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

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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

FRIDAY, JUNE 5, 1981

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

The subcommittee met, pursuant to notice, at 9:25 a.m., Courtroom No. 1, U.S. Courthouse, 200 West Eighth Street, Austin, Tex., Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Hyde, and Sensenbrenner.

Staff present: Helen C. Gonzales, assistant counsel, and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

Good morning. Today we begin our ninth in a series of hearings on legislation to extend and amend the Voting Rights Act. Our hearing here in Austin is the first of two regional hearings which the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee is holding. Next Friday, on June 12, we are going to convene a hearing in Montgomery, Ala.

On behalf of the subcommittee, I want to say how pleased we are that we could come to Austin to hear from such a distinguished list of witnesses. We also want to extend our thanks to Chief Judge William Sessions of the Western District of Texas for allowing us to have the use of this courtroom for today. We also want to thank the staff of the Office of the Clerk of the Court for their assistance and hospitality, especially to our subcommittee staff.

It is important to note that all of the bills before the subcommittee recognize the fundamental importance of the right to vote. Where they differ is on the means of guaranteeing the effectiveness of that vote.

Texas was brought under coverage of the Voting Rights Act in 1975. Since that time, there has been a 64-percent increase in the number of Hispanics registered to vote. Concurrently, there has also been an increase in the number of Mexican Americans who have been elected to office. According to testimony by the Southwest Voter Registration Education project before our subcommittee, there has been a 29.5-percent increase of Mexican Americans elected to office in 3 years, from 1976 to 1979.

It is also clear from the testimony we have heard to date regarding Texas that much progress has been made since 1975. It is equally clear, however, that significant problems may continue to exist, thereby requiring the continuance of the protections afforded under the act, primarily under the section 5 preclearance provisions.

We did invite several other witnesses, including the distinguished Governor of the State, Bill Clements, State Attorney General Mark White, and Secretary of State George Strake. I regret to say they did not accept our invitation. However, we look forward to hearing from all of the witnesses today and know that their testimony will be of great assistance to this subcommittee in its deliberations.

I now have the pleasure of yielding to the ranking Republican on the subcommittee, the distinguished Congressman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. I associate myself with your remarks. We are delighted to be here and look forward with great interest to the testimony.

Mr. EDWARDS. We are also pleased to have with us another distinguished Congressman from the great State of Wisconsin, Mr. Sensenbrenner.

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

I will not reiterate the accolades given by the chairman and Mr. Hyde for the hospitality we have received while in Texas. I am looking forward to this hearing and to the testimony that will be given today.

Mr. EDWARDS. Thank you, Mr. Sensenbrenner.

Our first witness is Mr. Sam Dawson, who is legislative representative of the United Steelworkers of America. Mr. Dawson, we welcome you. Will you please introduce your colleagues.

Without objection, all of the written testimony will be made a part of the record, and you may proceed.

TESTIMONY OF SAM DAWSON, LEGISLATIVE REPRESENTATIVE, UNITED STEELWORKERS OF AMERICA; ACCOMPANIED BY LORI JOSEPH, MACHINISTS UNION; JOHN HENDERSON, HUMAN RELATIONS DIRECTOR, AFL-CIO; ISAAC JACKSON, STAFF REPRESENTATIVE, UNITED STEELWORKERS OF AMERICA; MANUEL O. YSAGUIRRE, HUMAN RELATIONS DIRECTOR, AFL-CIO, AND PRESIDENT, STATE OF TEXAS LABOR COUNCIL FOR LATIN AMERICAN ADVANCEMENT; AND A. C. SUTTON, STATE PRESIDENT, NAACP

Mr. DAWSON. Thank you.

I would like to thank the committee for coming. It's good to know that the legislative branch of Government can work on the banks of the Colorado as well as on the banks of the Potomac. With the rain out there today, the banks of the Colorado may be getting closer all the time.

On my left is Lori Joseph, who is with the Machinists Union; Johnny Henderson, who is human relations director with the AFL-CIO in Texas; on my right is Isaac Jackson, who is a staff representative with the Steelworkers Union; and on my far right is Manuel Ysaguirre, also human relations director with the AFL-CIO.

I am testifying on behalf of the United Steelworkers of America, district 37, for the retention of the 1965 Voting Rights Act. I know of no other piece of legislation that has done more to give minorities access to the political system than the Voting Rights Act of 1965.

Our forefathers, the framers of the U.S. Constitution, designed a document that has stood for over 200 years as a symbol of democracy and justice. But those men of wisdom didn't provide access to all that democracy and justice to a majority of the citizens of the Nation. You had to be a male, Anglo-Saxon landowner to vote or to hold office.

During the history of this Nation, different segments of our society have demanded that they have a part in the political process. We have said by law that we will not discriminate against race, creed, or sex, but just saying these things simply was not enough. We were discriminating against certain segments of society.

The Voting Rights Act gave these people a law with enough teeth in it to make the law work. Any person saying the Voting Rights Act was not needed or isn't needed now is one of two things—either totally ignorant of what goes on in this State, or a liar, or possibly both. The blacks and Mexican Americans have come a long way, but still have a long way to go. There are numerous cities and schools that would allow minority officeholders if they had single member districts. These cities and school districts will not form single member districts unless the law dictates that it be done.

And the State of Texas and its political subdivisions have a history of trying to violate the right to vote. Texas had a poll tax which was declared unconstitutional. Texas had an annual voter registration which was declared unconstitutional. Texas required a full year's residency before being eligible to vote. Texas cut off the period for registration to vote 8 months before the general election before the practice was declared unconstitutional.

Since the poll tax was declared unconstitutional, voter participation in the general election has increased from 1½ million to over 4 million in 1980. Since the Voting Rights Act became effective, the participation in the general election has inereased from 3.4 million to over 4 million.

The State legislature passed specific laws prohibiting students from voting in counties where they attended college. The law was aimed at black students attending Prairie View A. & M. primarily. It was held unconstitutional.

The legislature passed laws prohibiting assistance to voters at the polls. This law was held unconstitutional.

Bilingual ballots and voting instructions were prohibited. This was held unconstitutional and the Voting Rights Act specifically required bilingual ballots and instructions.

Before the Voting Rights Act, legislators, city council members, school board members, and special district elected representatives were elected from at-large districts as a general rule. The single-member districts have become the general rule since passage of the Voting Rights Act. Single-member districts, of course, provide minority community members greater access to the political process in most instances.

In many cities and school districts election members were elected under the plurality system before adoption of the Voting Rights Act. Under this system, city council and school board members were selected not by majority of the voters but by the "high man

wins" voting. For example, there would be three seats on a city council up for election. All the candidates would run against each other, and the three receiving the highest number of votes won. The system has been all but eliminated.

The plurality system was abandoned when blacks and Hispanics began to get close to winning elections, and the at-large, by place system was adopted in most cities, towns and school districts.

Ward systems that existed and set up since the existence of cities were abandoned for at-large systems, when blacks began to run for city council seats within the wards. There have been a number of situations in the State of Texas, one being in 1975, when they redistricted Jefferson County. Twenty-five percent of that county was black. That county was entitled to four State representatives. The blacks were in one area of the county. Instead of cutting the county where the blacks could have a representative, the State legislature, in its wisdom, cut the lines where each of the four districts had 25 percent black. Because of the Voting Rights Act, that was held unconstitutional and now we do have a black representative from the county of Jefferson.

Right now the State legislature has just redistricted the State, and the county of El Paso is entitled to five State representatives. It is unreal—or I don't understand how they have managed to cut that county up to where there is only one Mexican American representative in that county. I'm satisfied that will not stand up, either, because of the Voting Rights Act.

There are now 109 more Mexican American officeholders in Texas today than in 1975 when the act came into the State. That's county, city, and State officeholders. I don't have the figures for the school boards, and I don't have the number of blacks in Texas holding office as a result of the Voting Rights Act, but I'm sure the numbers are significant.

I know there have been a number of counties in east Texas that have been redistricted as a result of the act, and there are a number of suits pending now that would redistrict other counties in that same area of the State.

There will be testimony later today giving the details and history of all this litigation. The United Steelworkers of America supported the enactment of the 1965 Voting Rights Act. We strongly support the retention of the act. It seems a shame in this society that such a law is needed, but it is, and we hope this committee recommends it be retained and continue to cover the State of Texas.

I would like to now call on Lori Joseph.

Ms. JOSEPH. My name is Lori Joseph. I'm an active member of the Machinists Union. I was a delegate last year to the Democratic National Convention.

As an active member of the Machinists Union, I think the Justice Department should continue to have the preclearance it has right now. I believe it will save the taxpayers money in the long run. Right now there are 254 counties in Texas, and if they did away with this preclearance hearing, it would be in litigation every time the precincts weren't drawn properly, the county wasn't drawn properly, or the congressional districts weren't redrawn properly. Peoples' organizations would always be constantly in

court fighting it. With preclearance from the Justice Department, I think that it cuts down the procedure immensely and it gives a fair shake according to the Voting Rights Act.

Thank you very much.

Mr. EDWARDS. Thank you.

Mr. DAWSON. Manuel?

Mr. YSAGUIRRE. I am Manuel Ysaguirre with the Texas AFL-CIO, and also president of the Labor Council for Latin American Advancement for the State of Texas.

Let me just say that the Texas AFL-CIO supports the extension of the Voting Rights Act.

I have a copy here of the McAllen newspaper, and the Voting Rights Act has been very critical for the Hispanics. This year, Your Honor, for your information, it says Dominga Sausedo was nervous as she walked from the cramped house to the neighborhood school a few blocks away. For the first time in the 48 years since she was born here in Texas, Mrs. Sausedo was on her way to vote. Like thousands of American citizens, Mrs. Sausedo speaks no English. The language and information barriers that existed until recently were enough to keep her away from the voting booth.

There are so many things that can go wrong, she said, with a self-conscious smile, to pull the wrong lever and make a mistake once at the polls. Earlier this month, however, she found the booth was bilingual, the election officials and voting machine, with instructions in Spanish and English. Her confidence increased by the moment Mrs. Sausedo strolled into the booth and pulled the lever for Ramiro Casso, a McAllen physician, challenging the incumbent, Mayor Othal Brand. Then, feeling content, she went home.

Dominga Sausedo has never heard of the Voting Rights Act of 1965, but without the protections of the act extended to citizens who do not speak English, she would probably have yet to register and cast her first vote. Even so, as a Spanish-speaking voter, Mrs. Sausedo is in the minority. Forty-one percent of eligible Hispanic Americans cast ballots in the 1980 Presidential election. But the minority is also rapidly growing. The number of Hispanic Americans who voted last November was 20 percent higher than in 1976.

This Voting Rights Act is not universally admired, particularly in those Sun Belt States where it has been most widely applied. Many election officials assert that their jurisdictions have been unfairly singled out and urge that such segments provided are no longer needed. They agree with President Reagan, that the law should be rewritten to apply to the entire country. Civil rights leaders contend that such a move would make effective enforcement impossible.

Some critics also contend that bilingual elections causes separatism, an argument rejected by Archibald Cox, the Harvard law professor who is chairman of Common Cause, a public affairs lobbying organization.

So I say to you, Your Honor, that we, the Hispanics, and also as representatives of the AFL-CIO, are in favor of extending the Voting Rights Act.

Thank you.

Mr. JACKSON. My name is Isaac Jackson, staff representative with the United Steelworkers of America. I am here to testify in favor of extending the Voting Rights Act.

The act has been and is a very effective tool in guaranteeing effective participation of all sections of the community in the political process. At this point in time we still need the act because there are areas where all sections are not permitted full participation. There is a lot to be done in Texas, creating single-member districts for city councils, school boards and county commissioners courts. The act is the only thing that in some cases prevents the dilution of minority voting strengths. I urge you to extend the Voting Rights Act.

Thank you.

Mr. HENDERSON. Thank you.

Mr. Chairman, I want to talk just a minute about some things that I think are important to all of us, and at the same time would ask for continued support for the extension of the Voting Rights Act.

Going back to a couple of years ago the students on the campus at Prairie View A. & M. were denied the right to register and vote because they were students, when all of the other students at all the other universities had a right to register and vote in the area in which they were going to school. Those students did not have that right at Prairie View.

Because of the Voting Rights Act, we appealed it on to the Supreme Court and those students were given the rights that all other students have. Because of the Voting Rights Act, the citizens of Waller County were able to elect two minority county commissioners. So, we want to encourage the committee to continue the extension of the act because we know it has done much to help many.

Another area that we want to talk just a minute about, very briefly, is about the Houston area. The mayor and city commissioners in Houston, Tex. were in place but at large. At that time it was very difficult to elect a minority to the city council or school board in the Houston-Harris County area. Since the Voting Rights Act and since we have now single-member districts because of the Voting Rights Act, we now have minority representation on the city council and also the school board, which would have never come about without the Voting Rights Act.

So, because of those areas where we have gained support of what we were rightfully entitled to, we want to encourage again that the committee extend the act.

I am with the Texas AFL-CIO and we are on record as supporting the extension of the act. We know that without the act many of us who are elected to the school boards and city councils and other elected positions would not have been elected to those positions.

So, Mr. Chairman, we want to encourage the committee to extend the act. Thank you very much.

Mr. EDWARDS. Thank you, Mr. Henderson.

Mr. DAWSON. Mr. Chairman, A. C. Sutton, who is State president of the NAACP, has joined us. I would like to relinquish the rest of our time, about 10 minutes, to Mr. Sutton.

Mr. EDWARDS. Mr. Sutton, you are welcome and you are recognized.

Mr. SUTTON. Thank you.

Mr. Chairman and members of the subcommittee, my name is A. C. Sutton. I am the president of the Texas Conference of the National Association for the Advancement of Colored People. The conference is appreciative that the committee is holding these hearings in Austin, Tex., the capital of our State, on the extension of the Voting Rights Act. We strongly support House bill 3112, the Rodino bill, in its entirety.

Blacks and other minorities in this State recall the white primary where they were allowed to vote in the fall after the selection had been made in the spring and in the summer, with a poll tax fee for the privilege of voting, with the restrictions as was in all other Southern States. Although the law has been changed, the attitudes of the controlling element remains the same. Thus, they continue to devise systems and procedures to make voting as difficult as possible.

The act of moving polling places prior to election as far as possible from blacks and other minorities, at-large elections, hard to get to locations to vote, harassment of voters, harassment of minority candidates, harassment of poll watchers, holding precinct conventions and meetings at hours difficult for blacks and other minorities. I have attached a letter from a county clerk denoting these procedures.

Thus the Voting Rights Act has been declared as one of the most effective civil rights laws ever. It has had a significant effect upon the electorial process in this State. Much of this presentation will indicate the ratio between Texas and the other of the southern States covered by this act.

It is believed that Texas, by its locality, further west than south, is not as prejudiced or has the same relationship as the other four deep Southern States. But I would like to compare some figures to bring out some facts that do indicate that Texas is as the other Southern States.

During my research I found that Texas is the second largest State in the Union in size; it's the third largest in population according to the census population of 1980. I also discovered that Texas has the third largest black population in America. There are 14,228,383 persons in Texas, of whom 2,985,643, or 21 percent, are Mexican Americans, and 1,710,250, or 12 percent, are blacks.

There are more counties in Texas, 254, than in any other State. Of the 1,016 county commissioners in Texas, less than 1 percent are black, and 5.43 percent were Mexican American in 1978. According to the percentage of the State's population, there ought to be at least 213 Mexican Americans and 122 black county commissioners.

Of the 150 State representatives in Texas, only 19, or 13.6 percent, are Mexican Americans, and 13, or 9 percent, are black. According to their percentage in population, there ought to be at least 32 Mexican Americans and 18 black State representatives.

Of 31 State senators in Texas, only three are Mexican American, and there are no blacks. According to the percentage of the State

population, there ought to be at least 7 Mexican American and 4 black Senators.

Several of the other Southern States, such as Alabama, Georgia, Louisiana, Mississippi, South Carolina, North Carolina, and Virginia have black senators—except for South Carolina; it has none, like Texas.

There are 24 current Congressmen from Texas. Only two, which is 8 percent, are Mexican American, and one, 4 percent, are black. According to their percentage of the population in regards to the 1980 census, where Texas will be alloted 27 Congressmen, there ought to be at least 5 Mexican Americans and 3 blacks. There are no black Congressmen from any of the other seven States and no Mexican Americans, nor are there any U.S. Senators, black Senators, from any of the other States.

When we take a broader view, comparatively speaking, Texas ranks seventh out of eight in total number of black officials, over 196 of the 2,019, with Virginia saving Texas from the bottom with 91. Yet Texas is last in county governing boards with five, up from four in law enforcement governing boards with five. Other officials, 21. A tie with Alabama for third with State house, with 13—in the delegation there are three women. In other county offices such as clerks and officers, there are reported none, in comparison with 27 for Mississippi, and only Alabama shows a zero as does Texas.

In municipal offices, Texas is ranked seventh with five. Mississippi again with 17. Governing bodies finds Texas No. 7, with 68, just above Virginia, with 48, but no comparison with Georgia, 139. Other elected positions, Texas ranks fifth with two, and No. 4 with other officials. I have attachments with information that bring these facts out to bear.

As Congresswoman Barbara Jordon testified for the extension of the present act, to quote:

> Among the civil rights legislation enacted in 1960, the Voting Rights Act epitomizes the black struggle of equality. In the South the Voting Rights Act has opened registration for eligible blacks. The Voting Rights Act has increased the possibility of free and equal representation by blacks as voters in the political process. But for many, the promise is yet unfilled. A few electoral victories should not mask reality. The Voting Rights Act may have overcome blatant discrimination practices; it has yet to overcome subtle discriminatory practices. Although the means may be different, the effect is the same.
>
> Blacks in the South continue to be excluded from the meaningful participation in a democratic process. Allowing the Voting Rights Act to lapse this year would vitiate the progress made in the last four years.

Further excerpts from Miss Jordan's presentation gives account of the political career, when in 1962 she ran for the Texas House from Harris County, Tex.

Will I be permitted to turn this in to you, since my time is running short?

Mr. EDWARDS. Yes. The full statement will be made a part of the record, Mr. Sutton.

Mr. SUTTON. All right. In order to expedite the time, since I find that my time is running short, I would like to say that what we are indicating is the proportion of elected officials ranges with Texas being near the bottom and very seldom ever getting up toward the top line in relation to the other States that are covered by the Voting Rights Act. Thus, we are asking that the Voting Rights Act be extended at the session in 1982.

(Materials submitted by Mr. Sutton follow:)

[From the Austin American Statesman, June 4, 1981]

REAGAN PROPOSALS OPPOSED—VOTING LAW FACES REVISION

(By Robert Pear)

WASHINGTON.—The Reagan administration may ask Congress to make major changes in sections of the Voting Rights Act of 1965, scheduled to expire next year.

Administration officials said Wednesday the purpose of the contemplated changes was to relieve the burden the law imposed on state and local governments.

Civil-rights advocates say the changes would diminish protection of voting rights.

In a series of interviews over the last two weeks, White House and Justice Department officials indicated a distaste for extending the law in its current form, saying it violated basic principles of federalism and states' rights that President Reagan has endorsed.

Under current law, states with a history of discrimination must get approval from the Justice Department or the federal District Court in Washington before they can change voting qualifications or election procedures.

This "pre-clearance" requirement applies to Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia, and to portions of 13 other states.

Administration officials said the proposals under study would make these changes:

Limit the pre-clearance requirement to those types of changes that have elicited the most objections from the Justice Department. These include the redistricting of a state or political subdivision, the change from single-member districts to at-large elections and the annexation of territory by a city.

Change the formula for coverage. Cities and counties with a history of discrimination would still have to obtain federal approval for changes in election procedures, but cities and counties with a clean record in recent years might be allowed to "bail out" from coverage.

Replace the pre-clearance requirement with a mandatory-notice provision. Covered jurisdictions would have to tell the Justice Department of proposed changes in local election law, but the attorney general would have to seek a court injunction if he wanted to prevent a change from taking effect. The department can now exercise an administrative veto simply by objecting to a change submitted for pre-clearance. This proposal would switch the burden of proof from the local authorities to the attorney general.

Let the pre-clearance requirement expire in August 1982 but make it easier for plaintiffs to win voting-discrimination suits by stating they should prevail if they could prove either a discriminatory purpose or a discriminatory effect. The Supreme Court has implied in recent decisions that a discriminatory effect, in the absence of a discriminatory purpose, is not enough to establish a constitutional violation.

Elaine Jones of the NAACP Legal Defense and Educational Fund Inc. said the pre-clearance requirement, known as Section 5, was "the heart of the Voting Rights Act."

"Any weakening of Section 5 is totally unacceptable to the minority-communities in this country," Jones said. "If that is taken away from us, it sends us back to the period before 1965. It makes us litigate everything."

When Congress renewed the Voting Rights Act in 1975, it expanded the law to protect members of "language minority" groups who do not speak or write English. States and counties covered by this part of the law must provide bilingual election materials, using whatever other language is understood by the local minority group.

These requirements do not expire until 1985, but civil-rights groups want Congress to act this year or next to extend both the bilingual provisions and the pre-clearance requirement to 1992. Administration officials said they did not want to confront the bilingual issue any sooner than necessary.

[From the Houston Post, May 28, 1981]

EXTENSION OF VOTING RIGHTS ACT BACKED

(By Susan Grafeld Long)

WASHINGTON.—Mexican-Americans and blacks in Texas desperately need the strict protection of the Voting Rights Act in order "to gain equal access to the political process," St. Mary's University professor Charles Cotrell told a House judiciary subcommittee Wednesday.

Cotrell said his extensive research into the impact of the act on the Texas electoral system and his experiences growing up in Texas have shown him that "only with the aid of the Voting Rights Act and federal court litigation have minorities in Texas been given the opportunity to reverse over 100 years of discriminatory election practices."

Cotrell and other political science professors testified in favor of a 10-year extension to the act's controversial "pre-clearance" provision requiring Southern states—including Texas—with a history of racial discrimination to receive advance approval from the Justice Department or a federal court before making any changes in their election laws. The provision is scheduled to expire in August 1982.

Cotrell said that since 1975—when the original Voting Rights Act was enacted—the state of Texas and its political subdivisions have attempted to enact 130 electoral changes, many of which would have been "devastating" to Mexican American and black political participation.

"These 130 proposed changes were included in 86 letters of objection by the Department of Justice," he said.

In the six years the "pre-clearance" provision has covered Texas, the state has received "more letters of objection than any other state covered by the act for 15 years," Cotrell added.

Election practices in Waller County, the only majority black county in Texas, prompted one such Justice Department objection, he said.

After 12 years of being denied the right to register to vote in Waller County, students of predominantly black Prairie View A&M attained "political access" only after the Justice Department objected to "racially gerrymandered county commissioner precinct lines," Cotrell said.

Cotrell and other witnesses testified that although the Voting Rights Act permanently banned blatant discriminatory practices—such as poll taxes, whites-only primaries, literacy tests and voter intimidation—comparatively subtle forms of discrimination still exist.

Witnesses cited "discriminatory practices" such as gerrymandering to break up minority voting blocs and annexation of neighboring white districts to dilute minority population concentrations.

[From the Corpus Christi Caller, May 11, 1981]

VOTING RIGHTS ACT SHOULD BE RETAINED

Congress is confronted with a dilemma. Admittedly, this is nothing new: Congressmen and senators are forever grappling with dilemmas. The one at hand, however, is a particularly formidable example of the species, and its handling is going to require more than a little delicacy.

The issue in question has arisen because the Voting Rights Act of 1965—the measure credited by many observers with securing real voting power for American blacks and other minorities is due to expire in August 1982. It is up to Congress to decide whether the act shall be extended or shall be allowed to lapse.

This is a matter of more than academic interest, particularly in the states of the South and Southwest. The Voting Rights Act has provided for continuing federal monitoring of elections in the states involved, and has required those states to demonstrate to the Justice Department that any changes in electoral procedures will not have an adverse impact on minority voting rights.

Many conservatives have opposed the measure right from the start, and with Washington tilting noticeably to the right, the scent of blood is in their nostrils. They argue that, whatever purpose the Voting Rights Act may have served, it has outlived its usefulness and now represents nothing more than unwarranted federal interference in the electoral process.

Not surprisingly, liberals and minority groups tend to see the matter in a different light. Benjamin Hooks, executive director of the NAACP, says failure to extend at least the most important provisions of the act "would embolden those who want to return to the bad old days. The National Urban League and the AFL-CIO have also jumped into the struggle for extension.

We find ourselves caught in the middle. On balance, however, we find the argument in favor of extending the act more compelling than that in favor of letting it lapse. For one thing, the provisions of the act have not been all that onerous. For another, it has served to make electoral politics more equitable in many areas where minority groups had previously been denied a voice. And for a third, it serves as visible reassurance to ethnic minorities inclined to question the commitment of

"the system" to their interests. All of these considerations, we believe, militate in favor of giving the Voting Rights Act of 1965 at least a limited new lease on life.

VOTING ACT EXTENSION IS BACKED

WASHINGTON.—Organized labor and major civil rights groups on Wednesday threw their weight behind the proposed extension of the 1965 Voting Rights Act, but the battle looms as difficult against the conservative tide of the 97th Congress.

The heads of the NAACP, the National Urban League and the AFL-CIO all urged renewal of the law before a generally sympathetic House Judiciary subcommittee.

But heavy resistance is expected in the full House and in the Senate. Strom Thurmond, R-S.C., chairman of the Senate Judiciary Committee, has indicated he will fight any bill that would keep alive one of the major legal tools used by civil rights enforcers over the past 16 years.

Failure to extend important provisions of the law before expiration in August 1982 "would embolden those who want to return to the bad old days," said NAACP executive director Benjamin Hooks.

Hooks recalled pre-Voting Rights Act days in the South when voting registrars would ask prospective black voters, "How many bubbles are in a bar of soap?" or "How far can a little dog run in the woods?"

He said without renewing the parts of the law under which the election laws in seven Southern and two Western states and parts of 11 others are monitored by the Justice Department, there will be a return to the "hostile, difficult conditions" of the past.

The states now required to demonstrate to the Justice Department that any changes in voting rules or jurisdictions do not deprive minorities of voting rights are South Carolina, Alabama, Mississippi, Louisiana, Georgia, Virginia, Texas, New Mexico and Arizona.

In addition, parts of Maine, Idaho, Florida, California, New York, Colorado, Michigan, Wyoming, South Dakota, Oklahoma and Hawaii are also monitored by department lawyers.

Rep. Henry Hyde, R-Ill., a conservative member of the subcommittee, said the seven Southern states to which the law now applies "have been in the penalty box" long enough.

Mr. EDWARDS. Thank you, Mr. Sutton, and thanks to all of the witnesses that were introduced by Mr. Dawson.

The gentleman from Illinois, Mr. Hyde, is recognized.

Mr. HYDE. I have no questions, Mr. Chairman.

Mr. EDWARDS. The gentleman from Wisconsin.

Mr. SENSENBRENNER. Yes, Mr. Chairman, I have a question.

Just so you ladies and gentlemen know where I'm coming from, I do support the extension of the preclearance provisions of the Voting Rights Act.

But in listening to the testimony both today and in previous hearings, I am a little bit puzzled, particularly about the at-large versus district election issue of school board members in the South. Where I come from in Wisconsin, most school boards are elected on an at-large basis, on the philosophy that a school board member's obligation is to provide quality education in all of the school buildings in that school district for all of the students attending those schools, rather than being an advocate for a specific neighborhood or a specific geographic area within that school district.

Incidentally, when the State legislature in Wisconsin changed the law to provide for district election of school board members in Milwaukee, which is our largest city, the number of blacks serving on the school board actually went down because blacks did better in the citywide elections than they did in specific neighborhood elections.

But I would like to have your comments, Mr. Dawson, about this general philosophical issue, that a school board member's responsi-

bility is a little bit different than that of the city councilman or a State representative, or even a U.S. Congressman, in that there is a greater responsibility to an area outside of a specific electoral district in providing good education.

Mr. DAWSON. I can agree with what you said, and I'm sure that's the way it is in Milwaukee and in Wisconsin. But, in fact, in the State of Texas, until we got single-member districts, we didn't have anyone on the city council or on school boards—and I know we're talking specifically about school boards and city councils.

But just to give an example of what goes on in the State of Texas, over in East Texas, some of the counties had as much as 50 percent population black, and the districts were gerrymandered to such an extent that there would be 180 percent deviation in population just to keep a black from being elected. The amount of money that it takes to run for a school board in the city of Houston almost prohibits anyone, unless you have a lot of money, to run. We have not found that to be the case in Texas, where you run at large, that blacks and Mexican Americans just do not get elected unless they have over 50 percent of the population of that county or the school board district, whatever.

I can agree with you, that the school board is not necessarily run the same way as the county and the city, but they do handle funds, school board funds; they are taxed to the same extent as everyone else in the district. We feel that in the State of Texas, if they're going to have access to the political process, that we need single-member districts.

Mr. SUTTON. May I speak to that also?

Mr. EDWARDS. Certainly.

Mr. SUTTON. The schools have gotten to be such a political entity, since it is a taxing body now, and the protection of every section of the city must be protected, with the amounts of money, as he explained, that it takes to get one in, there are systems that are being devised in many of our communities that actually do tax property to such a degree that it's better for some blacks to actually move out.

Now, we found out when blacks are able to get on school boards, it isn't in that direction so much. For instance, if a school district has a priority of advertising when some property is going to be sold for taxes, many times what they would do is publish it somewhere where no one would hardly see it. When we have blacks on those districts, then they call attention to it and those lists are furnished to everybody in the community. There are so many areas now that the school is almost as involved as it is in any of the other political arenas.

Mr. SENSENBRENNER. Have any of you found that school board members who have been elected by districts really don't pay as much attention to what goes on in the schools outside of their electoral districts, but within the school districts, as they do pay attention to those schools that are within their electoral district?

Mr. SUTTON. I think what has happened is the media plays them up so much that they can't really—and I think it's safer for all of the districts because they're going to have to give and take in order to be sure that they can fit the guidelines of the Federal Govern-

ment and the other educational guidelines. I think they have to deal very fairly across the board.

Mr. SENSENBRENNER. OK. Getting down to the bottom line, the concern I have is particularly in school district affairs. We're living in a period of declining enrollment in the schools, and school boards around the country are having to face the very painful decision of closing school buildings and consolidating classes in other buildings.

Have you found that a district election of school board members has really not provided the objectivity that is necessary in school closing situations that perhaps an at-large election of school board members would?

Mr. DAWSON. I don't see it as any different than electing a Congressman from districts, and naturally, the Congressman is going to look at his district and then he looks at the rest of the country. This system seems to work, and it seems to work for the school boards here. I haven't heard of any school official complaining about that aspect of it.

Mr. SENSENBRENNER. All I would say in response is just look at the difficulty the Congress has in closing up unneeded military bases. [Laughter.]

Mr. DAWSON. I understand.

Mr. HENDERSON. Congressman, may I just add that there are only a very few school districts within the State of Texas that have single member districts. The rest of them are positions at large.

When we talk about positions at large, what are we saying? We are simply saying that I run in position six, but everybody all over the school district has to vote for a minority. The chances are almost zero of one getting elected by a position at large.

We have some school districts and city councils and counties where some counties have 49-51 percent of the total population, and certain counties that's minority; but when you talk about a position at large, there is just no way that a minority person can win in a position at large. So that's why we need to keep what we have intact, to make sure at least that we try to hold on to what we have. That's why we think it's important.

Mr. SENSENBRENNER. I have no further questions.

Mr. EDWARDS. Ms. Joseph wishes to comment.

Ms. JOSEPH. This is a small comment. It goes back to when I was in high school, when I was in the 9th and 10th grades in 1968 and 1969.

I was a participant in Dallas County with the Greater Dallas Community Relations Commission. At that time it was the first tri-ethnic committee put together in Dallas County. I was on the high school's. I was going at that time to Hillcrest High School, which is in far North Dallas, which received excellent funding, had super teachers, clean grounds, and any kind of facilities that you wanted, including computers, back then.

I participated in a program where I exchanged and I went to Lincoln High School, which is over in West Dallas. The distinction between the schools was incredible. The funding for the schools was incredible. The difference in levels of education was incredible. There was at least 4- to 5-grade levels difference. The teaching levels were different. What the teachers had to work with—there

were no audiovisual aids. They did not have the kinds of things to help teach that the teachers over at Hillcrest had.

I feel that within the last 10 years, through single member districts, that has changed. Because now the people can get up and say "the schools out in this area are not getting the same materials as over here." All that anybody is asking in education is equal opportunity to learn.

There is not equal opportunity. This one gets audiovisuals, speech therapists, and all the other goodies that come along, and the people over here who might need remedial reading, English for foreign language students, more programs such as that, accelerated programs, things like screens, paper, pencils, chalk, erasers, very basic things are missing out of those classrooms for those teachers to teach with. They come out of those teachers' pockets. Those teachers can't afford it any more than the people out at Hillcrest could afford it. I think that is one of the major changes that I personally have seen in the last 10 years.

Mr. EDWARDS. Thank you, Ms. Joseph.

I have one question that can be directed to any member of the panel who cares to answer it.

In a January 1980 study of Texas by the Texas Advisory Committee to the U.S. Commission on Civil Rights, the committee said in part:

> Texas yields to no State in the area of voting rights violations. As was the case with most Southern States, Texas has employed the extra legal tactics of physical and economic intimidation to limit the use of the franchise by minorities. It should be observed that never has the Texas Legislature acted to encourage minority political participation in the absence of a Federal court order to do so, or where such an order was inevitable.

If the voting rights provisions that expire next year are allowed to expire, then the matter of voting rights in Texas will be largely returned to the State and local governments.

I would like to ask any member of the panel who cares to answer what would be the consequences?

Mr. DAWSON. That statement would probably be just as true as now. I mean, it would probably go back to the same thing it was. It appears to me that the same folks who have run the State are still running the State, and I would think, without Federal law to make the people do what's right by the citizens, that it would revert back to what it was prior to the Voting Rights Act.

Mr. EDWARDS. Mr. Sutton, do you agree that after 17 years of the Voting Rights Act, the situation in Texas would revert to the days before the 1965 act?

Mr. SUTTON. I certainly do, because Texas has had 84 objections, and of the 84, 13 have been declined. But it has filed more objections than any other State, so there are more infractions. But the real problem of the 17 years is, after so many years of discriminatory practices, it will be years before the white population as well as the black population actually recognize they can do something about the system.

In the last 17 years many people up until now don't know enough about even how to file an objection and are being discriminated in not knowing what to do. The educational process is the problem, of getting information to them and giving them the courage, in face of intimidation. It's going to take another 10 or 15

years before the people will actually recognize that they have a privilege of voting, a privilege of filing an objection, because the educational processes that go down through our communities are so limited when it comes to voting and voting rights.

So I certainly believe that it will revert immediately back, and if we do not continue to file objections, I think it will revert quicker in that system than any other system.

Mr. EDWARDS. Thank you, Mr. Sutton.

As my counsel points out, Texas has only been covered since 1975, so you only have 6 years——

Mr. SUTTON. That's right.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I would like to ask Mr. Sutton, do you think that reregistration is ever proper?

Mr. SUTTON. Yes. The only reason that I would think reregistration would be proper would be to update the list and not to purge.

Mr. HYDE. By updating the list, you would be purging people who——

Mr. SUTTON. Died.

Mr. HYDE [continuing]. Who have passed away, right, moved away.

Mr. SUTTON. Yes, moved off, rather than purging.

Mr. HYDE. How do you determine what the purpose is, say 10 years——

Mr. SUTTON. I would say not every year would be proper, or every other year. The idea of reminders and the kind of educational programs that we need to encourage the people to stay aware of the electoral process is I think where we need more than anything else, because people are not kept aware enough of the procedures and how they can participate in the procedures because they have been deprived and they have no knowledge of how the procedure actually works.

Mr. HYDE. I am always a little leery of some of the statistics on voting activities, because in many communities where there isn't a racial difference at all, there is great apathy. Apathy has characterized the electoral process in America for many years. It isn't because people are discouraged or intimidated from coming. They just don't care. Or they're satisfied with the way things are, or they don't think it makes any difference. So I do think those reasons ought to be borne in mind and in context. They certainly aren't applicable everywhere.

But when I hear statements about Texas not encouraging minority participation, I can assure you in Chicago Democrats don't encourage Republicans to participate, and vice versa in other areas. They have some interesting ways of discouraging participation. Voting machines break down in Republican precincts and the long lines, where people finally have to go to work.

Assistance in voting, which you have cited as an abuse, the denial of it, is abused on the other side in communities I am familiar with, where the precinct captain goes in and votes for the voter, to make sure they vote for the right candidate. If they're of Polish extraction and maybe have some language difficulty, it's the assistance in voting where the fraud occurs. It's very much abused.

So, you know, some things may be wrong in some areas and not so wrong in others.

Mr. DAWSON. One thing that's not wrong, I don't think, in the State of Texas is the voter registration law that we have. There could be some minor changes, but we do have what I consider to be one of the better voter registration laws of any State. Post card mail, you can register just about any way. You are mailed out a registration form every 2 years. If it is returned to the courthouse, then you are purged at that time. But there is no reregistration, and I don't think, as long as we have the law we have, that reregistration is necessary unless you move your residence. That's what we have in the State of Texas and I think it's working well.

I would like to see reregistration closer to the date of election, but——

Mr. HYDE. What about undocumented persons registering to vote? What safeguards exist on that situation?

Mr. DAWSON. How high is up, Congressman? I don't know how many are registered. I just absolutely do not know.

In the precincts that I have worked, where there were a number of undocumented workers, they didn't seem to be registered. So I wouldn't be able to answer that question.

Mr. HYDE. When you register, do they require proof of citizenship, or do you just say you're a citizen? Is the registration bilingual?

Mr. DAWSON. Yes, the registration is bilingual, but they do not require proof of citizenship.

Mr. HYDE. So as far as you know, however many undocumented workers—illegal aliens—are in here, if we continue with the bilingual there's no inhibition for them casting a vote, is there?

Mr. DAWSON. I don't believe that is happening a lot, I really don't. It may be, but I just don't believe that's being abused. I don't believe that many illegals are registering to vote.

Mr. HYDE. May I ask the gentleman over here, is it common that someone would be born in America and live 48 years here and not be able to speak English or understand it?

Mr. YSAGUIRRE. It is. It sure is.

Mr. HYDE. Why is that? Is it that there's no education in those communities?

Mr. YSAGUIREE. Well, that's one of the problems. The other one is, since the Voting Rights Act came about, a lot of our people—and we're talking about the oldest ones that have been here for so many years—they never participate in the political process.

You mentioned awhile ago, you know—take Corpus Christi, for instance, where we've got 55 percent Mexican Americans and 10 percent black and what have you, and yet we do not have a Mexican American in the city council for the simple reason that they don't want to go out and participate, because they say "why should we go when the at-large takes care of it." We never get a Mexican American elected.

Mr. HYDE. Well, maybe someone who isn't a Mexican American can be an honest, decent person and do a good job in office, and maybe a white could be an honest and decent person and a black and a Mexican American.

But I'm more concerned about how someone can spend a lifetime in our country and never learn any English. That bothers me. Something is even more wrong there, if that is widespread.

Now, I know how it can happen here and there. The more we are bilingual in this country, the more it seems to me we perpetuate or deny the incentive to learn English, which is the language of this country that predominates. We cripple people by not giving them the incentive to learn English, and 48 years without being able to—if that's widespread, you know. That's what you said.

Mr. YSAGUIRRE. We do have some, you know, here lately. Let's take it 10 years back. I don't know whether you know or not, but once you have worked in the fields, you get back with your people and really know what's going on. You know, you can sit in an office and say this and this and that, but when you work in the field and find out the conditions of these people, where they can participate or go to school at night, where they can learn English—and you know how it is when you are older, that you don't learn that easy as when you're young.

Mr. HYDE. Oh, sure. But I thought this woman was born in the United States.

Mr. YSAGUIRRE. Well, take, for example, my mother. She was born in Mexico and up to now I finally got her to where she can write her name. But English and how to read it, she can't do it. That's just giving an example on the part of my mother. She has been in the United States for so many years that she is a citizen of the United States. But yet to that point, I can't get her to read or write English.

Mr. HYDE. Lastly, you read from a story that President Reagan wanted to make the preclearance sections universal across the country, or some statement like that.

I am surprised to hear that, because the White House has not taken any position as yet there—it's under study—on the extension of the preclearance sections, not the Voting Rights Act itself, which is permanent law. We're just talking about the preclearance sections. I know they have not because they have consulted me and others on how our hearings are going. I am sure as these hearings develop it will have an impact on the position they take.

Mr. SUTTON. May I shed some light on the issue of why there are some people, 48 and 50 in all.

If you will look at the policy level of Texas, you will find that many people don't even get a chance to go to school in order to go out and to work. Many of the families have gone to the conformed labors and so forth where it's not necessary to speak the English language. In many instances, we find this quite often in our service—I'm from San Antonio, where we have 54 or 55 percent Mexican American and only have about 6 or 7 percent that are black. Being a minority in a minority setup, I'm able to tell you a lot of the background of that minority.

Unless we can begin to lift the poverty level to where we can more or less see that every one of them are able to go to school, we're still going to have people that will be speaking the language of their native land rather than the English language, because of their habitat and how they grew up in our society.

I guess until we're able to really lift the poverty level enough to where we can demand that every child would go to school and see that they get the proper education, at that point I imagine we will be able to have people growing up with the idea of English only.

Mr. HYDE. Are you saying, then, there are substantial numbers of children in the San Antonio area who do not ever go to school?

Mr. SUTTON. Well, now it's not as bad since they started the different programs. What the bilingual program actually does is focus in on those children that forces the parents to send those children to school. That's one of the greatest features of the bilingual program, to see that those children who have really no background of English up until their third or fourth year of life, they then begin in the program to learn. But many of the children that are in our elementary schools have not had any background at all of English, and this is why the bilingual program is so important, to see that they do get the foundation of English in order to speak the American tongue.

Mr. EDWARDS. Our thanks to the panel. We appreciate your contribution very much.

We are very pleased to have as our next two witnesses Ambassador Robert Krueger, who is accompanied by Mr. William White, visiting professor of law at the University of Texas.

Before I introduce our former colleague, I point out that the Congressman from this area, our good friend and colleague Jake Pickles, wanted to be here. But he is chairman of a very important Ways and Means Subcommittee on Social Security and he is overwhelmed with work. He gave us his very best wishes and offered us the hospitality that we are enjoying.

Mr. Krueger, I am delighted to see you. I can assert that we miss you very much in the House of Representatives. You made a great contribution during the years that you were there. I don't think I will ever forget the day that you walked up to me on the floor of the House a few days before consideration of the extension of the Voting Rights Act in 1975, and said, "I'm going to help you. I think it's a good thing, not only for the State of Texas but for the country." You went out on a limb because it was a very daring thing to do at that time. I applauded you then and I want to thank you once more because we haven't had a single witness—and we've invited a lot of witnesses—perhaps one, who didn't say that the Voting Rights Act and its extension in 1975 has not only been good for minority citizens, but it is also good for the country. So we are pleased to have you.

Without objection, your statements will be made a part of the record. Professor White, we're delighted to have you, too.

TESTIMONY OF HON. ROBERT KRUEGER, FORMER MEMBER OF CONGRESS AND FORMER AMBASSADOR AT LARGE AND U.S. COORDINATOR FOR MEXICAN AFFAIRS, ACCOMPANIED BY WILLIAM H. WHITE, ATTORNEY, AND VISITING PROFESSOR OF LAW, UNIVERSITY OF TEXAS IN AUSTIN

Mr. KRUEGER. Mr. Chairman, thank you very much for those kind remarks, and we wish to thank you and members of the committee for the opportunity to be here today to testify.

My name is Robert Krueger, and joining me in preparing and presenting this testimony is William H. White.

We have come to urge the extension, Mr. Chairman, of this act, which has brought the premier privilege of citizenship, the right to vote, to more Americans than any other act in the last half century.

We worked for the continuation of this act and its extension to Texas in 1975, one of us as a Member of Congress, the other as a legislative assistant. We recognized then that it was not a perfect act. If people were perfect, they would require no laws. Being imperfect, they write imperfect laws. Desiring a better society, they seek to improve those laws. We support that aim. But we believe that any alterations to this act should be minimal, and that its overall success in practice warrants its continuance without substantial alteration.

The success of the act has been real and substantial. The increase in registration of black voters in certain areas of the South immediately following its passage in 1965 is well known. Yet how the act can indirectly affect the course of participation in elections, and their results, can be seen nearer our home in San Antonio.

Before extension of the Voting Rights Act to Texas, and before the inclusion of language minorities such as Hispanics in its coverage, San Antonio had a city council of nine members. Only two were Hispanic, although the population of the city consisted roughly of 50 percent Hispanics, 10 percent blacks, and 40 percent Anglos. Following the extension of the Voting Rights Act and the elimination of at-large elections for city council, the first council elected in single-member districts was composed of five Anglos, five Hispanics, and one black member—a close reflection of the ethnic makeup of the city. Since then San Antonio has elected its first Hispanic mayor in this century, Henry Cisneros. No one should say that this change in mayoral and council election results came only from the Voting Rights Act, but anyone who knows the region should acknowledge that the act helped create the conditions to allow such elections.

We are not, of course, engaging in the racism of saying that it is better to have a mayor of one ethnic background, Hispanic, rather than another, Anglo. We are saying that is is important to all Americans that people of all ethnic groups have the opportunity, real as well as apparent, of being elected to the highest positions in the community; and that voters of all ethnic backgrounds have the realistic opportunity to choose and elect someone of similar ethnic background to represent them. That opportunity has historically existed for Anglos; it should for Hispanics and blacks as well, and the Voting Rights Act helps assure that it will.

We cannot ignore history in considering the demonstrable effects of this act. State Senator Bob Vale has told me that when he entered the Texas Legislature in 1965 there were: One black member, one Republican, five Mexican Americans, and no women among the 181 members. Those were all minority groups, and they certainly included Republicans at that time.

Today, because of single-member districting and the changed attitudes that have accompanied passage of this act, over half of the Texas Legislature's 181 members are composed of those groups.

Nationwide, the number of black officials elected to city and county offices increased four fold between 1970 and 1979, or, from 715 to 2,647. In elections of positions in education, the numbers went from 362 to 1,136 in the same period. Part of this increase is attributable to the expansion of single-member districts to replace at-large voting.

Consider, for example, what has happened in certain local school board elections in Texas in which all members are elected on an at-large basis. The Southwest Voter Registration and education project undertook a study of 361 Texas school districts, in which, among such districts, the student population was 20 percent or more Hispanic. Within these districts, only when the student Hispanic population exceeded 89 percent did Hispanics form a majority on the school board. And in 42 of the districts in which the Hispanic student population exceeded 50 percent, there were no Hispanics on the boards. Thus, many students who are reared in homes where English may not be spoken, or is not spoken exclusively, study in school systems in which probably no one on the school board has ever been reared bilingually.

The Voting Rights Act was written with an eye to historical patterns of discrimination and not with an eye to giving equal attention to all areas of the country. Some have criticized it for that, saying that it focuses excessively on one region of the country, thereby singling it out for coloquy. I say today, as I did on the floor of the House in 1975, that I look forward to the day when the citizens of Illinois will receive the same protections as those of Texas. But I don't want to remove those protections from Texans just because they are not extended to Illinois, any more than I would wish to remove police protection from Texas if it were not available to Illinois.

Texas can take great pride in the way in which it has opened vastly increased political opportunities for its citizens. We wish to continue to be a place of opportunity and this act helps us to do so.

If we are in a time of budget cutting and more careful attention to Federal expenditures, then prudent management suggests that Federal attention go to the areas with historic problems until the time at which those problems are solved. For this reason, we favor continuing to apply the coverage of the Voting Rights Act to those States to which it has applied, and not to expanding its coverage to all States, as some have suggested.

We recognize, having spoken with various local and State officials, that some provisions of the act result in increased, and sometimes unnecessary paperwork. We wish to be responsive to such criticisms. One way of reducing paperwork and unnecessary delay in effecting changes might be to continue the basic preclearance process under section 5, which we consider essential, but to reduce one unnecessary step in the process.

We understand that currently the Department of Justice receives documents requiring its preclearance and has 60 days in which to review them. Meanwhile, the Department also informs, from its list on file, interested parties such as MALDEF, LULAC, the NAACP and similar groups who wish to be informed of proposed changes in election procedures. These groups, and any other interested party, have the opportunity to express their views to the

Department of Justice. And in practice, at least in Texas, the great majority of instances in which the Department of Justice raises objections during this preclearance occurs in instances in which interested parties have raised objection.

Nonetheless, even on routine and noncontroversial matters such as slight changes in election procedures to which no one objects, the Department of Justice must now spend time. Meanwhile, those who proposed the changes face delay while Justice officials review these proposed changes. Wouldn't it be possible fully to maintain the strength of the Voting Rights Act, and yet to eliminate unnecessary delays for local or State officials, if preclearance scrutiny were required only when an interested party raised objection or requested such scrutiny? It might actually allow an overworked group of attorneys within the Department of Justice who are responsible for voter rights legislation the opportunity to spend more time on significant problems. Such a change, however, if effected, would have to guarantee full and adequate notice to interested parties at both national, State and local levels. Without such guarantees, the changes should not be undertaken. With it, however, the preclearance process might be streamlined.

There are some additional areas in the Voting Rights Act, Mr. Chairman, which some people are proposing should be altered, especially because of certain recent court decisions. I should like now to ask my colleague, Mr. White, to present this part of the testimony which addresses these changes.

Mr. WHITE. Like Bob, I will address my remarks to perhaps some changes that the committee ought to consider, or at least some legislative history that the committee ought to consider making.

We are in basic support of the legislation, and I think the thrust of our testimony, as well as support of the legislation, is to analyze perhaps some changes that might be made which will make the act more effective and minimize any objections that people have due to any bureaucratic delay and redtape that the act causes, and my remarks should be taken in that light.

Specifically—and I'll go through my statement. Perhaps if it's submitted into the record, I can skip portions and get to maybe explain in more detail what I recommend if it's not in this statement.

I believe that section 2 of the Voting Rights Act, which is the general prohibition against abridgement of voting rights, could be strengthened, beneficially strengthened, either through a change in wording, perhaps, or a clear legislative history that would give the courts better guidance in their interpretation of this troubled provision.

As you know, section 5 of the 14th amendment gives Congress the power to outlaw discriminatory practices even where those practices would not necessarily violate the 14th or 15th amendments of the U.S. Constitution as interpreted by the Federal courts. However, section 2 of the Voting Rights Act has been interpreted by the courts simply to restate the law of the Constitution against discrimination in voting practices—notably, as you are aware, the *Mobile* v. *Bolden* case

Last year the Supreme Court in that case decided that in order to show the violation of voting rights under the Constitution, and

under section 2 of the Voting Rights Act, a private plaintiff had to show that there was a subjective intent to discriminate.

Let me pause from my testimony right there and say that I think it is very important, either by express language or legislative history, that there be a private cause of action under section 2 of the Voting Rights Act. If the committee is successful, as I hope it will be, in clarifying the law in this area so that the courts are given somewhat more leeway under section 2 of the Voting Rights Act to find a practice of discrimination than they are under the 14th and 15th amendment, you see. So if you are able either through some change in the wording or through the legislative history to make the coverage of section 2 of the Voting Rights Act greater than the 14th and 15th amendments, then make quite clear, please, that private plaintiffs have a right of action under that section.

The Supreme Court in the *Mobile* v. *Bolden* case says "well, maybe they do" and dropped a footnote, or "maybe they don't." That's my point.

Proof of subjective intent to discriminate is very difficult, as you know. We have come a long way from the time at which, for example, the mayor of the city of Richmond in the 1960's could justify the annexation of a white suburb after blacks became a force in city politics by saying, "As long as I'm the mayor of the city of Richmond, the niggers won't take over this town." I think it's worthwhile to point out at this point that some of these people who think it's so ridiculous to have the Voting Rights Act extend to annexation ought to consider some of these historical incidents before they make that type of generalization.

Modern discrimination against racial and ethnic minorities is likely to be subtle and unexpressed rather than stated in the press and in the chambers of government. As a result, it becomes extremely difficult and in some cases nearly impossible to prove subjective intent to discriminate, even where the facts fairly and clearly indicate that intentional discrimination might have been in the minds of the officials in charge of voting practices.

Perhaps the prime examples of cases in which a burden of showing subjective intent to discriminate becomes almost impossible is the case of at-large elections, which I am sure you considered at length. As the statistics noted earlier concerning at-large elections in Texas' school boards indicated, at-large elections can have the effect of preventing access by minorities into leadership positions in important community institutions. If at-large elections have been the rule since the application of the Voting Rights Act to Texas, there is no opportunity for the Justice Department to review these practices under the preclearance provisions of section 5, since there has been no change in the voting practices. Therefore, the private lawsuit is the only means to effectively remedy any discrimination that would occur.

Now, in many counties in rural Texas it is well recognized that the predominant Anglo and historically the subordinate Mexican American populations have led independent existences. This is a historical fact, and questions such as the effect or intent of an at-large school election system should not be analyzed outside of that basic historical context. I think the gentleman from Wisconsin, this is one case where Texas might be distinguished from some of the

situations which he was talking about. I'm certainly not saying this is true throughout Texas. But I think in many areas of rural Texas it is just a fact that you have had two communities leading independent existences in which one community has had the power for generations.

In a case like that, how would you go about showing intent? Now, under present law, the answer to that question is unclear. Since the case of *White* v. *Register,* the Fifth Circuit Court of Appeals tried to devise a test that would allow private litigants to demonstrate when these at-large elections denied members of minority groups access to leadership in political positions, including school boards. As you might be familiar with, this was a fairly detailed test. I think the Fifth Circuit was very conscientious in this regard. They wanted to avoid the criticism, which might have been valid, if they failed to devise a specific test for discrimination, that they would just be deciding cases by the seat of their pants. So they had some very specific jurisprudential rules for determining where there was discrimination.

The *Mobile* v. *Bolden* case makes clear that this multifaceted test devised by the Federal courts in this part of the country was wrong unless it focused—and I would say, from reading parts of the opinion—almost exclusively on the element of subjective intent. That confused decision, which was supported by only a bare majority of the Supreme Court, strongly suggests that a court inferring discrimination only from discriminatory effects risks reversal. Congress, in its extension of the Voting Rights Act, can give to future courts and future litigants some guidance as to how intent to discriminate might be proved.

We propose that the legislative history of the Voting Rights Act make clear that the test of discriminatory intent under section 2 of the Voting Rights Act should contain the following elements:

First, the voting practice at question should be in some sense abnormal, not the type of practice that is routinely encountered in the political process. I believe that the use of at-large elections in this day and age should automatically qualify as an abnormality in the political process. Certainly you wouldn't tolerate it in Congress now, would you?

Second, the voting practice at issue should have an adverse effect on minorities. This is the second prong of a three-pronged test. To satisfy this test, a plaintiff would prove that members of minority groups are not proportionally represented in the political process and, in addition, perhaps, that the interest of minorities had been neglected compared to the interest of the majority group.

Let me just make a note here. I don't think courts—this would be a very tough decision for courts, but it's an evaluation the courts have been able to make, notably, for example, in the *White* v. *Register* case, where they analyzed the fact that Mexican Americans had not had a significant impact on the political process in the city of San Antonio. The Supreme Court was able to make that finding in that case.

Third, where there is a practice that is found to be abnormal and is found to have adverse effects on minorities, it should be considered discriminatory if it were not supported by any other policy that could not have been achieved by another alternative. This test

resembles somewhat the less restrictive alternative test used to test whether various regulations violate the first amendment. Yet, if the State or locality has an important State interest that can only be furthered by the practice in question, then evidence of effects alone should not be sufficient to show discriminatory intent. However, if the abnormal practice with discriminatory effect is not necessary, or is scarsely necessary, to accomplish the purpose by which it is justified, this is strong evidence of discriminatory intent.

Let me give you an example of how this type of test might be applied, I think, to strengthen and rationalize the law. Let's consider on the one hand the case of at-large elections, and on the other case of annexations. Consider the case of at-large elections where minorities, as in many school districts, were not able to be represented proportionally on the school board, where it is abnormal practice, and where it is very theoretical and in some cases a very tenuous argument that at-large elections are necessary to protect the integrity of the educational process in that community. In that case, I think clearly a court, in considering all the circumstances, should be allowed to infer there is discriminatory intent.

On the other hand, taking annexation, where a city annexes a suburban community that contains a greater proportion of Anglos than reside in the city prior to annexation, there might be an important and justifiable reason for that annexation—protection of the tax base, which is in the interest of all of the citizens of that city, whatever their ethnic background, and I would add I would think it would be particularly important to those members of minority groups. I don't think flight to the suburbs should be encouraged, and in Texas we have statutes—for example, in Houston, where I'm from—that allow aggressive annexation which has been quite successful in conserving our tax base. That is an important State policy.

Even though there might be some dilution of minority voting strength, in that case a court, if that policy of furthering and protecting the tax base is plausible and the annexation is necessary and significantly furthers that goal, then in the absence of other evidence of intent to discriminate I think that practice could very well be held to be lawful and not enough evidence of intent.

Finally, a clear legislative history expressing the intent of Congress for courts to use the above test in determining discriminatory intent will streamline the voting rights litigation without causing the additional problems of having the courts define discriminatory effect and apply some test of discriminatory effect as such.

Some people might advocate that section 2 be amended to bar voting practices which have a discriminatory effect. As I say, I think that, too, would lead to some severe jurisprudential problems. In addition, it might be politically impossible, as I suspect.

A clear statement of legislative policy that permitted courts to use evidence of discriminatory effect to infer intent, however, would make the law in this area less naive and more effective, and more effective in remedying the actual devices of discrimination such as at-large elections, where direct proof of subjective intent is impossible.

Finally, we believe—and I will repeat—that the Voting Rights Act must be extended. We hoped to have offered a few modest suggestions about ways in which it can both be strengthened and streamlined.

We conclude by recalling the words of the only President that our State has given the Nation, Lyndon Johnson, when he signed the act in 1965, where he termed it "an important instrument of freedom" and, when urging its passage, stated: "Their cause must be our cause, too, because it's not just Negroes, but really it's all of us who must overcome the crippling legacy of bigotry and injustice."

Thank you.

[The joint statement of Mr. Krueger and Mr. White follows:]

Testimony offered before the
Subcommittee on Civil & Constitutional Rights
of the House Judiciary Committee

on June 5, 1981,

meeting in the Federal Courthouse, Austin, Texas.

by The Honorable Robert Krueger,
former Member of Congress;
& former Ambassador-at-Large
& U.S. Co-ordinator for Mexican Affairs

&

William H. White, attorney
Susman & McGowan, &
Visiting Professor of Law,
University of Texas in Austin

Mr. Chairman, members of the Committee, my name is Robert Krueger, and joining me in preparing and presenting this testimony is William H. White. We wish to thank you for coming to Texas to receive testimony regarding the possible extension or amendment of the federal Voting Rights Act and for inviting us to testify.

We have come to urge the extension of this act, which has brought the premier privilege of citizenship, the right to vote, to more Americans than any other act in the last half century.

We worked for the continuation of this act, and its extension to Texas, in 1975, one of us as a Member of Congress, the other as a legislative assistant. We recognized then that it was not a perfect act. If people were perfect, they would require no laws. Being imperfect, they write imperfect laws. Desiring a better society, they seek to improve those laws. We support that aim. But we believe that any alterations to this act should be minimal, and that its overall success in practice warrants its continuance without substantial alteration.

The success of the act has been real and substantial. The increase in registration of Black voters in certain areas of the South immediately following its passage in 1965 is well known. Yet, how the act can indirectly affect the course of participation in elections, and their results, can be seen nearer our home, in San Antonio.

Before extension of the Voting Rights Act to Texas, and before the inclusion of language minorities such as Hispanics in its coverage, San Antonio had a City Council of nine members. Only two were Hispanic, although the population of the city consisted of approximately 50% Hispanics, 10% Blacks, and 40% Anglos. Following the extension of the Voting Rights Act and the elimination of at-large elections for city council, the first council elected in single-member districts was composed of five Anglos, five Hispanics, and one Black member: a close reflection of the

ethnic make-up of the city. Since then San Antonio has elected its first Hispanic mayor in this century - Henry Cisneros. No one should say that this change in mayoral and council election results came only from the Voting Rights Act. But anyone who knows the region should acknowledge that the Act helped create the conditions to allow such elections.

We are not, of course, engaging in the racism of saying that it is better to have a mayor of one ethnic background (Hispanic) rather than another (Anglo). We are saying that it is important to all Americans that people of all ethnic groups have the opportunity, real as well as apparent, of being elected to the highest positions in the community; and that voters of all ethnic backgrounds have the realistic opportunity to choose and elect someone of similar ethnic background to represent them. That opportunity has historically existed for Anglos; it should for Hispanics and Blacks as well, and the Voting Rights Act helps assure that it will.

We cannot ignore history in considering the demonstrable effects of this act. State Senator Bob Vale has told me that when he entered the Texas Legislature in 1965 there were one Black member, one Republican, five Mexican-Americans, and no women among the 181 members. Today, because of single-member districting and the changed attitudes that have accompanied passage of this act, over half of the Texas Legislature's 181 members are composed of those groups. Nationwide, the number of Black officials elected to city and county offices increased fourfold between 1970 and 1979, or, from 715 to 2647; in elections to positions in education, the numbers went from 362 to 1136 in the same period. Part of this increase is attributable to the expansion of single-member districts to replace at-large voting.

Consider, for example, what has happened in certain local school board elections in Texas in which all members are elected on an at-large basis. The Southwest Voter Registration and Education Project undertook a study of 361 Texas school districts in which, among such districts, the student population was 20% or more Hispanic. Within these districts, only when the student Hispanic population exceed 89% did

MALDEF, LULAC, NAACP, and similar groups who wish to be informed, of proposed changes in election procedures. These groups, and any other interested party, have the opportunity to express their views to the Department of Justice. And in practice, at least in Texas, the great majority of instances in which the Department of Justice raises objections during this preclearance occurs in instances in which interested parties have raised objection.

Nonetheless, even on routine and non-controversial matters such as a slight change on election procedures, to which no one objects, the Department of Justice must now spend time. Meanwhile, those who proposed the changes face delay while Justice officials review these proposed changes. Would it not be possible fully to maintain the strength of the Voting Rights Act, and yet to eliminate unnecessary delays for local or state officials, if preclearance scrutiny were required only when an interested party raised objection or requested such scrutiny? It might actually allow an overworked Voting Section of the Department of Justice the opportunity to spend more time on significant problems. Such a change, however, if effected, would have to guarantee full and adequate notice to interested parties at both national, state, and local levels. Without such guarantees, the change should not be undertaken. With it, however, the preclearance process might be streamlined.

There are some additional areas in the Voting Rights Act which some people are proposing should be altered, especially because of certain recent court decisions. I should like to ask my colleague Mr. White to present this part of the testimony, which addresses these changes.

Hispanics form a majority on the school board. And in 42 of the districts in which the Hispanic student population exceed 50% there were no Hispanics on the boards. Thus, many studerts who are reared in homes where English may not be spoken, or is not spoken exclusively, study in school systems in which probably no one on the school board has been reared bilingually.

The Voting Rights Act was written with an eye to historical patterns of discriminati and not with an eye giving equal attention to all areas of the country. Some have criticized it for that, saying that it focuses excessively on one region of the country, there by singling it out for obloquy. I say today, as I did on the floor of the House in 1975, that I look forward to the day when the citizens of Illinois will receive the same protec tions as those of Texas. But I don't want to remove those protections from Texans just because they are not extended to Illincis, any more than I would wish to remove police protection from Texas if it were not available to Illinois. Texas can take great pride in the way in which it has opened vastly increased political opportunities to its citizen We wish to continue to be a place of opportunity and this act helps us to do so. If we are in a time of budget-cutting and more careful attention to federal expenditures, then prudent management suggests that federal attention go to the areas with historic problems until the time at which those problems are solved. For this reason we favor continuing t apply the coverage of the Voting Rights Act to those states to which it has applied, and not to expanding its coverage to all states, as some have suggested.

We recognize, having spoken with various local and state officials, that some provisions of the act result in increased, and sometimes unnecessary paperwork. We wish to be responsive to such criticisms. One way of reducing paperwork and unnecessary delay in effecting changes might be to continue the basic preclearance process under Section 5, which we consider essential, but to reduce one unnecessary step in the process.

We understand that, currently, the Department of Justice receives documents requiring its preclearance, and has sixty days in which to review them. Meanwhile, the Department also informs, from its list on file, interested parties such as

Section 2 of the Voting Rights Act prohibits abridgement of the right to vote. Unlike Section 5, this provision applies whether or not there is a change in voting practices.

Section 5 of the Fourteenth Amendment gives Congress the power to outlaw discriminatory practices even where those practices would not necessarily violate the Fourteenth or Fifteenth Amendments of the United States Constitution as interpreted by the federal courts. However, Section 2 of the Voting Rights Act has been interpreted by courts simply to restate the law of the Constitution against discrimination in voting practices.

Last year the Supreme Court in the case of Mobile v. Bolden decided that in order to show the violation of voting rights under the Constitution and under Section 2 of the Voting Rights Act a private plaintiff had to show that there was a subjective intent to discriminate. Proof of subjective intent to discriminate is very difficult. We have come a long way from the time at which, for example, the Mayor of the City of Richmond in the 1960's could justify the annexation of a white suburb after Blacks became a force in city politics by saying: "As long as I am the Mayor of the City of Richmond, the niggers won't take over this town." Modern discrimination against racial and ethnic minorities is likely to be subtle and unexpressed rather than stated in the press and in the chambers of government. As a result, it becomes extremely difficult and in some cases impossible to prove subjective intent to discriminate, even where the facts fairly clearly indicate that intentional discrimination might have been in the minds of the officials in charge of voting practices.

Perhaps the prime example of cases in which a burden of showing subjective intent to discriminate becomes impossible is the case of at-large elections. As the statistics noted earlier concerning at-large elections in Texas' school boards indicated, at-large elections can have the effect of preventing access by minorities into leadership positions in important community institutions. If at-large elections have been the rule since the application of the Voting Rights Act to Texas, there is no opportunity for the Justice Department to review these practices under the pre-clearance

provisions of Section 5 since there has been no change in voting practices. Therefore the private law suit is the only means effectively to remedy any discrimination that would occur.

In many counties in rural Texas it is well recognized that the predominant Anglo and Mexican-American populations have too long led independent existences. In some of these counties school boards are elected at-large. Suppose that an analysis of the facts in a particular school district led you to believe that the device of at-large elections to the school board had limited the participation of Mexican-Americans in the leadership of a most vital resource in the community. How would you go about showing intent?

Under present law the answer to that question is unclear. For many years since the case of White v. Regester the Fifth Circuit Court of Appeals tried to devise a test that would allow private litigants to demonstrate when these at-large elections denied members of minority groups access to leadership in political positions, including school boards. The Mobile v. Bolden case makes it clear, however, that the multi-faceted tests devised by the federal courts in this part of the country were wrong unless they focused on the element of subjective intent. That confused decision, which was supported only by a bare majority of the Supreme Court, strongly suggests that a court inferring discrimination only from discriminatory effects risks reversal. Congress in its extension of the Voting Rights Act can give to future courts and future litigants some guidance as to how intent to discriminate could be proved.

We propose that the legislative history of the Voting Rights Act make clear that the test for discriminatory intent urder Section 2 of the Voting Rights Act should contain the following elements.

First, the voting practice at question should be in some sense abnormal, i.e., not the type of practice that is routinely encountered in the political process. Use of at-large election districts should automatically be determined to be abnormal under this test.

Second, the voting practice at issue should have an adverse effect on minorities. To satisfy this test a plaintiff would prove that members of minority groups are not proportionally represented in the political process, and in addition, perhaps, that the interest of minorities had been neglected compared to the interest of the majority group.

Third, a practice that is found to be abnormal and is found to have an adverse effect on minorities would be considered discriminatory if it were unsupported by any other policy that could not have been achieved by another alternative. This test resembles the "less restrictive alternative" test often used to test whether various regulations of speech violate the First Amendment. Yet, if the state or locality has an important interest that only can be furthered by the practice in question, then evidence of effects alone should not be sufficient to show discriminatory intent. However, if the abnormal practice with discriminatory effect is not necessary to accomplish the purpose by which it is justified, this is strong evidence of discriminatory intent.

A clear legislative history expressing the intent of Congress for courts to use the above test for determining discriminatory intent will streamline voting rights litigation without causing the additional problems of having the courts define discriminatory effect. Some people might advocate that Section 2 be amended to bar voting practices which have a discriminatory effect. This might be politically impossible, and in addition might invite some courts to impose racial quotas for elected officials, which would be unjustified. A clear statement of legislative policy that permitted courts to use evidence of discrimatory effect to infer intent would, however, make a law less naive and more effective in remedying the actual devices of discrimination such as at-large elections, where direct proof of subjective intent would be impossible.

We believe, Mr. Chairman, that the Voting Rights Act should be extended. We hope to have offered a few modest suggestions about ways in which it can be both strengthened and streamlined. And we conclude by recalling the words of the only president that our state has given the nation, Lyndon B. Johnson, who, when he signed the act in 1965, termed it "an important instrument of freedom," and who said, when urging its passage,

> "Their cause must be our cause too. Because it's not just Negroes, but really it's all of us who must overcome the crippling legacy of bigotry and injustice."

Thank you.

Mr. EDWARDS. Thank you very much, Mr. Krueger and Mr. White, for really a very thoughtful, scholarly and helpful testimony.

The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I want to salute both of you. I think your testimony has been the most valuable, at least that I've heard, in terms of making me think and in being helpful.

We have all been playing with the effects test as though this were something we ought to do and crank it in. It would have the effect—not the intent, but the effect of discriminating, and then it ought to be a voting rights abuse. But you have pointed out clearly, Professor White, that there can be a desperate need for annexation which would have the anciliary and unfortunate side effect of discriminating against some minority voters, but the need to increase the tax base is crucial. It may be crucial to the whole community.

So I commend this thought to my colleagues here in studying how this bill should be amended, to be very careful on an effects test. I think your suggestion of legislative history or some way of spelling out acceptable evidentiary presentations that would not automatically make an effect of discrimination of voting rights abuse is very important.

I also appreciate your comment on the possibility of imposing racial quotas for elected officials. That is a distinct possibility, as I view it, if section 2 is amended simply to provide an effects test. So both of these points I think are awfully important and I know we will take them into consideration.

Let me just say, in the form of kind of a discussion, I do not like the notion of some geographical areas being less equal than other geographical areas just as a basic principle. I believe in the principle of federalism; I believe that the States are sovereign and ought to be sovereign; and I don't believe the Federal Government is a supergovernment, where States ought to be administrative districts of the Department of Justice or anybody else.

But I am also keenly aware, and am being made more aware as these hearings go on, of the abuses and the history of abuses and the basic fundamental right to vote has been abused.

I am seeking a middle ground between the status quo and as things are for another 10, and another 10, and another 10, and at the same time just permitting expiration of the preclearance section, because I don't think that would be appropriate at all. But I would like to have some "good conduct ribbon" available to those areas that have, indeed, cleaned up their act, and I would like to provide incentives for jurisdictions to continue to respect the constitutional right to vote by all of our citizens.

I have the notion, and have introduced legislation to eliminate preclearance, automatic preclearance, and require the showing of a pattern of practice of voting rights abuse in a court proceeding. Once that is established, then mandatory preclearance would be imposed for a period of years—4 years, 5 years, something like that. That is in addition to section 3(c) which is already in the bill and provides for a court action anywhere in the country, and

preclearance is a remedy now under 3(c), although it is not mandatory.

The more I think about it, and the more hearings we participate in, I am beginning to think that isn't going to be too workable or too feasible. I am drafting legislation now that would keep the preclearance in—but liberalize the bailout sections where a jurisdiction can show that for 10 years there hasn't been a single significant objection sustained on any of their submissions, and show that they have made the submissions that are required, and then permit a hearing in a district court where adversaries can come in and say, yes, they have followed the letter of the law but very subtly they have done this and they have done that. Then a court may, upon hearing the evidence, issue a declaratory judgment, that an automatic preclearance no longer will apply to this jurisdiction, whether it's a county or a city or a State. But the court would retain jurisdiction of that case for another 5 years, so if something goes wrong, they don't have to file a new suit. It's right there.

That, it seems to me, would recognize some of these areas in the South that aren't all bad all the time, recognize good conduct, and permit a jurisdiction to bail out based on their record, an honest appraisal of their record, but to retain preclearance.

In Texas, as I heard someone say, there have only been 13 declined out of 80-some objections since 1975. Not a sparkling record, I would say. But some incentive to live up to the law and some recognition of the fact that they have, might be more politically acceptable in the other bodies than a blanket extension of keeping South Carolina and Virginia and the rest in the penalty box for another 10 years, and at the same time it maintains the club of preclearance over areas that have not had a very good record.

I would like your response to this rather long rambling but to me an important point.

Mr. WHITE. Let me just address that notion of court proceedings to allow an additional bailout.

You must be very aware of how this litigation is brought, and the fact that in many cases litigants in these types of actions rely either on private funded organizations, such as the Southwest Voter Registration and Education project, or lawyers who work pro bono in this area, and I would be very, very careful and very wary of any proposal that increased the burden and the amount of litigation that these lawyers would have to go through to prove such an illusive factual issue as to whether a particular jurisdiction has been a "good boy" for a number of years.

I just think, especially if there is cutbacks in Federal funding of various legal services, that that would be simply another area in which there could be protracted litigation which could tax some very important resources available, such as these nonprofit organizations, available to private litigants. For that reason, I would be wary either of your initial proposal, which you say you probably now are rejecting, or another——

Mr. HYDE. Let's say I'm losing enthusiasm for it.

Mr. WHITE [continuing]. Or the institution of another set of legal proceedings.

Mr. HYDE. Initiated by the jurisdiction, with notice to every interested party, which is now provided in the administrative proceeding. Yes, it's a court proceeding; yes, it would require somebody to go to court, but not to Washington, but a district court in the jurisdiction involved, which is more convenient for everybody. And yes, attorneys' fees are available under the act and would continue to be.

But you're trading a very efficient, almost summary proceeding, mandatory preclearance, which doesn't square with my notions of procedural due process, frankly. Yes, it's good for emergencies, but as a lawyer—you're a lawyer and I'm a lawyer, and the rules of evidence are there for very good reasons, and yes, they sometimes are slow. But justice is sometimes better served, I think.

In any event, I didn't mean to interrupt your——

Mr. WHITE. It's just my perception that the act would be significantly weakened if there were additional proceedings dealing with threshold issues which could be resolved in a more straightforward, although perhaps in some instances an arbitrary manner.

Mr. HYDE. But they will never be resolved, Professor—if we sock them for another 10 years, these jurisdictions, wherever they are in the South, are still locked in and can never bail out. That'll be 27 years. How long is enough?

Mr. WHITE. Well, I would say that in these hearings, be it 5 years, 10 years, however long the Voting Rights Act has been extended, that if you see a different record than the record you have seen in the last 5 years on affected jurisdictions, then perhaps you ought to consider this. But I think if you look at the number—let's just take the fifth circuit. I believe in the period 1977-79, there were nine cases in the fifth circuit dealing with voting rights, dealing with very substantial issues. These are very live issues.

I think the Ambassador and I have pointed out a fairly pervasive set of issues which still exist here in Texas, namely, the existence of at-large elections and these school boards. So I think there might be an appropriate time where the voting rights are no longer affected. But I believe that ought to be considered here by Congress and it ought to be considered explicitly in the statute, and I would be a little bit wary to see it determined in court on a case-by-case basis, in which hypothetical issues were being litigated, that further tax the resources that are available to private litigants.

Mr. HYDE. I appreciate the courtesy you have given me, Mr. Chairman, in going on.

Let me just say I am not proposing that this be considered jurisdiction-by-jurisdiction. I am proposing that jurisdictions look at their own record in the past 10 years and say:

> Hey, we have lived up to the law. We haven't had a single objection. Moreover, we haven't been guilty of any subtle schemes to deny people the right to register or vote. We're entitled to be treated like Oklahoma and like Oregon, and by god, we want to be treated like other jurisdictions in this country. And because we're in the South, it doesn't mean we're second-class jurisdictions or citizens.

They then have the laboring oar to go in and prove all of this, and if anybody can shoot it down, they have an opportunity and notice to do it. It seems to me that's fair and at some point we have got to start being fair to the other side as well as to the people who have been tragically denied their rights to vote.

Anyway, this is all in the form of stages, and when we get it put together, we'll send it down for your more—I won't say more thoughtful comments because your comments have been thoughtful—but more time to chew it over and make suggestions.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Following up on Mr. Hyde's line of questioning, I would like to know, Professor White, what kind of legislative history could be drafted so that it would be clear how one could determine whether the job has been accomplished and a jurisdiction that has been covered by the Voting Rights Act can get out of the penalty box because they have made all the required submissions and haven't attempted to either overtly or subtly discriminate and having the right to vote denied or the right to have one's vote effectively counted denied?

Mr. WHITE. Well, I think that is very difficult. You could either—in any case, the possibility or probability that a particular jurisdiction will discriminate in the future is necessarily a hypothetical question. But I could not consider—aside from a provision such as Mr. Hyde has suggested, allowing perhaps courts to determine on some ad hoc basis these admittedly fairly hypothetical questions—I think that the only way to do that would be for the committee to undertake further findings as to areas in which there has or has not been discrimination and just simply to amend the section dealing with covered jurisdictions.

Mr. SENSENBRENNER. Would it suffice if there would be a certification by the U.S. Attorney General that all the required submissions were made over a period of, say, 7 to 10 years, and that none of them were found objectionable to get a jurisdiction being covered by section 5?

Mr. WHITE. That would be, I suppose, a possibility. I hesitate for a moment because I wonder whether that might do the job, simply because there may be some jurisdictions where there have not been, within say the last 10 years—well, why say 10 years; 6 years in the case of Texas. We have 254 counties in Texas, and each of them is a covered jurisdiction. In many of these counties, the practices which I'm concerned about, at-large systems of election and the like, have been around for a long time and there might not have been particular change in that jurisdiction which would trigger the preclearance provision. So I think we might be losing, especially in an area like Texas, in which you have many sparsely-populated covered jurisdictions, in which I suspect that some abuses may occur, that you would lose some protection of the act. But, in fairness, I have to say that is a procedure, just as you described it, that is definitely a possibility.

Mr. SENSENBRENNER. Of course, I think we have to consider Texas being somewhat of a unique animal, in that Lyndon Johnson, in his wisdom, did not include Texas under the Voting Rights Act where he signed it, and it took 10 years to bring Texas under the act, so we now only have 6 years of experience here.

I have one question in one other area. As you gentlemen may know, title II of Mr. Rodino's bill changes section 2 of the Voting Rights Act to strike out the words "to deny or abridge" and insert in its place "in a manner which results in a denial or abridgement of". We have received some legal analyses in this subcommittee

that this change might give a court the opportunity to impose a quota system in the election of local officers, in that if, say, a 37-percent minority community elects 40 percent of its city council of minorities, the Anglo would have standing to sue, or if it was the other way around and only 30 percent minorities, then the minority citizen would have standing to sue.

I fear that there has got to be a tightening up of this language or the courts will be brought into a political thicket in a far greater manner than I think anybody really intends them to be or wants them to be.

Do you have any suggestions on how we can tighten up this language so that it is quite clear the Congress is not calling for the imposition of a quota system in elections?

Mr. WHITE. Yes, and to an extent, that is what I have tried to do in my testimony.

I think that some revision in the wording of section 2 would be quite helpful in telling courts that the language and rationale of *Mobile* v. *Bolden* didn't sit well with Congress.

On the other hand, I believe that a pure effects test is very difficult. What do you mean by discriminary effect, right? I mean, let's consider illustratively how that question of effect has been handled under section 5. The Beer test is that there would be a discriminatory effect, for example, found in a redistricting plan which left a State or a jurisdiction with less minority Congressmen, for example, or fewer districts which would be apt to elect a minority Congressman, than existed before the redistricting. So, in a sense, you have seen that the courts have used an expedient in order to try to define an effects test under section 5.

We would both agree that any kind of a system that imposed racial or ethnic quotas on elected officials, or had this possibility, would be very bad. So to repeat, in direct answer to your question, I would not use the result language. I would change the wording of section 2—and it doesn't have to be an extremely substantial wording change, and I regret I have not formulated at this time exactly what that wording change would be. But it would not be result or effect. It would be a wording change which would trigger courts to say "something different has happened, and what different is that."

Then I think it should be clear, in both this committee's report and this committee's presentation of the bill to the House, and in any report out of a conference committee, in specifically defining the test that would be used. And in my testimony I suggested the test that I think would be the most effective in strengthening the act, while not going overboard.

Now, as to how to manipulate that and how to politically obtain that kind of legislative history—I know you perhaps have some differences with the other House, and whether this could be done in conference committee or what position the House should take, these are matters of legislative strategy which you gentlemen know more about than I do.

Mr. SENSENBRENNER. I have no further questions, Mr. Chairman.

Mr. EDWARDS. If you could prepare what you and Mr. Sensenbrenner were talking about, it will be received for the record at this point in the record.

[The information follows:]

SUSMAN & MCGOWAN,
Houston, Tex., June 17, 1981.

Re Extension of the Voting Rights Act.

Congressman DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN EDWARDS: I write as promised in my testimony before the Subcommittee on Civil and Constitutional Rights on June 5, 1981. My testimony addressed changes in Section 2 of the Voting Rights Act. As I noted for the Subcommittee, I practice law in Houston and taught the law of the Voting Rights Act at the University of Texas Law School.

Because of the Confusion following *Mobile* v. *Bolden*, 446 U.S. 55 (1980), a clear legislative history on the extension of Section 2 would be welcome. My testimony proposed a clarification of the intent of this section. An amendment to the language of the statute would be better still, and the Subcommittee solicited my recommendation on that.

Section 2 of the Voting Rights Act should read as follows:

"No state or political subdivision shall impose or apply any qualification or prerequisite to voting, or any standard, practice or procedure which results in denial or abridgment of the right to vote of any citizen of the United States on account of race, color, or ethnic origin, when such discrimination is intentional or is not reasonably necessary to protect a legitimate and concrete public interest."

RATIONALE

1. "*. . . which results in denial or abridgement of the right to vote of any citizen . . .*" This language focuses on the effect of the practice. Minorities may be adversely affected where their voting strength is submerged. In close cases they can also be found to be adversely affected where there is evidence that the political process has not been responsive to their community. The legislative history should make clear that the "right to vote" referred to in the statute entails the right to equal voting strength.[1] Remember, however, that this is only a threshold test under the above language. This test of illegality alone could cause some mischief, because proportional representation may sometimes serve to divide our nation along racial and ethnic lines rather than simply to protect against discrimination.

2. "*. . . when such discrimination is intention . . .*" This phrase simply restates existing law as announced in *Mobile* v. *Bolden*, 446 U.S. 55 (1980), and as correctly interpreted in *Lodge* v. *Buxton*, 639 F.2d 1358 (5th Cir. 1981). Intent may be inferred from circumstantial evidence of effect,[2] but an appellate court apparently can secondguess a reasoned inference of discriminatory intent.[3] This test of intent gives courts much flexibility, but it has little predictability.

3. "*. . . or is not reasonably necessary to protect a legitimate and concrete public interest.*" Generally, practices that lessen the influence of the votes of particular races or ethnic groups are bad public policy, regardless of subjective intent. However, practices such as annexations and redistricting may have redeeming features even when they may lessen the influence of minority votes. For example, annexation of affluent white suburbs may decrease the voting strength of minorities in a city, but may be necessary to serve the legitimate and concrete interest of preserving the tax base. Similarly, redistricting may reduce the influence of some minority voters only to increase the influence of other minority voters, as in the case of a redistricting that avoids packing minority votes in particular districts.[4] Under the above language, not every alleged beneficial effect justifies a practice that reduces the influence of minority votes. The justification cannot be a makeshift; it must be reasonably necessary to accomplish a legitimate public interest. A practice diluting minority voting strength should not be tolerated where alternatives are available

[1] The notion that "right to vote" entails a right against voting dilution was implicitly questioned by the four justices in Justice Stewart's plurality opinion in *Mobile* v. *Bolden*. They viewed the issue of at large elections as one of equal protection, not of a right to vote under the Fifteenth Amendment. Two concurring and three dissenting justices did not agree with this reasoning. However, the legislative history of the Voting Rights Act should buttress this interpretation.

[2] *White* v. *Regester*, 412 U.S. 755 (1972); *Lodge* v. *Buxton*, supra.

[3] *Mobile* v. *Bolden*, supra

[4] Though annexation and redistricting in covered jurisdictions are subject to preclearance under an effects test, the Justice Department can exercise discretion and the courts apply a retrogression test to prevent the harshness of a test of legality that focuses on only one effect.

that do not have adverse effect. Similarly, the justification cannot be purely hypothetical; it must be concrete. Hence, multi-member districts which are proven to adversely affect minorities should not be redeemed by some theoretical justification of "good government."[8]

Congress can enact a statute with this proposed language under Section 5 of the Fourteenth Amendment. Do not hesitate to contact me if you have any questions.

Sincerely,

WILLIAM H. WHITE.

Mr. EDWARDS. I'm afraid that Mr. Hyde is more of an optimist than I am. I think that our legislative history should show in the extension of this bill that in 1992 we'll look at a bailout provision, because unfortunately I have heard no evidence of a cleaning up of their act, as a matter of fact, by these covered jurisdictions. On the contrary—and I'm sorry to have to say this—the evidence is the opposite and the evidence is that the plight of minorities in the United States is worsening, not gaining and not becoming better.

Mr. HYDE. Would the chairman yield?

Mr. EDWARDS. Yes; I will yield.

Mr. HYDE. I would just submit that we haven't heard from every jurisdiction covered by this act, and to say that every jurisdiction is uniformly bad throughout the South and the Southwest is overbroad. There may well be plenty of cities, towns, counties, districts and areas that have a very good record; we haven't looked for them and we certainly haven't heard from them all. Of course, you may have more information than I have.

Mr. EDWARDS. Well, I wish in Texas to respond to my friend from Illinois, that our invitations have been accepted by the people in charge of Texas, in charge of the political processes in Texas, the Governor and the attorney general and the secretary of state. I wish they had come to this legislative body today, this subcommittee of the House Judiciary Committee that historically has handled all civil rights bills and testified to the intentions of the State of Texas and of the establishment of Texas, to do a much better job, so we don't have to read a report of the Civil Rights Commission of the Committee of Texas, of the U.S. Commission on Civil Rights, to the effect that the situation is the opposite of what we had hoped to find. So that is my response, and I'm sorry to have to say that, I really am.

I'll tell you, they were all invited to come.

Mr. SENSENBRENNER. Will the chairman yield?

Mr. EDWARDS. Sure, I yield to the gentleman.

Mr. SENSENBRENNER. It's my understanding that the secretary of state's office in Texas received a phone call last Friday inviting them to come and appear at this hearing from the majority staff. Now, I knew that this hearing was on the docket for at least 3 weeks, and I made my plans to come down here. I can't understand why the invitation was issued at such a late date.

But be that as it may, I seem to recall that the Texas Legislature adjourned its session on redistricting on Monday of this week, and that the people here at the State capital have been kept quite busy with the legislative session, as well as considering the proposals that are being considered there.

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[8] It may always be claimed that multi-member districts beneficially result in election of representatives of the overall community interest, rather than more localized interests. Just as plausible is the possibility that multi-member districts result in representation of the dominant faction, to the exclusion of others, by elites who can afford a more expensive campaign in a large district.

I had hoped the people who are in charge of the State of Texas would come, but I think, from what I've heard, the excuse is adequate and perhaps the notice was not as long as it should have been.

Mr. EDWARDS. I appreciate the gentleman's observations. I am advised by counsel the invitation was extended 2 weeks ago. Of course, we would invite the people from the legislature, from the Governor's office, from the executive department, to testify at a future date. We would look forward to their testimony.

Mr. HYDE. Would the gentleman yield?

Mr. EDWARDS. Yes.

Mr. HYDE. I want to say that in all of these jurisdictions, public officials who have a contrary story to tell us from what we've been hearing, they had better come forward because if they think that by doing nothing, nothing will happen, and that the preclearance sections will automatically expire and, therefore, it is their choice to not come forward and rebut, if, indeed, they can, the evidence we have heard, I think they're making a very serious mistake. I, for one, will take that into consideration on how I'm going to view this.

But at the same time, preparing for this testimony is arduous, particularly for an elected State official, and I think we should take into consideration their legislature's redistricting problems. God knows my own legislature is immersed in it and other problems, too. But I do appreciate what you said and I agree. I hope they do start coming forward or they will be the losers.

Mr. EDWARDS. They certainly have a warm invitation from both sides of the aisle on this subcommittee.

Mr. KRUEGER. Mr. Chairman, I wonder whether I might just add one thing.

The comment was made, I believe by Mr. Hyde earlier, about one section of the country being perhaps considered somewhat as a second-class section of the country if it came under the Voting Rights Act. I don't view it that way myself. I'm a Texan and proud to be a Texan. I do not view these protections being extended to the citizens of Texas as making our citizens second class. I think it's a way of making them first class.

In 1975, I did, indeed, think of the problems in Chicago which you mentioned earlier, Mr. Hyde, and some of the voting problems there. That was the very reason that I at that time said I also looked forward to the day when the citizens of Chicago and Illinois might receive such protections.

I simply believe that we should offer those protections as fully and responsibly as we realistically can, and if there were to be a vast expansion in the Justice Department and the act could have its provisions extended more widely, then I would like to see Illinois enjoy the same first-class protections that the citizens of Texas do. But I think we still require these protections in many instances.

The testimony that I have seen from areas with which I'm very familiar, because there have been actions brought in my former congressional district through the Voting Rights Act, indicate to me that this particular area of protection, the protection to vote, a fundamental one to citizenship, is one that I would like to see continue to be extended to this State, and I don't consider us being

second class by receiving this protection. It seems to me a way of making us first class. I have all of that Texas pride that likes to think that Texas is first class and we hope the same protections will be extended elsewhere.

Mr. HYDE. May I comment, Mr. Chairman?

Mr. EDWARDS. Of course.

Mr. HYDE. I defer to no one in my devotion to insuring the right to vote to every citizen in this country. I also think having your vote counted is as important as getting to the polls and being able to cast it.

But at the same time I have a little different view of the Federal system perhaps than you do, Mr. Ambassador. I happen to think sovereign States are important entities and that we ought to be treated alike. At the same time I know that prior to 1965 there was a pretty tragic, shabby record. My only point of view is that at some point—and we obviously disagree on that point; the chairman thinks we can take another look at it in 1992—I think certain areas ought to get a chance to stand with the rest of the country and the judicial process is important—if you were injured and struck by a car, you can't get relief through the mail. There are rules of evidence and at some point States and jurisdictions ought to be able to stand with other States and jurisdictions and be treated equally. But that's a philosophical——

Mr. KRUEGER. Mr. Congressman, I would agree. I would like to see them treated equally. My notion of equality would be for those same protections in due course to be extended to your State which we have now, and that's the way I would view equality.

Mr. EDWARDS. Portions of California, including the congressional district that I represent, are covered in part by the provisions of the Voting Rights Act, and I have been severely criticized from time to time for not objecting to the coverage. However, I don't consider Californians second-class citizens in the family of States, nor do I consider Texans as such. It is a nationwide bill, and if the tests apply, then certain portions of the country are covered. But it's basically a nationwide bill.

Mr. Krueger, I do want to ask you a short question about your very interesting suggestion about the possible change in preclearance proceedings. I might just say that we have no evidence that the voting section of the Department of Justice is overworked. It's a very small section, and from talking to them personally, they can handle the burden without very much difficulty.

However, your proposal is that covered jurisdictions would still submit all proposed changes to the Department of Justice; isn't that correct?

Mr. KRUEGER. That is correct.

Mr. EDWARDS. But then there would have to be excellent notice to an objecting party, and it seems to me that would be the problem. Because as you point out in your testimony, modern discrimination against racial and ethnic minorities is likely to be subtle and unexpressed, rather than stated in the press and so forth.

I can see a large opportunity there for hiding the notice. This is something that has been testified to. There will be advertisements in a particular covered county on registration day, when the people

travel 100 miles or 50 miles and the plantation gets closed that day with a small notice on the door.

Now, how are you going to avoid the notice not getting to the people that count?

Mr. KRUEGER. I believe, Mr. Chairman, that it would be important for interested groups such as MALDEF, LULAC and others to receive information directly from the Department of Justice at the point at which they receive information that an election procedure is changed or had been proposed. I think there could be local information required as well, and if you were not satisfied that the guarantees would be sufficent, then, of course, you cannot have such changes.

I was candidly thinking, in part, of the fact that when the House goes to meet with the other body on this bill, if the other body has a different attitude and there is some compromise required, it seems to me this would be a compromise that would sustain the principle without necessarily costing much. I don't wish to be a defeatist about it at all, but I am looking for a means of putting some possible compromise language in if that is going to be required because that is part of my political experience, that sometimes such a compromise proves necessary.

Mr. HYDE. Will the chairman yield?

Mr. EDWARDS. Yes. But I do want to add before I yield that I think it's a very innovative and creative suggestion.

Mr. HYDE. To help it along, let's get a check list, as you get waivers on construction jobs from various subcontractors, let's have the ACLU, the NAACP and all of the other organizations. You have proposed a change in the law and you get them to sign a waiver of objection and there you are.

Mr. KRUEGER. No, I don't think that's what I would want to see, Mr. Hyde.

Mr. HYDE. Me, either. But it seems to be what you're suggesting.

Mr. KRUEGER. No. I'm sorry, then. I must not have suggested it as clearly as I should have. What I was suggesting simply is that these groups be informed that changes had been proposed. If no one had any objection to such a change, coming either from a local or State or other level, then——

Mr. HYDE. In what time frame?

Mr. KRUEGER. Well, you will have to decide what you think would be an appropriate time frame. We now have a 60-day period left in there.

But it seems to me a way of using staff that would probably be more efficient, because if absolutely no one has any objection, it is I think basically rather unlikely that the Department of Justice would have any objection. It would be a way of giving them additional focus.

Mr. EDWARDS. Well, I would hope that the committee will be able to report the bill as it was introduced by Chairman Rodino and that the compromises that we have to make, if we do have to make any, would be down the road. But I certainly am going to look at that and I know that Mr. Hyde and other members of the subcommittee are going to look at that suggestion and perhaps have it ready.

But we do appreciate it, and we appreciate the testimony of both you gentlemen. It's been very creative.

Mr. KRUEGER. Thank you very much.

Mr. EDWARDS. We now have a panel presentation of: Joaquin Avila, associate counsel, Mexican-American Legal Defense and Education Fund of San Antonio, Tex.; the Honorable Adolpho Alvarez, Sr., county commissioner of Frio County, Tex.; Jesus Trinidad of Seguin, Tex.; and Alfredo Arriola of Alice, Tex.

We are pleased to have you here this morning. Without objection, your statements will be made a part of the record. Will you introduce each other and tell us how you're going to proceed.

TESTIMONY OF JOAQUIN AVILA, ASSOCIATE COUNSEL, MEXICAN-AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, SAN ANTONIO, TEX.; HON. ADOLPHO ALVAREZ, SR., COUNTY COMMISSIONER, FRIO COUNTY, TEX.; JESUS TRINIDAD, SEGUIN, TEX.; AND ALFREDO ARRIOLA, ALICE, TEX.

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

My name is Joaquin Avila and I am associate counsel for the Mexican-American Legal Defense and Educational Fund. To my far right is Commissioner Adolpho Alvarez, a commissioner from Frio County. To my immediate right is Mr. Jesus Trinidad, who is affiliated with LULAC in the city of Seguin, Tex. To my left is Mr. Alfredo Arriola, who is a very active community resident in the town of Alice, Tex.

With the Chair's permission, I would like to use the easel to your immediate right because I do have some maps and charts.

Mr. EDWARDS. Without objection, it is approved.

Mr. AVILA. I would like to thank the subcommittee for this opportunity to present evidence of voting discrimination here in Texas, in order to support the extension of the Voting Rights Act.

I am presently the director of political access litigation for MALDEF. I have been involved in voting rights litigation since 1975, and more importantly, I have been involved in voting rights litigation here in Texas since 1976.

Initially I was a resident of California. I decided to move out to Texas specifically because of the large number of voting problems and voting discrimination complaints that we received from Texas. So I made a career decision in my own personal life to come to Texas to specifically address the voting rights problems that we have here.

Our organization has been involved in a considerable number of lawsuits since 1969 involving the denial and abridgement of voting rights and discrimination in Texas. Apart from this litigation, I am also an instructor at the University of Texas Law School, since 1977, teaching a course specifically on the issue of voting rights problems and voting rights litigation here in Texas.

The basic message that I would like to convey to the subcommittee today is that Section 5 in the Voting Rights Act is still needed here in Texas. Discrimination here in Texas is both personal and institutional. You will note in my rather extensive prepared written comment and testimony that there is in the first attachment an advertisement to the voters of Aransas County asking the voters to vote for a person who had died in office while running for office.

In that particular instance—this is an example of discrimination on a personal level. In that particular instance a Chicano in Aransas—County decided to file for office, to run against the incumbent Justice of the Peace in 1978. After the filing deadline had occurred, had passed, there were only two candidates that were supposed to be on the ballot for the May primary. That was the Chicano candidate and the Anglo incumbent.

The Anglo incumbent during this time period, but before the election, succumbed to an illness. Therefore, you only had the Chicano candidate who was the only living candidate to run for office. One would normally expect the person to win that office if he was the only live candidate.

In fact, a week before the election, the local Democratic Party committee took out full-page ads in this Aransas-Rockport newspaper, urging the voters of that particular precinct to vote for the dead candidate, because if the dead candidate was elected, then the local Democratic Party committee could then certify a nominee for the general election.

Well, needless to say, the Chicano candidate lost. As a result of that, there are no Chicanos serving as JP's in Aransas County.

With respect to institutional discrimination, this type of discrimination is very well documented in the testimony that is made a part of this record. Specifically, there are many types of election devices that have been used here in Texas, devices that have been implemented after the 1975 extension of the Voting Rights Act here to the State of Texas. Perhaps the most egregious and the most significant are the obvious attempts to gerrymander the Chicano community in many parts of Texas.

In order to combat this obvious attempt, these obvious, blatant gerrymanders, we need Federal oversight. To give you examples of the kinds of problems that we have here in Texas, our organization conducted a survey of all the counties in Texas, and we found that approximately 51 counties in Texas which contained Chicano populations ranging in precentage from the high 70's to 80's to as low as the low 20's, 25 percent, did not contain a single Hispanic commissioner on the county commissioners court, which is the governing body for each of the counties.

This, in large part, is due to violations of the one-person, one-vote principle which operates to discriminate against Mexican Americans in many parts of Texas.

In addition to these 51 counties, we also conducted a survey of all of the counties to determine how many counties had complied or had not complied with the one-person, one-vote principle. In other words, we wanted to find out how many counties had not redistricted since 1970.

We found in our survey—and this was just by telephone—that at least 59 counties had not redistricted since 1970, and in many instances there were several counties that had not redistricted and had never redistricted since its creation. When you have situations like that in Texas, what that amounts to is an overconcentration of minorities in many of the overpopulated precincts which works to the disadvantage of minority voting strength.

These instances of personal and institutional discrimination are not just limited to the minority community or to the minority

residents. In doing investigations for some of our cases, in one particular egregious instance which I have documented for the committee, our staff was told to get out of town before sundown because we were there to investigate why a particular city had segregated cemeteries. In that particular instance we received a personal threat, but yet we persisted in our efforts to redistrict that particular county. So discrimination is alive and well here in Texas.

Now, why do we need section 5? We need section 5 to curb the discriminatory excesses of many of the county commissioners and many of the city officials here in Texas. To give you a very prominent example, in Edwards County, which is a rural county not too far from here, the Hispanic population in that particular county comprises close to 45 to 46 percent of that particular county. With that large number of persons, you would anticipate that there would be at least one or two Hispanics out of the four county commissioners which are elected by commissioner precinct.

Well, in our investigation we found that the precincts are malapportioned. They violated the one-person, one-vote principle. The violation of the one-person, one-vote principle operated to the detriment of the Hispanic population. The county had close to 2,000 persons. If you had equal populations in each of the four county commissioner precincts, you would have 500 persons in each commissioner precinct. Our investigation showed that one particular precinct had close to 1,500 persons. Another precinct had about 108 persons. And guess where the Mexican Americans were concentrated? They were concentrated in the most overpopulated precinct. Consequently, if you would get this particular population to go out there and register and to go out and vote, they were a numerical minority within that precinct and they would never have an opportunity to meaningfully participate in the local political process.

We brought that problem of malapportionment to the attention of the county commissioners court, and they agreed to redistrict. We offered our assistance in redistricting. They agreed to redistrict because we had such a compelling case. The population deviation between the most overpopulated and the least populated district was close to 273 percent, which is well over the threshold level of 10 percent.

Well, the county ignored our invitation for assistance. The county thought that they could redistrict the county without our knowing about it and obtain section 5 preclearance without our knowing about it. But because of our active monitoring project that we have, not only here in San Antonio but in our Washington, D.C. office, we were apprised of this election change.

Knowing that there were several organizations monitoring this process, you would have thought the Edwards County commissioners court would have created at least one precinct that would have had a substantial number of Mexican Americans in order to permit that particular community to exercise its electoral choice. In sharp contrast, however, they adopted a plan that obviously discriminated against the Mexican American population. I will show you that plan now.

The red blocks are blocks that contain a majority of the minority population. The green lines are their proposed districts back in

1977. That is an obvious case of gerrymandering. Their own population analysis showed that the Chicano barrio was evenly divided among the four county commissioner precincts. This is part of the attachment which is included as part of the record. So this is a very clear example of why section 5 is important.

This particular plan was submitted to the Department of Justice, and we wrote an extensive comment urging that a letter of objection be issued. We were successful. As a result of that letter of objection, the county had to revert back to its malapportionment system. We subsequently filed a lawsuit and we now have a plan which provides a meaningful opportunity for Hispanics to participate. And that was done as a result of section 5 and a Federal court lawsuit.

Another example of why we need section 5 is in Medina County, which contains close to a 50-percent Hispanic population. The population itself—the county seat lies about 50 or so miles from San Antonio. Medina County contains a little over 20,000 persons. And yet, even though it contains close to a 50-percent Hispanic population, there is not a single Hispanic commissioner on the commissioner's court. The reason for that was again because of malapportionment. They had not redistricted for many years. When we brought it to their attention, again they sought to avoid the lawsuit that we anticipated filing by redistricting on their own. Instead of providing ample opportunity for Mexican Americans to effectively participate, they again sought to gerrymander the Mexican American community. That plan had to be submitted to the Department of Justice. The Department of Justice issued a letter of objection as a result of comments that we submitted.

They came back and drew another plan. That second plan was objected to by the Department of Justice. We had to file a lawsuit here in Texas to prevent the county from using those plans in upcoming elections. They intended to use those objectionable plans in upcoming elections. But we had to file a lawsuit and get a Federal court injunction to prevent them from doing so. So section 5 prevented the county from implementing those discriminatory election districts here in Texas.

Finally, the county sought judicial preclearance in Washington, D.C. We had to expend our resources and our staff and attorney time to urge the district court in the District of Columbia not to approve the two plans that had been objected to. The county, realizing that it was not going to prevail in this particular endeavor, decided to change its plan. As a result of that change, they now have a plan which provides Mexican Americans with a reasonable opportunity to select a Chicano for the first time in history to the county commissioners court.

As a result of a recent election that was held just this Saturday as a result of the new plan, we now have a Chicano and an Anglo who are going to be running in a runoff to determine who is going to be representing that particular commissioner precinct.

Another example of why we need section 5 is found in Jim Wells County. Mr. Alfredo Arriola will be able to discuss some of the details of that. But basically, section 5 has prevented Jim Wells County to this very day, has prevented Jim Wells County from implementing a discriminatory election plan. Three times the

county has sought preclearance, and three times the Department of Justice has issued a letter of objection. There have been no elections in Jim Wells County since 1976. And it's not because of the Voting Rights Act; it's not because of some Federal bureaucrats in Washington, D.C.; it's because of the recalcitrance of the county commissioners court in Alice, Tex.

Now, what would happen if the Voting Rights Act were suddenly to expire? Would that mean that Mexican Americans and blacks here in Texas would not suffer any voting discrimination? Of course, not. I can cite you very specific examples where section 5 has served as a very particular deterrent to prevent a particular political subdivision from enacting a given discriminatory election change. Once the act is no longer there, they will adopt those discriminatory election changes.

An example of that is documented in the written testimony dealing with the city of Pecos, Tex. The city of Pecos had adopted a numbered place system which was discriminatory. The Department of Justice objected to it. The city went along with the letter of objection and decided not to implement it. However, within 1 month, a month and 2 weeks of the Sheffield district court decision, which held that cities are not covered under the Voting Rights Act, within that very limited time period the city of Pecos ignored the letter of objection, did not even wait for the Supreme Court to issue a decision, and started to assign numbered places to each of the city council members. We had to file a lawsuit to prevent them from doing that. So that's a very clear indication of what the city of Pecos will do when the Voting Rights Act expires.

We also need section 5 for the present redistrictings which are occurring here with respect to the congressional, State senatorial and State legislative districts. Our organization, along with the Southwest Voter Registration project and the Texas Rural Legal Aid, presented several alternative plans to various houses, to redistrict the congressional districts, the State senatorial districts, and their State legislative districts. In many instances, these legislative bodies chose to ignore the recommendations that we presented to them. And in one particular instance, in the State senatorial seat, they sought to preserve an imbumbent at the expense of minority representation, or increased minority voting strength in a particular State senatorial district. They recommended the creation of a "doughnut" district, a district that was going to surround completely other senatorial districts.

Now, I don't know of any other doughnut districts across the country, but I'm sure if that plan was adopted by the State senate, it will have to be precleared. We are certainly going to register our opposition at the Department of Justice for that doughnut district and any other such districts as may be found in the State senatorial, State congressional, and State legislative plans.

I just want to site one other example concerning why we need the Voting Rights Act, why jurisdictions here in Texas are recalcitrant in their Federal obligation to follow the law.

In Terrell County there was a redistricting plan in 1973 which was considerably malapportioned and discriminated against the Mexican American population. In 1975, when the act was passed, we contacted that county, and in 1976 we contacted that county,

and we said, "Look, you have to submit." We waited. The 1976 election went by and then in 1977, we waited again. We had to file a lawsuit in 1978 to prevent that particular county from implementing that plan. To require it just to even submit that plan, much less comply with it, just to submit that plan, we had to file a lawsuit.

So I leave these examples with you to demonstrate why it's important to have section 5.

Now, the Federal courts do not provide a realistic alternative. Congress determined back in 1965 that the Federal court route was time consuming, it was expensive, and it operated to the disadvantage of the protected class. That is true today. In the city of Seguin, which Mr. Trinidad is going to be speaking about, we filed a one-person, one-vote lawsuit, seeking to equitably distribute the minority population and the entire city population among the city's four ward systems. We prevailed in getting the court to declare that the existing plan was unconstitutional. However, at the remedy stage, the city proposed a plan that continued the overconcentration of minorities in a given ward system, and that overconcentration of minorities in the previous plan has served to discriminate against the Mexican American population.

The city, instead of correcting that overconcentration, decided to continue that overconcentration in its plan. MALDEF, along with LULAC, presented an alternative plan to the court. This chart here represents the two plans. These are the four wards. This is the Mexican American, black, total minority, and the Anglo population.

Under the city plan, in ward 1 the total minority population was 90 percent, an obvious overconcentration. In ward 2 the minority population was 48 percent; in ward 3 it was 37 and in ward 4, 42 percent.

We presented a plan that would have provided an opportunity by reducing the overconcentration in ward 1 for the election of at least additional minority members from ward 2. The city of Seguin is a very salient example, because the city of Seguin contains at least a 54-percent minority population, and only two out of the eight council members are minority. We had to file a lawsuit to get that particular plan cleared by the Department of Justice. Initially the district court decided that our complaint was frivolous and insubstantial. But we had to go up to the fifth circuit level, the Fifth Circuit Court of Appeals, to get a ruling from them to require the city of Seguin to submit the plan for section 5 preclearance.

In the meantime, elections were held under the city plan, and the effects were obvious. There are still two minorities serving on that city council. That's the present effects. That's why you still need section 5.

With respect to the bilingual election provisions, for persons who are not familiar with Texas and the Southwest and its linguistic minority, it may be very difficult to appreciate the extent and the severity of the problem. This problem of nonparticipation, this problem of not understanding English, is not our fault. It is the fault of the Texas educational school system. We just don't share that concern. A U.S. district court here in Texas has ruled that the Texas educational system historically and presently has served to

deny an equal educational opportunity to Hispanics by failing to provide them with adequate language instruction. So it's not our fault because our parents can't understand English. It is not our fault because our sons and daughters cannot effectively communicate in the English language. It is the fault of the school system.

In conclusion, I would just like to leave this very brief message with this subcommittee. Our written testimony has provided ample documentation of why section 5 is still needed. It has provided documentation as to why the bilingual election provisions are still needed. Section 5 in the Voting Rights Act has been used very effectively to prevent voting discrimination since 1975. If you eliminate those provisions, you're going to have the city of Seguin continue with its plan; you're going to have the city of Pecos adopt a numbered place system; you're going to have Jim Wells County adopt another discriminatory election plan. We ask this committee to stop that.

Thank you.

[The prepared statement of Mr. Avila follows:]

Mexican American
Legal Defense
and Educational Fund

517 Petroleum Commerce Bldg
201 North St. Mary's Street
San Antonio, TX 78205
(512) 224-5476

MALDEF

Testimony of

The Mexican American Legal Defense

and Educational Fund

on the Voting Rights Act

Presented By

Joaquin G. Avila

Associate Counsel

Before

The Subcommittee on Civil & Constitutional Rights

of the

Judiciary Committee
U.S. House of Representatives

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National Office
28 Geary Street
San Francisco, CA 94108
(415) 981-5800

Regional Offices

250 W. Fourteenth Avenue
Suite 308
Denver, CO 80204
(303) 893-1893

1836 West Eighth Street
Suite 319
Los Angeles, CA 90017
(213) 383-8952

517 Petroleum Commerce Bldg
201 North St. Mary's Street
San Antonio, TX 78205
(512) 224-5476

1411 K Street, NW
Suite 300
Washington, DC 20005
(202) 393-5111

Voting discrimination against Hispanics still exists in Texas. This discrimination is manifested in the gerrymandering of districts at the county commissioner court level, in the adoption of discriminatory election devices such as numbered places for municipalities and school districts, in the maintenance of at-large election schemes, and in voting abuses designed to inhibit any effective Hispanic participation in the political process. This discrimination results in under-representation at all levels of government. According to the 1980 Census, Texas has a population of 14,228,383 persons of which 20.9% or 2;968,643 are of Spanish origin and 12.0% or 1,710,250 are Black. [1/] Yet despite this sizeable Hispanic population, Chicanos in 1980 constituted only 8.3% or 2 of the 24 congressional seats, [2/] 12.9% or 4 of the 31 state senatorial seats, [3/] 12% or 18 of the 150 state legislative seats, [4/] 4.7% or 12 of the 254 county judge seats, [5/] 7.0% or 71 of the

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1/ U.S. Bureau of the Census, 1980 Census of Population and Housing, Final Population and Housing Unit Counts, series PHC80-V (Advance Counts) at p. 4 (hereinafter cited as 1980 Census.).

2/ National Directory of Major Hispanic Elected and Appointed Officials, Congressional Hispanic Caucus (Wash., D.C. 1979). As a result of increased population growth 27 congressional seats are now allotted to Texas.

3/ Id.

4/ Id.

5/ Texas--23 Edition--State Directory 1980: The Comprehensive Guide to the Decision Makers in Texas Government, Austin, Texas, 1980.

1016 county commissioner seats, [6] 4.5% or 48 of the 1070 city Mayors, [7] 5.7% or 278 of the 4902 council members, [8] and only 6.7% of 496 of the 7428 school board members. [9]

To eliminate this underrepresentation federal intervention is necessary. Unless checked, these institutional devices will continue to deprive Hispanics of any meaningful political participation. For this reason, MALDEF supports the continued application of the special protections provided by the Voting Rights Act in Texas.

I. Voting Discrimination in Texas

Texas has a well documented history of voting discrimination. This discrimination was extensively documented in the 1975 hearings to seek extension of the Voting Rights Act [10] to the Southwest: changes in polling places for the Bloomington Independent School District which had a dramatic impact on voter participation resulting in the loss of two Chicano candidates by seventeen votes apiece; [11] voting machine failure in minority voting precincts; [12] poll taxes; [13] annual voter registration requirements; [14] denial of assistance to non-English-

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6/ Id. In Texas, counties are governed by a county commissioners court comprised of 4 commissioners and a county judge.

7/ Id.

8/ Id.

9/ Texas School Directory 1979-1980; Texas Education Agency, Austin, Texas. Oct. 1979.

10/ 42 U.S.C. §1973 et seq.

11/ Extension of the Voting Rights Act of 1965: Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Congress, 1st Session 804 (1975) (hereinafter Senate Hearings).

12/ Id. 13/ Id. at 740 14/ Id.

speaking persons;[15] harassment and intimidation of minority poll watchers;[16] harassment and intimidation by local law enforcement agencies,[17] inconvenient location of polling places away from minority areas,[18] economic intimidation of voters;[19] maintenance of legislative multi-member districts;[20] maintenance of discriminatory at-large election schemes;[21] adoption of discriminatory election devices;[22] gerrymandered county commissioner precincts,[23] and annexations with a discriminatory effect.[24] A few of these abuses have been corrected through litigation and effective use of the Section 5 preclearance provisions, 42 U.S.C. §1973 c.[25] For example, as a result of litigation there are no multi-member districts

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15/ Id. at 741.

16/ Id. at 741.

17/ Id.

18/ Id. at 742.

19/ Id.

20/ Id. at 474-476, 490-91, 497-514.

21/ Id. at 462.

22/ Id. at 469,489.

23/ Id. at 473

24/ Id. at 476.

25/ Section 5 requires political units in Texas to submit all changes in the law affecting voting enacted or administered after November 1, 1972 to the United States Attorney General or to the United States District Court for the District of Columbia for a determination that the proposed election change was not adopted pursuant to a discriminatory purpose and does not discriminate on the basis of color, race, or membership in an applicable language minority group.

utilised at the state legislative level. See White v. Regester, 412 U.S. 755, 93 S. Ct. 2332 (1973); Graves v. Barnes (IV), 446 F. Supp. 460 (W.D. Tex. 1977). Also, the annual voter registration is no longer a requirement. Beare v. Smith, 321 F. Supp. 1100 (W.D. Tex. 1971). Yet many of the discriminatory devices and practices mentioned above are still in effect.

A recent inquiry documented many of the abuses experienced by Hispanics in Texas. 26/ This inquiry focused on persons who voted both in the Republican and Democratic party primaries contrary to state law to defeat Hispanic candidates, the falsification of election returns, tampering with voting ballots, inadequate assistance at the polls, voter harassment, irregularities in the absentee balloting process, ineffectiveness of election contests, and the lack of prosecution of violations by state officials. This inquiry clearly demonstrated the widespread voting discrimination in Texas. Instances of voting discrimination in Texas are plentiful.

A prime example of this voting discrimination was evident in the May, 1978 Democratic Party Primary for the Justice of the Peace, Precinct 1, in Aransas County. According to Article 5, §18 of the Texas Constitution, Justices of the

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26/ Southwest Voter Registration Education Project, An Inquiry into Voting Irregularities in Texas, October 22, 1980 (on file in San Antonio MALDEF office.)

the Peace shall be elected from Justice of the Peace Precincts. See also Vernon's Ann. Civ. St. Art. 2373. Justices of the Peace preside over courts which have jurisdiction over certain civil matters. Id. Art. 2384. Aransas County has a population of 14,260 persons, according to the 1980 Census, of which 2722 or 19.1% are Hispanic.[27/] There are no Hispanics on the County Commissioners' Court, the County governing body,[28/] nor are there any Hispanics serving on any of the four Justice of the Peace positions.[29/]

This complete absence of Chicano elected officials compelled Mr. Jose Pepe Zambrano to run for the office of Justice of the Peace for Precinct No. 1 for the May 6, 1978, Democratic Party primary. The incumbent and the only other candidate opposing Zambrano died after the filing deadline had closed. No other candidate could file for office. In order to prevent Mr. Zambrano from winning the election, the local County Democratic Committee, through the deceased Judge's wife, took out newspaper advertisements in the local newspaper urging voters to vote for the dead candidate. See Attachment No. 1 and 2. In this manner, the local County Democratic Committee

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27/ 1980 Census at 4.

28/ Each County in Texas is governed by a County Commissioners' Court. The Court consists of one County Judge elected at-large and four county commissioners each elected from a commissioner precinct. Art. 5, §18, Texas Constitution. For a listing of Texas County officials see County Judges and Commissioners Association of Texas, Texas County Directory at 11 (1981-1982).

29/ Telephone call with county clerk's office.

could convene and certify a nominee to be placed on the general election ballot in 1978. The dead candidate won and there was no Chicano elected or appointed to serve as Justice of the Peace.

Nor is this discrimination limited to Chicanos residing within a given county. When our staff visited Edwards County we encountered a great deal of hostility and intimidation from the Anglo power structure. Edwards County contains a population of 2033 of which 967 or 47.6 are Hispanic. 1980 Census at 12. There are no Hispanics elected to the County Commissioners Court. Texas Directory at 27. We visited the County to do an on-site field investigation. During our investigation we came across a segregated cemetery: the Chicano plots were in the back and the Anglo plots were in the front. I contacted the President of the Rocksprings Cemetery Association to determine the reasons for this segregation. The person became very infuriated and agitated. He escorted me out of his office and told me, "If you're here to stir up trouble, you'd better get out of town before sundown." Attachment No. 3.

These instances of voting discrimination often occur within the confines of discriminatory election structures. The most prominent discriminatory election structures are at-large election schemes and gerrymandered county commissioner precinct boundaries. The discriminatory effects of at-large election

schemes have been extensively documented. See White v. Regester, 412 U.S. 755 (1973) (challenge to multi-member legislative districts in Bexar and Dallas Counties); Graves v. Barnes (II) 378 F. Supp. 640 (W.D. Tex. 1974), judgment vacated on other grounds, 95 S. Ct. 2670 (1975) (challenge to multimember legislative districts in Tarrant, Jefferson, McLennan, Travis, Lubbock, El Paso, Nueces, and Galveston Counties); Libscomb v. Wise, 399 F. Supp. 782 (N.D. Tex. 1975), reversed 551 F.2d 1043 (5th Cir. 1977), reversed, 437 U.S. 535, 98 S. Ct. 2493 (1978) (challenging the at-large election structure for the City of Dallas). The primary objection to at-large elections is that " . . . political access in terms of recruitment, nomination, election and ultimately representation is effectively denied Mexican American and Black citizens in Texas by at-large election schemes."[30/]

30/ Senate hearings at 503. In Calderon v. Board of Education, et al., Civ. Act. W-74-CA-21 and Derrick v. Mathis, Civ. Act. No. W-74-CA-2 (W.D. Tex.) (Memorandum Opinion and Order dated February 27, 1976), the District Court concluded that " . . . Plaintiffs have proved that the votes of black and Mexican American citizens of the City of Waco are unconstitutionally diluted and that blacks and Mexican Americans in Waco are afforded significantly less opportunity than other residents of the city to participate in the political process leading to the election of council members." With respect to the Waco Independent School District, the Court noted that "[t]he evidence revealed that the at-large election method, overlaid, as it is, upon the historic, cultural, economic, and political realities of the black and Mexican American community in Waco, results in a marked dilution of black and Mexican American votes." Order at 4, 7. See Attachment 4. See also LULAC v. Williams, C.A. No. 74-C-95 (S.D. Texas) (Memorandum and Order dated October 2, 1979) (where Court found that the 1956 at-large by-place election scheme was enacted by the Corpus Christi Independent School District for the purpose of diluting the voting strength of Mexican Americans).

The discriminatory effects of these at-large election structures are well documented. According to a study prepared for the Texas Advisory Committee to the U.S. Commission on Civil Rights, Mexican Americans and Blacks were severely underrepresented at both the school board and city council levels. Although Chicanos constitute 20.9% or 2,968,643 persons out of a total state population of 14,228,383 and Blacks constitute 12.0% or 1,710,250 persons, their representation on these governing bodies never approached parity. 31/ Recent studies do not

Percent Representation on School Boards

	1968	1970	1972	1974	1976	1978
Chicanos	less than 1%	4.7%	5.0%	6.0%	6.0%	5.9%
Blacks (Male)	less than 1%	less than 1.0%	less than 1.0%	1.0%	1.0%	less than 1.0%

Percent Representation on City Councils

	1968	1970	1972	1974	1976	1978
Chicanos	2.77%	3.62%	4.04%	4.62%	4.62	4.9%
Blacks	less than 1.0%	less than 1.0%	less than 1.0%	1.11%	1.20%	less than 1.0%

31/ Dr. Charles Cotrell, Status of Civil Rights, Vol. I: A Report on the Participation of Mexican Americans, Blacks and Females in the Political Institutions and Processes in Texas. 1968-1970, Texas Advisory Committee to the U.S. Commission on Civil Rights at 89, 108 (1980) (hereinafter Commission Study).

improve this severe underrepresentation. For school districts, out of 7428 school board members only 496 or 6.68% were Chicanos. Texas School Directory 1979-1980, Texas Education Agency, Austin, Texas (1979). For city councils, out of 4902 city council members only 278 or 4.67% were Chicanos. Texas-23 Edition-State Directory 1980; The Comprehensive Guide to the Decision Makers in Texas Government, Austin, Texas (1980). When the individual school districts are examined this underrepresentation becomes even more egregious: Beeville Independent School District (Bee County) has at least 58.7% Chicano student enrollment, yet there is only one Chicano on the seven person board; Rocksprings Independent School District (Edwards County) has at least a 73.6% Chicano student enrollment, yet there are no Chicanos on the seven person board; O'Donnell Independent School District (Lynn County) has at least a 64.5% Chicano student enrollment, yet there are no Chicanos on the seven person board; Karnes City Independent School District (Karnes County) has at least a 54.5% Chicano student enrollment, yet there are no Chicanos serving on the seven person school board. For additional examples see Southwest Voter Registration Education Project, Survey of Chicano Representation in 163 Texas Public School Boards-1970-1980 (1980) (on file at MALDEF office, San Antonio, Texas).

This paucity of minority underrepresentation is caused by the at-large election structures. With the exceptions of a few

metropolitan school districts, well over a thousand school districts conduct their elections on an at-large basis.[32/] Out of the 214 Home Rule Cities in Texas at least 179 use an at-large election scheme, 156 reported using a numbered place or post system, and 124 reported using a majority vote requirement.[33/] These discriminatory electoral devices operate to systematically minimize the impact of minority voting strength especially in the context of racially polarized voting.

Racially polarized voting frustrates the electoral choice expressed by Chicano communities in Texas. Voting along ethnic or racial lines has a tendency to minimize the impact of Chicano voting strength when they are a numerical voting minority within a given political subdivision. Such an effect is particularly evident in the recent elections for the Corpus Christi City council elections. The City Council consists of a mayor and six council members elected every two years. The City Council members run by place. The following table measures the degree of racially polarized voting evident in these city council elections. The numbers next to the candidate are called R factors. These R

32/ Commission Study at 107.

33/ Commission Study at 93. This does not include the remaining 865 municipalities which are not classified as Home Rule Cities.

factors are correlations between the percent of Spanish-Surnamed persons within a voting precinct and the margin of votes in the precinct received by a given candidate. A high positive R value indicates a strong correlation between the votes received by a candidate and Spanish Surname registration. A low or negative R value indicates a weak correlation between the votes cast for a given candidate and Spanish Surname registration. High positive R factors indicate strong support in the Hispanic community while low or negative factors indicate little support in the Hispanic community and strong support in the Anglo community.[34/] These

1981 Regular Election

Place 1		Place 2		Place 6	
Schaffer	- .253	Gonzalez	+ .819	Chapa	+ .635
Luna	+ .924	*Dumphy	- .819	Kennedy	- .809
Gulley	- .889			Bolden	- .068
Whitney	- .451			Roosth	- .450
				Cavazos	+ .838

*indicates winner

results indicate that in those places where Chicanos ran for office, they received overwhelming support from the Chicano community while the Anglo candidate received very little support.

34/ These correlations were provided by Dr. Fred Cervantes, Political Science Department, Corpus Christi State University.

In the runoff for places 1 and 6 the patterns became even more pronounced.

Place 1		Place 6	
Luna	+ .950	*Kennedy	- .940
* Gulley	- .950	Cavazos	+ .940

* indicates winner

As a result of the at-large by-place election structure and severe patterns of racially polarized voting all of the Chicano candidates lost in the election. Corpus Christi has a population of 231,915 persons of which 46.6% or 108,175 are Hispanics, yet does not have any Chicano representation on the city council. 1980 Census at 24. This underrepresentation is particularly egregious since Corpus Christi contains the largest concentration of Hispanics in any major South Texas city.

Racially polarized voting is found in smaller political subdivisions as well. Medina County has a population of 23,164 of which 43.4% or 10,042 are of Spanish Origin. 1980 Census at 22. There are no Hispanics on the County Commissioners Court or the Hondo City Council. Elections to the City Council are conducted on an at-large basis. Election returns for city council races show a very high correlation between the percentage of Spanish Surnamed voters and the percent of votes cast for Chicano candidates, thereby suggesting strong patterns of racially polarized voting.

	Spanish Surname Voters	Votes Cast for Chicano Candidate
April 1, 1978 Place 3	16.33%	18.58% (Attachment No. 5)
April 7, 1979 Place 1	43.87%	40.52% (Attachment No. 6)
April 2, 1980 Place 4	39.90%	39.43% (Attachment No. 7)

These patterns of racially polarized voting are also manifested in county elections as well as for county returns in other state elections. For example, in the June 5, 1976 runoff for county commissioner precinct 3, the Spanish-surname registration rate for the commissioner precinct was 44.8%. The Chicano candidate received 45.5% of the vote. In the May, 1980 Democratic Party Primary for Associate Justice, 4th Supreme Judicial District, Court of Appeals, the Chicano candidate received very little support from the predominantly Anglo precincts. See Attachment No. 8. These examples should provide ample evidence demonstrating the existence of racially polarized voting patterns in Mexican American communities.

Apart from at-large election schemes, gerrymandered county commissioner precincts also serve to inhibit minority representation on the county commissioners court. A recent study by MALDEF indicates that there are many counties in Texas containing significant Chicano populations yet little if any representation on the commissioners court. As previously mentioned, each of the four commissioners is elected

from a commissioner precinct. If the commissioner precincts are drawn in such a manner to either fragment or oversaturate a minority community into one commissioner precinct, gerrymandering occurs.[35/] This gerrymandering often results in no Hispanic representation. Consequently, the absence of Hispanic representation in counties containing significant Chicano populations suggest the presence of gerrymandered commissioner precincts. The following counties which contain over a 20% Hispanic population contain no Hispanic representation on the commissioners courts.

	% Chicano Population
Kenedy	82.9%
Atascosa	47.8% (currently in litigation - filed by MALDEF)
Edwards	47.6% (Recently redistricted as a result of lawsuit filed by MALDEF)
Medina	43.4% (Recently redistricted as a result of a lawsuit filed by MALDEF)
Terrell	43.3% (Recently redistricted as a result of a lawsuit filed by MALDEF)
Karnes	43.0%
Deaf Smith	40.7%

35/ See Kirskey v. Bd. of Supervisors, 554 F.2d 139, 150 (5th Cir. 1977), cert. den. 434 U.S. 877 (can't fragment); Graves v. Barnes, (IV), supra, 446 F. Supp. at 563, 567-68 (can't oversaturate).

Castro	38.6% (Recently redistricted - lawsuit filed by Texas Rural Legal Aid)
Refugio	38.3% (Currently in litigation-filed by MALDEF)
Lynn	37.9% (Recently redistricted - lawsuit filed by S.W.V.R.P.)
Dawson	37.7% (Recently redistricted - lawsuit filed by S.W.V.R.P.)
Crosby	37.0% Recently redistricted - lawsuit filed by S.W.V.R.P.)
Goliad	35.6%
Cochran	34.8% (Recently redistricted - lawsuit filed by MALDEF)
Martin	34.6% (Recently redistricted)
McMullen	34.5%
Calhoun	34.0%
Terry	34.0%
Bailey	33.9% (Recently redistricted)
Floyd	33.9%
Hale	33.7% (Recently redistricted)
Caldwell	33.0%
Parmer	32.7%
Live Oak	32.0%
Reagan	31.5%
Gaines	30.6%
Glasscock	28.8%
Gonzales	28.8%
Menard	28.6%

Upton	28.0%
Yoakum	27.8%
Concho	27.7%
Swisher	27.5%
Hockley	27.0%
Ward	26.8%
Schleicher	26.0%
Winkler	25.8%
Guadalupe	25.4%
Mitchell	25.1%
Crane	24.5%
Comal	23.9%
Sterling	23.1%
Dewitt	23.1%
Real	22.4%
Wharton	21.8%
Andrews	21.8%
Ector	21.5%
Tom Green	21.2%
Howard	21.1%
Matagorda	21.1%
Fort Bend	20.4%

This list totals to 51 counties out of 254 counties. In addition there are a number of other counties containing substantial Chicano populations, yet are only represented by one Chicano

county commissioner: Jim Wells (67.2% Chicano pop.), Culberson (63.4% Chicano pop.), Hudspeth (58.7% Chicano pop.), Kinney (57.5% Chicano pop.), Uvalde (55.2% Chicano pop. - in litigation lawsuit filed by MALDEF), Kleberg (52.2% Chicano pop. - in litigation - lawsuit filed by Texas Rural Legal Aid), Nueces (46.5% Chicano pop.), Pecos (48.6% Chicano pop.), San Patricio (46.3% Chicano pop. - recently redistricted - lawsuit filed by S.W.V.R.P.), Bee (45.8% Chicano pop.), Sutton (40.4% Chicano pop. - redistricted), Wilson (36.5% Chicano pop.) To a significant degree this underrepresentation is due to the failure to reapportion after the decennial census to comply with the one-person one-vote principle.

The one-person one-vote principle requires that each person's vote should have the same impact in a districting scheme. Consequently, each commissioner's precinct should have approximately the same number of persons. The United States Court of Appeals for the Fifth Circuit in Lister v. Navarro County, 566 F.2d 490, 492 (5th Cir. 1978) has recognized a clear duty to redistrict after every decennial census. Yet there are many counties in Texas which have ignored this clear duty.

In a study of counties conducted by MALDEF, extensive evidence concerning the failure of counties to redistrict was documented. In some instances, counties have not changed their

commissioner precincts since the turn of the century. The following is a list of counties and the date of their last redistricting of commissioner precincts.

Counties Which Have Not Redistricted Since 1970

1.	Zack	never
2.	Van Zandt	never
3.	Hamilton	never
4.	Lee	never
5.	Bandera	never
6.	Scurry	1876
7.	Hartley	1891
8.	Ellis	Feb., 1903
9.	Liberty	Feb., 1903
10.	Leon	August 17, 1905
11.	Zapata	1913
12.	Lipscomb	August 12, 1918
13.	Briscoe	November 13, 1934
14.	Wood	March 9, 1936
15.	Comanche	1939
16.	Dewitt	1940's
17.	Foard	1941
18.	Sterling	August 10, 1943
19.	Wise	1945
20.	Lavaca	1950's
21.	Blanco	1950's

22.	Stephens	1951
23.	Upton	August 10, 1955
24.	Floyd	June 25, 1962
25.	Loving	August 13, 1962
26.	Grayson	May 4, 1965
27.	Yoakum	July 15, 1965
28.	Wilbarger	August 5, 1965
29.	Delta	April 13, 1966
30.	Maverick	February 1, 1967
31.	Collingsworth	July 13, 1967
32.	Crane	August 14, 1967
33.	Calhoun	August 25, 1967
34.	Chambers	1967
35.	Red River	January 1, 1968
36.	Kenedy	August 12, 1968
37.	Coryell	November 8, 1968
38.	Tom Green	November 12, 1968
39.	Oldham	1968
40.	Childress	1968
41.	Menard	1968
42.	Coleman	1968
43.	Live Oak	1968
44.	Jim Hogg	1968
45.	Nolan	January 1, 1969
46.	Lampasas	Janaury 13, 1969

47.	Trinity	January 13, 1969
48.	Fannin	January 13, 1969
49.	Hill	January 17, 1969
50.	Reagan	February 1, 1969
51.	McCullough	August 27, 1969
52.	Montague	October 1969
53.	Donley	November 10, 1969
54.	LaSalle	November 10, 1969
55.	Kimble	January 13, 1969
56.	Montgomery	1969
57.	Karnes	1969
58.	McMullen	1969
59.	Brooks	1969

This list of 59 counties includes those counties which have not redistricted using the 1970 census.

In view of this widespread violation of the one-person one-vote principle, MALDEF along with S.W.R.V.P. and TRLA sought to redistrict counties containing significant minority populations. In many instances a violation of the one-person one-vote principle served to discriminate against minorities by including them in the most overpopulated commissioner precincts where their vote would be minimized. The results of these efforts resulted in litigation against several counties. MALDEF filed lawsuits against those counties which had more than the permissible 10% total population

deviation between the most overpopulated district and the least populated district. See White v. Regester, supra. These counties along with their total population deviations are as follows: Atascosa, 60.4% population deviation; Cochran, 31.6% population deviation; Edwards, 273% population deviation; Medina, 126.3% population deviation; Refugio, 176.2% population deviation; and Uvalde, 69.8% population deviation. For more detailed information in these counties please see Attachment No. 9.

The recent publication of the 1980 census will also demonstrate the severe population disparities existing among county commissioner precincts. For example, Briscoe County, which contains a 16.2% Hispanic population and no Chicano County Commissioners, has a total population deviation of 99.28%; Scurry County which has a 18.7% Hispanic population and no Chicano county commissioners has a total population deviation of 104.6%; Yoakum County, which has a 27.8% Hispanic population and no Chicano county commissioner, has a total population deviation of 116.7%.

These blatant violations of the one-person one-vote principle clearly demonstrate the reluctance of political subdivisions to follow federal law. The extensive nature of our documentation clearly indicates that these violations are not isolated instances. Rather, this documentation suggests

a pervasive pattern of failing to comply with applicable federal precedent. Redistricting will occur as the result of lawsuits filed by minority groups. Most of these plans will have to be submitted for Section 5 preclearance. Recently the United States Supreme Court in McDaniel v. Sanchez, No. 80-180 (Decided June 1, 1981), held that redistricting plans resulting from federal court litigation are subject to the Section 5 preclearance provisions. Consequently, this federal monitoring will be important in assuring that these plans do not discriminate against Hispanics.

Removing these institutional discriminatory election devices and preventing discriminatory voting abuses are important in creating more responsive government. Elected officials will be held more accountable if elected under a non-discriminatory system. More minorities are appointed to government positions, city boards and commissions. Governmental funds and services are redistributed to minority areas. 36/ In sharp contrast, where there has been a discriminatory election scheme in effect, there is no responsiveness. In Medina County, during the time period of 1954-1980, there were only 5 Chicano presiding election judges out of 351. In the same time period, only 5 Chicano election judges out of 508 were appointed. See Attachment No. 10. For a county which contains 43.4% Chicanos such a severe underrepresentation of election officials who can speak Spanish will only discourage Hispanic voter participation.

36/ Commission Study at 189.

With respect to appointments by the county commissiners Court, out of 1,057 persons from 1956 to 1980, Chicanos constituted only 1.98% or 21 of these appointments. See Attachment No. 11. Thus the elimination of discriminatory election devices has the potential for electing persons who will be more sensitive to the particularized needs of the Hispanic communities.

This presentation of voting discrimination is not complete. There are many other examples of discrimination which have yet to be documented. Abuses and discriminatory practices still occur. See, e.g., The Texas Observer, "Hispanic Drive Falters, p. 1, May 15, 1981 (Vol. 73 No. 10) (where Chicanos were being videotaped by the incumbent Anglo mayor in McAllen, as they voted absentee); The Texas Observer, "A little bitty dynasty", p. 2, May 12, 1978 (Vol. 70, No. 9) (documents the control of the Somerset Independent School District by an Anglo superintendent; also discusses election fraud in this District which contains at least a 50% Chicano student population and only one Chicano Boardmember).[37/] This extensive voting discrimination will not

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37/ The Southwest Independent School District contains a 60% Chicano student population. Prior to the April 1979 school board elections, there was not a single Chicano on the school board. This absence of representation was due to the District's decision to maintain only one polling place for the entire school District. Chicanos would have a 22 mile trip to vote in school board elections. Only after the threat of a lawsuit, were additional polling places created. As a result of this increased access, there is now one Chicano on the school board.

be eliminated by state authorities. The county commissioner precinct gerrymanderings were brought to the attention of the State Attorney General in the early part of 1979. The Attorney General took no action. This inaction by state officials clearly demonstrates the continued need for federal monitoring.

The federal monitoring provided by the Voting Rights Act has been effective, both in preventing the implementation of discriminatory election devices and in deterring officials from adopting discriminatory election changes. The next section of this testimony will document the results of Section 5 monitoring. These results have an impact on a state and regional level. Moreover, the recalcitrance of political subdivisions in Texas to comply with the Section 5 preclearance provisions clearly justifies the continued application of the Voting Rights Act until after the 1990 redistrictings.

II. Importance of Section 5

In Texas there have been at least 85 letters of objection issued by the United States Attorney General encompassing approximately 130 election changes. These adverse administrative determinations have prevented the implementation of discriminatory election changes both on a state and local level. Yet even with these letters of objection MALDEF in many instances has to institute litigation to enforce the letter of objection. In some cases, MALDEF had to file lawsuits to compel political subdivisions to submit election changes for preclearance.

For the record, the State of Texas has not assisted MALDEF in any of these efforts. On the contrary, the State of Texas was a defendant in three lawsuits. In addition, the State of Texas sought a judicial exemption from the Section 5 preclearance provisions by challenging the application of the triggering mechanism in Section 4b (b). 42 U.S.C. §1973b(b). Briscoe v. Bell, 97 S. Ct. 2428 (1977). Moreover, the current Attorney General has often spoken out against the preclearance provisions of the Act. In addition, then Secretary of State Mark White wrote all the county clerks urging them to voice their opposition to extension of the Voting Rights Act to Texas. See Attachment No. 12. In such a hostile environment, minorities in Texas need federal protection.

A. Statewide Letters of Objection

1. Senate Bill 300

The efforts by the State of Texas to adopt restrictive voter registration procedures have been extensively documented.[38/] The most recent effort to disenfranchise minorities occurred with the passage of Senate Bill 300. 64th Legislature, 1975 Legislative Session. According to S.B. 300, the tax assessor-collector in each county was directed during the period between November 5, 1975, and December 15, 1975, to mail a notice to each registered voter. This notice would have informed the voter that his or her current registration

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38/ Senate hearings at 468. See also Beare v. Smith, 321 F. Supp. 1100 (S.D. Texas 1971).

would expire on March 1, 1976. In order to remain registered, the voter must have filed a new application to vote by January 31, 1976. Absent such application the person would be purged from the registration rolls. The effects of S.B. 300 on Hispanic voter registration would have been devastating. A re-registration requirement would in effect disenfranchise Hispanic registered voters.

The United States Attorney General on October 22, 1975 advised the Texas Attorney General to submit S.B. 300 for preclearance. Since preclearance could not be obtained prior to November 5, 1975, MALDEF instituted a lawsuit. Flowers v. Wiley, S-75-103-CA (E.D. Tex.). Plaintiffs were successful in preventing the implementation of the objectionable portions of S.B. 300. MALDEF submitted a written comment documenting the difficulties minorities would encounter in understanding and returning the required forms. See Attachment No. 13. On December 10, 1975, a letter of objection was entered by the United States Attorney General. The U.S. Attorney General concluded that the State had not met its burden: "With regard to cognizable minority groups in Texas, namely, blacks and Mexican Americans, a study of their historical voting problems and a review of statistical data, including that relating to literacy, disclose that a total voter registration purge under existing circumstances may have a discriminatory effect on their voting rights . . . . Moreover, representations have been made to this office that a requirement that everyone

register anew, on the heels of registration difficulties experienced in the past, could cause significant frustration and result in creating voter apathy among minority citizens, thus, erasing the gains already accomplished in registering minority voters." See Attachment No. 14.

After the letter of objection was issued, the State of Texas under federal court order could not implement the discriminatory election features. The Flowers case is illustrative of the State's persistence in resisting the application of the Voting Rights Act. A federal court order was required to prevent a massive purging of minority registered voters. Clearly without the Section 5 preclearance provisions, the evidentiary difficulties in establishing a constitutional violation based upon a discriminatory effect would have been insurmountable.

2. H.B. 1097

This letter of objection involved the districting of the legislative districts for Nueces County. This letter of objection was the culmination of efforts commenced in White v. Regester, supra, to eliminate the use of multi-member legislative districts. After the Supreme Court in White affirmed the unconstitutionality of such schemes in Bexar and Dallas counties, the case was remanded for determining the constitutionality of the remaining multi-member districts in eight other counties. The District Court found the multi-member districting scheme unconstitutional in Nueces County. Graves v. Barnes, (II), 378 F.

Supp. 640 (W.D. Tex. 1974). During appeal to the Supreme Court, the Texas State Legislature enacted House Bill 1097, 1975 session of the Texas Legislature. Subsequently, the Supreme Court remanded the case to determine if the case should be dismissed. White v. Regester, 422 U.S. 935 (1975).

In the interim, the United States Congress extended the Voting Rights Act to Texas. Consequently the district lines for Nueces County incorporated in H.B. 1097 were submitted for preclearance. The most objectionable feature of H.B. 1097 with respect to Nueces County was the intentional fragmentation of a geographically cohesive minority community located in the Corpus Christi "corridor" area. The state plan was designed to limit minority representation to only one representative. District 48A was the only district in H.B. 1097 containing over a 50% minority population. In sharp contrast the redistricting plan submitted by the plaintiffs-intervenors in Graves II created two Hispanic districts each containing over a 50% Mexican American population. The state's plan was suspect also because of the absence of any community of interest. MALDEF submitted a comment urging the U.S. Attorney General to interpose a letter of objection. See Attachment No. 15.

On January 26, 1976, the U.S. Attorney General issued a letter of objection. The Attorney General agreed with MALDEF's contention concerning the unnecessary fragmentation of the minority corridor area. See Attachment No. 16. The impact of the letter

of objection was immediate. Prior to the redistricting efforts there had been one Hispanic legislator representing Nueces County since 1964. Graves II, supra, 378 F. Supp. at 660. After the letter of objection was issued an additional Chicano was elected to the State Legislature from Nueces County. In conclusion, the letter of objection was directly responsible for preventing the implementation of a redistricting plan which gerrymandered the minority community. Section 5 provided a mechanism for curbing the discriminatory intent of the Texas State Legislature.

3. S.B. 11

The efforts by the Texas Legislature to discriminate are not limited to minority communities; these efforts also encompass political parties. La Raza Unida Party presented a challenge to the established Democratic Party. La Raza Unida Party consisted primarily of Chicano activists who were disenchanted with the continued indifference and neglect exhibited by the Democratic Party toward the Mexican American community. In 1972, the Party ran a candidate for Governor. The 1972 elections were close. The Democratic candidate garnered 47.9% of the vote, while the Republican candidate received 45.0% of the vote. The Raza Unida candidate received a 6.3% of the vote. This strong showing permitted the Party to receive state financing of their primary elections. The Party received well over the 2% threshold level established by state statute.

The Democratic Party controlled legislature viewed the Raza Unida Party as a threat. Consequently, in 1973, the legislature sought to eliminate the Party by removing the financing of their primary elections. According to the terms of S.B. 11, a party must receive more than 20% of the votes cast for governor in order to be eligible for state financial backing. The discriminatory purpose of this statute is amply documented in the submission by a Raza Unida Party County Chairperson. See Attachment No. 17. The U.S. Attorney General agreed and issued a letter of objection on January 27, 1976. See Attachment No. 18. However, MALDEF had to file a lawsuit to enforce the letter of objection. La Raza Unida v. White, A-76-CA-17 (W.D. Tex.). Since the filing deadline for party primaries was February 2, 1976, an injunction was sought to extend the filing period to permit persons to file for La Raza Unida Party primary. MALDEF was successful in securing this Order.

Section 5 was responsible for checking once again the discriminatory tendencies of the State Legislature. The letter of objection permitted La Raza Unida Party to field candidates for primary elections who would then be placed on the ballot in the general elections, thereby permitting the Chicano community to select a candidate other than from the two established parties.

B. Edwards County: A Classic Case of Gerrymandering

Edwards County presents a clear example of Section 5 preventing county officials from blatantly gerrymanderring the county commissioner precincts. Edwards County, according to the 1980 Census, had 2,033 persons of which 47.6% are Chicano. Yet despite this overwhelming number of Chicanos there is not a single Chicano county commissioner. Our initial investigation determined that the commissioner precincts were seriously malapportionad.. Commissioner Precinct 1 had 1,541 persons or 192% more people than the ideal commissioner precinct. Commissioner Precinct 3 contained approximately 104 persons or 80% less than the ideal district. The total population deviation was 272% well over the permissible 10% threshold. Moreover, the Chicano population was overconcentrated in Precinct 1. Although a substantial number of Chicanos were placed in Precinct 1, they did not constitute a majority of the voters in Precinct 1. Consequently, even if they were all registered to vote they could not elect a Chicano commissioner.

During the course of our investigation, we went to Edwards County to the town of Rocksprings to conduct the initial political profile. During the course of our investigation, we came across a segregated cemetery. All of the Chicanos were buried in the back in small plots. The Anglo plots were much larger. When we surveyed the Mexican area of the Rocksprings cemetery, we came across a plaque which commemorated the burning of a Chicano at the stake for allegedly killing an Anglo woman. This

burning took place in the early part of the nineteen hundreds. After inquiring about the segregated nature of the cemetery, we were told to leave town before sundown. See Attachment no. 3.

Having documented the malapportionment, the Southwest Voter Registration Project and MALDEF made a presentation before the county commissioner's court urging them to voluntarily redistrict the county commissioner precincts. The organizations offered to assist the county to change the commissioner precinct boundaries. The commissioner's court decided to change the lines without our participation. The lines were changed and the plan was submitted to the United States Attorney General for approval.

The Edwards County commissioner's court divided the Chicano population among the four county commissioner precincts. This division resulted in an even distribution of the Chicano population. Attachment No. 19 is a map of Rocksprings clearly demonstrating the intentional gerrymandering of the Chicano community. Consequently, the Chicano population in Edwards County would not be able to elect a Chicano commissioner. According to their population estimates, Commissioner Precinct No. 1 had 40.2% Chicano population; Precinct No. 2 had 25.2% Chicano population; Precinct No. 3 had 29.2% Chicano population; Precinct No. 4 had 35.7% Chicano population.

In the comment to U.S. Attorney General, MALDEF referred to the extensive discrimination experienced by the Chicano community. See Attachment No. 20, and urged the U.S. Attorney General to issue a letter of objection. As a result of our comment and community input, the Department of Justice on April 26, 1978

issued a letter of objection. See Attachment No. 21. Since the plan was not approved, the County decided to revert back to the old county commissioner boundaries. Subsequently, MALDEF filed a lawsuit challenging the malapportioned plan. Cowsert v. Fred, Civ. Act. No. DR-79-CA-26 (U.S.D.C. Western District of Texas). After the complaint was filed the county decided to negotiate a redistricting plan. As a result of these negotiations, a new plan providing for a Chicano precinct was adopted. Edwards County is a perfect case study for assessing the immediate impact of a letter of objection. Without the letter of objection, the Chicano community would be gerrymandered.

C. Medina County: Unsuccessful Attempts to Limit Chicano Political Participation

Medina County represents an excellent example of the persistent efforts of governmental officials to discriminate against Chicanos. Medina County according to the 1980 census contains a 43.4% Chicano population; yet, Chicanos have not been elected to the county commissioner's court.

In 1978, a MALDEF analysis of the current redistricting plan revealed a violation of the one person one vote principle. The total population deviation was 126%. Moreover, the Mexican American communities in the cities of D'Hannis and Hondo were divided into two commissioner precincts. The plan resulted in the total absence of a Mexican American elected to the commissioner's court in the county's history. MALDEF informed the court of the malapportionment and the County chose to reapportion in 1978 rather than face a lawsuit.

The 1978 plan also fragmented the Chicano community in Medina County. The geographically cohesive Mexican American community within the county seat of Hondo was split between two commissioner precincts. The Mexican American voting age population in both of these two precincts was less than 50%. The County submitted the 1978 plan for Section 5 preclearance. MALDEF submitted a comment urging the issuance of a letter of objection. The comment documented the obvious attempt to fragment a cohesive community. The comment also documented the lack of Chicano political access in other political entities located within Medina County. See Attachment No. 22. The Department of Justice issued a letter of objection on April 14, 1978, finding that "the effect of the new plan is to perpetuate denial of access by Mexican Americans to the political process in Medina County." See Attachment No. 23.

On October 12, 1979, another objectionable plan was submitted to the Department of Justice. The 1979 plan was identical to the 1978 plan; the only difference being an increase of 1.47% in the Mexican American population of Precinct 3. MALDEF had to file a Section 5 enforcement proceeding to enjoin any additional elections until a non-discriminatory plan was adopted and precleared. Garcia v. Decker, Civ. Act. No. SA-79-CA 414 (W.D. Texas). MALDEF was successful in securing such an Order. In the meantime MALDEF submitted an additional comment urging the U.S. Attorney General to object to the 1979 plan. See Attachment No. 24. The Department of Justice objected to the 1979 plan on December 11, 1979, finding "no justification for the continued substantial fragmen-

tation of the Mexican American community of the City of Hondo." See Attachment No. 25.

On January 25, 1980, rather than formulate a non-discriminatory redistricting plan Medina County filed a declaratory judgment action in the U.S. District Court for the District of Columbia. Medina Co. v. U.S., Civ. Act. No. 80-0241 (D.C. Dist. Colum.). Initially, the County sought preclearance of either the 1978 or 1979 plan. However, after extensive discovery was conducted, the County submitted a third redistricting plan to the U.S. Attorney General for preclearance. Although MALDEF objected to this 3rd plan, See Attachment No. 26, the plan represented a substantial improvement over the 1978 and 1979 plans. On December 16, 1980, the Department of Justice issued a letter of no objection and a special election for Commissioners of Precincts 1 and 3 is scheduled for May 30, 1981. This new plan affords Mexican Americans in Medina County a greater opportunity for access to the county political system.

The Medina County case demonstrates the necessity to have Section 5 preclearance. After two Section 5 lawsuits and two letters of objection, Medina County finally acquiesced in giving Chicanos a meaningful opportunity to participate in the political process. The process lasted well over two years. Without the safeguard provided by Section 5, the 1978 redistricting plan would have been implemented. The result would have been to perpetuate the existing absence of minority representation on the county commissioner's court.

D. Frio County, San Antonio, Houston, and Dallas: Present Effects of Section 5 Preclearance

The Section 5 preclearance provisions have been in effect in Texas since 1975. Perhaps the most dramatic effects in terms of increasing minority representation have occurred in Frio County, San Antonio, Dallas, and Houston. Frio County according to the 1980 Census has 13,785 persons of which 68.4% are Mexican American. Despite this large number of Chicanos, prior to 1980 there had only been one Chicano elected to the County Commissioner's Court. The reason for this minority underrepresentation was the gerrymandering of the Mexican American community in Pearsall, Texas. See Senate Hearings at 737.

After the Voting Rights Act was extended to Texas, Frio County was informed of its obligation to preclear a 1973 redistricting plan. The County submitted the plan. Public comments very clearly documented the extent of minority exclusion by the overconcentration of the Chicano community in one precinct. In addition, comments provided instances of recent voting irregularities in Pearsall. As a result of these comments, the U.S. Attorney General on April 16, 1976 objected to the redistricting plan because of the overconcentration of minorities in commissioner precinct 3. See Attachment No. 27. The County disregarded the letter of objection. Since the county intended to implement the redistricting plan in the May, 1976, primary elections, MALDEF filed a lawsuit to prevent the use of this plan in any future elections. Silva v. Fitch, Civil Action No. SA-76-CA-126 (W.D. Tex.).

MALDEF was successful in this litigation. MALDEF was able to negotiate a plan providing for more minority participation. Although the first election held under the new plan did not result in any increased minority elected officials, the 1980 general elections resulted in the election of two Chicanos to the county commissioner's court. In addition, another commissioner precinct which contains a substantial number of Chicanos will be up for election in 1982. The Mexican American population in Pearsall expects to win this seat as well. Consequently, by 1982, for the first time in history, the Frio County Commissioner's Court may be governed by a majority of Chicano commissioners. Section 5 is directly responsible for this increase in minority representation.

Section 5 also had a significant impact in increasing minority representation in major metropolitan areas. In San Antonio and Houston, this increase in minority representatives was accomplished by letters of objection to the cities' annexations. The annexations in San Antonio were massive and resulted in increasing the Anglo population, thereby minimizing the impact of Chicano voting strength in an at-large election scheme. When these annexations were submitted for preclearance the U.S. Attorney General issued a letter of objection because of the discriminatory effect of these annexations in minority voting strength. See Commission Study at 180-190. As a condition of withdrawing the letter of objection, the city adopted a districting plan consisting of ten single member districts and one at-large seat. Prior to the redistricting plan, there were only two Mexican

Americans on the city council. With the 1977 election under the 10-1 plan, five Chicanos were elected. This increased Hispanic representation resulted in more minority appointments as city commissioners, and in the redistribution of city revenue and services. Id.

A similar transformation occurred in Houston. As with San Antonio, Houston submitted their annexations for Section 5 preclearance. The Attorney General objected. See Attachment No. 28. The result was the implementation of a districting scheme. The plan ultimately approved by the Attorney General consisted of 9 single member districts and 5 at-large seats. Prior to the implementation of the districting plan, only one Black and no Chicanos had ever served on the eight person city council. After the implementation of the districting plan, minority representation increased. There is now one Chicano and 3 Blacks serving on the City Council.

Section 5 was also responsible for requiring the modification of a redistricting plan which discriminated against the Black and Mexican American communities in Dallas. The redistricting plan was the result of a suit challenging the at-large election feature used to select members to the Dallas City Council. Wise v. Lipscomb, 98 S. Ct. 2493 (1978). To replace the at-large elections scheme, Dallas proposed a plan consisting of eight single member districts and three at-large seats. Dallas sought judicial preclearance of the plan in the United States District Court for the District of Columbia. Dallas v. U.S., Civ. Act. No. 78-1666 (D.C. Dist. Colum.). MALDEF and Blacks intervened in the lawsuit opposing preclearance of the 8-3 plan. Both

of the intervenors desired a straight single member district plan. Although a straight single member district plan was not adopted, the intervenors were able to require the city to modify the 8-3 plan in order to permit the election of at least three minority council members. As a result of these efforts there is now one Chicano and two Blacks on the city council.

In summary, Section 5 was directly responsible for securing minority representation in the three largest cities in Texas. The increase in minority representation was substantial. Also in rural areas, such as Frio County, Section 5 is increasing minority representation at local governmental levels.

E. Terrell County, and the City of Lockhart: Reluctance to Submit

MALDEF has also been involved in litigation seeking to require political subdivisions to comply with the preclearance provisions. Terrell County and the City of Lockhart are good examples demonstrating the reluctance of political subdivisions in Texas to comply with Section 5. According to the 1980 Census, Terrell County has a population of 1,595 persons of which 43.3% are Mexican Americans. Despite this overwhelming number of Chicanos, not a single Chicano has ever been elected to the county commissioner's court. This lack of representation was due to the substantial population deviation existing among the four county commissioner precincts. This violation of the one-person one-vote principle operated to the detriment of the Mexican American population. Since the redistricting was enacted in 1973, the County had to submit the redistricting plan for preclearance.

MALDEF first notified the county in 1976 of the necessity to preclear the redistricting plan. However, the county ignored our requests. Consequently, MALDEF instituted a lawsuit seeking to require submission of the redistricting plan for preclearance. Escamilla v. Staveley, No. DR-78-CA-23. (W.D. Tex.).

As a result of this lawsuit, the county finally submitted the redistricting plan for Section 5 approval. MALDEF submitted comments on the plan urging the Department of Justice to issue a letter of objection. The comment focused on the discriminatory effect of the redistricting plan. The plan minimized the impact of minority voting strength in a secondary minority district. See Attachment No. 29.

The Attorney General issued a letter of objection. See Attachment No. 30. The District Court prevented the county from implementing the 1973 redistricting plan in the 1978 elections. As a result of this order, Terrell County decided to negotiate a new plan. The negotiated plan provides for a significant Chicano district as well as a strong secondary district.

In the City of Lockhart, Caldwell County, MALDEF also had to institute a lawsuit to require the political entity to submit their adoption of a Home Rule Charter for Section 5 preclearance. The City of Lockhart, according to the 1980 Census has 7,953 persons of which 56.1% or 4,458 are Chicanos and 10.9% or 869 are Black. Despite this combined minority percentage of 67.0%, there is only one minority on the City Council. This paucity of minority representation is due to the at-large by-place elec-

tion scheme. This city adopted this system of government when the city opted for a Home Rule Charter. The City refused to submit the Home Rule Charter for preclearance. MALDEF filed a lawsuit seeking an Order requiring the City to submit the pertinent election changes for preclearance. Cano v. Chesser, Civ. Act. No. A-79-CA-0032. MALDEF succeeded.

The City submitted the Charter for preclearance. MALDEF urged the Attorney General to issue a letter of objection. The Attorney General agreed with our comments and issued a letter of objection on September 14, 1979. See Attachment 31. Instead of agreeing to implement a fairly drawn single member districting plan, the City decided to seek judicial preclearance in Washington, D.C. City of Lockhart v. U.S., Civ. Act. No. 80-0364 (D.C. Dist. Colum.). MALDEF intervened in the lawsuit. MALDEF presented extensive evidence documenting the discriminatory impact of the Home Rule Charter. See Attachment No. 32. A decision is awaited.

Both of these cases illustrate the recalcitrance of covered jurisdictions in Texas to even miniminally comply with the submission requirements of the Act. Private enforcement will continue to be necessary to effectively monitor compliance with the Section 5 preclearance provisions.

F. Jim Wells County, City of Pecos, City of Seguin, and Frio County: Necessity for Continued Section 5 Monitoring

There is a continuing need to have Section 5 preclearance in Texas. Without such federal oversight, discriminatory elec-

tion devices would be immediately implemented. This continued necessity is amply documented by the voting documentation evident in Jim Wells County, the City of Pecos, the City of Seguin, and Frio County.

Jim Wells County illustrates how a county continues to discriminate against the Chicano population. According to the 1980 Census Jim Wells County has 36,498 persons of which 67.2% are Chicano. Despite this overwhelming percentage, there has never been more than one Chicano on the County Commissioner's Court. Under a fairly drawn redistricting plan for the County Commissioner's precinct, Chicanos in Jim Wells County would be entitled to three Hispanic districts. In 1975, the County redistricted the commissioners' precincts.

Although Section 5 was in effect in Texas, the county commissioner's court ignored the federal government's request to submit the plan for preclearance. Finally in 1977 the redistricting plan for 1975 was submitted for Section 5 approval. MALDEF commented on the discriminatory feature of the proposed plan. The proposed plan overconcentrated the Chicano population in Precinct No. 1. See Attachment No. 33, 33a. The Attorney General as a result of MALDEF's comments issued a letter of objection. The redistricting plan not only violated the one-person one-vote principle, the plan also minimized the impact of the Mexican American voting strength. Since the county did not provide all of the information, a letter of objection was not issued until July 3, 1978. See Attachment No. 34. The county ignored

the letter of objection and planned to conduct their general elections for 1978. As in previous instances, MALDEF had to file a lawsuit to prevent the implementation of the unprecleared plan in any future election. Arriola v. Harville, Civil Action No. C-78-87 (S.D. Tex.). As a result of this litigation the 1975 plan was not implemented in any future elections. The commissioner's court decided to implement another plan. This plan was submitted to the Attorney General for approval. MALDEF opposed this plan as well. See Attachment No. 35. On February 1, 1980 the Attorney General issued a second letter of objection against the implementation of the second plan. See Attachment No. 36. After the issuance of this new plan, the Commissioner's Court again attempted to draft a third plan. In both of these instances, the Chicano community did not have any input into the plan whatsoever. The third plan was submitted to the Attorney General by June 13, 1980. Again, MALDEF opposed this latest attempt to discriminate against the Chicano community. See Attachment No. 37. The third plan was not an improvement over the 1979 redistricting plan. Accordingly, the Attorney General issued a third letter of objection on August 12, 1980. According to the letter, the third plan continued to dilute the voting strength of the minority population. The letter also referred to the absence of any significant input from the affected minority group. See Attachment No. 38.

In summary, there are three letters of objection issued against the Jim Wells County Commissioner's Court. As a result of litigation, no elections have been held since 1976. The Jim

Wells County Commissioner's Court has decided not to submit any additional plans; consequently, there have been no elections. Jim Wells offers a very clear example of a County Commissioner's Court refusing to include the Mexican American population in their community deliberations on a proposed redistricting plan. In addition, this case history documents the efforts of the commissioner's court to purposely exclude and minimize Mexican American voter participation. Without the Voting Rights Act, the county commissioner's court would have been able to implement their first discriminatory election plan.

The City of Pecos, Reeves County, is another example documenting a political subdivision's intent to adopt a discriminatory election change once the Voting Rights Act is no longer in effect. The City of Pecos according to the 1980 Census has 12,855 persons of which 61.8% or 7,939 are Hispanic. On May 22, 1975, the City Council adopted a numbered place system for the election of city councilmembers. Since there is racially polarized voting in local elections, the Attorney General on March 23, 1976, issued a letter of objection against the implementation of the numbered places. The numbered place system was not implemented in the 1976 or 1977 elections.

On March 31, 1977, a United States District Court in Alabama ruled that municipalities were not subject to Section 5 of the Voting Rights Act. U.S. v. Bd. of Com'rs. of Sheffield, Ala., 430 F. Supp. 786 (N.D. Ala. 1977). On May 12, 1977, the Mayor of Pecos disregarded the previous letter of objection and assigned numbered

places to the various council members based upon the District Court decision in Sheffield. The City Council did not wait until the Supreme Court considered the case. Instead, the City Council took advantage of the first opportunity to implement an election change which was found to be objectionable by the Attorney General. MALDEF instituted a lawsuit to prevent the implementation of the objectionable election change in the April 1978 municipal elections. Perea v. Pigman, Civ. Act. No. P-77-CA-23 (W.D. Tex.). The city council rescinded the designation of the numbered places. Clearly, if past experience is any guide, the City of Pecos will implement the numbered place system as soon as the Act expires. Consequently, the deterrent effect of Section 5 is needed in Pecos to prevent the implementation of discriminatory election changes.

The City of Seguin, Texas is an example demonstrating the continued need for the exclusive review provided by Section 5. This exclusive review prohibits local federal district courts from ruling on the constitutionality of a proposed redistricting plan prior to Section 5 review. See McDaniel v. Sanchez, No. 80-180 (June 1, 1981) at n. 31.

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The City of Seguin, Texas is governed by a city council consisting of a mayor and eight council members. The City Charter empowers the city council to divide the city into four wards with two council members elected from each city ward for a two year term. On even-numbered years, the Mayor and one council member from each ward is elected; on odd-numbered years, the other council members from each ward are elected.

According to the 1980 census, the City of Seguin has approximately 17,854 persons, of which 7664 or 43.0% are Mexican American and 2255 or 12.7% are Black for a combined minority percentage of 55.7%. Although the minority population constitutes over half of the city's population, there have been at most only two minorities sitting on the city council at any given time. Minorities contended that the malapportionment of the city ward system in existence since January 2, 1962, contributed to this minority underrepresentation by overconcentrating the minority population in Ward I which was the most over-populated ward. To prevent the continued implementation of a malapportioned redistricting plan for the 1978 municipal elections, MALDEF instituted a one-person one-vote challenge. Ramos v. Koebig, Civ. Act No. SA-78-CA-55 (W.D. Tex.).

Since the City of Seguin did not contest the malapportionment, the trial held on April 3, 1979, was limited to the adoption of a redistricting plan which would replace the previously unconstitutional plan.

At the trial, the City of Seguin presented their redistricting plan. The racial and ethnic characteristics for each of the wards under the City's plan were as follows:

Ward	Mexican American %	Black%	Total Min.%	Anglo %
1	65.2	25.1	90.3	9.7
2	34.8	13.3	48.1	51.9
3	30.5	7.4	37.9	62.1
4	29.4	12.7	42.1	57.9

In sharp contrast, the redistricting plan submitted by the minority community eliminated the overconcentration of minorities in Ward 1. The ethnic and racial characteristics of the proposed plan were as follows:

Ward	Mexican American %	Black	Total Min. %	Anglo%
1	51.4	29.1	80.5	19.5
2	55.1	15.0	70.1	29.9
3	36.8	12.7	49.5	50.5
4	16.9	2.9	19.8	80.2

Minority representatives favored this plan and disapproved of the City's proposed plan. The City's plan limited minority representation to 2 members on the city council, by continuing the over-concentration of minorities in Ward 1. The City's proposed plan discriminated against the Mexican American population due to the presence of racially polarized voting which minimized the impact of the minority vote in Ward Nos. 2, 3, and 4. Recent

elections in Seguin under the City's plan have resulted in the election of only 2 minorities from Ward I. Under the MALDEF plan, an additional two minorities could get elected from Ward 2.

The necessity for representatives responsive to the needs of the minority community was made evident in testimony. According to this testimony, less road maintenance is performed in the minority community, there is no curbing in the minority areas, the drainage is better in the Anglo parts of Seguin, no minorities are employed in high positions, there are insufficient minority appointments to city commissioners, and there are no bilingual oral assistants in municipal elections as required under the Voting Rights Act, 41 Fed. Regis. 29998, 30001.

After evaluating the evidence presented, the District Court adopted the City's plan. The plan, according to the Court's findings was not the product of a racial gerrymander, did not deprive minorities of fair access to the political process and did not dilute the voting strength of any minority group.

The Ramos decision was appealed to the United States Court of Appeals for the Fifth Circuit. Since the City of Seguin did not intend to submit the plan adopted by the District Court in Ramos for federal preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. §1973c, MALDEF filed an action to require preclearance. Trinidad v. Koebig, Civ. Act. No. SA-79-CA-179 (W.D. Tex.). The District Court in Trinidad dismissed the complaint because the plan was exempt from Section 5 preclearance. On appeal, the Trinidad and Ramos deicions were reversed. Trinidad v. Koebig, 638 F.2d 846 (5th Cir. 1981); Ramos v. Koebig, 638 F.2d 838 (5th Cir. 1981). The city's redistricting plan has

to be precleared.

The City does not intend to submit the 1979 redistricting plan because a new plan will be formulated based upon the 1980 Census. In the meantime, however, the discriminatory effects of the plan are still present. Only two Hispanics serve on the city council. This minority representation can only be remedied by Section 5 review. The District Court in Ramos certainly did not remedy this minority underrepresentation. Since Section 5 has stricter standards to protect minority voting strength, the minority overconcentration in Ward I under the City plan would not have been approved.

The deterrent effect of Section 5 was recently evident in Frio County. A Mexican American candidate filed for county tax assessor and collector in the May, 1980 Democratic Party primaries. The Mexican American candidate won the election. After this success, the county sought to transfer the critical voter registration functions of the county-tax assessor's office to the county clerk's office. 39/ The local Mexican American community voiced strong opposition to this transfer. Members of the minority community informed the commissioner's court that they would file a lawsuit to require preclearance of this transfer of election duties. The County subsequently decided not to undertake the transfer. Section 5 deterred the county from adopting this discriminatorily motivated transfer of election duties.

39/ Such a transfer is authorized by Art. 5.09b, Texas Election Code.

G. Congressional, State Senatorial, and State Legislative Districts: Necessity for Continued Section 5 Review

Section 5 review is needed to curb the discriminatory actions of the Texas State Legislature in their redistricting efforts. Both the 1960 and 1970 reapportionments were challenged in both state and federal courts. 40/ The present redistricting efforts will prove to be no different. The Texas State Legislature has adopted redistricting plans for the state senatorial seats and the 150 legislative seats. The Congressional plan has yet to be adopted. The Congressional districts will be formulated in a special session of the legislature yet to be called by the Governor.

To assist the House and Senate committees in their redistricting efforts, MALDEF, Texas Rural Legal Aid, and S.W.V.R.P. presented alternative plans which did not discriminate against Mexican Americans. With respect to existing legislative districts, according to data provided by the Lt. Governor's Office, there are 16 districts containing more than sixty-five percent Hispanic population. 41/

The minority group organization plans have seventeen districts containing sixty-five percent or over Hispanic popula-

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40/ Steve Bickerstaff, Reapportionment by State and Local Governments: A guide for the 1980's, (March 31, 1981) at 34-44.

41/ Dist. Nos. 48A, 49, 50, 51, 57, 57B, 57I 57J, 57K, 58, 59A, 59B, 70, 72C, 72D, 87.

tion. 42/ However, the most important factor to note is that these proposed plans maintain, and in some instance increase minority representation on a regional basis.

In Bexar County, under the existing plan, there are six minority representatives. Under the proposed house districts, this minority representation is maintained. Proposed Districts 57K, 57J, 57I, 57E and 57B all contain at least a 65% minority population. As a result of population shifts and minority distribution, the minority population for District 57A was fixed at 54.24%. This is a slight decrease from the existing 1980 minority population estimate.

In Nueces County, under the existing plan, there are two minority representatives. These two minority districts are maintained under the proposed plan. Proposed District Nos. 48A and 48B contain a 66.38% and 63.34% Hispanic population respectively. With respect to the valley districts, Hispanic representation is maintained in District Nos. 49 (69.19% Hispanic population), and 59B (83.97% Hispanic population). In addition, the minority voting strength is preserved in other districts: 58 (74.43% Hispanic population), 57 (92.15% Hispanic population), 51 (73.29% Hispanic population). Most importantly, however, two new Hispanic districts are created as a result of the population increases: Maverick County and surrounding area (73.22% Hispanic population); Hidalgo County (76.47% Hispanic population).

42/ Dist. Nos. 48A, 58, 57, (Maverick County new), 49, 50, 51, 59A, 59B, 59C, 57B, 57I, 57J, 57K, 72B, 72C, 72D.

In El Paso County, there are three minority districts under the existing plan. Under the proposed plan, these three minority districts are maintained: District 72B (69.75% Hispanic population), 72C (84.43% Hispanic population), and 72D (85.48% Hispanic population). There are two minority representatives under the existing plan. Under the proposed plan there would be at least two minority districts. 43/ In Harris County, the existing minority representative is maintained under the proposed plan: District 87 (58.2% Hispanic population). In addition, a new Hispanic district is created with at least a 59% Hispanic population. With respect to the Hispanic voting strength in Lubbock and Travis Counties, under the proposed plans, this minority voting strength is preserved: District 75B (34.09% Hispanic population), 37A (39.6% Hispanic population).

With respect to the congressional districts, the organizations proposed the following:

Dist. No.	Tot. Pop.	Black	%	Spanish Origin	%
15	526,803	1,270	.24	423,314	80.36
15A	526,891	14,904	2.83	318,783	60.50
16	527,008	18,640	3.54	324,356	61.55
20	527,004	44,978	8.53	358,103	67.95
23	528,288	27,301	3.27	240,545	45.53

According to data provided by the Lt. Governor's Office, there are four congressional districts containing more than

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43/ In addition, the proposed plan creates a new minority district in the "trans-Pecos" area consisting of a 59.44% combined minority population.

fifty percent Hispanic population. The ethnic composition for each district as well as the MALDEF proposed districts are as follows:

Dist.	Existing Districts	MALDEF's District
15	77.3%	80.36%
16	56.5%	61.55%
20	67.8%	67.95%
23	53.1%	45.53%
15A	---	60.50%

In each instance there is an increase in minority voting strength. With respect to District 15, the Hispanic percentage increases even though the District must lose population. The increase in District 16 is due to an increase in the Hispanic population in El Paso County and also to including counties such as Brewster, Presidio, and Pecos, instead of Ward, Winkler, Loving, and part of Ector County. District 20 remains for all practical purposes the same. District 23 is changed to include the counties in South Texas. This modified District results in an increase in Hispanic population. Clearly these four primary districts do not violate the retrogression principle stated in Beer v. U.S., 425 U.S. 130 (1976).

There was only one existing congressional district which approached a 40.0% Hispanic population. District 14 contains a 39.0% Hispanic population. Under the proposed District 23, the minority percentage increases to 45.53%. Thus, even this secondary district satisfies the retrogression principle.

Efforts were undertaken to create districts with at least 65% Hispanic population. However, due to the Chicano population's geographical distribution, only two districts in the MALDEF plan contain over a 65% Hispanic concentration (District 15, 20).

In summary, these proposed congressional districts would prevent any reduction in current voting strengths. By increasing the levels of Hispanic voting strength in all five congressional districts, the Beer retrogression principle is satisfied. 44/

The proposed senatorial districts also serve to provide Chicanos with an opportunity for greater access to the political process. According to the proposed plan there are five senatorial districts containing over a fifty percent Hispanic population. The proposed districts are as follows:

Dist. No.	Tot. Pop.	Black	%	Spanish Origin	%
20	461,097	15,490	3.36	244,445	53.01
21	457,974	3,976	.87	310,403	67.78
26	463,877	14,292	3.08	323,180	69.67
27	456,043	1,243	.27	360,657	79.08
29	456,519	13,639	2.99	272,416	59.67

The ethnic composition of the existing plan and the proposed senatorial districts are as follows:

44/ Other plans will be presented to the special legislative session which improves this proposed plan.

Dist. No.	Existing District	MALDEF District
20	49.8%	53.01%
21	52.7	67.78
26	56.0	69.67
27	78.8	79.08
29	61.9	59.67

With the exception of District 29, there is an increase in minority voting strength. The minority percentage in District 20 increases because of the additions of neighboring predominantly Chicano counties. These counties have to be surrendered by District 27 because of its overpopulation. The District 21 minority percentage increases because of the inclusion of counties such as Val Verde, Uvalde and by the percentage increase of Chicanos in the included counties. The cumulative impact is to create a district with a significant minority voting strength. The Chicano percentage in District 26 also dramatically increases when the predominantly suburban Anglo areas outside Interstate 410 are separated from the urban areas within San Antonio. All of District 26 is contained within the confines of Interstate 410. District No. 27 increases slightly as a result of Hispanic population increases. In summary, these five senatorial districts do not result in a retrogression of Hispanic voting strength.

Although these proposed congressional, senatorial, and legislative seats would have preserved existing minority seats, the legislature chose not to adopt them. Their failure to incorporate the proposed districts clearly suggests that preserving minority

voting strength will not be a priority for the Legislature. Such indifference clearly demonstrates the continued need for maintaining the Section 5 preclearance provisions in Texas.

H. Summary

This extensive documentation clearly justifies the continued need for federal monitoring. The examples of Jim Wells County, City of Pecos, Frio County, Seguin, and Medina County amply demonstrate the present discriminatory actions of political subdivisions. Without Section 5, our only remedy would be a constitutional challenge or a challenge under Section 2 of the Voting Rights Act. As a result of Mobile v. Bolden such an approach is clearly unfeasible. The evidentiary hurdles imposed by a requirement of establishing a discriminatory intent will in many instances be insurmountable.

As an example, a constitutional challenge in Jim Wells County to the three redistricting plans would have been unfeasible. Determining the discriminatory intent in adopting the three plans could only be directly ascertained by the commissioner's court. Yet as noted by the Fifth Circuit Court of Appeals in Lodge v. Buxton , 639 F.2d 1358, 1363, n. 8 (5th Cir. 1981), such an evidentiary inquiry would be unsuccessful:

> "We think it can be stated unequivocably that, assuming an electoral system is being maintained for the purpose of restricting minority access thereto, there will be no memorandum between the Defendants, or legislative history, in which it is said, '"We've got a good thing going with this system; let's keep it this way so those Blacks won't get to participate."' Even those who might otherwise be inclined to create such documentation have become sufficiently sensitive to the operation of our judicial

> system that they would not do so. Quite simply, there will be no 'smoking gun.'"

The Jim Wells County Commissioner's Court could always offer pretextual alternative justifications for adopting each of the three redistricting plans. Under a constitutional approach such plans would be approved even though the plans would have a clear discriminatory effect. For these same reasons, Congress enacted Section 5 to provide a more effective tool than the time and resource consuming process of a case-by-case approach. Section 5 is needed in Texas. Without Section 5, the significant advances made within the last six years will be eliminated the moment the Act expires.

III. The Necessity to Amend Section 2

Although Section 5 has been a powerful litigation tool in Texas, Section 5 only covers changes in the law affecting voting which have been implemented after November 1, 1972. Pre-existing election changes and electoral schemes must be challenged by a constitutional lawsuit. Beeville, Texas is a good illustration of the necessity to amend Section 2 of the Act to provide a more rigorous statutory protection for minorities. According to the 1980 Census, Beeville had a population of 14,574 of which over 56.8% was Mexican American. The City of Beeville is governed by a city council consisting of a Mayor and four city council members. Prior to 1973, the City Council was elected pursuant to an at-large election scheme. Utilizing single-shot voting, the Mexican American community was able to secure some representation on the city council.

In 1973, the city council adopted a modified redistricting plan. Pursuant to this redistricting plan, Mexican American participation on the city council was limited to 2 out of the 5 city council members. After the Voting Rights Act was passed, efforts were made to require the city to submit the redistricting plan for Section 5 approval. The city refused to submit. Consequently, MALDEF instituted a lawsuit to seek compliance with the Voting Rights Act. Gomez v. Galloway, No. 76-C-146 (S.D. Tex.).

The lawsuit resulted in an order requiring the city council to submit the election change for Section 5 preclearance. The Department of Justice, after reviewing comments submitted by various community groups, issued a letter of objection.

This letter of objection prevented the city council from implementing the redistricting plan in future elections. The city council had the option of either changing the district boundaries to permit more equitable representation on the city council or to return to the at-large election scheme. Instead of opting for a less discriminatory election system, the city council voted to implement the at-large election scheme over the objection of the two minority city council members. In the following election all of the 5 city council members were up for election. The Anglo incumbents and an additional Anglo all filed for office. No other Anglos filed for office. Consequently, there were only 4 Anglos running for office for five positions. They purposefully left one position vacant so that at least one minority would be elected. This action was taken in order to offset any claim that the at-large

election scheme had a discriminatory effect.

Minorities in Beeville can only challenge the at-large election scheme by a constitutional attack or a challenge premised upon Section 2. The constitutional standard will be difficult to meet under City of Mobile. Only by amending Section 2 to incorporate a result evidentiary test will minorities have a reasonable opportunity of effectively challenging the maintenance of at-large election schemes whose adoption pre-dates the November 11, 1972 preclearance deadline.

IV. The Bilingual Election Process Should be Continued

MALDEF supports the implementation of the bilingual election process mandated by the Voting Rights Act. Under the Voting Rights Act, a bilingual election process is required in covered political subdivisions.[44/] The Act requires political subdivisions to print bilingual ballots and to provide oral assistance during the registration and election processes. These requirements have generated much criticism at the continued implementation of these bilingual election provisions. This criticism is unfounded and provides a convenient scapegoat for ignoring the necessity for making the political system more responsive to the needs of the Hispanic community. A non-English speaking linguistic minority cannot be expected to participate in an electoral process conducted in language they cannot understand.

A. Necessity for a Bilingual Election Process

Currently, there is a large population of Spanish-Speaking persons who cannot understand English residing in the United States. According to pre-publication advance counts, there are 8,785,717 persons listed as Spanish Origin in the 1980

44/ Under Section 5 of the Voting Rights Act, 42 U.S.C. §1973 b(f)(4) a bilingual election process is required in the states of Texas and Arizona, El Paso County, Colorado, and four counties in California. A bilingual election process is required for other selected political subdivisions pursuant to 42 U.S.C. §1973 aa-1a(b). This latter provision applies to most of the Southwest. For a complete listing of the political subdivisions covered under the Act see 42 Fed. Reg. 1998, 30001-30003, NO. 140 (July 20, 1976).

census for the Southwest.[45] The final figures concerning the number of persons who speak a language other than English will not be available until sometime in 1982.[46] However, in 1970 there were 5,662,700 persons in the five Southwestern states who were "of Spanish language."[47]

Hispanics have long suffered the consequences of not understanding the English language. One immediate consequence is the failure to acquire any meaningful education. The functional illiteracy[48] of Mexican Americans in the Southwest is due to the lack of an educational system which provides instruction in a language a non-Engligh speaking student can understand.

45/ The individual populations for each state are as follows:

State	Total Pop.	Spanish Origin	%
Arizona	2,717,866	440,915	16.2
California	23,668,562	4,543,770	19.2
Colorado	2,888,834	339,300	11.8
New Mexico	1,299,968	476,089	36.6
Texas	14,228,383	2,985,643	21.0

Advance Counts, PHC 80-5, Proof Copies, U.S. Bur. of Census. For the United States, there are 14,605,883 persons of Spanish Origin, U.S. Dept. Commerce News, Wash., D.C. Feb. 23, 1981, p. 1.

46/ The information will be taken from Census Question No. 13 of the long form. The information will be compiled in Summary Tape File No. 3.

47/ U.S. Bureau of the Census, Census of Population: 1970 General Social and Economic Characteristics, Final Report PC (1)-C6 California, Texas, New Mexico. Arizona, Colorado. U.S. Government Printing Office, Washington, D.C., 1972.

48/ Extension of the Voting Rights Act: Hearings on H.R. 939, 2148, 3247, 2501 Before the Subcommittee on Civil and Constitutional Rights, 94th Cong., 1st Sess. 846, n. 18 (1975) ("More than a quarter of Mexican Americans (16.5%) over the age of 25 have completed less than five years of School." [1974]) (hereinafter Hearings).

The pernicious effects of this educational system have been extensively documented by the U.S. Commission on Civil Rights. 49/ Recently, a federal court documented this language and ethnic discrimination:

> The tragic legacy of discrimination will not be swept away in the course of a day or a week or a single school year. But these children deserve, at the very least, an opportunity to achieve a productive and fulfilling place in American society. Unless they receive instruction in a language they can understand pending the time when they are able to make the transition to all English classrooms, hundreds of thousands of Mexican American children in Texas will remain educationally crippled for life, denied the equal opportunity which most Americans take for granted. These children have waited long enough to reap the benefits of an adequate education. The more quickly the ethnic injusticies of the past can be overcome, the sooner this nation can face, as one people, the challenges of the future. 50/

Similar denials of an equal educational opportunity exist elsewhere. 51/

Another consequence of not understanding English is decreased participation in the political process. Congress, in extending the Voting Rights Act in 1975 recognized this correlation between educational achievement and participation in the political process in the congressional findings of voting discrimination against language minorities. 42 U.S.C. §1973b(f)(1). Presently

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49/ U.S. Commission on Civil Rights, Mexican American Education study, Vol. I-VI.

50/ U.S. v. Texas (Bilingual Education), No. 5281 (E.D. Tex. Jan. 9, 1981) at p. 66-67.

51/ See, e.g., Comite de los Padres v. Riles, No. 281824 (Cal. Superior Ct. Sacramento. Complaint filed).

language minorities have been denied equal educational opportunities resulting in severe disabilities and continued illiteracy in the English language. Thus, a substantial number of non-English Speaking eligible voters continues to exist.

This non-English Speaking population does not participate in the political process to a degree commensurate with their political voting strength. This lack of participation results in fewer elected officials who will be responsive to the particularized needs of the Hispanic community. As previously mentioned, according to the 1980 Census, Hispanics constitute 21.0% of the population in Texas. Yet in 1979 only 7.7% of the elected congresspersons were Spanish surnamed. At the state level in 1979, only 12.2% of the legislators were Spanish surnamed and in 1980 only 6.99% of the county commissioners were Spanish surnamed. This low level of representation is attributable in part to the failure of Hispanic eligible voters to participate because of their inability to understand the English language. Consequently, to remove this language barrier, Congress required a bilingual election process.

B. The Act

Civil rights organizations, minority elected officials and community activists realized the necessity for a bilingual election process. Various groups and persons testified in favor of a bilingual election process when the Act was extended to the Southwest. For example, in 1975 MALDEF related findings by the U.S. Civil Rights Commission in Uvalde County, Texas,

concerning voting discrimination against language minorities. Minorities encountered election judges refusing to assist non-English Speaking voters, refusals to appoint Spanish-Speaking deputy registrars, and selective invalidation of ballots cast by minority voters.[52/] Even a former Secretary of State of Texas recognized that "the question of language among Mexican Americans . . . still prevents many from participating in the political process of this State."[53/] As a result of this testimony, the Act incorporated a bilingual election process for selected political subdivisions.

The Voting Rights Act bilingual election provisions are very straightforward. The Act simply provides that all materials and assistance shall be provided in Spanish as well as in English. 42 U.S.C. §1973b(f)(4); 42 U.S.C. §1973 aa-1a(c). The purpose of the law is to assure participation of persons in the election process who do not understand English. With respect to written materials, the covered jurisdiction is not required to print all documents relating to elections in Spanish. Only those materials which are distributed to the public will be required to be printed in Spanish with a "clear, complete and accurate" translation. 28 Fed. Reg. §55.19. These documents

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52/ Hearings, supra, at 854.

53/ Ibid., p. 804.

include such items as ballots, sample ballots, informational materials, petitions and registration materials. Ballots are required in covered jurisdictions, to be both in Spanish and English. Id. A jurisdiction should publicize the availability of all Spanish materials. If all materials are not provided bilingually, a jurisdiction can target the areas which will receive bilingual election materials through the mail. This targetting method must assure that persons who need election materials in Spanish will receive them. Some local governments may send out notices of availability of materials in Spanish to Spanish-surnamed registered voters. Also, all public notices for covered jurisdictions are required to be in Spanish.

Another important bilingual election requirement relates to the use of oral assistants to assist Spanish Speaking persons. A covered jurisdiction should consider the number of Spanish-surnamed registered voters and the number of persons not proficient in English and appoint an adequate number of assistants. Finally, a bilingual registration process is required.

C. Implementation of the Bilingual Election Provisions

There has been a bilingual election process utilized in the Southwest since 1975. During this time period, Hispanic voter registration has increased dramatically. Registration and voter participation figures for Hispanics for the 1976 and 1980

Presidential elections[54/] are as follows:

Comparison of Latino Voter Registration
in the U.S. and the 5 Southwestern States

	1976	1980	Increase	%
United States	2,646,090	3,426,990	780,810	30.
Arizona	92,500	105,200	12,700	14.
California	715,600	988,131	272,531	38.
Colorado	81,000	114,201	33,201	41.
New Mexico	135,000	170,900	35,900	27.
Texas	488,000	798,563	310,563	64.

Comparison of Latino Voter Turnout
in the U.S. and the 5 Southwestern States

	1976	1980	Increase	%
United States	1,820,580	2,172,711	352,131	19.
Arizona	58,300	72,588	14,288	25.
California	522,400	643,285	120,885	23.
Colorado	60,000	83,366	23,366	39.
New Mexico	97,300	116,212	18,912	19.
Texas	278,200	415,253	137,053	49.

54/ Southwest Voter Registration and Education Project, the Latino Vote in the 1980 Presidential Election, p.16 (Jan. 1981).

This increase in voter participation is due to several factors. For Texas, the increase is in part attributable to the preclearance provisions of the Voting Rights Act which has prevented the implementation of discriminatory election changes. As mentioned before, the State of Texas sought to implement a statute which would have purged the voter registration rolls if the registered voter did not return a form by a certain date to election officials. MALDEF along with other civil rights organizations and activists urged the United States Attorney General to issue a letter of objection preventing the State of Texas from implementing the election change. The implementation of this statute would have had a disastrous effect on Hispanic voter registration. The Attorney General agreed and issued the letter of objection.[55/] For the rest of the Southwest, the increase in voter registration and participation has been caused by a growing awareness of the importance of the right to vote by the Hispanic community. This awareness is due to more Hispanic candidates running for office and more neighborhood registration drives. These efforts have clearly been assisted by the bilingual elections process mandated by the Voting Rights Act.

Research efforts have documented the continued necessity for a bilingual elections process. A 1976 study indicated that

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55/ See p. 25, supra.

bilingual election materials have a positive effect in building confidence and encourages first-time voters to participate in the political system. 56/ Recently, another survey in Texas determined that in Bexar County 87% of the voters surveyed found the materials to be helpful, while 76.6% of the voters in Nueces County surveyed found the materials to be helpful. Bexar and Nueces County represent two of the largest urban areas in Texas with large Mexican American populations. 57/

A greater increase in Hispanic voter registration and participation would have occurred if election officials would have implemented the bilingual election provisions and the Department of Justice would have made efforts to enforce compliance. The failure of county officials to comply with the bilingual provisions of the Act has been extensively documented by the Federal Elections Commission. According to the Report, the area of registration is the "key to minority voter participation for non-voting language minority citizens..."; yet, it "appears to be the area in which election administrators are the least willing or least able to invest effort." 58/ With regard to bilingual assistance the report concluded that:

56/ Charles Cotrell, Vol. I: A Report on the Participation of Mexican Americans, Blacks and Females in the Political Institutions and Processes in Texas, 1968-1978, Texas Advisory Committee to the United States Commission on Civil Rights, January, 1980. Appendix E, p. 4.

57/ Southwest Voter Registration and Education Project, San Antonio, Texas, survey conducted for the November, 1980 presidential election.

58/ Provision of Bilingual Registration and Election Services, Executive Summary by Alan Hudson-Edwards, Carlos Astiz, David Lopez, presented to the Federal Election Commission, March, 1979, pp. 13-14.

> "deployment of bilingual polling place personnel is all too often a matter of chance rather than careful design and that local administrators are less scrupulous than they should be about the linguistic competencies of polling place personnel whose function it is to provide bilingual oral assistance to non-English speaking voters. Until more care is devoted to systematic and effective placement of bilingual precinct board members, and until there is a proper insistence upon adequate qualifications and training for such personnel, the objectives of the oral assistance provisions of the Voting Rights Act are not likely to be realized." 59/

Despite this noncompliance and inaction by the Department of Justice, there have nevertheless been impressive gains in Hispanic voter registration and participation. Without these bilingual election provisions, Hispanic voter registration and participation will be adversely affected.

D. Objections to the Bilingual Election Provisions

Since the implementation of the bilingual election provisions, election officials and elected representatives have challenged the continued enforcement of these provisions. These criticisms have focused on several issues. First opponents argue that bilingual ballots will foster a dependence on foreign language media and create a separatist movement among the Spanish-Speaking population. Second, opponents argue that unnecessary expenditures have occurred because bilingual materials have not been used. Finally, opponents argue that a bilingual election process is too costly.

59/ Ibid., p. 17.

The concerns over a possible separatist movement are exaggerated. The purpose of a bilingual election process is to facilitate the participation of non-English speaking persons into an English language political process. These non-English speaking persons are citizens and contribute to the country's federal and local tax base. By making the political process understandable, these persons will be encouraged to become more involved with local political institutions. Increased political participation will not lead to a separatist movement or the formation of a "Quebec" in the Southwest. Instead, this increased participation will increase the political integration of the Hispanic community.

The primary issue raised by this concern over the creation of a separatist movement is whether the state should be obligated to facilitate this political integration by providing a bilingual election process. MALDEF's position in this matter is clear. The state should be obligated to make the political process more accessible to non-English Speaking persons. This obligation is even more compelling when a state fails to provide an educational system which results in non-English Speaking students being fluent in English. The state, by insisting on an English-only election process, penalizes persons who can't speak English. This treatment is unfair especially since the states have failed to implement educational programs designed to teach English fluency.

The basic problem is that there is a significant number of persons who do not understand English. The failure of these persons to learn English is directly attributable to a state's educational system. Consequently, the solution is to make the school systems more responsive to the needs of the Hispanic communities. Until all citizens become fluent in English, the State should assure that persons are not excluded from the political process merely for their failure to speak English.

A second objection to the bilingual election process is that bilingual materials are not used. Clearly, if covered political subdivisions only make minimal efforts to comply with the bilingual election provisions as documented by the Federal Election Commission report, one can necessarily expect little if any participation by non-English Speaking eligible voters. Until effective outreach into the minority communities is achieved, the possibility of attaining the goals of increased voter participation by language minority citizens will be diminished.

A final concern involves the high cost of bilingual elections. Most of the documentation of these costs have focused on bilingual ballots. Yet the documentation accompanying these costs have not discussed whether the political subdivision has isolated only those areas in need of bilingual election materials. Also, these figues usually do not differentiate the additional expense caused by processing bilingual ballots. Consequently, the

argument of higher costs for bilingual ballots cannot be supported by the present documentation offered by covered political subdivisions. 60/

E. Summary

The presence of a large non-English speaking community cannot be denied. The key issue is whether the state should provide equal treatment in the execution of the electoral process. Equal treatment in the political access area would consist of providing an electoral process in the language understood by designated linguistic minorities. Such treatment would result in increased voter participation and greater political integration for the Hispanic community. Without such treatment, Hispanics and other linguistic minorities will continue to be excluded and denied access to the political process.

V. Conclusion

MALDEF supports the retention of the Voting Rigths Act in Texas. The Section 5 preclearance provisions are a powerful tool to protect the voting rights of Mexican Americans. These provisions are necessary to prevent the implementation of gerrymandered districts and the adoption of other discriminatory election devices. The bilingual election provisions are needed to facilitate the political integration of a heretofore excluded linguistic minority. Without these special protections officials who have in the past discriminated against Chicanos will continue to do so in the future.

60/ In testimony presented by Polly Baca Barragan on May 7, 1981, before this subcommittee, for Los Angeles County the costs of a bilingual election have decreased from $355,000 in the 1976 General Election to $135,200 in the 1980 General Election.

THURSDAY, APRIL 27, 1978-THE ...KPORT PILOT-PAGE 11

TO THE VOTERS OF

ARANSAS COUNTY

PRECINCTS 1 & 1-A

THE NAME OF LAWRENCE MILLER, Candidate for Justice of the Peace, Precinct 1 will be on the Democratic Ballot on May 6th. You are entitled to vote for him even though he is now deceased.

If Judge Miller receives a majority of the votes cast, the Aransas County Democratic Committee will convene and select a nominee whose name will be certified to be placed on the General Election Ballot for November.

We encourage you to vote for

LAWRENCE MILLER.

ATTACHMENT 1

Political Ad Paid for by Mrs. Lawrence Miller

TO THE VOTERS OF ARANSAS COUNTY PRECINCT 1 & 1-A

THE NAME OF LAWRENCE MILLER,

Candidate for Justice of the Peace, Precinct 1, will be on the Democratic Ballot on May 6th. You are entitled to vote for him even though he is now deceased. If Judge Miller receives a majority of the votes cast, the Aransas County Democratic Committee will convene and select a nominee whose name will be certified to be placed on the General Ballot for November.

We encourage you to vote for

LAWRENCE MILLER

Published and paid for by Mrs. Lawrence Miller

STATE OF TEXAS I
COUNTY OF BEXAR I

A F F I D A V I T

Before me, on this day personally JOAQUIN G. AVILA who after being first duly sworn deposes and says as follows:

1. I am the Associate Counsel for the Mexican American Legal Defense and Educational Fund. Apart from being the Associate Counsel, I am also the Director of Political Access Litigation.

2. As Director of Political Access Litigation, I am in charge of monitoring submissions to the United States Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. §1973c. On April 12, 1978, I was in Rocksprings, Edwards County, Texas gathering information for a comment to be submitted to the Department of Justice regarding the 1977 reapportionment of the Edwards County Commissioners Court. Accompanying me on this trip was Erlinda Walden, our Voting Rights paralegal, and Armando Cruz, our workstudy paralegal.

3. As part of our investigation, we directed our attention to the Rocksprings cemetery. Upon examining the cemetery, we found that Mexican Americans were buried in separate areas. We could not find any Mexican Americans who were buried in the Anglo area. In addition, the Anglo area was more properly maintained that the Mexican American area. The difference in upkeep was very noticeable.

4. After examining the cemetery, we sought to contact the owners of the cemetery. Upon further inquiries in Rocksprings, the name of Mr. Ivan B. Smart, Sr., was given by a local resident as being in charge of the Rocksprings Cemetery Association. I contacted Mr. Smart and spoke to him concerning the cemetery's apparent segregation of Mexican Americans and Anglos. Mr. Smart became very defensive and belligerent. He accused me of stirring up trouble and indicated that he had spoken to similar types of persons from organizations who only stirred up trouble. He finally finished by stating, "If you're here to stir up trouble, you'd better get out of town before sundown." At

that point, I thanked Mr. Smart for his cooperation and departed. Although I was not physically intimidated by Mr. Smart's statement since Mr. Smart appeared to be between the ages of 50 and 60 years, his demeanor and tone of voice certainly caused me to fear for my well being and those of my fellow co-workers. He definitely gave me the impression that if I persisted in our investigation of discrimination in Rocksprings, we would be assaulted by Mr. Smart and other persons not specifically mentioned by name.

5. Since our organization will continue to investigate discrimination problems in Rocksprings, I am writing this affidavit for future reference in the event that a member of our organization suffers any harassments or bodily injury as a result of our involvement.

Further in this matter affiant sayeth not.

JOAQUIN G. AVILA

SWORN TO AND SUBSCRIBED before me on this the 14th day of April, 1978.

Notary Public in and for Bexar County, Texas

SYLVIA ALMAGUER
Notary Public, Bexar County, Texas
My Commission Expires June 30, 1978

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

JANE DERRICK, ET AL.	I	
VS.	I	Civil Action No. W-74-CA-2
HAROLD MATHIAS, ET AL.	I	
ERNEST CALDERON, ET AL.	I	
VS.	I	Civil Action No. W-74-CA-21 ✓
D. KENNETH McGEE, ET AL.	I	

MEMORANDUM OPINION AND ORDER

These cases raise the question of the constitutionality vel non of the methods utilized to elect members of the city council (Civil Action No. W-74-CA-2) and the board of trustees of the school district (Civil Action No. W-74-CA-21) in the city of Waco, Texas. Plaintiffs are black and Mexican-American residents of the City of Waco and the Waco Independent School District (WISD). Plaintiffs allege that black and Mexican-American residents of the City of Waco and WISD have been denied meaningful access to the process of electing city council members and school board members, and that their votes as blacks and Mexican-Americans, are impermissibly diluted under the existing methods of election. The Court heretofore ordered these cases to be consolidated and jointly tried, pursuant to FED. R. CIV. P. 42(a). Having now heard and considered all testimony, evidence and argument presented at trial by the parties, the Court now enters this Memorandum Opinion and Order constituting its findings of fact and conclusions of law.

The Court finds the Plaintiffs in both these cases have alleged "such a personal stake in the outcome of the controversy" as to confer standing, Baker v. Carr, 369 U.S. 186, 204 (1962), and that a justiciable controversy is presented. Id. These cases are governed by the standards enunciated by the United States Supreme Court in such leading cases as White v. Regester, 412 U.S. 755 (1973)

and Whitcomb v. Chavis, 403 U.S. 124 (1971), and by the Fifth Circuit Court of Appeals in such cases as Wallace v. House, 515 F.2d 619 (5th Cir. 1975); Perry v. City of Opelousas, 515 F.2d 639 (5th Cir. 1975); Bradas v. Rapides Parish Police Jury, 508 F.2d 1109 (5th Cir. 1975); Turner v. McKeithen, 490 F.2d 191 (5th Cir. 1973); and Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973). To warrant a finding that the present methods of election violate their constitutionally protected interests under the Equal Protection Clause of the Fourteenth Amendment Plaintiffs must prove

> . . . that multimember districts are being used invidiously to cancel out or minimize the voting strength of racial groups. . . . To sustain such claims, it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question -- that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice.

White v. Regester, supra at 765-66. With these principles in mind, we turn to the merits of the claims asserted.

I. THE CITY COUNCIL

The City of Waco is governed under a "council-manager" form of government whereby voters of the city elect six members of the city council who serve, without compensation, for two year terms. Each member of the council is elected on an at-large basis, by place, to represent one of the city's six wards (East, Northeast, North Central, Northwest, Southwest, and Southeast). The council member must reside in the ward he is elected to represent but, as previously noted, is elected by voters of the city as a whole. Members are elected by receiving a plurality of the votes in their respective races. The six elected council members choose the mayor from among their ranks and appoint the city manager, who is charged with actual administrative supervision of the city's business.

According to 1970 census figures the City of Waco is populated by 95,326 inhabitants, of whom 19.9% are black and 8.5% are Mexican-American. The black population of Waco is heavily concentrated in the East Ward, where 11,947 of the city's 18,955 black residents live. Blacks constitute 77.8% of the population of the East Ward. Blacks are also concentrated in substantial numbers in the Northeast Ward (18.5% of the ward's population) and Southeast Ward (17.2% of the ward's population). Mexican-Americans are most heavily concentrated in the Southeast Ward, where they number 4228 (19.5% of the ward's population). A substantial portion of the Mexican-American population also resides in the Northeast Ward (1715 Mexican-American, 11.5% of the ward's population), with the remainder of the Mexican-Americans in Waco rather evenly distributed among the remaining four wards.

During the entire electoral history of Waco only two blacks have ever been elected to the city council. In 1966 Dr. G. H. Radford became the first black person ever elected to the Waco City Council. Dr. Radford was re-elected in 1968 without opposition, and was again elected in 1970 against a black candidate by the name of Thurman Dorsey and Tucker Watson, a white condidate. In 1972 Dr. Radford did not run for re-election, and was succeeded by Oscar DuConge, the second black ever to serve on the Waco City Council. DuConge won election decisively, defeating a white opponent, and was re-elected without an opponent in 1974. Indeed, DuConge was elected mayor by his fellow council members in 1974 and served one year in that position.

While black citizens of Waco were thus achieving some limited success in their efforts to gain meaningful access to the political processes of their community, however, Mexican-American residents of Waco achieved no such rewards. No Mexican-American has yet been elected to the Waco City Council. The first Mexican-American to make such a race was Domingo Capetillo. In 1970 Capetillo entered the race to represent the old Southwest Ward on the

council, running against two Anglo opponents. Although Capetillo carried the Southwest Ward he lost the election. A similar situation resulted in the two subsequent races by a Mexican-American candidate. In 1972 Vidal DeLeon challenged the white incumbent councilman for the Southwest Ward. Although he carried the ward, DeLeon narrowly lost the election. In 1973 DeLeon ran again, this time from the redistricted Southeast Ward. DeLeon again carried his ward but lost the election.

Reviewing the evidence presented in light of the teachings of White v. Regester, supra and Zimmer v. McKeithen, supra this Court is forced to conclude that Plaintiffs have proved that the votes of black and Mexican-American citizens of the City of Waco are unconstitutionally diluted and that blacks and Mexican-Americans in Waco are afforded significantly less opportunity than other residents of the city to participate in the political processes leading to the election of council members. The "history of official racial discrimination in Texas, which at times touched on the right of Negroes to register and vote and to participate in the democratic processes," White v. Regester, supra at 766, is no less a part of the heritage of Waco than it was of Dallas County in White v. Regester. Moreover, Waco is akin to the City of Dallas in that the "mere existence of a definable minority area (of the city) . . . is itself a lingering effect of past official race discrimination." Lipscomb v. Wise, Civil Action No. CA3-4771-E (N.D. Tex. March 25, 1975)

This history of past official discrimination must be viewed in conjunction with the electoral history of black candidates for the Waco City Council. The first black candidate appeared in 1950, running in the East Ward. At that time council members were elected exclusively by voters within their respective wards. The black candidate, Louis Stewart, received 233 votes, enough to win an ordinary election, but lost. Shortly after this impressive showing the Waco City Charter was amended to provide that all council members thereafter be elected at-large. The parties

hotly dispute the motivation for this change. Plaintiffs contend that the change to at-large elections was a reaction to the threat that a black council member might soon be elected from the East Ward. Defendants contend that the change was merely the completion of a 1948 conversion from a mayor-council form of city government to the present council-manager form. The council in 1950 stated publicly no reasons for the conversion, and their motivations cannot accurately be determined at this point. Whatever may have been the reasons for the change, however, the effects on the opportunities of blacks to participate meaningfully in the operation of their city's government were clear-- and devastating.

Black candidates unsuccessfully sought election to the council as representatives of the East Ward in 1952, 1958 and 1964. In each of those elections the black candidate carried the East Waco Ward but lost the city-wide election. On each occasion the black candidate was prominently identified by the Waco Tribune-Herald as the "Negro candidate" in the race who was expected to receive powerful support from a minority bloc vote. These black candidates typically ran individually against slates of Anglo candidates supported by the newspaper and powerful Anglo groups and individuals, amid warnings by the newspaper that "selective voting" by blacks might actually elect a black council member.

The initial success of a black candidate in 1966 did not end the history of the minimization of minority voting strength by the at-large election method, however. In 1970 the East Ward council position was hotly contested with the two leading candidates (Radford and Dorsey) both being black. Although Dorsey defeated Radford in the East Ward by a 3-1 margin, Radford won the city-wide election by some 500 votes.

The evidence indicates that since 1966 substantial progess has been made toward mitigating the effects of racially polarized voting, at least insofar as the East Ward council race is concerned. No evidence was presented to indicate any concerted

effort in recent years to prevent election of a black to represent the East Ward. Nontheless, as the 1970 election made clear, the selection of which black candidate will represent the East Ward still remains largely outside the control of East Ward voters. The success of blacks in electing candidates representative of the black community depends upon their locating a candidate, such as Oscar DuConge, who can appeal to a substantial portion of the Anglo electorate while maintaining the support of his own community. By contrast, blacks have no hand in selecting candidates in the predominantly Anglo wards, and slate makers in those wards apparently feel no compulsion to select cnadidates who can appeal to a substantial portion of the black and Mexican-American electorate.

The situation presents a case of dilution. Plaintiffs' proof goes beyond showing a mere disparity between the number of minority residents and the number of minority representatives. Rather, the evidence shows a historic lack of access by minority voters to the processes of slating candidates and electing candidates reponsive to their interests, resulting from the existence of past discrimination which has precluded effective participation in the electoral system by minority candidates and voters.

Were our decision to rest entirely upon the responsiveness of the present Waco city council to black and Mexican-American needs, or on the recent success of two black candidates, the result might well be different. We see nothing in the record to question the good faith or responsiveness of the present city council. Nontheless, the lack of equal access by blacks and Mexican-Americans to the political processes leading to the election of city council members in Waco remains as a hard fact of political life in that community. Nor can the recent isolated success of black candidates foreclose this finding of dilution. Zimmer v. McKeithen, supra. "Meaningful participation in the political process must not be a function of grace, but rather a matter of right." Lipscomb v. Wise, supra at 16. The inescapable conclusion is that the present

at-large election of members of the Waco City Council violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

II. THE SCHOOL BOARD

The history of electoral participation by blacks and Mexican-Americans in the election of trustees of the Waco Independent School District is less complex than in the election of city council members, and the success of minority participation can be concisely summarized: No black or Mexican-American has ever been elected to the school board in Waco. Accordingly to 1970 census figures the population of the Waco Independent School District is 95,273 persons, of whom 19.4% are black and 8.7% are Mexican-American. Trustees of the WISD are elected at large by place, with no residency requirements, for terms of six years.

The evidence revealed that the at-large election method, overlaid, as it is, upon the historic, cultural, economic and political realities of the black and Mexican-American communities in Waco, results in a marked dilution of black and Mexican-American votes. The WISD does not seriously contest this conclusion, and agrees that single member districts could enhance the opportunities for Mexican-Americans and blacks to be elected to the board of trustees. As was the case with the city council, we see nothing in the record to question the good faith or responsiveness of the school trustees, and there was no evidence of any concerted effort in recent years to block the election of black or Mexican-American trustees. Nontheless, the lack of equal access by blacks and Mexican-Americans to the political processes leading to the election of school board trustees is an empirically obvious political reality. This lack of equal access, resulting from past discrimination, compels a finding that the present at-large election of school board trustees violated the Equal Protection Clause of the Fourteenth Amendment.

Manifesting an intention to recognize and fulfill their legal obligation, the board has submitted to the Court a proposal to modify the method of electing trustees by providing for the election of four trustees from single member districts and three trustees at large (herein referred to as the 4-3 Plan, or the District's Plan). This proposed plan was submitted for consideration at trial, and the parties were given an opportunity to present any evidence, testimony and argument relative thereto. Upon consideration of that evidence, testimony and argument, the Court is forced to conclude that the District's Plan cannot eliminate the present dilution of black and Mexican-American votes sufficiently to pass constitutional muster.

In considering proposed redistricting plans, the Supreme Court has observed that "apportionment is primarily a matter for legislative consideration and determination, and judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutuional requisites . . . ." Reynolds v. Sims, 377 U.S. 533, 586 (1964). In following this principle the Fifth Circuit Court of Appeals has recently announced the rule that "where there is nothing in a given scheme that is repugnant to the Constitution, a federal court ought not to substitute a plan which might seem to it only to be more efficient or more just than a plan preferred by the legislature concerned." Wallace v. House, 515 F.2d 619, 634 (5th Cir. 1975).

Notwithstanding the sound rule enunciated in Reynolds v. Sims and Wallace v. House, the Court is unable to conclude that the proposed 4-3 Plan will give blacks and Mexican-Americans "fair representation" on the school board, Perry v. City of Opelousas, supra at 642, or that it will provide minorities meaningful "access to the political process," Bradas v. Rapides Parish Police Jury, supra at 1112. The District's proposed 4-3 Plan provides for a single district with a black majority, two districts with populations over 90% Anglo, and a fourth District with a population of 61.3% Anglo residents. The District argues that this plan will provide one "sure" minority representative and a second "possible" minority

seat on the board. Nothing in the record suggests, however, that the chances for success by a black or Mexican-American candidate in the 61.3% Anglo District would be materially greater than in an at large election with a 71.9% Anglo population. Thus, the probable effect would be to create a single "permanent" minority seat on the board of trustees, with black and Mexican-American voters receiving virtually the same opportunity to elect the three at-large board members and the member from one additional district that they now have under the at-large election scheme.

While we are cognizant that black and Mexican-American voters have no right to elect office holders in proportion to their number, we are equally cognizant that any attempt to alleviate the effects of dilution must avoid the institutionalization of chronic underpresentation of blacks and Mexican-Americans. The District's proposed 4-3 Plan would do exactly that. Minority representation would be institutionalized at one member of the seven member board (representation of approximately 14%, as opposed to the 28% minority population of the WISD), with the opportunity for occasional success outside the predominantly black district.

The Court is therefore, compelled to conclude that the District's proposed 4-3 Plan is not constitutionally sufficient to eliminate the present dilution of black and Mexican-American votes in the election of school board trustees. The plan proposed by the Plaintiffs, providing for the election of all seven trustess from single-member districts, will not be considered at this time. Rather, the Court will direct the submission of an alternative plan by WISD officials. Those officials have clearly manifested their intention to come forward with a plan to bring their operations into compliance with the Constitution, just as they did in the school desegregation case previously heard by this Court, Arvizu v. Waco Independent School District, 373 F.Supp. 1264 (W.D. Tex. 1973), and they will be given every reasonable opportunity to do so.

III. THE MOTION TO DISMISS

Shortly before trial of these cases was scheduled to commence, the City Defendants in W-74-CA-2 submitted a Motion to Dismiss this action. That motion was based upon the contention that this case must be decided by a three-judge district court pursuant to 28 USC §2281, and that this cause presents a proper case for federal abstention. The theory that a three judge district court is required to hear a challenge of this nature was properly rejected by Judge Mahon in Lipscomb v. Wise, supra at 1, n.1. See also Kendrick v. Walder, 44 U.S.L.W. 2303 (7th Cir. Dec. 16, 1975). Plaintiffs do not seek to enjoin the enforcement of any State statute. Defendants' argument that the courts of Texas have not answered the question of whether TEX. CONST. art. VI, §3 requires the at-large election of city council members is incorrect. See State v. McAllister, 88 Tex. 284, 31 S.W. 187 (1895). No case for abstention is presented, and no three-judge court is required. The motion to dismiss will be DENIED.

IV. THE REMEDY

Having found the present methods of election utilized to select members of the Waco City Council and the Board of Trustees of the Waco Independent School District to be constitutionally deficient, the Court must now direct the submission of proposed plans to remedy the situation. The Defendant City officials (W-74-CA-2) and WISD officials (W-74-CA-21) shall prepare for submission to the Court proposals to bring their election procedures into compliance with the applicable constitutional requirements, including the population variance standards enunciated in Mahan v. Howell, 410 U.S. 315 (1973), as well as the constitutional principles discussed herein. The proposals shall be submitted to the Court at 9:30 A.M., on Wednesday, March 10, 1976, in Waco, Texas. At that time the Court will hear the proposed plans, and will receive testimony, evidence and argument from the parties relative thereto. It is accordingly

ORDERED, ADJUDGED and DECREED that Defendants be, and hereby are, directed to submit to the Court proposed plans to alleviate the dilution of black and Mexican-American votes, and to bring the methods of election utilized to select members of the Waco City Council and the Board of Trustees of the Waco Independent School District into compliance with the applicable constitutional standards discussed herein; and that said proposed plans shall be submitted to the Court at 9:30 A.M., on March 10, 1976, in Waco, Texas, at which time the Court will conduct a hearing thereon. This Memorandum Opinion and Order shall constitute findings of fact and conclusions of law.

ENTERED at Austin, Texas, this 27th day of February, 1976.

United States District Judge

HONDO, TEXAS -- MEDINA COUNTY

APRIL 1, 1978 RACE FOR PLACE 3, CITY COUNCIL

(AT-LARGE, BY PLACE)

Total Votes Cast	No. Cast for Campos & Arcos	%	No. Cast for Friole, Lawrence & Bless	%
436	81	18.58	355	81.42

PERCENTAGE OF SPANISH-SURNAMED VOTERS COMPARED TO PERCENTAGE OF VOTES CAST FOR SPANISH SURNAME CANDIDATE

% of Spanish Surname Voters	% of Votes Received by Campos and Arcos
16.33	18.58

PERCENTAGE OF NON-SPANISH SURNAMED VOTERS COMPARED TO PERCENTAGE OF VOTES CAST FOR NON-SPANISH SURNAMED CANDIDATES

% of Non-Spanish Surname Voters	% of Votes Received by Friole, Lawrence and Bless
83.67	81.42

ATTACHMENT 5

HONDO, TEXAS -- MEDINA COUNTY

APRIL 7, 1979 RACE FOR PLACE 1, CITY COUNCIL

(AT-LARGE, BY PLACE)

Total Votes Cast	No. Cast for Garcia	%	No. Cast for Stange	%
1,530	620	40.52	908	59.35

PERCENTAGE OF SPANISH-SURNAMED VOTERS COMPARED TO PERCENTAGE OF VOTES CAST FOR SPANISH SURNAME CANDIDATE

% of Spanish Surname Voters	% of Votes Received by Garcia
43.87	40.52

PERCENTAGE OF NON-SPANISH SURNAMED VOTERS COMPARED TO PERCENTAGE OF VOTES CAST FOR NON-SPANISH SURNAMED CANDIDATES

% of Non-Spanish Surname Voters	% of Votes Received by Stange
56.13	59.35

ATTACHMENT 6

HONDO, TEXAS -- MEDINA COUNTY
APRIL 2, 1980 RACE FOR PLACE 4, CITY COUNCIL

(CANDIDATES RUN AT-LARGE)

Total Votes Cast	No. Cast for Lopez	%	No. Cast for Chapman	%
629	248	39.43	381*	60.57

*includes 7 absentee votes

PERCENTAGE OF SPANISH-SURNAME VOTERS COMPARED TO PERCENTAGE OF VOTE CAST FOR SPANISH SURNAME CANDIDATE

% of Spanish Surname Voters	% of Votes Received by Lopez
39.90	39.43

PERCENTAGE OF NON-SPANISH SURNAME VOTERS COMPARED TO PERCENTAGE OF VOTE CAST FOR NON-SPANISH SURNAME CANDIDATES

% of Non-Spanish Surname Voters	% of Votes Received by Chapman
60.10	60.57

ATTACHMENT 7

ATTACHMENT 8

* R.S. Esquivel - Percentage of Votes Received by Esquivel by Precinct with Highest Spanish Surhame Voter Turn Our Percentage in Descending Order - May, 1980

Election Precinct	% SSA Voter Turnout	% Votes Received in Pct.
17	59.09	53.81
10	46.32	43.61
1	44.12	50.44
12	33.80	28.81
7	31.27	33.94
9	24.06	31.97
15	20.81	30.51
11	19.08	26.06
19	16.98	20.90
21	10.00	17.98
8	7.93	18.84
6	5.15	18.13
16	3.74	9.87
5	2.94	8.16
2	2.74	8.93
3	0	29.41
14	0	16.00
20	0	13.51

* Candidate for Associate Justice, 4th Supreme Judicial District, Court of Appeals

ATTACHMENT 9

FACT SHEET FOR COUNTIES FOR ATASCOSA, COCHRAN, EDWARDS, MEDINA, REFUGIO, UVALDE LYNN, DAWSON, CROSBY, VICTORIA, CASTRO MALDEF, SWVREP, TRLA

Name of County	Total Pop.	No. S.S.	% S.S.	No. & % S.S.Commis.	Ideal Pop. Per Precinct (1970 Census)	Pop. & Deviation of Over-pop. Precinct	Pop. & Deviation of Under Precinct	Total Dev.
Atascosa	18,792	9,603	51.0%	0 - 0%	4,674	5,939 - 27.7% (Pct. 2)	3,117 - 33.3% (Pct. 4)	60.4%
Cochran	5,326	1,514	28.4%	0 - 0%	1,331	1,576 - 18.4% (Pct. 1)	1,155 - 13.2% (Pct. 3)	31.6%
Edwards	1,922	922	48.0%	0 - 0%	526	1,541 - 193% (Pct. 1)	104 - 80% (Pct. 3)	273%
Medina	20,249	9,822	48.5%	0 - 0%	5,062	8,078 - 50.0% (Pct. 4)	1,707 - 66.3% (Pct. 3)	126.3%
Refugio	9,494	3,610	38.0%	0 - 0%	2,373	4,798 - 102% (Pct. 1)	613 - 74.2% (Pct. 3)	176.2%
Uvalde	17,348	3,802	50.7%	1 - 25%	4,337	6,243 - 44.0% (Pct. 2)	3,217 - 25.8% (Pct. 1)	69.8%
Lynn	9, 107	2,763	30.3%	0 - 0%	2,277	3,408 49.7% (Pct. 1)	1,811 - 20.4% (Pct. 4)	70.1%
Dawson	16,604	5,242	32.6%	0 - 0%	4,151	5,140 - 23.8% (Pct. 3)	2,966 - 28.6% (Pct. 1)	52.4%
Crosby	9,035	2,763	30.4%	0 - 0%	2,271	2,669 - 17.5% (Pct. 2)	2,096 - 7.7% (Pct. 4)	25.2%
Victoria	53,765	16,910	31.5%	0 - 0%	13,442	18,284 - 36.0% (Pct. 1)	10,944 - 18.6% (Pct. 2)	54.6%
Castro	10,394	3,685	35.5%	0 - 0%	2,598	3,130 - 20.0% (Pct. 2)	1,710 - 34% (Pct. 4)	54.%

MEDINA COUNTY COMMISSIONERS' COURT
APPOINTMENTS OF ELECTION
JUDGES OTHER THAN PRESIDING
JUDGES 1954-1980

YEAR	TOTAL APPTED	NON-SPANISH SURNAMED APPTED	%	SPANISH SURNAMED APPTED	%
1954	44	44	100	0	0
1955	48	48	100	0	0
1958	44	44	100	0	0
1960	44	44	100	0	0
1961	44	44	100	0	0
1964	43	42	97.67	1	2.33
1966	43	43	100	0	0
1967	18	18	100	0	0
1970	0	0	-	0	0
1971	18	18	100	0	0
1972	18	18	100	0	0
1973	18	18	100	0	0
1974	18	18	100	0	0
1975	18	18	100	0	0
1976	18	18	100	0	0
1977	18	17	94.4	1	5.56
1978	18	17	94.44	1	5.56
1979	18	17	94.44	1	5.56
1980	18	17	94.44	1	5.56
TOTAL	508	503	99.02%	5	.98%

ATTACHMENT 10

MEDINA COUNTY COMMISSIONERS' COURT APPOINTMENTS OF PRESIDING ELECTION JUDGES 1954-1980

YEAR	TOTAL # OF PRESIDING JUDGES APPTED.	NON-SPANISH SURNAMED APPOINTEES	%	SPANISH SURNAMED APPTEES.	%
1954	20	19	95	1	5
1955	21	20	95	1	4.76
1958	20	19	95	1	5
1960	20	19	95	1	5
1961	20	19	95	1	5
1964	17	17	100	0	0
1966	17	17	100	0	0
1967	18	18	100	0	0
1970	18	18	100	0	0
1971	18	18	100	0	0
1972	18	18	100	0	0
1973	18	18	100	0	0
1974	18	18	100	0	0
1975	28	18	100	0	0
1976	18	18	100	0	0
1977	18	81	100	0	0
1978	18	18	100	0	0
1979	18	18	100	0	0
1980	18	18	100	0	0
TOTALS	351	346	98.58%	5	1.42%

ATTACHMENT 11

SUMMARY OF ALL APPOINTMENTS BY
MEDINA CO. COMMISSIONERS COURT
1954 - January, 1980

YEAR	NO. OF APPTS.	#SPANISH SURNAME APPOINTED	%
1954	76	1	1.32
1955	73	1	1.37
1956	2	0	0
1957	59	1	1.69
1958	69	1	1.45
1959	0	0	0
1960	64	1	1.56
1961	64	1	1.56
1962	2	0	0
1963	1	0	0
1964	60	0	0
1965	9	0	0
1966	72	0	0
1967	40	0	0
1968	2	0	0
1969	4	0	0
1970	38	0	0
1971	41	0	0
1972	37	0	0
1973	41	0	2.44
1974	39	0	0
1975	44	2	4.55
1976	39	1	2.56
1977	40	1	2.50
1978	53	5	9.43
1979	45	2	4.44
1980	43	3	6.98
	1,057	21	1.98

Persons with Spanish Surnames comprised 1.98% of appointments made by the Medina County Commissioners Court in the last 26 years.

STATE OF TEXAS
OFFICE OF THE SECRETARY OF STATE
AUSTIN, TEXAS 78711

Mark White
SECRETARY OF STATE

July 7, 1975

Bruce Hughes
ASST SECRETARY OF STATE

Dear County Clerk:

Early last month the U. S. House of Representatives passed a ten-year extension of the Voting Rights Act of 1965. The U.S. Senate is expected to take action on this in July. As passed by the House, the Act would apply to every political subdivision in the State of Texas.

In 1965 Texas was excluded from the Act because our State had never used a "test or device" to eliminate minority voters from participating in the election process. Now, ten years later, an attempt is being made to include Texas within the Act based upon the premise that the lack of Spanish language ballot has denied Spanish-speaking Texans an effective voice at the polling place.

The records of this office conclusively prove that Mexican-Americans have not been *discriminated against in our elections.* A survey of the 1974 voter registration records of the Office of Secretary of State indicates that there is a minuscule difference between Mexican-American and non Mexican-American voter registration in Texas. In those counties with a population of less than 5% Spanish surname, 79% of the voting age population is registered, as compared with those counties with more than 50% Spanish surname where 72% of the voting age population is registered. Based on census data, 75% of the total voting age population is now registered in Texas as of 1974.

A similar survey in those counties with less than 5% Spanish surname, shows 23.16% of the total voting age population actually voted. In those counties with over 50% Spanish surname, 22.73% of the total voting age population exercised their right. In brief, there was less than one-half of one percent difference in voter turnout between counties with large numbers of Spanish surnamed citizens as opposed to counties with almost none of its population of Spanish surname. It is clear that Texas has in the past, and will in the future, protect the right of each of her citizens to fully participate in the political process.

The inclusion of Texas within the Voting Rights Act will not enhance the right to vote of citizens; it will only continue the trend toward centralization of authority in the Federal government.

ATTACHMENT 12

The imposition of the 1965 Voting Rights Act means that no longer will elections be regulated and conducted by local officials. In the future, all matters relating to elections will be subject to prior approval by the Civil Rights Division of the U. S. Justice Department, Washington, D. C. Therefore, when you as a duly elected representative in your county relocate polling places, you cannot do so without prior approval from Washington. When you change precinct lines, you cannot do so without prior approval from Washington. Annexations will also require approval from Washington and it will be your burden to prevail against the presumption of invalidity. Federal voting registrars would be authorized to register voters in your county notwithstanding the fact that the Secretary of State's office has not received a single complaint that a Spanish-speaking Texan has been denied the right to register. Federal voting examiners would be authorized to come into any election precinct or polling place, notwithstanding the fact that poll watchers are available to any candidate or group of citizens by following the simple procedures set out in the Election Code.

Please forgive this form letter, but I felt time is of the essence in getting this information to you.

If you feel as I do that this action by the Federal government is an unwarranted intrusion into the affairs of local elected representatives, please advise your Senators and your Congressmen of your thoughts.

Yours truly,

Mark White

Mark White
Secretary of State

COMMENT

S. B. 300 involves a drastic restructuring of voter registration in Texas. Its elements include a complete purge of the all registered voters in the State; procedures to reregister and then a provision for subsequent purges on a bi-annual basis. This comment will deal only with that part of S. B. 300 which involves the complete purge and initial reregistration. M.A.L.D.E.F. reserves the right to make subsequent comments on the balance of the Act in question

a. Logistics

Under S. B. 300, Texas proposes to send out notices to all registered voters in the State telling them they they must reregister. Included in this mailing would be a new application for voter registration which a person must fill out and return on or before January 31, 1976.

Some initial logistical problems appear at once. First, the form for reregistration will not have return postage on it (Almaguer affidavit). While this might seem minor, it is axiomatic that the absence of return postage will diminish the effectiveness of a response and severly reduce the percentage of the return. Next the statute provides for only one mailing of the notice to reregister. Without follow up mailings or intensive media campaigns the response from only one notice can only be described as minimal. (Brischetto affidavit). The state has indicated that it will take steps to create publicity for the reregistration. While we do not doubt these promises, we do note

that as of the end of October when the implementation of the statute was enjoined, no steps had been taken in that direction. It seems clear that each of these initial factors will weigh more heavily on the Black and Mexican American population. (Brischetto affidavit).

b. Functional Illiteracy and Functional Incompetancy Levels

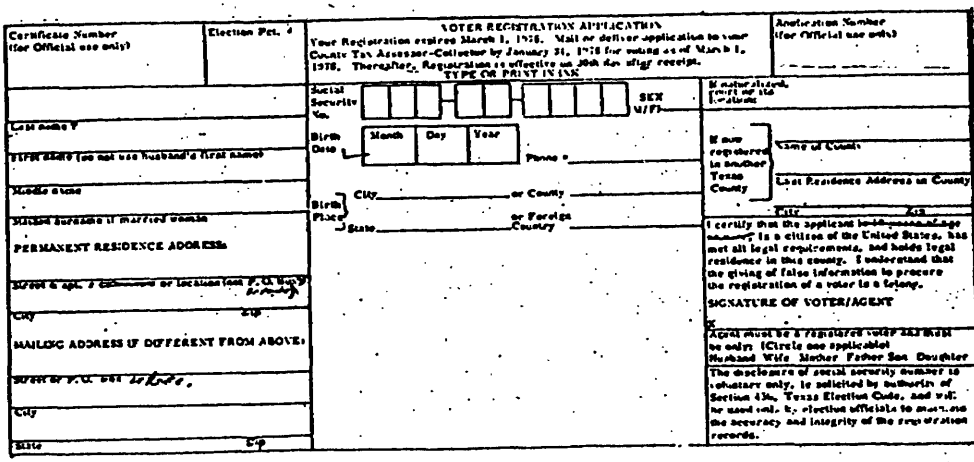
Aside from logistics, the purge and reregistration, considered in the context of Texas has serious racial implications. There is a vast difference in literacy between the Anglo and minority populations in the State. The testimony before the Senate Subcommittee considering the extension of the Voting Rights Act demonstrated that according to U.S. Census figures 33.8% of the Spanish surnamed and 14.6% of the Black Texans were functionally illiterate while only 3.8% of Anglo Texans were found to be in that condition. Senate Hearings at 477. An even greater underscore of this differential may be demonstrated from a recent publication of the University of Texas entitled, "Adult Functional Competency in Texas." We include a copy of that study in the data making up this comment. The adult population of this State was surveyed to determine the ability to perform specific simple functions which one experiences in every day life such as an application for social security, making out a bank deposit slip and the reading of simple instructions. The study concludes that:

> Because of inadequate or inappropriate schooling, low incomes, limited job opportunities, and possibly

> language difficulties, about two thirds of adults in Texas with Spanish surnames and one half of the Black population are estimated to be functionally incompetent. One fifth of the white population also performs inadequately on requirement indicators.

Adult Functional Competancy in Texas at 148, hereinafter cited as Study.

Specifically the Texas study is very helpful in making an assessment of the ability of Texans to respond to the specific items on the reregistration form even if they overcome the initial logistical difficulty of no return postage. A copy of the registration form, in English as specified by the Texas Secretary of State is as follows:



Certificate Number (for Official use only)

Election Pct. #

VOTER REGISTRATION APPLICATION

Your Registration expires March 1, 1978. Mail or deliver application to your County Tax Assessor-Collector by January 31, 1978 for voting as of March 1, 1978. Thereafter, Registration is effective on 30th day after receipt.

TYPE OR PRINT IN INK

Authorization Number (for Official use only)

Social Security No.

SEX M/F

Last name

First name (do not use husband's first name)

Middle name

Maiden Surname if married woman

PERMANENT RESIDENCE ADDRESS:

Street & apt. # (Otherwise or location if R.R. Box)

City Zip

MAILING ADDRESS IF DIFFERENT FROM ABOVE:

Street or P.O. Box (where)

City

State Zip

Birth Date: Month Day Year

Phone #

Birth Place: City or County

State or Foreign Country

If naturalized, county or city of naturalization

If now registered in another Texas County: Name of County

Last Residence Address in County

City Zip

I certify that the applicant is a citizen of the United States, has met all legal requirements, and holds legal residence in this county. I understand that the giving of false information to procure the registration of a voter is a felony.

SIGNATURE OF VOTER/AGENT

X

Agent must be a registered voter and shall be only: (Circle one applicable)
Husband Wife Mother Father Son Daughter

The disclosure of social security number is voluntary only, is solicited by authority of Section 13a, Texas Election Code, and will be used only by election officials to assure the accuracy and integrity of the registration records.

c. Comparison of Reregistration Form With Study Results

Printing of Name: The Texas study demonstrates that only 45% of the of the Mexican American and 50% of the Black population could perform this task in the context of an application for a social security number while in excess of 80% of the Anglo population could do so. Study at 90.

Supplying The Maiden Name if Married: The Texas Study demonstrates that only 50% of the Mexican American and 52% of the Black population could supply their mothers name in the context of an application for a social security number while approximately 90% of the Anglo population could do so. Study at 92.

Supplying the Address: The Texas study demonstrates that 60% of the Black and 62% of the Mexican American population were able to perform the task of addressing an envelope while 88% of the Anglo population was able to do so. Study at 51.

Supplying Social Security Number: The Texas study discloses that 35% of the Black and 44% of the Mexican American population were able to state whether they had ever applied for a social security number while approximately 70% of the Anglo population was able to respond to that question. Study at 94.

Supplying Date of Birth: The Texas study disclosed that 25% of the Black and 35% of the Mexican American population were able to correctly respond to the age question in the context of an application for social security while 62% of the Anglo population was able to do so. Study at 91.

Signature: Even the signature presents problems as the Texas study discloses that approximately 40% of the Mexican American and 50% of the Black population were able to perform the task of making a signature on a note explaining an absence to a teacher while 70% of the Anglo population was able to do so. Study at 71.

Comparison of the ability to complete other instruments which, in one way or another resemble the application for reregistration, is likewise helpful.

Completing a Bank Deposit Slip: The Texas study documents that only 22% of the Black and 25% of the Mexican American population were able to perform this task while 60% of the Anglo population was able to do so. Study at 117.

Completing an Employment Complaint: The Texas study documents the fact that as few as 36% of the Mexican American and 47% of the Black population were able to perform this task while as many as 80% of the Anglos could do so. Study at 53-55.

Completing the Various Lines on an Ordinary Tax Return: The Texas study documents the fact that Anglos are from three to seven times more likely to be able to complete a tax return as Mexican Americans and Blacks. Study at 120-126.

In light of their overwhelming functional illiteracy [1] and functional incompetency [2] M.A.L.D.E.F. feels that a serious disproportionate burden will be visited on Mexican American and Black Texans if the purge and re-registration provisions are utilized.

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[1] In this connection it is important to note, that the functional illiteracy rate of Mexican Americans in Texas is considerably higher than the functional illiteracy of Blacks in any of the states previously covered by the Voting Rights Act and more than eight times that of the white population nationwide. Senate Hearings at 477.

[2] In this connection it is important to note that the functional incompetency level of Mexican Americans in Texas is 18% higher than the national average for Mexican Americans and that the functional incompetency level of Blacks in Texas is 13% higher than the national average for Blacks while Texas Anglos are on a par with Anglos nationwide.

d. Gaston County v. U.S.

In Gaston, the Supreme Court quoted from the testimony of Attorney General Katzenbach at the original hearings on the adoption of the Voting Rights Act:

> 'It might be suggested that this kind of [voting] discrimination could be ended in a different way—by wiping the registration books clean and requiring all voters, white or Negro, to register anew under a uniformly applied literacy test.
>
> * * *[S]uch an approach would not solve, but would compound our present problems.
>
> "To subject every citizen to a higher literacy standard would, inevitably, work unfairly against Negroes—Negroes who have for decades been systematically denied educational opportunity equal to that available to the white population. Although the discredited 'separate but equal' doctrine had colorable constitutional legitimacy until 1954, the notorious and tragic fact is that educational opportunitites were pathetically inferior for thousands of Negroes who want to vote today.
>
> The impact of a general reregistration would produce a real irony. Years of violation of the 14th amendment, right of equal protection through equal education, would become the excuse for continuing violation of the 15th amendment, right to vote." Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., 22.

Gaston County v. United States, 395 U.S. 285, 289 (1969).

Texas, of course, has a history of segregation and unequal educational opportunity; fully the equivalent of North Carolina. 3/

3/ Although clearly one of the most wealthy states in the Union, Texas ranks among the lowest in funds spent on education and its record of minority educational achievement is more dismal than that found in any other.

Footnote #3 continued

As a federal court said in considering a Texas reapportionment case in 1972:

> There is no aspect of human endeavor, in general and of American life in particular, in which the ability to read, write and understand a language is more important than politics.
>
> There can be no doubt that lack of political participation by Texas Chicanos is affected by a cultural incompatability which has been fostered by a deficient educational system. If this court ignores the reason for the minimal impact of Mexican Americans. . ."it will prove that Justice is both blind and deaf" (Citations omitted)

Graves v. Barnes, 343 F. Supp. 704-731 (W.D.Tex. 1972).

Another federal court, considering a subsequent case, challenging the 1971 Texas Legislative reapportionment, isolated "educational segregation as a factor in political isolation" Graves v. Barnes, 378 F. Supp. 640-648 (W.D.Tex. 1974). With the exception of El Paso, where litigation is currently in progress, unconstitutional segregation has been found against against Mexican Americans or Blacks and in some cases against both in nearly all of the State's major metropolitan areas in addition to many of its smaller cities. See generally Project Report: DeJure Segregation of Chicanos in Texas Schools, 7 Harvard Civil Rights-Civil Liverties Law Review 307 (1972); Mexican Americans and the Desegregation of Schools in the Southwest, 8 Houston Law Review 921 (1971)

Indeed, as late as 1962, the Attorney General of Texas ruled that any integration without a referendum election would result in a loss of the State minimum foundation payments to the district. Only last year, a federal court noted that the Beaumont Independent School District "continues to operate seven all black schools and persists in busing black children past neighborhool schools to attend all black schools on the other side of town." Graves v. Barnes, 378 F.Supp. 640, 648 (W.D.Tex. 1974).

For Mexican Americans the pattern is hardly better. Although formal segregation was theoretically ended in 1948 by a federal court decision Delgado v. Bastrop Ind. School Dist., Civ. No. 388 (W.D.Tex. June 15, 1948), the U.S. Commission on Civil Rights found recently that 70% of all Mexican American elementary students attend one-race schools. U.S. Commission on Civil Rights Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest Report 1 at 28. In terms of performance, the U. S. Commission on Civil Rights further noted that before graduation from high school 47% of the state's Mexican Americans and 36% of the blacks have dropped out of school. In probably more start terms, the Commission established that at least 44% of those select few Mexican Americans who do graduate from high school suffer

In light of the overwhelming levels of functional incompetency on the part of the State's minority population [4/] the reregistration form becomes a mere literacy test which though equally applied will obviously have the same vastly disproportionate effects on minority Texans as those resulting to North Carolina Blacks from a literacy test so described in Gaston. In this

---

Footnote #3 continued

"severe reading retardation." U S. Commission on Civil Rights The Un-Finished Education, Report 2 at 28-34.

Probably the effects of the long fight for political access are best summed up with the fact that the first Black was not the nominee of either the Democratic or Republican party in Texas for any office, however, minimal, until 1966. And then only after the federal courts ordered re-apportionments.

Yet for Mexican Americans, as a whole, the picture is even more bleak for, as the Supreme Court noted in 1972, the

> cultural and language impediment, conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary.

White v. Regester, 412 U.S. 753, 769 (1972).

[4/] Both the Senate and House Committees considering the expansion of the Voting Rights Act in 1975 found that the

> high illiteracy rates are not the result of choice or mere happenstance. They are the product of failure of state and local officials to afford equal educational opportunity. . .

House Report at 20; Senate Report at 28.

regard it is important to note that functional illiteracy among Blacks in North Carolina is in the range of 20% while Mexican Americans functional illiteracy in Texas approaches 34%. House Hearings at 477.

The fact that the reregistration forms will be distributed in both English and Spanish will not solve the problem for few, if any Blacks will benefit and the testimony before the House Committee considering the extension of the Voting Rights Act establishes that many of the Mexican Americans who are illiterate in English are likewise illiterate in Spanish. House Hearings at 828.

For the foregoing reasons M.A.L.D.E.F. objects to S.B. 300 and opposses its implementation as a violation of the Voting Rights Act.

Respectfully submitted,

VILMA S. MARTINEZ
SANFORD J. ROSEN
Mexican American Legal Defense
and Educational Fund
145 Ninth Street, 2nd Floor
San Francisco, California 94103
(415) 864-6000

ALBERT H. KAUFFMAN
GEORGE J. KORBEL
Mexican American Legal Defense
and Educational Fund
501 Petroleum Commerce Building
201 N. St. Mary's Street
San Antonio, Texas
(512) 224-5476

Department of Justice
Washington, D.C. 20530

DEC 2 1975

Honorable Mark White
Secretary of State
State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to S.B. 300 of 1975, voter registration procedures in the State of Texas, which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended in 1975. Your submission was received on October 31, 1975. Pursuant to your request we have given expedited consideration to this submission in accordance with Section 51.22 of our Section 5 guidelines (28 C.F.R. 51.22).

We have reviewed carefully the information, statistical data and other material submitted by you as well as information, comments and views provided by other interested persons. Except insofar as S.B. 300 requires a purge of all currently registered voters in Texas, the Attorney General does not interpose an objection to the changes involved. We feel a responsibility to point out, however, that Section 5 of the Voting Rights Act expressly provides that our failure to object does not bar any subsequent judicial action to enjoin the enforcement of these changes should such action become necessary.

Section 2 of S.B. 300 provides, among other things, that registrants who fail to reregister shall have their registration terminated on March 1, 1976. We recognize the State's interest in enacting legislation which promotes registration and, also, which utilizes a reasonable means of maintaining accurate registration records. However, our review of recent registration laws in Texas, e.g., the poll tax, annual registration, reregistration (S.B. 51 of 1971), in conjunction with our evaluation of S.B. 300, illustrates that the citizens of Texas have experienced several registration procedures within a ten-year period.

Under Section 5 of the Voting Rights Act the burden falls upon the submitting authority to demonstrate that voting changes, such as those here under submission, not only do not have a prohibited discriminatory purpose but will not have such an effect. Thus, as set forth in his Procedures For the Administration of Section 5 of the Voting Rights Act of 1965, Section 51.19 (28 C.F.R. 51.19), the Attorney General will refrain from objecting only if he is satisfied that the proposed change does not have the prohibited purpose or effect. If he is persuaded to the contrary or if he cannot satisfy himself that the change is without discriminatory purpose or effect, the guidelines state that the Attorney General will object.

Our analysis has revealed nothing to suggest a discriminatory purpose to the purge involved here. In addition, the State's proposals for minimizing the adverse effect of the reregistration are commendable. However, we cannot conclude that the effect of the total purge to initiate the reregistration program will not be discriminatory in a prohibited way.

With regard to cognizable minority groups in Texas, namely, blacks and Mexican-Americans, a study of their historical voting problems and a review of statistical data, including that relating to literacy, disclose that a total voter registration purge under existing circumstances may have a discriminatory effect on their voting rights. Comments from interested parties, as well as our own investigation, indicate that a substantial number of minority registrants may be confused, unable to comply with the statutory registration requirements of Section 2, or only able to comply with substantial difficulty. Moreover, representations have been made to this office that a requirement that everyone register anew, on the heels of registration difficulties experienced in the past, could cause significant frustration and result in creating voter apathy among minority citizens, thus, erasing the gains already accomplished in registering minority voters.

We have reviewed carefully the justifications submitted by the State in an effort to satisfy the State's burden of proof that the purge in question does not have the purpose or effect of denying or abridging voting rights on the basis of race or language minority status. We also have closely scrutinized the nature of the State's interest in implementing a statewide purge to determine whether it is compelling and whether alternative means of accomplishing its purpose are available. Dunn v. Blumstein, 405 U.S. 330 (1972). Under all the circumstances involved, we are unable to conclude that a total purge is necessary to achieve the State's purpose. Likewise, we are unable to conclude, as we must under the Voting Rights Act, that implementation

of such a purge in Texas will not have the effect of discriminating on account of race or color and language minority status. For that reason, I must, on behalf of the Attorney General, interpose an objection to the implementation of the purge requirement of Section 2 of S.B. 300.

Should you decide, however, to implement the reregistration without the purge requirement and can at a later date demonstrate that it did not have an adverse effect on minority voting rights, we would welcome a request for reconsideration with appropriate supporting materials (see 28 C.F.R. 51.23).

Of course, as provided for by Section 5, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the 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. Should you decide to pursue such a course of action my staff and I will cooperate to expedite the matter in any way possible.

I am aware that there is now pending a lawsuit in the United States District Court for the Eastern District of Texas with respect to the subject matter of this submission. I am, therefore, taking the liberty of forwarding a copy of this letter to the Court.

Sincerely,

J. Stanley Pottinger

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

201 N. ST. MARY'S ST./SAN ANTONIO, TEXAS 78205/(512) 224-5476

VOTING RIGHTS ACT COMMENT
ON TEXAS H. B. 1047 AS IT
AFFECTS NUECES COUNTY

Generally

The three single member districts 48A, 48B and 48C are drawn from the multi-member district 48 which included a large part but not all of Nueces County (Corpus Christi). On January 28, 1974, this multi-member district was declared unconstitutional in Graves v. Barnes, 378 F. Supp. 640, 658-661 (W.D.Tex. 1974). Thereafter hearings were held before a three judge court on the adoption of plans of apportionment to replace the invalidated at large system. At those hearings, the State offered a proposed plan which was very similar to the one now before the U. S. Department of Justice for preclearance and M.A.L.D.E.F. on behalf of its clients offered an alternative scheme of apportionment which was adopted by the Court.

We are fortunate to have the full transcript of the hearings before the three judge court, as well as a Record of the Texas House debates which led to the adoption of the plan currently before on submission. For the assistance of the Department of Justice the Record of Debates is included

NATIONAL OFFICE

ATTACHMENT 15

VILMA S. MARTINEZ
GENERAL COUNSEL
145 NINTH STREET
SAN FRANCISCO, CALIF. 94103
415 864-6000

501 PETROLEUM COMMERCE BLDG.
201 N. ST. MARY'S STREET
SAN ANTONIO, TEXAS 78205
512-224-5476

SUITE 908 CONTINENTAL BLDG.
453 SOUTH SPRING STREET
LOS ANGELES, CALIF. 90013
213 629 1766

FORUM BUILDING
250 W. 14TH AVENUE, SUITE 204
DENVER, COLORADO 80204
303-893-1922

1012 TIJERAS, N.W.
ALBUQUERQUE, NEW MEXICO

as Exhibit 1 and cited as "Record of Debates." The Supreme Court appendix of the three judge hearing has been previously provided to Justice and is cited as "White Supreme Court Appendix." A copy of the apportionment plan adopted by the three judge court is attached as Exhibit 2 and referred to variously as the M.A.L.D.E.F. or Truan plan.[1/] Additional exhibits include a copy of the Nueces County census analysis prepared and offered as an exhibit to the three judge court which sat on question of the adoption of plans (Exhibit 3) and a map setting out the Barrio area in Nueces County which is often referred to as the Corridor area (Exhibit 4). Generally the census analysis considers the county, tract by tract, under the criteria set out in both White I and White II, 343 F. Supp. 730-731; 412 U. S. 766, 777; 378 F. Supp. 658. It was used to prepare the Truan/M.A.L.D.E.F. plan and later to explain and advocate it before both the three judge court and the Texas Legislature. The corridor area is the ghetto or barrio of Corpus Christi. It is well known through out Texas for its depressing health, educational, and social conditions.

History

The White cases arose out of a series of litigation including two decisions by the Texas Supreme Court, two decisions by the U. S. Supreme Court and two full blown trials before three judge district courts at which

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[1/] It is the M.A.L.D.E.F. Plan in the White Appendix and the Truan Plan on the floor of the House.

in excess of 10,000 pages of testimony and exhibits were compiled. [2] The multi-member district from which the single member districts on submission were drawn came not from the Legislature but from a Legislative Redistricting Board created after the Texas Legislature refused to act constitutionally. See generally Smith v. Craddick, 471 S.W.2d 375 (Tex. Sup. 1971) and Mauzy v. Legislative Redistricting Board, 471 S.W.2d 570 (Tex. Sup. 1971).

As stated earlier, this multi-member district along with several others was invalidated in Graves v. Barnes, 640 F. Supp. 378 (W.D.Tex. 1974) and a single member apportionment plan was adopted by the Court. [3] Thereafter, the Supreme Court stayed the operation of all the plans until it could hear the argument on appeal. In February of 1975 oral argument was heard but prior to an opinion, the Texas Legislature, seeing the handwriting on the wall acted to adopt single member districts. This they thought would moot the case and require the minority groups to proceed further under the more stringent standards of proof on gerrymanders as set out in Gomillion v. Lightfoot, 364 U.S. 334 (1960). The Supreme Court

---

[2] Smith v. Craddick, 471 S.W.2d 375 (Tex. Sup. 1971); Mauzy v. Legislative Redistricting Board, 471 S.W.2d 570 (Tex. Sup. 1971); Graves v. Barnes, 343 F.Supp. 704 (W.D.Tex. 1972) aff'd as to multi-member district sub nom White v. Regester, 412 U.S. 755 (1973); White v. Regester (on remand) 378 F. Supp. 640 (W.D.Tex. 1973).

[3] That plan is attached as Exhibit 2.

did remand to the district court for a determination on the question of mootness. White v. Regester, ____U.S.____, S. Ct. (1975). However, after the remand but before the district court could consider the question of mootness, the President signed the Voting Rights Act which, of course,occasioned this consideration by the Department of Justice.

Position on the Bill

We have been in touch with counsel for the parties in White and it is the consensus that while there are some problems with the plans in Lubbock and Hidalgo county, all are acceptable except Jefferson, Tarrant (Fort Worth) and Nueces. This comment will be limited to Nueces and I understand that Don Gladden of Fort Worth and David Richards of Austin will deal with Tarrant and Jefferson counties respectively.

I.

DEMOGRAPHIC ANALYSIS OF NUECES COUNTY

1. The Graves/White Factors

In Graves v. Barnes, 343 F. Supp. 704 (W.D. Tex. 1972), aff'd in relevant part sub nom White v. Regester, 412 U.S. 755 (1973) certain educational, social and economic factors were considered as crucial to a consideration of minority political activity and ability to compete vis a vis Anglos 343 F. Supp. at 740; 412 U.S. at 776. In application of these demographic factors from Graves to Nueces County one finds:

Persons with No School Years

Of Nueces County's 115,135 persons 25 years of age or older, 6,492 (5.64%) have not completed any years of school. On a comparative basis, 45,903 (39.87%) of the county's total persons 25 years of age or older live in the Barrio area. Yet of this 45,903, 5,553 (12.09%) have completed no years of school. Expressed in other terms, while the barrio contains only 39.87% of the persons 25 years of age or older, it includes 85.54% of the total persons in the county with no years of school completed.

	% of Population With No Education
Minority Tracts	12.09%
Balance of County (excluding minority tracts)	1.35

College Graduates

Of Nueces County's 115,135 persons 25 years of age or older, 11,828 (10.27%) have a college degree. On a comparative basis, while 45,903 (39.87%)

of the total persons 25 years of age or older live in the Barrio area, only 1,355 (2.95%) are college graduates. Expressed in other terms, while the Barrio contains almost 40% of the county's persons 25 years of age or older, it includes only 11.46% of the county's college graduates. Thus, it may be seen that while only 2.95% of the persons living in the Barrio are college graduates, 15% of those living in tracts outside the Barrio area have achieved that educational level.

	% of College Graduates
Minority tracts	2.95%
Balance of County (excluding minority tracts)	15.00

Median Years of School Completed

Of the county's population over 25, the median school years completed is found to be 11.5. This may be contrasted with the average median years completed for the Barrio of 8.0.

Median School Years Completed	11.5
Average Median for Barrio Tracts	8.0

Family Income Below Poverty Level

Of the 57,039 families living in Nueces County, 9,732 (17.06%) are found to be existing on sub-poverty level incomes. On a comparative basis, it may be seen that of the 21,751 families living in the Barrio area 7,182 (33.01%) are below the poverty level. Expressed in other terms, while the Barrio area includes only 38.13% of the county's families, it suffers from 73.80% of the county's poverty. Thus it may be seen that while almost one-third of the Barrio families exist on sub-poverty level income, only 7.22%

of the families living outside the Barrio are in the same situation.

% of Families Below Poverty Level	
Minority Tracts	33.1%
Balance of County (excluding the minority tracts)	7.22

Housing Facilities

The inferior condition of the Nueces County Barrio housing may probably best be illustrated by the substantial percentage of its housing units which lack some or all plumbing units. Of the 74,695 housing units in the county 30,196 (40.43%) are found in the Barrio. 11.17% (3,374) of these Barrio housing units lack plumbing, as contrasted with 1.67% of the housing units outside the Barrio which are in a similar situation. Expressed in other terms, the Barrio contains only 40.43% of the county's total housing units but 81.93% of the county's housing units lacking plumbing.

% of Housing Units Lacking Plumbing	
Minority Tracts	11.17%
Balance of Nueces County (excluding the Barrio)	1.67

Family Income

The median family income for Nueces County is found to be $8,168 while the average of the median income of the minority tracts amounts to only $5,239.

Minority Tracts	$5,239
Nueces County (including minority tracts)	8,168

2. Population by Ethnic Background

The only reason given in the House floor debates for the passage of the Nueces County action of 1097 was that it:

> truly reflected the makeup of the entire county, and that 51% of Nueces County is white or Anglo...

and so

> [W]hat we did and what this plan did do it gave one district which is a Chicano district. There is no doubt that they will be able to elect a Chicano from this district. Also we had one district or we created a district where an Anglo will be elected. There is no doubt about that. And then we have one swing district which reflects the general makeup of the county where you have 51% white, or 43 percent Chicano in it, and then 1% other, and this one district truly reflects the entire makeup of the county, as I said, white guaranteeing an Anglo and a Chicano; if granted it doesn't do what Representative Truan's district does and that is guarantee two Chicanos and only one white, which is what his plan does.

Reapportionment debate at 24.

The Nueces County population breakdown is:

Total Population	Black	%	Mexican American	%	Minority	%	Anglo	% [4/]
237,544	11,023	4.6	103,543	43.6	114,566	48.22	120,603	50.8

Thus the plan adopted by the State does represent the overall county figures.

[4/] A minimal number (approximately 1%) of so called "others" also live in Nueces County.

This argument might lend merit and support to the plan before the Department of Justice if the three districts which were drawn included the whole of Nueces County. Of course, they don't. In fact the area, formerly in the so called Nueces County multi-member district is less than the entire county and is over 50% minority according to the 1970 census.

District 48

Total Population	Black	%	Mexican American	%	Minority	%	Anglo	% [5]
220,056	11,466	5.2	99,059	45.0	110,525	50.2	107,331	48.7

Thus, when the facts are fully considered, the only argument in support of the plan adopted by the Legislature is not only misstated but, in fact even under 1970 census data supports the Truan Plan. The debates suggest the real reason the Legislature acted to ignore the plan offered by Representative Truan:

> [I]t doesn't do what Rep. Truan's district does and that is guarantee two Chicano and only one white [district] which is basically what his plan does.

Record of Debates at 24.

---

[5] A minimal number of so called "others" also live in this area.

The Truan plan had been adopted by the U. S. District Court in White v. Regester, supra. (See White Supreme Court appendix at 1007, 989-995; Record of Debates at 19). We include a copy of it as Exhibit 2.

A Background Court Approved Plan

In short the court approved Truan plan was an attempt to deal with several racial and demographic problems in Nueces County.

1. Racially Polarized Voting

In Nueces County, as in other areas in Texas we find racially identifiable voting (White Supreme Court appendix at 522-525; 612-613). Specifically the area south of Weber Road was pointed out as producing consistently heavy vote against Mexican American candidates (id. at 613-614; 997).

2. The Corridor Area and Problems Attendent Thereto

The corridor area was identified by the federal courts in Cisneros v. Corpus Christi I.S.D., 324 F.Supp. 599 (S.D.Tex. 1970, aff'd in part modified in part and remanded, 467 F.2d 142 (5th Cir. 1972). It has a high concentration of Mexican Americans and Blacks who live in conditions of severe poverty, Graves v. Barnes, 378 F.Supp. at 658. Thus, the persons who are found in the area have very specific needs and problems. (White Supreme Court Appendix 990-993.) The corridor area is set out generally

in Exhibit 5.

3. Overall Demographics-Community of Interest

As set out in this comment and documented in great detail in Exhibit 3, Nueces County is a place of great social, economic, and educational contrasts which revolve in almost every instances around race and national origin.

4. Racial Concentrations

The City of Corpus Christi, which represents the lion's share of District 48 is a very segregated city in terms of housing patterns. The Black population is fairly small and exceeds 50% of only two census tracts (Exhibit 3). The Mexican American population is concentrated in the corridor area and exceeds 50% in sixteen census tracts. (Id.) The Anglo population is found primarily in the area south of the corridor and is especially concentrated south of Weber Road.

B. Analysis of the Truan Plan

After extensive hearings and briefing on the question, the Texas district court adopted the Truan plan. This apportionment was carefully drawn to consider the special interests of these people. District 48A contains nine census tracts of which seven are corridor. These areas represent low voter registration and turnout but high correlation with

Mexican American candidates. Based on projections drawn from the last seven state legislative races it appears certain that a Mexican American would be elected to serve from this district.

District 48B contains the only two Nueces County census tracts which are majority Black. This Black area is combined with other urban populated tracts with similar demographic and racial characteristics in both Corpus Christi and neighboring Robstown (Tracts 56 and 57). The only rural area found in 48, the old multi-member district, was included with District B. Again the racial and other characteristics of the areas are quite similar (for example, the rural area, tracts 54 and 60 are 60.7% and 64% Mexican American respectively). Under the studies undertaken to try White II we feel that this district will be a close race between a minority and an Anglo since the overall turnout would favor the minority candidate in the area of 52-48. This, of course, is fairly representative of the population of the old-multi member district.

District 48C is a very compact rectangular district located in the southeastern part of Nueces County. It includes the area south of Weber Road where the highest incidence of racially identifiable Anglo voting is found. The tracts have minimal minority percentages. In this area we find little proverty, high famil comes, advanced educational backgrounds and high incidence of Anglo population. Under our studies, we feel that this area will be represented by an Anglo.

C. Analysis of the Plan Adopted By the State for District 48

As stated earlier, even under the 1970 census, the area comprising the multi-member district (48) from which 48A, 48B and 48C are drawn, was over 50% minority. It is therefore curious to note that the way the State structures the districts, only one of the three is over 50% minority. It is even more suspect when one reads the debates on the Texas House floor and finds that the only justification offered for the plan was that it seemed more fair because Anglos were in the majority. Race was, of course, the motive. Exhibit 5, attached, is a copy of the State's plan. It is a classic gerrymander. The corridor area is divided three ways. The districts are long and slender, each reaching in and taking a substantial portion of the minority area. The heavily Anglo area south of Weber Road in which racially polarized voting has been noted, was formed into two areas, each controlling one of the three districts. It is true that the Mexican Americans will elect one representative under this plan, but it would be impossible to draw single member districts where such would not be the case.

In the floor debates it was argued that a second district, 48B, would be a swing area - - That is to say, it is 47% minority. Again this is hard to imagine because of the substantial differential in turnout and registration between Anglos and minority persons combined with the high incidence of racially polarized voting recorded in the Anglo areas.

Indeed, there is absolutely no community of interest between the census tracts in 48B. In terms of persons with no education for example, the Mexican American tracts are up to 30 times higher in concentration non schooled persons. In terms of % of each tract that are college graduates, the Anglo tracts are ten to twenty times higher than the Mexican American tracts in concentrations of college educated persons. In terms of poverty level incomes, the Mexican American tracts contain up to eighteen times the concentration of persons with poverty level incomes. In terms of median family incomes, the Anglo tracts consistently have families with 1/3 higher incomes.

Comparison of Plans In Terms of Race [6/]

District 48	State Plan	Truan Plan
	A	A
Total Population	73,411	72,508
% Mexican American	65.9	68.00
% Black	11.2	6.41
% Minority	77.8	74.41
% Anglo	22.2	24.59
	B	B
Total Population	73,661	75,584
% Mexican American	45.0	53.81
% Black	2.7	8.93
% Minority	47.7	62.00
% Anglo	52.3	38.00

6/ Note that there are a minimal number of so called "others" included in the Anglo percentages which does not appear to exceed 1%.

District 48	State Plan	Truan Plan
	S	C
Total Population	72,984	71,964
% Mexican American	24.4	12.71
% Black	0.9	0.86
% Minority	25.3	13.49
% Anglo	74.7	86.51

CONCLUSION

The imposition of single member districts as set up in the State plan will unquestionably disadvantage minority persons in Nueces County. The debattes on the floor of the Texas House of Representatives highlight race as a major if not the only issue in the drawing of these districts. The court plan which was introduced and referred to as the Truan plan in the debates was tabled over the votes of seventeen (17) of the eighteen (18) present minority members.

Respectfully submitted

VILMA S. MARTINEZ
Mexican American Legal Defense and Educational Fund, Inc.
145 Ninth Street - 2nd Floor
San Francisco, California 94103
(415) 864-6000

GEORGE J. KORBEL
ALBERT H. KAUFFMAN
Mexican American Legal Defense and Educational Fund, Inc.
501 Petroleum Commerce Building
San Antonio, Texas 78205
(512) 224-5476

T. 1/26/76

JSP:BHW:mrk
DJ 166-012-3
X0614

Honorable Mark White
Secretary of State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to our letter of January 23, 1976, and in further reply to your submission of the subdistrictings of 9 multi-member Texas House of Representatives districts in House Bill 1097 of the 1975 Session of the Texas Legislature, to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on November 26, 1975.

We responded to your submission prior to January 25, 1976, the last day of the 60-day period as set out in Section 51.22 of our procedural guidelines for the administration of Section 5, 28 C.R.F. §51.22:

> When a decision not to object is made within the 60-day period following receipt of a submission which satisfies the requirements of §51.10(a), the Attorney General may reexamine the submission if additional information comes to his attention during the remainder of the 60-day period which would require objection in accordance with §51.19.

cc; Records
Chrono
Turner
Weinberg/Cabel/Jones
Inv. File
Public File
Sappey
Luther Jones
A.G. Hill
Usas - San Antonio, Tyler, Houston &

ATTACHMENT 16

Such additional information has come to our attention and we have reexamined the submission of House Bill 1097 with regard to the effect of new single-member districts defined in House Bill 1097 for Nueces County, District 48A through 48C

The additional information in this regard concerned the minority population within the single-member districting plans for Nueces County presented to the Court prior to its order of January 28, 1975, in Graves v. Barnes. During our initial examination of the districts set out in House Bill 1097 for Nueces County we erroneously considered the population statistics of the plan submitted to the Court by the State as statistics relative to the plan which the Court adopted. On that erroneous basis we had determined that the plan set out in House Bill 1097 would not dilute minority voting strength given the results that would flow from fairly drawn alternative districting plans.

Our evaluation of the new single-member districts in House Bill 1097 for Nueces County indicated that the district lines are drawn through a cogainable minority residential area known as "the corridor" in Corpus Christi resulting in an apportionment or fragmenting of that area into each of the 3 districts, only in one of which minorities represent a majority of the population. It was our understanding that in approaching the question of how to draw new single-member districts for Nueces County, the legislature utilized the theory that a fair districting of the county, given the county's population, should be designed to result in one "safe" Mexican-American district, one safe Anglo district, and one "swing" district with close to 50% Anglo and Mexican-American population.

We had no objection to this districting approach as long as it did not result in a dilution of minority voting strength and, as I explained above, given our erroneous understanding of available districting alternative we found no such dilution would result. However, we now realize that the districting plan for Nueces County adopted by the Court in Graves v. Barnes, which apportions the corridor into only 2 districts, results in 2 districts in which minorities represent a significant majority of the population. Thus, on the basis of our previous evaluation and in the light of population statistics of the districting plan ordered by the Court in Graves v. Barnes, it appears that fairly drawn alternative districting plans which avoid fragmenting the corridor into as many as 3 districts also would make a significant difference in the ability of minority residents of Nueces County to elect representatives of their choice. In addition, we have determined, as we had determined previously, that the result in House Bill 1097 for Nueces County does not appear to be necessary on the basis of natural boundaries or overriding considerations of district compactness.

Therefore, the remaining question is whether the Legislative approach for the districting of Nueces County constitutes a compelling governmental justification for the results that it achieved in Nueces County. I believe it does not. Although the theory used in House Bill 1097 for apportioning the population of Nueces County could, under other circumstances, be considered to reflect a legitimate interest of the state, under the standards for our Section 5 review as enunciated in my letter of Janaury 23, 1976, and given the facts as described above. I view the apportionment approach used in House Bill 1097 for

Nueces County as a minimization and thus a dilution of minority voting strength since it unnecessarily and unfairly limits minorities to only one district in which they would represent a majority of the population.

Accordingly, we are unable to conclude as we must under Section 5 that implementation of the districts 48A--48C set out in House Bill 1097 for Nueces County will not have a discriminatory effect. Under these circumstances I must, on behalf of the Attorney General, interpose an objection to the implementation of the specified districts set out in House Bill 1097 for Nueces County. So that there be no misunderstanding, I should point out that the objection interposed herein is in addition to the objections interposed in my letter of January 23, 1976, to the implementation of the district 7A--7C and 32A--32I set out in House Bill 1097 for Jefferson and Tarrant Counties.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these districts neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees set forth in Section 4(f) of the Act. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

I apologize for any inconvenience that may have been caused to you by our error in this matter.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

RAZA UNIDA PARTY
P. O. BOX 711 PEARSALL, TEXAS 78061
(512) 334-2668

SUBMISSION

Submitting Authority

The undersigned submitting authority is the duly elected and acting Frio county chairman of the Raza Unida Political Party - one of the three official parties in the state. 1/ As the county chairman he is an ex-office member of the county election board 2/ and is charged with the duty of conducting party primary elections for nomination of candidates for the various elected partisan posts. 3/ In such a role the county political chairman functions as a state official and his or her action were early held by the Supreme Court to be state action. 4/

Since the county political chairmen are charged with the conduct of all duties in connection with the holding of primary elections, 5/ they

---

1/ Under Texas law an official political party is defined as a party whose nominee for governor received more than 2% of the total vote. Currently the Democrats, the Republicans and the Raza Unida are all official parties. Texas Election Code Art. 13.02.

2/ Texas Election Code Article 7.07.

3/ Texas Election Code Article 13.01 FF.

4/ Nixon v. Condon, 286 U.S. 73 (1932)

5/ In Texas the State takes no part in the holding of primary elections. The county chairman is required to take all steps necessary including the designation of polling places, the printing and counting of ballots and the declaration of a winner. Since 1971 however the State began to finance these elections. With the advent of funding no additional responsibility was borne by the State.

clearly have an interest in all state statutes which deal with electoral procedures which they by law are charged to carry out. This submission, then, is of the statute set out herein, only as it effects Frio County. It should not be considered as a total submission of the law that duty resides by law in the Texas Attorney General or Secretary of State. [6/] It is only because those officials have refused to act that this piece meal submission is necessary.

Information Required Pursuant to 28 C.F.R. 51.10

(1) A copy of any legislative or administrative enactment or order embodying a change affecting voting, certified by an appropriate officer of the submitting authority to be a true copy.

Submission: See Attached Exhibit "A"

(2) The date of final adoption of the change affecting voting.

Submission: Change adopted by 63rd Texas Legislature to be effective August 27, 1973 but portion submitted by its terms does not go into operation until "the year 1976."

(3) Identification of the authority responsible for the change and the mode of decision, (e.g.) act of State legislature, ordinance of city council, redistricting by election officials.

[6/] Under the Voting Rights Act the chief legal official has the duty of submitting, however, it is the understanding of the county chairman that he takes the position that under Texas law the duty is found in the Secretary of State.

Submission: The 63rd Texas State Legislature.

(4) An explanation of the difference between the submitted change affecting voting and the existing law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the existing and proposed situation with respect to voting. When the change will affect less than the whole State or subdivision, such explanation should include a description of which subdivisions or parts thereof will be affected and how each will be affected.

Submission: The submitted change, commonly known as "S. B. 11" modifies the manner in which minority parties nominate their candidates. Texas Political parties have traditionally held their own primary elections. There is no question that this is due in major part to an attempt to prohibit the minority groups from participation in the political process. Nixon v. Herndon, 273 U.S. 536 (1926); Nixon v. Condon, 286 U.S. 73 (1932); Smith v. Allwright, 321 U.S. 657 (1944) and Terry v. Adams, 345 U.S. 461 (1953). The funding of these elections formerly came from very large filing fees. In 1971 the Federal courts struck the statute providing for these fees and the Texas Legislature passed an emergency statute to pay for the 1972 primary elections.

The year 1972 saw the emergence of a new political party in Texas Raza Unida whose candidate for governor received 214,000 votes. In addition Raza Unida elected several county level political

figures in certain areas in South Texas. During the election there was a great concern on the part of the Democrats in Texas that the Raza Unida Party would drain off sufficient numbers of Mexican Americans to elect the first Republican governor since reconstruction, and furthermore that our primarily Mexican American party would gain control of previously Anglo dominated South Texas counties. In the next session of the Texas Legislature, which met in 1973, the Democratic Party leadership designed a device to destroy the new political party.

S. B. 11 was the result of an effort by the State Democratic Party to inhibit the development of Raza Unida Party and limit the political activity of Mexican Americans. It requires in relevant part that in order to receive state financing of a primary election, a party must nominate a candidate for governor who received 20% of the vote.

Prior to the change, a party whose candidate for governor received either more than 2% of the total vote or 200,000 votes was an official party and eligible for complete state financial support for its primary election. After the change, a parties' candidate for governor must receive more than 20% of the vote for state financial backing. If

such party receives less than 20% but more than 2% it remains an official party, but it is required to nominate its candidates by convention and may not utilize a primary. No state funds are available to help defray the costs of this convention.

It is my feeling, as well as that of the other County Raza Unida Chairpersons that this statute will have a serious effect on our ability to compete with the Democratic Party. In my county, as well as in most of South Texas, there is no Republican presence. The Democrats will hold state financed primary elections which assure a great deal of publicity. The Raza Unida Party will be forced to nominate candidates without this state aid. Furthermore, primary elections in Texas are the elections that most Mexican Americans look to because before the advent of Raza Unida, Democratic nominations meant election. We must now teach the people not to vote in the primary and to attend our conventions instead. This fact alone will put our organizational efforts back several years.

S.B. 11 may make sense in some counties in Texas, where our candidate for Governor received few votes. But, in fact, we do not hold primary elections there and it is doubtful we ever would. The statute does not make sense however in South Texas counties

such as Zavala, Frio and LaSalle when our candiate for Governor either carried the county or ran far ahead of the Republican party and Raza Unida elected the County Judges, county commissioners and many county positions. What the statute does in these areas is to give a state subsidy for the Democrats to run against us and to change our nomination process so that our supporters will be confused. We believe that this was the only purpose behind the statute. Without effective local organization, it is further clear that our candidate for Governor will never again present the potential "drain off" of Mexican American voters to elect a Republican.

The racial effect of this is quite clear. Under the Raza Unida ticket Mexican Americans have been elected to positions previously controlled by Anglo Democrats in Zavala, Frio and LaSalle counties. This statute will help to again put the Anglos in the position of control.

(5) A statement certifying that the change affecting voting has not yet been enforce or administered, or an explanation of which such a statement cannot be made.

Submission: I hereby certify that the change affecting voting has not yet been enforced or administered.

Date: November 21 1975

Modesto Rodriguez
Frio County Raza Unida Chairman

Subscribed and Sworn to before me by the said Modesto Rodriguez on this the 21st day of November, 1975.

Notary Public in and for Bexar County, Texas

(6) With respect to redistricting, annexation, and other complex changes, other information which the Attorney General determines is required to enable him to evaluate the purpose or effect of the change. Such other information may include items listed under paragraph (b) of this section.

(7) A statement of the reasons for the change affecting voting.

Submission: The official reason we expect that Texas would give is that minority parties should not be allowed to hold primary elections financed by state funds because it is a non-economic expenditure of money. They would point out that Raza Unida got very little support in some of the State's 254 counties. What they will try to ignore is that in many counties Raza Unida either carries the county or is the only competition for the Democrats. The records show that Raza Unida, like the Republican party does not hold primary elections in all of the State's counties. Both the Raza Unida and the Republicans stay out of regions where they have little support.

The real reason for the passage of the statute I believe is two fold: (1) The State Democratic Party wants to insure that the Raza Unida does not split off traditional Mexican American straight ticket voters increasing Republican changes for taking over the State offices in Austin and (2) The Anglo dominated State Democratic Party wants to assist the Anglo dominated County Democratic Party in several South Texas counties to either retake the county offices or to stave

off Mexican American challenge via the Raza Unida.

(8) A statement of the anticipated effect of the change affecting voting.

Submission: I believe that the enforcement of S.B. 11 will result in a substantial adverse effect on the political fortunes of Raza Unida as a party and of the Mexican-Americans in my county.

(9) A statement identifying any past or pending litigation concerning the change affecting voting or related prior voting practices.

Submission: A suit entitled Flowers v. Wiley has been filed. I enclose a copy of the complaint.

(10) A copy of any other changes in law or administration relating to the subject matter of the submitted change affecting voting which have been put into effect since the time when coverage under Section 4 of the Voting Rights Act began and the reasons for such prior changes. If such changes have already been submitted the submitting authority may refer to the date of prior submission and identify the previously submitted changes.

Submission: I believe that only one of the many legislative enactments subject to submission and preclearance under the Voting Rights Act, has actually been submitted. Many of these statutes will cover duties which I have as a county chairman in the conduct of the nomination procedures. In most cases, however, the changes will not be effective until the actual elections are held in May of

1976. I feel that I must act to submit this statute as it affects my county so that I can plan. The deadline for filing for primary according to Texas law is February 2, 1976.

Respectfully submitted,

Modesto Rodriguez

Modesto Rodriguez
Frio County Chairman

Honorable Mark White
Secretary of State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to Senate Bill 11 (1973), which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act. Your submission was received on November 26, 1975. While we have noted your request for expedited consideration, we have been unable to give you an earlier response to this matter.

The Attorney General does not interpose an objection to the changes contained in Senate Bill 11 except as noted below. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

Section 6 of Senate Bill 11 restricts the ability of political parties in Texas to hold primary elections after 1974 by requiring that a political party nominate its candidates only by convention if the party's candidate for governor in the last preceding general election received at least 2% but less than 20% of the total votes cast

for that office. Immediately prior to Senate Bill 11 no such restriction was imposed upon any political party whose candidate for governor in the last preceding election received at least 2% of the vote for that office. In fact, Section 6 of Senate Bill 11 itself allowed such a political party to conduct primaries in 1974.

Under present state law the costs to political parties of primary elections are reimbursed by the State, but the State does not reimburse political parties for the costs of conducting party conventions. The reason advanced by the state for its limitation on the primary as a vehicle for nomination by political parties in Texas is a lessening of the burdensome expense of state-financed primary elections.

According to our information, in the 1974 gubernatorial election in Texas the Democratic Party's candidate received approximately 62% of the vote, the Republican Party's candidate received approximately 32%, and approximately 6% of the vote was received by the candidate of the Raza Unida Party, a party composed predominantly of Mexican-Americans and devoted to the protection of Mexican-American interests. The Raza Unida Party accounted for under $60,000 or less than 3% of the state's total expenditure for primary elections in 1974 and, therefore, under Senate Bill 11 the only parties able to conduct primary elections in 1976 will be the two parties which combined to account for over 97% of the cost to the state of primary elections in 1974. Thus, based on these results the effect of the Section 6's restriction in 1976 and thereafter necessarily would fall on only one party, the Raza Unida, and significantly limit the opportunity for Mexican-Americans to nominate, on an equal basis with others, a candidate of their choice.

Under these circumstances we are unable to conclude that the stated purpose for the primary election restriction in Senate Bill 11 outweighs the effect of the restriction on the racially identifiable La Raza Unida, and that beginning in 1976 the provisions of Section 6 of Senate Bill 11 will not have a prohibited discriminatory effect within the meaning of Section 5 of the Voting Rights Act. Accordingly, on behalf of the Attorney General, I must object to the implementation of those provisions of Section 6 of Senate Bill 11.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these provisions neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

ATTACHMENT NO. 19 is a map
of which there is only 1 copy.

It will be provided for the Committee.

[Committee note: Map is available in the committee files.]

ATTACHMENT 19

Mexican American
Legal Defense
and Educational Fund

517 Petroleum Commerce Building
201 North St. Mary's Street
San Antonio, Texas 78205
(512) 224-5471

April 17, 1978

Mr. Gerald Jones
Voting Section
Civil Rights Division
U. S. Department of
Justice
Washington, D.C. 20530

In re: Edwards County, Texas
File No. A 3723

Dear Mr. Jones:

The Mexican American Legal Defense and Educational Fund is requesting the United States Attorney General to issue a letter of objection declaring the December 12, 1977 redistricting of the Edwards County Commissioners Court, in Texas to be in violation of Section 5 of the Voting Rights Act. According to the 1970 census, the Chicano population comprises approximately 48% of the total county population. Despite this overwhelming number of Chicanos, there has never been a Chicano to serve on the County Commissioners Court in recent times. The redistricting by the County Commissioners Court only serves to perpetuate minority lack of access to the local political process. In the proposed redistricting, Precinct 1 Chicanos comprise only 40.2% of the total population and 35.7% of the population in Precinct 4. This obvious fragmentation of the Chicano population will only serve to furthe dilute Chicano voting strength in Edwards County. For these reasons, MALDEF strongly urges a letter of objection.

I. Background of Present Redistricting

In the summer of 1977, MALDEF and the Southwest Voter Registration and Education Project as a result of community complaints concerning gerrymandered Commissioner Precincts, focused on a series of counties for potential voter discrimination investigations. Due to the high concentration of Chicanos in Edwards County and the complete absence of Chicano county commissioners, Edwards County was high on our priority list. The initial voter registration investigation was conducted by SWREP. Attachment No. 1. This survey suggested that Precinct No. 1 was heavily overpopulated while Precincts 3 and 4 were underpopulated. The inferences suggested by the registration survey were later confirme by a split enumeration district study conducted by the Bureau of the

Census, Attachment No. 2. According to the census study, Precinct 1 contained 1541 persons and Precinct 3 contained 104 persons. This substantial disparity amounted to a top to bottom deviation of 273%, well beyond the 10% figure allowed by the United States Supreme Court. Connor v. Finch, 97 S. Ct. 1828, 1835 (1977). This violation of the one person one vote principle was compounded by the overconcentration of Chicanos in Precinct No. 1. Thus even if all of the Chicanos were registered to vote, they would still be a numerical minority within Precinct 1 and unable to elect their own representative.

Armed with this information, representatives of MALDEF and SWREP attended a meeting of the County Commissioners Court on August 31, 1977. At this meeting we informed them that unless the Court reapportioned their Precincts, a lawsuit would be filed. Within 30 minutes of our presentation, the County Commissioners' Court voted to redistrict. Attachment No. 3. Unfortunately the County Court chose not to utilize our assistance in reapportioning their precincts. In addition the County rejected a proposed redistricting offered by the Mayor of Rocksprings (county seat) which would have provided Chicanos with greater access to the political system.

II. Analysis of Plan

The new redistricting plan fragments the Chicano barrio into 4 precincts. As the attached map of Rocksprings indicates the precinct boundaries cut across the barrio area in order to ". . .to have approximately the same number of eligible Mexican American voters in each of the four precincts." Letter of County Judge Stovall to Department of Justice, dated February 22, 1978. Attachment No. 4. The final outcome of their reapportionment efforts is devastating:

Precinct No.	No. of Anglos	No. of Mexican Americans	(%)	Total
1	288	194	(40.2%)	482
2	348	117	(25.2%)	465
3	334	138	(29.2%)	472
4	302	168	(35.7%)	470
	1272	617 (32.7%)		1889

If this plan is implemented, Chicanos will never be able to elect their own representative. 1/

Clearly the division of the minority population reflected in the new redistricting plan falls well below the standards noted in United Jewish Organization v. Carey, 97 S. Ct. 996 (1977) (65% minority district) and Beer v. United States, 96 S. Ct. 1357, 1368, at n. 7 (1976) (64.1% minority district). Needless to say, the minority eligible voter population and the actual number of minority registered voters are lower than the 52.6% registered Black voters approved in Beer, supra.

Finally the proposed redistricting is unconstitutional when measured against the plan presented in Kirksey v. Bd. of Supr's. of Hinds Cty., Miss., 554 F. 2d 139 (5th Cir. 1977), cert. den., 46 U.S.L.W. 3357 (1977). In Kirksey, the two highest minority districts contained 53.4% Black (District 2) with a 48% eligible minority voter population and 54% Black (District 5) with a 48.6% eligible minority voter population. The District Court focused on the population majorities and concluded that the reapportionment plan offered Blacks a realistic opportunity to elect at least two supervisors. On appeal the Court of Appeals sitting en banc, reversed.

According to the Fifth Circuit, the District Court erroneously focused on population majorities rather than on minority voting strength. Also the District Court's approval of the plan resulted in the fragmentation of a geographically concentrated minority voting community. These two factors played a significant role in the appellate decision to reverse:

> "Where the cohesive black voting strength is fragmented among districts, the presence of districts with bare black population majorities

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1/ The total count of Mexican Americans shows that they comprise only 32.7% of the total population. Our review of the file did not indicate where the county obtained these figures. Our information for the City of Rocksprings was obtained by an informal survey conducted by the Mayor of Rocksprings. However this survey did not include any outlying areas outside of the City. Consequently the total population figures provided by the County are suspect since their figure are well below the 48% Chicano population listed by the Bureau of the Census. Even assuming the correctness of their population figures, the plan adopted by the Commissioners Court still has a discriminatory effec on Chicanos in Edwards County.

> not only does not necessarily preclude dilution but, as a panel of this court pointed out, bare population majorities may actually enhance the possibility of continued minority political impotence.
>
> .....The supervisors' reapportionment plan, though racially neutral, will perpetuate the denial of access. By fragmenting a geographically concentrated but substantial black minority in a community where block 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 communities. The plan denies rights protected under the Fourteenth and Fifteenth Amendments."

554 F. 2d at 150-151

In a similar fashion, the proposed redistricting fragments the minority community thereby unconstitutionally dividing a cohesive minority voting strength. The Edwards County plan is even more pernicious since the proposed redistricting does not even create precincts with bare Chicano majorities. In a county where there has never been a Chicano candidate for County Commissioner since 1952, such a division of the Chicano community will only serve to perpetuate the lack of access to the political system. 2/

This continued denial of equal access to Chicanos will occur in view of the county's present and past history of discrimination. The

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2/ The lack of Chicano participation within the political processes is not confined to the county. Out of the six person city council in Rocksprings only one is a Chicano. The municipal electoral scheme consists of at-large elections, a numbered place system, coupled with a majority vote runoff requirement. Out of the 7 person school board for Rocksprings Independant School District, none is a Chicano.

schools were not desegregated until the early '50s. 3/ Chicanos could not get haircuts in Rocksprings until 1964 when a Chicano barber settled in Rocksprings. Local restaurants were segregated. Community residents feel that there is unequal law enforcement. Perhaps the most discriminatory action taken by residents in Edwards County was the lynching of Antonio Rodriguez for allegedly killing an Anglo woman in 1910. After Rodriguez was apprehended for shooting the person, a mob secured his release from jail and took him out to a pasture where Rodriguez was burned at the stake. Even today Chicanos discuss this incident with deep resentment, since they contend that Rodriguez was an innocent victim who did not commit the crime.

Discrimination in Edwards County is not limited only to the living. The Rocksprings Cemetery has separate sections for Anglos and Mexican Americans. Although it is unclear whether the exclusion of Chicanos from the Anglo section is still practiced, an on-site inspection revealed that Anglos were buried in the more well maintained area while Chicanos were buried in the rear of the cemetery. When I attempted to inquire about the segregated burial plots to Mr. Smart, secretary of the Rocksprings Association, he became very agitated and told me if I was there to stir up trouble, that I should leave Rocksprings before sundown. Attachment No. 5. This threat has caused our organization to be more cautious in any future trips to Edwards County. 4/

With respect to minority hiring practices, only nine Chicanos or 21% of the total county employment force (42) are currently employed by Edwards County. This small number of minority employees clearly demonstrates the unresponsiveness of the county to the needs of the Mexican American community. The necessity for specific governmental action in the area of employment is evidenced by census data: median

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3/ The designation of "Mexican Public School" is still found in the maps of Rocksprings, distributed by the city. See Attachment No. 4.

4/ Another indication of the insensitivity of the Anglo community to Chicanos was the vote in 1962 defeating the state constitutional amendment which would have abolished the poll tax as a prerequisite for voting.

school years completed by Chicano males (4.8 years) is lower than the county median (10.0 years); the median income for Chicano families ($3,466) is lower than the median income for the rest of the county ($5,163); the percentage of Chicano families (63.6%) with income less than the poverty level is significantly higher than for the rest of the county (35.9%).

Conclusion

The attempt by the County Commissioners Court to divide the Chicano community evenly among all four precincts amounts to the fragmentation of a cohesive minority voting strength. This action clearly constitutes dilution. The County was well aware of the location of the minority population, the lack of access to the political processes experienced by Chicanos in Edwards County, and the existence of past and present discrimination against Chicanos. To divide the Chicano barrio in the context of these aforementioned factors demonstrates an intent to perpetuat the past denial of equal access to the political processes. Washington v. Davis, 96 S. Ct. 2040 (1976); Village of Arlington Heights v. Metropolitan Housing Development Corp., 97 S. Ct. 555 (1976); Kirksey, supra. The 40% minority population figure for Precinct No. 1 and the 35.7% minority population figure for Precinct No. 4 clearly will not giv Chicanos a meaningful opportunity to select their representatives to the Edwards County Commissioners Court. For these reasons, we urge the Department of Justice to issue a letter of objection.

Sincerely,

Joaquin G. Avila
Associate Counsel

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Attachments

Honorable Allan Stovall
County Judge
Edwards County
Post Office Box 348
Rocksprings, Texas 78880

Dear Judge Stovall:

This is in reference to the redistricting of commissioner precincts in Edwards County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 27, 1978.

We have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from interested parties. Our analysis reveals that, according to the 1970 Census, Mexican Americans constitute approximately 44% of the population of Edwards County and are concentrated in the City of Rocksprings. No Mexican Americans have been elected to the Commissioners Court under the prior districting plan. Under the submitted redistricting plan, the Mexican American population in the county has been almost evenly distributed among the four commissioner precincts. The result of this division of a highly concentrated minority group is to minimize and thus dilute minority voting strength since it assures that Mexican Americans will not represent a majority of the population in any one commissioner precinct. See Kirksey v. Board of Supervisors of Hinds County, 554 F.2d 139 (5th Cir. 1977), cert. denied, 98 S.Ct. 512 (1977), and Robinson v. Commissioners Court, 505 F.2d 674 (5th Cir. 1974). Our analysis further reveals that rational and compact alternative districting could achieve population equality among the four commissioner precincts while at the same time achieving a precinct system that would more accurately reflect Mexican American voting strength in Edwards County.

ATTACHMENT 21

Therefore, on the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the submitted redistricting of commissioner precincts in Edwards County does not have the purpose and will not have the effect of discriminating on account of membership in a language minority group. Accordingly, on behalf of the Attorney General, I must interpose an objection to the redistricting plan for Edwards County.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.2(b), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting plan for Edwards County legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: Joaquin Avila ✓
Charlie Cotrell
Willie Velasquez
David Lessard

Mexican American
Legal Defense
and Educational Fund

517 [illegible] leum Commerce Building
201 [illegible] St. Mary's Street
San Antonio, Texas 78205
(512) 224-5471

MALDEF

April 5, 1978

Mr. Gerald Jones, Chief
Voting Section
U. S. Dept. of Justice
Main Justice Building
Washington, D.C.

Dear Mr. Jones: RE: Medina County, File No. A 4881

On March 3, 1978, the Medina County Commissioner's Court submitted a redistricting of the Commissioner's precincts. We have evaluated the submitted plan and strongly urge the Department of Justice to issue a letter of objection. The Chicano population in Medina County according to 1970 Census comprises 48.5% of the total population; yet, Chicanos have never been represented in Commissioner's Court. The plan submitted by Medina County allows Chicanos only 55.41% in precinct 3 and 50.89% in precinct 4. This plan simply does not allow Chicanos a sufficient majority in either precinct to remedy the past effects of discrimination and lack of political access.

I. Analysis Of Submitted Plan.

In Texas, each county is governed by a County Commissioner's Court. Article V, §18 of the Texas Constitution. Commissioners are elected from one of four precincts. Id. There is no question that the County Commissioner's Court is subject to the one person one vote principle articulated in Avery v. Midland, 390 U.S. 474 (1967). As indicated in the submission, the pre-1978 precinct boundaries were in violation of the one person one vote principle. According to a Bureau of Census split enumeration district study purchased by MALDEF, the population was not evenly distributed among the four precincts:

Precinct No.	No. of Persons	No. of Persons above (+) or below (-) Ideal District of 20,249	% Deviation
1	6,590	1,528 (+)	+30%
2	3,874	1,188 (-)	-23%
3	1,707	3,355 (-)	-66%
4	8,078	3,016 (+)	+60%

ATTACHMENT 22

The total top to bottom deviation was 126%, well beyond the 9.9% recognized in White v. Regester, 412 U.S. 755 (1973) and even the 16.4% allowed in Mahan v. Howell, 410 U.S. 315 (1973)

Apart from violating the one person one vote principle, the Commissioner precincts divided the Chicano population located in the cities of D'Hanis and Hondo into two precincts. According to a voter registration survey conducted by MALDEF staff on October 21, 1977, the Commissioner precincts contained the following Spanish surname breakdown:

Precinct No.	No.of Regis.Voters	Total Spanish Surnames	
1	3,301	1,095	33.2%
2	2,075	309	14.9%
3	863	386	44.8%
4	4,069	968	23.8%
	10,308	2,758	(26.75%)

The city of Hondo was located in Commissioner Precinct No. 1 while the city of D'Hanis was located in Commissioner Precinct 2. Thus if the Chicano barrios of these two cities had been placed into one precinct, the feasibility of electing one Chicano Commissioner would have been increased. To date, there has not been a Chicano Commissioner elected to the County Commissioners Court. This paucity of minority elected officials is especially significant since Medina County contains a population consisting of 48% Chicano.

As a result of MALDEF's study of Chicano underrepresentation at the County Commissioner Court, the County decided to reapportion their precinct lines rather than face a lawsuit. When the reapportionment process was completed, the new plan did not provide Chicano greater access to the County Commissioner's Court. MALDEF does not dispute the census figures submitted by Medina County. Their own census analysis demonstrates that the adopted redistricting is even more pernicious than under the old reapportionment plan. The 1978 plan divides the Chicano community in Hondo into two different Commissioner Precincts. The Chicano barrio is located primarily in enumeration districts 6 and 8. According to the census data submitted by the county, enumeration district No. 6 contains about a total of 1,007 persons of which 91% are Chicanos, while enumeration district No.8 contains 1,670 persons of which 98.9% are Chicano. The other enumeration districts located within the corporate limits of the City of Hondo do not contain overwhelming concentrations of Chicanos:

(1) enumeration district No. 11 contains 157 persons of which 65.6% or 103 are Chicanos; (2) enumeration district No. 10 contains 1,475 persons of which 13.09% or 193 are Chicanos; (3) enumeration district No. 9 contains 1114 persons of which 58.17% or 648 are Chicanos.[1] As the attached enumeration district map indicates, the Chicanos in enumeration district No.6 are placed in Precinct No.1, while the Chicanos in enumeration district No. 8 are placed in Precinct No.3. Clearly this division of the Chicano population will lessen the impact of the minority community on county politics. Attachment No.1

Apart from the intentional fragmentation of the Chicano community, the bare Chicano population majorities in Precincts No.3 and 4 are also discriminatory. According to the County figures, Chicanos comprise 55.41% of the population in Precinct No.3 and 50.89% of the population in Precinct No.4. However the voting age population[2] for these precincts present a different picture:

Commissioner Precinct No.	% of Spanish Americans 21 Years & Over in 1970
1	39.6%
2	29.3%
3	49.0%
4	47.0%

Thus Chicanos will be relegated to a numerical minority in voting participation.

[1]Enumeration district No. 7 contains 64 persons and is thus inconsequential.

[2]The voting age population was obtained for each enumeration district by applying fifth count percentage of Spanish Americans who were 21 years and over in 1970 to the first count totals. See Attachments 2, 3, 4. Since only 50 persons were included in Precinct No.4,(E.D.22)a proportion based upon the percentages found on Tables 1 and 2 was applied.

The above analysis of the 1978 Medina County reapportionment plan indicates that the covered jurisdiction did not take into account the factor of minority voting strength expressed in terms of eligible voter population[3]. This absence of data on minority voting strength indicates that the covered jurisdiction seeks to focus on total population figures per district. Such a focus is misplaced and does not follow the criteria utilized by the United States Attorney General.[4] In United Jewish Organization v. Carey, 97 S. Ct. 996 (1977), The United States Attorney General focused on the concentration of potential minority voting strength within each of the legislative districts under review. The Supreme Court approved of the importance attached to minority voting strength by the Attorney General:

> "Because, as the Court said in Beer, the inquiry under §5 focuses ultimately on 'the position of racial minorities with respect to their effective exercise of the electoral franchise,' 425 U.S., at 141, 96 S. Ct., at 1364, the percentage of eligible voters by district is of great importance to that inquiry....We think it was reasonable for the Attorney General to conclude in this case that a substantial nonwhite population majority - in the vicinity of 65% - would be required to achieve a non-white majority of eligible voters."

97 S. Ct. at 1009 (Footnote omitted).

[3]Part VI of the submission is entitled "Effect on Minority Voting Strength." The only statistics presented in the report involved total population figures and not eligible voter population. See, e.g. pp 22 and 23 of the submission. This absence of voting strength information does not follow the applicable federal regulations which strongly urge the covered jurisdiction to include "(v)oting-age population and the number of registered voters before and after the change, by race, for the area to be affected by the change." 2P C.F.R §51. 10(6)(6)ii) (1976).

[4]CF. Kirksey v. Bd of Sup'rs of Hinds County, Miss., 554 F.2d 139, 150 (5th Cir. 1977) citing Bradas v. Rapides Parish Police Jury, 508 F. 2d 1109, 1112 (5th Cir. 1975) ("We have consistently recognized that 'access to the political process and not population (is) the barometer of dilution of voting strength.")

Clearly the 1978 reapportionment plan does not meet the standards established by the Attorney General and subsequently adopted by the Supreme Court in Carey. According to the 1970 census, Mexican Americans who are eligible voters comprise only 49.07% of the total eligible voter population in Precinct No.3 and 47% of the total eligible voter population in Precinct No.4. These minority voting strength percentages are well below the clear majority of registered voter percentage approved by the Supreme Court in Beer v. U.S. 96 S.Ct. 1357, 1368 at n.7 (1976). (The approved plan contained a minority district of 64.1% Black and 52.6% registered Black voters). Moreover, the total minority population figures per district are well below the 64.1% approved in Beer and the 65% approved in Carey. The 55% minority figure in Precinct 3 and the 50% minority figure in Precinct No. 4 of the submitted redistricting plan simply will not provide minorities with an effective exercise of the electoral franchise.

Apart from this infirmity, the 1978 reapportionment plan is unconstitutional. The plan resembles very closely the reapportionment plan declared unconstitutional in Kirksey v. Board of Supr's of Hinds Cty, Miss., 554 F.2d 139 (5th Cir 1977), cert den. 46 U.S.L.W. 3357 (1977). In Kirksey, the two highest minority districts contained 53.4% Black (District 2) with a 48% eligible minority voter population and 54% Black (District 5) with a 48.6% eligible minority voter population. The District Court focused on the population majorities and concluded that the reapportionment plan offered Blacks a realistic opportunity to elect at least two supervisors. On appeal the Court of Appeals sitting en banc, reversed.

According to the Fifth Circuit, the District Court erroneously focused on population majorities rather than on minority voting strength. Also the District Court's approval of the plan resulted in the fragmentation of a geographically concentrated minority voting community. These two factors played a significant role in the appellate decision to reverse:

> "Where the cohesive black voting strength is fragmented among districts, the presence of districts with bare black population majorities not only does not necessarily preclude dilution but, as a panel of this court pointed out, bare population majorities may actually enhance the possibility of continued minority political impotence.

> .....The supervisors' reapportionment plan, though racially neutral, will perpetuate the denial of access. By fragmenting a geographically concentrated but substantial black minority in a community where block 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 communities. The plan denies rights protected under the Fourteenth and Fifteenth Amendments."

554 F.2d at 150-151

The 1978 Medina County reapportionment, in a similar fashion, fragments the Chicano community and creates bare population majorities in two precincts. The County Commissioners Court was well aware of the plan's impact on the Chicano community. The reapportioning body had access to census data describing the size and location of the minority community. In addition, the Commissioners Court was well aware of the lack of participation by Chicanos in the political processes.

Chicanos in Medina County have simply not participated in local politics.[5] With respect to the county, there has never been a Chicano County Commissioner in recent times. This lack of Chicano representation is evident throughout the county. For example the City of Hondo which contains about a 50% Mexican American population does not have a single representative on the City Council. The remaining cities do not have adequate Chicano representation: Natalia - although 58% of the population is Chicano only 33% (2) of the City Council is Chicano; Castroville - 50% Mexican American population, only 33% (2) representation on the City Council; and Devine - 45% Mexican American population, only 33% (2) representation on the City Council. See Attachment No. 5. A similar paucity of Chicano elected officials occurs at the school district level. See Attachment No.6. This small number of Chicano elected officials is also attributable to the low level of Chicano voter registration. As of October 1, 1977, Chicanos constituted 26.75% of the total voter registration in the county.

[5]This nonparticipation was even evident at the redistricting public meeting. Out of the 104 persons who signed in, only 18 or 17.3% were Mexican-American. See Submission Exhibit 27.

The Court in Kirksey also focused on the existence of racially polarized voting. As in Kirksey there are noticeable patterns of polarized voting in Medina County. For example in the May 1, 1976 Democratic primary, Santos received 50.9% of the votes cast in Precinct No.12 which contained about 49.6% of Spanish Surnamed registered voters. In the runoff elections in June 5, 1976 Santos received 62.7% of the votes cast in Precinct No.12 (49.6% Spanish Surnamed registered voters) and 38.8% of the votes cast in Precinct No. 7 (38.8 Spanish Surnamed registered voters). These voting patterns definitely show a tendency among Mexican American voters to vote for Mexican American candidates. A more conclusive pattern cannot be provided because this apparently was the first time a Chicano ever ran for office in recent times. The only other candidate was a write-in candidate who picked up most of his votes in the Chicano precincts. See Attachments Nos. 7-12.

The presence of racially polarized voting coupled with a paucity of minority elected officials has created a sense of powerlessness in electing Chicanos to public bodies. This sense of powerlessness is also created by a history of discrimination. [6] An example of the type of intimidation and discrimination existing in Medina County can be found in Familias Unidas v. Briscoe, 544 F. 2d. 182 (5th Cir 1976), where a community organization sought to protect the responsiveness of Hondo I.S.D. by conducting a school boycott. The boycott resulted in a request by County Judge Decker for the membership list of the community organization who sought to protest the school's policies. This resulted in a tremendous chilling of First Amendment rights. The most immediate impact was evident in other organizational efforts in the Hondo Chicano community.

[6] Graves v. Barnes, 378 F. Supp. 640, 647 (W.D.Tex 1974) ("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 whose who are trapped by history, are condemned to repeat it. Discrimination in Medina County is not confined to past history. An idea of the attitudes presently shared by segments of the Anglo community is discernible in an exchange between an Anglo citizen and the moderator of the redistricting meeting. During this exchange the Anglo citizen referred to the Chicano representative from MALDEF as "this boy." See Transcript of Feb 10, 1978 meeting at page 65. In addition, an indication of Medina County's responsiveness to the needs of its Mexican American community is evident from the failure of the County to voluntarily reapportion the commissioner precincts to provide Chicanos greater access to the political process. The 1978 reapportionment occurred only after MALDEF threatened to file a lawsuit against the County. See Transcript of Feb 10, 1978 meeting at page 3.

Mrs. Irma Torrez, who was the spokesperson for Familias Unidas, indicated that the Chicano community still remembers the harrassement suffered as a consequence of asserting their First Amendment rights: Chicanos suffered economic reprisals, threats, and even were denied employment for their participation in the school boycott. A more detailed discussion can be found in Plaintiffs' Post Trial Brief which is included as Attachment No. 13.

Apart from discrimination in the First Amendment area, the Chicano community in Hondo suffers from a disparate rendition of municipal services, low public employment, and high drop-out rates in local schools. Statements of Ms. Irma Torrez, Juana Lopez, and Trinidad A. Lopez. These observations by local residents clearly demonstrate that the Chicano community suffers from the continuing effects of past and recent discrimination. Census data merely confirms this powerlessness: median school years completed by Chicano males (5.2 years) is lower than their Anglo counterparts (9.2 years); the median income for Mexican American families ($4,378) is lower than Anglo families ($6,362); the percentage of Mexican American families (42.8%) with incomes less than the poverty level is significantly higher than for Anglo families (24.7%). See Attachment No. 14 for a more complete breakdown.

In summary, although the reapportioning body had information concerning the impact of the plan on the Chicano barrio, the low level of Chicano elected officials at the county and local levels, the low rate of Spanish Surname registration, the existence of racially polarized voting, the existence of a community characterized by poverty and low educational achievements, the county nevertheless chose to divide the barrio and provide bare population majorities in two commissioner precincts. This, of course, dilutes the voting strength of the Chicano community. Such actions clearly rise to the level of discriminatory intent. Washington v. Davis, 96 S.Ct. 2040 (1976); Village of Arlington Heights v. Metropolitan Housing Development Corp., 97 S. Ct. 555 (1976).

The Commissioners' actions in adopting the reapportionment plan merely served to perpetuate this denial of access, a course of action condemned by the Fifth Circuit in Kirksey. These actions become even more pernicious when one examines the existence of alternative plans which could have provided Chicanos with greater access to political processes.

II. MALDEF PLAN

In sharp contrast the proposed plan by MALDEF did not divide the Chicano barrio in Hondo and included the Chicano barrio in D'Hanis. Contrary to the assertions made by the county, the MALDEF proposed plan is contiguous. The following is a description of the MALDEF plan:

	Total Population	Anglo	Mexican/American
PCT. No.1	4,725	3,597	1128 (23.87%)
PCT. No.2	5,006	3,217	1789 (35.74)
PCT. No.3	5,200	1,269	3890 (74.8%)
PCT. No.4	5,318	2,520	2722 (51.2%)

The total top to bottom deviation in this proposed plan is 11.8% (+5.1% in Precinct No.4 and - 6.7% in Precinct No.1), the same as the Medina County plan (+ 6.1% in Precinct No.4 and - 5.7% in Precinct No.3), See Attachment No. 15.

With respect to the voting age population in the MALDEF proposed plan, the most significant improvement is in Precinct No.3. According to the analysis presented in Attachment No.16, the following is a breakdown of the voting age population for each Precinct under the MALDEF plan.

Precinct No.	% of Spanish Americans 21 Years & Over in 1970
1	20.17%
2	29.26%
3	68.3 %
4	47.34%

There are other possible configurations which will increase the percentage of Chicanos within a given commissioner precinct. These other alternatives are included as Attachments Nos. 17-20. The purpose of these alternatives is to demonstrate that better plans providing Chicanos with greater access to the county political processes existed. In fact the MALDEF proposed plan was formally rejected by the Medina County Commissioners Court.

CONCLUSION

In view of the history of minimal participation within Medina County politics, the 1978 reapportionment plan, which divides the barrio into two commissioner precincts and provides a bare majority of Chicanos in Precincts No. 3 and 4, simply is inadequate to provide Chicanos in Medina County with equal access to the County Commissioners Court. The 55% minority figure in Precinct No. 3 does not allow Chicanos a majority of persons who are of voting age population. Without a substantial majority of eligible voters, Chicanos will continue to be relegated to second class citizenship. For these reasons we urge the Department of Justice to issue a letter of objection.

Respectfully Submitted,

Joaquin G. Avila
Associate Counsel

JGA:elc

APR 14 1978

Mr. William T. Armstrong
Foster, Lewis, Langley, Gardner
& Banack
Attorneys at Law
1655 Frost Bank Tower
San Antonio, Texas 78205

Dear Mr. Armstrong:

This is in reference to the apportionment of commissioner precincts in Medina County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on March 13, 1978. In accordance with your request expedited consideration has been given this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. 51.22).

We have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from other interested parties. On the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the submitted apportionment of commissioner precincts in Medina County will not have a discriminatory effect on the minority community of the county.

Our analysis reveals that, according to the 1970 Census, Mexican Americans constitute approximately 47% of the population of Medina County. Under the present plan, the county's population is disproportionately distributed among the four precincts, violating the one person-one vote principle. Mexican Americans constitute 56.69% of the population in Precinct 1 and 49.68% of Precinct 3. While we recognize that the proposed plan substantially remedies the one person-one vote problems in the existing plan, in our view the effect of the new plan is to perpetuate denial of access by Mexican Americans to the political process in Medina County.

cc: Public File
A4881

ATTACHMENT 23

In spite of the Mexican American 56.69% population majority in Precinct 1 that group has been unable to achieve representation on the County Commission. We are, therefore, unable to conclude that the new plan's precincts having 55.66% and 50.89% Mexican-American majorities would serve to remove the political disadvantage currently suffered by the minority community in Medina County. See, e.g., Kirksey v. Board of Supervisors of Hinds County, 554 F.2d 139 (1977).

Under these circumstances, therefore, I must, on behalf of the Attorney General, interpose an objection to the reapportionment plan for Medina County here under submission.

We have noted that widespread publicity was given and public input was invited in connection with the adoption of this plan. We further note that at least two other plans were considered, one of which was offered by the Mexican American Legal Defense and Educational Fund (MALDEF). The MALDEF plan, while noncontiguous due to the inclusion in Precinct 1 of all of several separate segments of Census enumeration district (ED) 7, contains a precinct with a significant Mexican-American majority of 79% and could easily be modified to remove the contiguity problems while only slightly increasing the deviation.

Sections 51.23 to 51.25 of the Attorney General's Section 5 guidelines (28 C.F.R. 51.23-51.25) permit reconsideration of the objection should you have new information bearing on the matter or should the County Commission alter its plan so as to alleviate the dilutive effects discussed above. We are aware of the upcoming elections scheduled for May 6, 1978, and in view of that the Attorney General will be happy to expedite any such request for reconsideration. In any event please notify us immediately, by telephoning Voting Section Attorney David H. Hunter at 202/739-3849, of the action the Commissioners Court plans to take.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change has neither the purpose nor the effect of abridging the right to vote on account of race, color or membership in a language minority group. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court is obtained, the legal effect of the objection by the Attorney General is to render the change in question unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Mexican American
Legal Defense
and Educational Fund

517 Petroleum Commerce Bldg
201 North St. Mary's Street
San Antonio, TX 78205
(512) 224-5476

MALDEF

December 6, 1979

Mr. Gerald Jones, Chief
Voting Section
U. S. Dept. of Justice
Main Justice Building
Washington, D. C.

Re: Medina County, File No. A 4881
MALDEF No. SA-78-5

Dear Mr. Jones:

After failing to secure Section 5 approval for the February 12, 1978, redistricting of the Medina County Commissioner Court Precincts, county officials have submitted a new redistricting plan which incorporates the objectionable features found in the 1978 redistricting plan. The only increase in minority representation is found in Commissioner Precinct No.3 which increased the minority population from 55.41% to 56.88% - a difference of only 1.47%. County official contend that this small difference is not retrogressive and therefore meets the standards established in Beer v. U. S., 425 U. S. 130 (1976).

Apart from misconstruing the precedential effect of Beer, the county's latest submission amply demonstrates the county's discriminatory attitude toward the Mexican American community in Medina County. The 1979 redistricting plan is a blatant attempt to prevent minority representation on the Commissioner's Court. By increasing the minority representations by only 1.47%, the county clearly demonstrates a discriminatory intent to limit chicano political participation as well as documents the county's callous disregard for the protection afforded by Section 5 of the Voting Rights Act. For these reasons, MALDEF is urging a letter of objection against the 1979 redistricting plan on the grounds that the plan dilutes the voting strength of the minority community and that the plan was adopted with a discriminatory intent. 1/

1/ MALDEF recently filed a Section 5 enforcement proceeding against Medina County. The purpose of the lawsuit is to enjoin any additional elections until a non-discriminatory plan is adopted.
(Footnote continued)

ATTACHMENT 24

National Office
28 [illegible] Street
San Francisco, CA 94103
(415) 543-5220

Regional Offices
250 W. Fourteenth Avenue
Suite 308
Denver, CO 80204
(303) 893-1893

[illegible]
Suite 319
Los Angeles, CA 90017
(213) 383 6952

517 Petroleum Commerce Bldg
201 North St. Mary's Street
San Antonio, TX 78205
(512) 224-5476

1411 K Street, NW
Suite 300
Washington, DC 20005
(202) 393-5111

I.
The 1979 Redistricting Plan Violates
the Substantive standards of Section 5

As previously mentioned, the plan violates Section 5 because the plan dilutes the voting strength of the minority community and was adopted with a discriminatory intent. A review of the minority concentrations in each of the Commissioner Precincts for the 1979 plan and previous reapportionments clearly demonstrates this dilutive impact.

Pct. No.	Pre-1978 Plan %Mex.Amer.	1978 Plan %Mex.Amer.	1979 Plan %Mex.Amer.
1	56.69	46.31	44.43
2	33.61	35.74	35.74
3	49.68	55.41	56.88
4	45.10	50.89	50.89

As with their previous reapportionment plan, the minority community was distributed in such a manner so that no Commissioner Precinct contained at least a 65% minority concentration. Moreover, the 1979 plan continues the division of the chicano barrio in Hondo into two different Commissioner Precincts. 2/ This intentional fragmentation of an active chicano barrio constitutes dilution.

As with the 1978 redistricting plan, chicanos do not constitute a majority of the eligible voter population in any of the Commissioner Precincts. (See page 3 of the previous MALDEF comment). As with their 1978 submission, the county has failed to provide a description of the minority eligible voter population in each of the

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(Footnote 1/ continued)

Garcia, III v. Decker, Civ. Act. No. SA-79 CA 414 (W.D.Texas complaint filed October 25, 1979). The complaint is listed as Attachment No. 1.

2/ On April 5, 1979, MALDEF submitted a comment urging a letter of objection to the 1978 redistricting plan. Since the 1978 and 1979 redistricting plans are almost identical, we refer you to the previous comment for a detailed analysis of the plan, for statistics on racially polarized voting, and for information on the discriminatory treatment of Mexican Americans in Medina County.

Commissioner Precincts as suggested by 28 C.F.R. §51.10 (b) (6) (11). 3/

When measured against applicable Supreme Court and 5th Circuit decisions, the 1979 plan violates Section 5 as well as constitutional standards: the plan does not provide a commissioner Precinct containing minority population concentrations of 64.1% approved in Beer, supra, and 65% approved in U.J.O. v. Carey, 97 S.Ct. 996 (1977). - both of these cases involved the application of Section 5; the plan resembles the reapportionment declared unconstitutional in Kirksey v. Bd. of Supr's of Hindo City, Miss., 554 F.2d 139 (5th Cir.1977) (en banc), cert denied, 98 S.Ct. 512 (1977) - the plan intentionally fragments a geographically cohesive minority voting community. When the plan is superimposed on a county where racially polarized voting exists, there will continue to be no Mexican American representation on the County Commissioner's Court. Clearly under these circumstances the 1979 plan dilutes the voting strength of the Mexican American community in Medina County. To prevent this obvious attempt to discriminate against the minority community, the Department of Justice should issue a letter of objection.

In their submission, the county contends that the Department of Justice has incorrently incorporated a constitutional analysis into a Section 5 determination. As support for this proposition, the county refers to the non-retrogressive standards stated in Beer. According to the county's interpretation, preclearance should be granted if the new plan is not more discriminatory than the plan it is replacing. Thus a plan which violates applicable constitutional standards should be precleared if the newly adopted plan merely improves minority representation in a given Commissioner Precinct. Such a construction is not supported by Beer. In fact Beer cearly stated that constitutional considerations would also govern a Section 5 analysis:

3/ On page 14 of the submission, county officials refer to the plan as giving minorities a majority of votes. However, there are no statistics given to support this claim. The county official confused population with eligible voting population.

> It is thus apparent that a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the "effect" of diluting or abridging the right to vote on account of race within the meaning of §5. We conclude, threfore, that such an ameliorative new legislative apportionment cannot violate §5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution. 425 U. S. at 141 (emphasis added).

In addition, the United States Attorney General in evaluating Section 5 submissions has consistently applied dilution principles established by pertinent federal precedent. This administrative practice is entitled to judicial deference given the central role of Attorney General in enforcing the preclearance provisions. See Dougherty Cty., Ga. v. White, 99 S.Ct. 368 (1978). Thus the county's assertion that constitutional consideration should not be implemented in evaluating an election submission is simply in error. It would indeed be anomalous if a redistricting plan could be precleared pursuant to Section 5 and yet be blatantly unconstitutional. Such a result was clearly not envisioned by Congress when the Voting Rights Act was extended in 1975.

Even when measured against a pure ameliorative standard, the 1979 redistricting plan violates Section 5. Commissioner Precinct No. 1 had a Mexican American concentration of 46.31% under the 1978 plan. Under the 1979 plan this percentage dropped to 44.43%. In summary, the 1979 redistricting plan is clearly objectionable on the grounds that the plan dilutes the Mexican American voting strength and that the 1979 plan was not ameliorative as defined in Beer.

The 1979 redistricting plan is also objectionable because the plan was enacted with a discriminatory intent. Clearly the County was placed on notice that a redistricting plan which did not provide a substantial majority of chicano eligible voters, would not secure Section 5 preclearance. In the instant case, the county was well aware of the minority community opposition to the plan. See Attachment No. 2 (petition expressing opposition to the 1979 redistricting plan). MALDEF and other community representatives expressed their opposition to the 1979 plan. Yet, in

complete disregard of the letter of objection to the 1978 plan and community opposition, the County adopted a plan which increased minority representation by only 1.47%. Such actions constitute an unmistakable intent to discriminate against the chicano community in Medina County.

III. Conclusion

The 1979 redistricting plan is a blatant attempt to prevent Mexican American representation on the Medina County Commissioners' Court. Apart from being adopted with a discriminatory intent, the plan unconstitutionally dilutes the voting strength of the minority community. In view of the history of discrimination against Mexican Americans in Medina County and the previous letter of objection issued by the Department of Justice, we strongly urge the Department of Justice to stop this obvious effort to disenfranchise the minority community and issue a letter of objection. 4/

Sincerely,

Joaquin G. Avila
Associate Counsel

JGA/mg

4/ An alternative redistricting plan will be forwarded to your office under separate cover.

William T. Armstrong, Esq.
Foster, Lewis, Langley,
Gardner & Banack
1655 Frost Bank Tower
San Antonio, Texas 78205

11 DEC 1979

Dear Mr. Armstrong:

This is in reference to the redistricting of county commissioner precincts, justice of the peace precincts and voting precincts in Medina County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on October 12, 1979.

We have given careful consideration to the information you have provided as well as to that available from Bureau of the Census data and from other interested parties. Our analysis reveals that the proposed change in the line dividing Commissioner Precincts 1 and 3 does little to change the situation to which the Attorney General interposed an objection on April 14, 1978. A comparison of the 1979 plan with the 1978 plan reveals an increase in the minority population of 1.47 percent in proposed Precinct 3. When compared with the only legally enforceable plan (pro-1978), an increase of 7.20 percent (49.68 to 56.88) is noted in Precinct 3, while Precinct 1 has been reduced by 12.26 percent from 56.69 percent to 44.43 percent in minority population.

As we indicated in our letter of April 14, 1978, Mexican Americans have been unable to achieve representation on the County Commission with a population majority of 56.69 percent in existing Commissioner Precinct 1. An increase of .19 percent as represented by the 56.88 percent total minority population in Precinct 3 would hardly seem to change this situation. Although Mexican Americans will have a population majority in Precinct 3, they likely will be unable to elect a candidate of their choice because of the fall-off in that percentage due to a smaller voting age population and a lower registration rate among Mexican Americans, and because of the racially polarized voting pattern that seems to exist in Medina County.

cc: Public File

ATTACHMENT 25

In addition, as indicated in our letter of April 14, 1978, it has been demonstrated that the minority population of Medina County is concentrated in such a way as to make it possible to develop a plan that would include a district which would include a minority percentage of the population at a level that would assure minority voters meaningful access to the political process. See, e.g., Mississippi v. United States, C.A. No. 78-1425 (D. D.C. June 1, 1979) and United Jewish Organizations v. Carey, 430 U.S. 144 (1977). Furthermore, we have been presented with no justification for the continued substantial fragmentation of the Mexican American community in the City of Hondo.

Under Section 5 the submitting authority has the burden of proving that the change in question is neither retrogressive nor unconstitutional with respect to protected minorities. Beer v. United States, 425 U.S. 130, 141-142 (1976). Under the circumstances I must conclude that, for the same reasons described in my letter of objection of April 14, 1978, Medina County has again failed to sustain its burden of proof. Therefore, on behalf of the Attorney General, I must object to the submitted reapportionment plan.

With regard to the changes in the justice of the peace precincts and the voting precincts, no determination will be made at this time pending resolution of the redistricting issue since the realignments of the justice of the peace and voting precincts are dependent upon the change in Commissioner precinct lines.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting of the commissioner precincts legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Donna Clarke (202--724-7440) of our staff, who has been assigned to handle this submission.

Sincerely,

DREW S. DAYS, III
Assistant Attorney General
Civil Rights Division

Legal Defense and Educational Fund

201 North [illegible] Street
San Antonio, [illegible] 78205
(512) 224-5476

MALDEF

December 4, 1980

Mr. Gerald Jones
Voting Section
U.S. Dept. of Justice
Main Justice Building
Washington, D.C. 20530

Re: Medina County Redistricting
DOJ File No. A 4881

Dear Mr. Jones:

Medina County recently submitted the latest in a series of redistricting plans for Section 5 review. Although the plan increases the minority population in district 3 to 67%, MALDEF opposes the plan because the submitting authority has failed to meet its burden under Section 5. Medina County has failed to demonstrate the absence of a discriminatory purpose in adopting the plan. Moreover, the plan has a retrogressive effect on minority voting strength in Medina County. MALDEF, therefore, urges the Department of Justice to issue a letter of objection in this case.

I. Section 5 Standards

Section 5 of the Voting Rights Act requires preclearance by the Attorney General or the United States District Court for the District of Columbia of any changes in a "standard practice or procedure with respect to voting" made after November 1, 1972. 42 U.S.C. §1973(c)(1975). A districting plan subject to Section 5 may not be precleared unless both discriminatory purpose and effect are absent. City of Rome v. U.S., 100 S. Ct. 1548, 1559 (1980). Moreover, the submitting authority has the burden of proving both the lack of discriminatory purpose and effect. Beer. v. U.S., 96 S. Ct. 1357, 1363 (1976).

ATTACHMENT 26

The controlling factor in proving a lack of discriminatory purpose is whether there are objectively verifiable, legitimate reasons for the election change. City of Richmond, Va. v. U.S., 95 S. Ct. 2296, 3206 (1975). 1/ Courts will gauge the validity of the asserted justification by determining whether alternative options satisfy the asserted justification without having a discriminatory impact. Wilkes County, Ga. v. U.S., 450 F. Supp. 1168 (D.D.C. 1978). The Court in Wilkes reviewed, pursuant to Section 5, a change from single member districts to at-large elections of County officials. According to county officials the election change was necessary to comply with the one person one vote principle. 450 F. Supp. at 1175. However, the Court examined the asserted justification and did not find the reason to be legitimate:

> The Plaintiffs do not satisfy the burden of proving the absence of discriminatory purpose by merely stating that the change from single member districts to elections at-large was done to satisfy one person one vote reqirements. This is because the record demonstrates that alternate options for satisfying one person one vote standards were available and the record does not demonstrate the reason for selecting the at-large method over other options. Such is particularly true in this case since it appears that the at-large method would retain black voting strength at a minimum level while alternate options would enhance black voting strength.

1/ Other factors which may shed light on the intent of the submitting authority include:

a) the historial background of the decision;

b) the sequence of events leading to the decision;

c) the impact of the decision;

d) the existence of a pattern inexplicable on grounds other than race;

e) any departures in normal procedural sequence; and,

f) any contemporary statements made by the decision makers.

Vil. of Arlington Hts. v. Metro Housing Dev., 97 S. Ct. 555, 564-565 (1977).

450 F. Supp. 1177-1178. (emphasis added).

Thus, alternative options satisfying the asserted justification without a corresponding discriminatory impact can offset a political entity's reasons for adopting an election change having a discriminatory impact.

In guaging the discriminatory effect of an election change under Section 5, the submitting authority must show the change will not " . . . lead to a retrogression . . ." in minority voting strength. Beer, supra. Regrogression is usually measured by comparing the new election change with the pre-existing election scheme. However, should the pre-existing election scheme be unconstitutional, the new election change must be compared with a non-discriminatory election scheme. Wilkes, supra. The county officials in Wilkes asserted the change had a racially neutral effect because black voters were not in a position to control any of the previously malapportioned single member districts, 450 F. Supp. at 1176. The court nevertheless found the plan retrogressive. 450 F. Supp. at 1178. The Court applied Beer, supra, by measuring the at-large election scheme against a fairly drawn single member district plan rather than the malapportioned prior plan. 450 F. Supp. at 1178. Such a comparison showed the racially discriminatory effect of the at-large election scheme. 450 F. Supp. at 1178.

II. Application of Standards to Medina County

A. Purpose

The Medina County Commissioners Court adopted the current plan pursuant to a discriminatory purpose. The precedent established by Wilkes, Richmond, and Arlington Heights compels this conclusion. As in Wilkes, Medina County has maintained that the purpose of the adopted redistricting plan was to satisfy one person one vote requirements. As in Wilkes, this rationale falls short in meeting the County's burden under Section 5, because: (1) the plans adopted consistently divided the Chicano community in Hondo; (2) the county refused to adopt alternative plans enhancing minority voting strength; and (3) other actions of the Commissioners indicate a racial motive in adopting the present redistricting plan.

In drawing their districting plans, the County has consistently split the Chicano community in Hondo. The current plan is no exception. Although ED9 appears to have an even split in ethnic population, segregated housing patterns result in a predominantly Chicano barrio in the portion of ED9 north of Highway 90. See Briscoe dep. pp. 23-24. Census data reveals that

both EDs 6 and 8 are over 90% Chicano. The current plan draws a line through the Chicano barrio in Hondo by placing ED9 into the predominantly Anglo district while putting EDs 8 and 6 in a different district.

As in Wilkes, Medina County has consistently resisted options that would enhance minority voting strength 2/ while complying with the one person one vote principle. Moreover these plans avoid splitting the Chicano barrio in Hondo. In summary, clearly the county was aware of alternative options satisfying the one person one vote principle which did not have a discriminatory impact. Nevertheless the county adopted a redistricting plan minimizing minority voting strength. Such actions amount to a discriminatory purpose.

The failure of the county to adopt a more satisfactory option is even more suspect when several of the Village factors, which surfaced during discovery in Medina County v. U.S., are considered. The record reveals, for instance, instructions to Medina County's hired consultant to draw plans without reducing minority populations in any of the districts. This, of course, resulted in no increases in minority populations in any of the districts. Zuebueler Dep. pp. 46, 48; Decker Dep. pp. 66, 92. In fact the commissioners admitted that any significant increase in Chicano population in any of the districts would be totally unacceptable. Decker Dep. pp. 15, 16, 39. Community imput has been maintained at minimum levels. Although the County Judge admitted it would take him at least ten (10) days to properly analyze a districting plan, the Chicano community was given less than 48 hours to analyze the county's first plan. Decker Dep. pp. 41-43, 93-97. Finally, the county's lawyers and consultant submitted a plan to the commissioners calling for a 69% district. The reaction of the Commissioners was to reduce the minority population in that district. In conclusion Medina County's continued insistence on dividing the Chicano barrio in Hondo coupled with the County's refusal to adopt fair options suggest the presence of a discriminatory motive. Under these circumstances the county has failed to meet the Section 5 burden of demonstrating

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2/ Both MALDEF and the Department of Justice have suggested plans which could enhance minority voting strength while complying with the one person one vote principle. MALDEF's latest alternative plan has two districts where Chicanos would have significant impact on the election process. One district is 77% Chicano and the other is 59% Chicano while the top to bottom deviation is less than 1%. See Attachment No. 1.

the lack of a discriminatory purpose.

B. Discriminatory Effect

The plan submitted by Medina County has a discriminatory effect on minority voting strength. The retrogressive nature of the plan is evident when measured against the MALDEF plan. Since the pre-1978 plan is admittedly severly malapportioned retrogression should be measured by comparing the latest plan with other options which fairly apportion the county. Wilkes, supra. The MALDEF plan evenly distributes the total population of the county. The total top to bottom deviation in the MALDEF plan is less than 1%. Under the County plan the Chicano community in Hondo is split. Under the MALDEF plan it is not. Under the County plan the Chicanos have a good opportunity to affect the outcome of the election in one district. Under the MALDEF plan Chicanos can significantly impact elections in two districts. 3/ Based on the application of Wilkes, therefore, the County's plan plainly has a discriminatory effect.

C. Polarized Voting.

Racially polarized voting exists in Medina County. MALDEF's election analysis as well as testimony given by the Commissioners during discovery in Medina Co. v. U.S. confirms the existence of racial bloc voting.

In a 1980 countywide race where a Chicano candidate was opposed by an Anglo candidate, there is a high correlation between the percent of spanish surnamed voters and the percent of votes received by the Chicano candidate. Attach. 2-4. Moreover, in the City of Hondo, where Chicanos were opposed by Anglos in council races for 1978, 1979, and 1980, the percent of spanish surnamed voters is almost identical to the percent of votes received by the Chicano candidates. Attach. 5-7.

The testimony given by the Commissioners during depositions in Medina County v. U.S. also supports the existence of racially polarized voting. When questioned on their reaction to plans calling for significant minority districts, the commissioners rejected these plans. The basis of the opposition to the plans was the reduced likelihood of success for Anglo candidates in those districts. Briscoe Dep. pp. 35-37. Decker Dep. pp. 60-63. Zueberbueler Dep. pp. 42-43. In fact, Commissioner Briscoe

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3/ Although almost 50% of the population in Medina County is Chicano, Chicanos have never been elected to the Commissioner's Court. The submitted plan has only one district where Chicanos compose over 50% of the voting age population. Under the MALDEF plan precinct 3 has 71% Chicano voting age population and pct. 4 has a 55% Chicano voting age population.

acknowledges the existence of racial bloc voting. Briscoe Dep. pp. 42-44, 54-55. Considering the foregoing, the existence of racial bloc voting cannot be denied.

III. Conclusion

The presence of racial bloc voting coupled with a paucity of minority elected officials and low voter registration rates 4/ creates a sense of powerlessness in electing Chicanos to public office. Gerrymandered districting plans aimed at maintaining this harness on Chicano voter participation should not be sanctioned through Section 5 approval. The record of the county's attempts to purposefully implement discriminatory districting plans is obvious. The discriminatory effect of the latest submission is easily discernable. MALDEF, therefore, resolutely calls upon the Department of Justice to issue a letter of objection to the latest submitted districting plan for Medina County Commissioners Precincts.

Respectfully submitted,

Jose D. Garza /ga.
Jose D. Garza
Staff Attorney

4/ See MALDEF comment dated April 5, 1978 on prior Medina County Submission at p. 6.

WEEKLY REPORT [✓]

SUMMARY [ ]

ret. 4/15/76
JSP:GWJ:JMF:rm:peb
DJ 166-012-3
X3589-3590

April 16, 1976

Mr. James W. Smith, Jr.
County Attorney
Frio County
P. O. Drawer V
Pearsall, Texas 78061

Dear Mr. Smith:

This is in response to your letter of January 19, 1976, in which you submitted to the Attorney General resolutions of the Frio County Commissioners' Court of July 13 and August 13, 1973, which redistricted the four commissioner precincts and established new voting precincts, respectively, pursuant to Section 5 of the Voting Rights Act of 1965. Your letter and the attached materials were received by this Department on February 23, 1976.

We have considered the submitted changes and supporting materials as well as information and comments received from other interested parties. Our review and analysis show that the commissioner precinct lines as drawn unnecessarily dilute Mexican-American voting strength in the county. According to the 1970 Census, Frio County is 69.1% Mexican-American, 29.8% Anglo and 1.1% black. According to information available to us, proposed Commissioner Precinct 3 is approximately 97% Mexican-American and deviates from the norm of an ideal (population) district of 2,790 by 499, thereby exceeding the norm by 17.9%. Meanwhile, Commissioner Precinct 2, approximately 60% Anglo, is 674 (-242) people under the norm. Thus, it would appear that the precinct with the highest percentage of Mexican-Americans is the most under-represented while the precinct with the highest percentage of Anglos is the most overrepresented.

cc: Records
Chron
Fallon
Turner
Wright
Public File

Our analysis further reveals that there is a history of ethnic bloc voting in Frio County. There is substantial evidence, including the absence of any Mexican-American representation on the 8-member reapportionment committee responsible for the plan under review, that Mexican-Americans are not afforded access to the political process in Frio County. When all of these considerations are noted, together with the configuration of the plan, particularly the elongated shape of Precinct 1 which emerges with only a 48% Mexican-American population, we cannot conclude, as we must under the Voting Rights Act, that this reapportionment does not have the purpose or effect of abridging the right to vote of the Mexican-American citizenry.

Accordingly, in view of our analysis and recent court decisions to which we feel obligated to give great weight, e.g., White v. Regester, 412 U.S. 755 (1973); Robinson v. Commissioners' Court, Anderson County, 505 F.2d 674 (1974), I must, on behalf of the Attorney General, interpose an objection to the 1973 redistricting of Frio County. In addition, since it is our understanding that state law requires that voting precinct lines conform with commissioner precinct lines, this objection also renders unenforceable any resulting changes in voting precincts.

Of course, as provided by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia seeking a declaratory judgment that the present submission does not have the purpose and will not have the effect of denying or abridging the right to vote to members of a language minority group in the county. However, until and unless such a judgment is obtained, the 1973 Frio County redistricting plan is legally unenforceable. Therefore, since it is our

understanding that primary elections are scheduled for two commissioner precincts on May 1, 1976, I would appreciate your advising me by April 23, 1976, of the steps you intend to take with respect to that election.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

RECEIVED
JUN 15 1979
MALDEF
SAN ANTONIO

United States Department of Justice
WASHINGTON, D.C. 20530

ASSISTANT ATTORNEY GENERAL

JUN 11 1979

Mr. Robert M. Collie, Jr.
City Attorney
City of Houston
Legal Department
Post Office Box 1562
Houston, Texas 77001

Dear Mr. Collie:

This is in reference to the annexations and disannexations by the City of Houston, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on April 12, 1979. Although we have attempted to make our determination with respect to this submission on an expedited basis, we have been unable to respond until this time.

To determine that a change in the composition of a city's population resulting from annexations does not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group the Attorney General must be satisfied either that the percentage of members of a racial or language minority group in the city has not been appreciably reduced, that voting is not polarized between racial or language groups, or that, nevertheless, the city's electoral system will afford minority groups "representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. 358, 370 (1975).

To apply this legal standard to this submission we have carefully examined the information you have provided with respect to this submission, information provided by other interested persons, information in our files with respect to prior submissions by the City of Houston, and information in the record in Greater Houston Civic Council v. Mann, 440 F. Supp. 696 (S.D. Tex. 1977), pending on appeal, No. 77-2083 (5th Cir.).

According to the statistics you have provided, the submitted annexations have proportionally reduced the black population in the City of Houston from 26.0 percent to 24.8 percent, a reduction of 1.2 percentage points, and have reduced the Mexican American population from 14.0 percent to 13.5 percent, a reduction of 0.5 percentage points. Based on the relevant court decisions and in view of the relevant characteristics of the City of Houston, we find such reductions to be legally significant. See City of Richmond v. United States, 422 U.S. at 368-70; City of Petersburg v. United States, 354 F. Supp. 1021, 1028-29 (D.D.C. 1972), affirmed, 410 U.S. 962 (1973); City of Rome v. United States, C.A. No. 77-0797 (D.D.C. 1979), slip opinion at 63-64.

Our analysis of the statistics you have provided with respect to the voting patterns of different groups in the City of Houston and of precinct election returns for City elections reveals the frequent occurrence of polarized voting between blacks and whites and between Mexican Americans and whites. For example, in the 1977 election for the council position for majority black District D, 64.0 percent of the white voters but only 11.6 percent of the black voters voted for the white incumbent, Homer Ford, instead of for one of his three black challengers. See City of Richmond v. United States 376 F. Supp. 1344, 1348, 1356 (D.D.C. 1974), reversed on other grounds, 422 U.S. 358 (1975); City of Petersburg, 354 F. Supp. at 1025-26; City of Rome, slip opinion at 9-13, 64-66.

Although approximately two of every eight residents of the City of Houston are black, and approximately one of every eight residents is a Mexican-American, only one black, and no Mexican-American, has ever served on the eight-member City Council under the present electoral system.

Finally, a consideration of elections in the City of Houston, of the responsiveness of the City to the concerns and needs of blacks and Mexican Americans, and of the views of blacks and Mexican Americans and their representatives, leads to the conclusion that the present electoral system, under which all members of the City Council are elected in citywide elections, will not afford blacks and Mexican Americans "representation reasonably equivalent to their political strength in the enlarged community." City of Richmond, 422 U.S. at 370. See City of Petersburg, 354 F. Supp. at 1025-27; City of Rome, slip opinion at 7-9, 64-66.

Thus none of the three conclusions that would support a determination that the annexations do not have a discriminatory effect can be reached. I am unable to conclude, therefore, as I must under the Voting Rights Act, that the submitted annexations will not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group.

Nevertheless, the two deannexations (Ordinance Nos. 78-2671 and 77-2197) and one annexation (Ordinance No. 77-2402) do not involve populated areas, and two annexations involve areas with substantial minority populations (Ordinance Nos. 77-2354 and 78-2380). With respect to the two deannexations and to these three annexations the Attorney General, accordingly, does not interpose any objection. (We feel a responsibility to point out, however, that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.)

With respect to the voting changes occasioned by the remaining fourteen annexations (Ordinance Nos. 77-1668, 77-2353, 77-2355, 77-2356, 77-2357, 78-2378, 78-2381, 78-2382, 78-2383, 78-2384, 78-2385, 78-2386, 78-2387, and 78-2388), because of the conclusion we have reached, I must, on behalf of the Attorney General, interpose an objection pursuant to Section 5.

Should the City of Houston adopt an electoral system in which blacks and Mexican Americans are afforded "representation reasonably equivalent to their political strength in the enlarged community" the Attorney General will consider withdrawal of this objection. Our analysis indicates that one such system would include the election of some members of the City Council from single-member districts, if the districts are fairly drawn and if the number of districts is sufficient to enable both blacks and Mexican Americans to elect candidates of their choice. See City of Richmond, 422 U.S. at 370-73; City of Petersburg, 354 F. Supp. at 1027, 1031; City of Rome, slip opinion at 65-70.

I wish to stress that this determination relates only to the voting changes occasioned by the annexations in question. The objection to the implementation of such changes does not affect the validity of the annexations themselves.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the changes affecting voting resulting from these annexations have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until the such a judgment is obtained from the District of Columbia Court, the effect of the objection by the Attorney General is to make the voting changes resulting from these annexations legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Mexican American
Legal Defense
and Educational Fund

201 North St. Mary's Street
San A[illegible] TX 78205
(512[illegible] 5476

MALDEF

December 6, 1978

Mr. Gerald Jones
Voting Section
Civil Rights Division
U. S. Dept. of Justice
Washington, D.C. 20530

In re: Terrell County, Texas
DOJ File No. X 9129

Dear Mr. Jones:

Terrell County, Texas as the result of a Section 5 lawsuit filed by MALDEF has forwarded for preclearance the November 12, 1973 redistricting of the County Commissioner Precincts. Based on our evaluation of the plan, Mexican Americans will continue to be unrepresented on the County Commissioners Court unless the United States Attorney General objects to the election change.

I. Background And Analysis

According to the 1970 census, Terrell County had a total population of 1,916 persons of which 834 or 43.5% were Chicano. However, the special census conducted in August, 1978 reflects a decrease in total population. Based on the new census, there are 1,544 persons of which 648 or 42.0% are Chicano. 1/ Yet despite this substantial minority population, there has never been a Mexican American elected to the post of county commissioner.

The basis for this complete absence of minority elected officials is due to the gerrymandering of the Chicano community into several precincts and the accompanying low level of minority political participation.

The Mexican American population has very little experience in running for office. According to our informal survey, the first time a Mexican American ran for the post

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1/ In our analysis we are including the data on aliens into the Mexican American category. Since there was no explanation as to how persons were determined to be aliens, we do not place any great accuracy in these figures. In any event, this inclusion of aliens will not significantly alter the percentages obtained in our analysis.

ATTACHMENT 29

of county commissioner was in 1978. This low level of political participation is reflected in a voter registration survey conducted by the Southwest Voter Registration and Education Project. Attachment No. 1. The results of the survey indicates that Mexican Americans constituted only 28.5% of the actual registered voters.

On site interviews with members of the Chicano community reveal that the minority community is not successful in increasing political participation because of the control exercised by several Anglo families. This Anglo control has resulted in a system of government which is not conducive to the election of minority officials. In the county's submission, the previous reapportionment plan contained a precinct which had well over 90% of the county's population. Clearly such a gross violation had a drastic impact on minority political participation. Simply stated, Chicanos did not run for office. The impact of the pre-1973 redistricting plan was obvious to the county commissioner's court. Yet the county did not redistrict until 1973, well over 5 years after Avery v. Midland, 390 U. S. 474, 88 S. Ct. 1114 (1968) extended the one person one vote principle to county governments.

However, the 1973 redistricting only continues this minority political underrepresentation. According to the submission, the following is a population breakdown of the current redistricting plan.

Pct. No.	Total Population	% Mexican American
1	417	44%
2	373	76%
3	432	10%
4	322	39%

An analysis of these figures reveals two constitutional objections. First there is an impermissible total deviation of 28%. Clearly such a plan is in violation of the one person one vote principle. Second, the voting strength of the Chicano population is diluted among Precinct Nos. 1, 3, and 4.

The basis of this dilution is the distribution of blocks containing a significant Chicano population among the three precincts. Specifically in Precinct No. 1, Blocks 35, 36, 39, 48, 106/37, and 111 are separated from the central core of the Chicano community; Precinct No. 4 had blocks 119, 120, 128, and 129; while Precinct No. 2 has blocks 38, 49, 52, 112, 113, 121, and 114. Such a division of a cohesive geographically concentrated community is clearly unconstitutional:

> "The most crucial and precise instrument of the Commissioners' denial of [a]. . .minority's equal access to the political participation, however, remains the gerrymander of precinct lines so as to fragment what could otherwise be a cohesive voting community. . . . This dismemberment of the . . .[minority] voting community. . .had the predictable effect of debilitating the organization and decreasing the participation of black voters."

Robinson v. Commissioners Court, Anderson County, 505 F. 2d 674, 679 (5th Cir. 1974).

The present redistricting plan only serves to continue the exclusion of minority representation on the county commissioners' court. Unfortunately population figures for the pre-1973 redistricting plan are unavailable. Thus no meaningful comparison can be made between the newly enacted election change and the previous reapportionment plan. Consequently the plan's impact must be evaluated in terms of its present effect on Mexican American political participation. Clearly under the previous reapportionment, Mexican Americans never ran for office. Under the 1973 plan, only one Mexican American has even attempted to run. His election was unsuccessful and was characterized by patterns of racially polarized voting. The following table will demonstrate this phenomenon:

Pct. No.	Total Regis.	Span.Sur.	%	Votes Cast for Span. Sur. Candidates	Votes Cast for Anglo Candidates
2	192	125	65.1%	71 (47%)	81 (53%) 2/

Thus the only attempt by a Mexican American to run for office was characterized by racially polarized voting which contributed to the defeat of the Chicano candidate. Under these circumstances, the minority voting strength is diluted:

2/ This election occurred in May, 1978 in the Democratic Party primaries. Alberto Escamilla was the unsuccessful candidate. To the best of our information, this is the only instance a Mexican American has run for county commissioner. This information was not obtained from the county, since a clerk for the county indicated that party primary results were not available in the county clerk's office. The results of this party primary were taken from the Sanderson Times, a local newspaper.

> "The supervisors' plan fragments a geographically concentrated minority voting community in a context of bloc voting. On its face, such a plan has a predictable tendency. Like a multimember plan, it tends to dilute the voting strength of the minority.
>
> . . . .
>
> 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. The plan denies rights protected under the Fourteenth and Fifteenth Amendments.

Kirksey v. Bd. of Sup'rs. of Hinds Cty., Miss. 554 F. 2d 139, 149 & 151 (1977).

Another method to determine the present impact of a reapportionment plan on minority voting participation is to review other plans which would have provided the Mexican American community with greater access to the political processes. The plan proposed by MALDEF, in sharp contrast to the county's reapportionment plan, does provide greater access to the minority community. Due to time constraints, we were able only to draft two districts for the minority community. The detailed population breakdown is provided in Attachment No. 2. According to our plan, District A has a 74% minority population and a +4.7% deviation, while District B has a 66.5% minority population and a +.5% deviation. The main difference between the MALDEF plan and the county reapportionment plan is the concentration of the minority community into two districts. In our estimation, if such a plan is adopted pursuant to court order, minorities will start to run for office. Moreover, in conjunction with our efforts the Southwest Voter Registration and Education Project will support registration drives in the minority community to increase the number of Chicano registered voters.

VI. Court Litigation

As previously mentioned, Terrell County is the subject of litigation. Although the Voting Rights Act was extended to Texas on September 23, 1975, Terrell County did not submit its reapportionment plan until our Section 5 enforcement proceeding was filed.

This lawsuit was necessary since the county apparently did not intend to submit this plan for approval. As a result of our inquiries, we informed the Department of Justice of the failure to submit by Terrell County. The Department of Justice on December 8, 1976, informed the County of its obligation to submit the re-apportionment plan. Attachment No. 3. However the county ignored the request by the Department of Justice. Only after the complaint was filed did the County submit the election change.

The necessity for this court action is indicative of the county's responsiveness to the minority community. The Mexican American community is in dire need of assistance with well over 44% of the Chicano families below the poverty level as compared to the county wide average of 23.6%. The median income level for Chicano families is $3,719 while the county wide median income figure was $6,577. With respect to educational achievement of persons who are over 25 years of age, Mexican American males have a median school year level of 6.4 years while Mexican American females have a level of 5.4 years — the county wide level is 10.6 years. These statistics indicate that Terrell County must demonstrate more responsiveness to the particularized needs of the Mexican American community. Unfortunately if history is any indication of future performance, the Terrell County Commissioners' Court will need minority representatives before the county government will be responsive to the particularized needs of the Mexican American community.

In conclusion the 1973 redistricting plan cannot be viewed as an ameliorative election change solely because the current plan now has one minority commissioner precinct whereas before there were none. The 1973 redistricting plan cannot be viewed as ameliorative when the plan impermissibly dilutes the minority community by dividing them into several precincts. The current plan assures that half of the minority community will have no impact on the political processes. Clearly under these circumstances, the plan cannot be designated as a positive improvement especially when there is a total population deviation of 28%.

For these reasons, we strongly urge the Department of Justice to issue a letter of objection. With this letter of objection, the Mexican American community will be able to pursue the ongoing litigation and secure the adoption of a plan which will provide greater access to the political processes.

Sincerely,

Joaquin G. Avila
Associate Counsel

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Attachments

DEC 27 1978

Mr. Lucius D. Bunton
Shafer, Gililland, Davis,
Bunton & McCollum
Attorneys at Law
First National Bank Building
Post Office Drawer 1552
Odessa, Texas 79760

Dear Mr. Bunton:

This is in reference to the reapportionment of commissioner precincts, polling place changes, addition of voting precincts and additional locations for absentee voting in 1975, in Terrell County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on October 28, 1978. In accordance with the request of the Court in Escamilla v. Stavley C.A. No. DR-78-CA-23 (W.D. Texas), we have made every effort to expedite our consideration of this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. 51.22) but have been unable to respond until this time.

We have given careful consideration to the changes involved and the supporting materials, as well as information and comments from other interested parties. The Attorney General does not interpose any objections to the polling place changes, addition of voting precincts and additional locations for absentee voting in 1975. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

In our review of districting plans we are guided by relevant judicial decisions. See Beer v. United States, 425 U.S. 130 (1976); Kirksey v. Hinds County Board of Supervisors, 554 F.2d 139 (5th Cir.), cert. denied, 54 L.Ed.2d 454 (1977); Wilkes County v. United States, 450 F. Supp. 1171 (D.D.C. 1978), affirmed, 47 U.S.L.W. 3391 (U.S. Dec. 4, 1978) (78-70). Under Section 5 the submitting jurisdiction has the burden of proving both that the change in question was not adopted with a discriminatory purpose and that its effect will not be discriminatory. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.19; Georgia v. United States, 411 U.S. 526, 538 (1973); City of Richmond v. United States, 422 U.S. 358, 380-81 (1975) (Brennan, J., dissenting).

In regard to the 1973 reapportionment of commissioner precincts in Terrell County, our analysis reveals that, according to the population survey conducted by the county, Mexican Americans constitute approximately 41 percent of the population of Terrell County. Under the submitted reapportionment plan, Mexican Americans constitute 75.6 percent of the population of Commissioner Precinct 2, 43.6 percent of the population of Commissioner Precinct 1, and 38.8 percent of the population of Commissioner Precinct 4. In our opinion, the effect of the 1973 reapportionment plan is to dilute minority voting strength by unnecessarily dividing the Mexican American community in Sanderson among three commissioner precincts. As a result, it would seem that Mexican American voters in Terrell County are afforded less of an opportunity than other residents to participate in the political processes and elect candidates of their choice. By splitting the Mexican American community with Precinct 2 and dispersing the remainder of that community between commissioner precincts 1 and 4, the plan has the effect of minimizing the overall impact of the Mexican American vote. Fairly drawn alternative reapportionment plans could easily avoid this result.

Under these circumstances, therefore, we are unable to conclude, as we must under the Voting Rights Act, that the plan does not discriminate against Mexican American voters. Accordingly, on behalf of the Attorney General, I must interpose an objection to the reapportionment plan here under submission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection the Attorney General is to make the reapportionment plan for commissioner precincts in Terrell County legally unenforceable.

As requested by the Court in the above cited litigation, we are providing a copy of this letter to the Court and to counsel for plaintiffs.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: United States Circuit Judge Homer Thornberry
United States District Judge John Rowland Wood, Jr.
United States District Judge D. W. Suttle

Clerk, U.S. District Court
Western District of Texas
Post Office Box 1349
Del Rio, Texas 78840

Joaquin G. Avila, Esquire
201 N. St. Mary's Street
Suite 517
San Antonio, Texas 78205

Mr. Walter H. Mizell
City Attorney
City of Lockhart
Brown, Maroney, Rose,
Baker and Barber
1300 American Bank Tower
221 West Sixth Street
Austin, Texas 78701

Dear Mr. Mizell:

This is in reference to the Home Rule Charter adopted on February 20, 1973 for the City of Lockhart, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on July 16, 1979.

We have given careful consideration to the information provided by you, as well as information and comments from other interested parties. Our analysis reveals that the Home Rule Charter for Lockhart provides for an at-large election scheme, which includes the use of staggered terms and numbered places. The new form of government also provides for two additional representatives, and a council with somewhat greater power than the prior form of government. There are, in addition, indications that racial bloc-voting exists in Lockhart elections, and that the city government may not be as responsive to its minority constituents as to its Anglo constituents.

Recent court decisions suggest that an at-large voting system which incorporates features such as numbered posts and staggered terms may operate to minimize or dilute the voting strength of minority groups and thus have an invidious discriminatory effect. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

cc: Public File

ATTACHMENT 31

In view of these court decisions, and on the basis of all the available facts and circumstances, the Attorney General is unable to conclude, as he must under the Voting Rights Act, that the Home Rule Charter, in its present form will not have a discriminatory effect on the voting rights of racial or language minorities in the City of Lockhart. On behalf of the Attorney General, I must interpose an objection to the Home Rule Charter insofar as it incorporates an at-large method of election, with numbered posts and staggered terms.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. §1.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the Home Rule Charter legally unenforceable with respect to the at-large method of election, and the numbered post and staggered term features.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the City of Lockhart plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call John MacCoon, the Director of the Section 5 Unit, at 202-724-7439.

Sincerely,

Drew S. Days, III
Assistant Attorney General
Civil Rights Division

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

CITY OF LOCKHART,	I	
Plaintiffs,	I	
VS.	I	CIVIL ACTION NO. 80-0364
UNITED STATES OF AMERICA,	I	
Defendant,	I	
ALFRED E. CANO,	I	
Defendant-Intervenor.	I	

DEFENDANT-INTERVENOR'S POST TRIAL BRIEF

I. Introduction And Summary

The minority community in the City of Lockhart, Texas is seeking to invalidate a discriminatory municipal election scheme. This election scheme has limited minority representation on the city council to only one member out of five in a city where the minority community comprises well over half the city's population. The discriminatory features of this election scheme are before this Court in this Voting Rights Act action.

The City of Lockhart initiated this action pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. §1973c.[1/] The Plaintiff seeks a declaratory judgment that a 1973 Home Rule Charter, altering the form of government and election structure, was not adopted pursuant to a discriminatory purpose and does not discriminate on the basis of race, color, or membership in an applicable language minority group.[2/]

1/ This Court permitted on May 7, 1980 Alfred E. Cano, a Mexican American, to intervene in this action as party defendant.

2/ Prior to the commencement of this action, in proceedings initiated by private litigants, the United States District Court for the Western District of Texas determined that the adoption of the Home Rule Charter was subject to the Section 5 preclearance provisions of the Voting Rights Act and enjoined the city from utilizing the unprecleared election change. Cano v. Chesser, A-79-CA-0032 (W.D. Tex. March 2, 1979). Following the district court's determination, the City of Lockhart submitted the Home Rule Charter to the Attorney General for Section 5 review. The Attorney General interposed a letter of objection to the Home Rule Charter on September 14, 1979.

state statutes under a commission form of government consisting of a mayor and two commissioners. State law required that the city elect the three member commission at large. Contrary to state law, the City of Lockhart required candidates for election to the governing body to designate the "post" to which the candidate sought election.

The Home Rule Charter in 1973 expanded the authority of the governing body, by providing for a council-manager form of government consisting of a mayor and four council members. The new election scheme provided for at-large election to the council with a numbered post provision for councilmanic candidates and staggered terms.

On September 10th and 11th, 1980 this case was heard on the merits.[3/] At the trial, the Court ruled that the at-large election feature, in and of itself, was not subject to review under Section 5 since it did not constitute a voter qualification prerequisite to vote standard, practice or procedure with respect to voting different from those in effect on November 1, 1973. The Court further decided that the circumstances of the case and the nature of Section 5 cases made bifurcation of the purpose and effect issues appropriate. Under Section 5, a political subdivision has the burden of demonstrating both the absence of a discriminatory purpose and effect. If a governmental entity cannot demonstrate the absence of a discriminatory effect there is no necessity to proceed with an additional trial on the issue of a discriminatory purpose. The Court therefore ruled that it would hear only evidence on the question of effect at the initial state of the trial. Should the City of Lockhart demonstrate the absence of a discriminatory effect then the Court would address the issue of a discriminatory purpose. The Court further limited its inquiry to the effects of two of the provisions, the numbered post and staggered term provisions of the election system adopted as part of the Charter.

This Brief will discuss the evidence and legal issues before this Court as they relate to the numbered post provision and the staggered term provision.

3/ Plaintiff's request for summary judgment was denied on July 31, 1980

II. Issues

A. Whether the adoption of the numbered post provision by the City of Lockhart in the 1973 Home Rule Charter constituted a voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or in effect on November 1, 1972.

B. Whether the Plaintiff has met its burden of demonstrating that the numbered-post provision and the staggered term provision of the election scheme provided for in the 1973 Home Rule Charter, adopted by the City of Lockhart, do not discriminate on the basis of race, color, or membership in an applicable language minority group.

C. Whether judgment against the Plaintiff on either the numbered post provision or the staggered term provision will necessarily result in the uninforceability of the Home Rule Charter and a reversion to general law status with reinstatement of the commission form of government.

III. Evidence Presented

The evidence in this case consists of testimony and exhibits at the trial held on September 10th and 11th, 1980 as well as deposition testimony taken prior to trial. The record includes evidence on the lack of access to the political process in Lockhart, the existence of racially polarized voting patterns and segregated housing patterns, as well as evidence on the election structure of Lockhart, both before and after the adoption of the Home Rule Charter. Reviewed in total, the evidence will assist the Court to determine whether the Plaintiff has met its burden in the case. The following is a summary of that evidence.

In regard the election structure in Lockhart, prior to February 20, 1973, the City of Lockhart, as a general law city, was governed by a Commission form of government. Trial Record hereinafter T.R. pp. 30, 31, 33. A general law city in Texas has authority to undertake only that which is specifically authorized by Texas law or can be necessarily implied by such law. Depositions of Fletcher p. 8. The City of

Lockhart thus had no control over the size of its governing body nor the method of electing that governing body. Deposition of Fletcher p. 13. Texas law requires that the commission consist of three members, a mayor and two commissioners. Art. 1158 Tex. Rev. Civ. Statutes. Moreover, there is no authorization for an election scheme with election features such as single member districts, numbered posts, residency districts, staggered terms, or majority vote requirements. Art. 1158 Tex. Rev. Civ. Stat. With the adoption of the Home Rule Charter in 1973 the City of Lockhart implemented an at-large with numbered post and staggered term election system. T.R. p. 69. The City of Lockhart by adopting the Home Rule Status had the opportunity to chose any-one of a number of election schemes including single member districts. Deposition of Fletcher p. 18-19.

The record further reveals that voting patterns in the City of Lockhart are consistent with racially polorized voting, whereby Chicano voters vote for Chicano candidates and Anglo voters vote for Anglo candidates. T.R. pp. 155-157, 209, 254-255; Deposition of Serrato pp. 12, 18, 19, 20, 27-27, Burton p. 65, Alexander p. 25, Garcia pp. 7-15, 38 and Buckley pp. 35-36; Defendant-Intervenor's exhibits nos. 1, 2, 3, 3a, and 5-5d. It is important to note that along with racially polarized voting, racially segregated housing patterns exist in Lockhart. T.R. pp. 103, 207-208; Deposition of Burton pp. 27, 69 and Deposition of Buckley pp. 23-24.

The evidence related to the effects of the particular election changes in question shows that both the staggered term provision and the numbered post provision tend to target minority candidates in Lockhart, T.R. pp. 81, 83, 96, 141, 149 and 150. Staggered terms have the added effect of creating lower voter turn-out among the electorate (T.R. p. 78) which normally disproportionately and adversely imports minority voters. T.R. pp. 257-258. The effect of lower voter turn-out on the minority community appears to be confirmed by the situation in the City of

Lockhart.[4/]

Finally, the Court should view this evidence within the context of the situation in Lockhart. In Lockhart the minority community composes over half of the population (Defendant-Intervenor's exhibit no. 12) yet only one member of the minority community has ever successfully run for a position on the city governing board. T.R. p. 208; Defendant-Intervenor's exhibit no. 1.

IV. Argument

A. The adoption of the numbered post provision by the City of Lockhart in the 1973 Home Rule Charter constituted a change in the law affecting voting and is therefore reviewable pursuant to Section 5 of the Voting Rights Act 42 U.S.C. §1973c.

1. Adoption of the charter triggered Section 5 coverage.

The threshold issue that must be resolved by the Court is whether the numbered post provision adopted in Section 3.01 of the City of Lockhart Home Rule Charter is a change in the law affecting voting which must be precleared pursuant to Section 5 of the Voting Rights Act. 42 U.S.C. §1973c. Under Section 5, a covered political subdivision in Texas must submit to the United States Attorney General or to the United States for the District of Columbia all post November 1, 1972 election changes for a determination that such election changes were not enacted pursuant to a discriminatory purpose and do not discriminate on the basis of race, color or membership in an applicable language minority group. 42 U.S.C. §1973. Those changes in the law affecting voting enacted prior to November 1, 1972 are exempt from Section 5 preclearance. The numbered post provision is not such a change exempt from Section 5 preclearance.

4/ Defendant-Intervenor's exhibit No. 2 shows that in 1970 of 559 Spanish Surnamed registered voters 64 or 11.45% turned out to vote while of 2,041 non-Spanish Surnamed registered voters 414 or 20.28% turned out to vote. In 1977 of 974 Spanish Surnamed registered voters 233 or 23.92% turned out to vote while of 2,293 non-Spanish Surnamed registered voters 834 or 36.37% turned out to vote.

In Beer v. U.S. 425 U.S. 130, 138-139, 96 S. Ct. 1357, 1362 (1976) the Supreme Court clearly stated the exemption: . [D]iscriminatory practices . . . instituted prior to [the] . triggering date] . . . are not subject to the requirement of preclearance [under §5]." In order to apply the rule of law stated in Beer, an examination of the facts is necessary. In Beer, the Court reviewed an ordinance adopting a districting scheme for the City of New Orleans. The ordinance did not refer to the at-large districts established in the 1954 City Charter. However, the District Court did not grant Section 5 approval because of the City Council's failure to eliminate the existing at-large districts. On appeal the Supreme Court reversed.

The Supreme Court reversed because there was no election change. The City ordinance did not refer to the at-large districts. The city was without authority to alter or remove the at-large districts absent a charter amendment approved by the city's electorate. 425 U.S.C. at 138-139, 96 S. Ct. at 1362. The Court correctly concluded, "The at-large seats, having existed without change since 1954, were not subject to review in this proceeding under §5." See also, no. 10.

Applying the factual underpinnings of the rule formulated in Beer to the City of Lockhart, the adoption of the numbered post provision cannot be characterized as a pre-existing election feature exempt from Section 5 review.. First, unlike the city ordinance in Beer, the City of Lockhart Home Rule Charter specifically referred to the adoption of the numbered post election feature in Section 3.01. Second, in Beer there was no change in the form of government. The city ordinance in Beer merely changed the election structure. In sharp contrast, the City of Lockhart fundamentally altered the form of government and adopted a different election scheme. Third, the city of New Orleans could not by ordinance change the at-large districts required by the City Charter unless there was a public referendum. In Lockhart, there was a new form of government which was approved

by the public. This approval permitted the implementation of the City Charter. Finally, the City of Lockhart had a choice in selecting the method of electing city councilmembers when the Charter was drafted. The City of Lockhart was not obligated to include the numbered post provision as part of the election plan it chose. In summary, the adoption of the numbered post provision in the election structure selected as part of the Charter constituted an election change for which Section 5 preclearance is required.

Such an application of Section 5 is consistent with the procedures and practices of the Attorney General in its administrative application of Section 5. The Department of Justice in its letter of objection of September 14, 1979, addressing the City of Lockhart submission of the 1973 Home Rule Charter (Def. Exhibit No. 12) clearly base Section 5 coverage on the fact that by adopting the Charter, the City of Lockhart altered its form of government and voluntarily adopted the entire election scheme in the charter.[5/] Moreover, Department of Justice officials in reporting to Congress on the Attorney General's construction of Section 5 in connection with the 1975 extension introduced an exhibit which indicates a policy of objection to changes in governance where specific features adopted in the change were objectionable. See testimony of Assistant Attorney General J. Stanley Pottinger at the Hearings on H.R. 939, et al., before the Subcommittee on Constitutional Rights the House Committee on the Judiciary 94th Cong., 1st Sess., 166 (1975) (1975 House Hearings), exhibit #5 to the testimony of Assistant Attorney General J. Stanley Pottinger.[6/]

5/ In the letter of objection, the basis for the objection is the at-large feature of the election scheme. The Department of Justice thus views the change-over in the form of government (Commission to council-manager) through the adoption of the Charter as the triggering devise for Section 5 coverage. The effect of such an application is to create a "clean slate" whereby the individual features of the election scheme become reviewable upon altering the form of government. See also, T.R. p. 215.

6/ Exhibit No. 5 indicates several instances of Section 5 coverage and objection to the change in form of government as well as specific features of the election change, i.e. Conyers City, Ga.; Lancaster County, South Carolina; and Charleston Co., South Carolina.

Although the Attorney General's application of Section 5 is in no way binding on this Court the Supreme Court has given great deference to the interpretation of Section 5 made by the Attorney General. U.S. v. Board of Commissioners of Sheffield, Ala., 435 U.S. 110, 131, 98 S.Ct. 965, 979 (1978); Perkins v. Matthews, 400 U.S. 379, 390-394, 91 S.Ct. 431, 437-439. It would, thus, be proper for this Court to likewise defer, in this matter of interpreting the Act, to the Attorney General's position.

Finally, a review of the facts of the case of United States v. Board of Commissioners of Sheffield, Ala. supra, would lend support to the proposition of the "clean slate" approach used by the Department of Justice. In Sheffield, the City of Sheffield, Ala. altered its form of government from a Commission form of government in which three commissioners were elected by the City at-large. 98 S.Ct. at 970. In 1975, a referendum was held to alter the form of government to a Mayor-Alderman form of government. 98 S.Ct. at 970. There were to be 8 aldermen and they were to be elected at-large, and for numbered posts. 98 S.Ct. at 971. The Attorney General then notified the city that while he did not

> "interpose any objecton to the change to a mayor-council form of government...to the proposed district lines or to the at-large election of the mayor and the president of the council, he did object to the implementation of the proposed at-large method of electing city councilman because he was unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect."

Id. 98 S.Ct. at 971.

The Supreme Court without passing on the issue before this Court sustained the objection by the Attorney General. The similarities in the facts of the present case and those in Sheffield are quite striking. In both instances the triggering device for Section 5 review was the change in governance. See,98 S.Ct. at 971 and Def. exhibit No. 12 ¶1. In both instances the Department of Justice found the objectionable feature to be the at-large method of election. See,98 S.Ct. at 971, Def's exhibit No. 12 ¶3&4. Finally, in both instances the at-large feature of the election scheme existed both before and after the "election change". 98 S.Ct. at 970; T.R. pp. 31 and 69.

The assumption of that decision is that adoption of a new form of governance makes the election features chosen for that governance subject to review under Section 5. The "stare decisis" significance is perhaps weakened because the issue was not raised. But see: Brown Shoe Co. v. United States, 370 U.S. 294, 307, 82 S. Ct. 1502, 1513 (1962). Yet the decision underscores the fact that whether or not some of the specific election features existed prior to the change in the form of governance, the Congress could not have intended §5's duties to be limited in application to exclude from review an item of the new election structure simply because it was also an election feature of the prior form of governance. In effect, such an exclusion would allow an increase in the powers of city governing bodies, which have control over such things as distribution of jobs and services and to make further discriminatory election changes, without review under Section 5. 7/ This, in cities such as Lockhart, which have shown a propensity to discriminate in these areas, would indeed be devastating to the intent of the Act. If at the same time, the election system chosen does not off-set the increase in power but in fact discriminates against minorities, such an increase in power will of course have an adverse effect on the voting strength of minorities. Moreover, this Court has ruled that an enactment involving a change in the functions and responsibilities of elected officials, as is the case with the adopting of the Home Rule Charter in Lockhart, must be precleared, Horry Cty. v. U.S., 449, F. Supp. 990, 995. The preclearance process would entail subjecting the new method of selecting the governing body to Section 5 review, 449 F. Supp. 990, 995.

An analogous situation exists with respect to annexations. An annexation in and of itself does not alter the election scheme

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7/ The city did, in fact, subsequent to the adoption of the Charter, implement a majority vote requirement. Defendant Exhibit No. 10. It is interesting to note that had the City of Lockhart remained as a general law city, under a Commission form of government it would not have had the authority to implement the majority vote requirements.

in place prior to and after the annexation. Yet such action by a covered political subdivision is a change in the law affecting voting and subject to Section 5 scrutiny. Perkins v. Matthews, 400 U.S. 379, 91 S. Ct. 431 (1971).

Based on the foregoing the numbered post provision adopted as part of the Home Rule Charter should be reviewed by this Court as part of its inquiry into compliance with standards applicable under Section 5 of the Voting Rights Act, 42 U.S.C. §1973c.

2. The numbered post provision, not having been legally a part of the City of Lockhart election scheme prior to the adoption of of the 1973 Home Rule Charter, became a change in the law affecting voting upon the adoption of the Home Rule Charter.

Should the Court not agree with the Defendant-Intervenor's argument, put forth above, the Court may yet review the adoption of the numbered post provision pursuant to Section 5. Under Section 5, a failure to secure preclearance simply leaves that change unenforceable, and the political subdivision must then revert back to the former election scheme absent the election change. Neither the Attorney General nor this Court have the authority, in the context of a Section 5 review, to order the political subdivision to develop alternate forms of election schemes which are contrary to state law. Pitts v. Busbee, 511 F.2d 126, 128 (5th Cir. 1975). A test that may be utilized to determine whether a change affecting voting has been implemented, therefore, is to compare the election scheme with the proposed change, to the election scheme that the political subdivision would revert back to if preclearance is not obtained. [8/] In the instant case the numbered post provision was being used by the City of Lockhart prior to November 1, 1972. T.R. 31, 69. However, the City of Lockhart did not have any authority to use the numbered post provision. Art. 1158 Tex. Rev. Civ. Statutes; Fletcher Deposition p. 14. The use of the

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8/ Such a test would be identical to the test used in Perkins, supra, but in reverse. Using this approach would prevent political subdivisions covered by the act from benefitting from their illegal conduct.

numbered post system by the City of Lockhart was therefore not in accordance with the laws of the State of Texas. In the case at hand, failure to secure preclearance of the election change would require a reversion to an election scheme without the number post provision. Under the test mentioned above, the numbered post provision is a change in the law affecting voting subject to Section 5 scrutiny.

Moreover, since the numbered post provision was being used by the city in violation of state law, the Voting Rights Act should not be used to permit the City of Lockhart to now benefit from such illegal conduct. Because the Voting Rights Act was meant to cover even the most minor of changes that affect voting, the election change can be readily conceptualized as one in which the Plaintiff has made a change which legalizes the numbered post provision and is therefore subject to Section 5 review.

In summary this Court should review pursuant to Section 5 the adoption by the City of Lockhart, of the numbered post provision. Although the provision was adopted as part of a broader more expansive election change, the change in governance makes the numbered posts reviewable. Furthermore, since the numbered post provision was utilized illegally prior to its adoption as part of the charter, its legalization make the numbered post provision reviewable pursuant to Section 5. 9/

B. The Plaintiff failed to meet its burden of demonstrating that the numbered post provision and the staggered term provision of the election scheme provided for in the 1973 Home Rule Charter adopted by the Plaintiff, do not discriminate on the basis of race, color, or membership in an applicable language minority group.

9/ There is no dispute that the staggered term provision is an election change subject to Section 5 review. Perkins v. Matthews, 400 U.S. 279, 91 S. Ct. 431, 440 (1971).

1. Polarized voting along ethnic patterns, where Mexican American voters vote for Mexican American candidates and Anglo voters vote for Anglo candidates, exists in elections in the City of Lockhart.

Evidence before this Court on the existence of racially polarized voting came in two forms. First, persons familiar with the electoral process in the City of Lockhart and familiar with the way people vote in Lockhart testified about the existence of racial polarized voting. Second, two expert witnesses Dr. Charles Cotrell and Dr. Frederick Cervantes testified about the existence of racially polarized voting based on their analysis of recent political races in the City of Lockhart.

Mexican-American residents of the City of Lockhart, who had experience in the political process were unanimous that their experiences in the political area revealed the existence of polarized bloc voting whereby Mexican American voters voted for Mexican American candidates and Anglo voters voted for Anglo candidates. See depositions of: Garcia pp. 7-15, 38; Serrato pp. 12, 18, 19, 20, 27-28; testimony of Bernardo Rangel T.R. p. 209. Testimony of members of the City of Lockhart's Anglo Community, who were familiar with the political process of Lockhart, also reveals impressions that would indicate and are consistent with the existence of racially polarized voting. See Depositions of: Marie Burton p. 65, Shufford Alexander p. 25 and, Buckley pp. 35-36.

The data used by both Dr. Cotrell and Dr. Cervantes consisted of election results for city council and mayoral races from 1973 to the present. The Plaintiff furnished, for each such election, the number of Mexican American voters participating. To determine the existence of racially polarized voting the number of votes received by the Mexican

American candidates was compared to the number of Mexican American votes. This analysis was used by both Dr. Cotrell and Dr. Cervantes. T.R. pp. 155, 254. The consistently close correlation between the numbe of votes received by Mexican American candidates and the number of Mexican American voters at each election indicated to both experts the existence of racially polarized voting. T.R. pp. 155, 254. In fact, Dr. Cervantes reviewed the data used to determine the existence of racially polarized voting in Wilkes County, Ga. v. U.S., 450 F. Supp. 1171 (D.D.C., 1978) and concluded the data available for Lockhart more strongly indicated racially polarized voting. T.R. p. 255. The record also reveals Mexican American candidates have never opposed one another, T.R. p. 209. Moreover, while anglo candidates have run unopposed from time to time, even after the adoption of the Charter, never has a Mexican American candidate been unopposed for a city office. T.R. p. 209.

Taken as a whole, the Court must conclude from the facts in the record the existence of racially polarized voting in the City of Lockhart. This evidence is even more compelling when one considers Plaintiff has not come forward with any data to refute the existence of racially polarized voting. T.R. pp. 22-24, passim.

2. In the context of racially polarized voting the adoption of the numbered post provision adversely impacts the voting strength of minority voters in Lockhart.

The record of this case reveals that generally a numbered post provision has the effect of targeting minority candidates. T.R. p. 96, 141, 149, & 150. Within the context of racially polarized voting, a numbered post system causes a dramatic increase in turnout by anglo voters to defeat the minority candidates. A numbered post system also permits the anglo community to place its strongest candidate against the minor-

ity candidate to ensure a head on head race. Def. Int. Exhibit No. 5-5d; T.R. p. 245. The numbered post provision thus has an adverse impact on minority candidates.

The record reveals that racially polarized voting exists in Lockhart. Moreover, Anglo turnout increases dramatically when Mexican American candidates run for office. Def. Int.'s Exhibit No. 5-5d. Finally, the numbered post provision has been used to target Mexican American candidates in Lockhart and has resulted in the strongest anglo candidates running against the minority candidates. T.R. p. 245, 247-248. In view of this evidence, the conclusion is inescapable that the numbered post provision has an adverse impact on minority voting strength. Since there is no stated justification for the numbered post provision, Plaintiff has failed to meet its burden that the adoption of the number post provision does not discriminate on the basis of race, color or membership in an applicable language minority group.

3. Within the contest of racially polarized voting the adoption of the staggered term provision adversely impacts the voting strength of minority voters in Lockhart.

Testimony from the Plaintiffs expert witness, Dr. Dalbert Taeble, reveals that the effect, generally, of staggered terms is to decrease voter turnout. T.R. p. 99. According to Dr. Cervantes' testimony, studies conducted on voter turnout show the disproportionate effect on minority voters by a low voter turnout. T.R. p. 257. When voter turnout is low, generally turnout among minority voters is even lower. Voter turnout data made available by the City of Lockhart supports Dr. Cervantes' testimony. In the City of Lockhart, low voter turnout disproportionately affects minorities. See footnote 4 supra.

Staggered terms also have an adverse impact on the voting strength of minorities by targeting minority candidates. The

Testimony at trial revealed that staggered terms operate in the same discriminatory fashion as a numbered post provision in the context of racially polarized voting. T.R. 81, 83, 148, 149. In Lockhart staggered terms have in fact had the effect of targeting minority candidates. T.R. p. 245.

The evidence before the Court shows the discrminatory effect of staggered terms in the context of the political situation in Lockhart.

C. Judgment against the Plaintiff on either the numbered post provision or the staggered term provision will result only in the elimination of those features not precleared.

A remaining issue in this action is whether the failure to secure Section 5 approval of the numbered place and staggered terms provisions invalidates the entire Charter. The rule of law as determined by the Voting Rights Act is that only changes affecting voting are subject to the preclearance provisions. Beer v. U.S., 425 U.S. 130, 138-139, 96 S.Ct. 1357, 1362 (1967). The Court in this case ruled that only the individual features of the election scheme incorporated in the City Charter are election changes subject to Section 5 review. T.R. p. 134-198. The remaining provisions of the Charter are not election changes requiring preclearance. Should the Court continue to adhere to this interpretation the issue becomes whether Plaintiff has met its burden with respect to these election features. Since only the staggered term and numbered post provisions are before the Court, and not the Charter as a whole, only those features may be affected by the Court's determination — Beer v. U.S. 425 U.S. 130, 138-139, 96 S.Ct. 1357, 1362 (1967).

Even if the Court should view the entire Charter as subject to Section 5 review the failure to preclear the numbered post or staggered term provisions should not affect the remainder of the Charter. As indicated in the charter, there is a separability clause permitting the continued enforcement of all Charter provisions which have not been invalidated. The separability clause also permits the continued enforcement of parts of a Charter provision where other portions have been invalidated. The separability clause is as follows:

> "If any section or part of section of this charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this charter nor the context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply".

Section 11 07, Home Rule Charter, Def. Exh. No. 7. Allowing the unaffected portions of the City Charter to remain in force is consistent with the Court's holding in Horry Cty, supra, 449 F. Supp. at 997. Although the District Court in Horry enjoined the use of an unprecleared enactment, the Court allowed vacancies to be filled pursuant to the unprecleared Act. 449 F.Supp. at 997. Cf., Pitts v. Bushee, 511 F.2d 126 (5th Cir. 1975) (where in the absence of a separability clause the Court invalidated an entire enactment). Consequently, in view of the separability clause and Horry, the change to a council-manager form of government and the increase in the size of the governing board as well as the other provisions should remain in effect.

V. Conclusion

In summary the Defendant-Intervenor urges the Court to review the effect of the adoption of the numbered post provision pursuant to the provisions of Section 5 of the Voting Rights Act. 42 USC §1973c. Further, the Defendant-Intervenor urges the Court to find that the Plaintiff has failed to meet its burden of showing that the numbered post provision and/or the staggered terms provision, adopted by the Plaintiff as part of the 1973 Home Rule Charter do not discriminate on the basis of race, color, or membership in an applicable language minority group. Finally, the Defendant-Intervenor urges the Court to find that its ruling will not affect the remaining portions of the Home Rule Charter.

Respectfully submitted,

VILMA S. MARTINEZ
MORRIS J. BALLER
Mexican American Legal Defense
and Educational Fund
28 Geary Street - 6th Floor
San Francisco, CA 94108

JOAQUIN G. AVILA
JOSE GARZA
NORMA V. SOLIS
Mexican American Legal Defense
and Educational Fund
201 N. St. Mary's Street
517 Petroleum Commerce Bldg.
San Antonio, TX 78205

Mexican American
Legal Defense
and Educational Fund

517 Petroleum Commerce Building
201 North St. Mary's Street
San Antonio, Texas 78204
(512) 224-5471

MALDEF

May 12, 1978

Mr. Gerald Jones
Voting Section
Civil Rights Division
U. S. Department of Justice
Washington, D.C. 20530

In re: Jim Wells County, Texas - Redistricting
File No. X 9051

Dear Mr. Jones:

The Department of Justice is presently considering a redistricting plan for Jim Wells County. The Mexican American Legal Defense and Educational Fund has analyzed the submitted plan and finds: 1) the plan is malapportioned; 2) it gerrymanders the Mexican American community; and 3) it lacks equalization of road mileage and land area which affects the budgets of each of the precincts. For these reasons, we urge the Department of Justice to issue a letter of objection.

I. Analysis of Plan

According to the county's submission, the following is the population breakdown of the commissioners precincts:

Precinct	Population
1	9,676
2	6,694
3	10,018
4	6,690

Based upon the above figures, the ideal district should contain 8,269 total persons. Thus the deviations for the submitted plan are as follows:

Prec. #	No. of Persons	No. of Persons above (+) or Below (-) Ideal District of 33,078	% Deviation
1	9,676	+ 1,407	+ 17.0%
2	6,694	- 1,575	- 19.0%
3	10,018	+ 1,749	+ 21.2%
4	6,690	- 1,579	- 19.1%

The total top to bottom deviation is 40.3%, well beyond the 9.9% recognized in White v. Register, 412 U. S. 755 (1973).

In addition to being in violation of the one person-one vote principle, the submitted plan is a retrogression in the impact of the Chicano voti strength when compared to the county's plan prior to the 1975 reapportionment.

	Old Plan			New Plan		
Pct.	Total Pop.	No. Mex. American	%	Total Pop.	No. Mex. American	%
1	7025	6456	91.9	9676	8666	89.6
2	8050	2690	33.4	6694	3841	57.4
3	9371	6017	64.2	10018	4240	42.3
4	8632	5939	68.8	6690	4313	64.5

In Beer v. U. S.,47 L. Ed. 2d 629, 639 (1976), the court addressed the purpose of the federal approval provision of §5:

> . . .[T]he purpose of §5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.

Mexican Americans in Jim Wells County are 64% of the total population. The submitted plan dilutes the heavily concentrated Mexican American community in the City of Alice (See Map, Attachment 1) by overconcentrating Precinct 1 with 89.6% Chicano and by diluting the Mexican

American majority in Precincts 3 and 4 from 64.2% to 42.3% in Precinct 3, and from 68.8% to 64.5% in Precinct 4.

The 1975 Jim Wells reapportionment plan has yet another significant impact on the Mexican American community. By drawing the lines affecting the total road maintenance afforded each precinct, the county has distributed its budgets as such: Precinct 1, which has the only Chicana commissioner, has an annual operating budget of $110,000; Precinct 2 has $250,000; Precinct 3 - $350,000; and Precinct 4 has $450,000. As the Financial Comparison Chart (Attachment 2) indicates, Mexican Americans have higher unemployment, have a greater percentage of families below poverty level, and have less education completed in comparison with the total county population. Sadly enough, the precinct which is in most need, has the least funds to address these problems.

II. MALDEF Plans

In an effort to show that better lines could be drawn taking into consideration the Mexican American voting strength and the distribution of rural roads, MALDEF has drawn four alternate plans. The following is a description of Plan I:

Pct. No.	Total Population [1/]	Mexican American	
1	8198	5855	(71.4%)
2	8316	3235	(39.5%)
3	7938	6308	(77.0%)
4	8307	5398	(65.9%)

The total top to bottom deviation in this proposed plan is ± 4.6% (-3.06 in Precinct 1 and +1.60 in Precinct 4). (See Attachment 3).

[1/] The ideal district for the MALDEF Plan is 8189 due to a different population basis. The MALDEF Plan uses ED population figures whereas the county used Voting Precinct totals.

The Voting Age Population figures (based on Census 1st and 5th counts: See chart, Attachment 8) in the MALDEF proposed plan do not decrease the Mexican American percentages below 60% in those precincts with a Mexican American majority. The following is a breakdown of the voting age population for each precinct:

Pct. No.	Total Population	Mexican American	
1	4304	3130	(72.7%)
2	4695	1451	(30.9%)
3	4326	3136	(72.5%)
4	4629	2779	(60.0%)

(See Plan 1 - Voting Age Population Figures, Attachment 4.)

Other alternative plans are provided as Attachments 5-7.

Conclusion

In view of the obvious retrogression of Chicano impact on the electoral process in Jim Wells County brought about by the 1975 reapportionment plan which overconcentrates Chicanos in one precinct, then fragments and dilutes Chicanos in the remaining precincts, we urge the Department of Justice to issue a letter of objection.

Sincerely,

Joaquin G. Avila

Joaquin G. Avila
Associate Counsel

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Encls.

Education Completed

	Total Population	63.9% Mexican American
% Completing Between 9-11 Years	18.4	14.5
% High School Graduates	19.1	12.0
% Completing 1-3 Years College	7.8	4.0
% Completing 4 or More Years College	6.5	2.7

Financial Comparison

	Total Population	Mexican American
% Earning Less than $4,000 per year	36.9	44.8
% Earning $15,000 or More	8.4	3.7

	All Families	Mexican American Families
% Families Below Poverty Level	26.6	40.9

Labor

	Total Workforce	Mexican American Workforce
Professional, Tech. & Managers	19.1	9.9
Unemployed	5.0	6.7

PLAN NO. 1

Commissioners Precinct #1

Same as Plan #3

Commissioners Precinct #2

Same as Plan #3

Commissioners Precinct #3

E.D.	Pop.	S.S.N.	
4	696	638	
12	700	224	
13	1248	365	
14	1343	1289	
16	981	870	
19	1644	1644	
20	1326	1278	
	7938	6308	79.5

Commissioners Precinct #4

E.D.	Pop.	S.S.N.	
24	731	724	
26	1825	949	
30	1232	795	
28	1420	1207	
29	1739	685	
29b	123	54	
27	975	722	
22	262	262	
	8307	5398	65.0

Top to Bottom Deviation 4.6

Plan No. 1 - Voting Age Population Figures

Commissioners Precinct #1

E.D.	Pop.	S.S.N.	
8	532	762	
10	151	17	
11	608	274	
15	496	466	
23	833	768	
17	500	500	
18	444	363	
21	740	580	
	4304	3130	72.7

Commissioners Precinct #2

E.D.	Pop.	S.S.N.	
1	623	237	
2	723	318	
3	154	52	
5	1010	143	
6	507	130	
7	837	297	
9	707	191	
25	134	83	
	4695	1451	30.0

Commissioners Precinct #3

E.D.	Pop.	S.S.N.	
4	472	259	
12	436	121	
13	718	142	
14	596	557	
16	548	510	
19	876	978	
20	680	671	
	4326	3136	72.5

Mexican American
Legal Defense
and Educational Fund

617 Petroleum Commerce Building
201 St. Mary's Street
San Antonio, Texas 78205
(512) 224-5476

MALDEF

September 21, 1978

Mr. Gerald Jones
Voting Section
Civil Rights Division
U. S. Department of Justice
Washington, D.C. 20530

In re: Jim Wells County, Texas - Redistricting
DOJ File No. X 9051
MALDEF File No. 379

Dear Mr. Jones:

The Department of Justice is currently reconsidering 1/ whether to withdraw the letter of objection issued on July 3, 1978 against the Jim Wells County Commissioners' Court for failure to meet the obligations imposed by Section 5 of the Voting Rights Act in their July 11, 1975 redistricting of county commissioner precincts. The new information submitted by the county does not warrant the withdrawal of the Department of Justice's prior determination. Briefly, the new population statistics will demonstrate an overwhelming concentration of Mexican Americans in Precinct No. 1 and the 55% Mexican American concentration in Precinct No. 3 under the previous 1974 plan has been reduced to 51% in Precinct No. 2 under the 1975 plan. When this 1975 redistricting plan is superimposed in a county where Mexican Americans have suffered a long history of discrimination in the areas of employment, economics, and education, the Mexican American voting strength is clearly diluted. The discriminatory impact of the 1975 redistricting plan is painfully evident — in a county where Mexican Americans comprise 64% of the county's population, there is only one representative on the County Commissioners' Court who is Mexican American. These glaring facts lead us to conclude that the 1975 redistricting plan has discriminated in the past and will continue to discriminate in the future if the Department of Justice withdraws the letter of objection. For these reasons, we strongly urge the Department of Justice not to withdraw the letter of objection.

1/ This request for reconsideration was filed on September 5, 1978. This request by the county is directly attributable to a Section 5 enforcement proceeding instituted by Mexican American residents in Jim Wells County. Arriola v. Harville, Civ. Act. No. C-78-87 (S.D. Texas) (Complaint filed on August 3, 1978).

ATTACHMENT 33a

National Office
28 Geary Street
San Francisco, CA 94108
(415) 981-5500

Regional Offices
250 W. Fourteenth Avenue
Denver, CO 80204
(303) 893-1893

5455 Wilshire Blvd
Los Angeles, CA 90036
(213) 936-1145

Petroleum Commerce Bldg
201 North St. Mary's Street
San Antonio, TX 78205
(512) 224-5476

1028 Connecticut Avenue
Washington, DC 20036
(202) 659-5166

I. The New Population Information Does Not Alter the Discriminatory Impact of The 1975 Redistricting Plan.

Before proceeding in our analysis of the new population information, a preliminary objection should be registered concerning the source of the new data. According to well established case authority, reapportionments should be based upon the preceeding decennial census. In Lister v. Commissioners Court, Navarro County, 566 F. 2d 490 (5th Cir. 1978), the Fifth Circuit considered a 1969 redistricting plan that was not based upon the federal census:

> "Regardless of the merits or demerits of the 1969 plan the County Commission had a clear duty to reapportion on the basis of the 1970 census, especially since its 1969 plan was not based on the 1960 census."

566 F. 2d at 492.

In the county's new submission, there is no indication that the 1970 census data was in fact utilized. On the contrary, the county appears to have utilized a formula based upon registered voters. Clearly such an estimate is simply not reliable. An indication of this unreliability is evident in the County's own tabulations.

The County's submission lists 33,078 as the total population for Jim Wells County for both the 1974 and 1975 redistricting plans. However utilizing their figures, there is a decrease of approximately 849 Anglos from one time period to the next and a corresponding increase of Mexican Americans. Such a significant change in population would not occur if the 1970 census had been used as a base. Moreover the County's new figures shows the Mexican American concentration in Precinct No. 1 as 89.5%. Yet using the 1970 census enumeration district data, the Mexican American percentage increases to 92%. This significant minority concentration is further corroborated by a registration survey which lists the Spanish surname registered voters at 93.1%.

Irrespective of which figure is utilized for Precinct No. 1, there can

be no question that the overconcentration of Mexican Americans in Precinct No. 1 serves to unconstitutionally dilute the vote of Mexican Americans. By being overconcentrated in Precinct No. 1, the impact of the voting strength of the Mexican American is minimized in the other three precincts. The County Commissioners were well aware of this concentration and dilution of the minority vote. Despite this awareness, the County continued to leave a substantial number of Mexican Americans in Precinct No. 1. Such action clearly indicates that the County perpetuated the continuing effects of past discrimination by adopting the present boundaries of Precinct No. 1. Similar action amounted to a denial of equal access to the political process in Kirksey v. Board of Sup'rs. of Hinds Cty., Miss., 554 F. 2d 139 (5th Cir. 1977) (en banc), cert. denied, 46 U.S.L.W. 3357 (1977). As indicated by the Court,

> Where a plan, though itself racially neutral, carries forward intentional and purposeful discriminatory denial of access that is already in effect, it is not constitutional. Its benign nature cannot insulate the redistricting government entity from the existent taint.

554 F. 2d at 147.

For this reason, the 1975 redistricting plan has a discriminatory impact and should alone warrant the continuation of the letter of objection issued by the Department of Justice. However there are additional reasons to support our contention.

In examining the impact of the minority vote from 1974 to 1976, one notes that there is the type of retrogression condemned in Beer v. United States, 96 S. Ct. 1357 (1976). As noted by the Supreme Court, a violation of Section 5 occurs when the new election change is retrogressive:

> ...[T]he purpose of §5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."

The following table constitutes the new information provided by the County:

	1974					1976			
Pre.	Total Pop.	Total Anglos	Total Mex.Amer.	% M.A.	Pre.	Total Pop.	Total Anglos	Total Mex.Amer.	% M.
1	8673	617	8056	92.9	1	8832	928	7903	89.
2	7653	6068	1585	20.7	2	7828	3775	4054	51.
3	9133	4052	5081	55.6	3	8799	5180	3619	41.
4	7619	2492	5127	67.3	4	7619	2492	5127	67.
Total	33078	13229	19849	60.0		33,078	12375	20703	62.

The retrogressive effect is evident upon examining the changes in Precin Nos. 2 and 3. The impact of the new redistricting plan in changing the voting strength of Mexican Americans in Precinct Nos. 1 and 4 were negligible. Precinct No. 1 still contained a very high concentration of Mexican Americans while the percentage of minority persons in Precinct No. 4 remained unchanged according to the county's figures. Of the remaining two precincts under the 1974 redistricting plan the Mexican American community had a third majority precinct containing a 55.6% Mexican American concentration. (Precinct 3). After the election change, the third majority district diminished to 51.8% Mexican American. Such a decrease in the overall impact of the Mexican American community in county politics constitutes a retrogression in violation of the substantive requirements of Section 5. 2 / The 1975 redistricting plan becomes even more pernicious when one notes that the Mexican American community was not given a meaningful opportunity to participate in the redistricting process.

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2 / Moreover, the division of the minority population in Precincts Nos.2 and 3 serves to fragment a cohesive block of minority voting stren This division becomes even more pernicious since the Mexican American population is left with a bare population majority in Precinct No. 2. Such a redistricting is clearly unconstitutional. As noted in Kirksey, supra:

> "Where the cohesive block voting strength is fragmented among districts, the presence of districts with bare black population majorities not only does not necessarily preclude dilution but, as a panel of this court pointed out, bare population majorities may actually enhance the possibility of continued minority political impotence. . . .The plan denies rights protected under the Fourteenth and Fifteenth Amendments."

554 F. 2d at 150, 151.

As noted by the County, the ostensible purpose of the redistricting plan was to bring the county in compliance with the one person one vote principle. According to their figures the top to bottom deviation was 18.3% under the 1974 redistricting plan and 14.7% under the 1975 plan. Such a miniscule change cannot serve to cloak the redistricting with an air of legitimacy, especially since the 14.7% figures is well in excess of the 9% figure approved in White v. Regester, 93 S. Ct. 2332 (1973). There are no natural boundaries or other state rationales to justify such a large division. Their contention becomes even more suspect when one examines the MALDEF alternative plans which not only utilize existing enumeration district boundaries, thereby insuring greater accuracy in estimating population distributions, but also provide considerably smaller top to bottom deviations than 14.7%.

Apart from discrimination in voting, the Chicano community in Jim Wells County suffers from low employment and low educational achievement. Census data confirms this powerlessness: the median income for Mexican American families ($4,798) is lower than Anglo families ($6,745); the percentage of Mexican American families (53.95%) with incomes less than the poverty level is significantly higher than for Anglo families (41.51% the percentage of Mexican Americans completing four (4) or more years of college is 2.65% as opposed to 6.55% for Anglos.

In the Alice Independent School District, which is the largest school district in Jim Wells County, Mexican Americans are still segregated in four schools: Mayer Elementary, 91.6%; Garcia Elementary, 99%; Saenz Elementary, 92.2%; and Salazar Elementary with 97.4% Mexican American students.

Conclusion

The attempt by the Commissioners Court to dilute the impact of the Mexican American vote in Jim Wells County by the overconcentration in Precinct 1 and the division in Precincts 2 and 3 amounts to fragmentation of a cohesive minority voting strength. To diminish the impact of the Chicano barrio in the context of present and past discrimination demonstrates an intent to perpetuate the past denial of equal access to the political processes. Washington v. Davis, 96 S. Ct. 2040 (1976);

Village of Arlington Heights v. Metropolitan Housing Development Corp., 97 S. Ct. 555 (1976); Kirksey, supra. For these reasons, we urge the Department of Justice not to withdraw its letter of objection.

Sincerely,

Joaquin G. Avila
Associate Counsel

sa

xc: Ms. Rebecca White
Voting Section
Civil Rights Division
Room 7266
U. S. Dept. of Justice
Washington, D.C. 20530

JUL 3 1978

Mr. Romeo Flores
County Attorney
Jim Wells County
P. O. Drawer 2080
Alice, Texas 78332

Dear Mr. Flores:

This is in reference to the August 11, 1975 redistricting of the Commissioners Precincts of Jim Wells County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on May 5, 1978.

We have analyzed the information contained in your submission, comments of other interested persons, and data obtained from the Bureau of the Census in the light of relevant judicial decisions. See, e.g., Kirksey v. Hinds County Board of Supervisors, 554 F. 2d 139 (5th Cir. 1977), cert. denied, 46 U.S.L.W. 3357 (Nov. 18, 1977); Robinson v. Commissioners Court, 505 F.2d 674 (5th Cir. 1974).

Although Mexican-Americans constitute 64 percent of the population of Jim Wells County, only one of the four commissioners is a Mexican-American. An analysis of election returns for Jim Wells County reveals a clear pattern of racial bloc voting. We note that a redistricting of the Commissioners Precincts was ordered by a Federal district court on January 18, 1974. We have not been provided information indicating why a second redistricting was necessary only one and one half years after the first. According to the statistics you have provided the 1974 plan contained a total deviation from equal population of 28.4 percentage points; the deviation under the 1975 plan is substantially greater—40 percentage points.

cc: Public File

ATTACHMENT 34

Under the 1974 plan two of the four precincts had a Mexican-American population of greater than 65 percent, and a third precinct had a Mexican-American population of greater than 60 percent. Under the submitted plan, the Mexican-American percentage is above 65 percent in only one precinct and is above 60 percent in one other.

Under Section 5 the burden is on the jurisdiction proposing a voting change to show that the new practice or procedure is not discriminatory in purpose or effect. The burden of proof is the same when a submission is made to the Attorney General as it would be in a suit for a declaratory judgment under Section 5 brought in the United States District Court for the District of Columbia. See Georgia v. United States, 411 U.S. 526 (1973). The Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.19, states

> If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the sixty-day period, he shall, consistent with the above-mentioned burden of proof applicable in the district court, enter an objection. . . .

Under these circumstances, we are unable to conclude that the county has carried its burden of proving that the submitted redistricting plan for Jim Wells County does not have the purpose and will not have the effect of diluting the vote of Mexican-Americans. Accordingly, on behalf of the Attorney General, I must interpose an objection to this plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5, 28 C.F.R. 51.21(b) & (c), 51.23, and 51.24, permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting plan legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Mexican American
Legal Defense
and Educational Fund

517 Petroleum Commerce Bldg.
201 North St. Mary's Street
San Antonio, TX 78205
(512) 224-5476

MALDEF

January 14, 1980

Mr. Gerald Jones, Chief
Voting Section
Civil Rights Division
U. S. Department of Justice
Washington, D.C.

RE: Jim Wells County, Texas - Redistricting

Dear Mr. Jones:

The Department of Justice is presently reviewing the December 12, 1979, proposed redistricting plan for the County Commissioners' Precincts for Jim Wells County, Texas. MALDEF strongly urges that an objection be issued for the following reasons:

1. The Mexican American population, according to data submitted by the County, is gerrymandered into four separate commissioners' precincts.

2. The 1979 plan violates standards set forth in U.J.O. v. Carey, 97 S. Ct. 996 (1977) and Kirksey v. Bd. of Sup'rs. of Hinds Co., Miss., 554 F. 2d 139 (1977).

3. The statistical data submitted by the county is unreliable; and

4. The plan was designed with discriminatory intent.

According to figures submitted by the County, the percentages of Mexican Americans in each commissioner precinct will be 63.30% in Precinct 1, 58.37% in Precinct 2, 56.38% in Precinct 3 and 64.81% in Precinct 4. This is in a county where 60.72% of the population is Mexican American. The effect of such a plan is dilution of the voting strength of the minority community.

When measured against applicable Supreme Court standards, the plan is defici For instance the plan does not contain a commissioner precinct containing 65% minority population concentrations approved in U.J.O. v. Carey, 97 S. Ct. 996 (1977). Obviously, this plan does not meet criteria necessary

ATTACHMENT 35

National Office
28 Geary Street
San Francisco, CA 94108
(415) 981-5800

Regional Offices
250 W. Fourteenth Avenue
Suite 308
Denver, CO 80204
(303) 893-1893

1838 West Eighth Street
Suite 319
Los Angeles, CA 90017
(213) 383-6952

517 Petroleum Commerce Bldg.
201 North St. Mary's Street
San Antonio, TX 78205
(512) 224-5476

1411 K Street, NW
Suite 300
Washington, DC 20005
(202) 393-5111

to maximize potential proportional representation. According to the data submitted, Jim Wells County has also failed to take into account the factor of minority voting strength expressed in terms of eligible voter population. This absence of data on minority voting strength indicates that the covered jurisdiction seeks to focus on total population figures per district. Such a focus is misplaced and does not follow the criteria utilized by the United States Attorney General. 1/ Failing to take eligible voter population into consideration will only perpetuate the county's longstanding denial of access.

It is difficult to analyze the precise discriminatory impact of the county's plan because the data submitted to support the plan outlined on maps included in the submission is unreliable. In other words, the supporting data does not correspond to the maps showing proposed boundaries. Within the City of Hondo, the splits of enumeration districts 14, 16, 18, 19 and 21, as outlined on the county's analysis do not correspond to the proposed boundaries as drawn on the county's City of Hondo map. These discrepancies affect all four precincts. The carelessness that is demonstrated in these discrepancies is indicative of the insensitivity that has always been manifested by the county with regard to minority voting rights.

The Jim Wells County proposed redistricting plan is also objectionable because it was drawn with discriminatory intent, to purposefully insure that minorities would not have a dominant voice in the commissioners' precincts. The county has racial statistics concerning the registered voter population, ethnic population, and the level of Spanish surname registered voters in each precinct. Obviously, the impact of the plan on minorities was known.

Discriminatory intent is also strongly suggested when the facts regarding the process used become known. The county's plan was developed without any participation by the Mexican American Commissioner, Lucilla DeLeon. A copy of her letter to the Department of Justice is attached; it described the systematic exclusion of the Chicano community from the redistricting process. Also, when

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1/ CF. Kirksey v. Bd. of Sup'rs. of Hinds County, Miss., 554 F.2d 139, 150 (5th Cir. 1977) citing Bradas v. Rapides Parish Police Jury, 508 F. 2d 1109, 1112 (5th Cir. 1975) ("We have consistently recognized that 'access to the political process and not population (is) the barometer of dilution of voting strength.")

Mexican Americans in Jim Wells County asked for copies of maps showing proposed precinct boundaries, they were told the only maps had been sent to Washington, D.C. Reliable information indicates that maps were readily available but were deliberately withheld, in an attempt to keep the community as uninformed as possible.

As presented in this comment, the Jim Wells County plan does not meet administrative standards developed by the Attorney General and approved by the Supreme Court in Carey. The plan was purposefully designed to dilute the potential voting strength of the minority community by not assuring a viable nonwhite eligible voting population in violation of the standards established in Kirksey. For these reasons, MALDEF strongly urges the Department of Justice to object to Jim Wells County's proposed redistricting plan for not providing the minority community with a meaningful opportunity to effectively exercise their electoral franchise.

Sincerely,

Joaquin G. Avila

Joaquin G. Avila
Associate Counsel

sa

Attachment

xc: Elda Gordon, Analyst
Voting Section
Civil Rights Division
U. S. Department of Justice
Washington, D.C. 20530

Willie Velasquez, Dir.
Southwest Voter Registration
and Education Project
Majestic Bldg.
San Antonio, TX. 78205

xc: Ms. Choco Mesa
Southwest Voter Registration
and Education Project
Majestic Bldg.
San Antonio, TX. 78205

David Lessard, Paralegal
MALDEF
1411 K Street, N.W.
Suite 300
Washington, D.C. 20005

Alfred Arreola
512 Chapparral Street
Alice, TX. 78332

T. 1/28/80

DSD:JMC:ELG:rjs
DJ 166-012-3
C8006

1 FEB 1980

Honorable T. L. Harville
Jim Wells County Judge
Post Office Drawer 2080
Alice, Texas 78332

Dear Judge Harville:

This is in reference to the proposed redistricting plan for Jim Wells County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on December 12, 1979 and additional information was received on January 2, 1980. Although we were unable to complete our evaluation by January 15, 1980 as you requested, we have expedited our consideration of your submission to the extent possible pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. Section 51.22).

We have analyzed carefully the material contained in your submission, data obtained from the Bureau of the Census, and comments from other interested persons. As explained to Mrs. Villareal on January 15, 1980, and to you on January 18, 1980, we found discrepancies in the data furnished on your summary charts and on the maps for the City of Alice with respect to the Census Enumeration Districts contained within proposed Commissioner Precinct One. During her telephone conversation with Elda Gordon of my staff. Mrs. Villareal confirmed that, despite the incongruity reflected in the summary charts, the County Commission is submitting the plan as depicted on the maps provided in the submission to the Attorney General. We have, therefore, reviewed your submission with this understanding.

In light of the inference of racial polorization among voters that emerged from our review of the election returns you provided, we find that the proposed plan has the potential of diluting the minority voting strength that has only recently begun to be realized in several largely Mexican-American voting precincts, which have been distributed among all four Commissioner Precincts. Although the information you have submitted is in large measure ambiguous and confusing, it appears that the proposed plan realistically yields only one district from which a Mexican-American may be selected and distinguishes that district as one that is over-populated and of little practical significance in view of the paucity of road mileage and budget funds allocated to it. Also, several members of the minority community have expressed concern about the conspicuous lack of input from interested members of the minority community, including the current Mexican-American commissioner, in the development of the plan and that Mexican-Americans in Jim Wells County, and especially those who reside in the area known as Rancho Alegre, may be denied effective and responsive representation on the Commissioners Court through the implementation of a plan that places that area within Commissioner Precinct Three. Thus the implementation of this proposed plan would appear to be retrogressive under the standard of Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973), 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the proposed plan.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group.

In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.31(b) and (c). 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the implementation of the proposed redistricting plan for Jim Wells County legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action that Jim Wells County Commissioners Court plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Elda Gordon (202--724-6675), of my staff, who has been assigned to handle this submission.

Sincerely,

DREW S. DAYS, III
Assistant Attorney General
Civil Rights Division

MALDEF

April 8, 1980

Mr. Gerald Jones, Chief
Voting Section
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

RE: Jim Wells County - Redistricting

Dear Mr. Jones:

The Department of Justice is currently reviewing the February 19, 1980, proposed redistricting plan for the County Commissioners' Precincts of Jim Wells County. MALDEF strongly urges that an objection be issued for the following reasons:

1. This plan will not provide minorities with greater access to the political system.

2. The area of Alice that is most heavily populated by Chicanos is gerrymandered into four separate commissioners' precincts.

3. The Commissioners Court is unresponsive to the particularized needs of the minority community.

4. The plan was designed with discriminatory intent.

5. The plan is inconsistent with Department of Justice policies and standards set forth in United Jewish Organization v. Carey, 430 U.S. 144, 97 S. Ct. 996 (1977).

I.

The proposed redistricting plan will not provide minorities with greater access to the political system in Jim Wells County. According to figures submitted by the County, the percentage of Mexican-Americans in each commissioner precinct will be 75.56% in Precinct 1, 57.40% in Precinct 2, 56.12% in Precinct 3 and 65.74% in Precinct 4. The effect of this plan is no different

than other plans proposed by the County; again only one commissioner precinct will provide minorities with access to the Commissioners' Court. This is supported not only by a concensus of opinion among the leaders of the Mexican-American community but also by past events. In the past, Precinct 4 has had approximately a 65% Mexican American concentration and yet it has not been possible to elect a Mexican-American from this precinct.

Our community contacts[1/] in Jim Wells County have explained that the Mexican-American vote in Precinct 4 is controlled in the following manner: The Precinct 4 Commissioner saves most of his budget during the first three and a half years after his election. Then six months before he is to run for re-election he begins spending this rather large sum of money. As a result, hiring of Mexican-Americans in need of employment increases during this time; it is not coincidental that hiring is generally restricted to those persons who are registered to vote. Political patronage seems to be the key to the Anglo candidate's success in Precinct 4.

II.

The proposed plan gerrymanders the area most heavily populated by Mexican-Americans--the barrio--into four separate commissioners precincts. Commissioners in Precincts 2 and 3 are known to be unresponsive and insensitive to the particularlarized needs of the community. For example, there are Mexican-Americans on Road 665 who are without running water. This has been brought to the attention of the Commissioners for Precinct 2, Dinky Price, yet no concrete steps have been taken to alleviate this problem. [2/]

[1/] Mr. Alfred Arreola - home telephone number (512) 664-4850; work telephone 939-2102 and Mr. Joe Ramirez, work telephone (512) 664-3158.

[2/] Commissioner DeLeon: work telephone number 664-3588.

To minimize the harm caused by unresponsive commissioners, the Mexican American population should not be divided between Precincts 2 and 3. This division of the barrio constitutes a dilution of minority voting strength. It is possible to formulate a plan that does not have this effect; the MALDEF plan reflects a 73% minority population in Precinct 3. This is non-dilutive when compared to dividing the barrio between Precincts 2 and 3 with 57.4% and 56.12% Mexican-American concentrations respectively.

It should be noted that because the barrio in Alice is large (the area south of Highway 44) division of this area is inescapable. However, the dilutive effect of such division should be minimized (as in the MALDEF plan). The Jim Wells County proposed plan maximizes the dilutive impact by evenly distributing the Chicanos not in Precinct 1 between Precincts 2 and 3.

III.

The proposed plan was drawn with a discriminatory intent. The Jim Wells County Commissioners stated that wide news media coverage was given, along with notice in the newspaper, when the Commissioners met to discuss the redistricting plan. This gives one the illusion that there was significant opportunity for community input. This illusion is quickly dispelled when one examines the facts. All of the plans proposed at the meeting we rejected by the Commissioners' court. The plan submitted to the Department of Justice was drawn up by the county Judge's secretary, in secrecy and behind closed doors. The three Anglo commissioners each paid this person $300 to draw up another plan more to their liking. 3/ There was no opportunity for any input from the leaders of the Mexican-American community. Any attempts by these leaders to gain information or maps of this plan been thwarted. The Judge's secretary simply "forgets" time after time to provide requested material.

IV.

Our community contacts--who are lifelong residents of Jim Wells

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3/ Ibid.

County--have said that there has never been a Mexican American county Judge in the county.[4] It should be noted that candidates for this position run at large. Also, to the best of the their memory, prior to 1964 there had never been any Mexican Americans elected to the Commissioners Court. After 1964, there has never been more than one Mexican American commissioner on the Court at any given time.

Due to this long-term absence of significant representation of minorities and because the Mexican American population is significantly more than 50% of the county's population, it would be appropirate for the minority community to be in the majority of the population in three commissioner's precincts. Because of the standards set forth in United Jewish Organization v. Carey, 430 U.S. 144, 97 S. Ct. 996 (1977) and carried forth by the Department of Justice, it would be appropriate for the minority population to be at least 65% in three precincts. Nothing less will address such a history of underrepresentation.[5]

CONCLUSION

In view of the history of minimal access to the political process, coupled with a history of intentional discrimination against Mexican-Americans, the effect of the Jim Wells County proposed redistricing plan represents an attempt to sustain the existing dilution of Mexican-American voting strength in Jim Wells County. For these reasons we strongly urge the Department of Justice to issue a letter of objection.

Sincerely,

Joaquin G. Avila
Associate Counsel

JGA:ml

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[4] Mr. Alfred Arreola, Mr. Joe Ramirez, and Mr. Antonio Lozano (County Tax Assessor Collector) work telephone number 512-664-7315.

[5] MALDEF would like to request that the Department of Justice not disclose the sources of our information to anyone outside of the agency, in accordance with 28 CFR §51.12(c).

AUG 1 8

T. 7/29/80
Ret. 8/8/80

DSD:JHC:ELG:elg
DJ 166-012-3
C9463

12 AUG 1980

Honorable T. L. Harville
Jim Wells County Judge
200 North Almond Street
Alice, Texas 78332

Dear Judge Harville:

This is in reference to the February, 1980, redistricting plan for Jim Wells County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on June 13, 1980.

We have analyzed carefully the materials contained in your submission, data obtained from the Bureau of the Census and comments from other interested persons. Our analysis reveals that while the proposed plan adequately deals with some of the concerns we had in the previously submitted plan, the plan continues to dilute the voting strength of the minority concentration that exists in the southern portion of the City of Alice by distributing those voters among all four commissioner precincts. On the other hand, it appears that a number of plans were available to the Commissioners Court that would not have had that effect. The adoption of a plan that would maintain Mexican-American 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; see also, 28 C.F.R. 51.19)), particularly where, as here, the plan was drawn with no significant input from the affected minority group.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted change.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting plan for Jim Wells County, Texas, legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Jim Wells County Commissioners Court plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Elda Gordon (202—724-7403) of our staff, who has been assigned to handle this submission.

Sincerely,

JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

MAR 3 1 Recd

Mr. Jerry Jacobs
Superintendent, Raymondville
Independent School District
P.O. Box 429
Raymondville, Texas 78580

Dear Mr. Jacobs:

This is in reference to the polling place changes for the Raymondville Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 15, 1977.

Your submission consists of the following changes in the location of polling places. The polling place for Precinct 1 (Willacy County Precincts 1 and 7) has been moved from the Raymondville City Hall to the American Legion Hall. The polling place for Precinct 2 (Willacy County Precincts 2, 8, and 11) has been moved from one location to another within the Raymondville Community and Historical Center.

The Attorney General does not interpose any objection to the polling place change at the Community and Historical Center. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of a change.

It is our understanding that since we received this submission the school district, as required by order of the 107th District Court, Willacy County (March 14, 1977), has designated the Smith Elementary School as the

polling place for those Precinct 1 voters residing in County Precinct 1, and that this polling place will be used in the election scheduled for April 2, 1977, unless the district court ruling is reversed on appeal prior to the date of the election. We also understand that the creation of the Faith school polling place will be submitted to the Attorney General pursuant to section 5.

The situation with respect to polling places for the April 2, 1977 election, therefore, is still uncertain. Nevertheless, because of your request for the expedited consideration of this submission and because of the need of a resolution of this matter prior to the election, we are responding at this time.

We will first consider the situation if only the American Legion Hall is used as a Precinct 1 polling place. We have received unrebutted representations indicating that the change in the location of the Precinct 1 polling place from the City Hall to the American Legion Hall may have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Specifically, it appears that this change will result in a significant inconvenience for many Mexican American voters residing in County Precinct 1. In addition, the American Legion Hall appears to be a place where many Mexican Americans feel unwelcome. Thus it is likely that the use of the American Legion Hall will have the effect of deterring participation by Mexican Americans in the April 2, 1977 election. We also note that other alternatives were available to the school district to overcome the problems associated with the continued use of the City Hall as a polling place location.

On the basis of those facts and circumstances, the Attorney General is unable to conclude, as he must under the Voting Rights Act, that the change to the use of the

American Legion Hall as the polling place for Precinct 1 will not have the effect of discriminating on account of race, color, or membership in a language minority group. Therefore, on behalf of the Attorney General, I must interpose an objection to the implementation of this polling place change.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, Sections 51.23 to 51.25 of the Attorney General's Section 5 guidelines (28 C.F.R. 51.23-51.25) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court is obtained, the legal effect of the objection by the Attorney General is to make the change to the American Legion Hall legally unenforceable.

It is our understanding, however, that the use of the Smith school as a polling place location would effectively eliminate whatever problems may be created by the change from the City Hall to the American Legion Hall. Therefore, the Attorney General does not interpose any objection to the use of the American Legion Hall for voters residing in County Precinct 7 if the Smith Elementary School is used. If the school district decides not to use the Smith school polling place for the April 2, 1977 election, please notify Voting Section Attorney David Hunter at 202--739-3869.

As was pointed out above, Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent

judicial action to enjoin the enforcement of a change. We should further point out that the Attorney General has no authority to waive the 60-day period for the consideration of a submission and, as our guidelines indicate (see 28 C.F.R. Section 51.22), we may reexamine our position on your submission should we receive additional information concerning the changes in voting procedure prior to the expiration of the 60-day period. Should such information warrant a change in the Attorney General's determination, you will be so advised.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Mr. EDWARDS. Thank you, Mr. Avila.

Mr. AVILA. At this point would you like to ask questions of myself, or hear from the rest of the panelists?

Mr. EDWARDS. I think we would like to hear from the other members of the panel.

Mr. AVILA. At this point I would like to ask Mr. Alfredo Arriola to make some comments concerning the city of Alice and Jim Wells County.

Mr. ARRIOLA. Members of the committee, ladies and gentlemen. My name is Alfredo Arriola. I am a resident of Jim Wells County, Tex., and have lived there my entire life.

Growing up as a Mexican American in Jim Wells County, I realized that we were treated differently from Anglos in many ways. Mexican Americans were not allowed to go to the same schools as white children, and as a child in school, I was not allowed to speak Spanish. My three children also attended schools that were all Mexican American. The teachers all spoke English. Most of us were taught Spanish in our homes. All classes were in English. As a result, the quality of education received by Mexican Americans was very poor. Many more Mexican Americans than Anglos left school during junior high and high school.

As I grew older, I realized that discrimination in Jim Wells County occurs in other areas besides education. Mexican Americans still live in one part of town, while Anglos live in another part. Also, conditions in the Mexican American neighborhoods are much different than those where Anglos live. We are especially affected by problems of sewage, small water pipes, and an absence of paved streets. In some areas, there is no running water available to Mexican Americans.

I feel that if there was a possibility of getting more Mexican Americans elected to office, we could have a better chance of solving these problems. We don't have enough representation on important governing boards such as the commissioners court of Jim Wells. The county is run by four commissioners. As it stands now, we have only one Mexican American county commissioner to represent Jim Wells County's Mexican American population. We need the possibility of electing more officials who understand the needs of the Mexican American community. Unless the Voting Rights Act is extended, we will never have this possibility in Jim Wells County.

Since the Voting Rights Act was extended to cover Texas, Jim Wells County has tried three times to adopt a county redistricting plan which discriminates against Mexican Americans. Three times the Voting Rights Act has been successful in preventing the county from using these plans to weaken our voting strength.

To the best of my recollection, there has never been a Mexican American county judge, and before 1964 there had never been a Mexican American county commissioner. There has never been more than one Mexican American commissioner, even though we make up 67.2 percent of the population. The Chicano community knew that underrepresentation was due to a gerrymandering of the commissioner precincts. But we did not have the statistics to show how our community was being gerrymandered.

The Mexican American Legal Defense and Educational Fund has assisted us in making sure the county does not violate the Voting Rights Act. MALDEF attorneys explained the requirements of the Voting Rights Act and we were shown population statistics that demonstrated how the Mexican American community had been gerrymandered.

I would like to give this committee background on Jim Wells County and the Voting Rights Act. In 1975, the county commissioner precincts in Jim Wells County were redistricted. However, the county ignored the requirements of the Voting Rights Act and did not inform the Department of Justice about the redistricting. In 1976, the Department of Justice wrote a letter to the county. The county was told that it could not use a plan that had not been approved through the Voting Rights Act. This 1975 plan was not submitted to the Department of Justice until some 3 years later.

On July 3, 1978, the Department of Justice objected to the 1975 plan because it discriminated against Mexican Americans. In August of 1978, I and other Mexican Americans filed suit in Federal court to stop the county from using this plan in the upcoming elections. We were represented by the Mexican American Legal Defense and Educational Fund. We were successful in our suit.

On December 2, 1979 another plan was given to the Department of Justice for approval. The one Mexican American commissioner was given no chance to have any input in this plan. Each of the three Anglo commissioners paid the county judge's secretary to come up with this plan. When Mexican Americans asked for maps of this plan, we were told that the only maps had been sent to Washington. The county did not want us to know how discriminatory the plan really was.

On February 1, 1980, a second objection was issued under the Voting Rights Act. The Department of Justice decided that this plan also discriminated against Mexican Americans. In reality, this plan was no different than the others. Under this plan only one Mexican American could have been elected to a precinct that had too much population and too little road mileage. Road mileage is very important in Jim Wells County. The budget for the county is divided according to the number of road miles in each precinct. The one Mexican American commissioner is given less than 10 percent of the roads and has very little money to spend on improving conditions in her precinct, which is mostly Mexican American.

On February 19, 1980, the Jim Wells County commissioners tried for a third time to get approval of a discriminatory redistricting plan. Attempts were made to weaken the voting strength of Mexican Americans by making it seem like we would have a chance of electing a second commissioner in precinct 4. Precinct 4 was given a 65-percent Mexican American population. This looks good on paper, but because of the politics in precinct 4, there would be no hope of representation in this precinct. The way Mexican Americans vote in precinct 4 is mainly controlled through economic intimidation. The commissioner of precinct 4 saves most of his budget until a few months before the election. Then, just before his reelection, he spends his money to hire Mexican Americans who need jobs. Usually those hired are registered voters. The key to the

success of this commissioner seems to be the way he uses county money to influence votes.

We believed that this third plan was deliberately drawn in a way that would discriminate against Mexican Americans. All plans presented at a public meeting were thrown out by the commissioners court. Again, the county judge's secretary was paid by the three Anglo commissioners to draw up a redistricting plan that they liked more. Mexican American leaders in the community were not allowed to give opinions of the plan and time after time the judge's secretary would forget to supply us with information we had asked for on this plan.

In conclusion, these discriminatory plans would have been adopted without the Voting Rights Act. There is still no redistricting plan in Jim Wells County. There have been no elections since 1976. When a plan is drawn using the 1980 census, we will need the protections of the Voting Rights Act. The county of Jim Wells cannot be trusted to provide Mexican Americans with equality in the area of voting rights.

Thank you.

[The complete statement follows:]

STATEMENT OF ALFREDO ARRIOLA

My name is Alfredo Arriola. I am a resident of Jim Wells County, Texas, and have lived there my entire life. I am a Mexican American.

Growing up as a Mexican American in Jim Wells County, I realized that we were treated differently than Anglos in many ways. Mexican Americans were not allowed to go to the same schools as white children and as a child in school, I was not allowed to speak Spanish. My three children also attended schools that were all Mexican American. The teachers all spoke English. Most of us were taught Spanish in our homes. All classes were in English. As a result, the quality of education received by Mexican Americans was very poor. Many more Mexican Americans than Anglos left school during junior high and high school.

As I grew older, I realized that discrimination in Jim Wells County occurs in other areas besides education. Mexican Americans still live in one part of town while Anglos live in another part. Also, conditions in the Mexican American neighborhoods are much different than those where Anglos live. We are especially affected by problems of sewage, small water pipes and an absence of paved streets. In some areas, there is no running water available to Mexican Americans.

I feel that if there was a possibility of getting more Mexican Americans elected to office we could have a better chance of solving these problems. We don't have enough representation

on important governing Boards such as the Commissioners Court of Jim Wells. The County is run by the four Commissioners. As it stands now, we have only one Mexican American County Commissioner to represent Jim Wells County's Mexican American population. We need the possibility of electing more officials who understand the needs of the Mexican American community. Unless the Voting Rights Act is extended, we will never have this possibility in Jim Wells County.

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On July 3, 1978, the Department of Justice objected to the 1975 plan because it discriminated against Mexican Americans. In August of 1978, I and other Mexican Americans filed suit in Federal Court to stop the County from using this plan in the upcoming elections. We were represented by the Mexican American Legal Defense and Educational Fund. We were successful in our suit.

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In conclusion, these discriminatory plans would have been adopted without the Voting Rights Act. There is still no redistricting plan in Jim Wells County. There have been no elections since 1976. When a plan is drawn using the 1980 Census, we will need the protections of the Voting Rights Act. The County of Jim Wells cannot be trusted to provide Mexican Americans with equality in the area of Voting Rights.

Mr. EDWARDS. Thank you very much.

Mr. AVILA. At this point I would like to have Mr. Trinidad read his statement.

Mr. EDWARDS. Mr. Trinidad.

Mr. TRINIDAD. Good morning, Chairman Edwards, Mr. Hyde.

My name is Jesus Trinidad, Jr. I am 30 years old and have lived in Seguin for most of my life. I have a degree in mechanical engineering from Texas A. & M. University and I am currently a mechanical engineer in civil service in San Antonio, Tex.

I have been a member of LULAC since 1975, and prior to that I belonged to a local organization which was the forerunner of LULAC in Seguin. I am currently district director of district II of LULAC, which encompasses the cities of Seguin, San Marcos, Luling, Lockhart, Gonzalez, and Floresville. I am here to speak to you today and convey my feelings on the importance of keeping the Voting Rights Act, especially here in Texas. Without this vital legislation, the only thing left for minorities is Federal court litigation.

Joaquin mentioned the problems in Seguin, and let me give you some more details on that.

The city of Seguin, Tex., is governed by a city council consisting of a mayor and eight council members. Although the minority population constitutes over half of the city's population, there have been at most only two minorities sitting on the city council at any given time. This minority underrepresentation was due to the overconcentration of minorities in ward 1, as was pointed out on the chart here. A fairly drawn districting plan would result in the election of possibly four minorities.

To prevent the continued implementation of this unconstitutional redistricting plan for the 1978 municipal elections, I, along with several other minorities, filed a lawsuit. We were successful in declaring the old plan unconstitutional.

The city proposed a plan which would have continued the overconcentration of minorities in ward 1. The city purposefully sought to prevent an increase in minority representation. None of the other three wards permitted minorities a realistic opportunity to get elected. The MALDEF plan, the plaintiff's plan, on the other hand, provided two wards which contained substantial minority populations. Under this plan, minorities would have a realistic opportunity to elect four minorities. The court, however, adopted the city's plan.

To prevent the implementation of this plan, we requested the city to submit the plan to the Department of Justice for approval pursuant to the Voting Rights Act. We were confident that the Department of Justice would agree that the plan was discriminatory. However, the city refused to submit the plan to the Department of Justice. We then filed a second lawsuit. In the meantime, elections were conducted under the city's plan. The results: only two minorities in the city council. On appeal, we finally succeeded in requiring the city to submit its plan to the Department of Justice. At this date, however, the city will formulate a new plan based on the 1980 census.

Without review by the Voting Rights Act, the city will adopt another plan which overconcentrates the minority population in

ward 1. We need section 5 to prevent this blatant attempt to limit minority political participation. I urge the distinguished members of this committee to continue coverage of the Voting Rights Act in Texas.

Thank you.

Mr. EDWARDS. Thank you, Mr. Trinidad.

Commissioner Alvarez.

Mr. ALVAREZ. Thank you, Mr. Edwards.

My name is Adolfo Alvarez. I am the commissioner for precinct 3 in Frio County, Tex. I have lived in Frio County for the past 18 years. I am Mexican American.

If not for the Voting Rights Act, I would not be a commissioner today. Only until recently has it been possible for Mexican Americans to be elected to office in Frio County. Although Frio County is 68.2 percent Mexican American, there had never been a Mexican American elected as county commissioner until 1974. For the most part, Chicanos were reluctant to run candidates for the county positions that were elected by precinct. We knew that the precinct boundaries were gerrymandered and that in almost every precinct the Anglo population was a majority. We felt pretty hopeless about the situation.

To give this committee a little background on the history of Frio County and the Voting Rights Act, I would like to begin by saying that a very discriminatory redistricting plan for county commissioner precincts was adopted in 1973. This plan gerrymandered almost the entire Mexican American population into one precinct. Even though all election changes enacted since November of 1972 were to have been approved by the Department of Justice, Frio County chose to ignore the requirements of the Voting Rights Act.

In August of 1975, the Mexican American Legal Defense and Educational Fund informed Frio County of the need to meet the requirements of the Voting Rights Act. In November of 1975, the Department of Justice sent a similar letter. It was not until 1976 that Frio County's 1973 plan was sent to the Department of Justice for review.

In April of 1976 the Department of Justice objected to this redistricting plan because it discriminated against Mexican Americans. Even though the Department of Justice decided that this plan was discriminatory, Frio County decided to go ahead with their elections anyway. It was necessary to file a lawsuit in Federal court to require the county to follow the law with respect to the Voting Rights Act. We were represented by the Mexican-American Legal Defense and Educational Fund.

It is only because of the Voting Rights Act that Chicanos in Frio County have representation. The county still would like to weaken our voting strength, and if not for the Voting Rights Act, they would get away with it. The Chicano community in Frio County does not earn a great deal of money and we cannot afford the time and money it takes to ask the courts for help each time the county tries to do something to weaken us. Only recently, in May of 1980, a Mexican American won in the Democratic primary in the race for tax assessor-collector. In Texas, the tax assessor-collector's office is very important. This office provides people with voter registration cards. After the Mexican American candidate won in

the 1980 primary, the county attempted to transfer the voter registration duties over to the county clerk, an Anglo. I feel that if not for the Voting Rights Act, the county would not have hesitated to take this action. But when the county was told that Mexican Americans were opposed to this change and that it would have to be submitted to the Department of Justice under the Voting Rights Act, the county decided not to make this change.

Thanks to the Voting Rights Act, a plan was adopted for county commissioner precincts which gave Mexican Americans a chance for equal representation. For the first time in Frio County, we felt hopeful. Through massive voter registration drives, Mexican Americans were registered to vote. The Chicano community was excited over the new realities of community involvement. Gone was the apathy that resulted from the futility of trying to work within the confines of a gerrymandered plan. Because of the existence of the Voting Rights Act and our work in the community, we now have two Mexican American county commissioners and three Mexican American justices of the peace out of four.

We have also been able to increase minority representation on the school board and city council. We feel that we now have a good chance of electing a Mexican American county judge for the first time in 130 years.

In conclusion, the Voting Rights Act has made a big difference in Frio County, Tex. Without it, we know that the voting rights of Mexican Americans would not be protected. Because of the past history of discrimination, and because of the progress that has been made in Frio County, I strongly recommend that the Voting Rights Act be extended for at least 10 more years.

Thank you very much.

Mr. EDWARDS. Thank you very much, and thanks to all the witnesses for very helpful statements.

Mr. Hyde.

Mr. HYDE. I share the sentiments of the chairman. It has been most illuminating. I have no questions, but thank the panel for their very good testimony.

Mr. EDWARDS. I might have a couple of modest questions here.

As the four of you testified—and in all of the testimony, each supports the other—do you have personally, and members of your family have, and people that you associate with, Hispanics, a feeling of deep resentment that this goes on, even of rage, that this discrimination has gone on and continues to this day, and that you cannot look forward to any real amelioration of it in the future?

Mr. TRINIDAD. I would like to answer that.

I definitely feel rage and hostility, but I always look to divine guidance, whatever you want to call it, to keep me from taking any drastic action that I know would not be proper.

The way that I look at it, it's a lot of the old people that are used to it, that were around when blatant discrimination was occurring, that have perpetuated this, and I think it's only a matter of time—I hate to say this, you know—before they die off, and I see a new generation of Anglos, Mexican Americans, and blacks and any other ethnic group working together in a peaceful society.

Mr. EDWARDS. But when you see that the Voting Rights Act extension does have a very promising future—at least according to what we all read in the papers—how do you feel about it?

Mr. AVILA. I, for one, in my travels throughout the State of Texas, with the voting complaints and abuses that we receive in our office, we have very few tools to use to prevent political subdivisions from adopting blatantly discriminatory actions. We have to make the best of those tools. Unfortunately, if you didn't have the Voting Rights Act, under the present interpretation of the Supreme Court of the 14th and 15th amendments, we would have very few tools, if any, to combat the kinds of institutional discrimination that we are referring to.

The fifth circuit has indicated repeatedly—and I believe Professor White referred to it—the difficulty of establishing the requisite intent in order to declare a given election scheme unconstitutional. There is simply no "smoking gun" that is going to be documented in contemporary city council minutes.

So what is the alternative? The alternative is that you're going to have frustration, you're going to have lower voter participation because people do not see a meaningful opportunity to participate in the system unless they can effectively change it, so that it's nondiscriminatory. So if you don't have the Voting Rights Act, you're going to have, in Jim Wells County, the adoption of a discriminatory election plan which will discourage Mexican American political participation; in the city of Seguin you're going to have the continued overconcentration of minorities; in the city of Pecos you will have the adoption of a numbered place system. So you are going to have that increased frustration, and you're going to have lower voter participation, and you're going to have less input by Mexican Americans and blacks into the political process.

Mr. EDWARDS. Well, in Texas are there jurisdictions and local governments and Anglos in positions of power that are making real efforts to cooperate with you and trying to bring more minority participation in the electoral process and trying to help you do your job, so that you can look forward to the future with hope?

Mr. AVILA. I'm afraid not. Texas needs the Federal presence. The only person or the only office that can effectively assist us in preventing these voting abuses is the State attorney general's office. The State attorney general has been remiss in enforcing or filing any lawsuits to prevent any kind of voting discrimination.

We informed the attorney general's office several years ago of the need to inform the counties to redistrict their lines, because they were in blatant violation of the one-person, one-vote principle. There hasn't been a single lawsuit filed by the State attorney general's office. Nonprofit corporations, private attorneys, had to institute these lawsuits.

When you have that kind of response or nonresponse by State officials who can do something about it, you need Federal oversight, because we can't rely on the State to enforce our rights. In fact, we are often litigating against the State because of the denial of those rights.

A good example of that is the bilingual education lawsuit, where the State has consistently opposed the implementation of bilingual education beyond certain grades. The State was a defendant in the

White v. *Register* case, in terms of dismantling the discriminatory election practice, the multimember districting scheme for the State legislature.

The State was a defendant in *Flowers* v. *Wiley*, where a State statute which would have required a purging of all the voters, would have clearly had a discriminatory impact. They were a defendant. So we can't rely on the State to come forward and protect our rights.

The record speaks for itself. There has been well over, close to 50 lawsuits filed in the State of Texas since 1976 dealing with issues of voting discrimination. I would like to see the State come forward and say "we filed" or "we assisted the minority community in challenging this particular election practice," not just by calling up on the phone but by filing a lawsuit.

Mr. EDWARDS. Could an Anglo in a congressional race, or a race for a statewide office, or in a race for the State assembly or the State senate, win if the Anglo came out for the Voting Rights Act and for the programs that you espouse and support?

Mr. AVILA. I think, in response to your question, it has been my experience that in many of the areas we have visited it really doesn't matter who gets elected. What we want is a responsive government official, someone who is going to be accountable to that particular group, irrespective of the person's color, race, or national origin. So if the person is going to be responsive to the particularized needs of a given community, then they have the choice of exercising their right of franchise and determine whether a given candidate is going to represent the particularized needs.

So the thrust of all our litigation is not necessarily to create a proportional minority representation. It is to eliminate any obstacles which frustrate the electoral choices of the voting strength of the minority community. That is the crux of our entire litigation efforts. So you can have persons who are non-Mexicans, who are nonminority, who can represent the interests of the Mexican American community.

I would cite you a very good example, Representative Glossbrenner, who is a legislator in south Texas. You have other Anglo representatives from those areas which have been responsive to the particularized needs of the Mexican American community.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I just want to comment that I really think it's unfortunately premature to assume that the future of the preclearance sections of the Voting Rights Act, as distinguished from the Voting Rights Act which is permanent law, including all of the prohibitions and the penalties and the Federal registrars and all of that, is going to expire; it's not, we're just talking about a process called preclearance.

We are also talking about bilingual sections which don't exire until 1985. We're talking about extending those another 7 years.

But I don't think it's really fair to say that the future of the preclearance section is dismal. Senator Thurmond is obviously the ogre in everybody's mind, the unspoken ogre. But I would remind anybody who cares to remember that Senator Thurmond voted to give the District of Columbia, the city-state of the District of Co-

lumbia, two Senators, something I would never do and didn't do. But I just think it's very premature to assume that the preclearance sections are going to go down.

I think, unless a better record is made for why they should go down, they won't go down, because if things haven't changed significantly, if people aren't being permitted to register, vote, and have their votes effectively count, through gerrymandering and that sort of thing, I don't see how reasonable people can say the job is done. I am one who very much wants to see some changes made in the law, but not just because I want them, but because some record somewhere is going to demonstrate that it's appropriate that that happen. I wouldn't be as pessimistic as my dear friend, the chairman, that the future is dismal for this. A lot depends on the record that we're making, that you're helping make here today and as others have.

My own views are certainly not locked in concrete. But I do know that some of the things you indicate as discriminatory or discouraging aren't necessarily due to much more than human nature. We thought the 18-year-olds, when they got the right to vote—my Lord, this was going to be great. They just don't care, as a group, that much about it. There are people who just don't care as passionately as you or as I do or as the chairman does, because we're involved in politics. But I wouldn't be as pessimistic as the chairman's remarks indicated. I think there's a future for guaranteeing everybody the right to vote effectively. I hope there is.

Mr. AVILA. I think that future can be guaranteed by adopting the Rodino bill.

Mr. HYDE. I wouldn't say it would be guaranteed, but it probably would help. I would say that these hearings are moving in the direction of providing a basis for some judgments on that.

Thank you.

Mr. EDWARDS. Counsel?

Ms. GONZALES. Thank you, Mr. Chairman.

I really have only two questions. One is, as you may know there are three bills before the subcommittee to delete the minority language provisions of the act, not sponsored by anybody here, but there are three bills before the subcommittee. They would also delete section 5 as they pertain to Texas and the Southwest.

With regard at least to the minority language provisions, I think the concern that has been expressed by some of those sponsors is that by allowing or encouraging bilingual ballot, what you're doing is really kind of creating a separate identity, a cultural isolation.

How would you respond to that?

Mr. AVILA. Well, I think, on the contrary, that a bilingual election process would permit persons who have not participated before and who won't participate unless they can just basically understand the process—because it's not conducted in a language which they can understand—I think it will serve to politically integrate these persons who are linguistically excluded from the political process. We're not talking about creating a Quebec. It's not like this phenomenon that just grows overnight. We have been here for several centuries and our common language is Spanish. And when the system of English is imposed, it doesn't necessarily mean we're not going to learn English; it's that we want to be exposed to an

educational system that will afford us some form of education in which we can acquire the English language. Therefore, if we have that kind of bilingual election process which affords that kind of access, I think it will not serve to separate people but will serve to politically integrate them.

Ms. GONZALES. Thank you.

The other question I have relates to a discussion—I believe—with Mr. White. To your knowledge, have the Federal courts ever adopted or indicated that racial quotas are, in fact, what is required under the Voting Rights Act?

Mr. AVILA. No. On the contrary, the focus has not been on the election of particular candidates. The focus has been on minimizing or maximizing the voting strength of a given community. An effects standard does not equate to a proportional representation standard because an effects standard is being used right now by the Department of Justice and is being used by the U.S. District Court in the District of Columbia to review election changes, and they certainly do not adopt a standard that we are going to guarantee proportional racial representation. So no, it does not.

Ms. GONZALES. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

With regard to the court interpretation of the effects test in section 2, you would agree, would you not, that that court interpretation applies to existing law, not to the amendments which Mr. Rodino's bill would make to existing law?

Mr. AVILA. The *Mobile* decision only applied to section 2 as it existed prior to 1975. It did not apply to the amendments to section 2 as a result of the addition of the language "minority provisions." So that interpretation is still open. The fifth circuit just recently decided a case which left that particular question open and it may be litigated at the Supreme Court level, so it's not completely over.

Mr. BOYD. But the effects definition that we're discussing, and the one to which you made reference in regard to section 5, is worded substantially different than title II of H.R. 3112; is it not?

Mr. AVILA. Yes; it is. The language in that particular statute speaks in terms of results instead of effects. To me, or in terms of judicial interpretation, I am not aware of any Federal appellate court decision or district court decision, for that matter, which has equated "results" or a section 5 court in Washington, D.C., which has equated "effects" with proportional representation.

Mr. BOYD. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. We thank the panel very much for your excellent testimony.

The last witness this morning before we have a short luncheon break is the Honorable Al Edwards, who is a Texas State representative, a Democrat from the great city of Houston.

Representative Edwards, we welcome you and you may proceed.

TESTIMONY OF AL EDWARDS, TEXAS STATE REPRESENTATIVE

Mr. AL EDWARDS. Thank you very much. Let me say that I am very honored to be able to come before you and speak as to our

feelings on the continuation of the Voting Rights Act and all of those sections dealing with the act. I'm not going to be repetitive. I'll be as brief as I can and will be open for any questions if there are some.

Let me just say that I do agree with those who have testified earlier in terms of the need and the problems that have arisen even with having the law, the fact that there has still been and the struggle of having to litigate in most parts of the State for those rights that we are just due and haven't had in terms of the political process. In many cases we are underrepresented in terms of the elected officials in most capacities across the State of Texas, even with the law. Without the law, I think we all know what it would be like.

In fact, if we look at what happened from 1876 up until just recent years, we could easily answer the question, the question that I heard addressed to this panel: What would happen or what has happened until the law was put into effect. We didn't have the numbers of elected officials in our city, county, or State level. So we know what it would be like, and I don't see where a regression of the law would improve the situation at all. In fact, I would be most optimistic in saying it would surely hinder it.

I think if we look at the effects of what has happened socially and educationally in this country by having the law on the books and by having the kind of input that we've had from those that we hadn't had input from directly prior to this time, we can see that many programs have been implemented and we have been much more effective in our labor organizations and educational institutions, in our communities, and we have been able to address those issues directly ourselves and then provide the kind of input that we know was needed. And we can continue to do that.

Let me just cite an example that happened just recently here in Texas duing the redistricting of the senate seats and, of course, particularly in the house seats. We have eight members of the house that's going to be paired, and we know, without the Voting Rights Act, that probably wouldn't have been that many because none of those happened to be minorities, and we know that our communities would have been cut up in little apple shaped or pie shaped pieces like they were prior to the act. Many of us would have been packing our bags and going back home at this time. We know that to be a fact.

What we did do was sacrifice some numbers for the minorities concerned to maintain and hold some of the incumbents that were there. But needless to say, in spite of the good relationships, because of the friendships, we know those individuals wouldn't have cut themselves out of their legislative seats. As a result of that, I feel, regardless of what some others have said, the representation wouldn't be as positive and effective, not having representation like we have today. In fact, we are very far underrepresented. Anyway, I thought I would just make mention of that.

I also know that when Congresswoman Jordan in Washington represented us in the congressional seat, the numbers being there to have a congressional seat in Harris County, and yet not having a senatorial seat, it should tell you something. Because if the numbers are there for a congressional seat, then surely the numbers

were there for a senatorial seat in the State of Texas. Because of the act, we will have a predominantly black senatorial seat, senate seat 9, if all goes well, that would be represented by a black. Of course, we have the third largest population for blacks around the country nearly; especially here in the State of Texas we know what we represent, and we'll have one black senator from Harris County. We know we are approaching vastly far above the half-a-million mark. So I think we can see, even with the law, it isn't close to be justified like it should be.

Let me say that the question about whether or not we are being helped and supported from those who are supposed to help us. You know, we have heard this and have seen it, and I think it's not being rude or taken out of context that token help and token favors is not what we're interested in. We prefer the law, because that help we have gotten in many cases is not the help that's needed, to give us a piece of something you don't want or help us in an area just to show that you might be OK, that's not what is needed to address the issues around this country.

I answered that because I'm a part of many organizations that I see in this room. I was there before I ever came to the legislature and I'll be there when I leave. I know what we have seen in the past. I know what we're seeing now. So I just thought I would touch upon that since I heard that question asked.

Lastly, I am one who firmly believes that this country, being in the predicament that it's in, even though we're a very prosperous country, we are also seeing that we're being attacked from many small countries around the world, that we're losing on many fronts economically, that this issue of racism has caused this country billions and billions of dollars, and it has caused us to weaken in some areas. And I know if it's a costly situation it's a timely situation, and that time that we're spending on these racial issues that we create or allow to be continued in this country is costing us. I think we could spend more of that time and effort with a collective input from everybody on a positive level, or even if it's a negative level, but going down the road together rather than trying to go down the road with one pulling from the other one. It's going to eventually catch up with us. It's catching up with us. We can see it.

Being an American, I am interested in the growth and continuing growth of this country, and I would say we should do whatever it takes to make sure that we can continue to have the kind of input that we do have and represent those areas that we can.

I could go on and on in some other areas, but I know there will be other testimony later that will address some other issues. But I'll stop there and say thanks again for allowing us to be here. I will be here for any questions now or later on in the evening. But I appreciate the time.

Mr. EDWARDS. We appreciate your testimony, Mr. Edwards. It was very eloquent.

Mr. Hyde.

Mr. HYDE. No. I just appreciate what you said.

You said there was enough for Barbara Jordan to get elected to Congress but not for a State senator. How many senators did run or were elected from Barbara Jordan's congressional district?

Mr. AL EDWARDS. Well, it was cut up, and the way it was cut up, we had from that particular area five senators——

Mr. HYDE. In that congressional district?

Mr. AL EDWARDS. No, as a part of that congressional district. But in that congressional district, we're saying that if the blacks and minorities made up enough numbers for a congressional seat, then surely the numbers were there for a senatorial seat.

Mr. HYDE. Were any of those Senators black?

Mr. AL EDWARDS. No.

Mr. HYDE. I see. In other words, there were enough Black votes to elect Barbara to Congress, but not to elect a senator in any of the senatorial districts that comprise——

Mr. AL EDWARDS. Because of the way the senatorial seats were cut.

Mr. HYDE. I see. Thank you.

Mr. EDWARDS. Mr. Edwards, let me go back to part of the statement made by the Texas Advisory Committee to the U.S. Commission on Civil Rights. I bring this up because if the extension of the Voting Rights Act is not approved by Congress and signed by the President, then the State legislature, of which you are a member, will have a very important part in enforcing voting rights for Texans.

The Commission said: "It should be observed that never has the Texas Legislature acted to encourage minority political participation in the absence of a Federal court order to do so, or where such an order was inevitable."

Is that a true statement?

Mr. AL EDWARDS. Well, I think if we look at what happened before, it would indicate clearly that that's the case, for the most part. Of course, we can always find little bits of pieces here, but in terms of the real move, in terms of the real input where it's effective, they're right.

Mr. EDWARDS. What you're saying, then, is that blacks and Hispanics in Texas are not going to be able to count on help from the Texas Legislature in the absence of the extension of the Voting Rights Act?

Mr. AL EDWARDS. Well, I would say this: That we have now four Mexican Americans who are senators, we have 12 blacks in the house now, and I think 17 browns. No blacks in the senate. We will get some help. I'm optimistic that we'll get some help. I would think that Texans will get some help from the legislature. I would hate to think I was serving in a body that I wouldn't get any help.

But I can guarantee, in my own mind, that we wouldn't have come out with what we're coming out with now, because of what's on the books. The numbers are not there. Collectively they're not there, in the house or the senate. So we will be able to politic our way into some things, and I'm sure we're going to get some help from some of our house members. But I am realistic also.

Mr. EDWARDS. Thank you.

Counsel?

Ms. GONZALES. Thank you, Mr. Chairman. One question.

Professor Charles Catrell testified before our subcommittee in Washington, D.C., that it was his belief the existence of section 5 preclearance had added a new dimension to politics; basically that

the local or State election officials now not only considered the economic impact of different plans, but now considered the political ramifications, particular minority access and the voting strength of different programs.

Based on your own experiences, would you agree that that's true?

Mr. AL EDWARDS. Sure. I'm sure it would. I can see, and I have seen, the input that has been there since we have had more elected officials, not only directly but from the communities themselves, the input that we have in the education process. For example, we had several bills dealing with bilingual education from certain grades to certain grades, how it would be treated, and other programs dealing with the real need of social programs.

The point is, since we have had what we've got now, then in all areas we are seeing a positive movement. There has been no comparison if we look at where we are now versus where we were before the law.

Ms. GONZALES. Thank you.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

As you know, the bill as presently drafted contains a bailout provision, and that bailout effectively cannot be operative to jurisdictions such as Texas, which have discriminatingly utilized tests or devices. In fact, in 1965, or in the case of Texas, 1975, suggestions have been made by Members of Congress, including members of this panel, that some sort of amendments should be considered with regard to bailout, which can have the effect of inducing jurisdictions, not just States, but also cities and counties, to become more affirmatively active with regard to their minority populations, with the potential result that they will be able to get out from under the preclearance provisions, even though their escape may be subject to being monitored by a court for some number of years.

Do you think that would be beneficial, and if so, how would you outline it?

Mr. AL EDWARDS. I think I would rather take the whole thing and look at that, because I would sure hate to think that—if you come up with an amendment where we would remove something on the one hand, and yet open up a bad situation on the other, I think if the bottom line is in addition to what we have, then yes. But without being able to see that amendment and fully understand what the long-range impact would be, I would hate to take a position on that unless the bottom line of that amendment is going to——

Mr. BOYD. Most of the suggestions which have been raised involve the demonstration of jurisdictions, subject to a particular type of showing, that they have, let's say, affirmatively incorporated minority communities into their electorate, into the electoral process, in order to escape preclearance. It doesn't necessarily mean they will escape coverage under the act, because section 3(c) of the act is permanent law and would permit anyone to go into Federal court and impose preclearance, by way of a judicial order.

Secondarily, any suggestion of effective bailout would also involve monitoring the jurisdiction to make sure things don't go back to the way they used to be.

Mr. AL EDWARDS. That sounds to me, the more you explain it, it sounds to me that we're still in for a good deal of litigation in courts. The monitoring part, the escape on the preclearance part, and yet giving certain permissions on the other part—here again, not having read that amendment, I can't take a real position.

But from just listening to it, the way you explain it, sounds like we may be doing something on one hand but opening up a lot of problems on the other, because I can see having to do a great deal of what we're having to do already.

Mr. BOYD. Don't you think permanent coverage, though, under administration preclearance serves as a disincentive for improvement in some jurisdictions?

Mr. AL EDWARDS. I didn't quite understand.

Mr. BOYD. Don't you think that permanent coverage under the preclearance provisions of the act serves as a disincentive in some jurisdictions to improve, to incorporate minorities into the electorate?

Mr. AL EDWARDS. Absolutely; I agree.

Mr. BOYD. So if you encourage them by way of a bailout provision, jurisdictions would probably take appropriate action to incorporate those minority communities into the electorate. Wouldn't that be an improvement of the situation?

Mr. AL EDWARDS. That would be an improvement. Here again, I want to be sure that that wouldn't be an improvement today and down the road it faded away. That's what is crucial.

Absolutely, I agree, that——

Mr. BOYD. That's why a court would retain jurisdiction for purposes of revoking bailout, and reinstituting administrative preclearance in the event someone decides to return to business as usual. The purpose is simply to try to encourage people to improve their systems rather than maintain an inequitable status quo. Because under the act, as you know, as long as there's no dilution of minority participation, there is no affirmative requirement that there be an increase in minority participation.

Mr. AL EDWARDS. I would say again, from listening to it, it sounds right and it sounds good, because that's absolutely true. We maintain the status quo here in Texas, but there is absolutely no move to improve upon the situation.

Mr. BOYD. Without the incentive, there is likely to be none in the future.

Mr. AL EDWARDS. That's right.

Mr. BOYD. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Representative Edwards, for your very helpful testimony.

The subcommittee will recess now until about 1:30, at which time we will have the pleasure of hearing from Douglas Caddy, who is the former director of the elections commission here in this great State.

[Whereupon, at 12:40 p.m., the subcommittee recessed for lunch.]

AFTERNOON SESSION

Mr. EDWARDS. The subcommittee will come to order.

This afternoon's session will begin with testimony from Mr. Douglas Caddy, who is a former director of the elections division of the office of the Texas secretary of state. Without objection, Mr. Caddy's full statement will be made a part of the record.

We welcome you and you may proceed.

TESTIMONY OF DOUGLAS CADDY, FORMER DIRECTOR, ELECTIONS DIVISION, OFFICE OF THE TEXAS SECRETARY OF STATE

Mr. CADDY. Thank you, Mr. Chairman.

My name is Douglas Caddy. I reside in Houston, Tex. I am a member of the Texas and District of Columbia Bars and served as director of the elections division, office of the Texas secretary of state, from March of 1980 to March 1981. My statement today is my own personal statement and does not reflect the views of any other person or office.

It is my privilege to testify before your committee today in favor of extending the Federal Voting Rights Act. I believe the many beneficial effects of the act far outweigh the burdens imposed on local public officials in complying with the act's requirements.

I shall not attempt today to duplicate the statistical evidence brought forth in prior testimony concerning the impact the act has had in Texas. Rather, my comments are confined to the impressions I received while serving as director of the elections division.

The Texas secretary of state is the State's chief election officer. The Honorable George L. Strake, Jr. is the present secretary of state. As such, he is responsible for solving the day-to-day problems arising from elections held throughout the State, utilizing his elections division to do most of this work, which never seems to abate.

There are at least 37 different types of elections in Texas, ranging from primaries to general elections, from local option liquor to school districts, from bond to weather modification. Texas has 6.6 million registered voters out of a total population of 14.1 million. On a general election day, approximately 5,746 polling places are open throughout the State. We use four types of voting devices, paper ballots still being used in two-thirds of our 254 counties.

By the way, I just might add that the populations of our counties vary from a number of 96 registered voters in Loving County to about 1.4 million registered voters in Harris County. So you have a big disparity there in the number of registered voters in the different counties.

Texas is unique, in that the number of its counties, 254, far exceeds any other State. California has 58, and New York has 62. Our large number of political subdivisions—counties, cities, towns, school districts—mean that numerically the total that must comply with the Voting Rights Act is extremely large. This accounts for the large number of filings and objections from Texas arising under the act.

In my opinion, the Voting Rights Act has had two primary beneficial effects in the Lone Star State. One, it has helped to inhibit the ever-present discrimination that exists in some communities against minority groups which has resulted in these minority

groups being frozen out of participation in local government, and two, it has served as a great psychological tool in bringing honesty to Texas elections.

During my tenure as director of the elections division, under the express direction of secretary of state Strake, our office embarked on a concerted plan to fight dishonesty in local elections. Many Texans are quite cynical about their elections because they are well aware of the dishonesty that goes on behind the scenes—and sometimes out in the open—in some of these. W. C. Fields was once asked whether he read the Bible, to which he replied, "Only to find the loopholes." Some local Texas politicians religiously read the complex Texas Election Code for the same reason—only to find the loopholes.

I have prepared a summary of our election process, of our election problems, and of current election fraud cases titled "Confessions of the State's Elections Director: Wherein He Admits Nobody Really Knows How the Whole System Works," which I have attached to this statement and request it be entered into the record.

I would like to conclude my remarks on a personal note. I accepted the offer to be director of the elections division because I wanted to contribute my service to the elections process during the critical 1980 Presidential year. During my tenure I oversaw five statewide election dates. As a conservative whose credentials include, among others, being the first executive director of Young Americans for Freedom and the incorporating attorney for the National Conservative Political Action Committee, as well as the author of two books on the national election process, I was initially hostile to the concept of Federal intrusion by means of the Voting Rights Act.

I now recognize that without the Voting Rights Act and other Federal statutes protecting voting, Texas could revert back to a Box 13 mentality, a condition symbolized by the rigging of an election in an obscure south Texas county—and, by the way, I am reliably informed it was Jim Wells County and not Duval County, Jim Wells having figured in the testimony this morning in this room—which launched a politician on his career that carried him eventually to the White House, where his actions had global impact, whose consequences continue to be felt by those of us who survive today. I am citing this past Texas election history to emphasize that the legislation being discussed today has profound ramifications, some that might impact even outside Texas or the United States.

I urge this Committee and the Congress to extend the Voting Rights Act to help end discrimination against minority groups and to help maintain honesty in elections.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Caddy follows:]

STATEMENT OF DOUGLAS CADDY
FORMER DIRECTOR, ELECTIONS DIVISION
OFFICE OF TEXAS SECRETARY OF STATE
BEFORE U.S. HOUSE JUDICIARY COMMITTEE
AUSTIN, TEXAS, JUNE 5, 1981

My name is Douglas Caddy. I reside in Houston, Texas. I am a member of the Texas and District of Columbia Bars and served as Director, Elections Division, Office of the Texas Secretary of State from March 1980 to March 1981.

It is my privilege to testify before your Committee today in favor of extending the Federal Voting Rights Act. I believe the many beneficial effects of the Act far outweigh the burdens imposed on local public officials in complying with the Act's requirements.

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The Texas Secretary of State is the state's chief election officer. The Honorable George L. Strake, Jr. is the present Secretary of State. As such, he is responsible for solving the day-to-day problems arising from elections held throughout the state, utilizing his Elections Division to do most of this work which never seems to abate. There are at least 37 different types of elections in Texas ranging from primaries to general elections, from local option liquor to school districts, from bond to weather modification. Texas has 6.6 million registered voters out of a total population of 14.1 million. On a general election day approximately 5,746 polling places are open throughout the state. We use four types of voting devices, paper ballots still being used in two-thirds of our 254 counties.

Texas is unique in that the number of its counties - 254 - far exceeds any other state. California has 58 and New York 62. Our large number of political subdivisions -- counties, cities, towns, school districts -- mean that numerically the total that must comply with the Voting Rights Act is extremely large. This accounts for the large number of filings and objections from Texas arising under the Act.

In my opinion, the Voting Rights Act has had two primary beneficial effects in the Lone Star State: (1) It has helped to inhibit the ever-present discrimination that exists in some communities against minority groups which has resulted in these minority groups being frozen out of participation in local government; and (2) It has served as a great psychological tool in bringing honesty to Texas elections.

During my tenure as Director of the Elections Division, under the express direction of Secretary of State Strake, our office embarked on a concerted plan to fight dishonesty in local elections. Many Texans are quite cynical about their elections because they are well aware of the dishonesty that goes on behind the scenes (and sometimes out in the open) in some of these. W. C. Fields was once asked whether he read the Bible, to which he replied, "Only to find the loopholes." Some local Texas politicians religiously read the complex Texas Election Code for the same reason -- only to find the loopholes. I have prepared a summary of our election process, of our election problems and of current election fraud cases titled

"Confessions of the State's Elections Director: Wherein He Admits Nobody Really Knows How the Whole System Works" which I have attached to this statement and request it be entered into the record.

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I urge this committee and the Congress to extend the Voting Rights Act to help end discrimination against minority groups and to help maintain honesty in elections.

CONFESSIONS OF THE STATE'S ELECTIONS DIRECTOR

Wherein He Admits Nobody Really Knows How the Whole System Works

by
Douglas Caddy

Register today. Your vote counts. Be sure to vote on election day. You probably thought with the Presidential race behind us these shibboleths were now in hibernation, awaiting awakening for use in next year's gubernatorial and congressional elections. Well, think again. In Texas, they are rarely out of sight or hearing.

Elections here are a business, more accurately a full-time multi-million dollar industry. They are held year round under the state's election code which sets four uniform election days: in January, April, August and November. For example, on April 4, over 2000 cities and school districts will have elections. In even-numbered years the four days are supplemented by the May and June primaries. The Governor can proclaim special elections if the circumstances warrant, which they frequently do. Bond, and local option liquor elections can be held anytime.

Like everything else in Texas, elections are big, so big and complex that no single individual possesses an encompassing knowledge about how they work. This is why native Texans, not only newcomers, find it difficult to keep track of elections comings and goings, not to mention what they are for or the rules governing their conduct.

Consider these facts:

*Texas has 254 counties, all elections entities. (In contrast, California has 58 counties and New York 62.) Thousands of additional political subdivisions -- such as municipalities and water districts --

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Mr. Caddy is Director of the Elections Division of the Texas Secretary of State's office. A member of the Texas and District of Columbia Bars, he is the author of two books on election laws. This summary prepared in March, 1981.

also hold elections.

*We have at least 37 different types of elections, ranging from primary to general, from local liquor option to school districts, from noxious weed to weather modification. With the recent passage of the constitutional amendment permitting local bingo, a new type has been added -- one which has the potential of fomenting thousands of local bingo elections.

* 6.6 million voters are registered out of a state population of 14.1 million. 4.5 million actually voted last November 4. The registration by county varies greatly, from Loving County with 93 registered voters to Harris County with 1,045,042.

* On a statewide election day 5,746 polling places are open throughout the state. Over 25,000 persons are employed to run these polling places from 7 a.m. to closing at 7 p.m. and until the votes are tabulated, which can be in the early morning hours.

* Not one but four types of voting devices certified by the Secretary of State are being used: paper ballot (206 counties), automatic voting machine (15 counties), punch card, where the voter punches a hole in his ballot which is computer counted (31 counties) and optical tabulator, which counts the voter's "sense marks" on the ballot (2 counties -- Webb and Ft. Bend). Generally rural counties use paper ballot while large cities such as Dallas, Houston, Corpus Christi and San Antonio use automatic voting machines. (However, Waco still uses paper ballots and El Paso, Beaumont, Austin, Lubbock, Texas-Kana and Amarillo use punch cards). In the 1980 elections approximately 48% voters used voting machines, 27% paper ballot, 24% punch cards and less than 1% optical tubulator. The major problem

in having different devices is an inconsistency has existed since 1972 on how votes are counted on these devices. For example, punch card votes are counted differently when a voter votes a straight party ticket and then proceeds to vote also for some individual candidates in another party. (Some observers believe that Judge Garwood might have actually been the victor in his recent close Supreme Court race if punch card votes cast in this manner had been counted the same way as on the other voting devices.)

* Texas Election Laws, a compilation by a private publisher which annually sells 12,000 copies, runs 472 pages in length in what is universally agreed upon as the most convoluted and turgid statutory language found anywhere. Indeed some believe the statute has been purposely designed this way. Laredo attorney Honore Ligarde, an articulate Democrat who served five terms in the state legislature, once told me, while I was supervising the Laredo School District election recount, that soon after he arrived in Austin to take his seat he discovered his colleagues "were quite cynical about the election code. They openly admitted they kept it complex to keep out the 'riff-raff.'" By "riff-Raff" his legislative peers meant blacks, hispanics, liberals and Republicans. Nevertheless, indications abound that the protective walls around the legislature and other public offices are beginning to crumble as more citizens educate themselves in the intricacies of the election code.

* Approximately 10,000 public officials are elected on statewide, county, district or other political subdivision bases. The job of the Federal Elections Commission in overseeing federal elections is undoubtedly easier than that of the Secretary of State, the state's chief elections officer, in overseeing Texas elections: in

number, about 1100 federal offices vs. 10,000 here. Size: 50 states vs. 254 counties. Regularity: every two years vs. year round. Scope: primarily a filing and disclosure agency for federal candidates vs. scheduling state elections, accepting certain candidate filings, conducting election schools for election workers, certifying the ballot, inspecting polling places, canvassing returns, investigating election fraud, to mention only a few functions. Staff: 250 FEC employees vs. 24 state employees.

Decentralized Government

To get a handle on the election system you must first realize that government in Texas is decentralized. The bulk of the power lies on the county and district level — not in the state legislature, Governor, Lieutenant-Governor, Attorney-General, State Comptroller, Supreme Court -- or any other person or agency in Austin. This power was purposely decentralized by Wise Old Ones after the Reconstruction Era to forestall consolidation of power by any new wave of Yankee intruders. In each of the 254 counties the real power lies in your commissioners court, comprised of four commissioners and by the county judge who heads it, which runs the county's affairs. Each county commissioners court will determine the number of election precincts and their new boundaries this year once census figures are made available.

The other principal county officers are county clerk, tax assessor-collector, sheriff, county attorney, district clerk, and county treasurer. In smaller counties, some of these offices are combined.

After the county level comes the district with its layer of powerful offices: state senator, state representative, justice of the court of civil appeals, district judge and district attorney.

A commonly heard saying in the county courthouses is that if you have your county sheriff and district judge on your side you can get away with almost anything in Texas. This is, of course, an exaggeration.

In the past year as elections director I have travelled 30,000 miles by automobile through most of our counties. (Senator Tower is probably undisputed in his claim of being the only person to have visited all 254 counties.) The county courthouse, invariably an imposing structure that looks as if it could survive a nuclear holocaust, is each area's focal point. From my travels I have learned that for a quick education into local government and politics, you need spend only a few hours in your local courthouse.

Primaries

A unique aspect is that the state pays for the primaries of our two major private political parties. Democratic and Republican county chairmen conducting primaries file expense reports with the Secretary of State for reimbursement. In 1980 the Democrats held primaries in all 254 counties, the Republicans in 232 counties, a record number for the GOP which lacks a party structure in some counties.

In the Democrats' non-binding presidential preference primary last May, Carter got approximately 766,000 votes, Kennedy 310,000 Brown 35,000 and 256,000 refused to indicate a preference. These figures are approximate because although the state pays for the primaries, the law does not require their vote totals be reported to a central authority.

In the May Republican primary Reagan got approximately 263,000, Bush 237,000 and 8,000 refused to indicate a preference.

On the surface, it appears that by a 3-1 margin Lone Star State voters continue to choose to vote in the Democratic rather than the

Republican primary, although the GOP vote might have been significantly higher if John Connally had remained in the presidential race. Nonetheless, the pattern suggests voters believe to make your vote meaningful you must still cast your ballot in the Democratic primary since the democrats control most local and county offices. This also affords the voter the optional luxury of voting Republican in November for federal and state candidates, leading to the saying that a county may be Democratic in May but Republican in November.

On primary election day, a voter in his party's primary can attend his precinct convention held after the polls close. The voter's registration card is stamped with the party's name when he votes in the primary; this gains him entry into his precinct convention. The precinct convention elects delegates to the county convention which elects delegates to the state convention where delegates are chosen for the party's national convention. Minutes of the county convention, listing delegates selected to the state convention, filed with the Secretary of State, illuminate how the system works. In his minutes a voter in Cotulla crisply reported:

"A county convention was held in LaSalle County at which I was the only one present. Therefore, I have elected myself as a delegate to the 1980 Republican State Convention."

Even though the GOP set a record by holding primaries in 232 counties, it experienced great difficulty in conducting these because they were first-time experiences for many county chairmen. Conducting a county primary is no easy task, even for a veteran Democratic chairman. It takes an especially publicly spirited person. County chairmen must accept candidate filings, prepare and print the ballot, set up polling places, find polling place judges and clerks, get the list of the county's registered voters, distribute to the polling places the ballots, boxes

and other materials, canvass the returns, keep track of expenses --in short, an awesome task which would test the managerial skills of even a corporate executive.

For this work the chairmen are reimbursed for the primary's expenses, plus a small amount for their own labor. For example, the cost of conducting the Democratic primaries in Bexar County was $355,229 and in Scurry County $2,475; the cost of the Republican primary in Dallas County was $152,991 and in Cameron County $8,055.

The 1980 primaries cost the state $4.2 million.

The party chairmen in 14 counties were so thrifty and independent that they refused to accept state funds to pay for their primaries, preferring instead to rely solely on candidate filing fees.

The precinct problems on primary election day by both parties were virtually the same in all parts of the state. The Secretary of State received a letter listing some typical problems shortly after the May Democratic primary from a justifiably angry and upset voter in Henderson County:

"Registration cards were not being stamped...Judge did not know what to do with the certificate of appointment of poll watchers...Judge was openly aggravated that poll watchers were there...several persons (some who could not read) asked the judge and clerks who to vote for and they did tell these people who to vote for...Ballots were laid on the table face up and were not mixed up by the judge...Voters came without registration cards (women didn't even bring in handbags or wallets, as if they were accustomed to voting without having such a thing as a card) and were allowed to vote without being checked against the registered voters lists, purge list and there was no absentee vote list...Several ballots had been marked in each race by more than one

candidate's name. The counter went ahead and picked one of the names in each category himself to be counted...The judge said they had until Monday to turn the ballot boxes in and he was going to a rodeo that election night and would turn his in after the rodeo."

Even though the state pays, most county primaries on the whole are loosely run amateur affairs. This upsets many voters who recognize the potential for fraud and abuse. These defects become especially irritating to many when nomination in a primary is tantamount to victory in the general election for many local offices.

1980 General Election

The big news here was the record turnout: 68 percent of the registered voters -- 4,541,637 out of 6,639,661 who were registered. Reagan got 2,510,705 vote (55%), Carter 1,881,147 (41%), Anderson 111,613 (2%), Libertarian Clark 37,643 (1%), and 529 declared write-in votes for president.

The decisive outcome in November overshadowed the prior intense maneuvering concerning which presidential candidates would appear on the ballot. Carter and Reagan were certified by their parties; but 1980 was also the year when the Libertarian Party finally made it on the ballot after years of failing to meet the ballot requirements of a third party. This time it collected the necessary valid voter signatures on its petitions representing one percent (or about 29,000) of the number of voters who voted in the last gubernatorial election. For independent candidate John Anderson the task was most difficult: He had to get the necessary valid signatures on his petitions representing one percent (about 40,000) of the number who voted in the last presidential election.

Both the Libertarians and Anderson forces turned in signatures well in excess of the required number and, after checking their validty, Secretary of State George Strake certified them to the ballot. Up to the last moment Attorney General Mark White and the Democratic party threatened to challenge in court Strake's certification of Anderson on the ground that some voters in the Democratic primary subsequently may have signed his petitions. This legal threat evaporated after much bombast and thunder, some believe because the Democrats had concluded Anderson on the ballot would hurt Reagan more than Carter. Ultimately, the vote for Anderson on November 4 proved insignificant.

The rub came, however, from the Socialist Workers Party which had been on the ballot since 1972. As a third party, the SWP had to turn in the same number of valid voter signatures (about 2$,000) as the Liberatarians. They exceeded this number but when the validity of these were tested, at the same time with those of the Libertarians and Anderson signatures, they were found lacking. Denied certification, the SWP immediately went into federal court seeking an order placing them on the ballot. After three days of hearings in San Antonio, Federal District Judge Fred Shannon ruled against the SWP, a victory for the requirement that third party and independent presidential candidates must meet a minimum standard set by law to qualify for a ballot position.

Once all the candidates had been certified to the ballot, the responsibility for conducting the November election shifted to the county clerks (and to the election administrators in the eight counties that have set up full time elections units.) The county clerks have a love-hate relationship towards running elections. They love the

excitement and the budgeted staff that go with the task but they hate the mind-boggling detail work involved which makes them the scapegoats when something goes wrong. They know from experience that Murphy's Law is especially applicable to running elections.

While the county clerks and election administrators are responsible for the election, the commissioners court has the power to appoint the presiding judges for the county's election precincts. The commissioners use this to dispense patronage. Since almost all commissioners courts are controlled by Democrats the presiding judges appointed are usually also Democrats. Of the 5,746 presiding judges appointed in the 1980 election, it is estimated all but 1,000 were Democrats. This was highlighted in an article "Politics Shape Polling Places, Tyson Says" in the December 22 Dallas Morning News which declared: "Untrained election judges, who allowed people to vote twice and ignored other election laws Nov. 4, were selected because politics has been allowed to dominate election appointments, Dallas County Commissioner Jim Tyson said." Ironically, Tyson, himself, was responsible for appointing judges in four precincts where a News survey showed at least 21 people in South Dallas were allowed to vote more than once.

The Republicans can have at least one of their own appointed a clerk to assist the presiding judge in a precinct if they submit at least two names to him. This, coupled with the right to have poll watchers, means that Republicans have the potential, if they can fulfill it, of off-setting the unusually high number of Democrats appointed presiding judges and clerks.

Based on my own observations and experiences around the state I estimate that 95 % of all judges and clerks, whether Democrat or Republican, attempt to be scrupulously fair in carrying

out their duties. Their faithful efforts are tainted by the 5% who abuse their positions.

Preventing abuses

Because the election code is so complex and conducting elections so difficult, counties, cities, school districts and other election entities are encouraged to sponsor election schools to train judges and clerks. Last year Secretary of State staff members taught 350 of these schools. Secretary Strake also distributed large quantities of handbooks for use by presiding judges and clerks.

The key to more efficient and fraud-free elections is increased education of polling place workers. Attendance at elections schools is now voluntary. In Dallas, five training sessions for the presidential election were held but only 30 percent of the 369 elections judges showed up. Mandatory attendance would improve the quality of conducting elections.

To assure fair elections, the Secretary of State appointed over 150 election inspectors who were dispatched on Nov. 4 to all parts of the State. Many were from Secretary Strake's own staff; some were recruited from young lawyers associations, League of Women Voters, and other groups. Each inspector was trained and provided with a checklist of problems he would encounter. Here from that checklist are the 14 most common problems for your use to see on how well your local polling place is being run on election day:

1. DISTANCE MARKERS. Placed 100 feet from polling place entrance and being enforced. Sound trucks not operating within 100 feet of polling place.

2. ELECTION SUPPLIES. All forms bilingual, adequate supplies, instruction cards and/or sample ballot posted.

3. ACCEPTANCE OF VOTERS. Certificates presented, list of registered voters checked, "voted" designation placed on list of registered voters, affidavits being signed when applicable, assistance by another voter being noted on poll list, notation "sworn" noted

on poll list if applicable, notation "challenged" and name of other voter swearing to qualifications when appropriate on poll list. All voters in line at 7 p.m. allowed to vote.

4. SECRECY OF BALLOT. If paper ballots used, ballots signed by judge, shuffled, face down on table. Adequate distance between voters marking ballots and people waiting to vote or election officials.

5. INFLUENCING VOTER. Instructions given when requested, are not stated in a way to influence how the voter should vote.

6. ASSISTANCE TO VOTER. Given only to those who are entitled to assistance. If assistance by another voter, that person sworn and noted on poll list, no other persons present when votes. If by election officials, two officials to assist, watchers permitted to observe.

7. SECURITY OF VOTED BALLOTS (PAPER BALLOT). Ballot box locked, not opened for counting until 8 a.m. and at least 10 ballots in the box. Must always be at least 10 ballots in box before opened.

8. BALLOT COUNTING (PAPER BALLOT). Counting done where no voters may hear counting. Each vote is called and tallied individually by counting team of one caller and at least two tally clerks. Counting rules from handbook being followed; status of count may be announced by judge after polls close.

9. SECURITY OF VOTED BALLOTS (PUNCH CARD). Equipment secured against voting when polls close. If presealed boxes not provided, ballots removed from box, separate valid and invalid ballots, place voted ballots in container and seal. Account for unvoted ballots, two officers and watchers deliver ballots to counting station.

10. BALLOT COUNTING (PUNCH CARD). Ballots tabulated by precinct, valid portion of partially invalid ballot may be duplicated for tabulation or counted manually, duplicates must be marked, write-ins added after tabulation, ballots may be counted manually, if necessary.

11. SECURITY OF VOTING MACHINE. After polls close, machine locked against voting, numbers entered, counting compartments opened to view, results called, returns completed, representatives of candidates or press allowed to check numbers, presiding judge deliver returns and machine keys to proper authority.

12. DELIVERY OF RETURNS AND VOTED BALLOTS (PAPER BALLOT). Returns prepared after count complete, returns and voted ballots delivered to appropriate officers (Box No. 3 containing voted ballots, 1 copy of returns, 1 copy of poll list, and 1 copy of tally list delivered to county clerk), returns to be delivered immediately after completion of count and not later than 24 hours after close of polls, keys to Box No. 3 delivered to sheriff.

13. POLL WATCHERS. Poll watchers must be allowed to observe all

functions in the polling place, including: the acceptance of voters, assistance by officials, counting of voted ballots, making and delivery of returns and voted ballots.

14. SPECIAL CANVASSING BOARD PROCEDURES (COUNTING OF ABSENTEE BALLOTS). Not to begin before 7 a.m. nor later than 7 p.m. Mail ballots: open jacket envelope, determine voter is qualified, signature on application and carrier envelope match, and complies with requirements, i.e., if reason is absence from county, post-marked outside county). Rejected ballots marked "Rejected," and retained. By mail voters entered on poll list. Ballot envelope placed in box with voted ballots by personal appearance. Carrier envelope and application placed in jacket envelope and retained as record of election. Mail and personal appearance ballots counted together. Returns made after polls close.

County Clerks Report

Following the November election, the Secretary of State asked the county clerks and election administrators to report on how the election had gone in their counties and what improvements could be made in the system. Their responses reveal a wide range of problems troubling them.

Elidia Segura, Atascosa County: "I believe the larger voter turnout contributed to the delays. However, the main factor would be the 10 [Justice Department] Federal Observers that I understand hindered the election clerks from conducting the election in the usual manner. I understand these observers conversed with the election clerks frequently, and the voters also, which held up the voting process...I believe there is too much flexibility allowed after a law is passed. First of all, a person is supposed to be a registered voter in order to vote; however, there are various affidavits, etc., that allow one to vote without being registered. There is toomuch deviation from the law and I think that the legislature should either require voter registration or do away with it altogether and allow everyone to vote."

Tencha de la Pena, Cameron County: " I am, in the process now, of turning over approximately 150 names of persons who were not on our voter registration rolls, but who insisted that they had a right to vote -- they were American citizens, paid taxes, etc., to our District Attorney. I understand that this carries a penalty of 2 to 10 years (3rd degree felony)."

Larry Murdoch, Dallas County: "Precincts in many cases too large. The ten largest precincts in this county have over 5900 plus qualified voters...our county has too few voting devices (Dallas County uses AVM machines in all precincts)...the majority of our voting is done in about five hour period (early morning and evening)...550,000 registered voters when we started allocating equipment and personnel. 750,000 voters on election day [due to increased registered voters]."

Helen Jamison, El Paso County: "There was somewhat of a delay in the larger voting precincts due to the unexpected voter turnout. There were approximately 13,000 new registrants before the October 5 voter deadline. I assigned the machines per precinct before the deadline; at that time I did not know what area of town the new registrants would be voting in. The only way to prevent the voters from any delay would be to hire more clerks and assign more machines."

Pearl Ellett, Fort Bend County: Our greatest problem was with our Electronic Voting [Optical Tabulator] System. This is being investigated by our County Judge, with the Company, hoping to seek a solution to this problem...I feel that the deadline for voter registration is too close to the election, not giving the person in charge of the voter registration ample time to report to the clerk the accurate amount or number of ballots to be ordered for that particular election."

Anita Rodeheaver, Harris County: "In the large precincts it was simply an excessive turn-out at certain times of the day, i.e., early morning and after work. In the minority precincts, it was poll watchers. These poll watchers were furnished a list of convicted felons by the Republican Party which they used instead of the official list furnished by the Tax Assessor. With this there was considerable confusion resulting in conversation between the poll watchers and voters rather than conversation with the judge as required by statute. It is my belief that the elimination of over zealous poll watchers would have eased what tension did occur in a few of our precints...Punch Cards were used in Harris County for absentee voting only, both in person and by mail. The total ordered was 75,000 (of these 45,000 were used). There were 345 voting devices used in 11 branch offices and the main office downtown...Shoup voting machines available - 3206; Shoup machines used - 3030; Of the 176 unused, most were already programmed and ready for local election...Allocation of voting machines is based on a formula taking the following facts into consideration:

(1) number of registered voters
(2) Predictability of turn-out
(3) capacity of voters in each voting machine per hour each voting day
(4) turnout in last presidential election
(5) Square footage of polling place to accomodate voting machine.

"As the County Clerk I felt we conducted a very smooth election with few problems. Our only real problem came out of the tedious method by which punch cards are processed by the canvassing board. With 14,533 mail ballots, each having 3 separate envelopes, the following procedure was utilized: signatures were compared, doctor's certificates were verified,

write-ins were checked for validity. All of these steps were done prior to categorizing ballots. Many hours were used. These mail ballots, together with 26,911 in-person, totaled 41,444 absentee ballots -- which then had to be separated into the 96 ballot categories. When the ballots were fed into the ballot tabulator we were then facing approximately 5 1/2 hours running time. As you can see this was a very time consuming operation With 519 election precincts in Harris County, our last precinct returns were delivered a few minutes past 1:00 a.m. We were finished tabulating all returns before 3:30 a.m., including absentee voting."

B. M. "Buck" Birdsong, Gregg County: "The last three days of absentee voting there were lines from the time we opened until we closed...The county has 90 voting machines...We try to send enough machines to each precinct so that no machine will turn over 999 on the public counter because the public counter starts over at 1000."

Jimmy Graham, Kaufman County: "I think the only way we will ever straighten out voter registration is to have everyone register every year. That would get the deceased out of our list, the people that have moved out of our county and the people that are registered in the wrong precinct."

Emmie Muenker, Kerr County: " We seem to have quite a few registered voters who show their permanent address as the Kerrville State Hospital. We do not know how they got registered, prior to this year. We received quite a number of applications for ballots this Nov. 4th election, and in checking on whether they should be allowed to vote or not, seemed to be an endless job, and we did not have the time nor the personnel to go back to the old records to see if their permanent address prior to being committed to KSH was Kerr County, or another county.

The election code states the residence of said patient is the county of his former residence, unless he has acquired a residence while he is an inmate, at the place where the institution is located. Also the type of commitment needed to be checked. We realize many are volunary patients and should be allowed to vote, but this still took time to check. We called several clerks who have State Mental Hospitals in their counties and they said they did not have the time nor the personnel to spend to check back into the records of patients, and if they were listed on the current voter registration list, they allowed them to vote. We worked very nicely with the Kerrville State Hospital on this, and they are very aware of patients' rights as we are voters' rights. This was a big problem, but we let them vote if they were on the current list of registered voters."

Nora Mae Tyler, LaSalle County: "It is too easy to vote absentee by mail. The county clerk has no way of determining if the request actually comes from the voter or if someone is requesting the ballot illegally. For example: During the absentee voting period a request came from a voter, a ballot was mailed to this particular voter. Several days later the voter (over 65) came to my office and told me she would appreciate it if I would stop sending her ballots, that this was the second time and that she had not requested it and did not care who won the election. I checked her application and an "x" had been made and an assistant had signed the application. Apparently she had never seen the application before. This is just one instance. Many ballots were not counted by the absentee canvassing board as the signature on the application did not correspond with the signature on the carrier envelope. This is a problem we have in this county every election. Applications are taken house to house to the elderly. They vote because someone pressures them into voting."

Rosenelle Cherry, Midland County: "I feel that elections have become a full time job and would like to see the law changed to make it mandatory that each county have an Elections Administrator. The Administrator could handle all elections such as city, college, school, hospital, water districts, absentee voting and voter registration."

Hope Skipper, Nacodoches County: "We need a longer cut-off date for new registrants and transfers. We had deputy registrars at the university registering students as they were registering for college. The students put their P O Box instead of their dorm name and these students did not qualify as these cards were turned in to the tax office on Friday, Oct. 3rd. On Friday before the election a suit was filed against the tax collector by the East Texas Legal Services on behalf of some college students. The District Judge ordered the Tax Collector to qualify these applicants. Could students be encouraged to vote absentee at their home address instead of re-registering at college? There is no way we can estimate what the voter turn-out will be in Precinct 2 because we don't know how many of the students are still here. Many attend for one semester and then go back home."

Mabel McLarty, Ochiltree County: "We oppose the printing of the ballot in both spanish and english. Many comments were made by the voting public that they opposed the printing of the ballot for the spanish and not other nationalities...I would like to have a special judge appointed to handle absentee voting. I do not think it fair for this to be handled by a person whose name will be on the ballot."

Sue Daniel, Potter County: "Our main problem was that in absentee voting by personal appearance, we had our separate ballot combinations when voters came in but the actual ballot card itself failed to carry a precinct number. This, of course, created a situation in which the computer did not know which Democrat or Republican to give a straight party punch to. This affected those races such as Commissioner and State Representative (Potter County has two) which change from precinct to precinct...We received much criticism over the procedure used regarding the counting of individulized punches for candidates when a straight party punch was also made. Our computer was setup according to your directive -- that is, to count individual punches and then count the straight party punch for those left on the ballot. Many felt these ballots should not be counted at all. They insisted the voter should not be able to do both and claimed it was unconstitutional."

Catherine Ashley, Reeves County: "Get legislation passed doing away with declared write-in candidacy and go to a step further -- 'no write-ins to be counted.""

Rebekah Scott, Refugio County: "I am opposed to allowing write-in votes for anyone or office, except after the death, illness or withdrawal of a candidate who has filed for the office and paid his filing fee at the proper time. This county had 7 write-in candidates (for local offices) besides the presidential candidate write-ins. None of the local candidates declared for an office which did not already have a candidate on the ballot; 2 had run in the Primary and lost, one had also lost in the run-off. I believe if anyone is serious about serving the government and people in his county, he will think ahead and file at the proper time and pay his fee, which is only fair. If he loses in the 1st and second

primaries, I feel he should not be allowed to run as a write-in in the general election."

Doris Shropshire, Travis County: "Delays caused because many of our election precints are too large. Many in excess of 3,000 and several over 5,000. Also, inexperienced election judges and high voter turnout. The County Clerk or Elections Administrator should have exclusive control of appointment of presiding and alternate judges...225,000 ballot cards ordered for this election. 1,400 voting devices prepared for use in absentee voting and on election day...The most significant problem faced by this office is attempting to guess the number of registered voters there will be on election day. As an example: For the May 3, 1980 General Primary there were 178,094 registered voters. On November 4, 1980 that number had increased to 226,683. An increase of 48,589! In order to timely receive supplies (ballots) it is necessary to advertise for bids at an early date. This was done based upon prior experience. ...There is always a large percentage turnout of voters during the General Election when the President and Vice-President is to be elected. Constitutional Amendments probably should not be included at this time since the average voter is unfamiliar with the amendments and spends an excessive amount of time in the voting booth."

Pat Finley, Ward County: "Perhaps the biggest overall problem was absentee voting in the county clerk's office. This took so much of our time away from our regular duties, such as having to let our recording get behind because we did not have time to do it. Our space for setting up the voting devices in this office is limited...I would like to see elections taken out of the county clerk's office and an election office set up to do the entire thing."

Ruth Godwin, Winkler County: "No person likes the idea of having an election official re-punch a (punch card) ballot for them, even though they still want the privilege of voting as they please...It is our belief that straight-party voting should not be allowed in general elections, as fewer than 5% of the people actually voted a straight party ticket, but these voters still wanted to vote for write-in candidates, or cross-over."

A different but useful perspective was provided by an official of the Stafford-Lowdon Company who wrote to Secretary Strake:

"I have received your Memorandum that you sent to all County Clerks as a questionnaire for General Election Problems Survey. I would like to put some input into this, in that, we probably print 30% to 35% of all of the election ballots for the General Election, and also for the Primaries. Our chief complaint from the producer's standpoint is that we need a little more time in receiving copies for printing of the General Election material, and we would like to see the dates backed up to where we would have a possible 10 working days more than what we are now receiving prior to the printing of the General Election Ballot. Specifically, the General Election copy is never ever approved for the General Election until somewhere around September 25 to October 1, and then Absentee Voting commences somewhere around

October 15. This only leaves approximately 10 to 12 working days for all of this material to be printed. Many of the local printers do not have presses large enough to run Machine Voting Strips in continous strips; Also, they do not have facilities to print a ballot that is 17 x 23 inches, such as the General Election ballot. Therefore, we do a lot of the printing. This throws a tremendous burden on us, as far as running overtime, and then having to ship the supplies by bus. It would cut down on the counties' costs if we could ship through normal freight channels, and by receiving the copy in time that it can be printed without overtime hours included into it and bring the overall cost down to the customer and a much better delivery time...If we could work toward some legislation to move the date back, as far as releasing the ballot the the printer, this would certainly help the total printing industry and we could do a much better job for the counties and the political parties."

Election Inspectors

Equally informative as the County Clerks comments were reports filed by election inspectors appointed by the Secretary of State. Highlights from these reveal some of the practical problems which cropped up on election day in various counties:

Bexar County: "Voter complained of poll watchers harassing voters... Leaque of Women Voters reported there was no ballot security or proper supervision in obtaining punch card ballots...Voter reported the precinct was not open at 7 a.m. (due to mechanical failure of voting machines.)"

Bexar County (Another inspector's report): "The League of Women Voters did a study of voting devices a few years ago. We reached the conclusion then that voting machines were preferable to the punch card system. My experience during this and previous elections reinforces that conclusion. There

are too many problems encountered using punch cards -- both people and mechanical problems. There are also too many opportunties for error."

Cameron County: "The local elections official complained that he was working under adverse conditions and that he was not familiar with the elections law. He explained that the presiding judge was present at the opening of the polls and left for her regular teaching job after swearing in the poll watchers and clerks."

Camp County: "Precincts 4,5 and 7 ran out of ballots. People were asked to remain while the county clerk xeroxed ballots and took them to precincts."

Dallas County: "Incorrect voter verification procedures used by officials...hostility toward poll watchers and election inspectors... poll watchers providing general instructions to voters...unrequested aid given to voters by election clerks...improper handling of absentee voter list...partisan campaign literature brought into the polling place by voters...marginal electioneering by election officials in the polling place...unauthorized visitors to the polling places..."

Duval County: "Upon my arrival in Duval County, I was assured by several county officials (the county clerk, county judge and the district judge) that there would be no problems in Duval County and that they were vitally concerned in conducting the elections 'by the book.' I found these statements to be accurate...all facets of the election, with a single exception, were exquisitely conducted in accordance with the Election Code."

El Paso County: "I managed to visit 8 precincts. At these precincts everything seemed to go quite well and I noticed no particular problems. The judges seemed to be well informed...the only real problem seemed to be a shortage of ballots and elections materials and respective

precinct judges could not contact the county elections department because the phone lines were always busy."

Galveston County: "Voters were instructed to stand in alphabetical order to vote."

Harris County: "The election judge distributed to residents of precinct 472 preferred candidate 'reminder sheets.' Note that the 'reminder sheet' states that it can be taken into the voting booth..."

Lubbock County: "The problems I encountered in Lubbock were mainly due to overcrowded conditions and judges responding to this in a casual manner...Inadequate distance between voters marking ballots and those who were waiting to cast ballots was also a problem."

McLennan County: "At box 9A I found a line at 6 p.m., over a block long. Election judge was cooperative about splitting poll list to make two lines and we finished the voting by 8 p.m."

McLennan County (Another inspector's report): "Ballot box cannot be locked because of broken hinge. Voters at tables not separated. Judge moves chairs apart but voters move them back. Judge states boxes too small for the number of ballots expected...they did not get sufficient ballots and called for more which were promptly delivered. Part of these delivered were printed properly and part for another district. Judge and clerks altered ballots to make them conform. They ran out of ballots twice and at 7 p.m., 56 voters were waiting but again had no ballots. Again improperly printed ballots were delivered...At about 10 p.m., voting was completed. A power failure cut off the lights for about 30 mintues at 1 a.m..."

Nueces County: "Precinct 80. Election judge used four poll watchers as election clerks. One poll watcher was sitting beside the election judge at the table alongside the list of registered voters with an open bible!"

Tarrant County: "The election judge asked me how one voter could vote as a Democratic voter for all candidates except the 12th Congressional district and was advised to use the small black levers to vote for each candidate separately. I find it hard to believe an election judge was not aware of how to vote for individual candidates."

Webb County: "The election controversy in Webb centered around the testing and use of the Optical Tabulator...[it was alleged] no test was performed, that all the machines were not tested, that the machines marked sporadically and they appeared to be red-lining an extremely large number of ballots. A compromise was reached...The absentee vote count was postponed for an hour so that clerks could be located. Two poll watchers agreed to act as election clerks. Disorganization prevailed...It was discovered that the county clerk had mailed many absentee ballots in cases where ballots should not have been mailed... In precinct 3 the complaint received was that assistance was being given to voters. I cautioned the judge about marking ballots for the voters. The polling place was located at the senior citizens home and was a conducive atmosphere for the giving of assistance."

Williamson County: "We were sent to precinct 2. Nobody was watching the ballot box and unused ballots were not being watched...In precinct 17, no secrecy of voting, people were voting on a big open table and the ballots were not being watched."

Prosecuting Violations

I find most Texans fall into two groups: those who rank as the most serious crimes treason, murder, elections fraud, and then other crimes and those who list treason, murder and place election fraud way down near the bottom, viewing election violations as fun and games and "good old boy" stuff. I fall in the first category: to my way of thinking, democracy is reduced to a farce when purity of the ballot is violated.

During the past year the Secretary of State inaugurated an aggressive program of investigating election violations and referring these, when appropriate, to local district attorneys. The results are beginning to show.

In Bexar County, an investigation into absentee vote fraud in San Antonio in the May Democratic primary has resulted in criminal charges being filed against two campaign workers for a candidate for county commissioner. The district attorney says more persons may also be charged.

In Walker County, a Huntsville grand jury indicted two persons for absentee vote fraud in the May Democratic primary in a county commissioner's race. Both have been convicted and are awaiting sentencing.

In Fannin County, the district attorney is investigating possible tampering with ballots cast in the Democratic primary for state representative. Over 600 outraged citizens of Leonard signed a petition calling for an investigation.

In Loving County, the district attorney is investigating cases of illegal office holding, failure to remove a convicted felon from the voter registration rolls and from public office, and the making of a false election canvass.

A pending case in Titus County, based on allegations raised by the county judge, involving possible irregularities in applications for absentee ballots received from a Mt. Pleasant nursing home in the May primary has been closed.

In Dallas, 11 indictments were returned by a grand jury investigating extensive vote fraud uncovered in the November 4 election

After the Presidential election the Secretary of State referred additional cases to the district attorneys in Travis County involving absentee vote fraud, in Duval County regarding illegal voting, in Nueces County regarding illegal assistance given Corpus Christi voters by precinct officials and in Rusk County regarding illegal voting.

There are two other pending cases, perhaps the most interesting.

A federal grand jury in Beaumont last June indicted the county clerk of Hardin County for absentee vote fraud in the 1978 Democratic primary. It alleged that he delivered over 100 absentee ballots to another individual instead of mailing these to voters. The basis of the indictment was mail fraud because the 100 illegally cast ballots had been sent back to the county clerk through the U.S. mails. In September a federal jury found the county clerk guilty and in October he was sentenced to two years. He is now appealing this sentence. Assistant U.S. Attorney David Baugh, who prosecuted the case, declared in court at the time of sentencing that there are people in Hardin County who are embarrassed that the case had to be handled on the federal level when it should have gone through state district court. He said that perhaps a

strict sentence would "compel" Hardin County Officials to begin handling cases for themselves.

The importance of the Hardin County Case is that the federal government has shown it may step in and prosecute a Texas election violation case when the local prosecuting authorities refuse or show reluctance to do so.

The second interesting case involves a Mexican-American in Frio County, J.P. Navarro of Pearsall, who claimed his absentee ballot in the May Democratic primary had been altered after he had placed it in the ballot box. He claimed other ballots also showed tampering. An investigation by the Texas Rangers, the state Attorney General and the local district attorney resulted in the indictment of Mr. Navarro on aggravated perjury charges. Some persons worry this may be interpreted by those who might uncover vote fraud (especially Mexican-Americans) that the safest and wisest course is to remain quiet about this subject, which traditionally has been swept under the rug in the Lone Star State.

San Antonio criminal attorney Gerald Goldstein, who represents Navarro, is confident his client will ultimately go free. The Justice Department in Washington is closely watching the case which has national implications.

Now that it is no longer taboo for the state to prosecute voting fraud,it is unlikely the subject can be permanently resealed. Too many citizens are aroused over the violations, many of them blatant transgressions. Moreover, the federal government stands ready to move in. Title 18 of the U.S. Code contains a number of applicable laws: conspiracy against rights of citizens, deprivation of rights under color of law, mail fraud,

false information in registering or voting, voting more than once, expenditure to influence voting, intimidation of voters, federally protected activities and promise of appointment by candidates.

Legislation Needed

The best route to clean elections in Texas does not lie through prosecutions but reform legislation. Many bills on election law are introduced into the legislature. Few become law. Here are some proposals which, if enacted, would improve the conduct of elections:

* Eliminate obsolete language from the election code such as the requirement of owning property, poll tax payments, and two year terms for the Governor and Lieutenant Governor. These have been kept in the statute to confuse and mislead citizens.

* Empower the Secretary of State to call election violations to attention of grand juries as well as to the Attorney General and prosecuting attorney.

* Eliminate from the ballot candidates who are unopposed in primary elections.

* Require person assisting a voter in applying for and in filling out an absentee ballot by mail to sign as having assisted as well as witnessed the application for the ballot.

* Give courts in primary contests the same power to order a new election as they have in other election contests.

* Prescribe standards by which the minimum numbers of voting devices, ballots, and clerks per county and per precinct are to be uniformly determined.

* Prescribe mandatory procedures for counting of ballots when a straight party vote is cast and other specific votes are also indicated.

* Implement some form of statewide uniform identification to enhance the accuracy and validity of voter registration lists.

* Provide criminal penalty for failure on the part of volunteer deputy registrars to deliver applications received by them in time to register the voters for the upcoming election.

* Require voting booths at each precinct in all political subdivisions having 1,000 inhabitants or more and prescribe requirements for these booths to ensure voter's privacy in order to preserve secrecy of the ballot.

* Provide for nonpartisan election of the judiciary.

* Raise the criminal penalty from Class C to Class A misdemeanor for failure to file, by the deadline, a candidate's sworn statement of contributions and expenditures.

* Require under criminal penalty for failure to do so that any contributions which are not accepted by the ensuing filing deadline must be returned to the contributor within 7 days from that deadline.

Texas is one of the few states entirely covered by the Federal Voting Rights Act which protects against discrimination of minorities. New legislation enacted or any change in election procedures by the state, counties or any political subdivisions must be submitted to the Justice Department for approval.

Reform legislation will take care of many of the existing election problems. Since most fraud takes place in absentee voting, a new statue could eliminate this accelerating abuse. The burden of voter registration should, perhaps, be lifted from the county tax-assessor by increasing the central role of the state in registering voters. A good deal of criticism is levelled at the punch card voting system. Actually, all four voting systems need to be re-examined since each has its deficiencies. It may

be discovered the deficiencies lie not so much in the systems themselves as in the untrained or poorly trained election personnel using them. Increased education of persons involved in conducting elections such as city secretaries, school board and water district officials, county clerks, polling place judges and clerks and also poll watchers will pay handsome dividends on election day.

The election code allows each county to appoint a professional election administrator to handle elections from start to finish -- from voter registration through the steps after an election is held. Eight counties now have professional election administrators. We need more.

Even after these corrective steps have been taken, our elections may still not function as well as they should. The reason for this may be unique to Texas: there may well be too many counties in the state. 254 counties mean 254 election entities and a minimum of 900 election officials (county clerks as election officers and tax assessors as voter registrars). These large numbers increase the chances of errors and breakdowns. In the end it may well be concluded that there are just too many counties and other election entities to assure uniformly well-run elections.

This does not mean we should not give it a try.

[Box] [Box]

ELECTIONS IN TEXAS: A FULL-TIME INDUSTRY

Primary, general, and most special elections
School District
Water Control and Improvement Districts
Underground Water Conservation Districts
Fresh Water Supply Districts
Municipal Utility Districts
Water Improvement Districts
Drainage Districts
Levee Improvement Districts
Navigation Districts
Local option liquor
Municipal Elections
    Consolidation
    Annexation by home rule city
    Incorporation
    Referendum
    Adopt or abolish city manager plan
Bond issuance elections of all kinds (involving numerous types of political subdivisions)
Constitutional amendments
Stock law
Noxious weed districts
Pink bollworm
Discontinuance of soil conservation district
Electric cooperative corporation
Fish market referenda
Land-use regulation
Mosquito control district
Optional County Road Law of 1947
Parks
Hospital districts
Rural fire prevention districts
Clean air financing
Consolidation of governmental functions and offices in political subdivisions within counties
Cooperative associations referenda
Firemen's relief and retirement fund trustee
Rapid transit authority
Regional transporation authority
Argicultural products referenda
Urban renewal projects
weather modification (hail suppression)
Solas
Certificate of Obligation Act of 1971

[Box] [Box]

Order of offices and names of candidates

Whenever there are to appear on the ballot for any general, special, or primary election, two or more office titles of offices which are regularly filled at the general election they shall be listed on the ballot in the following relative order:

Federal Offices:
President and Vice President
United States Senator
Congressman-at-Large
United States Representative (district office)

State Offices:
(1) Statewide offices
Governor
Lieutenant Governor
Attorney General
Comptroller of Public Accounts
State Treasurer
Commissioner of General Land Office
Commissioner of Agriculture
Railroad Commissioner
Chief Justice, Supreme Court
Associate Justice, Supreme Court
Presiding Judge, Court of Criminal Appeals
(2) District offices ← Judge, Court of Criminal Appeals
State Senator
State Representative
Member, State Board of Education
Chief Justice, Court of Civil Appeals
Associate Justice, Court of Civil Appeals
District Judge
Criminal District Judge
Judge, Family District Court
District Attorney
Criminal District Attorney
(3) County offices
County Judge
Judge, County Court-at-Law
Judge, County Criminal Court
Judge, County Probate Court
County Attorney
District Clerk
District and County Clerk
County Clerk
Sheriff
Sheriff and Tax Assessor-Collector
County Treasurer
County School Superintendent
County Surveyor
Inspector of Hides and Animals
(4) Precinct offices
County Commissioner
Justice of the Peace
Constable
Public Weigher.

Mr. EDWARDS. Thank you very much, Mr. Caddy. I'm sorry that my two colleagues, Mr. Hyde and Mr. Sensenbrenner, aren't here, because it is very refreshing to hear your testimony, and I am sure they would be very interested, especially with regard to your background. I would hope that you might be able to influence the Young Americans for Freedom and the National Conservative Political Action Committee to endorse the extension of the bill.

Mr. CADDY. Well, one purpose of my testifying today, and the reason I agreed to do so, was to issue an open appeal to my fellow conservatives to honestly study this legislation. If they do so, I do not believe they could oppose it. I think they would come out in favor of it.

I think, quite frankly, they see the word "Federal," you know, before the Voting Rights Act, as it's used in the media, and they are immediately against it just because it means more Federal intervention and so forth. But I appeal to my fellow conservatives because voting is at the very basis of our democracy and they should understand that more than anyone. I appeal to them to study the act, to study how it has been in effect, and to support its extension.

Mr. EDWARDS. Thank you. I appreciate that. The Constitution is Federal, too, and really all we're asking for in the Voting Rights Act is for the Constitution to be respected.

Mr. CADDY. I agree.

Mr. EDWARDS. I just think it's great that you have this particular view that you have, and I really welcome it because I think if we're going to have a peaceful and a decent and fair America, the principles of the Voting Rights Act have to be respected.

It's a very modest bill. All we're asking for is that people be allowed to register and to vote and not to be done out of political influence by these devices such as gerrymandering and other loopholes, because let's face it, annexations, gerrymandering and some of the devices are loopholes, aren't they?

Mr. CADDY. That's correct.

Mr. EDWARDS. In paragraph 2 you did mention some of the burdens imposed on local public officials. We have tried to ask about that of the various witnesses and we have not received very much evidence to the effect that there is very much of a burden. One or two witnesses described the burden, that you write a letter and put on a 15- or 20-cent stamp, whatever the post office is charging these days, and send it to Washington. There might be a phone call after that and a legitimate submission and there's no problem.

Do you agree with that?

Mr. CADDY. I do agree. I think it's really, basically a false issue that has been raised. I can't think in my own experience of someone coming forward to our office in the elections division and complaining about—a political entity in Texas—complaining about the burden. But I do think it's used by the opponents of the Federal Voting Rights Act as an issue.

Mr. EDWARDS. Well, we have some complaints in California in the areas that are subject to the bilingual voting provisions that it is a burden, and I think it might be. But a lot of it might have to

do with the way the law is being interpreted by some of the registrars.

You don't have that problem in Texas, I think, because you don't have the printing requirements that we have in California. We have absolutely ridiculous printing requirements, sending out booklets in advance of every election, explaining both sides of each issue, written by very prejudiced people.

Mr. CADDY. Well, we do have the requirement in Texas where propositions appear on the ballot, constitutional propositions, that approximately 250 newspapers throughout the State must carry explanatory language concerning the proposed propositions. These must be carried in both English and Spanish.

Mr. EDWARDS. Are the newspapers subsidized by the State?

Mr. CADDY. No, they are not.

Well, in a sense the State legislature appropriates money for the payment of the advertising, yes.

Mr. EDWARDS. I think my last question, Mr. Caddy, is this:

On page 1, paragraph 6 of your statement, you point out that some minority groups have been frozen out of participation in local government. Are there areas in Texas, important areas, where minorities are encouraged by the white establishment to participate and to be a part of the redistricting, of the revision of the election laws, so that they are encouraged to be an appropriate part of the process?

Mr. CADDY. I'm sure that goes on, just as I'm sure there are areas where there are conflicts, so to speak. One of the problems we have in Texas—and it's spelled out in my 33-page analysis which is attached to this statement—is that we have so many counties in Texas, 254, that no one really knows what is going on in each county. There is no single State official or individual who knows the makeup and the problems and the complexities of each county. So I really can't answer your question because—I'm sure that in some areas what you just mentioned probably is true, but in others we obviously have great problems where minority groups are discriminated against.

Mr. EDWARDS. There must be a historical reason why you have so many counties. Why do you have so many counties?

Mr. CADDY. Well, as I understand it, one of the reasons is that it was a decision by those who were in government in Texas after Reconstruction, that this was the best way to decentralize Texas, to make 254 counties. In that way you would keep local government very local. That's why we have a weak State executive. We have a weak Governor in Texas under the Constitution. Much of the power in Texas for government resides at the local level, at the county level.

Quite frankly, I think many of the problems that occur in Texas, the political problems as well as the governmental problems, occur because there are just too many counties. There are just too many counties for effective government.

Mr. EDWARDS. That's a very interesting concept.

Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Caddy, do you think there is a stigma attached to jurisdictions which are covered by the Voting Rights Act, a stigma that they discriminate and that they are, as a consequence, racist?

Mr. CADDY. Yes, I think that's true.

Mr. BOYD. Do you think it's reasonable to resent that sort of stigma?

Mr. CADDY. If the stigma is not justified, yes, I think it should be resented.

Mr. BOYD. Do you think it is appropriate then to consider some sort of bailout program which permits jurisdictions which don't believe they should bear such a stigma to get out from under mandatory preclearance under section 5?

Mr. CADDY. That's the most interesting concept that has come out at the hearings I have attended here today in this room. I, frankly, think that the bailout—and my testimony here is confined to Texas because I don't know what goes on in other States—I think it would be an incentive in Texas to have the bailout. That is, those political entities that did a good job, who have built a good record in this area, should be given a "gold star" so to speak, publicly recognized that they have built such a record and be bailed out from under coverage of the act.

The impact of this would be, when the county officials at whatever level, whether it's a county judge or county commissioners or tax assessors or county clerks and so forth, whenever they gather at their meetings, which they meet quite frequently, then there would be those present at the meetings who were from entities that had done a good job and publicly recognized as doing a good job and then bailed out, those, for whatever reason, who still bore the stigma of discrimination at the local level. I think it would cause these communities that do discriminate to clean up their act, so to speak. I think the peer pressure would be tremendous and I think it would be most beneficial.

Mr. BOYD. Thank you.

The bilingual preclearance provisions of section 5—and I think this is a perception which is somewhat misunderstood—don't expire until August 6, 1985, while the preclearance provisions with regard to race expire on August 6, 1982.

Do you think that these particular issues are severable? Do you think it is appropriate for the subcommittee to address the racial minority provisions with more earnest and energy now than the language minority provisions which don't expire for 4 years?

Mr. CADDY. Yes, I would say it's very appropriate.

Mr. BOYD. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. Caddy. You have been very helpful in your testimony.

Our next witness is the Honorable Ben Reyes, who is a member of the Houston City Council.

[No response.]

We are pleased to be able to welcome our next witness, Mr. Ruben Bonilla, who is the national president of LULAC.

Mr. Bonilla, we welcome you. Will you identify your colleague and, without objection, your full statement will be made a part of the record.

TESTIMONY OF RUBEN BONILLA, NATIONAL PRESIDENT, LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC); ACCOMPANIED BY ROLANDO RIOS, COUNSEL, SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT

Mr. BONILLA. Thank you, Mr. Chairman.

My colleague is Mr. Rolando Rios, associated with the Southwest Voter Registration Education project. Mr. Rios has served as general counsel for LULAC and other Hispanic organizations in a number of suits which have been filed under the Voting Rights Act. He will be here to serve as counsel and to answer any questions pertaining to specific litigation or specific provisions of the act being discussed.

For the record, I would like to introduce, with the committee's permission, a letter signed by the four Mexican American State senators of the Texas Senate, Senator Tati Santiesteban, Senator Carlos Truan, Senator Bob Vale, and Senator Hector Uribe, in which they urge an extension of the Voting Rights Act because of its having had a dramatic and beneficial impact on minorities and helping in many respects to rectify the otherwise underrepresentation of minorities.

Mr. EDWARDS. Without objection, the letter will be made a part of the record.

[The letter follows:]

June 4, 1981

The Honorable Don Edwards, Chairman
U.S. House of Representatives
Subcommittee on Civil and Constitutional Rights
Washington, D.C.

Dear Mr. Chairman,

By this letter, the four Mexican-American members of the Texas Senate wish to repectfully record our strong support for extension of the U.S. Voting Rights Act of 1965. Ample evidence exists to prove both the dramatic impact of the Voting Rights Act in Texas and the continued need for this worthy federal legislation.

The January, 1980 report of the Texas Advisory Committee to the United States Commission on Civil Rights, titled "A Report on the Participation of Mexican-Americans, Blacks and Females in the Political Institutions and Processes in Texas," includes this succinct summary.

> "In office after office, in position after position, there has been little or no change during 1968-1978 in Mexican-American and black representational proportions. The general exception to this conclusion can be found among those institutions and jurisdictions wherein federal law, such as the Voting Rights Act, or federal courts have intervened as the 'court and legislature of last resort' for minority citizens."

As State Senators, we are most familiar with the improvements in the legislative process that have been brought about by the provisions of the Voting Rights Act. In 1968, only one Mexican-American was a member of the Texas Senate, though our number has since quadrupled. In 1968, the Texas House of Representatives was 95.2% Anglo, though over 30 percent of the state's population is black or Spanish-surnamed. By 1978, the Texas House of Representatives included slightly over 11% Spanish-surnamed officials and almost 9% black representatives, an important increase but still indicative that minorities are, even today, under-represented. Minority representation at the city and county level is still disproportionately low, as is membership on state boards and commissions.

For Texas, the most beneficial provisions of the Voting Rights Act have been the bilingual ballot and the preclearance provisions. In a state where 18 percent of the population is of Spanish-surname, bilingual ballots have finally enfranchised thousands of voters who could not comprehend English ballots. The bilingual ballot provisions are of even greater importance in sections of the state where Mexican-Americans constitute over 50 percent of the population and sometimes as much as 80 or 90 percent of the constituency.

Provisions of the Votings Rights Act requiring Texas and other states to obtain Justice Department preclearance of election and annexation changes are also vital. In the period 1975 to mid-1978, 55 objections were sustained against Texas. This figure equals or exceeds the number of objections sustained against any one state in the thirteen years between 1965 and 1978.

As the previously-cited 1980 report by the Texas Advisory Committee to the United States Commission on Civil Rights notes, given this record, "could anyone seriously claim little or no impact on the electoral system?"

There simply is no doubt but that the Voting Rights Act has had a dramatic and beneficial impact on Texas. However, under-representation of minorities continues to be a serious problem in our state. By continuing the Voting Rights Act, minorities can achieve adequate representation in the legislative process, in local government, on executive boards and agencies, and in party politics. The Voting Rights Act provides hope that we can override the lingering legacy of political discrimination against minorities. If Congress fails to extend the Voting Rights Act, it will erase the hope for future progress and erode the gains of the past.

Please convey to Congress our strong support for the continued application and enforcement of the Voting Rights Act in our state.

Sincerely,

Tati Santiesteban
Senatorial District 29
El Paso, Texas

Carlos F. Truan
Senatorial District 20
Corpus Christi, Texas

Hector Uribe
Senatorial District 27
Brownsville, Texas

Bob Vale
Senatorial District 26
San Antonio, Texas

Mr. BONILLA. I also would like to submit for the record: There are many working people, of course, who cannot be here because of the restraints of time and financial lack of opportunity. On their behalf, I am submitting over 200 signatures from citizens in Raymondville, Tex. who successfully fought some electoral boundary changes and who feel that because of their success it is essential that the Voting Rights Act be extended.

[The information follows:]

Signed in Raymondville, TX
May 29 - 30, 1981

Maggie Fiskes
723 N 3 Raymondville TX 78580
512 - 689 - 3151

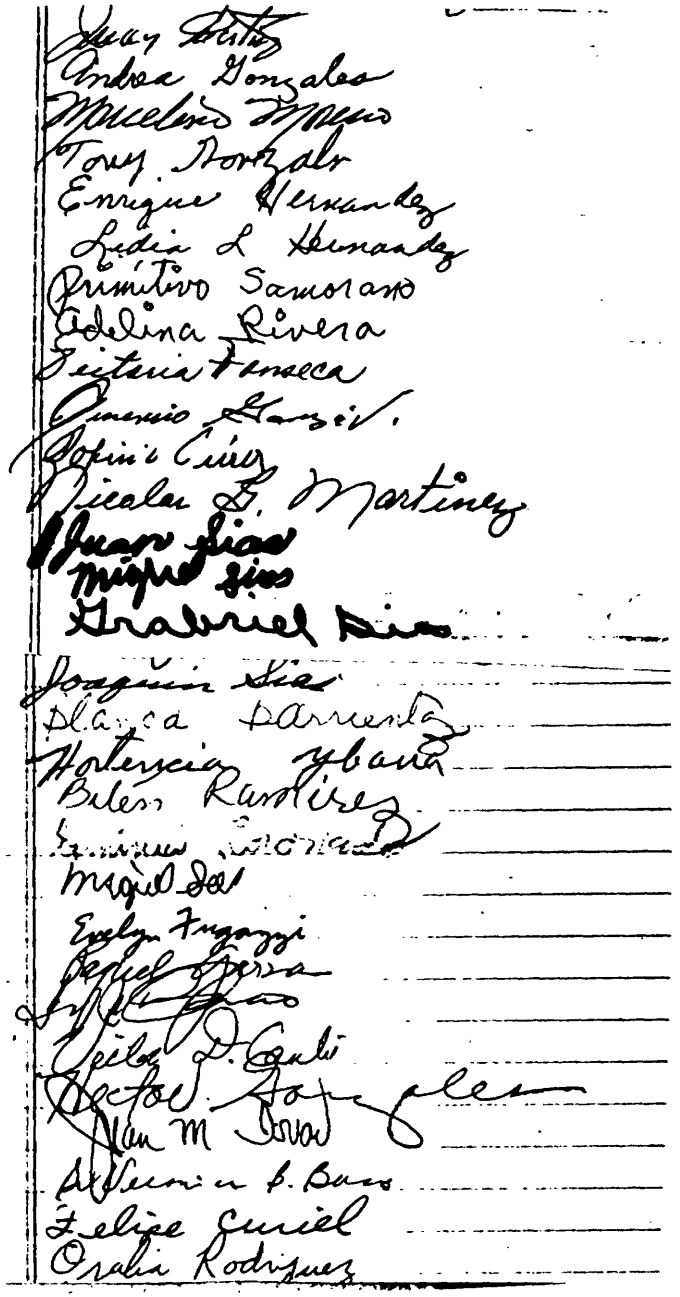
I support the Valley Rights Act

Olivia Cavazos
Palm Delgado
Rosa M. Vasquez
Delfino M. Alaniz
Cecilia B. Vasquez
Ygnacio L. Salazar
Delia Sánchez

Mr. Abel A. Perez
Sister Phyllis Bowlinsky
Cathy Webb
Lord Hongsler
Sister Barbara Koremsee
Gracie Ramirez
Mrs. Jose Guadez
Betty Vannucci

Marcus A. Salinas
Sylvia Caballero
Maria Barrate
Jorge Zamora

G. R. Navarro
Mrs. Josefina A De Leon
Mr. Gonzales
Dyal Gonzales
Walter Lomas Garcia
Jose Garcia
Peter Saenz
Santos Garcia
Robert A Villarreal
Julio Ramirez
Teresa De La Garza
Daniel Bermudez
Eustolio Lozano
Marisela Georgina Suarez
Jose M. Zamora
Richard Di Leo Sr.
Regina Caudle
Arnulfo Palomo
Guadalupe P. Martinez



Carlos Aguayo
Amelda Puga
Olga P. Cruz
Nilda D. Rivas
Juan. Crodes
Mariana Longoria
Raul de Luna
Santa M. de Luna
Mrs. Ana Perez
Juanita A. Salinas
Carmela Rodrigo

Daniel Martinez
Eva Martinez
Fernando Fuentes
Joe Cruz
Reynaldo Solis
Baldomero Leal
Lucia Delgado
Guadalupe Leal
Paulina S. Segovia
Juan Moreno
Julia Tijerina
Lorenzo Tijerina
Amado Segovia
Adela Duran

Conrado Duque
Cecilio Lara
Francisco Lara
Mike Gomez
Ignacio Gomez
Andrew J. Salinas
Antonio R. Salinas
Maria Dias
Miguel Dias
Margarita Dias
Pacheco Dias
Olga Sanz
Sr. Mary Andrew Heuman
Sr. Theresa Streif, C.S.C.
Leo Puga
Jose Guzman
Marlen R. Zaragoza
Juanita Salazar
Belinda Zuniga
Rd Tanez
Connie Tanez

Janie Rodriguez
Rosemary H. Duran
Antonia Olivarez
Maria Bazquez
Maria L. Gonzales
Manuela Contreras
Maria De Jesus Guzman

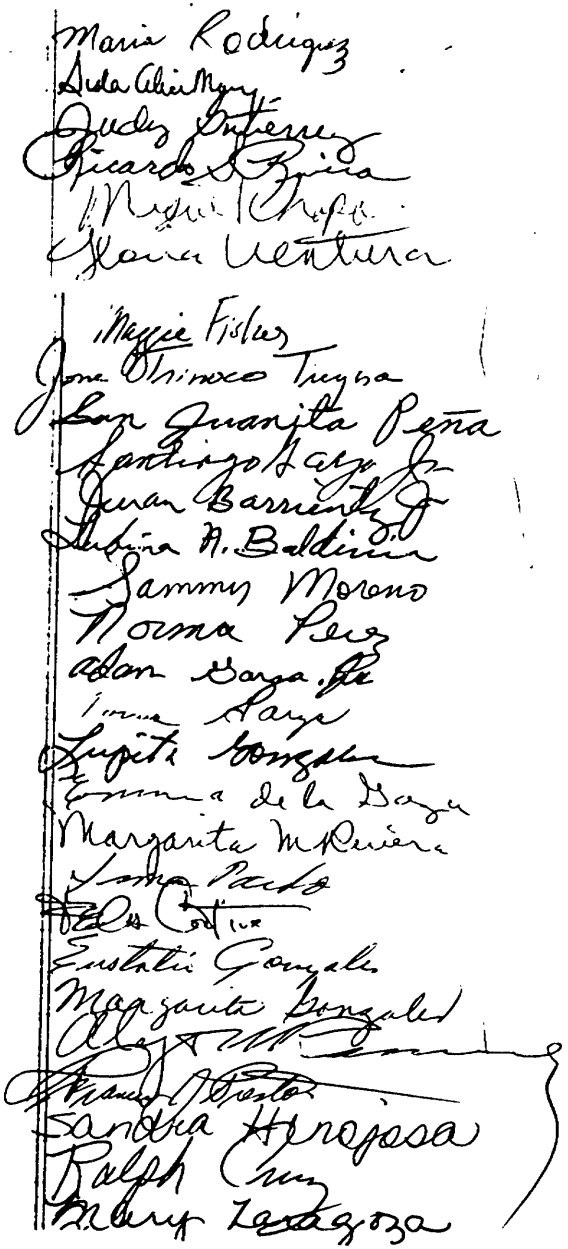
Diego Dorado de 4/7,
Adela Pena
Celina Pena
Julia Zarraga
Guadalupe Correa
Pedro Contreras Sr.
Angela Villarreal
Ramona Graciani
Fr. R. MacDonald OFM

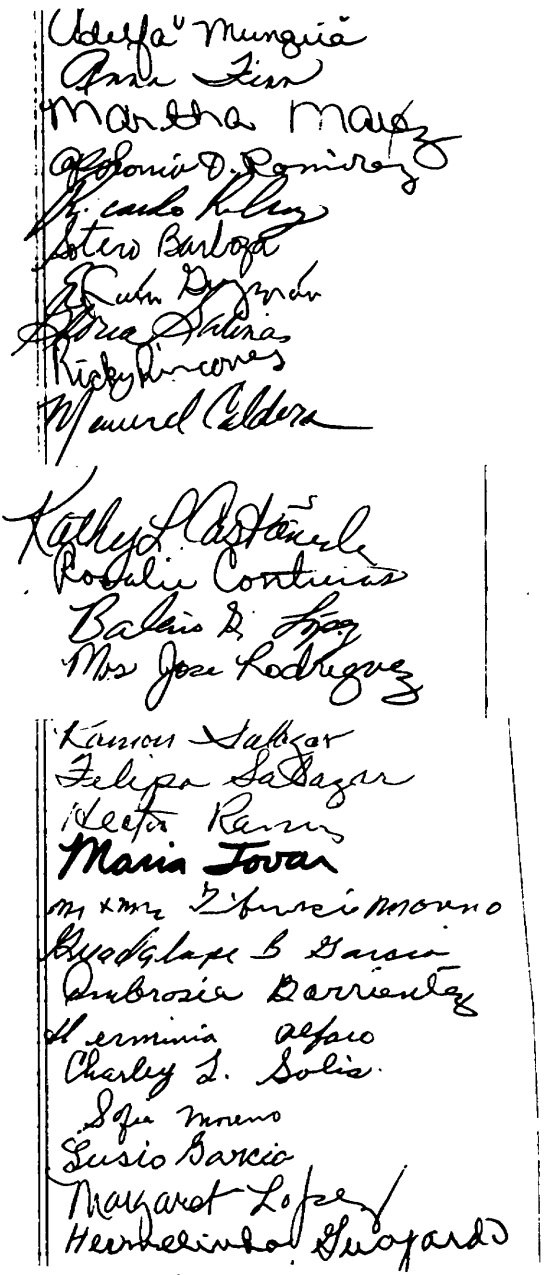
Mr. Andres Rodriguez Jr.
Mrs. Guadalupe Blanco
Manuel Graciani Sr.
Pedro Delgado
Mrs. Guadalupe G. Rodriguez
Mr. Andres Rodriguez Sr.
Duron Duron

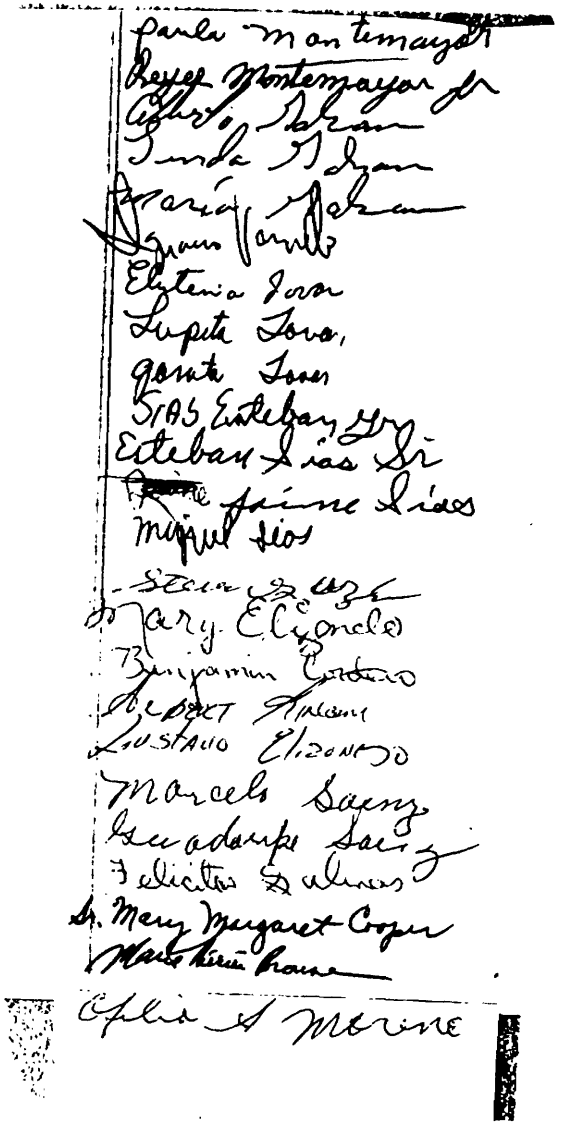
Eluterio "Ramiro" Rodriguez
Francisco Rodriguez Jr.
Marcos Trevino
Bertha Duron
Dora Duron
Gloria Nelly Cano

Mrs. Francisca P. Lozano
Mrs Ruben G Carazo
Mrs Diane C. Chavez
Dora Delgado
Elisa Gomez
Celia Rosa
Maria de la Garza
Bartola Torres
Yolanda Chapa
De Rosa
Mrs. Jane M. Dickman

Maricela Barriento
Celia Hernandez
Mary Lita Baldivia
Wally Hernandez
Maria de Jesus Trujillo
Amelia F. Dias
Miguel Dias
Margarita Dias
Patricia Dias
Juanita Lopez
Maria Luisa Pallardo
Ricky Trejo
Celia Rivera







Mr. BONILLA. Finally, I also have over 100 letters which have been submitted to the White House and various Members of Congress. The parties who have forwarded these letters ask that it also be made a part of the committee's permanent record.

Mr. EDWARDS. Without objection, they will be made a part of the record.

[The information follows today's hearing record.]

Mr. BONILLA. Mr. Chairman, this afternoon I would like to use the forum which I am fortunate enough to have as national president of the Nation's oldest and largest Hispanic organization, LULAC, to make a few comments regarding the importance of the Voting Rights Act and its relation to the Hispanic community.

We feel that the Voting Rights Act is the singular most critical issue affecting Mexican Americans in the State of Texas. I believe it is important to understand the makeup of Mexican Americans. We in the Mexican-American community are the fastest growing population group in American society, and that holds true for Texas. We have a lower median age of about 20 in comparison to 30 for the Nation as a whole. There is a higher birth rate among Hispanics. There is a larger average family size. All this growth among American citizens is augmented by an increasing Hispanic immigration pattern from across Latin America. This problem will become even more acute if we move forward with the administration's advocacy and implementation of a "guest worker" program, bringing in over a million workers into America, as is being discussed at the White House.

An example of the results of this phenomenal growth is that if we take all first-graders in the State of Texas and place them in one large auditorium—and this is information submitted by the Texas education agency—slightly over 50 percent of those first-graders are minorities, Mexican Americans and blacks, who have historically, unfortunately, in Texas been undereducated, underemployed, and underutilized politically. The result in Texas, as a result of this growing population, is that Hispanics now make up 20 percent of the population and blacks and Mexican Americans together comprise 33 percent, utilizing the most recent Census data.

Regretfully, the State of Texas, through its various political subdivisions, has generally failed to address and meet the needs of the Mexican American community. As a result, Mexican Americans have a higher unemployment rate than non-Hispanics; we have an unemployment rate among youth that is parallel to anything experienced by the black community; we have the lowest level of educational achievement because of the schools as well as the State's failure to address the needs of non-English speaking children.

We have a median income, therefore, that is $6,000 below the national average, and finally, we have a dirth of political representation, a terrible degree of political underrepresentation, which reflects that, in spite of our 20 percent population figure, one out of every five Texans being Mexican American, we have less than 12 percent of the State elected officials. We have less than 6 percent of county commissioners and judges. We have less than 5 percent of municipal elected officials, and we have approximately 5 percent of school board officials. I believe, therefore, that the record speaks

for itself in terms of insensitivity and the lack of opportunity for Hispanic Americans having equal accessibility to the political polling place.

I think, therefore, we need to consider the Hispanic agenda in the larger context of the direction in which our country is heading. It is enough for us to offer testimony on specific examples of the progress of the Voting Rights Act, but we are concerned with the rapid shift to the right of the ideological poll in this country. We have had a resurgence of the Klu Klux Klan, the American Nazis, the moral majority, the NICPAC's of America. There seems to be a new age of enlightenment, the gradual development of a myth that all is well. We are seeing the utilization of powerful persuasion through the electronic and print media as well as in the halls of Congress that would lead us in the minority community, and in America as well, to believe that the bigots of America have died away and that racism was but a dark chapter in our Nation's past, that it exists no more; that our public officials are imbued with a genuine benevolence, a sense of altruism, which will repell any effort to thwart or to deny minority political participation. In a sense, we have the mental construction of a "Fantasy Island," where our minorities are guaranteed full access and are being given every consideration at the voting place.

Mr. Chairman and distinguished members of the committee, I am here just to tell you that it isn't that way at all, that Texas remains a hotbed of simmering prejudice, racial and economic, where Mexican Americans have had to use every avenue available through the Voting Rights Act to redress political grievances.

Experience tells us the startling truth, and that is that exclusionary politics remains the rule. Let me give you a few examples—and you've heard some already.

In Rockport, Tex., near the area where I reside, in 1978, Pepe Sombrano ran for the justice of the peace. His opponent was an Anglo incumbent. During the primary campaign the Anglo incumbent died. So there was initial "hoopla" in the Hispanic community, that at last, for the first time in that county's history, a Mexican American would, indeed, be elected.

But then the Anglo community began running full page ads telling people to vote for the dead man, that there was an opportunity to prevent the election of a Mexican-American justice of the peace. Sure enough, the Anglos turned out in large numbers and voted for the dead man. In fact, Mr. Sombrano holds the dubious distinction now of perhaps being the only political figure to lose to a deceased candidate.

Shortly after that the Democratic Party met in executive session and they elected an Anglo through special process. I think that just reflects the Anglo mentality in that area, that being permitting a Mexican American to hold a public position was odious.

In Crockett County we have had absentee ballots marked in different colors. We have had county clerks color one set of absentee ballots white for the Americans, and we have had the other absentee ballots colored red for those Mexicans. I think it's a matter of public record, offered through sworn testimony in hearings held by the Southwest Voter Registration Education Project, in conjunction with other Hispanic organizations, a matter of

public record that these events did take place in Crockett County, where color coding was utilized to deny the vote to Mexican Americans—not in 1935, but in the late 1970's. Fortunately, that case was challenged in court and we now have two Mexican American county commissioners in Crockett County.

In a recent mayoral election in McAllen, Tex., held this spring, not in 1938, the Anglo incumbent, Otho Brand, who recently was rejected by the Texas Senate to a State board to which he had been appointed by the Governor, he had a Mexican-American opponent, Dr. Ramido Caso. Otho Brand ran full page ads in the local newspaper, printed in red ink, accusing Dr. Caso of binding with radical communist elements—most notably, the United Farm Workers. There were photographs in full page being pictured with United Farm Worker leadership. The picture went on to say that this was an example of the collusion and conspiracy that was meant to represent a Mexican takeover in the valley.

When one began investigating and determining the origin of the photograph, one learned that the photograph reflected a ceremony at which Dr. Caso had been given an award by the United Farm Workers for his charitable medical work among the poor in the valley. But it is this type of campaign tactic that was utilized, and this same mayor, Otho Brand, on the first primary, had photographs taken of voters as they were going to the polls, intimidation, in that Mr. Brand is one of the largest employers in the valley. It is this type of economic reprisal which represents a form of intimidation that we find reprehensible.

In my own home town of Corpus Christi, we have seven city council members, a Mexican-American community representing 509 percent of the population, but with an at-large election scheme that has prevented the election of any Mexican-American candidates in this last election.

We have local officials who adopt a stubborn resistance to the concept of equitable representation and refuse to call for charter elections to address the possibility of implementing single-member districts.

We have the attorney general of Texas, having stated before the Dallas Chamber of Commerce, that the best thing the Federal Government could do would be to fire all civil rights attorneys. I think it's this type of attitude at the State level that makes it essential that we look to the Federal Government for relief when our own State officials are looking down their noses at us with outright impugnity.

The most recent legislative session is a further reflection of Hispanic dilution. A redistricting plan was not adopted and therefore a special session has been called for July.

Since 1970, the State of Texas has grown tremendously. We are entitled now to three new Congressmen. In 1970 Hispanics had what amounts to four safe districts in which we would be assured accessibility to a congressional seat. In 1980, in spite of the fact that Hispanic population growth largely attributed, was largely responsible for the population growth in Texas, under the last plan discussed, Hispanic voting strength would remain the same. That is to say, at the most we could have four Hispanic congressional districts instead of the five to which we should be entitled. That is

not to say that Hispanics would be guaranteed a seat, but that they would have a good opportunity to run and be elected.

Likewise, Mexican Americans have been paired against Mexican Americans, and Mexican Americans who did not show allegiance to the speaker have been paired against other progressives, further diluting and failing to maximize the voting strength of Mexican Americans. Therefore, it seems to me that these deplorable, occasionally repugnant instances of institutionalized bias reaffirm the importance and justification for extension of the Voting Rights Act for a minimum of 10 years. The Voting Rights Act has become synonymous with an open, more participatory democracy. Hispanic political presence is, indeed, gradually being felt, but it is not being felt because we received any gifts in our laps; it is being felt because we have had to fight legal battles in order to expand our degree of political success.

The most phenomenal success perhaps is the story of San Antonio, Tex., where the city of San Antonio a few years back filed a protest under the Voting Rights Act which resulted in single-member districts being implemented. We saw a more active registration among Mexican Americans; we saw more vigorous voting patterns among Mexican Americans; and we saw, too, the election of a young man through the single-member district system by the name of Dr. Henry Cisneros. That was in 1977 or so. Just recently we saw the election of Dr. Henry Cisneros as mayor which catapulted him as a national leader in urban politics—not as a Hispanic, but as an American who was offered the opportunity to run and be elected. Had it not been for the Voting Rights Act, Dr. Cisneros would probably still be just another professor on a college campus where he was before he began his political drive.

I think, therefore, we have to express some degree of concern with the proposed changes as articulated by the Reagan administration, and I wish to just highlight these in concluding my testimony.

According to White House officials, as well as news reports submitted and distributed through the New York Times news service, the administration is recommending that pre-clearance be limited to those changes that have elicited the most objections from the Department of Justice—reapportionment, for example, the change from single-member to at-large district elections, and the annexation issue. But what we have in many parts of South Texas and in West Texas is the abuse of the absentee ballot, for example, but more significantly, we have the abuse of polling places where polling places are moved from election to election to confuse the Mexican American voter, where we have polling places consolidated, with people going to the usual polling place and it will be closed. So we need the preclearance for maneuvers of this type which are underhanded in an effort to abridge the right to vote of minorities.

The administration also recommends changing the formula for coverage, and it suggests that there be a bailout provision and that those cities and counties with a clean record in recent years might be allowed to be exempt from the coverage.

We would only ask, what constitutes a "clean record"? Who determines the criteria? Who determines what cities and counties? It most likely will not be Hispanics making the decision. It most

likely will not be friends who are aware of the climate in Texas. Therefore, that provision is very objectionable.

A third major area is where the administration proposes replacing the preclearance requirement with a mandatory notice provision. It states that the Attorney General would have to seek a court injunction if you wanted to prevent a change from taking effect. In other words, it would eliminate the administrative veto which we now utilize.

We have dealt not only in political matters but we have dealt as Hispanics with the issue of police abuse, where our citizens have been beaten, they have been assaulted, they have been killed by law enforcement officials. We have literally crawled to the desk of the Attorney General and asked him to file suit to protect and safeguard the rights of American citizens who happen to be of Mexican origin or who happen to be black citizens.

I would say the Attorney General and the Department of Justice have not been totally responsive in initiating litigation where necessary. So not only does this proposal encourage litigation by requiring court injunctions to be filed, but it also will result in a greater cost to the taxpayers. Instead of doing these things administratively, we are now going to have to take another trip to the courthouse, and as testimony has already shown today, the trip will probably have to be taken by a nonprofit corporation, by community-based organizations, because we don't have the confidence that the Attorney General is going to take this initiative, particularly when it's their very office calling for the dilution and the weakening of the Voting Rights Act that has protected us these past years.

These are critical issues in today's world. The Attorney General recently traveled to San Diego, Calif., to learn more about the immigration problems first hand. We would like to invite him to Texas to learn about the problems of blacks and Mexican Americans in this State, to learn about the prejudicial attitude that still exists, that caused the problems in Crockett County in the Valley, in the coastal bin area, and all across this great State. So we are simply imploring the committee members, imploring Congress, not to desert us and not to desert and abandon Hispanic Americans. We are losing on the economic front today. To lose on another issue will represent an irreparable loss on the political front.

Therefore, with the loss of the Voting Rights Act extension, I'm afraid that there would be a tremendous retrogression of Hispanic voting strength. It would be a throwback to the 1950's, when Americans who happened to be of Hispanic origin were ostracized in their own country.

Mr. Chairman, we would urge you to support the extension and we would urge the Congress to follow your lead in adopting a meaningful bill that will result in a reenactment of the Voting Rights Act as we know it today with an extension through 1982.

Thank you very much. We would be happy to answer any questions.

Mr. EDWARDS. Thank you, Mr. Bonilla.

Does your colleague have a statement?

Mr. RIOS. No, I have no statement.

Mr. EDWARDS. I believe that the statement of the administration's position that you referred to was in an article in the New York Times the day before yesterday, and I hope and I believe that it is the result of private conversations with some people in the Department of Justice by Mr. Robert Pear, a very responsible reporter. As far as the subcommittee is concerned, we hope that this will not be the views of the Department of Justice and the White House when it comes time for the administration to express its views. Because as you well pointed out, the suggestions they allegedly have in mind in the newspaper article would make it unnecessary for us to be here. They're so bad that we would rather have the Constitution and the permanent provisions of the Voting Rights Act rather than the provisions that you mentioned.

So we are looking down the road. We think we can prove the civil rights bills in this country have always been the product of both Republicans and Democrats, supported by Presidents like Eisenhower, President Ford, President Nixon, and we expect this administration to act responsibly also in the true tradition of the Republican Party. And that to turn its back on the minorities of America, the Hispanics, the blacks and others, would be such a massive step backwards, not only giving a signal to the country, but to the world, to South Africa, to the Third World, to our allies in Europe and elsewhere, that it really could not be acceptable. So that is what this subcommittee, at least a majority of this subcommittee, expects from the administration. We have asked them to testify and we hope they won't come out with anything—and we don't expect them to come out with anything like the article that you referred to. I agree with you, it would be absolutely and totally devastating.

Mr. Bonilla, we are going to have the pleasure and the honor shortly, I believe, of hearing from the distinguished attorney general of the State of Texas, Mark White. In the Congressional Quarterly, a responsible magazine that reports on congressional matters, in the edition of April 11, 1981, page 4, Attorney General White is quoted as saying "If Texas once discriminated against minorities, that period has ended." He allegedly said to the reporter at Congressional Quarterly that "Texas now has progressive election laws" and he cited the State's registration system which he termed "the best voter registration law in the Nation." The attorney general said that a person can register by mail, on a postcard provided by the State, the first day he comes to Texas and be eligible to vote in Texas within 30 days.

How do you respond to that?

Mr. BONILLA. Mr. Chairman, the attorney general is a fine and honorable man. I consider him a friend. I supported him in previous elections. But I feel that he has not met his commitment to Mexican Americans in this State. I feel that he has been a substantial disappointment in the past couple of years in his role as attorney general. He has appealed numerous decisions, particularly the critical case of bilingual education, which Judge Justice has ruled upon favorably. The State of Texas continues to appeal those favorable decisions, those opinions favorable to our community.

The attorney general has also appealed the Federal court decision which permitted free public school education for the children

of undocumented workers, in spite of case language to the contrary.

The attorney general also testified against the Voting Rights Act in the initial phase some years ago. The attorney general's staff has also admitted in Federal court, as a matter of open admissions in court by way of request for admissions, that the State of Texas has maintained a de jure system of discrimination and segregation against Mexican Americans. These are a series of requests for admissions which were admitted in open court and which are a matter of public record. Perhaps the attorney general would like to explain that and try to reconcile those admissions with the statements made before the other public officials.

I would say that in spite of those requests for admissions having been entered in court by staff attorney Susan Dasher, the attorney general then directed other attorneys to appeal those findings, those admissions, to the Fifth Circuit Court of Appeals.

So we are very confused as to exactly where the State attorney general stands. We are not convinced at this point that he is vigorously pursuing a more open political system that will allow Mexican American representation that is proportionate and equitable.

Mr. EDWARDS. The attorney general has also stated, according to this Congressional Quarterly, that it makes no sense to him to require Texas to have bilingual ballots for every election when there were no Hispanics in some of the State's 254 counties, and that they should not have to submit these law changes no matter how minute they might be.

Do you have any observations on that?

Mr. BONILLA. Yes, sir, Mr. Chairman. One of our observations has been that sometimes these statements are made without any followup fiscal responsibility. In other words, the blame is placed on our shoulders.

There are many instances where the bilingual ballot has, indeed, been printed by the State officials and placed in jurisdictions where there is no Hispanic constituency, thereby increasing the cost of running an election. We have never objected to the bilingual ballot being streamlined and provided only in those jurisdictions which would meet the general requisites set out by the Voting Rights Act. So that if there are counties in Texas where there is no Mexican American registration rolls, then I think the county officials, at least in local elections, should be instructed to take proper measures.

But on the other hand, I think that that is merely an attempt to subvert the real issue, and that is, complying with the Voting Rights Act so as to encourage more participation by non-English speaking people who are American citizens. I think that the right to vote should not have a price tag placed on it.

I would like Mr. White to accompany Mr. Rios and I into any number of Chicano precincts that have over a 90 percent Chicano population and learn first hand how these people must rely on the Spanish ballot, must rely on bilingual assistance at the voting poll. So hopefully, that will not be an issue raised to confuse the overall effort to provide a ballot that maximizes voter participation.

Mr. EDWARDS. Thank you.

Mr. RIOS. Could I add something to that, Mr. Chairman?

Mr. EDWARDS. Yes, of course. Move the mike over, please.

Mr. RIOS. The Southwest Voter Registration Education Project conducted an informal survey on exit polls of people who were voting in the 1980 Presidential election. The results showed that 80 percent of those people asked, whether they thought the bilingual materials were useful responded that they did think they were useful. We have that study available for the committee.

Mr. EDWARDS. Thank you. It will be admitted, without objection, if you will forward that to us. (See app. — at p. —.)

Mr. EDWARDS. Ms. Gonzales.

Ms. GONZALES. Thank you, Mr. Chairman.

Following up on this bilingual ballot issue, this is a question I asked an earlier panelist that I would like to get your views on. That is, one of the claims that people have raised about the problems that they have with the bilingual ballot is that, in fact, it encourages separatism possibly similar to that in Quebec, and a separate cultural identity.

How would you respond to that?

Mr. BONILLA. I would say, if you may excuse the expression—and not in reference to your raising it—but for those critics, that's absolutely asinine. Because we are already a separated nation, black and white, and in Texas brown and white. Our Mexican Americans live in communities that are unpaved, that have poor sanitation, that don't have adequate sewer facilities. We have already been segregated in our public schools. So don't talk to us, anyone, about separatism and about isolation or about Quebec, because we have been placed in that position by denying us the very right that we're seeking to expand today, and that is the right to vote.

By placing that ballot in English and Spanish—my mother, who is now 73 and has limited English ability, will vote in every election. By doing that in all cities in this State, we will encourage and increase voter participation so that we can have public officials who don't treat Mexican Americans and blacks with indignity and disrespect, so that they become sensitive and that they pave those streets and make our citizens more productive by offering them better jobs—in effect, addressing the tough, economic gut issues that affect the poor. So on the contrary, and consistent with the statements of earlier witnesses, the bilingual ballot encourages greater patriotism, a greater belief in the American spirit and Constitution, by encouraging and allowing people to vote in greater numbers.

Ms. GONZALES. Maybe you can explain also—one of the issues that was raised earlier was the fact that for some people it's very hard to understand why it is that some people need to vote in Spanish when, in fact, they've either been born here or have become U.S. citizens, where there's a requirement that English be spoken.

How would you respond to those kinds of concerns?

Mr. BONILLA. Well, Mr. White, of course, through his admissions in open court—or the State of Texas, through the admissions in open court—have admitted that the State of Texas has discriminated against Mexican Americans, that this is a generation of abuse

and neglect, that we have been undereducated or not educated at all, and the result is we have not had the abundance of economic opportunity that would enable us to become proficient in English as well as we would like.

We also have to understand that we have a proximity to Mexico that other immigrants do not have. We also have to understand that our immigration problems are far from resolved, and we need to understand that this problem is going to become more acute. A recent commission headed by Willie Brandt of West Germany stated that Latin America poses the greatest threat to world peace, and I think that poses problems of immigration that will continue to result in a flow of Spanish-speaking people into America, and those people are going to come into the border States, bringing their language and their culture, so that the problem of Spanish and English will always be with us and it's time that we recognize that bilingualism is a real asset and we need to utilize and maximize the potential that these Spanish-speaking people have to offer.

Our Spanish-speaking community is rich in vitality and productivity and we simply want to be given the same opportunity to which other Americans are entitled.

Ms. GONZALES. I have one last question.

In earlier testimony it was indicated that, in fact, some progress has been made in terms of increased registration and an increase in the number of Hispanics and blacks elected in Texas under the Voting Rights Act.

To your knowledge, how much of this progress has, in fact, come about because of the voluntary, positive steps taken by local or State government officials—for example, in voluntarily changing from at-large to single member district elections because of the fact they realize that would bring in and involve more minorities in the political system?

Mr. BONILLA. Not a single one. Local and State officials have not moved vigorously to protect and enforce voting and political rights. We have a "takeover syndrome" that affects the Anglo population of this State, and those of us who are activists in trying to focus upon the positive nature of a participatory democracy are condemned and attacked as being shrill and as being undemocratic.

The fact is that our State has not moved expeditiously to protect our rights. In almost every instance—and probably in every instance where there has been an increase in Hispanic participation, whether in San Antonio or in Frio County, or in Seguin, or in Houston, or in Lubbock—it has been either through letters of objections issued by the Department of Justice or through litigation initiated by MALDEF or the Southwest Voter Registration Project.

We also have to keep in mind, as was offered in the testimony in Washington, D.C., on this issue, that there have been more letters of objections filed by the Department of Justice against the State of Texas in these short 6 years than there have been against any other State since the enactment of the Voting Rights Act in 1965. I think that tells you a great deal about the temperament, the mentality, and the distaste of our efforts to gain economic and political parity in this State.

Ms. GONZALES. I take it you would then not agree with the goal of three of the bills that have been introduced before the subcommittee that would delete both the bilingual provisions and section 5 as it relates to Texas? You're statement then is that you feel that kind of legislation would not be warranted at this time?

Mr. BONILLA. Absolutely. It's a return to a State's right mentality that left minorities on an island of economic dispair in the forties and fifties.

We talk a great deal about the burdens on local and State officials. Perhaps that's what the Attorney General will tell you today, that it's a great burden. Well, it's also a great burden on Mexican Americans and blacks and other poor people not to be offered good jobs, be given a good education, because they don't have responsive public officials. The whole effort here is not to take over; it's to make our people more productive, to make them enjoy the good American life. They are being denied this opportunity today and have been for the generations of Texas political history because we have had nonresponsive, unresponsive political leadership at the top.

Ms. GONZALES. Thank you.

I would just clarify for the record that the bills that I referred to were by Congressmen McClory, McCloskey, and Mr. Thomas.

Thank you.

Mr. BONILLA. Mr. Chairman, if I could add one point, we do have a meeting with Attorney General Smith on Monday at 2:30 at the Department of Justice. It will be interesting to determine whether or not his position corresponds with the information in the New York Times.

I would like to know if it would be possible for us to submit some memorandum or some other data that we may learn from those meetings to this committee to be included with the testimony you have heard today?

Mr. EDWARDS. It certainly would be accepted for the record.

Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Bonilla, I would like to go back to your representation of the administration's position for a moment if I might.

Was the chairman correct, that your representation was gleaned from Robert Pear's article in the New York Times?

Mr. BONILLA. Yes, sir.

Mr. BOYD. Well, I talked with Mr. Pear before he wrote that article, and the minority on the subcommittee has been in pretty consistent contact with the Department of Justice and the White House throughout these proceedings. Mr. Pear's article was intended to reflect a range of issues, a range of alternatives, which were presented by certain members of the civil rights community when they met with the Attorney General. The Attorney General has made a commitment to listen to all points of view with regard to this issue, and you have just represented that you are one more link of that chain of representations who are scheduled to appear before the Department of Justice next week.

So far as I know, and so far as the minority membership of this subcommittee knows, no official position has been taken by the

administration, and it would be premature on your part to suggest that there has been.

I have no further comments to make. Thank you, Mr. Chairman.

Mr. BONILLA. Interpreting this article as a matter of public information and as a matter of public knowledge, I would rather react and bring this to the attention of the committee than to have to say I'm sorry I didn't bring it up later.

Also, you will recall in a meeting with President Reagan held earlier this spring that the President stated he had not taken a stand on the Voting Rights Act, but that he did feel that it was objectionable that one region of the country be penalized and, therefore, he thought it should be applied nationally.

That is an argument being advanced in certain quarters in Congress, which is a very weak argument, and is merely an effort to insure defeat of the Voting Rights Act because it will not be enforceable on a national level and would not be economically feasible to expand it to that level.

Mr. BOYD. Well, that presumes, Mr. Bonilla, that the national coverage you're contemplating is national preclearance. That is not necessarily the case. As you probably know, the Voting Rights Act can legitimately be applied nationally. In fact, to some degree, it already is. It can be applied both by means of nationwide preclearance, which admittedly would raise severe constitutional questions; it could be applied by the use of a trigger percentage population in certain portions of the country which could enact nationwide coverage; it could be applied by the transferral of administrative procedures to section 3(c) of the act, thereby incorporating the judicial procedures now present under the act. That, too, would be nationwide. So I think it would be inappropriate again for you to suggest that anyone who abstractly alludes to the Voting Rights Act as having nationwide coverage is implicitly trying to kill the provisions of that act.

Mr. BONILLA. I certainly hope I'm wrong on that point, sir.

Mr. BOYD. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Bonilla, I wish you bon voyage in that meeting with the Attorney General on Monday, and I hope in the great traditions of the Republican Party, which is, after all, the party that first was a leader in civil rights legislation more than 100 years ago, that your meeting will be immensely successful and the message will be that this administration will support an extension of the Voting Rights Act.

Mr. BONILLA. I'm hopeful it will be, sir.

Mr. EDWARDS. We thank both of you for your testimony today.

Mr. BONILLA. Thank you very much.

Mr. EDWARDS. I believe now that we will have the honor of receiving testimony from the attorney general of the State of Texas, Mr. Mark White.

Mr. White, it's nice to see you again. You have testified before this subcommittee in 1975. I was privileged at that time to be the chairman. We are certainly glad to have you here.

TESTIMONY OF MARK WHITE, ATTORNEY GENERAL OF THE STATE OF TEXAS

Mr. WHITE. Mr. Chairman, it is indeed a pleasure to be here before this subcommittee. I regret that you have come this far and I'm not in a position to give you a more extensive statement today, but I did not wish for your appearance in Texas and my absence from this hearing to indicate that we were less than concerned about the problems brought about by these hearings. To the contrary, I could not be more concerned.

The reason that I have not been able to prepare extensive remarks at this time is because I have spent the last few days of our legislative session working for the passage of what I believe to be a very effective bilingual education bill to afford that education that my predecessor on this podium referred to. I have spent many hours trying to make certain that Texas does address the issues associated with those who have some language other than English as their first language. That bill has now passed the legislature in Texas by overwhelming numbers and I hope we will see the signature of the Governor placed upon it within the next few days.

Also, my absence, or my lack of ability to give a more complete statement is partly due to the fact that I spent the past several weeks reviewing evidence in association with our lawsuit filed yesterday against the Klu Klux Klan for activities involving paramilitary training which is in contradiction to the civil laws of Texas. For those two reasons and others, I would ask for the opportunity to present a more extensive statement after I have had a chance to review the record made before the committee and also to review the record in Texas experienced in the last 5 years.

At the passage of the Voting Rights Act that included the State of Texas under the bilingual requirements, the State legislature happened to be in session at that time, and I think this committee should realize that we are not holding hearings today in our State, and our legislature did not have to reconsider the effect of renewing laws that had been passed in 1975 in Texas to do just exactly what the Voting Rights Act is intended to do; and that is, to protect the right to vote for each citizen.

We have a permanent law which outlaws discrimination, intimidation, or coercion in the exercise of the right to vote. It's a permanent law that provides stronger punishment than the Federal law, and it is also a permanent law. I believe those sections providing the protections of the Voting Rights Act at the Federal level should be made permanent law, and I think they should be made to extend nationwide; that discrimination, coercion, or intimidation in exercising the right to vote should be just as great a crime in Michigan as anywhere else, Texas, Florida, or California. That is a permanent part that I would like to see made permanent in the law.

In reference to remarks made by my predecessor on the podium, I think it's only fair to bring to this committee's attention that I believe—and I would refer back to the record as being a more accurate reflection—that Texas, during the five years under the Act, all of its political subdivisions have submitted in excess of 15,000 submissions. Texas has more political subdivisions and more voting entities than all the Old South put together. And because of

that, I think you will find the burden associated with preclearance is one which has been brought to the attention of the previous sponsors of this legislation.

I have tried to make constructive criticism and suggestions on how we might improve the Voting Rights Act and how it would apply to the State of Texas in the future. Two suggestions I have made—and I think one of those has been adopted today by Congressman Krueger—and that is, based on the fact that out of 15,000-plus submissions, I believe—and here again, let the record be accurate; the Voting Rights Section of the Justice Department can give the precise number, but somewhere in the neighborhood of 130 objections out of 15,000 submissions. I would suggest to the committee that it would be a more appropriate use of the very valuable time of those individuals in charge of pre-clearance, that they be focusing all of their attentions in the areas where there are objections and thus not be wasting efforts on those 14,000-plus times when there was no objection, in which there was no objection lodged or submitted. I think this can be done by adequate notice provisions prior to any change in the election procedures so that an individual citizen can make known his objection to those changes and how it would affect him in the voting process.

That, to me, makes a great deal of sense. I think it would also relieve this bill of the criticism that it is wasteful in the efforts of those people who are in charge of protecting the right to vote.

The other suggestion I have made would be one to follow very closely the Texas law on bilingual bills, bilingual ballots. The Texas statute passed in 1975 requires bilingual ballots in our State, and if the Voting Rights Act today were not extended, the people would Texas would have the following protections built into State law: Protections against coercion, intimidation or discrimination in the exercise of the right to vote. It's a felony in the State of Texas.

The protections of a bilingual ballot are permanent law in Texas today. That bilingual ballot law I think is effective because of the following reasons: No. 1, much of the resentment which is being cast about this statute is because of the fact that the Texas submission of the Voting Rights Act is statewide. We are required to have a bilingual ballot in every voting precinct statewide, so we run into the incongruity of having many counties in our State where there are no Spanish surnamed citizens and, thus, we are required to print at some expense and a great deal of consternation on the part of local citizens a Spanish ballot. That type of expenditure is wasteful, I think, and is also counterproductive of our efforts of trying to eliminate discrimination among our people.

It has been a point of concern of many citizens who think why do we have Spanish ballots when there are no people in this county who have any ability to speak or read Spanish.

The Texas approach to the bilingual ballot has been to provide Spanish ballots where there are Spanish-speaking people and there may be an apparent need for a Spanish ballot. I think that's thoughtful and I think it's also effective.

Also, in Texas we have a very lengthy publication on many issues involved in the elections process, on constitutional issues and on bond issues, where there is a great amount of verbiage involved in the publication of those issues so the people will be aware of

what they are voting upon. In those counties where we have no Spanish surnamed population, we are still required to print those publications in Spanish. That is a great expense to the taxpayer and I think gives absolutely no protection to the Spanish-speaking person who is sought to be protected by the law.

Those are two points which I would submit to this committee that I feel should be reviewed. I would urge this committee to vote for the permanent emplacement of those proscriptions against coercion, against discrimination, in the exercise of the right to vote.

I would be pleased to submit to this committee a statement of facts concerning prosecution of alleged violations under the Voting Rights Act. I will submit that to this committee under oath. I will also be available at subsequent hearings, if the committee pleases, to respond to questions arising from that submission.

Mr. EDWARDS. Thank you very much, Mr. Attorney General.

Do I understand that you do not want to have any questions today?

Mr. WHITE. Well, I would rather limit my questions to the statements I made, and I would also, if I could, before I conclude, mention a couple of points that I think have not been stressed.

It seems we have had much negative comment today about Texas and the voting rights of Texans. You did refer to the voter registration law in Texas and I am very pleased to inform the committee that should you choose to become a resident of Texas, you can do so today by your presence in the State and your intention of remaining here as a citizen. Upon those coincidental events, Mr. Edwards, we would be pleased to register you today as a voting citizen within our State and 30 days from now you could participate in the elections in our State.

We have moved a long way in Texas from the days of the poll tax, and I'm very proud of the fact that we have made that move because those days were not our State's greatest. Our voter registration law today is a positive law which has an outreach feature to it. We asked the Federal Government to give us postage-free registration. The Federal Government refused to do that, but the Texas Legislature has now provided funds to pay for the postage for our voter registration applications. We can do that by mail, and as I said before, on your first day in our State you are eligible to register to vote in the State.

I think hopefully that will typify the Texas response to the need to protect the right to vote.

I would be pleased to answer questions concerning the statement that I made, and if you would give me any idea of what questions you might have that I might not be able to respond directly to today, I would also try to obtain answers for you at a later date.

Mr. EDWARDS. Thank you very much, Mr. Attorney General.

I might point out that with regard to your statement about making the provisions regarding coercion and so forth permanent, they already are permanent under section 11 of the Voting Rights Act. So that type of activity is criminal and forbidden by Federal law in every State of the Union.

You also mentioned the tough Texas laws that proscribe discrimination against minorities in voting; is that correct?

Mr. WHITE. Actually, what we have, if there is any intimidation or coercion in the exercise of the right to vote, that is proscribed by law. You do not have to prove it was racially oriented.

Mr. EDWARDS. And has your office been active in enforcing that law? Do you have——

Mr. WHITE. In the State of Texas, prosecutorial authority resides with the district attorney for felonies. I think——

Mr. EDWARDS. Have they been active?

Mr. WHITE. I have not made a survey of any of their prosecutorial efforts in this regard. I have made a survey of the Federal Government's prosecutorial efforts in regard to their statute and found that they have never filed criminal charges against anyone in Texas.

Mr. EDWARDS. So it's very possible that none of the district attorneys have filed, either, right?

Mr. WHITE. None of the Federal district attorneys have.

Mr. EDWARDS. No, I meant the district attorneys in the counties of Texas.

Mr. WHITE. As I said, I have not made a survey and I am not prepared to—I will be pleased to try and find out——

Mr. EDWARDS. I think we would be pleased to receive that for the record. For the moment, let's get back to the bilingual ballots which are not the heart of the Voting Rights Act——

Mr. WHITE. Right. It's an important feature.

Mr. EDWARDS. The evidence is very clear and the testimony is very clear throughout the country that section 5 is really the heart of the bill. That's the "nitty-gritty" of this bill.

For a lot of Californians, including the area that I represent, there is the requirement for bilingual ballots. However, the attorney general's guidelines would not require, at least in California, and I presume in Texas, printing of more than 50 or 100 bilingual ballots in Spanish, say, where there are only 50 or 100 residents who would be appropriately using ballots in Spanish. The attorney general's guidelines say that it's up to the county registrars to target, to identify where these particular minorities live who would require and could use the ballots.

Why isn't that done in Texas?

Mr. WHITE. Well, I believe there's a misconception about those guidelines, and I think in all fairness the fact that the Attorney General may have issued a guideline, the fact that we have over 5,000 voting precincts in the State, those people in charge of holding the elections are seldom ever lawyers; the fact that we have a difficult time of getting people even to work in the elections process—we have recently raised the pay for those individuals to $3 an hour and that's below the minimum wage, these are some of the difficulties involved.

I don't think that those guidelines, if they do apply—We have been informed at one time that Texas was obligated statewide to have a bilingual ballot in every polling place. Now, I do know that because that was told to me when I was secretary of state. That was the obligation that was extended to the State when this bill was passed.

Mr. EDWARDS. Well, I think that if you have a registrar of voters who is cooperative and who understands the problem will do like

the registrar of voters in one of our great counties 500 miles from where I live in San Diego, where he addresses the law by putting up within the polling place a ballot on the wall in Spanish that has been enlarged. That takes care of the act.

Mr. WHITE. That's precisely what our State law would permit. At the time we were becoming initiated under the Voting Rights Act, they did not say that our State law would be satisfactory. I think our State law reflects accurately the needs. If there has been some intervening change, I certainly would hope that our State election officials would make that fact known to all those people who print the ballots.

Mr. EDWARDS. I would hope so, too, because it can be a source of irritation and misunderstanding by people. It fans the flames of racism to unnecessarily print anything that people don't necessarily like. We've had that experience in California and I would hope we can do better in both of our States.

The last question I have—and I have limited my questions to your testimony as it's the only fair thing to do—but I wonder if you could just describe briefly how the Voting Rights Act has worked in Texas for the last 5 years. Hasn't it really done an awful lot of good things, registering people and a larger participation of Blacks and Hispanics in the political process in the true American spirit?

Mr. WHITE. One of the things that I was disappointed in was the report from Mr. Caddy, that apparently we have not done quite as well in voter registration as I would have hoped. Back when I was secretary of state, our voter registration rolls were 6.3 million citizens and we had a population of approximately 12 million people. We have increased almost 2 million in population in that intervening time and we have not increased but 300,000 on our voter registration rolls.

I would suggest that there needs to be more emphasis on the part of the State to extend, as we did in 1976, a voter registration program which proved to be the most effective in the Nation, a voluntary program. It was without expense to the taxpayers of Texas, other than the printing of applications for voter registration. We secured the support of most every major supermarket, most convenience stores, and we were able to put together a statewide voter registration campaign, including bilingual materials, public service statements, all of which was designed to enhance the opportunity for registration in our State.

I think you have seen rather dramatic increases in the numbers of people who are today registered to vote as contrasted to the 1971-72 era. I think we need to continually maintain an outreach program, in a sense, to see that every citizen that comes to this State is offered an opportunity to register.

I don't think the Voting Rights Act really does that work for us. It is going to require public officials who are willing to get out and do that work.

The law is a static device. People working within the law make that law work. I believe that what we need to make certain of is our public officials continue to maintain an aggressive approach toward voter registration. That means starting at the high school level, where they become 17 years and 11 months of age and are

eligible to register. They should be contacted statewide and we have made efforts to do that.

I am no longer secretary of state and I have other responsibilities that are not quite so directly attuned to the elections process, but certainly that is one area which the State should take an affirmative role.

Mr. EDWARDS. You mentioned Ambassador Krueger's suggestion, which is roughly that section 5 be extended and that the covered jurisdictions must still send in any change, but that there would have to be Federal provision for notice so that people in the covered jurisdictions and organizations would know that there is in the mill a change in voter procedures and that then the Federal action in Washington would be triggered by a complaint or a letter of protest from the local people.

I believe your testimony is that you liked Ambassador Krueger's idea.

Mr. WHITE. I think the biggest criticism of the Voting Rights Act has been the unnecessary amount of paperwork flowing to Washington over matters which, by actual count, of some 15,000 submissions, some 1,309 objections, tends to be more oriented towards submission and less objection.

If we can turn this around and focus on the problem areas, then certainly we have done two things—we have permitted the Federal Government to focus on areas where they have some concern, and we have also eliminated waste, which makes a world of sense, I think.

I have not heard Congressman Krueger's statement. I have been advised that it was along the lines that you suggest, and I certainly would support anything that would eliminate the 14,000 submissions that were not objected to.

But at the same time I want to stress that any individual citizen would have the right to make an objection, that there be notice before a change is made. Most of Texas law requires notice today. I think that it is feasible to work within that framework and to make certain we're really focusing our attentions on the problem areas.

Many of the things that are referred to by some of the people I have heard testify were brought about by federal court action as opposed to the Voting Rights Act section of the Justice Department. So it is important for this committee to differentiate between the source of that remedial relief.

Mr. EDWARDS. Well, I want to be fair about it, Mr. Attorney General. Mr. Krueger's suggestion is that the submissions in all cases would still have to be made, but that the Justice Department would only look at them in the event, after publication back home, some local person or local group would pose an objection.

Mr. WHITE. I would like to offer a plan along these lines. It may not be four square with what he suggested, but one which I would submit in writing which would maintain that right to object and maintain those protections, at the same time eliminating any possible wasteful effort on the part of local officials in preparation or on the reviewing agency's point.

Mr. EDWARDS. Thank you.

I might add that we have had no evidence to the effect that the submission is any burden to speak of on the local jurisdictions.

Mr. WHITE. Let me say that you may not have heard that but I have, that the effort in putting together some of these submissions is rather significant. I don't know if you had any local officials testify or not, but through the years they have made remarks about how much paperwork and effort went into the submission, and much of the time there is rather little if any comment upon it.

Most of that comment I think arises from objections made locally anyway, and I would like to eliminate the wasteful paperwork effort if we could and at the same time maintain protection.

Mr. EDWARDS. Counsel?

Ms. GONZALES. Thank you, Mr. Chairman.

Our understanding has been that basically, for most of the submissions that are made, all that is required is—and we hope to hear from the Department of Justice on this later—all that is required is really the mailing of a letter that attaches the particular change that has been suggested with a paragraph or two describing what the impact of that change would be.

Is that what you're referring to in terms of being burdensome?

Mr. WHITE. Well, as I said before, I haven't been Secretary of State since 1977, and at that time there was a great volume of materials that were being flowed through to Washington. What the current situation is, I frankly am not aware.

Ms. GONZALES. I do have a question on a point that you made, and that is, you indicated there had only been 130 objections—and that's what it is from the Department of Justice figures that we have—about 130 objections to changes made over the last 5 years.

We have heard testimony that indicated each of those objections is a possible lawsuit had there not been the administrative process in place, that in fact each of those may in fact equal a lawsuit. If that's the case, wouldn't 130 lawsuits in the voting rights area over a period of 5 years be very significant?

Mr. WHITE. I have 17,000 lawsuits pending in my office today, so 130 looks like a real deal.

Ms. GONZALES. OK. Even if it impacts——

Mr. WHITE. No, I don't mean that lightly. The significance of the protection of the right to vote is the primary point underlying our whole democratic system. On that, I don't think there's any disagreement. The 130 lawsuits may very well be extremely significant. The Voting Rights Act may have played some role in it. In some cases I happen to know the Voting Rights Act had nothing to do with the litigation involved.

It would be a guess on my part to make any direct response to your question without having a chance to review each of those 130-some-odd lawsuits. But certainly, if they're able to work out their differences, that is a beneficial thing, I think, and avoids litigation if it can be done. Oftentimes that has not been the case and we have involved ourselves in litigation anyway.

I am not here today to defend or to support those people who were in the wrong in the way they went about redistricting or whatever they may have done. I am fixing to have to defend, if litigation arises, the redistricting plans of the Legislature.

One of the misconceptions I think on the part of my predecessor in this chair is that the attorney general gets to be whimsical about which lawsuits he gets to defend and which ones he gets to surrender. I am sworn to defend them all. I think the people of this State are entitled to know that their lawyer is going to try to uphold the laws that are passed and to use the strength of the office to do so.

If they're wrong in passing the laws, then certainly the court ought to set those laws aside and they haven't had any hesitency to do so.

Ms. GONZALES. One last question. If, in fact, it was required that there be an objection interposed by a local community prior to the Department of Justice really reviewing a particular change, wouldn't that be a particularly heavy burden on the few resources that existed in local communities, through organizations such as MALDEF and the Southwest Voter Education Project, that deal not only with one specific issue but the whole range of issues, so that with those few resources, what they would be forced to do is really pay much more attention to every single voting change that came to their attention, because otherwise the sense would be that if they didn't really pay attention and object, that nobody else may and, thus, that kind of change may go through.

Mr. WHITE. Well, let's take, for instance, a change in the precinct polling place. If the persons affected by that, the voters in that precinct, feel like it's not inconvenient for them to accept that change, then I don't know what greater concern anyone would have than they would have. If they are given notice of the change and given an opportunity to say, "Hey, wait a minute—" and one person; I'm not talking about an organization has to be formed to make an objection. I'm talking about one person can make that objection. I think that's the important feature, that every citizen in this State, or in this Nation for that matter, be given all those protections. It doesn't have to be an organization to respond. Any citizen can respond, to make their objection known and let that trigger, as to whether or not that change was made in a discriminatory purpose of effect.

To me, that would do a great deal toward solving our problems of 14,000 of these submissions, which really we focus all of our attention on 120 or 130 problems.

Ms. GONZALES. I would just make one suggestion. You mentioned you would be writing us more about this, and that one issue to keep in mind is that currently the Department of Justice has 60 days from the time the change is submitted to it to in fact either preclear it or object to it, so that one issue that would have to be addressed is when does that 60 day period start running; does it start running from the time they get the objection or from the time that they find out about a change, just when——

Mr. WHITE. The mechanics that we're talking about is certainly important and we'll try to keep that in mind when we make our suggestion.

Ms. GONZALES. Thank you.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Attorney General, I take it from your remarks that you do not favor the extension of section 5 of the Voting Rights Act in its present form; is that a fair impression?

Mr. WHITE. What I have tried to do is to give suggestions, and I have not made any statement concerning its extension or otherwise. I find that the Congress makes those decisions. The attorney general in Texas has very little to say about that.

Mr. BOYD. But I think the chairman made reference earlier to some statement you allegedly had made along those lines.

Mr. WHITE. I did, back in 1975, make remarks about how we supported the protection but we were concerned about the preclearance section. We never did object to the protections that were built into that act.

Mr. BOYD. Just the procedures.

Mr. WHITE. Some of the procedures we were concerned about, and I have expressed my concern today about those procedures. I have offered constructive remarks on how they can be improved.

Mr. BOYD. Do you think that the language minority provisions of the act, which expire on August 6, 1985, are because of their history somewhat severable from the racial minority provisions which expire earlier, August 6, 1982?

Mr. WHITE. Well, no matter what you do in 1982, it has no effect upon the State of Texas. We have the Voting Rights Act extended through 1985.

Mr. BOYD. Only for the language minority provisions. The racial minority provisions expire on August 6, 1982 in Texas.

Mr. WHITE. I don't believe that's correct.

Mr. BOYD. I stand corrected, then.

But you don't think, then, that either one of those two provisions are severable?

Mr. WHITE. I never have viewed the protection of the right to vote as a severable issue. I think it's a unified issue and applies to every citizen of the State, without regard to their ethnic origin.

Mr. BOYD. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. Attorney General. We look forward to hearing further from you. We do appreciate your coming here today.

[The prepared statement of Mr. White follows:]

THE ATTORNEY GENERAL OF TEXAS,
Austin, Tex., August 11, 1981.

Hon. DON EDWARDS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN EDWARDS: Enclosed is the written statement on the Voting Rights Act which you requested from me following my testimony at your Subcommittee hearing.

I hope my statement will be useful for the hearing record, despite the current date being past the July 31 deadline.

Sincerely,

MARK WHITE.

Enclosure.

VOTING RIGHTS STATEMENT

(By Mark White, Attorney General of Texas)

I would like to take this opportunity, first, to outline the positive steps which Texas has taken with its own Voting Rights Act passed in 1975 to protect the right to

vote for each citizen in our State. Secondly, I want to clear up any misconceptions which may have occurred about my support of any law, federal or state, which increases and enhances one of the most fundamental liberties in our country, the right of every qualified individual to vote for those people who make, administer and, in some cases, interpret the laws which govern our nation.

Senat Bills 1046 and 1047, introduced by former Senator Raul Longoria of the South Texas city of Edinburg, became the core of the Texas Voting Rights Act which was signed into law by former Governor Dolph Briscoe on June 20, 1975. These bills sought to amend a number of statutes to increase the penalties for officials for failing to perform their duty under the law or for misusing the power given them by the statutes. Earlier, on May 16, 1975, Governor Briscoe signed into law S.B. 165, introduced be Senator Jack Ogg from Houston, mandating the use of Spanish language election materials. The Texas Voting Rights Act, together with our bilingual requirements, is a permanent law, a positive law with outreach, which outlaw discrimination, intimidation or coercion in the exercise of the right to vote. Not only is our State law a permanent law, but it provides stronger punishments than the federal law.

Article 1.03 of the Texas Election Code was amended by S.B. 1046. It gives the Secretary of State, who is the chief elections officer of the State, the authority to appoint upon his initiative election inspectors to "observe all functions, activities, or procedures conducted pursuant to the election laws of this State." Should he fail to act, such appointments are mandated upon the written request of fifteen or more residents of a county.

Under S.B. 1046, the duties of poll watchers were expanded to provide that watchers could "be" conveniently near the presiding judge rather than requiring that they "sit" conveniently near, thereby ending some unfortunate applications of previous law. Additionally, any person who prevented a watcher from observing election activities could be tried for a Class A misdemeanor. Finally, the Texas Secretary of State may now refer any violations observed by these observers to the Attorney General to a prosecuting attorney for appropriate action.

Article 2.01 was amended to eliminate the opening of the polls as late as 8 a.m. in some small counties because of the inhibiting effect upon voters who must report to their jobs before that hour. The Election Code permits all persons within the polling place and those waiting to enter to vote.

Other amendments provided for stiffer penalties for violations of the Election Code. S.B. 1046 made it a third degree felony for any poll official, inspector or watcher to divulge how a person had voted; and a third degree felony to vote illegally or to instigate illegal voting, to swear falsely as to one's qualifications as a voter, and to willfully alter or destroy ballots. It is a Class A misdemeanor to vote or attempt to vote more than once in any election. It is a third degree felony for a messenger to tamper with ballots or to allow them to be tampered with, for an official to fail to keep the ballot box secure, for anyone to use physical or economic intimidation on a person for having voted for or against a proposition, or to force that person to reveal how he voted, and for anyone to induce a person to make false statements on a voter registration application. A section was added to the Texas Election Code to encourge the participation of Spanish-speaking voters by having presiding judges in appropriate areas make reasonable efforts to appoint clerks fluent in English and Spanish. Most of the penalties that were changed became stiffer under this statute, from providing for small fines or time in jail, to two to ten years in the State prison and larger fines.

The Texas Voting Rights Act cannot be considered as a separate entity out of context with our liberal system of voter registration in Texas, and the provision for bilingual election and registration materials, also adopted by the 64th Legislative Session.

Texas has a permanent voter registration system, and in 1977 the law was amended to provide postage-free registration. The State decided to institute postage-free registration when an attempt to persuade the federal government to provide this service failed. With postage-free registration, every mail box became a deputy registrar.

When I served as Texas Secretary of State, in line with my belief that the right to vote is not just the right of some but the right of all citizens, I launched a massive voter information campaign designed to encourage Texans to register. This extensive media program which was conducted in English and Spanish, included information regarding qualifications to register, places to register, and deadlines for registration.

Registration applications were distributed to grocery and convenience stores, state agencies, high schools, utility companies, political parties, and other participating groups. Changes in the registration law made these applications available by statute

to "organizations, businesses and political subdivisions," which made it easier to conduct registration programs. Additionally, we provided in our office a toll-free number, or voter "hotline," which was staffed by bilingual personnel to provide registration and application information to any citizen who called in requesting such information. We were able to put together an entire statewide campaign, including bilingual material and public service statements, which was designed to enhance the opportunity for registration within our State.

Generally speaking, any person who is 18 years old, a United States citizen and a resident of Texas can vote in Texas. To vote, a person must be registered, and an individual can register when he or she is 17 years and 11 months old in order to vote at age 18. Registration is effective on the 30th day after the application is received by the county Voter Registrar, who usually is the County Tax Assessor-Collector. Once a person has registered under Texas voter registration law, he or she remains registered to vote for life provided he notifies the County Tax Assessor-Collector of any change of address. The husband, wife, father, mother, son or daughter of any Texan entitled to register to vote may act as an agent for such person in applying for registration, provided the agent is a registered voter of the county.

I think we have seem dramatic increases in the numbers of people who today are registered to vote in Texas in contrast to 1971-1972. We need not only to maintain but to increase our efforts toward an outreach program to see that every citizen who comes to our State is offered the opportunity to register. I do not believe the Voting Rights Act alone in its current form does that work for us. The law is a static device. It is the people working within the law that make the law work. We need to make certain that our public officials continue to work with the law to maintain an aggressive approach toward voter registration.

The Texas Voting Rights Act requires that election materials and ballots be printed in both English and Spanish in all elections conducted in counties or political subdivisions in which five percent or more of the inhabitants are "persons of Spanish origin or descent." However, the Federal Voting Rights Act on its face appears to require our State to have a bilingual ballot in every voting precinct statewide. Thus, unless we are willing to rely upon some questionable Justice Department policies which in effect permit exemption for some areas of Texas, we run into the incongruity of being required to print, at considerable expense, a ballot in both English and Spanish in counties where there are no Spanish surnamed citizens. This expenditure is not only wasteful, it is a point of concern to many citizens who do not understand why we have Spanish ballots in a county where there are no people with the ability to speak and read Spanish. Texas' approach has been to provide ballots in Spanish where there are Spanish-speaking people, where there is a *need* for Spanish ballots. We issue lengthy publications on issues involving the election process, and on constitutional issues and bond issues on which the public must be informed in order to vote intelligently. Federal law appears to require that these publications be printed in Spanish even in counties where there are no Spanish-speaking citizens.

My first suggestion, therefore, would be that you review these requirements with the idea that federal law would be amended in this area to track the Texas Voting Rights Act, which is both more thoughtful and more effective, and certainly more efficient and more economical than the federal law.

Today the State of Texas finds itself in the apparently contradictory position of wholeheartedly supporting the goals of those who favor the extension of the Federal Voting Rights Act and opposing certain unnecessary and counterproductive aspects of that Act. We support the goals because the right to vote is the keystone of our Democratic system. We oppose certain parts of the Act for several reasons.

The Federal Voting Rights Act does not recognize the progress that Texas has made in the past ten years in eliminating any vestiges of discrimination in the election process which may have been present. Under Section 5 of the Act, the pre-clearance section, in the last five years all of the political subdivisions of Texas have submitted in excess of 15,000 submissions. Texas has more political subdivisions and more voting entities than all of the Old South put together. Out of those 15,000 submissions, some 130 have been objected to by the Department of Justice. The submissions alone involve a tremendous amount of unnecessary paperwork flowing to Washington over matters which prove not to be relevant to the election process. I would suggest that it would be a more appropriate use of the valuable time of those individuals in charge of pre-clearance that they focus their attention on those areas where there are alleged objections by individual voters. If adequate notice is provided prior to any change in the election procedure, any individual citizen can make known his or her objections to those changes and how such a change would affect him or her in the voting process. Such objections would then be forwarded to the

Justice Department for review, and the proposed changes would be cleared or objected to by federal officials. Preferably, differences could be negotiated and worked out without litigation; if not, the matter would be settled in court. For example, if there is a proposed change in the location of the precinct polling place, the voters in that precinct should be given adequate notice of such a change. If any voter feels that the change would be unfair or inconvenient, that individual could make his objection known and an inquiry could be initiated to determine if the change would be discriminatory in any way. I feel that this process would achieve the same goals that we are all striving for in the election process, and would eliminate waste on the part of preparation of papers filed by local officials and on the part of the reviewing agency as well.

I have never objected to the protections that develop from the Federal Voting Rights Act, just the procedures. Our Legislature, with my active support, passed the Texas Voting Rights Act and bilingual requirements in 1975 in order to insure each citizen a meaningful participation in the decisions that will affect his life. Texas will continue to respond to recognized needs for election reform. I would ask that the federal government recognize the progress that Texas had made and be willing to amend its own laws to be consistent legally with those areas in the Texas election process which experience has shown are better organized to give each Texas citizen a true voice in the governing process.

Mr. EDWARDS. Is the Honorable Ben Reyes of the Houston City Council here?

[No response.]

Mr. EDWARDS. Our next witness is Hon. Bernardo Eureste, who is a member of the San Antonio City Council.

Councilman Eureste, we are delighted to have you here. You may proceed.

TESTIMONY OF HON. BERNARDO EURESTE, MEMBER, SAN ANTONIO CITY COUNCIL

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

I would like to read a statement that has been submitted to this committee, for it to be made a part of the record, and then——

Mr. EDWARDS. It will be made a part of the record, and you may proceed.

Mr. EURESTE. Then I would like to make a few remarks after that.

I am Bernardo Eureste. I am a city council member from the city of San Antonio, and I have served on the city council since 1977. I am now in my third term as councilman from District No. 5. I am employed by Our Lady of the Lake University, at the Wharton School of Social Service, having worked there since 1972, and am currently an associate professor and teach two courses, one called community organization and the other one social welfare policy.

I was elected to the city council because of single-member districts, and the Voting Rights Act made possible the creation of single-member districts for San Antonio.

San Antonio's population is ethnically divided, approximately 54 percent Mexican American, 39 percent Anglo, and 7 percent black. San Antonio's representational system was changed following a section 5 objection to annexation made during the period 1972-74, and the local political impact is clearly seen in this case.

Prior to single-member districts, a council manager system was in effect, in which the nine-member council was elected at large. On April 2, 1976, the Attorney General entered a controversial objection against 13 annexations that were made by the city of San Antonio during the period 1972-74. The letter went on to suggest a remedy to the objections by proposing the adoption of single-

member wards. The city council put a single-member district plan to a referendum and on January 15, 1977, the voters accepted the remedy and adopted a 10-member district council with a mayor elected at large.

The council districts under this plan were composed of five majority Mexican American districts, one near majority black district, and four majority Anglo districts. The effect of the letter of objection was felt in the April 1977 city election. Five Mexican Americans were elected to city council, myself included. Seven members came from areas of the city which had experienced little or no representation during the previous decades. With five Mexican Americans and one black, minorities composed a majority on the council for the first time ever.

The 1977 city council was more responsive to the particular needs of the minority communities. The city council was more aggressive in improving the hiring of minorities in muncipal employment, monitoring the actions of the agencies, and redistributing revenues and services that heretofore excluded areas such as minority areas of the west side, the east side, and the south side of San Antonio.

The new council has also changed the procedures for personnel appointments to city boards and commissions. This new policy for appointments consists basically of three approaches: We appoint people to our boards, committees and commissions either by district that we represent, by geographical area, or by ethnic representation. Any board, commission or committee that is controlled by city ordinance and whose membership is controlled by that ordinance is kept at a maximum of 11 members. Each council member then makes one appointment, usually a member of that particular district, to serve on the board.

If the number of members is controlled by State or Federal law, we then aim toward achieving geographical representation. Generally we're talking here about boards, committees or commissions that are established by State statute or governed by Federal law that would have a representation, say, of 79, we would then try to strive for geographical representation, since we could not have a member from each of the 10 council districts that we have.

If the committee is small, like the municipal civil service commission and the fire and police civil service commission, where the membership generally is made up of about three individuals, we then work toward ethnic representation. In 1977, when we came on the council and had more minorities on the council, we appointed two Mexican Americans and one black. The mayor, who was Anglo, complained and said we needed to have a balance in the ethnic composition of the committee. In a few months, with another opportunity to appoint a person who was leaving that commission, we appointed an Anglo and for the three-member commissions we then attempt to balance it out with proper ethnic representation.

An equitable representation of these committees cannot be overemphasized, given the importance of the responsibilities. These committees play very key roles in policy formation and recommendations. Of the policies submitted to the city manager and then to the council, 95 to 98 percent are accepted as is, leaving the remainder, 2 to 5 percent, that are rejected or modified by the city council.

These various committee members therefore play very important roles in how policies are actually shaped.

You, as members of this committee, would understand the importance of committee work. Committee work generally involves the formation of policy. You go back and you recommend. In many cases, what you have recommended would be accepted because you have been entrusted to have done all that was necessary to prepare the good policy that your colleagues expected you to put together.

Thus, section 5 played a very critical role in assuring this equitable representation in these committees. Although the scope and effect of section 5 objections will not always equal the San Antonio example, it demonstrates how the section 5 process can be employed as a powerful intervenor on behalf of minority voting rights.

Just to cite for the record to this committee the importance of our committees, commissions and boards that we have in San Antonio, as you would have them in almost every municipality in this country, and what perhaps we have been denied by not being properly represented on the city council, we would then be denied proper representation on every board, committee and commission of the city.

We have over 70 boards, committees, and commissions. The city public service board, which is a gas and electrical distributor to over 950,000 people in the metropolitan area of San Antonio, with a budget of over $450 million, with a potential to hire and to employ and provide good services or bad services, depending on where those services are being provided, a utility company that is managed by a board, that although not fully responsible for the appointment of that board, the city council has a lot to do with the actual composition and through the political process, through the give and take of politics, we do approve all rates and all bond issues of that utility board. So there is a political exchange, membership for rates and bonds. We were denied adequate representation on that board.

The city water board, which is the purveyor of water in the San Antonio metropolitan area, this one appointed by the city council, another board on which we were denied adequate representation.

The zoning board, which is the board that deals with land use in the San Antonio city limits, and within our ETJ, it deals with land use and how land is utilized, whether it is utilized for commercial purposes, whether it's utilized for residential or what not.

The planning commission, which lays out the master plan for all of the services that the city of San Antonio is involved in, from major transportation planning to parks and recreation planning, to libraries, to residential street construction, almost anything that deals with human beings and human beings' existence in the metropolitan area comes through the planning commission—even from dealing with the master plan for water and master plan for electricity, those policies have to be processed through the planning commission. We were denied adequate representation.

The San Antonio development agency, which is the urban renewal agency for the city, an agency that is very important to the inner city of any major community, we were denied adequate representation prior to the Voting Rights Act.

The parks and recreation advisory commission, the animal control board—and you're going to ask, what's so important about animal control? Well, dogs bite blacks, browns, and whites. They do not discriminate. We have problems in our communities, and without proper representation from people who come from the barrios and the ghettos, you're not going to get any sensitivity with regards to the policies that are recommended on those boards to the city council for enactment.

The metropolitan health board, this is the board that deals with preventive health care. We were denied adequate representation.

I could go on and on and cite any number of boards—the library board, where we were again denied adequate representation.

With the districts, we now have good representation on the council. I think that one point that has perhaps not been fully emphasized—and I think the State official who was here a little while ago, Mr. Mark White, failed to comprehend—is that the right to vote is one thing; the right to good representation has got to have equal importance. I don't think that the American public would accept a situation where as Americans they have a right to vote, but all of their Congressmen came from the land that is situated west of the Mississippi. I don't think that they could tolerate a situation where you had a Senate that had all of the representation from the area west of the Mississippi or solely from the area east of the Mississippi. That is the problem with voting and voting rights in the State of Texas.

Yes, we do have more of an opportunity today to vote. We have a greater opportunity today to vote. But the problem of good representation is still the problem that plagues us all. The reason that I became very emotional as I started this is because I sit there at city hall and look at the old, old documents of how the city of San Antonio was founded, and I look back to the 1830's when San Antonio freed itself from Mexican Government dominance. it became an independent republic and later joined the United States, and history would record the later developments of the State of Texas.

But what happened with the Voting Rights Act is that not since the 1830's, when at that time San Antonio was governed by Mexico, not since then had we had the number of Mexican Americans on the city council. We have a population of Mexican Americans that can support that kind of representation. But for 140 years we were denied good representation, and that has got to be the saddest story for anybody growing up in the State of Texas. I am 38 years old. I do not want my children, my grandchildren, to have to live through a period where they do not have the right to elect people that can truly represent them.

In the case of the city of San Antonio, all board, committee, and commission members, at least a majority of them, came from the Anglo part of town. All of the city councils under the system that we had came from the Anglo part of town. The Mexican-American community was underrepresented. The black community, until the 1950's, when a token effort was made to bring in one black that would be controlled by the Anglo establishment, the black community didn't have a right to select who their black representative was going to be.

The Mexican-American community didn't have a right to elect who their Mexican-American representative was going to be. The Anglo establishment determined that for us. We should not be forced to live under those conditions again.

All I can say is that I have lived through the sixties, I have lived through the seventies, and I don't want to take my case to the streets; I don't want my children to take their case to the streets; I don't want their children to take their case to the streets. What we are really talking about is democracy. That's all we're talking about, and that's all that I have ever asked of our society, that it be truly the democracy that we talk about, and democracy is all about, No. 1, the right to vote, and No. 2, the right to proper representation.

Thank you very much, sir.

Mr. EDWARDS. Thank you very much. It was very impressive testimony, councilman.

I think the longer I'm here—I haven't been here very long—the more I realize that yes, it is important to make it easy to register and vote, but if at the same time there is widespread gerrymandering, then the right to vote isn't worth much because the same crowd will control who's going to get elected; isn't that correct?

Mr. EURESTE. That's correct.

Mr. EDWARDS. Whatever particular part of society that particular elected official will come from.

Mr. EURESTE. That's correct, sir.

Mr. EDWARDS. I guess that probably the testimony today is to the effect that before the Voting Rights Act was passed insofar as Texas was concerned, that this gerrymandering kept blacks and Hispanics from being elected in any large percentage at all, any effective percentage; is that correct?

Mr. EURESTE. That's true, sir. What was happening basically was that those in power were doing to the American colonists what the British—you know, to us, what the British Government was doing to the American colonists back before——

Mr. EDWARDS. That's right, gerrymandering, plus to a certain extent, annexation and at-large voting, which all is sort of part of the same pattern.

You say the setup in San Antonio today is largely the result of the operation of section 5 of the Voting Rights Act; is that your testimony?

Mr. EURESTE. The setup today is 100 percent as a result of the Voting Rights Act.

Mr. EDWARDS. And it's a better city?

Mr. EURESTE. It's a fabulous city, and it's going to get even greater down the road.

Mr. EDWARDS. And if the Voting Rights Act is not extended, especially section 5, by 1982, you feel that the rights of Hispanics and blacks at least in San Antonio, and I guess Texas at large, will not be defended and protected by local district attorneys and by the State government; is that also your testimony?

Mr. EURESTE. Sir, I heard the eloquent Mr. Ruben Bonilla from Corpus Christi. I was talking to an individual from Corpus Christi just this week, and I will be making a visit to Corpus Christi, and he is telling me the sad story about Corpus Christi, where still the

city of Corpus has not been able to guarantee the residents of that community the kind of representation that we have in San Antonio, a city that has over 50 percent Mexican Americans, and has not one Mexican American on that city council. And as a result, everything that happens that is done by government in that community, by local government, is basically shortchanging the minority community of Corpus Christi.

I am concerned about San Antonio, sir, but I am at the same time a resident of the State and I am concerned about any inequities that might exist in the State of Texas, and I would also be concerned about inequities that exist in other parts of the country where the Voting Rights Act is applicable at this point.

Mr. EDWARDS. Thank you.

Counsel?

Ms. GONZALES. I have no questions, thank you.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. No questions.

Mr. EDWARDS. Thank you very much, councilman.

Mr. EURESTE. Thank you.

Mr. EDWARDS. Our next witness is Hon. Paul Ragsdale, who is a State representative from Dallas, and he's a Democrat.

It's nice to have you here. Without objection, your statement will be made a part of the record.

TESTIMONY OF HON. PAUL RAGSDALE, TEXAS STATE REPRESENTATIVE, DALLAS

Mr. RAGSDALE. Thank you.

In my opinion, extension of the Voting Rights Act is very much needed in Texas to assist minorities to obtain their rightful voting strength at the ballot box. This is particularly true since in 1976 and again in 1980 the Supreme Court asserted the need to prove racially motivated intent in the 14th and 15th amendment cases alleging discrimination.

In *Bolden* v. *Mobile,* the Court found that in 1901 blacks in Alabama were disenfranchised by State law; consequently, the justices found no racially motivated intent to disenfranchise Mobile's black population by the city's creation of the at-large city commission scheme in 1911.

I, for one, am concerned with the state of mind of Mobile's white political leaders in 1911. I am gravely concerned with laws which effectively prohibit black people from ever being represented in government at the local level—the level most highly regarded by conservatives. The high court has presented us with a burden that is insurmountable in the vast majority of cases, leaving no legal remedy to the victims of political exclusion except the Voting Rights Act where it can be applied.

No longer is it practicable for minorities to go to court challenging an at-large system of voting as invidiously discriminatory. Almost all of Texas' cities and school districts still elect officials by at-large voting schemes. And while cities have the local authority to decide their method of electing their council members, school districts do not. With the exception of three of the largest Texas school districts, all of the nearly 1,000 Texas public school districts

elect their trustees via at-large voting systems, in accordance with State law.

For three consecutive legislative sessions the Texas legislature has refused to pass my bill which would allow local school districts, having in excess of 2,500 scholastics, to decide the method of electing trustees. This bill, mind you, is strictly a local option bill, and the Texas Legislature refuses to pass it.

In November 1973, as a freshman State representative, I initiated what I call my East Texas project with the filing of six lawsuits against county commissioner courts. The project involves attempts to reapportion 50 counties and bust up the at-large system of voting in cities and school districts so that blacks can obtain their proportionate share of political power. These targeted political subdivisions contain black populations ranging from 17 percent to 53 percent.

I might add I have handed over a copy of some material that I thought might be valuable in terms of providing some insight into the voting rights problems over the last decade or so.

Significantly, before 1974, of the 254 Texas counties, one black had been elected as a county commissioner since Reconstruction—and his election was made possible because of one of the East Texas project lawsuits—despite the fact that Texas has 1,016 county commissioners and a black population of 12 percent. Prior to 1967 no black had served in the Texas Legislature since Reconstruction, when a series of Texas laws, from literacy tests to the poll tax, disenfranchised blacks. In fact, Texas has spawned more voting rights litigation than any other State. Since extension of the Voting Rights Act to Texas in 1975, Texas has further distinguished itself by receiving more section 5 objections than any other State.

The Voting Rights Act has been helpful in several respects as it interacts with my East Texas project. In 1975, after I sued the cities of Tyler and Palestine, the Justice Department intervened and forced both cities into out-of-court settlements. All during my earlier legislative career, I had fought and supported efforts to obtain voting rights for the black students at Prairie View A. & M. University. These students were the only ones in the United States who could not register to vote in the county where they attended school. Throughout the early 1970's in a case styled *Balas* v. *Symns,* the Waller County tax assessor-collector had been taken to Federal court in an effort to invalidate a questionnaire used by the tax assessor-collector used primarily to determine residency. If a student's home was outside the county, then the student was required to sign a sworn statement indicating that he/she planned to reside in Waller County permanently.

I don't know how you feel about it, but when I was at that college age, if anybody presented me with something official indicating that I would have to live in a place the rest of my natural life before I would become a registered voter, I probably wouldn't sign.

Failure to do so resulted in refusal to register the student. In a county which was 52.8 percent black—the only black majority county in Texas—the potential political impact of 4,000-5,000 student voters in a county of only 14,250 is apparent. Symn's continu-

ing efforts to disenfranchise black students has obvious racial overtones.

Such an unconstitutional and unconscionable position by an election official prevailed until I finally persuaded the Justice Department to file suit in October of 1976 under the Voting Rights Act. A Houston Federal judge invalidated the questionnaire early in 1977.

It is ironic that the Voting Rights Act is being actively reconsidered at this point in time. During our recent efforts to reapportion the Texas Legislature and Congressional districts, the primary focus of the legislature became the numbers and locations of the State's minority citizens. In fact, Governor Clements must now call us into special session to deal with congressional redistricting, which the legislature failed to accomplish for one reason and one reason only: Republicans in Texas want to use the Voting Rights Act to consolidate minority voters in Dallas where they are currently the backbone of two Democratic congressional districts. The effect of this will be to increase the likelihood of electing a minority in one district and to create an additional Republican district in Dallas County. This same strategy is being pursued by the Republican Party in other metropolitan areas of Texas, utilizing the heavy Mexican-American population. I point this strategy out, not necessarily to reflect my point of view but rather as my assessment of Texas politics at the moment.

Whether we consider this use of the act an attempt to fairly represent minorities, or an attack by Republicans on Democrats, or Conservatives versus Liberals, it would be the supreme act of political hypocrisy to passionately argue the merits of this law in 1981 and casually discard or emasculate it in 1982. To do so would reveal a dangerously cynical attitude toward the legal protection of one of our most fundamental civil rights, especially in light of recent Supreme Court attacks on voting rights. Voting rights is no place for a display, in my opinion, of raw political expediency.

Seven years is hardly time enough for a political culture appreciative of minority participation to develop in a State which for generations has excluded blacks and Mexican Americans. Resistance to participation continues as evidenced by the cases of my east Texas project and the resistance of the Texas Legislature to my local option, single-member district school board bill into law. Voter involvement is abysmally low among Texas minorities but has grown steadily in recent years and will continue to grow for as long as their right to participate is protected.

I urge you, members of this committee and Congress, to reenact the Voting Rights Act in its current form. The act is the only remaining protection minority people have as they attempt to continue their movement into the mainstream of American politics.

I noticed a few minutes ago that the Attorney General talked rather extensively about laws regarding voter registration here in Texas, with emphasis being placed on the ease at which one could register to vote. I think the central issue here, not only in Texas but elsewhere, is much greater than that of voter registration. I believe the central issue should be centered around those obstacles which precludes or inhibits proportionate or adequate political representation by minority groups.

For one thing, we have the at-large method of electing officials, and attendant resistance to change such methods in most of our political subdivisions. For another thing, we have a refusal in Texas, in many rural counties—in fact, most of them are reapportionment and individual county commissioner precincts. For example, Bastrop County, which is a county just adjacent and east of Travis County, where we're situated now, until I filed a lawsuit in 1976 and 1977 to reapportion the county commissioners court, there was a 108.8 percent total population deviation between the county commissioner precincts.

Madison County, another county in East Texas, had and perhaps still does 164 percent total population deviation. This sort of situation still exists and existed at the time in defiance of the one-person, one-vote Supreme Court decision as enunciated in the mid-1960s. To this date, to my knowledge, there are still some counties which have not reapportioned their populations in several decades, in blatant disregard for the Federal law or the Federal court decisions.

We in Texas have perhaps some peculiar problems that maybe some other States don't have, with the exception maybe of California, in that we've got two large minority groups which are protected under the Voting Rights Act, and we think that 7 years is certainly not enough time for us to get a toehold on the political process in Texas.

I intend to continue my efforts to persuade the State to do such things as pass or at least eliminate a State law which prohibits school districts from electing their trustees from anything other than an at-large system of voting. It has been a real struggle all the way, fighting in the last few years not only local elected officials in this State but Texas elected officials.

In 1975, as I recall—and you have some information in your packet—not only did the Governor but the Secretary of State, now the Attorney General, Mark White, as well as the Attorney General at the time, all opposed the extension of the Voting Rights Act to Texas. As far as I'm concerned, the minority population in Texas had tremendous obstacles placed before us during the last decade and before that in an attempt to gain political power anywhere near in proportion to our numbers.

That is my presentation. Thank you.

[The information provided by Mr. Ragsdale follows:]

The East Texas Project is a six year old litigation effort designed to increase Black East Texans representation in local government. Conceived of in 1973 by State Rep. Paul Ragsdale of Dallas, the target area of the project now includes 48 East Texas counties ranging from 17.7 percent Black to 52.6 percent Black. Through reapportionment lawsuits funded by the project, counties, cities and school boards across East Texas are being forced to redistrict and, for the first time in history, provide Blacks with an opportunity to have a real voice in local government.

Rep. Ragsdale conceived of the project in 1973, not long after he was elected to the State Legislature. He credited his election largely to a reapportionment suit which led to the demise of the at large method of electing state representatives in Dallas County. As a native of East Texas, (he was born and raised in Jacksonville) Rep. Ragsdale believed that the same constitutional principles which aided his election could also help to politically empower Black East Texans, who prior to that time had played only an insignificant role in local government. After conferring with reapportionment expert Dan Weiser and civil rights attorney David Richards, Ragsdale sought seed money from the TExas AFL-CIO to fund seven initial law suits against seven counties, challenging their county commissioner precinct plans as constitutionally unsound. As a result of these suits, Black County Commissioner precincts were drawn in Anderson, Houston and Nacogdoches Counties. And in 1974, the first Black County Commissioner since Reconstruction was elected in Nacogdoches County.

The project was soon expanded to cover a 48 County target area, including virtually every county in Texas with a Black population in the range of 20 percent. As a result of the litigation it has spawned, nine East Texas counties now have Black county commissioner precincts where before there were none. They are Angelina County, Bastrop County, Falls County, Navarro County, Robertson County and Waller County in addition to the three counties previously mentioned, Anderson, Houston and Nacogdoches. Now Black County Commissioners sit on the Commissioners Courts of five counties -- ~~XXXXXXXXXXXXXXXXXXXX~~ Anderson, Angelina, Falls, Nacogdoches and Waller.

But the battle is not only for the county courthouses of East Texas. The project has also been initiated and supported single member districting suits against city councils and school boards in the target area, with the goal of increasing Black representation at these levels. Today, largely due to legal pressure brought to bear through the East Texas Project, the Black communities of Longview, Jacksonville, Palestine and Tyler have now elected city councilmembers to fight for their rights in city hall.

The problem is that it is quite costly to fund these lawsuits. After some initial help from labor, Rep. Ragsdale has been forced to raise money on his own to support the project. He has also provided the services of his legislative staff to coordinate the project and perform the demographic analysis required to sustain these suits. As a result, the attornies who have been involved have had to largely look to an uncertain award of attorney's fees if the litigation is successful in order to cover their expenses.

If the project is to truly realize the potential it represents, more money must be provided to locate plaintiffs, organize local communities in support of these lawsuits and to pay for expenses of the attornies and redistricting experts involved. For this reason, the East Texas Project is appealing to progressive groups across the state for financial support of its goal of politically empowering the Black citizens of East Texas.

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EAST TEXAS PROJECT: Target Counties, Cities and School Districts

Priority Counties

1. Bowie Atkinson, Howard
2. Camp Patterson, Howard
3. Grimes Kerr, Moore
4. Morries Florence, Howard
5. Newton Temple, Blake
6. Polk Browder, Moore
7. San Augustine Temple, Blake
8. San Jacinto Browder, Moore, [illegible]
9. Washington Kerr, Moore

Counties Under Study

1. Burleson Kerr, Moore
2. Cass Florence, Howard
3. Jefferson Pr. U, Parker
4. ? Kaufman Hollowell, ? Blake
5. Leon Whitehead, ? Moore
6. Madison Kerr, Moore
7. Marion Florence, Howard
8. Panola Haley, ? Blake
9. Sabine Temple, Blake
10. Shelby Haley, ? Blake
11. Upshur Florence, McKnight
12. Walker Edwards, Moore

Cities Under Study
(All with 10,000 in population and above)

1. Athens
2. Bay City
3. Beaumont
4. Bryan
5. Conroe
6. Corsicana
7. Ennis
8. Henderson
9. Huntsville
10. Kilgore
11. Marshall
12. Sherman
13. Terrell
14. Texarkana
15. Texas City
16. Waxahachie

School Districts Under Study

1. Beaumont
2. Bryan
3. Corsicana
4. Longview
5. Lufkin
6. Marshall
7. Nacogdoches
8. Sherman
9. Texarkana
10. Tyler

REPRESENTATIVE RAGSDALE'S SPECIAL PROJECT FUND:
A Catalyst for Community Development and Social Change

Representative Ragsdale's Special Projects Fund was conceived more than a year ago by the Representative as, in his words, "a method of initiating positive projects for social change and community development outside the confines of the legislative process. I had hoped that the fund could be utilized in a variety of ways to finance projects which would be of benefit to the community. And I must say, that almost all of my greatest expectation about the fund have been fulfilled."

The fund was initially raised from the proceeds of the benefit sponsored by the Friends of Paul Ragsdale, chaired by LuNita White. Funds from the benefit, held in the Laborer's Temple on Forest Avenue in December of 1973, were originally intended to go to the Representative for his own personal use. Rep. Ragsdale, however, specified that the funds should be utilized to benefit the community. At that moment, the special fund was born.

Since its inception, the special project fund has received backing from all segments of the community. During this time, two significant projects have initiated and developed through its funding: The East Texas Project and the Project for Economic Development.

The East Texas Project was the first special project to receive finances from the fund. It involves a series of lawsuits in East Texas County designed to break up old County Commissioners precinct lines which have traditionally discriminated against black county residents. Through these court cases, new precinct lines are being drawn which will provide East Texas blacks with their rightful share of political power in county politics. Already the significant results are apparent. Elder Henderson became the first black elected to Commissioner's court in Texas in more than a century with his victory in the recent election in his race for County Commissioner in Nacogdoches County.

Another important effort sponsored by the fund has been in the field of economic development. First among the projects initiated in this sphere was the sponsorship of Negro Chamber of Commerce Director Willie Thompson's trip to the National Business League Convention in Atlanta, Georgia. Rep. Ragsdale commented that he hopes the fund can be used similarly in the future to facilitate interaction among black businessmen and between black businessmen and the community they serve.

Such have been the recent uses of the special project fund. Future uses will be devised with the same intentions in mind: to increase black political involvement and to stimulate the development of black business enterprises. For the purpose of the fund from its inception has been the initiation of these kind of people projects; projects which help people outside the normal scope of the legislative process. And Rep. Ragsdale has continually pledged that as a full time legislator, he believes his responsibility to work for the people doesn't simply end on the last day of the legislative session in Austin.

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PAUL B. RAGSDALE
DISTRICT 33-I
5710 E. THORNTON FWY
DALLAS, TEXAS 75201
214/827-1750

House of Representatives

Austin, Texas

COMMITTEES
BUSINESS & INDUSTRY
REAPPORTIONMENT

Solon files class suits on boundaries

State Rep. Paul Ragsdale said he has initiated class action suits—the first of 30 such challenges he expects to file—contesting apportionment lines for county commissioners in six East Texas counties.

At issue, according to Ragsdale, is the manner in which the lines in the six counties—Cherokee, Houston, Rusk, Panola, Shelby and Nacogdoches—were drawn. The suits contend black citizens in those counties were deprived of equal political representation.

"The filing of these lawsuits culminates the dream which many of us have been working to fulfill for over a year," Ragsdale said Monday. A native of Jacksonville in Cherokee County, he said he had promised several of his friends in East Texas to help them while campaigning last year for his Texas House seat.

The six suits were filed Friday in the court of U.S. Dist. Judge William Wayne Justice at Tyler.

PAUL B RAGSDALE
DISTRICT 33-N
5710 E. THORNTON FWY
DALLAS TEXAS 75201
214/827 1750

House of Representatives
Austin, Texas

COMMITTEES
BUSINESS & INDUSTRY
REAPPORTIONMENT

Tyler Morning Telegraph
FRIDAY, NOVEMBER 30, 1973

Anderson Precinct Changes Sought In U.S. Suit Here

By BUDDY PRICE
Staff Writer

A class action suit has been filed in Tyler's Federal District Court against the Anderson County Commissioners Court and Anderson County Judge N. R. Link alleging "disparity of population" among the commissioners court precincts.

The suit was filed by Frank J. Robinson, Rodney Howard and Timothy Smith and states "action arises under the Constitution of the United States, the due process, privileges and immunities and equal protection clauses of the 14th and 15th amendments to the Constitution."

The suit states "the plaintiffs are Negro residents and registered voters of Anderson County. They are seeking to assert rights secured by the Constitution of the U.S. on their own behalf and on behalf of a class composed of all Negro citizens of Anderson County, Texas."

The plaintiffs contend in the suit that "a substantial disparity of population now exists among the Commissioners Courts precincts. As a result of this disparity of population, the force and effect of the impact of plaintiffs and the class they represent on the elections to the Commissioners Court is invidiously cancelled, diluted and minimized, thus violating the rights of the plaintiffs and the class they represent to equal protection of the laws and the right to vote guaranteed by the 14th and 15th amendments to the Constitution."

Further the suit alleges there resides within the county substantial numbers of Negro citizens, comprising more than 20 per cent of the population of the county."

Despite the substantial Negro population, the suit says no Negro has ever served as a county commissioner and Negro citizens have suffered from unfair representation and dilution of their right to vote, all in violation of the guarantees of the equal protection of the laws and the right to vote pursuant in the Constitution.

The plaintiffs are asking the court to "declare that the present 'scheme' of apportionment of members of the commissioners court of the county in question, is unconstitutional, null and void, and of no legal force and effect; enter a permanent injunction enjoining the defendants, their successors and all persons in concert with them from conducting elections pursuant to the present scheme of apportionment in said county, adopt such a constitutionally sufficient plan and make such findings of fact and conclusions of law as may be necessary, adjudge all costs against defendants, including reasonable attorney's fees; retain jurisdiction to render such further and additional orders that the court may from time to time deem appropriate; grant such other and further additional relief at law or in equity as the court may deem appropriate in the premises."

The suit was filed by David R. Richards of the law firm of Clinton and Richards of Austin

THE DAILY TEXAN
March 29, 1974

Ragsdale To Continue Racial Politics Fight

By BILL TROTT
Texas Staff Writer

While expressing pleasure with a recent federal court ruling that will open up Texas politics to blacks, Rep. Paul Ragsdale, D-Dallas, said Thursday he plans to continue lawsuits against as many as 32 Texas counties in an effort to create more black political awareness.

The Fifth Circuit Court of Appeals in New Orleans upheld an earlier decision which had rejected a request to stay an order creating new county commissioner districts in Anderson and Nacogdoches Counties in East Texas.

As a result of the new commissioner district lines, both counties will have one district composed of approximately 54 percent blacks. The new lines will be in effect for the May primaries.

The suit was initiated by Anderson County after U.S. Dist. Judge Wayne Justice of Tyler found that the county commissioner district lines were unconstitutional in both counties.

"What we have to look forward to is a landmark," said Ragsdale, "we could have the first black county commissioner in Texas, thank goodness."

Ragsdale plans to pursue similar suits in Shelby, Rusk, Houston and Cherokee Counties, and is working on suits in 28 others.

"The purpose of all this is to include a group of people that always have been excluded in Texas politics," Ragsdale said. "We want to get more blacks in the mainstream of politics, and there certainly will be more suits. We've just barely dented the project."

Blacks have filed for commissioner seats in both counties, with Frank Robinson filing for Precinct 2 of Anderson County and Elder Amos Henderson filing in Nacogdoches County.

Ragsdale said he conceived his "East Texas Project" immediately following his election in 1972, after being convinced of racial gerrymandering in East Texas counties. He began filing suits in December, 1972.

He also plans to bring blacks into the Texas political scene with programs to educate the black community in campaign methods, voter registration and other aspects of politics.

"Since these people have been excluded for so long, they don't have the political experience and don't know how to carry on a campaign," Ragsdale said.

Ragsdale's project is financed primarily by the A. Phillip Randolph Institute, a branch of the AFL-CIO, and is represented by Austin attorney David Richards.

Ragsdale, who drew considerable publicity when he filed for food stamps to supplement his $4,800 annual legislative salary, is a native of Jacksonville, Cherokee County, one of the counties that will soon be brought to court.

"This can bring on a definite increase in black participation, locally and in other state races, too," Ragsdale said. "It's bringing on some positive changes, and I'm going to try like hell to keep making these changes."

LP 9-3-77

Waller voter directive blasted

Post State Capitol Bureau

AUSTIN — State Rep. Paul B. Ragsdale, D-Dallas, Friday accused Texas Secretary of State Mark W. White Jr. of "totally meaningless" moves to end voter discrimination against blacks in Waller County and of engaging in political opportunism.

Ragsdale criticized an order White issued Thursday directing LeRoy E. Symm, the Waller County tax assessor-collector, to abandon use of a controversial questionnaire as a prerequisite to becoming a registered voter in that county.

The state lawmaker and other black leaders have charged the questionnaire discriminates against students at predominantly black Prairie View A&M University in that county. About 5,000 students attend classes there.

"A similar directive issued by Bob Bullock during his term as secretary of state was totally ignored by Mr. Symm," Ragsdale said, adding White should have threatened to cut off state voter registration funds to the county as a move that would have had more effect.

The directive, Ragsdale's statement continued, raised "some serious questions regarding Mr. White's motives.

"After refraining from any real action whatsoever during his five years as secretary of state, his action on this matter immediately prior to his expected announcement for attorney general reeks with political considerations." He said White should join with federal Justice Department lawyers next Thursday and support a motion for a summary judgment against Waller County in a voting rights discrimination suit.

"If we are ever to have an immediate impact on Texas' miniature Rhodesia, Waller County, our state's chief election officer must join the battle rather than continue to consort with the enemy," Ragsdale concluded.

During Moscow blaze

Embassy looting claimed

MOSCOW (UPI) — U.S. Ambassador Malcolm Toon said Friday Soviet fire fighters who battled a blaze at the embassy last week apparently stole from some offices, taking among other things a chapter of the television movie "Roots."

However, Toon told reporters he did not believe the security of the embassy had been compromised when the fire fighters entered the upper floors of the

Address books, tape cassettes, rubber stamps used to mark documents as "classified" or "secret," a videotape film of one of the segments of "Roots," and a sterling silver medallion from his own office are missing, he said.

The presumption is that "a degree of looting took place," he said.

There was a period of about 20 minutes during early last Saturday morning when Soviet fire fighters were

tural integrity of the 10-story embassy, Toon said.

Repairs to the building, which are estimated to cost $5 million, will take approximately three to four months, he said.

Toon said embassy employes had been told they could request a transfer out of Moscow "without prejudice to their careers." He said two had requested such transfers because of fears about the haz-

PAUL B. RAGSDALE
DISTRICT 33-N
5710 E. THORNTON FWY
DALLAS, TEXAS 75201
214/827-1750

House of Representatives
Austin, Texas

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education

PV Voting Suit Appealed To Supreme Court

B13c
Forum Times 12-7-74

WASHINGTON, D.C. -- Houston civil rights attorney, Michael Anthony Manees, August 23, appealed the student voting rights suit brought against Waller County Tax Collector LeRoy Symm to the U.S. Supreme Court.

Symm was sued by Prairie View A&M University student, Charles R. Ballas after the tax collector refused to register PV students to vote in predominately Black Waller County.

SYMM SAID HE BELIEVED most PV students did not intend to remain in the county after graduation and therefore were not "bonafide residents" of the county.

Ballas disagreed, referring to state and federal laws that require only 30 days residency as a qualification for voting.

The 5th U.S. Circuit Court of Appeals ruled that the tax collector was justified in requiring PV students to submit to lengthy residency questionnaires before considering their voter registration applications.

ALTHOUGH THE 5TH CIRCUIT did not rule that students could not register to vote in Waller, Manees says by sanctioning the use of the questionnaire the court did in fact allow Symm to deny the students the ballot.

Manees says that Symm

PRAIRIE VIEW BECOMING DUMPING GROUNDS?

By Ed Wendt

PRAIRIE VIEW--A large number of citizens in this mostly Black, rural community, 35 miles west of Houston, are crying out in anger at the proposal to create a second land fill dump on the outskirts of town and have vowed to do everything in their power to block it.

The dump is a pet project of Jack Smith of Waller, Texas, and would be used by cities other than Prairie View. A similar dump is already located less than a mile from the city limits and serves the near-by city of Waller.

SMITH PRESENTED A sales pitch for the dump to the city council of Brookshire, Texas offering to dispose of the city's garbage at the Prairie View dump for $1000 a month. Brookshire is 30 miles south of Prairie View. The council temporarily rejected Smith's proposal.

Prairie View citizens are angered at the Smith dump proposition and declare that they "do not want to be buried in someone else's garbage."

SAYS CHARLIE FLUKINGER of nearby Hale community, "Do we really want our county to be the dumping grounds for other towns and counties?

"Prairie View is the most populated city in Waller County.

The Dallas Morning News Saturday, November 22 1975 East Tex - Articles

Austin Wire

Rate powers ruling issued

Austin Bureau of The News

AUSTIN—A city doesn't give up its utility regulatory power when it grants automatic rate increases based on costs dictated by "the impersonal forces of the marketplace," Atty. Gen. John Hill said Friday.

Hill thus ruled that such practices as allowing public utilities to raise their prices when fuel costs increase do not violate the principle that cities cannot delegate their rate-regulation powers.

The attorney general's opinion, in response to a request from Sen. Ron Clower of Garland, added that automatic rate adjustments are permissible if there is "an adequate objective formula" by which increases in "readily ascertainable costs" can be applied to the rates.

In another opinion, Hill ruled that the 1876 Constitution makes it illegal for a private contractor to make money by selling by-products of a waste disposal system that was financed with public bonds.

HOUSE SPEAKER Billy Clayton named a 9-member committee to study possible new ways for local districts to finance public schools other than through property taxation and alternatives to using local taxable property values as a basis for dividing state school aid. Rep. Fred Agnich of Dallas is a member of the panel, which is headed by Rep. Tom Massey of San Angelo.

CITIZENS UNITED for Rehabilitation of Errants, a corrections reform lobby, said it will seek signatures on a statewide petition supporting the group's request to form a pilot chapter of CURE in a state prison. The chapter is designed to get prisoners' views on corrections reform disseminated, to all in prisoner rehabilitation, and to give prisoners a chance to exercise their constitutional rights.

REP. PAUL RAGSDALE of Dallas said a Harrison County redistricting suit already has proved how the federal voting rights act helps blacks exercise political power. Ragsdale said the case, involving commissioners precinct lines, shows that federal courts will apply the voting rights act to local governments as well as to the state by requiring Justice Department approval before any political subdivision district lines can be changed.

Ragsdale said he will protest a series of boundary and districting plans in the East Texas "target area" where he has been fighting for black political power during the last two years.

AMONG DOZENS of other appointments, Gov. Dolph Briscoe named Dr. W. A. Criswell of Dallas, pastor of the First Baptist Church, to the policy board for services to the visually handicapped.

DALLAS COUNTY Juvenile Department will receive a Texas Youth Council grant of $170,190 to assign up to 800 delinquent children to foster homes, or find them jobs and give medical or emotional care tailored to their needs. Dallas County Youth Services Commission, sponsored by the Community Council of Greater Dallas, will get up to $94,850 for a 2-year-old program to reduce delinquency.

Commissioners Court Plows Through Lengthy Session

The Anderson County Commissioners Court labored all day Thursday on a heavy agate of agenda items in its first 1975 meeting and ran up against a late-afternoon knot that could not be cut through in time.

The court ended its marathon with a recess until 1 p.m. today, at which time the snarl over road-and-bridge department appointment will be tackled anew.

A list of proposed R&B appointments which County Judge N.R. Lisk said had been handed in by the county auditor's office ran into challenges by the county commissioners.

Judge Lisk reminded the commissioners of a letter they had been sent, requesting them to turn in lists of county road crews and other precinct work staffs. He had assumed that the list he submitted had been made from recommendations of the commissioners which was denied.

Commissioner J.W. Stafford adamantly declared he would not work men in his department whom he could not hire or fire.

The commissioners agreed they had not expected to have a list acted upon before they had submitted it.

The court had just authorized letters to the various county department heads, emphasizing the importance of each department operating this year within its budget and stating that expenditures exceeding these budgets can't be tolerated.

In executive session, the commissioners and judge discussed with Jerry Calhoon, attorney for the court in the federal litigation over commissioners' precinct boundaries, what action further to take if any. The Circuit Court of Appeals at New Orleans has upheld the federal district court decision at Tyler changing the boundary lines. After the executive session, it was announced that the matter is being taken under advisement for a decision within the next few days whether to seek a rehearing of the appellate decision, undertake appeal to the U.S. Supreme Court, or do nothing more.

The commissioners approved reappointment of a long list of county employees other than the commissioners' work crews.

Two new full-time deputies in the Sheriff's Department were authorized. Appointed to fill these positions were Ricky Allen Bostick and John Thomas Eady at salaries tentatively set at $632 a month.

Orders of the three district judges reappointing Lacy Kendrick county auditor for two years and Mrs. Hazel Unger Wesson and Mrs. Mary E. Cox as assistants in the auditor's office were approved.

It was announced that Judge Lisk will advertise, as provided by law at the proper time, for bids for depository of county funds. The bank at Frankston has been the county depository the last two years.

Good Friday, March 28, was designated an additional Courthouse holiday. Others approved are Jan. 1, Memorial Day, July 4, Labor Day (Sept. 1), Veterans Day (Oct. 4), Thanksgiving (Nov. 27 and 28), and Christmas (Dec. 24 and 25).

Reappointed to the Anderson County Memorial Hospital board were Ecta Walters (the new chairman) of Elkhart, Frank Carroll of Tennessee Colony and H.A. Northcutt of Frankston. The reappointments are for two years, Jan. 1, 1975, to include Dec. 31, 1977.

Bids were authorized, to be opened Feb. 3, for a new car for use by the Sheriff's Department.

In addition to approval of county employees' reappointments, the court also approved for pay purpose the list of county officials.

The county commission took under advisement a proposal to seek legislative action to add Melvin Whitaker, 173rd District Attorney, to the County Juvenile Board. Action was deferred on the grounds that the county would have to pay the fee.

County Attorney Bill Green's request for the purchase of law books for his office was tabled.

A representative of the State Department of Public Welfare was on the agenda to discuss need for additional office space did not appear.

No Appeal Slated Of Court Ruling

The Anderson County Commissioners' Court will not pursue further appeal of a U.S. Fifth Circuit Court of Appeals decision upholding a ruling by Federal District Judge William Wayne Justice of Tyler regarding Commissioner precinct lines of this county.

Commissioners announced the decision, which was unanimous, following a brief executive session Friday afternoon.

"The Commissioners Court is of the unanimous opinion that it would be in the best interest of all concerned if it does not pursue the lawsuit processed through the Fifth Circuit Court further," Judge N.R. Lisk said on behalf of the entire Court.

"We are convinced that the actions of the U.S. District Court in Tyler and unanimous confirmation of it by three judges sitting in New Orleans, that the decision of Judge Justice is the law of the land as being presently interpreted by the Federal courts."

Judge Lisk and members of the Commissioners Court said that they consider themselves law abiding citizens.

"We acted in good faith in attempting to realign our precincts in a workable manner," the Commissioners Court said. "However, if the decision of the courts is the law, we will abide by it."

The Commissioners Court said it is its unanimous opinion that to further pursue the matter by appeal to the Supreme Court "would only cost the taxpayers of our county additional money and further divide our local community. This we wish to avoid.

The lawsuit referred to by the Commissioners Court was brought in Federal District Court at Tyler by Frank J. Robinson, Timothy Smith and Rodney Howard of Palestine who contended that the way Commissioner precinct lines were drawn in Anderson County tended to dilute the vote of black residents.

PAUL B. RAGSDALE
DISTRICT 33-N
5710 E. THORNTON FWY.
DALLAS, TEXAS 75231
214/827-1750

House of Representatives
Austin, Texas

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Court postpones action on redrawing precincts

8-14-75 The Free Press Diboll, Tx.

BY MIKE CRIM

LUFKIN — A plan which would redistrict county commissioner voting lines was again postponed Monday by the Angelina County Commissioner's Court.

The latest plan, submitted by Isaac Time, who represents a local black citizens group, would redraw voting lines within the City of Luffin to consolidate the black vote. An earlier plan which would have redrawn lines countywide was rejected by the court last month because of the problems it would have created with county road work.

Under the current plan outlined by the Time group, the redistricting would place all black voters in the North Luffin and Luffin Land areas into Commissioner Precinct 1. It would also move Precinct 1 Commissioner Leon Tillman's home into Precinct 3 boundaries and would involve other line and population changes in Precincts 2 and 4.

If such a plan were enacted, Tillman would be forced to run for reelection in Precinct 3, leaving no incumbent to run in Precinct 1. Both Tillman and Precinct 3 Commissioner Charles (Bo) Shofner are up for reelection next year.

Although Tillman and Commissioner Precinct 2 Louis Parise had indicated prior to the court session Monday that they, too, would submit alternate plans before the court, neither did so. Precinct 4 Commissioner Robert Colwell stated that he would rather the court not pursue any further attempts at redistricting, but should rather wait and have the matter settled in Federal district court, "because it will probably end up there anyway."

County Judge Claude Welch called for unity on the court in an attempt to pursue a compromise on the matter, at least until Aug. 26, when the court has scheduled a special meeting.

Welch stated that he felt that the court owed it to the people of Angelina County to continue to try and find a common solution to the problem. "I do not want to see this commissioner's court split," Welch told members as he asked for further co-operation.

"The lines of communication are still open (between the court and the citizens' group) and I believe that we should continue at least until the end of the month," said Welch. Under Texas statute, redistricting of county voting lines should be completed by the end of this month.

Time' group gave no indication of what they planned to do if a compromise were not reached by the end of August, but the general feeling was that the group would go to court only as a last resort.

"We don't care how you draw the lines, we just want to consolidate the black people's vote in this county," Time told the court.

He further indicated that any settlement which would allow blacks to have a viable candidate in next year's elections would be suitable.

PAUL B. RAGSDALE
DISTRICT 33-N
5710 E. THORNTON FWY
DALLAS, TEXAS 75201
214/827-1750

House of Representatives

Austin, Texas

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EAST TEXAS PROJECT

Status Report: October 2, 1975

Original County Suits

Anderson

Status: Settled through federal suit.

Austin

Status: All materials obtained.
Plans: Prepare analysis. Formulate Black district.

Bastrop

Status: 108.8% current total deviation. Attempt to formulate Black district unsuccessful.
Plans: Hold until other counties finished.

Burleson

Status: All materials obtained except for county commissioner precinct map. Received letter from County Judge asking for $10.00 for copy of precinct map. Sent response in June affirming our right to map under the Open Records Act. Received second rejection.
Plans: Request Attorney General's opinion. Attempt to formulate Black district.

Bowie

Status: All materials obtained except for tract map of Texarkana.
Plans: Obtain tract map. Prepare analysis. Formulate Black district.

Caldwell

Status: All materials obtained. 35.6% current total deviation.
Plans: Formulate Black district. Prepare to file suit.

Camp

Status: 151.0% current total deviation. 66% Black district formulated with 7% deviation.
Plans: Attempt to reduce deviation. Complete districting plan. Proceed to file suit.

Cass

Status: 63.5% current total deviation. Attempt to formulate Black district unsuccessful.
Plans: Hold until other counties finished.

Chambers

Status: All materials obtained except for precinct map. Response from County Judge indicated that one is on the way.
Plans: Formulate Black district. Prepare analysis when precinct map arrives.

Cherokee

Status: All materials obtained except for county commissioner precinct map. 42% Black district defined by Pat Holdaway.
Plans: Obtain county commissioner precinct map. Complete analysis. Attempt to formulate stronger Black district.

Colorado

Status: All materials obtained except for precinct map. No response to the first letter.
Plans: Formulate Black district. Send registered letter requesting precinct map.

Falls

Status: 11.0% current total deviation. 76% Black district formulated.
Plans: Check for possible racial gerrymandering. If no gerrymandering, deviation doesn't appear to justify suit.

Freestone

Status: 61.8% current total deviation. 53.9% Black district formulated which splits insignificant part of one ED. 51.9% Black district possible without splitting ED's.
Plans: Complete districting plan. Proceed to file suit.

Grimes

Status: 84.7% current total deviation. 49.3% Black district devised.
Plans: Need to consult with local residents to formulate Black district.

Gregg

Status: All materials obtained except for place maps.
Plans: Obtain place maps. Complete analysis. Attempt to define Black district.

Harrison

Status: Suit filed. Original plan showed 90.0% current total deviation. Plan revised by County Commissioners in response to suit; deviation cut to 19.9%. 61.6% Black district defined.
Plans: Complete districting plan. Attempt to obtain more money for Daves.

Houston

Status: Settled through cooperative redistricting plan.

Jasper

Status: All materials obtained except precinct map; response by County Judge indicated that only one map is available. Attempt to draw Black district unsuccessful (No response to registered letter).
Plans: Obtain precinct map; perhaps this will necessitate a trip to the county.

Jefferson

Status: Population data on hand. Still need precinct map and tract map.
Plans: Send registered letter requesting precinct map. Obtain tract map from library.

Kaufman

Status: 70.6% current total deviation. 63.9% Black district defined.
Plans: Complete districting plan. Proceed to file suit.

Leon

Status: All materials obtained. Attempt to define Black district unsuccessful.
Plans: Complete analysis.

Lee

Status: All materials available except for precinct map. County Judge indicated in his response that one is on the way.
Plans: Formulate Black district.

Liberty

Status: Attempt to draw up Black district unsuccessful. I understand County has recently redistricted.
Plans: Obtain present county precinct map.

Limestone

Status: 39.1% current total deviation. 54.1% Black district defined.
Plans: Complete districting plan. Proceed to file suit.

Madison

Status: 164.3% current total deviation. Formulation of Black district will necessitate splitting ED's.
Plans: Draw up Black district splitting as few ED's as possible.

Marion

Status: All materials obtained except for County Commissioner precinct map. 64.3% Black district formulated.
Plans: Obtain County Commissioner precinct map. Complete analysis.

Matagorda

Status: All materials available except for precinct map. No response to the first letter.
Plans: Send registered letter requesting precinct map. Formulate Black district.

Morris

Status: All materials obtained. 54.2% Black district formulated. (78.4% current total deviation).
Plans: Prepare to file suit.

Navarro

Status: 43.2% current total deviation. 66.2% Black district formulated.
Plans: Complete districting plan. Proceed to file suit.

Newton

Status: 17.3% current total deviation 56.5% Black district formulated.
Plans: Complete District plan. Proceed to file suit.

Panola

Status: All materials obtained except for county commissioner precinct map. Response indicated that a map will be supplied. Attempt to formulate Black district unsuccessful.
Plans: Write again for county commissioner precinct map. Complete analysis. Consult with residents to formulate Black district by splitting ED's.

Red River

Status: 45.2% current total deviation. Attempt to formulate Black district unsuccessful.
Plans: Hold for more work after other counties.

Polk

Status: 157.0% current total deviation. Attempt to draw Black district unsuccessful.
Plans: Consult with residents to formulate Black district by splitting ED's.

Robertson

Status: 138.8% current total deviation. 56.4% Black district and 43.8% swing district formulated.
Plans: Complete districting plan. Proceed to file suit.

Rusk

Status: 35.9% current total deviation. 45.6% Black district formulated by Pat Holdaway. The County's lawyer came up with a plan with smaller deviation than Pat's and no significant Black plurality precinct. Our attempt to formulate majority Black district unsuccessful.
Plans: Hold until other counties finished.

Sabine

Status: All materials obtained except for precinct map. No response to first letter.
Plans: Formulate Black district. Send registered letter requesting precinct map.

San Augustine

Status: 91.3% current total deviation. 72.3% Black district formulated.
Plans: Complete districting plans. Proceed to file suit.

San Jacinto

Status: 61.2% current total deviation. Two Black districts formulated through splitting 1ED, 57.9%, 51.2%.
Note: Present plan includes one Black district.
Plans: Check over districting plan to see if Black population can be distributed more advantageously. Complete districting plan. Proceed to file suit.

Shelby

Status: 37.4% current total deviation. 49.8% Black district formulated.
Plans: Consult with residents to formulate Black district by splitting ED's.

Smith

Status: Districting plan with 57% Black district submitted to County Commissioners Court. Plan revised to include Republican precinct. Analysis on estimated precinct lines complete.
Plans: Obtain exact present precinct lines and prepare analysis.

Trinity

Status: 98.0% current total deviation. 55.1% Black district formulated.
Plans: Complete districting plan. Proceed to file suit.

Upshur

Status: All materials obtained.
Plans: Prepare analysis. Formulate Black district.

Walker

Status: Need map of county commissioners precincts within Huntsville for accurate analysis. 55.0% Black district formulated.
Plans: Obtain in city of Huntsville map of county commissioners precinct. Complete analysis.

Washington

Status: 31.1% current total deviation. 56.0% Black district formulated.
Plans: Complete districting plan. Proceed to file suit.

Waller

Status: Suit filed. 107% current total deviation.
Plans: Formulate Black district.

Wharton

Status: 81.5% current total deviation. Attempt to formulate Black district was unsuccessful.
Plans: Hold for more work after other counties finished.

City Council Suits

Palestine

Status: 5-2 and 6-1 plans submitted to plaintiffs. 5-2 plan provides for one strong majority Black precinct. 5-2 and 6-1 plans provides for a 53.5% Black precinct and a 54.6% Black precinct. Neither plan has been adjusted to account for annexations.
Plans: Adopt plan to include annexed territory.

Tyler

Status: 5-2 plan with 56% Black district and 36% Black district submitted to council and plaintiffs based on ED data. City Council has tentatively accepted a plan with 69% Black district and 34% Black district based on block data. Black population figures possibly inflated.
Plans: Obtain breakdown of City Council's plan by blocks for analysis. Check for inflation of Black population. If data is valid we should advise to set up an approximately 57% district and a very strong swing district. Revise our plan in accordance with block data and to include annexed territory.

Ragsdale Announces New Suit

DALLAS – Rep. Paul B. Ragsdale is continuing in his fight to achieve the political empowerment of Blacks in East Texas, evidenced by his recent announcement of another suit challenging the apportionment of county commissioner districts in Navarro County.

In a printed statement, Ragsdale said, "I am extremely pleased to announce the filing of a suit challenging the apportionment of the county commissioner precincts in Navarro County. This suit asks the federal court to declare the present lines invalid and to order the adoption of a new plan which will equalize population in the precincts and provide reasonable representation for the Black community in Navarro County."

This is one of several federal suits which have been filed as a part of Ragsdale's East Texas Project. To date, three of the suits have been settled and the first Black ever to hold the position of county commissioner was elected in Nacogdoches County – Elder Amos Henderson.

2-4-76

'Failure Of Court' Cited In Voter Suit On County

County Judge Billy Williamson said Tuesday the "failure of the (commissioners) court to correct a reapportionment plan in 1975 is the reason we'll be going to court."

Williamson was speaking of a suit filed recently in the federal court of U.S. District Judge William Wayne Justice.

Plaintiffs in the case are Dorothy Lee, John Westbrooks and S.E. Palmer, who filed the suit against Judge Williamson; the Smith County commissioners; Louise Boulter Jones, chairwoman of the county's Democratic Executive Committee; and Bill Lust, chairman of the county's Republican Executive Committee.

The plaintiffs filed the suit "to enjoin the defendants from conducting or holding elections for positions as county commissioners until such time as the present apportionment plan of the commissioners court be approved by the Justice Department.

The case is based on the Voting Rights Act of 1965, which stipulates that any change in voting laws made since 1972 must be approved by the Justice Department or results of any election held under such voting laws are invalid.

The apportionment plan referred to is one approved by the commissioners court in late 1974 that shifted Voting Box 21, at Andy Woods school, from commissioner Roy Stanley's precinct to that of Commissioner Hugh Anderson and Box 23, at Gary Elementary, from Roland Chamblee's precinct to Lee Horton's.

"The apparent question raised (in the suit)," Judge Williamson said, "is based on minority representation, but there is also another question, just as prominent if not more so, and that's the violation of the one man, one vote concept.

"Precinct 1," he said, "has approximately 6.65 per cent more people than it's supposed to have in it; Precinct 2 has 11 per cent more people than it's supposed to have in it; and Precinct 3 has about 15 per cent fewer and Precinct 4 about 2.5 per cent fewer people than they are supposed to have in them.

"With this much disparity," he said, "we have a serious problem with violating the one man, one vote concept, not to mention any problem we have with minority representation."

Judge Williamson said on the last day of his predecessor's (Kenneth Barron) term of office, the commissioners created

SUIT (Page 9, Sec. 1)

SUIT

(Cont. From Page 1, Sec. 1)

the precincts being challenged in the suit.

"It's obvious to me," he said, "that the precincts are not properly balanced. The commissioners did not give proper notice that the changes were to be brought and after the changes were made, the court, and particularly Roy Stanley, never brought any figures to substantiate and justify the changes they made.

"I figured sooner or later he (Stanley) would have to come up with them (the figures). I would have preferred that he come up with them before the commissioners court rather than the federal court."

Judge Justice has disqualified himself from trying the case, which will be assigned to Judge William M. Steger, who will hold court in Tyler in April.

12 Palestine Herald-Press Thursday, January 1, 1976

OFFICIAL STAFF — Staff of the Anderson County Leadership Forum for 1976 planned and carried out a program this week to raise a defense fund. Shown here, front, left to right, are the Rev. Edward F. Boyd, secretary; Frank J. Robinson, director of public relations and research; and Timothy S. Smith, chairman of the Advisory Board. In back are, left to right, the Rev. J. F. Wade, president; the Rev. T. L. Dilworth, treasurer; the Rev. S. N. Hobbs, chairman of the research committee; and E. E. Brown, vice president.

Volunteers Organized To Raise Defense Fund

A capacity crowd at the Masonic Hall Tuesday night heard the Rev. T. L. Dilworth outline plans that have been developed by the Anderson County Leadership Forum to raise a defense fund.

A corps of volunteer workers were organized, pledges were made and a substantial sum was collected.

Frank J. Robinson, director of public relations and field coordinator of the East Texas Leadership Forum, commended the ministers for the leadership they are providing in the fund raising effort. "You are setting an example for other ministers in East Texas counties," he said.

In explaining the East Texas Project which he organized, Rep. Paul B. Ragsdale of Dallas declared that "politics is the most pervasive force in the lives of all Americans, and every citizen needs to be represented at the decision making level."

Rep. Ragsdale, a Jacksonville native said, "In spite of efforts of many to identify Texas with the Southwest, Texas is South in its ideology, and much needs to be done to secure political freedom for all citizens."

Also appearing on Tuesday night's program was the Rev. V. L. Bell of Wichita Falls and formerly of Palestine, secretary of the East Texas Leadership Forum. In his remarks, the Rev. Mr. Bell traced the history of the organization.

Foley Wynn of Corsicana, chairman of the Navarro County Unit, presented a check for $100 to Rep. Ragsdale for the East Texas Project.

Rodney Howard explained the status of efforts to create single member districts in the city of Palestine.

PAUL B HAGSDALE
DISTRICT 33N
AUSTIN OFFICE
STATE CAPITOL
BOX 2910
AUSTIN, TEXAS 78767
512/475 5023

House of Representatives
Austin, Texas

DISTRICT OFFICE
8710 EAST R L THORNTON FWY
DALLAS, TEXAS
214/827 1760

EAST TEXAS PROJECT

Status Report: September, 1976

Original County Suits

Anderson

Status: Settled through federal suit.

Austin

Status: All materials obtained. 37% Black district formulated
Plans: Hold until other counties finished.

Bastrop

Status: 108.8% current total deviation. 46.7% Blach district formulated. Formulation of a majority SSA-Black precinct probable. Plaintiffs identified
Plans: Define majority minority district. File Suit.

Burleson

Status: All materials obtained except for county commissioner precinct map. Received letter for County Judge asking for $10.00 for copy of precinct map. Sent response in June affirming our right to map under the Open Records Act. Received second rejection. 48.4% Black district formulated. Formulation of a majority SSA-Black precinct probable.
Plans: A. G's. office says we have no chance for a good opinion on Open Records Question. Send check for map. Prepare analysis.

Bowie

Status: All materials obtained.
Plans: Prepare analysis. Formulate Black district.

Caldwell

Status: All materials obtained. 35.6% current total deviation 39.9% Black district formulated.
Plans: Hold until other counties finished.

Camp

Status: 42.5% current total deviation. 66% Black district formulated with 7% deviation. Suit filed
Plans: Attempt to reduce deviation. Complete districting plan.

Cass

Status: 63.5% current total deviation. 47.1% Black district formulated
Plans: Hold until other counties finished.

Chambers

Status: All materials obtained except for precinct map. Response from County Judge indicated that one is on the way. 45.7% Black district formulated.
Plans: Hold until other counties finished.

Cherokee

Status: Suit dismissed due to lack of evidence.

Colorado

Status: All materials obtained except for precinct map. No response to the first letter. 45.9% Black district formulated.
Plans: Hold until other counties finished.

Falls

Status: 11.0% current total deviation. 76% Black district formulated. Evidence of racial gerrumandering within Marlin.
Plans: Complete districting plan.

Freestone

Status: 61.9% current total deviation. 53.9% Black district formulated which splits insignificant part of one ED. 51.9% Black district possible without splitting ED's. Suit filed.
Plans: Complete districting plan.

Grimes

Status: 84.7% current total deviation. 49.3% Black district devised. Formulation of a majority Black-SSA precinct probable.
Plans: Define majority minority precinct. File suit.

EAST TEXAS PROJECT

County	Status
Anderson	Settled through Federal Suit
Bastrop	108.8% current total deviation
Burleson	Analysis not yet completed
Camp	151.0% current total deviation
Cass	63.5% current total deviation
Cherokee	Analysis not yet completed
Falls	11.0% current total deviation
Freestone	61.8% current total deviation
Grimes	Analysis not yet completed
Gregg	Analysis not yet completed
Harrison	97.0% current total deviation
Houston	Settled through cooperative redistricting plan
Jasper	Analysis not yet completed
Kaufman	70.6% current total deviation
Liberty	Analysis not yet completed
Limestone	39.1% current total deviation
Leon	Analysis not yet available
Madison	Analysis not yet available
Marion	Analysis not yet available
Morris	Analysis not yet available
Nacogdoches	Settled through Federal Suit
Navarro	43.2 current total deviation
Newton	22.2 current total deviation
Panola	Analysis not yet completed
Polk	157.0% current total deviation
Red River	Analysis not yet completed
Robertson	Analysis not yet completed
Rusk	35.9% current total deviation
San Augustine	91.3% current total deviation
San Jacinto	61.2% current total deviation
Shelby	37.4% current total deviation
Smith	Analysis not yet available
Trinity	Analysis not yet available
Walker	Analysis not yet available
Washington	Analysis not yet available
Wharton	81.5% current total deviation
Waller	107.3% current total deviation

House of Representatives
Austin, Texas

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Lawsuit Planned Over Vote Lines

6/12/75

Austin Bureau of The News

AUSTIN—A class action lawsuit is being filed this week to force new county commissioner precinct boundaries in Waller County, and another suit is being prepared against Harrison County, alleging precinct lines constitute racial discrimination, State Rep. Paul Ragsdale of Dallas reported.

The black Dallas lawmaker said the cases are part of his "East Texas project" to encourage county commissioner precinct lines which provide meaningful representation for black citizens of Texas.

RAGSDALE CHARGED that precinct lines in 37 counties are gerrymandered to prevent black domination of a commissioners precinct and the 1-man, 1-vote concept laid down by the United States Supreme Court is ignored by most of the counties in the project.

Waller County, for instance, has a population deviation of 107.3 per cent from its precinct with smallest population to its largest precinct, Ragsdale said. Waller County is over 52 per cent black, counting the students at Prairie View A&M University.

The population deviation in Harrison County is 93 per cent, he said.

The Waller County case is in federal district court at Houston. Plaintiffs are Lristus Sams Mayor of Prairie View, and Claudis Busby, a Waller County resident. Austin attorney David R. Richards prepared the class action lawsuit.

RAGSDALE SAID he launched the "East Texas project" in December, 1973, after being asked by black constituents who originally moved to Dallas from East Texas. Ragsdale himself came to Dallas from near Jacksonville in Cherokee County.

He said commissioners precincts have been redrawn in Nacogdoches, Anderson and Houston Counties as a result of the project, and voluntary redistricting is being considered in Smith County and other counties.

Ragsdale said Waller County suffers from "plantation politics" where black residents haven't had a real voice in county government for nearly a century.

He said reapportionment of county precincts is just as necessary a part of the progress of the state as gargantuan airports, superports and skyscrapers.

"Just as these manifestations of economic progress are inevitable, I believe that these needed social changes are inevitable," Ragsdale said.

PAUL B. RAGSDALE
DISTRICT 33-N
5710 E. THORNTON FWY.
DALLAS, TEXAS 75201
214/827-1750

House of Representatives
Austin, Texas

COMMITTEES
BUSINESS & INDUSTRY
REAPPORTIONMENT

HOUSTON CHRONICLE
Page 12, Section 1

Thursday, June 12, 1975

East Texas Counties Discriminate Against Blacks, Legislator Says

Austin (UPI) — A black legislator says East Texas counties are gerrymandering precincts to discriminate against black voters and to preserve plantation politics.

Rep. Paul Ragsdale, D-Dallas, announced plans Wednesday to sue Waller County commissioners. He said a similar suit will be filed soon against Harrison coutny.

Ragsdale said he is compiling files on 37 East Texas counties with black populations of 20 per cent or more in a project aimed at providing meaningful representation for blacks.

"East Texas is, in many ways, a time warp," he said. "It has refused to step into the 20th century. In East Texas, the black citizen is still for the most part disenfranchised."

Ragsdale said the suit to force reapportionment of county commissioners precincts in Waller County will be filed in U.S. district court in Houston this week.

"I am certain that in light of the overwhelming evidence in our favor, the court will once and for all strike down the plantation politics of Waller County and at long last provide each of its citizens with an equal voice in county government," he said.

Ragsdale said Waller County is the only county in the state with a black majority, 52.8 per cent of the population.

"But notably, in spite of this fact, no black has been elected to county office there in the last century," he said.

"Rather than providing its black citizens with the opportunity to have an impact on county government, Waller county has embarked on a course of invidious gerrymandering to preclude any black citizen from effectively seeking the post of county commissioner."

Ragsdale said the 107 per cent deviation in population between the largest and smallest precinct in the county is a glaring violation of the U.S. Supreme Court's one man — one vote rule.

Litigation against three other counties (Cherokee, Rusk and Shelby) is pending.

Similar suits already forced reapportionment in Nacogdoches, Houston and Andersen counties, and, in the latter case led to the election last year of the first black county commissioner in Texas since Reconstruction.

Plaintiffs in the suit against Waller County include the black mayor of Prairie View, Eristus Sams, and Claudia Busby of Prairie View.

Other counties Ragsdale said he is investigating include Bastrop, Burleson, Camp, Cass, Falls, Freestone, Grimes, Gregg, Jasper, Kaufman, Liberty, Limestone, Leon, Madison, Marion, Morris, Navarro, Newton, Panola, Polk, Red River, San Augustine, San Jacinto Smith, Trinity, Walker, Washington and Wharton.

East Texas Project:
Summary Sheet

1977

Counties under suit

a. Now filed or soon to be filed

Gregg	Larry Daves, Attorney
Morris	
Marion	
San Augustine	
Falls	James Johnston, Attorney
Freestone	
Limestone	
Robertson	
Matagorda	Carnegie Mims, Attorney
San Jacinto	
Trinity	
Washington	

b. Under Analysis

Jefferson
Walker
Bowie
Colorado
Bastrop *
Burleson*
Grimes *

(* indicates probability of SSA-Black Pct)

Counties with VRA Status

Kaufman		@
Smith	*	@
Harrison	*	@
Waller	*	@
Rusk	*	
Polk		
Wharton		
Liberty	*	

(@ indicates formulation of Black Pct)
(* indicates receipt of Submission by Justice Dept.)

Counties on Appeal

Navarro

Counties with settled suits

Anderson
Houston
Nacogdoches

Counties on Hold

Cass
Chambers
Leon
Cherokee

Counties on Hold (cont.)

Jasper
Panola
Red River
Shelby
Lee
Austin
Newton
Madison
Caldwell
Camp
Upshur
Sabine

Cities under suit

Palestine

Cities under analysis (all Cities in Target Area with pop. of app.10,000 and above)

Longview
Texarkana
Marshall
Jacksonville
Corsicana
Terrell
Texas City
Port Arthur
Bay City
Huntsville

Cities settled

Tyler

School Districts under analysis

Longview I.S.D.

PAUL B. RAGSDALE
DISTRICT 33N
AUSTIN OFFICE
STATE CAPITOL
BOX 2910
AUSTIN, TEXAS 78769
512/476-5923

House of Representatives
Austin, Texas

DISTRICT OFFICE
5710 EAST R. L. THORNTON FWY
DALLAS, TEXAS
214/827-1750

Suit Against Gregg Settled

By WILL HUNDLEY
Staff Writer

A suit alleging Gregg County precinct lines discriminated against black voters—and asking for redistricting—was settled out of court Monday.

The agreement signed before U.S. District Judge William Steger means the county commissioners court will not have to redistrict—at least until past 1980.

The class action suit was filed last Oct. 15 by Clarence Bailey and Bennie Jackson of Longview "on behalf of themselves and others" in federal district court in Tyler. It claimed blacks comprise more than 20 per cent of county population and, that because of precinct line demarcation, denied fair representation and diluted black voting rights.

The order Monday withdrew the suit, stipulating commissioners, after the 1980 census, will hold public hearings on precinct boundaries and adopt any changes ordered by law.

Bailey and Jackson had sought a declaratory judgment against the county—ruling the line demarcation discriminatory and seeking a preliminary injunction to stop voting there.

"The particular area comprising Gregg County is as free of race prejudices as is possible to achieve," Longview attorney Fred Erisman, appointed by commissioners to defend the county, said in his answer to the original suit.

"We're very pleased with the cooperation of the plaintiffs," County Judge Henry Atkinson said Tuesday.

"In their depositions, they agreed that the commissioners court had done nothing intentionally to discriminate against anyone.

"State law requires that each county in the State of Texas review and redefine its commissioners precinct lines each 10 years — and since I've been county judge we have done this and will continue to do so."

Atkinson was served with the suit Nov. 22. It named him and County Commissioners Bill Satterwhite, Bill Owens, Jack Egan and the now late Hugh Camp as defendants.

The consent decree that was agreed to by the county and the plaintiffs reaffirms that the commissioners will—after the 1980 census—comply with that law as we have done in the past," the judge said.

"We will have public hearings to determine the interest of any citizen in this regard and we would urge anyone that would be interested — or having a suggestion — to attend the public hearings in 1980."

April 12, 1977 Gregg County

COMMITTEES: BUSINESS AND INDUSTRY REGIONS, COMPACTS & DISTRICTS

Thursday, February 23, 1978 • Austin American-Statesman 87

School board districts ordered

By ROSEMARY BEALES
American-Statesman Staff

The Temple school board may have its first minority members after its next election, as a result of a ruling Wednesday by U.S. District Judge Jack Roberts of Austin.

Roberts ordered the Temple Independent School District to use single-member voting districts in the election, scheduled for April 1.

Candidates for the two positions to be filled in the election will come from districts with minority concentrations, according to Roberts' order.

The school district, which has used an at-large election system since it was formed in 1962, was brought to federal court Wednesday by the U.S. Justice Department. The Justice Department charged that at-large elections diluted the votes of Temple's black and Mexican-American citizens.

Some of those minority citizens were in court Wednesday, and reacted with jubilation when Roberts granted the government's request for a preliminary injunction.

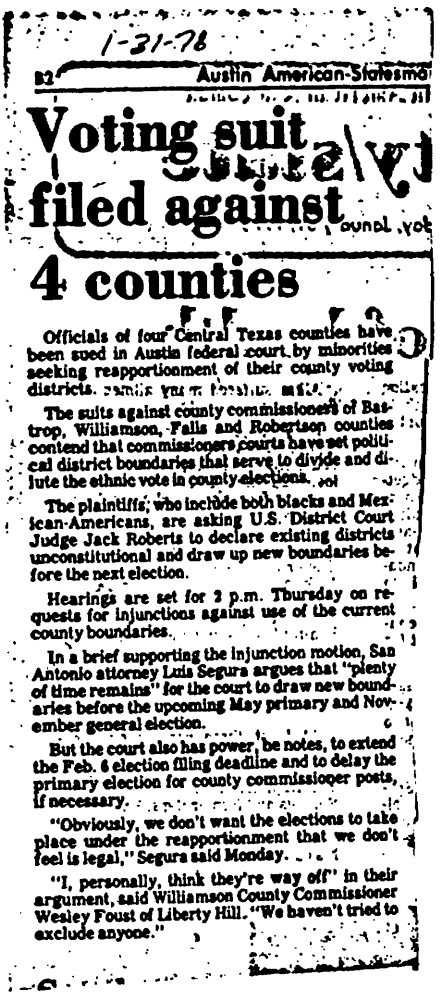
The injunction prohibits the district from holding the April 1 election under the at-large system, but attorneys for both the school board and the Justice Department said the election probably will not have to be postponed.

Jack Prescott, the Temple attorney representing the seven-member school board, and John MacCoon, a lawyer with the Justice Department's Civil Rights Division, said they will meet today with school district staff to work on a plan for seven single-member districts in Temple.

Whatever plan is devised, it will have to be approved by Roberts before an election can be held.

If the election is postponed, it would not be delayed for more than a month, MacCoon said.

In arguing for the injunction Wednesday, MacCoon noted that five blacks and five Mexican-Americans have run for school board positions since 1964, but none has been elected. Minority candidates have done well in the minority neighborhoods, he said, but "never are sufficient votes gotten from the white community."



1-31-78

B2 Austin American-Statesma

Voting suit filed against 4 counties

Officials of four Central Texas counties have been sued in Austin federal court by minorities seeking reapportionment of their county voting districts.

The suits against county commissioners of Bastrop, Williamson, Falls and Robertson counties contend that commissioners courts have set political district boundaries that serve to divide and dilute the ethnic vote in county elections.

The plaintiffs, who include both blacks and Mexican-Americans, are asking U.S. District Court Judge Jack Roberts to declare existing districts unconstitutional and draw up new boundaries before the next election.

Hearings are set for 2 p.m. Thursday on requests for injunctions against use of the current county boundaries.

In a brief supporting the injunction motion, San Antonio attorney Luis Segura argues that "plenty of time remains" for the court to draw new boundaries before the upcoming May primary and November general election.

But the court also has power, he notes, to extend the Feb. 6 election filing deadline and to delay the primary election for county commissioner posts, if necessary.

"Obviously, we don't want the elections to take place under the reapportionment that we don't feel is legal," Segura said Monday.

"I, personally, think they're way off" in their argument, said Williamson County Commissioner Wesley Foust of Liberty Hill. "We haven't tried to exclude anyone."

EAST TEXAS PROJECT

Status Report: July 1, 1979

Original County Suits

Anderson

Status: Settled through federal suit.

Angelina

Status: Settled through federal suit.

Austin

Status: All materials obtained. 37% Black district formulated.
Plans: Hold until other counties finished.

Bastrop

Status: 108.8% current total deviation. 46.7% Black district formulated.
Plans: Hold until other counties finished. Settled through federal suit

Burleson

Status: All materials obtained except for county commissioner precinct map. Received letter from County Judge asking for $10.00 for copy of precinct map. Sent response affirming our right to map under the Open Records Act. Received second rejection. 48.4% Black district formulated.
Plans: Request Attorney General's opinion.

Bowie

Status: All materials obtained.
Plans: Obtain tract map from library. Prepare analysis. Formulate Black district. Contact ETLS to see if they want to litigate.

Caldwell

Status: All materials obtained. 36.5% current total deviation. 39.9% Black district formulated.
Plans: Hold until other counties finished.

Camp

Status: 151.0% current total deviation. 66% Black district formulated with 7% deviation. 52% Black district under present plan.
Plans: Attempt to reduce deviation. Complete districting plan. Proceed to file suit.

Cass

Status: 63.5% current total deviation. 47.1% Black district formulated.
Plans: Hold until other counties finished.

Chambers

Status: All materials obtained except for precinct map. Response from County Judge indicated that one is on the way. 45.7% Black district formulated.
Plans: Hold until other counties finished.

Cherokee

Status: Suit dismissed due to lack of evidence.

Colorado

Status: All materials obtained except for precinct map. No response to the first letter. 45.9% Black district formulated.
Plans: Hold until other counties finished.

Falls

Status: Settled through federal suit.

Freestone

Status: Settlement agreement signed requiring redistricting and approval by Justice Department.
Plans: Monitor redistricting process.

Grimes

Status: 84.7% current total deviation. 49.3% Black district devised.
Plans: Need to consult with local residents to formulate Black district.

Gregg

Status: Under court order requiring redistricting after 80 census. No appeal taken.

Harrison

Status: Under court order requiring redistricting after 80 census. Appealed.
Plans: Contact to Larry Daves to get up date.

Houston

Status: Settled through federal suit.

Jasper

Status: All materials obtained except precinct map; response by County Judge indicated that only one map is available. 43.4% Black district formulated.
Plans: Hold until other counties finished.

Jefferson

Status: Population data on hand. Still need precinct map. 60+% Black district possible.
Plans: Send registered letter requesting precinct map. Obtain tract map from library.

Kaufman

Status: 70.6% current total deviation. 63.9% Black district defined. Justice Department refused to object.
Plans: Complete districting plan. Proceed to file suit.

Leon

Status: All materials obtained. 48.7% Black district formulated.
Plans: Hold until other counties finished.

Lee

Status: All materials available except for precinct map. County Judge indicated in his response that one is on the way. 46.8% Black district formulated.
Plans: Hold until other counties finished.

Liberty

Status: 41.2% Black district formulated. I understand County has recently redistricted.
Plans: Obtain present county precinct map.

Limestone

Status: 39.1% current total deviation. 54.1% Black district defined. Suit filed. Previous suit may require dismissal.
Plans: Check with David Richards re: interrogatories to confirm deviation. If constitutionally acceptable, may have to dismiss.

Madison

Status: 164.3% current total deviation.
Plans: Check population of prison farm in Southeast quadrant of County. Formulate Black district.

Marion

Status: 64.3% Black district formulated. % Deviation 8.0
Plans: Perform analysis to see if grounds for suit based on racial gerrymandering.

Matagorda

Status: Settlement agreement signed requiring redistricting. Black district formulated.
Plans: Monitor redistricting process.

Morris

Status: All materials obtained. 54.2% Black district formulated. 74.8% current total deviation.
Plans: Prepare to file suit.

Navarro

Status: Settled through federal suit.

Newton

Status: 17.3% current total deviation 56.5% Black district formulated. check to see if Black District exists under present plan.
Plans: Complete District plan. Proceed to file suit.

Panola

Status: Suit dismissed due to withdrawal of Plaintiff.

Red River

Status: 45.2% current total deviation. 40.3% Black district formulated.
Plans: Hold for more work after other counties.

Polk

Status: 157.0% current total deviation. Attempt to draw Black district unsuccessful.
Plans: Consult with residents to formulate Black District by splitting ED's. Not community of interest between Blacks & Indians.

Robertson

Status: Settled through federal suit.

Rusk

Status: 35.9% current total deviation. 45.6% Black district formulated by Pat Holdaway. The County's lawyer came up with a plan with smaller deviation than Pat's and no significant Black plurality precinct. Our attempt to formulate majority Black district unsuccessful.
Plans: Hold until other counties finished.

Sabine

Status: All materials obtained except for precinct map. No response to first letter. 47.0% Black district formulated.
Plans: Hold until other counties finished.

San Augustine

Status: 91.3% current total deviation. 72.3% Black district formulated.
Plans: Complete districting plans. Proceed to file suit.

San Jacinto

Status: 61.2% current total deviation. Two Black districts formulated through splitting 1ED, 57.9%, 51.2%.
Note: Present plan includes one Black district.
Plans: Check over districting plan to see if Black population can be distributed more advantageously. Complete districting plan. Proceed to file suit.

Shelby

Status: Suit dismissed due to lack of evidence.

Smith

Status: 7.5% current total deviation. Justice Department did not object.

Trinity

Status: 98.0% current total deviation. 55.1% Black district formulated. Suit filed.
Plans: Present plan to county commissioners.

Upshur

Status: All materials obtained.
Plans: Prepare analysis. Formulate Black district.

Walker

Status: Need map of county commissioners precincts within Huntsville for accurate analysis.
Plans: Complete analysis. Phone County Clerk to delineate precincts within Huntsville. Check for impact of inmates on population data.

Washington

Status: 31.1% current total deviation. 56.0% Black district formulated.
Plans: Complete districting plan. Proceed to file suit.

Waller

Status: Suit filed. We have offered to settle for two Black districts of 62.6% and 75.6% formulated. County Commissioner submitted revised districint plan. We have copy.
Plans: Wait for reply to settlement offer.

Wharton

Status: 81.5% current total deviation. Attempt to formulate Black district was unsuccessful.
Plans: Hold for more work after other counties finished.

4 A The Dallas Morning News

Texan Lobbying Against Expansion Of Voting Law

7-3-75

By CAROLYN RAEKE

WASHINGTON — The House-passed legislation bringing Texas under the 1965 Voting Rights Act is scheduled for Senate consideration in the next few weeks, so Texas secretary of State Mark White was here Wednesday seeking Senate support to keep Texas out of the act's coverage.

Although White chose a time when the Senate is in recess—for the Fourth of July—he said he was talking with staff aides to both Texas senators and hoped to speak to aides to senators from other tates.

HE CONCEDED he has no commitment of support for his position from either Sen. John Tower, R-Texas, or Sen. Lloyd Bentsen, D-Texas but anticipates their opposition to Texas' being covered.

White, who has previously testified against broadening the act's coverage to Texas bases his case on his belief that "in the past two and a half years since my appointment as chief elections officer, there has been no substantial claim or charge of the denial of the right to vote due to race, color, creed or national origin."

The House passed the legislation last month, both extending the act, which expires Aug. 6, for another 10 years and broadening its coverage to establish a new "test or device" that would trigger coverage of a state or jurisdiction.

That test or device is that in 1972 a state or jurisdiction used English-only election materials when it had a five per cent "language minority" whose turnout in the federal election was lower than 50 per cent.

THE LEGISLATIVE definition of a language minority citizen includes Spanish heritage, so Texas would be covered by the act unless it can show that for the past 10 years it has not used English-only election materials.

Only recently did the Texas Legislature pass and Gov Dolph Briscoe sign into law three bills which Briscoe and White believe are sufficient to how the state's good faith efforts in getting out the Mexican-American vote.

The bills provide bilingual election and registration materials in all Texas counties having five per cent or more of its population of Spanish-speaking origin or descent; reduction in precinct sizes in certain areas to eliminate driving long distances to vote; state inspectors to supervise Texas elections, and establishing new procedures and stiffer penalties to prevent economic or physical coercion on anyone seeking to vote, Gov. Briscoe noted in a letter he sent to all U.S. Senators.

"WE HAVE proven that we have made—and will continue to make—a good faith effort to solve any voting rights problems that may exist in Texas," Briscoe wrote the senators.

A House Judicary Committee report explaining the need to broaden the act, was hard on Texas, saying: "Texas has a long history of discriminting against members of both minority grups (Mexican-Americans and blacks) in ways similar to the myriad forms of discrimination practiced against blacks in the South."

White aid: "As the man most responsible for voting in Texas, I want to tell you that the alleged violations jut don't exist."

If Texas were covered by the act, it would be required to use bilingual election procedures for the next 10 years, but it would also have to get clearance from of its proposed changes in election procedures and federal examiners would be designated to oversee the elections.

OPPONENTS consider the clerance aspect the most onerous and White said Wednesday the ustice Department would have to clear every voting change made since 1972. "I think the task imposed is ominous," he said.

White also noted that Texas has 3,287 units of government which would have to be monitored by the Justice Department. "While they're monitoring all of this who is going to be available to handle the real voting rights violations?" he asked.

'Vote Bill 'Repugnant'

7-3-75 DMN

Briscoe Cites Federal Controls

By CARL FREUND

Gov. Dolph Briscoe asserted here Wednesday that a federal voting rights bill would require Dallas and other Texas cities to get U.S. Justice Department approval before they annexed land.

Briscoe termed the bill, which the House has passed, "one of the worst pieces of legislation ever considered by Congress." The governor said he sent Secretary of State Mark White to Washington this week as part of an effort to persuade the Senate to kill it.

"THIS BILL would let the Justice Department veto any change in boundaries," Briscoe said. "This would apply to any annexation by a city or other political subdivision. And it would apply to redistricting plans."

Texas Secretary of State Mark White lobbies to keep state from being covered by the 1965 Voting Rights Act, Page 4A.

These provisions are retroactive to 1972, Briscoe said.

"I think it is repugnant to apply these provisions to our state," Briscoe said. "The people of Texas do not need to have a Washington official telling them where they must draw boundaries."

ADVOCATES OF the legislation contend there has been harassment of Mexican-American voters in some sections of Texas. They say the Justice Department would quickly approve annexations and other boundary changes which did not dilute the political effectiveness of Negroes and Mexican-Americans.

Critics say Texas has strong laws to protect the voting rights of minorities. They argue also that "political considerations" could affect Justice Department decisions.

Briscoe said the bill would also let the federal government supervise the registration of voters and elections.

Briscoe drew applause during a State Junior Bar luncheon when he called for Texans to fight efforts by federal bureaucrats to take over powers which belong to the state and local governments.

When the federal government sends tax funds back to states in the form of grants, Briscoe said, these bureaucrats try to control policies through the use of "guidelines."

THE GOVERNOR charged also that federal officials put needless restrictions on Texans while trying to solve the problems of New York, Los Angeles and other distant cities. He cited proposed air pollution control measures as an example.

"The government closest to the people is most responsive to wishes of the people," Briscoe commented.

Briscoe told a press conference later that he has reservations about federal revnue sharing "since it is actually deficit sharing."

Daily Texan 7-8-75

Ragsdale Attacks Briscoe's Views On Voting Rights

By ROSANNE MOGAVERO
Texas Staff Writer

Gov. Dolph Briscoe's stance against extending the federal voting rights act to Texas met with opposition Monday from State Rep. Paul Ragsdale of Dallas.

"Minorities must still overcome significant barriers, in the field of voting rights," Ragsdale said adding that "unless the federal government steps in, the minority citizens in many sections of Texas will remain politically disenfranchised."

The bill, scheduled to come before the U.S. Senate on July 16, would require the U.S. Department of Justice to monitor elections in Texas.

Briscoe said in a recent letter sent to every member of the Senate that extension of the act would be "totally unnecessary" and it "reflects unfairly on the people of Texas" because Congress is trying "to usurp our authority, to dictate our election procedures to us and to picture us as racists."

RAGSDALE claims that Mexican-Americans and blacks have been traditionally "disenfranchised by Texas' discriminatory voter registration practices and procedures."

An example cited by Ragsdale concerns Prairie View A&M University in Waller County. Students there "remain the only students in Texas who are not allowed to register to vote where they attend school," Ragsdale said. Out of approximately 4,000 to 5,000 students, only about 100 are registered to vote, he added.

"Coincidentally, Waller County is the only majority black county in Texas," he said.

Secretary of State Mark White recently said "there has been no substantial claim or charge of the denial of the right to vote," to minorities. Ragsdale said he has talked to White about voting problems in Waller County.

WHITE RESPONDED Monday that he had "personally inspected the situation" and found affairs to be in accordance with the law. "One case was tried in a federal court, and it (the voting registration procedure) was upheld," he said.

Another complaint concerning voter registration practices was reported by the Mexican American Legal Defense and Educational Fund. In a court case filed last month against White, MALDEF asked a three-judge federal court permanently to do away with the ballot stub signing requirement of the Texas Election Code.

"Mexican-Americans in South Texas have been intimidated from exercising their right to vote," by this voting method, MALDEF claimed.

PRESENT EDECTION laws require a voter to sign his or her name on a numbered ballot stub. This stub contains a number identical to the one on the ballot signed by the voter. A person's vote therefore can possibly be determined by matching the ballot with the stub.

"I don't think any other state has a ballot stub signing procedure like it," said MALDEF representative Al Kauffman.

Other discriminatory voting practices claimed by Ragsdale are:

- In 47 counties in East Texas ranging from 19 to 53 percent black population, blacks are excluded from total participation in the political process.
- Jefferson County, in the Port Arthur-Beaumont area, was "blatantly gerrymandered" by recent redistricting of the 64th Legislature.

Texas' inclusion in voting rights bill asked

HP 7-8-75

Post-State Capitol Bureau

AUSTIN — State Rep. Paul Ragsdale, D-Dallas, said Monday that the Federal Voting Rights Act's coverage should be extended to Texas by Congress.

Attacking Gov. Dolph Briscoe and Secretary of State Mark W. White Jr. for opposing the extension, Ragsdale claimed "out state leadership has refused to eliminate the discriminatory policies of recalcitrant [illegible]

[illegible] steps in, the minority citizens in many sections of Texas will remain politically disenfranchised for some time to come," he added.

Ragsdale said he was "appalled by Gov. Briscoe's rabid denunciation" of the proposed extension of the federal law to Texas.

"This state's record in the field of voting rights has been dismal," he said. "Both Mexican-Americans and blacks have been disenfranchised by Texas' discriminatory voter registration practices and procedures."

In black-majority Waller County, he said black students at Prairie View A&M University "remain the only students in Texas who are not allowed to register to vote where they attend school." The county's tax assessor-collector "has generally tried every trick in the book to keep students away from the polls," he said.

Ragsdale said he had complained to White, the state's chief elections officer, about the situation more than once and "he has consistently contended that there is nothing he can do about it."

The Dallas legislator also said blacks are "excluded from total participation in the political process" by gerrymandering and other tactics by local officials. Forty-seven counties in East Texas contain black populations ranging from 19 per cent to 53 per cent, he said, but only last year was the first black elected to a county commissioner position in Texas.

Ragsdale challenges Briscoe

Texas Human Rights Bureau

[illegible] Dallas congressman has challenged [illegible] Gov. Dolph Briscoe and his secretary of state Mark White that Texas should not be included in the federal voting Rights Act.

White states's request in the fight to voting rights law been opposed. Both Mexican-Americans and blacks have historically been discriminated by [illegible] registration requirements and procedures," Congressman Ragsdale said Monday.

The U.S. House of Representatives has already approved extension of the right to Texas and Senate approval is expected. The law requires Justice Department approval of all state and local laws and ordinances affecting voting rights.

Ragsdale said that blacks are excluded from full participation in the political process in [illegible] Texas counties with black populations ranging from 19 to 53 per cent.

Students at predominantly black Prairie View A&M in Waller County are the only students in Texas who cannot vote where they go to school, Ragsdale said.

He said he has complained to White about the Waller County situation without result, despite White's contention there have been no substantiated complaints about denial of the right to vote.

Only recently, Ragsdale said, have any blacks been elected to city councils or school district seats in East Texas.

"It is for this reason that the federal Voting Rights Act must be extended to Texas. Our state leadership has refused to eliminate the discriminatory policies of recalcitrant local officials," Ragsdale said.

White claimed that Texas has model legislation banning discrimination in voting. Statistics show that the number of Mexican-American elected officials corresponds to the percentage of Mexican-American population in most counties, he said.

Briscoe wrote Texas congressman opposing extension of the law to Texas and Briscoe operatives, including White, pushed hard in the Legislature for two state voting rights laws which could be [illegible]

was policing its own voting practices.

suits in several East Texas counties aimed at increasing Ragsdale and the Texas minority political power.

Federal redistricting suits filed

Associated Press

Rep. Paul Ragsdale, D-Dallas, said Wednesday that federal suits have been filed in Houston and Tyler aimed at redistricting Waller and Harrison counties for the election of county officials.

Ragsdale said Waller County had yet had any black county officials in at least a century even though the county's 7,939 blacks constitute 32.5 per cent of the county's population. He said Waller County "has been the most recalcitrant of the East Texas counties in its policies toward its black citizens."

He said the deviation between the most populous precinct and the least populous precinct in Harrison County is 91 per cent.

AAS
6/12/75

SOUTHWEST

Dallas Rep. Paul Ragsdale says Gov. Dolph Briscoe is wrong in challenging the inclusion of Texas in a group of states cited by the federal government as needing more stringent guidelines under the Voting Rights Act. (Page 11-A)

In Judge G.F. Carville is considering a motion for an instructed verdict against Duval County Judge Archer Parr after Parr failed to appear for deposition taking. (Page 11-A)

Black Representative

'T ...s Minorities Need Voting Rights Law'

AUSTI... ...y groups ... Texas ... voting ri... interven... black ... heading ... racial dis... ...ast Texas

Rep Paul Ragsdale, D-Dallas, said Monday blacks and Mexican-Americans needed the protection of the Federal Voting Rights Act. Congress is considering extending the law to cover Texas

"This state's record in the field of voting rights has been dismal," Ragsdale said. "Both Mexican-Americans and blacks have traditionally been disenfranchised by Texas' discriminatory voter registration practices and procedures."

Gov Dolph Briscoe wrote congressmen and federal officials in June saying he opposed extending the act to Texas Secretary of State Mark White, a Briscoe appointee, said there has been no substantial claim of denial of voting rights to minorities during his term

"Gov. Briscoe's position simply denies political reality for many black and brown citizens of Texas," Ragsdale said.

"It is for this reason that the Federal Voting Rights Act must be extended to Texas Our state leadership has refused to eliminate the discriminatory policies of recalcitrant local officials Unless the federal government steps in, the minority citizens in many sections of Texas will remain politically disenfranchised for some time to come."

Ragsdale, sponsor of the "Fair Texas Project" which has filed several suits challenging districting of county commissioners courts and city councils, said he has numerous records of voting rights discrimination.

"For example, in Waller County, the black students at Prairie View A&M (University) remain the only students in Texas who are not allowed to register to vote where they attend school The tax collector of Waller County has generally tried every trick in the book to keep students away from the polls," Ragsdale said.

"Coincidentally, Waller County is the only majority black county in Texas"

Ragsdale said he has informed White of the Waller County situation several times but White said he could do nothing about it

"I have advised [redacted] ranging from 30 to 53 per cent," Ragsdale said. "As a result of gerrymandering and other tactics used by local officials, blacks are excluded from total participation in the political

[redacted] according to a black legislator heading a project to combat racial discrimination in East Texas. Rep Paul Ragsdale, D-Dallas, said Monday blacks and Mexican-Americans needed the protection of the Federal Voting Rights Act. Congress is considering extending the law to cover Texas (Page 7-A)

Voting Rights Act for Texas Is Supported

Black legislator urges voting act

Austin Am-Statesman 7/8/75

1327

PAUL B. RAGSDALE
DISTRICT 33-N
9710 E. THORNTON FWY
DALLAS, TEXAS 75201
214/827-1750

House of Representatives
Austin, Texas

COMMITTEES
BUSINESS & INDUSTRY
REAPPORTIONMENT

August 4, 1975

Mr. Sam Wood
Editor, Austin-American Statesman

Dear Mr. Wood,

Your editorial of 31 July indicting the extension of the Voting Rights Act to Texas is based more on fear than fact. You focus exclusively on the alleged problems of implementing the act and completely ignore the very real reasons why it is needed. Traditionally, Texas voting laws have been as blatantly discriminatory as those in the other southern states which are presently covered by the Voting Rights Act. And while the provisions of the act cleaned up most of the voting irregularities in these states, voting practices in Texas never recieved the kind of comprehensive scrutiny necessary to bring them in line with the requirements of the U. S. Constitution. In short, the minority citizens of Texas remain legally discouraged from participating in the political process.

Just to cite one example, the Black students of Prairie View A & M University in Waller County are the only students in the State who cannot vote in the county in which they attend school. Notably, the ability of these students to vote in Waller County would significantly alter the political balance of the county. But due to outright opposition from the local white establishment and complete inaction on the part of state officials, the students of Waller County remain politically disenfranchised and its citizens remain dominated by a small power elite controlled by the ideology of "plantation politics".

Clearly, then, it has been state inaction which has allowed this overt violation of the basic constitutional rights of the minority citizens of Texas to continue. For this reason, I am deeply disturbed by your kneejerk rejection of this needed extension of federal authority. I am sure that your minority readership is equally disturbed.

Sincerely,

Paul B. Ragsdale

PBR:mrm

The Austin American-Statesman

The Austin Statesman—Established July 26, 1871
The Oldest Afternoon Newspaper in Texas

The Austin American—Established May 31, 1914

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Editorials ● Comment

The members of the Austin American-Statesman editorial staff freely express opinions in their editorials and columns. They are their own and not necessarily reflective of the American-Statesman itself, which speaks only through unsigned editorials in the Editorial...

"I thought we got rid of CARPETBAGGERS in 1873!"

editorials

The new federalism

As we feared, the impending extension of the Voting Rights Act's punitive provisions to Texas will mean everything done in the state since 1972 as regards voting rights will have to be packed in a federal carpetbag and shipped off to Big Brother in Washington.

Local and county officials expect an added nuisance factor but little problem in implementing the act's extension. We wish them a lot of luck. But we also must remind them of Murphy's First and Second Laws: "Nothing is a easy as it looks" and "Everything takes longer than you think."

It is hoped that faced with a giant flood of state, city, county and school district acts enacted in the state in the past 3 ½ years, the feds will simply give most of them the once-over-lightly treatment and let it go at that.

Asst. City Atty. Richard Talk said that the act will mostly be "a nuisance," but echoed our concern that federal diddling with every dinky annexation will create some problems. Even Mayor Jeff Friedman, an enthusiastic supporter of the Act, conceded that some problems could arise if the city charter is changed to provide for city council districts, as such a change would have to be approved by the Justice Department.

County Commissioner Richard Moya took the position, "If you're doing it right, why be scared" of submitting election documents to the feds. The problem with that reasoning is that it doesn't matter whether Richard Moya or the people of the county believe it's being done right. They don't count. What counts is whether the feds believe it's right, and what do they know about Travis County, Texas?

We keep wondering about people like Rep. Jake Pickle of Austin, Rep. Robert Krueger of New Braunfels and all those other congresspeople who voted for extension of the Act. Do they think Texans are racists? Do they think Texans don't know how to govern themselves? Or were they adopting the principle that abrogation of one's principles in defense of one's sinecure is no vice?

Maybe Pickle et al ought to be given the job of carrying the carpetbags full of our business up to Washington when they aren't hustling votes or explaining themselves to the voters whom they so roundly insulted by their "aye" vote?

Now that we've got that off our chests, we'd like to ask for a round of applause for Congressmen like Omar Burleson, Abraham Kazen and William Poage for voting against the Act.

But what can we say about Henry Gonzales and Olin Teague, who were present and not voting? Maybe we can find them a couple of used saddles to use while riding fences...

7/3/75

PAUL B. RAGSDALE
DISTRICT 33-K
5710 [illegible] WAY
DALLAS, TEXAS 75201
214/827-1750

House of Representatives
Austin, Texas

COMMITTEES
BUSINESS & INDUSTRY
REAPPORTIONMENT

September 24, 1975

The Honorable Dolph Briscoe
Governor of the State of Texas
State Capitol
Austin, Texas

Dear Governor Briscoe:

Let me again urge you to order Attorney General Hill to drop the State's appeal of Judge Gisell's order regarding the extension of the Voting Rights Act to Texas.

It is now time for all sides involved to cease the protracted debate over this issue. I fear that this controversy has already cost our state enough, both in terms of tax dollars and in terms of emotional expense.

I implore you to exercise your leadership and see to it that this debate is laid to rest, once and for all.

Sincerely,

Paul B Ragsdale

Paul B. Ragsdale

cc/ Secretary of State Mark White
Attorney General John Hill

The Houston Post 21A

VRA

Hill attacks voting act decision

Weinberg

By DARRELL HANCOCK
Post State Capitol Bureau

AUSTIN — The U.S. Justice Department's decision last week to knock down part of the state's new voter registration act was "dictatorial," Atty. Gen. John Hill said Wednesday.

That federal agency violently has Texas "under heavy legal siege," and many of its regulations for carrying out the U.S. Voting Rights Act—which now permits it to oversee election procedures in Texas—are "bureaucratic foolishness," Hill added.

His unexpectedly blunt speech brought strong applause from more than 600 local election officials crowded into the Texas House floor and gallery for a House Elections Committee hearing on the recent extension of the federal law to Texas.

Two top lawyers from the civil rights division of the U.S. Justice Department, here to brief officials on the law, listened in [illegible] as Hill berated their boss, J. Stanley Pottinger.

The speech, Hill said later, came "from the gut."

Hill first called Pottinger a "brilliant" lawyer, but then mockingly read aloud his opinion striking down the planned [illegible] voter registration "purge" next spring.

Pottinger conceded that the purpose of the purge was not discriminatory, but could not conclude that the effect would not discriminate against minorities, Hill said. Comments from "interested parties"—Hill pointedly noted that they were unnamed—helped persuade Pottinger that many voters would be confused by the purge, the attorney general complained.

"How do we satisfy a situation where one person can absolutely and dictatorially say he is not satisfied?" Hill asked.

"We're used to accepting legal results in our state," Hill said. "But we're not used to accepting bureaucratic decisions."

Hill also accused the two visiting attorneys of, in effect, lecturing the local Texas officials like schoolchildren.

The U.S. Justice Department is going too far in requiring preclearance of such minor matters as moving a precinct polling place, Hill said. "When you see the appeals . . . it comes off a little bit as bureaucratic foolishness."

Hill also questioned whether the 10-year-old federal law even applies to political subdivisions smaller than counties. The law defines political subdivisions as those that register voters, he said, noting that only counties have that job in Texas.

Still the attorney general said he will help any local unit of government that will carry that issue to court.

The "heavy legal siege" against Texas, Hill said, includes several federal and federally assisted suits against the Texas Youth Council, the Department of Corrections and other state institutions. No other state is under such attack, he complained.

Hill denied his outburst was prompted by his unsuccessful efforts as far-acting on behalf of Gov. Dolph Briscoe and Secretary of State Mark White—to prevent the Voting Rights Act from being applied to Texas.

White echoed Hill's remarks. The Voting Rights Act is a "revisitation of reconstruction some 100 years after it supposedly concluded," he said. "I find it an abhorrent situation when the duly elected representatives of a free people are not permitted to carry into effect the laws they pass until they are cleared by unelected, generally unresponsive bureaucrats in Washington."

The out-of-state foils for the anti-federal rhetoric were deputy voting section chiefs Barry Weinberg and Carl Gable.

Weinberg outlined the federal law and urged the local officials to comply voluntarily.

As for what changes in election law or procedures must be submitted to the Justice Department for preclearance before they go into effect, "darn near everything [illegible]," he said.

The list includes redistricting, switches from at-large to district elections (or vice versa), a change from majority to plurality politics, use of different voting machines, addition or elimination of registrars or changes in their hours, changes in precincts, creation or changes of polling places, annexation, and overhauls of political party delegate selection plans.

So far, Justice Department has objected to only one of the more than 800 changes submitted by Texas and its subdivisions, Weinberg said.

Gable said federal law requires virtually all printed election material, including the names of the political offices on the ballot, to be printed in Spanish as well as English. But the agency permits "targeting" such material into Mexican-American precincts, he said.

With the audience rapidly dwindling to nothing by mid-afternoon, only two speakers defended extension of the federal voting rights law to Texas.

George Korbel of San Antonio, an attorney with the Mexican-American Legal Defense and Educational Fund, said his organization "believes" in the legislation.

And Modesto Rodriguez, chairman of the Raza Unida Party in Frio County, said his people have suffered intimidation and economic reprisals for voting. He suggested the federal monitoring would help guarantee "free enterprise" competition among all political parties, including small ones such as his own.

The Dallas Morning News

Friday, May 14, 1976

Discrimination claim disputed

Austin Bureau of The News

AUSTIN — State Rep. Paul Ragsdale of Dallas disputed Thursday Secretary of State Mark White's claim that discrimination does not exist in Texas elections.

White this week demanded an apology from the U.S. Department of Justice, which said election supervisors would be sent to Texas May 1, unless that agency furnished some evidence they found discrimination here.

Rep. Ragsdale said black students at Prairie View A&M have been systematically excluded from voting by Waller County officials. The university is in Waller County, although most students come from other counties.

The legislator charged White with registered to vote.

Ragsdale added he is unfamiliar with conditions in four South Texas counties named by the Justice Department as potential discrimination trouble spots.

In Waller County, Ragsdale objected to use of a residency questionaire for voters, asking the applicant where his car is registered and other questions.

Wednesday, March 31, 1976
Page A4—Austin, Texas The Austin American-Statesman

Court dilutes voting act

Washington Post

WASHINGTON — The Supreme Court made it easier Tuesday for states and localities covered by the federal Voting Rights Act to escape the burden of proving that their reapportionment plans are free of racial discrimination.

By a 5-to-3 vote the court ruled that reapportionment plans that improve black voting strength do not violate the federal law, even when they leave blacks far short of the voting strength of their share of the population.

The law, often called the most effective civil rights legislation ever passed, ordinarily puts a heavy burden on state and local governments, mostly in the South, to justify any change in their election laws.

By removing some jurisdictions from the law's coverage, Tuesday's decision shifted to the challengers — black voters, civil rights lawyers and sometimes the Justice Department — the burdens of proving that the proposed reapportionment would discriminate against blacks.

The burden of proof is a critical feature of the landmark civil rights law, which was designed to put teeth into the 15th Amendment's ban on racial discrimination in voting. Covered jurisdictions rarely have met their burden when challenged under the law, while challengers have never persuaded the high court that any legislative reapportionment violated the 15th Amendment.

The decision, a victory for a districting plan drawn up by the New Orleans City Council, was the latest in a series of setbacks for civil rights lawyers on the scope and effectiveness of the act.

BARBARA JORDAN
18TH DISTRICT, TEXAS

COMMITTEES:
JUDICIARY
GOVERNMENT OPERATIONS
DEMOCRATIC STEERING AND POLICY

JRM

Congress of the United States
House of Representatives
Washington, D.C. 20515

1534 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3816

FEDERAL BUILDING
915 RUSK
HOUSTON, TEXAS 77002
TELEPHONE: (713) 226-8724

9303 LIONS, 2D FLOOR
HOUSTON, TEXAS 77023
TELEPHONE: (713) 674-8465

March 31, 1975

The Honorable Paul B. Ragsdale
House of Representatives
State Capitol
Austin, Texas 78711

Dear Paul:

I have recently introduced, along with Congressman Badillo of New York and Congressman Roybal of California, legislation which would expand the Voting Rights Act to cover Texas and other areas where Mexican-Americans reside. Because of your interest in protecting the voting rights of both blacks and Mexican-Americans I thought you should have the enclosed material which explains the bill.

The right to vote is a basic American right protected by the Fourteenth and Fifteenth Amendments to the Constitution. The Congress has the authority to enforce these Amendments by the passage of appropriate legislation. This bill merely implements the guarantees expressed in our Constitution.

The Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee has heard extensive testimony about the degree to which the voting rights of minorities are not adequately protected in Texas. The need for this bill has been clearly and dramatically established. When the Subcommittee meets in mid April to consider amendments to the Voting Rights Act I am hopeful this bill will be favorably reported.

The bill has been carefully drafted in order that efforts to include areas where Mexican-Americans reside does not jeopardize the Act's continued applicability to the South. It is important that the life of the Voting Rights Act be extended beyond its current August, 1975, expiration date. Nothing should deter us from that goal. Title I of this bill fulfills that pledge.

Should you have any comments or suggestions please feel free to contact me.

Sincerely,

Barbara

BARBARA JORDAN
Member of Congress

BJ/ba
enc.

United States Senate

COMMITTEE ON PUBLIC WORKS
WASHINGTON, D.C. 20510

August 9, 1975

Honorable Paul B. Ragsdale
State Representative
House of Representatives
P. O. Box 2910
Austin, Texas 78767

Dear Representative Ragsdale:

In voting for the Voting Rights Act, my primary concern was for the people of Texas, for I believe our goal should be to make sure that no citizen of our state has any reason to feel that he has been hindered in any way in exercising the most cherished right of citizenship -- the right to cast an effective ballot.

I compliment the members of the Texas Legislature and our state officials for their diligent work and significant progress in their efforts to guarantee all citizens full participation in the electoral process. In fact, we are in compliance with all sections of the new Voting Rights Act except the part dealing with procedural changes in the electoral process.

We have come along way, but there is strong feeling that there is still work to be done to guarantee the right to vote of every citizen in our state.

It is this new "preclearance" requirement that has caused the most concern among Texans who question what they consider interference by the federal government in state and local election matters. They are disturbed by the prospect of having to submit to the Justice Department plans for any changes that could, in any way, affect the electoral process.

I could understand their concern over this provision if this were a case of a new federal infringement into the activities of the states. However, it is not. There is nothing new about this. We have had to have federal approval in the past -- but it had to be sought in the courts, in costly, protracted litigation, after the fact.

The new provision would replace the cumbersome existing process with a more swift administrative review by the Justice Department to determine in advance whether or not proposed changes are in compliance with the Supreme Court ruling or "one man, one vote". This procedure is far more certain, quite expeditious and considerably less costly than ex post facto judicial review.

Various court rulings showing voter discrimination in Texas were cited in hearings before the House and Senate Judiciary subcommittees and in floor debate in both chambers. We have only to look at the White vs. Regester case to observe the disadvantages of the old system. These issues remained unsettled during protracted litigation. Speeding the process of resolving these questions will help to achieve the result all of us want: equal representation for equal numbers of people in a truly democratic system.

This procedure removes the burden from individuals or groups whose only avenue of redress has been to bring suit in the courts to establish proof of injustices in the electoral process. I believe it is only right that the burden be shifted to the government to insure the right of every person in Texas to vote.

There were the compelling reasons that convinced me to vote in favor of the Voting Rights Act. I am convinced that the vast majority of Texans will agree with my position.

I would like to add that in view of the broad and unlimited interpretation often given the "preclearance" provision, I have received assurances from the chairmen of both the Senate and House Judiciary subcommittees to hold hearings in the near future in an effort to define and clarify the applicability of this provision. Furthermore, I am also requesting from the Attorney General a full review of administrative procedures on "preclearance" in light of the anticipated increased burden to assure the minimum of delay in the processing of such applications.

Sincerely,

Lloyd Bentsen

CHARLES WILSON
32 DISTRICT, TEXAS

VR4

COMMITTEES
FOREIGN AFFAIRS
VETERANS' AFFAIRS

Congress of the United States
House of Representatives
Washington, D.C. 20515

August 1, 1975

Honorable Paul B. Ragsdale
State Representative
P. O. Box 2910
Austin, Texas 78767

Dear Paul:

I am very pleased to report that I had the honor to be Barbara's only co-sponsor on the Voting Rights Act. I am sure you know that we adopted the conference report overwhelmingly earlier this week.

Sincerely,

Charles Wilson

CW:ls

JOHN G. TOWER
TEXAS

COMMITTEES
ARMED SERVICES
BANKING, HOUSING AND URBAN AFFAIRS
JOINT COMMITTEE ON
DEFENSE PRODUCTION

United States Senate

WASHINGTON, D.C. 20510

July 15, 1975

The Honorable Paul B. Ragsdale
State Representative
State Capitol
Box 910
Austin, Texas

Dear Mr. Ragsdale:

The Senate will shortly be considering legislation to expand the Voting Rights Act of 1965, and I appreciate having the benefit of your thinking on this issue.

The House has already passed a bill, H.R. 6219, to extend the VRA through 1985. That bill also places a permanent nationwide ban on the use of literacy tests and extends coverage to areas with a language minority population of 5% or greater. Language minorities are defined in the bill as "Asian American, American Indian, Alaskan Native and Spanish heritage". It is this latter provision--the language minorities title--which will for the first time bring the State of Texas under coverage of the VRA.

Here in the Senate, it is anticipated that the Judiciary Committee will report a bill shortly, and that Senate Floor debate will take place around mid-July. I expect there will be a number of amendments offered at that time (the House considered 23 amendments to its bill) before we reach final passage of the bill.

I firmly believe that no one should be denied the right to vote on the basis of race, color, or national origin, and I have stated my intention to support extension of the VRA. It is difficult for me to say how I will vote on specific provisions or amendments until I see what those provisions are, and what effect they will have on the total Act, but I shall certainly give this issue my undivided attention when it does come to the Senate Floor.

Sincerely yours,

John Tower

John Tower

JT:cr

Court: Voting Rights Act areas must get federal preclearance

By ANN McDANIEL
Washington Bureau

WASHINGTON — The U.S. Supreme Court Monday ruled that Kleberg County and other areas covered by the Voting Rights Act must have all changes in election laws or practices precleared by the federal government unless the plan is designed by a federal judge.

In a statement of strong support for the controversial law, which Congress is currently considering whether to renew, seven of the justices said court ordered changes in which the judge does not design the plan, but merely accepts it must be precleared by the Justice Department or the U.S. District Court for the District of Columbia.

"Because a large number of voting changes must necessarily undergo the preclearance process centralized review enhances the likelihood the recurring problems will be resolved in a consistent and expeditious way," Justice John Paul Stevens wrote for the majority. "Moreover if covered jurisdictions could avoid the normal preclearance procedure by awaiting litigation challenging a refusal to redistrict after a census is completed, the statute might have the unintended effect of actually encouraging delay in making obviously needed changes in district boundaries."

The decision will be used by lower court to determine which plans must be precleared as Congress and state legislatures continue reapportionment based on 1980 census figures.

In other action which could affect election practices in Texas, the justices agreed to determine whether the state's "resign-to-run rule" which requires certain elected officials to automatically quit their jobs if they run for a higher office, is constitutional.

The question stems from a lawsuit filed by John Fashing a county judge in El Paso. Under the state law, adopted in 1958, Fashing was forced to resign his post after serving only half of his four-year term in order to run for a district judgeship. Other state judges seeking a higher office also joined the lawsuit.

The Fifth Circuit Court of Appeals affirmed a lower court decision favoring Fashing, which said the state law was "invidiously discriminatory" and failed to serve any proper governmental interest."

The state law requires most officeholders to resign to run for a higher office if they have more than one year left in their term. Officials who must resign include district clerks, county judges, county treasurers, county commissioners, county and district attorneys, sheriffs and tax assessors and collectors.

The law does not force some officials to resign before seeking a higher office, including the governor, lieutenant governor, railroad commissioner and attorney general.

The state contends the law is needed because it compels officials to give their undivided attention to their office and eliminates any appearance of impropriety or conflict of interest.

In the Voting Rights case, Kleberg County commissioners were ordered by a federal district judge to redraw the county's precinct boundries as a result of a court ruling that existing boundries violated the one-person, one vote principle.

The commissioners submitted a plan, that was accepted by the court despite objections from area Mexican-Americans who argued that the plan diluted their voting strength in one of the county's four precincts. The plan had been prepared by Robert Nash, dean of the business school at Texas A&I University.

The federal district judge allowed the county to bypass preclearance by the Justice Department, saying "the Kleberg County Commissioner's Court did not reapportion the commissioner's court precincts on their own authority, but instead did so in response to a court order."

The 5th Current Court of Appeals overturned the district judge's ruling and ordered the plan submitted for preclearance.

The high court upheld the appeals court's ruling.

Portions of the Voting Rights Act expire next year and members of Congress are currently holding hearings to determine whether the act should be renewed and whether any changes in the law should be made. Many critics of the law contend he provision calling for preclearance should be eliminated. Instead, the critics say, changes in election practices could be challenged in court if they appeared to be discriminatory.

Bilingual education survives final rush

Associated Press

AUSTIN — The Legislature approved a proposal Monday to extend bilingual education in Texas schools through the elementary grades although a House member insisted it would segregate students by language.

The Senate adopted a conference committee report on bilingual education, 22-6, and the House approved the report, 82-56.

Rep. Milton Fox, R-Houston, a member of the committee that worked out the final version, said he had refused to sign the report.

"Educators feel that existing bilingual programs by and large have failed," Fox said.

"Bilingual education as we have been practicing it in Texas perpetrates segregation, and I fear it will perpetrate segregation in our society," he said.

HE SAID HE had gotten "very negative feedback from teachers" on bilingual programs.

Atty. Gen. Mark White praised the Legislature's action, saying, "Passage of this legislation is evidence that Texans can work together to resolve their own educational problems without federal court intervention."

U.S. Dist. Judge William Wayne Justice has said Texas must provide bilingual education for all public school students who need it through the 12th grade, if necessary.

"In addition to enhancing our appeal, this legislation will allow our non-English speaking children to learn English quicker so that they can compete equally with other children, and thus be able to take advantage of the many opportunities that Texas has to offer," White said in a statement.

"The funding provision is unfortunate," San Carlos Truan, D-Corpus Christi, said about the $56.85 per student allocated for each student in the bilingual program. He originally asked for $150 per student.

HE SAID THE program would affect about 350 school districts out of the 1,100 in the state. It would apply to districts in which at least 20 persons in a grade have limited English speaking ability.

Most people think the bill applies only to Spanish speaking children, Fox said, but in his district 17 languages are spoken in the home.

After about 10 minutes of discussion in conference committee, Rep. Hamp Atkinson, D-New Boston, made the motion to remove House amendments in view of the nearness of the end of the session.

One change would have said none of the $8.6 million appropriated for the expanded bilingual education program could be spent on pilot programs.

"I do not oppose pilot programs," said Rep. Matt Garcia, D-San Antonio, author of the amendment. "I just want to see as much money spent as possible on actual bilingual education."

The other change removed by the conferees said any child not proficient in English after four years of bilingual teaching would be transferred to "an alternative transitional language program, such as English as a second language."

Potheads light up at non-rally

FT WORTH S.T. MAY 31 '91

By DE VISE DE SHIELD
Star-Telegram Writer

ARLINGTON — While the Beatles' *Revolution* played in the background and long hair red occupants in passing cars flashed the peace sign, a small group of self proclaimed "potheads" gathered in Randol Mill Park claiming Gov. Bill Clements' law-and-order policies have "awakened a sleeping child" of the 1960s.

"Marijuana smokers live and are an actual constituency to somebody," Max Sinclare said, and that his Arlington based group plans to support candidates for mayor, governor and eventually the president of the United States.

The 36-year-old organizer and about 20 supporters of the Marijuana Mass Conspiracy were met by as many Arlington police officers Saturday in the Arlington park. Clusters of uniformed, motorcycle and undercover officers — including Chief Herman Perry and Deputy Chief Marion Rettig — were spread throughout the park although no arrests were made.

Officers, who tried to keep a low profile while remaining highly visible, checked about a dozen tobacco cigarettes rolled up purposely to look like marijuana cigarettes. At one point several Conspiracy members were suspected of passing around the illegal weed in front of the police, but an undercover officer said he watched them roll the cigarette from a pack of Marlboros.

That's exactly what they wanted us to do. Move in on them, and the cigarette be just tobacco," one officer said.

The Arlington City Council had refused to grant a permit for the "smoke in" rally, which had been advertised as offering "free pot, dope and music." The rally later was renamed a "be-in" — "in behalf of letting people be," the fliers stated. A temporary restraining order to permit the gathering had been denied Friday in a last-ditch effort in federal court.

"We're not actually out here to prove our point. We're out here to throw our frisbee today," Sinclare said. "It takes 500 or more people to violate the law, and me and my old lady hardly constitute 500 people." He identified his female companion as Freda People.

Sinclare, who has rented an office on Pioneer Parkway, said he hopes to reschedule the rally for July. He and American Civil Liberties Union lawyer Art Ecender have indicated they will file a suit to challenge the constitutionality of the city's park permit ordinance.

Sinclare said the aim of his group is to abolish all marijuana laws. He said the political movement had been building since the election of Clements and erection of U. Ross Perot's War on Drugs. He said the Arlington emphasis was sparked further by the Arlington council's recent approval of an ordinance banning shops that sell drug paraphernalia.

A member of the movement who identified himself only as Skipper — because, he said, he is an Arlington businessman with two children — said the group sees Arlington as a perfect breeding ground for the cause to abolish anti-marijuana legislation. He said Arlington, the community of young people, and the University of Texas at Arlington provides many liberal minds.

"I don't want to shake anybody's boat, but, likewise, I don't think they should shake mine," Skipper said. He said the group plans to fight Clements and Perot on their home territory.

Many of the Conspiracy members [illegible]

[illegible] acknowledged much of their program is aimed at grabbing headlines and media attention. "But we have a cause behind those of us who are Max Sinclare's aims in using negotiation techniques where you ask for more than you want," Skipper said.

Some requests Sinclare made Saturday included release of all "political" prisoners and a free "stash" of marijuana provided by the government to make up for the time pot has been outlawed.

He said a president elected by the Conspiracy would serve only seven days "to allow total freedom."

The Arlington council said it rejected Sinclare's request for a rally permit because the application listed as officers of the Conspiracy the late FBI Director J. Edgar Hoover, former Vice President Spiro Agnew and the former mayor of Chicago, the late Richard Daley. Sinclare also refused to pay a $200 deposit and $641 for police protection, which the city Parks and Recreation Department said was required to use the park.

The group in Randol Mill Park broke up after about 30 minutes Saturday, saying they were headed for Lake Grapevine. "If we don't smoke it here, we'll smoke it where we can," said one man, boasting a life sign tattoo and a "smoke-in" T-shirt.

Courts bill back in conference

SAN ANTONIO EXPRESS

MAY 31 '91

by Dick Merkel and David Guerino

[redacted]
Capitol News Capitol Bureau

AUSTIN — Two pieces of major legislation of importance to Bexar County and San Antonio were sent to 11th hour conference committees Saturday in an effort to adjust differences in Senate and House versions.

HB95, an omnibus courts bill by Rep. Buck Florence, D-Hughes Springs, calls for the creation of four new state district courts for Bexar County along with 16 others statewide.

However, when Florence's bill reached the Senate, the number of statewide courts was trimmed to 15 although the number of Bexar County courts remained unchanged.

Saturday, Florence asked the House not to accept the Senate version of his bill and the conference committee was named in both houses.

High center

Also stuck on high center late Saturday was a proposed constitutional amendment which, if approved by voters statewide, would place the San Antonio campuses of the University of Texas System under the $14 billion Permanent University Fund (PUF).

Two versions of the amendment have been approved in separate actions by the House and Senate.

The House plan, authored by House Speaker Bill Clayton, would create a second fund, nationally protected Higher Education Endowment Fund (HEEF) to provide financing for new construction at colleges and universities outside the PUF.

The Senate plan also establishes a second fund, the Permanent Higher Education Fund (PHEF).

Both proposals would open up the PUF, now shared by the University of Texas and Texas A&M University systems to include all branch campuses and schools for future construction money.

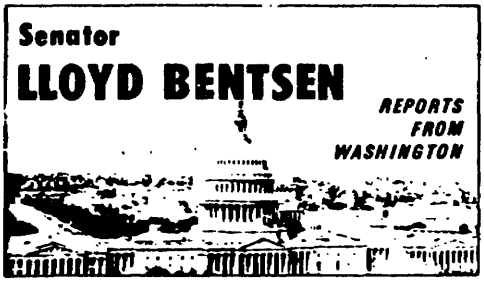
Expanded PUF

This would include the University of Texas at San Antonio, the UT Health Science Center at San Antonio and the Institute of Texan Cultures in the expanded PUF.

The major difference in the two measures is the way the second fund is to be financed.

Both conference committees must hammer out an agreement quickly if either the courts bill or the higher education construction funds proposal are to be passed by the Legislature which ends at midnight Monday.

33



SEPTEMBER, 1975

Too Much Government

Small Businesses Now Crippled

We rightly credit much of our nation's prosperity to the continued prosperity of small businesses -- the family-owned grocery store in Alpine, the dry-goods business in Mount Pleasant and the fresh fruit market in the Valley.

Such small businesses account for 97 percent of all American businesses.

They are responsible for one-third of the Gross National Product. And, especially important during these times of recession, small businesses employ roughly half of the people working in the United States.

All this is now in jeopardy. During Senate hearings I recently conducted we examined the plight of these small businesses, and discovered an alarming decline.

Census bureau statistics show that from 1948 to 1972 the number of self-employed businessmen shrank from 10.7 million to 7.1 million.

In 1960, small and medium-sized businesses held 50 percent of this country's manufacturing assets and earned 41 percent of the profits. By 1972, this had dropped to 30 percent of the assets and only 29 percent of the profits.

A major reason for this is that they are paying a higher tax rate than big corporations. A Congressional study shows that 143 large corporations had an average tax rate of 23.6 percent, compared to a tax level for all corporations of about 33.4 percent. I supported an additional tax cut for small business in the '75 Tax Act and will work to make it a permanent reduction.

Small businesses are also more crippled by excessive government regulation involving mountains of red tape. Too often, they cannot afford to hire lawyers and accountants to take care of these matters.

The Federal Paperwork Commission, created from a bill I authored, is now studying the problem, and formulating ways to relieve small businesses from the burden of massive government paperwork. But much more must be done and I am hopeful my hearings will help provide additional relief through tax reform and release from needless interference by government.

SHARING A MOMENT -- Allison Kay Brannon, a 6-year-old fellow Texan, has been waging a plucky fight against a hereditary disease that affects breathing, digestion and life since she was born. I am especially proud that Allison, daughter of Carolyn and Ron Brannon of Houston, has been chosen to represent the Cystic Fibrosis Foundation as the 1975 National Poster Child.

Soviet Aid Mocked Helsinki

Nearly two weeks before the United States joined Russia and twenty-eight other nations in signing the Helsinki communique, I learned from the Central Intelligence Agency that the Russian aid to Portuguese Communists might well exceed $10 million a month.

Despite the mockery this made of the Helsinki Summit Conference, President Ford went ahead and participated. A key provision, in fact, of the agreement he signed there reaffirmed that no country should intervene in the internal affairs of another nation.

Later, two weeks after the Helsinki Conference, Secretary of State Henry Kissinger joined me in condemning Soviet involvement in Portugal.

It is gratifying that the Administration has now taken a moral stand against Russian interference in the affairs of this NATO ally, but it would have been a far more effective stand had it been taken before Helsinki.

Education Suffering

First Senate Bill Barring Busing

I have consistently opposed the compulsory busing of school-children since coming to the Senate. And for good reason.

I've voted against it 37 times. And, today, as the issue is disrupting the educational process in northern and southern communities alike, I am more convinced than ever that it simply does not work.

Others are now coming to that conclusion. This month, for the first time, the Senate approved anti-busing legislation as an amendment to the Health, Education and Welfare appropriations bill.

I co-sponsored this measure and I am pleased that it passed. It is not a final solution. It will not affect court-ordered busing plans in Texas cities. But it is a very encouraging sign of the change in attitude by the Senate.

I intend to take new legislative initiatives in the coming weeks and months to stop the compulsory busing of school-children to achieve racial balance. I will support either statutory changes or a constitutional amendment directed at that end. And I am hopeful that, now, we can persuade the solid majority in Congress who previously defeated every effort to prohibit forced busing that it is wrong.

Our goal should be to provide quality education for all young Americans, regardless of color--rich and poor, white and black and brown. But busing has proved counter-productive to the overall goal of quality education. It has created bitterness. And caught in the middle of the strife are those very students we are supposedly trying to help.

The time has clearly come to stop chasing after some mythical ratio of black to white through compulsory busing. The time has come to realize that although the end is still the same--a quality education for all our children--the means have got to change.

Atom Bombs Mushroom

This spring sixty-five nations met in Geneva to review the Nuclear Non-Proliferation Treaty of 1970. There was much talk about the need to limit the spread of atomic weapons.

A few weeks later the world learned that while the conference was taking place, secret negotiations had made three more countries capable of producing atomic bombs.

West Germany had sold full-scale nuclear technology to Brazil. France had also been working behind the scenes, negotiating similar sales to both Pakistan and South Korea.

So, despite all the talk in Geneva, the number of countries that will someday be capable of exploding their own atomic bombs is steadily growing. By 1980, it is estimated that the number of countries which will have nuclear reactors operating or under construction will double, from the present 26 to 52.

There is an urgent need for a new international agreement governing the sale or transfer of nuclear technology to foreign countries.

I have urged the Secretary of State, the President and my fellow Congressmen to begin seeking a truly workable international agreement that will stop the mushrooming of atom bombs. Only in this way can we ease the expanding threat of nuclear war.

Letters to the Senator

Above and beyond . . . .

"On December 21, 1973, my husband risked his life in heavy seas without a net, rope and without a life-line to rescue a man at sea. Please forgive my personal pride, but I feel he deserves some official recognition for the service he performed as a member of the Coast Guard at the Port Isabel Station."

-- Mrs. Kenneth J. Snider, South Padre Island

EDITOR'S NOTE: In late spring, I contacted Coast Guard officials here in Washington about Kenneth Snider's heroic actions. I am pleased to report that SN Snider has since been awarded the Coast Guard Medal for distinguished service, an honor he clearly deserves.

. . . . the call of duty

"My recent promotion to Colonel reminds me that, had it not been for you in the first place, it is unlikely that I would have pursued a career in the military, nor have achieved the success I have enjoyed. Thank you for the confidence and trust you bestowed on me some twenty-five years ago. I will always be indebted to you for that honor."

-- Colonel W.G. Baron, Director of Instruction, Fort Bliss

EDITOR'S NOTE: As a U.S. Representative, I appointed Colonel Baron to the Military Academy in 1950. I am proud that he has since given so much to his country: 21 years of distinguished military service, including overseas tours in Spain and in Vietnam.

The Voting Rights Act: Pro . . . .

"Through your positive position on the Voting Rights Act, Texas can look forward to the removal of all vestiges of inhibitive voting practices wherever they exist in our state."

-- Representative Paul B. Ragsdale, Austin

. . . . And Con

"Every Texan who wants to vote, can and does. We do not need any more federal controls."

-- Mrs. B.R. Belcher, Austin

BLUEBONNETS FROM TEXAS -- Twelve high school seniors from throughout our state spent a week in Washington this summer visiting legislators, Cabinet members and other government officials as part of the annual Bentsen Bluebonnet Intern Program.

Tougher Laws Deter Criminals

Texans from the biggest city to the smallest town are worried about the ever-growing crime rate, and with good reason.

Last year alone, crime across the country jumped 17 percent over the year before. Violent crimes are up 11 percent. And FBI statistics show that over half of those charged with major crimes are either acquitted at trial, or released before trial with all charges dropped.

An adult burglar knows that he has only one chance in 412 of going to jail for any single burglary he commits. The robber arrested in England is more than three times as likely to go to jail as the robber arrested in New York.

This has got to change. We must take steps to fashion a system of law enforcement that insures those who commit crimes will be punished.

First, we must deal more severely with chronic criminals. There should be mandatory sentences for repeat offenders and the sentences should become harsher with each offense.

I have also introduced a bill changing federal law to impose mandatory criminal penalties for the possession of a hand-gun by anyone who was convicted of using a hand-gun in an earlier crime.

We must also work to better train and equip our police forces, make more effective use of judges and attorneys, and shape a truly workable approach to rehabilitation.

Certainly the very least Texans and other Americans should expect from their government is that they can walk the streets of their own neighborhoods in safety.

White House Seeks Aides

The White House is looking for 20 young Americans, ages 23 to 35, to serve as special assistants to Cabinet members for one year.

Any Texans interested in further information on this fellowship program should either contact my office or write: President's Commission on White House Fellowships, Washington, D.C. 20415.

United States Senate

WASHINGTON, D.C. 20510

Lloyd Bentsen

U. S. S.

Post Tribune
1-2-77

Raysdale Attacks Proposal To Bail Texas Out Of VRA

Austin -- In a statement issued recently, State Rep. Paul B. Ragsdale blasted Secretary of Stat Mark - White for consideration of a proposal to bail Texas out of the Federal Voting RIGHTS Act (VRA). And thus, must of .ustice department ap pr .prior to any change in voting or election procedures.

In a decision that was hand ed down unanimously by the U. S. Supreme Court, Justice Thurgood Marshall wrote that the VRA applies to Texas and that questions concerning jurisdiction covered by the act can nc be received in court and that "the only procedure available to Texas to seek termination of the voting rights act coverage is a bail out suit."

"The Secretary of State appears obsessed with the notion that black and brown Texas citizens do not deserve protection as the act now requires, Ragsdale stated." From the day Mark White heard of Congress' proposal to extend the 1965 VRA to Texas he has waged a continuous battle to ensure disenfranchisement of black and brown citizens. There are still many areas particularly in East and South Texas where blacks and - brown are deprived of full participation in the electoral process via such insidious methods such as at large voting, gerrymandering and in the case of the Prairie View A&M students outright denial of the right to vote in Waller County.

In 1975 Ragsdale lead the charge in combating the states political leadership contention that the VRA was not needed in Texas. It was last October, a year after the act took affect in Texas that Ragsdale finally succeeded in getting the Justice Dept. to take action to obtain voting rights for Prairie View students -- currently the only students in Texas who are denied the right to vote where they attend school. The Justice Dept. chose to file suit on constitutional grounds instead of sending in federal registrars as Ragsdale had requested and assisted in that effort.

Ragsdale went on to caution the Secretary of State that callous attempt to bail Texas out of the voting rights act will be met with full full resistance on the part of black and brown citizens and many of their elected representatives in various parts of this state. Texas has found more federal litigation in the area of voting rights violations than any other state in the Union. As for my part, this office has accumulated a wealth of data on the massive stabilizing effects of present voting and election procedures as well as chances in such, that will be prepared to refute the state's chief election officer in court if necessary.

DMN 9-3-77

Ragsdale blasts White's motives

AUSTIN (UPI) — A Dallas legislator said Friday Secretary of State Mark White's directive concerning voter registration of Prairie View A&M students in Waller County is "too little too late."

White issued a directive Thursday ordering Waller County Tax Assessor-Collector Leroy Symm to immediately stop using questionnaires as a prerequisite for registering voters in the county.

The secretary of state said he would ask the attorney general to file suit if Symm failed to comply with the order.

Rep. Paul Ragsdale, D-Dallas, said Friday White's order is "window dressing" and will have no effect.

"In fact, it raises some serious questions regarding Mr. White's motives," Ragsdale said. "After refraining from any real action whatsoever during his five years as secretary of state, his action on this matter immediately prior to his expected announcement for attorney general reeks with politics.

"I certainly hope that he doesn't expect this to bring him the support of the black citizens of this state who watched him fight tooth and nail against the extension of the young rights act of Texas."

DMN 4-19-74

Voter ruling under fire by Ragsdale

Times Herald Austin Bureau

AUSTIN — Dallas Rep Paul Ragsdale said Thursday he is dismayed that "a legal technicality" will prevent many students at predominantly black Prairie View A&M University from voting.

Ragsdale spoke after federal District Judge Wayne Justice ruled he did not have jurisdiction to reopen voter registration in Waller County.

Ragsdale said Waller County officials have systematically blocked black students from voting in a county which has a black population of 52.6 per cent.

Blacks hold no significant political offices in Waller County, Ragsdale said.

Ragsdale also charged Secretary of State Mark White with lack of leadership in fighting discriminatory practices there.

"The attitude appears to be a completely passive one," he said.

Representative Ragsdale Applauds Voting Suit

Capital City Argus Aug. 15, 1975

Rep. Paul B. Ragsdale made the following statement in regard to the signing of the Voting Rights Act extension by President Ford.

"I am glad that the Voting Rights is now a law that will be extended to Texas. I want to commend President Ford for his approval of the bill. It has been my position that Texas' election practices have not had the close scrutiny that they deserve. It will only be through the implementation of the Voting Rights Act that this can finally be acheived.

I am aware that Governor Briscoe along with others in our state have been offended by the idea that Texas should come under the same Federal supervision that has characterized other states whose voting practices have excluded people on the basis of color. In spite of these feelings the fact remains that Texas has had every opportunity to move expeditiously toward seeing that the rights of fair and equal representation through the ballot are acheived for all its citizens.

In Waller County the students at Prairie View A&M are still not allowed to exercise their constitutional franchise. It is a farce for reforms in voting procedures to be held up as the measure of Texas' progress in civil rights without realizing that the right to equal representation must follow. How futile it must be for the Black citizens of East Texas who cast a ballot reluctantly only because they understand that their vote is nullified by districting plans that are gerrymandered to keep them off the ballot. This is appalling when considering that a significant number of Blacks make up the po-

(See voting suit, pg. 6)

(Voting suit, from pg. 3)

pulation in East Texas.

The Voting Rights Act will help to legitimze the right to vote. In my East Texas Project, I have continually struggled to acheived the same goal. As has been the case with the Voting Rights Act extension, my East Texas Project has been subject to the same fierce opposition form the local elite.

We are now in the process of analyzing the bill, to see how it will not only help the Mexican-Americnas who desperately need it, but Black citizens as well.

I know that the extension of the Voting Rights Act to Texas will help to move our state toward the goal of equal representation for all."

[redacted]

Minority legislators challenge voting act

DTH 9-11-75

Times Herald Austin Bureau

AUSTIN—Six minority legislators, including Dallas Rep. Paul Ragsdale, took legal steps today to challenge the state leadership's opposition to the federal Voting Rights Act.

Ragsdale and Reps. Gonzalo Barrientos of Austin, Paul Moreno of El Paso, and George "Mickey" Leland, and Ben T. Reyes, both of Houston, filed a motion to become co-defendants in a suit filed by Gov. Deolph Briscoe and Secretary of State Mark White.

The suit, lodged by Atty. Gen. John Hill, asks a Washington district court to prevent Texas' inclusion under punitive provisions of the newly extended federal law.

A hearing has been set for 10 a.m. Friday in District Judge Gerhard A. Gesell's court.

In announcing their motion to intervene, Ragsdale, Barrientos and Reyes sharply criticized Briscoe, claiming he is thwarting minorities' basic voting rights.

Ragsdale characterized Briscoe's opposition to the law as "almost manic" and "senseless."

"These actions make me wonder how close the governor and his advisers are to the black and brown citizens of this state, who have been systematically denied effective access to the political process," Ragsdale asserted.

Mr. EDWARDS. It was an excellent presentation.

It seems to me the minority population of Texas has some built-in disadvantages that will exist even if the voting rights bill is extended in its present form, such as bloc voting and the established at-large jurisdictions, where people have been elected at large for a long time, like in school districts, which the Voting Rights Act can't touch.

Is it also true that what the Attorney General has referred to with regard to registration has largely been cured by new laws, so that a *Symns* case couldn't take place today; is that correct?

Mr. RAGSDALE. Well, I would hope not, Mr. Chairman. That situation was only cured in early 1977, which is not that long ago. It happened to be a unique situation. It was the only situation of that nature which existed in the United States. It was certainly a sore spot on this State.

But the fact is that the only remedy which took place under the Voting Rights Act, after about a year-and-a-half of attempts to persuade the Justice Department to intervene. Finally a suit was filed against the county tax assessor-collector in October of 1976. The State government had nothing to do with the elimination of that problem.

Mr. EDWARDS. Thank you.

Counsel?

Ms. GONZALES. Thank you, Mr. Chairman. I have just a couple of questions.

Would you share the testimony of the previous witness, Councilman Eureste, that the Voting Rights Act has not only helped to open up the process in terms of the city council and the State representative positions, but also that it has a ripple effect in terms of the people who were appointed to the different commissions and boards?

Mr. RAGSDALE. There's no question about it. The fact is that when blacks and browns have been able to get elected to places where they have never been elected, there have been tangible benefits in terms of additional funds to come down in our communities, which have been deprived communities. There has also been certainly a greater representation on various city and county boards and commissions than previously was the case. So the benefits are not only tangible but there are social and psychological benefits where people feel like they're no longer impotent, that they can, in fact, affect the political process and derive some benefits from it.

Ms. GONZALES. The other question I would ask is whether you would also share the testimony that was presented to the subcommittee in Washington, D.C., that section 5 has also had the effect of requiring, or at least has had the effect of having local and State officials consider the political impact upon minorities in terms of vote dilution and the like, access, where before they might only consider the economic or strictly personal gains or losses that would be made by a particular change.

Mr. RAGSDALE. Well, I totally agree. In fact, I think if it were not for this law the blacks and browns in this State would be in much worse shape than we are now.

The fact is, also the submission process—I am on the submissions list, and I have over the various years tried to monitor that list, particularly in my area of concern, mainly the eastern part of the State, and where blacks are not even aware of the Voting Rights Act and are not aware of much at all politically, I have taken it upon myself to work with people in these various communities so that when a change is submitted to the Justice Department, if it's going to have a negative effect on the black population, then I will work with that population in order to try to get the situation altered.

Without that sort of monitoring device, in many instances blacks and browns would be left without any way to determine what the local officials in any given area are doing.

I regret that the black population is not more organized in a group action in this State than it is. That's one reason that I, as a State representative—and I appreciate the fact that I was referred to as Senator; I'm thinking about that next year. [Laughter.]

That is one reason I have taken it upon myself individually, out of conscience and a sense of need on the part of a deprived people, to help in any way I could, even though my staff is certainly not a huge staff.

Ms. GONZALES. Thank you, Representative Ragsdale.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. No questions.

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

Our next witness is Hon. Paul Moreno, who is a State representative from El Paso. Mr. Moreno, we're delighted to have you here. Without objection, any statement that you might have will be made a part of the record in full, and you may proceed.

TESTIMONY OF PAUL MORENO, TEXAS STATE REPRESENTATIVE, EL PASO

Mr. MORENO. Mr. Chairman, I do not have a written statement.

As the committee knows, I am a member of the Texas Legislature, and I also chair the Mexican-American House Legislative Caucus, which consists of 21 members. I speak for the Mexican-American Legislative Caucus in toto.

We met just before the legislature adjourned in a formal meeting of the caucus, and at that time the caucus voted that we appear before the committee, and I am very appreciative that the committee invited me to come here and tell this committee the need, the urgent need, the dire need—I cannot stress enough to explain the need for the extension of the Voting Rights Act.

We have just experienced a redistricting session, as you call it. I call it a session where the rights of Mexican Americans were diminished, in spite of the Voting Rights Act. I am here to tell you, members of this committee, that whatever the State officials tell you about this great State of Texas, that discrimination exists. Don't let nobody kid you. It does exist. It's just like a black cloud hanging over you. You don't know when it's going to hit you. It hit us here in the legislature.

If it wasn't for the Voting Rights Act, I don't know what they would be up to right now. In my county, for example, we are going to pursue the redistricting that was supposedly done in the House

of Representatives. We are waiting for the Governor to sign it. I don't know if he signed the bill today or what have you.

But let me just give you an example of what happened in El Paso County. El Paso County has a percentage of 64-65 percent minority, 65 percent. It's 61.9 Mexican American and 3 point something black. We are haggling and asking for three predominant Mexican-American districts out of a 64-, 65-percent minority population. I think that is graceful on our part, we the members of the House, to go up there and, in essence, beg the house of representatives to permit us three seats from El Paso County, three out of five. The house of representatives, led by Speaker Clayton and the chairman of the Compacts and Regions Committee, did a marvelous job in obstructing what we thought was going to be good representation for El Paso County. We were able to convince the committee—and I'm sure you understand the committee process—that the plan that we proposed, two minority members, myself and Representative Viaz, was a good, equitable plan. In fact, the committee voted to adopt our plan.

Overnight, the speaker of the house and Mr. Von Dolan, the chairman of the Compacts and Regions Committee, decided not to take the committee's recommendation and, without holding a committee hearing, without doing anything, they went ahead and submitted their plan.

Their plan, on its face, looks marvelous. It looks tremendous. It gives a numerical percentage in four Mexican-American districts. But what happened is that they did not go into detail and find out exactly what these percentages did. For example, one district, the west side district, has 57 percent Mexican-American representation. They don't realize, and they didn't take it into account, that that particular district represents the richest part of town, the two richest country clubs, and then goes all the way down south and takes what used to be the old Chamisol [phonetic] area, which used to be part of Mexico until recently.

Now, out of that 57 percent, our figures indicated that perhaps at the most 30 percent were eligible to participate in the political process. The other districts were the same, too. To summarize, El Paso was only awarded or given one district out of five that were predominantly Mexican American.

Without the Voting Rights Act, it is just going to be insurmountable for us to go to court. And let me tell you, I echo the comments of my good friend Paul Ragsdale. Paul Ragsdale has done a tremendous job in the field of redistricting. I echo the remarks of my good friend Bernardo Eureste. We have to have this quasi-judicial factor that we can depend on, without going through the great expense of going to court. We have to tell these people in Texas, yes, there is discrimination, yes, we have been denied access to the political process; we have to tell them that there are many language barriers, cultural barriers; we have to remind these people that there is a poll tax that existed in 1966. We have to tell them that there were segregated schools in the State. We have to tell them there's a great disparity of income levels. We have to tell them that there is polarized voting in the State. We have to tell them about the limited level of voting population.

So the State officials must understand, even if they're not doing it consciously, even if they are not discriminating against us consciously, it is a fact that what they have done has completely negated us the right to proper representation. Again, I echo the comments of Mr. Eureste. Yes, the right to vote and the right to representation. He analyzed it so beautifully when he said just a few minutes ago that the United States of America would certainly not like the whole Congress of the United States to be elected west of the Mississippi or east of the Mississippi, as the case may be. This is exactly our problem. This is a problem that we have in Texas and we cannot convince the State officials that we have a deep concern for this.

You know, in El Paso my city council redistricted 4 years ago, and the district plan was so good that it even fooled the Justice Department because it gave numerical majorities but did not take into account the other factors. As a consequence, El Paso has six city council people, and so far we have been able to elect two. One, in my district where I live, has a majority Mexican Americans. Again, my district is tied into the country club and what have you. We have had some well-meaning, well-recognized Mexican-American individuals run and they have been unable to get as far as a runoff. So all these things have to be taken into account, and I am just here to plead to you to use all your efforts in extending the Voting Rights Act for Texas.

I might just end my comments by saying I was here in 1975 when Texas was going to be included in the Voting Rights Act, and every State official, including Mark White that was here, testified against it. Everyone. So don't fall for that, that they're for equal representation or what have you.

So, with that, I would just close my remarks and answer any questions you might have. Again, I'm sorry that I did not have a written statement, but we just adjourned and I got home the other day and had to come back down here.

Mr. EDWARDS. I think you gave us a very good statement, Mr. Moreno, an excellent statement.

Do you think that very many white people in Texas would vote for a Mexican American?

Mr. MORENO. No. No, sir.

Mr. EDWARDS. So that's what you meant by "polarized" voting.

Mr. MORENO. We have a polarized voting system in Texas. I think it hurts the Mexican American more because of our level of education, because of our economic situation. Let's face it; we never had candidates to vote for. El Paso is 400 years old. We've had two Mexican-American mayors. We have had in the house of representatives in the legislature five people serve since El Paso became an entity. Three of those people are serving right now; three Mexican Americans are serving right now. One was defeated because he voted to abolish the poll tax. So you have an indication of what kind of obstacles we have in Texas.

Mr. EDWARDS. What about the Mexican-American people in Texas; would they vote for a white candidate rather than a Mexican-American candidate if they thought the white candidate was a better candidate?

Mr. MORENO. I think—I know I have, and I'm sure you know that other people have. But again, the mere fact that we see a Gonzalez, a Garcia, a Eureste, a Moreno on the ballot, the average person that does not realize what the person stands for and what have you is going to punch the Moreno, the Eureste and so on.

I think that a great number of my Anglo friends—and some of my best friends are Anglos—[laughter] vote against the Moreno. It's that simple.

Mr. EDWARDS. You have expressed a certain amount of emotion and have been candid about what your feelings are on this issue, that it effects you personally and internally. What will be the mental state of Hispanics in Texas if Congress doesn't extend the Voting Rights Act?

Mr. MORENO. Oh, my god. Street politics.

Mr. EDWARDS. Would it be a serious blow?

Mr. MORENO. Street politics, I can guarantee you that. As it is right now, we are tense about what has happened in redistricting. You know, the congressional redistricting plan was not adopted simply because the Mexican Americans in Corpus Christi were attempted to be diluted. The house is rubberstamped by the senate, and we rubberstamp the senate version. So that's the only reason there was no conference committee on those two plans.

I hate to say this, but unless we get our proper representation, I know the people I represent, the people I talk to, are very uneasy. I know it's going to create another problem as far as street politics is concerned. I don't want to see this again. I already went through it once and I think once is enough in anybody's lifetime.

Mr. EDWARDS. Well, we don't want to see it again, either. The message ought to get out to all the people of the United States that the consequences are bound to be very serious if we turn our backs on the best civil rights law that has ever been enacted in the United States.

Mr. MORENO. I agree.

Mr. EDWARDS. I agree with you there.

Counsel?

Ms. GONZALES. Thank you, Mr. Chairman.

Representative Moreno, we have heard testimony in the past where comments have been made to the effect that the bilingual ballots really are too costly and that they discourage people and are a disincentive for Chicanos to take part in or become a part of the political mainstream.

How would you respond to those concerns.

Mr. MORENO. I think that's incorrect. I think that's incorrect because I have personal knowledge of a lot of people that just can't read English, you know, and they're voting people. I think that statement is totally hogwash.

They use that term in Texas, "hogwash". It means no good. [Laughter.]

Ms. GONZALES. You would not agree, then, with the thrust of the three bills that have been introduced before the subcommittee, that would not only delete section 5 with regard to Texas, but also would delete the minority language provisions.

Mr. MORENO. That's correct.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. No questions.

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

Mr. MORENO. Mr. Chairman, one more thing. If you would deliver this message to Congressman Pickle, being a double minority is very rough. It took me a half-an-hour to get into this building, a U.S. Federal courthouse, because they have no ramps here. Can you imagine that?

Mr. EDWARDS. I think it's against the law.

Mr. MORENO. It is against the law, and I think the good Congressman from Austin should be chastized for it.

Mr. EDWARDS. I will tell Jake Monday morning that we're not going to stand for it.

Mr. MORENO. Tell him that we're going to have another lawsuit on not only the Voting Rights Act but on a violation of the rights of the handicapped.

Mr. EDWARDS. I understand that, sir.

Mr. MORENO. Thank you, sir.

Mr. EDWARDS. Our next witness is Olivia Walker. Miss Walker is a staff representative of the Black Caucus of the State Legislature. It's very nice to have you here.

TESTIMONY OF OLIVIA WALKER, STAFF REPRESENTATIVE, BLACK CAUCUS, TEXAS STATE LEGISLATURE

Ms. WALKER. Thank you.

Mr. Chairman and members, today I would like to present a resolution to you on behalf of the members of the Texas Legislative Black Caucus.

Mr. EDWARDS. It will be accepted for the record, without objection.

Ms. WALKER. Thank you.

The text of the resolution reads as follows:

Whereas, for United States citizens, the right to vote is fundamental; it provides a means for representation of public opinion and is preservative of all other rights inherent in a democratic form of government; and

Whereas, it is widely recognized that certain states in this country have practiced systematic discrimination in voting requirements and procedures that for decades resulted in the effective disenfranchisement of a large majority of Southern blacks; and

Whereas, the United States Congress passed the Voting Rights Act of 1965 in an attempt to ensure equal voting opportunities; as part of its provisions, the Act requires Southern state and local officials to demonstrate that changes in the election laws have neither the purpose nor the effect of discriminating on the basis of race; and

Whereas, one especially important section of the Act requires certain states with a history of discrimination to obtain advance approval from the Justice Department or from a federal court for any change in election rules, and this section, like each part of the Act, was included in the measure because of specific and repeated actions taken by the states; and

Whereas, the Voting Rights Act has resulted in greatly increased political participation by blacks and other minority groups, and it is vital that the progress made in this area not be lost. Now, therefore, be it

Resolved, That the Texas Legislative Black Caucus hereby recognizes the overwhelming importance of the changes resulting from the successful implementation of the Federal Voting Rights Act of 1965 and express strong support for the continuation of all provisions of the Act.

As is stated in the Resolution, the Black Caucus members believe that continuation of the provisions of the Act is necessary to ensure a fair political future for all Texans.

I would like to leave a copy of this resolution with you, and I would like to thank you for your time and interest.

[The resolution follows:]

RESOLUTION

WHEREAS, For United States citizens, the right to vote is fundamental; it provides a means for representation of public opinion and is preservative of all other rights inherent in a democratic form of government; and

WHEREAS, It is widely recognized that certain states in this country have practiced systematic discrimination in voting requirements and procedures that for decades resulted in the effective disenfranchisement of a large majority of Southern blacks; and

WHEREAS, The United States Congress passed the Voting Rights Act of 1965 in an attempt to ensure equal voting opportunities; as part of its provisions, the Act requires Southern state and local officials to demonstrate that changes in election laws have neither the purpose nor the effect of discriminating on the basis of race; and

WHEREAS, One especially important section of the Act requires certain states with a history of discrimination to obtain advance approval from the Justice Department or from a federal court for any change in election rules, and this section, like each part of the Act, was included in the measure because of specific and repeated actions taken by the states; and

WHEREAS, The Voting Rights Act has resulted in greatly increased political participation by blacks and other minority groups, and it is vital that the progress made in this area not be lost; now, therefore, be it

RESOLVED, That the Texas Legislative Black Caucus hereby recognizes the overwhelming importance of the changes resulting from the successful implementation of the federal Voting Rights Act of 1965 and expresses strong support for the continuation of all provisions of the Act.

Mr. EDWARDS. Thank you, Miss Walker, and thank the members of the black caucus of the State Legislature.

How many are there?

Ms. WALKER. There are 12 members of the caucus, and 13 black members of the legislature.

Mr. EDWARDS. You can advise them that if the Voting Rights Act is not extended, there might be a lot fewer than 12 in a couple of years.

Ms. WALKER. Definitely.

I also would like to extend the apologies of the chairperson who was not able to be here because of obligations that he had in Houston. That's Representative Washington.

Mr. EDWARDS. The apologies are accepted and the best wishes of the subcommittee go to the chairperson.

Mr. Boyd?

Mr. BOYD. No questions.

Mr. EDWARDS. Thank you very much.

Ms. WALKER. Thank you.

Mr. EDWARDS. Our last witness, last and certainly perhaps the best, is Mr. George Korbel. He represents the Texas Rural Legal Assistance. We're glad to have you here and we apologize for keeping you waiting all day, but it has been interesting, hasn't it?

Mr. KORBEL. It certainly has, Mr. Chairman.

TESTIMONY OF GEORGE KORBEL, ESQ., REPRESENTING TEXAS RURAL LEGAL ASSISTANCE

Mr. KORBEL. Mr. Chairman, my name is George Korbel. I am an attorney. I was formerly a staff attorney and regional director of the Mexican-American Legal Defense and Education Fund. I testified before the Congress 6 years ago on the Voting Rights Act, and I really welcome the opportunity to appear again.

Mr. EDWARDS. It's nice to see you again.

Mr. KORBEL. I also would like to point out that it is very appropriate that these hearings are being held in this courtroom. This is a very historic place. I don't know if anybody has told you that, Mr. Chairman.

These courtroom walls have played a backdrop to many lawsuits which were central to the civil rights movement, not only in this State but in the entire country. *Sweat* v. *Painter,* the first breakthrough in school desegregation in the United States, took place in this courtroom.

The poll tax was held unconstitutional in this courtroom. Even the more limited annual voter registration laws were voided in this courtroom. The excessive filing fees case up to several thousand dollars just for file for election in Texas was knocked out in this courtroom. The requirement that a voter in Texas sign his or her ballot was heard in this courtroom.

The Austin school desegregation case was held in this courtroom. The Waco school desegregation case was heard in this courtroom. The Waco single-member district case was heard in this courtroom. About 12 other school desegregation cases were heard in this courtroom. This is really a historic place.

If these walls could tell you the story, I think this is the story of the civil rights movement in Texas, in a sense the story of the civil

rights movement in the United States. So I'm really happy that you're here and I hope you can feel what this courtroom means to us in Texas.

I was asked to testify at these hearings only a few days ago and, therefore—I have been deeply involved in the reapportionment session, so I don't really have a prepared statement. I would like to tender one to you, if I may have that opportunity.

Mr. EDWARDS. It will be received at the proper time.

Mr. KORBEL. At this time I would like to tender a study that I have done, which is forthcoming in the Journal on Politics. It's a joint venture between myself and Chandler Davidson, who is the chairman of the Department of Sociology at Rice University on the effects of at-large elections in Texas.

What we did, we did a survey of before and after, of how many people were elected before we got single-member districts and how many people were elected after, immediately before and after. It shows that about three times as many minority people, blacks and Mexican-Americans, were elected after the imposition of single-member districts than before the imposition of single-member districts.

Now, we did this in such a way that I think that we were able to wipe out almost all other ecological factors, so that you can really see a tremendous change. Just like you have to be in this courtroom and know about this courtroom to feel the change, if you lived in those cities like I have in San Antonio, and you spend as much time as I do in Houston, you can feel the change that single-member districts accomplish. In any event, I would ask the Committee if they would take a look at that paper.

Mr. EDWARDS. It will be made a part of the record, without objection.

[Committee Note: Study is available in the Committee's files.]

Mr. KORBEL. There are a couple of things I will touch on and go into greater detail on in my prepared statement when I send it to you.

First of all, on bilingual elections I want to say three things: "Con nosotros, estamos de acuerdo, and P.T. Barnum." I can explain those.

"Con nosotros" was the slogan of John Tower; "estamos de acuerdo" was the slogan of Bill Clements; and P.T. Barnum, when Ringling Brothers, Barnum and Bailey Circus came to Texas, all of their ads were in Spanish, because P.T. Barnum was the greatest promoter of all times and the Ringling Brothers Circus, which was the descendant of the greatest promoter of all times knew, that if you want to appeal to the people, you appeal to them in the language that they're the most comfortable. Maybe they speak English, but they're the most comfortable in Spanish.

I want to underline the fact of something that was mentioned when Mark White testified, and that is that in Texas the State and the counties could do more targeting of the bilingual ballot. They could do more targeting in the counties and in the precincts, but they don't do it. I don't know why they don't do it. Mark White claims that some unspecified person from the Justice Department says that they couldn't. But it's true that, in fact, they can.

Mr. EDWARDS. That is certainly true, and expenses can go down for a county, and in a county where there are very few Spanish-

speaking people and the targeting can be very limited and cost a very little amount of money. I think in some cases the registrars haven't really wanted to do it.

Mr. KORBEL. I'm a member of the Federal Election Commission's panel on bilingual elections, and we did a study on that. We found that in Texas there was a great deal of hostility being expressed very openly by voter registrars and by people who were in charge of preparing the ballots to print in Spanish. Even when we explained to them that it would be easy for them to get around some of these requirements that they complained about, they still showed hostility. They just didn't believe in the concept of bilingual elections.

In fact, we have done some studies—and I'll tender those to the committee, also—which shows that the bilingual elections are not only not a problem, but they really encourage turnout in voter registration.

Another thing I wanted to point out, it was mentioned about school boards, something to the effect that maybe if you elect people from single-member districts on school boards they wouldn't have the interest of the entire community at heart.

Well, first of all, I want to point out that we only have, I think, six Texas school boards out of 1,148 which are elected by single-member districts, so we really can't tell from that. I, myself, was involved in litigation against one of them, against the Waco Independent School District, back about 2 years ago. They had a dropout rate among Mexican Americans and blacks which came close to 80 percent, with no Mexican Americans or blacks on that school board.

Now, it just seems to me that the interest of all of the community in that school board were not being taken into consideration by those people who were being elected. In fact, they sat right in that witness chair over there and they had a heck of a time explaining why they had an 80 percent dropout rate. They were embarrassed. The superintendent of the schools became visibly embarrassed and couldn't deal with those statistics.

I might say, since we have elected some minorities to that school board after the addition of single-member districts, the dropout rate has gone down remarkably and that children are staying in school and doing a good job.

The other thing I wanted to say was the quotation that you make from the Civil Rights Commission, about Texas never having passed an affirmative piece of election litigation without being under Federal court order, I am proud to say that I think the Civil Rights Commission copied that from my statement before this committee 7 years ago—at least I like to think that they did. I said that 7 years ago, and after I said it Mark White came up and testified, the secretary of state, testified before the Senate. He had every opportunity to refute that statement. In fact, he brought along a document which was around 700 pages long, bound in green—I'll never forget, buckram green—in which he had put together all the attorney general's opinions which showed that Texas was doing this tremendous job of encouraging minority political participation. Right there, bound in green. We looked at that thing, and one after another—it didn't say so, but we knew they were the

result of a court opinion. There had been a court opinion, for example, on the requirement there be bilingual assistance provided in the polling places. We knew that. I knew that because I was involved in the litigation myself. So the attorney general, after the court opinion comes out, puts out a statement directing all the voter registrars in the State that they have to provide bilingual assistance.

So it's a positive thing, no question, but it's the direct result of court action. There was example after example after example in this very long, buckram bound submission. He admitted finally, at the end of all his testimony, after they went through all of those things, that yes, that was true. I think, having looked at Texas in the 7 years that have ensued, that there has been a change. And I hate to differ with my good friend, Representative Edwards from Houston, but I think that when a man is a State Representative and participating as a State Representative, he kind of hates to think that what he's doing is not accomplishing as much as he would like to.

I want to say a couple of other things, too, and I don't want to take a cheap shot at Attorney General White, but my father-in-law is a south Texas politician—I'm kind of proud of that. He's a county commissioner in south Texas, so I have had an opportunity to speak to both sides of the issue. I have spoken to the people who are on the inside, who actually have to make these voting rights submissions, and I have yet to run into anybody who actually complains about the volume of work that a Voting Rights Act submission entails. It just doesn't happen. In fact, they kind of joke about it.

In fact, my father-in-law says—and I quote him here—that the only problem he has seen with the Voting Rights Act are these terribly boring speeches that Texas politicians give at the commissioners court meetings when they meet around the State. They come in and try and rile people up against the Voting Rights Act. He says that's the only problem he sees with the Voting Rights Act.

But if you have to change it, I want to say to you, if you have to change the doggoned Voting Rights Act, think about the ability that we have to deal with the change; give us some thought here. Think about the cost it is to litigate these cases. If there are 18,000 changes in Texas, just think what it would take for us to have to look at all 18,000 changes to decide what it was that was going to have to be precleared or what should be considered by the Justice Department. It would really switch the burden of the Voting Rights Act and, frankly, as you know, Legal Services is in trouble and I know the Mexican-American Legal Defense Fund is very short of funds and the private bar is really strapped in the State on civil rights issues. So that if you were to change the Voting Rights Act, even as little as what Ambassador Krueger suggests, I think you would do a great deal to emasculate the law.

One other thing I wanted to say, and I just wanted you to think about this, and that is what has happened since 1975, how much progress have we made. There has been a lot of progress. We have single-member districts in San Antonio as you have heard; we have single-member districts in the city of Houston, electing the first

Mexican American in the city of Houston. Those are all the result of the Voting Rights Act.

There has been some talk about Crockett County and Carroll County and all these counties around the State, all the result of the Voting Rights Act. And yet, in the 6 or 7 years that have ensued since the Voting Rights Act, I have not seen one county voluntarily apportion itself and create a district that a Mexican American or a black could win. I haven't seen one, except if they have been forced to do it by litigation. Not one.

I realize, maybe they don't have a responsibility to maximize minority political participation. But they do have a responsibility to recognize minority political strength. That's clear under the Voting Rights Act. None of them have done that. I don't see one city which actually voluntarily moved to single-member districts. All of them were done by prodding through litigation. That's only the way it has happened.

I also want to point out that at least 14 suits have been filed against Texas jurisdictions to enforce the Voting Rights Act. These were jurisdictions who refused to obey Federal law. We had to sue them, at least 14 times.

Finally, I want to mention a couple of other things about what Attorney General White said. He says that Texas has really good laws on coercion and discrimination. I'm sure that they do, but the problem that they have is the problem that you pointed out, Mr. Chairman, and that is that nobody enforces those laws. There is some testimony in a hearing which was held by the Southwest Voter Registration Project—and I think you have a copy of this; it was tendered into the record—and there is example after example after example of election fraud in Texas, which has been given to the attorney general and the local prosecuting attorneys, and nothing is done to prosecute those. Even situations where representatives of the attorney general have been present when the fraud took place, nothing is done to deal with those.

Again, I can't help stressing the size of Texas. I always like to talk about how big Texas is. I remember 7 years ago I told you if you flew from Houston to Los Angeles, you were over half way when you landed in El Paso, and when you drive from Brownsville to the Canadian border, you're 67 miles short of half way when you cross the Texas line.

I have another one I want to tell you about. Did you know, if you took just the Mexican Americans and the black people out of Houston and made a separate city out of them, it would be the ninth largest city in the United States. Now, that's a tremendous size.

I want to tell you how many Mexican-American State representatives there are going to be from Houston under this recent reapportionment plan that was just adopted by the legislature that's going to be signed by the Governor. There's going to be one. There are 385,000 Mexican Americans in Houston, and they gerrymandered that in such a way so there will only be one Mexican-American State representative. You tell me whether that's progress.

Representative Edwards talked about there was finally going to be a black Senator from Houston. There's 485,000 blacks in Hous-

ton. There's going to be one black Senator. There ought to be two black Senators. There's going to be one black Congressman; there ought to be two black Congressmen.

I think the State has begrudgingly given up as little as possible in terms of this last reapportionment, and I expect several voting rights objections from this last reapportionment.

Maybe I can say one more thing, and that is, if the Mexican-American population in Houston were a separate city, they would be the 33d largest city in the United States, larger than Minneapolis or St. Paul or Miami, any of those cities. A tremendous size, with tremendous amounts of ability to participate in the political process that has just been totally shut off.

I ask you to extend the Voting Rights Act. Let's get about the business of making it fair for everybody.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Korbel. As I said earlier, it's very nice to have you here again. I think so far you and the attorney general are the only two witnesses who appeared before the committee in 1975.

Don't you think we ought to get this issue behind us and get on to some of the other important issues facing America? In other words, we ought to agree, as a people of this country, that we're going to encourage everybody to participate; we're going to have fair districts and get about some other major problems we have.

Mr. KORBEL. Exactly, Mr. Chairman. I wonder if there isn't a possibility that when you hold more hearings on this in Washington, so that the full committee could hear him, if you could bring Doug Caddy over to testify, because he knows more about the functioning of the Texas political system than just about anybody does, because he was on the inside. I think that nobody can accuse him of being politically biased. He understands what is going on and I sure wish that everybody in Washington could hear his testimony. He makes a lot of sense, as far as I'm concerned.

Mr. EDWARDS. That's a very good suggestion. Thank you.

Counsel?

Ms. GONZALES. Thank you.

Mr. Korbel, one of the complaints that has been voiced about the section 5 preclearance is that it allows an administrative agency, the Department of Justice, to unilaterally force a local jurisdiction to change its electoral scheme, to change from at-large to a district election, and that it seems an unfair situation to be in.

How would you respond to that?

Mr. KORBEL. All it does is recognize certain changes, changes in reapportionment, changes in terms of annexations. All those changes can in some ways so affect the political structure, that if the city or the subdivison really wants those changes, that it has to adopt some progressive additional change so that things will not be materially different than what they were before.

I don't think there's a unilateral forcing. If the city didn't want the annexation, let's say, they wouldn't have to make the annexation.

In terms of those annexations, too, I want to make sure this is real clear. For example, when Houston annexes, Houston doesn't annex a couple of blocks. Houston annexed 128 square miles. What

is that, 10 times the size of San Francisco? You know, in 1 year. So they do these things in a big way. You add 128 square miles to a city, you really affect the ability of someone to campaign. Golly, Houston is now almost 600 square miles.

Do you know that 3 of the 10 largest cities in the United States could fit within the boundaries of the city of Houston, with room for Minneapolis, St. Paul, and San Francisco in there, and you could get Austin in. These are tremendous changes when they make annexations.

Ms. GONZALES. Let me also clarify one other point.

Is it your sense, based on your experience, that the Justice Department does act unilaterally, or do they try to take into consideration maybe counterproposals that the local jurisdiction may make? How much do they take into consideration the concerns of local governments?

Mr. KORBEL. My experience has been that the Justice Department just bends over backward, and I am highly critical of them because they do that. They just bend over backward to give every consideration to local units of government. In fact, we say there have been 130 objections in Texas. In my opinion, there probably should have been at least twice that many. I think they miss quite a number of objections. In some ways, I think they almost switch the burden on us. Sometimes we have to show that the thing is going to be discriminatory rather than the local unit of government having to show it's being nondiscriminatory.

The Justice Department is not really hard on these local jurisdictions, and I think if you talked to local officials they'll tell you that. They have certainly told me that.

In fact, the Justice Department, of all governmental agencies, seems to be the easiest one to deal with. The people in the schools say try to deal with HEW.

Ms. GONZALES. One final question, and again, I want to take advantage of your background and your experience in this area.

Another issue that has been raised, and you may have heard it raised earlier today, is that the courts might approve, under the Rodino bill, which talks about the results test, that they might approve racial quotas.

To your knowledge, have the courts ever either approved or implied that racial quotas might be acceptable?

Mr. KORBEL. As far as I know, there has been no approval of racial quotas. In fact, they say just the opposite. It seems to me it's the way it ought to be. Everybody ought to have an equal opportunity to participate. That is to say, you look at Houston, for example, there are 385,000 Mexican Americans in Houston and you would imagine a randomly drawn reapportionment plan would produce at least 3 legislators in 100,000-seat legislators, you see. I think what the courts would do in a situation like that would be to say, "Well, what would you expect a random plan to produce?" Or the Justice Department would say, "What would you expect a random plan to produce," and then would suggest that's what the responsibility of the local unit of government when it reapportioned.

Ms. GONZALES. So that basically you're saying that if, in fact, the language is changed, at least based on information that was put

into the record when the Senate bill was introduced, which was the same as the Rodino bill, the intent of the language that was put into the bill was really to return the law to where it was prior to *Mobile*.

Under the case law prior to the *Mobile* decision, is there any reason why people should fear that, in fact, racial quotas might be imposed?

Mr. KORBEL. Absolutely none. I think that I was involved in trying at least half the single-member district cases that were tried before Mobile, and I never ran into a judge that ever held that opinion. In fact, I myself would be hostile to that kind of a concept. It's not right, but everybody ought to have an equal opportunity.

If you're 385,000, you ought not be divided in such a way that you can only elect one. That's just so wrong, it's just antithetical to everything, it seems to me, that this courtroom and this country stands for.

Ms. GONZALES. Thank you very much.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Korbel, what counsel was referring to when she references section 2 and case law that existed prior to the *Mobile* case was, of course, with regard to section 2 as it now exists. *Mobile* was a response to the interpretation of section 2 as being really a statutory codification, if you will, of the fifteenth amendment.

H.R. 3112 is not, I am sure you would admit, consistent necessary with what section 2 said before. It is at least possible, according to Professor White of the Texas Law School, who appeared earlier today, and other witnesses, including the Congressional Research Service, that the court could reasonably interpret that the language of title II of H.R. 3112 to require proportional representation because of the use of the language in H.R. 3112 with regard to the effects test.

Do you think that's a possible, reasonable potential with regard to a court decision?

Mr. KORBEL. Well, I just practice constitutional law; I don't teach it. So in my opinion as a practitioner, that is absolute hogwash—to quote Representative Moreno. Maybe if I was a teacher I would see things differently. Somehow they're able to understand things quite differently than we practitioners.

You see, I qualify as a country lawyer myself because I work for Texas Rural Legal Aid.

Mr. BOYD. Representative Moreno said "asinine," I think.

Mr. KORBEL. Yeah. OK. Well, I'll quote him, too.

Mr. BOYD. But the use of H.R. 3112, it uses the language "in a manner which results in the denial or abridgement of." If you interpret that and incoporate it into section 2, it could have a wholly different meaning than what a number of people suggest they would like it to have.

Mr. KORBEL. I have a hard time seeing that interpretation, and I have a hard time thinking any Federal judge would interpret it that way.

Mr. EDWARDS. Couldn't we make that very clear in the report and on the floor of the House, the committee, and every place else, that that's not our intention? Do you think that would help?

Mr. KORBEL. Absolutely.

Mr. BOYD. And in the statute.

Mr. KORBEL. Can I also ask you to make another thing clear? That is, it used to be under the Voting Rights Act that when a change was submitted, the Justice Department looked not only at retrogression, but it also looked at what it did to the minority community, what the change actually did to the minority community. I believe it was in the *Beer* case that it indicated that maybe the Justice Department is only supposed to look at intent or pretty clear fourteenth amendment violations.

I hope, for example, when the Texas Legislature adopts a plan which so severely underrepresents blacks and Mexican Americans, that even though there are as many minority representatives after the plan as before the plan, that by golly, when minorities get only half as many as one would expect a randomly drawn plan would produce, that that is a clear voting rights objection. I hope that that's clear. I think that was your intent when you passed the law in 1975, and I think the Justice Department, the courts, misconstrued your intent clearly. I hope you look at that and make a good record on it.

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

And our thanks to all of the witnesses. They were a most impressive group of experts. We have built a very important record here today. And our thanks also go to the people of Austin and the officials for their warm hospitality in welcoming the subcommittee here today.

[Whereupon, at 4:35 p.m., the subcommittee was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD BY RUBEN BONILLA

Juan Paz Pena, Chairperson
LULAC Council #04353
5408 Parliament
Arlington, TX 76017

Representative Jim Wright
U. S. House of Representatives
Washington, D.C. 20515

Dear Congressman Wright:

This letter is to urge your support of the extension of the Voting Rights Act. The Voting Rights Act (VRA) has been called the most important and successful piece of civil rights legislation ever passed. There is no question in my mind that this statement is correct. Outrageous abuses against our own citizens and their right to vote have been remedied through the application of this law. It's effect is profound because it actually gives everyone a change to participate in our electoral process, just like the Constitution mandates.

Under the VRA important progress has been made, however, there is much to be done. Minorities need continued protection from the manipulation of local voting laws directed at diluting their voting strength. In those areas where the VRA has been in effect there has been an increase in the number of minorities participating in the electoral process and running for political office.

I understand there is a movement to have the VRA apply nationally. This would be unnecessary since certain provisions of the Act already apply nationally. The application of Section 5 of the VRA to limited parts of the nation is necessary because those jurisdictions have historically discriminated against minorities in voting practices. Applying Section 5 nationwide would render the Act ineffective.

Further I urge you to support the VRA amendments added in 1975 directed at protecting language minorities--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans.

If the VRA is not reauthorized, much of the progress made by minorities in the South and Southwest will be eliminated. If our democracy is to remain valid and responsive to the needs of the citizenry, we must allow all minorities full participation in the electoral process without fearing fraudulent election procedures.

I urge you to consider my comments in your deliberations, and I would appreciate knowing your position on this most vital issue.

Sincerely,

Juan Paz Pena
Leage of United Latin American Citizens (LULAC)
Arlington, Texas

Juan Paz Pena, Chairperson
LULAC Council #04353
5408 Parliament
Arlington, TX 76016

Senator John Tower
U. S. Senate
Washington, D. C. 20515

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I urge you to consider my comments in your deliberations, and I would appreciate knowing your position on this most vital issue.

Sincerely,

Juan Paz Pena
League of United Latin American Citizens (LULAC)
Arlington, Texas

Willie, 3-23-81

Please accept my personal note.

Attached are the letters I forwarded on 3-23-81. Sorry I did not have time to be original in the letter. We are looking forward to having you as our Workshop Facilitator/Speaker during the Area IV/6 LULAC State Convention. The workshop coordinator will be in contact with you in the near future. His name is Calleja Castellanos. Thanks, Juan Paz

Juan Paz Pena, Chairperson
LULAC Council #04353
5408 Parliament
Arlington, TX 76017

President Reagan
The White House
Washington, D. C. 20510

Dear President Reagan:

This letter is to urge your support of the extension of the Voting Rights Act. The Voting Rights Act (VRA) has been called the most important and successful piece of civil rights legislation ever passed. There is no question in my mind that this statement is correct. Outrageous abuses against our own citizens and their right to vote have been remedied through the application of this law. It's effect is profound because it actually gives everyone a chance to participate in our electoral process, just like the Constitution mandates.

Under the VRA important progress has been made, however, there is much to be done. Minorities need continued protection from the manipulation of local voting laws directed at diluting their voting strength. In those areas where the VRA has been in effect there has been an increase in the number of minorities participating in the electoral process and running for political office.

I understand there is a movement to have the VRA apply nationally. This would be unnecessary since certain provisions of the Act already apply nationally. The application of Section 5 of the VRA to limited parts of the nation is necessary because those jurisdictions have historically discriminated against minorities in voting practices. Applying Section 5 nationwide would render the Act ineffective.

Further I urge you to support the VRA amendments added in 1975 directed at protecting language minorities--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans.

If the VRA is not reauthorized, much of the progress made by minorities in the South and Southwest will be eliminated. If our democracy is to remain valid and responsive to the needs of the citizenry, we must allow all minorities full participation in the electoral process without fearing fraudulent election procedures.

I urge you to consider my comments in your deliberations, and I would appreciate knowing your position on this most vital issue.

Sincerely,

Juan Paz Pena
League of United Latin American Citizens (LULAC)
Arlington, Texas

Mar. 30, 1981

Dear William Velasquez

I am sending you a copy of the letter sended to Representatives: Henry J. Hyde, & Dan Lungren, Senator: John Tower and President: Reagan. The short letter was sent to all of the above by about 30 persons in Bay City.

Sincerely
Geneviave Cisneros

104
~~205~~ Regina Street
Bay City, Texas 77414
March 26, 1981

Dear Senator

This letter is to urge your support of the extension of the Voting Rights Act (VRA). The Voting Rights Act is needed because it actually gives everyone a chance to take part in our electoral process, as done in the Constitution mandates.

This has to be the most successful piece of Civil Rights Legislation ever passed. Through the application of this law, abuses of our own citizens and their rights to vote have been remedied.

Progress has been made under VRA, but much is there to be done. The protection is much needed by the minorities from manipulation of local voting laws, in which their voting strength is diluted. Where an increase of the number of minorities participating in running for political office, you will find to be an area in which VRA has been in effect.

I understand there is a movement to have the VRA apply nationally. This would be unnecessary since certain provisions of the Act already apply nationally. The application of Section 5 of the VRA to limited parts of the nation is necessary because those jurisdictions have historically discriminated against minorities in voting practices. Applying Section 5 nationwide would render the Act ineffective.

Further I urge you to support the VRA amendments added in 1975 directed at protecting language minorities--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans.

Minorities have progressed with VRA. The South and Southwest work done for minorities will be eliminated, the need of citizens to go to vote without fear of fraudulent election procedures will again appear. If democracy is to remain responsive to the citizens of this nation, we must allow minorities full participation in the electoral process, which at time the VRA provides.

In your deliberations, I urge you to consider these comments, and I would appreciate knowing your position on this most vital issue.

Sincerely,

Genevieve Cisneros, President
LULAC Council 610
Bay City, Texas

GC:mm

March 26, 1981

This letter is to urge your support of the extension of the Voting Rights Act (VRA).

As citizens of this nation and knowing the needs of the minorities, I feel the (VRA) is the most sucessful piece of Civil Rights Legislation ever passed. The need is there for the manipulation of local voting laws directed at diluting their voting strength.

Further I urge you to support the VRA amendments added in 1975 directed at protecting language minorities--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans.

The VRA should be reauthorized for the progress made by minorities in the South and Southwest not be eliminated. For our democracy to remain valid to the citizens participating in electoral process without fearing fraudulent procedures.

I urge you to support the extension of the Voting Rights Act.

Sincerely,

:mm

Same letter sent to Sen. Strom Thurmond. 7WP 3-31-81

League of United Latin American Citizens
Santa Ana Council No. 147
P.O. Box 1810 ★ Santa Ana, California 92702
March 30, 1981

1410 Broadway
Santa Ana, CA 92706
RECEIVED APR 1981

Representative Pete McCloskey
U.S. House of Representatives
Washington, D.C. 20515

Dear Sir:

This letter is to urge your support for the extension of the Voting Rights Act (VRA). The VRA is one of the most important and successful pieces of civil rights legislation ever passed. As you are aware, outrageous abuses against our citizens right to vote have been remedied through the application of this law. It's enforcement has given every American a chance to participate in the electoral process as mandated by the Constitution.

Under the VRA important progress has been made, however much remains to be done. Minorities need continued protection from the manipulation of local voting laws directed at diluting their voting strength. In those areas where the VRA has been in effect there has been an increase in the number of minorities participating in the electoral process and running for political office. This is essential to the success and continued acceptance of the American political process.

Now, I understand there is a movement to have the VRA apply nationally. This would be unnecessary since these portions of the Act for which nationwide applicability would be most useful already have such applicability required in the law. On the other hand, the application of Section 5 of the VRA to limited parts of the country is necessary because those jurisdictions have historically discriminated against minorities in voting practices. Applying Section 5 nationwide would, in effect, render the Act ineffective.

I also strongly urge you to support the VRA amendments added in 1975 which were directed at protecting America's language minorities. These minorities- the Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans have all achieved greater political participation as a result of the 1975 amendments. The strength of our political system, as you well know, depends upon the maximum acceptance of it, and participation in it, rather than upon the disenfranchisement of its citizens.

If the VRA is not reauthorized, much of the progress made by minorities in the South and Southwest will be eliminated. If our democracy is to remain vital and responsive we must guarantee all of our citizens full access to the electoral process.

Your support for extending the VRA will be greatly appreciated by millions of Americans-- now, and in the future. I seriously urge you to consider my comments in your deliberations over this important matter. I would also appreciate knowing what your position is on this vital issue.

Very sincerely,

Manuel Rede

Manuel A. Rede, president

League of United Latin American Citizens
113 West Clay Ave.
COUNCIL No. 360 Flagstaff, Arizona 86001

All for One...One for All

April 8, 1981

RECEIVED APR 13 1981

Honorable President Ronald Reagan
The White House
Washington, D. C. 20510

Estimado President Ronald Reagan:

I am taking this opportunity to speak out on and in support of the Voting Rights Act as amended in 1975. There has been shameful abuses towards our citizenry and their right tovote has been assisted through the positive application of this Act. Our constitution guarantees the right of our citizens to participate in our electoral process and is assisted through the application of the VRA.

It has also been brought to my attention that there is a movement to have VRA applied on a National basis. Certain provisions of the Act address themselves to National concerns, therefore, it would be unnecessary. There are sections of the United States that have historically discriminated against, minority voting practices and Section 5 of VRA affects them. To have Section 5 applied on a National basis would render it ineffective.

Important progress has been made under this Act and there is much remaining to be done. Continued protection from the manipulation of local voting laws directed at diluting the voting strength of minorities must be done. VRA has been effective in increasing the number of minorities participating in our electoral process and seeking out political office.

If reauthorization is not met, much of the progress made by our folks in the South and Southwest will be eliminated. We must make our Democracy responsive and valid to meet the needs of our citizens. Therefore, we must allow and guarantee all minorities full participation in the electoral process free from the fear of fraudulent election procedures.

Please consider my comments in your deliverations, and advise me of your position in this issue.

Sinceramente,

James J. Sedillo
President
LULAC Council 160

JJS:cg
cc: Don Edwards, CA
Robert W. Kastenmeier, WI
Patricia Schroeder, CO
Harold Washington, IL
Henry J. Hyde, IL
Dan Lungren, CA
F. James Sensenbrenner Jr., WI
Robert McClory, Il
Pete McClosky, CA
George E. Danielson, CA
Robert Michel
Tip O'Neill
Jim Wright, TX
Bob Stump, AZ
Eldon Rudd, AZ
Barry M. Goldwater, AZ
Dennis DeConcini, AZ
Strom Thurmond
Robert Byard
Alan Cranston
John Tower

1872

April 17, 1981

3320 S. MacGregor Way
Houston, Texas 77021

Senator Lloyd Bentsen
U. S. Senate
Washington, D. C. 20515

Dear Senator Bentsen:

In 1975 I had the privilege of testifying before the Senate Judiciary Committee on the need to extend the coverage of the Voting Rights Act.

This letter is to once again urge your support of the extension of the Voting Rights Act. Many outrageous abuses against our own citizens and their right to vote have been remedied through the application of this law. It's effect has been profound in Hispanic communities in the Southwest. Doors once shut tight have been partially opened.

While important progress has been made, there is still much to be done. Minorities need continued protection from the manipulation of local voting laws directed at diluting their voting strength. In those areas where the VRA has been in effect there has been a positive increase in the number of minorities participating in the electoral process and running for political office.

If the VRA is not continued the progress made by minorities in the South and Southwest will be slowed. If our democracy is to remain valid and responsive to the needs of the citizenry, we must allow all minorities full participation in the electoral process without fearing fraudulent election procedures.

I urge you to vote to wipe out the last vestiges of racism and prejudice.

Sincerely,

Leonel J. Castillo

1378

April 17, 1981

3320 S. MacGregor Way
Houston, Texas 77021

REC[illegible]

Senator John Tower
U. S. Senate
Washington, D. C. 20515

Dear Senator Tower:

In 1975 I had the privilege of testifying before the Senate Judiciary Committee on the need to extend the coverage of the Voting Rights Act.

This letter is to once again urge your support of the extension of the Voting Rights Act. Many outrageous abuses againt our own citizens and their right to vote have been remedied through the application of this law. It's effect has been profound in Hispanic communities in the Southwest. Doors once shut tight have been partially opened.

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If the VRA is not continued the progress made by minorities in the South and Southwest will be slowed. If our democracy is to remain valid and responsive to the needs of the citizenry, we must allow all minorities full participation in the electoral process without fearing fraudulent election procedures.

I urge you to vote to wipe out the last vestiges of racism and prejudice.

Sincerely,

Leonel J. Castillo

Leonel J. Castillo
[illegible]

April 21, 1981

William C. Velasquez
Executive Director
SVREP
201 N. St. Mary's St., Suite 501
San Antonio, Texas 78205

Dear Mr. Velasquez:

Please find enclosed a copy of the letters sent to Washington.

As always your information and assistance is vital to our community. Nevertheless, we seem to be fighting a losing battle. We've had voter registration drives, had good candidates run for public office and yet our voters don't come out and vote! We do have the numbers to win elections.

For the upcoming year we have a plan to organized an "information center". One of our fellow concerned citizen has a home computor and we are planning to computerize all county registered voters (mainly hispanic voters). Our plan is to arouse and interest the citizens on vital local issues.

Although the afore-mentioned plan is still in the drawing board any technical assistance from SVREP will be greatly appreciated.

Sincerely,

Eliodoro Martinez

Eliodoro Martinez
LULAC Council 682
P.O. Box 707
Seguin, Texas 78155
512-379-8106

Encl.

April 21, 1981

Honorable Representative Tip O'Neill
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative O'Neill:

Your support of the extension of the Voting Rights Acts (VRA) is of paramount importance. Our civil rights were tremendously upgraded when this legislation was passed.

I further stress that while important progress has been made, applying Section 5 of the VRA nationally would make the Act ineffective.

The 1975 amendments protecting language minorities needs your support and backing.

All the progress made in voting rights over the last decade will take steps backwards if VRA is not reauthorized.

Please forward your position on this vital issue.

Sincerely,

Eliodoro Martinez
233 River Road
Seguin, Texas 78155
512-379-8106

Note: Senators Bentsen, Tower, Representative Kazen and President Reagan were sent similar letter

BILLY A. NIMES
International Vice President

RAFAEL RUIZ
Joint Board Manager

MURRAY H. FINLEY
General President

JACK SHEINKMAN
General Secretary-Treasurer

EL PASO JOINT BOARD
Amalgamated Clothing and Textile Workers Union
AFL-CIO, CLC

MAY 5, 1981

SENATOR JOHN TOWER
U. S. SENATE
WASHINGTON, D. C. 20515

DEAR SENATOR TOWER:

FEW PIECES OF LEGISLATION HAVE FAVORABLY AFFECTED YOUR VERY LARGE CONSTITUENCY IN THE STATE OF TEXAS AND THROUGHOUT THE UNITED STATES, AS HAS THE VOTING REGISTRATION ACT. IT IS NO REVELATION TO YOU THAT RIFE ABUSES AGAINST OUR OWN CITIZENS AND THEIR RIGHT TO VOTE HAVE BEEN AMELIORATED THROUGH THE APPLICATION OF THIS LAW. OUR COUNTRY WILL BE STRONG ONLY IN PROPORTION TO THE NUMBER OF ITS CITIZENS WHO PARTICIPATE IN THE ELECTORAL PROCESS. THIS, I THINK, IS WHAT OUR CONSTITUTION INDICATES.

THE PROGRESS MADE BY MINORITIES IN THE ELECTORAL PROCESS IN THE SOUTH AND SOUTHWEST IS MOST EVIDENT. THIS PROGRESS WILL STOP IF THE VOTING REGISTRATION ACT IS NOT REAUTHORIZED.

I'M ASKING THAT YOU SERIOUSLY CONSIDER MY COMMENTS IN DEALING WITH THIS MATTER. I AM ALSO VERY INTERESTED IN KNOWING YOUR POSITION IN THIS MOST IMPORTANT ISSUE.

SINCERELY YOURS,

Rafael Ruiz

RAFAEL RUIZ, MANAGER
EL PASO JOINT BOARD
ACTWU, AFL-CIO, CLC

RR/MAF

BILLY A. NIMES
International Vice President

RAFAEL RUIZ
Joint Board Manager

MURRAY H. FINLEY
General President

JACK SHEINKMAN
General Secretary-Treasurer

EL PASO JOINT BOARD
Amalgamated Clothing and Textile Workers Union
AFL-CIO, CLC

MAY 5, 1981

SENATOR LLOYD BENTSON
U. S. SENATE
WASHINGTON, D. C. 20515

DEAR SENATOR BENTSEN:

FEW PIECES OF LEGISLATION HAVE FAVORABLY AFFECTED YOUR VERY LARGE CONSTITUENCY IN THE STATE OF TEXAS AND THROUGHOUT THE UNITED STATES, AS HAS THE VOTING REGISTRATION ACT. IT IS NO REVELATION TO YOU THAT RIFE ABUSES AGAINST OUR OWN CITIZENS AND THEIR RIGHT TO VOTE HAVE BEEN AMELIORATED THROUGH THE APPLICATION OF THIS LAW. OUR COUNTRY WILL BE STRONG ONLY IN PROPORTION TO THE NUMBER OF ITS CITIZENS WHO PARTICIPATE IN THE ELECTORAL PROCESS. THIS, I THINK, IS WHAT OUR CONSTITUTION INDICATES.

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SINCERELY YOURS,

Rafael Ruiz

RAFAEL RUIZ, MANAGER
EL PASO JOINT BOARD
ACTWU, AFL-CIO, CLC

RR/MAF

BILLY A. HIMES
International Vice President

MURRAY H. FINLEY
General President

JACK SHEINKMAN
General Secretary-Treasurer

RAFAEL RUIZ
Joint Board Manager

EL PASO JOINT BOARD
Amalgamated Clothing and Textile Workers Union
AFL-CIO, CLC

MAY 5, 1981

REPRESENTATIVE JIM WRIGHT
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

DEAR REPRESENTATIVE WRIGHT:

FEW PIECES OF LEGISLATION HAVE FAVORABLY AFFECTED YOUR VERY LARGE CONSTITUENCY IN THE STATE OF TEXAS AND THROUGHOUT THE UNITED STATES, AS HAS THE VOTING REGISTRATION ACT. IT IS NO REVELATION TO YOU THAT RIFE ABUSES AGAINST OUR OWN CITIZENS AND THEIR RIGHT TO VOTE HAVE BEEN AMELIORATED THROUGH THE APPLICATION OF THIS LAW. OUR COUNTRY WILL BE STRONG ONLY IN PROPORTION TO THE NUMBER OF ITS CITIZENS WHO PARTICIPATE IN THE ELECTORAL PROCESS. THIS, I THINK, IS WHAT OUR CONSTITUTION INDICATES.

THE PROGRESS MADE BY MINORITIES IN THE ELECTORAL PROCESS IN THE SOUTH AND SOUTHWEST IS MOST EVIDENT. THIS PROGRESS WILL STOP IF THE VOTING REGISTRATION ACT IS NOT REAUTHORIZED.

I'M ASKING THAT YOU SERIOUSLY CONSIDER MY COMMENTS IN DEALING WITH THIS MATTER. I AM ALSO VERY INTERESTED IN KNOWING YOUR POSITION IN THIS MOST IMPORTANT ISSUE.

SINCERELY YOURS,

Rafael Ruiz

RAFAEL RUIZ, MANAGER
EL PASO JOINT BOARD
ACTWU, AFL-CIO, CLC

RR/MAF

BILLY A. HIMES
International Vice President
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Joint Board Manager

MURRAY H. FINLEY
General President

JACK SHEINKMAN
General Secretary-Treasurer

EL PASO JOINT BOARD
Amalgamated Clothing and Textile Workers Union
AFL-CIO, CLC

MAY 5, 1981

PRESIDENT REAGAN
THE WHITE HOUSE
WASHINGTON, D. C. 20510

DEAR PRESIDENT REAGAN:

FEW PIECES OF LEGISLATION HAVE FAVORABLY AFFECTED YOUR VERY LARGE CONSTITUENCY IN THE STATE OF TEXAS AND THROUGHOUT THE UNITED STATES AS HAS THE VOTING REGISTRATION ACT. IT IS NO REVELATION TO YOU THAT RIFE ABUSES AGAINST OUR OWN CITIZENS AND THEIR RIGHT TO VOTE HAVE BEEN AMELIORATED THROUGH THE APPLICATION OF THIS LAW. OUR COUNTRY WILL BE STRONG ONLY IN PROPORTION TO THE NUMBER OF ITS CITIZENS WHO PARTICIPATE IN THE ELECTORAL PROCESS. THIS, I THINK, IS WHAT OUR CONSTITUTION INDICATES.

THE PROGRESS MADE BY MINORITIES IN THE ELECTORAL PROCESS IN THE SOUTH AND SOUTHWEST IS MOST EVIDENT. THIS PROGRESS WILL STOP IF THE VOTING REGISTRATION ACT IS NOT REAUTHORIZED.

I'M ASKING THAT YOU SERIOUSLY CONSIDER MY COMMENTS IN DEALING WITH THIS MATTER. I AM ALSO VERY INTERESTED IN KNOWING YOUR POSITION IN THIS MOST IMPORTANT ISSUE.

SINCERELY YOURS,

Rafael Ruiz

RAFAEL RUIZ, MANAGER
EL PASO JOINT BOARD
ACTWU, AFL-CIO, CLC

RR/MAF

State Representative
BOB MARTINEZ
6995 Niagara Street
Commerce City, Colorado 80022
Home phone: 287-8111

Member of:
Education Committee
Transportation and Energy Committee
Capitol phone: 866-2909

COLORADO
HOUSE OF REPRESENTATIVES
STATE CAPITOL
DENVER
80203

May 5, 1981

Rolando L. Rios
Southwest Voter Registration Education Project
201 N. St. Mary's Street, Suite 501
San Antonio, TX 78205

Dear Mr. Rios:

As per your request of March 10, 1981, a letter was sent out concerning the Voting Rights Act. Enclosed you will find a list of the Legislators it was sent to and a copy of the letter sent.

Sincerely,

Bob Martinez
Bob Martinez
State Representative

President Ronald Reagan

Senators

Strom Thurmond
Robert Byrd
Alan Cranston
John Tower
Gary Hart
William L. Armstrong

Representatives

Patricia Schroeder
Tim Wirth
Ray Kogovsek
Hank Brown
Kenneth Kramer
Don Edwards
Robert W. Kastenmeier
Harold Washington
Henry J. Hyde
Dan Lungren
F. James Sensenbrenner Jr.
Robert McClory
Pete McCloskey
George E. Danielson
Robert Michel
Tip O'Neill
Jim Wright

This letter is to urge your support of the extension of the Voting Rights Act (VRA). It is my contention that the VRA has played a very significant role in increasing the political participation of minorities in the Southwestern United States. Although some important progress has been made, there still exists a great deal to be done. Minorities need protection from the use of local voting laws to dilute their voting strength.

In those areas where the VRA has been in effect there has been a noticeable increase in the number of minorities voting and running for political office. It has afforded minorities at the local level an opportunity to have representation on school boards, city councils, county commissions and in state legislatures.

It is my understanding that there are some who would have the VRA apply nationally. This is an unnecessary act since certain provisions of the Act already apply to the Nation. Section 5 of the VRA is necessary to limited parts of the Nation because those jurisdictions have historically discriminated against minorities in voting practices. Applying it nationwide would render the Act ineffective.

In addition, I urge you to support the VRA amendments of 1975 directed at protecting language minorities -- Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans.

If the VRA is not extended, much of the progress made by minorities in the south and southwest will be eliminated. If our democracy is to remain a democracy, for all the people, it must include all groups of people at all levels of government.

In conclusion, I urge you to carefully consider the repercussions that would ensue should the VRA not be extended.

Sincerely,

Bob Martinez
State Representative

BM/blu

REYES
&
BARRERA, INC

Attorneys
& Counselors
at Law

FRUMENCIO REYES, JR
ELLIS BARRERA, JR
VINCENT RODRIGUEZ
MIKE G. HERNANDEZ
ROLANDO GARCIA
JUAN M. ALDAPE
MARIA LUPE DeLEÓN

3702 N. MAIN ST.
TEL. 713/869-971
HOUSTON, TEXAS 77009

May 5, 1981

Senator Lloyd Bentsen
U.S. Senate
Washington, D.C. 20515

Dear Senator Bentsen:

The Voting Rights Act has been one, if not, the most effective tool in providing for Chicanos in this country access to a more equitable participation in the political process, and therefore providing for Chicanos of this country a more representative share of the "pie" in this country.

The Constitution of our country (and note, how I say "our country", for I too, am an American.) mandates that everyone have an equal chance to participate in our electoral process, and the Voting Rights Act, has provided for Chicanos the right to vote through the application of law.

For too long minorities, specially Chicanos, have been denied their right to participation in the political process by various methods, all of which are unconstitutional or have been declared suspect by our federal courts, and where these rights have not been denied the local voting laws have been manipulated in such a way as to dilute the Chicanos voting strength. In those areas where the Voting Rights Act has been in effect there has been an increase in the number of Chicanos participating and getting elected. Examples: Houston and San Antonio, Texas.

It has come to my attention that there exists a certain movement to have the Voting Rights Act apply nationally. I am opposed to it. Certain provisions of the act already apply nationally, and the application of Section 5 of the Voting Rights Act to limited parts of the nation is necessary because those jurisdictions have historically discriminated against Chicanos and other minorities. I do not contend that voting discrimination on a nation-

wide basis exists against Chicanos. I contend that voting discrimination exists where large populations of Chicanos live; i.e. Texas, Arizona, New Mexico, Colorado, and California; and certain pockets in Chicago and other midwestern cities. Allowing the Voting Rights Act, Section 5, to be applicable nationwide, would render such provision totally ineffective and would be contrary to the spirit in which the Voting Rights Act as draft, passed, and applied.

I, further urge you, to support the Voting Rights Act Amendments of 1975, which directly protect language minorities, Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans.

The 1980's is supposed to be the "Decade of the Hispanics". However, without the Voting Rights Act, the small progress which Hispanics have made in this country will be eliminated. And, if our democracy is to remain valid and responsive to the needs of our people, it must remain relevant to our needs. We need access to the political process to fully share in all the good things this country provides for the rest of its citizens,representation in the governing bodies from City Halls to the U.S. Congress.

I urge you to consider my comments in your deliberations, and if you should need additional information regarding this matter, write me, call me, or request that I come see you personally. I am available. I would appreciate knowing your position to this vital issue.

Sincerely,

REYES & BARRERA, INC.

FRUMENCIO REYES, JR.
Attorney at Law

FRJ/vlz

REYES
&
BARRERA, P.C.

May 5, 1981

President Ronald Reagan
The White House
Washington, D.C. 20510

Dear President Reagan:

The Voting Rights Act has been one, if not, the most effective tool in providing for Chicanos in this country access to a more equitable participation in the political process, and therefore providing for Chicanos of this country a more representative share of the "pie" in this country.

The Constitution of our country (and note, how I say "our country", for I too, am an American.) mandates that everyone have an equal chance to participate in our electoral process, and the Voting Rights Act, has provided for Chicanos the right to vote through the application of law.

For too long minorities, specially Chicanos, have been denied their right to participation in the political process by various methods, all of which are unconstitutional or have been declared suspect by our federal courts, and where these rights have not been denied the local voting laws have been manipulated in such a way as to dilute the Chicanos voting strength. In those areas where the Voting Rights Act has been in effect there has been an increase in the number of Chicanos participating and getting elected. Examples: Houston and San Antonio, Texas.

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I urge you to consider my comments in your deliberations, and if you should need additional information regarding this matter, write me, call me, or request that I come see you personally. I am available. I would appreciate knowing your position to this vital issue.

Sincerely,

REYES & BARRERA, INC.

FRUMENCIO REYES, JR.
Attorney at Law

FRJ/vlz

REYES
&
BARRERA, INC

Attorneys
& Counselors
at Law

FRUMENCIO REYES JR
ELLIS BARRERA, JR
VINCENT RODRIGUEZ
MIKE G. HERNANDEZ
ROLANDO GARCIA
JUAN M. ALDAPE
MARIA LUPE DeLEON

3702 N. MAIN ST.
TEL. 713/869-5971
HOUSTON, TEXAS 77009

May 5, 1981

Senator John Tower
U.S. Senate
Washington, D.C. 20515

Dear Senator Tower:

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The Constitution of our country (and note, how I say "our country", for I too, am an American.) mandates that everyone have an equal chance to participate in our electoral process, and the Voting Rights Act, has provided for Chicanos the right to vote through the application of law.

For too long minorities, specially Chicanos, have been denied their right to participation in the political process by various methods, all of which are unconstitutional or have been declared suspect by our federal courts, and where these rights have not been denied the local voting laws have been manipulated in such a way as to dilute the Chicanos voting strength. In those areas where the Voting Rights Act has been in effect there has been an increase in the number of Chicanos participating and getting elected. Examples: Houston and San Antonio, Texas.

It has come to my attention that there exists a certain movement to have the Voting Rights Act apply nationally. I am opposed to it. Certain provisions of the act already apply nationally, and the application of Section 5 of the Voting Rights Act to limited parts of the nation is necessary because those jurisdictions have historically discriminated against Chicanos and other minorities. I do not contend that voting discrimination on a nation-

wide basis exists against Chicanos. I contend that voting discrimination exists where large populations of Chicanos live; i.e. Texas, Arizona, New Mexico, Colorado, and California; and certain pockets in Chicago and other midwestern cities. Allowing the Voting Rights Act, Section 5, to be applicable nationwide, would render such provision totally ineffective and would be contrary to the spirit in which the Voting Rights Act as craft, passed, and applied.

I, further urge you, to support the Voting Rights Act Amendments of 1975, which directly protect language minorities, Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans.

The 1980's is supposed to be the "Decade of the Hispanics". However, without the Voting Rights Act, the small progress which Hispanics have made in this country will be eliminated. And, if our democracy is to remain valid and responsive to the needs of our people, it must remain relevant to our needs. We need access to the political process to fully share in all the good things this country provides for the rest of its citizens,representation in the governing bodies from City Halls to the U.S. Congress.

I urge you to consider my comments in your deliberations, and if you should need additional information regarding this matter, write me, call me, or request that I come see you personally. I am available. I would appreciate knowing your position to this vital issue.

Sincerely,

REYES & BARRERA, INC.

FRUMENCIO REYES, JR.
Attorney at Law

FRJ/vlz

REYES
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BARRERA, INC.

Attorneys
& Counselors
at Law

FRUMENCIO REYES, JR
ELLIS BARRERA, JR.
VINCENT RODRIGUEZ
MIKE G. HERNANDEZ
ROLANDO GARCIA
JUAN M. ALDAPE
MARIA LUPE DeLEÓN

1702 N. MAIN ST
TEL. 713/862-5975
HOUSTON, TEXAS 77009

May 5, 1981

Representative Jim Wright
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Wright:

The Voting Rights Act has been one, if not, the most effective tool in providing for Chicanos in this country access to a more equitable participation in the political process, and therefore providing for Chicanos of this country a more representative share of the "pie" in this country.

The Constitution of our country (and note, how I say "our country", for I too, am an American.) mandates that everyone have an equal chance to participate in our electoral process, and the Voting Rights Act, has provided for Chicanos the right to vote through the application of law.

For too long minorities, specially Chicanos, have been denied their right to participation in the political process by various methods, all of which are unconstitutional or have been declared suspect by our federal courts, and where these rights have not been denied the local voting laws have been manipulated in such a way as to dilute the Chicanos voting strength. In those areas where the Voting Rights Act has been in effect there has been an increase in the number of Chicanos participating and getting elected. Examples: Houston and San Antonio, Texas.

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ROLANDO GARCIA
JUAN M. ALCAPE
MARIA LUPE DeLEÓN

May 6, 1981

Senator Lloyd Bentsen
U.S. Senate
Washington, D.C. 20515

Dear Senator Bentsen:

I write you today to urge you to keep the Voting Rights Act alive. The Voting Rights Act is certainly a most important piece of legislation for us minorities and it should become a part of the law of the United States permanently. The protection it affords minorities is equally beneficial to non-minorities as it allows us all to work together in the electoral processes of this country.

Further, the extension of the Act nationwide would likewise be detrimental to the people it is intended to protect. Only limited national application of Section 5 is necessary in those areas which have historically discriminated in their voting practices. I would strongly urge, though the 1975 Amendments, as they strengthen the act and make it more effective for the many people who are to benefit from it.

I urge you to heed the needs of many of the people you represent by reauthorizing the Voting Rights Act.

Sincerely,

REYES & BARRERA, INC.

MARIA LUPE DE LEON
Attorney at Law

MLDL/vlz

3702 N. MAIN ST.
TEL. 713 / 869-5975
HOUSTON, TEXAS 77009

REYES
&
BARRERA, INC

Attorneys
& Counselors
at Law

FRUMENCIO REYES, JR
FELIS BARRERA, III
VINCENT RODRIGUEZ
MIKE G. HERNANDEZ
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May 6, 1981

President Ronald Reagan
The White House
Washington, D.C. 20510

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Sincerely,

REYES & BARRERA, INC.

MARIA LUPE DE LEON
Attorney at Law

MLDL/vlz

3702 N. MAIN ST
TEL 713/869-5971
HOUSTON, TEXAS 77009

REYES
&
BARRERA, INC.

Attorneys
& Counselors
at Law

FRUMENCIO REYES, JR.
ELLIS BARRERA, JR.
VINCENT RODRIGUEZ
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May 6, 1981

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U.S. House of Representatives
Washington, D.C. 20515

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MARIA LUPE DeLEÓN

May 7, 1981

Senator Lloyd Bentsen
U.S. Senate
Washington, D.C. 20515

Dear Senator Bentsen:

This letter is to request your profound support for the extension of the Voting Rights Act. For instance, VRA has been regarded the most vital and integral piece of legislation where Civil Rights have been effected. I regarded it as the most important and successful piece of legislation, due to the fact that it affects our basic rights of participation in our electoral process Throught this piece of legislation, the abuses against our citizenry and their right to vote have been protected to a great extent. Our constitution is very specific in displaying this basic right to vote, and the same has been taken away by the outrageous misuse of power and has severed our citizens from the participation in our electoral process. This severance has been demised by the implementation of the Voting Rights Act.

Although progress has been made, however, there is much to be met simply because citizens of Mexican American Extraction are still being questioned regarding their citizenship in different local elections in areas where an election can be decided by a small margin of votes The citizenry of other minorities has confronted this problem in large and small communities as well. The citizenry of these communities have to continue to receive this protection from the manipulation of local voting procedures by local and entrench politicians who have no other purpose but to dilute the public voting stream. VRA has been very effective in increasing the number of minorities participating in the electoral process.

Further I urge you to support the VRA Amendments added in 1975 directed at protecting language minorities--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans.

3202 N. MAIN
TEL. [illegible]
HOUSTON, TEXAS 77009

If our democracy is to remain valid and responsive to the need of the citizenry, we must allow the town, full participation on the electoral process without being intimidated.

I urge you to consider my comments in your deliberations, and I would appreciate knowing your position in this vital issue.

Respectfully submitted,

REYES & BARRERA, INC.

ELLIS BARRERA, JR.
Attorney at Law

EBJ/eaz

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3702 N. MAIN ST
TEL 713/864-9971
HOUSTON, TEXAS 77009

May 7, 1981

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U. S. House of Representatives
Washington, D.C. 20515

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3702 N. MAIN ST
TEL 713/869-9[illegible]
HOUSTON, TEXAS 77009

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May 7, 1981

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3702 N. MAIN ST.
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HOUSTON, TEXAS 77009

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Respectfully submitted,

REYES & BARRERA, INC.

ELLIS BARRERA, JR.
Attorney at Law

EBJ/eaz

May 7, 1981

President Reagan
The White House
Washington, D.C. 20510

Dear President Reagan:

The Voting Rights Act (VRA) has been called the most significant and achieved piece of civil rights legislation ever passed. There is no doubt in my mind that this is correct. Polling abuses against our own citizens and their equity to vote have been remedied through application of this law.

Under the VRA significant progress has been made, however, there is much to be done. Minorities need continued protection from manipulation of local voting laws directed at weakening their voting strength.

I feel that you should support the VRA amendments added in 1975 directed at protecting language minorities--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans.

If the VRA is not reauthorized, much of the progress made by minorities in the South and Southwest will be negated.

I urge you to take my comments into consideration in your deliberations. I would appreciate knowing your position on this most crucial issue.

Very truly yours,

Arturo P. Gomez, Jr.
Constable Pct. #2
1200 W. C. C. St.
Beeville, Texas 78102

CC: Gen. Lloyd Bentsen
CC: U.S. Sen. John Tower
CC: State Sen. Carlos F. Truan
CC: U.S. Rep. Jim Wright

Esther A. Zepeda
7946 Glenscot
Houston, Texas 77061

May 7, 1981

Senator John Tower
U.S. Senate
Washington, D.C. 20515

RE: The Voting Rights Act

Dear Senator Tower:

This letter is to urge your support of the extension of the Voting Rights Act. Because of it, there has been an increased interest in our electoral process within the minority groups. All are becoming more conscious of their common interests and their national identity.

Elimination of the VRA would be selfish in that the interests of others are not being considered. The poor, therefore, should have a say in government so as to be able to protect themselves against those who would exploit their individual weaknesses. Without the VRA, we would surely verge to anarchy and confusion.

If our democracy is to remain valid and responsive to the needs of the citizenry we must allow all minorities full participation in the electoral process without fear of fraudulent election procedures. Even in 1869, the 15th Amendment was passed, which forbids all states to deny the vote to anyone "on account of race, color, or previous condition of servitude".

Are we to regress instead of advance in our government and its procedures?

I urge you to consider my comments in your deliberations, and I would appreciate knowing your position on this most crucial and vital issue.

Sincerely,

Esther A. Zepeda

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7946 Glenscot
Houston, Texas 77061

May 7, 1981

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U.S. Senate
Washington, D.C. 20515

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Washington, D.C. 20515

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Sincerely,

Esther A. Zepeda

1401

Esther A. Zepeda
7946 Glenscot
Houston, Texas 77061

May 7, 198[illegible]

President Reagan
The White House
Washington, D.C. 20510

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I urge you to consider my comments in your deliberations, and I would appreciate knowing your position on this most crucial and vital issue.

Sincerely,

Esther A. Zepeda

111 East 24th St.
Houston, Texas 77008

May 8, 1981

President Reagan
The White House
Washington, D.C. 20510

Dear President Reagan:

As a concerned American, I strongly urge you to support the extension of the Voting Rights Act, in the minority language provisions. I also urge you to oppose nationwide coverage and any other efforts to dilute the effectiveness of this legislation. Many of my community have taken the opportunity to vote and participate in our political process since 1975 when the Act began to apply to our entire community.

Though the Act has increased participation by minorities, there is still a long way to go before minorities will be represented adequately at all levels of government. Minorities continue to be gerrymandered and continue to be victims of violations of the one-person/one-vote principal. The Voting Rights Act has been successful in preventing many of these violations from taking place in the South and Southwest where Section 5 applies. Section 5 applies primarily in the South and Southwest because that is where voting violations against minorities have been documented by Congress, the courts and the Department of Justice.

If Congress fails to renew the Voting Rights Act, we will see a sharp curtailment in minority voter participation. Many of the gains made by blacks, Hispanics and other minorities could easily be undone if the Voting Rights Act is not renewed.

Sincerely,

Vera L. Zepeda

VERA L. ZEPEDA

111 East 24th St.
Houston, Texas 77008

May 8, 1981

Representative Jim Wright
U.S. House of Representatives
Washington, D.C. 20515

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111 East 24th St.
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May 8, 1981

Senator Lloyd Bentsen
U.S. Senate
Washington, D.C. 20515

Dear Senator Bentsen:

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Though the Act has increased participation by minorities, there is still a long way to go before minorities will be represented adequately at all levels of government. Minorities continue to be gerrymandered and continue to be victims of violations of the one-person/one-vote principal. The Voting Rights Act has been successful in preventing many of these violations from taking place in the South and Southwest where Section 5 applies. Section 5 applies primarily in the South and Southwest because that is where voting violations against minorities have been documented by Congress, the courts and the Department of Justice.

If Congress fails to renew the Voting Rights Act, we will see a sharp curtailment in minority voter participation. Many of the gains made by blacks, Hispanics and other minorities could easily be undone if the Voting Rights Act is now renewed.

Sincerely,

Vera L. Zepeda

VERA L. ZEPEDA

May 8, 1981

President Reagan
The White House
Washington, D.C. 20500

Dear Mr. President:

I urge you to support a ten-year extension of the Voting Rights Act, including the language minority provisions which provide bilingual assistance to American citizens who are not totally literate in English.

I also urge you to oppose efforts toward "nationwide coverage" of the Voting Rights Act which have recently been publicized. The Voting Rights Act was designed to target specific areas of the country where voting discrimination against minority citizens exists. In the past, efforts to make the Voting Rights Act nationwide were advocated by those who wanted to dilute the original purpose of the Act. Though nationwide coverage is in many ways an appealing concept, it would create federal involvement in state and local matters in areas not currently covered by the Voting Rights Act.

The Voting Rights Act has significantly increased voter participation for blacks, Hispanics and other language minority citizens. It has prevented hundreds of discriminatory election changes from taking place. In short, it has begun to bring America's minorities into the mainstream of the American political process.

I urge you to support this critically important legislation.

Sincerely,

Rev. Edward Salazar, S.J.
Pastor

ES/sk

May 19,1981

Senator John Tower
U.S. Senate
Washington, D.C. 20515

Dear Senator Tower,

We have recently found out that the Voting Rights Act runs out in 1982. This letter is to urge your support of the extension of the Voting Rights Act. This act has been called the most important and successful piece of civil rights legislation ever passed. There is no doubt in our minds that this statement is true. Political abuses to minorities, especially Mexican Americans, have been remedied through the application of this law. It's effect is profound because it actually gives everyone a chance to participate in our electoral process, as the Constitution mandates.

Under the VRA important progress has been made, however, there is much to be done. Minorities need continued protection from the manipulation and discrimination of local voting laws directed at diluting their voting strength. In those areas where the VRA has been in effect there has been an increase in the number of minorities participatin in the electoral process and running for office.

I understand there is a movement to have the VRA apply nationally. This would be unnecessary since certain provisions of the Act already apply nationally. The application of Section 5 of the VRA to limited parts of the nation is necessary because those jurisdictions have historically discriminated against minorities in voting practices. Applying Section 5 nationwide would render the Act ineffective.

Further I urge you to support the VRA amendments added in 1975 directed at protecting language minoritites--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans.

If the VRA is not reauthorized, mcuh of the progress made by minorities in the South and Southwest will be eliminated. If our democracy is to remain valid and responsible to the needs of the citizenry, we must allow all minoritites full participation in the electoral process without fearing fraudulent election procedures.

I urge you to consider my comments in your deliberation, and I would appreciat knowing your position on this most vital issue.

Sincerely,
Richard Flores
Christine Flores
Richard and Christine Flor
2615 W. French
San Antonio, TX 78201

1981 PADRES NATIONAL CONGRESS

Resolution: Voting Rights Act Extension

WHEREAS:

There is an effort in Congress to eliminate the Voting Rights Acts or to so expand its coverage as to render the Act ineffective;

Congressional Committees will soon be holding hearings to determine whether or not extension is necessary;

The elimination of the Vote Right Acts would eliminate the most important piece of civil rights legislation ever created for the protection of minority rights;

THEREFORE BE IT RESOLVED:

1. That PADRES supports the extension of the 1964 Votings Rights Act and auxiliary statutes and voting codes.

2. PADRES members will send letters to Senators and Congressmen in their respective areas urging passage of the extension of the Voting Rights Act of 1964.

(Please send copies of your letters to:)

Mr. Willie Velesquez
S.W. Voter Registration Project
San Antonio, Texas

THE ARCHDIOCESE OF MIAMI

May 29, 1981

Senator Strom Thurmond, Chairman
Judiciary Committee
United States Senate
Washington, D. C. 20515

Dear Senator Thurmond:

This letter is to urge your support of the extension of the Voting Rights Act. Abuses against our own citizens and their right to vote have been remedied through the application of this law.

I think you will agree minorities need protection from weakening of their voting strength. I am told in those areas where the VRA has been in effect there has been an increase in the number of minorities participating in the electoral process and running for political office.

I understand there is a movement to have the VRA apply nationally. This, I am told, would be unnecessary since certain provisions of the Act already apply nationally. The application of Section 5 of the VRA to limited parts of the nation is necessary because those jurisdictions have historically discriminated against minorities in voting practices. Applying Section 5 nationwide would render the Act ineffective.

Further, I urge you to support the VRA amendments added in 1975 directed at protecting language minorities--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians, and Asian Americans.

If the VRA is not reauthorized, much of the progress made by minorities in the South and Southwest will be eliminated.

I would appreciate your support in this issue.

Sincerely yours,

Edward A. McCarthy
Archbishop of Miami

EAM:mm
bcc: Mr. Willie Velasquez

6301 BISCAYNE BOULEVARD • MIAMI, FLORIDA 33138 • TELEPHONE (305) 757-6241

THE ARCHDIOCESE OF MIAMI

FROM THE RISING TO THE SETTING OF THE SUN IS THE NAME OF THE LORD TO BE PRAISED

May 29, 1981

Representative Peter W. Rodino, Jr., Chairman
Judiciary Committee
United States House of Representatives
Washington, D. C. 20515

Dear Representative Rodino:

This letter is to urge your support of the extension of the Voting Rights Act. Abuses against our own citizens and their right to vote have been remedied through the application of this law.

I think you will agree minorities need protection from weakening of their voting strength. I am told in those areas where the VRA has been in effect there has been an increase in the number of minorities participating in the electoral process and running for political office.

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Sincerely yours,

Edward A. McCarthy
Archbishop of Miami

EAM:mm
bcc: Mr. Willie Velasquez

6301 BISCAYNE BOULEVARD • MIAMI, FLORIDA 33138 • TELEPHONE (305) 757-6241

Date 05-20-81

Congressman Kika de la Garza
U S. House of Representatives
Washington, D.C. 20515

Dear Representative de la Garza:

This letter is to urge your support of the extension of the Voting Rights Act. The Voting Rights Act (VRA) has been called the most important and successful piece of civil rights legislation ever passed. There is no question in my mind that this statement is correct. Outrageous abuses against our own citizens and their right to vote have been remedied through the application of this law. It's effect is profound because it actually gives everyone a chance to participate in our electoral process, just like the Constitution mandates.

Under the VRA important progress has been made, however, there is much to be done. Minorities need continued protection from the manipulation of local voting laws directed at diluting their voting strength. In those areas where the VRA has been in effect there has been an increase in the number of minorities participating in the electoral process and running for political office.

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I urge you to consider my comments in your deliberations, and I would appreciate knowing your position on this most vital issue.

Sincerely,

Juan J. Maldonado
Democratic National Committee
213 W. 2nd St.
San Juan, Texas 78589

Date 05-20-81

President Reagan
The White House
Washington, D.C. 20515

Dear President Reagan:

This letter is to urge your support of the extension of the Voting Rights Act. The Voting Rights Act (VRA) has been called the most important and successful piece of civil rights legislation ever passed. There is no question in my mind that this statement is correct. Outrageous abuses against our own citizens and their right to vote have been remedied through the application of this law. It's effect is profound because it actually gives everyone a chance to participate in our electoral process, just like this Constitution mandates.

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Sincerely,

Juan J. Maldonado
Democratic National Committee
213 W. 2nd St.
San Juan, Texas 78589

Date 05-20-81

RECEIVED MAY 28 1981

Senator Lloyd Benson
U.S. Senate
Washington, D.C. 20510

Dear Senator Benson:

This letter is to urge your support of the extension of the Voting Rights Act, The Voting Rights Act (VRA) has been called the most important and successful piece of civil rights legislation ever passed. There is no question in my mind that this statement is correct. Outrageous abuses against our own citizens and their right to vote have been remedied through the application of this law. It's effect is profound because it actually gives everyone a chance to participate in our electoral process, just like the Constitution mandates.

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Juan J. Maldonado
Democratic National Committee
213 W. 2nd St,
San Juan, Texas 78589

ARCHDIOCESE OF NEW YORK

AUXILIARY BISHOP

St Thomas Aquinas
1900 Crotona Parkway
Bronx, N Y 10460
212-599-6220

Episcopal Vicar
for Spanish Pastoral
Development for the
Archdiocese of
New York

Most Reverend Francisco Carmendia, D D

May 17, 1981

Senator Strom Thurmond
U.S. Senate
Washington, D.C.

Dear Senator Thurmond,

This letter is to urge your support of the extension of the Voting Rights Act.

Under the VRA important progress has been made, however there is much to be done. Minorities need continued protection from the manipulation of local voting laws directed at diluting their voting strength.

I would also urge you to support the VRA amendments added in 1975 directed at protecting language minorities--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians and Asian Americans.

I request you consider my comments in your deliberations, and I would appreciate knowing your position on this most vital issue.

Sincerely yours,

Francisco Carmendia

+Francisco Carmendia
Auxiliary Bishop of New York

FC/ec

ARCHDIOCESE OF NEW YORK

AUXILIARY BISHOP

St. Thomas Aquinas
1950 Crotona Parkway
Bronx, N.Y. 10460
212-589-5235

Episcopal Vicar for Spanish Pastoral Development for the Archdiocese of New York

Most Reverend Francisco Garmendia, D.D.

May 17, 198[illegible]

Senator John Tower
U.S. Senate
Washington, D.C.

Dear Senator Tower,

This letter is to urge your support of the extension of the Voting Rights Act.

Under the VRA important progress has been made, however there is much to be done. Minorities need continued protection from the manipulation of local voting laws directed at diluting their voting strength.

I would also [illegible] support the [illegible] amendments added in 1975 directed at protecting language minorities--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians and Asian Americans.

I request you consider my comments in your deliberations, and I will appreciate knowing your position on this most vital issue.

Sincerely yours,

+ Francisco Garmendia

+Francisco Garmendia
Auxiliary Bishop of New York

FG/ec

ARCHDIOCESE OF NEW YORK

AUXILIARY BISHOP

St. Thomas Aquinas
1900 Crotona Parkway
Bronx, N. Y. 10460
212-589-5235

Episcopal Vicar
for Spanish Pastoral
Development for the
Archdiocese of
New York

Most Reverend Francisco Garmendia, D.D.

May 15, 1981

President Ronald Reagan
The White House
Washington, D.C.

Dear President Reagan,

This letter is to urge your support of the extension of the Voting Rights Act.

Under the VRA important progress has been made, however there is much to be done. Minorities need continued protection from the manipulation of local voting laws directed at diluting their voting strength.

I would urge you to support the VRA and amendments added in 1975 directed at protecting language minorities--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians and Asian Americans.

I request you consider my comments in your deliberations, and I would appreciate knowing your position on this most vital issue.

Sincerely yours,

+Francisco Garmendia

+Francisco Garmendia
Auxiliary Bishop of New York

[illegible]

ARCHDIOCESE OF NEW YORK

AUXILIARY BISHOP

St. Thomas Aquinas
1900 Crotona Parkway
Bronx, N.Y. 10460
212-589-6235

Episcopal Vicar for Spanish Pastoral Development for the Archdiocese of New York

Most Reverend Francisco Garmendia, D.D.

May 18, 1981

Representative [illegible]
U.S. House of Representatives
Washington, D.C.

Dear Representative Hyde,

This letter is to urge your support of the extension of the Voting Rights Act.

Under the VRA important progress has been made, however there is much to be done. Minorities need continued protection from the manipulation of local voting laws directed at diluting their voting strength.

I would also urge you to support the VRA amendments added in 1975 directed at protecting language minorities--Mexican Americans, Puerto Ricans, Cuban Americans, American Indians and Asian Americans

I request you consider my comments in your deliberations, and I would appreciate knowing your position on this most vital issue.

Sincerely yours,

+Francisco Garmendia

+Francisco Garmendia
Auxiliary Bishop of New York

FG/ec

SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT

201 N. ST. MARY'S ST., SUITE 501
SAN ANTONIO, TEXAS 78205
AC/512-222-0224

May 19, 1981

Mr. and Mrs. Jose B. Torres
202 Plestex
Pleasanton, TX 78064

Thank you for notifying me of your communication (by Mailgram) to President Reagan, Congressman Wright, and Senator Tower urging their support on the VRA extension effort. Your cooperation in this letter writing campaign is extremely appreciated.

As I mentioned in our telephone conversation earlier today, I am enclosing a list of other members of the Judiciary Committee. You and Mrs. Torres may write to any or all members listed. Also, please mail us a copy of any letters you write so that we may maintain an up-to-date file on letters supporting the VRA.

Again, thanks to both of you for your commitment. If I may be of further service to you as a source of information, please do not hesitate to contact me.

Cordially,

Gladys Alonzo
Paralegal

Enc.

CC: William C. Velasquez

1418

Texas House of Representatives

RECEIVED

IRMA RANGEL
P. O. Box 2910
Austin, Texas 78769
(512) 475-4732

District Office
221 E. Kleberg
Kingsville, Texas 78363
(512) 592-5142

May 15, 1981

Mr. William C. Velasquez
Southwest Voter Registration
Education Project
201 N. St. Mary's St.
Suite 501
San Antonio, Texas 78205

Dear Mr. Velasquez:

Enclosed you will find a copy of the letter our office sent to all the Texas Congressmen and Senators.

If you have any questions, please do not hesitate to call our office.

Sincerely,

Maria

Maria Arellano
Adm. Secretary to
Representative Rangel

Committees: Judiciary and Transportation

Texas
House of Representatives

IRMA RANGEL
P. O. Box 2910
Austin, Texas 78769
(512) 475-4732

District Office
221 E. Kleberg
Kingsville, Texas 78363
(512) 592-5143

May 14, 1981

RECEIVED

The Honorable Eligio de la Garza
House Office Building
Washington, D. C. 20515

Dear Mr. de la Garza:

I understand that there is an effort in Congress to eliminate the Voting Rights Act, or to expand its coverage so drastically that it will render the Act ineffective. Eliminating the Voting Rights Act is eliminating the most effective civil rights laws ever passed.

Outrageous abuses against our own citizens and their right to vote have been remedied through the application of this law. Its effect is profound because it actually gives everyone a chance to participate in our electoral process, just like the Constitution mandates.

If the VRA is not reauthorized, much of the progress made by minorities in the South and Southwest will be eliminated. If our democracy is to remain valid and responsive to the needs of citizenry, we must allow all minorities full participation in the electoral process without fearing fraudulent election procedures.

It is also my understanding that there is a movement to have the VRA apply nationally. This would be unnecessary since certain provisions of the Act already apply nationally. The application of Section 5 of the VRA to limited parts of the nation is necessary because those jurisdictions have historically discriminated against minorities in voting practices. Applying Section 5 nationwide would render the Act ineffective.

I urge you to strongly support the extension of the Voting Rights Act and to give my comments your full consideration.

Sincerely,

Irma Rangel
State Representative
District 49

IR/ma

Committees: Judiciary and Transportation

SPANISH SPEAKING CATHOLIC COMMISSION
COMISION CATOLICA DE HABLA HISPANA
NATIONAL CONFERENCE OF CATHOLIC BISHOPS REGIONS VI & VII

P.O. BOX 703
NOTRE DAME, IN 46556
(219) 283-4369

COPY

May 15, 1981

President Ronald Reagan
The White House
Washington, DC 20510

Dear President Reagan:

This letter is to urge your support of the extension of the Voting Rights Act. The Voting Rights Act (VRA) has been called the most important and successful piece of civil rights legislation ever passed. There is no question in my mind that this statement is correct. Outrageous abuses against our own citizens and their right to vote have been remedied through the application of this law. Its effect is profound because it actually gives everyone a chance to participate in our electoral process, just as the Constitution mandates.

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I urge you to consider my comments in your deliberations, and I would appreciate knowing your position on this most vital issue.

Sincerely,

Rogelio Manrique
Executive Director

RM:eh

SPANISH SPEAKING CATHOLIC COMMISSION
COMISION CATOLICA DE HABLA HISPANA
NATIONAL CONFERENCE OF CATHOLIC BISHOPS REGIONS VI & VII

P.O. BOX 703
NOTRE DAME, IN 46556
(219) 283-4369

COPY

May 15, 1981

Representative John Hiler
U.S. House of Representatives
Washington, DC 20515

Dear Representative Hiler:

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Sincerely,

Rogelio Manrique
Executive Director

RM:eh

SPANISH SPEAKING CATHOLIC COMMISSION
COMISION CATOLICA DE HABLA HISPANA
NATIONAL CONFERENCE OF CATHOLIC BISHOPS REGIONS VI & VII

P.O. BOX 703
NOTRE DAME, IN 46556
(219) 283-4369

COPY

May 15, 1981

Senator Daniel Quayle
U.S. Senate
Washington, DC 20515

Dear Senator Quayle:

This letter is to urge your support of the extension of the Voting Rights Act. The Voting Rights Act (VRA) has been called the most important and successful piece of civil rights legislation ever passed. There is no question in my mind that this statement is correct. Outrageous abuses against our own citizens and their right to vote have been remedied through the application of this law. Its effect is profound because it actually gives everyone a chance to participate in our electoral process, just as the Constitution mandates.

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I urge you to consider my comments in your deliberations, and I would appreciate knowing your position on this most vital issue.

Sincerely,

Rogelio Manrique
Executive Director

RM:eh

May 14, 1981

Senator Lloyd Bentsen
United States Senate
Washington, D.C. 20515

Dear Senator Bentsen:

The Voting Rights Act has brought democracy to the Mexican American in the urban barrios and in the rural areas. It is the watchdog of our society.

We at the Mexican American Cultural Center strongly recommend that you support the extension of the Act and vote in favor of it. Thank you and God bless you.

Sincerely,

Leonard R. Anguiano

Leonard R. Anguiano
First Vice President

LRA:jld

3019 WEST FRENCH PLACE P.O. BOX 28185 SAN ANTONIO, TEXAS 78228 512 732-2156

May 14, 1981

Senator John Tower
United States Senate
Washington, D.C. 20515

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3019 WEST FRENCH PLACE P.O. BOX 28185 SAN ANTONIO, TEXAS 78228 512 732-2156

CAMERON COUNTY
606 E. HARRISON
HARLINGEN, TEXAS 78550
(512) 423-1878
(512) 423-1316

JOE G. VILLARREAL
Commissioner Pct. No. 4

May 12, 1981

Senator John Tower
U.S. Senate
Washington, D.C. 20515

Dear Senator Tower:

This letter is to urge your support of the extension of the Voting Rights Act. The Voting Rights Act (VRA) has been called the most important and successful piece of civil rights legislation ever passed. There is no question in my mind that this statement is correct. Outrageous abuses against our own citizens and their right to vote have been remedied through the application of this law. It's effect is profound because it actually gives everyone a chance to participate in our electoral process, just like the Constitution mandates.

I urge you to consider my comments in your deliberations, and I would appreciate knowing your position on this most vital issued.

Sincerely,

Joe G. Villarreal

JGV/DM

CAMERON COUNTY
608 E. HARRISON
HARLINGEN, TEXAS 78550
(512) 423-1878
(512) 423-1316

JOE G. VILLARREAL
Commissioner Pct. No. 4

May 12, 1981

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I urge you to consider my comments in your deliberations, and I would appreciate knowing your position on this most vital issue.

Senator Bentsen, when you get ready to run for re-election, be sure to contact me.

Sincerely,

Joe G. Villarreal

JGV/DM

CAMERON COUNTY
606 E. HARRISON
HARLINGEN, TEXAS 78550
(512) 423-1878
(512) 423-1316

JOE G. VILLARREAL
Commissioner Pct. No. 4

May 12,1981

President Reagan
The White House
Washington, D.C. 20515

Dear President Reagan:

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Sincerely,

Joe G. Villarreal

JGV/DM

May 11, 1981

Senator John Tower
U.S. Senate
Washington D.C. 20515

Dear Senator Tower:

The purpose of this letter is two-fold:

1. To urge your support of the extension of the Voting Rights Act, and in particular, the amendments added in 1975 directed at protecting language minorities, including Hispanics;

2. To urge your support in opposing any movement to have the Voting Rights Act applied nationally.

The Voting Rights Act, since enacted in 1965, has been called the most important and successful piece of civil rights legislation ever passed. The protection afforded Blacks against voter discrimination in the South has aided the advancement of Blacks in the political process. Now, these same results are becoming evident in Texas where the Voting Rights Act has been applied to protect the Hispanics.

According to the Southwest Voter Registration Project, voter participation by Hispanics in Texas in the last presidential election increased by approximately 66%, compared to the number of Hispanics voting in the 1976 presidential election. The number of Hispanics elected to public office between 1976 and 1979, increased by 29%.

Although the above gains are significant, I believe that voting discrimination against Hispanics in Texas is still widespread and will continue and/or increase if the Voting Rights Act is permitted to expire.

Regarding the movement to have the Voting Rights Act applied nationally, it is my belief that the underlying purpose of such a movement is to dilute the effect of the Voting Rights Act as presently applied. Voter discrimination is more profound in areas where substantial numbers of minorities exist, and where protection from voter discrimination through the Voting Rights Act would have a significant effect on the outcome of an election.

Application of the Voting Rights Act where an alleged minority voting block exists, but where without the voter discrimination the election results would not change, would tend to dilute and direct the effort of the Justice Department in enforcement of the Voting Rights Act as presently applied.

It is for the above reasons that I urge you consider my views and to support the extension of the Voting Rights Act and to oppose any effort to have the Act applied nationally.

Sincerely,

REYES & BARRERA, INC.

VINCENT RODRIGUEZ
Attorney at Law

VR/eaz

REYES
&
BARRERA, INC.

Attorneys
& Counselors
at Law

FRUMENCIO REYES, JR
ELLIS BARRERA, JR
VINCENT RODRIGUEZ
MIKE G. HERNANDEZ
ROLANDO GARCIA
JUAN M. ALOAPE
MARIA LUPE DeLEÓN

3702 N. MAIN ST.
TEL. 713/869-5973
HOUSTON, TEXAS 77009

May 11, 1981

Representative Jim Wright
U. S House of Representatives
Washington, D.C. 20515

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The Voting Rights Act, since enacted in 1965, has been called the most important and successful piece of civil rights legislation ever passed. The protection afforded Blacks against voter discrimination in the South has aided the advancement of Blacks in the political process. Now, these same results are becoming evident in Texas where the Voting Rights Act has been applied to protect the Hispanics.

According to the Southwest Voter Registration Project, voter participation by Hispanics in Texas in the last presidential election increased by approximately 66%, compared to the number of Hispanics voting in the 1976 presidential election. The number of Hispanics elected to public office between 1976 and 1979, increased by 29%.

Although the above gains are significant, I believe that voting discrimination against Hispanics in Texas is still widespread and will continue and/or increase if the Voting Rights Act is permitted to expire.

Regarding the movement to have the Voting Rights Act applied nationally, it is my belief that the underlying purpose of such a movement is to dilute the effect of the Voting Rights Act as presently applied. Voter discrimination is more profound in areas where substantial numbers of minorities exist, and where protection from voter discrimination through the Voting Rights Act would have a significant effect on the outcome of an election.

Application of the Voting Rights Act where an alleged minority voting block exists, but where without the voter discrimination the election results would not change, would tend to dilute and direct the effort of the Justice Department in enforcement of the Voting Rights Act as presently applied.

It is for the above reasons that I urge you consider my views and to support the extension of the Voting Rights Act and to oppose any effort to have the Act applied nationally.

Sincerely,

REYES & BARRERA, INC.

VINCENT RODRIGUEZ
Attorney at Law

VR/eaz

REYES
&
BARRERA, INC
Attorneys
& Counselors
at Law

FRUMENCIO REYES, JR
ELLIS BARRERA, JR
VINCENT RODRIGUEZ
MIKE G. HERNANDEZ
ROLANDO GARCIA
JUAN H. ALDAPE
MARIA LUPE DeLEÓN

May 11, 1981

Senator Lloyd Bentsen
U.S. Senate
Washington, D.C. 20515

Dear Senator Bentsen:

The purpose of this letter is two-fold:

1. To urge your support of the extension of the Voting Rights Act, and in particular, the amendments added in 1975 directed at protecting language minorities, including Hispanics;

2. To urge your support in opposing any movement to have the Voting Rights Act applied nationally.

The Voting Rights Act, since enacted in 1965, has been called the most important and successful piece of civil rights legislation ever passed. The protection afforded Blacks against voter discrimination in the South has aided the advancement of Blacks in the political process. Now, these same results are becoming evident in Texas where the Voting Rights Act has been applied to protect the Hispanics.

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3703 N. MAIN ST
TEL 713/869-3975
HOUSTON, TEXAS 77009

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It is for the above reasons that I urge you consider my views and to support the extension of the Voting Rights Act and to oppose any effort to have the Act applied nationally.

Sincerely,

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MIKE G. HERNANDEZ
ROLANDO GARCIA
JUAN M. ALDAPE
MARIA LUPE DeLEÓN

3703 N. MAIN ST.
TEL. 713 / 869-9973
HOUSTON, TEXAS 77009

May 11, 1981

President Ronald Reagan
The White House
Washington, D.C. 20510

Dear President Reagan:

The purpose of this letter is two-fold:

1. To urge your support of the extension of the Voting Rights Act, and in particular, the amendments added in 1975 directed at protecting language minorities, including Hispanics;

2. To urge your support in opposing any movement to have the Voting Rights Act applied nationally.

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It is for the above reasons that I urge you consider my views and to support the extension of the Voting Rights Act and to oppose any effort to have the Act applied nationally.

Sincerely,

REYES & BARRERA, INC.

VINCENT RODRIGUEZ
Attorney at Law

VR/eaz

Memorandum

TO Rolando Rios
FROM Bruce Hupp, Admin Asst RE
DATE 5-7-81

Rolando —

Originals letters were sent to President Reagan, the members of the Texas Congressional Delegation, and Peter W. Rodino, Chairman, House Judiciary Committee.

P.S. I also sent a copy of this letter to members of Mexican American Legislative Caucus & asked that they write a similar letter.

Representative Gonzalo Barrientos

The State of Texas
House of Representatives

GONZALO BARRIENTOS P.O. BOX 2910 AUSTIN, TEXAS 78769 (512) 475-3072

May 7, 1981

The Honorable Ronald Reagan
President
The White House
Washington, D.C. 20500

Dear President Reagan:

I am writing to urge your support for the extension of the Voting Rights Act. Its effectiveness in involving minorities in the electoral process has been profound. But to decide it is no longer necessary, or to dilute its strength would be an assumption that the rationale for abuse which required enactment of the Voting Rights Act in the first place, no longer exists.

In Texas, the number of registered Hispanic voters grew from 484,000 in 1976 to 798,000 in 1980 and is directly attributable to their expanded access to the political process. Bilingual provisions and a more responsive slate of candidates have helped to elect more minorities, but their representation is still disproportionate to their percentage of the population. Gerrymandering, at-large districts, and suburban white annexation are tactics still being used to dilute minority strength.

When abuses still exist, there is no plausibility to the argument that the Voting Rights Act is no longer needed. Section 5 was specifically addressed to those states which have historically been the worst offenders. Diluting the strength of this provision would be an unfair, unrealistic assumption that these states have now made a permanent social and political commitment to equal, non-discriminatory voting rights.

Let's not throw away the medicine before the patient is cured. Extension of the Voting Rights Act would be a reaffirmation of America's commitment to her constitutional ideals in the ongoing struggle for a democracy in word and deed.

I would appreciate your consideration of these concerns in your deliberations regarding the merits and need for the Voting Rights Act.

Sincerely yours,

Gonzalo Barrientos
State Representative

GB/bfh

EXTENSION OF THE VOTING RIGHTS ACT

WEDNESDAY, JUNE 10, 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 2141, Rayburn House Office Building, the Honorable Don Edwards (chairman of the subcommittee) presiding.

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

Also present: Catherine A. 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.

The gentleman from Illinois.

Mr. WASHINGTON. Mr. Chairman, I ask unanimous consent that the subcommittee permit coverage of this hearing in whole or in part by television broadcasting, radio broadcast or still photography, in accordance with committee rule 5.

Mr. EDWARDS. Is there objection?

The Chair hears none.

It is so ordered.

Today the subcommittee will commence the 10th in our continuing series of hearings on legislation to extend and amend the Voting Rights Act.

The focus of our hearing this afternoon is twofold: First, we will hear testimony regarding the administration of section 5, from the perspective of State officials.

Second, witnesses will address the implementation of the 1975 minority language provisions of the act.

The subcommittee has four bills before it which address these provisions. One is H.R. 3112 which would extend these provisions so that they would expire concurrently with the other special provisions of the act in 1992, as was Congress' intent in 1975. The other three bills would delete section 203 which provides language assistance throughout various States in the Nation. They also would delete from section 5 coverage, States such as Texas, and strike reference to language minorities wherever it appears in the act, thereby raising doubts about the ability of language minorities to utilize other remedies provided in the act.

We are delighted to have with us today as our first witness our colleague from Tennessee, the Honorable Harold Ford, who is here, I am sure, to lend his general support for the extension of the act.

Mr. Ford, we are delighted to have you here and, you may proceed.

TESTIMONY OF HON. HAROLD E. FORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

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

I am very delighted to appear before the committee today and to come before this very distinguished and able chairman of the subcommittee as well as with my other colleagues, especially my colleague from Illinois, Mr. Washington.

Mr. Chairman, I appear before you today as one of the two black Representatives from the South currently serving in the Congress.

While Tennessee was one of the Southern States not covered by the Voting Rights Act of 1965, the momentum of the legislation swept through my home State like a forest fire, and the number of black voters in Tennessee increased significantly.

Had not the Voting Rights Act been passed, I seriously doubt that I would be appearing before you as the elected Representative of the 8th District of Tennessee. Although I was only 20 years old and a college student when the Voting Rights Act was passed, it had a very, very special meaning to me.

When the landmark Voting Rights Act was passed in 1965 by the Congress, it was viewed by many citizens, black and white, as one of the most significant pieces of civil rights legislation passed in the history of the United States.

The year 1965 was almost 100 years after the Civil War ended and the Emancipation Proclamation was signed by President Abraham Lincoln. Yet, it took that long for voting privileges of black Americans in this country to be fully guaranteed and enforced under the law.

During the Reconstruction Era, after the Civil War, black Americans in the Southern States did exercise their new voting rights, and they elected 20 black members to the Congress of the United States, including two black Senators.

As you know, at the end of the Reconstruction Era, black Americans were quickly disenfranchised through gerrymandering, poll taxes, literacy tests, and violence and intimidation by various white supremacy organizations which were sanctioned by local and State government officials.

In the 1960's, black Americans became adamant about exercising their voting rights, despite specific legal language that neither the Federal Government nor any State could deny the right to vote because of race.

If we look, Mr. Chairman, the 15th amendment of the U.S. Constitution, ratified in 1890, had not been successful in insuring that black Americans could vote.

When the Voting Rights Act was passed in 1965 it, in effect, utilized an administrative remedy for ending voter discrimination based on race. The judicial process had been slow and had not worked effectively.

The Voting Rights Act of 1965, as amended in 1970 and 1975, prohibited literacy tests and other devices used to qualify individuals for election, provided for Federal examiners to supervise the voting process when necessary, required approval by the Federal

Government before changes could be made in voting registration laws or procedures in the affected States, and provided for language requirements other than English in affected States to protect the rights of non-English-speaking groups.

As a result of the enactment of the Voting Rights Act of 1965, black voter registration and participation increased dramatically. For example, in the 7 years, from 1965 to 1972, the percentage of blacks who registered to vote in 7 Southern States increased from 29.3 percent to 56.6 percent.

Furthermore, in these States, black elected officials increased from less than 100 prior to 1965 to more than 1,100 in 1974. These numbers have continued to increase.

For example, in Mississippi, almost 70 percent of black citizens are registered and there are approximately 400 black elected officials.

Even given these impressive statistics, there are some who say that the Voting Rights Act of 1965 has outlived its usefulness and should not be extended when it expires in August 1982 or should be modified. There are those who say times have changed, and that this is 1981, not 1965.

I should note that those who focus their attention on ending or modifying the Voting Rights Act tend to look at only a few of the aspects of the act, the increased number of registered black voters and the elimination of literacy tests.

I remind you that while black voters certainly have increased in the affected States that I previously mentioned, their registration percentage generally trails that of white voters, 56.8 percent for black voters compared to approximately 70 percent for white.

As proposed in H.R. 3112, I believe that it is necessary to extend the Voting Rights Act for 10 years, until 1992, in order to protect the impressive gains that have been made. To not extend the act, or to significantly water it down, Mr. Chairman, would seriously erode these gains.

One of the most important factors of the Voting Rights Act is section 5, which forbids any State or political subdivision to put into effect any voting qualification or prerequisite to voting, or standard, practice, or procedure, unless submitted to the Justice Department for prior approval to insure that the proposed change does not discriminate on the basis of race or language.

Without the preclearance provision of the Voting Rights Act, States and localities would again be free to resort to more sophisticated and subtle methods of disenfranchising and discriminating against black voters.

No, I don't think there will ever be poll taxes or literacy tests again in this country, but I do think that the following methods could easily be utilized as they are being used by some localities at this very moment:

Changes by redistricting to dilute the voting power of concentrations of black voters by adding more white voters or by concentrating blacks into one district rather than several.

Annexing surrounding areas which almost always tend to be predominantly white. Again, the effect is to dilute the voting power of black voters.

Changing key public offices to appointed rather than elected offices.

Switching poll locations outside of black areas to discourage black voter turnout.

Changing single-member districts to at-large voting districts to dilute the political power of black voters.

Eliminating minority language requirements on ballots.

To say that all voting discrimination based on race and language has been eliminated is an overstatement. We have made significant progress, but we still have a long way to go. As I have previously said, the gains can easily, without oversight from the Federal Government, be wiped out overnight.

Does anyone here today believe that without the Voting Rights Act progress will continue and we will be protected? If you do, then I have some costume jewelry that you might be interested in buying after my testimony.

It is not the question of whether the Old Confederacy has been in the "penalty box for the past 17 years," as I have heard. It is a matter of having done what was right, and continuing to do so in the future.

I should note that some people tend to point to the South as being the victim of the Voting Rights Act. All Southern States are not involved in the preclearance provision. I hardly consider States such as Oregon, Arizona, California, Alaska, Hawaii, and New York as Southern States. They are included in the section 5 preclearance provision. Without scrutiny by the Federal Government, there could be a relapse in disenfranchising black voters similar to when the Federal troops were ordered out of the South during reconstruction.

I need not remind you of what happened.

Blacks, again, were totally disenfranchised until the Voting Rights Act of 1965 was enacted.

I would also like to remind you that the Voting Rights Act covers not only black Americans, but also persons of Spanish heritage, American Indians, Alaska Natives, Asian Americans, and other minority groups as well.

For example, as a result of the amended Voting Rights Act, Hispanic voter registration, from 1975 to 1980, increased 29.5 percent nationwide, and 44 percent in the Southwest.

It would seem to me that if States and localities have actually stopped discriminating based on race, and have no plans to do so in the future, then preclearance or Federal approval of proposed voting law changes should not bother them.

Why should the burden of proof be shifted to the complaining party? How do you prove that a change in voting procedures or a change in precinct boundaries or poll location was intended to discriminate unless you participated in the process? You know, folks just don't sit out on the public square and invite the whole town when they are making plans to circumvent the law.

In 1978, the city of Jackson, Miss., moved 38 polling places located in predominantly black areas to white areas and announced the changes 1 day before the election was held.

Should black voters, as proposed by opponents of the Voting Rights Act, have to prove that discrimination was intended in that particular case?

The Voting Rights Act of 1965 as amended in 1970 and 1975 has worked well for the past 17 years. I don't think that we are totally ready to say that it is no longer needed, that preclearance is no longer necessary, or the burden or proof of discrimination should be on the complaining party. This is not the time to retreat.

The act should be extended for 10 additional years. During this period, Mr. Chairman, the country will go through another census and reapportionment process.

The extension will give us the chance to see whether we truly need to eliminate the Voting Rights Act. The redistricting plans will speak for themselves at that time.

In 1992, I hope that I can come before this subcommittee again and advocate that the Voting Rights Act is no longer necessary.

With that, Mr. Chairman, I close my testimony and will be happy to make myself available for any questions from members of the committee.

Thank you.

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

That is a most impressive and hard-hitting statement and it will be a great help to the committee.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. I also want to commend my colleague from the Black Congressional Caucus for a very cogent and tremendous statement.

Congressman, you made a very unique statement on page 1, one which I think most people are not quite familiar with.

Even though you come from a State not covered by the Voting Rights Act, you attribute your election to that act by saying that the Voting Rights Act was a catalyst and gave momentum to the enfranchisement and registration and concern and just sheer interest in the whole electoral process on the part of a lot of black and Latin peoples.

That is a beautiful statement and one I think needs to be just emblazoned across the sky.

Would you want to embellish on it?

Mr. FORD. Let me say, Mr. Washington, in 1974, when I offered myself as a candidate for the Congress of the United States, I looked at the previous years and the makeup of the voter participation in our State, and I am almost certain that the 1965 act, passed by the Congress, made it possible for black participation in voter registration in that city.

Yes, Mississippi is adjacent to the State of Tennessee, which is covered under the Voting Rights Act. This made it easier for us in Tennessee to register under the leadership of certain organizations and groups, and it's obvious that we had people who spearheaded the voter registration campaigns throughout the South, which were headed at that time under the leadership of Dr. Martin Luther King and others.

I would have to say the protection of the Federal Government guaranteed the black citizens in the South an opportunity not only

to register but to exercise their right and their privilege which was given them, the right to vote.

Mr. WASHINGTON. In short, it gave credibility to the whole process because blacks knew they were protected or that there was a shield which would protect them from attitudes in the South and some border States, for example, that made it difficult for them to be involved in the process prior to that.

In other words, it gave them credibility in that process.

Mr. FORD. Being from the South, I can attest to the importance of the Federal Government providing that type protection for those who so long did not share in that privilege, nor that right to participate in the electoral process. When the Voting Rights Act was enacted in the Congress, it gave us the feeling that we could, in fact, participate and feel confident that we were protected at the same time.

Mr. WASHINGTON. It's one of those intangibles that is hard to put your finger on. But we know there on page 5 you lay out very clearly, and I don't see how anyone can possibly challenge it, the various shenanigans and methods and procedures that have been used by the controlling interests of certain Southern States to frustrate, not just registration, but to frustrate the effects of registration and voting by certain people.

We have had testimony to this effect before. I have never seen it brought together in such a cogent fashion. It just seems to be very difficult to penetrate the impediment or shield that those would put up who want to destroy this act.

I cannot imagine anyone reading this kind of thing, buttressed by the kind of on-site testimony you have had, and which on-site observations which you have had and have been talking about, I just don't see how anyone can possibly legitimately and honestly fight the reauthorization of this act. I just don't see it.

Also, on page 7, another very good observation in terms of the burden of proof. Paragraph 2 should be etched in stone, Congressman, it should be etched in stone, because you are saying very clearly unless you are involved in the negotiation, the legislative and administrative process you simply cannot determine intent unless it is obviously and manifestly clear and if for no other reason than that the burden of proof should stay exactly where it is.

You are to be commended for that and I want to thank you.

Mr. FORD. Thank you very much, Mr. Washington.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

Mr. Ford, would you like Tennessee brought in under the Voting Rights Act?

Mr. FORD. I certainly would not have a problem with that at all. I am satisfied with it, including the States presently covered under the Voting Rights Act now, but I would not have a problem with that at all.

Mr. HYDE. In other words, you are indifferent as to whether or not it would be brought in; you wouldn't have a problem with it but you don't advocate it; is that correct?

Mr. FORD. No; let me put it this way: I am here to support the extension of the Voting Rights Act that was passed in 1965. I would

have no problem if this committee wanted to send to the House legislation that would cover all of the 50 States in the Nation. I would not have a problem with that law, Mr. Hyde.

Mr. HYDE. Is Tennessee that much better than Mississippi in terms of the spirit of compliance with helping minorities vote and get registered?

Mr. FORD. I would not want to put Tennessee over Mississippi at all. I wouldn't want to compare the two States. Our sister State which is adjacent to us on the south, certainly is a very progressive State. Because of the Voting Rights Act they now have some 400 black elected officials while we, in Tennessee, would have less than 50.

So, I think they have made political progress and, hopefully, with the extension of the Voting Rights Act, we will continue to make that progress, not only in Mississippi but we will be the benefactors as well in our State and other States throughout this country.

Mr. HYDE. Thank you.

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

Mr. KASTENMEIER. Mr. Chairman, I have no questions.

I just want to commend the witness for his statement, which I was very interested in.

Mr. FORD. Thank you very much.

Mr. EDWARDS. Mr. Ford, you mentioned on page 4 the increased number of registered black voters and certainly the record has been remarkable and we are impressed with it too, and a number of the witnesses have been impressed with the effect on registration and voting among black and Hispanics of the Voting Rights Act.

However, we have had a number of witnesses, especially from the Southwest, who have pointed out that, yes, the Voting Rights Act has made it possible for Hispanic and blacks in the Southwest to register and vote, but that new devices and ways of gerrymandering have been invoked and used over and over again so they might be able to register and vote but they can't get elected to office.

Do you believe that is true and that is one of the chief reasons why we have to continue to support a continuation of section 5, preclearance?

Mr. FORD. Yes, Mr. Chairman.

I must say I had a personal experience myself in 1974. I served in the Tennessee House of Representatives before being elected to serve in the Congress, and I was there in 1972 when we drew the lines under the new census and reapportionment of 1972.

We had our election commission submit all of the data we needed to draw the lines in our county.

Two days prior to their submitting the precincts they split approximately 15 white precincts and did not show the split numbers on the list that they submitted to us.

Under the redistricting plan throughout the State, we identified counties and precincts, with the exception of the county that I represent, and when we got to the last district, which was the 8th District, we said, "All other precincts and wards should be placed in the 8th Congressional District," and we were working with one set of guides the election commission had submitted to us.

While they really had not falsified the information, they split the precinct 2 days before submitting the information to us, so once we enacted the legislation all of those other precincts that they split in Shelby County went into the district that I represent now, and in which it was almost impossible for a black to seek and win the 8th Congressional District set in Shelby County. The intent of the legislation in Nashville was that they wanted to draw a district in which a black could have a good possibility of being elected.

So we went immediately and got relief from the Federal courts. A three-judge panel heard the case, made reference to the Voting Rights Act, and said that the actions of the election commission were gerrymandering and, that the election commission should have sent the precincts that were split to the legislature? They ruled in our favor and took those precincts out of the district.

Mr. EDWARDS. Thank you very much.

Are there further questions?

If not, we thank you very much for your help.

Mr. HYDE. Mr. Chairman, I wonder if I might be heard for purposes of a statement and offer it for the record.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde, is recognized.

Mr. HYDE. Thank you, Mr. Chairman.

On May 18, you and I wrote the Department of Justice regarding complaints which Rev. Jesse Jackson had made about the Department's enforcement of section 5 in the city of Jackson and Edgefield County, S.C.

I assume that is Jackson, Miss., and Edgefield County, S.C.

Yesterday I received a response from Robert A. McConnell, the Assistant Attorney General-Designate for the Office of Legislative Affairs, Department of Justice.

If you have no objection, I would like to offer the letter which numbers 3 pages as part of the record with the understanding that attachments which are appended to it can be acquired from the Department of Justice's Office of Legislative Affairs.

I would also suggest that the committee forward copies of the letter to Reverend Jackson.

According to the Department, it wrote the city attorney of Jackson, Miss. on February 17, 1981, and requested that the city outline the steps it planned to take in order to comply with an objection which the Department initially interposed on December 3, 1976.

We are informed that the Carter administration came to an interim agreement covering the intervening period. Since then the Department officials have been meeting with representatives of the city of Jackson to obtain compliance with its objections.

On April 23 the Department received a communication from the Jackson city attorney to the effect that the city requested a de novo review of the annexation at issue. In responding the Department wrote the city attorney on May 8, 1981, that though the Department would not institute legal proceedings prior to the June 2, 1981 election because of the inherently disruptive nature of last minute litigation, it would take prompt legal action as soon as the elections were held.

The city has since agreed to separate ballots cast in the annexed area so that the Department might measure the impact of the participation by residents of the annexed area.

With respect to Edgefield County, S.C., a section 5 objection to the at-large election system extant there was interposed on February 8, 1979. Further research revealed that a 1966 State statute establishing an at-large electoral system for the governing body of the county had not been submitted for review pursuant to the Voting Rights Act.

To date neither the State of South Carolina nor the county of Edgefield has complied with the Department's request for submission of the 1966 law.

Nevertheless, the applicability of section 5 to this law is being privately litigated in *McCain* v. *Lybrand*. I presume this private litigation is based on section 3(c) of the act.

Mr. Chairman, this is in response to the issues which Reverend Jackson raised during his appearance before us, and I would hope that both jurisdictions can be brought into conformity by the litigation now pending in the district court for the District of South Carolina and in litigation which the Department plans to file against the city of Jackson, Miss.

I cannot say that I am at all satisfied with the action or rather protracted inaction that characterizes both of these cases.

Mr. EDWARDS. Thank you very much, Mr. Hyde and, without objection, the enclosures you referred to will be made a part of the record.

[The information follows:]

U.S. DEPARTMENT OF JUSTICE,
ASSISTANT ATTORNEY GENERAL LEGISLATIVE AFFAIRS,
Washington, D.C., June 8, 1981.

Hon. HENRY J. HYDE,
House of Representative,
Washington, D.C.

DEAR CONGRESSMAN HYDE: The Attorney General has asked me to respond to the letter dated May 18, 1981, from you and Congressman Edwards regarding the Department's enforcement of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, in the City of Jackson, Mississippi and Edgefield County, South Carolina.

On December 3, 1976, the Attorney General interposed a Section 5 objection to the voting changes resulting from an annexation made by the City of Jackson. A copy of the letter of objection, which explains the basis for the objection, is appended for your information as Attachment A. In late 1980, the Department learned that, in spite of the outstanding Section 5 objection, the City intended to implement the voting changes occasioned by the annexation in the 1981 municipal elections, i.e., the citizens residing in the annexed area would be permitted to participate in the election. Thus, on February 17, 1981, the Department wrote to the city attorney requesting he tell us what steps the City planned to take to comply with the Section 5 objection. In this letter, the Department reiterated its position that as long as the Section 5 objection remains outstanding, the residents in the annexed area may not legally participate in municipal elections. A copy of the February 17, 1981 letter is enclosed as Attachment B.

In response, the City of Jackson advised, by letter dated March 16, 1981 (appended as Attachment C), that it would submit 1980 Census figures concerning the annexation to the Attorney General in support of a request for reconsideration of the objection. But the City further indicated that it planned to implement the unprecleared voting changes occasioned by the annexation in the 1981 municipal elections.

Since then, officials of this Department have met with representatives of the City of Jackson in an effort to obtain voluntary compliance with federal law. At a conference held on April 13, 1981, we offered suggestions for obtaining a voluntary resolution. See Letter of Douglas R. Marvin, Assistant to the Attorney General, to

Jerris Leonard, Counsel for the City of Jackson, dated April 29, 1981. (Attachment D.) On May 5, 1981, we again met with counsel retained by the City in an effort to resolve the matter. At that meeting we were informed that by May 15, 1981, the City would request the Attorney General to reconsider the Section 5 objection to the annexation. On May 23, 1981, the Department received from the Jackson city attorney a request for "de novo" Section 5 review of the annexation at issue.

The results of our negotiation efforts are summarized in our letter to the City's counsel dated May 8, 1981. (Attachment E.) You will note that our efforts did not result in voluntary compliance with federal law by the start of the 1981 municipal elections on May 12, 1981. We informed the City that, although we would not institute legal proceedings prior to the election because of the disruptive nature of last minute litigation, we would take prompt action to enforce federal law after the 1981 elections are completed.

As you know, the municipal election was held on June 2d. The City has agreed to keep separate the ballots cast in the annexed area so that we might measure the impact of the participation by residents of the annexed area. The City has also been advised that, even if the election outcome is not affected by the annexation, the illegal implementation of the annexation may result in an order shortening the terms of the persons elected and requiring that a new election in compliance with federal law be conducted.

With respect to Edgefield County, South Carolina, a Section 5 objection "to the implementation of the requirements of the South Carolina Home Rule Act in the context of the at-large election system existing in Edgefield County" was interposed on February 8, 1979. A copy of the objection letter is appended as Attachment F. You will not that the letter states that "should the county undertake to adopt an electoral system that more accurately reflects minority voting strength, such as single-member districts, the Attorney General will reconsider his determination upon being so advised."

In December 1980 additional research with respect to Edgefield County revealed that a 1966 State act that originally established an at-large electoral system for the governing body of the county had not been submitted for review under Section 5. On December 9, 1980 we sent a letter to the Attorney General of South Carolina, with a copy to the county attorney, requesting the submission of the 1966 act. (Attachment G.) A follow-up letter was sent to the county attorney on December 31, 1980. (Attachment H.) To date a submission of the 1966 act has not been received.

Although neither the state nor the county has yet complied with our request for a submission of the 1966 change to at-large elections, the applicability of Section 5 to the 1966 change is being litigated in the private lawsuit styled *McCain* v. *Lybrand*, Civ. No. 74-281 (D.S.C.). Plaintiffs in that lawsuit also challenge, on constitutional grounds, the at-large method of electing the county governing body. The Civil Rights Division is currently considering whether our participation in the private lawsuit might help assure compliance with Section 5.

I hope that this information is helpful in understanding the Department efforts to obtain compliance with Section 5 in these two specific instances. We regret that we were unable to obtain voluntary compliance by the City of Jackson prior to the 1981 municipal elections but I assure you that our efforts to obtain compliance will continue and, if necessary, we will seek the judicial relief necessary to effectuate the requirements of the Voting Rights Act. The Edgefield County Section 5 issues are now pending before the United States District Court for the District of South Carolina and that private lawsuit should resolve the issues. Although we believe that private litigation such as the *McCain* lawsuit is an important element of effective Section 5 enforcement, particularly in light of the limited resources of this Department, we are currently considering whether participation by the United States in the lawsuit might help assure proper enforcement of the Act.

An identical letter is being sent to Congressman Edwards.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General—Designate.

Mr. EDWARDS. Our next witness is the State Attorney General from the great State of New York, the Honorable Robert Abrams.

Mr. Attorney General, we welcome you.

Would you introduce your colleague and, without objection, your statement will be made a part of the record and you may proceed at your own time.

TESTIMONY OF HON. ROBERT ABRAMS, STATE ATTORNEY GENERAL, STATE OF NEW YORK, ACCOMPANIED BY DEBORAH BACHRACH, ASSISTANT ATTORNEY GENERAL, DEPUTY CHIEF, CIVIL RIGHTS BUREAU

Mr. ABRAMS. Thank you very much, Congressman.

I am very pleased to be here and I am joined at the table by Deborah Bachrach, who is the assistant attorney general, deputy chief of our civil rights bureau in the attorney general's office in the State of New York.

[The statement of Mr. Abrams follows:]

STATEMENT OF ROBERT ABRAMS, ATTORNEY GENERAL OF THE STATE OF NEW YORK

I am grateful for the opportunity to testify before this distinguished subcommittee in support of the proposed extension of the Voting Rights Act of 1965. I speak as the elected Attorney General of the State of New York—a state which has three of its largest counties covered by the special provisions of the Voting Rights Act. I believe that extension of those provisions is essential.

The right to vote and to have that vote count is the bedrock of our democracy. By ratifying the Fourteenth and Fifteenth Amendments in the 1860's, the states declared this to be true. By passing the Voting Rights Act one hundred years later, Congress sought to make the Constitution's promise of voter equality a reality, at long last, for our minority citizens.

Every state of course has the right to determine its own electoral processes, and the Voting Rights Act does not interfere with this right. But Congress has also declared that states' activities must be exercised within the constraints of the Fourteenth and Fifteenth Amendments. Federalism can mean no less.

The history of the past fifteen years has proven Congress right. The Voting Rights Act does give practical effect to the Fourteenth and Fifteenth Amendments. It has led to dramatically increased registration and voting among Black and Hispanic citizens, and has helped to increase the number of Black and Hispanic elected officials. Because the Act works so well, Congress wisely decided to extend its terms in 1970 and again in 1975.

The Act eliminated the literacy test for voting, a discriminatory requirement of long standing. And to assure that more novel or subtle devices did not replace older forms of discrimination, the Act included a "preclearance requirement." For the past fifteen years, this requirement has deterred the use of new forms of discriminatory practices—in many cases by discouraging even their introduction into state legislatures.

In 1975, many argued that because the affected jurisdictions had made significant gains, the Act's preclearance requirement was no longer necessary. It turned out not to be true. In 1976, the Department of Justice objected to as many or more proposed changes from some affected states as it had in any previous year. The same arguments are being made today, and are equally likely to prove untrue. Unfortunately, discriminatory practices will continue to be devised next year, and in future years, and our nation cannot tolerate that. Extension of the preclearance requirement is the crucial safeguard we must maintain.

In 1975, Congress also extended the protections of the Voting Rights Act to language minorities, after finding that they too had been systematically excluded from the electoral process. In the last six years, bilingual elections have begun to translate the Fourteenth Amendment into a reality for many American citizens who are not fluent in English. Kings, New York and Bronx counties in New York State are subject to the Act's special provisions, including Section 5, which requires preclearance of any changes in voting, and Section 203, which requires bilingual elections. The balance of my testimony will relate to New York's experience in complying with these requirements. That experience convinces me that neither requirement is overly burdensome and that both requirements effectively serve to protect the rights of minority citizens.

ADMINISTERING THE PRECLEARANCE REQUIREMENT

The counties of Kings, New York and Bronx first came within the purview of the Act in March, 1971. It was then that the United States Attorney General determined that the literacy requirement imposed by New York law was a "test or device" within the meaning of the Voting Rights Act; and the Director of the

Census Bureau determined that less than 50 percent of the persons of voting age residing in each of the three counties had voted in the preceding presidential election.

Thereafter, as allowed by the Act, the three counties attempted, to be exempted by the federal court from the preclearance requirement. They tried without success to demonstrate that New York's literacy test had neither the purpose nor effect of abridging any citizen's right to vote on account of race or color. As a result, New York has been required to submit to the Department of Justice all the voting laws and procedures enacted since November 1, 1968 which affect any of the three counties.

Because any change in state law or regulation necessarily affects the three counties, all such changes are precleared with the Department of Justice. Redistricting affecting any of the three counties is pre-cleared; two examples are the upcoming statewide reapportionment and the recent realignment of the New York City Council after the 1980 Census. Additionally, changes unique to any of the three counties, such as location of polling places, are also precleared.

Because responsibility for complying with the Act's preclearance requirement regularly falls both on the New York City Board of Elections and the New York State Board of Elections, I recently had my staff discuss with the heads of these two agencies their views on the preclearance requirement. From these discussions, it became clear that the preclearance requirement has not been overly burdensome to administer.

For example, the New York State Board submits to the Justice Department for preclearance all amendments to our Election Law. On average, eight to twelve amendments are submitted each year. The submission includes a cover letter of transmittal, a copy of the bill, the memoradum in support prepared by the bills' sponsor, any other memoranda that were influential in gaining passage, and the memoradum explaining the bill's terms and effect, which is prepared by the State Board of Elections for the Governor. By submission of these documents, the State Board of Elections is usually able to provide the Justice Department with all the information it requires to determine whether or not a proposed change will have a discriminatory impact. With the exception of a routine cover letter, the submission generally includes only documents which had already been prepared as part of the process by which the bill was enacted into law. On the rare occasion when this information is insufficient, the additional information required can generally be transmitted by telephone. When the voting change is not objectionable, the preclearance process imposes an insignificant burden on the state and results in no delay in implementing amendments to our voting laws.

Since becoming subject to the Act's preclearance requirement, New York has had approximately 500 changes in voting practices reviewed by the Justice Department. The Department raised objections three times: twice in 1974 and once in 1975.

A brief mention of these situations aptly demonstrates the Voting Rights Act's effectiveness in preventing changes with harmful consequences for minority citizens of our state. In 1974, the Department objected that certain polling places had been located in New York County, that is Manhattan, in apartment complexes with mostly white tenants, although polling places had not been similarly located in complexes with mostly minority tenants. As a result of the objection, steps were taken to make polling places equally accessible to white and minority voters. In 1975, the Justice Department objected to the consolidation of two Democratic leadership districts in Manhattan. The proposed consolidation would have dismembered a predominantly minority district, with the possibility that the votes of minority voters would be diluted. As a result of the objection, the consolidation plan was abandoned. In each case, the objection was interposed in a timely manner, causing the minimum necessary disruption to the electroal process. And, in each case, the matter was resolved without litigation.

The third objection involved the 1974 redistricting of State Assembly, State Senate, and Congressional districts in Kings and New York counties. Most of the redistricting was unobjectionable. However, the Justice Department was concerned that the creation of certain districts in those two counties would have the effects of abridging the right vote on account of race.

While, of course, New York had the right under the Voting Rights Act to challenge the Justice Department's determination in court, the state choose instead to redraw the districts to prevent vote dilution. The reapportionment amendments were submitted to the Justice Department on May 31, 1974 and were approved one month later. However, white voters in Kings County sued, alleging that the plan violated the Fourteenth and Fifteenth Amendments.

Ultimately, the Supreme Court upheld the plan, ruling that the Constitution does not prohibit racial considerations when they are used to minimize the consequences

of racial discrimination. Under the Voting Rights Act, the effectiveness of minority voting power could not be diluted by dividing minority communities among predominantly white districts.

The Court's decision in UJO acknowledges that a blind approach to redistricting may well produce grossly unfair results—albeit perhaps unintended. For example, in Kings County, in the early 1970s, the bulk of the Black population was concentrated near the center of the county. At that time, the traditional method of drawing district lines in New York State was to start at the peripheries of a county and work toward the center. Using the method of redistricting, the Black population would likely have been divided among more districts than would have been the case if the redistricting procedures started at the interior of the county and worked outward. The 1974 district lines in Kings County were, accordingly, drawn to avoid any unintentional discriminatory effects that prior districting plans may have had in distributing Black residents, and thereby reducing the changes to elect representatives responsive to the needs of the minority community.

I have spoken in some detail about the effect of preclearance on the redistricting in Kings County because it raises the issue of vote dilution; that is, the practice of reducing the potential effectiveness of the votes of minority group members by redistricting, at-large elections, and annexations. We cannot permit the voices of Black and Hispanic voters to be muted by dispersing these voters among districts in which by their numbers they comprise ineffective minorities. Both on a local and national level, legislatures will reflect the interests of all of the people, and not just one segment of the population, only when election districts are drawn in a nondiscriminatory manner.

In the 1970's and 80's, the issues of voting discrimination have shifted from vote denial to vote dilution. With this shift, the preclearance requirement of Section 5 has become crucial. The overwhelming majority of objections interposed under Section 5 in the last ten years have been to voting changes that would dilute newly-acquired minority voting strength. Thus, to allow Section 5 to expire just as the post-1980 census redistricting is taking place would be particularly inappropriate.

One recent New York example again highlights the complexities of redistricting and the continuing need for the preclearance mechanism. After the 1980 census figures were released (unadjusted for minority undercount), the New York City Council rewrote the council lines in all five boroughs of New York City. The Voting Rights Act, and especially the preclearance requirement, has figured prominently in this redistricting. On the one hand, the Council redistricting appears to preserve the opportunity for incumbent minority members to be reelected. On the other hand, some claim that the Council could have been realigned to increase the number of districts in which minority voters constitute a majority, and thereby more accurately reflect the increased minority population of New York City which went from 31 percent to 47 percent between 1970 and 1980.

The Council's redistricting plan will have to be submitted to the Department of Justice prior to its implementation. Obviously, we cannot now adequately analyze the factors that went into the reapportionment, or the effect on minority voters of the City Council redistricting. The Voting Section at the Department of Justice, with its acquired expertise, will evaluate its ultimate impact. It will do so within 60 days, before the plan is implemented. If there were no preclearance, a potentially discriminatory redistricting plan might be implemented, and years spent in expensive and time-consuming court challenges. And even if the plan were ultimately found to be fair, the perception of discrimination that might grow out of accusations made in protracted, heated litigation could not easily be eradicated.

The 1980 and 1990 post-census redistricting create the opportunity for diluting the voting strength of the growing numbers of minority voters. This seems to me argument enough for a ten-year extension of Section 5's preclearance requirement. Additional argument, however, is found in Section 5's deterrent effect. Some point to the fact that of the hundreds of submissions from New York, only three have resulted in objections. They cite this as evidence that Section 5 has become an unnecessary burden. I believe rather that these figures are evidence of the Act's effectiveness as a deterrent. A former member of the New York Senate's Election Committee has described to us how amendments to the Election Law, which might have had a discriminatory effect if passed, were often defeated or not even offered at all because of the barrier erected by the Voting Rights Act and the need for preclearance by the Justice Department.

The burden of meeting the preclearance requirement is one we can well afford. It is far less costly and far more expeditious to process five hundred voting changes through the Justice Department than to litigate through the courts the manifold challenges that would ensue absent preclearance. And, more importantly, Section 5

is a crucial safeguard of the gains the nation has made in transforming the promises of the Fourteenth and Fifteenth Amendments into reality.

PROTECTING THE RIGHTS OF LANGUAGE MINORITIES

The language minority provisions of the Voting Rights Act are equally important in guaranteeing the right to an effective vote. New York State has a Hispanic population of at least 1.6 million people, 1.4 of whom live in New York City. As much as I would like to be able to say that New York has a long history of protecting the voting rights of its language minority citizens, I cannot fairly say that. However, I can state that—with a prod from Congress and the federal courts—we are now taking steps to bring our Hispanic citizens into the electoral process.

In 1965, the Voting Rights Act included a provision, Section 4(e), which mandated that no person who has successfully completed the sixth grade in a public school,[1] or a private school accredited by the Commonwealth of Puerto Rico in which English was not the language of instruction, could be denied the right to vote in any election because of an inability to read or write English. This provision was sponsored by Senators Robert Kennedy and Javits and Representatives Gilbert and Ryan, all of New York. Its explicit purpose was to deal with the disenfranchisement of large segments of the Puerto Rican population in New York because of an English-language literacy requirement in New York's constitution and election laws. There were those who honestly believed that New York's English-language literacy requirement for voting was an appropriate mechanism to encourage our citizens who did not speak English to learn it. But Congress declared that so precious a right as the right to vote cannot be withheld while a citizen, otherwise qualified to vote, is learning English.

As an example, all those born in Puerto Rico are citizens of the United States. While Puerto Rico has a bilingual society, the primary language of Puerto Rico's people and its classrooms is Spanish; many citizens, born and educated in Puerto Rico are unable to speak, understand or read English. Until the mid-1970's, New York had no comprehensive program of instruction in English and Spanish. Congress recognized that it was inappropriate to penalize citizens for attending Spanish-speaking schools in Puerto Rico, or schools in the United States which had only recently begun to implement effective educational programs to teach English.

Elimination of the English literacy test was only the first step in opening the New York electoral process to citizens who are not fluent in English. In 1974, in *Torres* v. *Sachs,* a federal court, finding that New York's English-only voting procedures violated the Voting Rights Act, ordered New York City to provide bilingual elections. Specifically, the court order requires the New York City Board of Elections to: (1) provide all written election materials, including ballots, in both Spanish and English; (2) provide a sufficient number of bilingual election officials at each Board of Elections county office and at all polling places in areas with a high concentration of Hispanic citizens; (3) post Spanish-language signs at all polling places and places of registration, stating that election officials are available to assist Spanish-speaking voters or registrants, and that bilingual printed materials are available; and (4) publicize elections in the media in Spanish.

In 1975, the State Board, after encountering some difficulties in obtaining statewide implementation, consented to a similar federal court order requiring bilingual elections statewide in *Ortiz* v. *New York State Board of Elections.*

New York's experience with bilingual elections demonstrates that although local officials may indeed be committed to a fair electoral process, it may take federal legislation or a court order to ensure that the commitment becomes action. The 1975 amendments to the Voting Rights Act, requiring bilingual elections in areas with significant numbers of language minorities, do precisely that. The Act's bilingual election provision, like those of Section 5, apply only to the counties of the Bronx, Kings and New York, where they serve to reinforce federal court mandate.

The New York experience demonstrates the importance of the bilingual provisions and the fact that they are not burdensome or costly to implement. In New York City, all printed election materials are bilingual. To the extent possible, all forms are printed in both Spanish and English on the same form—either front and back, top and bottom, or left and right side. This policy extends even to the "No Smoking" signs. The envelope containing the "Notice of Cancellation of Registration" has a return address in English and Spanish, and a warning that the enclosed material is "very important * * * concerning voting status" in both English and Spanish. And, needless to say, the enclosed notice is entirely bilingual.

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[1] In 1970 Congress eliminated the sixth grade education requirement.

The financial burden to the state of bilingual elections is minimal; beyond start-up costs, the sums are truly insignificant. For example, all translation of state-wide registration and voting materials is handled by the New York State Board of Elections. The translations are done by the Chairman of the Political Science Department of the State University at Albany, and cost, on average, just over $1,000 per year for the entire state. In Westchester County, with a Hispanic population of over 45,000 people, the costs of providing bilingual materials is approximately $3,000 per year, or less than 0.2 percent of the County Board of Elections' budget. By using volunteer interpreters provided by the Maryknoll priests and local Hispanic organizations, Westchester County spends no money on interpreters. And the return on these insignificant expenditures is enormous. It is estimated that since New York first provided bilingual elections, Hispanic registration has increased by 20 percent. Since 1965, the number of New York Hispanic representatives in the state and federal legislatures has more than doubled. With minimal costs or burden, New York has done much to integrate the Hispanic community in New York into the electoral process.

To those who contend that the bilingual provisions of the Act are no longer necessary, I point to the fact that significant numbers of people still emigrate to the United States from Puerto Rico alone. All of them, and many other Hispanic citizens who are not fluent in English, are citizens, entitled to vote. The Fourteenth Amendment's guarantee of voter equality demands continuation of the Congress' commitment to the Act's bilingual provisions.

CONCLUSION

The special provisions of the Voting Rights Act apply to all or part of 22 states. As I have testified, three New York counties, with more than 4.8 million people, are covered by the Act's special provisions. More people are protected in these three counties than are protected in the States of Alabama (3.9 million), Mississippi (2.5 million) or South Carolina (3.1 million) and only slightly less than in Georgia (5.4 million) or Virginia (5.3 million).

I am troubled by the argument that the Act singles out the Southern states. Even the few statistics I have cited indicate otherwise. Furthermore, the Act's special provisions are triggered only by practices that are demonstrated to have a discriminatory impact, regardless of the state where they occur.

I am equally troubled that one response to this perception of regional discrimination is that preclearance should be implemented nationwide, without a trigger mechanism. Unless there is a need in all jurisdictions, it seems simply wasteful and arbitrary to extend preclearance in this fashion. At a time when the stated goal of Congress is to cut the budget, and the goal of the Administration is to do away with excessive government, it is ironic that some in Congress would propose extension of a program without any prior showing of need for that extension. One can only suspect that the effort to extend preclearance nationwide is in reality an attempt to undermine the Act's effectiveness.

At a time when our national priorities are undergoing a major reassessment, it is critical that the Congress as our representatives not permit our commitment to voting rights to wane. The right to vote is fundamental because, as the Supreme Court has noted, it alone preserves all other rights. If elected officials are to consider eliminating programs which aid racial and language minorities in obtaining social and economic equality, it is imperative that those minorities fully and fairly participate in the electoral process. We can ill afford to send to the American people a signal that voter equality is no longer a top national priority. Failure to extend the special provisions of the Voting Rights Act would do just that.

Mr. ABRAMS. I am grateful for the opportunity to testify before this distinguished subcommittee in support of the proposed extension of the Voting Rights Act of 1965.

I speak as the elected attorney general of the State of New York, a State which has three of its largest counties covered by the special provisions of the Voting Rights Act. I believe that extension of those provisions is essential.

The history of the past 15 years has proven that Congress' effort to give practical effect to the 14th and 15th amendments by passing the Voting Rights Act was well worthwhile. The act has dramatically increased registration and voting among black and His-

panic citizens, and has helped to increase the numbers of black and Hispanic elected officials. Because the act works so well, Congress wisely decided to extend its terms in 1970 and again in 1975.

The act eliminated the literacy test for voting, a discriminatory requirement of long standing. And to assure that more novel or subtle devices did not replace older forms of discrimination, the act included a preclearance requirement. For the past 15 years, this requirement has deterred the use of new forms of discriminatory practices, in many cases by discouraging even their introduction into State legislatures.

In 1975 many argued that because the affected jurisdictions had made significant gains, the act's preclearance requirement was no longer necessary. It turned out not to be true. In 1976, the Department of Justice objected to as many or more proposed changes from some affected States as it had in any previous year. The same arguments are being made today, and are equally likely to prove untrue.

Unfortunately, discriminatory practices will continue to be devised next year, and in future years, and our Nation cannot tolerate that. Extension of the preclearance requirement is the crucial safeguard we must maintain.

In 1975, Congress also extended the protections of the Voting Rights Act to language minorities, after finding that they too had been systematically excluded from the electoral process. In the last 6 years, bilingual elections have begun to translate the 14th amendment into a reality for many American citizens who are not fluent in English.

Kings, and Bronx Counties in New York State are subject to the act's special provisions, including the preclearance and bilingual election requirements.

While I support the proposed extension of both provisions, the balance of my testimony will relate specifically to New York's experience in complying with the preclearance requirement. That experience convinces me that the requirement is not overly burdensome and effectively serves to protect the rights of minority citizens.

The State of New York has been required to submit to the Justice Department all voting laws and procedures enacted since November 1, 1968, which affect Kings, New York, and Bronx Counties. Because any change in State law or regulation necessarily affects the three counties, all such changes are precleared with the Justice Department. Redistricting affecting any of the three counties is precleared. Additionally, changes unique to any of the three counties, such as location of polling places, are also precleared.

Because responsibility for complying with the preclearance requirement regularly falls both on the New York City Board of Elections and the New York State Board of Elections, I had my staff discuss with the heads of these two agencies their views on the preclearance requirement. From these discussions, it became clear that the preclearance requirement has not been overly burdensome to adminster.

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bill, the memorandum in support prepared by the bill's sponsor, any other memorandums that were influential in gaining passage, and the memorandum explaining the bill's terms and effect, which is prepared by the State board of elections for the Governor.

By submission of these documents, the State board of elections is usually able to provide the Justice Department with all the information it requires to determine whether or not a proposed change will have a discriminatory impact.

With the exception of a routine cover letter, the submission generally includes only documents which had already been prepared as part of the process by which the bill was enacted into law. On the rare occasion when this information is insufficient, the additional information required can generally be transmitted by telephone.

When the voting change is not objectionable, the preclearance process imposes an insignificant burden on the State and results in no delay in implementing amendments to our voting laws.

Since becoming subject to the preclearance requirement, New York has had approximately 500 changes in voting practices reviewed by the Justice Department. The Department raised objections three times: twice in 1974 and once in 1975.

A brief mention of these situations aptly demonstrates the act's effectiveness in preventing changes with harmful consequences for minority citizens. In 1974, the Department objected that certain polling places had been located in New York County in apartment complexes with mostly white tenants although polling places had not been similarly located in complexes with mostly minority tenants.

As a result of the objection, steps were taken to make polling places equally accessible to white and minority voters. In 1975, the Justice Department objected to the consolidation of two Democratic leadership districts in Manhattan. The proposed consolidation would have dismembered a predominantly minority district, with the possibility that the votes of minority voters would be diluted.

As a result of the objection, the consolidation plan was abandoned. In each case, the objection was interposed in a timely manner, causing the minimum necessary disruption to the electoral process. And, in each case, the matter was resolved without litigation.

The third objection involved the 1974 redistricting of State assembly, State senate, and congressional districts in Kings and New York Counties. Most of the redistricting was unobjectionable. However, the Justice Department was concerned that the creation of certain districts in those two counties would have the effect of abridging the right to vote on account of race.

Rather than challenge the Justice Department's determination in court, the State chose instead to redraw the districts to prevent minority vote dilution. A new plan was submitted to the Justice Department and approved 1 month later. However, white voters in Kings County sued, alleging that the plan violated the 14th and 15th amendments.

Ultimately, the Supreme Court upheld the plan, ruling that the Constitution does not prohibit racial considerations used to minimize the consequences of racial discrimination. Under the Voting

Rights Act, the effectiveness of minority voting power could not be diluted by dividing minority communities among predominantly white districts.

The redistricting in Kings County squarely raises the issue of vote dilution. The overwhelming majority of objections interposed under section 5 in the last 10 years have been to voting changes that would dilute newly acquired minority voting strength.

We cannot permit the voices of black and Hispanic voters to be muted by dispersing these voters among districts in which, by their numbers, they comprise ineffective minorities. To allow section 5 to expire just as the post-1980 census redistricting is taking place would be particularly inappropriate.

One recent New York example again highlights the complexities of redistricting and the continuing need for the preclearance mechanism. After the 1980 census figures were released, unadjusted for minority undercount, the New York City Council redrew the council lines in all five boroughs of New York City.

The Voting Rights Act, and especially the preclearance requirement, has figured prominently in this redistricting. On the one hand, the council redistricting appears to preserve the opportunity for incumbent minority members to be re-elected. On the other hand, some claim that the council could have redistricted so as to increase the number of districts in which minority voters constitute a majority, and thereby more accurately reflect the increased minority population of New York City which went from 31 percent to 47 percent between 1970 and 1980.

The council's redistricting plan will have to be submitted to the Justice Department prior to its implementation. Obviously, we cannot now adequately analyze the factors that went into the reapportionment, or the effect on minority voters of the city council redistricting.

The voting section at the Justice Department, with its acquired expertise, will evaluate its ultimate impact. It will do so within 60 days before the plan is implemented.

If there were no preclearance, a potentially discriminatory redistricting plan might be implemented, and years spent in expensive and time-consuming court challenges. And even if the plan were ultimately found to be fair, the perception of discrimination that might grow out of accusations made in protracted, heated litigation could not easily be eradicated.

The 1980 and 1990 post-census redistricting create the opportunity for diluting the voting strength of the growing numbers of minority voters. This seems to me argument enough for a 10-year extension of section 5's preclearance requirement. Additional argument, however, is found in section 5's deterrent effect.

Some point to the fact that of the hundreds of submissions from New York, only three have resulted in objections. They cite this as evidence that section 5 has become an unnecessary burden. I believe rather that these figures are evidence of the act's effectiveness as a deterrent.

A former member of the New York Senate's Election Committee has described to us how amendments to the election law, which might have had a discriminatory effect if passed, were often defeated or not even offered because of the barrier erected by the Voting

Rights Act and the need for preclearance by the Justice Department.

The burden of meeting the preclearance requirement is one we can well afford. It is far less costly and far more expeditious to process 500 voting changes through the Justice Department than to litigate through the courts the manifold challenges that would ensue absent preclearance.

And, more importantly, section 5 is a crucial safeguard of the gains the Nation has made in transforming the promises of the 14th and 15th amendments into reality.

The special provisions of the Voting Rights Act apply to all or part of 22 States. As I have testified, three New York Counties, with more than 4.8 million people, are covered by the act's special provisions. More people are protected in these three counties than are protected in the States of Alabama or Mississippi or South Carolina.

I am troubled by the argument that the act singles out the Southern States. Even the few statistics I have cited indicate otherwise. Furthermore, the act's special provisions are triggered by practices that have a discriminatory impact, regardless of the State where they occur.

I am equally troubled that one response to this perception of regional discrimination is that preclearance should be implemented nationwide, without a trigger mechanism. Unless there is a showing of need in all jurisdictions, it seems simply wasteful and arbitrary to extend preclearance in this fashion.

At a time when the stated goal of Congress is to cut the budget. and the goal of the administration is to do away with excessive government, it is ironic that some in Congress would propose extension of a program without any prior showing of need for that extension. One can only suspect that the effort to extend preclearance nationwide is in reality an attempt to undermine the act's effectiveness.

At a time when our national priorities are undergoing a major reassessment, it is critical that we as a nation and the Congress as our representatives not permit our commitment to voting rights to wane.

The right to vote is fundamental because, as the Supreme Court has noted, it alone preserves all other rights. We can ill afford to send to the American people a signal that voter equality is no longer a top national priority.

Failure to extend the special provisions of the Voting Rights Act would do just that.

Mr. EDWARDS. Thank you very much, Mr. Attorney General. We appreciate your very valuable testimony.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. I want to thank you, also, Mr. Attorney General.

You very skillfully and correctly put to bed a lot of bugaboos which have been raised around here about the Voting Rights Act.

You have dealt with the burden and you say there is practically no burden on the State. You have exploded the idea that expanding it nationwide would be effective. You have dealt with the deterrent

effect and it's quite clear, and you have dealt with it better than anyone I have seen on the deterrent effect of the act.

You have also dealt with the same concept Representative Ford dealt with earlier, and that is the credibility of the Federal Government behind the act does a good deal to deter and give faith and hope that not only will people have the right to vote, but that their vote will be counted.

One myth you didn't quite get to, and you can't deal with all of them, of course, was the myth of the implied and inordinate encroachment upon the sovereignty of the State.

Would you comment on that one?

Mr. ABRAMS. Yes; I think the Voting Rights Act really implements those constitutional safeguards that are found as the unique opportunity for the Federal Government to insure equal rights and equal justice for all of the people who live in the 50 States that make up this great Union.

So I don't really see great moment or merit in terms of that argument.

Mr. WASHINGTON. It's not a question of sovereignty, it's a question of trying to unite the country around one solid concept, and that is the inviolability of the franchise, it's just that simple.

Mr. ABRAMS. The franchise is the bedrock, fundamental right that is at the very heart of this country. It's at the very heart and fabric of the democratic process and I think when we see from experience an effective effort on the Federal level to deal with problems in some States we should not just discard it.

We should be able to have it continue in the days ahead.

Mr. WASHINGTON. I think your testimony has done a lot to strengthen that bedrock, Mr. Abrams, and I want to thank you.

Mr. ABRAMS. Thank you.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you.

Mr. Abrams, I seem to recall in my reading that the Hasidic Jews had a serious problem of gerrymandering, and they are not covered by the Voting Rights Act.

Can you enlighten me on that?

Mr. ABRAMS. Yes. I believe you may be referring to the third example that came under preclearance that I indicated in my testimony, and the basic plan that was promulgated by the State was sustained all the way through the courts up to the U.S. Supreme Court.

Mr. HYDE. But the plan resulted in denying a significant identifiable ethnic group representation and the court said they are not a minority within the contemplation of the Voting Rights Act.

Is that correct?

Mr. ABRAMS. No; that was not my understanding or reading of that case.

Mr. HYDE. Would you explain it to me because I am unclear.

What was the complaint of the Hasidic Jews about the way the districts were drawn? They were denied representation. Was that their complaint?

Mr. ABRAMS. Ms. Bachrach would like to try to respond.

Ms. BACHRACH. The plaintiffs in that case had alleged that they were dispersed into two districts where before they had been primarily in one district.

The Supreme Court found, however, that they had made no showing of any dilution of the effect of franchise on their part, and so upheld the redistricting plan as a fair plan and, in fact, went on to say it was a plan which was equally responsive to the voting needs and strengths of both the black community and the white community in Brooklyn.

Mr. HYDE. Then their complaint that their voting strength was diluted by the community being divided into two districts was rejected by the Court?

Ms. BACHRACH. That is correct.

Mr. HYDE. As a matter of fact, not because they didn't come within the definition of minority under the law; is that correct?

Ms. BACHRACH. That is my understanding of the decision, yes.

Mr. HYDE. What groups are covered by the Voting Rights Act, minorities, racial minorities meaning blacks, Hispanics and then you get into the single language minority situations.

The Hasidic Jews were not encompassed in any of those, were they? Are they a group to be protected by the act as presently written?

Ms. BACHRACH. It is my understanding that the act was initially directed at the problem of race discrimination.

Mr. HYDE. What I am getting at is should we broaden the definition of the people to be protected?

I am doing it the hard way, I guess. That is really what I am asking. There are significant identifiable ethnic groups that don't fit within the popular term of minorities; women, Hispanics, blacks, and native Americans. I guess those are the only ones.

I am just wondering if there are not groups that maybe ought to be protected.

Mr. ABRAMS. It's something I think for us to ponder. We have not focused on it precisely as you have articulated that issue.

Mr. HYDE. Thank you.

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

Mr. LUNGREN. Thank you, Mr. Chairman.

Mr. Abrams, you have spoken very eloquently about why we should extend the Voting Rights Act in its present form.

I guess the question I would like to address to you is what indices should we use now or in the future which would give us direction, such as the preclearance provisions which are no longer necessary in particular areas of the country or are they?

Mr. ABRAMS. I think they are. If we were to have this extended for another 10-year period, we would come to that period in time when we can examine certain indices and data and make a value judgment.

Some of those indices might be further enrollment of the minorities who are contemplated for coverage under the Voting Rights Act.

The opportunity for those minority members to be elected to important positions in the body electorate of this country. Those may be some of those indices that we would look at at that point in time.

I think at this juncture we find impressive progress on both fronts, but not sufficient enough for us to say that we are at that point in time when we should not renew these basic provisions.

Mr. LUNGREN. You have in your written testimony discussed the language minority provisions but touch only lightly if at all during the verbal presentation.

Why do you think we ought to extend the language minority provision of the act at this time since that has another 3 years to run?

Do you see any reason why we should extend it now and rather not review it when it comes up under the already existing law?

Mr. ABRAMS. My remarks are contained in the longer testimony submitted with respect to the issue of bilingual provision under the Voting Rights Act and were not contained in my short statement because others are going to come to this table to speak to that issue later on, and I was focusing heavily on preclearance.

The reason why I think that should be joined at this time for extension is we can have both provisions of law terminate at the same juncture so we won't have dispersed dates in the future with respect to these very important basic voting rights issues.

Mr. LUNGREN. Are they not two separate issues and should they not fall or stand on their own merits rather than one piggyback on another?

Mr. ABRAMS. I think it's much more expeditious if they can be treated at one time, have one set of hearings, have people who are concerned about both issues testify. I think Hispanics are concerned about both issues, about the various sections under the Voting Rights Act and not only the bilingual provisions.

I think the earlier provisions apply importantly to them as well, so I think it's just a much more orderly way in which the Congress could perhaps focus upon this at the expiration date of both of these acts.

Mr. LUNGREN. What do you say to those people who say bilingual ballots are one indication of a society losing one of its unifying elements, that is a single language and moving us in the direction of Quebec situation.

Mr. ABRAMS. I would say that that is a misperception. I have not had that perception going to my polling place in recent years and seeing a bilingual ballot in front of me or instructions that come in two languages or getting information from the board of elections.

Indeed, just the opposite is the case. We are going to move toward a more united and harmonious country when we increase the opportunity for people to participate, not to feel alienated, isolated, left out, denied. I think this basic provision of law allows people participation in the decisionmaking process and even to be elected to important public offices.

Mr. LUNGREN. In some areas, I guess New York, but also particularly in southern California, we have had a tremendous number of Southeast Asian refugees. Under the definition of this act, within the near future, we could have ballots required in many, many different languages, Cambodian, Vietnamese, and so forth.

Do you think a proliferation of ballots has no effect whatsoever with respect to the unity of the people?

Mr. ABRAMS. I don't really see that specter emerging. I don't think we have such numbers of people where that is going to happen. It has been the Spanish language in certain parts of this country and from my view, which is a real and practical one, living in a city that has a large number of Spanish-speaking people.

This has done much to enable them to participate in the process; it has been a signal that they are not barred, that there is a desire on the part of all people on the superstructure and hierarchy of this country to have Spanish-speaking and Hispanic people participate in the electoral process to vote in primaries and elections and also to seek public office.

So I have not found what you have said to be the case in the State of New York as this law has been implemented in recent years.

Mr. LUNGREN. Thank you.

Mr. EDWARDS. Mr. Attorney General, I was impressed with your entire statement and, without objection, it will be made a part of the record.

On page 10 you pointed out something new. We have had a lot of witnesses and it's very hard to find something new. But you point out that the preclearance requirement is far less costly and far more expeditious to process 500 voting changes through the Justice Department than to litigate through the courts the manifold challenges that would ensue absent preclearance.

In other words, you are saying that justice gets done insofar as gerrymandering and annexation and so forth through this process rather than people having to go to court; is that correct?

Mr. ABRAMS. That is right. If we didn't have this kind of expeditious process we would have lawsuits cropping up all over the country that would be costing us much more in terms of the Federal Government's involvement, the Department of Justice's time, the cost that is involved for a given State or other political subdivision, the individuals, the clogging of the court.

You would have increased costs involved and, of course, there would be a much greater span of time. Instead of getting a decision within 60 days you would have years go by and, indeed, I think we have seen in some of these voting rights cases as long as 9 years have gone by before we had an ultimate decision.

Of course, this is not very healthy or wholesome in engendering confidence to those who feel their rights have been denied.

Mr. EDWARDS. I suppose you could say that with regard to the Spanish or the multilanguage requirements. As I recall, New York City or the State was taken to court before the provisions were added to New York law and I suppose Federal law, and the allegation of the plaintiffs was that I guess they are being denied due process if they can't understand what the ballots and the voting information says.

Is that correct?

Mr. ABRAMS. That is right. That was the *Torres* case in 1974, Congressman, and you are absolutely correct.

On the issue of cost and bilingual elections, if it's of interest to you and the other distinguished members of this committee, I might tell you that it is literally miniscule in the State of New York.

We have contacted the key executive officer of the New York City Board of Elections to try to determine what has this cost us, what additional cost has been imposed to have these bilingual provisions in the law.

We have discovered that at the very outset of this process where it was most expensive, where the startup costs had to be incurred, there was a cost of $30,000 out of a total budget of $16 million for the New York City Board of Elections.

To continue this on an annual basis there is almost no additional cost. We contacted the State and discovered that there is a cost to the State of $1,000 a year to translate voting and registration material for the entire State of New York.

Another further example on a more local level might be the experience of 1 of the 62 counties in New York State, Westchester County, where there is a total population of 866,000 people and there is a Hispanic population of 45,000, approximately 5.2 percent of the population of that county.

The county spends less than $3,000 a year out of the budget of $1½ million for elections for operating elections, which comes to less than two-tenths of 1 percent of that budget.

So we think the experience in New York amply demonstrates that cost is not a problem or a burden of implementing this very important provision of law that will help enfranchise millions of citizens all over this country.

Mr. EDWARDS. Your testimony is that in the first few years of the bilingual requirements it cost more; isn't that correct?

Mr. ABRAMS. Yes.

Mr. EDWARDS. Then as techniques were developed to target and to otherwise not waste paper and energy, then the services that were provided were provided without any really large additional costs.

Mr. ABRAMS. That is correct.

Mr. EDWARDS. That is generally the experience we are having in California. At the beginning it was rather expensive, especially since some of the registrars who flood a district unnecessarily with the language materials. But now as they target according to the regulations promulgated by the U.S. Attorney General, the costs are going way down.

Are there further questions by any members of the committee?

Thank you very much, Mr. Abrams, and Ms. Bachrach.

Mr. ABRAMS. Thank you, sir.

Mr. EDWARDS. We are pleased to have the State attorney general of the State of South Carolina, Hon. Daniel McLeod.

Mr. Attorney General, we welcome you, of course, and, without objection, your entire statement will be made a part of the record.

Would you be so kind as to introduce your colleague and then you may proceed.

TESTIMONY OF DANIEL R. McLEOD, ATTORNEY GENERAL, STATE OF SOUTH CAROLINA, ACCOMPANIED BY TREVA ASHWORTH, ASSISTANT ATTORNEY GENERAL, STATE OF SOUTH CAROLINA

Mr. MCLEOD. Thank you, Mr. Chairman, gentlemen.

I have with me Mrs. Treva Ashworth, assistant attorney general in my office, who has general responsibility for election matters.

I may have occasion to relate some questions that may be posed and some comments to her.

I have submitted a prepared statement to the committee and I must say because of certain difficulties we have encountered, the time for preparation of this has been somewhat limited.

I will, Mr. Chairman, if I may, proceed into reading the statement which I have submitted to your counsel this afternoon.

When the voting rights bill was originally under consideration in the Congress, I appeared to testify in opposition to the bill with other persons from the State of South Carolina.

After the act was originally enacted in 1965, I also instituted an action in the U.S. Supreme Court entitled: *South Carolina* v. *Katzenbahk* to challenge the constitutionality of the act.

The act was affirmed by the Supreme Court and since that decision our State has faithfully complied with the act. Since 1965, every known act of our State regarding election matters has been forwarded to the Justice Department for preclearance pursuant to the provisions of the Voting Rights Act.

Ms. Ashworth has available the number of submissions that have been made in those years together with the number of those which were found unacceptable to the Civil Rights Division of the Department of Justice.

In fact, the faithfulness of South Carolina submissions was noted in a footnote in a Supreme Court decision in which it was stated that South Carolina was the only State falling within the scope of the act which had consistently complied with the act.

Since the implementation of the act, there have only been two counties in which Federal observers have been sent into South Carolina, during the years 1966, 1968, 1970, and 1972, and the entire episode was concluded without rancor.

There was only one actual lawsuit which was brought in the courts at that time to clarify the numbers of persons who were to be admitted within the voting booth, and we litigated that in the Federal court in Florence, S.C., and a judgment was handed down and complied with.

There have, in the 16 years of the coverage of the act, been very few complaints regarding voting rights problems made to my office.

I might interpolate that I am not speaking with respect to those matters which have presented problems insofar as reapportionment, which has grown to a large extent in recent years, particularly in the counties by virtue of the enactment of what we term a home rule act or provision which calls for an application of or can call for an application of reapportionment principles.

That has presented some problems and I think that should be pointed out.

The Voting Rights Act has had a profound effect on South Carolina in terms of numbers of people who are registered to vote and are participating in the elections. It would be impossible to say that there aren't probably still some problems in South Carolina regarding voting; recent convictions in South Carolina, including a member of the South Carolina State Senate for election fraud bears this out.

There have been actions taken by me in my capacity as attorney general in respect to an election fraud and laws which occurred in other counties approximately 3 or 4 years ago. Convictions were handed down and were the first of many actions of that nature in which convictions were obtained in State courts in quite a number of years.

Neither the first of the prosecutions which has recently terminated in the Federal courts nor the ones which are referred to as having been brought by my office 3 or 4 years ago, concerned or had any racial overtones at all; but they were purely election law violations.

One would have to be an unrealistic visionary to conclude that the Voting Rights Act or any other act will stop the stealing of elections. Its purpose has been to secure the right of suffrage and it has achieved that purpose in my State.

Whereas, the focus of concern appeared to be within matters such as literary tests, obstacles to registration of voters, notices of times and places of elections, assistance to illiterate voters and the like, in recent years, section 5 activity appears to be almost exclusively devoted to securing the election of minority representatives. In South Carolina, this has been most often presented in the form of reapportionment acts of whatever kind.

The Voting Rights Act has, in my opinion, served its purpose and it should be allowed to expire.

Because of the free exercise of the right to vote and the voting strength of minorities, it is not likely that any persons will attempt to tamper with their or any other person's right to vote.

I might interpolate, I mean by that not to any degree that cannot be managed by the States themselves.

It has been suggested as an alternative to allowing the Voting Rights Act to expire that it should instead be extended to the entire United States. This suggestion would not appear to be viable simply because the administrative difficulties would be more than should have to be borne by the Federal Government.

The difficulties that would ensue, of which I am aware, would clearly require a monstrous organization to bring each State of the Union under the coverage of the act.

The only reference I wish to make with respect to that concerns Clarendon County. That was one of the two counties to which voting observers were sent in prior years. In Clarendon County at one time there was an act that was related to the election of the superintendent of education.

It provided that the superintendent of education in that country should be elected rather than appointed. The act was disapproved by the different civil rights divisions and it was not enforced.

As time went along for several years, more recently the same issue came up when there was an ordinance established by Clarendon County which provided that the office should be elective rather than appointive. That was submitted to the Justice Department and they approved it.

By State law the county probably did not have the authority to enact that type of ordinance. The entire area had been preempted by State law.

Nevertheless, the voting rights department, I think there was some bureaucratic, understandably a bureaucratic misunderstanding. They rendered an inconsistent decision in 1 year with one which was a few years later, completely at odds with the prior one.

The basis of it, when we inquired of their reasoning, was that another group or another person had made that decision prior. Consequently, we had to spend an inordinate amount of time involved in disputes in the courts in my State to try to attempt to make some heads or tails of the situation.

I would suggest that certain provisions of the act could be retained. For instance, it would not unduly disturb me if preclearance requirements were maintained for reapportionment acts enacted for the first time following the 1980 census. Additionally, it would be my position that the criminal sanctions of the Voting Rights Act be made permanent provisions of law.

Their effectiveness has already been demonstrated in my State by conviction of prominent citizens under the criminal provisions of this act who were charged and convicted of the crime of vote buying. That was the case I referred to just a moment ago.

The right to vote is essential to the maintenance of the Government under which we live and any legal enforcement provisions that protect that right should not be discarded.

I am deeply committed to the fundamental proposition that a citizen's right to vote and to have his vote counted should be jealously and zealously protected. I do not believe that the expiration of the Voting Rights Act will have the effect of bringing about a restoration of any discriminatory practices which the Congress found to formerly exist in South Carolina as its basis for the enactment of the law.

That law has been upheld by the U.S. Supreme Court and I do not question its validity. The continuance, however, now rests with the Congress.

Any discriminatory practices or procedures, including laws that have been enacted relating directly to the voting process or to annexations or to the political thicket of reapportionment, that may have taken place in the last decade, have been few in number and are not likely to recur.

It is now time to remove South Carolina from its state of vassalage.

I might add, lest I be too critical of the Civil Rights Division of the Department of Justice, I do not mean to be hypercritical of them at all. I have worked and I have been up here constantly back and forth since 1965 and to some extent prior thereto.

My relationships with them have been very cordial and I have a high degree of regard for them. We differ on very fundamental questions and differ very sharply but, nevertheless, the relationship established has been good.

I know the problems to deliberate. Not infrequently, Mrs. Ashworth has the problem of forwarding certain matters to the Civil Rights Division for its consideration. We will receive telephone calls or she will call the Department and ascertain whether an act of a certain year has been forwarded up there. They may do the same thing in reverse.

I may have a record in my office; they may have a record in theirs, it may not be in the other one. It is understandable with that difficulty facing the operation of 16 States now within the scope of the Voting Rights Act the bureaucratic organization is going to get too large.

It could not possibly, in my opinion, be extended, realistically be expected to be large enough, efficient enough to be able to cover the entire United States.

I think at the very least the extension of the retention of any part of the preclearance provision of section 5 related to, as I said a moment ago, original acts that were enacted after the 1980 census, could well be submitted for preclearance.

Mr. Chairman, that completes whatever statement I had to make.

Thank you very much, sir.

Mr. EDWARDS. Thank you very much, Mr. Attorney General. We are pleased to have you here.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. I want to also thank you, Mr. Attorney General, for your testimony.

I get the feeling, as I read your testimony, sir, that you are attempting to fairly weigh this whole business of the Voting Rights Act.

For example, you feel it should not be extended. Your reason is a cost factor on the taxpayers. That is debatable as to whether or not it would be that cost, but I can see your point.

You also maintain that even though you feel that preclearance section should not be maintained in its pristine form that perhaps it could be continued beyond the reapportionment in 1980, as other evidences of your attempts to be fair here in assessing the efficacy of this act.

But I can't concur with your conclusion on page 4 when you say: "I do not believe that the expiration of the Voting Rights Act will have the effect of bringing about a restoration of discriminatory practices."

The discriminatory practices, as you well know, existed in many States, including South Carolina, based on the testimony we have before us for many, many years.

Mr. MCLEOD. I have the statement you referred to.

Mr. WASHINGTON. I am quoting the part of the statement in which you said, on page 4:

> I do not believe that the expiration of the Voting Rights Act will have the effect of bringing about a restoration of the discriminatory practices which the Congress found to formerly exist in South Carolina as its basis for enactment of the law.

As a matter of fact, those practices existed for many years and the act has been in effect only 17 years.

My question to you is, based upon your temperate approach to this act in terms of your assessment of it, would it not be wise to give the Federal Government the benefit of a long history of inordinate infringements upon the voting rights of black people in your State, would it not be wise to leave this act on the books as a deterrent effect, if nothing else, as was alluded to or stated by the attorney general from the State of New York?

What would be your response to that?

Mr. McLeod. I see your point but I don't think, sir, that I would agree with it.

I think it ought to be allowed to expire.

I grant you that this is a desired fact of the present Federal presence in so far as any violation of certain practices might appear to exist. For example, I made a statement to the Subcommittee on Sectional Elections of the American Bar Association recently in Washington. I used this illustration.

I am morally certain that the threat which was made by means of a telephone conversation early in the morning in the State said a box had not been submitted, a ballot box had not been received in the central vote-counting place. It was a prominent race of some degree of importance in that State, and I used the deterrent effect of Federal prisons.

I said, "You better get that box or you are going to have Federal people swarming all over your place in 30 minutes."

It was a bluff, of course. I do not think the retention of any provision of section 5 of the Voting Rights Act, as I conceded in my statement to you, would have that effect. I think that box probably came in immediately, and I am morally certain that it brought about the election of a single person in the State, just as I am morally certain that the voting strength of minority groups had a very effective and telling vote in the State's two gubernatorial races in the past years in South Carolina.

Mr. Washington. As a matter of fact, in South Carolina since the advent of this act, the percentage in number of blacks on the voting rolls have increased, am I correct?

Mr. McLeod. Yes, sir; not increased as much, as dramatically as I had thought. They have increased since 1965 until the present time, of about 7 percent.

The significant thing is, when you look at the 1980 total population of the State, which is approximately 3 million people, and compare the number of black registrants with the number of white registrants vis-a-vis their respective populations, you have a decrease in the number of registrants, white, percentagewise, since 1965, to the present time, and an increase in the number of black registrants since 1965 to the present time. The total raw figures, of course, are probably in accordance with the population comparison.

Another factor that serves as a greater deterrent, and I deeply and sincerely believe the greatest deterrent to anyone tampering around with the right to vote, tampering around with elections, tampering around with statutes, with reapportionment statutes or anything of that nature, the biggest deterrent is the fact that black power is a great factor in my State as in many other States. When you have the right to vote, that brings respect.

Mr. Washington. It is more potential than real, is it not?

Mr. McLeod. Well, I think——

Mr. Washington. As a matter of fact, Mr. Attorney General, there have been some prominent black citizens from your State who came and testified very candidly that they felt that for the Voting Rights Act to end, the preclearance section, would set them back inordinately in the State, and they felt that Congress in its wisdom should extend this section another 10 years.

They were not bitter; they were not recriminatory. They were simply stating as a cold, hard fact that they felt the kind of exclusion that existed in this State for so many years, it would be extremely unwise for Congress to back up at this point.

I see your position is not cast in stone either. I see you are trying to be fair. I am simply saying to you that many black citizens in your State do not feel as you feel about it.

Mr. McLEOD. Well, I do not think to maintain an act on the books just for deterrent, it would create more an irritant than anything else. We have got an additional factor. It is not a proper sphere of the Federal Government.

Mr. WASHINGTON. Sir, there have been too many cases which have been brought and which were found to have tremendous effects throughout the South, not necessarily in your State, in terms of the percentages, but quite a few of them, so it is not just something that is an irritant.

It has been effective and viable with blacks and Latins not only on the voting registration books, but also guaranteeing a good count, and to preclude the annexation of suburban areas to take blacks in certain cities. It has been proven and documented, so it is not just an irritant; it is viable, and if not the most effective one, one of the most effective civil rights acts we have ever passed.

You are a temperate person, a considerate person. You are a thinking man, and I would suggest you might well consider this.

I yield back my time.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you.

Mr. Attorney General, what is the percentage of black population in South Carolina?

Mr. McLEOD. The total population is 3 million in round figures. White is 2 million in round figures; black, 948,000.

Mr. HYDE. In other words, about one-third of the population?

Mr. McLEOD. I think it is 38 percent black, I believe.

Mr. HYDE. Thirty-eight percent black?

Mr. McLEOD. I think that is right. I could be corrected on that.

Mr. HYDE. Do you have a bicameral legislature; a senate and a house?

Mr. McLEOD. Yes, sir.

Mr. HYDE. How many senators do you have?

Mr. McLEOD. Forty-six.

Mr. HYDE. How many are black?

Mr. McLEOD. None.

Mr. HYDE. I have no more questions.

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

Mr. LUNGREN. No questions.

Mr. EDWARDS. I have no questions. Thank you very much.

Mr. McLEOD. Black members of the house of representatives, which contains——

Mr. HYDE. I am sorry, how many members of the house are black?

Mr. McLEOD. I think it is 14. I may be wrong.

Mr. HYDE. Out of how many?

Mr. McLEOD. 124.

Mr. HYDE. 124?

Mr. McLeod. Yes.

Mr. Hyde. But no senators?

Mr. McLeod. We have confused the figures. From the election report which has been submitted, about 63 blacks are elected at the present time; about 63 blacks at the present time, I think, statewide. Some of them are elected statewide, some members of the house, some of them are council members.

Mr. Hyde. I want to go over that again. You just said 63 blacks are elected statewide?

Mr. McLeod. Well, I mean statewide compilation. Some are elected. There are none elected on a statewide race, that is true.

Mr. Hyde. I understand. Your senate is divided into senatorial districts?

Mr. McLeod. Yes, sir.

Mr. Hyde. Can you explain why there are no black senators, State senators?

Mr. McLeod. Well, I would explain to you with just the words I used to Mr. Emmanuel Cellar when I testified before this predecessor committee some years back. A great deal of this—and I do not know what percentage—is due to apathy and nothing else but.

The same thing is true with respect to the young people, who fought like the devil to be given the right to vote, getting the voting age lowered, and then failed to participate. Whites do it; blacks do it. I dare say other racial minorities do the same thing. They simply neglect to vote.

Mr. Hyde. I understand that and appreciate that. Are there districts that are drawn that one would expect a black would be elected to the senate, but through apathy is not? Is there such a district?

Mr. McLeod. To a degree. The Reapportionment Act of the senate was litigated, *Morris* v. *Klinger*. That was decided and went up to the Supreme Court. It was a tug-of-war that was on the very issue you are talking about. It was ultimately affirmed by the Federal court as nondiscriminatory. That was a verdict on 14th amendment grounds as well as 15th amendment grounds.

The reason the Justice Department did not figure in the early States was simply because it had been submitted to them, they did not act—the attorney in charge of the Civil Rights Division. I have forgotten his name, but there was a tug-of-war between the Justice Department and the courts over which should be required to move first.

The attorney I mentioned, the assistant in charge of the Voting Rights Division, came down, argued this matter before the three-judge court in my State. At that time they were pussy-footing around. One was waiting for the other to move. The three-judge court moved first and relieved the Justice Department of the trouble.

If the Justice Department moved first, it would relieve the court of a great degree of trouble.

Finally, the court made another decision on it. That was appealed, and it was appealed before Judge Green in the District here on the extension of time for the consideration while these things were happening. That is what reached the District Court of Ap-

peals, the three-judge court in the District, and ultimately went up to the U.S. Supreme Court, which denied certiorari on it.

Mr. HYDE. If I understand you right, there are districts in South Carolina where black voters dominate, but do not vote in such numbers as to elect a black to the senate.

Mr. MCLEOD. That is correct.

Mr. HYDE. And there are no legal obstacles to them participating; it is just a disinterest, which is a problem that we have seen in young voters as well as others. Is that your testimony? I just want what you understand.

Mr. MCLEOD. To a degree. I do not think they have any difficulty from a legal standpoint with any reapportionment acts of the senate or of the house of representatives. Each of those has been contested. Each of those have been approved by the final judgment of some court competent to handle it in the Federal jurisdiction.

I frankly have forgotten what the routine they went through under section 5 or what the procedure was there. We do not represent the senate nor the house in the court proceedings. We formerly did, but do not at the present time. They retain their own counsel.

I do not think you can quarrel with any malfunction in so far as voting rights are concerned from that standpoint. They do not like it, sure. They are arguing about it in the legislature today and probably are going to continue to argue about it for a long time.

Mr. HYDE. Do you not think it is odd though, a third of the State is black and not one black is in the senate? Does that not strike you as odd?

Mr. MCLEOD. I am sorry——

Mr. HYDE. Does it not strike you as odd that a third of the population is black and there is not one black State senator—unusual?

Mr. MCLEOD. No; it is not. Unfortunately, it is not unusual. It is a typical thing. There is a change in house representation, no question. They are elected every 2 years and the senate is elected every 4 years. Reapportionment presents that problem.

If I were a black I would complain about it. As a matter of fact, I live in a Republican neighborhood right now myself. I am not a Republican. It caused the defeat of the fellow that redistricted that area.

Mr. HYDE. Let me ask you this: The reapportionment plan that is now in effect in the State of South Carolina for your State senate districts, is that precleared?

Mr. MCLEOD. This is the one I was referring to a moment ago when there was a race between the——

Mr. HYDE. The courts and Justice Department, you mean it fell between the stools and nobody made an adjudication on it?

Mr. MCLEOD. It was adjudicated, as I tried to indicate a moment ago.

Mr. HYDE. The courts upheld the reapportionment?

Mr. MCLEOD. Yes; and in the house also.

Mr. HYDE. I am not asking about the house. I am looking at the State senate.

Mr. MCLEOD. That case was *Harper* v. *Kleindeinst.*

Mr. HYDE. That is a Federal court case. Was it litigated in the District of Columbia or down in South Carolina?

Mr. MCLEOD. It was originated in South Carolina, a three-judge court down there.

Mr. HYDE. A three-judge court, and they held reapportionment was not a violation of the Voting Rights Act. Thank you.

Mr. MCLEOD. *Harper* v. *Kleindeinst.*

Mr. EDWARDS. Mr. Washington.

Mr. WASHINGTON. Mr. Chairman, there is some conflict in testimony here, or rather there apparently is some conflict in testimony. We have had witnesses from South Carolina who testified contrary to what this witness has testified to.

For example, we were told that Senator Gressette, State Senator Gressette of the senate of South Carolina, who is in charge of redistricting, stated publicly that there would be no redistricting in his State until after the Voting Rights Act expired. That testimony, we have had that stated here.

Other than interrogating the witness further, Mr. Chairman, I am going to suggest that perhaps we do some investigatory work here and find out exactly what the status of redistricting in the State of South Carolina is at this point.

Mr. EDWARDS. Well, certainly the redistricting for congressional seats has not taken place yet, is that not correct? Is it not accurate the redistricting, the congressional redistricting and the State assembly and senate redistricting as a result, as required after the 1980 census——

Mr. MCLEOD. That is right.

Mr. EDWARDS. Have not been enacted yet by the South Carolina Legislature?

Mr. MCLEOD. Under consideration at the present time.

Mr. EDWARDS. Under consideration, and the point of the gentleman from Illinois is that some State official—who was it?

Mr. WASHINGTON. Senator Gressette.

Mr. EDWARDS. Said that they intended to postpone it until after the Voting Rights Act expires, or section 5 expires, in August 1982.

Mr. MCLEOD. I am not familiar with it. I know Senator Gressette, but I am not familiar with it.

Mr. WASHINGTON. Well, is it coincidence that on page 4 you state that you are not adverse to extending the act, preclearance section, beyond redistricting of 1981? Is there a coincidence between those two things?

Mr. MCLEOD. First enactment after the 1980 census, I would not favor extending it beyond that time.

Mr. WASHINGTON. I understand your position.

Mr. EDWARDS. Thank you very much, Mr. Attorney General. We appreciate your testimony.

We are now pleased to welcome our colleague from the 12th Congressional District of California, the district which is closest to my own congressional district, our good friend and most distinguished congressman for many years, the Honorable Paul "Pete" McCloskey, Jr.

Mr. EDWARDS. Mr. McCloskey, we are delighted to have you. Without objection, your statement will be made part of the record. You may proceed.

TESTIMONY OF HON. PAUL McCLOSKEY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. McCLOSKEY. Mr. Chairman, rather than read my whole statement, I might say that the first two-thirds of it refers to the cost of the bilingual ballot on local governments.

I would just like to refer to the fact that the first 2 pages of it specify the cost to the State of California, local governments, in complying with the act last year, and point out that the proposition 13 initiative in California was a definite expression of California voters to cut the costs of local government, and that while this imposed cost under the bilingual ballot law is relatively minor, it is viewed by the residents of California as a Federal imposition on local government, and perhaps has attracted more hostility and anger as a result of this Federal requirement than any other law that I know of, at least in my own district.

I use the example of Redwood City, one of California's 54 cities of 50,000 population or more, which has 8,622 Spanish-origin citizens, with perhaps half that number of eligible Spanish-origin voters, and yet after printing the materials last year at a cost of $1,784.59, only 60 voters of Spanish origin out of over 4,000 requested the ballot, and of that 25 actually used it.

The balance of the cost of the bilingual provisions against the use in that community has made the citizens of that community almost unanimously request that this provision be repealed.

The point I would like to make, though, more strongly than the cost and the perceived fact of that cost being imposed for a rather minor benefit is the last point of my statement, and the question, are we really helping minorities by making it easier for them to vote knowledgeably in their native language.

For citizenship, we require applicants to pass a test on the U.S. Constitution and legal system, and the English language. For children born here to foreign language parents, we provide several million dollars a year in bilingual education funds. Why? Because we realize that equal opportunities in education and employment, and thus earning capacity, requires a working use of the English language.

We diminish the ability of the minorities to reach their full status of equality in the American economic system if we encourage them to neglect a diligent pursuit of excellence in the use of the English language.

Is there any one of us, moving to Mexico or Japan, who would not want to learn the Spanish or Japanese language in order to improve our economic and social circumstances? Would we feel voting in Mexico or Japan to be more important than earning a good living there?

Solely on principle, Mr. Chairman, I think this law is wrong. It is bad for the very people it seeks to assist.

I would suggest we repeal it now, and thereby enhance the chances for a more valuable Voting Rights Act.

I might say, as I listened to the prior witness, I go back to 1965 when, as I recall, 7 percent of the black citizens of Mississippi eligible to vote were actually able to register, and I hope we will extend the Voting Rights Act of 1965. I think it is one of the most important acts ever passed by this Congress, but I think the bilin-

gual provisions unduly attract attention, an adverse attention to the underlying act.

Thank you, Mr. Chairman.

[The statement of Mr. McCloskey follows:]

TESTIMONY OF PAUL N. MCCLOSKEY, JR.

Mr. Chairman, I would like to make a very brief statement in support of extension of the Voting Rights Act as a whole, but for repeal of the Bilingual Ballot provisions of Title II of the Act.

Since the bilingual ballot law in 1975, we have seen a wave of public opposition to the steadily-increasing costs of government at all levels, federal, state and local.

In 1974, Congress had the luxury of trying to help minorities and the poor with a whole host of well-intentioned actions, of which the bilingual ballot was one.

In the same year, however, we saw the commencement of an uninterrupted chain of years of deficit spending: In 1974 the federal deficit was $4.7 billion; in 1975 the federal deficit was $45.2 billion; in 1976 the federal deficit was $66.4 billion; in 1977 the federal deficit was $44.9 billion; in 1978 the federal deficit was $48.8 billion; in 1979 the federal deficity was $27.7 billion; in 1980 the federal deficit was $59.6 billion.

We are now engaged in a wholesale congressional review of the many praiseworthy programs which have contributed to these deficits following an overwhelming public mandate to do so in the 1980 elections.

California voters, in Proposition 13, issued a similar overwhelming mandate to local governments * * * insisting on a cut in local expenditures by cities and counties. It is on local cities and counties that the burden of bilingual ballot expenditures falls.

I have appended to this statement a list of the incremental costs to California's 58 counties of the bilingual ballot, totalling $862,756.01 solely for the 1980 general election.

But let me point to a single small city in my congressional district, one of some 424 cities in California and one of 54 cities of 50,000 population or over.

Redwood City has a population of 54,965, of whom 8,622 are of Spanish-origin. In Redwood City's separate municipal election in 1980, the City spent $1,784.59 for Spanish-language materials.

Of its 8,622 Spanish-origin citizens, only 60 requested Spanish-language materials and only 25 actually voted.

The resulting cost, $73 per Spanish language ballot actually used, is clearly offensive to the tax paying public.

I think it fair to say that the overwhelming opinion in the State of California is that the bilingual ballot law should be repealed.

The question is one of balance * * * between federally-imposed taxpayer costs on the one hand and a praiseworthy experiment in helping minorities on the other.

And are we really helping minorities by making it easier for them to vote knowledgeably in their native tongue?

For citizenship, we require applicants to pass a test on the U.S. Constitution and legal system in the English language. For children born here to foreign-language parents, we provide several hundred million dollars a year in bilingual education funds. Why? Because we realize that equal opportunity in education, employment and thus earning capacity, requires a working use of the English language. We diminish the ability of minorities to reach their full status of equality in the American economic system if we encourage them to neglect a diligent pursuit of excellence in the use of the English language.

Is there any one of us, moving to Mexico or Japan, who would not want to learn the Spanish or Japanese language in order to improve our economic and social circumstances? Would we feel voting in Mexico or Japan to be more important than earning a good living there?

Solely on principle, Mr. Chairman, I think this law is wrong. It's bad for the very people it seeks to assist.

Let's repeal it now, and hopefully thereby enhance the chances for extension of the far more valuable underlying Voting Rights Act.

COST IN CALIFORNIA FOR THE IMPLEMENTATION OF TITLE II OF THE VOTING RIGHTS ACT

[1980 general election]

	Translation cost	Incremental printing cost	Incremental postage cost	Incremental staff labor cost	Incremental data processing cost	Other incremental cost	Total cost
Alameda	$3,435.00	$2,636.45	$586.09	$613.55		$4,800.00	$12,071.09
Colusa	60.00	488.70	2.05		$0.25	7.88	558.88
Contra Costa	3,437.00	11,505.00	167.00	75.00	114.00		15,298.00
Fresno	225.00	3,439.00	58,488.00	1,141.00		63,293.00	126,586.00
Imperial	350.00	2,075.50					2,425.50
Inyo	300.00						300.00
Kern	245.00	13,941.00		3,000.00			17,186.00
Kings	225.00	3,409.00	659.00	1,827.00	210.00		6,330.00
Los Angeles		29,100.00	3,700.00	94,100.00		8,300.00	135,200.00
Madera	250.00	2,487.00		106.00		533.00	3,376.00
Merced	238.00	2,572.51		500.00		150.00	3,460.51
Monterey	424.00	25,707.00					26,131.00
Napa	1,350.00	5,940.00	2,336.55	11.72		172.00	9,810.27
Orange	500.00	18,105.00		1,125.00			19,730.00
Placer		21,950.00					21,950.00
Riverside	745.00	1,227.00	130.00	1,800.00	200.00	100.00	4,202.00
Sacramento	1,076.00	5,211.23	75.27	1,135.00			7,497.50
San Benito		346.05				141.00	487.05
San Bernardino	976.50	60,250.00	1,000.00	27,500.00		5,000.00	94,726.50
San Diego	3,200.00	54,700.00	100.00	1,100.00	50.00		59,150.00
San Francisco	15,360.00	4,537.00	409.00	4,125.00	145.00	7,000.00	31,576.00
San Joaquin	1,031.00	1,700.00	58.00	525.00	75.00		3,389.00
San Luis Obispo	645.00	10,186.73		42.92			10,874.65
San Mateo		7,917.00		9,812.00	206.00	223.00	18,158.00
Santa Barbara	630.00	11,271.00	396.00	229.00	100.00		12,626.00
Santa Clara	935.00	4,034.00	117.43	189.40	20.00	100.00	5,395.83
Santa Cruz	1,795.50	14,297.00	10.00				16,102.50
Solano	6,000.00						6,000.00
Sonoma	1,004.37	3,615.19	243.80	147.36			5,010.72
Stanislaus	1,058.00	24,872.00	11,176.00	42,976.00	5,000.00	30,972.00	116,054.00
Sutter	55.00	863.37	14.00	200.00	100.00		1,232.37
Tulare	665.65	3,468.68		277.92		247.95	4,660.20
Ventura	982.00	13,667.00	745.00	121.00	52.00	241.00	15,808.00
Yolo	5,000.00						5,000.00
Yuba	785.00	2,674.44		245.00		146.00	3,850.44
San Francisco (Chinese)	24,167.00	4,537.00	543.00	4,125.00	170.00	7,000.00	40,542.00
Total	77,150.02	372,730.85	80,956.19	197,049.87	6,442.25	128,426.83	862,756.01

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

The gentleman from Illinois.

Mr. WASHINGTON. I have no questions of the distinguished gentleman except to thank him for his very cogent testimony.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. I too welcome Mr. McCloskey, who is always illuminating.

Pete, Redwood City has a population of 54,000, 8,000 of Spanish origin, and of the 8,000 Spanish-origin citizens, in the separate municipal election of 1980 only 60 of them requested Spanish language materials?

Mr. MCCLOSKEY. I think that statistic ought to be cut in half, probably there were less than 50 percent registered or eligible voters of that population.

Mr. HYDE. So you are saying that what number should be cut in two?

Mr. McCLOSKEY. Out of perhaps 4,000 eligible voters or people of voting age, only 25 actually voted out of the 4,000.

Mr. HYDE. Out of 4,000, only 25 voted. My question is, it cost your municipality, or this municipality, $1,784 for those materials?

Mr. McCLOSKEY. Right.

Mr. HYDE. Is that typical, though, throughout the State or was that an unusual situation?

Mr. McCLOSKEY. It is typical throughout my area, San Mateo and Santa Clara Counties. I cannot speak for the other counties. The costs were a great deal more in 1978, but the counties were able to reduce the cost substantially by 1980.

Mr. HYDE. Pete, it would help us if we have more macro than micro figures because we are legislating for the country, not just your district. I should think that somehow, if you want us to let California rather than just your district out from under, we ought to have figures.

Mr. McCLOSKEY. Appended to it are 36 of the 58 counties. The cost to the counties was $862,756.01.

Mr. HYDE. How much does that work out per vote? Have you figured that out?

Mr. McCLOSKEY. I will be glad to supply that for the record. I have the 1978 figures, but not the 1980 per-vote figures.

Mr. HYDE. I mean, just something that is a good, hard statistic to justify your position would be helpful to the rest of us.

Do you see any particular problem with a person who is a citizen, who is eligible to vote, an adult of voting age, what is so insuperable about learning the name of the candidate in English and the party and the office? You know, this is not like it is calculus or something. I should think it would not be too difficult.

Mr. McCLOSKEY. Mr. Hyde, I do not know that there is any material intrusion on the selection of candidates under the California process, but since the days of Hiram Johnson we have had initiatives which quite often attract much attention.

Mr. HYDE. Bilingual?

Mr. McCLOSKEY. Those are valid explanations, and to vote knowledgeably, even knowledgeable citizens of the English language can be misled on something as to whether a cigarette tax helps or hurts the country.

I make no quarrel with the fact that many people of foreign language will be better educated in California on issues if the ballot is in their own language, but the cost of this, while relatively minor you might say to a city of 50,000, what is the cost if the Federal Government imposes $1,700, what does it really mean?

But it is a State where the people have voted, rather a substantial majority, in proposition 13, to reduce property taxes to a level in which cities and counties have a rough time going forward at all, any additional cost imposed by the Federal Government is perceived as a burden perhaps much greater than the dollar would indicate. That attracts a public hostility to the Federal law which imposes this, and that is what causes the citizen to look at the small number of people actually using the ballot, saying, "For 25 ballots in Redwood City, why should the city have any expense imposed by the Federal Government?"

That is really the point. I think that this law is well-intentioned, properly conceived, but back in 1974 we had the luxury of operating on relatively balanced budgets up until now, fiscally, with the citizenry examining every cost imposed by every law, cost effectiveness does become a major point, and respect for the law itself becomes a major point.

Mr. HYDE. Well, I had not thought of California's unique initiative. We do not have that to any extent in Illinois, and I could certainly see that bilingual material would be very important. Thank you.

Mr. EDWARDS. Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman, and thank you for appearing here today, Pete.

In some of the submitted testimony we have today, there is a suggestion that much of the opposition to bilingual elections is the result of, not high cost or even the possibility of their promoting cultural separatism, but of an anti-Hispanic, antiforeign sentiment that is pervasive now.

It goes on to suggest that some people seem to be unduly fearful of refugees and aliens overrunning our shores. How would you respond to that as being the basis for support for what you are trying to do?

Mr. MCCLOSKEY. I would be embarrassed and ashamed if any part of my desire to repeal the bilingual ballot was based on hostility to any foreigners coming to California, particularly Vietnamese or Cambodians or Koreans or Mexican American. It seems to me that that should have no weight in this argument, has no proper weight.

The basic argument against bilingual ballot, in my judgment is that if minorities come here, they ought to be encouraged as rapidly as possible to have full social and economic equality. If you cannot speak the English language, you are denied promotability in any number of jobs, and you are limited to those jobs where a lack of English knowledge, you can get by. Those are usually the lowest-paying jobs in our society, so to say to a foreigner coming to this country, "We are going to break our backs to let you vote in the English language," I think to that person coming here, he would far rather have a good living, a good standard of living, a good employment wage than the right to vote.

It seems to me that you inexorably, by stretching the voting privilege above the economic privilege, it does not make sense.

Mr. LUNGREN. Someone suggested that this first came into law as a result of the efforts of Senators and Congressmen from New York on behalf of a rather large Puerto Rican community, and pointed out that Puerto Ricans are American citizens, and yet apparently Spanish is the predominant language; therefore, they need this protection to fully participate in the system. I am just trying to find out how you respond to that.

Mr. MCCLOSKEY. I was here in 1974, and my recollection is that the cosponsors of the bill were both from California, Senator Tunney and Congressman Edwards, who occupied a position of leadership at that time, as Congressman Edwards does now. I give him credit for it, as I did then. Excuse me, I may go too far in that respect.

Mr. LUNGREN. Is the crux of your complaint about the continuation of bilingual ballots the cost? You also indicated the hostility that has been engendered in your district. Could you elaborate?

Mr. MCCLOSKEY. It used to be the cost in the first years it was used, in 1976 and 1978. The cost was much higher. I have the precise per city and per county cost. We have an overwhelming eruption of anger in the cities and counties of California at this cost being imposed upon them, but as you look at this schedule that is appended for the counties and the figures for the single city, I think the cost can no longer be contended to be the primary objection to bilingual ballots.

What is now the primary objection is the practical—not just hostility, but fury that this engenders in the voter when he sees a ballot printed in two languages and wants to know why there is a ballot voted in two languages when he believes, or she believes that we do have a national language. It is a national policy that everybody be encouraged to speak that language. That runs counter to that policy.

You will notice that a Senator from my State has entered a constitutional amendment making English the national language. That seems a little redundant. I guess we consider English as the national language.

Mr. LUNGREN. Thank you.

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

One of the previous witnesses mentioned the Federal cases. One is *Torres* v. *Sachs*. The other is the *Puerto Rican Organization for Political Action* v. *Kusper*, where the court said that if a person who cannot read English is entitled to oral assistance; if a Negro is entitled to correction of erroneous instructions, so a Spanish-speaking Puerto Rican is entitled to assistance in the language he can read or write or understand.

Would not your suggestion violate what the court has held? You are going to give a Spanish-speaking American citizen born in San Jose or San Mateo no assistance.

Mr. MCCLOSKEY. Well, if the person is born here, he is required to go to school until the age of 16 in the State of California in a school system in which we are going to break our backs to give him proficiency in the English language so that he can earn a living, and if at the age of 16 that person has not pursued the course of study in the English language that we spent so much money to make available to him, then I have no sympathy with that person's inability to find and understand the materials on how to vote.

It seems 10 times more important that that person who is born here and gone through a school system for 16 years have the ability to earn a living and have the economic opportunity without which he or she cannot have without an understanding of the language.

Mr. EDWARDS. We have had testimony that about 16.5 percent of Mexican Americans over the age of 16 have completed less than 5 years of schooling.

As a witness from Austin, Tex., pointed out last Friday, it was not the Mexican American child's fault. It was the fault of the American system that did not provide education and allowed these children to be out in the plantations cutting vegetables, whatever

they were doing, and they would have to go to work and the school system did not really take care of the obvious and clear idea you just expressed, and we, of course, would agree with.

It is now estimated that almost one-fourth of all citizens of Mexican American extraction have completed less than 5 years of school. Well, are you going to disenfranchise these people?

Mr. McCLOSKEY. No, but does not this law encourage people to feel that they are entitled to assistance because they have not taken advantage of the educational system? I would accept the blame in past years for whatever we have not provided in the way of equal educational opportunity for language minorities, but it seems to me that today to keep this law in effect would be, in effect, to recognize a future right not to attend school.

It is not just the whole public school system we are now trying to cope with, and if we were to create a new Federal obligation to spend money, and in this case require money of local government to make up for all of our past sins, that I think goes too far in the face of the framework of our people right now who are saying, "Cut every possible cost of government you can."

I guess it is a different concept of what we owe for the sins of past years that may have been appropriate in 1974. That is why I cited these last 7 years of incredible deficit spending. We had the luxury to try all sorts of good things in the 1970's, but now we are going on seven straight years of deficit spending, essentially 10 percent of the Federal budget, and having to review every one of these programs.

So, I suppose I apply a slightly different standard of what we should spend to make up for some of these deficiencies of the past.

Mr. EDWARDS. There are hundreds of thousands of Puerto Ricans and hundreds of thousands of Mexican Americans in different parts of the country, and quite a number of them in California, and our own county. You and I share Santa Clara County, which has the largest number of Spanish-speaking people in northern California.

Do you really think it is in the public interest to send them into voting booths all over the country where they really do not understand what they are voting about?

Mr. McCLOSKEY. No, I do not think that is in the public interest, but I think it is even less in the public interest to encourage people to try to reach equality in this country with any misunderstanding that they can do so without speaking English well.

I put economic quality of opportunity as the major goal we should seek for the minorities. I know of no way in our system that you can achieve equal pay and equal opportunity for promotion unless you do speak the English language fairly well. I see the Vietnamese coming here, rapidly learning this language because of their desire to get ahead economically.

It seems to me that the best thing we can do for the Mexican American is to make employment opportunities available that are not just cleaning hotel rooms or working in the agricultural fields, in neither of which case do you need to speak English, but the lack of ability to speak English goes hand-in-hand with the lowest jobs in the economic spectrum, so anything that encourages that it seems to me is a disservice to the minorities.

Mr. EDWARDS. Certainly no one would ever quarrel with your devotion to education and to proper education to all of our children. We all certainly agree on that.

In New Mexico they have had bilingual ballots since, I think, 1910, and Hispanics hold statewide offices in the State senate to the extent of 35 percent, and the State representatives, 28 percent.

Does not the example of New Mexico, having bilingual ballots and bilingual assistance, show that integration into American society is even better where people can use the language that they are the most comfortable with?

Mr. MCCLOSKEY. Mr. Chairman, if you or I went to New Mexico we might not want to run for office there unless we could speak the Spanish language, but New Mexico is unique among the 50 States. New Mexico is a State which was the center of Spanish culture in this country.

I remember it was 300 years ago last year, I mentioned to the gentleman from Illinois, that the New Mexicans rose up and threw out the Spanish Inquisition in the rebellion of 1680.

The cultural history of New Mexico is a little like Louisiana in its cultural derivation from the French. I think it helps in Louisiana today to know French, but I do not think we would want to insist in New Mexico or Louisiana that they teach Spanish or that they teach French, because of that cultural background.

Mr. EDWARDS. I have no further questions.

Mr. Washington.

Mr. WASHINGTON. Representative McCloskey, I was diverted during your testimony and missed practically all of it. I just heard the tail end of it in which I thought you did endorse without reservation the entire act.

Mr. MCCLOSKEY. I have endorsed the Voting Rights Act, which I hope will be extended. I would like to repeal the bilingual ballot provision.

Mr. WASHINGTON. That is what I gathered, but during the course of these hearings we have heard a great deal of testimony about the actual cost of minority language assistance in elections. I believe all witnesses felt that the cost of elections in California was unnecessarily high, and this resulted from certain unique provisions of California law and the administration of the statute.

My question is, Do you not think California could find cheaper ways to administer the voting rights provisions?

Mr. MCCLOSKEY. When I testified 4 years ago I said the cost was too high. California has successfully reduced the cost. In this appendix which I have added, it shows that for 36 counties the cost was less than $1 million. It seems to me that it can no longer be argued that the cost is excessive for the bilingual ballot. I do not make that argument.

Mr. WASHINGTON. I see. I am not conversant with the bilingual program in the State of California public school system. How are they faring in light of proposition 13?

Mr. MCCLOSKEY. I cannot give you a judgment.

Mr. WASHINGTON. Would it be fair to assume they are suffering less than with other school systems?

Mr. MCCLOSKEY. That would be my guess, but I am not informed on that.

Mr. WASHINGTON. The reason I asked the question is because you stress what you feel to be the responsibility of our Latin citizens to as quickly as possible master the English language.

I was just wondering whether or not the State of California had the people in positions to help Hispanic citizens to master it?

Mr. MCCLOSKEY. Put it this way: California has a mandatory education law so that each child up to the age of 16 must attend and complete the high school education. The city of Mountain View, which Congressman Edwards and I have both represented in the past, and which I now represent, for years in Mountain View, for its Mexican American population, concerted efforts were made to keep the kids in school so that they finish their high school education.

The tendency of the Mexican American culture is for the kids to fan out over the area and earn money, which is turned over to the head of the family to keep the family going. Quite often, it was almost impossible to get the Mexican American to go on into college because of the cultural ethic and background.

The whole effort in California to educate the Mexican American to speak the English language well so that he or she could rise up in the economic community is not just in the schools, it is in the colleges. Tremendous efforts have been made to try to get Mexican American people into the educational system, primarily to learn the English language which then equipped them for whatever abilities they have to go on to better employment opportunities.

That is why it seems to me that the bilingual ballot concept, that voting is the important issue, runs counter to our desire to upgrade their economic situations.

Mr. WASHINGTON. My question directed itself to the curriculae rather than attendance. Both might be proper. Let me ask another question.

You have introduced a bill which I understand from staff would eliminate the preclearance provisions in the State of Texas, where you have a large percentage of blacks. Are you aware that it does do that?

Mr. MCCLOSKEY. No, the only bill I have is repealing title II of the act.

Mr. WASHINGTON. Let me just indicate that your bill, which is identical to the other bills that have been introduced to delete the minority language provisions, does more than that.

The reason that Texas and the Southwest are covered under section 5 is because of the trigger mechanism that is defined as language minority. It also deletes that particular trigger, so that Texas and the Southwest would no longer be covered.

It also deletes the 14th amendment provisions for section 5, which was in fact inserted in 1979 because it was not clear whether in fact the 15th amendment would cover Texas and the rest.

Mr. MCCLOSKEY. You are saying part of title II triggers title V?

Mr. WASHINGTON. No, but the language in the act, there are two different sections of the act. One is the separate section 203, which your bill does delete—specifically, section 203, but it also goes back and deletes any reference to language minority, the term "language minority."

So that the trigger mechanism to bring in Texas and the Southwest is deleted under all three bills, yours and the other two, so they in fact do go further than stated.

Mr. McCLOSKEY. Then I am in error in the draftsmanship, because that is not the intention. Our intention is to repeal the bilingual ballot provisions and no more.

Mr. EDWARDS. Mr. Hyde still does not eliminate the language minority.

Mr. HYDE. If I may, Mr. Chairman, I just want to understand our good colleague, Pete McCloskey. As I heard you testify, you feel, you indicate that the right to vote is not as important as making economic progress. Is that an unfair statement?

Mr. McCLOSKEY. I would say that economic progress to me is the most important thing we can do for the minorities in this country; the economic progress is what makes all of the other rights worthwhile.

Mr. HYDE. Are you subordinating the right to vote?

Mr. McCLOSKEY. I don't think you deny the person the right to vote by making the vote in the language of the country. I said, for example, if I went to Mexico I would not feel the Mexican Government was under an obligation to have printed ballots in English so I might vote more knowledgeably.

It would seem to me if I choose a country I choose that country with the understanding and hopefully the goal of knowing the language of that country, and that no country ought to have to change its voting requirements or its ease of voting to accommodate the person who is trying to learn that language in order to be an equal citizen in that country.

I would agree with you if we were denying the person the right to vote, but you are not denying the Spanish American.

Mr. HYDE. You are failing to facilitate.

Mr. McCLOSKEY. You are failing to make it easier.

Mr. HYDE. In a way you are saying by crippling you are perpetuating a dependence on a language that is not in the mainstream, is not a language that will facilitate them to achieve economic progress.

Mr. McCLOSKEY. You have said it better than I did.

Mr. HYDE. I doubt that. Thank you.

Mr. EDWARDS. Mr. McCloskey, I want to compliment you on your coming here today and also in reversing your position with regard to the cost. I think it was a very courageous thing to do and honest thing for you to do, because you have always operated in that way.

But, you do know your testimony is now different from the former course that you together with Mr. Thomas, the gentleman from California took. You do not object to this provision any more on account of cost because, really, it is not costing very much.

Mr. McCLOSKEY. That is correct, Mr. Chairman. I have to say that since 1976 and 1978 the county clerks have managed to reduce the cost to what I think is a defensible figure.

I would point out, though, that the perception of the California voter of any costs at the present time imposed by the Federal Government on the State and local level, like many other issues, causes much more concern than perhaps it justifies; but the perception of the voter that his laws are fair and that his costs are

acceptable probably has not diminished even though my testimony here, it seems to me, is an acceptable cost.

I am not so sure the public so views it.

Mr. EDWARDS. Civil rights laws, I am sure you would agree, are written for the benefit of the minorities generally, not the benefit of majorities which can generally take care of themselves in America.

The legislation after it was enacted for bilingual ballots was attacked severely in California by the secretary of state, as you recall, and by many registrars who swamped California with bilingual ballots, without complying with the regulations promulgated by the U.S. Attorney General that require careful targeting.

In San Diego, for example, they just post the facsimile of the Spanish language ballot on the wall of the voting booth.

So, the cost problems have been worked out and I know you and I are delighted they are.

I now yield to counsel.

Ms. GONZALES. Thank you, Mr. Chairman.

Congressman McCloskey, you state that you would hope that these minority language provisions would be deleted or rescinded; would you also want the California election laws which require oral assistance in polling locations with 3 percent, not 5 percent, but 3 percent of the language minorities—the law requires that where there is 3-percent minority language population in a particular precinct, oral assistance must be provided. Would you also want that California law to be rescinded?

Mr. MCCLOSKEY. I think probably.

Ms. GONZALES. You have been mentioning that one of the reasons why people ought to be able to speak English or understand English much better than we maybe recognize is because of the money that is being poured into bilingual education, and that that ought to have had some effect on the population; is that correct?

Mr. MCCLOSKEY. That is my understanding of the rationale for bilingual education. It is a valid Federal expenditure to permit new citizens or citizens of foreign parentage an opportunity to learn the language.

It seemed a valid reason and I have supported the program.

Ms. GONZALES. Is it your understanding bilingual education has developed since the Federal decision which came about in 1973 or 1974, so, in fact, it may not have affected earlier generations that are really more impacted by this situation.

Mr. MCCLOSKEY. Yes; I would accept that.

Ms. GONZALES. Thank you.

No more questions.

Mr. EDWARDS. We appreciate your testimony, Mr. McCloskey. Your testimony is that the rest of the act should be extended, the bilingual requirement should go out; is that it?

Mr. MCCLOSKEY. Yes. I think this act—as I say, I would put it in the 1964 act as the most important act of Congress in this century.

Mr. EDWARDS. Your work in civil rights for many years is known by all of us and appreciated by all of us, and we appreciate your testimony here today, even though there might be some disagreement as to a couple of items.

Mr. MCCLOSKEY. Thank you.

Mr. EDWARDS. Thank you very much.

We are delighted now to have the testimony of our patient colleague from the great State of New York, Congressman Robert Garcia.

Mr. Garcia, we certainly welcome you. Your statement will be made a part of the record, without objection, and you may proceed. Please introduce your colleagues.

TESTIMONY OF HON. ROBERT GARCIA, REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, ACCOMPANIED BY LUIS BURGUILLO, JR., AND ANTONIA HERNANDEZ

Mr. GARCIA. Mr. Chairman, I am fortunate to have Ms. Antonia Hernandez. I have asked her to join me on this panel. And my own counsel, Mr. Luis Burguillo.

Mr. Chairman, the hour is late and I know what it is to sit at that end. I know sometimes we listen with a great deal of patience, but we have so much to do. I will try to be brief, Mr. Chairman.

Mr. Chairman, I have my statement and I will only read a small portion of my statement and I would ask that the balance of the statement be entered into the record.

Mr. EDWARDS. Without objection, so ordered.

[The statement of Mr. Garcia follows:]

PREPARED STATEMENT OF HON. ROBERT GARCIA

Chairman Edwards and members of the Civil and Constitutional Rights Subcommittee, I am here today to show my overwhelming support for H.R. 3112, an extension of key provisions of the Voting Rights Act. I am supportive of the 10 year extension of the special provisions, the seven year extension of the language minority provisions, the amendment to Section 2 which enables the victims of voting discrimination to challenge discriminatory election practices without the necessity of proving discriminatory purpose. Mr. Chairman, as the only Hispanic Member of Congress from the State of New York, which has a Hispanic population according to the census of almost 10 percent, and as chairman of the Census Subcommittee I can assure you the undercount is very extensive. As chairman of the Congressional Hispanic Caucus whose members represent the nation's more than 18 million Hispanic Americans.

Hispanics are vastly underrepresented in the U.S. Congress and at all levels of government throughout the United States. Longstanding and often purposeful discrimination is at the root of our exclusion. The Voting Rights Act has been instrumental in working to guarantee that Hispanics and other racial and language minority citizens will not be excluded from the political process because of their racial or ethnic background. I am deeply fearful that if the Voting Rights Act is weakened in any way, the small but sure signs of progress we can now point to will rapidly erode.

Of particular concern to me and to Hispanics throughout the country are the bilingual provisions of the Voting Rights Act. Sadly, these provisions are under attack by members of Congress, the public and the press. I firmly believe that much of the hostility to bilingual elections is based on ignorance, misinformation, and fear. I hope today to educate you, correct some of the misinformation and to dispel some of the fears that have been generated.

When Congress enacted the Voting Rights Act in 1965, it recognized that there are indeed American citizens who do not speak English and who are entitled to the protections of the Voting Rights Act as surely as illiterate English speaking citizens. I am referring to Section 4(e) of the Voting Rights Act which states in part: "Congress hereby declares that to secure the rights under the 14th Amendment of persons educated in American-flag schools in which the predominat classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand or interpret any matter in the English language."

This section on the Voting Rights Act is directed toward Puerto Ricans and it was included in the Act at the urging of members of Congress from New York where

Puerto Ricans have long made up a significant part of our population. I am grateful to the late Robert Kennedy, the late William Ryan and to Senator Jacob Javits for having introduced Section 4(e) into the original Voting Rights Act.

Unfortunately, Section 4(e) did not go so far as to require bilingual election materials and a lawsuit on behalf of Puerto Ricans residing in New York had to be brought in the early 1970's. As a result of this lawsuit, *Torres* v. *Sachs*, New York City has had bilingual elections since late 1973. I would like to read from the decision in *Torres* v. *Sachs* because it is very illuminating in understanding how fundamental bilingual voting assistance is to citizens who do not speak English:

"In order that the phrase 'the right to vote' be more than an empty platitude, a voter must be able effectively to register his or her political choice. This involves more than physically being able to pull a lever or marking a ballot. It is simply fundamental that voting instructions and ballots, in addition to any other material which forms part of the official communication to registered voters prior to an election, must be in Spanish as well as English, if the vote of Spanish-speaking citizens is not to be seriously impaired . . . (and to ensure) that their vote will be more than a mere physical act void of any meaningful choice. Plaintiffs cannot cast an effective vote without being able to comprehend fully the registration and election forms and the ballot itself. (Slip Opinion at pp. 6-7.) *Torres* v. *Sachs*, 73 Civ. 3921 (S.D. N.Y. July 25, 1974).

Torres v. *Sachs* was only one of a number of lawsuits brought on behalf of Puerto Ricans under Section 4(e) of the Voting Rights Act. As a result of other lawsuits, the entire state of New York, three counties in New Jersey, and the cities of Philadelphia and Chicago have bilingual elections.

When Congress expanded the Voting Rights Act in 1975 to include protections for other language minority citizens it was acknowledging what the courts had decided already: that non-English speaking U.S. citizens have a right to assistance in their own language.

Sadly, many members of Congress wish now to do away with protections they determined six years ago were necessary in order to insure equal access to the polls for all U.S. citizens, regardless of their ability to speak or understand English.

Opponents of bilingual elections have alleged that bilingual elections are "too costly" and that they promote cultural separatism. I believe these allegations are unfounded. Members of this subcommittee have heard extensive testimony to the effect that many of the high costs associated with bilingual elections are erroneous and misleading. I would like to add here that New York City has never felt burdened by the requirement to provide assistance to non-English speaking voters. The Director of the Board of Elections for New York City reports without resentment that the costs of bilingual assistance are "all part of our system."

Testimony presented to the subcommittee by the Lieutenant Governor of New Mexico, Roberto Mondragon, was persuasive in dispelling the allegations that bilingual elections will lead to cultural separatism. He pointed out that the state of New Mexico has provided bilingual assistance since 1912 and that New Mexico has the highest degree of minority participation and representation of any state. So I hope that these allegations can be laid to rest.

But before doing so, I feel compelled to say that I believe much of the opposition to bilingual elections is the result not of their high cost or even of their "promoting cultural separatism" but of an anti-Hispanic, anti-foreign sentiment that is so pervasive now. As a nation, we seem to be unduly fearful of "hordes of refugees and aliens" whom, it is thought, will overrun our shores.

I am deeply saddened by these sentiments and the negative actions taken by legislators in response to them. But I am hopeful that this committee and this Congress will not confuse the voting rights of millions of U.S. citizens with such negative sentiments. I am hopeful that this committee and this Congress will indeed extend the Voting Rights Act and all of its temporary provisions until 1992.

Mr. GARCIA. Thank you, Mr. Chairman.

Mr. Chairman, I am here today to show my overwhelming support for H.R. 3112, an extension of key provisions of the Voting Rights Act. I am supportive of the 10-year extension of the special provisions, the 7-year extension of the language minority provisions, the amendment to section 2 which enables the victims of voting discrimination to challenge discriminatory election practices without the necessity of proving discriminatory purpose.

Mr. Chairman, as the only Hispanic Member of Congress from the State of New York, which has an Hispanic population, accord-

ing to the census, of almost 10 percent, which, as chairman of the Census Subcommittee I can assure you the undercount is very extensive.

As chairman of the Congressional Hispanic Caucus, whose members represent the Nation's more than 18 million Hispanic Americans—within that figure, Mr. Chairman, I have also included the Commonwealth of Puerto Rico with their 3.5 million population.

There is no question when you look at the U.S. Congress, six of us—five of us who vote—Hispanics are vastly underrepresented in the U.S. Congress and at all levels of government throughout the United States.

I would say, to deviate from my statement, I am a product of the 1965 Voting Rights Act. I was the first Senator of Hispanic origin to be elected to my State, the State of New York. Even though in those days, Mr. Chairman, we had a population almost I would say of about 1 million people, we never were able to get an Hispanic elected to the New York State Senate. We had maybe two members, three members of the State assembly. We had no members of the city council. And the reason was very plain, that the reapportionment—and having been involved in four different reapportionments myself, I speak from experience, Mr. Chairman—when it comes to the political reapportionment of Districts, every member, whether they be at the State level or the Federal level, we are all going to look out for ourselves and what is good for us, and that districts where there is no question they are compact and contiguous, that truly represent large blocs of Hispanics, large blocs of blacks, are split and cut up in so many different pieces that it is a virtual impossibility to be able to elect a person from a minority group.

Mr. Chairman, I would say these are very difficult times for Hispanics. I think the trend in this country has been very negative.

I sit as the chairman of the Census and Population Committee and I held some hearings on immigration. There is hostility, Mr. Chairman, no matter how you want to cut it, no matter how it surfaces, when the large groups of Haitians and Cubans were arriving. There are many people in this country who just did not want them.

I am certain, Mr. Chairman, if those same immigrants were crossing the Atlantic from various Anglo-Saxon parts of the Atlantic or Europe that there would not have been the same objection as there has been because of race and because of color.

I say that also because, Mr. Chairman, I think we have to call it the way it is. There are ways to discuss it and we can use the right adjective and right word at a time so it does not appear we are discriminating, but there is a hard core discrimination throughout this country.

Just let me speak in terms of the Hispanic and the Hispanic's opportunity for the media. In spite of what my colleague from the State of California, who I understand is also a candidate for the U.S. Senate from that State as well, and who has always been a champion, and—it really hurts me personally to come here and testify after him and have him say what he said—but the Hispanic community is probably one of the few communities, Mr. Chairman, that has for the first time nationwide, just as ABC and NBC and

CBS, a major network that broadcasts one-half hour of news every day into approximately 24 cities throughout America where there is a large Hispanic community, which means that the Hispanic, while in fact he may not be able to read or write, he is certainly knowledgeable as to what is taking place in this country.

In terms of newspapers, in Los Angeles you a have a newspaper called La Opinion, the opinion. And in New York we have El Diario. These are large newspapers. These are papers with tremendous circulations. And, again, well-written newspapers that reach a large community. So that again not only from the media but also from the printed word you a have got a community that truly knows what is happening within their respective communities.

What we are doing here today, Mr. Chairman—I know the number of radio stations in California alone, there are 24 radio stations that are Hispanic.

When I was holding a hearing, Mr. Chairman, in the city of Houston with my colleague Mickey Leland, on the census, I remember a gentleman coming up and testifying before us and he testified that he had owned an all-English-speaking radio station—I will never forget this—and was losing money, Mr. Chairman. What happened was he converted that station to an all-Spanish radio station. He said his revenues have never been higher. He said he received all sorts of threatening phone calls for devoting all of that energy to those wetbacks, to those—it was just awful, the testimony. I would be delighted to make that testimony part of this record.

The point is he nevertheless pursued and continued and that station today is alive and well in the city of Houston.

I use these examples, Mr. Chairman, because even in my own nomination when I decided to run for the U.S. Congress I want to make it clear it is not just one party, it is two parties that discriminate. My party is just as bad as the other party when it comes to reapportionment.

The franchise is with the political bosses, Mr. Chairman; that is who controls.

When I decided I was going to run for the U.S. Congress, and I was a New York State Senator, the deputy minority leader, Mr. Chairman, I could not run on my own party's line. I had to run as a Republican because I never got along with that person who was my county chairman because he, in fact, had other thoughts and I would never participate with him in terms of what took place in the State capital.

The point is these are the same people, Mr. Chairman, who pick up the phone and call the leadership of both Houses and draw the lines as to how the new districts will be. So I believe that with what we all and what you have now come to know as section 5, the preclearance, which covers my county, incidentally, the county of the Bronx in the city of New York—I think that is essential.

But I believe that should also go into many of the Southern States. The attorney general of the State of South Carolina sat here and talked about a population of 900,000 in a State, his State, the State of South Carolina, and yet there was not one, not one black member of the State senate. There is no excuse for that. There is just none.

In the State of Texas there is not one black State senator.

Mr. Chairman, it just seems to me that anybody who has the slightest amount of commonsense should realize that those lines are lines that until the Attorney Genral plays a major role, and goes into those States—I remember, Mr. Chairman, when I was listening to testimony in the State of Texas, a small group came and testified in terms of breaking down the census tracks in the State of Texas. If it is a population of 10,000 or less they don't give you the breakdown.

In many of these small towns how are you going to be able to break that figure down to be able to reapportion if you don't have those census tracks that come in below the 10,000 figure.

Mr. Chairman, I know that these are very difficult times, especially for minorities. There is a trend in this country that is moving so far to the right which makes it very difficult.

I don't expect to be applauded in my effort here before you, not because of this, but I just think the whole question of this Congress and the mood toward the renewal of the Voting Rights Act is going to be close at best. But I am not optimistic in terms of its passage in both Houses, and if it should be that it should be signed into law by this President.

It is a shame because I think when you exclude any American from the process you are excluding all of us. While power is the name of the game, there is no question in my mind that I think this country is the poorer for what has developed and what is developing.

I just would like to applaud you because I know you have been a champion as it relates to trying to get everybody into the mainstream, and I think these hearings are essential.

I very seldom testify, Mr. Chairman, before committees. This is only about the second or third time. But the issue, as far as I am concerned, is that important, and I thank you.

Mr. EDWARDS. Thank you, Mr. Garcia. Your testimony was not only useful but it was very moving and it is much appreciated.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. I also want to thank you, Representative Garcia, and I also want to refer to your fine work during the last Congress when you authored a bill establishing the Federal equal opportunity recruitment program, which is now part of the Civil Service Reform Act.

I cannot say any more than to allude to—direct your attention to your remarks on page 4 of your submission, and you say it all there. You feel compelled to say you believe much of the opposition to bilingual elections is a result not of their high costs or even of their promoting cultural separatism, but to an anti-Hispanic and antiforeign sentiment that is pervasive in this country.

Substitute black for Hispanic, you get the same result. Substitute, to a certain extent, the word Jewish, and you get the same result.

As you so well pointed out, I think until this country gets its head together in reference to its minority groups, we are going to have some serious, serious trouble.

I can't add anything. I want to compliment you on a very cogent statement.

Mr. GARCIA. Mr. Washington, if I may, one of the things Mr. McCloskey failed to mention is that when a person enters into a precinct to vote—just let me speak from my own experience in the State of New York, we have these big black cards that are on the wall describing the candidates and the office and it is in both English and Spanish.

Many people come in and they will read that in Spanish. They will not ask for a ballot in most instances, but they will read that black card and they will know. But had that black card not been there in English and Spanish, many of them would have problems and especially Puerto Ricans who were born as American citizens and who come to New York or Northern parts of the United States and who really cannot speak English, and yet they are citizens by birth.

So when he talked about 25 ballots or 40 or 50 ballots being printed, the fact is many of those people read this black card, a facsimile of what they are actually going to be doing, and actually what the voting machine looks like, so that his testimony is not necessarily complete.

Mr. WASHINGTON. Thank you, sir.

Mr. EDWARDS. Mr. Lungren?

Mr. LUNGREN. Thank you, Mr. Chairman.

Congressman Garcia, on the question of the bilingual ballot approach, is that something that you think is only of a temporary duration or is it something that ought to be permanent?

Mr. GARCIA. I would have no problem. I would think it should be permanent as long as there are Americans who have difficulty in truly understanding a ballot in only the English language.

Mr. LUNGREN. Evidently you have a rather strong feeling about some who suggest that bilingual ballots might be one means of promoting cultural separatism.

Let me just ask you: Do you think there is any validity to that? Do you recognize as a sincere concern on the part of some that they don't want this country moving in the direction of a Quebec situation, and to the extent they have that concern can you suggest how they can view this bilingual ballot just as limited in the electoral context and not as part of a promotion of cultural separatism?

Mr. GARCIA. On the question of Quebec, because that question has come up time and time again, I think the situation in the United States is totally different than that which has taken place in Canada today between the Province of Quebec and the rest of the country.

The English and French historically have been at odds. Whether you go to France or England, that has been the situation, and when they first joined together, Canada and Quebec, they truly never tried to put that act together. So, consequently, over the decades the situation has become exacerbated in Quebec.

I feel my own sense—I feel that every person in this country should speak English. There is no question in my mind and I would want that to be. I believe we have to be competitive. I am a believer in bilingual education, not for the sake of perpetuating, but to make us competitive. But I want to make it very clear that as long as there are youngsters out there and people who are

citizens and have a problem, that we have to make it our business that they go into those polling places and that they have every tool available to them to make certain that they vote in an intelligent manner. That, to me, is very important.

It reminds me of a joke, but it is true, about this person who goes into a court for citizenship and he says, "Your Honor, you will forgiva me, Mr. Judge, but you know, I don'ta speaka so good an English, but I coma before you and I want to be a good American." And the Judge looks down from the bench and he says, "Look, as longa as I ama the Judge, you gonna be a citizen." And that is the point, as long as a person speaks with an accent or has difficulty, that does not make them less of a citizen.

What I am saying is we have to be sure that everything is made available.

I think the cost, as Mr. McCloskey has said, from the time we involved ourselves in the bilingual situation as it regards the ballots today, the cost has decreased accordingly.

The question I would have liked to have asked Mr. McCloskey, if in fact the private group in Redwood had decided to print those ballots, would it have made any difference to the people of Redwood that that was being printed at private expense, at the cost of some private individual, as opposed to coming to the $1,700 that came out of taxpayers' money?

I would venture to say, Mr. Lungren, that the problem would still prevail. It is not the money. It was not the money. It is the question of having the ballot.

So when he talks about the financial aspects of what this Voting Rights Act is all about as it involves the ballot being in two languages, I would dare say that is not the case.

Mr. LUNGREN. I am on another Subcommittee on Immigration and very much involved in the whole refugee issue and, believe it or not, get accused of being both a conservative and liberal at the same time.

Mr. GARCIA. That is a tough situation.

Mr. LUNGREN. No one seems to be satisfied with what you do there. One of the major, I think, bits of information our subcommittee probably achieved when we brought them out to California recently was the crux of the problem with the refugees appears to be, in almost every instance, language difficulty.

Those that are not being able to get off welfare and work, it is because of language difficulty. Those who are having problems, just about every area it was language difficulty.

One of the things I think we concluded on both sides of the aisle, at least from our subcommittee, was we had not done a good enough effort in promoting the learning of English with those individuals.

I just have a major concern in terms of policy decisionmaking as to whether we do that, and whether this is an element of that. I understand your concern about people voting not knowing what they are doing, and I don't want that happening either.

Mr. GARCIA. But it can take place, Mr. Lungren, and that is the problem we face. Just what I hope to do, what I hope to accomplish by testifying before this committee is to make that point because I just feel it is important for you as well as it is for me.

I dare say that the three of us who are here as Members of Congress, all of us within our districts have Hispanics, and I would just think we would want those persons as they go to know what the issues are, what you stand for, what Mr. Edwards stands for, and what I stand for, and I hope they would be able to weigh all of that and vote intelligently.

In this business it is not 100 percent one way or the other. It is a question of how far you go; it is 80-20 or 70-30 or 60-40, or even 51-49; I don't know. But it just seems to me we have that responsibility as Members of the U.S. Congress. And it is not easy as it deals with immigration and the whole question because I face it, too.

I get hell from the other side. They beat me up all of the time. But what can I do? I am not quitting. I am going to run for reelection again and I am sure you are. And I am sure Mr. Edwards is.

Mr. LUNGREN. Thank you.

Mr. GARCIA. It is a tough business. These are difficult days and everything we do is looked at and measured.

Mr. EDWARDS. Thank you very much. It was just very impressive testimony, and thanks to your assistants.

We will now have a panel presentation. Our witnesses are Mr. Arnold Torres, a congressional liaison with the League of United Latin American Citizens, and Henry Der, executive director, Chinese for Affirmative Action.

Gentlemen, we welcome you. Without objection, the statement will be made a part of the record.

Mr. Torres is first or Mr. Der?

TESTIMONY OF ARNOLD TORRES, CONGRESSIONAL LIAISON, LEAGUE OF UNITED LATIN AMERICAN CITIZENS, AND HENRY DER, EXECUTIVE DIRECTOR, CHINESE FOR AFFIRMATIVE ACTION

Mr. TORRES. I will proceed, sir.

I would like to apologize first to the members of the committee and to staff for not preparing our written testimony in time to circulate it and distribute it to the members.

Furthermore, I would like to thank the committee and their staff for allowing us and giving us this opportunity to testify on what we have been informed as to the minority language provisions of the Voting Rights Act.

Basically, introduction-wise, I am Arnold Torres, Congressional Liaison for the League of United Latin American Citizens, the country's oldest and largest Hispanic organization, and we would like to direct our comments primarly to the testimony that has been provided by Mr. McCloskey and to try and provide a different perspective or, better yet, a more clear perspective of the need for bilingual provisions.

LULAC is extremely supportive and would underscore the necessity to extend the Voting Rights Act as is without any changes. In fact, if there were to be any changes politically I would not expect it to be very feasible.

We would like to see more money go into enforcement aspects of it as well as more moneys into resources for the Department of

Justice to insure and to respond to complaints and objections from litigant groups.

We were very, very interested and found very stimulating the statements made by Mr. McCloskey. He gave the example of Redwood City of a population of 8,622 Spanish origin citizens. He indicated, without having any documentation, he felt out of the 8,622, 50 percent of those were of voting eligibility. Again, we don't exactly know the number. I don't have that kind of information at my fingertips.

Furthermore, he indicates that the cost to the city of Redwood was $1,784.59 for Spanish language materials. He does not clarify if, in fact, that $1,784.59 are just on the bilingual ballot or if, in fact, they were for the purposes of providing voting materials, election materials in Spanish or other languages.

Again, another piece of detailed information which is necessary in order to get a much more clear picture of the situation.

Third, in his statement, written as well as verbalized, he said that 60 requested Spanish language materials and only 25 actually voted.

It escapes us to make any conclusions from that statement until the 35 who didn't vote on the Spanish language materials or ballots have been surveyed as to the reasons why they didn't.

I think the problem really lies in the fact that many assumptions are being made about the bilingual ballot, but more importantly about the overall issue of the minority language provisions.

Mr. McCloskey has, unfortunately, in support of bilingual education, perhaps has not fully understood the purpose of it. It is not intended to provide educational services to people who are not in school. It is a program, educational program for minority children or children who do not have English as a dominant language, and do not speak English primarily.

It does not address the problem of the individual in this country who entered back in the 1930's or 1920's who was not really held to a very, very stringent citizenship or naturalization requirements of having to speak English. It does not address and does not begin to deal with the issue of the new migrant from Spanish-speaking countries or from other countries that do not have English as their dominant language.

We find that in the census of 1980 that the Bureau of the Census has indicated that the growth in the Hispanic community cannot be solely looked at, nor is it solely based on the birth rates of the Hispanic community, but more importantly perhaps it is as a result and consequence of migrant patterns.

We are not finding migrants or immigrants from Mexico and other countries of Latin America who are 6 and 7 and 10 and 15 years old coming that are open to bilingual eduation, but unfortunately are not in a position to vote.

So bilingual education is not a remedy to deal with the language problems that a person has who is of voting eligibility.

That is something that perhaps should be underscored insofar as dealing with the interests in repealing the provisions, the minority language provisions.

The other thing that concerns us is that whole idea that the bilingual ballot should be scratched because it is an intent or perhaps serves to create a Quebec in the United States.

The primary purpose of the Voting Rights Act and the minority langauge provisions is to try to correct and try to establish a mechanism that will allow people to participate in the democratic society of the United States. The democratic society allows, guarantees, and has as one of its most cherished rights the right to vote.

The creation of a Voting Rights Act was—I don't need to really go into this—but we need to emphasize the fact that if the States were doing their job, the Voting Rights Act would never have come about.

If San Mateo or Redwood City would have somehow provided their own type of system, educational system, or whatever you would like, in order to address the problem of not allowing Hispanics equal entry into the elections process, then there wouldn't be a Voting Rights Act whatsoever.

But because of the shortcomings of States and local jurisdictions, because of the pervasive discrimination in certain parts of the country, not only toward the Hispanic but toward blacks and other minorities, the Voting Rights Act was created and passed by Congress.

So to us it escapes us as to the concern that people have to do away with minority language provisions. It is not an educational program. It is a program that provides a mechanism by which the abridged rights of a large segment of this country's population are being given the opportunity to vote under circumstances that were not there before.

We wanted to provide you with a very brief overview. I have 5 minutes and I wanted to get this over with real quick to satisfy counsel.

In 1977 the Secretary of State of California conducted a study, a section 1655 study in which they found a number of problems on the part of the counties. I wanted to just go very briefly over the problems of recruitment, lack of recruitment of bilingual personnel, a very, very lightweight or, better yet, a very superficial selection process in which you had in the general election, at least in the county of Fresno in the State of California, some bilingual election officers who could not answer a simple question such as "Hay personas que hablan Espanol en este recinto de votacion?" [Are there Spanish-speaking precinct workers at this polling place?].

Also the assignments of bilingual personnel was never made in areas where there was assessments of need of precincts, in certain precincts in the award of their need of people that had a certain bilingual skill.

There are a number of problems insofar as targeting. Many counties that are covered under the VRA in the State of California, instead of targeting decided to blanket; obviously that increased the cost of anything they did.

In addition to that, they continued to do a very poor job insofar as outreach services. Or they did not work with outside community groups very well at all.

I guess maybe we can allow for the questions. But the point is a lot of work has gone into trying to have the act be that to many which they have not been afforded before, the opportunity to vote.

There are a lot of things that need to be done to improve the act. Obviously, the extension of it would help very much.

One last point. Some people may ask us why are we concerned with extension, having the minority language provisions discussed now as part of the overall extension of the Voting Rights Act in view of the fact these provisions do not expire until 1985.

It is our view administratively, bureaucratically, and morally, we have five abridged groups under the Voting Rights Act: blacks, Hispanics, native Americans, Alaskans, and Asian Americans, and they all have the same problem.

To separate the one mechanism that is attempting to remedy those problems does not appear to make much sense, and certainly is a very costly and unnecessary function of congressional oversight.

The opportunity presents itself as it does now to bring together both aspects of the act, and we would underscore the necessity to do just that.

If the act is to be extended, the minority provisions should be extended along with the overall sections of the act.

Thank you very much.

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

As a matter of fact, the registrars in California really sabotaged the bill by, as I said earlier, by completely flooding their districts with a lot of unnecessary material at taxpayers' expense, and since that time——

Mr. TORRES. They are improved somewhat.

Mr. EDWARDS. They have improved tremendously. And it is very much I think to Mr. McCloskey's credit he has taken back his original accusations that the bill was terribly expensive. It is not expensive.

Mr. TORRES. No. Not if it is implemented correctly.

Mr. EDWARDS. It was definite testimony today.

Mr. TORRES. It has changed and has altered significantly. One point was of the 35 counties I think only two did not blanket back in the 1976 election in the State of California in 1977. So in our opinion you put it very well. They did, in our opinion, very much sabotage the act and they have done a very good job because the fallout of their initial criticisms still looms over these provisions as evidenced by Mr. McCloskey's testimony, and the sentiments and opinions of some of the members of this subcommittee and other Members of this Congress.

Mr. EDWARDS. Thank you.

Mr. Der?

Mr. DER. Thank you, Mr. Chairman.

Because I have submitted an 18-page written testimony, I don't think that the 5 minutes or 10 minutes allotted will permit me to read all 18.

Mr. EDWARDS. I think a couple of pages of it, but the entire statement, of course—and it is a splendid statement—will be made a part of the record, and you may proceed as you desire.

Mr. DER. I was just going to do that. That was to summarize some of my written comments.

[The statement of Mr. Der follows:]

TESTIMONY OF HENRY DER, EXECUTIVE DIRECTOR, CHINESE FOR AFFIRMATIVE ACTION

I am Henry Der, Executive Director of Chinese for Affirmative Action.

Chinese for Affirmative Action is a voluntary membership-supported, San Francisco-based non-profit organization dedicated to defend the civil rights of Chinese Americans and to promote equal employment opportunities for members of the Chinese American Community.

For the past six years, Chinese for Affirmative Action has played an active role to monitor and assist the office of the San Francisco Registrar of Voters for compliance with Section 203 of the Voting Rights Act, which requires the City and County of San Francisco to conduct its election in Chinese and Spanish, as well as in English.

Ever since President Gerald Ford signed the 1975 bilingual election amendments into law, the opponents of bilingual elections have been relentless in their emotional, fever-pitched campaign to belittle the rights of language minority citizens and to virtually accuse these citizens for being un-American and lazy. While it is almost impossible to persuade these opponents of bilingual elections to reverse or moderate their views, there is a compelling need to answer the charges that: (1) Bilingual elections are costly; (2) language minority citizens do not want to learn English; (3) the federal bilingual elections law is ineffective and unworkable.

I. THE COSTS OF BILINGUAL ELECTIONS HAVE BEEN GROSSLY EXAGGERATED AND INCORRECT

Even before the 1975 bilingual election amendments were enacted. The San Francisco Registrar of Voters predicted that it would cost $2 million to implement trilingual elections in San Francisco. The California Secretary of State March Fong Eu characterized the 1975 bilingual elections amendments as a "financial albatross" around the necks of state and local governments, requiring the expenditure of "$20 million" to send a trilingual ballot pamphlet (English, Spanish, and Chinese) to every registered voter in California. (Ms. Eu's assumption about a trilingual ballot pamphlet for every California voter was incorrect.) Ms. Eu's Office also predicated that the printing of a trilingual ballot pamphlet would "consume a full one third of the total uncommitted current newsprint supply available in the United States and Canada."

These and other predictions made by other election officials throughout California were dramatic, but totally misleading and over-inflated. In almost every instance, the costs of bilingual elections were less than 5 percent of what was predicted. The San Francisco Registrar of Voters spent $40,250 to print Chinese and Spanish ballots and ballot pamphlets for the November 1975 Municipal Election, the first election to be covered by the newly-enacted bilingual elections law. The Secretary of State spent $278,000 to print bilingual ballot pamphlets or about 1+ percent of her original prediction for the June 1976 Primary Election. In spite of these actual costs, these predictions of "multi-million" dollar bilingual elections from the outset have created the lingering impression on the general public that bilingual elections are costly and unnecessary.

As if the prediction of a $2 million trilingual election in San Francisco was not bad enough, the City and County of San Francisco wasted over $84,000 in October, 1975, to send a notice of inquiry on plain bond paper without any official letterhead to then all 271,718 San Francisco registered voters to ask whether they needed bilingual, written materials. The Chinese and Spanish portions of this notice of inquiry read:

"The purpose of this notice is to find out if you would prefer your written electoral materials and information in Chinese or Spanish or verbal assistance in the voting booth . . . . If you would prefer this, please check the box or boxes on the enclosed card and mail it as soon as possible. The card must be in the mail within 5 days if you want to have the information or assistance in another language at the November elections."

There was no telephone number listed in the Chinese or Spanish portions of this notice of inquiry. The only method of requesting Chinese or Spanish materials was in writing. Nothing in the notice indicated that the reader had the right under federal and state law to receive election materials in their native language.

The response to this kind of chilling, ineffective inquiry was predictably low. 783 voters requested election materials printed in Chinese and 580 requested materials

printed in Spanish. Riled by this notice of inquiry, an equal number of citizens adamantly opposed to bilingual elections went out of their way to send back the prepaid-postage card with scribbled comments like: "American people that don't make an effort to learn English should not have the privilege to vote." "Let these people learn our language. Stop changing things to suit them." "American language only." "If they don't like it, let them go back where they came from."

It never occurred to San Francisco officials to spend the $84,750 on voter registration and education among affected language minority communities as one means of including non-English speaking citizens into the democratic process.

The San Francisco Registrar of Voters, also went ahead and printed 25,000 ballot pamphlets each in Chinese and Spanish for the November, 1975 election. Because the San Francisco Registrar of voters had not developed an effective plan to identify and register language minority voters, San Francisco officials did not distribute many of the 50,000 ballot pamphlets in Chinese and Spanish. The cost to conduct a trilingual election in November, 1975, could and should have been much less than $125,000.

What is the cost to conduct trilingual elections? Opponents of bilingual elections have been quick to cite price tags from $537 per language minority vote cost in Redwood City, San Mateo County to $10,668 per vote cost in Solano County in California as the consequences of complying with federal law. Proponents of bilingual elections have never asserted that it would cost no extra dollars to implement bilingual elections. But, given the general lack of comprehensive voter outreach and registration plans targeted towards language minority citizens throughout affected counties in California, it is not surprising that "bilingual" ballots are underutilized and that the unit cost of language minority ballots has been made more expensive than the unit cost for English ballots.

There is a great need to examine the cost of conducting bilingual elections relative to the cost of government. Listed below is the breakdown of the trilingual election costs incurred in San Francisco for the June 1980 Primary Election to November 1980 General Election:

	June 1980 primary election	November 1980 general election
Personnel	$6,366	$8,250
Advertising	4,771	3,661
Voter pamphlet	30,975	49,553
Other printing	10,000	10,000
Miscellaneous	739	739
Total trilingual costs	52,851	72,203

It should be noted that the ballot for the November 1980 General Election was more lengthy than the average because of the unusually large number of supervisorial candidates, local and state propositions, and the city charter revision amendment, thereby requiring the printing of two ballot pamphlets per voter. The cost of $72,203 for the bilingual components of the November 1980 General Election does not accurately reflect the average costs for the bilingual components of an election. The price tag of $52,851 for the June 1980 Primary Election is more typical of the average cost.

Contrary to the widely held misconception that bilingual elections cost the American public "an arm and a leg", the cost to conduct elections in three languages is insignificant compared to the cost of government listed below are some comparative cost figures within San Francisco city government:

Item	Budget	Percentage of total city budget
All city departments	$1,069,000,000	100.000
SF registrar of voters	1,800,000	.168
November 1980	900,000	.084
Bilingual components of November 1980	72,203	.006

Bilingual components of the November 1980 General Election cost barely six-one-thousandth of one percent of the total 1980-81 City budget. Bilingual elections in San Francisco are clearly neither a significant nor expensive cost item. (Because the November 1980 General Election was not typical, the costs of bilingual elections are more like 0.004 percent of the total city budget).

Critics may claim that the bilingual components of the November 1980 General Election accounted for 8 percent of the total cost of that election. Greater scrutiny is needed to demonstrate that the bilingual costs incurred are reasonable. Of the $72,203 spent on the bilingual components is the November general election, $49,522 was spent on both the Chinese and Spanish voter pamphlets in the following manner:

November 1980 bilingual voter pamphets

Translation:	
Chinese	$24,166
Spanish	15,360
Printing: 18,000 pamphlets total	9,074
Postage	952
	49,552

Unless an office has the in-house capability, outside costs will always be incurred to translate the voter ballot pamphlet and other related election materials into the affected minority languages.

The cost to print and distribute the language minority ballot pamphlet is comparable to the cost for the English ballot pamphlet.

November 1980 pamphlet	Printing	Postage	Number of pamphlets	Unit cost (cents)
English	$139,834	$85,503	407,982	55.2
Chinese/Spanish	9,074	952	18,000	55.7

As of October, 1980, the San Francisco Registrar of Voters had on record 3,206 requests for election materials in Spanish. Undoubtedly opponents of bilingual elections will argue that the unit cost per language minority vote in the 1980 November General Election was $15.70 as compared to the 96¢ unit cost for the 234,627 voter cost in English. It is a mistake to calculate the unit cost per language minority vote based on the number of requests for bilingual materials.

Immediately after the December 1979 Run-off Election, the San Francisco Registrar of Voters surveyed the head inspectors of 46 targeted Chinese precincts out of a total of 900+ city precincts. In these 46 precincts, a total of 7,104 ballots were cast. Of these, 2,986 or 42 percent were cast by non-English speakers. The number of non-English speakers who actually vote in an election is considerably higher than the number of requests for written language minority materials.

California State election laws require considerably more printed, written materials distributed to every voter than what is required in other states. Bilingual elections materials are only an extension of existent state election requirements and laws. It is unfair for critics to lambast the cost of bilingual elections without carefully examining the basic costs involved in conducting English elections. For example, in San Francisco alone, over 50,000 English ballot pamphlets are returned to the Office of the Registrar of Voters every election because the registered voter did not vote, move, or failed to notify officials of a change in residence. The costs to print and mail and receive back these unused English ballot pamphlets, to check the voter rolls, and to send a postcard verification are as follows:

English Ballot Pamphlets for Nonvoters

Printing: 50,000×20 cents	$10,000
Postage: 50,000×23 cents	11,500
Return postage: 50,000×25 cents	12,500
Clerical	20,000
Verification: 30,000×9 cents	2,700
Return postage: 10,000×15 cents	1,500
Total	58,200

Clearly, San Francisco spends more for English ballot pamphlets sent to non-voters per election than for bilingual pamphlets, $58,200 vs. $49,552.

There is no doubt that the effectiveness and efficiency of various city/county registrar of voters offices can be improved. If so, both English and bilingual elections costs would be considerably lower.

II. LANGUAGE MINORITY CITIZENS WANT TO LEARN ENGLISH AND TO VOTE

Critics of bilingual elections have often characterized bilingual elections as a ploy by language minority communities to promote ethnic separation. There is the sterotype held by many that language minority citizens do not want to learn English. Opponents also question how naturalized language minority citizens gained their status without learning sufficient English to vote. Naturally, persons opposed to bilingual elections do not understand the discriminatory experiences that Chinese Americans have had to suffer and which have made it difficult for Chinese Americans, particularly the elderly, to learn English.

Not until 1943 were Chinese persons permitted to become naturalized citizens of our country. This historic prohibition against citizenship by Chinese Americans have had a devastating impact on many of today's elderly citizens who were denied equal educational and socio-economic opportunities during their younger days. The brutality of this federal prohibition forced Chinese Americans to look inwardly to the Chinatowns of America were opportunities were few and interaction with other Americans occurred infrequently.

At least 20 percent of the Chinese American adult population are employed either as seamstresses, janitors, maids, waiters, busboys, or unskilled workers. These persons know only too well that, if they possessed greater English language skills, they would be able to attain better-paying employment opportunities and gain greater social mobility in our society.

In spite of their long working hours, many of these Chinese adults are motivated to learn English. One out of every 4 students (25%) enrolled in adult classes at S.F. Community College District today is Chinese. Practically all of these Chinese adult students are enrolled in English language classes. The percentage of Chinese adult students far exceed the 15 percent Chinese representation in the total city population.

Chinese Americans can hardly be characterized as not wanting to learn English. While Chinese for Affirmative Action has been a strong advocate for bilingual elections, we have also encouraged all limited, non-English Chinese speakers to learn English and to become active participants in the democratic process. Over ten years ago, Chinese for Affirmative Action took the initiative to produce the Emmy award-winning 65 half-hour television series, "Practical English," to teach English to Chinese adults with an accompanying set of 4 Practical English Handbooks. Through a subsequent federal grant, Chinese for Affirmative produced the "Practical English Tape Kit" comprised of 29 one-hour audio cassette tapes to complement the Practical English Handbook for home learning. To date, the Practical English Tape Kit has been distributed to over 25 percent of the non-English speaking Chinese adult population throughout the country.

Recent amendment to the Immigration and Naturalization Act have attempted to remedy the longstanding discriminatory practices against Chinese persons. Permanent resident aliens who are at least 50 years old and have resided in America for 20 years do not have to met the English language requirement of the naturalization examination. Title VIII US Code 1423 provides:

"No person except as otherwise provided in this subchapter shall hereafter be naturalized as citizen of the United States upon his own petition who cannot demonstrate—

"(1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: [Provided], That this requirement shall not apply to any person physically unable to comply therewith, if otherwise qualified to be naturalized, or to any person who, on the date of the filing of his petition for naturalization as provided in section 1445 of this title, is over fifty years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence: [Provided further], That the requirement of this section relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant; and

"(2) a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of United States."

By virtue of their long time residence in America, many Chinese adults have become citizens under this provision of the law. It is important to note though that these persons still had to demonstrate a knowledge and understanding of American history and government.

Applicants for citizenship who are not at least 50 years old must demonstrate the ability to read and write simple words and phrases in English. Frequent questions asked during the English language portion of the citizenship examination include: What's your name? Where do you live? How many children do you have? Who is the President of the United States? Is this a book?

A review of the English language used in a typical ballot proposition demonstates that more than simple English words and phrases are used. Attached as Appendix A is a copy of the state and local propositions appearing on the November 4, 1980 General Election ballot plus an excerpt from Propositions L—the Retirement Cost-of-Living Increase.

There is no reason to penalize language minority citizens from voting because they do not comprehend the English used on a typical ballot and ballot pamphlet. In addition to the assistance of the translation of all official elections materials, there exist a dozen daily or weekly Chinese language community newspapers which play an important role in informing and educating the public about political candidates, their stands on different issues, and political propositions. These Chinese language newspapers include: Chinese Times, Sing Tao Daily, Young China Daily, China Daily, World Journal, Tien Shing Weekly, East/West, Asian Week, San Francisco Journal, Truth Semi-Weekly, Chinese Pacific Weekly, Far East Times.

In addition to these newspapers, there are numerous Chinese language radio programs dealing with current events and political issues in our society.

III. BILINGUAL ELECTIONS CAN WORK IF LOCAL OFFICIALS WANT THEM TO WORK

No one will argue that it take some effort to enfranchise language minority citizens who have been excluded from the democratic process and to develop and implement effective bilingual elections. But, the task is not so monumental that it is impossible. If local election officials work in good faith and try to solicit the cooperation of affected language minority communities, tremendous progress can be achieved to make language minority citizens equal participants in the electoral process and our society.

It is commonplace for some election officials to believe that the mere printing of bilingual materials fulfills the requirements of the 1975 bilingual elections amendments. There is more to bilingual elections than just a bilingual ballot or ballot pamphlet. Specifically, the presence of bilingual poll assistance is a major component in assisting language minority voters to cast an effective ballot.

The tenure of Mr. Thomas Kearney as San Francisco Registrar of Voters from the period of May, 1976 to February, 1980 is a clear demonstration of how one local official can thwart compliance with federal law and implementation of effective bilingual election.

Immediately after the 1975 amendments were enacted the law, Chinese for Affirmative Action persuaded the San Francisco Board of Supervisors to establish a Multilingual Citizens Task Force to assist in the implementation of the Voting Rights Act. In spite of the appointment of concerned language minority citizens to the Multilingual Citizens Task Force, the Registrar led to the demise of the Task Force within one year of its creation.

Prior to the June 1976 Primary Election, Chinese for Affirmative Action communicated to the Registrar that, based on the number of requests for elections materials in Chinese and U.S. Census population data, at least 47 precincts, out of 900+ in San Francisco, should be assigned to Chinese bilingual poll worker to render bilingual oral assistance. Monitoring the 47 precincts on Election Day, Chinese for Affirmative Action found that only 14 of these targeted precincts or 29.8 percent had a Chinese bilingual poll worker. Further, Chinese for Affirmative Action pointed out to the Registar that, of the six official voter registration tables situated throughout the City, none were located in either of the two affected language minority communities.

During the 1977 San Francisco Election, Chinese for Affirmative Action indicated to the Registrar again which precincts were in need of bilingual poll assistance. As in the previous election year, the Registrar ignored our communications with him with regard to the need to target Chinese bilingual precincts.

Chinese for Affirmative Action and other community groups had no alternative but to approach the U.S. Attorney and the U.S. Department of Justice to enforce Section 203 of the Voting Rights Act in San Francisco. Prior to the June, 1978 Primary Election, the U.S. Attorney informed the Registrar of his obligations to

comply with the federal law. After several on-site visits, the U.S. Attorney notified the Registrar that, among the deficiencies observed, (1) San Francisco had adopted no precedure whereby Spanish speaking election officials were assigned to precincts in Chicano communities; (2) there were no Chinese speaking election officials assigned to several precincts in the Chinese community were a clear need for such assistance had been demonstrated, and in still other precincts more assistance than had been provided was required in order to meet the needs of those precincts.

On election day during the June Primary, teams of assistant attorneys and law clerks of the U.S. Attorney Office and bilingual community volunteers observed selected, targeted bilingual precincts in the Chinese and Hispanic communities. Of the 48 targeted Chinese precincts, only 29 had a bilingual poll worker. The Registrar had made no provisions to target any Spanish precincts. Voter confusion or hesitancy to proceed with the electoral process by language minority voters was noted as commonplace in the Chinese precincts. For example, three elderly Chinese voters were reported to have decided not to enter their polling place at Clementina Towers because no Chinese bilingual poll official was present.

Other deficiencies observed by these teams included ineffective assistance at polls rendered by bilingual officials, due to the lack of adequate training. In some precincts, the presence of one bilingual poll official was not sufficient to handle all non-English speaking voters. Often times, the use of the voting machine was explained by the English speaking poll official. Further, many language minority voters were automatically given the English ballot without being asked whether they needed a minority language ballot.

Between the June 1978 Primary Election and November 1978 General Election, the Registrar had a time certain to demonstrate how he would better comply with the federal law. Because the Registrar made little effort to comply, the U.S. Attorney filed a lawsuit in federal court on October 27, 1978, to seek compliance. The federal court judge then issued a temporary order requiring the Registrar to implement the following action for the November, 1978 General Election: (a) secure the assistance of the Secretary of State to target Chinese and Hispanic bilingual precincts; (b) secure the assistance of community groups to recruit bilingual officials; (c) conduct training sessions for bilingual poll officials, particularly in cooperation with community groups; (d) notify all poll officials in targeted precincts of their obligation to assist non-English speaking voters; (e) post bilingual signs notifying voters about the availability of bilingual poll assistance. A federal examiner was also appointed to monitor all polling activities on election day. With the cooperation of community groups, an almost sufficient number of bilingual poll workers was recruited within three days to cover the targeted bilingual precincts on election day.

While the U.S. Attorney was negotiating a Consent Decree for the lawsuit, the Registrar was given all of 1979 to demonstrate what he could do on his own to comply with the requirements of the federal law. For the November 1979 Municipal Election, the Registrar demonstrated again his defiance of federal law by not recruiting a sufficient number of bilingual poll officials. Of the 51 targeted Spanish precincts, only 41 had bilingual poll workers. Only 36 of the 69 targeted Chinese precincts had bilingual poll workers.

Hauled into federal court immediately after the November 1979 Municipal Election to explain his failure to recruit an adequate number of bilingual poll officials, the Registrar revealed, when questioned about his personal feelings about the 1975 amendments:

"My feelings about the necessity for polling place workers, my personal feelings aside from the law is that it's not as necessary as a lot of people think. However, that doesn't influence my efforts in trying to comply with the law."

Under further questioning of Mr. Kearney, it was revealed that he had made racial slurs against Chinese Americans during the preceding November 1978 General Election when he got angry at his assistant for assigning a trainer to go to Chinatown, at the request of Chinese for Affirmative Action, to train bilingual poll workers recruited by community groups.

"ASSISTANT ATTORNEY. Mr. Kearney, did you state to the presence of Mr. Lamar Johnson (trainer), having been informed that he was going to the Chinese community to conduct training sessions for Chinese bilingual poll workers, did you state to him quote, 'I don't want Lamar teaching those damn chinks and also damn chinks they shouldn't get something special.'

"Mr. KEARNEY. I may have said that. I don't know the exact text of that."

Later on under further questioning by the federal court judge, Mr. Kearney admitted: "* * * asked that we send an instructor to a location in Chinatown to conduct a class for Chinese polling place workers only. And I thought that wasn't necessary. And knowing that I felt that way, one of our staff scheduled Mr. Johnson

to conduct a class in Chinatown against my wishes and I became angry and said something approximately what was quoted * * * I can't deny that I said it."

Evident from this court testimony, the Registrar's personal feelings about bilingual elections did interfere with his efforts to comply or not comply with the 1975 amendments. The Chinese American community succeeded to persuade the Chief Administrative Officer to remove Mr. Kearney from the position of Registrar of Voters. After Kearney's removal, the City made remarkable improvements to comply with federal law. Listed below is a comparison between the June 1978 and June 1980 (post-Kearney) Primary Elections for the assignment of bilingual poll officials:

	June 1978		June 1980	
	Targeted	Filled	Targeted	Filled
Chinese	48	29	92	92 + 20 standbys
Spanish			60	60 + 9 standbys.

More importantly, in May, 1980, the U.S. Department of Justice and City and County of San Francisco entered into a comprehensive Consent Decree that requires the City to take the following actions: (1) develop and implement a recruitment program for bilingual poll officials to commence four months prior to every election; (2) establish effective procedures to target precincts in need of bilingual poll workers; (3) provide appropriate training and written materials to all bilingual poll workers; (4) establish an election day "hotline" for non-English speaking voters; (5) train all poll officials regarding the manner in which they are to assist language minority voters who vote in non-designated Chinese and Spanish language precincts; (6) develop a glossary of commonly-used election terms in the appropriate minority languages; (7) assign at least two bilingual poll officials to those precincts where there are determined to be at least twenty-five percent or more Chinese or Spanish speaking voters; (8) develop a voter registration outreach plan to actively seek out and register Chinese and Spanish speaking voters; (9) establish effective procedures for distribution of bilingual voting and registration materials; (10) initiate contact and work with community groups to identify and secure sites for voter registration; (11) identify and maintain a listing of underregistered Chinese and Spanish speaking precincts; (12) assign appropriate staff resources to assist community-based voter registration groups located in language minority communities; (13) develop public service announcements to encourage voter registration among affected language minority communities; (14) encourage public agencies and private institutions to assist in the distribution of bilingual voter registration forms.

IV. CONCLUSION

With the Consent Decree in effect and a more cooperative Registrar of Voter staff, Chinese for Affirmative Action is optimistic that progress will be made during the coming years to enfranchise all language minority citizens in San Francisco into the electoral process. Bilingual elections will work in San Francisco at very little cost to the public. Chinese for Affirmative Action asks the U.S. Congress to approve H.R. 3112 which if enacted will extend the bilingual elections amendments to the Voting Rights Act for seven additional years.

APPENDIX A

9

CITY & COUNTY OF SAN FRANCISCO
GENERAL ELECTION
NOVEMBER 4, 1980

MEASURES SUBMITTED TO VOTE OF VOTERS

STATE

1 **PARKLANDS ACQUISITION AND DEVELOPMENT PROGRAM.** Provides $285,000,000 bond issue for acquiring, developing, restoring parks, beaches, recreation areas, other resources.

FOR 211 →
AGAINST 212 →

2 **THE LAKE TAHOE ACQUISITIONS BOND ACT.** Provides $85,000,000 bond issue to acquire Tahoe Basin property for protection and preservation.

FOR 214 →
AGAINST 215 →

3 **INSURANCE GUARANTEE FUNDS. TAX OFFSET.** Authorizes legislation establishing insurance guarantee funds to pay claims against insolvent insurers. Allows tax offsets. Fiscal impact: If offset allowed by legislation, could result in State General Fund loss of as much as $30 million per year.

YES 217 →
NO 218 →

4 **TAXATION. REAL PROPERTY: PROPERTY ACQUISITION BY TAXING ENTITY.** Removes tax limitation for this purpose if approved by two-thirds of voters. Fiscal impact: To extent new indebtedness is created, ad valorem property taxes on real property could rise. A rise in property taxes could increase state costs for reimbursements to local entities. For other possible fiscal impacts see analysis by Legislative Analyst in Ballot Pamphlet.

YES 221 →
NO 222 →

5 **TAXATION. REAL PROPERTY VALUATION. DISASTERS, SEISMIC SAFETY, CHANGE IN OWNERSHIP.** Amends constitutional definitions of "newly constructed" and "change in ownership." Fiscal impact: Local—Significant loss of property tax revenues. Moderate increase in assessment costs. State—Additional school district aid costs. Increase in income tax revenues.

YES 224 →
NO 225 →

6 **JURORS.** Permits legislative reduction of juries in municipal and justice court civil cases to 8 persons or lesser agreed number. Fiscal impact: None

YES 227 →
NO 228 →

7 **TAXATION. REAL PROPERTY VALUATION. SOLAR ENERGY SYSTEM.** Legislature may exclude active solar energy systems from term "newly constructed" in Constitution. Fiscal impact: Depending upon legislation enacted, local property tax revenues could be reduced and state school district aid increased.

YES 230 →
NO 231 →

8 **WATER RESOURCES DEVELOPMENT AND PROTECTION.** Limits modification of specified measures relating to Delta and specifies other water resources development conditions. Fiscal impact: Undetermined increase in state reimbursement of court costs to Sacramento County and decrease in state travel costs

YES 233 →
NO 234 →

APPENDIX A

CITY & COUNTY OF SAN FRANCISCO
GENERAL ELECTION
NOVEMBER 4, 1980

10

9 **SAFE DRINKING WATER BOND LAW.** Allows increase from $15,000,000 to $30,000,000 in bond proceeds for grants to improve public water systems. Fiscal impact: Revenue loss to State General Fund of $36 million over a 30-year period.
YES 235 →
NO 236 →

10 **SMOKING AND NO-SMOKING SECTIONS.** Provides for designation of smoking and no-smoking sections in specified types of enclosed facilities. Fiscal impact: Minor costs to state and local governments. Indeterminable reductions in state and local tax revenues and savings from decline in smoke-related illnesses and decline in fire losses.
YES 238 →
NO 239 →

11 **JUDGES SALARIES.** Establishes judicial base salaries. Allows specified changes by Legislature. Provides laws setting judges salaries are not contract obligations. Fiscal impact: State salary and pension reductions of approximately $2.7 million from 1981 through 1986.
YES 241 →
NO 242 →

CITY AND COUNTY

A Shall a Charter as proposed by the San Francisco Charter Commission be adopted?
YES 244 →
NO 245 →

B Shall officers and employees be permitted to have designated interests in certain transactions of the city which are now prohibited but be required to disclose said interests and abstain from participation in the transaction?
YES 247 →
NO 248 →

C Shall rates for the Municipal Railway as proposed by the Public Utilities Commission be approved, rejected or amended by a majority vote of the Board of Supervisors?
YES 250 →
NO 251 →

D Shall City employees be allowed in the City's Health Service System as determined by ordinance subject to conditions and qualifications as the Board of Supervisors may impose?
YES 253 →
NO 254 →

E Shall the compensation of Police and Fire uniformed officers be protected against reduction below a base rate determined by date of employment?
YES 256 →
NO 257 →

F Shall policemen and firemen who were members before November 1, 1976 be allowed to transfer to the Retirement Plan in effect after November 1, 1976 and be compensated up to $40,000 based on years of service for electing to transfer?
YES 259 →
NO 260 →

APPENDIX A

11

CITY & COUNTY OF SAN FRANCISCO
GENERAL ELECTION
NOVEMBER 4, 1980

G Shall members of the Police and Fire Departments with five years of service who cease to be employed for causes other than death or retirement have the right to rest their retirement contributions and receive a retirement benefit at age 50?

YES 261 →
NO 262 →

H Shall fire protection services be restored to and maintained at the levels no less than those authorized on June 30, 1978?

YES 264 →
NO 265 →

I Shall a schedule of compensation based upon the last demand of employees represented by the International Brotherhood of Electrical Workers, Local No. 6, be approved?

YES 267 →
NO 268 →

J Shall a schedule of compensation based upon the last demand of employees represented by the Laborers' International Union of North America, Local No. 261, be approved?

YES 270 →
NO 271 →

K **DECLARATION OF POLICY:** Shall the Board of Supervisors enact legislation to establish as the policy of the City and County of San Francisco that there be an addition of 20,000 new units of Residential Housing in San Francisco by January 1, 1985?

YES 273 →
NO 274 →

L **DECLARATION OF POLICY:** Shall the Board of Supervisors submit a Charter amendment to adjust cost-of-living increases or decreases in retirement allowances for miscellaneous employees, from funds legally available for such purposes, in accordance with percentage cost-of-living allowances determined to be in effect annually in other San Francisco Bay Area counties; provided that such cost-of living allowances to San Francisco retired employees or beneficiaries shall not be less than 2 percent annually.

YES 276 →
NO 277 →

M **DECLARATION OF POLICY:** We, the people, declare that San Francisco must increase the taxes paid by its largest corporations. It is fundamentally unjust that large corporations, such as giant oil companies whose profits will exceed $1 trillion in the 1980's, pay a lower rate of taxes than the average wage-earner; and that San Francisco's huge banks and insurance companies pay no local business taxes at all. We pay our share, and so should they.

YES 280 →
NO 281 →

N Shall the members of the Board of Supervisors be elected by district rather than at large?

YES 283 →
NO 284 →

11 END OF BALLOT

APPENDIX A

Retirement Cost-of-Living Increase

PROPOSITION L

DECLARATION OF POLICY: Shall the Board of Supervisors submit a Charter amendment to adjust cost-of-living increases or decreases in retirement allowances for miscellaneous employees, from funds legally available for such purposes, in accordance with percentage cost-of-living allowances determined to be in effect annually in other San Francisco Bay Area counties; provided that such cost-of-living allowances to San Francisco retired employees or beneficiaries shall not be less than 2 percent annually?

Analysis

By Ballot Simplification Committee

THE WAY IT IS NOW: The Charter now provides for a cost-of-living adjustment for retired city employees. This adjustment cannot be more than a 2% increase per year of the basic retirement allowance. Only a charter amendment can change this.

THE PROPOSAL: Proposition L would direct the Board of Supervisors to put such a charter amendment on the ballot. This amendment would set cost-of-living adjustments in retirement allowances according to a formula based on cost-of-living allowances in other Bay Area counties. Any increase could not be less than 2% per year of the basic retirement allowance.

A YES VOTE MEANS: You want the Board of Supervisors to place a charter amendment before the voters which would change the method of adjusting retirement allowances for cost-of-living.

A NO VOTE MEANS: If you vote no, you do not want a charter amendment changing retirement cost-of-living adjustments.

Controller's Statement on "L"

City Controller John C. Farrell has issued the following statement on the fiscal impact of Proposition L:

"Should the proposed Declaration of Policy be approved, in my opinion, it would neither increase nor decrease the cost of government.

"If a Charter amendment is subsequently approved by the electorate granting permissive powers to the Board of Supervisors to adjust cost-of-living allowances, in and of itself, the legislation would have no effect on the cost of government. However, future legislative action by the Board of Supervisors increasing the current 2% ceiling on cost-of-living allowances could result in an increase in the cost of government. Based on existing actuarial data, each 1% increase beyond the current 2% ceiling could add approximately $8,000,000 to the cost of government."

How "L" Got On Ballot

Proposition L was placed on the November 4 ballot through a provision in the present City Charter which allows four or more members of the Board of Supervisors, acting individually rather than as a legislative body, to place an ordinance or a policy measure on the ballot. San Francisco is believed to be the only city or county with a legal provision of this type.

On August 21 Registrar of Voters Jay Patterson received a request signed by seven supervisors asking that the issue of cost-of-living adjustments for retired City employees be placed on the ballot as a "Declaration of Policy" for the voters to decide. The Supervisors signing the request were Don Horanzy, Quentin Kopp, Nancy Walker, Harry Britt, Doris Ward, John Molinari and John Bardis.

ARGUMENT IN FAVOR OF PROPOSITION L

Vote "Yes" on Proposition L

For years our retired city employees have struggled to meet the increased cost of living on fixed incomes. More than 65 percent of our members, who paid into the Retirement System during their working years, are living on monthly retirement allowances of less than $500 with an existing non-compounded 2 percent annual adjustment for inflation. Cost-of-living statistics are nagging reminders that 2 percent provides only $3 to $4 monthly to meet living costs. This ballot measure won't cost the taxpayers one dollar. As a declaration of Policy it merely authorizes the Board of Supervisors to study and develop a more reasonable cost-of-living adjustment. Results of the Board's study would be included in a Charter Amendment for submission to the people at a later election. San Francisco's 2 percent cost-of-living allowance is among the lowest of Bay Area Counties In fairness, we urge a "YES" vote on Proposition L.

Frank H. Dunne, President

Jaykee Ford, 1st Vice-President

Retired Employees, City and County of San Francisco.

NO ARGUMENT AGAINST PROPOSITION L WAS SUBMITTED

Mr. DER. From the outset I would like to state for the record that the rights of language minorities and minorities in general have never, been a popular issue in this country. Minority rights would never win an election anyplace in the country.

The fact that people resent the appearance of a second language other than English on a ballot pamphlet or a ballot is not a bona fide excuse for depriving language minority citizens of the right to vote in a language that is intelligible.

I am heartened by Congressman McCloskey's admission today that cost is not a major problem with the bilingual provisions of this particular Federal law. We need to realize though that great harm has been done during the last 5 to 6 years by opponents of bilingual elections. Prior to the act being enacted and signed into law by President Ford and immediately thereafter, many State and local officials were quite irresponsible in making dire predictions as to the cost of implementing bilingual elections in California.

The California Secretary of State herself characterized bilingual elections as being a financial albatross around the necks of State and local governments. Her original estimate was $20 million to implement bilingual elections.

The San Francisco Registrar of Voters predicted that it would cost in the neighborhood of $2 million to implement trilingual elections.

It is really those kinds of figures that have stuck in the minds of the local citizenry.

While again I am heartened by the admission that cost is not the problem, I think it is going to take us more than 3 years to set the record straight with the general public as to what are the intended results and goals of bilingual elections.

Much has been stated with respect to why language minority citizens need bilingual elections, particularly those who have become naturalized citizens. I would only bring to the attention of the subcommittee title VIII of the United States Code Section 1423, which speaks to the two requirements to become a naturalized citizen. The first requirement is to understand, to read, and write simple English. The second is to a have a knowledge of American history and government.

There is one exception to the first requirement. If a person is 50 years old at the time of application for naturalization and has resided in this country for over 20 years, then the applicant is not required to demonstrate a proficiency in the English language.

Given the long history of Chinese American, in this country, there are many elderly Chinese American citizens who have become citizens through this exception of the law whereby proficiency in English is not required. Chinese Americans have suffered a long history of discrimination in this country of ours. Prior to 1943, Chinese permanent resident aliens were not permitted to become naturalized citizens. It is only just that certain elderly Chinese Americans are not required to demonstrate English language proficiency to gain citizenship.

With respect to all other applicants for naturalization, one is required to speak only simple phrases and words in the English language.

To the best of my knowledge, naturalization examiner ask, simple questions such as where do you live, how old are you, how many children do you have for the English language portion of the examination.

I have submitted for the record a copy of the most recent ballot that appeared in the November, 1980, general election in San Francisco. One only has to take a quick perusal of this ballot to see that the English used in this ballot is fairly complex. This ballot requires extraordinary English skills on the part of the naturalized citizen to wade through the many complex ballot argument for both local and State propositions.

It is my strong belief that the bilingual election laws can work if people want them to work in the respective local jurisdictions.

In the case of the city and county of San Francisco, for the past 5 years language minority citizens have had to deal with a registrar of voters who has been both a recalcitrant obstructionist and a racist in his attitudes toward implementation of the bilingual election laws for Spanish-speaking and Chinese-speaking citizens in the city and county of San Francisco. My written testimony documents during the period from May 1976 to February 1980, all the opportunities the register of voters had to establish a procedure whereby adequate bilingual oral assistance would be rendered to language minority citizens, but failed to do so in every instance and in practically every election. Even when under a court order to work with community organizations, to train and recruit bilingual poll workers, the registrar of voters resisted and resorted to calling Chinese-Americans by various racial slurs and derogatory names.

This registrar is probably the most blatant, clear example of how one official has allowed his personal feelings to get into the way of conducting official business.

Fortunately San Francisco has been able to get another registrar of voters. Language minority citizens feel that we will see a better day in the city and county of San Francisco because the present incumbent has a much better attitude toward the Federal voting rights law and how it should be implemented in the city and county of San Francisco.

One last comment I would like to bring to the attention of the committee; 3 years ago the U.S. Attorney in San Francisco took a very active interest in the voting problems faced by language minority citizens in the city and county of San Francisco. Because of the U.S. Attorney Office's great interest in seeking compliance in the city and county of San Francisco and in working with community civil rights organizations, their office filed a lawsuit in 1978 against the city and county of San Francisco. In May 1980, a consent decree was achieved, laying out a fairly comprehensive program whereby language minority citizens in San Francisco will be registered and rendered adequate bilingual poll assistance on election day.

This consent decree has great merit. We would hope that the U.S. Department of Justice and other local U.S. attorneys will make appropriate applications in those jurisdictions that come under their purview.

Mr. EDWARDS. Thank you both very much.

I certainly agree with you that great harm was done in California, anyway, in the first 2 or 3 years of the operation of the act, both by local and State politicians to the climate in California, and by radio talk shows, and I think you know which one I mean.

Mr. DER. Yes. And also local newspaper columnists who have been quite brutal.

Mr. EDWARDS. As I started to say, local columnists on the first page of the second section of the local paper.

Mr. DER. Yes, which is an afternoon paper; right.

Mr. EDWARDS. Really, I cannot tell you how delighted I am to have our colleague, Mr. McCloskey, who is just a fair guy, to come here today and testify, and, in effect, say that his position was misinformed and that he has changed his mind and that cost is not an element anymore.

Cost is not an element at all.

I am delighted because I think it is very much the job of the politician, of the elected official, to explain things to his or her constituents and never under any circumstances to have any tinge of racism because there is a great deal of racism in the argument over the minority ballot, especially in California and, to a certain extent, in Texas.

Certainly it has been proved in a number of States, and I am happy to say it is now proved in California that it can work if people want it to work. If they don't want it to work, then it will just be the subject of talk shows and newspaper articles and a lot of racial disorder and emotion and animosity are developed and it is up to us who are in office to keep cool heads, keep level heads and explain what the truth of the matter is.

Counsel, do you have any questions?

Ms. GONZALES. Thank you, Mr. Chairman.

I wonder if maybe both of you could answer a question Mr. McCloskey raised in his statement. His question is are we really helping minorities by making it easier for them to vote knowledgeably in their native language.

His main thrust was really on the next page where he really is talking about whether we don't, by providing bilingual assistance, we don't diminish the ability of minorities to be able to become integrated into the economic system, and whether we don't do minorities a disfavor by, in fact, encouraging them to continue to use their own primary language.

Mr. DER. Even prior to the implementation of bilingual elections, Chinese Americans were never really that well integrated into American society in the first place. The fact that we have Chinatowns in the major metropolitan areas of the west coast and east coast is a testament to the fact that historically Chinese Americans have had to look inwardly and look to themselves because of not being accepted in American society and because of pervasive discriminatory practices.

Obviously I disagree with Congressman McCloskey's position that bilingual elections do a great disservice to language minority citizens because it hinders their integration into American society.

Every language minority person, like other Americans, worries about house and home, and being able to secure a good job. Even before bilingual elections were enacted by the U.S. Congress people

in the Chinese community were scrambling to get better jobs. The implementation of bilingual elections has not caused language minority citizens to stop their quest for better jobs and then narrowly turn to bilingual elections as salvation for a better future.

Bilingual elections is really just one very small means for language minority citizens to participate in the democratic process.

Mr. TORRES. Unfortunately a lot of people say a number of things based on assumptions and based on a public mood. Obviously the public mood now is to have serious concerns about anything that is bilingual.

But I think we just look at the results in this case, we are not going to assume anything, we are going to look at some of the facts.

The Hispanic community in the last Presidential election had an increase in voter registration of 30 percent, had an actual increase of 19 percent in actual voter participation, actual voter turnout. That was not done because they were in a bilingual education program. That was done becaue the Voting Rights Act made it available to them to do just that. That was created and brought about by the fact that the bilingual minority language provisions of the Voting Rights Act allows for the dissemination of information in other languages besides English and languages that allow people to feel as though they have a stake involved in an election, whether it be at a local, State or, in this case, the Federal election of a President, national election of a President.

The last point I would make is that we are a little concerned that oftentimes non-Hispanics have a tendency to tell Hispanics what is best for us. I think in this case the statistics very much point out the fact that the Voting Rights Act and minority language provisions are the best thing for us.

The last point, the paranoia that exists in the country now against bilingualism would have us believe that the Hispanic American is organizing itself very well to create a different nation within the United States. Supposedly some would even like to refer to it as the Southwest onslaught. But you don't see a referendum in San Antonio where over 50 percent of the population is Hispanic saying you no longer can speak English in San Antonio. You don't see that in the city of El Paso where over 56 percent or 56 percent is Hispanic or Mexican American. But you do see a referendum in Dade County which says that English is the dominant language and there is no moneys to be appropriated for functions that perpetuate or advance the cause and learning of a different language.

It is not a fear that is realistic; it is one that has been brought about by paranoia, a very concerted paranoia and effort that is a problem of insuring minority Americans participate fully in the democratic processes of this society.

Thank you.

Ms. GONZALES. Thank you.

I have no further questions, Mr. Chairman.

Mr. EDWARDS. Thank you.

Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman. Mr. Der, you made an interesting point when you indicated that in your judgment the use of bilingual ballots encourages, in your case, Chinese, to reach

outward rather than inward as they historically have done; is that correct?

Mr. DER. Yes. I feel very strongly that the bilingual ballot is one mechanism that draws Chinese-speaking citizens into the political arena and permits them to understand what is happening in our society.

Mr. BOYD. If we put that aside for the moment, philosophically, do you think that a person is made more or less economically mobile by an inability to speak English?

Mr. DER. I agree with the fact that one absolutely has to know English to be at the maximum level of economic mobility. As a civil rights organization, Chinese for Affirmative Action encourages people to learn English. We produce Practical English audio cassette tapes that are distributed to Chinese-speaking adults so they can learn English at home.

I feel that people can do a number of things at one time. They can learn English and still use the bilingual ballot in the democratic process.

Mr. BOYD. OK. But if you do agree that you are less economically mobile through an inability to speak English, couldn't that, and has it not in the case of the Chinese, resulted in a greater interdependence on others within the same language minority group?

Mr. DER. Not necessarily. The fact that people have not been able to get jobs outside of Chinatown and then have had to revert to the subeconomic culture in Chinatown, have left them ripe for economic exploitation by other Chinese Americans.

Mr. BOYD. Was that not partially as a result of inability to speak English?

Mr. DER. Partially so, but also there has always been historically a lack of opportunity to learn English in Chinatown.

Mr. BOYD. I understand that.

Mr. DER. Also, in different parts of the country.

Mr. BOYD. I understand that also. I am trying to suggest to you that some of the people who take the position in the Congress that bilingual ballots are inappropriate in this kind of legislation do so because they feel in an incremental way that lack of economic mobility is caused by lack of ability to speak English. Lack of economic mobility ultimately results in greater interdependence on one's own cultural, language and ethnic group, and continued interdependence can, in the long term, result in cultural separatism.

You take the position, interestingly, that the use of the bilingual ballot encourages involvement, encourages a culture to reach outward rather than turn inward. It is on that point that you may disagree with other members who have testified.

Mr. DER. Like the Hispanic community, there are well over 12 Chinese language newspapers that are printed either on a weekly or daily basis in San Francisco. Language minority citizens are quite aware of national, regional, and local events that are occurring daily.

Chinese Americans read about these events in the Chinese langauge newspapers because that is a language that they know best. But they are unable to voice their opinions or to participate in the

democratic process because they are intimidated by an English-only election system, particularly in California where we have many propositions that affect the financial status of our State and local government.

Language minority citizens are interested, but have not participated in the election process because of the English language barrier.

The presence and availability of bilingual ballots give them the opportunity to vote and to voice their opinions and be counted.

Mr. BOYD. But have you any statistics to show that their participation and use of bilingual ballots is directly proportionate to their increased use of the English language? Has it encouraged them to remain dependent on Chinese or does it encourage them to learn English or does it have any relation at all?

Mr. DER. I don't think really there is a relationship. As a matter of fact, I would say that the interest in learning English in the Chinese American community is extremely high. One out of every four adult students who is enrolled in our community college classes is a Chinese American. That is 25 percent of all students.

Chinese Americans constitute 15 percent of the San Francisco population. So we far exceed the population parity.

Most of these Chinese students are enrolled in English language classes of all levels from zero level up to the fifth grade level and on up.

The fact that we have bilingual elections has not encouraged people to stop learning English.

Mr. BOYD. But in your judgment there is really no relationship between the two?

Mr. DER. I don't think so. In terms of whether they want to continue to learn English or not, language minority citizens have to learn English to get a better job.

Mr. BOYD. But you do agree with the progression of points we have just been discussing about economic mobility, and separatism caused by inability to integrate culturally?

Mr. DER. Yes; as other proponents of bilingual elections have stated, proponents of bilingual elections are not seeking cultural separatism. We are part of America. Everything around us is American. It just so happens there are certain groups of people that don't speak English very well. They have something to say at the ballot box like other taxpayers.

As you may know, Chinese Americans hold the owning of property in high esteem. It would seem quite reasonable to me that if you pay property tax, you should be able to voice your vote. Contrary to popular belief, not all Chinese Americans register with just one party when they do register. Chinese Americans span all economic interests.

Mr. BOYD. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, gentlemen.

That concludes the hearing for today. The next hearing will be in Montgomery, Ala., Friday.

[Whereupon, at 5:05 p.m., the subcommittee was recessed, to reconvene at 9:30 a.m., Friday, June 12, 1981.]

EXTENSION OF THE VOTING RIGHTS ACT

FRIDAY, JUNE 12, 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 a.m., in the U.S. courthouse, Montgomery, Ala., Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Washington, and Hyde.

Also present: Ivy L. Davis, assistant counsel and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

The House Judiciary Subcommittee on Civil and Constitutional Rights, which is a portion of the House Judiciary Committee, is here in Montgomery, the historic capital of the great State of Alabama, as we continue our extensive review of the need to extend the Voting Rights Act of 1965.

All of us here today from Washington, from Illinois, from California, are appreciative of the hospitality of all of the people that we have met.

We have enjoyed being here very much. We are looking forward to our stay. I want to particularly thank the good mayor, Mayor Folmar, for arranging to have us met at the airport and transported to our hotel.

Mayor, we appreciate that very much.

Our colleague, Congressman Bill Dickinson, said that he wanted to come and sent us a message of hospitality. Congressman Dickinson, who is a good friend of us here on this podium, states that he too welcomed us to Alabama and, of course, to the State capital.

Our hearings have shown that the permanent provisions of the act are national in scope and that the temporary provisions, especially section 5—which expires in the next year—apply to all or portions of 22 States. Today's hearing is going to focus on voting rights issues in Alabama and Mississippi.

In the time we have here, we have tried to achieve a cross-section of views from various parts of the State. We have invited several Alabama State officials, who declined to attend, but we encourage them and others who were unable to schedule their appearance to submit their statements for the record and I hope that the Governor and the other State officials will submit statements for the record.

It is my pleasure to introduce for a short statement the gentleman from Illinois, Congressman Harold Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

Thank you, Mayor, for your gracious reception of us. I am pleased to be in the State of Alabama, which is considered a second home by many people in my district, the First District of Chicago.

They too remember the frustrations and the debate that came from attempting to vote in the South.

Throughout these hearings we have learned that while progress has been made, we have heard testimony that emphasized the need to extend the special provisions of the Voting Rights Act for 10 years.

I guess my feelings may be summarized as follows: I congratulate the State of Alabama and the State of Mississippi, on having made progress since enactment of the historic Civil Rights Act of the past few years.

I understand the tremendous struggle to part with past ways and the tremendous good will of the many people among these States that this progress represents.

At the same time, I must view it against a longer history, one which makes clear that the prudent policy for us all would be to extend these laws for an additional 10 years.

I am reminded that the Federal guarantees have provided much needed protection for the good people of all races who have in the end been responsible for the progress that has occurred.

I look forward to a productive hearing today with my colleagues. Once again I want to thank you, Mayor, for inviting us here.

Mr. EDWARDS. The ranking Republican on this subcommittee is the distinguished member from Chicago, the Honorable Henry Hyde.

Mr. HYDE. Thank you, Mr. Chairman. I have no statement to make.

Mr. EDWARDS. Our first witness today is the mayor of this city, Mayor Emory Folmar.

Mayor Folmar, welcome. You may proceed.

TESTIMONY OF EMORY FOLMAR, MAYOR OF THE CITY OF MONTGOMERY, ALA.

Mr. FOLMAR. Thank you.

Mr. EDWARDS. The gentleman from Illinois?

Mr. WASHINGTON. I ask unanimous consent that the subcommittee permit coverage of this hearing in whole or in part by television broadcast, radio broadcast, or still photography in accordance with committee rule No. 5.

Mr. EDWARDS. Is there objection?

The Chair hears none. It is so ordered.

Mayor?

Mr. FOLMAR. Mr. Chairman, gentlemen of the committee, we do sincerely welcome you to the city of Montgomery. We hope your stay here is pleasant and productive.

Mr. Chairman, I appreciate this opportunity to express my opinion to you and the committee on the proposed extension of portions of the 1965 Voting Rights Act.

No one that I know in this area has any desire to deny anyone the right to vote. That is a settled issue.

I have not come to talk about doing away with safeguards that deal with voting rights. I don't believe it is right to deny anyone

the right to vote because of race, color, or sex and I have never thought so.

Blacks have been for the last 15 years able to register to vote with absolutely no difficulty. According to the Almanac of American Politics 1980 and the 1980 Census for the State of Alabama, the statistics for registered voters are as follows:

Total population for Alabama, 3,890,061; total registered voters, 1,938,231; total black population, 995,623; total black registered voters, 503,940; percentage of registered voters, 50.6 percent; total white population, 2,894,438; total white registered voters, 1,434,291 and percentage of registered voters, 49.4 percent.

Last year, prior to the Presidential election, blacks were registered by the hundreds in Montgomery County and by the thousands all across Alabama. Even with all the heat generated in the Presidential and senatorial election in this city, not a single difficulty in voting, other than long lines, was brought to my attention.

Alabama has two black Federal judges and one black on the Alabama Supreme Court. There are many black mayors and city council members in Alabama towns and cities.

Numerous blacks have been elected to the Alabama Legislature where their influence is strong. As a matter of fact, in the Alabama Senate blacks are chairmen of the two most powerful committees.

Here in Montgomery four of nine city council members are black, two of five county commissioners are black, two of five legislators are black and one of three city judges is black.

My point in this recitation is to point out that black representation is a reflection of black political power.

With this as the background, it is my strong opinion that Alabama should be treated like other States in the Union either by being removed from the coverage of section 5 of this act or by its expiration.

Never would this law have emerged from the Congress had it been applied to the entire United States.

This act presupposes guilt on the part of the covered political subdivisions until that subdivision proves that it is not discriminatory in its actions.

This concept is discriminatory to the covered jurisdictions and goes squarely against the American concept of everyone being innocent until proven guilty.

I feel about this law as did former Supreme Court Justice Black when he said, "When any State abridges the rights of citizens on account of race, the proper course for the United States is to institute suit in Federal court and have such discriminatory practice halted."

There are adequate remedies easily available to any citizen who believes that he or she has been the victim of racial discrimination.

If the remedy of total expiration of this portion of the act is not available, may I suggest that those jurisdictions that have not had a proven case of racial discrimination as covered by this act for 10 years, immediately be released from coverage.

Under Section 5 of this act, jurisdictions must submit any change in its voting laws to the U.S. Attorney General or district Federal court in Washington, D.C. for preclearance for a declaratory judg-

ment that the 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.

I cannot believe it serves any useful purpose for the city of Montgomery to have to go to Washington, hat in hand, to beg for permission to change the location of voting places or get permission to redistrict or to annex additional citizens.

Treat us as equals; if we do something wrong, right the wrong.

However, do not consider us worse than murderers and thieves who must be proven guilty before sentencing.

If people who commit heinous crimes still have all the safeguards of trials and appeals, why should not honest citizens have those same rights?

Before someone suggests that this extension is needed to keep us honest, let me point out that law enforcement officers cannot incarcerate someone just to keep them honest.

No; we must have proof of guilt before a judge and jury before even the most unsavory character can be removed from society.

Why then the continuance of this discriminatory practice that says we must prove our innocence before some faraway tribunal?

Is it politics in its rawest form? If so, say so.

Say that there are those who wish to keep this yoke on our southern necks for the political delight of others. If that is not the case, what in heaven's name is the extension for?

If we are doing wrong, show us where we err; if we do a wrong, right that wrong. But do it in the same manner you would with any other suspected lawbreaker.

Take the suspected party to court and prove him to be a lawbreaker.

Furthermore, just because someone comes before this committee and says there is discrimination taking place now in Alabama or Montgomery doesn't make it so any more than an arresting policy officer saying that a person is guilty just because he says so.

All we are asking for is to be treated as full citizens of this great country with the same guarantees at the bar of justice as any other American.

I urge that section 5 of the 1965 voting rights be allowed to expire without further extensions.

Thank you for this opportunity to present my views to this committee.

[The prepared statement of Mr. Folmar follows:]

STATEMENT TO HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS, BY EMORY FOLMAR, MAYOR OF THE CITY OF MONTGOMERY

Mr. Chairman, I appreciate this opportunity to express my opinion to you and the committee on the proposed extension of portions of the 1965 voting rights act.

No one that I know in this area has any desire to deny anyone the right to vote. That is a settled issue. I have not come to talk about doing away with safeguards that deal with voting rights. I don't believe it is right to deny anyone the right to vote because of race, color or sex and I have never though so. Blacks have been for the last 15 years able to register to vote with absolutely no difficulty. According to the Almanac of American Politics 1980 and the 1980 census for the State of Alabama, the statistics for registered voters are as follows:

Total population for Alabama	3,890,061
Total registered voters	1,938,231
Total black population	995,623

Total black registered voters	503,940
Percentage of registered voters	50.6
Total white population	2,894,438
Total white registered voters	1,434,291
Percentage of registered voters	49.4

Last year, prior to the Presidential election, blacks were registered by the 100's in Montgomery County and by the 1,000's all across Alabama. Even with all the heat generated in the presidential and senatorial election in this city, not a single difficulty in voting, other than long lines, was brought to my attention.

Alabama has two black Federal judges and one black on the Alabama Supreme Court. There are many black mayors and city councilmembers in Alabama town and cities. Numerous blacks have been elected to the Alabama legislature where their influence is strong. As a matter of fact, in the Alabama Senate blacks are chairmen of the 2 most powerful committees. Here in Montgomery 4 of 9 city councilmembers are black, 2 of 5 county commissioners are black, 2 of 5 legislators are black and 1 of 3 city judges is black. My point in this recitation is to point out that black representation is a reflection of black political power.

With this as the background, it is my strong opinion that Alabama should be treated like other States in the Union either by being removed from the coverage of section 5 of this act or by its expiration. Never would this law have emerged from the Congress had it been applied to the entire United States. This act pre-supposes guilt on the part of the covered political subdivisions until that subdivision proves that it is not discriminatory in its actions. This concept is discriminatory to the covered jurisdictions and goes squarely against the American concept of everyone being innocent until proven guilty. I feel about this law as did former Supreme Court Justice Black when he said, "When any state abridges the rights of citizens on account of race, the proper course for the United States is to institute suit in Federal Court and have such discriminatory practice halted". There are adequate remedies easily available to any citizen who believes that he or she has been the victim of racial discrimination.

If the remedy of total expiration of this portion of the act is not available, may I suggest that those jurisdictions that have not had a proven case of racial discrimination as covered by this act for 10 years, immediately be released from coverage. Under section 5 of the act, jurisdictions must submit any change in its voting laws to the U.S. Attorney General or District Federal Court in Washington, D.C. for preclearance for a declaratory judgment that the 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. I cannot believe it serves any useful purpose for the city of Montgomery to have to go to Washington, hat in hand, to beg for permission to change the location of voting places or get permission to redistrict or annex additional citizens. Treat us as equals; if we do something wrong, right the wrong. However, do not consider us worse than murderers and thieves who must be proven guilty before sentencing. If people who commit henious crimes still have all the safeguards of trials and appeals why should not honest citizens have those same rights. Before someone suggests that this extension is needed to keep us honest, let me point out that law enforcement officers can not incarcerate someone just to keep them honest. No, we must have proof of guilt before a judge and jury, before even the most unsavory character can be removed from society. Why then, the continuance of this discriminatory practice that says we must prove our innocence before some far away tribunal? Is it politics in its rawest form? If that's the case, say so. Say that there are those who wish to keep this yoke on our southern necks for the political delight of others. If that's not the case, what in heavens name is the extension for. If we are doing wrong, show us where we err; if we do a wrong, right that wrong. But do it in the same manner you would with any other suspected lawbreaker. Take the suspected party to court and prove him to be a lawbreaker.

Furthermore, just because someone comes before this committee and says there is discrimination taking place now in Alabama or Montgomery doesn't make it so, anymore than an arresting police officer saying that a person is guilty just because he says so. All we are asking for is to be treated as full citizens of this great country with the same guarantees at the bar of justice as any other American. I urge that section 5 of the 1965 voting rights be allowed to expire without further extension.

Thank you for this opportunity to present my views to this committee.

Mr. EDWARDS. Thank you, Mayor.

Mr. Hyde?

Mr. HYDE. Thank you, Mayor, very much. I appreciate your forthright statement and I think you have stated the case for the

philosophy of expiration as well as I have heard it. I understand that you have a Ku Klux Klan active down here. What have you done about that?

Mr. FOLMAR. Mr. Chairman, Mr. Hyde, in August of 1979, sections of the Ku Klux Klan from Louisiana and Mississippi, north Alabama, some from this area and others, came to Selma to say that they wanted to reenact the march that Dr. Martin Luther King made years ago.

They came to the city council too late to be placed on the agenda for public assembly permit and were turned down. They came to this very courthouse and sought Federal relief from it.

The judge ruled that our ordinance was, in fact, valid. We met the Ku Klux Klan representatives first and told them of this action and then they said that they would come to town and do whatever was necessary to finish their march.

We met them at the west end of the city limits, disarmed and incarcerated 197 members of the Ku Klux Klan, sir.

Mr. HYDE. From the statistics you have provided, you indicate despite a nearly 3-to-1 white population over black population in terms of numbers, a higher percentage of registered black voters than registered white voters. Is that so?

Mr. FOLMAR. I base my information on information that I have reason to rely on which is the Almanac of American Politics, Legal Services—although I must say that I think I don't always rely on legal services—but their testimony in a case in Mobile indicated a figure of some 450,000.

The American Almanac of Politics says 500,000.

I think this is so because of intensive voter registration drives that have taken place in the black community. I think that is great.

Mr. HYDE. Let's assume the preclearance sections, as they now exist, were to continue, were to be extended, say for 10 more years.

Would you think that an amendment to the act which permitted a jurisdiction, whether it is a subdivision or even a State, could go into a U.S. district court and seek a declaratory judgment and must prove, sustain the burden of proof, that that jurisdiction had in the 10 years immediately past fully complied with the Voting Rights act, made every submission required of it, had had no objections made to any of its submissions and that notice would be given to any interested party through publication in every newspaper of general circulation by posting it in the Post Office, and that any interested party could come to court and could introduce testimony or evidence as to the spirit of the act being violated?

In other words, one could live up to the letter and still, through attitudes, intimidate people not to vote, not to register, and so that this jurisdiction could prove it is absolutely clean in terms of the spirit and letter of the act, and has been so for 10 years; then the court could issue a declaratory judgment that preclearance is no longer mandated for that jurisdiction automatically, and the court keeps jurisdiction for 5 more years in case there is any backsliding.

Then, of course, we always have section 3(c), which, for the isolated case permits you to go into court and prove that there has been a voting rights abuse and reimpose preclearance.

Would you say that that might be an acceptable middle ground which would permit jurisdictions with a record in the past that is one not to be proud of in terms of facilitating minorities to register to vote, and would give them an opportunity to join the rest of the country in being treated equally so long as they can sustain that burden?

Would that be, you understand, it was a long question. Do you understand what I was saying?

Mr. FOLMAR. Yes, sir.

Mr. Chairman, Mr. Hyde, Mr. Washington, I think that it would be fairer if the U.S. Attorney General had to prove that we erred. I think in any other court that we go into the burden of proof is on the prosecution.

I don't see why we should be treated any different, as I said, than murderers and thieves who have to be proven guilty before we can be sentenced. We feel that since the enactment of the 1965 Voting Rights Act—and it did change, Mr. Washington, as you pointed out.

I want to say that I agree with you. I thought it was necessary that we have a Voting Rights Act. We are not proud of the way things were handled in years gone by.

But, with the advent of the 1965 Voting Rights Act, in this jurisdiction we have been clean. I don't think there has been a sustained complaint against the city of Montgomery, the county of Montgomery, and probably the State.

I am speaking mainly for Montgomery at the moment. I think it is only fair that the burden of proof shift to the U.S. Attorney General.

Why should we have to come in and prove we are not a Communist? Why should we have to prove that we quit beating our wives? Why should we have to come in and prove this?

At this point it seems with the record as indicated that the burden of proof should shift. If we do something wrong——

Mr. HYDE. Well, sir, in an ideal situation I think you are quite right, but it is not as though you are dealing with an isolated criminal act. You are dealing with an alleged practice or procedure that bars whole groups of people from exercising a basic civil right, the right to vote.

You are under the act now. This yoke is on your neck, so to speak.

What I am wondering is, if there is a way for you to remove the yoke that may not be ideal in terms of the burden of procedure, but if the act is extended for 10 more years, there is no way that any jurisdiction that may have a record that they have worked very hard to prove to get out, and I am not talking idealism.

I am talking compromise and something that can be accepted.

I just throw that out as an idea.

Maintaining preclearance and having a substantial burden to be borne by a jurisdiction that wants out, and it is just an idea. I wanted your reaction.

Mr. FOLMAR. Mr. Chairman, members, it is a good idea. We have no quarrel with the concept.

I think we can prove in this jurisdiction in the past 10 years there has never been a sustained complaint against this jurisdic-

tion. There will be those who will testify before this microphone that there is a need for it, it still exists, this, that and the other.

I think we ought to be in a position where these allegations ought to be proved. We are willing to go and say that we are clean.

Mr. HYDE. Complying with the act is really no big deal in terms of expense. It is irritating, I suppose, but that is about what the burden of the act is to your jurisdiction; is that not so?

Mr. FOLMAR. Well, it requires no matter what we do we have to get the preclearance, whether it be to change a voting place from city hall to the civic center or something. We have to get preclearance. It is not the great burden; it is not the thing.

It is the stigma that those of us who have tried real hard to do something about over the years resent. We think that our act has been cleaned up. The proof of it is the number of blacks that are elected in the State of Alabama, the city of Montgomery, the number of blacks registered, and so forth.

As I pointed out in the last year's Presidential election, prior to that, blacks were registered all over the place without any difficulty.

We just think it is a stigma that is unwarranted just because it is placed on our necks.

Mr. HYDE. Mr. Chairman, you have been very generous. I just have one more question. This is perhaps more philosophical than anything else. I find sometimes it is tough to draw the line between racial discrimination and political discrimination.

I think you have got a burgeoning Republican Party down here and Democrats and Republicans don't always get along too well together.

That is certainly true up where I come from. Some of the infighting could be political rather than racial, could it not?

Mr. FOLMAR. Oh, I think when the House of Representatives—I mean when the Alabama Legislature grabs the thorny problem of redistricting, you will find politics rearing its head. I think you will find that in any jurisdiction that you can still comply with all of the civil rights laws and politics still exists.

I don't think you can ever get politics out of politics.

Mr. HYDE. Thank you. I have no more questions.

Mr. EDWARDS. The gentleman from Illinois, Mr. Washington?

Mr. WASHINGTON. Thank you, Mr. Chairman.

Mayor, unlike my colleague, I have no problem whatsoever in making a clear distinction, historical, factual and otherwise, between politics and race.

There is no confusion about that at all. In the realm of politics, one still has no problem pointing to certain clearcut instances of racism against black people.

The justification for the 1965 Voting Rights Act was well established back in the sixties and that is why we have the act. There is no question that historically this act is designed to abolish or wipe out a preexisting pattern of conduct which made it impossible for black folks, one, to register; two, to vote; and three, to make their vote count.

There is just no arguing against that historical fact.

Your point, I gather, is that we have gone through the crucible, you have proved yourself, and therefore you should be able to opt out.

I can't agree with you.

For example, in your statement you indicate that blacks have not been discriminated against in the last 15 years or at least since passage of the original act in 1965.

Could you comment then on the massive reidentification and explain that for me?

Where I come from, we don't call it reidentification; we call it something else. That has been proposed for the black belt counties and their effect on persons who reside in rural areas? Could you spell it out?

Mr. FOLMAR. Mr. Chairman, gentlemen, first of all, let me say up front that I agree with you.

There was a need for the Voting Rights Act of 1965. There were a lot of us ashamed of the practices that took place in this State and other States along that way.

I go back to my statement: I have never believed that anybody should be denied the right to vote because of race, sex, color, or anything like that. I said that then. I say it now.

I didn't like it. I don't like it now.

Mr. WASHINGTON. You are not on trial here.

Mr. FOLMAR. Yes, sir.

Mr. WASHINGTON. We are talking about the necessity for extending the act. Just assume that everyone who appears before us is bound to obey the law. The question is, should the law be extended?

My concern is what is behind this reidentification thing that seems to be proliferating throughout the counties of this State?

Mr. FOLMAR. Mr. Chairman, members, jurors for the circuit court of Montgomery County are drawn from the registered voter list. We have a registered voter list in Montgomery County of 110,338; 78,537 are white, 31,845 are black.

But here is the kicker: On the average, 36.9 percent of the notices mailed out to serve on jury duty are returned marked unknown.

The December mailout for jury duty consisted of 5,000 names drawn from the voter lists at random; 1,846, or 36.9 percent of the notices came back marked addressee unknown, deceased, moved, left no forwarding address. We have—and I can only speak for Montgomery County—we have many people on the voter lists. We know they have moved, they have died, et cetera. We think that reidentification process would make our lists more correct.

I don't think this is an effort—I cannot speak for other jurisdictions. I can speak for here. We would do it under the—with Federal agents standing there, if you chose to.

But I think that to clean the list up, to get rid of a situation where 36.9 percent of the notices that we send out for jury duty to registered voters are returned unknown, deceased, unknown, so forth, that is the reason we want to do it in Montgomery County.

Mr. WASHINGTON. Who is in control of the reidentification process? Who sends out the notices? Who tabulates them? Who is responsible for them?

Where do you get these figures from? Who compiled those figures?

Mr. FOLMAR. The figures for the jurors, Mr. Washington?

Mr. WASHINGTON. Yes, sir.

Mr. FOLMAR. This was done by the Clerk of the Probate Judge's office.

Mr. WASHINGTON. Is that an elective office?

Mr. FOLMAR. The clerk's job is an appointed office. The probate judge is elected.

Mr. WASHINGTON. Who appoints the clerk?

Mr. FOLMAR. The probate judge.

Mr. WASHINGTON. He's elected?

Mr. FOLMAR. Yes, sir.

Mr. WASHINGTON. I assume he is a Caucasian?

Mr. FOLMAR. Yes, sir.

Mr. WASHINGTON. In Choctaw County, in 1978, the reidentification process eventuated this situation. Prior to the bill there was an 8-percent difference, and after the bill there was a 30-percent difference; that is 8 and 30 percent more whites than blacks were registered before than after the registration was completed.

The registration bills have been introduced in Perry, Sumter, and Wilcox Counties, which are 60-, 69-, 68-percent black respectively.

Has the population in Choctaw County, the black population, diminished relative to the white?

Mr. FOLMAR. Mr. Chairman, gentlemen, I cannot speak for the other jurisdictions. I can only say that there are more registered voters in some of those counties than the U.S. census says there are people.

Mr. WASHINGTON. That would be a political question, I suppose.

My concern is about did the black population dwindle vis-a-vis the white population? How can you account for the lowering percentage of black registrants after reidentification and that great gap between the black and the white?

I mean it just didn't happen. You would assume—I would assume that if that is valid, then the black population must have decreased or the white population would have gone up; but if they remained relatively static, then I don't know how you can account for that difference.

Mr. FOLMAR. The only thing I can say, Mr. Chairman, gentlemen, is that I did not bring the Alabama census figures with me, but to show that there is no method of chicanery before you as far as I am concerned, I would just as soon have my good friend, Joe Reed, be chairman of the reidentification committee. And we don't get along too well.

Mr. WASHINGTON. If you maintain this act, perhaps that might be.

Mr. FOLMAR. I am not saying we are asking to put the fox to guard the henhouse door. We are asking any commission or tribunal anybody wishes to do, to clearly identify those voters that still exist in a county be the ones identified.

I am not trying to turn the clock back, no, sir.

Mr. WASHINGTON. All I am trying to indicate is that the reidentification process is suspect.

For example, in this case, justice has interposed 72 objections to changes submitted under section 5. Four of those changes have been since 1975. That is quite a track record.

Mr. FOLMAR. Yes, sir.

Mr. WASHINGTON. For the last 5 years, 45, but yet and still you indicate that all is peace and quiet on the plantation?

Mr. FOLMAR. I don't believe I said plantation, but I will agree that I did say—now, again, we will accentuate the difference in political philosophies.

I don't think that in this jurisdiction there has been a single sustained objection to any of the requests that we have made under section 5, Mr. Chairman, members, in this jurisdiction.

Mr. WASHINGTON. I will yield for the present time, Mr. Chairman.

Mr. EDWARDS. Mr. Mayor, I too want to thank you for your forthright statement.

I might point out that there is no politics in this act for any of us here.

I assure you that certainly you don't get or lose votes in the State of California by coming here.

So I might point out that my own congressional district, the 10th District of California, is covered in part by the Voting Rights Act, as well as a total of 22 States are covered in one way or the other.

Also, that the act has been held as constitutional and rational excercise of Federal power by the Supreme Court of the United States.

I note also that although you state that it is time for section 5 to be phased out, the Birmingham Post Herald in an editorial Friday, May 1, disagreed with you. It says "We disagree. Scores of complaints of civil rights violations filed under the act remain unresolved * * *" and so forth. So there is a difference of opinion.

We have yet to have any organization of black citizens of Alabama come forward and say that it is time to end the participation of this State in the Voting Rights Act.

There are some examples that the subcommittee has not had explained to them of what is going on that are very difficult to swallow, and we are down here to seek responses; and certainly Mr. Washington mentioned one of the key ones, this reidentification, purging system that seems unique in this part of the country.

We have 22 million people in California. We don't have to reidentify, purge, and do all those sorts of things. As a matter of fact, the State of Wisconsin doesn't even require registration. Registration can be used as a device to deny people the right to vote, so can purging, so can reidentification.

In Choctaw County, in Alabama, how do you explain this? In Choctaw County the reregistration bill that was passed by the legislature puts the burden on the voter to register to vote from the hours of 9 to 4.

Now, this is when a poor black is working, perhaps out in the field, 30, 40 miles from home. He or she has to find his or her way 20, 30, 40 miles and reidentify or reregister or something like that when it is very easy for most white people in Choctaw County to reregister.

They have much better transportation and so forth.

How can we sitting up here look at that in any way and say that it is designed and it does reduce the number of black people who can vote?

Mr. FOLMAR. Mr. Chairman, members, I have not come to plead for doing away—for reidentification. What I was talking about in my testimony was the preclearance, of changing the—having to go to get redistricting or annexation or moving polling places.

I agree with you that the voter reidentification would present some problems. I do think that there are some pitfalls. I do think that any situation where voter reidentification takes place should be monitored very closely to see that it is done honestly and fairly.

I would support any such thing as that.

My point, in merely speaking to voter reidentification, is what I know in Montgomery County where we have a tremendous number of people that we know that have moved or are decreased. I am not here as an advocate for voter reidentification, Mr. Chairman.

Mr. EDWARDS. Well, Mr. Mayor, if Congress does as you suggest and not renew or extend section 5, then the field is wide open for reidentification bills to be passed in State legislatures, or purging bills.

What happened in Choctaw County could happen all over.

Now, in Jefferson County that is entirely different. The bill passed by the legislature provided for the burden to be on the county to go out and seek, and it worked just fine.

Blacks' and whites' registration went up 10 percent, but where you put the burden on the blacks, on the voters, himself or herself, it could only result in deprivation.

I think it is honest and forthright of you to say what you said.

Mr. FOLMAR. Yes.

Mr. EDWARDS. I have no further questions.

Mr. HYDE. Mr. Chairman, I have one. I think it should be made clear when the chairman says if preclearance expires that the field is wide open for the legislature to pass reidentification legislation, that section 3(c) of the Voting Rights Act is permanent law.

The Voting Rights Act will not expire. It is permanent law. The prohibition against bailout expires and it has to do with preclearance.

Should a reidentification ordinance, statute, pass of the sort the chairman has described, with hours from 9 to 4 during a weekday, obviously designed to make it tough to get in and reregister, a court remedy exists and that court remedy is under section 3(c).

It is permanent law. The court takes equitable jurisdiction and can impose mandatory preclearance for as long as the court wants. So no matter what happens in terms of expiration of preclearance, there are court remedies.

The real problem is nobody wants to go to court. It is time-consuming. It is costly. It is burdensome. It may not be effective. Automatic preclearance at least has the appearance of being effective. I am not sure it has been all that effective for some of the cases we have seen. Justice hasn't been on top of them in my judgment.

That is what the argument is about. Every other—a criminal is to be tried in court. Personal injury cases are to be tried in court

under rules of evidence. But these voting procedures are to be precleared.

Voting is different. Voting involves a lot of people. Delay denies the right. If an unfair law is passed, by the time it gets through the court, the question is really moot.

So that is the reason, the rationale for the administrative procedure.

OK. I really appreciate your testimony. You have shown courage and intelligence. I thank you.

Mr. EDWARDS. Mr. Washington?

Mr. WASHINGTON. Yes, Mr. Chairman.

Mr. Mayor, let me try to nail this down. I think the colloquy here regarding reidentification illustrates clearer than anything else we could bring forth the necessity for maintaining preclearance.

Clearly, as you and I both agreed a short while ago, there has been a pattern in many of the States which definitely, clearly, denied blacks the right to vote, et cetera.

Denied them the right to register, and then diluted or destroyed the efficacy of the vote by various forms such as gerrymandering, at large elections, so forth and so on.

Reidentification in Choctaw County, which puts the burden on the voter to me is a clearcut example of another attempt—in this case successful—to keep blacks from registering to vote as compared to Jefferson County reidentification, which is a purer form.

There is a suspicion that any change in the electoral laws or administrative procedures in certain States and counties is designed to dilute, destroy, and negate that vote. We didn't create that suspicion.

The black voters in Alabama didn't create that suspicion. The people who voted for the 1965 Civil Rights Act didn't create that suspicion. That suspicion of that kind of conduct was created right here in this State and other States. That is a fact.

Any time you change any laws, and the net result of those electoral changes is that the black vote is diluted, you have suspicion. That suspicion is not paranoic. It is well founded. It is clear.

To me Congress would be negligent in its responsibilities to enforce the 15th amendment of the Constitution if it did not insist that preclearance and the administrative process prevail.

Not the court system which is costly, time consuming; not the court system, but preclearance.

I say, sir, just by a discussion of the reidentification, we have brought out the central point of why preclearance should be maintained. That burden is not necessarily yours. I am not talking about Montgomery necessarily. That is not necessarily yours. You can't defend the whole State.

You cannot defend all the laws of the State, but since you are in this State and that pattern exists and these laws have passed and the Justice Department has come in 45 times in 5 years, I think commonsense dictates that the Congress maintains section 5 of the act.

Mr. HYDE. Would the gentleman yield?

Mr. WASHINGTON. Certainly.

Mr. HYDE. What we do in Chicago, I think the board of election commissioners, or the county clerk sends a post card to your registered address. If it comes back undelivered, you are automatically removed. Then you have to come down and reinstate yourself to prove that you really are living there and you are not sure why that post card wasn't delivered.

The problem in reregistering is like voting. It ought to be just as easy to do; it ought not to be made more difficult than voting. If it is done with a rational reason, with a good reason such as nearly 39, 37 percent on jury duty returned unknown, but 9 to 4 is really not fair.

Of course, in Illinois we close at 6, don't we, Harold?

Mr. WASHINGTON. Yes.

Mr. HYDE. That is not good. We ought to keep open until 8 so people can get there to vote. I wish Illinois would be a little more liberal on that too.

Thank you.

Mr. FOLMAR. Mr. Chairman?

Mr. EDWARDS. Yes?

Mr. FOLMAR. I would like to respond to Mr. Washington and say that I agree that the suspicion is rightly founded. I agree. I can't quarrel with that.

There were acts that were unconscionable as far as I am personally concerned.

As I say, I can't speak for Choctaw County, nor can I look at their intent; but I am saying that I would certainly support any proposition that would be reasonably fair to achieve a cleaning up of a voter list to get rid of some 30 percent or 37 percent of people who are dead.

There is no rationale in the world for their names or people who have moved to stay on the voter lists whatever safeguards would be necessary to do that or follow the Birmingham or Jefferson County pattern, whatever.

I didn't come to speak on that point as much as I did the other. If we want to separate the reidentification process from the others, then that is an entirely different matter.

I noticed you mentioned at-large elections, and I know that is going to be a part of further congressional action, but I believe the Supreme Court said that that is not illegal, that an election at-large is not illegal and doesn't—unless the intent is proved that the purpose of it was to deny somebody the right to vote.

Certainly as long as we are following Supreme Court rules in other things, I think an at-large election is certainly legal.

Mr. WASHINGTON. That may well be true, but I insist on hanging tough on the reidentification aspect which to me is a clear illustration.

It seems to me if you just look at your vital statistics, and look at the ratio of black versus white in terms of population, you would assume that that similar ratio, a similar ratio would prevail after reidentification. It didn't. Suspicion is well founded. Since suspicion is well founded in reference to that employee, why should the Congress repeal or not continue section 5? It just does not make any sense. That is just one example, in one State.

There are other examples in other States, and other examples in this State which we will get to some time today.

I submit to you, sir, that the reidentification aspect proves beyond a shadow of a doubt that Congress right in what it did in 1965; it was right in extending this act; and it would be just as right in extending it for another 10 years, not as a burden on this State, but as a guarantee to citizens that their rights are inviolate and they will not be cut short, truncated, or abused by any process on the State level.

That is all.

Mr. HYDE. I think what the gentleman is saying is, he can't defend Choctaw County. He is talking about Montgomery County. What is right for Montgomery County may be different for some other county.

Why should Montgomery have to carry the burden of Choctaw County?

Mr. WASHINGTON. Because Montgomery County is a part of the State of Alabama just like Choctaw County.

Mr. HYDE. And Alabama is part of America.

Mr. WASHINGTON. And America has said that the voting rights will prevail.

Mr. EDWARDS. If there are no further words, thank you, Mayor.

Mr. FOLMAR. Mr. Chairman, gentlemen, we appreciate you being here. Thank you for the opportunity to testify. I hope your stay here is pleasant.

Mr. EDWARDS. We now have a panel presentation. Ms. Maggie Bozeman from Aliceville, Ala., Pickens County, accompanied by Sheriff Prince Arnold, Camden, Ala., in Wilcox County, and Mr. W. C. Patton, retired national director of the NAACP voter education project, and accompanied by I believe our friend Dr. Joe Reed, who is chairman of the Alabama Democratic Conference.

TESTIMONY OF MAGGIE BOZEMAN, ALICEVILLE, ALA.; SHERIFF PRINCE ARNOLD, CAMDEN, ALA.; W. C. PATTON, RETIRED NATIONAL DIRECTOR, NAACP VOTER EDUCATION PROJECT; AND DR. JOE REED, CHAIRMAN, ALABAMA DEMOCRATIC CONFERENCE

Mr. REED. Welcome to Montgomery, Ala. We appreciate your coming.

Alabama is in dire need of the extension of the Voting Rights Act. Montgomery is not interested.

I am Joe Reed, chairman of the Alabama Democratic Conference, the Black Political Caucus of Alabama. I am a member of the Montgomery City Council and I am employed as associate executive secretary of the Alabama Education Association.

We hope that when this committee leaves this State you will go back with a firm commitment to extend the 1965 Voting Rights Act.

I am not surprised that the mayor of Montgomery opposed this act. I am certain he opposed it in 1965. He opposed it in 1975. He will probably oppose it in 1985 and 1995. His rhetoric changed a little bit.

I have never heard of him being for the 1965 Voting Rights Act in my 22 years in Montgomery, Ala. That is not the issue here.

One of the concerns we have you have touched on already. That is the hours people must have in order to register to vote. Usually they are from 9 in the morning to 4 o'clock in the afternoon.

You have already taken notice of the fact that working folks cannot vote and register at that particular time.

I won't dwell on that particular issue because I want to take my 5 minutes and get through.

One thing I would point out to the committee is there is a lot of resistance to voter registration. Alabama passed a law to allow voter registrars to appoint deputy registrars to assist in the process of voter registering. Only 12 counties would appoint deputy registrars, even when the Governor of Alabama wrote some voter registrars and encouraged them to appoint deputy registrars.

They ignored the Governor. That tells you pretty much how most folks in Alabama still feel about registration. That is a fact.

Another point I would point out is that we still have numerous polling places in white establishments, white stores, white churches, and so forth. While I don't think that there ought to be any, seldom, if ever, do you find a voter place in a black establishment.

I want to move on as rapidly as I possibly can to speak to another chilling effect on the casting of one's ballot, and that is the involvement of blacks as polling officials.

I will concede in some counties blacks do serve as polling officials, but in most counties they do not. If they do, it is only tokenism. I won't spend a lot of time on that.

I will make that point and go on. If you want to raise that question, you can.

I think one point we ought to talk about is the preclearance section. The mayor told you this morning Montgomery is innocent.

Just, I believe 3 years ago, this court found that Montgomery had a pattern and practice of discrimination against blacks, particularly in the fact that the court finally ordered the county commissioners of Montgomery to reapportion.

Blacks are elected now by district. We happen to have two blacks on the Montgomery County Commission as a result of that court order.

We are not talking about 1965. We are not talking about 1975. In fact, these persons were elected in November of last year. It is because of the Federal court, this court, the Federal District Court of Alabama found that Alabama had intentionally passed laws to get around electing blacks.

At that time we did have a district system. We went to an at-large system.

Another point I would like to point out is that since Montgomery is so innocent, just recently in 1978, the mayor of the city of Montgomery came before the city council and asked the city council to annex certain portions of Montgomery, certain portions of the county to the city of Montgomery. I opposed it because I saw it was going to dilute the black vote and possibly eliminate a black on the city council.

We all entered a covenant that is in your package there. We said, let's for the sake of Montgomery, try to do something in good faith.

The mayor called me and said, let's work this matter out.

I said OK, if we can, we will try to work it out.

I said I will be fair. I don't trust the mayor any more than I trust the Russians. What we did do, I did agree to, because there were certain council members who signed the covenant.

I want you to know under the laws of Alabama, the mayor of Montgomery is supposed to submit a plan for reapportionment.

We blocked it in the legislature, but, as I said, to get it through, we entered an agreement.

I want you to know that the mayor responded not by working cooperatively with us, but submitted a plan that would wipe out district three, my particular council district. That is what the mayor did. That is a fact.

I want to show you the headline: "Blacks May Lose Seat on City Council."

Look at that. Let the public see it. That is the very gentleman who said things were so hunky-dory down here.

The point I am getting to is that this was not necessary. In fact, I have presented a plan to do just the opposite. That is, to preserve the four black council seats.

The mayor is now fighting that tooth and nail. What I am trying to tell you is, the preclearance section is very important in this instance. We are going to oppose it in the Department of Justice and if necessary we are going to have to do what Mr. Hyde just said was very expensive and that is to go into court, because it is not fair and it broke the covenant and this is what people sitting there said in signed statements.

If they break a promise when there is a signed statement, I guess you can imagine what would happen when those statements are not signed.

I will leave that and go to something else.

I think it is important you take note that the Alabama Legislature, with 16 blacks in it, has been under a court order. Therefore, they have to report to the courts on any changes in the legislature.

Right now the courts have decided that particular issue and you would note in your pack again that the Attorney General wrote a letter to some legislators that read, "I am pleased to inform you that you don't have to report to the courts any longer."

When he did that, that was a signal. Do what you need to do. There was an open secret on Capitol Hill they are going to try to get rid of blacks in the legislature this time around.

This is why the preclearance section is so important. Nowhere has the need for the Voting Rights Act been more evident than in the State of Alabama.

Those of you on the committee who participated in the passage of this act, your contribution to making America live up to its true creed, that we hold these truths to be self-evident, that all men are created equal, and they are endowed by their Creator with certain inalienable rights, and among these are life, liberty and the pursuit of happiness.

I submit to you, people cannot pursue happiness if they can't vote.

When you go back, you keep in mind that in Alabama we still have some 250,000 blacks unregistered. There are some 300,000

registered and they are registered because of the 1965 Voting Rights Act.

When Everett Dirksen and Hubert Humphrey joined hands in 1965 to pass the Voting Rights Act, Alabama had less than 10 black public officials. Today we have over 300,000 black voters and 250 black elected officials.

As I said, 16 members of the legislature, six sheriffs—one is sitting right here with me today—two probate judges, tax assessors, school superintendents, county commissioners, what-have-you.

No one has ever been hurt by passage of the 1965 Voting Rights Act. Many people will be hurt if it is not extended.

The only criticism people can find of the Voting Rights Act is, it has been too successful for some people.

I wish to impress upon this committee unless the Federal Government continues to provide unconditional protection of black people to vote, then we won't have it.

If the Congress fails to extend the 1965 Voting Rights Act, it will be a signal for the sons of former slaveowners to take away the political birthright of the sons of former slaves and return them to the shackles of political slavery without any hope of political emancipation.

Mr. Chairman, whatever happens, the Congress, the President should not and cannot turn their backs on the black citizens of this State, on the black citizens of this region, on the black citizens of this Nation and not only blacks, any other citizen who wants to enjoy and use the sacred pearl of democracy; the right to vote.

Again I say, if it were not for the Congress, if it were not for the courts, we wouldn't be here this morning.

Thank you so very much.

[Applause.]

[The statement of Mr. Reed follows:]

TESTIMONY OF JOE L. REED ON THE VOTING RIGHTS ACT
BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE HOUSE JUDICIARY COMMITTEE
MONTGOMERY, ALABAMA
JUNE 12, 1981

I am Joe Reed and I am Chairman of the Alabama Democratic Conference, the Black Political Caucus of Alabama. I am a member of the Montgomery City Council and I am employed as the Associate Executive Secretary of the Alabama Education Association. I come before this committee to ask that the United States Government keep its commitment to help all Americans achieve the American dream, expressed in the statement that, "we hold these truths to be self-evident that all men are created equal, they are endowed by their creator with certain inalienable rights, among these are life, liberty and the pursuit of happiness." But there can be no pursuit of happiness in a democracy if people do not have the right to vote. To this end, Mr. Chairman, I ask that when this committee leaves the boundaries of the State of Alabama, it go back to the nation's capitol and reaffirm to all Americans that the right to vote is a sacred pearl of democracy and to deny any individual that right to vote is to deny that individual his share of democracy. Our country cannot tolerate such a denial.

I wish to add that I am not surprised to see Mayor Emory Folmar, of the City of Montgomery, here to oppose this law. Mayor Folmar, no doubt, opposed this amendment in 1965; he would have opposed it in 1975; he will oppose it in 1985; he will oppose it in 1995, because Mayor Folmar does not share the commitment to the American Dream, as I trust that members of this committee and the rest of America share. The saying that a voteless

people is a hopeless people can be no more true than in the State of Alabama; and, if ever there was a time when the right to vote should not be abandoned, diluted, or compromised, it is now. Mr. Chairman, as a person who has the responsibility and the opportunity to travel throughout the State of Alabama and as one who is totally involved in the political process as it relates to voter registration as well as elections, I can submit to you, that in this state, we still have problems associated with registration and voting. One severe problem is that of inconvenient registration hours. The hours we have today are the same hours we had in 1965. In most cases, the hours set by the Board of Registrars are from 9:00 in the morning to 4:00 in the afternoon. Usually, the place designated for registration is in the courthouse and, of course, the courthouse may be as much as 20 to 30 miles from some people's residence. This makes it virtually impossible for the working man or woman to become a registered voter and, because of distance, in some cases the cost is prohibitive.

Not only do we have a resistance on the part of the registrars to adopt new registration hours, there is still an atmosphere of resistance to registering people. For example, the 1978 Alabama Legislature passed a law that allowed each county Board of Registrars to appoint deputy registrars to assist them in the registration process. To date, only about 12 counties have appointed deputy registrars and in some cases they have since fired them. Even when the Governor sent a letter to Boards of Registrars throughout the state encouraging them to appoint deputy registrars, most boards ignored the

Governor's request. In some cases, elected officials have accompanied blacks to the Board of Registrars in order to get deputy registrars appointed. Yet most Boards refused to appoint deputy registrars even though the deputy registrars were serving at no cost to the State and no cost to the Board of Registrars.

Another factor that caused a chilling affect on the process of voting is the location of voting places. Throughout this state are numerous polling places located in white private establishments such as stores, churches, and other private businesses. But seldom, if ever, and most times never, can one find a voting place located in a black establishment. In addition, the distance is oftentimes so far that a person must own a car in order to get to the polls.

Another problem that has an impact adversely on blacks registering to vote is the lack of blacks serving on Boards of Registrars and in addition the lack of blacks working as election officials. While I will concede that there are blacks working as election officials in a few counties, in most counties blacks are rarely selected to work as polling officials, and this tends to chill black participation in the political process. We still have situations where police and other law enforcement officials are patrolling polling places when it is obvious that there is no reason for their being there. In some cases, where blacks have sought to assist other blacks in casting their ballots, these blacks have been arrested or otherwise intimidated.

Another technique being used to adversely affect black folk's political strength is the process of annexation, where many white communities are annexed in order to dilute the black vote, particularly in city elections. On the other hand, there has been resistance to annexing areas which are predominately black into certain corporate city limits. In Courtland, Alabama, it was necessary for blacks to incorporate a small neighborhood that should have been annexed to the City of Courtland, but because they could never get that portion annexed, they finally incorporated as an independent municipality. This happened only after five years of repeated frustration and rejection by the city fathers. Another technique used has been to relocate new subdivisions just outside the City limits so that when blacks move into them, their influence in the city's politics would be diluted.

In our own city of Montgomery, Alabama, in 1978, the Mayor of the city proposed to annex certain portions of the county into the city limits of Montgomery. As a councilmember, I opposed this annexation because I was convinced that it would dilute the black vote in the city as well as cause the reduction in the number of black council members. The matter, however, passed the city council without my vote but then, we who opposed annexation, successfully had it blocked in the Alabama Legislature until a commitment was made among the councilmembers that they would adopt a redistricting plan that would preserve four black council seats. This covenant was signed by eight of the nine councilmembers, as well as the Mayor. After annexation passed, the Mayor of the City of Montgomery (the one who just testified before

this committee) broke the covenant by proposing to the city council a plan that would dilute the number of blacks in Council District 3 to the extent that no black could likely be elected. In 1970, this district had 78% black in it and now it would have 62% black, made up primarily of children in the housing project, to be mixed in with prominent white communities that do not have a reputation for supporting black candidates. See Exhibit I, which is a copy of the covenant.

At this point, may I remind you that the least expensive solution to problems similar to the one I have just discussed is the preclearance section of the Voting Rights Act. In the Alabama Legislature, there are conversations already appearing signifying that there will be efforts to get rid of three or four blacks in the Legislature; and, since Alabama is no longer required to submit its legislative reapportionment plan to the federal courts, the preclearance requirement takes on additional significance. (See Exhibit II)

Last, but not least, is the effort that the State of Alabama is making through its so-called reidentification act to further dilute black participation in the political process. There have been several local bills passed this year in the Alabama Legislature that would require all voters to come forward and reidentify themselves in order to remain on the voter rolls. (Exhibit III) This means appearing in person, and these bills are not reidentification bills; they are re-registration bills. There are already laws on the books to correct the problems, the very thing that these so-called reidentification laws purport

to correct. I hasten to add that we are not opposed to reidentification, per se, in fact, in an effort to prevent the passage of so-called local reidentification bills, we proposed a statewide bill to deal with voter reidentification. It passed the Senate and died in the House, largely because some white representatives from rural black-belt counties opposed it. I submit to you a copy of this proposal. (See Exhibit IV)

In that proposal, we had also recommended a system of Deputy Registrars, but some of the legislators simply did not want any more black folk registered in their areas.

I urge the committee to note that most of these local bills apply in counties where there is a majority or high percentage of blacks in the population. In fact, one county legislator introduced a bill to allow city clerks to become deputy registrars, but another legislator removed all the counties in his district from the bill's coverage.

Nowhere has the need of the Voting Rights Act been more evident than in the State of Alabama and for those of you on this committee who participated in the passage of this Act, your contribution toward making America live up to its true creed is perhaps far beyond what you at that time realized. When the late Senators Dirksen and Humphrey joined hands to make the fifteenth amendment to the United States Constitution bear fruit in 1965 by enacting the Voting Rights Act, Alabama had less than 10 black elected officials and fewer than 75,000 black voters. Today, because of that Act,

Alabama has over 300,000 black voters and 250 black elected officials: 16 members of the Legislature, 6 sheriffs, 2 probate judges, 5 tax assessors, 5 school superintendents, over 35 school board members, over 100 city council members, over 20 mayors, and 27 county commissioners. While we still do not have our proportionate share of black public officials, no one can deny that this election of blacks to public office resulted directly from the 1965 Voting Rights Act and the only reason we have people who are opposing it is because it has been too successful.

I wish to impress upon this committee that the black vote in Alabama has not only been used to elect black officials; we have supported and determined the outcome of the election of many white officials also. Thus, the off-spring of the 1965 Voting Rights Act are not only found among black elected officials, but among white elected officials as well.

In short, unless the Federal government continues to provide unconditional protection for black people to vote, then I submit to you we will not have it. If the Congress fails to extend the 1965 Voting Rights Act, it will be a signal for the"sons of former slave owners" to take away the political birthright of the "sons of former slaves" and return them to the shackles of political slavery without any possible hope of political emancipation.

EXHIBIT I

An Agreement

WHEREAS, it is the desire of the undersigned officials of the City of Montgomery to expand the City Limits of the City of Montgomery; and,

WHEREAS, such expansion will require certain portions of Montgomery County not currently in the City of Montgomery to be annexed to said City; and,

WHEREAS, such annexation will increase the population of the City of Montgomery by an estimated 18,000 citizens; and,

WHEREAS, such increase in population will require an increase in the population size of each Montgomery City Council District: and,

WHEREAS, such increase could have an adverse effect on the current racial makeup of the said City Council; and,

WHEREAS, it is not the desire of the undersigned officials to dilute the current racial makeup of the said City Council:

NOW, THEREFORE, We, the undersigned officials of the City of Montgomery, in a spirit of cooperation and in an effort to ensure the City's growth through annexation, do hereby agree to support the re-districting plan, effective in 1983, that most nearly preserves the current racial makeup of the Montgomery City Council, so long as said plan complies with applicable law in general, and with the following conditions in particular:

1. That any Montgomery City Council District drawn must meet the "one man, one vote" concept as required by the Federal Courts.
2. That the Montgomery City Council Districts must be contiguous.
3. That no Montgomery City Council member will be gerrymandered out of his or her district as a result of re-districting.

We further agree that, to insure that the spirit of this agreement is carried out, to submit, the 1983 plan to the United States Department of Justice for appropriate review.

DONE this the 21st day of MARCH, in the Year of Our Lord, One Thousand Nine Hundred and Seventy Eight.

WILLIE PEAK, President,
Montgomery City Council

LARRY D. DIXON, Member
Montgomery City Council

HERMAN HARRIS, President Pro-Tem,
Montgomery City Council

LEWIS GOLSON, Member
Montgomery City Council

CATHERYNE CASWELL, Member
Montgomery City Council

LUTHER L. OLIVER, Member
Montgomery City Council

JOE L. REED Member
Montgomery City Council

JOHN C. STARR, JR., Member
Montgomery City Council

PAT WILLIAMSON, Member
Montgomery City Council

EMORY FOLMAR, Mayor
City of Montgomery

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

SWORN TO AND SUBSCRIBED before me, this the 21st day of March, 1978.

Doris Faye Sexton
NOTARY PUBLIC
My Commission Expires: 7-20-80

OFFICE OF THE ATTORNEY GENERAL

EXHIBIT II

CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM H. BEXLEY, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANE MOBLEY
ADMINISTRATIVE ASSISTANT

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

April 30, 1981

Honorable Lister Hill Proctor
Honorable Richard S. Manley
Co-Chairmen
Joint Interim Committee on
Apportionment
State Capitol
Montgomery, Alabama 36130

Dear Gentlemen:

I am pleased to inform you that the three-judge panel in the legislative reapportionment case has been dissolved and that you are no longer required to submit the new reapportionment plan for approval.

You may already be aware of this decision, which arose from a motion to intervene filed by the Board of Registrars of Tuscaloosa County. However, I am enclosing a copy of the opinion for your convenience.

Sincerely,

Charles A. Graddick

CHARLES A. GRADDICK
Attorney General

CAG:lb

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

M. O. SIMS, et al.,

Plaintiffs,

R. E. FARR, et al.,

Intervening Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff and Amicus Curiae,

v. CIVIL ACTION NO. 1744-N

MABEL AMOS, Secretary of State of the State of Alabama, et al.,

Defendants,

PIERRE PELHAM, et al.,

Intervening Defendants.

E. D. NIXON, et al.,

Plaintiffs,

ALABAMA INDEPENDENT DEMOCRATIC PARTY, a corporation,

Plaintiff-Intervenor,

v. CIVIL ACTION NO. 3017-N

GEORGE C. WALLACE, as Governor of the State of Alabama, et al.,

Defendants,

PIERRE PELHAM, et al.,

Intervening Defendants.

J. ELBERT PETERS, individually, for himself and for all others similarly situated,

Plaintiff,

v. CIVIL ACTION NO. 3459-N

GEORGE C. WALLACE, as Governor of the State of Alabama, et al.,

Defendants,

PIERRE PELHAM, et al.,

Intervening Defendants.

ORDER

Pursuant to the memorandum opinion of this Court made and entered herein this date, it is hereby ORDERED:

1. That the motion for leave to intervene in the above-captioned cases be and is hereby denied.

2. That this three-judge court be and is hereby dissolved.

Done, this the 28th day of April, 1981.

UNITED STATES CIRCUIT JUDGE

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTFICT JUDGE

MEMORANDUM OPINION

The Board of Registrars of Tuscaloosa County, Alabama, moves for leave to intervene in the above-captioned cases. The Board alleges it is charged with the duty of registering voters within Tuscaloosa County for all elections, including municipal elections. The Board further alleges that a certain area was annexed into the City of Tuscaloosa, Alabama, in July and August of 1980; that, according to this Court's order entered in these cases on January 3, 1972, the location of Alabama Senate Districts 16 and 30 was established; that at the time of the entry of this Court's order in 1972 Academy Drive Subdivision was totally unoccupied and was used primarily for agricultural purposes. The Board asks this three-judge court to clarify the location of the affected area by determining whether the affected area is located in Senate District 16 or in Senate District 30.

These civil actions were commenced under Title 42, Sections 1983 and 1988, United States Code, by plaintiffs contending that the Alabama Legislature was malapportioned and that, as a result, their voting strength was diluted and they were underrepresented in contravention of the Fourteenth and Fifteenth Amendments to the United States Constitution and the Constitution of the State of Alabama (1901).

This Court determined and held that a three-judge court was required because a substantial constitutional question was involved.

The history of this litigation spanned more than a decade prior to the entry of the 1972 order. In that order the Court recounted the trend of protracted judicial restraint that was for the purpose of affording the Alabama Legislature an opportunity to reapportion itself in accordance with the 1970 decennial census as required by both the United States and the Alabama Constitutions. The action taken by the Court in the 1972 order was to order a plan of reapportionment of the Alabama Legislature on the basis of the 1970 decennial census.

The 1980 decennial census has now been completed. We are quite certain there have been many population shifts and changes in Alabama since 1970; these will be reflected by the 1980 census. The "affected" areas which the petition for intervention that we now consider discloses, present one such change. The United States and the Alabama Constitutions required that the Alabama Legislature respond to these changes by reapportionment. As a matter of fact the Alabama Constitution commands that reapportionment be accomplished in the next regular session following each decennial census. Art. 9, Sec. 199, Alabama Constitution of 1901.

In March 1970 this three-judge court observed that "[a]fter the completion of the 1970 census the Legislature can be expected with reasonable dispatch to reapportion both the House and the Senate . . ." We intervened only because the legislature refused to do so and we intervened for a specific purpose, i.e., to reapportion the Alabama Legislature as required by the 1970 census.

This three-judge court by its 1972 order accomplished its intended purpose. We retained jurisdiction to see that that purpose was fully implemented. It was properly implemented and now there is no further purpose for this three-judge court to continue to retain jurisdiction. The court was not constituted to sit in perpetuity for the purpose of overseeing the apportionment of the Alabama Legislature. This three-judge court having served its purpose and the substantial constitutional question no longer existing, the court should now be dissolved.

It may very well be that some changes should be made in the Senate district lines in Tuscaloosa County. If so, these changes, as the petition to intervene reflects, are changes that have taken place since the 1970 census. If that be true then petitioner's relief must come from the Alabama Legislature or, if that body again fails to act, from a duly constituted court.

An order will be entered accordingly.

Done, this the 28th day of April, 1981.

Richard T. Rives
UNITED STATES CIRCUIT JUDGE

Frank M. Johnson, Jr.
UNITED STATES CIRCUIT JUDGE

Daniel H. Thomas - By Jmf
UNITED STATES DISTRICT JUDGE

EXHIBIT III(a)

H. 663 By Pegues (With Notice and Proof)
Rl 3/17/81
RFD Local Legislation No. 1

Black Belt County

A B I L L

T O B E E N T I T L E D

A N A C T

Relating to Perry County; providing for purging the lists of registered voters; requiring and prescribing the procedure for the re-identification of registered voters; placing certain duties on the board of registrars, judge of probate, and the county governing body relative to the re-identification of registered voters; and providing a penalty for willfully making a false statement in connection with re-identification.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. In Perry County, the board of registrars is hereby directed to purge all lists of the qualified electors in the county to the end that the names of all persons who are deceased or nonresidents of the county, or have otherwise become disqualified from voting in Perry County, shall be removed from such lists, and that the name of each qualified elector shall appear only on the list of qualified electors for the beat in which he resides.

Section 2. The board of registrars shall omit and remove from the lists of qualified electors of the county the name of any person who fails to re-identify himself, in the manner prescribed herein, before the first day of January, 1982. No person whose name is removed from the list of qualified electors as herein provided shall cease permanently to be a qualified elector nor be subject to re-registration, but shall be subject only to

the requirement that he re-identify himself as a duly registered elector before being listed on the list of qualified electors in the county, and before being entitled to vote.

Section 3. Prior to the first day of January, 1982, the board of registrars of Perry County is hereby authorized, directed, and required to visit each beat in the county at least once, and more often if necessary, and remain there at least one day from nine o'clock in the morning until four o'clock in the afternoon, for the purpose of enabling qualified and registered voters residing in the beat to appear before the board and re-identify themselves. The board shall give at least ten days notice by advertisement in a newspaper published in the county, of the time when, and the place in the beat where, they will attend for the purpose of enabling voters to appear and re-identify themselves. Upon failure to give such notice, or to attend any appointment made by them in any beat, they shall, after like notice, fill new appointments. The board shall remain in session for thirty days. During the 30 day session the board shall visit each beat on at least one day and the remainder of the time may be divided as the board of registrars deem necessary, to enable the qualified electors of the county to appear and re-identify themselves in the manner prescribed herein. No voter shall appear and re-identify himself at any place except in the beat in which he resides or in the courthouse of the county.

Section 4. Each member of the board of registrars shall receive thirty dollars per day, for each day, for each day's attendance upon the special sessions of the board required under the provisions of this act; but if such special session is held on the same day a regular session is required to be

held under the laws of this state, registrars shall receive only one per diem allowed for performing their regular duties, it being the intent and purpose of this act that registrars shall be entitled to receive only one per diem allowance for one day's service. If one or more of the members of the board shall refuse, neglect, or be unable to serve, or if a vacancy or vacancies occur in the membership of the board from any cause, the Governor, State Auditor, and Commissioner of Agriculture and Industries, or a majority of them, shall forthwith make other appointments to fill such vacancies.

Section 5. The voter may re-identify himself by appearing in person before the board of registrars in the beat in which he resides, or before the board of registrars in regular session, and answering such questions and submitting such proof under oath, as the board may require in order to establish the voter's identity, place of legal residence, and the fact that the voter has not become disqualified from voting in the county.

Section 6. The board of registrars shall meet on the first Monday in January 1982 for the purpose of purging the registration lists and the names of all persons who have failed to appear and re-identify themselves in the manner herein prescribed shall be stricken from the lists, provided, however, that said board shall not strike the name of any persons, or the spouse of any person, known by any member of said board, or made known to the said board by the written affidavit of another qualified elector, to be in active duty of any of the armed forces of the United States of America, and to be stationed, or to be living with her or his spouse, as the case may be,

H.B. 563

outside Perry County, Alabama during the period of time from the effective date thereof to January 1, 1982.

Section 7. Any qualified elector of the county who shall have his name omitted or removed from the list of qualified electors in the county by failure to appear and re-identify himself as herein provided shall be entitled to have his name restored to the list of qualified electors by appearing in person at the office of the board of registrars, and answering such questions and submitting such proof, under oath, as the board may require to establish the voter's identity, place of legal residence, and the fact that the voter has not become disqualified from voting in the county. Provided, however, every qualified elector must have re-identified himself at least 10 days prior to the election at which he offers to vote; provided further, however, that this act shall not be construed or applied to impair or deny the right to vote in person or by absentee ballot of any person or of the spouse of any person, now a qualified elector of said county, who is in active duty of any of the armed forces of the United States of America and stationed, and, as to the spouse, who is living with her or his husband or wife as the case may be outside of Perry County, Alabama, during the period of time from the effective date hereof to January 1, 1982.

Section 8. The county commission of Perry County is hereby authorized, directed, and required to furnish the board of registrars with the supplies, equipment, printed forms, stationery and newspaper advertisements necessary for the re-identification of voters as herein provided.

Section 9. The questionnaire to re-identify a voter shall be in substantially the following form:

VOTERS RE-IDENTIFICATION QUESTIONNAIRE

Perry County, Alabama

Date ....., 19.....

Name .....
First Middle Last

Identification; S.S. #, or other _____

Legal Residence Address .....
Street

City or Town .....

State .....

Date of Birth ..... Sex .....

I now vote and I am a qualified elector in precinct or Beat No. ....., Box No. ....., ... County, and I have not been disqualified from voting in this county, I am not a qualified voter in any other county in the State of Alabama or in any other State in the United States.

I have resided in Precinct or Beat No. ..... for the past ..... months.

Signed .....
Signature of Voter

Sworn to and subscribed before me this ..... day of ....., 19 ....,

.....
Registrar--Judge of Probate

Section 10. Any person who willfully makes a false statement to the board of registrars, or any duly authorized person, in re-identifying himself as a qualified elector in the manner provided herein shall be guilty of perjury, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one nor more than five years.

Section 11. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

83-679 O - 82 - 43 Pt.2

Section 12. All laws or parts of laws which conflict with this act are repealed.

Section 13. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

EXHIBIT III(b) Black Belt County

S. 568
By Mr. Taylor (N & P)
RFD - LL # 1
Rd 1 - 4-7-81

A B I L L

T O B E E N T I T L E D

A N A C T

Providing for purging the lists of registered voters in Lowndes County; requiring and prescribing the procedure for the reidentification of registered voters; placing certain duties on the board of registrars and the county governing body relative to the reidentification of registered voters.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The board of registrars of Lowndes County is hereby directed to purge all lists of the qualified electors in the county to the end that the names of all persons who are deceased or nonresidents of the county, or have otherwise become disqualified from voting in Lowndes County, shall be removed from such lists, and that the name of each qualified elector shall appear only on the list of qualified electors for the precinct or beat in which he resides.

Section 2. The board of registrars shall omit and remove from the lists of qualified electors of the county the name of any person who fails to reidentify himself, in the manner prescribed herein, before the first Monday in January 1982. No person whose name is removed from the list of qualified electors as herein provided shall cease permanently to be a qualified elector nor be subject to re-registration, but shall be subject only to the requirement that he reidentify himself as a duly registered

elector before being listed on the list of qualified electors in the county, and before being entitled to vote.

Section 3. Effective immediately, the board of registrars of Lowndes County is authorized and directed to commence reidentification of the qualified electors of the county. The members of the board of registrars shall meet as provided by law at least once, and more often if necessary, and remain at each location at least one day from nine o'clock a.m. until four o'clock p.m. for the purpose of enabling qualified and registered voters to reidentify themselves. The board shall give at least ten days' notice, by advertisement in all newspapers of general circulation published in the county, stating the time, date and place where they will meet. Upon failure to give such notice, or appear as notified, after like notice, they shall repeat correctly the notice and meeting process. The board shall remain in session for thirty (30) days. During such session the board shall visit each location on at least one day and the remainder of the time may be divided as the board of registrars deems necessary to enable the qualified electors of the county to appear and reidentify themselves in the manner provided herein. No voter shall appear and reidentify himself except as provided in this Act.

Section 4. Each member of the board of registrars shall receive ten dollars per day from the county general fund, or as otherwise provided by law for special registrars, for each day's attendance upon the special sessions of the board required under the provisions of this Act; but if such special session is held on the same day a regular session is required to be held under the laws of this state, registrars shall receive only one per diem allowance for performing their regular duties, it being the intent and purpose of this Act that registrars shall be entitled to receive only one

per diem allowance for one day's service. If one or more of the members of the board shall refuse, neglect, or be unable to serve, or if a vacancy or vacancies occur in the membership of the board from any cause, the Governor, State Auditor, and Commissioner of Agriculture and Industries, or a majority of them, shall forthwith make other appointments to fill such vacancies.

Section 5. A voter may reidentify himself in either one of the following ways: (a) He may reidentify himself by appearing in person at the office of the board of registrars and answering such questions and submitting such proof as may reasonably be required by the board or one of their duly authorized employees to establish his identity and place of legal residence and that he has not become disqualified from voting in such county. (b) If the voter is physically handicapped, injured or incapacitated to such an extent that his or her personal appearance before the board of registrars would place an undue burden or hardship on the voter, then the voter may make a written request of the board of registrars to have a member of the board come to the residence of the voter for the purpose of reidentifying the voter. It is provided further, however, that such a written request must be accompanied by a certificate of a licensed physician of Lowndes County stating that the voter is so handicapped, injured or incapacitated. The board of registrars shall respond to all such valid requests for such reidentification in the voter's personal residence. (c) Any voter who has been purged from the list of qualified electors for failure to reidentify, may reidentify himself on any election day at the office of the board of registrars by appearing in person. He will be given a certificate to take to the polls in order to vote on that day.

Section 6. (a) The board of registrars shall meet on the first Monday in January 1982, for the purpose of purging the registration lists, and the names of all persons who have failed to appear and reidentify themselves in the manner herein prescribed shall be stricken from the lists; provided, however, that said board shall not strike the name of any person, or of the spouse of any person, known by any member of said board, or made known to the said board by the written affidavit of another qualified elector, to be in active duty of any of the armed forces of the United States of America, and to be stationed, or to be living with her or his spouse, as the case may be, outside Lowndes County, Alabama, during the period of time of reidentification.

(b) Following each general election, the election officers of Lowndes County shall deliver to the board of registrars a list which indicates the names of all electors who voted at such election. The board of registrars shall keep on file such listing and any qualified elector who does not vote in two or more consecutive general elections shall have his or her name removed from the list of eligible voters and may reidentify as provided in Section 5 hereof.

Section 7. Any qualified elector of the county who shall have his name omitted or removed from the list of qualified electors in the county for any reason stated herein shall be entitled to have his name restored to the list of qualified electors by appearing in person at the office of the board of registrars and answering such questions and submitting such proof, under oath, as the board may require to establish the voter's identity, place of legal residence, and the fact that the voter has not become disqualified from voting in the county. Provided, however,

every qualified elector must have reidentified himself as herein provided in Section 5 hereof; provided further, however, that this Act shall not be construed or applied to impair or deny the right to vote in person or by absentee ballot of any person or of the spouse of any person, now a qualified elector of said county, who is in active duty of any of the armed forces of the United States of America and stationed, and, as to the spouse, who is living with her or his husband or wife as the case may be outside of Lowndes County, Alabama, during the period of time of reidentification.

Section 8. The county commissioners of Lowndes County are hereby authorized, directed, and required to furnish the board of registrars with the supplies, equipment, printed forms, stationery and newspaper advertisements necessary for the reidentification of voters as herein provided.

Section 9. The questionnaire to reidentify a voter shall be in substantially the following form:

VOTER'S REIDENTIFICATION QUESTIONNAIRE

Lowndes County, Alabama

Date _____, 19 ____

Name _____
First Middle Last

Legal Residence Address _____
Street

City or Town _____

State _____

Date of Birth _____ Sex ____

Social Security Number _____

Driver's License: State _____ Number _____

I now vote and I am a qualified elector in Precinct or Beat No. _____, Box No. _____, Lowndes County, and I have

not been disqualified from voting in this county. I am not a qualified voter in any other county in the State of Alabama or in any other state in the United States.

I have resided in Precinct or Beat No. _____ for the past _____ months.

Signed _____
Signature of Voter

Sworn to and subscribed before me this ____ day of _____, 19 ____.

_____
Registrar

Section 10. The board of registrars shall publish in the county newspaper or newspapers a map showing voting district dividing lines to assure that the voters will be informed as to which district they are to vote in.

Section 11. The provisions of this Act are severable. If any part of the Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 12. All laws or parts of laws which conflict with this Act are hereby repealed.

Section 13. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law, except as hereinabove otherwise provided.

A-246

Taylor

AMENDMENT TO S.B. 568

In Section 5, page 3, delete entirely lines 24 through 31, and insert in lieu thereof the following:

of registrars requesting the board to furnish the necessary forms for reidentification. Such written request must be accompanied by a certificate of a duly licensed physician stating that the voter is so handicapped, injured or incapacitated. The board shall respond to all such valid requests for reidentification forms. (c) Any voter who

SENATE 4/14 1981
ADOPTED
YEAS 25 NAYS 0
McDOWELL Secretary

EXHIBIT III(c)

H. 140 By Minus (With Notice and Proof)
R1 2/3/81
RFD Local Legislation No. 1

Black Belt County

A B I L L

T O B E E N T I T L E D

A N A C T

Relating to Sumter County; providing for the reidentification of registered voters in such county; prescribing the procedure for the reidentification of registered voters; and providing a penalty for willfully making a false statement in connection with reidentification.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The board of registrars of Sumter County is hereby directed to purge all lists of the qualified electors in the county to the end that the names of all persons who are deceased or nonresidents of the county, or have otherwise become disqualified from voting in Sumter County, shall be removed from such lists, and that the name of each qualified elector shall appear only on the list of qualified electors for the beat in which he resides.

Section 2. The board of registrars shall omit and remove from the lists of qualified electors of the county the name of any person who fails to reidentify himself, in the manner prescribed herein, before the first day of January, 1982. No person whose name is removed from the list of qualified electors as herein provided shall cease permanently to be a qualified elector nor be subject to reregistration, but shall be subject only to the requirement that he reidentify himself as a duly registered elector before being listed on the list of qualified electors in the county, and before being entitled to vote.

Section 3. Prior to the first day of January, 1982, the board of registrars of Sumter County is hereby authorized, directed, and required to visit each beat in the county at least once, and more often if necessary, and remain there at least one day from nine o'clock in the morning until five o'clock in the afternoon, for the purpose of enabling qualified and registered voters residing in the beat to appear before the board and reidentify themselves. The board shall give at least ten days notice by advertisement in a newspaper published in the county, of the time when, and the place in the beat where, they will attend for the purpose of enabling voters to appear and reidentify themselves. Upon failure to give such notice, or to attend any appointment made by them in any beat, they shall, after like notice, fill new appointments. The board shall remain in session for thirty days. During the 30 day session the board shall visit each beat on at least one day and the remainder of the time may be divided as the board of registrars deem necessary, to enable the qualified electors of the county to appear and reidentify themselves in the manner prescribed herein. No voter shall appear and reidentify himself at any place except in the beat in which he resides or in the courthouse of the county.

Section 4. Each member of the board of registrars shall receive thirty dollars per day, for each day's attendance upon the special sessions of the board required under the provisions of this act; but if such special session is held on the same day a regular session is required to be held under the laws of this state, registrars shall receive only one per diem allowed for performing their regular duties, it being the intent and purpose of this act that registrars shall be entitled to receive only one per diem allowance for one day's service. If one or more of the members of the board

shall refuse, neglect, or be unable to serve, or if a vacancy or vacancies occur in the membership of the board from any cause, the Governor, State Auditor, and Commissioner of Agriculture and Industries, or a majority of them, shall forthwith make other appointments to fill such vacancies.

Section 5. The voter may reidentify himself by appearing in person before the board of registrars in the beat in which he resides, or by appearing before the judge of probate, or either of the clerks in the office of the judge of probate, or before the board of registrars in regular session, and answering such questions and submitting such proof under oath, as the board may require in order to establish the voter's identity, place of legal residence, and the fact that the voter has not become disqualified from voting in the county.

Section 6. The board of registrars shall meet on the first Monday in January 1982 for the purpose of purging the registration lists and the names of all persons who have failed to appear and reidentify themselves in the manner herein prescribed shall be stricken from the lists, provided, however, that said board shall not strike the name of any person, or of the spouse of any person, known by any member of said board, or made known to the said board by the written affidavit of another qualified elector, to be in active duty of any of the armed forces of the United States of America, and to be stationed, or to be living with her or his spouse, as the case may be, outside Sumter County, Alabama, during the period of time from the effective date hereof to January 1, 1982.

Section 7. Any qualified elector of the county who shall have his name omitted or removed from the list of qualified electors in the county by failure to appear and reidentify himself as herein provided shall be entitled to have his name restored to the list of qualified electors by appearing in person at the office of the board of registrars, or at the office of the judge of probate, and answering

such questions and submitting such proof, under oath, as the board may require to establish the voter's identity, place of legal residence, and the fact that the voter has not become disqualified from voting in the county. Provided, however, every qualified elector must have reidentified himself at least 10 days prior to the election at which he offers to vote; provided further, however, that this act shall not be construed or applied to impair or deny the right to vote in person or by absentee ballot of any person or of the spouse of any person, now a qualified elector of said county, who is in active duty of any of the armed forces of the United States of America and stationed, and, as to the spouse, who is living with her or his husband or wife as the case may be outside of Sumter County, Alabama, during the period of time from the effecitve date hereof to January 1, 1982.

Section 8. The county governing body of Sumter County is hereby authorized, directed, and required to furnish the board of registrars with the supplies, equipment, printed forms, stationery and newspaper advertisements necessary for the reidentification of voters as herein provided.

Section 9. The questionnaire to reidentify a voter shall be in substantially the following form:

VOTERS REIDENTIFICATION QUESTIONNAIRE

Sumter County, Alabama

Date _____, 198___

Name _____
Last Middle First

Legal Residence Address _____
Street

City or Town _____

State _____

Social Security Number (Optional) _____

Other Identification _____

Date of Birth _____ Sex _____ Race _____

I now vote and I am a qualified elector in precinct or Beat No. _____, Box No. _____ County, and I have not been disqualified from voting in this county. I am not a qualified voter in any other county in the State of Alabama or in any other State in the United States.

I have resided in Precinct or Beat No. _____ for the past _____ months.

Signed _____
Signature of Voter

Sworn to and subscribed before me this _____ day of _____, 19 ____.

_____
Registrar - Judge of Probate

Section 10. Any person who willfully makes a false statement to the board of registrars, or any duly authorized person, in reidentifying himself as a qualified elector in the manner provided herein shall be guilty of perjury, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one nor more than five years.

Section 11. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 12. All laws or parts of laws which conflict with this act are repealed.

Section 13. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

H. 146 - 5 -

EXHIBIT IV

SYNOPSIS: This bill provides for the County Board of Registrars to purge the names of any registered voter it believes to be deceased, non-residents of the county or who otherwise suffer disqualification as registered voters; provides for and prescribes the procedure for re-identification of registered voters; provides for the appointment of Deputy Registrars to aid in the re-identification and registration of electors; provides for the appointment of City Clerks as Deputy Registrars upon the request of the municipal governing body; places certain duties on the Board of Registrars, the Judge of Probate, and the County Governing Body relative to re-identification of registered voters; and provides a penalty for making a false statement in connection with re-identification.

A B I L L

T O B E E N T I T L E D

A N A C T

Providing for purging the lists of registered voters; requiring and prescribing the procedure for the re-identification of registered voters; providing for the appointment of deputy registrars to aid in the re-identification and registration of electors; placing certain duties on the board of registrars, judge of probate, and the county governing body relative to the re-identification of registered voters; and providing a penalty for willfully making a false statement in connection with re-identification.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The board of registrars of each county is hereby directed to purge the names of all qualified electors which it reasonably believes or upon information or evidence are deceased or nonresidents of the county, or have otherwise become disqualified from voting in the county, and the name of each qualified elector shall appear only on the list of qualified electors for the beat, precinct or ward (referred to hereinafter as beat) in which he resides.

Section 2. The board of registrars shall omit and remove from the lists of qualified electors of the county the name of any person who it reasonably believes is not a qualified elector and who has by reason of death or nonresidence in the county or other legal disqualification not re-identified, in the manner prescribed herein, before the first day of January, 1982. No person whose name is removed from the list of qualified electors as herein provided shall cease permanently to be a qualified elector nor be subject to re-registration, but shall be subject only to the requirement that he re-identify himself as a duly registered elector before being listed on the list of qualified electors in the county, and before being entitled to vote.

Section 3. Prior to the first day of January, 1982, the board of registrars of each county is hereby authorized, directed, and required to visit or cause deputy registrars to visit each beat in the county at least once, and more often if necessary, and remain there at least one day from nine o'clock in the morning until six o'clock in the evening or nine o'clock in the morning until 12:00 noon Saturday for the purpose of enabling qualified and registered voters whose names it proposes to strike to appear before the registrar or deputy registrar to re-identify themselves or nonelectors to register. The board shall give at least fifteen days notice by advertisement in a newspaper of general circulation in the county, of the time when, and the place in the beat where, they will attend for the purpose of enabling voters to appear and re-identify or nonelectors to register. Upon failure to give such notice, or to attend any appointment made by them in any beat, they shall, after like notice, fill new appointments. The board shall remain in session for thirty working days. During the 30 day session, the board shall visit each beat on at least one day and the remainder of the time may be divided as the board of registrars deem necessary, to enable the qualified electors of the county to appear and re-identify themselves in the manner prescribed herein. A voter may appear and re-identify himself at any beat or in the courthouse of the county.

Section 4. Each member of the board of registrars shall receive twenty dollars per day, for each day's attendance upon the special sessions of the board required under the provisions of this act; but if such special session is held on the same day a regular session is required to be held under the laws of this state, registrars shall receive only one per diem allowed for performing their

regular duties, it being the intent and purpose of this act that registrars shall be entitled to receive only one per diem allowance for one day's service. If one or more of the members of the board shall refuse, neglect, or be unable to serve, or if a vacancy or vancies occur in the membership of the board from any cause, the Governor, State Auditor, and Commissioner of Agriculture and Industries, or a majority of them, shall forthwith make other appointments to fill such vacancies.

Section 5. To assist in the re-identification required by this act and in the registration of electors and other performance of its lawful duties, the board of registrars shall appoint in accordance with §17-4-157, Code of Alabama 1975, two deputy registrars for each precinct in the county for a two year term within sixty days after the passage of this act and every two years thereafter. Further, each board shall, upon the written request of any municipal governing body, appoint as a deputy registrar the clerk of any municipality within the county. Any person serving as a deputy registrar shall be trained by the board of registrars and shall serve without compensation. The board shall provide deputy registrars with all necessary forms and when such forms are completed, deputy registrars shall return them to the office of the board of registrars as the board may require, but not later than five working days.

Section 6. The voter may re-identify himself by appearing in person before a registrar or deputy registrar, or by appearing before the judge of probate, or either of the clerks in the office of the judge of probate, or through his or her representative before the board of registrars in regular session or deputy registrar.

Section 7. The names of persons to be stricken from the list of registered voters shall be published in a newspaper of general circulation in the county not more than thirty and not less than fifteen days prior to making the visits required in Section 3, and not more than thirty nor less than fifteen days prior to the date for purging the list.

Section 8. The board of registrars shall meet on the first Monday in January, 1982, for the purpose of purging the registration lists and the names of all persons who have failed to re-identify themselves in the manner herein prescribed shall be stricken from the lists, provided, however, that said board shall not strike the name of any persons, known by any member of said board, or made known to the said board by another qualified elector, to be a legal resident

83-679 O - 82 - 44 Pt.2

of the county not known to be suffering from any disqualification.

Section 9. Any qualified elector of the county who shall have his name omitted or removed from the list of qualified electors in the county by failure to appear and re-identify himself and who has not otherwise been identified as herein provided shall be entitled to have his name restored to the list of qualified electors by written affidavit or appearing in person before a registrar, or deputy registrar, or at the office of the board of registrars or at the office of the judge of probate, submitting proof of legal residence, and the fact that the voter has not become disqualified from voting in the county. Provided, however, every qualified elector must have re-identified himself at least 10 days prior to the election at which he offers to vote; provided, further, however, that this act shall not be construed or applied to impair or deny the right to vote in person or by absentee ballot of any person, or of the spouse or child of any person, now a qualified elector of said county, who is in active duty of any of the armed forces of the United States of America and stationed, and, as to the spouse or child, who is living with her or his husband or wife, mother or father, as the case may be, outside of the county, or who is living outside the county while attending a college or university or other institution of higher education or who is employed outside of the United States during the period of time from the effective date hereof to January 1, 1982; and provided further that the provisions of this act shall not restrict the board of registrars from purging the registration list as provided in §17-4-132, Code of Alabama, 1975.

Section 10. The county commission of each county is hereby authorized, directed, and required to furnish the county board of registrars with the supplies, equipment, printed forms, stationery and newspaper advertisements necessary for the re-identification of voters as herein provided.

Section 11. Any person who willfully makes a false statement to the board of registrars, or any duly authorized person, in re-identifying himself as a qualified elector in the manner provided herein shall be guilty of perjury, and upon conviction thereof shall be punished with a fine not to exceed $1,000 or by imprisonment in the penitentiary for not less than one month nor more than one year.

Section 12. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 13. All laws or parts of laws which conflict with this act are repealed.

Section 14. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Mr. EDWARDS. May I note applause is not permitted in a congressional hearing?

Who will be the next witness to speak? Without objection, all of the statements of the four witnesses will be made part of the record.

Ms. Bozeman?

Ms. BOZEMAN. Thank you.

Mr. Chairman, members of the subcommittee, my name is Maggie Bozeman.

I am a resident of Pickens County, Ala. I am president of the Pickens County branch of the NAACP.

I serve as coordinator of the Pickens County Democratic Conference. I live in the town of Aliceville, population 3,240.

When it comes to black people registering and voting, I am here to tell you that Aliceville is a long ways from being a wonderland. Unless you take wonderland to mean the whole Pickens County in a negative sense.

Based on the 1980 census, Pickens County has 8,978 blacks and 12,451 whites. Blacks are 41.8 percent of the population. However, those fairly impressive numbers don't mean anything because we have been unable to elect a black to a countywide office in Pickens County.

Except for two black towns in Pickens County, we have no black officials to speak of.

Likewise, we have few blacks who are appointed to serve on various city and county boards. Every chance I get to say it, I tell people that Pickens County has no equal when it comes to denying blacks ease of access to registration and voting. Registration barriers, accessibility to the registration site, an attitude of the board of registrars remain our biggest problem in Pickens County, Ala.

In 1978 we requested that our board of registrars appoint deputy registrars. They flatly refused.

Although the board told us on several occasions that they would be willing to hold voters registrations in the precincts, we have been unable to get them to implement this. Their basic excuse for not having an active voters' outreach program is that the legislature has set certain registration days for them to follow and that they will not get paid for the days which have already been designated by law for them to register people.

Rarely have we conducted a voters' registration drive in Pickens County which has not met with some resistance from local officials.

One of the most annoying things black voters face in Pickens County in trying to register is steady pressure of the law enforcement officers.

You would think that the deputies were on the payroll of the board of registrars the way they come around to snoop, to see what we are doing.

Voting problems in Pickens County. Voting problems are far more severe than problems of registration. In fact, based upon numerous complaints we filed with the Justice Department last year, that agency sent Federal observers to Pickens County to monitor the election.

In my opinion Pickens County has one of the most outdated systems of voting I have ever seen recently.

We still use paper ballots. Moreover, for lack of a better term, we have open house voting in Pickens County Ala. In most polling places there is no privacy whatsoever. I mean whatsoever.

For example, if I vote at the armory, I must go there and go to the table which has the letter B. I and all the other voters whose name end in B must mark our ballots in the presence of others using the same table.

For those folks who cannot read, it is very discouraging because these folks often are readily turned off by new schemes to harass black voters.

During the 1980 election last fall, blacks seems to be the only ones who were questioned about who would be providing assistance to voters.

In addition, the standards for assisting voters was changed by local officials.

People who were to provide assistance were required to stand an unreasonable distance away from the polling place. I happened to be one. They were often watched by a deputy sheriff on duty at the polling place.

In my case particularly, the deputy sheriff took pictures of me—if you will, we are willing to share them with you—and all of the folks I assisted in voting.

Has this committee ever heard of such?

Absentee ballots. In Pickens County in 1980 the sheriff deputies were instructed to visit the homes of all black families who requested absentee ballots. The whole idea behind this move was to determine if there were people who got absentee ballots who were in town on the day of election.

In addition to this, legal harassment can result from voter participation in Pickens County. I can testify to that because I sought to educate black people regarding how they can vote an absentee ballot.

By doing so, I was hauled into court and accused of fraud along with Mrs. Julia Wilder.

The board of elections released me once an indictment was made about charges regarding absentee ballot distribution.

Just being a voter in Pickens County is a wearying experience. Sometimes I feel like giving up, but I keep going on.

Indeed, the thing that keeps me going on is to know that I can call upon the Justice Department for relief if need be.

If Congress takes the Voting Rights Act protection from us in Pickens County in the State of Alabama, we voters in rural Alabama may as well start whistling Dixie.

May I say to the committee and to the people here today, if the Voting Rights Act is not extended, may you come to Pickens County, Ala., and kneel with us and say, "Lord, please take all blacks on home with you where maybe, if such be; we cannot take much more."

Thank you kindly.

Mr. EDWARDS. Thank you, Ms. Bozeman.

[The prepared statement follows:]

TESTIMONY OF

MAGGIE BOZEMAN

PICKENS COUNTY, ALABAMA

BEFORE THE HOUSE JUDICIARY SUBCOMMITTEE

ON

CIVIL AND CONSTITUTIONAL RIGHTS

JUNE 12, 1981

MONTGOMERY, ALABAMA

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

MY NAME IS MAGGIE BOZEMAN, AND I AM A RESIDENT OF PICKENS COUNTY, ALABAMA. I AM PRESIDENT OF THE PICKENS COUNTY BRANCH NAACP, AND I SERVE AS COORDINATOR OF THE PICKENS COUNTY DEMOCRATIC CONFERENCE. I LIVE IN THE TOWN OF ALICEVILLE, POPULATION, 3,240.

WHEN IT COMES TO BLACK PEOPLE REGISTERING AND VOTING, I'M HERE TO TELL YOU THAT ALICEVILLE IS A LONG WAYS FROM BEING A WONDERLAND, UNLESS YOU TAKE "WONDERLAND" TO MEAN THE WHOLE OF PICKENS COUNTY IN A NEGATIVE SENSE.

BASED ON THE 1980 CENSUS, PICKENS COUNTY HAS 8,978 BLACKS, AND 12,451 WHITES. BLACKS ARE 41.8% OF THE POPULATION. HOWEVER, THOSE FAIRLY IMPRESSIVE NUMBERS DON'T MEAN ANYTHING BECAUSE WE HAVE BEEN UNABLE TO ELECT A BLACK TO A COUNTYWIDE OFFICE IN PICKENS COUNTY. EXCEPT FOR TWO POOR ALL-BLACK TOWNS IN PICKENS COUNTY (OLD MEMPHIS AND McMULLEN), WE HAVE NO BLACK ELECTED OFFICIALS TO SPEAK OF. LIKEWISE, WE HAVE FEW BLACKS WHO ARE APPOINTED TO SERVE ON VARIOUS CITY AND COUNTY BOARDS.

EVERY CHANCE I GET TO SAY IT, I TELL PEOPLE THAT PICKENS COUNTY HAS NO EQUAL WHEN IT COMES TO DENYING BLACKS EASY ACCESS TO REGISTRATION AND VOTING.

REGISTRATION BARRIERS: ACCESSIBILITY TO THE REGISTRATION SITE AND ATTITUDES OF THE BOARDS OF REGISTRARS REMAIN OUR BIGGEST PROBLEM IN PICKENS COUNTY. IN 1978, WE REQUESTED THAT OUR BOARD OF REGISTRARS APPOINT DEPUTY REGISTRARS. THEY FLATLY REFUSED. ALTHOUGH THE BOARD TOLD US ON SEVERAL OCCASIONS THAT THEY WOULD BE WILLING TO HOLD VOTER REGISTRATION IN THE PRECINCTS, WE HAVE BEEN UNABLE TO GET THEM TO IMPLEMENT THIS. THEIR BASIC EXCUSE FOR NOT HAVING AN ACTIVE VOTER OUTREACH PROGRAM IS THATTHE LEGISLATURE HAS SET CERTAIN REGISTRATION DAYS FOR THEM TO FOLLOW, AND THAT THEY WILL NOT GET PAID FOR THE DAYS WHICH HAVE ALREADY BEEN DESIGNATED BY LAW FOR THEM TO REGISTER PEOPLE.

RARELY HAVE WE CONDUCTED A VOTER REGISTRATION DRIVE IN PICKENS COUNTY WHICH HAS NOT MET WITH SOME RESISTANCE FROM LOCAL OFFICIALS. ONE OF THE MOST ANNOYING THINGS BLACK VOTERS FACE IN PICKENS COUNTY IN TRYING TO REGISTER IS THE STEADY PRESENCE OF THE LAW ENFORCEMENT OFFICERS. YOU WOULD THINK THAT THE DEPUTIES ARE ON THE PAYROLL OF THE BOARD OF REGISTRARS THE WAY THEY COME AROUND TO SNOOP TO SEE WHAT WE'RE DOING.

VOTING PROBLEMS: IN PICKENS COUNTY, VOTING PROBLEMS ARE FAR MORE SEVERE THAN PROBLEMS OF REGISTRATION. IN FACT, BASED UPON NUMEROUS COMPLAINTS WE FILED WITH THE JUSTICE DEPARTMENT LAST YEAR, THAT AGENCY SENT FEDERAL OBSERVERS TO PICKENS COUNTY TO MONITOR THE ELECTIONS.

IN MY OPINION, PICKENS COUNTY HAS ONE OF THE MOST OUTDATED SYSTEMS OF VOTING I HAVE SEEN RECENTLY. WE STILL USE PAPER BALLOTS. MOREOVER, FOR LACK OF A BETTER TERM, WE HAVE "OPEN HOUSE VOTING" IN PICKENS COUNTY. IN MOST POLLING PLACES, THERE IS NO PRIVACY WHATSOEVER. FOR EXAMPLE, IF I VOTE AT THE ARMORY, I MUST GO THERE AND GO TO THE TABLE WHICH HAS THE "B". I AND ALL THE OTHER VOTERS WHOSE NAMES END IN "B" MUST MARK OUR BALLOTS IN THE PRESENCE OF OTHERS, USING THE SAME TABLE. FOR THOSE FOLK WHO CAN'T READ, IT IS VERY DISCOURAGING BECAUSE THESE FOLK OFTEN ARE EASILY TURNED OFF BY NEW SCHEMES TO HARASS BLACK VOTERS.

DURING THE 1980 ELECTIONS LAST FALL, BLACKS SEEMED TO BE THE ONLY ONES WHO WERE QUESTIONED ABOUT WHO WOULD BE PROVIDING ASSISTANCE TO VOTERS. IN ADDITION, THE STANDARDS FOR ASSISTING VOTERS WAS CHANGED BY LOCAL OFFICIALS. PEOPLE WHO WERE TO PROVIDE ASSISTANCE WERE REQUIRED TO STAND A REASONABLE DISTANCE AWAY FROM THE POLLIN PLACE. THEY WERE OFTEN SUMMONED TO ASSIST BY A DEPUTY SHERIFF ON DUTY AT THE POLLING PLACE. IN MY CASE IN PARTICULAR, THE DEPUTY SHERIFF TOOK PICTURES OF ME AND ALL THE FOLK I ASSISTED IN VOTING. HAS THIS COMMITTEE EVER HEARD OF SUCH?

ABSENTEE BALLOTS: IN PICKENS COUNTY IN 1980, THE SHERIFF'S DEPUTIES WERE INSTRUCTED TO VISIT THE HOMES OF ALL BLACK FAMILIES WHO REQUESTED ABSENTEE BALLOTS. THE WHOLE IDEA BEHIND THIS MOVE WAS TO DETERMINE IF THERE WERE PEOPLE WHO GOT ABSENTEE BALLOTS WHO WERE IN TOWN ON THE DAY OF THE ELECTION.

IN ADDITION TO THIS, LEGAL HARASSMENT CAN RESULT FROM VOTER PARTICIPATION IN PICKENS COUNTY. I CAN TESTIFY TO THAT, BECAUSE I SOUGHT TO EDUCATE BLACK PEOPLE REGARDING HOW THEY CAN VOTE AN ABSENTEE BALLOT. BY DOING SO, I WAS HAULED INTO COURT AND ACCUSED OF FRAUD, ALONG WITH MRS. JULIA WILDER. THE BOARD OF EDUCATION RELEASED ME ONCE AN INDICTMENT WAS MADE ABOUT CHARGES REGARDING ABSENTEE BALLOTS DISTRIBUTION.

JUST BEING A VOTER IN PICKENS COUNTY IS A WEARYING EXPERIENCE. SOMETIMES I FEEL LIKE GIVING UP, BUT I KEEP GOING. INDEED, THE THING THAT KEEPS ME GOING IS TO KNOW THAT I CAN CALL ON THE JUSTICE DEPARTMENT FOR RELIEF, IF NEED BE. IF CONGRESS TAKES THE VOTING RIGHTS ACT PROTECTION FROM US, WE VOTERS IN RURAL ALABAMA MAY AS WELL START WHISTLING DIXIE.

THANK YOU, MR. CHAIRMAN.

Mr. Patton, are you next, or Sheriff Arnold?

Mr. PATTON. Mr. Chairman, members of the committee, lest I forget, all that may be told to you that has been accomplished since we had the 1965 Voting Rights Act would not have been accomplished if we had not had it.

I want to emphasize that fact.

The passage of the 1965 Voting Rights Act may be considered the second Emancipation Proclamation in this country and particularly in the Southern States.

The key to our survival in the future is the ballot, for with the proper use of the ballot we breathe and grow economically, politically, socially, and physically.

The ballot is so important that I used to say in going around that it affected us from the cradle to the grave, but now, since we have the abortion laws, I have had to change that.

I now say we are affected by the ballot from conception to the resurrection.

There are two B's that run this country. They are the ballot and the buck. Without the ballot we couldn't get the buck. Without the ballot we don't get what our taxes pay for as services from our cities and our counties.

The only weapon that we have, the most effective weapon, is our vote for people in the legislative bodies, policymaking boards that we determine and breed.

Before the 1965 Voting Rights Act was made law, the way of life in the South for blacks was only the crumbs that fell from the tables of those in power.

Before the 1965 emancipation, the old cliche that said, "Negroes have no right that a white man had to respect" was in effect.

As national director of NAACP voter education, I traveled an average of 20,000 miles a year working in large cities, hamlets, and villages, organizing voter registration campaigns and I know of the hostility and barriers to black participation in the political process which affected not only the economic and social well-being of black Americans in a devastating manner but the judicial system was blighted with unequal justice, or no justice at all for blacks.

Today, without reenactment of this bill, the evil roots that are still present will sprout and give growth to the inequities that stalked this country until 1965. This may be detected in the comments made by people who are opposed to it, the evil forces, the evil roots that exist.

It was in 1943, or thereabouts, when I was called on by the late Walter White in an effort to conduct a voter registration campaign.

At that time we had less than 25,000 black voters in the State of Alabama. It was not until after 1965 that any material progress was made.

I can recount that in the remote rural areas of Alabama, the few Negroes that were registered had to be recommended by some white person. All types of intimidation was experienced by those who attempted to register on their own.

When blacks began to become wise as to what the ballot could do, our State legislature passed a bill that had so many requirements it made it impossible to register unless some white person said the black applicant embraced the qualities of a good citizen.

We had to go into court and I sat as chairman of a committee to raise funds to take this bill into court which was finally declared illegal.

As soon as this was done, the legislature then enacted a requirement for a literacy test with questions that a Philadelphia lawyer couldn't answer and certainly not the members of the board of registrars.

With the test done away with, the State appointed hostile members of the board of registrars in the various counties. They did whatever it was possible to make it difficult because there was a time that we were registered on a quota basis. They registered one black to every three white persons that they registered. Some insisted upon—those who insisted on putting our names on the rolls, our homes were shot into at night. Some were dismissed from their jobs. Even today in a subtle manner, this sort of thing is existing.

When the law was first passed, of reidentification, it was designed for counties of 200,000 population and more. Today many of those who have much smaller populations are asking for that.

The only purpose of it is to dilute and make it inconvenient and expensive for blacks to keep their names on the rolls of registered voters.

The law provides that in the month of October of certain years that the books shall be carried from precinct to precinct and district to district. What would happen? These registrars would put up a little sign of where they were going to be in some obscure place. Nobody would see it. They couldn't read it. The only notice in the papers was the weekly papers, the white papers.

Blacks didn't have them. When they went to these rural areas with the books, those who were on these boards of registrars would hide behind the counters in those stores where they were in order to keep Negroes from finding them.

When they went to the courthouse on many occasions, the boards of registrars hid in the vault—in the probate judge's office, out of the sight of these Negroes.

They had persons to tell the whites where the board of registrars were located. This was done.

There have been times when they did all these types of things.

There are hundreds of other gimmicks used to prevent black registration. You went into register. If you look like you were intelligent, they would say, give me a utility bill, a gas bill, a light bill. If you didn't have it, you would have to go back and get it another day. When you got back there, they had another requirement that sent you away, all designed to keep you from registering, to discourage you.

The key to our survival in this what we call the land of the free and the home of the brave, supposedly exercising democracy, will depend greatly upon the enactment and extension of the voting rights bill.

The political process in this State and in many other States in the South—I work in the North as well as in the South, East and West, the political frontiers are still here and will be for years to come unless this civil rights bill is reenacted before we will penetrate these political frontiers.

Thank you, gentlemen.
[The statement of Mr. Patton follows:]

TESTIMONY

CONGRESSIONAL HEARING ON EXTENSION OF 1965 VOTING RIGHT ACT

BY: W. C. PATTON
RETIRED NATIONAL DIRECTOR,
NAACP VOTER EDUCATION

FRIDAY, JUNE 12, 1981

THE PASSAGE OF THE 1965 VOTING RIGHT ACT MAY BE CONSIDERED THE SECOND EMANCIPATION OF NEGROES IN THIS NATION AND PARTICULARLY IN THE SOUTHERN STATES.

THE KEY TO OUR SURVIVAL IN THE FUTURE IS THE BALLOT, FOR WITH THE PROPER USE OF THE BALLOT, WE BREATHE AND GROW ECONOMICALLY, POLITICALLY, SOCIALLY AND PHYSICALLY.

THERE ARE TWO B'S THAT RUN THIS COUNTRY. THEY ARE THE BALLOT AND THE BUCK AND WITHOUT THE BALLOT, WE CAN'T GET THE BUCK. WITHOUT THE BALLOT, WE DON'T GET THE SERVICES WE PAY FOR WITH OUR TAXES. THE ONLY EFFECTIVE WEAPONS WE HAVE TO FIGHT OFF THE ENEMIES ARE OUR POWER IN THE LEGISLATIVE BODIES AND POLICYMAKING BOARDS WHICH DETERMINE HOW WE LIVE AND BREATHE.

BEFORE THE 1965 VOTING RIGHT ACT WAS MADE LAW, THE WAY OF LIFE IN THE SOUTH FOR BLACKS WAS ONLY THE CRUMBS THAT FELL FROM THE TABLES OF THOSE IN POWER. BEFORE THE 1965 EMANCIPATION, THE OLD CLICHE THAT SAID "NEGROES HAVE NO RIGHT THAT A WHITE MAN HAD TO RESPECT" WAS IN EFFECT.

AS NATIONAL DIRECTOR OF NAACP VOTER EDUCATION, I TRAVELLED AN AVERAGE OF 20,000 MILES A YEAR WORKING IN LARGE CITIES, HAMLETS AND VILLAGES, ORGANIZING VOTER

REGISTRATION CAMPAIGNS AND I KNOW OF THE HOSTILITY AND BARRIERS TO BLACK PARTICIPATION IN THE POLITICAL PROCESS WHICH AFFECTED NOT ONLY THE ECONOMIC AND SOCIAL WELL-BEING OF BLACK AMERICANS IN A DEVASTATING MANNER BUT THE JUDICIAL SYSTEM WAS BLIGHTED WITH UNEQUAL JUSTICE, OR NO JUSTICE AT ALL FOR BLACKS.

TODAY, WITHOUT REENACTMENT OF THIS BILL, THE EVIL ROOTS THAT ARE STILL PRESENT WILL SPROUT AND GIVE GROWTH TO THE INEQUITIES THAT STALKED THIS COUNTRY UNTIL 1965.

IT WAS IN 1943, OR THEREABOUT, WHEN I WAS CALLED ON BY THE LATE WALTER WHITE, EXECUTIVE DIRECTOR OF NAACP, TO ORGANIZE AND PROMOTE A STATEWIDE VOTER REGISTRATION CAMPAIGN IN ALABAMA, AT WHICH TIME WE HAD LESS THAN 25,000 BLACK VOTERS IN THE ENTIRE STATE OF ALABAMA. NO NOTABLE GROWTH WAS MADE UNTIL AFTER THE 1965 VOTING RIGHT ACT WAS PASSED.

I CAN RECOUNT THAT IN THE REMOTE RURAL AREAS OF ALABAMA, THE FEW NEGROES THAT WERE REGISTERED HAD TO BE RECOMMENDED BY SOME WHITE PERSON. ALL TYPES OF INTIMIDATION WAS EXPERIENCED BY THOSE WHO ATTEMPTED TO REGISTER ON THEIR OWN.

WHEN BLACKS BEGAN TO BECOME WISE AS TO WHAT THE BALLOT COULD DO, OUR STATE LEGISLATURE PASSED A BILL THAT HAD SO MANY REQUIREMENTS IT MADE IT IMPOSSIBLE TO REGISTER UNLESS SOME WHITE PERSON SAID THE BLACK APPLICANT EMBRACED THE QUALITIES OF A GOOD CITIZEN.

I PERSONALLY CHAIRED A STATEWIDE COMMITTEE TO RAISE FUNDS THAT THIS LEGISLATIVE ACT MIGHT HAVE ITS DAY IN COURT. THE CASE WAS FILED IN MOBILE, ALABAMA, AND WAS ULTIMATELY DECLARED UNCONSTITUTIONAL.

AS SOON AS THIS WAS DONE, THE LEGISLATURE ENACTED ANOTHER BILL REQUIRING A LITERACY TEST WHICH HAD QUESTIONS WHICH A PHILADELPHIA LAWYER COULDN'T ANSWER AND CERTAINLY NOT MEMBERS OF THE LOCAL BOARD OF REGISTRARS. IT WAS THE 1965 VOTING RIGHT ACT THAT DID AWAY WITH THIS TEST.

WITH THE TEST DONE AWAY WITH, THE STATE APPOINTED HOSTILE PERSONS ON LOCAL BOARDS OF REGISTRARS IN THE VARIOUS COUNTIES THAT SOUGHT TO USE WHATEVER METHODS THEY COULD TO REGISTER BLACKS ON A QUOTA BASIS, SOMETHING LIKE FIVE WHITES TO ONE BLACK. THE EMPLOYERS OF BLACKS USED VARIOUS KINDS OF THREATS TO DISCOURAGE THEIR BLACK EMPLOYEES FROM REGISTERING. SOME WHO INSISTED ON PUTTING THEIR NAMES ON THE ROLL OF QUALIFIED VOTERS HAD THEIR HOMES SHOT INTO AT NIGHT. SOME WERE DISMISSED FROM THEIR JOBS. ANOTHER ONE OF THE GIMMICKS WHICH THEY CONSIDER LEGAL IS REIDENTIFICATION. THIS IS DESIGNED MAINLY TO PUT VOTERS TO A LOT OF EXTRA TROUBLE AND TO DILUTE OUR VOTING STRENGTH. WHEN THE LAW WAS FIRST PASSED IT AFFECTED ONLY COUNTIES WITH 200,000 OR MORE POPULATION, BUT TODAY OTHER COUNTIES HAVE JOINED IN ADOPTING THIS PROPOSAL, MAINLY TO DILUTE AND REDUCE OUR VOTING STRENGTH.

THE STATE LAW PROVIDES THAT IN THE MONTH OF OCTOBER BEFORE A GENERAL ELECTION, THE REGISTRATION BOOKS SHALL BE CARRIED TO THE VARIOUS PRECINCTS AND DISTRICTS. MANY TIMES NOTICES OF THE DATE AND PLACES WHERE THE BOOKS ARE TO BE LOCATED ARE PUT IN SUCH OBSCURE PLACES, THEY ARE NOT NOTICEABLE. THERE HAVE BEEN TIMES WHEN THE BOARD WAS NOT OPEN TO REGISTER PEOPLE BUT WERE HID BEHIND THE COUNTERS OF SOME STORE OR EVEN IN THE VAULT IN THE PROBATE JUDGE'S OFFICE, ALL DESIGNED TO KEEP OUT OF THE SIGHT OF BLACKS WHO WOULD WANT TO REGISTER.

THERE ARE HUNDREDS OF OTHER GIMMICKS USED TO PREVENT BLACK REGISTRATION. FOR EXAMPLE, BLACK PERSONS WOULD BE ASKED TO PRODUCE A UTILITY BILL FOR IDENTIFICATION.

THE KEY TO OUR SURVIVAL IN THIS WHAT WE CALL THE LAND OF THE FREE AND THE HOME OF THE BRAVE SUPPOSEDLY EXERCISING DEMOCRACY WILL DEPEND GREATLY UPON THE REENACTMENT OR EXTENSION OF THE VOTING RIGHTS ACT.

THE POLITICAL PROCESS IS STILL A FRONTIER AND IT WILL NOT BE UNTIL YEARS TO COME THAT WE WILL HAVE COMPLETELY PENETRATED THIS FRONTIER.

THERE ARE HUNDREDS OF OTHER GIMMICKS USED TO PREVENT BLACK REGISTRATION. FOR EXAMPLE, BLACK PERSONS WOULD BE ASKED TO PRODUCE A UTILITY BILL FOR IDENTIFICATION.

THE KEY TO OUR SURVIVAL IN THIS WHAT WE CALL THE LAND OF THE FREE AND THE HOME OF THE BRAVE SUPPOSEDLY EXERCISING DEMOCRACY WILL DEPEND GREATLY UPON THE REENACTMENT OR EXTENSION OF THE VOTING RIGHTS BILL.

THE POLITICAL PROCESS IS STILL A FRONTIER AND IT WILL NOT BE UNTIL YEARS TO COME THAT WE WILL HAVE COMPLETELY PENETRATED THIS FRONTIER.

Mr. EDWARDS. Thank you, Mr. Patton.

The last member of the panel to testify will be Sheriff Prince Arnold, Camden, Ala., the sheriff of Wilcox County.

Mr. ARNOLD. Thank you, Mr. Chairman.

I wanted to come before this committee to testify in favor of the extension of the Voting Rights Act.

Our local press many times reports that I am one of the youngest sheriffs in the country. I was elected sheriff in 1978. In fact, Mr. Jesse Brooks, who is the tax collector, and I became the first elected officials in the history of Wilcox County.

This opportunity of blacks being able to serve I feel as a man in the political arena did not come in Wilcox County until over a hundred years after the American Constitution guaranteed blacks the right to vote.

You may be interested to know that Wilcox County did not have a single voter until the Voting Rights Act in 1965. At that time the black population in Wilcox County was over 70 percent. Today the black population is over 68 percent. That is based on the 1980 census, but in terms of black elected officials, we are still underrepresented.

Indeed, if it wasn't for the Voting Rights Act, we wouldn't have a single black elected official in Wilcox County.

In 1980, Wilcox County elected four additional blacks to public office. We elected two to the board of comissioners, two to the board of education.

Right now we feel that these gains are not safe because there is a move to undo our gains among the black folks of Wilcox County.

The old attitudes are still there. The resistance to blacks participating in public affairs are not looked on too kindly.

Some black folks in Wilcox County are still not able to vote and still not able to exercise their rights. There are new schemes that are being devised to discourage black folks from participating in the politics and the political arena in Wilcox County.

In order to give this committee a better background of what it is like to run for sheriff in Wilcox County, I am going to try to give you some of my experiences over the last few years.

During my election in 1978, approximately 72 Federal observers were called to monitor the election. If the Federal observers had not been there, there is no doubt in my mind that I wouldn't have been elected sheriff of that county.

In addition to the Federal observers, there were State troopers called in to keep order during the tabulation of the votes.

There were threats on my life. I can never forget on the night of election there was a wall of human bodies surrounding me as I left the courthouse, to protect my safety because it was not common for black folks to be elected in Wilcox County.

At a number of the polling places on that date, black folks were given—black poll workers were given a whole lot of hell. Many voters were turned around, especially our old people and illiterate voters. But the determination to win, the determination to succeed was so strong that we had black folks who openly challenged the resistance with a new defiance of their own.

This is the reason I was elected sheriff of Wilcox County.

In one particular area, in the Pine Hill community, the mayor of that city turned black folks around in droves until a Vietnamn veteran—he contended, told the mayor if he didn't stop harassing his black folks, he said that one of us was going to hell today and he wasn't intending to be that one.

One of the most bizarre, one of the most incredible things that happened on that election day occurred in one of the polling places known as the members community.

My opponent, who was a white man at that particular time, the election was being held in one of his relatives' homes.

The white/black population was approximately 50 percent. I got one vote out of that place. I would like the community to know that that voting place is still there.

We feel that for black folks who have struggled so long to become a voter, it is difficult to go and vote in these type places.

One of the most abusive type acts I saw in 1978 was the refusal of poll workers to allow black folks to challenge a ballot. If the names of the voter were not on the voting list, especially among the elderly and the handicapped people, the abusive language was so bad.

I remember one time the polling official said, "Old lady, if you can't see, if you can't hear, you should have stayed at home."

These type of things discourage people from going out and voting. Please don't think that the Voting Rights Act is not needed and the coverage is not needed and the extension is not needed at this time.

In my race in 1978, over a thousand absentee votes were cast. I think that—I think there were many dead folks who voted in that election.

The cheating that went on, I can't tell you of the cheating that went on down there.

I led in the primary close to 2,000 votes, but I won the election by less than 200.

The fact that I am now sheriff and I am committed to upholding the law does not mean that the abuse has stopped.

The defiance is still there. There seems to be little respect for voting laws. For example, during the 1980 election, approximately

60 white poll workers failed to show up to work on the polls on election day.

I believe the reason was because they knew that black folks had started voting for other black folks. We had to try to run out and find people to work the polls, and many times the probate judge could not be found in Wilcox County.

The latest struggle confronting us in Wilcox County is that they call the reidentification bill, the reregistration of voters. Our senator, Senator Taylor, who represents seven counties, introduced this bill in only two counties, which are predominantly black counties, Wilcox, which is 68 percent black, and Lyons County, which is 75 percent black.

At that particular time, the senator stated that the county commission in Wilcox County wanted this bill, but I say to the committee today that these were lame duck commissioners. They had lost the election.

Between that time, they had the senator introduce this bill. These two white commissioners were defeated at a later date. The two black commissioners went on record opposing this bill, but we still didn't have enough votes to overturn it.

Recently I went to Washington. In fact, I went to Washington Monday. I was up there Tuesday to appear before the officials at the U.S. Department of Justice stating our objection to the Wilcox County reregistration, reidentification of voters.

In my opinion the bill is unconstitutional. It is strictly designed to diluate the black vote. There is no other way. I think the hardship that it would cause on our people to try to reidentify, to reregister, would be worse than when they brought in the Federal registrars in 1965.

I wonder why Senator Taylor only sponsored this bill for the two predominantly black counties in his seven county district?

Finally, I want this committee to know that I want to see the Voting Rights Act extended to protect the dreams of my grandparents, that the life could be better for people in Wilcox County.

I went to Chicago looking for a better life, but I came back to my roots in Wilcox County because I felt that I had a promise to keep.

I came back so that I could show black folks and white folks that sheriffs can be good people, that they can be honest people and they can be gentle people.

I came back and allowed myself to serve so that black women who worked in domestic-type jobs, who pulled out of their bosoms their hard earned dollars to help get me elected, that I will always protect her rights in Wilcox County.

As the Voting Rights Act is made, it is possible for basic constitutional rights to be realized by both of us.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Arnold follows:]

PREPARED STATEMENT OF SHERIFF PRINCE ARNOLD

Mr. Chairman and members of the subcommittee: I am Prince Arnold, Sheriff of Wilcox County, Alabama. I am honored to come before this committee to testify in favor of the extension of the Voting Rights Act. Although the press likes to report that I am one of the youngest sheriffs in the nation, becoming sheriff in Wilcox County did not come easy. I was elected sheriff in 1978. In fact, Mr. Jesse Brooks,

who was elected collector, and I became the first black elected officials in the history of Wilcox County.

Just think. This opportunity of blacks being able to serve our fellowman in the poltical arena did not come in Wilcox County until over 100 years after the American Constitution "guaranteed" blacks the right to vote.

You may be interested to know that Wilcox County did not have a single black registered voter prior to the passage of the Voting Rights Act in 1965. At the time, the black population of Wilcox was over 70 percent. Today, Wilcox County has a black population of 68.8 percent based on the 1980 census figures. But in terms of black elected officials, we are still underrepresented. Indeed, were it not for the Voting Rights Act, I dare say that Wilcox County would still have no black elected officials today.

In 1980, Wilcox County elected four additional blacks to public office. Two were elected county commissioners, and two were elected to the county school board. These gains are not safe, however. Because there is a move afoot to undo our gains. Among whites, the old attitudes are still there. The resistance to blacks participating in the domain of public affairs is not looked on too kindly among some white residents of Wilcox County. Consequently, new schemes are being devised in an effort to discourage blacks from actively participating in the political process.

In order to give this committee a better background of what it was like to run for sheriff and to be elected in Wilcox County in 1978, I'd like to recall some experiences for you.

During my election in 1978, approximately 72 federal observers were called in to monitor the election. If the federal observers had not been there, I know that I would not have been elected. In addition to the federal observers, state troopers were called in to keep order during the vote tallying. There were even some threats on my life. I'll never forget that on the night of the election, a human wall of black men surrounded me as I left the courthouse. They were there to protect my safety because it was not a common practice for blacks in Wilcox County to go to the courthouse to witness the counting of votes, and especially the votes of a black candidate.

At a number of polling places that day, poll workers gave black folks hell. Many a voter was turned around, especially the elderly and illiterate voters. However, the determination to succeed was so strong that we had blacks to openly challenge the resistance with a new defiance of their own. In the Pine Hill community, the mayor was turning away black voters in droves. However, he abruptly stopped that when a Vietnam veteran walked up to the mayor and said: "If you continue to harass these black voters, one of us is going to hell today, and I don't intend for it to be me."

One of the most bizarre things to happen on election day in 1978 occurred at the polling place in Mims. At Mims, the voters vote in a private home, which is a residence belonging to whites. Did y'all hear what I said. At Mims, the voteres vote in a private home—and not on the porch either, but inside the living room. As fate would have it, the residential polling place at Mims was the home of a close relative of the white candidate I was running against, and though that voting box is predominately black, I got only one vote in Mims because the blacks were simply afraid to attempt to vote there. It was reported that the white woman who owned the house would not let black voters go inside her place to vote.

Incidentally, the polling place at the Mims residence is still being used today. What's more, I know of another polling place in Wilcox County where the people vote inside a house. The effect of this is that black voters rarely go vote there because of the trouble they may encournter in doing so.

One of the most flagrant abuses I saw in 1978 was the refusal of poll workers to allow blacks to vote a challenged ballot, if the names of said voters were not on the voting list. Among the elderly voters, the physically handicapped and the illiterate voters, the verbal buse many received from poll officials was disgraceful. I remember hearing one poll worker tell an elderly black woman: "If you can't hear or can't see, you should have stayed home, old woman."

Please don't think for a moment that the Voting Rights Act is not needed and the coverage maintained and extended in present form. Alas, in my race in 1978, whites cast over 1,000 absentee votes. Somebody has got to be voting dead folk. The cheating which went on was phenomenal. I lead substantially in the primary. However, in the runoff, I won by only 200 some odd votes.

The fact that I am now sheriff and am committed to upholding the law does not mean that the abuses have stopped. The defiance is still there. And there seems to be little respect for voting laws. For example, during the 1980 general election, approximately 60 white poll workers failed to show up to work the polls on election day. At the last minute, we had to run around and conscript blacks to work at the polls. The probate, judge was nowhere to be found on election day.

The latest strategy which the white Wilcox County community has influenced was their conspiring to get State Senator Cordy Taylor to sponsor a Voter re-identification bill. Senator Taylor contends that the county commissioners asked him to sponsor the re-identification bill. But two of the white commissioners were defeated last year, by black candidates. About a month ago, our black commissioners went on record opposing the bill. But the three white commissioners voted for a re-identification bill.

I went to Washington recently and appeared before officials at the U.S. Department of Justice, stating my objections to the Wilcox County voter re-identification bill. In my opinion, the bill is unconstitutional and is designed to dilute the black vote. I wonder why Senator Taylor only sponsored re-identification bills in the two predominately black counties in his seven-county district? I wonder why the Wilcox County Commission just decided last year that it wanted to have a re-identification program, only after two white commissioners were defeated? The defeated commissiones lost to black candidates. Senator Taylor was elected in 1978. Why wasn't the bill sponsored then?

Finally, I want this committee to know that I want to see the Voting Rights Act extended to protect the dream that my grandparents had that life could be better for people in Wilcox County. I went to Chicago looking for a better life, but I came back to my roots in Wilcox County because I felt that I had a promise to keep. I came back so that I could show black people and white people that sheriffs can be good people, honest people, gentle people. I came back and allowed myself to be used in service so that the black woman domestics who pulled out $1,000.00 for her bosom to help me get elected can know that I will always protect her rights in Wilcox County just as the Voting Rights Act has made it possible for a basic constitutional right to be realized by both of us.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Sheriff.

Thanks to all of the witnesses for very moving and persuasive testimony. We appreciate it very much.

The gentleman from Illinos, Mr. Washington?

Mr. WASHINGTON. Mr. Reed, the former plan for redistricting the city, has that been submitted for preclearance?

Mr. REED. No, sir; not yet. It has not yet passed the council. It is now in my committee.

We have substituted that plan. The council has not yet voted on it. The mayor has said he has the five votes to stop my plan because we have substituted a new plan for the one the mayor has submitted.

The mayor says he has the five votes to get his plan through.

Of course, if he gets it through, we will then have to oppose it in the Department of Justice.

Mr. WASHINGTON. I am looking at the map. I don't have the figures nor do I have the breakdown, the racial breakdown.

In what way does the mayor's plan remove your seat?

Mr. REED. What happened, the mayor changed district three, in which this courtroom sits, by taking a great portion of this district, placing it in another district, which was not necessary, and placing settled white communities, which do not have a reputation for supporting black candidates, into my district along with placing blacks in my district who are basically from the housing projects where you have children who are not voting—of voting age population.

In fact, in 1970 a council district in Montgomery had roughly 15,000 folks. Now an ideal district would be 19,795, roughly 19,600, given the point deviations.

The mayor took about one-half of my district and just placed it among other districts and put a total new section into my district. This was not necessary at all. That is the way he sought to dilute

the black vote in that particular district, because the mayor can't defeat me.

He wants me defeated. That is the only way he can try to do it.

Mr. WASHINGTON. What percentage of your district is black now?

Mr. REED. In the 1970 census it was 78 percent black. Under the mayor's plan, it would be 62 percent black.

I have not verified the mayor's figures, but under my plan, which the mayor has already verified my figures, it will be 82 percent black.

So the mayor proposes to reduce it from 78 percent black, the way it was in the 1970 census, to 62 percent black.

The key to it is that you are putting children, making up to 62 percent black who are now of voting age population in several communities where the voting age population is much higher in those communities.

Mr. WASHINGTON. And the percent black that he takes out of your district, he puts them into a white district?

Mr. REED. No, sir; what he does, he puts some in a black district and takes some of the other black district and mixes it with whites. He does a combination of three things.

When we annexed the city of Montgomery, it was necessary for all districts to expand. Roughly we have to pick up about 4,700 folks. There had been some shifts in the population. It is very easy, the plan that I submitted—which is this plan—it is very easy to meet the covenant we entered into.

I think that is the most damaging thing about it. When men can't meet—make an agreement and then everybody keep it. I think that part is more damaging than anything else because it places the integrity of the city and the city officials on the line, particularly when the agreement was made to get annexation through.

So the mayor responded by simply coming up with this plan to dilute district three.

Therefore, what is going to happen, there are four blacks on the city council out of nine. If the mayor's plan passes, which he says he has the five votes to pass it, then there would be three blacks on the city council.

No black is going to get elected under the mayor's plan.

Mr. WASHINGTON. The percentage of blacks in the overall area is——

Mr. REED. About 40 percent.

Mr. WASHINGTON. Has it remained the same?

Mr. REED. Yes. The mayor was so upset when the census came out that he was demanding a new census count because he was saying there are too many blacks in Montgomery.

That is what he said.

In fact, he wanted to demand a new count from the census. He said there are just too many blacks.

What the mayor was upset about, there were enough blacks to be put in the district so we could keep both council seats. That is what the mayor ws upset about.

Mr. WASHINGTON. I yield.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Mr. Chairman, I would like to know if the testimony of Mr. Reed was available last evening? Was it?

Ms. DAVIS. No.

Mr. HYDE. Nobody knew the mayor would be as sharply criticized? I am just concerned that the mayor testified first and left. He has been the object—and I don't know whether rightly or wrongly—of a rather serious personal attack.

You know we are going to have to bring him back to respond to this, I would think, if he wants to.

I just wondered whether anybody knew the nature of Mr. Reed's testimony.

I am not criticizing it. I am just saying in all fairness the mayor ought to have a chance to respond.

I would suggest that Mr. Reed's testimony—the transcript be prepared and submitted to the mayor. If he wants to, he can get a chance to respond.

Mr. EDWARDS. Is there objection?

The Chair hears none. So ordered.

Mr. HYDE. I want to say that I have listened with great interest and concern, and I will tell you, registration hours from 9 to 4 is outrageous. It is absolutely designed to keep people who are working and who have difficulty in traveling from registering.

If that persists and exists, it is more than wrong. It is—it would seem to me to—well, I don't want to say too much, but it is more than wrong.

The lack of deputy registrars, only 12 counties have them, demonstrates a clear lack of enthusiasm for getting people registered, obviously.

The location of voting places, if what Mr. Reed says is true—and I don't doubt that it is—is a subtle intimidation of black people and is also wrong.

The lack of blacks working as polling officials is wrong.

On assistance voting, I have very mixed feelings because I can tell you that is very abused up in my area where the polling worker—does the voting for the voter—makes sure they vote for the right party—now, we have heard where it is all done on the table; there is no privacy.

That is outrageous, absolutely outrageous; yet do you want to say something, Mr. Reed, about assistance voting?

Mr. REED. Yes, sir.

One thing, in Alabama a voter has the right to select a person of his choosing to assist him. In other words, John Jones can get his mother, brother, cousin, anyone he wants to take in to help him.

What happens, we have found some resistance from polling officials on this, but the attorney general and the laws have been interpreted to mean that a voter can get the person of his choosing to help him.

Mr. HYDE. I would like—I think that is a good idea. It should be anyone but a polling official.

Mr. REED. Right.

Mr. HYDE. The polling official is there to see you vote right and not to cast the vote for you. That is an abuse in my judgment.

Mr. REED. We agree with you.

Mr. HYDE. These are very serious charges and facts.

I would be most interested in any rebuttal of those that can be made, if indeed it can be made; 9 to 4 to register is absurd.

Thank you.

Mr. EDWARDS. Ms. Bozeman, in Pickens County the legislature has established for, I guess, all of the counties certain registration days.

In other words, the legislature has not established that all days and evenings are appropriate for registration.

Now, that is what we have in my State, which is not necessarily the model for the world, but the Government goes out of its way to provide registration books to what we call floating registrars. They can take them home with them and the purpose is to get as many people to vote as possible.

That is not the practice; the opposite is the practice. Is that correct?

Ms. BOZEMAN. That is correct, sir.

Mr. EDWARDS. Is it really true that finally when in Pickens County black people come to vote that there are law enforcement officers standing by?

Ms. BOZEMAN. It is true, sir.

Mr. EDWARDS. This is not before 1965? This is now?

Ms. BOZEMAN. This is now, in the 1980 election.

Mr. HYDE. Would the gentleman yield?

Mr. EDWARDS. Yes, I yield.

Mr. HYDE. I would say in Chicago, and I think in Cook County, Illinois, that is the practice as well, to have a policeman stationed at the polling place.

Frankly, I look upon that as salutary. It may be different down here, but in places in Chicago things sometimes get pretty heated in polling places.

An officer of the law can be most useful. You don't have to run out and call one. He is right there.

It may be different down here, but I personally welcome, in my jurisdiction, having a policeman in each polling place. They do try to keep things orderly.

Sometimes things get disorderly.

Mr. EDWARDS. Are these black policemen?

Ms. BOZEMAN. They will be on the inside with the weapons taking pictures of people who help assist.

Mr. HYDE. Taking pictures is outrageous. That is nonsense.

Ms. BOZEMAN. It happens.

Mr. HYDE. You ought to charge them a fee for having them take your picture.

Mr. ARNOLD. Mr. Hyde?

Mr. HYDE. Yes, sir.

Mr. ARNOLD. May I address the law official's question?

In a small county, in a rural county, you don't have the resistance that you would have in Chicago, a large city.

Law people normally just as easily stop by; if everything is orderly, he continues on. I think in these counties law officials are used to harass people, to intimidate people, and this is their purpose.

Most people are afraid of the law in these rural counties.

Mr. HYDE. I can see where it would be different. We feel more comfortable, frankly, seeing a policeman sitting in a polling place. They just sit off to the side and read the paper and don't bother anybody, but they are there because it can get pretty contentious, pretty argumentative, pretty hot in the polling places sometimes.

I can see where it could be an intimidating factor too, but I just want you to know it isn't that way everywhere.

I welcome it, frankly, up in my area.

Ms. BOZEMAN. We see them all around, at the voting precinct, on the day of election, and also the day you are trying to register people. When we go in they go in with us.

Mr. EDWARDS. Mr. Patton?

Mr. PATTON. In one county of Alabama, at the primaries, the deputy sheriff was there and the white polling officials did not want the poll watchers to see them count the vote. They said that they did not want to see them breathing down their necks.

When the general election came, or before the general election, I sent a telegram to the sheriff and said to him, "You are the chief lawmaking man in this country." He was running for election.

"Now, unless you see to it that these poll watchers can notice and count the vote, we are going to ask that this election be thrown out and that a new election be held."

He got my telegram and he went over to the Judge of Probate and asked him who was W. C. Patton. The Judge of Probate pretended he didn't know.

Finally he asked somebody else. He says he is with the NAACP.

At that general election, when the election was held and the time to count the vote came, this sheriff was there to tell those persons counting the vote that you have got to let these poll watchers in there to see what you are doing because he is going to have this election thrown out and I want to be re-elected.

The sheriff said, so you have got to let them see it. Otherwise he knew that I could appeal to Mr. Jerry Jones—Mr. Jones in Washington, who is with the Department of Justice, the Voting Rights Section—to ask that we contest that election.

If we hadn't had the Voting Rights Act, and we didn't have the voting rights section there in Washington of the Justice Department, that would have never been made possible.

Ms. BOZEMAN. I would like to add that some of the officers, the policemen, are also polling officials.

We cannot have poll watchers in Pickens County because in 1980 there were some persons manhandled because they were watching.

Mr. HYDE. Would you repeat something? You don't have a secret ballot in Pickens County? You vote on a table in front of everybody?

Ms. BOZEMAN. Yes. Open house. Just like here now.

Mr. HYDE. Does that still go on?

Ms. BOZEMAN. 1980.

Mr. HYDE. Everybody sees how you vote?

Ms. BOZEMAN. Yes.

Mr. HYDE. No booths, no curtains, nothing like that?

Ms. BOZEMAN. In one precinct where there were the Justice Department, the last election, the Presidential election, they had

little curtains in Aliceville, but in other parts of the county, still open house in 1980.

Mr. HYDE. How widespread is that? How many polling places does that occur in?

Ms. BOZEMAN. Give and take about 15.

Mr. HYDE. Does that happen anywhere else in Alabama?

Mr. REED. I am certain there are plenty of places in Alabama where people don't have a booth to vote in, where you vote on the table.

There's plenty of places in the State for that. I can confirm—I cannot confirm how many, but so many that you can't count them all, sir.

Mr. PATTON. In one county where you have the paper ballot, it appears that the polling officials keep a record of the number; that is, your count; you first, second, third, fourth. Those blacks that come in and they vote, and they look at that number, and when the election is over they can tell their white counterparts in there how you voted because the record is kept of how he voted by number.

Ms. BOZEMAN. This happened in Sumter County, Marengo, and Choctaw, open house.

Mr. WASHINGTON. I have a different question.

Ms. BOZEMAN. We can't even take sample ballots.

Mr. WASHINGTON. Mr. Patton, on June 3, in a hearing in Washington, D.C., of this subcommittee, Attorney Fred Gray of Birmingham testified that in many instances the State or counties had failed to preclear certain election changes. My question is, are you structured here in such a way that you can monitor all these changes?

Are you aware, are your voters aware, the people aware, of how they can perhaps—either one? It doesn't make any difference.

Mr. PATTON. At this present time I am not employed as such and I cannot monitor them because I am not employed as such, but I would venture to say if somebody monitored this, they would still find these inequities and these violations and that sort of thing.

Mr. WASHINGTON. I was directing my question to the question of the changes in electoral laws which have to be precleared.

Mr. REED. What you have on that, and we have many legislators here who can bear this out, normally many of these changes you are talking about that have not been precleared, they are basically local bills.

In the Alabama Legislature you have the local courtesy rule. A legislator can introduce a bill for his county, his area.

Nobody checks it. It passes without being looked at.

Sometimes people don't know what they passed. There is virtually no way to keep up with all of them.

In some cases you can find out, you can monitor the paper, you keep up with some of them. Keeping up with all of them is almost an impossibility.

Black members of the legislature can't keep up with every local bill that comes up and what it does.

Mr. PATTON. All of those submitted to the Department of Justice, the Voting Rights Section, I get a copy of them when I get that copy; I try to make the people in local communities aware and ask

them if they have any objections and tell them the time limit that they have in order to register their objections with Washington, the Voting Rights Section.

That is true for all over the country, even in—even in New York and in other States where the voting rights bill affects them.

Mr. REED. Mr. Chairman, on the point that Mr. Hyde made concerning the mayor, I would also request and urge you to ask the mayor to come back.

I think it would be appropriate for him to come back and respond. I would like to hear his responses. I am not being facetious. I would certainly ask that you ask him to come back. I really do.

I think it is a good point. I want to point that out.

Back to the question raised by Mr. Washington. What we did in one instance, as much as we could, we collected as many local bills as we possibly could find. We submitted them to the Justice Department in Washington and asked them to find out how many have been cleared. We found out quite a few had not been precleared.

We still have a lot of local bills now that people are operating under that have not been precleared.

There is no way to keep up with them.

Mr. WASHINGTON. In the last 5 years, there have been objections raised by the Justice Department to 45 changes. There is just no way of knowing how many objections the Justice Department might have raised to bills that they didn't know anything about.

Mr. REED. They have some now—they have confirmed some legal bills that no one objected to because people didn't know about it. When we sent the bills up, I guess it must have been 1½ years ago—don't hold me to that time, within the last 2 years—we sent some bills up that had been passed, particularly involving local bills.

Mr. WASHINGTON. My point is this: We simply do not have an adequate recordkeeping, one, of the number of changes; two, the number of changes which might have been objected to by the Justice Department? We just don't know how deeply this act has cut?

Mr. REED. That is correct, sir.

Mr. WASHINGTON. It might be the Justice Department is just dealing with the surface?

Mr. REED. That is right.

Mr. WASHINGTON. Which argues for an extension of this act so there can be a more assiduous concern, a monitoring of the Justice Department of this?

We don't know the effect of the act?

Mr. REED. By all means.

Mr. WASHINGTON. We say it is the best Civil Rights Act ever passed. That is probably true. It still may not be 40 percent effective, 50 percent. It may be only 5 or 10 percent?

Mr. REED. I would suggest changes in it to correct a lot of concerns.

Rev. Jesse Jackson and several other folks talked about some weaknesses in the law; but right now, since we are trying to hold it, we are not bothering with it.

There are serious weaknesses in the law that could be corrected and ought to be corrected.

Mr. WASHINGTON. It might well be the greatest weakness is the commitment on the part of the Justice Department to make certain commitments.

Mr. REED. Without question. That is one of them.

Mr. EDWARDS. I have a final question for Mr. Patton. Mr. Patton, you spent a great part of your life, of your active, very active life, in this area of voting rights and working for participation of black southerners in the elective process, is that not correct?

What do you think would happen if the Voting Rights Act is not renewed in Alabama?

Mr. PATTON. We would go back to where we were before 1965. It would be a matter of turning back the clock, and all of the inequities, the intimidation, et cetera, would be reenacted; and as I said a few minutes ago, the roots of those evils back yonder are still here and only time and opportunity is needed for them to come back to sprout out and to do the same thing that was done before the 1965 Voting Rights Act was passed.

We would have the same intimidation, the same type of situation; laws would be passed; we would not have representation in our legislature; we would not have representation on our policy-making boards, in our counties, and our cities. It would be simply turning back the clock.

The minds of those who were here have not changed. We have got to look at it, that racism is not dead.

Mr. EDWARDS. Thank you very much.

Are there further questions?

Mr. Hyde?

Mr. HYDE. I don't mean to detract in any way from the important statement you just made. I think we perpetuate an error when we constantly say that if the Voting Rights Act is repealed or expires—I think we have a duty to explain the Voting Rights Act is not about to expire; it is not going to be repealed; only the preclearance sections; that is what we are discussing.

Intimidation of people concerning their voting rights is a crime, under permanent sections of the Voting Rights Act.

The provision of attorneys fees for private parties bringing suit is a permanent provision of the act.

The provision of Federal registrars is a permanent provision of the act.

I just think we demean a lot of strong portions of the act that are staying by saying it rises or falls on preclearance.

I think preclearance is important. More and more I am inclined to think we must retain preclearance; but I do think that we must recognize there are other parts of the Voting Rights Act that are permanent law, that do not expire next year; and that maybe don't go far enough, but they are again from the days of 1965.

Literacy tests are outlawed by the Voting Rights Act. That doesn't expire. That will not be repealed. Poll taxes are outlawed.

Intimidation, obstructing people from voting is a crime, a Federal crime now. That is not going to expire.

The Voting Rights Act doesn't expire. The preclearance provisions only. We are trying to determine whether they should be

extended for 10 years more, not the expiration of the Voting Rights Act. I really think that we use that phrase a little cavalierly when we say the Voting Rights Act is repealed or expired. It is not going to be repealed.

Mr. PATTON. Until a whole lot more funerals are held, you still need the preclearance.

Mr. HYDE. You would agree that there are other provisions in the act that are most useful, would you not, that are permanent law?

Mr. PATTON. I think they are needed and equally as needed as the preclearance.

Mr. HYDE. I thank you. That is a very important statement. Thank you.

Mr. EDWARDS. Well, I thank you too. I have to respectfully disagree insofar as the emphasis that my respected colleague from Illinois made.

It is my opinion that without preclearance, the Voting Rights Act is in real trouble. Voting in this country, and especially in the South, is in real trouble.

Without preclearance, you have an invitation to gerrymander; you have an invitation to at-large voting; you have an invitation to completely disenfranchise the black population like it was before 1965.

Many of the things that my respected colleague mentioned have to do with violations of criminal law that are flaws in practically every State of the Union and Federal law—In the earlier civil rights laws also—and of course violations of the Constitution.

So I don't think we ought to split hairs about it, but I think we would agree—and Mr. Hyde agrees too how important preclearance is.

Mr. HYDE. Let me state that judicial preclearance remains, I might add.

Not to make too fine a point of it, the Voting Rights Act retains judicial preclearance which can be ordered by a court.

What we are really talking about is administrative preclearance. That is the only part that expires. It is an important part, maybe the most important part, but I just think we are a little loose in our language when we say the Voting Rights Act.

A lot of good things are in that act that are permanent law and will stay.

Mr. REED. That is so important, the preclearance. The average person cannot get a lawyer. The judiciary—you can't reach it; you can't get in court. We can't go to court every time there is—not only that, some judges are not always friendly either.

You have to keep that in mind.

Basically the preclearance administrative section is so important, particularly to people who do not have the means to litigate, the time it takes, and so forth.

Mr. HYDE. That is the heart and soul of these hearings.

Mr. PATTON. Every section of this voting rights bill, including the preclearance, is important, and will be important, and will be necessary until a whole lot more funerals are held.

Ms. BOZEMAN. May I read this one statement from the Alabama Code, 17-4125?

Registration required only once. Exception: No person heretofore registered and no person hereafter registered shall again be required to register unless he or she has changed the county of his residence.

Mr. EDWARDS. Thank you very much. I want to thank all of the witnesses.

Mr. EDWARDS. Our next witness is the Honorable Don Siegelman, secretary of state of the State of Alabama.

TESTIMONY OF HON. DON SIEGELMAN, SECRETARY OF STATE OF THE STATE OF ALABAMA

Mr. SIEGELMAN. Thank you, Mr. Chairman.

Congressmen, ladies and gentlemen, thank you for giving me this opportunity to testify on behalf of this most important and historic act.

The Secretary of State in Alabama, as in most States, has a myriad of election functions and is therefore usually referred to as the chief elections officer for the state.

The Secretary of State has responsibility for the form and content of the ballot, supplies, forms, notices, certification of nominees and the official canvass of results.

As the secretary of state, I have frequent contact with various Federal and State officials regarding the enforcement and meaning of Federal and State election laws.

In addition to the perspective afforded me by the official duties of the secretary of state, I have been fortunate to have received a wealth of information from the Alabama Election Law Commission.

The election law commission is an advisory group of citizens appointed by me in 1979 to advise my office of problems in the election process as well as to propose solutions to those problems.

The commission is composed of blacks and whites, women and men, young and old, Republicans and Democrats, labor and business, officials and nonofficials, candidates who won as well as candidates who lost.

More than 1,700 persons have participated in scores of public meetings held throughout Alabama. The information I have gathered at these meetings and through correspondence with election law commissioners has been invaluable in helping me to understand, in a practical way, how the elections process in Alabama works.

Since 1901, as a nation, our philosophy and attitude about politics and participation in government has changed. Both Federal and State laws, and U.S. court decisions have required changes from time to time.

Some of those changes included giving the right to vote to women in 1919, and removing the obstacles of poll taxes, literacy tests, and property ownership requirements.

In 1965, the Federal Government mandated a fair and even-handed policy with respect to the right of all citizens to register and vote.

In 1972, after thousands of young Americans were killed or wounded in the Vietnam war, we extended the right to vote to their peers so that they too could help formulate the national and

international policy in which they would be expected to participate in future years.

An examination of election data during the 1950's and early 1960's provides incontrovertible evidence that the constitutionally guaranteed right of citizenship was still denied to many Alabamans at that time.

In 1956, only 10.3 percent of the voting age blacks in Alabama were registered to vote. In predominantly black Wilcox and Lowndes Counties, there were no blacks registered to vote.

Between July 1964, just prior to the passage of the Voting Rights Act, and March 1968, Alabama saw a 31 percent gain in registered voters. The densely black populated counties of the Black Belt more than doubled their registered voters in all but three of the counties.

Clearly voter registration in Alabama has been greatly affected by the passage of the Voting Rights Act. But this is not the only aspect of the election process which has seen dramatic change. Since 1965 we have seen major increases in the numbers of blacks running for political office and being elected to office.

We have come a long way since the days of standing in the schoolhouse door. Where once Southern whites threatened, intimidated and coerced blacks, Federal officials are now accused of threatening, intimidating, and coercing election officials.

Neither is the correct process for orderly change. When the 1965 Voting Rights Act was passed, after the long struggles which had taken place between black and white citizens in the South and other parts of the country over the emotionally volatile issue of integration, some southerners perceived that there was rejoicing and feelings of vindictiveness on the part of certain Federal bureaucrats who seemed to them to enjoy rubbing the South's nose in it, if you will.

The right atmosphere for change today must be based on mutual understanding of each other's position, and a sense of trust, cooperation and assistance.

For the State-Federal relationship to improve, there must be a demonstrable showing by Federal officials that we have made progress in the South and that problems also exist elsewhere.

The change in philosophy and attitude, no doubt in part due to the 1965 Voting Rights Act and the discussion and debate which encircled it, has broadened the perspective of Alabamans so that there is now a continuous vigil by blacks and whites alike which is witnessed here today, to insure the integrity of the process and the continuation of our democratic system of government.

The question today is whether or not the safeguards built into the 1965 Voting Rights Act are still necessary to protect the rights of citizens to register and vote.

As an example of what could happen, let's just look at one State House district, composed of Perry and parts of Dallas and Marengo counties, with a black population of over 60 percent.

The legislator who is elected is white. None of the counties are predominantly white. Without the protection of the Voting Rights Act there is nothing to prohibit an act of local application being passed by the legislature which obliterates, through a voter reiden-

tification bill, the voting population of those counties which have the highest black population.

Even if such voter reidentification bills are not racially motivated, if the Voting Rights Act is not extended, the bill could be administered to the disadvantage of citizens without much real fear that their prejudiced action would ever be challenged.

In fact, one such bill did pass, reducing the combined black population for this district to 45.4 percent.

Blacks in rural Alabama are often the poorest people in their community. Transportation to polling places and registration places is extremely limited. Purchasing newspapers which announce voter reidentification programs is a very low priority to poor people, coming well after buying food, clothing, and providing shelter.

Members of minority groups and poor people often obtain inferior education and therefore are unable to read public notices, or make a calendar note of the date, time, and place of public meetings.

More often than not, opportunities for reidentification are held at a time and place which is not convenient, or in places where members of minority groups may not feel welcome.

It has been recognized that voter reidentification programs are outdated methods of trying to clean voter registration lists of dead people, duplicates, felons, and others who should not be on the list.

With reidentification, we throw out the baby with the bath water by removing qualified registered voters at the same time we take off the list persons who are no longer qualified.

This puts an added burden on certain groups of people. In this past legislative session in Alabama, there were many such bills introduced and passed.

It is my fear, and the fear of many others in Alabama, that voter reidentification could severely threaten and undermine the democratic system and concept of one person/one vote.

Legislation which would purge voting lists throughout the State in a fair and concise manner was introduced to the State house and senate this past session.

This legislation would have provided for a statewide voter file maintenance system to insure that deceased persons, and persons who have moved and reregistered in different counties, or who have been convicted of disqualifying crimes, would automatically be purged from voting lists.

Unfortunately, the need to maintain more accurate voter lists was seen as important only in certain counties.

The Federal Government is coming to Alabama on issues of overcrowded prisons, mental health, reapportionment, and voting rights. Each time it has been brought on by a handful of powerful legislators who refuse to act in a responsible manner.

As a result, the entire State has to suffer.

Here we are in 1981 still talking about voter registration problems. If election law reform legislation would pass the Alabama legislature, we could solve our own problems and put our own house in order.

Unfortunately, a couple of reactionary, shortsighted, white legislators coming from predominantly black districts have been able to

stop election law changes that would be able to bring our voting rights laws up to date and make the voting rights extension unnecessary for Alabama.

Voting list maintenance is just one area where local officials need assistance.

Some problems could be avoided in the first place if there were proper training programs, training aids, and job aids for officials charged with election responsibilities.

Complaints of this nature which are now being filed with the Justice Department would be eliminated before they arise.

Not only would such assistance facilitate compliance and save valuable employer time, it would also help create a closer working relationship between Federal and local officials.

It is time the Federal Government offered a helping hand rather than the back of the hand to local election officials.

The Federal Government needs to provide assistance to states from which it expects compliance with the Voting Rights Act. A simple and easy to understand form furnished by the Federal Government to the secretaries of state, and then forwarded to counties and municipalities within the State, would facilitate initial submission requirements under the act.

Federal funding to establish and maintain election statistics, as well as demographic data, which could be made available to local and county officials, would do much to aid local officials in their ability to respond to questions put to them by Federal officials.

The preclearance provisions are necessary and should be applied to any jurisdiction in any part of the United States where laws or procedures seem to limit citizen participation in the electoral process but, once the available data indicate that barriers no longer exist, preclearance should no longer be required.

Federal and State officials need to move from an adversary relationship to one of cooperation. Local officials are in desperate need of resources and assistance from the State and/or Federal Government if they are expected to fully comply with the provisions of the Voting Rights Act.

Changes need to be made in the triggering formula for preclearance to take into account changes in demographics and voter participation.

I hope these recommendations can be given careful thought and consideration by this committee.

But, despite the shortcomings of the act and its implementation, the extension of the Voting Rights Act is a minimum effort which must be made to protect the right of all Americans to exercise their constitutionally guaranteed right to freely participate in the affairs of their government.

The federal government has come into Alabama on the issues of overcrowed prisons, mental health, reapportionment and voting rights—each time such has brought on by a handful of powerful legislators who refuse to act in a responsible manner. As a result, the entire State has to suffer.

Here we are in 1981 still talking about voter registration problems. If election law reform legislation would pass the Alabama Legislature we could solve our own problems and put our own house in order. Unfortunately, a couple reactionary, short-sighted,

white legislators, coming from predominantly black districts, have been able to stop election law changes that would bring our laws up-to-date and probably would make the Voting Rights Act unnecessary for Alabama.

Mr. EDWARDS. Thank you very much, Mr. Secretary of State.

[The prepared statement of Mr. Siegelman follows:]

PREPARED STATEMENT OF DON SIEGELMAN, SECRETARY OF STATE, STATE OF ALABAMA

STATEMENT REGARDING EXTENSION OF THE VOTING RIGHTS ACT

Ladies and gentlemen, thank you for giving me this opportunity to testify on behalf of this most important and historic Act.

Holding public office gives one a viable forum from which to address such issues. Public officials have a special responsibility to use that forum to address issues which have a relationship to their office. The more important the issue, usually the more controversial, and hence, the more political risk associated with the issue.

It is critical that these controversial issues be addressed, not avoided. Otherwise, the holding of public office becomes nothing more than a tool for self-gratification, or for selfish special interests.

The thoughts that I wish to share with you today may not please either the political Right or the political Left. They are certainly not intended to please everyone or any one particular group. Rather, I will present my honest assessment of where we are in our political and philosophical development, and, my realistic views of what should be done to preserve the intended state-federal relationship, while at the same time protecting the right of all qualified citizens to vote and fully participate in our governmental system.

Mine is a moderate proposal, enlightened by my years of political involvement before I was elected to public office and tempered by the knowledge I have gained since having been elected the Secretary of State for the State of Alabama.

I served as Executive Director and General Counsel for the state Democratic Party from June, 1973 to December, 1977 which provided me with a unique vantage point, revealing very serious problems affecting elections in Alabama. Because I was concerned about these election law problems and because of my background, I ran for Secretary of State, believing that I could propose meaningful and creative changes which would be of benefit to all the people of Alabama.

The Secretary of State in Alabama, as in most states, has a myriad of elections functions and is therefore usually referred to as the Chief Elections Officer for that state. The Secretary of State has responsibility for the form and content of the ballot, supplies, forms, notices, certification of nominees and the official canvass of results. As the Secretary of State, I have frequent contact with various federal and state officials regarding the enforcement and meaning of federal and state election laws.

Voter registration in Alabama is handled by a three-person Board of Registrars in each of the 67 counties. The Secretary of State is charged with the responsibility of furnishing all forms, supplies and notices to the Boards. In addition, the Secretary of State is to receive from the Boards of Registrars voter registration data on a periodic basis. Such reports include the total number of registered voters immediately preceding each election.

In addition to the perspective afforded me by the official duties of the Secretary of State, I have been fortunate to have received a wealth of information from the Alabama Election Law Commission. The Election Law Commission is an advisory group of citizens appointed by me in 1979 to advise my office of problems in the election process as well as propose solutions to those problems. The Commission is composed of blacks and whites, women and men, young and old, Republicans and Democrats, labor and business, officials and non-officials, candidates who won as well as candidates who lost. More than 1,700 persons have participated in scores of public meetings held throughout Alabama. The information I have gathered at these meetings and through correspondence with Election Law Commissioners has been invaluable in helping me to understand, in a practical and concrete way, how the elections process in Alabama works.

I have recited for you some of my background and the experience from which my perspective has developed. Before I share with you my recommendations regarding the future of federal voting rights legislation, I would first like to review some of the legal and political history of voter participation in Alabama.

As you ladies and gentlemen are perhaps aware, when the Constitution of Alabama was adopted in 1901 it was done so with the specific purpose of disenfranchising certain citizens. One had to be white, male, 21 years of age and own property to vote. Not only could black people not vote, neither could women, young people, nor those who rented property. The poll tax and literacy tests were also created as further barriers to registration and participation in government.

Since 1901, as a nation, our philosophy and attitude about politics and participation in government has changed. Both federal and state laws, and United States court decisions have required changes from time to time. Some of those changes included giving the right to vote to women in 1919, and removing the obstacles of poll taxes, literacy tests, and property ownership requirements. In 1965, the federal government mandated a fair and even-handed policy with respect to the right of all citizens to register and vote. In 1972, after thousands of young Americans were killed or wounded in the Vietnam War, we extended the right to vote to their peers so that they could help formulate the national and international policy in which they would be expected to participate in future years.

Although changes were occurring nationally, the evolution of attitudes in the South, and in Alabama, came more slowly. An examination of election data during the 1950's and early 1960's provides incontrovertable evidence that the constitutionally guaranteed right of citizenship was still denied to many Alabamians.

In 1956, only 10.3 percent of the voting age blacks in Alabama were registered to vote. In predominantly black Wilcox and Lowndes Counties, there were no blacks registered to vote, yet potential black voters amounted to 8,218 in Wilcox County and 6,512 in Lowndes County.

Two years later, in 1958, blacks in Macon County petitioned the Civil Rights Commission to study discriminatory practices used in voter registration. At that time, the population of Macon County was approximately 32,000, of which 27,000 (or 84 percent) were black and 5,000 were white. However, out of the 3,170 registered voters only 1,070 were black, less than 4 percent of the black population. Of the white population, on the other hand, 42 percent were registered. When Civil Rights Commissioners were called in to study the issue, the Board of Registrars refused to let them examine their voter registration records.

During the period from 1960 to 1965, Alabama was the site of much racial unrest resulting largely from inferior treatment of blacks in the area of voting rights. The record clearly shows that, very often, the only recourse blacks had was to turn to the federal government.

In 1960, the Supreme Court ruled in *Gomillion* v. *Lightfoot* that gerrymandering (drawing district lines in a way which denies a minority group representation) constituted a denial of suffrage, which violated the 15th Amendment.

In 1964, the Civil Rights Act was ratified and the Supreme Court ruled in *Reynolds* v. *Sims* that Alabama, among other states, was not apportioned properly and ordered the state to reapportion.

Finally, in 1965, prior to the passing of the Voting Rights Act, Alabama was the site of the famous Selma to Montgomery march, led by Dr. Martin Luther King, which illustrated and dramatized the plight of the disenfranchised blacks.

Between July 30, 1964, just prior to the passage of the Voting Rights Act, and March 1, 1968, Alabama saw a 31.4 percent gain in registered voters. The densely black populated counties of the "Black Belt" more than doubled their registered voters in all but three of the counties. The following chart illustrates the registration trends in predominantly black Alabama counties over the past two decades:

County	Percent black	Number of registered voters					Percent increase since 1960
		1960	1966	1968	1970	1980	
Bullock	68	3,732	5,886	6,136	6,620	8,919	139
Dallas	55	9,437	22,941	23,398	24,238	32,171	241
Greene	78	2,372	5,500	5,448	5,500	7,448	214
Hale	63	4,125	9,000	8,793	8,500	8,724	112
Lowndes	75	2,325	5,282	5,880	6,215	10,869	367
Macon	85	7,111	11,000	10,691	8,318	15,418	117
Marengo	53	6,455	13,065	12,901	13,567	17,090	165
Perry	60	4,000	8,935	8,576	8,306	9,800	145
Sumter	70	3,942	7,826	8,003	8,115	12,500	217

County	Percent black	Number of registered voters					Percent increase since 1960
		1960	1966	1968	1970	1980	
Wilcox	69	3,050	8,453	8,453	8,518	12,500	310

Clearly voter registration in Alabama has been greatly affected by the passage of the Voting Rights Act. But, this is not the only aspect of the election process which has seen dramatic change. Since 1965 we have seen major increases in the numbers of blacks running for political office and being elected to office.

In 1966, Dr. John Cashin, a black dentist from Huntsville, organized the National Democratic Party of Alabama (NDPA), with the goal of registering blacks to vote, and electing blacks to local, state, and party offices, By 1960, four of five Commissioners elected in Greene County were NDPA candidates. In 1970, three blacks were elected to the State Legislature, the first since the Reconstruction period. Currently, there are three black members of the State Senate and 12 members of the State House of Representatives. Blacks now hold many county and city positions throughout the state and participate to a great extent in activities of the major political parties in Alabama.

There is no doubt that the Voting Rights Act of 1965 was responsible for improvements in the elections process in Alabama. The dramatic changes in the numbers of blacks being registered, participating as candidates, and holding elective office, is evidence that previous methods of disenfranchising the black voter have been effectively dealt with. The facts, election and voter registration data, speak for themselves.

We have come a long way since the days of standing in the school house door. Where once Southern whites threatened, intimidated and coerced blacks, federal officials are now accused of threatening, intimidating, and coercing Southern election officials. Neither is the correct process for orderly change. When the 1965 Voting Rights Act was passed, after the long struggles which had taken place between black and white citizens in the South and other parts of the country over the emotionally volatile issue of integration, some Southerners perceived that there was rejoicing and feelings of vindictiveness on the part of certain federal bureaucrats, who seemed to them to enjoy rubbing the South's nose in it, if you will.

This perceived "holier than thou" attitude and unjustified, boastfully expressed self-righteousnes by politicians in other parts of the country and federal officials, left as much as a bad taste in many a Southerner's mouth as did the days after Reconstruction.

The right atmosphere for change today must be based on mutual understanding of each other's position, and a sense of trust, cooperation and assistance. For the state-federal relationship to improve, there must be a demonstrable showing, by federal officials that we have made progress in the South and that problems also exist elsewhere.

Blacks are registered and will continue to be registered throughout the state of Alabama. The change in philosophy and attitude, no doubt in part due to the 1965 Voting Rights Act and the discussion and debate which encircled it, has broadened the perspective of Alabamians so that there is now a continuous vigil by blacks and whites, which is witnessed here today, to ensure the integrity of the process and the continuation of our democratic system of government.

The question today is whether or not the safeguards built into the 1965 Voting Rights Act are still necessary to protect the rights of black citizens to register and vote.

While I personally believe that most Alabama election officials are scrupulously honest, fair and non-prejudiced in their respnsibilities relating to voter registration, it would be unreasonably, and dangerously, naive for us to assume that there are not those who would manipulate the political system to maintain their political power, perhaps not on the basis of race or solely on the basis of race, but for their own selfish, egotistical or financial gain. The Voting Rights Act continues to serve as a deterrent for those few who would seek to intentionally deny black citizens the right to vote or to dilute it through legislative reapportionment or other schemes.

As an example of what could happen, let's just look at one state House district, composed of Perry and parts of Dallas and Marengo counties, with a black population of 60.5%. The legislator who is elected is white. None of the counties are predominantly white. Without the protection of the Voting Rights Act there is

nothing to prohibit an Act of local application being passed by the Legislature which obliterates, through a voter "reidentification" bill, the voting population of those countries which have the highest black population. Even if such voter reidentification bills are not racially motivated, if the Voting Rights Act is not extended, unscrupulous officials could administer the bill to the disadvantage of citizens without much real fear that their prejudiced action would ever be challenged.

In fact, one such bill requiring the voting population of Perry County to "reidentify," was passed. 60.2% of the citizens of Perry County are black. By removing those citizens, the combined black population for this district is lowered to 45.4%. It is apparent that it will be more difficult for the poor, for the black voters in that district, to become reregistered, even if we assume an even-handed, policy with respect to acceptance of white and black voter registration applications.

Blacks in rural Alabama are often the poorest people in their community. Transportation to polling places and registration places is extremely limited. Purchasing newspapers which announce voter "reidentification" programs is a very low priority to poor people, coming well after buying clothing and providing shelter. Members of minority groups and poor people are often victims of inferior education and therefore are unable to read public notices, or make a calendar note of the date, time and place of public meetings. More often than not, opportunities for "reidentification" are held at a time and place which is inconvenient, or in places where members of minority groups do not normally feel welcome.

It has been recognized that voter "reidentification" programs are outdated methods of trying to clean voter registration lists of dead people, duplicates, felons, and others who should not be on the list. With reidentification "we throw out the baby with the bath water" by removing qualified registered voters at the same time we take off the list persons who are no longer qualified. This puts an added burden on certain groups of people. In this past legislative session in Alabama, there are many such bills introduced and passed.

Let's take a look at the demographics of three counties for which voter "reidentification" bills have been enacted:

(1) Perry County: 60.2 percent black.
(2) Sumter County: 69.5 percent black.
(3) Wilcox County: 68.9 percent black.

These three state Acts passed by the Alabama Legislature would force voters in three predominantly rural counties to "reidentify" themselves prior to voting in the next elections. These bills, in my opinion, have an extremely adverse effect on the elections process in this state and can be construed to revoke the voting rights of many citizens of those counties.

Acts dealing with voter reidentification in Sumter and Perry counties carry an unfair burden: The hours required by this legislation for reidentifying are prohibitive to most people. The legislation requires that Boards of registrars meet only between the hours of 9:00 a.m. and 4:00 p.m., hours when most people work. The legislation also requires that notice of reidentification dates and places be announced in only one newspaper. These county newspapers are aimed at a particular reading public and are not read by the entire citizenry.

A third objection to this legislation is that "proof" of voting eligibility is defined by the members of the Board of Registrars, and could be arbitrarily enforced.

Finally, there are no provisions for reidentifying electors who are unable to visit the reidentification site, whether they are ill, handicapped, elderly, unable to find or afford transportation.

Act 81-383, requiring reidentification of voters in Wilcox County, is far more ominous than the first two mentioned. Section 3 of this Act requires that registrars meet "as provided by law at least once, and more often if necessary". Conceivably, if the Board determined that only one meeting was necessary, a vast percentage of the voting population could be purged after holding one seven hour session. Compounding this problem, this Act does not specify "where" each meeting of the Board shall be held. Thus, by virtue of this reidentification law, the Board could hold its meetings at a private club, residence or other locations inconvenient to vast sections of the black population.

Once again, the hours required for reidentification are between 9:00 a.m. and 4:00 p.m., impractical for working people.

Section 5 (a) states that a person may reidentify only by "answering such questions and submitting such proof as may reasonably be required by the board or one of their duly authorized employees". This is an arbitrary method for determining eligibility and may not be uniform in its application.

81-383 does provide for reidentification of infirm voters. However, Section 5 (b) requires a written request be made, by the elector, for forms from the board. This requires that the elector be able to read and to write. A further requirement is that

a doctor's certificate, stating that the elector cannot appear in person to reidentify, accompany the reidentification form. An undue financial burden may be placed on the elector since a doctor frequently requires an office visit, even of regular patients, to write such certificates, and often if no visit is required, a fee is charged for filling out such a form.

Section 9 requires that in re-identifying as a registered voter, one must provide a social security number and driver's license number. Many people living in rural communities do not have jobs which are covered by the Social Security Act and have never applied for a number. Many people do not drive and therefore do not have a driver's license. As a result, failure to drive an automobile or have a Social Security card could become grounds to deny voting rights.

It is my fear, and the fear of many others in Alabama, that voter reidentification legislation severely threatens and undermines the democratic system and concept of one person-one vote.

While this legislation may not have been passed to intentionally deny black citizens the right to vote, it is easy to see that it could have the effect of diluting black voting strength in three state House districts which have a predominately black population, but where legislation would adversely affect black voting strength but where such legislation was not necessarily racially motivated, the Voting Rights Act serves as a safeguard, a measure of protection which would not otherwise be available.

Legislation which would purge voting lists throughout the State in a fair and concise manner was introduced to the State House and Senate this past session. This legislation would have provided for a statewide voter file maintenance system to ensure that deceased persons, and persons who have moved and reregistered in different counties, or who have been convicted of disqualifying crimes, would automatically be purged from voting lists. Unfortunately, the need to maintain more accurate voter lists was seen as important only in certain counties. Re-identification was the method chosen by the Legislature to be used in those counties.

While I strongly oppose reidentification legislation because it requires extra work, finances, and places burdens on those people who can least afford it, we must recognize the difficulty which faces Boards of Registrars who try to maintain up-to-date lists.

In our society, where citizens frequently move from state to state, if is difficult to maintain a clean and up-to-date list of registered voters. The Census Bureau has estimated that several million people move from state to state each year. In addition, of course, people move from county to county and across precinct lines within a county in the course of a year. In Alabama, it is estimated that in excess of 100,000 voters change their residence annually. Some people lose their voting rights because of the commission of certain crimes. Others die in another county or outside the state. All of these activities make for a job that is virtually impossible for the Boards of Registrars in Alabama, since each Board has a separate and independent system of its own. It is therefore impossible for the Board in one county to know if a citizen is also registered in every neighboring county, nor is there any way to verify whether or not that person may have voted in all the counties in which he or she might be registered.

Maintaining an up-to-date and accurate voter registration list is so important to the majority of the electoral process, that I feel that states and counties under the Voting Rights Act should be given financial assistance for list maintenance. If this were done it would eliminate the need for voter reidentification programs, reduce the possibility of vote fraud and consequently reduce complaints being filed with the Justice Department under Section 5 of the Voting Rights Act.

Voting list maintenance is just one area where local officials need assistance.

One of the complaints received as an outgrowth of this last election emerged from Sumter County. Sumter has a population which is approximately 69.5 percent black and 30.5 percent white. There was a voter registration drive in Sumter County, and as a result, a complaint was filed with the Justice Department against the Board of Registrars alleging that more information was being required at the time of registration than was called for constitutionally or statutorily. My office intervened to help solve the problem. On the surface this problem appeared racially motivated. However, the Board of Registrars was not deliberately trying to prevent people from registering, but simply had unanswered questions. They were trying to handle the situation as best they could. Since there was a place on the voter registration form for the voter's social security number, the Board assumed it was required and refused to register voters without one.

Some problems could be avoided in the first place if there were proper training programs, training aids and job aids for officials charged with election responsibilities. Complaints of this nature which are now being filed with the Justice Depart-

ment would be eliminated before they arise. Not only would such assistance facilitate compliance and save valuable employee time, it would also help create a closer working relationship between federal and local officials.

It is time the federal government offered "a helping hand" rather than the "back of the hand" to local election officials. In the past, some federal officials seemed to have enjoyed making impossible demands on Southern election officials when questions under Section 5 of the Voting Rights Act emerged. Impossible documentary demands have been made to justify the passage of simple annexation laws. No simple forms have been made available and no federal help has been forthcoming to assist election officials to comply with the demands of the Voting Rights Act. Information concerning a specific breakdown of black/white population in a certain portion of a city, comparison of box-by-box election results of black participation in elections, as well as other demographic requirements apt to justify the passage of certain Acts, places an impossible demand on the local official who barely has enough money in his or her budget to make ends meet as it is.

The federal government needs to provide assistance to states from which it expects compliance with the Voting Rights Act. A simple and easy-to-understand form furnished by the federal government to the Secretaries of State, and then forwarded to counties and municipalities within the state, would facilitate initial submission requirements under the Act.

Federal funding to establish and maintain election statistics, as well as demographic data, which could be made available to local and county officials, would do much to aid local officials in their ability to respond to questions put to them by federal officials.

In addition, the federal government has a greater responsibility in the elections process than it has been willing to accept. States and counties bear the entire financial burden of not only responding to questions arising out of the submission of an Act under Section 5 of the Voting Rights Act, but also for every federal election. Every two years we have a general election which includes candidates for Congress. Every 6 years we elect U.S. Senators. Every 4 years we have elections for delegates to the national conventions and candidates for President and Vice-President. Ballots are printed, elections supplies are ordered, voting machines are purchased, and elections officials are hired to conduct and election, for which the state and county pay the entire economic cost. In my judgment the federal government should bear some of the financial responsibility for elections.

While I realize that Congress is unlikely to consider modifications to the Voting Rights Act during its current session, I would like to suggest one additional improvement that I hope we can work toward. In my judgment, the trigger mechanism for section 5 preclearance should be a formula which is continuously updated. All federal elections throughout the country should be monitored, and as it becomes available, new census data should be analyzed, to determine which voting jurisdictions should fall under the provisions of the Act. For example, there are many counties in Alabama where voter participation problems are far fewer than in the past and, in my opinion and demographically, do not justify the use of the preclearance procedures. If an examination of current voting and census data suggests that systematic barriers to participation no longer exist in a given jurisdiction, then that area should be exempted from the preclearance provisions. If on the other hand, current data indicate systematic exclusion is occuring in a jurisdiction not previously covered, that area should be subject to preclearance requirements.

My point is simple: the preclearance provisions are necessary and should be applied to any jurisdiction in the United States where laws or procedures seem to limit citizen participation in the electoral process, but, once the available data indicate that barriers no longer exist, preclearance should no longer be required.

Justice Oliver Wendell Holmes stated that "the right to vote is our most precious right." And, indeed it is since all duties and responsibilities as well as our rights and freedoms stem from our right to vote. And, all problems that we face can be solved, or exacerbated, by the people we put into public office. Attempts to thwart the will of the voter, or to subvert our democracy by tampering with the elections process, by restraining, diluting or denying the right of qualified citizens to register and to vote, cannot be tolerated.

If the right to vote is important to be protected for blacks in Alabama, certainly that right to vote is precious enough to be protected for blacks in Massachusetts or Chicanos in New Mexico and Texas or Native Americans in Arizona, or Puerto Ricans in New York. Any Acts which affect the right to vote should be looked upon with the utmost care and scrutiny, whether they are in the South, the North, East, or West.

The Voting Rights Act sometimes has been applied in a heavy-handed and vindictive manner. Federal and state officials need to move from an adversary relation-

ship to one of cooperation. Local officials are in desperate need of resources and assistance from the federal government if they are expected to fully comply with the provisions of the Voting Rights Act. Changes need to be made in the triggering formula for preclearance to take into account changes in demographics and voter participation.

The federal government has come in to Alabama on the issues of overcrowded prisons, mental health, reapportionment and voting rights—each time such has been brought on by a handful of powerful legislators who refuse to act in a responsible manner. As a result, the entire state has to suffer.

Here we are in 1981 still talking about voter registration problems. If election law reform legislation would pass the Alabama Legislature we could solve our own problems and put our own house in order. Unfortunately, a few reactionary, short-sighted, white legislators, coming from predominantly black districts, have been able to stop election law changes that would bring our laws up-to-date and probably would make the Voting Rights Act unnecessary for Alabama.

I hope these recommendations can be given careful and thoughtful consideration by this committee at an appropriate time. But, despite the shortcomings of the Act and its implementation, the extention of the Voting Rights Act is a minimum effort which must be made to protect the right of all Americans to exercise their Constitutionally guaranteed right to freely participate in the affairs of their government.

Mr. EDWARDS. Mr. Washington?

Mr. WASHINGTON. Yes.

Mr. Siegelman, I have had a bit of trouble focusing on your statement here. You have two before us and you amended the second one.

I have been bouncing back and forth trying to keep up with you.

Did I understand you to suggest that racial motivation was not a factor in the reidentification bills?

Mr. SIEGELMAN. I am saying that that has yet to be shown, but the practical effect of at least one of those bills is that it substantially reduces the black combined population of that legislative district from which a white legislator has been elected.

Mr. WASHINGTON. As you know, in cases like this, the intent has to be garnered from the available objective evidence.

What we have here is that five of the seven counties designated for reapplication have a black population of over 50 percent, Sumter, Wilcox, Perry, Lowndes, Tuscaloosa, Dallas, and Winston.

Is that coincidental?

Mr. SIEGELMAN. Going back to my statement, there are a couple of legislators who are eleted from predominantly black districts who are in powerful positions in the Alabama House of Representatives who have opposed a statewide voter file maintenance system which would eliminate not only the need, but would specifically repeal voter reidentification bills.

In my judgment the statewide voter file maintenance system bill should be passed and if it were passed it would eliminate these complaints from the State of Alabama going to the Justice Department.

My position is, if the State of Alabama does not create such a system and if we remain under the provisions of the Voting Rights Act, the Federal Government should offer us that help so that we can solve those problems here in Alabama and eliminate the problem from which complaints arise.

Mr. WASHINGTON. But the problem is that certain legislators, white, if you will, conduct themselves in such a way that one has to assume that their purpose is to dilute black votes.

For example, my allusion to the five out of seven counties, one has to look at revocation as it has been applied in Alabama as a tool to dilute black representation.

You certainly can't look at it any other way.

Those few, as you indicated, who do this make it hard for the good guys like you who maintain you want to straighten this matter out.

It makes it difficult to go along with your statement at page 20 where you say my point is simple.

The preclearance is unnecessary and should be applied to any jurisdiction where laws seem to limit citizens' participation in the electoral process, but once the available data indicate that barriers no longer exist, preclearance should no longer be required.

What available data do you have to indicate that Alabama no longer has this problem in contradiction to these reidentification bills, which have passed in several of the black counties?

Mr. SIEGELMAN. What I am saying, sir, is there are certain counties in Alabama which in my judgment do not justify being included under the preclearance——

Mr. WASHINGTON. That came because the Federal Government wasn't dealing with the counties. It was dealing with the State.

The Congress was very aware—you were dealing with the concept of States rights. They imposed that burden on the States, the theory being that the State would police its own internal affairs.

There are various political geographical subdivisions. They in turn would wipe out these things. Many of the States have not done that. They have let these counties go along as they please and do as they please.

Now, well-meaning people like yourself come to us and appear and say, we want to bail out. County X is a clean county. Look at our record. You see?

Then you have seven or eight counties where that is not true. The States have not lived up to their responsibility.

Let us have no confusion about the power of Congress in this matter. The 15th amendment is clear. It couldn't be clearer.

For the first time in 1965 the Voting Rights Act seriously implemented it. The purpose overrides State individual conduct.

There is a Federal standard of conduct. What the Federal Congress was trying to do was bring certain States up to that level of standard. They haven't done it.

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

We have five more witnesses this morning. In fairness to the witnesses who remain this morning, the Chair will impose the House rule of 5 minutes.

Mr. WASHINGTON. You caught me in midair, Mr. Chairman. But that is all right.

Did you want to respond briefly?

Mr. SIEGELMAN. My response would be that there are counties in Alabama which, in my judgment, should not be included under the preclearance provisions.

If we are to remain under the Voting Rights Act, I think that State or Federal help should be provided so that in responding to questions which perhaps emanate from an annexation law, local officils will be provided with the democratic data, the statistical

data which they need to answer the questions put to them by Justice Department officials.

Again I think that the preclearance provisions are necessary, but that for us to create the type of atmosphere that I think we all wish, then I think that that relationship between the State and Federal officials needs to be based on trust and cooperation and understanding of where each other is.

Mr. WASHINGTON. I will subscribe to that.

One quick question.

As I indicated before at one of our hearings, Attorney Gray from Birmingham made the statement that the State of Alabama had failed or certain counties had failed to submit certain changes for preclearance. As the secretary of state in this great State, don't you feel it your responsibility, since you are in charge of the electoral machinery of the State to monitor every county, every township, every hamlet, every city, to make certain that any changes in election laws are precleared?

Don't you think that is your responsibility?

Mr. SIEGELMAN. No. One, if we had the appropriate assistance, which I addressed in my 22-page statement, I think that could be done. I think that it is unnecessary in certain counties because I don't believe their past history or present demographic data warrants their being included under the Voting Rights Act.

I think there are counties which should remain.

As I said, I think the preclearance provisions are necessary until we are able to solve these remedial election problems which would make complaints virtually nonexistent.

Mr. WASHINGTON. But the responsibility is yours by virtue of your own statement?

Mr. SIEGELMAN. No. The responsibility as a statutorily constructed matter is not mine; but in Alabama we have a very decentralized system of elections which is perhaps part of our problem.

The responsibility for municipal elections is solely within the municipality itself. The chief elections officer for municipal elections is the city clerk.

For counties it is the probate judge. For State elections, it is the secretary of state.

Mr. WASHINGTON. The 1965 Voting Rights Act acts upon the State of Alabama. You are the chief electoral officer of the State of Alabama?

Mr. SIEGELMAN. Not—as a practical matter, yes. As a legal matter, as I mentioned, the responsibility is extremely decentralized. We have a system which places a responsibility on the Attorney General. We have a system that places part of the elections function on the Governor; part on district attorneys, part on the boards of registrars, part on county clerks, part on city clerks, part on the sheriff.

It is because of this decentralized nature of Alabama's election laws that I think part of our problems arise in the administration of the laws.

Mr. WASHINGTON. This is a Federal law, Mr. Siegelman. This is a Federal law. If the chief electoral officer of the State doesn't at least inform and monitor these various political subdivisions, how can you expect the subdivisions to comply?

How can you even advocate modifying the Voting Rights Act when the chief electoral officer of the State hasn't done all he can do to make sure that act is in force?

Mr. SIEGELMAN. I would differ with you in the respect that the secretary of state's office has not done everything he could possibly do to improve the elections process.

We have continuously submitted—legislation—we have continuousy submitted legislation to the proposed legislation to the Alabama Legislature which would make it easier for people to register and easier for people to vote.

We have submitted legislation to the Alabama Legislature that would systematically and fairly remove dead people and duplicates and remove the need for voter identification programs.

We have submitted legislation which would provide for an instituted training program for election officials so they would know what questions to ask of potential voters so that the rights of voters would be fully protected.

We have proposed a number of reforms which I think, if they were enacted, would make this act virtually unnecessary in the State of Alabama.

Mr. WASHINGTON. The point is, the reforms haven't taken hold? The witnesses' testimony——

Mr. SIEGELMAN. In some counties, as I mentioned, there are at least two Alabama Legislators who have been vehemently opposed to remedial reforms in the elections process. They are white legislators coming from black districts. If the reforms are passed, they probably will not be back in 1982. They are acting perhaps not out of racial motivation, but perhaps out of selfish, political self-survival, but the result of their act is still the same; that the entire State is having to suffer for the acts of those few people.

There are counties in Alabama that are having to justify annexation laws in my judgment that perhaps should not be.

Mr. EDWARDS. Mr. Hyde?

Mr. HYDE. Is open house voting illegal in Alabama?

In other words, the failure to provide a secret ballot? Is that against the law?

Mr. SIEGELMAN. Yes. Except we had a—up until this last election we had a provision with respect to absentee ballots which required voters to sign his or her ballot.

Alabama was the only State that required voters to sign his or her absentee ballot. We were able to have a provision passed by the Alabama Legislature to insure the secrecy of absentee ballots. The paper ballots are numbered. There is a seal placed over that number.

The ballot, after it is cast by the elector, is to be placed in a sealed ballot box only to be opened, counted, and then resealed and never opened except in the case of contests.

To open that box, or to examine it, to remove the seal, is a violation of State law.

Mr. HYDE. Were you here when the testimony of the previous panel occurred and they said that they don't have a secret polling place? They have to vote on a table in front of everybody?

Mr. SIEGELMAN. State law requires that each voter be provided a proper place for casting a secret ballot.

Mr. HYDE. Obviously that State law is not obeyed in those counties and places where they must vote on the table?

Mr. SIEGELMAN. If that is occurring, that is a violation of State law.

Mr. HYDE. Does the attorney general of the State of Alabama have the legal authority to enforce that State law?

Mr. SIEGELMAN. Certainly. The district attorneys in that district also have that responsibility. They share that responsibility.

The district attorneys in Alabama are elected, of course.

Mr. HYDE. Is the attorney general appointed?

Mr. SIEGELMAN. He is also elected.

What I am saying is, it is sometimes difficult as a political matter for a district attorney—this is their perception: It is difficult to enforce the laws against the people you expect to vote for you in the next election.

Mr. HYDE. But the attorney general for the State of Alabama represents all the people of Alabama. He ought to have the resources to start doing something about these kinds of conduct. These violations of law.

Mr. SIEGELMAN. Obviously all of the laws of the State ought to be enforced with that same vigor. I happen to think the right to vote is our most precious right since all our duties and responsibilities emanate from that and therefore it should be carefully and especially protected.

Mr. HYDE. I agree with you.

Thank you.

Mr. EDWARDS. Thank you very much.

Mr. SIEGELMAN. Thank you, Mr. Chairman.

Mr. EDWARDS. Our next group of witnesses is a panel presentation by Mayor Richard Arrington of Birmingham, Ala., Jefferson County; Senator Michael Figures, Mobile, Ala., Mobile County; Larry Fluker of Evergreen, Ala.

TESTIMONY OF MAYOR RICHARD ARRINGTON, BIRMINGHAM, ALA.; STATE SENATOR MICHAEL FIGURES, MOBILE, ALA.; AND LARRY FLUKER, EVERGREEN, ALA.

Mr. ARRINGTON. Thank you, Mr. Chairman.

Any particular order we should follow, Mr. Chairman?

Mr. EDWARDS. That is entirely up to you.

Mr. ARRINGTON. Thank you, Mr. Chairman.

I am Richard Arrington, Jr., mayor of the city of Birmingham. You do not have copies of my prepared statement. I do have copies here.

Mr. Chairman, other distinguished committee members, I appreciate the opportunity to appear before this committee in support of the extension of the key provisions of the 1965 Voting Rights Act now currently in effect.

Among all of the recent civil rights legislation aimed at protecting the basic constitutional rights of all of our citizens and rectifying the lingering effects of past acts of illegal denial of constitutional rights, none is as important or more important than the Voting Rights Act of 1965.

I say this not only because of the significant increase in the number of minority voters since the Voting Rights Act, but also as

a reminder that in a democratic society such as ours there is perhaps nothing so important as total access to the exercise of one's right to vote.

In addition to its impact on increased minority voter registration, the Voting Rights Act, through its provisions for court-imposed preclearance as a remedy for voting violations, the formula for subjecting jurisdictions to the requirements of the act and prohibitions against tests and other devices which have the effect of denying or abridging the right to vote on unconstitutional grounds, have served to secure the rights of minorities gained through the exercise of the right to vote.

In other words, these provisions have served as a deterrent to many of the potential practices which could serve to dilute the voting strength made possible by increased minority voter registration or which could otherwise abridge one's access to equal participation in our political system.

The Voting Rights Act has brought our Nation a long way down the road toward its goals of full and equal protection of every individual's and every group's right to participation in our political system.

Certainly when we have a proven legislative remedy for achieving a goal which is fundamental to what we cherish in a democracy, it is not the time to abandon that remedy or to dilute it before our goal is fully achieved.

Let me point out several facts which speak clearly to the need to continue the current provisions of the Voting Rights Act.

One. In Alabama and other States affected by the Voting Rights Act, at some levels of government and particularly the State level, the percentage of elected officials who are black do not begin to approximate the percentage of blacks in the total population.

Yet the progress of the past 15 years or so indicates that the interest on the part of blacks in participating in the system is clearly present and an adequate extension of the act will surely lead us to achieving that goal in the affected States.

Two. Unabridged access to the ballot box in all jurisdictions affected by the current act is not yet a reality. In some Alabama counties, for example, that goal has been realized; but in some, notably some rural counties with majority black populations, complaints about tactics designed to discourage black voter registration are not uncommon.

Short hours for voter registration and a limited number of days per week for voter registration make it difficult for people living in areas remote from the board of registrars and who work extended hours to register and at the very best it creates an inconvenience inconsistent with our goal of equal access to the political system; hence it becomes a deterrent to voting.

Some boards of registrars, despite enabling legislation from the State and requests of blacks, still do not permit the use of deputy registrars which would enhance access to the ballot by many, including the elderly.

Fears by blacks of political gerrymandering, the unfair redistricting acts, biased annexations which dilute black voting strength, unfair use of voter reidentification programs—and I might add parenthetically the unwillingness of State officials to live by the

laws or the authority they have or to use that authority particularly when it comes to programs of reapportionment or programs of redistricting.

All of these are concerns which are likely and fears which are likely to become realities in the absence of protective provisions of the Voting Rights Act such as preclearance and similar safeguards.

I strongly encourage the committee to support the extension of the current Voting Rights Act by support of H.R. 3112 introduced by Congressman Rodino in April 1981.

In addition to retaining the current temporary provisions of the act, it is important to clarify the burden of proof in cases of voting discrimination.

Where the effect of discrimination is clearly present, it appears unreasonable to impose an undue burden on victims by requiring a proof of intent also.

Thank you, Mr. Chairman.

[The statement of Mr. Arrington follows:]

STATEMENT OF MAYOR RICHARD ARRINGTON, JR.
OF BIRMINGHAM, ALABAMA
BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE HOUSE COMMITTEE ON THE JUDICIARY
IN SUPPORT OF THE EXTENSION OF THE VOTING RIGHTS ACT OF 1965

JUNE 12, 1981
MONTGOMERY, ALABAMA

Mr. Chairman and Other Distinguished Committee Members:

I appreciate the opportunity to appear before this Committee in support of the extension of the key provisions of the 1965 Voting Rights Act now currently in effect. Among all of the recent Civil Rights Legislation aimed at protecting the basic constitutional rights of all of our citizens and rectifying the lingering effects of past acts of illegal denial of Constitutional rights, none is as important or more important than the Voting Rights Act of 1965. I say this, not only because of the significant increase in the number of minority voters since the Voting Rights Act, but also as a reminder that in a democratic society such as ours, there is perhaps nothing so important as total access to the exercise of one's right to vote. In addition to its impact on increased minority voter registration, the Voting Rights Act, through its provisions for court-imposed preclearance as a remedy for voting violations, the formula for subjecting jurisdictions to the requirements of the Act and prohibitions against tests and other devices which have the effect of denying or abridging the right to vote on unconstitutional grounds, have served to secure the rights of minorities gained through the exercise of the right to vote. In other words, these provisions have served as a deterrent to many of the potential practices which could serve to dilute the voting strength made possible by increased minority voter

registration or which could otherwise abridge one's access to equal participation in our political system.

The Voting Rights Act has brought our nation a long way down the road towards its goals of full and equal protection of every individual's and every group's right to participation in our political system. Certainly, when we have a proven legislative remedy for achieving a goal which is fundamental to what we cherish in a democracy, it is not the time to abandon that remedy or to dilute it before our goal is fully achieved. Let me point out several facts which speak clearly to the need to continue the current provisions of the Voting Rights Act:

(1) In Alabama and other states affected by the Voting Rights Act, at some levels of government and particularly the state level, the percentage of elected officials who are black, do not begin to approximate the percentage of blacks in the total population. Yet, the progress of the past 15 years or so indicates that the interest on the part of blacks in participating in the system is clearly present and an adequate extension of the Act will surely lead us to achieving that goal in the affected states.

(2) Unabridged access to the ballot box in <u>all</u> jurisdictions affected by the current Act is not yet a reality. In some Alabama counties, for example, that goal has been realized; but in some, notably some rural counties with majority black populations, complaints about tactics designed to discourage black voter registration are not uncommon.

(a) <u>Short hours for voter registration and a limited number of days</u> per week for voter registration make

it difficult for people living in areas remote from the Board of Registrars and who work extended hours to register and at the very best it creates an inconvenience inconsistent with our goal of equal access to the political system; hence it becomes a deterrent to voting.

(b) Some Board of Registrars, despite enabling legislation from the State and requests of blacks, still do not permit the use of Deputy Registrars which would enhance access to the ballot by many, including the elderly.

(c) Fears by blacks of political gerrymandering, the unfair re-districting acts, biased annexations which dilute black voting strength, unfair use of voter re-identification programs, etc., are likely to become realities in the absence of protective provision of the Voting Rights Act, such as pre-clearance and similar safeguards.

I strongly encourage the Committee to support the extention of the current Voting Rights Act by support of H. R. 3112 introduced by Congressman Rodino in April, 1981. In addition to retaining the current temporary provisions of the Act, it is important to clarify the burden of proof in cases of voting discrimination. Where the effect of discrimination is clearly present, it appears unreasonable to impose an undue burden on victims by requiring a proof of intent also.

Should we abandon outright or by indirection or dilution, this noble and worthy cause of safeguarding everyone's right to equitable participation in our political system, we will have taken a giant step backward towards repeating a part of our history which all who

truly believe in the American ideals of freedom, justice and equality of opportunity will regret.

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Mr. EDWARDS. Thank you, Mayor Arrington.

TESTIMONY OF MICHAEL FIGURES

Mr. FIGURES. Chairman Edwards, I am Michael Figures. I represent the 33d senatorial district in Mobile County.

The question I should like to propose at the outset as a framework to my brief statement is this: By what logic can one assume that over 300 years of slavery and institutionalized racism can be eliminated, particularly in the area of its most historical concentration, within the 16 years that the Voting Rights Act was placed on the books of this country?

Voting, of course, is the most fundamental right in the democracy. What then gives us the authority to believe that the right so murderously denied 16 years ago that Congress sought to further support the protection already provided in the U.S. Constitution is no longer necessary?

The fact is, most of those in power at the time the Voting Rights Act passed and at whom it was aimed for the most part are still alive and doing well. Their spirits have not been cleansed by the well of redemption.

They believe no more now than they did then that black votes should be freely allowed.

There have been few, if any, accommodations by them if you look at it closely.

The test, I submit, is not how many black elected officials have been elected because of or under the Voting Rights Act, and indeed there really have not been many in proportion to our number, but rather how many whites have voted for those blacks who were elected.

There may be some isolated examples somewhere where a large number of whites have voted for a black, but not in Birmingham where Mayor Arrington is from; not in Evergreen where Mr. Fluker comes from, and certainly the less than 2 percent white vote I received in 1978 in a district over 40 percent white is evidence of a pattern existent in the South.

As long as racially polarized voting exists, there will be a need for a Voting Rights Act to protect against white politicians who will do all they can to insure they stay in office in areas with large black populations.

You see what the Alabama Legislature did just last month in Lowndes, Wilcox, and Sumter Counties with the reidentification bills about which there has been abundant testimony. They resist elections by doing what my hometown has done. They have spent in excess of $600,000 already to keep an at-large election scheme that has prevented any black from being elected to a three-member at-large city commission in the history of the city.

They don't have the money to stop homes from flooding every time we have a hard rain because they spend it to keep blacks out of city hall.

Now, the Supreme Court has said we must show the form of government we have that was established in 1911 was established for the specific purpose of excluding blacks from office.

We must show that it was intentional, in other words. It is fundamentally absurd that you don't have to show intent to

damage another person's property in a traffic accident, but you have to show intent when a whole race of people's right to vote and consequent right to have access to public office is damaged, in fact, denied.

Why should you have to prove intent in a town where in 1976 the bicentennial year, you will recall, a group of more than eight white policemen attempted to hang a black man; where just this past Tuesday morning, a white policeman is accused of raping a black woman?

Why should you have to prove intent where the only black policemen who rank above patrolmen in the Mobile Police Department are three black sergeants, all who were put there by court order, while a white counterpart, who used the word nigger just 2½ months ago in describing a black suspect, is promoted to major and a white policeman who has killed three blacks and paralyzed another runs for city commissioner against an encumbent who has allowed these things to go on in the police department?

Black elected city officials could begin to address these problems that white officials ignore because they know that white voters elect them and will not hold their mistreatment of black folks against them.

No wonder that Senator Jeremiah Denton feels he has the right, through political pressure, to involve himself in a voting rights suit in his hometown because there has been no discrimination there since he has been home.

What further evidence do you need to see the extent to which white politicians will go to project an at-large voting system?

With this kind of example being set by a U.S. Senator, what kind of schemes do you think local and State officials might engage in to protect their power by abridging the right of black folks to vote and hold public office.

It is not by accident that almost all black citizens are gerrymandered out of the city limits of Mount Vernon, Ala., or a group of blacks surrounded by municipalities in Mobile County is in neither of them.

Why do local communities refuse to appoint deputy registrars? Are limited voter registration days and hours designed to prevent massive voter registration drives?

Is this why, after 1968, the percentage of black voters has not increased significantly?

In a way it is strange that we talk here of allowing one of the major achievements, perhaps the major achievement of the civil rights struggle, to expire, in a day when assaults against blacks, and the Ku Klux Klan are on the rise, when black unemployment is disproportionately high.

You know, the majority of the black community in Mobile believes that the recent lynching of a young black boy was purely racially motivated and here we are in Montgomery, indeed, the birthplace of the civil rights movement where the Voting Rights Act was actually born and we are here talking about letting it die.

I am on the joint legislative committee that will study reapportionment, that is supposed to reapportion the State legislature and the U.S. congressional seats. I am gearing up for a fight. We begin meeting next week.

I know my colleagues, some of whom might otherwise do well, will be doing all they can to not increase the number of black elected officials in this State.

They will be doing their best to lessen that number.

Thank you very much.

[The prepared statement of Mr. Figures follows:]

PREPARED TESTIMONY OF MICHAEL A. FIGURES, ALABAMA STATE SENATOR

The question I should like to propose at the outset as a framework to my brief statement is this: By what logic can one assume that 100 years of slavery and institutionalized racism can be eliminated, particularly, in it's historically most concentrated areas, within the 16 years that the Voting Rights Act was placed on the books of this country?

Voting, of course, is the most fundamental right in the democracy. What then gives us the authority to believe that the right so murderously denied, just 16 years ago, that Congress sought to further support the protection already provided in the United States Constitution, is now no longer necessary?

The fact is that most of those who were in power at the time the Voting Rights Act passed and at whom it was aimed for the most part, are still alive and doing well and their spirits have not been cleansed by the well of redemption. They believe no more now than they did then, that black votes should be freely allowed.

There have been few, if any accommodations by them, if you look at it closely. THE TEST, I submit, is not how many black elected officials have been elected because of or under the Voting Rights Act, and indeed there really have been many in proportion to our number. But rather, how many whites have voted for those blacks who were elected?

There may be some isolated examples somewhere, where a large number of whites have voted for a black, but not in Birmingham, where Mayor Arrington is from, not in Evergreen where Mr. Fluker comes from and certainly the less than 270 white votes that I received in 1978, in a district that is over 40 percent white is evidence of pattern existent throughout this state and the entire South.

As long as racially polarized voting exists, there will be a need for a Voting Rights Act to protect against white politicians who will do all they can to insure that they stay in office in areas not having large black populations. You see what the Alabama Legislature did just last month in Lowndes, Wilcox and Sumter Counties. They resist single member district election systems by doing as my home town, I am not proud to say, has done. They have spent in excess of $600,000 already to keep an at-large election scheme that has prevented any black from being elected to a three-member City Commission in the history of the city. They don't have money to stop homes from flooding every time we have a hard rain because they spend it to keep blacks out of city halls.

Now, the Supreme Court has said that we must show that the form of government we have was established in 1911 for the specific purpose of excluding blacks from office. We must show that it was intentional. It is fundamentally absurd that you don't have to show intent to damage another's person or property in a traffic accident, but you have to show intent when a whole race of people's right to vote and consequent right to have access to public office is damaged—in fact, denied.

Why should you have to prove intent in a town where in 1976, the Bicentennial Year, you will recall, a group of more than 8 white policemen attempted to hang a black man; where just this past Tuesday morning, a white policeman is accused of raping a black woman?

Why should you have to prove intent where the only black policemen who rank above patrolmen in the Mobile Police Department are three black sargeants, all who were put there by Court Order, while a white counterpart, who used the word "nigger" just 2½ months ago in decribing a black suspect is promoted to major and a white policeman who has killed three blacks and paralyzed another runs for City Commissioner against an incumbent who has allowed these things to go on in the police department?

Black elected city officials could begin to address these problems that white officials ignore because they know that white voters elect them and will not hold their mistreatment of black folks against them.

No wonder that Senator Jerimiah Denton feels he has to right through political pressure to involve himself in a Voting Right Suit in his hometown because "There has been no discrimination there since he has been home." What further evidence do you need to see the extent to which white politicians will go to project an at-large

voting system. With this kind of example being set by a U.S. Senator, what kind of schemes do you think local and State officials might engage in to protect their power by abridging the right of black folks to vote and hold public office.

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Why do local communities refuse to appoint Deputy Registrars? Are limited Voter Registration days and hours designed to prevent massive Voter Registration drives? Is this why after 1968, the percentage of black voters has not increased significantly?

In a way it is strange that we talk here of allowing one of the major achievements; perhaps, the Major achievement of the civil rights struggle to expire . . . in a day when assaults against blacks, and the Ku Klux Klan are on the rise, when black unemployment is disproportionately high. You, know, the majority of the black community in Mobile believes that the recent lynching of a young black boy was purely racially motivated and here we are in Montgomery, indeed, the birthplace of the civil rights movement where the Voting Rights Act was actually born and we are here talking about letting die.

Mr. EDWARDS. Thank you, Senator.

Mr. Fluker.

TESTIMONY OF LARRY FLUKER

Mr. FLUKER. Mr. Chairman, members of the subcommittee, I am Larry Fluker of Conecuh County, Evergreen, Ala. I am president of the Conecuh County branch of the NAACP and vice chairman of the Conecuh County Democratic Conference.

In addition, I am a deputy registrar, and have held the position since June of 1978.

In 1964, I became the first president of the Conecuh County branch NAACP, just one year prior to the passage of the Voting Rights Act.

At the time a number of community leaders drafted me to be the NAACP president because I was in the funeral and insurance business. Therefore, they thought it would be more difficult for whites to bring economic reprisals against me.

I was only 20 years old then, but I accepted the challenge because I saw the need for a civil rights organization in Conecuh County.

For the most part, teachers were afraid to be openly identified with the NAACP then.

Prior to the signing of the Voting Rights Act, there were approximately 1,000 black voters in Conecuh County. But after August of 1965, I can recall vividly the long lines of black people who came from throughout the county to register.

We even had Federal registrars to assist in the registration process. Today Conecuh County has approximately 3,600 black registered voters.

The black population, based on the 1980 census data for Conecuh County, is 6,534. We are 41.1 percent of the population.

Excluding the Black Belt counties, Conecuh is one of the few counties which has a black population of over 40 percent. Despite our numbers, we have been unable to elect any blacks to county office because of racial bloc voting.

In 1980, we had three blacks to run for county office. Two of them were in runoffs. And one lost by a margin of approximately 250 votes in an at-large election.

In 1978 we had two blacks to seek county office.

In 1976 there was only one black candidate in a race. In fact, as early as 1972, we had a black to run for county office.

It is interesting to note that prior to 1972 Conecuh County had four single-member commissioner districts. District 1 was predominantly black, with a black population of 60.1 percent.

District 2 was 43.7 percent black.

District 3 was 41 percent black.

And District 4 was 38.1 percent black.

In 1971, however, at the request of the Conecuh County Commission, an act was introduced and passed the Alabama Legislature, merging the four single-member districts into two districts. The former districts 1 and 2 were merged, forming a new district 1. Former districts 3 and 4 were merged, creating a new district 2.

This merger of former single member districts definitely diluted the black vote. Because after the merger neither district had a majority of blacks. I learned about the change in commission districts in 1980. The changes were never submitted to the Justice Department for preclearance.

In fact, the Justice Department indicated that Conecuh County had never submitted any reports with respect to changes in election procedures.

In any case, I ran for place 2 on the Evergreen City Council in 1980. To my amazement and that of the entire black community, the city clerk who served as election supervisor in all municipal elections, left off approximately 200 black voters on the official list.

Many of the people who were left off had lived in the city for years. Many were prominent citizens. None of these folk were told that they could vote a challenge ballot.

Consequently, they had to go by city hall and pick up a certification slip before they could vote. Because of this requirement, a significant number of these people did not return to vote.

At one of the polling places in the courthouse, one of our poll watchers reported that 28 black names were left off the list. Thirteen of them did not return to vote. As a result, the only incumbent black member on the council at the time lost by four votes.

Unfortunately, this council member seemed afraid to challenge the election, so he never did.

Incidentally, although there were two white incumbent council members who were unopposed, another white candidate chose to run against the black incumbent.

In my case, a white store manager who had been in Evergreen for less than 2 years, ran against me. One of the white candidates even admitted that his reason for running against a black candidate was because he felt he could beat him.

The inference one can draw from that is that the white candidate was counting on the white bloc vote to elect him.

Although Conecuh County now has nine black deputy registrars—plus the chairman of the board of registrars is black, the resistance to appointing deputy registrars initially was astounding.

For over a week we battled with the board before they consented to appoint us. However, we went out and registered almost 800 people in 2 months. The white chairman of the Board resigned in protest. The vacancy which was created paved the way for Governor Wallace to appoint the first black registrar in Alabama.

In addition to not having any black elected officials in Conecuh County, our efforts to get blacks appointed as poll workers have also been frustrated.

Both the Conecuh County Democratic Executive Committee and the election supervisory committee have given us the runaround in terms of appointing blacks to work the polls.

The election supervisory committee claims that it cannot appoint poll workers but only accepts recommendation from committee members.

However, I know of an instance where a man went to a commissioner and asked him to get the election supervisory committee to appoint his wife to work the polls. It was done.

Incidentally, during the 1980 elections Conecuh County had less than 12 blacks working at the polls out of approximately 140 poll workers.

I forgot to mention earlier that as a result of our protesting the city clerk striking approximately 200 black voters from the list last summer, the Justice Department sent in 70 Federal observers to monitor the primary elections last September. Approximately 25 returned for the runoff election.

The Federal observers decided to return for the runoff elections because they observed a number of irregularities at several of the polling places. In several instances it was reported that the poll workers were quite rude to the Federal observers.

At the Cedar Creek polling place, poll officials would not let several black voters come inside the polling house out of the rain.

One official slammed the door in my face when I asked him to permit the voters to come in out of the rain. This same poll official made some threats later, stating that he would be ready for the niggers when we came back for the runoff election.

One of the things that the poll officials resist most is the law which permits assistance to voters who are illiterate, handicapped, or don't know how to operate the voting machine. There are repeated attempts on the part of poll workers to deny illiterate voters to select people of their own choosing to assist them in voting.

In wrapping up, I wish to point out that Conecuh County has been selected by the U.S. Commission on Civil Rights as one of four counties in the South on which it will do an intensive election probe.

The local officials have not taken too kindly to this thought. In fact the editor of the local paper said that Conecuh County elections don't need the Feds to stick their noses in local politics.

In his column of August 28, 1980, the editor of the Evergreen Courant advised local officials to cooperate with the Federal observers. Also, as a final statement to his readers, the editor wrote, "I really don't think there is anything to hide. Elections in this county have been conducted fairly and honestly for at least 10 years now."

To say the least, that is an interesting comment. For the editor implies that 10 years ago, in 1970, elections may not have been conducted fairly in Conecuh County. That revelation supports my contention all the more that we need the Voting Rights Act extended. Because, just as the editor didn't speak of corruption or

discrimination he may have known about 10 years ago, it is highly unlikely he will do so now.

[The prepared statement of Mr. Fluker follows:]

PREPARED TESTIMONY OF LARRY FLUKER, CONECUH COUNTY, ALA.

Mr. Chairman and members of the subcommittee: I am Larry Fluker of Conecuh County, in Evergreen, Alabama. I am president of the Conecuh County Branch NAACP and Vice Chairman of the Conecuh County Democratic Conference. In addition, I am a Deputy Registrar, and have held the position since, June of 1978.

In 1964, I became the first president of the Conecuh County Branch NAACP, just one year prior to the passage of the Voting Rights Act. At the time, a number of community leaders drafted me to be the NAACP president because I was in the funeral and insurance business. Therefore, they though it would be more difficult for whites to bring economic reprisals against me. I was only 20 years old then, but I accepted the challenge because I saw the need for a civil rights organization in Conecuh County. For the most part, teachers were afraid to be openly identified with the NAACP, then.

Prior to the signing of the Voting Rights Act, there were approximately 1,000 black voters in Conecuh County. But after August of 1965, I can recall vividly the long lines of black people who came from throughout the county to register. We even had Federal registrars to assist in the registration process. Today, Conecuh County has approximately 3,600 black registered voters. The black population based on the 1980 census data for Conecuh County is 6,534. We are 41.1 percent of the population.

Excluding the biack belt counties, Conecuh is one of the few counties which has a black population of over 40 percent. Despite our numbers, we have been unable to elect any blacks to county office because of racial bloc voting. In 1980, we had three blacks to run for county office. Two of them were in runoffs. And one lost by a margin of approximately 250 votes in an at-large election. In 1978, we had two blacks to seek county office. In 1976, there was only one black candidate in a race. In fact, as early as 1972, we had a black to run for county office.

It is interesting to note that prior to 1971, Conecuh County had four single member commissioner districts. District one was predominately black, with a black population of 60.1 percent. District two was 43.7 percent black. District three was 41.0 percent black. And district four was 38.1 percent black. In 1971, however, at the request of the Conecuh County Commission, an Act was introduced and passed the Alabama legislature, merging the four single member districts into two districts. The former districts 1 and 2 were merged, forming a new district 1. Former districts 3 and 4 were merged, creating a new district 2.

This merger of former single member districts definitely diluted the black vote. Because after the merger, neither district had a majority of blacks. I learned about the change in commission districts in 1980. The changes were never submitted to the Justice Department for pre-clearance. In fact, the Justice Department indicated that Conecuh County had never submitted any reports with respect to changes in election procedures.

In any case, I ran for place 2 on the Evergreen City Council in 1980. To my amazement and that of the entire black community, the city clerk, who served as election supervisor in all municipal elections, left off approximately 200 black voters on the official list. Many of the people who were left off had lived in the city for years: Many were prominent citizens. None of these folk were told that they could vote a challenge ballot. Consequently, they had to go by City Hall and pick up a certification slip before they could vote. Because of this requirement, a significant number of these people did not return to vote. At one of the polling places in the courthouse, one of our poll watchers reported that 28 black names were left off the list. 13 of them did not return to vote. As a result, the only incumbent black member on the council at the time, lost by four votes. Unfortunately, this council member seemed afraid to challenge the election. So he never did.

Incidentially, although there were two white incumbent council members who were unopposed, another white candidate chose to run against the black incumbent. In my case, a white store manager who had been in Evergreen for less than two years ran against me. One of the white candidates even admitted that his reason for running against a black candidate was because he felt he could beat him. The inference one can draw from that is that the white candidate was counting on the white bloc vote to elect him.

Although Conecuh County now has 9 black deputy registrars—plus the Chairman of the Board of Registrars is black, the resistance to appointing Deputy Registrars

initially was astounding. For over a week, we battled with the board before they consented to appoint us. However, we went out and registered almost 800 people in two months, the white Chairman of the Board resigned in protest. The vacancy which was created paved the way for Governor Wallace to appoint the first black Registrar in Alabama.

In addition to not having any black elected officials on Conecuh County, our efforts to get blacks appointed as poll workers have also been frustrated. Both the Conecuh County Democratic Executive Committee and the Election Supervisory Committee have given us the runaround in terms of appointing blacks to work the polls. The Election Supervisory Committee claims that it cannot appoint poll workers but only accepts recommendation from committee members. However, I know of an instance were a man went to a commissioner and asked him to get the election Supervisory Committee to appoint his wife to work the polls. It was done. Incidentally, during the 1980 elections, Conecuh County had less than 12 blacks working at the polls, out of approximately 140 poll workers.

I forgot to mention earlier that as a result of our protesting the city clerk striking approximately 200 black voters from the list last summer, the Justice Dept. sent in 70 Federal observers to monitor the primary elections last September approximately 25 returned for the runoff election.

The Federal observers decided to return for the runoff elections because they observed a number of irregularities at several of the polling places. In several instances, it was reported that the poll workers were quite rude to the Federal observers.

At the Cedar Creek polling place, poll officials would not let several black voters come inside the polling house, out of the rain. One official slammed the door in my face when I asked him to permit the voters to come in out of the rain. This same poll official made some threats later, stating the he would be ready "for the niggers" when we came back for the runoff election.

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In wrapping up, I wish to point out that Conecuh County has been selected by the U.S. Commission on Civil Rights as one of four counties in the south which it will do an intensive election probe. The local officials have not taken too kindly to this thought. In fact, the editor of the local paper said that Conecuh County elections don't need the "FEDs" to stick their noses in local politics. In his column of August 28, 1980, the editor of the Evergreen Courant advised local officials to cooperate with the Federal observers. Also, as a final statement to his readers, the editor wrote: "I really don't think there is anything to hide . . . elections in this county have been conducted fairly and honestly for at least 10 years now."

To say the least, that is an interesting comment. For the editor implies that 10 years ago in 1970, elections may not have been conducted fairly in Conecuh County. That relevation supports my contention all the more that we need the Voting Rights Act extended. Because just as the editor didn't speak of corruption or discrimination he may have know about 10 years ago, it's highly unlikely he will do so now.

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

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Mayor Arrington, Birmingham is in Jefferson County, right?

Alabama. Yes, it is.

Mr. EDWARDS. When you had reidentification there, the black and white registration percentage went up 5 percent or 10 pecent for each group.

In Choctaw County, after reidentification, black registration was cut in half. How do you account for that?

Mr. ARRINGTON. Well, we have to consider the manner in which local authorities such as members of the Board of Registrars apply the law. I think that in many instances the authority exists at State and local levels to do away with the abridgement of some of the rights that we are concerned about.

However, were people willing to shoulder that responsibility at these levels, there never would have been a need for the Voting Rights Act in the first place.

In Birmingham you had an urbanized area, a very active registration campaign, a very cooperative Board of Registrars in terms of using deputy registrars, in terms of trying to promote voter reidentification.

Compared with some of the rural counties, it is very, very unique in that regard.

In rural counties, you often times get just the opposite. Reidentification may very well be used as a means of—as a deterrent to voting.

Mr. WASHINGTON. Is it your fear that reidentification or ploys such as that would proliferate if this act, or the preclearance sections were permitted to expire? Ploys like that would proliferate?

Mr. ARRINGTON. Yes. I think preclearance is absolutely essential to assuring complete access to the voting box. Preclearance, I think is absolutely essential not only for the rural counties, but I think for the entire State of Alabama. Preclearance is important.

It serves as a deterrent to potential practices that might abridge one's right to vote.

In a very short time, for example, consider the fact we are going through redistricting or we will be going through redistricting, reapportionment in the State of Alabama.

Consider the fact that you can take that with home rule and a single act of the legislature, can wipe out all the gains we made in voting and everywhere else, including in Jefferson County.

I think preclearance is an absolute necessity if we are going to continue to make progress toward giving everybody equal access to voting rights.

Mr. WASHINGTON. I yield.

Mr. HYDE. I have no questions. Thank you.

Mr. EDWARDS. Senator Figures, the secretary of state, I believe, said if the Alabama legislature really did its work, we would not have to be down here.

It would not be necessary to have a Voting Rights Act, is that right?

Mr. FIGURES. Yes, sir. I think his more exact words were that there were a couple of white reactionary legislators who keep reaction reform from passing which, if it were passed, the election law would not be necessary.

Mr. EDWARDS. They are not a majority?

Mr. FIGURES. No, but there are more than two. There are 105 members of the Alabama House. Thirteen are black. The remainder are white. Of that number, I would say 70 percent feel that way. The same thing is true in the senate.

One senator in the senate has a local veto power over any legislation affecting the entire county, whether in his senate district or not.

I represent senate district 33. There are three others representing a part of Mobile County. Either of us can veto any legislation pertaining to the entire county. It is true if the Alabama legisla-

ture would do its job there would be no need for the Voting Rights Act.

I might point out polarized voting is so great in this State that it does not behoove them politically to make decisions advantageous to black folks.

Mr. EDWARDS. You are saying if they did their job they wouldn't get re-elected?

Mr. FIGURES. They feel that way.

I take the position it is about time they demonstrated leadership and begin to advance at the political leadership level the notion that black folks can run and be elected on the basis of qualification and that they should not be making decisions on the basis of racial considerations, but they always do.

Mr. EDWARDS. Thank you.

Mr. Fluker, you pointed out that in Conecuh County this redistricting was done that was obviously discriminatory but you discovered it 9 years later.

Mr. FLUKER. Yes.

Mr. EDWARDS. It has never been submitted to the Justice Department?

That points out something that I believe Mr. Washington was concerned with and rightly so.

The Voting Rights Act, the preclearance provisions, are voluntary. The jurisdictions have to do this in a voluntary manner and then the Justice Department acts in a voluntary manner too. That sometimes can result in great delays.

Perhaps that is something that we should address in the future. Not having it quite as voluntary as it is.

I imagine that was quite a shock for you to discover that something happened 9 years earlier that had never complied with the law.

Mr. FLUKER. Yes, sir, that is true. In fact, we learned about it when we got in touch with the Justice Department because we were dissatisfied with not having a significant number of poll workers and when we began to report the incident that happened with the city election, we were amazed at the fact that there had been no submission on the part of the county commission.

Of course, I think that generally in Conecuh County nobody is aware of the change that took place in 1971.

Mr. EDWARDS. Thank you very much.

Are there other questions?

Thank you very much, members of the panel.

Mr. EDWARDS. Our last witness this morning is the president of the Alabama League of Women Voters from Birmingham, Ala., Anne Findley-Shores.

TESTIMONY OF ANNE FINDLEY-SHORES, PRESIDENT, ALABAMA LEAGUE OF WOMEN VOTERS

Ms. FINDLEY-SHORES. Thank you, Mr. Chairman.

Mr. EDWARDS. Ms. Findley-Shores, welcome. Your entire statement will be made part of the record. Without objection, you may proceed.

Ms. FINDLEY-SHORES. Mr. Chairman, members of the subcommittee, I am Anne Findley-Shores.

I do thank you for this opportunity to speak to you on behalf of the League of Women Voters of Alabama.

I know Ruth Hinenfeld, president of our national organization, has testified before you of the League's support for the extension of the Voting Rights Act.

I do not want to be repetitious. I do, however, want to assure you that we at the State level, even of a State covered in the jurisdiction of section 5, are in agreement with the League's national support position.

We are in favor of a 10-year extension of the act with its requirement for preclearance with the Justice Department of changes in voting or election procedures in States and localities where discrimination has existed.

I remember well when the Voting Rights Act passed in 1965. A bill had been introduced in the State legislature which would have liberalized our State voter registration laws and the League of Women Voters was in Montgomery lobbying for its passage.

Before the bill came up for a vote, the Federal legslation passed. As a native Alabaman, I shared the sense of humiliation which many white southerners felt because section 5 did not apply to the whole country, but my humiliation was really for my home State, which did not deal fairly or justly with its black people until the Federal Government forced it to.

With the addition in 1975 of section 5 coverage for language minorities, the act does now apply to the whole country. Thus the argument that it discriminates unfairly against the South is clearly invalid.

The League of Women Voters of Alabama is opposed to an automatic nationwide application of section 5.

The enormous number of submissions which would result from such application would so dilute Justice Department attention that many inequitable election practices could and probably would slip through.

We are opposed to allowing the temporary provisions of the Voting Rights Act to expire. With the changed political climate in Washington, we are hearing more of the old rallying cry of States' rights.

We must remember that too often in the past States' rights has really meant States' claim to the right to practice racial injustice.

The elections of last November are being interpreted by some as a mandate by the people for a return to the good old days, and I put that in quotes.

Whatever the so-called mandate was, I do not believe a majority of the voters intended their votes to lead us to a return of the days when voting discrimination was common practice.

Alabama is a better place now than it was 20 years ago largely because of Federal intervention. Black Alabamans generally now know firsthand of the privileges and responsibilities of citizenship, and white Alabamans have finally overcome their paralyzing fear of integration.

If the Voting Rights Act, the temporary provisions were to expire, I would like to believe that white and black Alabamans together would not allow us to return to the way it used to be, but why take the chance?

We urge your support of the extension of the Voting Rights Act to encourage our continued progress toward interracial harmony and justice for all.

Thank you very much.

[The prepared statement of Ms. Findley-Shores follows:]

PREPARED TESTIMONY OF ANNE FINDLEY-SHORES

Mr. Chairman and Members of the Subcommittee: I am Anne Findley-Shores. Thank you for this opportunity to speak to you on behalf of the League of Women Voters of Alabama. I know that Ruth Hinerfeld, president of our national organization, has testified before you of the League's support for the extension of the Voting Rights Act and I do not wish to be repetitious. I do, however, want to assure you that we at the state level, even of a state comprising a covered jurisdiction under Section 2, are in agreement with the League's national support position. We are in favor of a ten-year extension of the Act with its preclearance requirement with the Justice Department for changes in voting or election procedures in states and localities where discrimination has existed.

I remember well when the Voting Rights Act passed in 1965. A bill had been introduced in the state legislature which would have liberalized our state voter registration laws and the League of Women Voters was in Montgomery lobbying for its passage. Before the bill came up for a vote, the federal legislation passed. As a native Alabamian, I shared the sense of humiliation which many white southerners felt because Section 5 did not apply to the whole country. But my humiliation was really for my home state which did not deal fairly or justly with its black people until the federal government forced it to.

With the addition in 1975 of Section 5 coverage for language minorities, the Act does now apply to the whole country. Thus the argument that it discriminates unfairly against the South is clearly invalid.

The League of Women Voters of Alabama is opposed to an automatic nationwide application of Section 5. The enormous number of submissions which would result from such application would so dilute Justice Department attention that many inequitable election practices could, and probably would, slip through.

We are opposed to allowing the temporary provisions of Voting Rights Act to expire. With the changed political climate in Washington, we are hearing more of the old rallying cry of "States Rights". We must remember that too often in the past, "States Rights" has really meant states' claim to the right to practice racial injustice. The elections of last November are being interpreted by some as a mandate by the people for a return to the "good old days". Whatever the so-called mandate was, I do not believe a majority of the voters intended their votes to lead us to a return to the days when voting discrimination was common practice.

Alabama is a better place now than it was twenty years ago, largely because of federal intervention. Black Alabamians now know first hand of the privileges and responsibilities of full citizenship. And white Alabamians have finally overcome their paralizing fear of integration.

If the Voting Rights Act were to expire, I would like to believe that white and black Alabamians, together, would not allow us to return to the way it used to be. But why take the chance? We urge your support of the extension of the Voting Rights Act to encourage our continued progress toward interracial harmony and justice for all.

Thank you for your attention.

Mr. EDWARDS. Thank you very much, Ms. Findley-Shores, for a very helpful statement.

Mr. Washington?

Mr. WASHINGTON. I agree with you, Ms. Shores. Why take the chance?

Thank you.

Mr. EDWARDS. Mr. Hyde?

Mr. HYDE. No questions.

Mr. EDWARDS. You are from Birmingham, is that correct?

Ms. FINDLEY-SHORES. Yes, sir.

Mr. EDWARDS. Birmingham has a black mayor. We had the pleasure of having him testify. What happened in Birmingham that is different than what happened to some other cities?

Can you use the microphone, please?

Ms. FINDLEY-SHORES. You mean regarding the voter registrars?

Mr. EDWARDS. Well, it is somewhat unusual to have a black mayor of a major American southern city. I wondered what went on in Birmingham that resulted in the election of a black mayor?

Ms. FINDLEY-SHORES. My own opinion is that Birmingham was so bad for so long. [Laughter.]

Well, it was—that finally when the Voting Rights Act did pass and people began to register in larger numbers, I think it was a relief to everybody, frankly. White people also.

I sense a relief. We had feared integration, and blacks voting en masse.

When it came about and the world didn't come to an end, it was a relief.

Mr. EDWARDS. Well, thank you very much.

The subcommittee will recess now until promptly at 1:30 when we will hear from witnesses regarding the State of Mississippi.

[Whereupon, at 12 noon, the subcommittee was recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

Mr. EDWARDS. The subcommittee will come to order.

The next witnesses will constitute a panel. The panel will consist of Haley Barbour, Esquire, who is the vice chair of the Mississippi State Republican Party—Mr. Barbour is from Yazoo City, Miss.—and a gentleman who has testified before this committee before, Stone Barfield, Esquire, also from Mississippi.

Gentlemen, please come to order.

TESTIMONY OF HALEY BARBOUR, VICE CHAIR, MISSISSIPPI STATE REPUBLICAN PARTY, YAZOO CITY, MISS., AND STONE BAREFIELD, MEMBER OF THE MISSISSIPPI HOUSE OF REPRESENTATIVES

Mr. BARBOUR. Thank you, Mr. Chairman.

Mr. EDWARDS. Welcome.

Without objection, both of your statements will be made a part of the record.

Mr. Barbour, are you first?

Mr. BARBOUR. If that suits the committee, Mr. Chairman.

Mr. EDWARDS. Welcome. You may proceed.

Mr. BARBOUR. Thank you, Mr. Chairman, members of the committee; I am Haley Barbour. I am the Vice Chairman of the Mississippi Republican Party and Chairman of its Election Law Task Force. My testimony is in opposition to the renewal of the 1965 Voting Rights Act.

This act grossly violates the principles of federalism, relegating certain States to a statute more akin to that of colonies than full members of the Union. It repudiates the democratic process and the republican form of government by giving unelected bureaucrats veto power over matters far beyond what would normally be con-

sidered election or voting issues. There can be no doubt preclearance literally rends the fabric of the U.S. Constitution.

My opposition to the act centers on section 5 preclearance and its implementation, failure to provide a reasonable bailout provision, and the designation of the District of Columbia as the proper jurisdiction for cases arising under the act. I also believe this punitive act is no longer needed and that any aggrieved party has other adequate remedies to redress any voting rights violations.

Section 5 preclearance is violative of virtually every concept of American government. Compliance with it is onerous and expensive under the best of circumstances, but it is oppressive and openly discriminatory as implemented by the Department of Justice.

The Office of the Assistant Attorney General for Civil Rights makes it plain that they do not consider their role in preclearance as that of neutral umpire or unbiased judge. Their purpose under section 5 is to help black candidates and black voters dominate, not just to see that they are not discriminated against.

Jim Turner, Deputy Assistant Attorney General under at least four Presidents, flatly told me the test is not whether a submission is fair or reasonable but whether it is subjectively the best deal that can be made for the blacks involved. There is, therefore, no objective standard by which an act, ordinance or plan is judged at Justice.

Hence, the State of Louisiana is allowed to adopt an open primary system of elections, while Mississippi's legislature repeatedly passes and submits the exact same procedure, only to have it knocked out each time.

Hence, when my home county, Yazoo, sought guidance from Justice after its 1975 redistricting plan was turned down, Gerald Jones, chief of the voting rights section, told our county attorney he could provide no direction on whether the black population should be packed in larger majorities into fewer districts or spread out to impact on more districts. Jones said he would have to check with the local civil rights leaders in our community to see if they considered any new plan the best for them.

Hence, Mississippi is prevented from having a reasonable system of purging from the rolls voters who have died or moved, despite the fact the legislature passed a system like that used in 28 other States. The assistant attorney general's office asked that the facts be verified over and above the certified documents of the State of Mississippi, so the Mississippi attorney general called the speaker of the house in Mississippi's House of Representatives on the phone to substantiate his information.

Making no progress, the Speaker reached Representative Fred Banks, a black representative from Jackson, and let the voting rights officials get the word straight from Representative Banks. Only then was the story believed and the submission was approved.

One would hope such an instance was unique, but it is not. In my hometown, when we redistricted our wards prior to the 1978 election, there was a lawsuit filed. A plan agreeable to all parties was developed and adopted. The lawsuit was settled by an agreed order.

This plan, along with the agreed order of the court, the U.S. District Court for the southern District of Mississippi, signed by the civil rights plaintiff's attorney, was submitted under section 5.

Soon thereafter, Justice contacted the plaintiff's attorney. They wanted to verify that he had actually signed and actually agreed to this plan, this order, and whether he thought it was still the best plan for his clients. In essence, he wants to know if he wanted another bite at the apple. Not only was this an insult to our town's officials and the Federal court, but I believe the plaintiff's attorney himself considered it an affront.

For preclearance, all I shall use are irrelevant save race, and the rankest conjecture as to the possible effect of a law on black voting strength overrides demonstrable concrete evidence of the need for it on other reasonable and productive grounds.

A prime example is the expansion of the city limits of Jackson, Miss. You need not be a political scientist or a public administrator to know many cities are strangled by loss of population to surrounding suburbs and the resulting diminution of the tax base. I was taught in college that the liberal solution to this problem was to make it easier for the core city to annex the suburban areas. This would result in the city remaining vital, services being unified and efficient, everyone paying his fair share for the common good, et cetera.

Jackson in the 1970's tried to take on everything within howitzer distance, including every residential neighborhood, black or white. Justice objected on the ground the annexation would reduce the black percentage of the city's population from 40 percent to 38.6 percent and, therefore, violated the act.

In the two elections since the objection, the annexed area's vote has not affected the outcome of any race. Nonetheless, the citizens of the annexed area are threatened each time by the Justice Department with disenfranchisement. Here a bureaucratic and, as it turned out, erroneous determination of a miniscule dilution of the black vote overrode numerous valid reasons for annexation.

Not only does Justice enforce the act discriminatorily and unreasonably, they also expand their powers under the act by interpreting it as they please. A case in point occurred in Mississippi last year.

The Mississippi Republican Party, which had formerly selected its national convention delegates by convention, held a primary to select them under authority of an act passed by the Mississippi Legislature, and approved by the Department of Justice in 1976. The Voting Rights Section, upon being advised of the party's decision, required preclearance of the party's delegate selection rules.

The party, under severe time restraints, submitted the rules under protest and they were approved. Still, I find no authority under the act for Justice to demand such a submission or for a political party to be burdened by the provisions of section 5.

Preclearance in principle, and its discriminatory enforcement in particular, are insults to the people of Mississippi, but perhaps the cruelest cut of all is that there is no way to get relief from being punished, if you happen to be in Mississippi. There is no real bailout provision.

Representative Barefield will discuss the absurdity of the so-called bailout provision in more depth than I, but suffice it to say the provision is a sham. It doesn't exist.

First, it is unfair enough for a political subdivision to be forced to comply with the unique and onerous provisions of section 5 when it has not been accused and does not violate anyone's voting rights. It is doubly wrong when such an entity cannot even try to prove its innocence to get relief from the burdens of the act. If preclearance is retained—and I believe it should not be—or if current preclearance is replaced by an alternative procedure, elementary fairness dictates that a real bailout mechanism be created or that the act be made applicable to every State.

Making the District Court of the District of Columbia the forum for actions under sections 4 and 5 does great violence to the basic precepts of American jurisprudence. It is expensive and oppressive. It is an invidious system like that applied to colonies by their emperor. It is indefensible, even if it were necessary, and it is not.

I assume you agree that provisions of the Voting Rights Act contradict the basic systems of American Government and jurisprudence. I suppose some of you are willing to impose these extraordinary burdens because you perceive a need to protect voters whose freedoms are in daily peril. If so, you are wrong, very wrong.

Aaron Henry told you in Washington recently that it is harder to register to vote in Mississippi than to get a hunting license. That is a misleading statement, falsely implying that discriminatory practices exist. There are no racial impediments to voter registration anywhere in Mississippi, and have not been in my adult life. The clearest demonstration of this is the fact that in 1978 a higher percentage of the voting age population was registered to vote in Mississippi than in New Jersey, California, New York, Massachusetts, or in the Nation as a whole.

We have more black elected officials in Mississippi than in any other State. In my hometown and county, we have a number of black elected officials, and the black vote often determines the outcome of elections. It is actively sought by politicans, black and white alike. Such is the case across the State.

Furthermore, the most effective political organization both in Yazoo County and in the State of Mississippi is the unified black campaign for a Democratic candidate led by the NAACP, voters leagues, et cetera. We have had several such campaigns in my county and four statewide since 1976. The vote generated by this organization is virtually monolithic, and the turnout mechanism is highly organized and extremely efficient.

The product of this organization is that Mississippi voted approximately the same percentage of its voting age population in 1980 as did the Nation as a whole. In 1978 its turnout of the voting age population was 36.2 percent and compared favorably with that of New Jersey, 36.8 percent, and New York, 36.8 percent, while it exceeded the percentages in such States as Arizona and Maryland and matched that of Vermont.

Our 1978 percentage of registered voters actually casting ballots was one-fourth higher than that of the District of Columbia. The 1976 turnout percentage of voting age population, 49.8 percent, exceeded that of such States as Hawaii and Nevada, matched Flor-

ida's, and was within 1 percentage point of that of Maryland, 50.3, and New York, 50.6.

It is a plain fact that the voting rights of blacks in Mississippi are neither denied nor abridged. Both statistical and empirical research will bear that out. Those who cry for preclearance and the other travesties of the Voting Rights Act to be extended do not do so because they want a fair, open election system but because they want an arbitrary and discriminatory process they can manipulate.

Aaron Henry himself established that in his testimony before this subcommittee on May 29 when he told you how Justice is always at his beck and call. Congress would do this country a great disservice to continue such an insult so that one man can pull the strings and completely change the outcome of votes taken by elected officials, elected by hundreds of thousands of people.

Mr. EDWARDS. Thank you, Mr. Barbour.

[The prepared statement follows:]

HALEY BARBOUR
Box 960
YAZOO CITY, MISSISSIPPI 39194

TESTIMONY OF

HALEY BARBOUR
VICE-CHAIRMAN, MISSISSIPPI REPUBLICAN PARTY,
CHAIRMAN, MISSISSIPPI REPUBLICAN PARTY
ELECTION LAW TASK FORCE

BEFORE THE

SUBCOMMITTEE ON CIVIL AND
CONSTITUTIONAL RIGHTS HOUSE COMMITTEE
ON THE JUDICIARY

MONTGOMERY, ALAMABA

June 12, 1981

My name is Haley Barbour. I am Vice-Chairman of the Mississippi Republican Party and Chairman of its Election Law Task Force. My testimony is in opposition to the renewal of the 1965 Voting Rights Act.

This Act grossly violates the principles of federalism, relegating certain states to a statue more akin to that of colonies than full members of the Union. It repudiates the democratic process and the republican form of government by giving unelected bureaucrats veto power over matters far beyond what would normally be considered election or voting issues. There can be do doubt preclearance literally rends the fabric of the United States Constitution.

My opposition to the Act centers on Section 5 Preclearance and its implementation, failure to provide a reasonable bail-out mechanism, and the designation of the District of Columbia as the proper jurisdiction for cases arising under the Act. I also believe this punitive Act is not needed and that any aggrieved party has other adequate remedies to redress any voting rights violations.

Section 5 Preclearance is violative of virtually every concept of American government. Compliance with it is onerous and expensive under the best of circumstances, but it is oppressive and openly discriminatory as implemented by the Department of Justice.

The Office of the Assistant Attorney General for Civil Rights makes it plain that they do not consider their role in preclearance as that of neutral umpire or unbiased judge. Their purpose under Section 5 is to help black candidates and black voters dominate, not just to see that they are not discriminated against. Jim Turner, Deputy Assistant Attorney General under at least four presidents, flatly told me the test is not whether a submission is fair or reasonable but whether it is subjectively

the best deal for the blacks involved. There is, therefore, no objective standard by which an act, ordinance or plan is judged at Justice.

Hence, the State of Louisiana is allowed to adopt an "open primary" system of elections, while Mississippi's legislature repeatedly passes and submits the exact same procedure only to have it knocked out each time.

Hence, when my home county, Yazoo, sought guidance from Justice after its 1975 redistricting plan was turned down, Gerald Jones, Chief of the Voting Rights Section, told our County Attorney he could provide no direction on whether the black population should be packed in larger majorities into fewer districts or spread out to impact on more districts. Jones said he would have to check with the local civil rights leaders in our community to see if they considered any new plan the best for them.

Hence, Mississippi is prevented from having a reasonable system of purging from the rolls voters who have died or moved, despite the fact the Legislature passed a system like that used in 28 other states.

For preclearance all issues are irrelevant save race, and the rankest conjecture as to the possible effect of a law on black voting strength overrides demonstrable, concrete evidence of the need for it on other reasonable and productive grounds.

A prime example is the expansion of the city limits of Jackson, Mississippi. You need not be a political scientist or a public administrator to know many cities are strangled by loss of population to surrounding suburbs and the resulting diminution of the tax base. I was taught in college that the "liberal" solution to this problem was to make it easier for the core city to annex the suburban areas. This would result in the city remaining vital, services being unified and efficient, everyone paying his fair share for the common good, etc..

Jackson in the 1970's tried to take in everything within howitzer

distance, including every residential neighborhood, black or white. Justice objected on the ground the annexation would reduce the black percentage of the City's population from 40% to 38.6% and, therefore, violated the Act. In the two elections since the objection, the annexed area has not affected the outcome of any race. Nonetheless, the citizens of the annexed are are threatened each time by the Justice Department with disenfranchisement. Here a bureaucratic and, as it turned out, erroneous determination of a miniscule dilution of the black vote overrode numerous valid reasons for annexation.

Preclearance in principle and its discriminatory enforcement in particular are insults to the people of Mississippi, but perhaps the cruelest cut of all is that there is no way to get relief from being punished, if you happen to be in Mississippi. There is no real bail-out provision.

Representative Barefield will discuss the absurdity of the so-called bail-out provision in more depth than I, but suffice it to say the provision is a sham.

First, it is unfair enough for a political subdivision to be forced to comply with the unique and onerous provisions of Section 5 when it has not or does not violate anyone's voting rights. It is doubly wrong when such an entity cannot even try to prove its innocence to get relief from the burdens of the Act. If preclearance is retained--and it should not be--or if current preclearance is replaced by an alternative procedure, elementary fairness dictates that a real bail-out mechanism be created or that the Act be made applicable to every state.

Making the District Court of the District of Columbia the forum for actions under Sections 4 and 5 does great violence to the basic precepts of American jurisprudence. It is expensive and oppressive.

It is an invidious system like that applied to colonies by their emperor. It is indefensible, even if it were necessary, and it is not.

I assume you agree that provisions of the Voting Rights Act contradict the basic systems of American government and jurisprudence. I suppose some of you are willing to impose these extraordinary burdens because you perceive a need to protect voters whose freedoms are in daily peril. If so, you are wrong. . . very wrong.

Aaron Henry told you in Washington recently that it is harder to register to vote in Mississippi than to get a hunting license. That is a misleading statement, falsely implying that discriminatory practices exist. There are no racial impediments to voter registration anywhere in Mississippi, and have not been in my adult life. The clearest demonstration of this is the fact that in 1978 a higher percentage of the voting age population was registered to vote in Mississippi than in New Jersey, California, New York, Massachusetts, or in the nation as a whole.

We have more black elected officials in Mississippi than in any other state. In my hometown and county, we have a number of black elected officials, and the black vote often determines the outcome of elections. It is actively sought by politicans, black and while alike. Such is the case across the state.

Furthermore, the most effective political organization both in Yazoo County and in the State of Mississippi is the unified black campaign for a Democratic candidate led by the NAACP, Voters Leagues, etc. We have had several such campaigns in my county and four state-wide since 1976. The vote generated by this organization is virtually monolithic, and the turnout mechanism is highly organized and extremely efficient.

The product of this organization is that Mississippi voted approximately the same percentage of its voting age population in 1980

as did the nation as a whole. In 1978 its turnout of the voting age population was 36.2% and compared favorably with that of New Jersey (36.8%) and New York (36.8%), while it exceeded the percentages in such states as Arizona and Maryland and matched that of Vermont. Our 1978 percentage of registered voters actually casting ballots was 1/4 higher than that of the District of Columbia. The 1976 turnout percentage of voting age population (49.8) exceeded that of such states as Hawaii and Nevada, matched Florida's, and was within one percentage point of that of Maryland (50.3) and New York (50.6).

It is a plain fact that the voting rights of blacks in Mississippi are neither denied nor abridged. Both statistical and empirical research will bear that out. Those who cry for preclearance and the other travesties of the Votings Rights Act to be extended do not do so because they want a fair, open election system, but because they want an arbitrary and discriminatory process they can manipulate. Aaron Henry himself established that in his testimony before this Subcommittee on May 29 when he told you how Justice is always at his beck and call. Congress would do this country a great disservice to continue such an insult.

Mr. EDWARDS. Mr. Barefield.

TESTIMONY OF STONE BAREFIELD

Mr. BAREFIELD. Thank you, Mr. Chairman. I sincerely appreciate the opportunity you afford me to come here today to express my thoughts concerning proposed legislation relating to the Voting Rights Act of 1965.

Let me first assure you, Mr. Chairman, and the other gentlemen of the subcommittee, that I do not oppose the provisions of the Voting Rights Act of 1965 in any shape, form, or fashion except the provisions contained in section 5.

Mr. Chairman, you will recall that I also appeared before this committee some 6 years ago and expressed my opposition to the amendments to the Voting Rights Act at that time. I have read much and heard much about the proposed extension of the Voting Rights Act of 1965.

Mr. Chairman, I am just a poor country boy who tries to practice law down in southeastern Mississippi. I have been in that profession for 20 years. I have read the Voting Rights Act of 1965 numerous times. I have studied its language in great detail, and within the limited knowledge of the English language which I possess, I can find no language in the Voting Rights Act of 1965 that provides that it will stand repealed at any time in the future.

The Voting Rights Act of 1965 is a permanent act. It is an act in perpetuity and will always be on the statute books until it is repealed by Congress or otherwise declared unconstitutional.

What this committee is considering—and I refer to the bill introduced by Mr. Rodino, H.R. 3112—and what this Congress did in 1965 and what this Congress is about to do again in 1982 is to add additional years onto the burden which the States must carry before they will even have the right to petition the Federal judiciary to come out from under this act.

Let me depart from my text for a minute, Mr. Chairman.

When Congress passed the Voting Rights Act in 1965, it determined that there were certain tests and devices existing in these States which should be eliminated. I think they were correct. Hindsight tells me that. Without the Voting Rights Act, the South would have never made the progress that it has made since 1965. There has been great change and great progress made; but Congress wrote the law and Congress said Mississippi, you exist for 10 years with a perfect record—excuse me, you exist for 5 years—the first time—with a perfect record and you can get out from under this act.

Then Congress, when we served our 5 years, this subcommittee and Congress met and said we made a mistake, we should have said 10 years.

So Mississippi served its 10 years, Mr. Chairman. Just as we were about to get out, you met again and said whoops, we made a mistake, we should have sentenced you to 17.

Now Mr. Chairman, 16 years, hopefully with a perfect record, but if even one iota of the allegations made before this committee by Mr. Fred Banks, by Dr. Aaron Henry, by Mr. Frank Parker, by Mr. Rheems Barber, are to be taken as truth, there is no way in the world Mississippi can get out from under this act, because

section 4 provides, Mr. Chairman, that when we filed our petition the burden is on us to prove that for the 17 years prior to the filing of that petition we have not violated this act.

We will go a step further. It says that if the court—and this court, by the way, sits in Washington, D.C., not in Mississippi—that if the court in Washington, D.C., finds that we in fact did during that 17 years violate this act, then we can't go back to court for another 17 years from the day they sign that court order, under existing law.

Gentlemen, listen to me. We can't file today. The earliest we could possibly file it would be August of 1982. If Mississippi goes to Washington, D.C., and asks and petitions our Government, through the Federal judiciary, for the opportunity of proving our innocence for 17 years, you may rest assured Dr. Henry will be there testifying, Mr. Banks will be there testifying, Mr. Parker will be there testifying.

If that court finds that we are not clean, then, gentlemen, under the existing act it will be the year 1997 before Mississippi can go back, but if you adopt the amendment of Mr. Rodino, it will be the year 2007, a quarter of a century—not in my lifetime, Mr. Chairman, or perhaps yours—that 2.5 million people and the legislative process of Mississippi will be subjected to section 5 clearance in the Justice Department.

I am fully aware that there are members of this subcommittee and Members of Congress who would like to make such a fact permanent. If you do, Mr. Chairman, for God's sake give us some protection from the arbitrary and capricious manner by which the State of Mississippi is treated by the Justice Department.

I say that, and I mean that. I represent the Forest County Board of Supervisors. We redistricted under a suit filed against us by black plaintiffs. They were well-represented by an outstanding attorney who now resides in this State, I believe, Mr. George Peach Taylor. We fought that lawsuit. The court ordered the plan.

Mr. George Peach Taylor appealed that to the Fifth Circuit Court of Appeals. The fifth circuit affirmed that plan, dismissed the appeal. We reregistered our voters with the approval of the Justice Department, and under the supervision of federally designated employees who came there and watched us, and we prepared for the 1975 election.

On July 5, without so much as a phone call, without so much as a letter, in walks a Justice Department lawyer, files a lawsuit, and seeks to enjoin our elections.

Mr. Chairman, I couldn't have been more shocked if the Moon was to fall through this ceiling. Why? We have had our lawsuit. We have had our day in court. Everybody is happy. One man, one vote. We met the burden.

The lawyer said, well, that was a 14th amendment lawsuit. Now we are going to sue you under the 15th amendment.

How many days in court do they get? I said, what do you need? What do you want? What can we do to make you happy, Mr. Justice Department?

He said all you have to do is move these little lines over here and take these blacks in. The minute he said it, it was very obvious

why. There was a local black citizen who was a potential candidate who wanted to be included.

We told him no. Mr. Chairman, that lawyer looked me and my colawyer in the eye and said, you can't afford not to agree. I said why?

You don't have the financial resources.

We fought them. We went back to court. We won. We went to the fifth circuit and, Mr. Chairman, a black lady was elected justice court judge in that district in the first primary over two whites, one of whom was a white incumbent.

As soon as the election was over, and the Justice Department realized that we were right and they were wrong, they dismissed the lawsuit, dismissed the appeal.

This kind of treatment we can't live under, Mr. Chairman. We have to have some fair and equitable treatment in dealing with our problems.

Mr. Frank Parker in his presentation to your committee in Washington used my name in his testimony with regard to the open primary law and quoted me as having said that one of the purposes of the open law was to prevent minorities from being elected.

I deny that quote, but what I did say, Mr. Chairman, and I authored that bill for the first time in 1964, quite frankly, to prevent my colleague over here in the Republican Party from getting to the situation that he finds himself in today, and that is almost a controlling party in my State; what I did say was that under the system that I grew up under, and under my understanding of the American system, majority vote ruled; that had always been the system in Mississippi.

The open primary rule, it required nothing more than a majority vote for election. All I said was that I did not believe that a person should be elected by a minority vote, meaning—and perhaps a bad choice of words—a plurality.

Another instance that I believe was mentioned by Mr. Banks regarded an amendment in the 1981 session of the Mississippi Legislature where we had had our justice court judge system, declared unconstitutional because of the fee system upon which it was based and the legislature found it necessary to revamp that system. In doing so, we chose to modernize it, to update it, hopefully to make it more effective by reducing the number of judges.

Each county is now allocated five judges from each county. We went on a graduated scale based on some two judges in some counties to five in others. I serve as vice chairman of the judiciary committee of the Mississippi House of Representatives. Mr. Henry is a member of that committee. He proposed in that committee that those judges be elected by district rather than the county at large.

I supported him with that amendment. We lost in committee. We went to the floor. Dr. Henry tells you in his testimony, and Mr. Banks, that it was through his efforts on the floor of the house that that was reversed and that is true but, Mr. Chairman, I tell you that I stood at the podium with him for no other reason than the fact that he was right.

I am concerned that, having once placed upon the Southern States a sentence of punishment, that Congress cannot make up their mind when that sentence will be completed.

I heard the mayor of Montgomery say to you this morning, gentlemen, if we are doing something wrong, tell us what it is. Put it in the law so I can know how to work with it. It is the section that defines a test or device that I sincerely believe you ought to be dealing with, because if you are to lead us to believe that if even at the end of 27 years I can get out and have hope and look forward to that date, but four times I have reached that point only to have you resentence me. Give us some hope.

May I close, Mr. Chairman, by recalling an incident in the early history of this country. I am reminded of the story about General Washington when he was at Valley Forge. It was a severe winter. His troops were without shoes, clothes, or ammunition or complements of war.

He wrote a letter to Congress and asked for help. He received no response. Congress just debated.

He sent a second letter. He received the same response and Congress continued to debate.

Finally, he wrote a third letter. It came to the attention, I believe, of Benjamin Franklin, who read it. It said this, in effect: "Is there anybody there? Is anybody listening? Does anybody care?"

Mr. Chairman, Mississippi finds itself today in that same situation along with the other States. We really wonder, is there anybody here? Is anybody listening to us? Does anybody care? It is time for all of us, black and white, to put the reconstruction of the 1870's behind us and the mistreatment that they have received for many years and start working together as a people and forgetting the distrust.

I understand why the black man has a fear. I do not understand why he still has it in 1980. I do not believe it is realistic. He is getting more help today than he ever dreamed he would have in 1965. Many, many black elected officials in Mississippi today are there because of this act. If you repealed it on the spot today, Mr. Chairman, you could not in the Mississippi Legislature go back to where we were.

Thank you, Mr. Chairman.

[Statement of Mr. Barefield follows:]

TESTIMONY OF STONE D. BAREFIELD, MEMBER, MISSISSIPPI HOUSE OF REPRESENTATIVES

Mr. Chairman, members of the committee, I sincerely appreciate the opportunity that you afford me today to express to you my views and concerns relative to proposed legislation presently before this committee and the Congress of the United States relating to the Voting Rights Act of 1965.

Let me first assure you that I do not oppose the provisions of the Voting Rights Act of 1965 in any shape, form, or fashion, except those provisions contained in Section 5.

Mr. Chairman, you will recall that I also appeared before this committee some six years ago and expressed my opposition to the amendments to the Voting Rights Act at that time. I have read much and heard much about the "Proposed Extension" of the Voting Rights Act of 1965.

I have secured copies and have read the statements of Dr. Aaron Henry, Representative Fred Banks, Mr. Rheems Barber, Mr. Frank Parker, Mr. Benny C. Thompson, and others who have previously appeared before this committee in support of

the pending legislation. Each of these gentleman have encouraged this committee to "extend" the Voting Rights Act of 1965, either for a number of years or to make it permanent.

Mr. Chairman, I am just a poor old country boy who tries to practice law in a small town in South Mississippi, having been engaged in that profession now for some 27 years. I have read the Voting Rights Act of 1965 numerous times. I have studied its language in great detail, and within the limited knowledge of the English language which I possess, I can find no language contained in the Voting Rights Act of 1965 that provides that it will stand repealed at any time in the future.

Mr. Chairman, the Voting Rights Act of 1965 is a permanent act. It is an act in perpetuity and will always be on the statute books until it is repealed by the Congress of the United States or declared unconstitutional.

What this committee is considering and what this Congress did in 1965 and what this Congress is about to do again in 1982 is to add additional years on to the burden which the states must carry before they will even have the right to petition the Federal Judiciary to come out from under this act.

In short, Mr. Chairman and members of this Committee, you are undertaking to increase the burden from 17 years to years; that Mississippi must prove that it has not committed any violations of the Voting Rights Act of 1965. I read where Dr. Aaron Henry had stated that during the last four years there had been 56 instances of violations of the Voting Rights Act by the State of Mississippi or its political subdivisions. Assuming that it is true, for I certainly do not accept it as a fact, and assuming that the last of those 56 acts occurred as late as 1980, then as I interpret the 1965 Voting Rights Act, it will be the year 1997 before the State of Mississippi would even be eligible to come out from under the Voting Rights Act, as the law is presently written.

Mr. Chairman, is this committee and this Congress so interested in continuing a burden of punishment, so vindictive in its desire to destroy the spirit of 2½ million good people, that it would seriously consider postponing until the year, 2002, before the State of Mississippi can seek relief? It was, I believe, the original intent of Congress to insure not only that all people, but particularly the Blacks in the South, can not only register to vote, but could vote and have that vote counted and to show good faith by providing that once that was accomplished, the State would have to show that it had existed for at least ten years before it could be exempted from the act, and thus, remove itself from the pre-clearance provision. That ten years has grown to seventeen, and now you seek to increase it further to twenty-seven.

As a member of the Mississippi Legislature for the past twenty-two years and a former chairman of the election committee of the Mississippi House of Representatives and presently a member of that same committee, I can assure you that notwithstanding all of the allegations, suspicions, and innuendos made before this committee by those Mississippians who have testified earlier and whom I have mentioned above, that the legislature of the State of Mississippi has made a tremendous good faith effort to stop and prevent the enactment of any legislation that could even be considered a possible violation of the Voting Rights Act of 1965, because of the sincerity of the legislative leadership of Mississippi to get Mississippi out from under this act.

I certainly do not suggest that there have not been acts which were in violation of the Voting Rights Act, either by the State of Mississippi or by its numerous political subdivisions of which I and other members of the legislature have no control, but I am saying to you that these acts, when made, were made in good faith and their unconstitutionality was only determined by subsequent Court Decisions of the Federal Judiciary and were not based upon any existing case law at the time of their enactment.

The pre-clearance provision of Section 5 continues to work a tremendous hardship on the people of Mississippi and particularly the arbitrary and capricious manner by which the preclearance provision is administered by the Justice Department. Yes, Mr. Chairman, I said arbitrary and capricious.

Those who have previously testified before this committee from Mississippi have described what a horrible motive and purpose was behind the enactment of the open primary law, which I first authored in 1964 as a member of the House of Representatives. As the author of this legislation, I can assure you the motives were not racial, but were designed to insure that no public official would hold office in the State of Mississippi unless he shall have been elected by the majority of the voters of the election district. I personally and sincerely believe that that is the American system. I have been told that all of my life, and I have been led to believe that the majority system was the American system, but notwithstanding whatever motives Dr. Henry and others may want to place upon the so-called open primary law, I would like to point out to this committee that it has been enacted and submitted

under Section 5 on at least three or four occasions. In each instance, it has been either rejected outright or it has been given undue delay and consideration by the Justice Department. Now if you will please understand what I am about to say: After the State of Mississippi had enacted the open primary law on three different occasions, members of the Louisiana legislature, hearing of the law and believing that it would be good for their state, came to Mississippi, secured copies of our legislation, took it back to Louisiana, enacted our legislation, changing primarily the word, Tuesday, to the word, Saturday, in order to conform to the fact that they hold their elections on Saturday and secured the approval of the Louisiana open primary law. Louisiana submitted it to the Attorney General under the preclearance provisions of Section 5, and to the astonishment of everyone in the State of Mississippi, secured the immediate approval.

Now, if you know anything at all about the history of Mississippi and Louisiana insofar as racial relations are concerned, you will know that there is not one iota of difference in the racial history of those two states, and the only thing that may separate them is the Mississippi River. For the Justice Department to refuse to approve a law for Mississippi on the grounds that it dilutes Black votes and to approve the same law for another state, Louisiana, and determine that it does not, is certainly not a fair and equitable administration of Section 5 and appears to be a political decision rather than a legal one.

When efforts that were made to determine how such a law could have been accepted for Louisiana when rejected by Mississippi, all we could learn was that the Blacks in Louisiana did not object to it, or perhaps, Mr. Chairman, the political clout of the Congressional delegation from Louisiana was perhaps a little more powerful than that of the Mississippi delegation. If we are to live under the law of this country, then let us administer the law fairly and equally and not based on the political whims and wishes of the bureaucrats who infest the Justice Department.

Again, Mr. Chairman, in regard to the statement to the committee by Mr. Frank Parker, he went to great detail in his presentation to discuss the Mississippi Legislative Reapportionment controversy that existed for almost 12 years.

May I say, Mr. Chairman, that I have known Mr. Parker for a number of years. He is, indeed, an outstanding attorney. I would be remiss if I did not suggest that sometimes he is somewhat loose with his facts in that he does not always present them fairly and equitably. Mr. Parker in his presentation would have you believe that the reapportionment plan which is presently in existence in the State of Mississippi is the result of his untiring efforts and legal talents. The truth of the matter is that the present existing apportionment of the Mississippi legislature is the result of a legislative enactment plan which was submitted to the Justice Department for pre-clearance under Section 5 and was promptly objected to by the Justice Department, maintaining that it would dilute the Black vote. The elected leadership of Mississippi chose to exercise their right and petition the three Judge Court of the District of Columbia to approve said legislative enactment, notwithstanding the objection of the Justice Department.

That plan, Mr. Chairman, was approved by a three Judge Federal Court in the District of Columbia under Section 5 as a constitutional reapportionment plan. Mr. Frank Parker, representing the intervenors contested that plan and during the course of that plan attempted to secure compromise modifications which were, in my opinion and the opinion of many others, politically conspired so as to alter Black districts by reducing the Black percentage in districts where a majority of sixty percent Blacks would be reduced in order to increase the Black percentage in other districts where there resided friends and clients of Mr. Parker. This shows to me and I hope to this committee that the Justice Department will not move on any issue in Mississippi without first receiving its pre-clearance of Dr. Henry Aaron, Mr. Fred Banks, Mr. Frank Parker, and perhaps others. I would remind this committee that none of the Judges in the three Judge District of Columbia Court were from Mississippi. I believe one was from Pennsylvania, one from Maryland, and perhaps the other one was from New Jersey. I would request that this committee review, read, and study the transcript of the proceeding in that case so that you might learn first hand of the little respect they indicated for the manner in which the Justice Department had treated the State of Mississippi in its reapportionement controversy.

A few more instances of the Justice Department arbitrary and capriciousness:

The town of Port Gibson attempted to annex vacant land in which no one resided for the purposes, I understand, of constructing a manufacturing plant for the community. No way it could have been a dilusion. Annexation was rejected by the Justice Department.

The city of Indianola sought to change the position of Chief of Police from an elected position to an appointed position. In attempting to clear the matter under

Section 5, the Justice Department was only concerned with, "Who do you intend to appoint?" I would suggest, Mr. Chairman, that who was to have been appointed is of no concern to the Justice Department. It was either a dilusion or it was not.

The city of Hattiesburg annexes property in an adjacent county in order to furnish fire and police protection and water and sewer to a new hospital constructed in the area. The annexation is submitted to the Justice Department and approved without question. Notwithstanding, that it was a dilution—approval, in my opinion, because the Black community did not object.

The city of Jackson, Mississippi annexes additional area adjacent to Southwest Jackson, containing some 35,000 residents. The Justice Department objects but tells the city officials of Jackson that it is not the annexation they object to but only the right of the people in the area to vote, and as late as June 2, 1981, those 35,000 residents who were permitted to vote in the municipal election of Jackson, but who were required to have them segregated and separated from the other votes so that the Justice Department could throw them out if they did not like the outcome of the City elections.

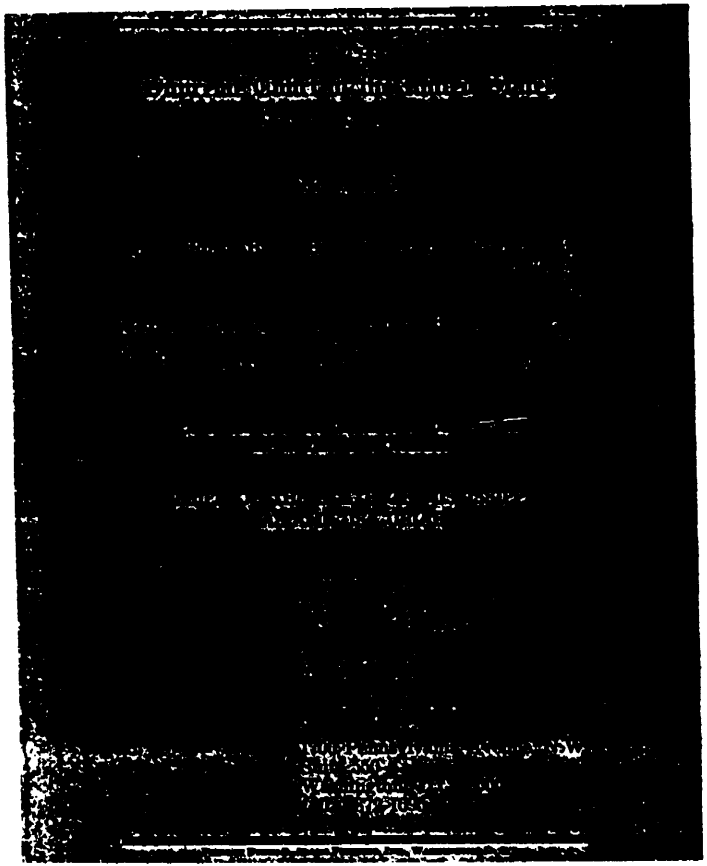
The State of Mississippi enacted legislation that contained a number of changes in the election laws. One section of that act provided for the increase of pay for the election workers who work at the polls on election day. The act was submitted to the Justice Department for pre-clearance under Section 5 and was objected to by the Justice Department. When the Black leadership in Mississippi began to get pressure put on them by the Black poll workers, who were to work in that year's election, because they were not going to get the pay increase which the legislature had voted them, the Justice Department simply revised its thinking and advised the State of Mississippi that they had no objection to that "section" of the act. I would point out, Mr. Chairman, that the Voting Rights Act of 1965 does not give the Attorney General or his deputies such discretion.

One point I would like to specifically make reference to is the remark contained on page seven of the statement of Mr. Frank Parker, before this committee last week, and I quote from that the following, "In 1968, the bill's sponsor, Rep. Stone Barefield, stated that one of the purposes of the bill was to cut down the changes (sic—obviously should be chances) of a 'minority' candidate being elected." I wish to deny to this committee that I ever made such a statement. The purpose of the open primary law in 1964, when I first introduced it and today is the assurance that no candidate should be elected by a minority of the votes. Perhaps the word, minority, was a bad choice of words. To state it another way: the purpose of the open primary law is to insure that no person shall be elected by a plurality vote.

Mr. Parker goes into great detail testifying as to the number of instances which he alleges are violations of the Voting Rights Act. In all fairness, I only ask that you have your staff review the facts in each of those instances to determine whether or not the instances as described by Mr. Parker are, in fact, as he describes them. I do not suggest for a minute that there have not been some instances of violation of voting rights in Mississippi as in other states. But for Mr. Parker to attempt to persuade this committee that each and every act undertaken by the people of Mississippi is done out of bad motives to prevent some from voting in the State of Mississippi is a contemptable misrepresentation of the truth. Many of the instances which Mr. Parker refers to you will find were decisions of the United States Federal Court and the United States Court of Appeals, and were not acts of the Mississippi Legislature or other State officials.

If, Mr. Chairman, the number of instances cited to this committee by Mr. Parker, Mr. Banks, and Dr. Henry have, in fact, occurred, which I deny, then the fact that such acts have not been punished or corrected constitute a sincere indictment of the Justice Department having permitted such acts to occur without appropriate and swift legal action against the State of Mississippi and its political subdivisions to insure compliance with the Voting Rights Act of 1965.

Finally, Mr. Chairman and members of the committee, I would like to attach to this statement and earnestly encourage that each member of this committee and its staff read it, a brief, filed by the State of Mississippi in the Supreme Court of the United States in the case of City of Rome vs United States of America. I sincerely believe that a study of this brief will point out to this committee far better than I ever can the serious problems which Mississippi and the other Southern states face because of the arbitrary and capricious manner by which they are treated by the Justice Department. This, Mr. Chairman, must be corrected.



INDEX

CITATIONS

1942

83-679 O - 82 - 49 Pt.2

IN THE

Supreme Court of the United States

OCTOBER TERM, ——

No. 78-1840

CITY OF ROME, BRUCE HAMLER, and H. F. HUNTER, JR., *Appellants,*

v.

UNITED STATES OF AMERICA, GRIFFIN B. BELL, Attorney General of the United States, and DREW S. DAYS III, Assistant Attorney General of the United States, *Appellees.*

On Appeal From the United States District Court for the District of Columbia

BRIEF OF THE STATE OF MISSISSIPPI AS AMICUS CURIAE

This brief is submitted pursuant to the privileges granted a State through its Attorney General under Supreme Court Rule 42(4).

QUESTION ADDRESSED

The State of Mississippi confines its presentation as *amicus curiae* to discussion of the questions of whether

this Court (a) should reverse its prior decisions upholding generally the constitutionality of 42 U.S.C. 1973c (1970) [hereinafter Section 5 of the Voting Rights Act], or (b) having extended the scope of Section 5, as presently applied in the wake of judicial determinations and administrative misapplications based upon this Court's precedents, it has become unconstitutional.

INTEREST OF THE STATE OF MISSISSIPPI

As one of the jurisdictions covered by the Voting Rights Act of 1970, as amended, the State of Mississippi *qua* State, and with regard to its component political subdivisions, has a significant and continuing interest in the current status of the constitutionality of Section 5 of the Act. Mississippi supports the position adopted by the City of Rome with regard to the construction of the phrase "does not have the purpose and will not have the effect," with respect to the triggering mechanism for Section 5.

Under Section 5, State interests have been subjected to significant apprehension as a result of this Court's interpretation of the scope and extent of that section's operation. The State of Mississippi has found through years of litigation in the federal courts, that under Section 5 there exists a statutory right without an effective judicial or administrative remedy. This would likely be the case even if the provisions of the Voting Rights Act were confined to the evident plain meaning of the words of the statute. But compounding the interpretations of federal courts at all levels, is the application by the Department of Justice of its own interpretation of those various court decisions. These Departmental interpretations are further complicated by

its own application of intra-Departmental policies and procedures in the operation and execution of the provisions of Section 5. The result is that all covered jurisdictions, from that of a sovereign State down to the smallest school district, must traverse a maze of finite approval stages within the Department or the federal courts. Even if officials at these levels have access to clear and undisputed facts in each case, the prospective variables of ignorance, mistake and plain misfeasance at the administrative level cause the application of Section 5 of the Voting Rights Act to fall before the constitutional requirement of "appropriateness" under Section 2 of the Fifteenth Amendment.

For these reasons, because Mississippi has an interest in protecting its inchoate authority as a State in the orderly operation of state and local government and in future litigation in federal courts at all levels, it presents this supportive brief in the present action.

STATEMENT OF THE CASE

As a local jurisdiction covered under Section 5 of the Voting Rights Act, the City of Rome, pursuant to that provision's preclearance requirement, sought approval by the Attorney General of the United States to effectuate certain changes in its City Charter. These changes included the creation of a seemingly simple majority vote requirement for the City Commission and the Board of Education elections, along with the creation of numbered posts for those elections; the establishment of ward residency requirements for the Board of Education elections only; and the institution of staggered terms for both the City Commission and the Board of Elections. JURISDICTIONAL STATEMENT 5-6. In one form or another, the Attorney General inter-

posed objections to all of these changes on two separate occasions in 1975 and 1976. The City then filed a 42 U.S.C. 1973b [Section 4] action seeking a declaratory judgment in the District Court for the District of Columbia. The sum and substance of that court's holding was that while the City was found to have acted without invidious "purpose," it was nevertheless found to have an *unintended* effect adverse to the class of voters protected by the Voting Rights Act. Appeal lies directly to this Honorable Court pursuant to 42 U.S.C. 1973b(a) and 42 U.S.C. 1973c. *Id.* 7-9.

SUMMARY OF ARGUMENT

The State of Mississippi seeks to persuade this Court to reconsider its decision in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), finding Section 5 of the Voting Rights Act of 1965 to be constitutional within the ambit of the Enforcement Clause of the Fifteenth Amendment. For the reasons urged in separate and dissenting opinions since that case, it has now become clear that Section 5 of the Voting Rights Act is and always has been unconstitutional. Its threshold violation is of the fundamental principle of federalism inherent in our constitutional system. The vesting of authority in a single individual to effectively veto the operations of an integral component of this Federal Union is to reduce the States to colonial or palatinate status. This is a direct contravention of the Guarantee Clause of Article IV, Section 4 of the United States Constitution. There, in point of fact, the affirmative duty is placed upon the central government to preserve and guarantee republican government, rather than create statutory and administrative barriers to its orderly function.

Assuming *arguendo* that Section 5 of the Voting Rights Act is not unconstitutional on its face, it has become unconstitutional as applied pursuant to its piecemeal interpretation by federal courts at all levels, and by the arbitrary, capricious and ofttimes malpracticed administration by the Department of Justice. From the initial decisions by this Court applying the Act's remedies to state and federal elections, to those decisions extending its administrative guidelines to the smallest political component in the covered States, the statutorily-required preclearance procedures have burgeoned into incredible complexity and delay. The procedures comprehended in the language of the Act itself, from the sixty-day submission period to *de novo* proceedings before an independent three-judge federal tribunal, have resulted in litigatory and financial burdens which no right-thinking legislator could have intended for Section 5 to have visited upon the covered jurisdictions. Certainly the lengths to which the courts and the Department of Justice have required these jurisdictions to go in order to exercise even the most basic electoral and governmental powers cannot any longer be said to be "appropriate" under the Fifteenth Amendment.

This is especially clear since both Mississippi, and the City of Rome, Georgia (and, indeed, along with the South in general) have, in the thirteen years since the initial findings regarding the constitutionality of Section 5, experienced dramatic social, economic and political changes. This positive progress has resulted in making Section 5 superfluous at best and an administrative burden at worst for the free and unfettered access to the very electoral system it was designed to enhance and facilitate to begin with.

Finally, Mississippi emphasizes the inherent authority of this Court to reverse itself, especially where constitutional rulings are concerned. Not only is it within the Court's endemic authority to override precedent, but it also becomes its duty to do so where the passage of time clearly establishes the need to act in the Court's continuing protection of our Constitution as the organic law of the nation.

For these and other reasons elucidated herein, Mississippi supports the City of Rome's application for reversal of the judgment below.

I. Section 5 of the Voting Rights Act Is and Always Has Been Unconstitutional.

In much the same way as the first Mr. Justice Harlan in dissent anticipated the true meaning of the Equal Protection Clause of the Fourteenth Amendment in *Plessy* v. *Ferguson*, 163 U.S. 537, 559-560 (1896), so too was Mr. Justice Black incisively aware of the prospective impact of the operation of Section 5 of the Voting Rights Act on constitutional government in the United States. In the central case at issue here, *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), upholding the constitutionality of Section 5, Mr. Justice Black filed what has come to be a classic dissent. Protesting against the justiciability of the issue to begin with, and concerned about the further liquidation of the Guarantee Clause, Justice Black objected that the mendicant requirement of Section 5 "so distorts our constitutional structure of government as to render any distinction drawn on the Constitution between State and Federal power almost meaningless." *Id.* at 358. In a central government of delegated powers, he argued, if the "reserve[d] . . . powers to the

States are to mean anything, they mean at least that the States have the power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them." *Id.* at 359. With astonishing prescience for the bureaucratic functioning of the Section 5 requirements, he noted through experience that, "I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat federal authorities in far away places for approval of local laws before they can become effective is to create the impression that the State or States treated in this way are little more than conquered provinces." *Id.* at 359-360. He also noted the tendency toward the inevitable delegation and dispersion of power within a Section 5 type preclearance apparatus. With that delegation traditionally goes a dissipation of care and expertise in administrative decisions. Justice Black concluded that, "It is inconceivable to me that such a radical degradation of State power was intended in any of the provisions of our Constitution or its Amendments." *Id.* at 360. *Cf.* the dissenting opinion of Mr. Justice Harlan earlier in *Wesberry* v. *Sanders*, 376 U.S. 1, 38 and 48 (1964).[1]

Over the next seven years there was a steady expansion of the scope of Section 5 preclearance authority. When in 1973, the Court ruled in *Georgia* v. *United States*, 411 U.S. 526 (1973), that Section 5 preclearance requirements applied to the reapportioning of entire State legislatures, Mr. Justice Powell, in a vig-

[1] As is elucidated in greater detail in Argument II below, at p. 14, the inexorable operation of Parkinson's Law with regard to Section 5 of the Voting Rights Act has become all too grim a reality.

orous dissent, reasserted the constitutional objections voiced by Justice Black. In the *Georgia* case, Justice Powell agreeing with Mr. Justice White, objected to the extension of Secton 5 upward to incorporate the fundamental electoral partitioning of an entire State. It was, he said, "a serious intrusion, incompatible with the basic structure of our system for federal authorities to compel a State to submit its legislation for advance review." *Id.* at 545 (footnote omitted).

It is, of course, fundamental that Congress has the power to implement protective voting rights legislation pursuant to the "appropriate legislation" license of the Enforcement Clause of the Fifteenth Amendment. That authority, however, while plenary, is neither absolute nor arbitrary. All segments of the Constitution operate in harmony with all other segments, and federal authority to regulate guarantees as to voting-rights must conform with authority reserved to the States to manage their own poliitcal affairs. Fundamental to those reserved rights is the authority of State legislatures, again within the context of constitutional confines, to pass State laws. As with all federal enactments, those laws have the full leeway of "necessary and proper" legislation. *Maryland* v. *Environmental Protection Agency*, 530 F.2d 215, 225 (4th Cir. 1975). This Court has long devoted careful concern to the protection of "functions essential to the separate and independent existence of the component members of the federal union." *Lane County* v. *Oregon*, 74 U.S. (7 Wall.) 71 (1869); *see also Texas* v. *White* 74 U.S. (7 Wall.) 700 (1869). While cross-currents of American society may change the focus of legislative and judicial attention in response to the needs of the body politic, a State is not a mere factor in the "shifting

economic arrangements" of society, *Kovacs* v. *Cooper*, 366 U.S. 77, 95 (1949), but is, instead, a coordinate element in our constitutional system. That system will not allow "the National Government [to] devour the essentials of State Sovereignty." *Maryland* v. *Wirtz*, 392 U.S. 183, 205 (1968) (Douglas, J., dissenting).

This Court, in a recent consideration of the traditional means and substantial needs of the structures of State and local governments, has ruled that notwithstanding a broad basis for the Federal Government's constitutional power (e.g., the Commerce Clause), Congress may not exercise that power in a fashion which "would impair . . . the States' 'ability to function effectively in a federal system.'" *National League of Cities* v. *Usery*, 426 U.S. 833, 852 (1976). There the Court held that a federal statute, constitutional on its face, was infirmly applied under the conditions as they existed at that time. "We hold that insofar as the challenged amendments operate to directly displace the State's freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress . . . ." *Id.* at 852. The Court further observed that a situational over-extension of Congress' authority to withdraw from the States the power to make fundamental intrastate decisions would leave little of the States' "'separate and independent existence'" *Id.* at 851. *See also Coyle* v. *Oklahoma*, 221 U.S. 559, 580 (1911).

The seemingly plenary power of the Enforcement Clause of the Fifteenth Amendment has thus provided a wellspring, feeding a vast reservoir of federal statutory authority in dealing with civil rights legislation. This case is confined to the dredging of merely one

estuary, Section 5 of the Voting Rights Act. *See* JURISDICTIONAL STATEMENT 5-9.

The central philosophy in upholding Section 5 as "an uncommon exercise of constitutional power," was the Court's conclusion "that exceptional conditions can justify legislative measures not otherwise appropriate" under the Constitution. 383 U.S. at 334.[9] If this constitutional philosophy is to be accepted, it must necessarily, therefore, work both ways. If the *Katzenbach* premise that extraordinary times such as the early years of the Civil Rights Movement, can produce constitutionally permissive federal legislation to deal with extraordinary civil rights deficiencies, it is also logical to conclude that changes in those conditions for the better may abate the constitutional operation of that legislation. If, therefore, the enforcement provisions of the Civil War Amendments are operative as corrective devices under the Constitution in order to insure proper access to equality for minority citizens in all phases of American social, economic, and political life, that same liberality of interpretation must also take cognizance of the turning of the seasons wherein the desired fruit has been borne and harvested. In short, the very methodology which, during a previous era became vital to the acquisition of access to the political process can—and we submit has—become an obstacle to the participatory government which it was intended to promote.

[9] We do not here dwell on the argument, but merely advert in passing to previous rulings on this precise point. This "exceptional conditions" proposition arose in more trying times in *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935). There the Court in a landmark pronouncement ruled that, "Extraordinary conditions may call for extraordinary remedies [but] . . . extraordinary conditions do not create or enlarge constitutional power." *Id.* at 528.

"Appropriateness," therefore, must be considered within the context of the Constitution as it exists today.[9] Justice Powell had serious misgivings about the appropriateness of Section 5 in *Georgia v. United States*, *supra*, six years ago. While acknowledging congressional power to enact "appropriate legislation" in necessitous circumstances, he expressed "disagreement . . . with the unprecedented requirement of advance review of State or local legislative acts by federal authorities, rendered all the more noxious by its selective application to only a few States." 411 U.S. at 545, note.

Central to this case, therefore, is the contention of the City of Rome, supported by the State of Mississippi, that legislation, which under the Fifteenth Amendment was found to be constitutional and appropriate under circumstances existing thirteen years ago, can no longer be upheld on that basis due to both the very success of the legislation and the dramatic changes which were symbiotic to it. Under these conditions, both the legislation and its judicial adhesion, have, in fact, outlived the utilitarian purposes for which they were at that time intended.

In this regard, judicial analogy has been drawn between the Elastic Clause of Article I and the Enforcement Clause of the Fifteenth Amendment. *See United States v. State of Louisiana*, 225 F. Supp. 353, 360 (E.D. La., 1963). But this analogy standing alone—even without the fresh viewpoints of modern social and

[9] Indeed, even the precipatory case of *Brown v. Board of Education*, 347 U.S. 483 (1954) found that the Civil War Amendments must be viewed in their "*present* place in American life throughout the Nation." (emphasis added) *Id.* at 492-493.

political developments—cannot bear the full weight of constitutional imprimatur. If any analogy is to be drawn, it should be one which emphasizes the composition of two separate and vital elements in this parallel, i.e., that "appropriate" legislation not only conform to the denotation of that term, but also that it meet the separate requirements of being both *"necessary"* and "proper." Appellants and *amicus* contend that Section 5 no longer meets the constitutional requirement of these parameters. These results obtain essentially because of the dramatic changes in Southern political life since the inception of Section 5 remedies. They also contend that Section 5 in particular has reached the limit of its productivity under the Constitution and therefore should be pruned from the corpus of federal constitutional law so as to allow the continued organic growth of democratic participatory government in the States affected.

To begin with, the primary intent of the Voting Rights Act, dramatic increase in Black voting registration, has become a *fait accompli* in every Southern State.[1] The electoral consequences of this dramatic increase were inevitable, and blacks now hold more offices in the Southern States than in any other region in America.[2] This proportion of minority leadership is al-

[1] The biggest gains have been in Mississippi, where black registration went from 6.7% to 59.8%; in Georgia the black percentage went up from 27.4% to 52.6%. Overall, by 1969, black registration had quadrupled in the States covered by the Voting Rights Act. J. Hanus, et al., The Voting Rights Act of 1965 as Amended: History, Effects, and Alternatives (Congressional Research Service, June 17, 1975, *revised* November 19, 1975) [hereinafter, Legislative History].

[2] The latest statistics on black elected officials are reflective of the saturation effect of the Voting Rights Act itself. As of July 1978, there was a total of 4,503 black elected officials in the United States.

most certain to be significantly increased as a result of the implementation of the most recent legislatively enacted reapportionment plan approved for the State of Mississippi by a three-judge federal court for the District of Columbia under the Section 5 court alternative preclearance provision of the Voting Rights Act, *Mississippi* v. *United States*, Civ. No. 78-1425 (D.D.C., June 1, 1979), *motion for stay denied* in *Henry, et al.* v. *Mississippi*, No. A-1067 (S.Ct., June 18, 1979);[3] and doubtless also by both Mississippi's and Georgia's 1980 legislative reapportionment. These statistics conform to the plain meaning concept of the law and are immensely illuminating with regard to the dramatically changed political conditions in the States covered by Section 5.

Nor are the benefits of these dramatic gains likely to suffer retrenchment as a result of the overruling of this Court's decision in *South Carolina* v. *Katzenbach*, viz Section 5 of the Voting Rights Act. There remain a plethora of legal, statutory and equitable remedies available to private plaintiffs with the eager assistance of the Department of Justice and all its many resources in the continued maintenance and protection of all man-

The eleven Southern States account for 2,230 or 55.7% of them. Mississippi ranks second in the nation in the total number of black elected officials (393), while Georgia ranks sixth in the nation (229). Georgia ranks second in the nation in the number of black elected officials holding *two* offices (3). *Mississippi and* Georgia alone account for 11.8% of the total black elected officials in the United States. Joint Center for Political Studies, National Roster of Black Elected Officials IX-X (1978).

[3] A black State Senator, the first in modern Mississippi history, was elected in a special election called by the U.S. District Court for the Southern District of Mississippi in a district whose configuration is nearly identical to the Senate District approved in *Mississippi* v. *United States*. *Id.*

ner of civil rights under the Thirteenth, Fourteenth and Fifteenth Amendments. *See Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 440 (1968) (these Amendments operate to strip away all "badges and incidents of slavery"). Moreover, public interest groups, political leadership, and more especially black leadership in elected and appointed positions of public trust and power, in the South would prevent any regression to the practices of a previous era.

Thus, in view of the burdensome consequences attending the passage and sustaining of Section 5 of the Voting Rights Act, its constitutionality ought to be reconsidered in light of the fifteen years of experience and practice since its enactment. It is our view that if the Court were now to undertake such analysis, it would find that what seemed to many an incursion on the constitutional rights of the States which may have been justified under the concept of a "living Constitution," is no longer required.

II. Assuming Arguendo That Section 5 of the Voting Rights Act Is Not Unconstitutional On Its Face, It Has Become Unconstitutional As A Result Of Judicial Determination and Administrative Misapplication.

This Honorable Court has previously upheld the constitutionality of the enactment of the Voting Rights Act and its Section 5 preclearance mechanism, *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), and its amendments, *Oregon* v. *Mitchell*, 400 U.S. 112 (1970). In addition, this Court has been called upon on numerous other occasions to deal with the applicability of Section 5 in particular to various situations and units of government in the affected States. On separate occasions this Court has held that the broad purview of Section 5 encompasses electoral activity in congressional districts, *Lucas* v. *Rhodes*, 389 U.S. 212 (1967); local units of government, *Avery* v. *Midland County*, 390 U.S. 474 (1968); activities of citizens as private attorneys general, *Allen* v. *Board of Elections*, 393 U.S. 544 (1969); selection of presidential electors, *Moore* v. *Ogilvie*, 394 U.S. 814 (1969); the impact of educational levels on the electoral process, *Gaston County* v. *United States*, 395 U.S. 285 (1969); the shift to at-large municipal elections, *Perkins* v. *Matthews*, 400 U.S. 379 (1971); state reapportionment plans, *Georgia* v. *United States*, 411 U.S. 526 (1973); at-large county elections, *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 (1976); municipal subdivisions, *United States* v. *Board of Commissioners of Sheffield*, 435 U.S. 110 (1978); and participation of public personnel in elections, *Dougherty County Board of Education* v. *White*, —— U.S. ——, 99 S.Ct. 368 (1978).

Appellants and *amicus* submit that this piecemeal interpretation of Section 5 has spread its intended force and effect over an area well beyond that intended by Congress or manageable by those in the Department of Justice responsible for executing these decisions. Our position conforms to that of Mr. Justice Powell in his dissent in *Dougherty County Board of Education* v. *White*, where he averred that, "The Court's ruling is without support in the language or legislative history of the [Voting Rights] Act." His conclusion was that, "Indeed, if the Court truly means that any incidental impact on elections is significant [enough] to trigger the preclearance requirement of § 5, then it is difficult to imagine what source of state and local enactments

would *not* fall within the scope of that section." —— U.S. at ——, 99 S.Ct. at 380. (footnotes omitted)'

The philosophical premises of our judicial system, of course, allow an appellate court to review statutory law only by chance, when litigation happens to arise in the accusatorial process. The necessitous installment interpretation of Section 5 has nonetheless had an adverse and unfortunate effect not only on the purpose of the Voting Rights Act itself, but also on the confluent operation of the two tiers of the federal system. These situational interpretations of the applicability of the coverage of Section 5 have resulted in the fragmenting of the powers of federalism and their absorption in the vacuum of centralized authority. Nonetheless, all of the political entities within and including the States covered by the Section 5 preclearance requirements have, pursuant to this Court's decisions, been forced to shoulder a burden which increases geometrically in proportion to a political subdivision's inability to sustain it. The result is that the smaller the governmental unit captured by Section 5, the greater its proportionate burden in bearing up under the judicial and administrative burdens. As already noted, *absent* Section 5 preclearance procedures, political minorities would still

'Speaking in a footnote to the question of the constitutionality of Section 5, Justice Powell's dissent adverted to the fact that in addition to himself—he cited his previous dissent in *Georgia* v. *United States*, 411 U.S. at 545—"Other Members of this Court have also expressed misgivings about the constitutionality of Section 5." In addition to referring to Mr. Justice Black's dissenting views in *South Carolina* v. *Katzenbach*, in 1966, 383 U.S. 301, 358, he also cited Justice Harlan's concurring and dissenting opinion in *Allen* v. *State Board of Elections*, 393 U.S. 544, 586 (1969), and Chief Justice Burger's concurring opinion in *Georgia* v. *United States*, 411 U.S. 526, 545 (1973). —— U.S. at ——, 99 S.Ct. at 377, n. 1.

retain a multiplicity of remedies in order to protect their rights. But with the *continued* interference of the administrative requirements of Section 5, States and their component political subdivisions are technically given administrative and judicial appeal rights but realistically denied them in the ensuing process.

Section 5, as it stands today, therefore, provides the States with a technical right without an effective remedy. It does not strain the concept of this Court's power of judicial notice for it to take cognizance of Mississippi's experiences with Section 5. Mississippi is economically a poor State composed of political subdivisions whose economic resources are relatively meager. Yet their experiences with Section 5 are not untypical. The operation of both the administrative and litigatory alternatives of Section 5 has the inevitable effect of requiring the smallest governmental entity to match its resources with the largest, the Federal Government. Not only for the State, but also for its smaller municipalities, its poorer counties, and independent entities such as boards of trustees of hospitals and other municipal corporations, the functional requirements of the "Washington experience" with Section 5 is prohibitory. The retention of D.C. counsel required under the local rules, the expenses involved in the location, transportation, and testimony of witnesses, and the sustaining of all other expenses attending a one- to two-week trial in the District of Columbia—not to mention an appeal to this Honorable Court—are so far beyond the capacity of governmental units such as the City of Rome and cities and towns similarly situated in *Mississippi* as to strain the credulity of even the most optimistic litigant. Indeed, in more instances than perhaps even this Court is aware, various governmental units

simply allow a Department of Justice's arbitrary objection to stand for the simple reason that in the overall scheme of things, selectivity in pursuing the appeal requires that smaller issues must be allowed to fall before the Department's *fiat*. In sum, the covered States and their subdivisions are being required to weigh issues, not on the basis of their legality or constitutionality, but rather on the basis of whether or not they can afford to make a point of exercising their constitutional rights. If anything could be found to be more objectionable than local government by federal interdiction, it must be local government by federal default. Thus by the operational effect of this Court's interpretations of Section 5, it has, while technically recognizing States' rights under Section 5, effectively cut off the remedies of smaller subdivisions within those States to appeal.

Faced with these insurmountable difficulties, the covered States have been forced to accept as a fact of life that the Department of Justice may use Section 5 as a sword as well as a shield. Under current Court decisions—as well as the Department of Justice's own interpretations of them—the implementation of Section 5 goes beyond mere Departmental approval or disapproval of a prospective change in local election laws, and is used instead to usurp the daily operation of local government. In Mississippi's experience, for example, before a small Mississippi community could be allowed to change the office of Chief of Police from an elected to an appointed position, the Department of Justice required the town officials to stipulate in advance who would be appointed to the office. The same kind of overt *political* negotiations have also been required in instances from the seemingly innocuous annexation of land for future town development to the De-

partment's selective approval of proposed legislation so that vital parts have been discarded while precatory provisions have been allowed to stand useless by themselves. Finally, with regard to the conflicting interpretations of Section 5, the Attorney General of Mississippi, on at least one occasion, has had to issue separate and conflicting opinions for the Northern District of Mississippi, under one court's interpretation, and for the Southern District of Mississippi under another, for the same statewide election.

This undue, and we believe unconstitutional, operation of Section 5 comes from the hands of an integral Department of the federal government which, under the Constitution, has an affirmative duty to protect and guarantee republican government, rather than interpose barriers to it. Functional consequences make elections almost impossible in the covered States. Mississippi has not been able to restructure its election laws for 15 years, since November 1, 1964. During that time the State's Attorney General has had to constantly build bridges between laws as enacted, statutes as approved by the Justice Department, and the situations as they have actually existed during election years. Over the years those bridges have become more and more precarious in their underpinnings and consequently have become constitutionally and legally unsafe for the support of the voting rights of *all* the citizens of the State.

It is our contention, therefore, that when the absence of rights varies inversely to available remedies, any statute requiring conformity with such a process is unconstitutional. As Mr. Justice Stone consistently pointed out, "The Constitution, viewed as a continuously operative charter of government, is not to be in-

terpreted as demanding the impossible or the impracticable." *Opp Cotton Mills* v. *Administrator*, 312 U.S. 126, 145 (1941) and *Yakus* v. *United States*, 321 U.S. 414, 424 (1944). *See also* his opinion in *Hirabayashi* v. *United States*, 320 U.S. 81, 104 (1943).

Under Section 5 as it exists today, all covered States and their subdivisions, no matter how small in size, and all electoral issues, no matter how seemingly remote to the electoral process, must be submitted to the expensive legal, litigatory, and lugubrious burden of going to Washington, D.C. to appeal procedurally to the Attorney General of the United States but in reality to his subordinates, or in the alternative to an increasingly burdened federal district court there. In such a system it is not uncommon that "an erroneous judgment may stand, and acquire an undeserved authority, merely because the losing party does not appeal against it—usually for the excellent reason that he can't afford any further costs of litigation." C. Allen, LAW IN THE MAKING 298 (1958).

As already noted,* this Court's standing precedents now require any governmental unit to bear this expensive, time consuming, and immensely frustrating burden for all aspects of the electoral process in each and every State subdivision. But this Court has also recently taken judicial notice of a similar process with respect to the burdens of federal legislation on local participation in commerce. "Quite apart from the substantial costs imposed upon the States and their political subdivisions," the Court noted of that federal statute, "[it] displaces State policies regarding the manner in which they will structure delivery of those

* See *supra* pages 14-15.

governmental services which their citizens require." *National League of Cities* v. *Usery*, 426 U.S. at 847.

The operational burden of Section 5 has, at long last, come to that point in the history of this nation where it should be allowed to collapse of its own weight. In addition to the litigatory maze which any party from State to county to municipality to school board must thread, the administrative anthill of Section 5 preclearance submissions in the Attorney General's office has so leavened the quality of the administrative process as to place it beyond the ken of even the most conscientious public servant. As a direct result of this Court's previous rulings and the Attorney General's interpretation of them, the processing of these submissions has become an increasingly burdensome task for the Department of Justice.*

Moreover, the increased burden on the Department of Justice indisputably has had the effect of lowering the quality of attention the Attorney General and his staff can give to submissions. Whatever the jurisdic-

* Shortly after the passage of the Voting Rights Act, the number of submissions was negligible, averaging only about 65 per year for the first five years of the Act's existence. Of these, the Department objected to only 19 or about 5.9%. After this Court's initial rulings on the expansive nature of Section 5 per se, however, especially in *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), submissions increased from 255 in 1970 to 1,118 in 1971. By 1974, the total submissions had increased to 3,929. By then the Attorney General's proportionate rate of objection of 4% to 6% was resulting in a countermanding of electoral laws in about 180 cases per year. LEGISLATIVE HISTORY at 56-57. This discussion of the burdens of the administrative route under Section 5, however, is in no way meant to defer to any purported desirability of the alternative Section 5 route of litigation. See JURISDICTIONAL STATEMENT at 27.

tion, this process still requires massive amounts of man hours, legal fees, and political negotiations to produce. Indeed, this Court took judicial notice of the fact that under such conditions "the Department of Justice does not have the resources to police effectively all the States and subdivisions covered by the Act." *Perkins* v. *Matthews*, 400 U.S. 379, 396 (1971).

The inevitable result, despite the terms of the Act, is that the Attorney General must delegate to the lowest echelons of his Department, a federal statutory power of the broadest implications and results for the sovereign States of this Union and their citizens.[9] There is at least some doubt, however, as to whether the Voting Rights Act, by analogy to other federal legislation of the same era, even allows the Attorney General to delegate this authority beyond the top level of the Department of Justice. In an action based on the Omnibus Crime Control Act of 1968, this Court concluded that Congress did not intend a similar power on the criminal side to be exercised by "any individual other than the Attorney General or an Assistant Attorney General specially designated by him." *United States* v. *Giordano*, 416 U.S. 505, 508 (1974). There the Court found that the exercise of federal statutory power in a constitutionally sensitive area required "[t]he mature judgment of a particular responsible Department of Justice official [to be] . . . interposed as a critical precondition to any judicial order." *Id.* at 515-516.

[9] In at least one major case, the Attorney General literally could not make up his mind within the sixty days whether or not a jurisdiction's proposed action was objectionable. Rather than "take the chance" he therefore interposed a *nunc pro tunc* objection just to be "safe." While that action was disallowed by this Court, *Morris* v. *Gressette*, 432 U.S. 491, 507 (1977), that attempt by the Department of Justice demonstrates a disposition in the administration of the Act of a philosophy of presumptive and almost reflexive rejection. *See also City of Richmond* v. *United States*, 422 U.S. 358, 362 (1975). Early on, Mr. Justice Powell foresaw such a difficulty and was insisting in dissent that, "As a minimum, assuming the constitutionality of the Act [itself], the Attorney General should be required to comply with it explicitly and to invoke its provisions only when he is able to make an affirmative finding." *Georgia* v. *United States*, 411 U.S. at 545. *See also* the opinion by White, Powell and Rehnquist, J.J., in the same case that the Attorney General "should not be able to object by simply saying that he cannot make up his mind or that the evidence is in equipoise." *Id.*

But the level to which this decision-making process under Section 5 has devolved was astonishingly demonstrated in Mississippi's most recent administrative experience with the Department of Justice. There the functional decision to interpose an objection to Mississippi's entire statewide reapportionment plan—the same plan which was recently upheld on appeal in the judicial alternative—was left to the discretion of a second-year law student who was a paralegal on the Voting Rights staff and who had no substantive expertise in the field. *See* Defendant's Brief in *Connor, et al.* v. *Coleman, et al.*, No. 78-1013 (S.Ct., October Term, 1978), at 19, n. 15, and its Appendix at D-44. *See also* the Appellee's Brief in Response to Opposition to the Application for a Stay Pending Appeal in a companion case, *Henry, et al.* v. *State of Mississippi*, (S.Ct., October Term, 1978), at 15 n. 42. The State of Mississippi as *amicus* submits that it could never have been the intent of the Congress of the United States that one of the States of the Union or any of its political subdivisions should receive this kind of negligible attention to the expensive and painstakingly crafted efforts of an entire State legislature and administration, or

if it did so intend, this Court should never stand for it."

The declivity of administrative quality current under Section 5 is all the more distressing in view of the fact that the decisions of the Department of Justice and its Voting Rights Section are not only traditionally not reviewable, *Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967), but are also veiled from public and judicial scrutiny by Section 4(b) of the 1975 amendments to the Voting Rights Act. 42 U.S.C. 1973b(b). That this Court upheld the constitutionality of that section as well, offers little encouragement. *Briscoe* v. *Bell*, 432 U.S. 404, 412 (1977). *See also Morris* v. *Gressette*, 432 U.S. at 504-505 ("Since judicial review of the Attorney General's actions would unavoidably extend this [preclearance] period, it is necessarily precluded."). The sole alternative to this discouraging administrative process is to plunge once again into litigation, excessively costly to every jurisdiction in every way.

Despite the prayer of appellants in this case, supplemented by the urging of the State of Mississippi as *amicus curiae*, to persuade this Court to depart from previous decisions under federal statutory execution of a vital Amendment to the nation's Charter, these prayers are made not in derogation of, but rather in faithful defense of, the basic doctrines of participatory

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[11] Earlier, Mr. Justice Black had foreseen that if the States and their subdivisions were to be required to get distant Federal preclearance in the Department of Justice, that other laws on different subjects can force the States to seek the advance approval not only of the Attorney General "but [also] of . . . any other chosen members of his staff." *South Carolina* v. *Katzenbach*, 383 U.S. at 360.

democracy under our federal system. As then-Solicitor General Stanley Reed observed, "No responsible official, jurist or statesman, has ever suggested that an effort should be made to ask reconsideration of the doctrine of dual sovereignty, separation of powers, or the supremacy of the federal Constitution." Reed, Stare Decisis and Constitutional Law, 35 PA. BAR ASSN. Q. 131, 139-140 (1938). Through these briefs, the City of Rome and the State of Mississippi seek to integrate and strengthen the symbiotic partnership of the basic component elements of our State and Federal Governments. These intonements are therefore made in obeisance to the paramount order of the Constitution. This Court is no stranger to the fact that a statute, seemingly innocuous, or even beneficial, on its face, may result in an unconstitutionality of the most pernicious sort, as applied. That concept is one against which this Court has traditionally been vigilant. "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." *Yick Wo* v. *Hopkins*, 118 U.S. 356, 373-374 (1886).

III. This Court Should Exercise Its Inherent Authority To Depart From The Doctrine Of *Stare Decisis* And Overrule Precedent In This Case.

Since its initial ruling on Section 5 in *Georgia* v. *United States*, 411 U.S. 526 (1973), this Court has felt itself bound under the doctrine of *stare decisis et non quieta movere* ("adhere to prior decisions and do not

disturb settled points"). By its very nature, however, and certainly cognitive of the mass of litigation springing from its operation, Section 5 of the Voting Rights Act is *not* a settled issue. In the past, the admonition of Mr. Justice Brandeis has been urged upon the Court to the effect that, "*Stare decisis* is usually the wise policy because in most matters it is more important that the applicable rule of law be settled than it be settled right." *Burnet* v. *Coronado Oil & Gas Co.*, 285 U.S. 393, 405 (1931) (Brandeis, J., dissenting). Of course, ideally, the converse rule should be applied as it has been traditionally by this Court. "It is more important that the Court should be right upon later and more elaborate consideration of the cases than consistent with previous declarations." *Barden* v. *Northern Pacific Railroad*, 154 U.S. 282, 322 (1893). Otherwise the doctrine would tend to persuade judges "to let bad enough alone." R. Traynor, The Limits of Judicial Creativity, 29 Hast. L. J. 1025, 1035 (1978).

The State of Mississippi thus urges this Honorable Court to be as liberal in *reappraising* the applicability of Section 5 of the Voting Rights Act as was Chief Justice Warren in speaking for the Court in *South Carolina* v. *Katzenbach*, when he acknowledged the "inventive manner," 383 U.S. at 327, of its enactment and conceded "the possibility of over-breadth" in the Act's provisions. *Id.* at 331. *See also* his language in *Allen* v. *Board of Elections*, 393 U.S. 544, 566 (1969). As Mr. Justice Frankfurter observed, "Legal doctrines are not self-generated abstract categories . . . . [T]hey have a specific judicial origin and etiology. They derive meaning and content from circumstances that gave rise to them and from the purpose they were

designed to serve." *Reid* v. *Covert*, 354 U.S. 1, 50 (1957) (Frankfurter, J., concurring).[*]

This capacity for constitutional change in an organic document was comprehended by Justice Douglas who observed that "*stare decisis* must give way before the dynamic component of history." W. Douglas, Stare Decisis, 49 Colum. L. Rev. 735, 737 (1949). The alternative, he said, "is to let the Constitution freeze in the pattern which one generation gave it." *Id.*

In the thirteen years since the upholding of the initial version of the Voting Rights Act, the interpretation of what was constitutionally necessary during chaotic and critical decades of American history may no longer be deemed requisite. Accommodation might be made for constitutional observance of changing mores and institutions in American life. As one constitutional scholar observed,

> Particular constitutional principles or certain applications thereof may be correct for one period of our development and yet incorrect for a future era. It is true that certain clauses of the Constitution may have a fixed, technical meaning that is susceptible of only one correct interpretation. However, most of the significant clauses speak only in generalities whose substance and importance vary with the course of history. J. Noland, Stare Decisis and the Overruling of Constitutional Deci-

[*] Thus the Court has most recently reiterated that "'*stare decisis* is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder and verified by experience.'" *Continental T.V., Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36, 58, n. 30 (1977). *Cf. Helvering* v. *Hallock*, 309 U.S. 106, 119 (1940).

sions in the Warren Years, 4 VALP. L. REV. 101, 104-105 (1969). *See also Springer* v. *Philippine Islands*, 277 U.S. 189, 209-210 (1928).

Mr. Justice Jackson also found that "individual study of [a decision's] background and antecedents, its draftsmanship and effects" are mandatory. R. Jackson, Decisional Law and Stare Decisis, 30 A.B.A.J. 334, 335 (1944). Chief Justice Roger Traynor was of a similar view, counseling that precedents "first [be] analyze[d] exhaustively . . . , particularly in the context of possibly equally strong competing claims . . . ." 29 HAST. L. J. at 1040.

Because of the viability of our Constitution, rulings on constitutional law in particular simply do not lend themselves the Talmudic permanence of transcendental morality. As Mr. Justice Cardozo noted, "The doctrine of *stare decisis*, however appropriate and even necessary at times, has only a limited application in the field of constitutional law." *St. Joseph's Stock Yards Co.* v. *United States*, 298 U.S. 38, 94 (1936). *See also James* v. *United States*, 366 U.S. 213, 222 (1960) (Black and Douglas, J.J., separate opinion); *Green* v. *United States*, 356 U.S. 165, 193 (1957) (Black, J., Warren, C.J., and Douglas, J., separate opinion); and *Glidden Co.* v. *Zdanock*, 370 U.S. 530, 541 (1962) (Harlan, Brennan, and Stewart, J.J., separate opinion). Indeed, in a landmark case of reversal, Mr. Justice Bradley, concurring, found that,

> Where the decision is recent, and is only made by a bare majority of the Court, and during a time of public excitement on the subject, when the question has largely entered into political discussions of the day, I consider it our right and duty to subject it to a further examination, if a majority of the Court are dissatisfied with a former decision. *Legal Tender Cases*, 79 U.S. (12 Wall.) 457, 569-570 (1871).

The modern and traditional argument, therefore, with regard to previous decisions under the Voting Rights Act, that reversal of any one or more of them would have unsettling constitutional, political, and social effects, cannot withstand close scrutiny in light of the history of the Court and the nation. This would especially be the case if this Honorable Court could be persuaded, at long last, to take judicial notice of the changed and changing conditions in those jurisdictions covered by the Voting Rights Act itself. The State of Mississippi and the City of Rome, therefore, endeavor through these briefs to impress upon the Court the resultant inappropriateness under the Constitution of continued adherence to Section 5 of the Voting Rights Act.

CONCLUSION

For these reasons, therefore, the decision of the United States District Court below should be reversed.

Respectfully submitted.

A. F. SUMNER
Attorney General for the State of Mississippi

JESSIE LEONARD
Special Counsel

FRANK W. DUNHAM, JR.
Special Counsel

1700 Pennsylvania Avenue, N.W.
Suite 550
Washington, D.C. 20006
(202) 872-1095

Mr. EDWARDS. Thank you, Mr. Barefield.

The gentleman from Illinois, Mr. Washington?

Mr. WASHINGTON. My question is for counsel, Mr. Barefield.

On page 3, sir, the second paragraph, what is the population of Mississippi?

Mr. BAREFIELD. If you will pardon me, Mr. Washington, I have some hearing problem. The acoustics in here are not the best they should be.

Mr. WASHINGTON. Counsel, what is the population of Mississippi?

Mr. BAREFIELD. In the 1980 census, roughly 2.5 million people.

Mr. WASHINGTON. On page 3, the second paragraph, you say:

Mr. Chairman, is this committee and this Congress so interested in continuing a burden of punishment, so vindictive in its desire to destroy the spirit of 2.5 million people?

Mr. BAREFIELD. Yes, sir.

Mr. WASHINGTON. How many black people live in the State of Mississippi?

Mr. BAREFIELD. 34 percent; 800,000.

Mr. WASHINGTON. So this 2.5 million includes the black people?

Mr. BAREFIELD. Yes, sir.

Mr. WASHINGTON. Are you implying the Voting Rights Act of 1965 is destroying the spirit of the black people?

Mr. BAREFIELD. Yes, sir.

Mr. WASHINGTON. On what basis, sir?

Mr. BAREFIELD. When the city of Jackson attempted to annex southwest Jackson, and they did, and the Justice Department in an arbitrary manner comes back and says, look, we don't care if you annex southwest Jackson, but you are not going to let those people vote down there, there were blacks living in that area, Mr. Congressman. Blacks.

Now when a black man—let me give you an illustration.

Cities furnish garbage collection to the residents of the municipality and not to the residents outside. If you were a black man living in southeast Jackson, right outside the line, would you be upset because your garbage couldn't get collected because you happened to have two white neighbors instead of two black ones?

Mr. WASHINGTON. Counsel, I haven't seen a black person from Mississippi who would agree with that statement. As a matter of fact, I haven't seen a black person in Mississippi who doesn't agree that the Voting Rights Act of 1965 should not be extended.

I am submitting, sir, that perhaps you shouldn't put yourself in the position of speaking for black people in Mississippi and so your 2½ million figure is probably off.

Mr. BAREFIELD. Congressman, may I respond?

Mr. WASHINGTON. Certainly.

Mr. BAREFIELD. Certainly I have learned after 22 years in the Mississippi legislature that I cannot speak for the black people.

I can speak for the people of Mississippi and hopefully one of these days we are going to become a homogenous group with common interests.

I do not know how we will ever get there if we do not work together.

Mr. WASHINGTON. I can suggest a way. You appeal to people to put the reconstruction behind us.

Mr. BAREFIELD. Yes, sir.

Mr. WASHINGTON. Everybody agrees with you. I am the only one who doesn't. Black or white.

The question is the effects of reconstruction, how can we get that behind us?

Many people, including myself, feel that one way to do so is to maintain section 5 in the Voting Rights Act because there are simply too many instances, for example, in the State of Mississippi which make it clear that Mississippi or those who control the electoral process of the State simply have not made up their minds to be fair to the black people and the effects are still here.

For example, there have been approximately 1100 complaints lodged with the Justice Department relative to election changes in the State of Mississippi, and in that 15-year period 56 submissions and 78 changes have been found by the Justice Department to be validly complained against.

Approximately half of those have been within the past 5 years.

These matters have not been litigated in a court obviously, but there have been administrative hearings, there have been determinations made, and the conclusions were that certain aspects of certain areas within Mississippi were unfair to the treatment of black people.

That is a fact of life. How can you claim that the act is no longer of any value to the people of the State?

Mr. BAREFIELD. Congressman, let me ask you, how can you take those statistical figures which are not substantiated and have never been substantiated by anybody and rely on them?

Mr. WASHINGTON. Well, they are from the Justice Department. I will take their word for it.

Mr. BAREFIELD. They are figures of complaints filed. Did they ever go to court to determine the validity of those?

Mr. WASHINGTON. Counsel, you know as well as I do every question of law doesn't wind up in a court of law. Nor would you, as a lawyer, advocate any such thing.

If that happened, you couldn't get into the courts, they would be so cluttered up.

We need administrative processes. We need areas like this, to do it through negotiation, through administration, rather than through the adversarial tactics of a courtroom.

I advocate that. I know many other lawyers who do.

The issue whether it is in court or not in court is not viable. We don't want to clutter up the courts with these cases ad infinitum.

Mr. BAREFIELD. Congressman, may I clarify here? You indicated a minute ago about section 5 giving that protection. I understand that. My argument to the committee today is if you are going to keep section 5 and you don't want me to come up from under section 5 forever or for when, say so.

Don't keep toying with us and say we are going to let you out in 5 more years. We will let you out in ten years. Seventeen years. Now 27.

Mr. WASHINGTON. Who says that?

Mr. BAREFIELD. The law says it.

Mr. WASHINGTON. It doesn't say that at all. It has been extended.

Mr. EDWARDS. He is talking about a bail-out.

Mr. BAREFIELD. I interpret the law as being a continuous amendment increasing the sentence of the southern States before they can even have the right to petition to come out.

That is the way I read the law. I am sorry.

Mr. WASHINGTON. Let me quote from Frank Parker. "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."

The discrimination is rampant, it is documented, it is there, it has been testified to by any number of people before. There will be others testifying to it today. You simply want to ignore it.

I yield the rest of my time.

Mr. EDWARDS. Mr. Hyde?

Mr. HYDE. I do not have any questions.

Mr. BARBOUR. Mr. Chairman, would it be rude if I asked to answer a question Mr. Washington asked of Mr. Barefield?

Mr. EDWARDS. You are recognized.

Mr. BARBOUR. The point——

Mr. WASHINGTON. Before he does, may I do this?

In your opening remarks in your submission, Mr. Barbour, you say "This act grossly violates the principles of federalism, relegating certain States to a status"—blah, blah, blah.

That matter has been resolved, sir. It has been resolved many, many times. It was resolved back in 1965 when the act was passed.

It was resolved in 1970 when it was amended. That is old hat. The 15th amendment makes it very clear that Congress has the power, the responsibility, the duty to do exactly what they did.

The question now is in this hearing whether or not the State of Mississippi and its political subdivisions and other States under the act have conducted themselves in such a way that the act does not have to be extended, and the testimony is overwhelmingly no.

They haven't done so. That is the issue.

But we are not here to reprove the Congress' basic power to establish the act. They had that power.

Mr. BARBOUR. Of course, sir. I do not contend it is unconstitutional to discriminate against these States this way.

The U.S. Supreme Court has clearly said, even though this does fly in the face of federalism and fly in the face of basic American jurisprudence, it is still constitutional to do so as a remedy for a wrong.

Mr. WASHINGTON. I don't understand them saying it flew in the face of basic remedies. The 15th amendment of the Constitution of the United States is the law of the land.

Congress has the power within that 15th amendment to implement the 15th amendment.

That is what it did with this act. It is not violative of the Constitution. It doesn't rend it asunder.

Mr. HYDE. Would the gentleman yield?

Mr. WASHINGTON. Certainly.

Mr. HYDE. I can't ask any questions. I must leave. I regret I must catch a plane.

The focus of the testimony is that administrative preclearance is unfair; no way ever to bail out no matter how good you are, what your intentions are, what your record is, and third, whatever you

do has to be done in the District of Columbia court, and don't trust your local courts even though they are Federal. It seems to me that it is worth discussing as to whether or not there should be a provision in the law to permit a jurisdiction, whether it is a State or a county or a municipality, to have its conduct recognized for a sufficient period of time to have been exemplary in conformity with the spirit as well as the letter of the law and to provide incentives to counties to clean up their act.

I think that is something we can address that doesn't weaken the act. I think it strengthens it to provide some incentive for decent people to act decently to have their decency recognized and then have an opportunity to join the ranks of the other States in terms of being treated alike in legal procedure.

I also think we ought to take a look at the courts of the South, the Federal courts, to see whether they are so deficient that only the District of Columbia court is adequate to handle this.

The subject of preclearance, I am not yet convinced that it isn't still needed, but I am simply expressing my statement. I do agree, I think we need some better bailout and we ought to recognize there is a U.S. District Court down here in the South that is honest as well as in the District of Columbia.

That is just a statement that I say; then take the disadvantage of you by leaving.

Mr. EDWARDS. Thank you, Mr. Hyde.

Mr. BAREFIELD. Mr. Chairman, may I respond?

Mr. WASHINGTON. You may just as soon as I remark.

I am not at quarrel with you, Mr. Hyde. The question here is how has Mississippi comported itself.

Mr. HYDE. Sure.

Mr. WASHINGTON. That is the issue.

Unless we get beyond that issue, the relevant matters that you bring up I don't think are quite relevant.

Mr. HYDE. If the gentleman would yield, I don't think you are entitled to narrow the issue to that. I think that is an issue.

I think it is a basic issue, but I also think we can always look at these laws as long as they are up for renewal and see if they can be improved and made more fair.

I would like to define that as an issue too, even over your objections.

Mr. WASHINGTON. That would be on your time and your question.

Mr. HYDE. That is right.

Mr. WASHINGTON. My question goes to the comportment of the State of Mississippi.

Mr. BARBOUR. That is the point I wanted to answer.

Mississippi to day is under the Voting Rights Act under a form of the grandfather clause. The 1964 trigger, if it was applied in 1980, Mississippi would not be under the Voting Rights Act.

In 1980 Mississippi met the standards of the act that we would not have been covered. So we are being covered because of where we were in 1964.

All we are saying is OK, we are under the grandfather clause. I am being punished for the sins of prior generations. So be it.

Give us a way to try to prove our innocence. The public is being misled into thinking if you don't renew this act, come August 1982, Mississippi is going to be out from under section 5.

The fact of the matter is, if what you are saying is true—and it is certainly not my place to argue with you—if we have not comported ourselves properly, in 1982, when we go to the district court in the District of Columbia, we don't get out from under the act and we can't until 17 years of perfect behavior, and the burden of proof is on the State of Mississippi to prove the 17 years of good behavior, if you don't do anything.

Congressman, I submit to you one reason that the black people of Mississippi and the white people of Mississippi don't understand what is happening here is that they think this act is just going to expire, that it is over, that we are out from under it come 1982.

We are not. The words of the act are plain. We can't get out until we can go to the district court, petition and prove 17 years of a clean slate.

Now, you want to make it 27 years of a clean slate. Politicians I know are often unfairly called on to prove their innocence. We in Mississippi are saying let us try to prove our innocence. We would rather take our chances proving our innocense than taking the treatment we are getting from justice now.

Mr. WASHINGTON. I can suggest one direction you might take to demonstrate, if not prove your innocence. On page 2, you say here, in paragraph 2:

> Hence, when my home county of Yazoo, sought guidance from justice after its 1975 redistricting plan was turned down.
>
> Gerald Jones, chief of the voting rights section, told our county attorney he could provide no direction on whether the black population should be packed in larger majorities into fewer districts, etc.

Why didn't you ask the black people how they felt about it? You didn't think about that. Why didn't you have it in your submission? It would have made sense to me. You didn't think enough of the black people in Yazoo County to ask them what they wanted. You went some place else to ask them what you should give them.

Mr. BARBOUR. It was demonstrated to the Justice Department and was pointed out in fact that the black people of Yazoo County had been involved. When Justice didn't approve it, the board of supervisors said look, if you tell us what you want and what is wrong with this, we will do it however you want.

Mr. WASHINGTON. The Justice Department had no responsibility to tell you what they wanted. They had the responsibility to tell you you were doing it wrong. Why didn't you go back to the black people you were affecting?

Mr. BARBOUR. Congressman, the fact of the matter is that didn't seem to have much weight with the Justice Department who was involved in drawing up the plan.

Mr. WASHINGTON. You wouldn't have much weight with me in the Justice Department.

Mr. BARBOUR. What is wrong with it? What is wrong about it you want us to change? We will change it if that is what it takes.

Mr. Jones said look, that is not my problem. You give me something, I will ask the people down there if that is what they think is the best deal they can make.

Mr. WASHINGTON. Is that a promise?

Mr. BARBOUR. Sir?

Mr. WASHINGTON. Is that a promise?

Mr. EDWARDS. Mr. Barefield, both you and Mr. Barbour feel Mississippi should be bailed out?

Mr. BARBOUR. No, sir. I believe we should have an opportunity to bail out.

Mr. EDWARDS. Then would you assist the committee in telling us what part of Mississippi should have the opportunity to be bailed out?

Mr. BARBOUR. There are numerous counties and municipalities in the State of Mississippi that have never had anyone, to my knowledge, file any complaint against them. They are bound because the State is bound.

Every municipality, 290 cities, 82 counties, are bound under the State. The State is bound——

Mr. EDWARDS. I understand the law, sir.

Mr. BARBOUR. I am sorry. I submit some of those municipalities and counties, if they could have the opportunity to prove their innocence, would.

Black and white alike would agree to it.

Mr. EDWARDS. Do you think Yazoo should have the opportunity to be bailed out?

Mr. BARBOUR. I think Yazoo County should have an opportunity to prove its innocence.

Mr. EDWARDS. What indications would you produce to prove that this should be done?

Mr. BARBOUR. Well, sir, I think we would introduce the voter registration rolls of our county. We have very, very high voter registration votes for the county and for the municipality.

Half of the elected officials in the municipality, or half of the aldermen, are black. We have black elected officials in the county. I will be candid with you, Mr. Congressman. We can't meet a 27-year standard right now.

If Yazoo County had to prove 17 years of innocence, we are going to have to wait some number of years down the road. The point is, we are not going to have a chance some number of years down the road.

Mr. EDWARDS. Have you gone to the legislature? Your registration office is open in one place from 8:30 to 5:30 on weekdays in accordance with the State law?

Mr. BARBOUR. I believe 5 o'clock, to be candid.

Mr. EDWARDS. That is difficult for black people in many cases; isn't that correct?

Have you made efforts to have roving or deputy registrars to make it easier for black people in Yazoo to register?

Mr. BARBOUR. In Yazoo County in recent years the answer to that is no. In Yazoo County voter registration is essentially at the saturation point.

Mr. EDWARDS. Have you gone out of the way to have the polls open at very convenient hours for black people living 40, 30 miles out of town?

Mr. BARBOUR. We open the polls when the State law says open them.

Mr. EDWARDS. Have you gone to the legislature and asked that the law be changed for the convenience of your people?

Mr. BARBOUR. Mr. Congressman, the answer to that is no.

The reason for that is in our last municipal election, for instance, we had a 90 percent turnout of registered voters. Ninety percent.

In every election we have a higher percentage of the registered voters to vote than ever before.

Mr. EDWARDS. Have you consulted with the local black population when redistricting is involved to be certain that you are complying with the Voting Rights Act that requires that you enhance minority power?

Mr. BARBOUR. My understanding is not that we are required to enhance minority power.

That is not my understanding. In answer to your question of have we both in the city and county redistricting, both of which were done in the 1970's, absolutely.

Blacks were involved in it; agreements were reached with civil rights groups. The NAACP, black potential candidates. They were involved not only in the drawing of the lines, but in the agreements about reregistration.

With the agreement of the black political leadership of the country, when the city redistricted, we had a reregistration. When the county redistricted, we agreed the blacks wanted to wait and have a reregistration after the 1980 census thinking we may have to have another county redistricting.

The answer to your question is absolutely yes.

Ms. DAVIS. Mr. Barbour, you have indicated in your statement at page 2 that compliance with section 5 is onerous and expensive. Can you indicate to the committee when you have served as a public official charged with submitting changes to the Department of Justice?

Mr. BARBOUR. I have not served as a public official charged with that duty.

I have been called upon to work with public officials that have done that.

Ms. DAVIS. Upon what do you base your charge that the act is onerous and expensive?

Mr. BARBOUR. Well, the Mississippi Legislature just appropriated $400,000 to try to get a declaratory judgment in the District Court for the District of Columbia.

By my standards, that is expensive.

Ms. DAVIS. Mr. Barbour, excuse me, we have had testimony from public officials—including the attorney general of South Carolina—who have indicated that in fact compliance with section 5 is not burdensome and not expensive. They have indicated that the principle of having to comply with section 5 is what troubles public officials in the covered jurisdictions more than anything else.

I would suggest to you that the argument you have raised is an argument that is probably unique to yourself and probably not to many other public officials.

Mr. BARBOUR. If I may, ma'am—if that was a question—let me state while I may have a difference of opinion with the attorney general of the State of South Carolina, I believe you are mistaken

if you believe elected officials throughout the State find the act to be neither onerous or expensive.

Ms. DAVIS. On page 4 of your testimony you indicated that there have never been racial impediments to voter registration for blacks anywhere in Mississippi, anywhere in your lifetime.

Mr. BARBOUR. My adult life.

Ms. DAVIS. Your adult life.

You have also indicated in your testimony that you had an opportunity to review the testimony that was submitted to the subcommittee on May 18 by a number of individuals from Mississippi, and I ask you in light of the testimony that you had an opportunity to review, are you still supporting this statement?

I assume your adult life has been——

Mr. BARBOUR. Sixty-eight.

Ms. DAVIS. Sixty-eight?

Mr. BARBOUR. Ma'am, to be accurate, 1968.

Ms. DAVIS. OK. The testimony that those witnesses presented indicated voting discrimination post-1968 and especially post-1975—that would take into account your adult life. Are you still supporting that?

Mr. BARBOUR. Ma'am, the only thing I remembered in any of that testimony as far as registration to vote was Mr. Henry saying that it is discrimination that the voter registrar's office only opens from 8:30 to 5 and doesn't move around.

I happen to favor moving out and going into the precincts. It hurts Republicans a lot worse than blacks because in the suburban neighborhoods, overflow from the city of Jackson into Madison and Rankin Counties—which are heavily Republican—apartment houses are another angle.

The fact is, I don't consider that discrimination or unconstitutional. I wish it were different myself. That is the only thing I remember in the testimony about voter registration discrimination, ma'am, to be honest.

Ms. DAVIS. Mr. Barefield, you indicated that you testified before this subcommittee in previous years, in 1975, during that extension?

Mr. BAREFIELD. I did, yes.

Ms. DAVIS. I had an opportunity to review your testimony at that time. I wonder if you might be able to give us an update on an action that you reported on at that time?

You indicated that the Mississippi Legislature—I don't recall the exact date of your testimony before the committee, but the committee held hearings in March of 1975 on the extension legislation.

At that time you reported on house concurrent resolution No. 45, which was adopted by the Mississippi House in February of 1975 and adopted by the senate in March of 1975.

That particular resolution would repeal the literacy requirement that was part of the Mississippi constitution.

Mr. BAREFIELD. Yes.

Ms. DAVIS. You also reported that there was a house concurrent resolution No. 46, which would repeal the poll tax provision in the Mississippi constitution.

Mr. BAREFIELD. Yes.

Ms. DAVIS. That those resolutions were now before the people of Mississippi and you suggested in your testimony that you would assure the committee that the people of Mississippi would vote to repeal those provisions and that would certainly be an indication of their good faith and interest in not discriminating against blacks any more in voting.

Can you tell me what the status is of those resolutions?

Mr. BAREFIELD. You are asking me to go back 6 years to 1975. I remember what you are talking about. I remember the constitutional amendments being proposed.

I remember them being passed. I couldn't tell you right now—do you know? As far as I know, they are not in the constitution any more.

Mr. BARBOUR. They were all struck out.

Ms. DAVIS. They were struck out?

Mr. BARBOUR. There was a list on the ballot. They voted to put them out of the constitution.

Ms. DAVIS. There is no longer a literacy test requirement and no longer a poll tax requirement?

Mr. BAREFIELD. There is no requirement to my knowledge, statutorily or otherwise, in the constitution of the State of Mississippi that requires any test or device as defined within the Voting Rights Act of 1965.

May I say right here if I could, Mr. Washington, with regard to the things that you keep talking about that are occurring in the South—and I don't deny that they are occurring—but I am befuddled somewhat, Congressman, because what you are talking about is not the test or the device that Congress wrote into the law.

If that is what you want us to do, and these are the things that you say stop, that is what I suggested in my testimony.

Amend that section and say a test or device shall include and be defined as being any annexation in which there are more whites in the area than there are blacks. Put it in the law. Then I can stop annexing territories to cities and try to comply with the law.

We are dealing with a gray area. You are dealing with people on the local levels, in small communities, untrained in the law, who are trying to operate a town of 500 people or a county that is very rural, and they just do things, just like they do, I am sure, in the rural areas of your State. They just do things. They try to do what the people want.

Ms. DAVIS. Mr. Barefield, I have one more question. I have a limited amount of time. If you would respond to the following question:

How has the Voting Rights Act hurt Mississippi?

Mr. BAREFIELD. I don't think it has. It has been a great help. I really mean that.

Mississippi is today where it would never have been without this act. That is not the point I argued today. That is not the plea I make.

I ask only to be told with some definite time when can Mississippi join the rest of the Union with regard to legislative enactments?

That is all I want to know.

Ms. DAVIS. I assume the presumption would be when the act is not extended again that the record is clear it is no longer necessary to apply section 5.

I assume if the act is not extended again that that is an indication that Mississippi has reached that point?

Mr. BAREFIELD. Do you think Mississippi qualifies to come out in 1982? I don't. I don't. I really don't.

Ms. DAVIS. I am not here to answer those questions. You are, Mr. Barefield.

Mr. BARBOUR. You referred to me and Mr. Barefield when you said had it hurt us. The one thing it really does that is bad, it makes every issue a racial issue.

That is what is bad and wrong and unfair. There ought not to be anything in the world where all the white people think one thing and all black people think one thing. That is not right. That is not human nature.

But the Voting Rights Act submerges everything else to race. That is what I think is wrong. I really think it does young people particularly a disservice. It is unfair to weight us down with what people were doing 20 years ago.

Young black people and white alike, ma'am.

Ms. DAVIS. I would suggest there may be some people who feel that way and other people who do not feel that way. You obviously feel the Voting Rights Act does that. I think there are many Mississippians, blacks and whites, who may not share your view.

That is all for me, Mr. Chairman.

Mr. EDWARDS. Mr. Washington?

Mr. BAREFIELD. Mr. Chairman, before I close, I have a few documents I would like to submit for the committee. I would like to ask, specifically, Mr. Chairman, that a copy of the amicus brief which I attached to my statement filed by the State of Mississippi in the case of the city of Rome against the United States be made a part of your record.

Mr. EDWARDS. Yes. It will be made a part of the record. Thank you.

Mr. BAREFIELD. I have also, Mr. Chairman, a deposition taken of Mr. Drew S. Days III of the Justice Department by the State of Mississippi which was taken in the case of the State of Mississippi in the three-judge court when we were seeking to secure the approval of our reapportionment plan which was approved, Mr. Chairman, by the three-judge court in Washington, D.C., after the Justice Department had objected to it.

I would like to make that copy of his deposition a part of the record for the study of the committee.

And finally, Mr. Chairman, I have a number of copies—and this did not come to my attention until Tuesday of this week, after I sent my statement in—I have here an editorial from the Gulfport-Biloxi Sun newspaper, located on the Mississippi Gulf Coast.

I can only say that I would describe this paper as a very modern, progressive, and liberal newspaper. I would like to leave that editorial for the record.

Mr. EDWARDS. That editorial will be part of the record. The affidavits will be made a part of the file without objection.

Mr. BARBOUR. Mr. Chairman, I have a number of documents concerning the Justice Department's assumption of jurisdiction over the question of the Mississippi Republican Party's rules for its delegate selection in 1980 which I ask be made part of the record.

Mr. EDWARDS. Without objection, so ordered.

We thank both of you gentlemen for very candid discussion and testimony with us.

Mr. Boyd, did you have questions?

Mr. BOYD. The only remark I would make, Mr. Chairman, is for the record.

That has to do with last Friday's meeting of the subcommittee in Austin, Tex., at which time the subcommittee heard testimony from Attorney General Mark White, who emphasized the cost and burden which he believed the Justice Department puts upon his State as a result of section 5.

In light of counsel's comment to the contrary, I thought it was necessary to balance the record.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much.

Our next witnesses will be Betty Paulette from Macon, Miss.; James Figgs, member of the Quitman County School Board, Marks, Miss., and they are accompanied by Robert Walker, field director, NAACP, Jackson, Miss.

TESTIMONY OF BETTY PAULETTE, MACON, MISS., JAMES FIGGS, MEMBER, QUITMAN COUNTY SCHOOL BOARD, MARKS, MISS., ACCOMPANIED BY ROBERT WALKER, FIELD DIRECTOR, NAACP, JACKSON, MISS., AND JASPER NEELY, PRESIDENT, GRENADA COUNTY, MISSISSIPPI CHAPTER, NAACP

Ms. PAULETTE. Thank you, Mr. Chairman.

Mr. WALKER. Thank you, Mr. Chairman.

Ms. Paulette will speak first.

Mr. EDWARDS. Ms. Paulette is from Macon, Miss. You may proceed.

Mr. WALKER. Mr. Chairman, Mr. Washington, staff of this Judiciary Subcommittee on Civil and Constitutional Rights, thank you for the opportunity to appear before you.

I am Robert Walker, a native and resident of Vicksburg, Miss., and a U.S. citizen.

Except for several short working assignments outside of Mississippi, I have lived in the State my entire life.

At present I am the Mississippi field director of the NAACP. I am a historian by training and am well aware of the relationship of the franchise to meaningful citizenship and the need for Federal legislation and protection of this basic right.

Also, I know of the abuse my people and Americans have suffered in the absence of guarantees and protection of our franchised rights throughout this land.

Additionally, I know the obstacles that have prevailed with reference to the efforts of black Mississippians to register and vote. I wish to introduce into the record a short overview on white resistance to black voter registration in Mississippi through 1974.

Mr. EDWARDS. Without objection, it will be received. (See p. 2641.)

Mr. WALKER. In addition, Mr. chairman, we have some statements in support of the extension of the Voting Rights Act, as is, that we would also like to have introduced into the record.

Mr. EDWARDS. Without objection, so ordered.

Mr. WALKER. They are from the League of Women Voters of Mississippi, the Mississippi AFL-CIO and the Mississippi American Civil Liberties Union. (See pp. 2699, 2740, 2793.)

Our presentation today will, as stated, be in two parts.

First, we will deal with the question of access. Mrs. Betty Paulette and Mr. James Figgs will deal with that.

We have with us Mr. Jasper Neely.

Once finished with the statements and questions, the second panel will deal with the question of dilution and some access overlap. That panel consists of Attorney Charles Victor McTeer of Greenville, Miss.; State Senator Henry Kirksey of Jackson, Miss., and Attorney Martha Bergmark, a member of the Advisory Committee of the U.S. Commission on Civil Rights.

At this time Ms. Paulette will make a statement. She will be followed by Mr. James Figgs, a member of the county board of education in Quitman County.

We will have a short wrap-up then.

Ms. PAULETTE. I am Betty Paulette, Macon, Miss., Noxubee County.

I am a member of the Democratic Party executive committee of the county.

I have had the chance to work on the polls in the municipality and also in the county.

I stand in favor of the Voting Rights Act that was passed in 1965.

The citizens of Noxubee County were the last people to go to the polls to cast their vote.

I don't know what they are doing in other counties, but I was born and reared in Noxubee County and I know them.

In all neighboring counties in Mississippi, blacks had begun registering to vote for quite a while. The first year, one black elected to the board of supervisors was the only black elected official for several years.

The attitudes of some poll workers were terrible, and still is to a large degree. Without the Voting Rights Act, Mississippi will move back to no blacks working on the polls. They have about 75 percent of whites now.

Where there are six people at a table in most cases, only two blacks are there with four whites, and sometimes none.

Their job is to initial ballots, and tally at the close of the voting day. Sometimes a recount is requested.

In recounting the ballots, the attitude was terrible of some of the white people. We found that some ballots would be left in boxes. Totals of tally would be switched. The incumbent's total which was small, was placed in the challenger's total and the large total which was the challenger's was placed in the incumbent's total.

Poll watchers were harassed and illiterate voters would be so nervous confronting the attitudes of some of the poll workers.

The registering of sick and handicapped people was a terrible ordeal. The local police and deputy sheriff with a lawyer would go to the homes of some of the old black people and threaten them

and ask them not to vote absentee. They would have them brought into the sheriff's office and question them. The people would be so frightened.

In the State of Mississippi where they will not pass a compulsory school attendance law, and now take away the Voting Rights Act, blacks and minority citizens would suffer a great setback. This Voting Rights Act should be an act to last permanently or until a compulsory school attendance law is passed and has been in effect for the next 2 years.

That way the younger generation would be able to mark their ballots correctly. So many ballots wouldn't have to go down the drain at the end of a voting day. Education is the basic opportunity for people to be able to read and write and elect officers of their own choice.

In Noxubee County approximately 75 percent of the total black population is functionally illiterate. Since integration no real effort to improve the educational system has existed because of the election process.

The county school system administration is made up of five elected board members and an elected county superintendent of education.

The educational system has been dominated by an all-white school board and a white superintendent who showed no interest in the all-black public school system because their children attended the academy or elsewhere.

As a result, young blacks still have doubts and fears of registering and voting because of a lack of confidence and fears of being intimidated at the voting precincts.

We have just begun to live down the fears of voting and to stand up to threats, and we have a lot of them on election day. We cannot stand up to threats if we do not have this Voting Rights Act. We need this act as we need shelter if we are to help develop ourselves as a race of people.

Great numbers of people in the county do not know how to read and write. They need help. Without this Voting Rights Act they would not get it.

[The prepared statement of Ms. Paulette follows:]

STATEMENT BY BETTY PAULETTE, MACON, MISS., NOXUBEE COUNTY

I stand in favor of the Voting Rights Act that was passed in 1965. The Citizens of Nuxubee County were the last people to go to the polls to cast their vote. In all neighboring counties in Mississippi, Blacks had begun registering to vote for quite a while. The first year one Black elected to the Board of Supervisors was the only Black elected official for several years.

The attitude of some poll workers were terrible, and still is to a large degree. Without the Voting Rights Act Noxubee County will move back to no Blacks working on the polls. They have about 75 percentl of Whites now. Where there are 6 people at a table in most cases, only 2 Blacks are there with 4 Whites. Their job is to initial ballots, and tally at the close of the voting day. Sometimes a recount is requested. In recounting the ballots, the attitude was terrible of some of the White people. We found that some ballots would be left in Boxes. Totals of tally would be switched. The incumbents total which was small was placed in the challengers total and the large total which was the Challengers was placed in the incumbents total.

Poll watchers were harrassed and illiterate voters would be so nervous confronting the attitudes of some poll workers.

The registering of sick and handicapped people was a terrible ordeal. The Local Police and Deputy Sheriff with a lawyer would go to the homes of some of the old Black people and threaten them and ask them not to vote absentee. They would

have them brought into the Sheriff's office and question them. The people would be so frightened.

In the state of Mississippi where they will not pass a Compulsory School Attendance Law, and now take away the Voting Rights Act, Blacks and minority citizens would suffer a great set back. This Voting Rights Act should be an act to last permanently or until a Compulsory School Attendance Law is passed and has been in effect 20 years.

In Noxubee County approximately 75 percent of the total Black population is functional illiterate. Since integration, no real effort to improve the educational system has existed because of the election process. The county school system administration is made up of five elected Board members and an elected County Superintendent of Education.

The educational system has been dominated by an all White school board and a White Superintendent, who showed no interest in the all Black Public School System, because their children attended the Academy or elsewhere. As a result young Blacks still have doubts and fears of registering and voting because of a lack of confidence and fears of being intimidated at the voting precincts.

We have just began to live down the fears of voting an to stand up to threats. We cannot stand up to threats if we do not have this Voting Rights Act. We need this Act as we need shelter if we are to help ourselves as a race of people.

Mr. EDWARDS. Thank you, Ms. Paulette.

Mr. Figgs. Welcome.

You may proceed.

Mr. FIGGS. Mr. Chairman, members of this honorable committee. My name is James Figgs.

As you can see, I am black. I make this fact known on this record because very few black Americans in this country, and indeed, in the area where the Voting Rights Act is applicable, the Deep South, are opposed to its continuance.

I am most happy to appear before you today because you have shown your concern for America by holding this hearing.

I believe that this great country of ours must do what it must to unite all elements and this togetherness cannot be achieved unless we are all given an equal opportunity to participate in the political process.

Unfortunately, blacks in the South and in Mississippi have not been able to participate on par with whites.

The Voting Rights Act is our only guarantee that we will at least be given an equal chance to make the American system work for all people, whether they be black, white, or of Mexican descent.

Honorable committee members, I have read many reports, statements, and proposed legislation concerning the Voting Rights Act and most of the proposals tend to suggest that all is well in the South and there is no real need to continue the Voting Rights Act.

These statements are based upon false assumptions and cry out loud for correction.

The South, and indeed, Mississippi, has not changed to the extent that black people's voting rights will be observed without a strong Voting Rights Act. The more things seem to change, the more things seem to remain the same.

I have read my history and I know that the Hayes-Tilden compromise of 1877 is about to reoccur.

If the Voting Rights Act is discontinued or weakened, widespread corruption, intimidation, and political slavery will reoccur and black people will be set back in this country 50 years.

White control of the political process in areas where blacks have substantial numbers will be boosted by a combination of fear, farce, violence, and fraud.

The Ku Klux Klan has already started to flex their muscles by committing acts of terror in the South and no one has attempted to stop them.

Just as in 1877, intimidation on the one hand and lack of protection on the other will effectively reduce black participation in the political process.

At least with the Voting Rights Act, we can vote out mayors, sheriffs, and other law enforcement officers and officials who refuse to curtail racial violence. If we don't vote, or can't vote, we will return to the days of political slavery and everybody in this country will suffer.

The myth that Mississippi has changed can be dispelled by the following events and circumstances.

I have noted this on a couple of exhibits. I might add in Quitman County, Marks, Miss., where I live in the Delta, there is approximately 59 percent of the population that is black.

Out of five supervisor district beats, a black majority. The fifth supervisor district beat, with a 35-percent black population, almost but never occur any irregularities as they pertain to participation of blacks in that beat.

For the last 8 years we have tried to elect innumerable number of black citizens in Quitman County.

For the last two elections, two State supreme court decisions in the State of Mississippi have overturned the election based upon gross irregularities and discrimination in Quitman County.

In other areas of Quitman County, in three other areas, blacks have sought to participate to find only themselves to be subjected to intimidation; persons who live on plantations, persons who work in factories, persons who work as housemaids, are psychologically intimidated by their superiors.

As you can note in exhibits, I have requested, as president of the local chapter, several investigations by the Justice Department. As a result of one of those investigations, for the first time our black supervisor was allowed to take his seat only to find out 7 months later that the other four supervisors and the chancery clerk had connived and conspired against him to have him eliminated out of office, thereby putting him in a position of embarrassment where he had to run all over again.

Only upon a recount was it found that persons who lived in Memphis, Tenn., white people, came down to Mississippi and this community and voted for the white candidate of that particular beat.

Only after the election commissioner refused to have a sensitive ear to the complaints of the black candidate, only after filing through the proper courts, was the black candidate able to go to the Supreme Court and get a favorable decision.

There have been many, many other instances that I could cite here and repeat over and over again.

I say, in my conclusion, that when blacks lose in this country their fundamental rights, everybody loses. Until we have caught up with the white folk in voting rights matters, the act should be maintained.

The Voting Rights Act is a small price to pay for all of the years of black suffering in this country, for those voices who still cry in

the graves of Mississippi that died that those of us in Mississippi might have a piece of the political process.

Thank you.

[The prepared statement of Mr. Figgs follows:]

PREPARED STATEMENT OF JAMES FIGGS, PRESIDENT OF QUITMAN COUNTY NAACP

Mr. Chairman and members of this Honorable Committee: My name is James Figgs, and as you can see, I am Black. I make this fact known on this record because very few Black Americans in this country, and indeed in the area where the Voters Rights Act is applicable, the deep South are opposed to its continuance.

I am most happy to appear before you today because you have shown your concern for America by holding this hearing. I believe that this great country of ours must do what it must to unite all elements, and this togetherness cannot be achieved unless we all are given an equal opportunity to participate in the political process. Unfortunately, Blacks in the South and in Mississippi have not been able to participate on par with Whites. The Voters Rights Act is our only guarantee that we will at least be given an equal chance to make the American system work for all people, whether they be Black, White, or of Mexican descendant.

Honorable Committee members, I have read many reports, statements and proposed legislation concerning the Voting Rights Act and most of the proposals tends to suggest that all is well in the South and there is no need to continue the Voting Rights Act. These statements are based upon false assumptions and cryout for correction. The South and indeed Mississippi has not changed to the extent that Black People Voting Rights will be observed with a strong Voting Rights Act. The more things seems to change, the more things seems to remain the same.

I have read my history and I know that the *Hayes-Tilden* Compromise of 1877 is about to reoccur. If the Voting Rights Act is discontinued or weaken, widespread corruption, intimidation and political slavery will reoccur and black people will be set back in this country 50 years. White control of the political process in areas where blacks have substantial numbers will be hasten in by a combination of fear, force, violence and fraud. The KKK has already started to flex their muscles by committing acts of terror in the South and no one has attempted to stop them. Just as in 1877, intimidation on the one hand and lack of protection on the other will effectively reduce black participation in the political process. At least with the Voters Rights Act, we can vote out mayors, sheriffs and other law enforcement officers and officials who refuse to curtail racial violence. If we don't vote or can't vote, we will return to the days of political slavery and everybody in this country will suffer.

The myth that Mississippi has changed can be disspelled by the following events and circumstances.

In conclusion, I can only say that when Blacks lose in this country, their fundamental rights, everybody loses. Until we have caught up with the white folk in voting rights matters the act should be maintained. The Voting Rights Act is a small price to pay for all of the years of black suffering in this country. Thank you.

EXHIBITS

NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED PEOPLE.

Mr. DREW S. DAYS III,
Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C.

DEAR DREW: The Quitman County N.A.A.C.P. is requesting your personal attention be given to this request for immediate investigation to several alleged irregularities which occured upon it's Black Citizens of Quitman County during the November 6, election. This was as a result of the many blacks that were seeking a position in the County government. There seems to have been a denial of the proper WILL of the voters complaints as follows: 1) Threats and intimidation of some black voters 2) The denial of some illiterates to receive assistance of their own choosing 3) Pollwatchers denied their rights and harassed. 4) Some farmers denied their laborer the right-to-go-vote. 5) Some factories and plants didn't allow time-off for voting. The Quitman County N.A.A.C.P. strenuously object to anyone's civil rights being violated. We deserve justice down here in Quitman County. If you could hear my

people crying out for fair treatment. You wouldn't put off for tomorrow—what you can do today. Please Help Immediately!

Peace to all!

JAMES FIGGS,
President of Quitman County NAACP.

LOCAL NAACP REQUESTS INVESTIGATION

The Quitman County NAACP is responding to a request made by its membership to seek help from the Department of Justice during the NAACP regular monthly meeting, November 7, Wednesday night, when Mr. Alfred "Skip" Robinson, president of the United League of Mississippi, was special guest.

James Figgs, president of NAACP, is requesting Mr. Drew Days III, assistant attorney general of the civil rights division, United States Department of Justice, to investigate immediately alleged irregularities during the November 6 election in Quitman County.

Some of the complaints the NAACP received: (1) The denial of some illiterates for assistance; (2) Threats and intimidation of some voters; (3) Pollwatchers denied their rights; (4) Some farmers who did not allow their labor time off to vote and some factories which didn't allow their labor time off for voting.

The Quitman County NAACP strenuously objects to anyone's civil rights being violated.

Mr. EDWARDS. Thank you, Mr. Figgs.

Mr. Neely, do you have a statement?

Mr. NEELY. Yes, sir.

Mr. Chairman, due to the length of time that we have taken, I am not going to read an entire statement.

I think there is a copy of it before you there. I would like to make some excerpts from the contents of the statement, if possible.

Mr. EDWARDS. It will be made a part of the record, Mr. Neely.

Mr. NEELY. Thank you.

I am Jasper Neely. I live in Grenada County, Miss., where I have resided all my life.

First of all, I would like to say that I am in full support of the extension of the 1965 Voting Rights Act and if it weren't for the act I would not have been elected in 1976 to the Grenada City Council.

Prior to 1975, approximately 500 blacks were registered in Grenada County and now approximately 6,000 are registered in Grenada County.

The 1965 Voting Rights Act is a result of our ability to participate in the political process.

I would just like for the panel to turn to page 2 of the document. I hope that this panel today realizes the Voting Rights Act is not the real issue.

The real issue is the antiblack movement in this country.

It is affecting black individuals as a whole. The same individuals who opposed integration in the 1950's and 1960's and the 1965 Voting Rights Act—such as Senator John Stennis, Senator Strom Thurmond, former Senator James Eastland, and Republican Senator Thad Cochran are the same individuals who opposed the extension of the 1965 Voting Rights Act, affirmative action plans, Legal Services, and other social service programs.

In 1946 a Mississippi Senator opposed legislation that would have hampered or prevented many of the activities of the Ku Klux Klan. The reason given by the Senator for opposing the legislation was that the legislation would be unconstitutional.

However, no Senator or Representative from Mississippi has ever sponsored or supported any legislation against the Ku Klux Klan that may have prevented violent acts against those involved in voters' registration in Mississippi, such as Medgar Evers, Veron Damner, Rev. George Lee, Amzely Moore, and the three youths found dead near Philadelphia, Miss., in 1963.

Much of the violent acts against blacks for registering and voting must be shared by Mississippi senators, congressmen, Governors, representatives and Mississippi city officials for not speaking out against violence.

Yes, I must admit Mississippi has changed since the passing of the 1956 Voting Rights Act. However, many of Mississippi's changes have come about as a result of Federal intervention such as the 1965 Voting Rights Act, public accommodation laws, and Federal court decisions.

Mississippi is not going to voluntarily comply with any Federal law with which they disagree.

The 1965 Voting Rights Act needs to be extended.

I urge this committee to do what they can to see that this act is extended.

[The statement of Mr. Neely follows:]

EXTENSION OF THE 1965 VOTING RIGHTS ACT

My name is Jasper Neely, I am a 43 year old black citizen of Grenada County, Mississippi, where I have resided all of my life, except for traveling. I am President of the Grenada County, Mississippi Chapter of the NAACP, and a former Grenada, Mississippi, City Councilman (a position I held from 1976 until 1980).

Historically, Mississippi has denied black citizens the right to vote and devised many means of preventing blacks from becoming qualified voters. It is my opinion that Mississippi would resort to illegal tactics if it were not for the 1965 Voting Rights Act. Prior to the 1965 Voting Rights Act, less than five hundred (500) blacks were registered to vote in Grenada County, and no black had ever been elected to serve as a city or county official. Today there are 6,000 black registered voters in Grenada County, and two of the six City Councilmen are black. There is a strong possibility that blacks may be elected to the Grenada County Board of Supervisors in the next election. If it were not for the 1965 Voting Rights Act, this political change would not have been possible in Grenada County, Mississippi.

In 1974, the Grenada County Chapter of the NAACP informed the Justice Department that the City of Grenada, Mississippi, was not in compliance with the 1965 Voting Rights Act because of failure to submit city annexations and voting changes to the Justice Department for appearance or rejection. All of the city's annexations were composed of white subdivisions, even though the black citizens of Pine Hill had requested annexation to the city and were continually denied.

Following an investigation by the U.S. Department of Justice, all annexations which had previously not been submitted to the Justice Department for approval were declared void. Following numerous conferences between city representatives, the Grenada County Chapter of the NAACP and the Justice Department, an agreement was reached, which resulted in the City being redistricted. Since blacks were of the majority in two of the city's four voting wards, two blacks were elected to the City Council in 1976. Thus, Pine Hill was annexed to the City. All this was made possible by the 1965 Voting Rights Act.

Following the attempt of a black man to run for City Council for the City of Grenada in 1966, the City of Grenada, Mississippi attempted to change their form of City Elections from by Wards to At Large Elections. However, a U.S. District court Judge of the Northern District of Mississippi instructed the City of Grenada, Mississippi that they must return to their original pattern of electing by Wards. Prior to the Grenada City election in 1976, we discovered that approximately one hundred qualified black voters (including my wife) had been removed from Ward three. I beat my white opponent by less than a hundred votes. Gentlemen, I hope today that we are not over looking the real issues. The real issues are racism and the anti black movement in the United States today by the so called conservative element and the so called moral majority. Not balancing the Budget or the 1965 Voting

Rights Act. The same individuals who opposed Integration in the Nineteen Fifties and Nineteen Sixties, and the 1965 Voting Rights such as Senator John Stennis, Senator Strom Thurmond, former Senator James Eastland, and Republican Senator Thad Cochran, are the same individuals who are opposing the extension of the 1965 Voting Rights Act, Affirmative Action Plans, Legal Services, and other social service programs.

In 1946 a Mississippi Senator opposed legislation that would have hampered or prevented many of the activities of the K K K, the reason given by the Senator for opposing the legislation was that the Legislation would be unconstitutional. However, no Senator or Representative from Mississippi has ever sponsored or supported any legislation against the K K K, that may have prevented violent acts against those involved in Voters Registration in Mississippi such as Meger Evers, Veron Damner, Rev. George Lee, Amzely Moore; and the three youths found dead near Philadelphia, Mississippi in 1963. Much of the violence acts against black for registering and voting must be shared by Mississippi Senators, Congressmen, Governors, Representatives and Mississippi City Officials for not speaking out against violence.

Yes, I must admit Mississippi has changed since the passing of the 1965 Voting Rights Act. However, many of Mississippi's changes have come about as a result of Federal intervention such as the 1965 Voting Rights Act, public accommodation laws and Federal court decisions. Mississippi is not going to voluntarily comply with any Federal law with which they disagree.

The 1965 Voting Rights Act needs to be extended.

MISSISSIPPI COUNCIL REFUSES TO ADOPT RESOLUTION OPPOSING RACISM

The Grenada, Mississippi City Council, by a vote of four to two, refused to adopt a resolution opposing racial, religious and sexual hatred at its regular meeting on May 11, 1981, here. Three white city councilmen voted against the resolution, with one abstaining. The City's two Black councilmen voted for the resolution.

The resolution, which was introduced by Floyd Boelair, a Black councilman, came at the urging of a local citizen present at the council meeting, who was concerned with the leafleting of the local white community by representatives of the Ku Klux Klan that past weekend. Reportedly, the Klan passed out literature at several locations in this colorful lakeside community.

The original intent of the resolution, according to Stewart Guernsey, a local lawyer, was to get the city government to go on record condemning Klan activity in the area.

Some civil rights observers in the state say that this incident is further evidence that the Voting Rights Act should be extended when it comes up for renewal in the congress. They say that whites can't be trusted to look out for the rights of Blacks.

Mr. EDWARDS. Thank you, Mr. Neely, for an excellent statement.

Mr. Washington.

Mr. WASHINGTON. Yes, I have a question for Mr. Figgs.

Mr. Figgs, you indicate, or rather you state, that if the Voting Rights Act or the preclearance sections of it are not extended, there is a clear and present possibility of violence against black voters in Mississippi. Is that what you are saying?

Mr. FIGGS. I didn't quite understand you.

Mr. WASHINGTON. You expressed some fears that if the Voting Rights Act is not extended that there might well be violence perpetrated against black voters or black people in Mississippi.

Mr. FIGGS. That is correct. at this point in the area that I live in, the only time that we have any cross burnings is where blacks have a possible chance of being elected.

Those individuals who have ownership of grocery stores who let out credit, who do hiring, bank officials, plantation owners are the individuals who are selected to conduct the voting process in its entirety during the election.

We have numerous times requested an accounting with that number of blacks, that blacks be given the same proportion of representation on the poll working crew as whites.

We find that in beat one, where we have this trouble with the only black supervisor that we now have, that many times they will appoint a black who is up in age and will be a bailiff. It would be in the age bracket from 65 to 75, and if they decide to appoint a black woman, it will be one who can identify with their concerns.

Black in skin but white in heart.

These are the kinds of things we are confronted with daily in Quitman County because of our potential outbreak of electing black officials. It does not stop with the person at the polls. It goes to the height of, the epitome of the people who control the political power in the county.

We were surprised during the last election in the municipality that one of the strong families decided that they wanted to stoop low and do their own dirty work at the polls.

So as my colleague, Mr. Neely, said, I just can't accept the fact that if you have been kicking my hump all these many years, that you decided that you are going to stop, because of a change of heart, voluntarily.

Mr. WASHINGTON. I can't say it better. You are saying this, as many witnesses are saying: there are still many attempts to dilute black voting strength through changes in the laws, and so forth?

Mr. FIGGS. I am saying that.

Mr. WASHINGTON. Let me get your rationale.

Mr. FIGGS. During the November election many of the blacks in Quitman County did not have the educational level that one would expect at this day and time. So, therefore, any presence of someone that they feel that they might meet some repercussion later on, they would not go in the polls.

Some of them need our assistance, but that fear is still there. Believe it or not, the fear is still there. The fear is still there.

We were only able to elect myself and another person for the first time to the board of education when we had 15 Federal observers.

Mr. WALKER. Mr. Washington, if I may say something?

The possibility of danger is always real in Mississippi, and there have been numerous instances pointed out to the State office of the NAACP where people have had exchanges of words and there have been hard feelings.

Certainly if it were not possible to have a Federal presence at the elections, I have no reservations whatsoever about real, actual, physical violence taking place.

One report we received from Quitman County in Marks, in the most recent mayoral election, is that the deputy sheriffs were bringing people to the polls and that in itself was intimidation.

As Ms. Paulette pointed there was intimidation in Noxubee County, Miss., when law enforcement officers were present.,

I would like to mention several other things about the question of dilution. That would be addressed by the following panel, but during the past year I had an opportunity to serve on a special education study committee for the State of Mississippi, and there are many, many people in the State in key political positions who want to dilute the black vote. They are doing everything they can.

One of the proposals that came up in those committee meetings was a movement from appointed, municipal school board members to at-large elections.

I live in Warren County. We all know about the efforts of the board of supervisors there.

In the State of Mississippi supervisors have the responsibility of developing county redistricting plans.

We went without elections from 1971 to 1979 because the board of supervisors was so keyed up on diluting the black voting strength that they refused to come out with an acceptable plan.

We know about what has been happening in Jackson, Miss., in the delta. Those will be spoken to, but I would like to give a couple of more things that I hope will put in perspective what we are about here today.

Many of you probably know that when Mayor Charles Evers of Fayette, Miss., ran for the U.S. Senate in 1978, that there were changes in polling places overnight without any notice whatsoever.

We, during the past election in Mississippi, the municipal election on June 2, we decided that we would have people report to us the various irregularities that were taking place.

Let me speak for a few minutes to the question of access.

Generally in Mississippi there is a dual registration in order for a person to have access to the electoral process; that is, if a person lives in a town or municipality, in order to be able to vote in the municipal election, they have to register both for the county and the city.

Last September there were in Jackson some protest march registration efforts. While people were across the street at the county court house registering, many of those persons were residents of the city. The persons at city hall closed shop.

We find that in the State of Mississippi there were—in Vicksburg, for instance—there were 28 people on June 2 who were denied the right to vote because of the dual registration policy.

In Marks, Miss., in the delta, there were at least 50 people who were denied the right to vote in the municipal election because of the dual registration policy.

We found—and I want to just focus on Vicksburg and a couple of other places, and we will submit to you our complete study, but we found that there were 116 people in Vicksburg alone who were turned away from the voting booths because they had allegedly gone to incorrect polling places.

There were 97 people who were not granted permission to vote due to the fact that their names did not appear on the official voting books.

There were 24 instances of relatives living at the same address, yet having to vote at separate voting precincts which could, in effect, deal both with access and dilution.

Forty-seven people had to transfer to other polling places to vote even though they had been able to vote at that particular voting precinct during the recent Democratic primary, a few weeks before.

Twenty-eight persons were not allowed to vote, as I pointed out earlier, because they had only registered in the county.

The Governor of Mississippi, several weeks ago, acknowledged that Mississippi still had problems and that is in the record, in the newspapers, and he has not denied that.

What has been said for Vicksburg can be said for Lexington, Miss.; can be said for Laurel, Miss.; can be said for Jackson; can be said for Greenwood; can be said for Woodville, Miss., where a young black man had a realistic chance of winning the position of mayor at Woodville, but, because of the dual registration policy, many people were not able to vote because they had not registered in the city.

He lost by 29 votes.

Mr. Chairman, members of the committee, we find that while all of these things happen to potential voters, some elected officials do as they wish. For example, in my home county in December of 1980, the brother of the county attorney sought the position of district attorney, and the county attorney went into the office of the circuit clerk, removed the poll boxes from that office and did not bring them back until the next morning, a violation of both State law and in violation of seeking the approval of the circuit clerk, who said he did not know anything about it.

These are just a few of the things that are happening in Mississippi. I say to you that unless we have the Voting Rights Act

continued as is and enforced, the number of things that happens at the different elections in Mississippi will increase tremendously. There is no question about it. We must have the 1965 Voting Rights Act extended as is.

Mr. EDWARDS. Well, Mr. Walker, Mr. Barefield and Mr. Barbour testified that the white officials of Mississippi are suffering because of the Voting Rights Act, that it is a huge burden and that in most parts of Mississippi that if it were—section 5 were not renewed that there wouldn't be any consequences at all. How do you respond to that?

Mr. WALKER. Mr. Chairman, I cannot agree with anything that Mr. Barefield says.

Mr. EDWARDS. Ms. Paulette, is the discrimination more predominant in the rural portions of Mississippi? Are the cities better insofar as that issue is concerned?

Ms. PAULETTE. Mr. Chairman, I can only answer for Noxubee County, where I have lived and worked. It is the same in the municipality and also in the county. The discrimination is there. The intimidation is there.

The fear among the black people going to the polls is there. The illiteracy is there. You name it.

Anything that can be counted against minorities and blacks in Noxubee County and in the city is there.

Mr. EDWARDS. This could be changed overnight if the attitude of the people, the white people, sort of in charge of these areas, would change their attitudes, is that correct?

Ms. PAULETTE. That is right. This is not overnight. It has always been there. People that used to—before the Voting Rights Act, there were several people that I know about who were intimidated, beaten, and ran out of town from their homes because they tried to go to the polls to vote. That is a fact.

Mr. EDWARDS. That is illegal under Federal law and State law in the State of Mississippi?

Ms. PAULETTE. That is right, but it is happening.

Mr. EDWARDS. Is it your testimony that the local police do not enforce those laws?

Ms. PAULETTE. I didn't hear you. Beg pardon?

Mr. EDWARDS. You have local police. They don't enforce these Mississippi laws that prohibit the kind of conduct that you describe?

Ms. PAULETTE. No, sir, they do not. They participate in it.

Mr. FIGGS. Absolutely.

Ms. PAULETTE. They participate in it.

Mr. FIGGS. Mr. Chairman, we had one individual who called the sheriff to complain about a precinct manager, and the sheriff locked the complainer up.

The word got out and it was in the heat of the day, and most of the people who were going to come to the polls stayed away because they had a sheriff down there locking up folks.

When you are dealing with people who already are afraid to vote, this adds to the burden. I have been in voter registration 17 years. No one that is in control of the books, no one in the municipality or the county, volunteer and do the volunteer act, open up on Saturdays, appoint registrars, they don't even tell blacks when

they go pay their tax or when they pay the water bill at the city hall that you should register.

We have registered in the city of Marks over 250 people, and we had about 100 volunteers to go themselves. Those hundred were not told that you had to go over to the Court House, which is in front of the City Hall, to register, so you can participate.

So it is sort of a—all of them are caught together.

They came up—they had about 25 of 100 of them showing up dead. So when it is in the books, they had them dead because the last name was Brown. Maybe two or three Browns had died. They automatically claimed the living Brown was dead.

All these kinds of things add up. When a decision of an office is decided by three or four votes, they won't be playing; they are going for broke.

Mr. NEELY. Mr. Chairman, I think you asked earlier why fear is still there. I can say for the people in Mississippi, in my home town, fear is still there.

On May 9, in my home town, the Ku Klux Klan, in full gear, paraded in the city of Grenada past soliciting memberships.

On May 11 the Grenada city council refused to pass a resolution opposing the activity of the Ku Klux Klan.

This past Thursday, a week ago, the United Methodist Conference, State Conference, being held in Grenada, Miss., recognized the fact that Ku Klux Klan activity is a problem and drafted a resolution opposing the activity of the Ku Klux Klan in Mississippi.

Thank you.

Mr. EDWARDS. Thank you very much. You have been a very helpful panel, excellent witnesses. Thank you.

Mr. Walker, I believe you have another panel, is that correct?

Mr. WALKER. Yes. While that panel is coming forward, let me just say the figures I gave, they were all blacks; blacks were the ones.

Mr. EDWARDS. Thank you. Members of the next panel are: Mr. Charles Victor, Esq., of Greenville, Miss.; Senator Henry Kirksey of Jackson; Martha Bergmark, a member of the Advisory Committee of the U.S. Commission on Civil Rights.

You may proceed.

TESTIMONY OF CHARLES VICTOR McTEER, GREENVILLE, MISS.; SENATOR HENRY KIRKSEY, JACKSON, MISS.; AND MARTHA BERGMARK, MEMBER, ADVISORY COMMITTEE, U.S. COMMISSION ON CIVIL RIGHTS

Mr. McTEER. I am Charles Victor McTeer, attorney for the plaintiffs in the lawsuit known as *Dotson* vs. *The City of Indianola.*

In order to tell my story, I have to begin with the year 1965.

In 1965 this country was beset by what was commonly called throughout the South "Freedom Summer."

Black people in Mississippi were beginning to vote for the first time in 100 years. Indeed, what had resulted was the fact that blacks in places like Indianola, Miss., which represented the heartland of the Mississippi Delta, and an area which included more than a 70-percent black populace, had the first opportunity to vote.

In 1965, faced with the prospect of a 70-percent black vote turnout in the city of Indianola for the first time in the city's history, the city was faced with the prospect of having a huge number of black people coming out to vote and essentially taking over that city.

What they did to combat that problem was both innovative and unique.

The first thing they did was that in 1965 it annexed almost double the size of the community in the white side of town. This is most interesting. Indianola is like most southern towns. There's a white community and a black community.

Indianola simply took the white community and completely doubled its size in white residential communities. Not to be outdone, in 1966 it took in a very small black community which only had approximately one-third the number of people located in the white community.

Then in 1967 the city again took in certain nonresidential properties. Please note the fact that at all times during the course of this activity Indianola was covered by section 5 of the Voting Rights Act.

However, the city of Indianola completely failed to file any form of preclearance submission as required by section 5 of the Voting Rights Act.

In 1975, someone in the black community finally found out about the fact of the annexation had taken place. This is an extremely important matter.

The reason why is because you must remember that it has only been 16 years since black people have had the right to vote in Mississippi. Sixteen years since the great Reconstruction compromise of 1876. What resultingly happened would be this:

Black people in 1965, very often because of fears outlined here and above, have been afraid, if you will, to go in and register to vote. Who in their right mind was going to go into the chancery clerk's office of Sunflower County and not only register to vote, but at the same time look for an annexation which no one had notice of in the first place.

What resulted then was that in 1965, after notification was given to the U.S. Department of Justice, the Department of Justice wrote to the city of Indianola and asked them whether or not the annexations had indeed taken place and whether or not they had been precleared.

The city of Indianola by and through its city attorney, wrote back to the Department of Justice and explained that the annexations which took place in 1966 and 1967 had, in fact, taken place, but the city refused to make reference to the annexation which took place in 1965 which doubled the size of the white community.

What resulted thereafter was a shambles. The city of Indianola failed to submit any documentation whatsoever. However, the U.S. Department of Justice took absolutely no action whatsoever during the period from 1975 to 1980 to determine whether or not there had been any submission at all.

In 1980, a submission was requested again by the U.S. Department of Justice in view of the fact that blacks had determined that there was an annexation and in view of the fact that they knew

exactly the tort numbers, the times, the dates these annexations took place.

Thereafter the U.S. Department of Justice took no further action and likewise the city of Indianola continued again to make no submissions.

In October of 1980, a private lawsuit was filed requesting enforcement of section 5.

In April of 1980, the U.S. District Court for the northern district of Mississippi, a three-judge court, with Judges Charles Clark, William Keady, and L.D. Senter, hearing the case, decided that indeed the city of Indianola had breached section 5 of the Voting Rights Act and they said any annexation made after November 1 of 1965 which was not subject to preclearance would from thereafter not be effective until such time as it was, in fact, approved by the Department of Justice under section 5.

It should be noted that in 1965 blacks were 70 percent of the total population of the city of Indianola. As a result of the annexations, blacks then became approximately 48 percent of the voting age population.

As a consequence of the court's action on April 7, 1981 blacks became at that point in time 64 percent of the voting population because of the obvious dilution effect by bringing in whites in annexed areas.

Finally the U.S. Department of Justice received the submission from the city of Indianola if only because of the fact that the court had said in earlier memorandums that it should be done.

The Department of Justice objected to the 1965 annexation and did not object to some of the other annexations which occurred after 1965.

This was a major victory, but it is a sad victory in the context of a number of other facts. For a 16-year period between 1965 and 1980, four city elections took place in the city of Indianola. During that period of time all four of those elections were wholly and completely illegal, but more important, remember this fact: In 1972 the city of Indianola enacted what is commonly called its subdivision regulations.

Under those subdivision regulations, the city required that in order to build a house within the city limits, in the city proper, you had to have a lot which met certain defined prerequisites.

A review of the lot sizes of the city of Indianola would show you that in the white community, the lot size was exactly in agreement with the provisions of the subdivision regulations.

In the black community, however, where lots were much smaller, the lots were not large enough. As a consequence, at the point in time that someone sold property, and the grandfather clause no longer applied, if he tried to sell the property to someone who would build a new house, that person could not do so because of the fact his lot was too small.

Interestingly enough, city officials and others were involved in housing projects which were located just outside of town, conveniently placed there for the specific purpose of allowing black people to move by way of what we commonly call the Pied Piper effect, outside of city limits.

What resulted thereafter was that during the period from 1972 through 1980, approximately 3,100 black people moved into communities located just outside of town.

The sadness about this prospect—and this is something that no one has talked about here—and perhaps my brothers and sisters from Alabama would agree with me, in every Mississippi Delta town there is a Federal subdivision which is located just outside of town. In every Mississippi community, even in my dear Yazoo City, there is indeed a Federal subdivision financed by Federal money, used under the 235 act or the 502 act which is, in fact, put just outside of town an without exclusion, not one of those subdivisions in any Mississippi town, in any place in the Mississippi Delta, has ever been brought into town.

It is also interesting to note that not one of those subdivisions is in fact resided in primarily by members of the white race.

The crucial and most interesting fact about Indianola is that every possible piece of white property which could have been brought into that town was brought into that town, but every possible black piece of property that was located adjacent to the city limits was, in fact, eliminated.

We are told by the city of Indianola that they cannot bring these black properties into town. They say the reason is economic feasibility. They basically claim that there is indeed too many people and there's too much money that must be expended for repairs of these areas.

Yet each one of these areas was built in accord with the Indianola subdivision regulations and second, built with Federal money.

Indeed, we will hope to prove in our case that one of the crucial aspects of this thing is that the black subdivisions located just outside of town are in even better condition than white subdivisions located inside of town.

As a native Mississippian, one who chooses to live there, I just point out the fact that we should not be here talking about the future or extension of the Voting Rights Act. We should be talking about the strengthening of the Voting Rights Act.

The reason why is because of the fact that as I have described to you in Indianola, changes as they are defined by section 5 often taken place in the absence of knowledge of black people.

We don't sit in the courthouse. I sit here and look at the beauty of seeing two black women working in this Federal courthouse here. We don't have black people in large numbers sitting in chancery clerks 'offices in Indianola or other parts of Mississippi.

We point out the fact that indeed outside of the city of Jackson and Hinds County, there is only one suit that has ever been filed in the entire State of Mississippi to enforce section 5. That is this lawsuit.

We also point out the fact that the advantage of the Voting Rights Act is that it puts the burden where it belongs.

It puts the burden on Mississippi and each one of those people who testified here earlier, Stone Barefield and the other gentleman, when they used the word Mississippi they didn't mean black and white Mississippi; they meant white Mississippi.

That has got to be remembered here, because no black man in his right mind is going to come before this tribunal or any other and say in his adult lifetime he knows no history of racism.

Let us consider this fact: One of the reasons why black people have not been successful in Mississippi in the use of section 5 to date relates to the fact that we just have not had technical assistance. There have not been lawyers in every city, in every town, ready and available to these questions.

Let us not forget that the crucial flaw of section 5, the crucial flaw of section 5 is indeed the fact that it is a mandatory statute which is voluntarily enforced, meaning that, in fact, it is the area of the commuity, the governmental unit, the city, the town, the county which must in the first instance make the submission which is indeed required before the Justice Department can even take a look, and let us not further forget the fact that it is the city that makes the decision on what, in fact, is a change.

Remember, the statute basically says all changes, procedures, standards, and practices that exist from or after November 1 of 1964. Many municipalities might say there is no such thing as an annexation change, even though annexations may have a dilutive effect.

The point here is that the burden must remain because not one of the gentlemen here who testified before this group, not one of those white gentlemen would dare say before me or any other native Mississippian that he is willing to guarantee that white government, municipalities, and other governmental units have followed the prerequisites of section 5 for the last 16 years.

I would like you to consider the fact that Stone Barefield was right when he said that we good black folk have been more successful than we ever dreamed.

I would suggest to you we have been more successful than he ever dreamed, and indeed that is in fact the problem.

Any Mississippian who stands before you and says that there is no need for section 5, either knows nothing about the operation of section 5 in the State of Mississippi, or knows a whole lot.

In that consequence, yes, we have had more blacks elected to positions than we have ever had before, but we have more blacks proportionately in Mississippi than any other place in the country.

Yes, it is in fact true there is now a proper legislative plan in 1978 for that in the State of Mississippi.

Everybody forgets that we have had an illegal plan which has been the consistent source of fights with the State legislature.

Let us not forget the fact that indeed we are talking about a reversion to Dred Scott in the simplest form of the word where Judge Taney said very specifically in 1875, indeed, the black man has no right which a white man must honor.

I have been told there is a suggestion that there should be a bail-out provision. I do not agree with a bail-out provision unless certain things are promised to me and my fellow black citizens.

No. 1, there must be the enactment of district civil and criminal penalties for officials who, in fact, enforce a change under section 5 in a knowing way and attempt to enforce that change.

No. 2, funds must be provided for black people so that they may indeed combat the city, because the saddest thing about Indianola

is that even though there has been an illegal government there for 16 years, and even though everybody knows it, the courts, the lawyers, the city of Indianola, because of the fact that those black—white officials sitting there having the right to use black folks' money as well as white folks' money to combat black folks' civil rights, and there is no greater irony than that, to pay taxes and have the same tax money used to maintain a clearcut illegality.

There should be the consideration of appointment of masters under rule 52 of the Federal Rules of Civil Procedure to provide basically that the conduct of the city must be reviewed by a neutral party to determine whether or not in fact changes were made; and clearly any review of compliance over the past 16, 25 or 30 years must show that indeed section 5 has been complied with and that the 15th amendment has been complied with under both the concepts of purpose and effect.

They say that indeed they have been good for the last 16 years. They were bad for 400 years before that, and indeed, I believe that after the experience of Indianola, section 5 must be continued.

If section 5 and the Voting Rights Act as a whole is not continued, then there will be a reversion. Those people who sit here and talk about fear, if you have never been in Mississippi, and if you have never handled a Civil Rights Act case, and if you have never had your name plastered across the papers, and if you have never had the experience of someone calling your house and saying that they were going to kill your daughter, like they told me 2 years ago, then you can't talk to me.

I love my State and I think that we are entitled to fairness. If you take section 5 from us, then it will be the first step not just for the end of fairness for black people in Mississippi, but perhaps the end of the 15th amendment, and that is what is at stake here.

Thank you.

[The statement of Mr. McTeer follows:]

STATEMENT OF CHARLES VICTOR MCTEER, ESQ., GREENVILLE, MISSISSIPPI

In Indianola, Mississippi, for 16 years the municipality has held illegal elections. Individuals residing in areas annexed in 1965, 1966, and 1967 have been allowed to vote in elections absent available pre-clearance under section 5 of the Voting Rights Act. In 1975, the United States Department of Justice, being aware of Indianola's annexations, demanded Indianola to submit those annexations for pre-clearance. Thereafter, in 1975, Indianola did admit the occurrence of certain annexations which included within the City a small black area and certain non-resident areas and made no mention of the 1965 annexation which brought into Indianola a large number of white citizens. Thereafter, Indianola failed to submit any further documentation as required by the U.S. Dept. of Justice. The Department of Justice, likewise, also took no further action pertaining to Indianola. In August of 1980, after consultation with citizens within the city of Indianola and their attorney, the U.S. Department of Justice made a second request for information pertaining to those annexations. Again, Indianola failed to respond. In October of 1980, Nelson Dotson and others, filed their suit in the United States District Court for the Northern District of Mississippi claiming that the city of Indianola had violated section 5 and requesting that citizens residing in the areas subjected to annexation and no preclearance be deannexed from the municipality for purposes of voting. In April, 1981, Indianola finally made its submission to the Department of Justice. In essence, section 5 provides that no covered governmental unit shall enact any change in voting prerequisites or qualifications, standards, practices or procedures different from those in existence on November 1, 1964, without approval of the United States Department of Justice or the United States District Court for the District of Columbia. A change in any practice or procedure may have an adverse

impact upon minority voting strength. On the basis of this analysis an annexation which may change the percentages of black voting strength in the affected community is such a change. Upon review, the key issue for a United States District Court is whether or not a change has occurred in an affected area which was not precleared. If this is the case, private parties may move to stop enforcement of the change by injunction.

On May 7, 1981, following a hearing in Jackson, Mississippi, of April 7, 1981, the United States District Court issued its order deannexing each of the said subdivisions from participation in the municipal elections of the City of Indianola until such time as the annexations have in fact been approved by the United States Department of Justice under section 5.

On June 2, 1981, the United States Department of Justice (DOJ) filed its response to the submission of Indianola. The Department objected to the annexation of all white residential areas while accepting all the black residential areas so annexed and all non-residential areas in both communities. The effect of this ruling is to again substantially increase the percentage of black voters in the City of Indianola, Mississippi.

We are advised that there are two basic complaints which have been made by opponents of section 5 which are the basis for their alleged good faith efforts to see an end to the statute's operation. First, it is claimed that the South for too long has been the "Whipping-boy" and should be allowed to come from under the shroud of its past. Second, it is argued that section 5 has effectively operated to eliminate the very problems which it sought to solve and therefore it no longer needs to continue.

One cannot avoid historical likenesses evident here. Could one imagine the serious impact upon the rights of black people had the 13th, 14th and 15th amendments to the Constitution of the United States been subject to repeal during the 20-year period after their enactment in the late 1860's. Indeed, the South and Mississippi have made great advances during this last score of years. Nonetheless, Indianola demonstrates the crucial flaw in the operation of section 5. While mandatory in nature, section 5 is basically a voluntary enforcement statute. The statute is based upon voluntary decision by a municipality to abide by the law and submit its changes and further prove that there is no effect or purpose in the opration of the statute which adversely affects minority voting strength. Additionally, the statute depends upon the voluntary efforts of the Attorney General of the United States to enforce the law, thereby ending known discriminatory practices and disallowing attempts to enforce subtle and sophisticated as well as direct forms of racial discrimination. Unfortunately, Indianola demonstrates best that it is the voluntary nature of section 5 that has been its historic weakness. In this consequence, those persons who say that the Act has run its course do not understand that there is no proof that municipalities subject to its coverage have abided with the provisions of section 5 and precleared their changes. Likewise, there is no proof that the U.S. Department of Justice has effectively enforced section 5.

Any person familiar with the Mississippi Delta would clearly understand that there is a strong likelihood that section 5 is only beginning to have a real meaning and effect in that area. Since its enactment only one suit has been filed in the Mississippi Delta pertaining to the operation of section 5, that being the recent Indianola case. This is due in part to two factors. First, many black citizens simply did not and do not understand the operation of section 5 nor is there a clear understanding of the actions of a municipality which are covered under operation of the statute. Secondly, many of the decisions pertaining to the operation of municipal government that many be covered under section 5 often are unknown unto blacks until after they have been in effect for some time. As indicated in Indianola, it was 10 years following the annexations of 1965 that blacks generally had knowledge that annexations had taken place in the white community. Finally, even in those areas where blacks were aware of annexations, there was a lack of available technical assistance to help and/or assist blacks legally in the provision of suits or private actions to maintain their rights. Finally, the U.S. Department of Justice simply does not have the staff available to facilitate ready enforcement of objection where they may exist. For these reasons, section 5 is only now beginning to have real meaning in the black communities of the Mississippi Delta. In the State of Mississippi, Jackson and Hinds Counties have been the center of all activity in the Voting Rights arena. Few suits have been filed outside of that area. Indeed, no area of the state of Mississippi has had the intense legal struggles pertaining to voting rights similar to those found in Jackson and Hinds Counties. Few, if any, actions to those found in Jackson and Hinds Counties. Few, if any, actions have been filed to redistrict county supervisory line, school board lines and municipal borders in the Mississippi Delta. For this reason, the Mississippi Delta which includes the largest per capita concentration of blacks in the United States contains relatively few

blacks holding official positions in legislative seats on a state and/or federal basis, in country-wide office or in a region-wide position. It is inescapable that with such a large concentration of black people this could only occur in the face of evident racial gerrymandering.

The State of Mississippi and particularly the Mississippi Delta suffer from continued evidence of white resistance to fair black participation in elections. The demise of section 5 would clearly result in a return to both subtle and blatant forms of racial discrimination and a retrenchment similar to that following the great compromise of 1876.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

NELSON DOTSON, et al., Plaintiffs	)	
versus	)	NO. GC80-220-WK-O
THE CITY OF INDIANOLA, et al., Defendants	)	

JUDGMENT

For the reasons set out in the Opinion of this court entered this date,

It is DECLARED AND ADJUDGED that the annexations to its corporate limits effected by the City of Indianola, Mississippi, on May 25, 1965; May 4, 1966; September 2, 1966; and July 14, 1967, constitute voting qualifications or prerequisites to voting or standards, practices, or procedures different from those in force and effect on November 1, 1964, within the meaning of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, that Indianola has failed to fully comply with the provisions of that Act before enacting or administering those changes, and that the conduct of elections by the City of Indianola which encompass such annexed areas as a part of the municipality is violative of the Act.

It is ORDERED, ADJUDGED AND DECREED that the legal boundary lines of the City of Indianola, Mississippi, shall be, for the purpose of conducting municipal elections, those in force and effect prior to November 1, 1964; provided, that the City of Indianola may enforce in such elections any subsequent annexations which are properly precleared in accordance with the provisions of said Section 5 of the Voting Rights Act. Citizens residing in

areas annexed prior to such preclearance shall have all other rights of citizens in the municipality except the right to participate in municipal elections as candidates or electors.

It is FURTHER ORDERED that this case be and is hereby remanded to Honorable William C. Keady as a single-judge for the purpose of hearing and disposing of all other claims raised by the plaintiffs and not considered by this court.

Nothing contained in the Opinion of this court nor in this Order nor the continuing jurisdiction of this court to enforce its terms nor the jurisdiction of the single judge to hear the remaining issues in this cause shall be construed as cause to delay the promptest possible determination by the Attorney General of the United States of whether to object to all or any part of the four annexations submitted by the City of Indianola for his approval.

SO ORDERED this 13 day of May, 1981.

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF MISSISSIPPI

GREENVILLE DIVISION

NELSON DOTSON, et al., Plaintiffs	)	
versus	)	NO. GC80-220-WK-O
THE CITY OF INDIANOLA, et al., Defendants	)	

OPINION

Before CHARLES CLARK, Circuit Judge; KEADY, Chief Judge; and SENTER, District Judge.

CHARLES CLARK, Circuit Judge:

On October 1, 1980, Nelson Dotson and fifteen other black adult citizens, residents, and qualified electors of Sunflower County, Mississippi, brought this action pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1971 et seq. Section 5 prohibits a state or political subdivision from enacting or seeking to administer any voting qualification, prerequisite, standard, practice, or procedure different from that in effect on November 1, 1964, without first either obtaining a declaratory judgment in the United States District Court for the District of Columbia or securing tacit recognition from the Attorney General that the voting change does not have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority. 42 U.S.C. § 1973c.

The complaint in this case is composed of five counts, only the first of which is presently under consideration. In Count I the plaintiffs challenge four annexations to the corporate limits

of Indianola, claiming that the City violated Section 5 when it made these annexations without obtaining preclearance as required by the Act. They seek declaratory and injunctive relief against Phillip Fratesi, Mayor of Indianola, and against Gary L. Austin, Charlotte H. Buchanan, G. Clarke Johnson, W. Harold Manning, and James D. Robinson, members of the Indianola Board of Aldermen. The plaintiffs seek an order setting aside the 1977 municipal elections and scheduling a special election to choose new city officials. They also ask for prospective injunctive relief requiring the City to hold future elections based upon the pre-annexation city limits.

We grant only the plaintiffs' request for declaratory and prospective injunctive relief.

I.

Substantially all of the facts necessary to the disposition of the issues in this case have been stipulated by the parties. On May 25, 1965; May 4, 1966; September 2, 1966; and July 14, 1967, the City of Indianola obtained decrees from the Chancery Court of Sunflower County, Mississippi, approving its Petitions for Confirmation of Extension of Boundaries. Each of these annexations added new eligible voters to the electoral base for Indianola; and the City now concedes, as it must, that annexations enlarging the number of eligible voters in the municipality are changes of a voting qualification, prerequisite, standard, practice, or procedure as contemplated by Section 5 of the Voting Rights Act. See Perkins v. Matthews, 400 U.S. 379, 388-95, 91 S.Ct. 431, 437-39, 27 L.Ed.2d 484-89 (1971). Indianola also concedes that it has not yet obtained preclearance of these annexations as required by Section 5.

Indianola has implemented the 1965-67 annexations in the municipal elections conducted in 1968, 1969, 1973, and 1977. In each of these elections, persons residing in the newly annexed

areas have participated both as voters and as candidates. The incumbent mayor and aldermen were all elected in 1977, and four of the five present aldermen reside in the annexed areas.

Some additional facts are relevant to the question of the scope of relief to be afforded in this case. On October 2, 1975, J. Stanley Pottinger, Assistant U.S. Attorney General for the Civil Rights Division, wrote to Frank Crosthwait, then City Attorney for Indianola. Pottinger informed Crosthwait that the Division had learned of several annexations to the corporate limits of Indianola and advised him that these changes in voting practice or procedure could not lawfully be implemented unless the City first complied with the preclearance requirement of Section 5. Pottinger requested the City to submit the annexations to the Attorney General for review or to bring an appropriate declaratory action in the District Court for the District of Columbia. On November 10, 1975, Crosthwait replied to the Pottinger letter, noting three of the challenged annexations and identifying them by their location in the Chancery Clerk's records. Crosthwait's letter did not refer to the 1965 annexation.

On December 23, 1975, Pottinger again wrote to Crosthwait, this time requesting additional information necessary for proper evaluation of the annexations. For some unexplained reason, the City never responded to this request. Then, on August 21, 1980, the Department of Justice wrote to the present City Attorney, W. Dean Belk, and asked the City to provide the additional information previously requested concerning the 1966 and 1967 annexations. The Justice Department also requested the same kind of information for the 1965 annexation. The City represents to this court that it has now submitted all of the information sought by the Department of Justice concerning each of these annexations.

The Voting Rights Act ordinarily limits the issues for determination by the three-judge court to the question of whether the political subdivision has complied with the requirements of the Act and to the nature of relief to be afforded the plaintiffs in the event of non-compliance. See United States v. Board of Supervisors of Warren County, Miss., 429 U.S. 642, 97 S.Ct. 833, 51 L.Ed.2d 106 (1977); Perkins v. Matthews, 400 U.S. 379, 91 S.Ct. 431, 27 L.Ed. 2d 476 (1971).

However, Indianola has interposed numerous defenses to the plaintiffs' requested relief. The main defense, and the one upon which the City primarily relies, is the doctrine of laches. Laches is an equitable concept that may operate in some contexts as a time limitation barring a plaintiff's claim. It is founded upon the policies of promoting repose in society, encouraging diligence in plaintiffs, avoiding evidentiary problems occasioned by long delay, and advancing shared concepts of justice. See generally Note, The Application of the Doctrine of Laches in Public Interest Litigatio 56 B.U.L. Rev. 181, 196 (1976). To prevail on a laches defense, a defendant must show a delay by the plaintiff in asserting a right or claim, that the delay was inexcusable, and there has been undue prejudice to the defendant resulting from the delay. See, e.g., Environmental Defense Fund v. Alexander, 614 F.2d 474, 478 (5th Cir. 1980), cert. denied, ___ U.S. ___, 101 S.Ct. 316, 66 L.Ed.2d 146 (1980); Bernard v. Gulf Oil Co., 596 F.2d 1249, 1256 (5th Cir. 1979); Matter of Henderson, 577 F.2d 997, 1001 (5th Cir. 1978).

Although there is no precedent for application of the laches defense to private suits for injunctive relief under Section 5, the City urges us to adopt it in this case. The gist of its argument is as follows. Indianola first annexed adjacent lands in 1965. Thus, the plaintiffs have delayed 15 years before initiating this action. The City then argues that we should look to the analogous

state statute of limitations, in this case the six-year "catch-all" statute embodied in Miss. Code Ann. § 15-1-49 (1972). Since the plaintiffs' delay exceeds the applicable limitations period, a presumption arises that the delay is inexcusable, thereby shifting to the plaintiffs the burden of showing some justification for the untimeliness of their suit. To demonstrate prejudice the City offers three categories of evidence. First, it offers proof of potential witnesses who are now deceased or who have diminished memories of the events surrounding the annexations to show it has incurred a disadvantage in asserting or establishing its claims or defenses. Second, the City offers to show that it has expanded municipal services and incurred bond obligations on the assumption that the annexations were properly made. Third, the City proffers evidence of injury to citizens and residents of Indianola who, relying in good faith on the validity of the annexations, have moved into and purchased property in the newly annexed areas.

Nevertheless, we conclude that the doctrine of laches is not available in a private action for injunctive relief brought under Section 5 of the Voting Rights Act. We do so for several reasons.

First, application of the laches defense to bar the plaintiffs' action would frustrate the remedial purposes of the Act. Section 5 was intended to prevent covered states from fashioning voting changes which might deprive blacks of their right to vote. See generally South Carolina v. Katzenbach, 383 U.S. 301, 308-16, 86 S.Ct. 803, 808-12, 15 L.Ed.2d 769, 775-80 (1966). Congress imposed upon the covered states the burden of submitting any change in voting practice or procedures for approval in Washington, D.C., before it became effective. See Perkins v. Matthews, 400 U.S. 379, 396, 91 S.Ct. 431, 441, 27 L.Ed.2d 476, 489 (1971); Ramos v. Koebig, 638 F.2d 838, 846 (5th Cir. 1981).

Indianola has not discharged its undisputed obligation to submit these four annexations to either test designated by Congress.

The burden to obtain federal approval of those annexations before conducting elections based upon the new corporate limits has always rested with the City. The laches defense, however, presupposes that the plaintiffs had an obligation to challenge the altered voting regulation in the first instance. Allowing Indianola to assert laches to bar the plaintiffs' requested relief would transform its own long failure to comply with the duty imposed upon it by Section 5 into a defense. Under this approach, the longer the City delayed in fulfilling its statutory responsibilities, the better its defense would become. Therefore, to apply the doctrine of laches to a private injunctive action "would be to do precisely what § 5 was designed to forbid: allow the burden of litigation delay to operate in favor of the perpetrators and against the victims of possibly racially discriminatory practices." Berry v. Doles, 438 U.S. 190, 194, 98 S.Ct. 2692, 2694, 57 L.Ed.2d 693, 697 (1978) (Brennan, J., concurring) (citation omitted).

Second, the doctrine of laches is inconsistent with the nature of the obligation imposed by Section 5 upon affected states and political subdivisions. The duty to obtain federal approval of new voting standards, practices, or procedures is a continuing one. It arises anew each time the defendant enacts or seeks to administer an uncleared voting regulation. See 42 U.S.C. § 1973c. Even though Indianola effected the challenged annexations during 1965, 1966, and 1967, it breached its statutory duty to secure preclearance of the annexations when it conducted municipal elections in 1968, 1969, 1973, and 1977 based upon the post-annexation corporate limits. Although the City insists that the plaintiffs have delayed bringing this action for at least 13 years, it is clear that Indianola violated Section 5 as recently as 1977 by holding municipal elections utilizing boundary changes which had not been precleared. Thus, the vice of City's past non-compliance survives unabated as a present violation.

Third, the remedy sought does not go to the legality of the annexations. It is limited to the right of those living in such areas to vote in municipal elections.

For similar reasons we reject the City's proffered statute of limitations defense. Assuming without deciding that an action for injunctive relief brought by a private litigant could be barred by the running of an analogous state statute of limitations, it is clear that the applicable six-year limitations period of Miss. Code Ann. § 15-1-49 (1972) has not yet run. Less than four years ago, Indianola held municipal elections which improperly implemented the four challenged annexations. Therefore, even if applicable, the statutory period has not expired as to this election.

In addition to the laches and statute of limitations claims, the City raises several other defenses in its answer, including the necessity under state law that one objecting to an annexation take an appeal within 10 days from the approving judgment of the Chancery Court, exhaustion of state remedies, and the unconstitutionality of the Voting Rights Act. The City has not pressed these contentions before the three-judge court. They are without merit, and we reject them.

III.

We come now to the question of remedy. Since Indianola admits that the challenged annexations are subject to the Act's preclearance requirement and that it has failed to fully comply with the provisions of Section 5, the municipal elections conducted by Indianola in 1977 were in violation of the Voting Rights Act. To remedy the municipality's past implementation of the unapproved annexations, plaintiffs seek an order setting aside the 1977 elections, ousting the incumbent city officials, and compelling a special election to choose replacements to serve until the next regularly scheduled electi

Although the Supreme Court has tacitly recognized that such retrospective relief may be appropriate in some cases where an election implementing a covered voting change has been held without preclearance, it has never decided a case specifically endorsing such a remedy. We conclude that ordering a special election is unwarranted in the circumstances of this case.

The Supreme Court has identified several factors to be considered when determining whether overturning an election and ordering a new one will be justified. One factor is whether the state or political subdivision could reasonably be expected to have known that the election violated Section 5. When the issue of whether the disputed change in voting practices or procedures is novel or unsettled, then ordering a new election would not be appropriate. See Allen v. State Board of Elections, 393 U.S. 544, 571-72, 89 S.Ct. 817, 835, 22 L.Ed.2d 1, 20-21 (1969).

In Perkins v. Matthews, 400 U.S. at 396-97, 91 S.Ct. at 441, 27 L.Ed.2d at 489-90, the Court identified several other factors relevant to fashioning appropriate relief. Included were the nature of the voting changes involved and whether the political subdivision had sought federal approval. Where no submission of the implemented change had been made pursuant to Section 5, Perkins suggested that it might be appropriate to give the affected jurisdiction a period of time in which to seek preclearance, ordering a new election only if preclearance were not obtained. Id.

Finally, in Berry v. Doles, 438 U.S. at 192-93, 98 S.Ct. at 2693-94, 57 L.Ed.2d at 696, the Supreme Court adopted the remedial approach suggested in Perkins. In Berry, the covered change was a statute staggering the terms of the members of a county board, administered in an election held without preclearance. The district court enjoined future enforcement of the statute but refused to set

aside the past election because the statute effected a minor, technical change and because there was no evidence of discriminatory intent. The Court remanded the case with directions to enter an order allowing the defendants 30 days to submit the change pursuant to Section 5. The Court noted that if preclearance were denied or not sought, the district court might properly order all members of the board to be elected simultaneously at the general election. Id. at 192-93, 91 S.Ct. at 2694, 57 L.Ed.2d at 696.

Relying upon these factors, the plaintiffs urge that ordering new elections is justified in this case. They point out that these four annexations made extensive and comprehensive changes in voting practices and not minor or technical ones. They also point out that the City must have known of its duty to seek federal approval of these changes since Perkins v. Matthews established in 1971 that such annexations were covered by the Act. See 400 U.S. at 389-90, 91 S.Ct. at 437, 27 L.Ed.2d at 485-86. Moreover, they emphasize that the 1975 Pottinger-Crosthwait correspondence indicates that the City actually knew of its statutory duty.

After giving full consideration to these facts, we nevertheless decline to order new elections. Two reasons predominate. First, counsel for the City of Indianola have represented to the court that all the requested preclearance information has been submitted to the Attorney General of the United States as of May 1, 1981. This submission makes possible a final resolution of the dispute.

Second, burdens imposed upon the City and its residents by holding special elections decidedly outweigh the benefits inuring to the plaintiffs and public. The incumbent mayor and aldermen, elected in 1977, have already served more than three-quarters of their terms. Scheduled regular primary and general elections must be conducted November 8 and December 10 of this year. City officials chosen for the remainder of the incumbents' terms at a special election which allowed meaningful time for campaigning would serve only a few months before the regular election process commenced.

Any elections are expensive and time-consuming. Special electic would entail campaign expenses for both black and white candidates and supporters to gain relatively brief terms of office. The burdens of cost and disruption of the orderly administration of municipal affairs entailed by special elections would far outweigh the possible benefits to the general public. The plaintiffs themselves would obtain little or no benefit, too. To void the 1977 elections and order a special election could do nothing but vindicate an abstract right without according any perceptible advantage in addition to the remaining relief we grant. Taking into account the rights of all the parties involved and the public, we decline to require special elections now. The incumbent city officials may continue to hold office for the remainder of their present terms and until their successors are elected and take office at the regular election held later this year.

However, Indianola cannot continue to hold elections based upon uncleared post-annexation city limits. Unless and until the City obtains clearance of its post-Act annexations in accordance with Section 5, all future elections must be conducted on the basis of the city boundaries as they existed before the unprecleared annexations were made, and citizens residing in such annexed areas may not participate in future municipal elections, either as electors or as candidates. Cf. Perkins v. Matthews, 400 U.S. at 397 n.14, 91 S.Ct. at 441 n.14, 27 L.Ed.2d at 490 n.14. This relief applies only to the right to vote and be a candidate. It does not, of course, constitute de-annexation, and it does not affec the rights of citizens residing in the annexed areas in any other wa

Therefore, having determined that the May 25, 1965; May 4, 1966; September 2, 1966; and July 14, 1967, annexations by the City of Indianola constitute voting qualifications, prerequisites, standards, practices, or procedures different from those in force or effect

November 1, 1964; that such differences are within the coverage of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c; and that the City failed to comply with the provisions of Section 5 with regard to such changes, the court concludes that the plaintiffs are entitled to the declaratory and injunctive relief set out above. All the remaining issues should be remanded to Judge William C. Keady for determination as a single district judge.

Judgment will be entered in accordance with Fed. R. Civ. P. 58.

Mr. EDWARDS. Thank you, Mr. McTeer. Splendid testimony. Senator Kirksey, are you next?

TESTIMONY OF MARTHA BERGMARK

Ms. BERGMARK. Mr. Chairman, Mr. Washington, I am Martha Bergmark of Hattiesburg, Miss.

I have resided in the State of Mississippi for 28 of my 32 years. Since 1973, I have practiced law in Hattiesburg, first with a private firm and since 1978 as the executive director of Southeast Mississippi Legal Services Corp.

Since 1975, I have been a member of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights.

I am pleased to have the opportunity today to tell you why I believe extension and strengthening of the 1965 Voting Rights Act are essential to the continued participation of blacks in the functions of government in Mississippi.

As an exhibit to his testimony before you on May 28, 1981, Frank Parker of the Lawyers Committee for Civil Rights Under Law submitted a comprehensive recent history of continuing infringements on voting rights entitled, "Voting in Mississippi: A Right Still Denied."

I believe this study provides compelling documentation of the ingenuity and diligence of Mississippi's white power structure in maintaining up to the present day a political system in which blacks have only minimal representation.

I will use my time with you to provide some additional examples of voting rights infringement in my home area, southeast Mississippi.

The city of Hattiesburg is presently a defendant in a suit to change the form of its municipal government from an at-large to a district or ward system of voting.

During the pendency of that suit, on August 7, 1979, a referendum was held on the question of whether to change from a commission form of government with at-large voting, under which blacks have never been elected, to a mayor-council form with ward voting, under which it was likely that two blacks would be elected to a nine-member council.

Blacks comprise approximately 29 percent of the population.

In that referendum, 84 percent of the white voters voted to retain the commission form of government, while 84 percent of the black voters voted for the mayor-council form.

During the petition drive which precipitated the referendum, supporters of the change collected signatures door to door and at shopping centers. White petitioners, including myself, were frequently told by whites that they were refusing to sign the petition because they knew our purpose was to make black representation in city government possible.

Such responses were typically accompanied by the use of racial epithets.

Black petitioners were directly subjected to racial slurs.

Henry McFarlin, a black, testified that only two of the more than 200 whites he talked to agreed to sign the petition.

Another incident which occurred prior to the August 7 referendum is described in the affidavit of Robert L. Gibbs, a native Mississippian and a black attorney then residing in Hattiesburg.

I have attached this affidavit as an exhibit to my testimony and request that it be made part of the hearing record.

Mr. Gibbs relates his experience in being improperly denied access to timely voter registration and the persistence it required for him to secure his right to vote in an important and racially polarized city election.

Mr. Gibbs later learned that his experience was shared by at least one other black Hattiesburg resident.

We can reasonably infer that this clear interference with the right to register and vote would have deterred those less knowledgeable or sophisticated in the exercise of their rights.

Hattiesburg's three city commissioners, all white, campaigned actively for retaining the commission form of government with its at-large voting.

Then-Mayor A. L. Gerrard, addressing questions about the issue at an all-white Rotary Club meeting was asked whether mayor-council supporters were "pushing this change just to get the niggers in the government" and answered affirmatively.

This was confirmed at the Hattiesburg trial and he confirmed it by saying he answered yes out of respect for the questioner.

This incident dispels the notion that the mere existence of a substantial black minority in the electorate, and a corresponding desire to court black votes will force white elected officials to be sensitive or responsive to the needs of their black constituents.

Finally, with respect to Hattiesburg, two very recent incidents of official interference with the right of blacks to be elected to public office illustrate the lengths to which whites continue to go to prevent the effective participation of blacks in the electoral process.

In the November 4, 1980, Presidential election, two white precinct workers at Camp School Precinct made certain that at least two white voters knew the racial identity of candidates for public office. Affidavits from the white voters documenting these incidents are submitted herewith for inclusion in the hearing record.

I am convinced that if the Voting Rights Act is not extended and strengthened, even more egregious interference with black participation in the electoral process will be commonplace.

Before I turn to the situation in Laurel, Miss., I would like to digress for a moment and speak to a question that counsel to the committee, Ms. Davis, raised with an earlier witness, Mr. Barefield.

Mr. Barefield told you that the Mississippi Constitution no longer contains literacy or poll tax provisions as prerequisites to voting.

It still contains an antimiscegenation provision. At a pretrial deposition and subsequently at trial for the Hattiesburg city government case testimony was taken from the Forrest County circuit clerk who is not only the official responsible for voter registration, but also the official who issues marriage licenses.

She testified that since coming into office in 1978, it had been her policy to refuse marriage licenses to interracial couples in order to comply with Mississippi law in this regard.

She has never seen fit to hire a black person on her staff.

As a member of the U.S. Civil Rights Commission's Mississippi advisory committee, I participated in a recent study of the responsiveness of the city of Laurel's municipal government, elected on an at-large basis, to the needs and views of its substantial—37 percent—black minority community.

The advisory committee chose Laurel for this study based on application of neutral criteria as typical of cities its size with at-large voting.

The committee further decided to prepare its public report in the form of a videotape documentary in order to facilitate its clearinghouse and community information functions.

At its December 17, 1980, meeting held in Laurel, the advisory committee viewed the videotape report entitled "Laurel and Laurel: A City Divided," and found that at-large municipal voting structures generally deny black people in Mississippi living in majority white communities equal opportunities for representation in municipal government.

The advisory committee further found that black citizens living in Mississippi cities and towns with at-large voting systems strongly believe that their all-white city councils are not responsive to their needs and interests.

Based on its findings, the advisory committee urged the U.S. Commission on Civil Rights to recommend to the President and Congress that the Voting Rights Act be extended for an additional 7 years.

The committee further asked the Commission to recommend that the present provisions of the act be expanded to outlaw on a nationwide basis any voting qualification or standard, practice, or procedure with respect to voting which has the purpose or effect of denying or abridging the right to vote on account of race or color.

The advisory committee asked the Commission to forward the videotape report to this Judiciary Committee for review in your deliberations on this issue.

I submit herewith as exhibits to my testimony a transcript of the videotape and a copy of advisory committee Chairperson Mary Ramberg's letter of transmittal to the Commission.

Again I request that these documents be made a part of this hearing record and urge the committee to obtain and view this 26-minute report.

It will provide you with eloquent testimony to the view of Laurel's black community that so long as blacks are denied even the possibility of being represented in city government, city officials will continue their historic pattern of nonresponsiveness.

Based on my experiences as a Mississippian, I believe that the Voting Rights Act, and especially the critical enforcement provisions contained in section 5 must be extended. This act has been crucial to the gains made since 1965 by black Mississippians in voter registration and in winning election to public office. However, as great as these gains have been, we must recognize that the battle is far from won.

Far too many Mississippi whites, including many public officials, would celebrate the lapse of the Voting Rights Act. Too many whites would welcome a return to the all-too-recent past when blacks were openly denied participation in government.

Mississippi history, up to the present, is replete with examples of the dedication of her white citizens to that goal.

If the Voting Rights Act is not extended, I fear that historians would point to 1981, as they now point to 1876, when Federal troops were withdrawn from the States of the Confederacy, as a year when the U.S. Government abandoned its commitment to legal equality and left Mississippi and other Southern States free to trample the rights of their black citizens.

[The statement of Ms. Bergmark follows:]

TESTIMONY OF MARTHA BERGMARK ON EXTENSION OF THE VOTING RIGHTS ACT

Mr. Chairman and Members of the Subcommittee, I am Martha Bergmark of Hattiesburg, Mississippi. I have resided in the State of Mississippi for 28 of my 32 years. Since 1973, I have practiced law in Hattiesburg, first with a private firm and since 1978 as the executive director of Southeast Mississippi Legal Services Corporation. Since 1975, I have been a member of the Mississippi Advisory Committee to the United States Commission on Civil Rights.

I am pleased to have the opportunity today to tell you why I believe extension and the strengthening of the 1965 Voting Rights Act are essential to the continued participation of blacks in the functions of government in Mississipi.

As an exhibit to his testimony before you on May 28, 1981, Frank Parker of the Lawyers Committee for Civil Rights Under Law submitted a comprehensive recent history of continuing infringements on voting rights entitled, "Voting in Mississippi: A Right Still Denied." I believe this study provides compelling documentation of the ingenuity and diligence of Mississippi's white power structure in maintaining, up to the present day, a political system in which blacks have only minimal representation. I will use my time with you to provide some additional examples of voting rights infringement in my home area, southeast Mississippi.

The City of Hattiesburg is presently a defendant in a suit to change the form of its municipal government from an at-large to a district or ward system of voting. During the pendency of that suit, on August 7, 1979, a referendum was held on the question of whether to change from a commission form of government with at-large voting, under which blacks have never been eleceted, to a mayor-council form with ward voting, under which it was likely that two blacks would be elected to a nine-member council. Blacks comprise approximately 29 percent of the population. In that referendum, 84 percent of the white voters voted to retain the commission form of government, while 84 percent of the black voters voted for the mayor-council form.

During the petition drive which precipitated the referendum, supporters of the change collected signatures door-to-door and at shopping centers. White petitioners, including myself, were frequently told by whites that they were refusing to sign the petition because they knew our purpose was to make black representation in city government possible. Such responses were typically accompanied by the use of racial epithets. Black petitioners were directly subjected to racial slurs. Henry McFarlin, a black, testified that only two of the more than 200 whites he talked to agreed to sign the petition.

Another incident which occurred prior to the August 7 referendum is described in the affidavit of Robert L. Gibbs, a native Mississippian and a black attorney then residing in Hattiesburg. I have attached this affidavit as an exhibit to my testimony and request that it be made a part of the hearing record. Mr. Gibbs relates his experience in being improperly denied access to timely voter registration and the persistence it required for him to secure his right to vote in an important and racially polarized city election. Mr. Gibbs later learned that his experience was shared by at least one other black Hattiesburg resident. We can reasonably infer that this clear interference with the right to register and vote would have deterred those less knowledgeable or sophisticated in the exercise of their rights.

Hattiesburg's three city commissioners (all white) campaigned actively for retaining the commission form of government with its at-large voting. Then-mayor A. L. Gerrard, addressing questions about the issue at an all-white Rotary Club meeting, was asked whether mayor-council supporters were "pushing this change just to get the Niggers in the government" and answered affirmatively. This incident dispels the notion that the mere existence of a substantial black minority in the electorate, and a corresponding desire to "court" black votes, will force white elected officials to be sensitive or responsive to the needs of their black constituents.

Finally, with respect to Hattiesburg, two very recent incidents of official interference with the right of blacks to be elected to public office illustrate the lengths to which whites continue to go to prevent the effective participation of blacks in the electoral process. In the November 4, 1980, presidential election, two white precinct workers at Camp School Precinct made certain that at least two white voters knew the racial identity of candidates for public office. Affidavits from the white voters documenting these incidents are submitted herewith for inclusion in the hearing record. I am convinced that if the Voting Rights Act is not extended and strengthened, even more egregious interference with black participation in the electoral process will be commonplace.

LAUREL

As a member of the U.S. Civil Rights Commission's Mississippi Advisory Committee, I participated in a recent study of the responsiveness of the City of Laurel's municipal government, elected on an at-large basis, to the needs and views of its substantial (37 percent) black minority community.

The Advisory Committee chose Laurel for this study, based on application of neutral criteria, as typical of cities its size with at-large voting. The Committee further decided to prepare its public report in the form of a videotape documentary in order to facilitate its clearinghouse and community information functions.

At its December 17, 1980, meeting, held in Laurel, the Advisory Committee viewed the videotape report, entitled "Laurel and Laurel: A City Divided," and found that at-large municipal voting structures generally deny black people in Mississippi living in majority white communities equal opportunities for representation in municipal government. The Advisory Committee further found that black citizens living in Mississippi cities and towns with at-large voting systems strongly believe that their all-white city councils are not responsive to their needs and interests.

Based on its findings, the Advisory Committee urged the U.S. Commission on Civil Rights to recommend to the President and Congress that the Voting Rights Act be extended for an additional seven years. The Committee further asked the Commission to recommend that the present provisions of the Act be expanded to outlaw on a nationwide basis any voting qualification or standard practice or procedure with respect to voting which has the purpose or effect of denying or abridging the right to vote on account of race or color.

The Advisory Committee asked the Commission to forward the videotape report to this Judiciary Committee for review in your deliberations on this issue. I submit herewith, as exhibits to my testimony, a transcript of the videotape and a copy of Advisory Committee Chairperson Mary Ramberg's letter of transmittal to the Commission. Again, I request that these documents be made a part of this hearing record and urge the Committee to obtain and view this 26-minute report. It will provide you with eloquent testimony to the view of Laurel's black community that so long as blacks are denied even the possibility of being represented in city government, city officials will continue their historic pattern of non-responsiveness.

Based on my experience as a Mississippian, I believe that the Voting Rights Act, and especially the critical enforcement provisions contained in Section 5, must be extended. This Act has been crucial to the gains made since 1965 by black Mississippians in voter registration and in winning election to public office. However, as great as these gains have been, we must recognize that the battle is far from won.

Far too many Mississippi whites, including many public officials, would celebrate the lapse of the Voting Rights Act. Too many whites would welcome a return to the all-too-recent past, when blacks were openly denied participation in government. Mississippi history, up to the present, is replete with examples of the dedication of her white citizens to that goal.

If the Voting Rights Act is not extended, I fear that historians would point to 1981—as they now point to 1876, when federal troops were withdrawn from the states of the Confederacy—as a year when the United States government abandoned its commitment to legal equality and left Mississippi and the other southern states free to trample the rights of their black citizens.

AFFIDAVIT OF ROBERT L. GIBBS

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, Robert L. Gibbs, being duly sworn say:

1.

That I am Robert L. Gibbs, an adult resident citizen of Hinds County, Mississippi, and a duly licensed and practicing attorney in the State of Mississippi.

2.

That in June, 1979, I moved to Hattiesburg, Mississippi, Forrest County, where I became employed as a staff attorney with Southeast Mississippi Legal Services Corporation.

3.

That sometime in June, 1979, prior to the deadline to register to vote in the election to decide the change in Municipal form of Government, I went to the Forrest County Courthouse to register to vote. I was allowed to register in the County, but I was told by a deputy clerk that the apartment complex in which I lived (Christina Apartments) was outside the city limits and that I would not be allowed to register for the municipal elections. She informed me not to go to Hattiesburg city hall, since I was outside the city.

4.

Later, after the deadline to register for the election on the change of the Municipal form of Government had past, I found out that I was, indeed, staying within Hattiesburg's city limits. I determined this after talking with several people who were from Hattiesburg and knew its city limits.

5.

Shortly thereafter, I, along with another black attorney went to city hall. At city hall I spoke with a white deputy city clerk who informed me that I did stay in the city limits and I could register to vote. However, she informed me that I would not be allowed to vote in the election on the change in the Municipal form of Government since the deadline had past. I explained to the clerk that when registering to vote at the Forrest County Courthouse I was told I could not vote in the city elections, and it was this reason that I did not register to vote in the city on that day. I produced my voter's registration card which evidenced the date I registered at the County Courthouse. The clerk again told me I would not be allowed to vote in the upcoming election. I then demanded to see a city commissioner. When this was done another white person (who appeared to be a city clerk), called the deputy clerk aside. After a short discussion out of my hearing, I was told that since it was not my fault in failing to register to vote before the deadline, my registration would be "backdated" so I could vote in the upcoming election. This was done without further incident.

6.

I have also spoken with another black resident of Christina Apartments who told me that she too was told that she could not register to vote in the Hattiesburg city elections by officials of the Forrest County Courthouse. I cannot, however, remember who that person was.

Further affiant says not.

ROBERT L. GIBBS

SWORN TO AND SUBSCRIBED before me this the 9th day of June, 1981.

Jane C. Husbands
NOTARY PUBLIC

My Commission Expires:

My Commission Expires October 28, 1984.

AFFIDAVIT OF JO HAILEY

STATE OF MISSISSIPPI

COUNTY OF FORREST

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named JO HAILEY, who after having been by me first duly sworn states on oath the following:

I.

I am a white resident of Hattiesburg, Forrest County, Mississippi, where I am employed as an assistant professor of Psychology at the University of Southern Mississippi, and am a qualified elector.

II.

On November 4, 1980, I went to vote at Camp School Precinct. I obtained assistance from a precinct worker, an older white male, in the use of the new voting machines. In demonstrating the machine he used a demonstration ballot, not a sample of the real November 4 ballot. However, at the end of the demonstration, he opened the real ballot, pointed out the names of two candidates for a particular office and said, "Now this is the white one and this is the colored one."

III.

Later that day, I telephened Martha Bergmark, reported this incident to her, and asked her to report it to whatever election official or other persons she deemed appropriate.

Jo Hailey
JO HAILEY

SWORN TO AND SUBSCRIBED BEFORE ME, this the 10th day of June, 1981.

Martha Bergmark
NOTARY PUBLIC

MY COMMISSION EXPIRES:
August 13, 1983

AFFIDAVIT OF KIM T. CHAZE

STATE OF MISSISSIPPI

COUNTY OF FORREST

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named KIM T. CHAZE, who after having been by me first duly sworn states on oath the following:

I.

I am an adult resident of Hattiesburg, Forrest County, Mississippi, where I am employed as an attorney. I reside in the Camp School Precinct and am a qualified elector.

II.

On November 4, 1980, I went to vote at Camp School Precinct. I obtained assistance from a precinct worker, an older white female, in the use of the new voting machines. In demonstrating the use of the voting machine, this precinct worker pointed out to me that of the two candidates for a particular office, one was black and the other was white, and she identified which was which on the ballot.

K. T. C.

KIM T. CHAZE

SWORN TO AND SUBSCRIBED BEFORE ME, this the 10th day of June, 1981.

Barbara J. Brown

NOTARY PUBLIC

MY COMMISSION EXPIRES:

9-6-82

February 1981

Arthur S. Fleming, Chairperson
Mary F. Berry, Vice Chairperson
Stephen Horn
Jill S. Ruckleshous
Murray Saltzman, Members
United States Commission on Civil Rights
Washington, D.C. 20425

Dear Commissioners:

The Mississippi State Advisory Committee to the United States Commission on Civil Rights presents the report Laurel and Laurel: A City Divided to you pursuant to our responsibilities under Commission regulations.

The Mississippi State Advisory Committee undertook this study to analyze whether or not there are continuing problems of denials to blacks in Mississippi of equal rights to political participation and if so, to analyze the consequences of that denial for the black community.

Mississippi now has 387 black elected officials, more than any other state in the country, largely as a result of the implementation and enforcement of the Voting Rights Act. Although this represents considerable progress, there are more than 4,900 elective offices in the state, and black elected officials still represent only 8 percent of the total number of elected officials in a state which is 37 percent black.

The City of Laurel, Mississippi was not singled out for this study, but was chosen on the basis of the application of neutral criteria as typical of cities its size with at-large voting. The Mississippi State Advisory Committee wishes to thank Bobby D. Doctor, Regional Director, and staff of the Southern Regional Office for their support services on this project. The Committee is particularly grateful for the diligent efforts and hard work of Ms. Miriam Grayboff who worked with the Committee in the preparation of the documentary report.

As a result of this study, the Mississippi State Advisory Committee finds:

1) At-large municipal voting structures generally deny black people in Mississippi living in majority white communities

equal opportunities for representation in municipal government. Since Laurel's adoption in 1912 of at-large voting under the commission form of government, no black person has been elected to the Laurel City Council, despite the fact that, according to the 1970 Census, Laurel is 36.9 percent black in population.

This total exclusion of black representation typically exists throughout Mississippi in majority white cities and towns with at-large municipal elections. Of the 79 cities and towns in Mississippi with populations of 2,500 and over, half (39) currently elect members of their city councils at-large. Of these, 69 percent (27) have no black representation on their city councils despite substantial black population concentrations living within their city limits. Most of the remaining communities with at-large elections which have one or more black city council members are majority black in population.

2) Black citizens living in Mississippi cities and towns with at-large voting systems strongly believe that their all-white city councils are not responsive to the needs and interests of their black communities. As this report demonstrates, the black citizens of Laurel have numerous complaints of racial discrimination in the provision of municipal services which they feel are not being addressed by a city council elected at-large.

In light of these findings, the Mississippi State Advisory Committee recommends:

1) That the United States Commission on Civil Rights recommend to the President and Congress that the Voting Rights Act of 1965 be extended for an additional 7 years.

If the temporary provisions of the Voting Rights Act are allowed to expire as scheduled in August 1982, the modest gains made in this state could be wiped out. The Voting Rights Act remains the lifeblood of black political participation in Mississippi and the South, and its guarantees must continue in effect both to protect existing gains and to provide for continued progress in black political participation.

2) That the United States Commission on Civil Rights recommend to the President and Congress that the present provisions of the Voting Rights Act be expanded to outlaw on a nationwide basis any voting qualification or standard, practice or procedure with respect to voting which has the purpose or effect of denying or abridging the right to vote on account of race or color.

At present, the Voting Rights Act outlaws in covered states only those election law changes enacted since November 1, 1964, which are racially discriminatory in purpose or effect. Under recent Supreme Court decisions, black voters challenging discriminatory election laws in effect before 1964 have the heavy burden of proving that those laws were conceived of operated for a racially discriminatory purpose. Proof of racially discriminatory effect is not enough. As one consequence, majority white cities and towns through Mississippi and the South are permitted to retain at-large municipal election schemes adopted before 1964 which deny black voters any opportunity for representation in municipal government.

The promises of the Fifteenth Amendment and the Voting Rights Act of equal political participation for black citizens remain unfulfilled if racially discriminatory electoral mechanisms such as these are allowed to continue to exist and remain untouched by existing law.

We urge your consideration of the facts presented in this report and the Mississippi State Advisory Committee's recommendation for corrective action. We believe Laurel and Laurel evidences, perhaps more clearly than raw data, black voter alienation from the local political process in Mississippi, and suggest that the videotape and transcript be forwarded to the House and Senate Judiciary Committees for review in their deliberations on the question of extension of the Voting Rights Act of 1965.

Respectfully,

FOR THE MISSISSIPPI STATE
ADVISORY COMMITTEE

Mary L. Ramberg, Chairperson

UNITED STATES COMMISSION ON CIVIL RIGHTS

SOUTHERN REGIONAL OFFICE
Citizens Trust Company Bank Building
75 Piedmont Avenue, Room 362
Atlanta, Georgia 30303
Telephone (404) 221-4391

LAUREL & LAUREL -- A CITY DIVIDED

A 27-minute Videotape Report by the Mississippi Advisory Committee to the U.S. Commission on Civil Rights.

This report of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights was prepared for the information and consideration of the Commission. It will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the contents of the report should not be attributed to the Commission, but only to the Mississippi Advisory Committee.

August 1981

Transcript of Soundtrack
Laurel & Laurel: A City Divided

Video	Audio
Voice of Interviewer: (A Report of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights:	Why did the Advisory Committee to the U.S. Commission on Civil Rights adopt this project of looking into the political structure in Laurel, Mississippi, and its relationship to how Federal money is spent?
Frank Parker (Member, Mississippi Advisory Committee)	Well there is a continuing concern of the exclusion of black people from representation in government, at all levels, in the state of Mississippi. We have a situation now in which, as a result of the last election, there is a substantial number of black legislators elected to the Mississippi legislature--17 blacks were elected.1/ A substantial number of blacks elected to county supervisor positions. Yet, at the municipal level, black people are still excluded in many parts of the state from any representation in municipal government as a result of at-large voting.2/
Youngsters' Voices Singing: (Camera run by of dilapidated houses, well kept homes)	1, 2, 3, 4. Tell me what you're waiting for. Scooby scooby doo. Guess what America, we love you! A rock, a roll and so much soul.....I don't mean to say, I don't mean to boast...:"
Voice of Susie Ruffin: (Community Resident) (Scenes of Laurel residents at work, home, etc.)	They just get a job, go to work, eat, sleep... Some of em go to church every night, ain't got a thought of their own.... They're afraid if they think, the white folks'll know it.
Train Sound comes up and fades	
Nate Samuels: (Rehabilitation and Community Officer) Stands before map in Laurel City Planning Office.	As you can plainly see, the division line is here. This is the, the Southern Railway tracks running here, and it more or less divides the city in terms of black population and white population.3/

Video	Audio
Narrator: (Scenes of Laurel)	As the railroad tracks cut southwest to northeast through Laurel, Mississippi, two communities are divided. On the one side of the tracks, the Laurel which is almost all black and mostly low income; on the other side, the Laurel which is nearly all white and where the shopping district, schools, and hospitals are located.4/ For the many black residents, the isolation of their community and the occasional blocking off by the trains are more than inconvenience. The train line has come to symbolize a segregated past and a perceived neglect of present needs.
Marzell Clayton: (Laurel Resident)	We have had houses in this Queensburg area to burn down because the fire truck couldn't get there. And then we have had sick people trying to get out from down here to the hospital. The ambulance can't get down there when these trains are blocked. Both of these trains have been across the tracks at the same time. And in the morning time we have had people late for work, children late for school. See, just this year is the only time we have ever had any transportation. We had to fight like 'Rip' to get transportation for our children to get to school. And some of 'em were walking 5 miles! Now that we do have the buses, but yet and still we have a hassle with the people who are trying to get to work. And if we had a fire, just look what could happen down there now. And it's just a bad condition!
Interviewer:	What has happend over the 11 years which has prevented a crossing from being put here?
Marzell Clayton:	Not one thing! Only thing we have just been to them from time to time, asking them to put one here. Every time, "Well, we got to them when we fix the downtown area first, then we'll go into the community." But I don't think, I don't, that's right! Because I think, they should serve the needs of the people.

Video	Audio
Narrator (Scenes of Laurel and of people voting)	Although blacks make up a sizeable proportion of the population, Laurel has never elected a member of a minority to public office. 5/ Jones County's largest municipality began as a lumber mill in the late 1800's. John Mason, who developed a way to turn sawdust and woodwaste into building board, and the rail lines, helped it grow into a town of 25,000. Elections in Laurel are held at large. 6/
	Members of the Commission on Civil Rights' Mississippi Advisory Committee wanted to find out how just responsive government officials chosen on such a basis could be to the needs of minority constituents, whether Laurel's 7,000 black citizens were able to participate fully in the electoral process and if federal funds were being meted out properly and fairly.
John Rasberry (President, Jones County Board of Supervisors:):	I'm sure most of y'all are here on behalf of the Revenue Sharing... Everybody back there?
ce	O.K. You got it, Mr. Clerk? Right.
Interviewer:	In your opinion have you spent the Federal Revenue Sharing money properly.
Rasberry: (Rasberry's face appears on "flashback" insert)	As far as we know, according to law we have gone straight down the line. Yes, m'aam.
Interviewer:	How do you go about assessing the needs?
Rasberry:	Well we set up in different categories to fit the needs, the demands of the people.
Interviewer:	How do you go about establishing priorities on what should come first in your budgeting?
Rasberry:	Well, we have to get together and discuss that. We don't know...and then we come up with that priority.
(flashback dissolves)	
Rasberry (in Board hearing room)	Anybody got anything they want to say, come on around.

Video	Audio
Marzell Clayton	I'm Marzell Clayton. First I'd like to thank the board for this opportunity for the organization of People Helping People to have the opportunity to come before you and present to you some of the most needed proposals that we feel that Revenue Sharing money should be spent, and any money that can be available in Jones County and in the City of Laurel that would 'releviate' the problems of the people who live in Jones County and in the City of Laurel. And our number one priority, we feel like, which we have tried on several occasions, is to get an emergency housing system. Number two, is the railroad tracks that are located in the City of Laurel and on Queensburg Avenue. (That railroad track is a spur from Masionite.) And it's the most unconvenient thing we have in trafficway in the City of Laurel.
Voice of Interviewer: (In Parker's Office)	Do you think hearings on various Federal programs are sufficient where people can come and voice their opinions to the elected officials?
Parker: (Attorney, Lawyers' Committee)	No because this can simply be a sham. This can be a futile exercise. The city commissioners can sit at this hearing, or the county board of supervisors can sit at this hearing all evening long and not act on any of those suggestions, and not act on any of those protests. It's just a sham; it could have no affect at all on the decision-making as to exactly how that money is being spent.
Interviewer: (in Laurel Mayor's office)	Could we get to Revenue Sharing. Do you have any idea of how much money was allocated to Laurel last year?
Mayor Bill Patrick	Around, around 500,000 dollars 7/
	You are aware that, well, the formula calls for giving more Revenue Sharing to those municipalities or counties where you have lower income people, so that the more low income...
Mayor:	The poverty level. In fact that's figured in twice.
Interviewer:	Ah, so it is weighted toward the poor. Would you say that most of the Revenue Sharing money is spent in projects where the poor reside?

Audio	Video
Mayor:	Ah, yes, to benefit them. Of course, like, you take a training facility for the police department. We have used some Revenue Sharing funds to provide the police training which are white and black. Because the police protect the black as much as they protect the white. So, yes I would say so.
Interviewer:	Is that what it was spent for last year?
Mayor:	Well, a portion of it, 8/ We've paved a lot of streets in the black area with Revenue Sharing funds. 7/ We put a lot of sewer extension lines in the black area. Of course they needed it in the first place. Their streets were not as well kept down through the years and there was quite a number of areas that did not have sewerage. 9/ There're not anymore. We've covered 'em all.
Interviewer:	How were the priorities established? I mean who decided that the best usage would be a police training facility?
Mayor:	We have a citizens' input group, quite a number of citizen groups. We open it up to anybody. We advertise our intent, have hearings and anybody that has any input whatsoever, no matter who he is, he can be an individial or a group. And we listen to them all.
Emma Nix (Laurel resident) (at downtown mall)	Well, it seems as though we have poor government right now, for listening to our problems.
Clayton: (at railroad crossing)	The City of Laurel don't listen to nobody unless you got some money! Now if you're in the big brackets they'll hear you.
Bill Tillery: (Laurel businessman)	I think those that're administrating our tax monies are good people and they're doing their very best to put those monies in places that will be the best for our general population.
Narrator: (camera surveys white neighborhood)	In talking with Laurel residents, the interviewers soon found out that attitudes on how good a job local officials were doing depended on which side of the tracks you came from. To some, like newsman Ed Jussley, Laurel, and the state, had made remarkable progress in involving blacks in the political process.

Video	Audio
Ed Jussley: (Laurel Newsman)	No, I don't think that's an issue anymore. Because they're in all the advisory councils. They always have blacks on them now.
Interviewer:	On advisory councils?
Jussley:	On citizens' groups, and councils and school boards, that kind of thing.
Interviewer:	Is this because of the Federal requirement?
Jussley:	No. I think people around here in Laurel, in Jones county, realized back in the 60's that it was time to get that input. There was some real pressure, sure, because when you went to Washington to appeal for money, it was always nice to have a black sitting there with you that would help talk the case up.
Parker: (In his office)	I don't think a paternalistic city government can have a true assessment of the needs of the black community. They will make certain appointments — for example, maybe appoint a black to a school board — which are basically showcase. They will do some showcase things. They will maybe pave some streets in the black community. But without living in the black community, without being familiar with the population and their needs, in the black community, then no all-white city government can be truly responsive to the needs and interests of that black community.
Clayton: (at railroad tracks)	If Masonite won't put an overpass here, then let the city take the Federal money and make an overpass with the street, build a bridge with a street. It wouldn't take that much money, the way it's sloping and all. It went downtown into a good barn shed.

Video	Audio
..wing of Downtown Mall)	This nice good shed up there which we had some good stables under there we could make a good cattle shed out of it. What it really did, it done our old people a disadvantage. See before that was built, what they had, we could take old people and drive right up in front of the store, right on the sidewalk and let them out. Now they can't go up town now. You can't get a car close enough. If it's raining, it gets wet, and most of the people can't get there, because they can't walk. So somewhere, some Federal money's going down the drain here somewhere, And I feel, like, it's a bigger Watergate down here than there's ever been in Washington. But how are we going to find it?
Text appears over Mall Fountains: From 1971-1978 the City of Laurel received $14,000,000 from the U.S. Department of Housing and Urban Development. 10/	
Male interviewer: (in Mayor's office)	Mayor Patrick, have there been any criticisms of the way the Commission has decided to use Federal funds either through Revenue Sharing or CD monies; that is, arguing with the priorities which the Commission has set?
Mayor:	Oh yeah. As long as people have opinions there are going to be varying opinions. Certainly. We have groups that will complain about, y'know, anything that we do and so we do hear 'em. And sometimes people's complaints are justified and sometimes they are not. But we do receive complaints.
Male interviewer:	How would you characterize "justified and unjustified" complaints about the priorities that have been set up to this point, starting with these criticism you think may have....
Mayor:	Well we have some people that have a personal interest in certain things that they would like to have these Revenue Sharing funds spent on so that they might benefit personally. We have some people that I call "aginners." They are just against anything, and we hear from those quite a bit. But I would say that the cricitisms that are real just, and ones that are there for a productive reason, we don't get too many of those. But those are the ones we really pay a lot of attention to because, when they are trying to benefit the entire city and the people through their constructive criticism, then

Video	Audio
	that's good. But uh, that's not the ones...that gets up on television. It's usually the other, the other type, and that's good because, y'know, we're glad to have them. We like to have these voices raised, because how are you going to know what everybody is thinking if you can't hear them? But I've never heard of a statue being erected to the memory of an "aginner."
Voice of Female Interviewer: (at housing project)	When you have complaints about conditions or water in this area, do you go to the city officials with your complaints?
George Miller (Laurel resident)	Well you can, but it is fruitless. Because the Leontyne Price project, 11/ the project down here aren't owned by the city. They're owned by a private company. These streets down here aren't even owned by the city. So they will tell you when you have a complaint about the Leontyne Price project, go to that company. And then when you have complaints about the Laurel Housing Authority projects, they will tell you, they will send you to the Laurel Housing Authority. And that is an all white board. There are no blacks on that board.
Interviewer:	Is that an elected board? or an appointed board?
Miller:	It's an appointed board.
Interviewer:	Who appoints them?
Miller:	The City Commissioners. And we won't have a black on that board until you get a black as a city commissioner. And with the present form of government we can't do that. 12/
Interviewer: (in shopping mall)	What is the general situation facing the black community in Laurel as far as low income housing is concerned?
Emma Nix:	We don't have any. At least, we can't get any.
Interviewer:	Are there any public housing projects as such?

Video	Audio
Emma Nix:	They say they are not taking applications. We were told that it would be May before they start. But I don't know why they are letting the houses go vacant. And there are so many, not only this girl, but so many that don't have any place to stay here.
Interviewer:	Now when people don't have any place to stay, they don't sleep under the trees, they don't sleep out in the fields, where do they stay?
Nix:	Well, they can't get a place for rent. They don't have any houses for people for low income Those that they have, if you find a house out in the street, they're so high the people here don't have any funds to pay for their rent.
Parker: (in his office)	The problem here, is that cities refuse to spend their own money to perform the kinds of studies which are necessary to determine the needs of the black community, and unless the Federal Government provides this money, most cities will not do it. The whole purpose of the HUD community block grant program is to eliminate urban blight. And in most cities in Mississippi, the greatest, the highest, level of urban blight occurs in the black neighborhoods. And most cities refuse to recognize their obligation under this program to spend their money where the needs are greatest.
Interviewer:	Of course, Laurel has built a downtown mall, I gather with a block grant. Would you consider this an appropriate use of community block grants funds?
Parker:	Well, that is for HUD to determine. My own position would be that it would be a violation of the Congressional purpose of the act.
Mayor: (In Mayor's office)	We asked for some money, and the Federal government granted it to us <u>for the purpose</u> of renovating downtown Laurel. Then, when we got to the area where we had finished our planning, and we were starting to demolish buildings and had the town in the biggest mess you've ever seen in your life, <u>then</u> they said there will be no more Urban Renewal. But we <u>will</u> have Community Development, and you'll get the same money that you would have gotten through Urban Renewal but we are going to call it 'Hold Harmless,' and it's going to be in the Community Development.

Video	Audio
	We had to use that money to finish what we started. If we hadn't used Federal money to fix it back up like the original plan called for, we wouldn't have a Laurel. If we can have a viable downtown, one where we are a regional shopping complex, where people will come in here and buy where they wouldn't have before, that's going to increase our sales tax money. That means that the coffers of the City of Laurel are going to have more money to do things for the people who live here without raising their taxes. This is a direct benefit to the low and moderate income people and the minorities, having this downtown fixed up that way.
Male Interviewer: (at mall)	Do you shop down here, downtown?
Emma Nix	Well, not too much, not very often because I don't have very much money. But I pay bills down here.
Larry Thomas (Laurel Pharmacist)(in Pharmacy)	As of now there exist no black businesses downtown in the central downtown district at all. 13/
Female Interviewer:	Do you feel the Mall has benefited the city at large.
Thomas:	You're speaking of the Downtown Mall?
Interviewer:	Yes.
Thomas:	In beauty, and I believe their intentions were to bring more business to downtown. And I believe they succeeded some, doing that. But I, but from the proportion of money spent and the benefit they got, I wouldn't believe it was that positive.
Question from Martha Bergmark: (Mississippi Advisory Committee)	Mayor Patrick, you have mentioned that various groups have input into how these priorities are set for expenditure of funds. Is it not, though, the Commission that has the final say in that?
Mayor Patrick:	Absolutely. Right.
Bergmark:	In setting the priorities, these officials are the ones that have, actually vote on what the priorities will be, what the expenditures will be?

Video	Audio
Mayor:	According to law. That's right
Bergmark:	So you can either take into account or not take into account, as you see fit, the input of these various groups?
Mayor:	Right. Just like the one that wanted the olympic size-swimming pool. We took, we listened to him, we analyzed it, but the priorities were not there.
Voice of Male Interviewer:	Mayor Patrick we've picked up some complaints about the questions about these very long trains coming and bisecting the city (the train coming from Masonite plant) and that, for a number of years, citizens groups and individuals have being saying that this disrupts the community, is a threat to safety because of fires on one side of the tracks and fire engines on the other, people trying to get to hospitals, to school, to work, and the city has not been responsive. Could you comment a bit on just how serious a problem this is and where it ranks in the list of the Commission's priorities?
Mayor:	Well, we have had complaints of the trains. 'Course, we don't run the trains. That's private enterprise. So all we can do is have ordinances that set up the times the streets can be blocked. And we have enforced that every time it is been called to our attention and we've put fines on the railroad and, frankly, I've heard very little complaints recently on that because one of the big complaints was, well, 'we don't have fire protection.' We have built two new fire stations, in the minority area. This was one of the top complaints that the minorities said they had against the city. We don't have proper fire protection. We have built and supplied two brand new fire stations. So we corrected that problem — according to the input of the citizens group that brought it to our attention. So this is one of the citizens' participation that paid off, and we have them both there. 14/

Video	Audio
Narrator: (views of firestation under construction)	Construction of the Queensburg firehouse came about after nearly a decade of futile requests for a railroad overpass, and was more immediately preceded by citizen appeals directly to the Federal Government. Aware that the Mississippi Advisory Committee to the Civil Rights Commission was looking into Laurel and monitoring how the city used Federal funds, several residents availed themselves of the rather simple procedure for registering complaints with the Office of Revenue Sharing. They wrote letters alleging discriminatory use of those monies. The decision to build the station followed soon after.
	And then there was the man in the middle, Rehabilitation and Community Relations Officer, Nate Samuels.
Samuels: (In city planning office)	For a long while the black people, the minority people, were rather reluctant to come to me, I think, based on the fact that, I think, they thought they would get nothing accomplished. And in time, though, this was all changed, and they did see that I was being productive and had, and was concerned about their needs and their concerns. And of course that was the reason why I was there, to address these problems. And increasingly, they began to rely on me and bring their problems to me. And I acted as advocate for them, for all of their problems, with the city fathers.
Voice of Narrator: Employment data superinposed of still photo of man moving lawn in front of City Hall	Samuels, Laurel's highest ranking black employee is the exception in the city's employment profile. While Laurel does an adequate job, numerically, in hiring blacks in proportion to their 36 percent representation in the population, the kinds of jobs they hold is another story. Almost half of the 96 blacks in the 352-person workforce are in sewers and sanitation, streets and highways. None of the department administrators, nor any person in the professional category is a member of a minority or a female. 15/
Parker: (In his office)	Black people, I think, in Mississippi want more than anything a voice in city government. Even if there's only one or two black city council members, at least black people will know they do have a voice, that they will have an opportunity or channel through which they can make complaints, and bring issues into the open, which concern them. Without a voice in city government, without any

Video	Audio
	black representation at all, then city government, in my view, cannot remain viable and cannot be claimed to be representative.
Larry Thomas: (In pharmacy)	There's never been any fruitful election -- as a matter of fact there has never been a black elected official in Jones county or Laurel ever. No public office, of no type.
Emma Nix: (at Mall)	I do know, we have a lot of names that be on the books, and they don't ever vote. I don't know why.
George Miller: (at housing project)	Black people in Laurel have, they've given up. They feel that there is no reason for them to register to vote, or even to go vote. The blacks across Jones county, about 47 percent of the black population are not even registered. 16/ And, of the people that are registered, only about 35 percent of them even go to the polls to vote.
Interviewer:	Why do you think that they don't vote, or don't register to vote?
'ller:	Well they feel, that there's nothing they... they feel their votes don't count, that there's nothing they can do.
Interviewer:	You were talking before about the kind of government you have here, the form of government. Is that any reason for it?
Miller:	Well we have a mayor and two commissioners, and they are elected at large. And there's no way for a black to be appointed, I mean, to be elected to a position on the city government. But we can change the city government if we can get people to come to the polls and vote for a change. But they feel like, again, we've met with voter apathy. But we need a mayor/council, a strong mayor/council elected by wards. But at the present time I can't see no way for the changes except through the court, and then that takes money.

Video	Audio
Mayor: (in his office)	They are in the minority and they would have a hard time electing a minority person for that type /elected office/, but it can be done.
Bergmark:	Would you support a change in the form of Laurel city government to a mayor/council type system with single-member districts?
Mayor:	If a petition came forward asking for something like that I would give it to the people and let them decide themselves.
Bergmark:	And you would not take a position one way or the other?
Mayor:	Well I can't tell you what I would do in the future without knowing the circumstances. But I would probably think that my best position is to let the people speak.
Nate Samuels: (in city planning office)	The potential is there. It's just in recent years, as you well know, that blacks've been actually given the right to vote. I'm talking about things like the outlawing of things like poll tax and other avenues they had for rejecting or keeping the blacks from voting -- intimidation and all that kind of things. We don't have that now to contend with, and yet we don't have full participation by blacks in the political process. And blacks, in particular, need to be more concerned because we are the ones who need representation more so.
(View of County Court House, persons voting)	What the power can do, if we do become cohesive as a unit, get together, see what our needs are, identify them and address them through the political process.
Voice of Larry Thomas;	Hopefully in the future, people will began to see that the city, the mayor/council form of government will be a more representative form of government for everybody. And this form of government will meet the needs of people more, and people will be more in touch and can respond better to a mayor/council kind of government rather than just three commissioners.

Video	Audio
Text appears on screen	
The Justice Department is conducting an investigation to determine if election methods in Laurel violate the Constitution of the United States. 17/	
Residents of housing projects talking behind credits and acknowledgments:	Song comes up again: Scooby Scooby Doo, Guess What, America, We Love You. (Train sound comes up and fades out)

Laurel--A City Divided--was documented for the Mississippi Advisory Committtee by the Commission's Southern Regional Office, Bobby D. Doctor, Director

The Commission staff and Mississippi Advisory Committee thank the citizens and officials of Laurel and Jones County for their cooperation in the production of this presentation.

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Mary Ramberg, Chairperson

Members of the Committee

Martha Bergmark
Gil Carmichael
H. Power Hearn
Sarah Johnson
Linda Lewald
Ruth Moseley
Dr. George Owens
Thomas Reed Ward
Dr. Albert B. Britton, Jr.
William Dilday
Bobbye Henley
Sam Kinsolving
Wilson Minor
Dr. Cora Norman
Frank Parker

WRITER/PRODUCER
Mirfam Grayboff

NARRATOR
Boyd Lewis

CAMERA
Mark Glatzer

EDITOR
Keith Glatzer, Telecom Productions

ADDITIONAL COMMENTS
by
FORMER MAYOR W.L. PATRICK, JR.

Subsequent to the completion of this report, former Mayor W.L. Patrick, Jr. provided additional information reflecting the city's expenditure of Federal funds within minority areas. Although this report focuses primarily on the allocation by Laurel city officials of Federal discretionary monies during the two-year period from 1978 through 1979, the following data include both discretionary funds and those specifically earmarked by the Federal government for specific projects for a seven-year period, from 1973 to 1980. Thus, according to former Mayor Patrick, Laurel city officials spent over $4.5 million in Federal funds in minority areas as follows:

Neighborhood Projects	$2,134,000
Recreation Center	209,000
Fire Station	75,000
CDBG Entitlement	1,184,000
CDBG Discretionary	590,000
Revenue Sharing	340,000

CORRECTION

Contrary to a statement contained in this report, the Laurel Housing Authority does have a black member. He was appointed in 1975 by Mayor Patrick.

LAUREL & LAUREL: A CITY DIVIDED

End Notes

1. At present there are five blacks in the 52- member State Senate and 12 in the 122-member House. Blacks comprise 9 percent of the State Legislature, but make up 33 percent of Mississippi's population. Barbara McGinnis, Research Associate, Joint Center for Political Studies, telephone interview, July 22, 1980.

2. As of July 1979 there were 17 black county supervisors (or 4 percent) among the 410 in Mississippi. There were 17 black mayors or aldermen (6 percent) among the state's 270. Most of the black mayors represent small, all-black towns. One exception is the town of Bolton which has a small white population. Joint Center for Political Studies, "National Roster of Black Elected Officials," Vol. 9, 1979.

3. Residents on the entire east side of the railroad tracks are virtually 100 percent black. On the west side of the tracks, along the northern and middle portions, residents -- except for one family -- are white. The southwest tip is now a "transition area" with a few white families among the black residents. Joyln Sellers, Laurel City Clerk, telephone interview, July 22, 1980 (hereafter cited as Sellers Interview).

4. Average income figures for black and whites not available. Ibid.

5. In 1970 the total population of 24,145 residents included 8,914 blacks (36 percent). The three city commissioners in office in 1980 are white men. 1970 Census Data and Dan Walley, Administrative Assistant to the Mayor of Laurel, telephone interview, July 22, 1980 (hereafter cited as "Walley Interview 7-22-80").

6. Frank Parker, Attorney, Lawyers Committee for Civil Rights Under Law, interview in Jackson, Mississippi, initial field interview, November 8, 1978.

7. Actual expenditures of Revenue Sharing funds for the fiscal year ending September 80, 1980, total over $570,000. Large amounts of money were spent for the following: police training facility, $100,000; equipment for street department, $95,000; traffic lights, $89,000 and relocation of a fire station $75,000. Source: City of Laurel, "Budget of Estimated Revenue and Expenditures for Fiscal Year ending September 30, 1980," no date (hereafter cited as "FY '80 budget").

According to Laurel City Planner David Parham, other significant amounts of Federal funds received by the city since 1978 include approximately $623,500 from the U.S. Environmental Protection Agency and almost $2 million from the U.S. Department of Housing and Urban Development (HUD). Since 1978 about $258,000 of the HUD Community Development Block Grant (CDBG) money was spent for three drainage tributaries on both sides of the tracks, and over $250,000 of the HUD funds were spent for resurfacing and paving roads, mostly in the black community. Telephone interview July 25, 1980 (Hereafter cited as "Parham Interview").

8. $100,000 was spent for a police training facility. FY '80 Budget.

9. City Planner David Parham also stated that all areas of the city now have water and sewer services available. Parham Interview.

10. All of this $14 million from HUD was spent on the City of Laurel's downtown mall. Walley Interview, 7-22-80.

11. South Park Villa (formerly Leontyne Price Homes) has 100 rent-subsidized multi-family units. It had been operated by a non-profit corporation and was foreclosed by HUD for mismanagement with 27 units still vacant but requiring renovation. The second complex, the Laurel Housing Authority with 623 units -- 54 of which are designed for elderly and handicapped persons -- is totally occupied. Mary Ann Wilson, Deputy Manager, Jackson Office, HUD; and Tommy Beech, Assistant Director, Laurel Housing Authority. Telephone interviews, November 26, 1980 and December 1, 1980.

12. The five members of the Housing Authority are appointed by the City Commissioners to 5-year terms. Once appointed they are autonomous. One black man currently serves on the Board. Dan Walley, telephone interview, July 24, 1980.

13. Confirmed by Dan Walley, Walley Interview, 7-22-80.

14. The Lynn Keyes Fire Station on Meridian Avenue was built in 1977 using $148,690 of HUD money. The John H. Spriggs Fire Station was built (on school property) in 1979 with $75,863 of Revenue Sharing funds. Both are in black neighborhoods. Parham Interview.

15. City of Laurel, EEO and Personnel Office, "EEO-4 Employment Summaries 1978."

16. Of the over 14,000 registered voters in Laurel, only 6,744 voted in the general election of June 1977. Jolyn Sellers, telephone interview, July 23, 1980.

(16. continued)

Approximately 15,600 Laurel residents are eligible to vote, including 5,000 blacks and 10,500 whites. Statistics by race on who actually does vote are not available. Alice McGinnis, Researcher, Joint Center for Political Studies, telephone interview, July 24, 1980.

17. Gerald Hebert, Attorney, Civil Rights Division, Voting Rights Section, U.S. Department of Justice, telephone interview, May 13, 1980.

CITY OF LAUREL FULL TIME EMPLOYEES
June 30, 1978

CITY DEPARTMENTS	TOTAL	White Male	Black Male	White Female	Black Female	Hispanic (Female)
Financial Administration	28	7	1	17	2	1
Streets & Highways	41	22	18	1	0	0
Police Protection	73	48	15	8	2	0
Fire Protection	69	68	1	0	0	0
Natural Resources and Parks & Recreation	20	8	7	4	1	0
Housing	5	4	0	1	0	0
Community Development	10	5	2	3	0	0
Utiltiation & Transportation	41	23	10	7	1	0
Sanitation & Sewage	58	25	33	0	0	0
Civil Defense and Cemetery Maintenance	6	3	2	1	0	0
TOTALS	351	213	89	42	6	1

OTHER THAN FULL TIME EMPLOYEES
June 30, 1978

TOTAL	White Male	Black Male	White Female	Black Female
48	8	13	13	14

Analysis of Workforce Data

Laurel's 1978 employment data* reveal that minorities, including 1 Hispanic female, make up 27 percent of the fulltime workforce--compared to 36 percent minority representation in the 1978 population. More than one third of the 89 black males who work for the city are in the Sanitation and Sewage Department while one-tenth of the 213 white male city employees are in the department. Similarly, in Streets and Highways, 20 percent of all black male employees and 10 percent of the total number of white male city employees are in the same department.

All three persons classified as Administrators on EEO-4 reporting forms are white males as are the eight persons in the Professional category. (The highest level minority employee is the Community Relations Officer in the Planning Department.)

* Data and Analysis based on tables and 1978 EEO-4 reporting forms furnished by Albert W. Robertson, Personnel Officer, City of Laurel.

Mr. EDWARDS. Thank you, Ms. Bergmark.
Senator Kirksey, you are recognized.

TESTIMONY OF STATE SENATOR HENRY KIRKSEY

Mr. KIRKSEY. Mr. Chairman, Mr. Washington, Ms. Davis, I am most appreciative of this opportunity to express my concerns and views about the Voting Rights Act of 1965 as extended and amended.

Having hastily looked through statements and testimonies of Attorney Frank Parker of the Lawyers Committee for Civil Rights Under Law, and Representative Fred L. Banks of the Mississippi State Legislature, I shall try not to belabor points already made although our experiences and opinions are, for the most part, closely related.

I could make a further reference to that for Mr. McTeer and others who have testified here today.

I am a native of northeast Mississippi as was my father and his father as well as my mother and her mother. I have been a resident of Jackson, Miss., since 1961.

Let me say at the outset that I am a proud Mississippian. I love the State and its people. I firmly believe that in terms of natural and human resources, Mississippi should rank among the Nation's leading States. The lowly position of my State among sister States and the extent of poverty are attributable, not to the people or geography of the State, but to political evils and domination that the Voting Rights Act was designed to remedy.

Therefore, my only purpose in being here is to plead for extension of the Voting Rights Act and the strengthening of section 5 thereof.

Since most gains in voting and civil rights in the State accruing to black citizens are associated with the Voting Rights Act, fear abounds among most of us that failure to extend the act means a return to "lily whiteism."

There has never been a time in the history of the State of Mississippi when race was not a political, social, and economic issue. Never. That is a simple fact.

Race is still the dominant issue in housing, education, jobs, and representation in government.

Until that climate is changed, need for the Voting Rights Act will remain.

As long as at-large elections, gerrymandered election districts, racially discriminatory annexations, voter registration and voting problems and the threat of open primaries remain, so will the need for the Voting Rights Act.

I would like to deviate a little bit and simply comment on some of the things I have written here.

Having heard some of the other people testify, I don't think I should go through the six pages that I have prepared, but simply comment, because I want to get back to some statements that were made earlier by Mr. Barbour and Representative Barefield.

Poverty in Mississippi is still rampant. I have included in the statement that you have a copy of the fact that 59.2 percent of the black families of Mississippi in the 1970 census had income below poverty level and also that includes a statement that the median-

income of blacks was less than half that of whites of the State of Mississippi.

I submit that while those figures have changed substantially because of inflation and other factors, that the gap between the incomes of blacks and whites remains substantially the same or perhaps it has widened.

There is an important matter here, and that is the exclusion of blacks from the political process. It has left an indelible impression on the people of the State that no matter what happens, how they cast their vote and when they cast their vote, they are not going to matter. It is that simple; that the white folks are going to find a way to negate that vote or determine who voted for whom or for what, and as a result of that they will probably lose their jobs.

So a lot of people won't vote for those reasons.

Mississippi is a biracial State. Others have already alluded to the fact that blacks live in black communities and whites live in white communities.

I would like to respond to a question that was asked earlier about the population of the State. The 1980 census shows that blacks constitute 35.2 percent or 887,206 of the 2,520,690 residents in the State.

Voter registration remains a problem. I am simply going to make that statement and stand on it.

I would like to submit to this committee a copy of the Jackson magazine. On page 20, you will find a statement here that I submit that describes the election process in Mississippi very, very well.

The statement was made on an interview by former Governor Ross Barnett of Mississippi in which he alludes to having bought election for his brother and how it is necessary that if you are running for office, that you must have someone standing over whoever is counting the votes or you will be counted out.

I would like to enter this as a part of my testimony.

Mr. EDWARDS. Without objection, it will be received.

Mr. KIRKSEY. Let me just give you figures here.

Madison County is just north of Hinds County, in which the city of Jackson is located.

A recent news item shows that the voter registration in Madison County exceeds the population of the county.

I recently ran for mayor of the city of Jackson—as a matter of fact, a few days ago.

Jackson, according to the 1980 census, has 106,000 white population; 106,000, but the white voter registration in the city of Jackson is 78,000. Now, there are no 1980 census figures out, or available, on voting age, but if you take the percentage of the white population for 1970 and apply that to the 1980 population, you will find that you have about 70 percent of the population, 65.59 to be precise, who were voting age as of 1970.

Now, I submit that that might have changed somewhat, and let's move it up to the upper side and let's say that a number of whites who are voting age, out of the total population—say in the City of Jackson—has increased to 75 percent.

I submit to you that 78,000 registered white voters in the city of Jackson would still be 100 percent of the total voting age population, and I submit also that there never has been a time when they

were 100 percent of the voting age population registered, and that is certified by the fact that people are registering week after week after week, all ages of people in the city.

So the total voting age population is not registered.

Now, what bothers me about that is that in 1979, when I ran for the senate, I have a district that is approximately half black and white. I would not have won except that the whites were not satisfied with the incumbent against whom I ran.

What actually happened in the southern end of my district is that we went to the—we took the vote and determined some 600 people who may not live in a certain precinct, 68, for example. Out of that 600, we determined that at least we identified the residence of 300 who were nevertheless still on the rolls in the city of Jackson.

We challenged them and almost caused a riot in that part of the city.

Now, we did that in this recent mayoral election. We simply didn't have the money or the troops to do a good job, but it is very clear that the same thing applies to other precincts around the city.

What I am saying, I suppose, to you is that the method of keeping the voting rolls in the city, in the State of Mississippi, because what applies to the city of Jackson applies statewide, is poor; there is no attempt, or very little attempt made to update the roll, and if people are taken off, then they tend to be black people.

In addition to that, the double registration that has been alluded to figured very prominently in the election of June 3 of this year.

Now, what is the case as a matter of recorded fact, several hundred people who are registered with the county circuit clerk were not able to vote in the municipal election because they had not also registered with city hall and they were not aware of it. These things are not known to all of the people who are eligible to vote, and it is a very vague requirement of law, and I submit that there is no possibility of remedy legislatively because Senator Childre of Rankin County offered such a bill with my support and it got only two votes in the elections commission—in the municipalities committee.

So there is no sense of responsibility on the part of the elected officials of the state, not only the legislature, but the others, in terms of making things convenient for citizens to participate in the electoral process.

Now, racial bloc voting is a fact in Mississippi, and I would like to submit for this committee's consideration a chart that I have prepared, and I restricted that chart to the city of Jackson.

In 1980 I ran for Congress in the Fourth Congressional District. You might say you are running for everything, aren't you? That is true. I run often.

I ran for Congress in the primary as a Democrat, and I carried—and I think Attorney Frank Parker alluded to the vote that I received in that election—about 100 percent—99.9 percent of the black votes in the entire district were cast for me in the primary.

I take that chart—let me go back.

I took the vote. Those that were cast for me and those that were cast for my opponent and I developed the chart.

The chart is what I call a 200 percent charge; that is, there is the bottom line which is zero and at the top is 100 percent. Every vote cast by a precinct for me. If precinct one cast only one vote and that vote was for me, it is 100 percent of the vote in the precinct.

If there were 10 votes and I got 9, it was 90 percent. So the chart lines will go from the bottom to the top.

The purpose of it is to indicate and to very dramatically and graphically illustrate the difference in the voting patterns racially in the State of Mississippi.

When you see that chart, you will see that whites just simply don't vote for blacks no matter what the qualifications.

I don't mind someone saying that maybe you just don't have the qualifications, but in the general election Dr. Leslie McLemore, head of the Jackson State University Political Science Department ran as an independent.

While I speak race all the time because it is a fact of life—and I have to talk about it—Dr. Leslie McLemore kind of goes around the issue and he talks very nice, with the idea that if you don't bring it up, you are going to solicit some white votes.

I submit to you that McLemore didn't get any more votes from the whites than I did. He got less, in fact, and he got fewer in the black community.

What I am saying is that racial block voting in Mississippi is there, and as long as at-large elections are allowed to be held in municipalities, in counties, or wherever, blacks simply don't have a chance not only because of racial bloc voting, but the black people simply don't have the means financially to mount campaigns that are what we call in the State viable campaigns; that is, to get the word to all of the voters to turn out.

Additionally, the black voters again have that historic reluctance to even go out, considering it a waste of time.

I would like to wind up with just two things. One is that—and I would hope that you have this little pamphlet which I have already submitted. I would like you, if you would, please, to follow it with me.

I would like to go to page 1, the cover. If each of you have one, I would appreciate your looking at the cover because I want to refer to something.

The front cover, the very last illustration in the left column is Yazoo County.

Mr. Barbour, who testified here earlier, is from Yazoo County. Now, there are five county districts, two in black and one shaded and two in white.

You will notice one thing about those districts, that they all come together at a point and that point in this particular instance is where the scope of the submarine—the submarine district at the bottom comes together.

That is the city of Yazoo, Yazoo City. What is interesting about that is that every one of those districts terminate right in the heart of the black community and split it up. That is why it took so many years to come about a redistricting of Yazoo County that was acceptable to the Justice Department.

I would like you to then turn on the back at the top right and you see another illustration. That is representative Stone Bare-

field's County. On the left of that you see the county as it was redistricted prior to what we call—let me—prior to—after the 1970 census. You will also notice that on the right, the black and the shaded, and the white districts, rather, come together in the city of Hattiesburg and just coincidentally again they terminate right in the heart of the black concentration of Hattiesburg in Forrest County.

It is an amazing thing that even when there are no black concentrations that this pattern or this scheme for redistricting counties is universally used in the State of Mississippi and I submit to you it was developed by Mississippi State University for the specific purpose of having in place when the Voting Rights Act was implemented, a scheme to dilute the black voting strength.

It is a very, very effective instrument.

I submit that until and unless this practice is done away with, there will never be a time in the foreseeable future when the blacks will not have to go into court and try to undo what is done.

Let me just tell you briefly what this plan is all about.

Up until—let me see if I can find another illustration for you to look at.

On page 18, next to the back. You will also find this in the report of attorney Frank Parker. You will see two maps, one at the top, one underneath that.

Those are the same counties. That is Warren County.

The top one shows three small districts, No. 2, 3 and 4. They were all inside the corporate limits of the city of Vicksburg. As soon as the Voting Rights Act debate began, so began the process of redoing the redistricting of Warren County; and the map below with the black and white shaded district shows what resulted from the redistricting of Warren County.

Now, the rationale for this type of redistricting is that each supervisor, county supervisor in the State of Mississippi is responsible for the maintenance, the construction, administration of roads and bridges for the county. Therefore, you divide the roads equally between the five so as to equalize the responsibility.

Initially they attempted to equally divide the assessed evaluation of all property, real and personal.

That was—proved to be so monumental that they left it alone. That is the rationale, the basis for that.

But, the chamber of commerce in Mississippi—the MEC—the Mississippi Economic Council—for more than 50 years prior to the evolvement of this method of redistricting counties recommended that county road administration in the State of Mississippi should be a unit system of road administration because the County Supervisor District Administration is the most wasteful in the country.

It makes Mississippi, as they reported in 1970, one of the highest cost road administration States in the Nation.

Now, what actually happens here is that there are 82 counties. Each county has five districts, and each district has an independent road administration. It has a supervisor, it has a road crew, and it has some of the most expensive equipment that you can buy in this country.

Now, that ranges from little Issaqueena County with 2,513 population, to Hinds County with over a quarter of a million. It doesn't matter.

Issaqueena County buys equipment the same as Hinds County does.

I said all of this to say to you that the plan is stupid; it has no commonsense. Therefore, the only rational purpose, the only reasonable purpose has to do with race. A means by which the State at the county level can, to the extent that there is no means by which they are prevented from doing it, such as the Voting Rights Act, can instantly dilute the black voting strength.

Now, I am also a member of the joint legislative congressional and legislative redistricting committee by virtue of being vice chairman of the Senate's election committee.

I am on that committee, but I can say to you in all truth, except for information that I accidentally stumbled upon, I don't know what is going on. That is how open government is in the State of Mississippi. What is happening right now is that hearings using a lawyer out of Washington, D.C., a man I call Gerrymander Leonard, who is hired at the cost of $85 an hour to counsel the joint legislative committee in the manner in which it holds hearings and in the manner in which the plan, the drawing up of the plans will evolve.

Now I submit to you that if there were any intention of drawing up a fair plan there would be no need for going to Washington, D.C., and hiring an $85 an hour lawyer to come down here and tell Mississippians how to draw a plan when, in fact, the people of Mississippi pay for the law school at Ole Mississippi, and if they can't produce good lawyers down here, as I am sure this man is, then we ought to do away with Ole Mississippi Law School.

I will say that over again.

The important point is, if a fair plan was intended, then we would not need to go through that.

I draw congressional redistricting plans and I can start from scratch. I can draw you one in about half an hour for the State of Mississippi. That is no big deal.

An eighth grader with good—who is fair in arithmetic can do it. There are only so many ways you can draw it.

The legislative district is going to be difficult.

What I am saying to you is this: If you will again look at the plan on the back here, Forrest County, you have a precinct that runs up that long stovepipe.

Incidentally, the leg on there is about 23 miles long by 1 mile wide. There's some worse than that.

When they began to draw up the plan for reapportionment of the legislature, the very fact that they are now drawing in the precinct boundaries on a census map, drawing in those boundaries on a census map and making a determination of the precinct population tells me that they are going to incorporate to the extent possible the gerrymander that is already built into the county district and transfer it to the legislative districts; otherwise there would be no reason for doing what they are now doing.

I will end there. I feel I have taken up a lot of your time. I appreciate your listening to me. Thank you very much.

[The statement of Mr. Kirksey follows:]

STATEMENT OF HENRY J. KIRKSEY, STATE SENATOR, MEMBER OF THE STATE LEGISLATURE, STATE OF MISSISSIPPI, MEMBER OF THE JOINT LEGISLATIVE COMMITTEE ON CONGRESSIONAL AND LEGISLATIVE REAPPORTIONMENT

I am most appreciative of this opportunity to express my concerns and views about the Voting Rights Act of 1965 as extended and amended. Having hastily looked through statements and testimonies of Attorney Frank Parker of the Lawyers Committee for Civil Rights Under Law and Representative Fred L. Banks of the Mississippi State Legislature, I shall try not to belabor points already made although our experiences and opinions are, for the most part, closely related.

I am a native of northeast Mississippi as was my father and his father as well as my mother and her mother. I have been a resident of Jackson, Mississippi since 1961.

Let me say at the outset that I'm a proud Mississippian. I love the state and its people. I firmly believe that in terms of natural and human resources, Mississippi should rank among the nation's leading states. The lowly position of my state among sister states and the extent of poverty are attributable, not to the people or geography of the state, but to political evils and domination that the Voting Rights Act was designed to remedy. Therefore, my only purpose in being here is to plead for extension of the Voting Rights Act and the strengthening of Section 5 thereof.

Since most gains in voting and civil rights in the state accruing to black citizens are associated with the Voting Rights Act, fear abounds among most of us that failure to extend the Act, means a return to "lily whiteism".

There has never been a time in the history of the State of Mississippi when race was not a political, social and economic issue * * * never. That is a simple fact. Race is still the dominant issue in housing, education, jobs and representation in government. Until that climate is changed, need for the Voting Rights Act will remain. As long as at-large elections, gerry-mandered election districts, racially discriminatory annexations, voter registration and voting problems and the threat of open primaries remain, so will the need for the Voting Rights Act.

BLACK ELECTED REPRESENTATION

As never before in history, political campaign funds play a dominant role in the determination of who wins elections. As of the last available census report, 59.2 percent of all black families in Mississippi had incomes below the poverty level compared with only 28.9 percent of white families. The median income for black families was $3,202 compared to $7,578 for white families. The figures have changed but the gap remains. Clearly, at-large elections place black candidates at a serious disadvantage.

Add to the election problems of blacks the wide chasm between the level of education of blacks and whites. As of the same available census data, the median years of school completed by blacks 25-years old and over was 7.5 years * * * purely elementary compared to 12.1 or post secondary level for whites in the same age category.

Add historic exclusion of blacks from the political process and you find an indelible impression among a high percentage of black people that voting is a waste of time * * * "By hook or crook, white folks are going to run things their way."

OTHER BARRIERS TO BLACK REPRESENTATION

Mississippi is a biracial state, black and white, where all other races comprise less than 1 percent. Blacks constitute 35.2 percent or 887,206 of the 2,520,638 (1980 census). In terms of housing, jobs and government, Mississippi is two states * * * one black and the other white and controlling. In short, blacks live in black communities and whites live in white communities. However, for the purpose of electing public officials, political lines are drawn to make the separate communities "one" * * * and that is where oneness begins and ends.

Voter registration remains a serious problem. Among other things, for example, a person must go to the Circuit Clerk's office in the County Courthouse to register no matter how distant that office may be from the person's home or work. Then, if that person lives in another municipality, he or she must also go to that City Clerk's office to complete the registration. Many don't understand the double registration requirement and are denied a ballot for municipal elections.

VOTING ROLLS—OFTEN A BAD JOKE

A recent news report showed the total voter registration in Madison County to be substantially equal to the total population of that county (over 41,000 per 1980 census). The 1980 census showed a population of 106,285 white residents in the City of Jackson. Current voting rolls show a white registration of 78,000. If the voting age level of the white population has not increased by more than 5 percent, that registration is over 100 percent of the total white voting age population. Reports on voter registration levels in 1976 indicated the white registration level to be 76 percent of the voting age population. This can only mean that about 20,000 white persons on the rolls are no longer living in Jackson. One thing is certain, since white persons of all ages register to vote in Jackson every week, there cannot be a 100 percent registration of the white voting age population in Jackson, Mississippi. Re-registration of voters in Hinds County began in 1970 after redistricting of the county. Meanwhile, the black registration is about 20,000 below the indicated voting age level.

RACIAL BLOC VOTING

Because they don't always have a choice, black voters do vote for white candidates for public office. On the other hand, it is as rare as Mississippi snow in May to find a significant white vote for a black candidate no matter for what office. Since the gubernatorial election of 1971, records show that white voters in Jackson, for example, who vote for a black candidate average about 3 percent of the white vote.

Since white voters will not vote for black candidates regardless of their qualification, platform or record, at large elections discriminates against blacks as effectively as districts gerrymandered to dilute the voting strength of blacks.

BLACK ELECTED OFFICIALS—MISSISSIPPI LEADS

Much to-do has been made about the fact that Mississippi leads the nation in the number of black elected officials. While this is true, it is also true that no other state approaches Mississippi as to the percent of blacks in the population. No other state comes to the number of black majority municipalities (85 or 29.7 percent) of the total number of municipalities in the state. No other state comes close to Mississippi as to the percent of black majority counties (21 or 26.5 percent of the total), or black majority county districts (in spite of statewide gerrymander of county districts) * * * 116 or 28.3 percent of the total. In short, Mississippi should have several times the number of black elected officials it has and it would still be far short of equity.

EQUAL ROAD MILEAGE COUNTY REDISTRICTING—A MIRROR OF POLITICAL INTEGRITY AND PURPOSE

Around 1964, a group of Mississippi State University professors devised an invidious scheme designed to all but completely disfranchise blacks for the purpose of electing blacks to county offices. The plan was put into effect in Lauderdale County in 1964 ahead of implementation of the Voting Rights Act.

The alleged purpose of the "equal road mileage" scheme is to equalize county road and bridge construction and maintenance responsibilities of the five county supervisors. Racial purpose was denied and the methodology "legalized" by Mississippi federal judges as an acceptable redistricting "planning method." Initially, the plan called for equalization of real and personal property as well as square mile area. Suffice it to say that none of the alleged purposes have ever been achieved to any appreciable extent. Nevertheless, nearly all Mississippi counties have been redistricted on the bases of equal road mileage distribution. The constitutional requirement of equal population and contiguity are secondary considerations, it would seem. To meet the secondary purpose, long arms are extended from the equal road mileage areas in carefully planned directions into the heaviest population concentrations. Ironically, the nearest approach to equalization by the equal road mileage scheme is the equal distribution of the black population among if not all the county districts. The other achievement is to institutionalize road administration in Mississippi as the most costly in the nation for the nation's poorest state.

LEGISLATIVE REAPPORTIONMENT ON EQUAL ROAD MILEAGE FOUNDATIONS

Today the Joint Legislative Committee on Legislative Reapportionment is hard at work drawing in voting precinct boundaries on 1980 census maps and computing populations for the same. Except for the purpose of preserving the racial gerryman-

der built into county districts and using the same to further dilute black voting strength in legislative districts, no other explanation makes sense.

If there is any hope for escape from this graphically clear purpose of racial discrimination, it is only through extension and strengthening of the Voting Rights Act.

Mr. EDWARDS. Thank you very much, Senator. It has been very illuminating, I must say.

The gentleman from Illinois?

Mr. WASHINGTON. I have no questions.

Mr. EDWARDS. We found in Texas that their specialty in voting discrimination was gerrymandering. They had 250 counties that seemed almost to be designed for that purpose.

The more counties you have, the more you can gerrymander, obviously.

Won't these plans, this redistrictings, be turned down by the Justice Department? They have to be submitted.

Mr. KIRKSEY. What is happening, Mr. Chairman, in the past has been—let me go to one I can explain, because it is one of Hinds County.

If you will go to page 15, as you can see all of those districts—the lines shading in there was the corporate Jackson, Miss., as of 1970.

The black lines and the map lines, and the white lines, of course, are the district.

What has happened is that, of course, we brought suit, *Kirksey* v. *Hinds County,* just as I have *Kirksey* v. *The City of Jackson* and Kirksey verus this, that, and the other.

The point here is the only thing the court did, the only thing the court did was to simply change the configuration a little bit in the city of Jackson to the extent that the court could then say—and I am talking about the Southern District Court for the District of Mississippi—the only thing they did was to move a few precincts, move the lines a little bit so they could come up with, say, 51 percent black.

They said now the blacks ought to be able to elect here. That obviously was not true because no black was elected.

Well, the next time around, with the help of the fifth circuit and the Supreme Court, we had to make substantial movement on those lines.

By doing that we were able to elect two county supervisors, two justices of the peace, and some other officers.

But the point is—and I think maybe I am not exactly—I may not be responding to your question—the point is that as long as this concept of redistricting—which is based on the distribution of county road mileage, as a first priority—and I think people ought to be the first priority in considering any redistricting or the drawing of any kind of district—as long as that is in place, it is easy to re-gerrymander or re-dilute the black voting strength by simply changing the points—the boundaries in those population concentrations, particularly where blacks are heavier concentrated.

Mr. EDWARDS. Ms. Bergmark, this system of dual registration, I must admit, is rather new to me. It seems very unnecessary and on its face discriminatory.

Is this an old law in Mississippi or is this a new law that has been approved by the Justice Department?

Ms. BERGMARK. As far as I know, it probably predates the Voting Rights Act. It does seem unwieldy, doesn't it?

Mr. EDWARDS. Well, it seems a terrible waste of time and discriminatory on its face, as I say.

How are we going to eventually stop racial bloc voting? That is a blockbuster of a question.

How in Mississippi will racial bloc voting eventually be eliminated?

Mr. KIRKSEY. It is one of the things that you have, Mr. Chairman. There are no known methods; there is nothing that I know of that has been tried that brought it about.

I think it is one of those things that you have to live through. I think that as people begin to realize over a period of time the color of the person's skin is not indicative of his ability, that that happens.

When we were trying for 14 years to reapportion the legislature—and I have been working on that case since 1965—there was that claim by Stone Barefield and the others that it was going to totally change and disrupt the way of life in Mississippi. That didn't happen.

A few blacks in the legislature was all that happened.

The whites have come to respect the legislators who are there. I am talking about changing laws to improve things in Mississippi.

The very first day in the legislature my—I offered a resolution which would have required every legislator to abide by article 1, section 1 of the Constitution, which prohibits legislators or any member of one division of State government from—or any unit of government in the State from serving in another division.

That is what the article says and that is, of course, a national provision also.

The Governor of the State of Mississippi is a figurehead compared to some of the legislators and the speaker of the house, who make all these appointments.

I hate to get into it like this, but the point is that when I presented that resolution, my first day working there in the legislature, there were—there are 52 members of the Senate.

All I am asking the legislature is to abide by the law. In spite of the fact there were also two blacks in there, there was just one vote out of the 52 for causing legislators to abide by the law.

Now I said that to make this one point: Elections are paid for in the State of Mississippi. The people don't have the means of making a determination of who represents them to the extent that they should be. Hence we get the same kinds of people who are opinionated as Representative Stone Barefield is—and I don't mind saying that. I would say that if he were sitting there.

Mr. EDWARDS. I am sure you would.

Mr. KIRKSEY. If we have the opportunity of demonstrating the capabilities of what it means to have all of the members of the team, every member of the population of Mississippi a fully productive citizen, I think that this fear of voting black will eventually go, but, sir, it means that we have got a long road to hoe, if you understand that farmer's term.

Ms. BERGMARK. Congressman?

Mr. EDWARDS. Ms. Bergmark.

Ms. BERGMARK. Mr. Chairman, I think it can be safely said that racial bloc voting is not going to go by the boards any time soon, and that at a very minimum the provisions of the section 5 preclearance are at least a help in this respect and an appropriate remedy for trying to deal with these very longstanding and deep-seated attitudes that are simply there.

I can walk into the attorney lounge in the Forrest County Courthouse on any day that I like and hear nigger-this and nigger-that among attorneys.

That is just the way it is. I don't see—and those aren't all people who are about to retire or die off or something.

So I think that is a longstanding thing that certainly I don't see any possibility for it being corrected in my lifetime, although hopefully we will see some diminishment of it.

Mr. EDWARDS. You are talking about a more equitable and fair economic system and educational system.

I was shocked to hear one witness say that children don't have to go to school here in some places; is that correct?

Ms. BERGMARK. That is correct. The Mississippi legislature repealed the compulsory education law shortly after *Brown* v. *Board of Education* was decided.

Just within the last 2 years, passed a provision which has no enforcement provisions at all attached to it that says something about, you know, you need to go to school. But that is it.

There are no enforcement provisions to the law at all.

Mr. MCTEER. Representative Edwards, I think you should be aware of the fact you have asked three black Mississippians a very difficult question: why are white people racist?

I think that you should be aware of the fact that there are any number of interesting theories that have been developed about that.

Perhaps one of the most interesting was developed by a white, Prof. Charles Chalmers, who has testified in a number of cases on racism in Mississippi and the aspect of racial bloc voting.

He sets forth an interesting theory which has been presented in any number of cases. He says basically white citizens of Mississippi still have quite an ingrained sense of Reconstruction and still believe that the Reconstruction governments created from 1869 through 1876 were governments which were not fair, not proper, or otherwise deprived white ctizens.

There are white children today, particularly those white children who, do not forget, were put into private schools for the specific purpose of avoiding the basic Kenneth Clark assumption of putting whites and blacks together in the same institution, that are being bred on the concept of racial superiority.

The saddest thing about Mississippi in that context is that there is really no basic difference between the concepts of government, of black—excuse me, of white Mississippians and the concept of government of Afrikaners.

Insofar as we basically understand that in the Mississippi Delta, which has the highest concentration of black people outside of Africa in the world, there is indeed a clearcut pride on the part of many whites that so few whites could control so many blacks.

There is no need for guns and rifles. Indeed, section 2 of the Voting Rights Act expressly deals with obvious formats of discrimination.

What we are talking about here are subtle forms of discrimination that work effectively and we are also talking about the destruction of a system of apartheid.

That is the only way we can describe Indianola. It is a clearcut instance of a voting age minorty controlling a voting age majority.

Whether that is done at the end of the pistol or by the threat of losing a job or by racial bloc voting, it is just as effective no matter what the source.

Mr. KIRKSEY. May I make an additional comment on this?

Mr. EDWARDS. Mr. Walker, please use the microphone.

Senator Kirksey?

Mr. KIRKSEY. One of the matters here about the complaints that have been filed—and I submit to this committee that if every complaint that is—if every violation of the Voting Rights Act in the State of Mississippi—if a complaint had been filed, there would be a mountain of paper that there would be no way.

The sad part about it is just as in the case of Indianola, the act had occurred before anyone, any black, realized really what was going on and what recourse they had. So you have a very limited number of complaints being filed as opposed to the violations that occur across the State in municipalities, in counties, in the State at large.

I wanted particularly to bring that out because the indication is that there has been a definable number of violations, and that simply is not the case.

Thank you, sir.

Mr. EDWARDS. Counsel?

Ms. DAVIS. Ms. Bergmark, I don't mean this disrespectfully, but I would like the record to show that you are white, and I would like to know how you respond to the claim that the extension of section 5 of the Voting Rights Act is a stigma against well-meaning whites in the South and an indication in their view that people perceive them as racist?

I raise the question with you because you are white, a Mississippian, and quite frankly we have not had many whites from the covered jurisdictions who are willing to support the extension of section 5 unqualifiedly the way you have today.

So I would like to know how you can respond to that, please?

Ms. BERGMARK. One of the occurrences in my life that made a very great impression on me occurred on Easter Sunday when I was in junior high school, 1963. I was standing on the steps of my church, which was the largest Methodist Church in the State of Mississippi, and watched as a Methodist Bishop, a black Methodist Bishop, came and tried to worship at our church.

I watched as the church officials had him arrested and taken to jail rather than allow him to go through the doors.

I watched as a church usher cursed and chased and kicked at and tried to grab the camera away from a newsman who was recording this event. That made a tremendous impression on me. It made me realize what I said earlier: That we are dealing with extremely deep-seated views and opinions; and even though those

views and opinions may not be held by all white Mississippians—and I think if there is anywhere we have seen some improvement, it is at least in the ability of certain whites to be able to break out of those patterns and perhaps think somewhat differently than their parents did or their grandparents did, but that we are dealing with the need for a long-term remedy, a remedy, the end of which I don't see the need for.

I don't know when that is going to come.

But for me to take that personally as a stigma against me to me doesn't make sense. To me it is just a recognition of the reality of the situation. In all my years in Mississippi, I never saw a Klansman in garb in public until this past year when they were handing out leaflets and so forth on street corners.

I had never seen that until 1980, even though, of course, they had been active for years and years.

So I think if you really look at the situation there, you see that that is the need and that is the objective situation.

Simply because there are some whites who wouldn't feel that way, there were some whites who voted for the mayor-council form of government in Hattiesburg, Jackson, and other places, but that doesn't take away the need for the remedy as a whole.

Ms. DAVIS. So you would support the view expressed by Attorney Frank Parker before our subcommittee that instead of looking at the Voting Rights Act or extension of the temporary provisions of Voting Rights Act, namely section 5, that it should not be looked at as punishment for the South for its past wrongs, but to protect minority voters from present discrimination?

Ms. BERGMARK. That is correct. I agree fully with that.

Ms. DAVIS. Thank you.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman.

Ms. Bergmark, I would like to go back to the miscegenation law. You indicate that that is still a provision in the Mississippi constitution, is that correct?

Ms. BERGMARK. That is correct.

Mr. BOYD. My recollection of constitutional law is that the Supreme Court decided that question in the early sixties involving a Virginia statute.

Ms. BERGMARK. That is correct.

Mr. BOYD. Has anyone communicated with the local U.S. attorney with regard to the enforcement of that decision?

Ms. BERGMARK. I don't know. I think that as a result of attention having been brought to the issue in Forrest County through the use of this lawsuit, that the circuit clerk said she guessed she would enforce the Federal law, the constitutional law in that respect; and I understand that she has since issued at least one marriage license to an interracial couple since giving the deposition in that case.

Mr. BOYD. Do you know how widespread the enforcement of this provision of the constitution is in Mississippi?

Ms. BERGMARK. Of that provision? I don't have the slightest idea.

Mr. BOYD. Mr. McTeer, you addressed to some extent the bailout provision.

Do you know of any jurisdictions of any size in the State of Mississippi which in your opinion have made improvements in the last 15 to 17 years, and, if so, would you name them?

Mr. McTeer. I do not know of any communities in the State of Mississippi that justify the use of a bail-out provision at this time. I have no knowledge of any such communities.

Mr. Boyd. And you know of none which have made any improvements of any significance?

Mr. McTeer. What do you mean by improvements of any significance?

Mr. Boyd. I suppose what I mean by improvements is improvements with regard to their attitudes toward the involvement of minorities; in the case of Mississippi, blacks in the electoral process.

The attitude with regard to cross-over voting.

Mr. McTeer. I think there is a substantial change in the attitude of white people toward black people which is basically one of tolerance in Mississippi and the attitude of supporting black candidates.

If you are asking me whether white people have now thrown down their cross and are saying they are willing to allow blacks to become an equal participant in the franchise of the United States of America, and the State of Mississippi, my answer to that question is an unequivocal no.

On the other hand, if you are asking me if whites tolerate blacks and are not picking up the cross and putting on sheets and they are not doing that as much as they did years ago, clearly their attitude is one of tolerance.

Mr. Boyd. I am talking about involvement on the part of——

Mr. McTeer. I think there needs to be—and I am not trying to question you; I am trying to answer you—there needs to be a distinct difference between the question of attitude on the one hand and the question of actual participation and involvement and the willingness of black people to become involved on the other hand.

That is the problem with the intent deprivation or description that is evident.

Someone can stand up before you and I in this public place and say simply, "I have a wonderful attitude toward black people."

The fact of the matter is though as soon as they get in the polling booth, they tell you what they will do to that nigger. That is the distinct difference.

What is your next question?

Mr. Boyd. I have no further questions.

Mr. McTeer. Thank you.

Mr. Edwards. Well, on behalf of all of the members of the subcommittee, we want to thank the people of Mississippi who came up here and the people of Alabama who testified today and the people of this fine city for the hospitality that has been afforded us.

We have had a most interesting and fruitful day of hearings. We go back to Washington somewhat depressed in some ways, but also refreshed.

Thank you.

[Whereupon, at 4:30 p.m., the subcommittee was adjourned.]

EXTENSION OF THE VOTING RIGHTS ACT

TUESDAY, JUNE 16, 1981

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

The subcommittee met at 2:25 p.m. in room 2226 of the Rayburn House Office Building; Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards and Hyde.

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

Mr. EDWARDS. The subcommittee will come to order.

Today we continue testimony on the extension of the Voting Rights Act of 1965. We've had hearings here and in Texas and in Alabama, and we are honored and pleased this afternoon to welcome our colleague from the great State of Connecticut, the Honorable Lawrence DeNardis, who represents the Third Congressional District.

Mr. DeNardis, we welcome you and you may proceed.

TESTIMONY OF HON. LAWRENCE DeNARDIS, REPRESENTATIVE IN CONGRESS OF THE UNITED STATES FROM THE THIRD DISTRICT OF THE STATE OF CONNECTICUT

Mr. DENARDIS. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity of being able to discuss the legislation before this subcommittee to extend the Voting Rights Act of 1965. As you know, the Voting Rights Act which will expire next year, if Congress does not vote to extend its provisions, is probably the most effective civil rights legislation ever enacted in the United States. This law has brought about a dramatic increase in registration and voting by black and Hispanic American citizens in State, local, and Federal elections and the number of minority elected officials has also risen substantially.

In 1966 when the U.S. Supreme Court held that the Voting Rights Act was constitutional and a valid means of implementing the 15th amendment, the court concluded that, and I quote:

> Hopefully millions of nonwhite Americans will now be able to participate for the first time on an equal basis in the Government under which they live. We may finally look forward to the day when truly the right of the 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.

Despite great strides toward this end, Federal protection of minority voting rights still is needed. The threat to the political

equality of minorities remains and there is more than sufficient justification to extend the essential protections of this act.

While the most obvious barriers to equal political opportunity, such as literacy tests and poll taxes have been successfully eliminated, it would be irresponsible to ignore the more subtle methods of discrimination which have surfaced. We are all aware of the many methods which have been devised to dilute the minority vote. These range from changing the location of polling places in predominately minority districts without notice until the day of election, to gerrymandering election districts, holding at-large elections, and annexing predominantly white areas to cities to weaken minority voting strength.

I strongly believe that the continuation of the Voting Rights Act will prevent such discriminatory tactics.

In the past, each time this act served to block a discriminatory election law or procedure, the rights of many, many minority individuals have been protected. I ask that we do not allow our successes of the past—please do not allow our successes of the past to make extension vulnerable to the charge that it is no longer needed.

Without the extension of the act, we risk undermining the gains that have been made. The right to vote and to fully participate in the political process is fundamental to our system of government. In fact, as the Supreme Court has said in the past, it is preservative of all other rights.

Mr. Chairman, I'd like to make just two additional points before I conclude, and that is some have suggested that the gains that have been made under this act point to the fact that the special provisions of the Voting Rights Act have done their job and should be allowed to expire. I am not of that view.

I would join other voting rights advocates in arguing that 17 years can only begin to make up for a history of exclusion from the political process; and point out further that language minorities have been covered under the act for less than 6 years.

I would like to point out further that to revoke section 5, as has been discussed, or to water it down substantially, would be to abandon the most effective instrument that we have found preventing new forms of discrimination. I think it would mean, Mr. Chairman, a return to the less efficient means of using the courts as the sole, case-by-case enforcer of minority voting rights.

I would be glad to respond to any questions that you might have, and I will certainly offer my statement for inclusion in the record.

[The complete statement follows:]

STATEMENT OF CONGRESSMAN LAWRENCE J. DENARDIS

Mr. Chairman and members of the Subcommittee: I appreciate having the opportunity to discuss legislation to extend the Voting Rights Act of 1965.

As you all know, the Voting Rights Act, which will expire in 1982, if Congress does not vote to extend its provisions, is probably the most effective civil rights legislation ever enacted in the United States. This law has brought about a dramatic increase in registration and voting by black and Hispanic American citizens in state, local and federal elections, and the number of minority elected officials has also risen substantially.

In 1966, when the U.S. Supreme Court held that the Voting Rights Act was constitutional and a valid means of implementing the Fifteenth Amendment, the Court concluded that, "Hopefully, millions of non-white Americans will now be able

to participate for the first time on an equal basis in the government under which they live. We may finally look forward to the day when truly 'the right of the 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.'" Despite great strides toward this end, Federal protection of minority voting rights still is needed. The threat to the political equality of minorities remains, and there is more than sufficient justification to extend the essential protections of this Act.

While the most obvious barriers to equal political opportunity such as literacy tests and poll taxes have been successfully eliminated, it would be irresponsible to ignore the more subtle methods of discrimination which have surfaced. We are all aware of the many methods which have been devised to dilute the minority vote. These range from changing the location of the polling places in predominantly minority districts without notice until the day of the election to gerrymandering election districts, holding at-large elections and annexing predominantly white areas to cities to weaken minority voting strength. I strongly believe that the continuation of the Voting Rights Act will prevent such discriminatory tactics.

In the past, each time this Act served to block a discriminatory election law or procedure, the rights of many, many minority individuals have been protected. Please do not allow our successes of the past make extension vulnerable to the charge that it is no longer needed, however. Without the extension of the Act, we risk undermining the gains that have been made. The right to vote and to fully participate in the political process is fundamental to our system of government. In fact, as the Supreme Court has said in the past, it is "preservative" of all other rights.

Thank you.

Mr. EDWARDS. Thank you very much, Mr. DeNardis, for very excellent testimony and a very astute and knowledgeable summary of the situation. I also welcome your testimony, and indeed the entire subcommittee and the judiciary committee will, because all of these civil rights bills have truly been bipartisan, nonpartisan bills. We can't enact these bills without good Republican support, and we have always had splendid support from the various Republican Presidents too, including President Nixon and President Gerry Ford. I am sure we all look forward to President Reagan's announcement in the next few weeks or months, that he, too, shares your view. [Laughter.]

Mr. DENARDIS. I will certainly try, in my way as a freshman Republican, to work toward that end, Mr. Chairman.

Mr. EDWARDS. Thank you very much.

Our next witness really should be sitting up here. He sat here on my left—not necessarily ideologically on my left—for a number of very happy years, as far as the chairman is concerned, and I certainly speak also for our chairman of the full committee, the gentleman from New Jersey, Mr. Rodino.

Mr. Drinan, we do miss you in the House and the committee. The American people miss you, where you so well used the platform for good causes that you had while you were a Member of Congress. We are all delighted that you have not taken a backseat and retired to holier and quieter things. [Laughter.]

I see you're president of the Americans for Democratic Action. I spent a couple of interesting years as president myself and gave it up to someone I wasn't quite sure had the intellectual capacity to carry on my program, Kenneth Galbraith. [Laughter.]

He did all right. But, Bob, we're just delighted you're here, and you may proceed.

TESTIMONY OF FATHER ROBERT F. DRINAN, VICE PRESIDENT, AMERICANS FOR DEMOCRATIC ACTION

Father DRINAN. Thank you very much, Mr. Chairman.

It's a great pleasure for me to reappear, if you will, before this committee where I was honored to serve for some 10 years.

I speak today representing Americans for Democratic Action, an organization which I have served as vice president, and I want to speak on behalf of the Voting Rights Act of 1965, H.R. 3112.

ADA was established in 1947 to promote liberal causes and policies and liberal candidates. Today there are more than 55,000 ADA members in 24 chapters throughout the country. And the Voting Rights Act is one of the prime objectives of the ADA in this session of Congress.

Mr. Chairman, the Voting Rights Act was designed to do three things—first, to allow and facilitate the registration of all voters; second, to permit all citizens to vote equally, impartially, and without discrimination and to have their vote count fully with others; and third, to permit minority candidates to run with a reasonable hope of access to public office.

Mr. Chairman, a look at voting participation among minorities over the past 16 years shows that the Voting Rights Act has been nothing short of revolutionary in accomplishing these goals. I will not reiterate the statistics that other witnesses have ably presented. And incidentally, Mr. Chairman, I commend you upon your characteristic resourcefulness in going out across the country, especially in the South and Southwest, to conduct hearings in the field.

It is not enough to state the impressive results of this legislation, but unfortunately or paradoxically it has brought it about that this is the most successful piece of civil rights legislation the Congress has ever enacted. And as a result, that very success has brought upon the Voting Rights Act criticism as being no longer necessary. It is also criticized as being burdensome and unfair because it requires selected States and jurisdictions to preclear all changes in voting procedures.

Those three charges, Mr. Chairman—that the act is unnecessary, unfair, and burdensome—constitute the core of opposition arguments against its extension and especially to get rid of the preclearance provisions provided for in section 5.

Mr. Chairman, it is very clear to us at the ADA that, in fact, the act remains a paramount necessity. It is quite fair, and it is remarkably free from paperwork expense and other burdens. An alternative to section 5 proposed by Congressman Henry Hyde, H.R. 3198, would be less fair, would overburden our court system, and most importantly would not guarantee voting rights.

Mr. Chairman, I understand Mr. Hyde has indicated he is now persuaded section 5 should be retained, and he will not pursue his compromise. But other members may still offer something similar, so I will discuss H.R. 3198 briefly. Allow me to address these issues.

First, is preclearance still necessary? And the answer is yes. Although voting rights for minorities have greatly expanded since 1965, attempts to block those rights have certainly not ended. The Department of Justice has raised objections to 815 of 34,798 proposed election law changes since 1965. Those are 815 cases in which the suffrage of thousands of men and women would have been

impeded had there been no preclearance procedure. Without section 5, Mr. Chairman, each of those cases would have had to be settled by going to court, a process that can take many years and many dollars.

During the court case, the voting rights violation would normally be allowed to continue, as was the case with the Mississippi NAACP challenge to the State's legislative districts. There is no telling how many attempts there would be to deny minority voting rights were the courts the only recourse for the injured. But we have a good indication by the history of the covered States and jurisdictions before 1965.

Mr. Chairman, we hear protests that the South and the Southwest have changed since those years, and we are all delighted that they have. We will not go back to virtual accross-the-board denial of the right to vote, to a Mississippi in which 6 percent of the voting age blacks were registered. Literacy tests are gone, but gerrymandering, other forms of vote dilution, questionable siting of polling places, and other ingenious techniques of undermining the minority vote are still with us.

It is essential to remember that while we all remember Selma and the dogs and the firehoses, since the late sixties efforts to nullify the new minority votes through dilution schemes have been the name of the game for those who would deny full voting rights to others. Of the 800 objections which have been entered during the 18 years of the act's existence, some 500 have taken place in the last 5 years since the act was last extended in 1975. It cannot be said that those figures are the result of the new section 5 coverage added in that year.

Mr. Chairman, we should look at the same figures for the originally covered States, and the story is the same. In Mississippi, 37 changes were objected to from 1965 through 1974, but 40 objections were interposed in the last 5 years. In Alabama, 30 changes were objected to from 1965 through 1974, but 42 objections were interposed in the last 5 years. In Georgia, the figures are very stark—73 from 1965 until 1974, and a total of 152 from 1975 until now. In South Carolina, 40 changes were objected to from 1965 through 1974, but 37 objections have been interposed in the last 5 years. In North Carolina, 10 changes were objected to in the original 9 years, but 52 objections were interposed in the last 5 years. Louisiana—67 changes were objected to from 1965 through 1974 with a total of 69 objections interposed in the last 5 years.

Mr. Chairman, these figures tell the story of why we are here today. These are dry statistics, but the story has been told in vivid detail by the witnesses that you have heard from these States these past several weeks. They have told of the widespread continued efforts to dilute the votes of blacks and Hispanic Americans in the covered jurisdictions.

We therefore, Mr. Chairman, are not talking about 17 years in the penalty box, as a member of the subcommittee put it "for actions ended long ago"; we are talking, Mr. Chairman, about a very real and very pressing danger to the most fundamental political right. It takes more than a decade and a half to remedy centuries of discrimination. It takes special efforts and special methods.

But the crucial concern is losing the gains that we have made. They are not guaranteed; they are not necessarily permanent; they are fragile, and we risk them if we turn back the clock.

Are the Voting Rights Act and preclearance fairly applied? Again, the answer is yes.

Under section 5, 10 States and towns or counties in 13 others must preclear election law changes with the Justice Department. The covered jurisdictions run from counties in New England in my own State of Massachusetts, in New Hampshire, to Alaska, Hawaii, Arizona, California, and Colorado.

Mr. Chairman, this is hardly regional legislation, since some have called for its extension to cover all jursidictions in order to make section 5 literally nationwide. Despite claims that this proposal is meant to promote fairness, it is nothing more than an attempt to emasculate the process by bogging down the Justice Department's staff in more applications than it can reasonably handle. In its effect, it would end preclearance, or its implementation would require a huge and unnecessary bureaucracy.

In addition, universal preclearance is of dubious constitutionality. The U.S. Supreme Court has noted that very substantial evidence or widespread abuse must be present before the Congress may constitutionally impose such unusual Federal power upon the voting process of a jurisdiction. Only selected areas are covered by section 5 because that is both the constitutional and the efficient way and method of guaranteeing voting rights.

Mr. Chairman, it would be a waste of resources to cover all of those places with absolutely no history of preventing people from voting. As Congressman Hyde put it earlier in these hearings in his customarily candid and blunt appraisals of such disingenuous suggestions, nationwide coverage of section 5 "would strengthen it to death." Facing avowed enemies, the Voting Rights Act does not need such helpful friends.

Finally, of course, we note the minorities whom the act is designed to help do not seek such extension. They oppose it as harmful to their cause.

There are other complaints, Mr. Chairman, that States cannot prove their way out of being covered or a so-called bail out, and a few bureaucrats in Washington, D.C. should not be able to dictate the actions of local officials.

On the first, there is the great risk I discussed earlier of voting rights being denied anew should the preclearance procedure be dropped. In addition, no reasonable bail out or procedure or qualifications have been suggested. Of course, the suggestion that an individual saintly county should be allowed to bail out of statewide coverage is appealing.

Mr. Chairman, while I believe strongly in redemption and salvation, I do not yet know what jurisdictions these proponents are talking about. What we have heard in evidence suggests the danger of fashioning a simple bail out test, which in fact would eliminate section 5 safeguards from hundreds of jurisdictions where that particular safeguard is still necessary.

As to the second complaint, those who worry about the autonomy of local officials still call for the Federal court system to resolve election complaints. It is the responsibility, Mr. Chairman, of the

Federal Government to guarantee that the 14th and 15th amendments of the Constitution are observed.

This last complaint, Mr. Chairman, touches on our third issue: Is the preclearance process too great a burden to put on a local jurisdiction?

A look at the preclearance process reveals how small the burden really is. A covered jurisdiction which wants to put an election change into effect simply submits the change, along with background information, to the U.S. Justice Department. Within 60 days, or 120 days if the Justice Department requests more time, the Department responds by preclearing or raising an objection. If there is preclearance, the jurisdiction can simply implement the change, and that's the end of it as far as section 5 is concerned. If there is an objection, then the jurisdiction has other remedies.

The covered jurisdiction also has the option, Mr. Chairman, of seeking preclearance from the District Court in Washington, D.C., either initially or after an objection by the Justice Department. But the court option is so rarely used that one has to conclude that people generally think that the Justice Department's decisions are sound.

These burdens are small when compared to those of a court trial, which is the suggested alternative. They are very small, Mr. Chairman, in view of the alternative of even one or a few persons being denied a fundamental right, the fundamental right to vote.

In short, Mr. Chairman, each Member of Congress must ask himself or herself if he or she is ready to tamper with a system that works and to run the risk of denying any American that precious right to vote.

I thank you very much.

[The complete statement follows.]

STATEMENT OF FATHER ROBERT F. DRINAN, VICE PRESIDENT, AMERICANS FOR DEMOCRATIC ACTION

Mr. Chairman, it is a great pleasure to appear before my old committee to speak on behalf of extension and modification of the Voting Rights Act of 1965, H.R. 3112. As you know, I was actively involved in the 1975 debate that led to its extension until August of 1982.

Today, I am representing Americans for Democratic Action, an organization which I serve as Vice President. ADA was founded in 1947 to promote liberal policies and liberal candidates for public office. Today there are more than 55,000 ADA members in 24 chapters throughout the country.

Mr. Chairman, the Voting Rights Act was designed to do three things: first, to allow and facilitate the registration of all voters.

Second, to permit all citizens to vote equally, impartially and without discrimination and to have their vote count fully with others.

And third, to permit minority candidates to run with a reasonable hope of access to public office.

A look at voting participation among minorities over the past 16 years shows that the Voting Rights Act has been nothing short of revolutionary in accomplishing these goals. I will not reiterate the statistics that other witnesses have ably presented. It is enough to state that the impressive results of this legislation have brought it the reputation as the most successful piece of civil rights legislation the Congress has ever enacted.

Ironically, that very success has brought upon the Voting Rights Act criticism as being no longer necessary. It is also criticized as being burdensome and unfair because it requires selected States and jurisdictions to "preclear" all changes in voting procedures. Those three charges—that the Act is unnecessary, unfair and burdensome—constitute the core of opposition arguments against its extension, and especially to get rid of the preclearance provisions provided for in section 5.

It is clear to us at ADA that in fact the Act remains of paramount necessity. It is quite fair and it is remarkably free from paperwork, expense, and other burdens. An alternative to section 5 proposed by Representative Henry Hyde, H.R. 3198, would be less fair, would over-burden our court system, and, most important, would not guarantee voting rights. Mr. Chairman, I understand that Mr. Hyde has indicated he is now persuaded section 5 should be retained and that he will not pursue his compromise. But other members may still offer something similar, so I will discuss H.R. 3198 briefly. Allow me to address these issues.

First, is preclearance still necessary? Yes! Although voting rights for minorities have greatly expanded since 1965, attempts to block those rights have certainly not ended. The Department of Justice has raised objections to 815 of 34,798 proposed election law changes since 1965. Those are 815 cases in which the suffrage of thousands of men and women would have been impeded had there been no preclearance procedure. Without section 5 each of those cases would have had to be settled by going to court, a process that can take many years and many dollars. During the court case the voting rights violation would normally be allowed to continue, as was the case with the Mississippi NAACP challenge to the State's legislative districts. There is no telling how many attempts there would be to deny minority voting rights were the courts the only recourse for the injured. But we have a good indication by the history of the "covered" States and jurisdiction before 1965.

We hear protests that the South and the Southwest have changed since those years. And I believe they have. We will not go back to virtual across-the-board denial of the right to vote, to a Mississippi in which only 6 percent of the voting age blacks were registered. Literacy tests are gone. But gerrymandering, other forms of vote dilution, questionable siting of polling places and other ingenious techniques of undermining the minority vote are still with us. It is essential to remember that while we all remember Selma and the dogs and the firehoses, since the late sixties, efforts to nullify the new minority vote through dilution schemes have been the name of the game for those who would deny full voting rights to others.

Of the over 800 objections which have been entered during the 18 years of the Act's existence, some 500 have taken place in the last 5 years since the Act was last extended in 1975. It cannot be said that those figures are the result of the new section 5 coverage added in that year.

Look at the same figures for the originally covered States and the story is the same.

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Mr. Chairman, these figures tell the story of why we are here today. But they are dry statistics. The story has been told in vivid detail by the witnesses you have heard from those States these past few months. They have told of the widespread continued efforts to dilute the vote of blacks and Hispanic Americans in the covered jurisdictions.

We are not talking about 17 years "in the penalty box" for actions ended long ago. We are talking about a very real and present danger to the most fundamental political right. It takes more than a decade and a half to remedy centuries of discrimination. It takes special efforts and special methods. But the crucial concern is losing the gains we have made. They are not guaranteed. They are not necessarily permanent. They are fragile. We risk them if we turn back the clock.

Are the Voting Rights Act and preclearance fairly applied? Again, yes! Under section 5, 10 States and towns or counties in 13 others must preclear election law changes with the Justice Department. The covered jurisdictions run from counties in New England, in my own Massachusetts and New Hampshire, to Alaska, Hawaii, Arizona, California and Colorado. That is hardly regional legislation, Mr. Chairman. Yet some have called for its extension to cover all jurisdictions in order to make section 5 literally nationwide. Despite claims that this proposal is meant to promote fairness, it is nothing more than an attempt to emasculate the process by bogging down the Justice Department staff in more applications than it can reasonably handle. In its effect it would end preclearance. Or its implementation would require a huge and unnecessary bureaucracy.

In addition, universal pre-clearance is of dubious constitutionality. The U.S. Supreme Court has noted that very substantial evidence of widespread abuse must be

present before the Congress may constitutionally impose such unusual Federal power upon the voting process of a jurisdiction.

Only selected areas are covered by Section 5 because that is both the constitutional and the efficient method of guaranteeing voting rights. It would be a waste of resources to cover those places with no history of preventing people from voting.

As Representative Hyde put it earlier in these hearings in his customarily candid and blunt appraisal of such disingenuous suggestions, nationwide coverage of Section 5 "would strengthen it to death." Facing avowed enemies, the Voting Rights Act does not need such helpful friends.

And finally, of course, we note that the minorities whom the Act is designed to help do not seek such extension; they oppose it as harmful to their cause.

There are other complaints that states cannot prove their way out of being covered—or "bail-out"—and that a few bureaucrats in Washington, D.C. should not be able to dictate the actions of local officials. On the first, there is the great risk I discussed earlier of voting rights being denied anew should the pre-clearance procedure be dropped. In addition, no reasonable "bail-out" procedure or qualifications have been suggested. Of course the suggestion that an individual "saintly" county should be allowed to "bail-out" of statewide coverage is appealing. But, while I believe strongly in redemption and salvation, I do not yet know that jurisdictions proponents of this idea have in mind. What we have heard in evidence in this hearing suggests the danger of fashioning a simple "bail-out" test which in fact would eliminate Section 5 safeguards from hundreds of jurisdictions where it still is desperately needed.

As to the second complaint, those who worry about the autonomy of local officials still call for the federal court system to resolve election complaints. And it is the responsibility of the federal government to guarantee that the 14th and 15th Amendments to the Constitution are observed.

This last complaint touches on our third issue: Is the pre-clearance process too great a burden to put on a local jurisdiction? A look at the pre-clearance process reveals how small the burden actually is. A covered jurisdiction which wants to put an election change into effect submits the change, along with background information, to the U.S. Justice Department. Within 60 days (or 120 days if the Justice Department needs more time) the Department responds by pre-clearing or "objecting" to the change. If there is pre-clearance, the jurisdiction can implement the change and that is the end of it as far as Section 5 is concerned; but if there is an objection, the jurisdiction may not use the change.

The covered jurisdiction also has the option of seeking pre-clearance from the District Court in Washington, D.C., either initially or after an objection by the Justice Department; but the court option is rarely used because the Justice Department's decisions are recognized as sound.

These burdens are small when compared to those of a court trial, which is the suggested alternative.

In short, each Member of Congress must ask himself or herself if he or she is ready to tamper with a system that works and to run the risk of denying any American the right to vote.

Mr. EDWARDS. We thank you very much, Father Drinan. We are all delighted to learn that you have not lost your faith in redemption and salvation. [Laughter.]

I would say that the hearings to date would indicate that the new devices that you mention to prevent minorities from being elected, are the pattern not so much of preventing them from registering and voting, as in the old days, but the subtle devices such as gerrymandering, annexation, changing boundaries, and things like that.

I do appreciate your point on page 1, to permit minority candidates to run with reasonable access to public office. There's no way a minority candidate can get elected to public office if he or she is gerrymandered out of it. And that's a pretty easy thing to do.

Some witnesses have said: "Well, look, there are only 815 objections out of 34,798"—I am referring to page 2 of your statement.

Is there any way of knowing how many gerrymanders there might have been if there hadn't been the requirement for preclearance?

Father DRINAN. That's an excellent question.

When people say: "Well, the law is still violated"—the law would be worse—the law would be more violated if it did not in fact exist.

You're quite right. This has given a signal to all of the covered jurisdictions that they shouldn't be caught at something that is illegal. And, as a result, they do it correct in the first instance.

Mr. EDWARDS. Counsel?

Ms. DAVIS. Thank you, Mr. Chairman.

Father DRINAN. I'm afraid of this. She has such good questions. [Laughter.]

Ms. DAVIS. In determining whether the need still exists for the special temporary provisions, such as section 5, what in your view should be considered?

That is, when should we know, or when will we know, that the act has served its purpose?

Father DRINAN. I would say another extension for the time recommended in the bill is the thing before the Congress now.

We can't know whether prejudice will die in another 5 or 10 years. All we can say is that this has been spectacularly successful in limiting the prejudice in connection with the 15th amendment. And I don't think we have to answer that.

We will just say that it's the role of the Congress to extend the bill and that, hopefully, when this subcommittee has hearings 5 or 10 years down the road, these statistics will not be available. Then and only then should the question of repealing this bill be thought about.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. No questions.

Mr. EDWARDS. What kind of a signal do you think we will be sending, not only to the people in the United States, but to other countries, if we were to either refuse to extend section 5, or amend it so that it really wouldn't be very effective?

Father DRINAN. I think it would be quite disastrous, especially all through Africa, and I think everywhere. It would be a signal that we really don't care about the minority vote. It would be worse than that. It could be said, once again, that blacks and certain language minorities are affirmatively being excluded from the process.

There's no other inference to be drawn, if you would repeal or even weaken the bill.

Mr. EDWARDS. And you think it would be noticed in the Third World?

Father DRINAN. I'm certain that the people in Africa watch the fate of Mr. LeFever—and it is African newspapers that comment on it every day. And this would even be more significant for them. They would feel Americans of African ancestry are once again being victimized by withdrawing Federal protection from a fundamental right.

Mr. EDWARDS. We thank you very much.

Father DRINAN. Thank you.

Mr. EDWARDS. Thank you. It's really been just wonderful having you back.

We now welcome Arthur Flemming, the very distinguished Chairman of the U.S. Commission on Civil Rights.

Accompanying him are Mr. Louis Nunez, Staff Director for the Commission; Ms. Thelma Crivens, the Commission's Voting Rights Act Study project director; and Mr. Paul Alexander, Acting General Counsel of the Commission.

Mr. EDWARDS. I'll let you identify them, Dr. Flemming, so you can pronounce all the names perfectly.

Without objection, your excellent statement, which is loaded with good information, will be made a part of the record.

[The complete statement follows:]

STATEMENT OF ARTHUR S. FLEMMING, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS

I am Arthur S. Flemming, Chairman of the United States Commission on Civil Rights. With me today are Mr. Louis Nunez, Staff Director for the Commission; Ms. Thelma Crivens, the Commission's Voting Rights Act Study project director; and Mr. Paul Alexander, who is our Acting General Counsel. I appreciate the opportunity to speak to you today concerning extension of the Voting Rights Act of 1965, as amended.

Since the Commission was established in 1957, it has been concerned that all American citizens are able to exercise the right to vote. The Commission has held hearings and has done field surveys on the problems that minorities face in becoming full participants in the political process. Previous Commission publications such as Voting in Mississippi, The Voting Rights Act . . . The First Months, Political Participation, and The Voting Rights Act: Ten Years After have documented the fact that the right to vote has not yet been fully realized by minority citizens.

In the 1965 hearings before Congress, the Commission testified on the need for the Voting Rights Act. In 1970 and in 1975 the Commission reported that the act was having a salutary effect in improving minority voting rights. Noting the need to continue its protections, the Commission called for its extension.

On behalf of my colleagues, I am appearing before you today to report the findings of our most recent investigation of minority voting problems and to share with you our views on the positive effects of the Voting Rights Act. This investigation will also culminate in a report entitled The Voting Rights Act: Unfulfilled Goals, which reviews the status of minority voting rights in jurisdictions subject to the special provisions of the Voting Rights Act. The report focuses on the status of minority voting rights since the 1975 amendments to the act. I will share with you the findings of this report, but, first, I would like to address myself briefly to the question of why the Voting Rights Act was needed.

BACKGROUND

The right to vote is central to full political participation of all citizens of this Nation. It grants to all citizens the power to elect those persons who make decisions affecting their lives. Although it is a precious right, it has not been exercised freely by minority citizens, due to continued efforts of State and local officials and private citizens to deny them that right. As William Gillette has argued in The Right to Vote: Politics and the Passage of the Fifteenth Amendment: "Freedom for the freedman . . . was meaningless unless he had the ballot to protect himself." The 15th Amendment to the United States Constitution states: "[T]he right of citizens . . . 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." Despite the passage of this Amendment, America's black citizens were systematically denied the right to vote. For example, "literacy tests" were used as a prerequisite to registration, and were manipulated so that whites passed, but blacks failed, regardless of the academic degrees they held. Blacks, who attempted to register, were sometimes required to be accompanied by two persons already registered; since no blacks were already registered, and no whites made themselves available, blacks could not register. In some areas blacks who attempted to register were met with violence, so that any attempt to participate in elections was futile.

Congress enacted legislation in 1870, 1957, 1960 and 1964 prohibiting discrimination in voting, but State and local officials and private citizens were persistent in their efforts to deny minority citizens the right to vote.

Litigation was similarly unsuccessful in guaranteeing America's black citizens their right to full participation in the political process. After lengthy and arduous court battles in which courts found discrimination in a particular jurisdiction, the

discriminating parties quickly invented new mechanisms for preventing minorities from exercising their right to vote. Thus, another round of expensive and time-consuming litigation was required. In the meantime, few minorities were registered, and white candidates and officeholders were able to ignore the needs and concerns of minority citizens.

In 1965, 95 years after the Fifteenth Amendment was ratified, Congress confronted a problem that could best be characterized as a blight on American society: persistent exclusion of minority citizens from the political process. In response to that problem, Congress enacted strong legislation aimed at eliminating discrimination in registration and voting. That legislation—the Voting Rights Act of 1965—was a carefully crafted document, each provision of which was designed to address different types of discriminatory practices affecting minorities. It contains permanent provisions that protect the voting rights of minorities throughout the Nation. And, it contains special provisions that offer added protection to minorities in those areas where discrimination has been the most blatant and pervasive.

SPECIAL PROVISIONS OF THE VOTING RIGHTS ACT

The heart of the act was—and is—its special provisions. Jurisdictions covered by the special provisions had manifested voting discrimination through the use of tests or devices as a prerequisite to registering or voting. Such discrimination had resulted in exceptionally low registration and voter turnout by minorities in these jurisdictions. Congress did not limit coverage under the special provisions to one geographic region, however. Jurisdictions in 22 States across the Nation are covered by the special provisions of the Voting Rights Act.

A state or political subdivision subject to the special provisions must submit ("preclear") to the U.S. Attorney General or to the U.S. District Court for the District of Columbia any proposed change in voting practices or procedures and prove that the proposed change does not have a racially discriminatory purpose or effect. This provision, which is section 5 of the act, was enacted to prevent jurisdictions from repeatedly devising new and subtle forms of discriminatory voting practices after old forms were prohibited.

Another special provison allows the Attorney General to send Federal examiners and observers to jurisdictions subject to preclearance. Examiners, who interview and list potential registrants, ensure that minorities are not denied the right to register based on race, color or inclusion in a minority language group. Observers, who may be appointed in jurisdictions designated for examiners, observe whether eligible voters are allowed to vote on election day and whether voting results are properly tabulated. The appointment of observers helps to ensure that minorities vote in an atmosphere free from fraud and intimidation.

When the Voting Rights Act was under consideration for extension in 1975, testimony was presented showing that minority language groups were victims of the same types of discriminatory practices used to prevent blacks from registering and voting, such as intimidation and harassment and gerrymandering. As a result, a coverage formula was devised making jurisdictions that had engaged in such widespread discrimination against language minorities subject to preclearance and to the other special provisions as well. The special provisions covering language minorities also require minority language assistance in registration and voting in the applicable minority language.

PROGRESS UNDER THE VOTING RIGHTS ACT

The Voting Rights Act of 1965 has prevented discrimination in registration and voting and, as a result, has increased minority access to the political process. The results of the act are most evident in increased registration and voting and in the increase in the number of minority elected officials.

REGISTRATION

In 1965, registration rates for blacks were very low, especially when compared to white registration rates. In Mississippi, 7 percent of the black voting age population was registered, contrasted with 70 percent for whites. In Alabama, it was 19 percent and 69 percent, respectively. In Georgia: 27 percent for blacks; 63 percent for whites. In Louisiana: 32 percent for blacks; 80 percent for whites. In North Carolina: 47 percent for blacks; 97 percent for whites. In South Carolina: 37 percent for blacks; 76 percent for whites. Finally, in Virginia, 38 percent of the black voting age population was registered, while 61 percent of the white voting age population was registered.

Bureau of the Census data, most recently available for 1976, show substantial increases, with no State black registration rate lower than 47 percent and several above 60 percent. Nevertheless, black registration rates continued to be lower than white registration rates.

Registration rates for Hispanics and American Indians and Alaskan Natives collected by the Bureau of the Census in 1976 show that their registration rates were also lower than white rates in jurisdictions subject to preclearance. For example, in Arizona the rate for Hispanics was 61 percent; for whites it was 72 percent. In Colorado, the Hispanic rate was 53 percent; the white rate was 68 percent. In New York the Hispanic rate was 52 percent; the white rate was 70 percent.

American Indian and Alaskan Native rates were also lower than white registration rates in the 1976 Bureau of the Census data. For example, in Alaska, the Alaskan Native registration rate was 63 percent; the white rate was 73 percent. In Arizona, the Indian registration rate was 48 percent; the white rate was 72 percent. In South Dakota, the Indian rate was 52 percent and the white registration rate was 77 percent.

MINORITY ELECTED OFFICIALS

The number of minority elected officials has also increased. Exact estimates are unavailable on the number of minorities elected to public office prior to 1965 in the seven States, all but one of which [North Carolina] were covered in their entirety by the 1965 Voting Rights Act. They were certainly fewer than 100, however. In 1968, 156 blacks had been elected. In 1974, 963 blacks held public office in these States. By July 1980, the number had increased to 2,042.

Despite these statistics, progress under the Voting Rights Act has been painstakingly slow. Moreover, voting discrimination has not been eradicated in many jurisdictions subject to preclearance. Studies by the Commission as well as by private organizations since 1965 have shown that voting discrimination in jurisdictions subject to preclearance is so deeply entrenched—indeed, institutionalized—that the improvements in the political status of minorities are fragile and, in large degree, dependent on extension of the special provisions of the act. Not only does the legacy of decades of discriminatory laws and practices die slowly, but jurisdictions subject to the preclearance provisions have also shown a propensity to create new ways to deny their minority citizens the rights the special provisions of the Voting Rights Act were designed to protect. Continued attempts to impose new forms of discrimination make continued vigilance an absolute necessity.

THE COMMISSION'S REPORT

In its forthcoming report, The Voting Rights Act: Unfulfilled Goals, the Commission documents continuing problems that minorities face in becoming full participants in the political process. The report, which focuses on jurisdictions subject to the preclearance provisions of the Voting Rights Act, found persistent and widespread problems in the areas of registration, voting, fair representation and candidacy. Additionally, the Commission found that jurisdictions frequently did not comply with the preclearance provisions of the act. Even in 1981, some of the barriers to full participation in the political process that had led to passage of the Voting Rights Act persist. In other instances, newer and more subtle forms of discrimination are being used to deny minorities full participation in the political process. One fact, however, remains the same: minorities still do not register, vote, or run for office in an environment free of discrimination. Moreover, even in jurisdictions with increases in minority registration and voting, barriers to the full political participation of minorities continue.

The Commission's forthcoming report, which was originally scheduled for release in early 1982, was completed on an expedited schedule to enable the Commission to provide information useful for Congressional deliberations in 1981. In conducting a comprehensive survey of voting practices and procedures in the States subject either to the preclearance provisions or to the minority language provisions of the Voting Rights Act, Commission staff have interviewed election officials and other interested parties. Before the Commission can release its report, (or otherwise identify individuals or jurisdictions named in the report), it must provide them the opportunity to reply, as our statute requires. These replies will be included in the appendix of the report. Since the expedited schedule has not as yet afforded sufficient time for the completion of this process, my review of findings based on data collected by the Commission will omit the names of individuals and of jurisdictions. Testimony based on public information, however, will identify specific jurisdictions. The Commission will be ready to release this report following your August recess.

HARASSMENT AND INTIMIDATION

Although the Voting Rights Act prohibits State and local officials as well as private citizens from intimidating minority registrants and voters, intimidation and harassment of minorities still persist in jurisdictions subject to preclearance.

REGISTRATION

Some minority citizens stated that some registars often ask detailed questions about their employment and housing status. In 1980 a black 25 year-old female attorney attempted to register in a jurisdiction in Virginia. She reported that the attitude of the white person who registered her was "nasty" and that "the atmosphere was uncomfortable." The respondent also noted that after asking about her occupation, the registrar then wanted to know the name of her employer. The Virginia registration form does not contain any specific question on the name of an employer. The registrant said that this kind of questioning could easily deter some blacks from registering, because "they are scared of whites asking them questions. They, especially some of the older population, still remember the way things used to be to register, and having to go through a lot of questions reminds them of those times."

In a Mississippi jurisdiction the white city clerk, who is the registrar for city elections, described the registration process as being "simple and quick." According to her, registration is an informal procedure whereby the registrant gives his or her name, address, and employment. According to Mississippi law, every person entitled to be registered shall sign his or her name in the registration book and thereupon be registered. The black county tax assessor explained that the registration of a white may be a "simple" process, but that the registration of blacks may "take up to 1 hour" to complete.

According to the tax assessor, the questioning of black applicants by the registrar is "intimidating." The registrar asks blacks unrequired questions such as "Do you own the house you're staying in?" and "Does your employer know you're here registering?" Once he observed the clerk asking an elderly black woman such questions. "The woman became so nervous that she could not answer any of the questions." Questions about an individual's employment can be more intimidating to older black persons, because, according to the respondent, "To an older black, this [type of questioning] is fearful. The fear is that the white employer will find out . . . For the older black, it's a scare tactic. The older black person also feels that the employer knows who he or she is going to vote for." Given the economically dependent position of minorities and the history of discrimination and economic retaliation against them, questions about their employment status can discourage them from participating further in the political process.

Harassment and intimidation can be physically as well as phychologically threatening. In 1980 an older black citizen, who lives in a jurisdiction in Georgia and who had been involved in registration drives before, took two blacks to the courthouse so they could register to vote. She said that while she waited for them, "the sheriff and three other men in a car drove next to her parked car." According to the respondent, the sheriff "stared" at her. "The way he looked scared me to death." She said that the sheriff drove slowly around her car "a total of three times." As a result of this experience, the respondent stated, "I [am not] going back there [to the courthouse] anymore . . . . I'm too old to be beaten up."

VOTING

Minority respondents in the Commission's survey have also stated that election officials remain openly hostile to them when they attempt to vote. For example, the officials challenge their eligilbility to vote when they do not challenge whites in similar circumstances. In one jurisdiction in Georgia, hostile whites with guns visible reportedly congregated around the polling place and "heckled" black people who were attempting to enter the polls to vote, making them fearful for their physical safety. In another jurisdiction in Texas, a Mexican American candidate reported that Mexican Americans were afraid to vote because of potential economic reprisal. He said, "People are just too scared. I don't blame them. If they vote for someone that their boss doesn't want them to [and he finds out], they will lose their jobs." An Hispanic election worker in that jurisdiction said, "The attitude among election personnel toward Mexican American voters is bad." She reiterated, "they treat them bad."

In another jurisdiction in Texas, an official said that some white election judges "make things more difficult for the Hispanics voting [so they] are not comfortable at the polls. The negative attitude of election judges easily discourages people from

voting." According to a paralegal in that county, "Mexican Americans want more Mexican American election judges. They do not feel at ease at the polls." A county commissioner reported that there have been compliants that "election judges are being sarcastic" to Mexican American voters "and [have] tried to discourage them from voting."

MINORITY CANDIDATES

Minorities seeking to run for office also face intimidation and harassment, sometimes even before they have actually declared their candidacy. After one potential candidate indicated to several people (both black and white) in a Georgia community his interest in running for sheriff, shots were fired into his home, wounding one of his daughters. Two whites were arrested in the incident; not surprisingly, the man subsequently decided not to run for sheriff. In another instance, a cross was burned on the lawn of a minority candidate for the South Carolina State legislature. Still other minority candidates in North Carolina and Mississippi have received threatening telephone calls and in some cases reported that they have armed themselves or, alternatively, have taken steps never to travel alone.

Intimidation and harassment of minority voters and candidates continue to be a fact of life in some jurisdictions subject to preclearance. As a result, many minority voters are deterred from registering and voting and minority candidates are discouraged from running for office. The special provisions of the Voting Rights Act were enacted because practices such as these prevented minorities from participating fully in the political process. Now I must report that the practices that originally led to passage of the act continue to exist. Consequently, the special provisions are still needed to ensure that jurisdictions subject to preclearance do not engage in other practices that further restrict the right of minorities to register and to vote.

FAILURE OF JURISDICTIONS TO PRECLEAR

Another reason the Commission believes that the special provisions of the Voting Rights Act should be extended is that minorities in some jurisdictions subject to preclearance have never received, or have only recently received, the protections the preclearance provision was designed to provide. That is, some jurisdictions have never submitted for preclearance changes in voting practices or procedures prior to implementing them.

Due to the expedited schedule under which the Commission completed its 1981 investigation of the impact of the Voting Rights Act, we did not study the Department of Justic's enforcement of the act's preclearance provisions. However, data from the Department of Justice, from the Southern Regional Council and from court cases indicate the need for systematic and rigorous enforcement of the preclearance provisions.

In 1980 the Department of Justice sent 124 letters requesting submissions to jurisdictions subject to preclearance where it was believed that changes had been made in violation of section 5. Of these, 79 jurisdictions responded with 78 changes that had taken place without preclearance. The Southern Regional Council in Atlanta, Georgia, a representative of which, I understand, will be testifying here today, has collected preliminary data on nonsubmissions by covered jurisdictions in South Carolina, Georgia, Alabama, and Louisiana. In March 1981 the Council estimated that since passage of the act over 500 changes had been made in jurisdictions in these States without submitting them for preclearance. These data provide additional evidence on the extent of noncompliance with section 5 preclearance procedures, despite the fact that the Voting Rights Act has been in existence for 16 years.

The Department of Justice also continues to be involved in litigation against jurisdictions that implemented changes over its objections. Information provided by the Department indicates that as of December 1980 it has been involved in 47 cases since 1975 involving noncompliance with an objection interposed by the Attorney General under section 5. The Department of Justice was the plaintiff in 28 of these cases.

In many instances, when the Department of Justice or private organizations have discovered that a jurisdiction failed to preclear a change in voting practices or procedures, the Department has objected to the change after it was submitted because the jurisdiction could not prove lack of discriminatory purpose or effect. The change that was not precleared could have had a discriminatory purpose or effect on the voting rights of minorities in the jurisdiction. For example, in *McKenzie* v. *Giles*, the failure of Dooly County, Georgia to preclear a change from a single-member district election system, which increases the likelihood of electing minority candidates to office, to an at-large election system, which decreases the likelihood of

electing minority candidates to office, had a discriminatory effect on the voting rights of minority citizens in the county. In that case, the Southern Regional Office of the American Civil Liberties Union challenged the at-large election system for electing members to the Dooly County Board of Commissioners, on grounds that the at-large system had not been precleared under section 5. In fact, Dooly County's method of electing county commissioners on an at-large basis was implemented in 1967 in violation of the Voting Rights Act. Prior to these changes, members of the county commission had been elected from single-member districts.

After the ACLU filed suit against Dooly County, alleging noncompliance with the Voting Rights Act, the county submitted its at-large election system for county commissioners to the Department of Justice, some 13 years after the election system had been implemented. In July 1980, the Department of Justice objected to the change in the method of electing county commissioners. In a consent decree entered the same month, the court in the *McKenzie* case directed that the board of commissioners be elected from three single-member districts, including one majority-black district.

Section 5 is a strong remedy to deal with the deeply-entrenched problem of discrimination in voting. The problem of discrimination will remain, however, as long as the remedy is not used. Failure to comply with the law means that minorities in jurisdictions subject to preclearance will continue to be denied their full voting rights. The issue before this Committee is not only that there is a continuing need for the Voting Rights Act, but also that the Justice Department's enforcement of the preclearance provisions needs to be strengthened.

FAILURE OF JURISDICTIONS TO CONSIDER THE DISCRIMINATORY EFFECTS OF VOTING PRACTICES AND PROCEDURES ON MINORITY POLITICAL PARTICIPATION

The Commission believes the special provisions of the Voting Rights Act should be extended for yet another reason, that is: many voting practices and procedures used in jurisdictions subject to preclearance continue to have a discriminatory effect on minority political participation. As I have stressed, prior to 1965, discrimination in registration and voting was a fact of life in jurisdictions subject to preclearance. Coupled with discrimination in voting, however was discrimination against minorities in other aspects of their lives, such as employment, housing and education. As a result, minorities were unable to participate in the political process on an equal basis with whites. Because of their low economic status, they were not always able to afford transportation to the registration location; because of inferior education they were unable to read the ballot on election day; and because of their experiences with hostile whites, they were fearful of voting at all-white polling locations.

The effects of past—and present—discrimination against minorities in virtually every aspect of their lives still remain. A disproportionate number of them still are poor and many still fear contact with whites, especially those whites on whom they may be economically dependent. Despite the fact that whites were the perpetrators of discrimination against minorities, many of them have not taken any steps to help overcome past barriers to minority political participation. Indeed, in many instances election officials in jurisdictions subject to preclearance have resisted efforts to facilitate minority registration, voting and candidacy.

PRACTICES AND PROCEDURES THAT MAKE IT ESPECIALLY DIFFICULT FOR MINORITIES TO REGISTER.

Earlier in my discussion of progress achieved as a result of the Voting Rights Act, I noted increasing minority registration rates. Nevertheless, black registration rates continue to lag behind those of whites. In its November 1976 survey of reported registration the Bureau of the Census found few jurisdictions covered by the preclearance provisions of the Voting Rights Act in which the reported registration rates of minorities approached those of whites. In North Carolina and South Carolina the gap between white and black registration rates has increased since 1974. In Louisiana, the rate has remained constant over this period.

Two reasons why the registration rates of blacks are low compared to those of whites are that (1) blacks continue to have relatively less access to the registration process and (2) registration officials have resisted taking steps that would increase their opportunities to register.

Blacks have less access because registration is an urban, business hour process that is, for the most part, inaccessible to rural and low income people, a disproportionate number of whom are black. For example, in 1977, over 44 percent of the black population in the South lived in nonmetropolitan areas and over 39 percent of this population was below the poverty level. Registration is inaccessible to them

primarily because they cannot afford transportation to the registration location, usually the county courthouse or city hall, or because the registration office is open only during business hours, when they must work.

In some of the jurisdictions studied by the Commission, registrars have refused to use mechanisms that could ease the registration process for minority registrants who are low-income or who live in rural areas. Despite State laws permitting the appointment of deputy registrars and/or permitting alternative registration times and places, registrars often refuse to implement these measures on behalf of minority citizens. This has been true even when minority organizations have volunteered to help ficilitate the process with community registration drives. Even under court pressure, some jurisdictions have moved so slowly that the positive impact of changes in registration procedures has been minimal. For example, the U.S. Court of Appeals for the Fifth Circuit found in *Lodge* v. *Buxton* that Burke County, Georgia, a jurisdiction subject to preclearance, had been unresponsive to the needs of the black community. One example of this lack of responsiveness was the county's resistance to making registration more accessible to the black community. The court stated: "The county did, indeed, establish additional registration sites. But only after a pre-trial conference before and 'friendly persuasion' by this Court. The defendants' tepidity was further demonstrated by the fact that a period of four months was required to get the registration cards to the new sites; and that the new sites were operative only a short while before the registration period ended. Admittedly, the County Commissioners recently approved a transportation system that should help solve access problems for some; but only after being prodded by the prosecution of this lawsuit * * *"

Another jurisdiction in Georgia was similarly reluctant to adopt measures to facilitate minority registration. After intense pressure from the black community, however, black deputy registrars were subsequently appointed. The duties of these new registrars, however, did not involve registering voters. Instead, they were only allowed to transport potential registrants to the courthouse. Moreover, these deputy registrars were appointed only one week before the end of the registration period for the local primary. It is clear that without affirmative efforts on the part of registrars and election officials throughout many of these jurisdictions, minorities will not have equal access to registration and minority registration rates therefore will continue to languish.

PRACTICES AND PROCEDURES THAT MAKE IT ESPECIALLY DIFFICULT FOR MINORITIES TO BE ELECTED TO OFFICE

Earlier in my discussion of progress under the Voting Rights Act, I noted that the number of minority elected officials has increased in jurisdictions subject to preclearance. These increases do not necessarily indicate that minorities are achieving fair representation, however. Moreover, most minority elected officials are concentrated in local, part-time positions which rarely provide them with the resources or power necessary to affect policy. In this respect, the increased number of minority elected officials cannot be said to be a significant increase in minority political access.

The discriminatory effect of certain voting practices and procedures on minority political participation is most evident in the use of election systems and voting rules that severely restrict the ability of minorities to be elected to office. Failure to be able to elect candidates of their choice has frustrated members of minority groups, many of whom feel that their interests are not being considered when governing bodies make decisions affecting their lives. This is a particular concern because of past or present discrimination against them in housing, employment, education and access to services.

The Commission found that numerous barriers continue to limit the opportunities of minorities to be elected in many jurisdictions. In some jurisdictions subject to preclearance, election systems and voting rules are used which have a severely discriminatory impact upon minorities. For example, when members of governing bodies are elected at large rather than from single-member districts, the opportunities for minorities to gain elective office can be severely circumscribed. When whites will not vote for minority candidates, that is, when racial bloc voting exists, the prospects for minority officeholding under an at-large system are limited, unless the jurisdiction has a majority of black or Hispanic voters. Multimember districts, in which more than one representative is elected from the same district, have a similar negative impact upon minority officeholding. They are more populous than single-member districts, often encompassing several counties or a large city, and rarely have a majority of black or Hispanic voters.

Particular voting rules, often found in conjunction with at-large election systems, also can make it very difficult for minorities to be elected to office. For example, candidates for an at-large position on a city council may be required to gain a majority, rather than a plurality of the votes cast, to win the election. In a community with a black population of less than 50 percent of the total, a black candidate may finish first among a sizeable field of candidates. But if the black candidate does not receive a majority of the votes and the runoff is against a white candidate, the candidate will lose if there is a significant degree of racial bloc voting. The Commission found numerous examples of this effect in jurisdictions subject to preclearance in races ranging from Congressional campaigns to contests for town council.

The negative effect of at-large election systems can be seen in jurisdictions that have changed their election systems to ones that provide more opportunities for minority representation. In the period 1970 to 1978, 29 jurisdictions in Texas changed from at-large election systems to single-member districts or mixed plans. Immediately prior to these changes, the 29 systems elected 9 blacks and 8 Hispanics to office. Immediately after the respective changes, 26 blacks and 24 Hispanics were elected. In Louisiana, during the same period, 12 jurisdictions changed to single-member districts or mixed plans. Before these changes, there were three black elected officials in these jurisdictions. After these changes, there were 24.

In one jurisdiction in Alabama, the at-large election system for electing members to the city commission coupled with majority vote and staggered term requirements reportedly have a discriminatory effect on minority voting strength. The city commission in this jurisdiction is composed of three members who are elected at large. One of the commissioners also serves as mayor.

Despite the fact that the jurisdiction at one time had a near majority black population and in 1980 was 33 percent black, no black has ever been elected to the city commission. Between 1969 and 1978, four black candidates ran for places on the commission. All were defeated. Currently, all three members of the city commission live in the predominantly white north side of the city.

The lack of opportunities for black candidates to gain election to the city commission is related to the interaction of the city's election system with the high degree of racial bloc voting. At-large elections, the majority vote rule, and staggered terms make it impossible for black condidates to be elected without white votes. However, no black candidate has ever won a single voting box (precinct) in the white community. The one black candidate who reached a runoff failed to attract the votes that had gone to white candidates defeated in the primary election.

The informal practice of always filling commission vacancies arising from resignation or death through appointments by the remaining commissioners also has prevented black candidates from ever running in an election in which there was no incumbent. Although black individuals and organizations have attempted to influence the filling of these vacancies, their suggestions have been consistently ignored.

Blacks complain that the all-white city commission has not been responsive to their needs. They cite problems in employment as well as problems related to access to services. For example, they allege that in 1980, 4 of 31 employees at city hall were black. All four of these were in the two lowest paying classifications. In virtually all city departments. blacks were underrepresented or concentrated in the lowest paying jobs. Blacks also claim that in 1978 twice as many black households were located on dirt streets than were white households. One black resident of the city stated that "the white attitude here is that black folks are not ready for leadership."

The Commission found that redrawing the boundaries of election districts or changing actual boundaries of the jurisdiction can also have a discriminatory effect upon the opportunities of minorities to be elected. In the context of racial bloc voting, redrawing district boundaries in such a way that minority voters are a clear numerical minority, or changing the boundaries of a city or town to decrease the proportion of minority voters can ensure defeat for minority candidates.

Discriminatory boundary changes will be of special concern in the 1980s. After the 1980 census population figures are released, States, counties, and municipalities again will be determining whether district lines will have to be redrawn. Of primary importance to minorities will be whether redistricting plans lessen minority voting strength and whether they discriminate against minorities in purpose or effect.

EFFECTIVENESS OF THE PRECLEARANCE PROVISIONS IN PREVENTING POTENTIALLY DISCRIMINATORY VOTING PRACTICES AND PROCEDURES

Voting practices and procedures that may discriminate against minorities in purpose or effect, such as purging and reregistration, polling place location, at-large

election systems, and statutes on assistance to illiterate voters are widespread. In numerous instances, the section 5 preclearance process prevented implementation of these voting practices and procedures. Three examples illustrate the impact of section 5.

In one instance the section 5 preclearance process prevented implementation of a Mississippi law on assistance to illiterates that would have had a negative effect on the ability of illiterate voters to be helped by an individual of their choice. In 1975 the illiteracy rates for blacks and whites in Mississippi were 18.8 percent and 3.1 percent, respectively. Prior to the new law, Mississippi's statute on assistance to illiterates provided that illiterate voters could receive assistance from the person of their choice, whether or not that person was a registered voter in the same precinct. One individual could assist any number of voters, and no other person was permitted or required to be present when assistance was given. The new law required that the person giving assistance be a registered voter of the same precinct as the person receiving assistance, that one person could assist no more than five others, and that the poll manager must be present while assistance was given.

In May 1979 the new law was submitted to the Department of Justice for preclearance under section 5 of the Voting Rights Act. In July 1979 the Attorney General was "unable to conclude that the proposed system of assistance 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." The Department also noted that it is common for more than five black voters to receive assistance from the same person and that there is no need for the person giving assistance to reside in the same precinct as the voters receiving assistance. The Department of Justice further noted that the vast majority of voters who have requested voting assistance in Mississippi are black and their voting rights would be adversely affected by the provisions of the new law.

Another reported voting problem which the section 5 preclearance provision has helped to prevent is the location of polling places in areas that are at other times off limits to minorities, for example in buildings which are regarded by minorities as symbols of exclusion. In such circumstances, minority voters report that they feel intimidated and are often reluctant to vote in the building. In other instances a polling place is changed to a location that is inconvenient to minorities.

In February 1977, officials in Raymondville, Texas submitted to the Attorney General changes in the location of two polling places, pursuant to section 5 of the Voting Rights Act of 1965. Although the Department of Justice did not object to one of the polling place changes, it objected to the other change. According to the Department, it "received unrebutted representations indicating that the change in the location of the Precinct 1 polling place from City Hall to the American Legion Hall may have the purpose of effect of denying or abridging the right to vote on account of race, color, or membership in a minority language group." The Department reported that the polling place change "will result in a significant inconvenience for many Mexican American voters" who reside in that precinct. In its objection, the Department also noted that "the American Legion Hall appears to be a place where Mexican Americans feel unwelcome. Thus, it is likely that the use of the hall will have the effect of deterring participation by Mexican Americans * * *."

The preclearance process also has prevented gerrymandering of district lines, another voting practice that discriminates against minorities in purpose or effect. In Warren County, Mississippi the 1971 county elections were held under a redistricting plan objected to by the Attorney General under section 5 of the Voting Rights Act. After the 1975 county elections were stayed by the district court pending development of a nondiscriminatory plan by the county, the all-white board of supervisors in the 37 percent black county filed suit in the District Court for the District of Columbia seeking approval under the Voting rights Act of their proposed redistricting plan.

The 1929 redistricting plan, the last plan effective prior to the Voting Rights Act, contained three districts within the near majority black city of Vicksburg and two in rural Warren County, but the new redistricting plan proposed to eliminate the Vicksburg districts and in each new district to combine portions of the city with rural areas. One area in the city with a high concentration of blacks would be divided among three districts. The proposed plan also contained districts that were neither compact nor contiguous. Finally, the redistricting plan contained no district with more than a 61 percent black population. A 65 percent black population is generally considered the minimum necessary to give blacks an opportunity to be elected to office.

The U.S. District Court for the District of Columbia determined that Warren County did not demonstrate that its proposed redistricting plan did not discriminate

in purpose or effect. The court stated that the county had "failed to demonstrate that the proposed plan would not lead to a retrogression in the position of racial minorities * * *" and that the county had "offered no valid nonracial justification for the district lines within the city of Vicksburg which result in irregularly shaped districts, fragment the black community and cause a diminution of black voting strength."

Subsequent to this decision, the all-white county board of supervisors refused to conduct elections under the 1929 redistricting plan. However, in September 1979 the district court put into effect an interim, court-ordered, county redistricting plan and set elections for November 27, 1979. The interim plan included districts that were 67 percent and 65 percent black. The first black county supervisor in this century was elected in Warren County in that election.

It is clear that a variety of barriers continues to undercut the opportunities of minorities to be elected to office. However, section 5 of the Voting Rights Act has been effective in preventing the implementation of voting practices or procedures that have a discriminatory purpose or effect, in jurisdictions covered by the preclearance provisions.

The Commission strongly recommends extension of the special provisions of the Voting Rights Act for an additional 10 years. The continuing efforts by many of these jurisdictions to implement voting practices or procedures, regardless of their negative effects on their minority populations, makes such an extension an absolute necessity if the voting rights of minorities are to be protected.

In other jurisdictions similarly discriminatory practices, such as the use of-election systems and voting rules that dilute minority voting strength, were in place prior to the effective date that the jurisdictions were covered under the special provisions of the Voting Rights Act. In such instances, minorities have brought suit seeking to prove that jurisdictions have diluted their voting strength, in violation of the 14th and 15th amendments, or section 2 of the Voting Rights Act. Unconstitutional dilution has been made more difficult to prove as a result of a recent Supreme Court of the United States' decision, *City of Mobile* v. *Bolden*. In a plurality decision, the Court established a strict standard of intent for proving unconstitutional vote dilution. The plurality also applied that strict standard to Section 2 of the Act, which prohibits the use of voting practices or procedures that abridge or deny the right to vote based on race, color or inclusion in a minority language group.

It is for that reason that the Commission recommends that Congress amend section 2 of the Voting Rights Act to prohibit all States or political subdivisions from establishing voting practices or procedures that have the "effect" of discriminating on the basis of race, color, or inclusion in a minority language group. The effects of certain practices and procedures can be the result of past and present discrimination against minorities. Since some jurisdictions do not consider the effects of their voting practices and procedures on their minority populations, it is important that minorities themselves have some effective mechanism for seeking redress from discriminatory voting practices. The Commission's recommendation to amend section 2 would provide that mechanism.

COMPLIANCE-MINORITY LANGUAGE PROVISIONS

I now would like to discuss the continuing need for the minority language provisions of the Voting Rights Act. Before discussing the Commission's findings and recommendations with respect to these provisions, I would like to note that Commissioner Stephen Horn dissents from them both.

Language minority citizens have also encountered numerous barriers to achieving full political participation. Such barriers have resulted in low registration and voting by these citizens. In Texas, for example, a U.S. District Court in 1972 stated: "There can be no doubt that lack of political participation by Texas Chicanos is affected by a cultural incompatibility which has been fostered by a deficient educational system . . . This cultural and language impediment, conjoined with the poll tax and the most restrictive voter registration procedures in the Nation have operated to effectively deny Mexican Americans access to the political processes in Texas even longer than the blacks were formally denied access by the white primary."

Testimony presented during the 1975 hearings on extension of the Voting Rights Act documented the failure of language minority citizens to gain full access to the political process. Numerous witnesses testified concerning the roles that culture, socio-economic conditions, unequal educational opportunities, and a language other than English play in preventing language minorities from fully participating in the political process. One witness, Howard A. Glickstein, then-director of the Center for

Civil Rights at the University of Notre Dame, testified: "Overt discrimination is not the only factor which limits the political participation of Sapnish-speaking Americans. Since most registration and election materials are printed in English, the language barrier often has prevented Spanish-speaking citizens from registering or, once registered, from voting effectively. This barrier is as significant an impairment of the right to vote as any literacy test that was used to deny the franchise to blacks."

As a result of testimony on voting problems faced by members of minority language groups, the minority language provisions were added to the Voting Rights Act in 1975. Under these provisions jurisdictions must provide: "* * * any registration or voting notices, forms, instructions, assistance, or other materials or information relating to electoral process, including ballots * * * in the language of the applicable minority group as well as in the English language * * *"

In many jurisdictions the minority language provisions have been interpreted in the most narrow fashion, in conflict with Department of Justice guidelines for local compliance. To begin with, jurisdictions often do not have registration outreach or voter education programs aimed at the language minority community. Despite the fact that the actual registration form may be in the applicable language, many minorities remain unaware of registration times and locations or are intimidated by a registration process that does not include oral assistance in the applicable language.

The Commission found that on election day the availability of a ballot in the applicable language is often not accompanied by effective oral assistance in that language. Such assistance is a necessity to aid illiterates and also to create a non-intimidating and supportive atmosphere for other minority language voters. Native American respondents in Oklahoma and Hispanic respondents in California and Colorado complained that at some polling places with significant numbers of minority language voters, there was no oral assistance available in the applicable language. In some cases where this assistance was available, minority language voters did not vote because they were unaware of its availability and were reportedly embarrassed about voting without full command of the English language.

Current Department of Justice guidelines provide only that "materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities." The Commission believes that lack of specific criteria has resulted in inadequate oral assistance to minority language voters. It has also resulted in the failure of local jurisdictions to develop programs that will reach minority language communities. So that covered jurisdictions may provide minority language assistance more thoroughly and efficiently, the Commission recommends that the Department of Justice develop criteria specifying what constitutes effective minority language assistance.

The Commission also found that for the majority of jurisdictions required to provide assistance to language minorities, there were minimal efforts by the appropriate U.S. Attorney to ensure compliance. Commission staff interviewed the eight U.S. Attorneys that were responsible for the largest number of different types of minority language groups in the covered jurisdictions in their regions. None had any compliance procedures, and only three had implemented any type of enforcement activity to help assure compliance with the minority language provisions in their regions. In general, the U.S. Attorneys considered that it was not their role to seek out problems but to wait for submission of specific complaints. The Commission believes that effective enforcement of the minority language provisions would be enhanced if U.S. Attorneys were required to monitor regularly compliance with the provisions in every section 203 jurisdiction in their districts.

It is clear that members of minority language groups continue to face numerous barriers to full participation in the political process that stem from the refusal of local jurisdictions to comply fully with the Voting Rights Act. The provision of registration forms and ballots in the applicable language is only a small step in facilitating this participation. Without registration outreach and voter education in the language minority community and oral assistance throughout the election process in the applicable language, increased numbers of language minorities will not register and vote. Additionally, without adequate monitoring by U.S. Attorneys, jurisdictions covered under these provisions may not fully understand their responsibilities and also may lack key incentives to comply.

The minority language provisions are not due to be considered for extension until August 6, 1985. At this time, however, the Commission recommends that they be extended for 7 years. This extension would make the expiration date of all of the act's special provisions uniform. It would also provide more time to jurisdictions that have not yet fully implemented these provisions so that they can adequately

plan and implement assistance to language minority citizens as intended by Congress.

The Voting Rights Act and its amendments constitute a major effort to fulfill the most basic right in our Nation. The act has certainly been an effective vehicle in guaranteeing that right; unfortunately, however, its goals have not yet been fulfilled. To continue the protections provided to minorities in jurisdictions subject to preclearance the Commission reiterates its recommendations:

(1) That the special provisions of the Voting Rights Act being considered in 1982 be extended through 1992, an additional 10 years; and that those jurisdictions made subject to preclearance by the 1975 amendments to the act be covered until 1992 as well, an additional 7 years;

(2) That the minority language provisions of the Voting Rights Act be extended through 1992, an additional 7 years;

(3) That section 2 of the Voting Rights Act be amended to prohibit all States or political subdivisions from maintaining or establishing voting practices or procedures that have the effect of discriminating on the basis of race, color, or inclusion in a minority language group;

(4) That the Rights Act be amended by adding a section which places an affirmative responsibility on the Attorney General to enforce more vigorously compliance with the preclearance provision of Section 5;

(5) That the Voting Rights Act be amended by providing for civil penalties or damages against State and local officials who fail to comply with the preclearance provisions of the Voting Rights Act;

(6) That the Department of Justice amend its guidelines on implementation of the minority language provisions to include specific criteria for determining effective minority language assistance.

(7) That the Attorney General provide for effective enforcement of the minority language provisions in jurisdictions subject to section 203 of the Voting Rights Act by requiring U.S. Attorneys to monitor regularly compliance with the provisions in every section 203 jurisdiction in their districts.

I hope that I have conveyed to you today that a lengthy journey lies ahead. Clearly, 17 years of remedial effort has not been enough in view of the kinds of persistent opposition to full voting rights for minority Americans, that I have described to you today. Failure to pursue the goals of full and equal political rights for all our citizens by not renewing and strengthening the Voting Rights Act would not only constitute abandonment of that journey, but it would also represent a signal to minority citizens that we no longer care. Thank you.

Mr. EDWARDS. You may proceed. Would you please be so kind as to introduce your colleagues.

TESTIMONY OF ARTHUR S. FLEMMING, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS; ACCOMPANIED BY LOUIS NUNEZ, STAFF DIRECTOR; THELMA CRIVENS, VOTING RIGHTS ACT STUDY PROJECT DIRECTOR; AND PAUL ALEXANDER, ACTING GENERAL COUNSEL

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

I am happy to have the opportunity of appearing before this committee, on this very important piece of legislation.

As you have indicated, I am accompanied today by: Mr. Nunez, the Staff Director for the Commission; Ms. Thelma Crivens, who is the Commission's Voting Rights Act Study Project Director; and Mr. Paul Alexander, who is our Acting General Counsel.

I appreciate your willingness to have me submit my complete statement for the record. This is a much longer statement than I normally would submit for a hearing of this kind. I will give you some reasons for that, a little later on.

But my testimony this afternoon will be a shortened version of this statement.

Since the Commission was established in 1957, it has been concerned that all American citizens are able to exercise the right to vote.

Over the years, the Commission has held hearings and has done field surveys on the problems that minorities face in becoming full participants in the political process.

On behalf of my colleagues, I am appearing before you today to report the findings of our most recent investigation of minority voting problems, and to share with you our views on the positive effects of the Voting Rights Act.

This investigation will culminate in a report entitled "The Voting Rights Act: Unfulfilled Goals," which reviews the status of minority voting rights in jurisdictions subject to the special provisions of the Voting Rights Act.

In 1965, 95 years after the 15th amendment was ratified, Congress confronted a problem that could best be characterized as a blight on American society: Namely, the persistent exclusion of minority citizens from the political process.

In response to that problem, Congress enacted strong legislation aimed at eliminating discrimination in registration and voting. That legislation, the Voting Rights Act of 1965, was a carefully crafted document, each provision of which was designed to address different types of discriminatory practices affecting minorities.

It contains permanent provisions that protect the voting rights of minorities throughout the nation; and it contains special provisions that offer added protection to minorities in those areas where discrimination has been the most blatant and pervasive.

The heart of the act was, and is, its special provisions. Jurisdictions covered by the special provisions had manifested voting discrimination through the use of tests or devices as a prerequisite to registering or voting. Such discrimination had resulted in exceptionally low registration and voter turnout by minorities in these jurisdictions.

Congress did not limit coverage under the special provisions to one geographic region, however. Jurisdictions in 22 States across the Nation are covered by the special provisions of the Voting Rights Act.

A State or political subdivision subject to the special provisions must submit or "preclear" to the U.S. Attorney General, or to the U.S. District Court for the District of Columbia, any proposed change in voting practices or procedures; and prove that the proposed change does not have a racially discriminatory purpose or effect.

This provision—which is section 5 of the act—was enacted to prevent jurisdictions from repeatedly devising new and subtle forms of discriminatory voting practices after old forms were prohibited.

Another special provision allows the Attorney General to send Federal examiners and observers to jurisdictions subject to preclearance.

When the Voting Rights Act was under consideration for extension in 1975, testimony was presented showing that minority language groups were victims of the same types of discriminatory practices used to prevent blacks from registering and voting, such as intimidation and harassment and gerrymandering.

As a result, a coverage formula was devised, making jurisdictions that engaged in such widespread discrimination against language

minorities subject to preclearance and to the other special provisions, as well.

The special provisions covering language minorities also require minority language assistance in registration and voting, in the applicable minority language.

The Voting Rights Act of 1965 has prevented discrimination in registration and voting and, as a result, has increased minority access to the political process.

The results of the act are most evident in increased registration and voting, and in the increase in the number of minority elected officials.

Progress, however, under the Voting Rights Act has been painstakingly slow. Moreover, voting discrimination has not been eradicated in many jurisdictions subject to preclearance.

In its forthcoming report, "The Voting Rights Act: Unfulfilled Goals," the Commission documents continuing problems that minorities face in becoming full participants in the political process.

The report, which focuses on jurisdictions subject to the preclearance provisions of the Voting Rights Act, found persistent and widespread problems in the areas of: registration, voting, fair representation, and candidacy.

Additionally, the Commission found that jurisdictions frequently did not comply with the preclearance provisions of the act.

The Commission's report, which was originally scheduled for release in early 1982, was completed on an expedited schedule, to enable the Commission to provide information useful for congressional deliberation in 1981. In conducting a comprehensive survey of voting practices and procedures in the States subject either to the preclearance provision or to the minority language provisions of the Voting Rights Act, Commission staff have interviewed election officials and other interested parties.

Before the Commission can release the full text of its report, or otherwise identify individuals or jurisdictions named in the report, it must provide them the opportunity to reply, as our statute requires. These replies will be included in the appendix of the report.

Since the expedited schedule has not as yet afforded sufficient time for the completion of this process, my review of findings based on data collected by the Commission will omit the names of individuals and of jurisdictions. Testimony based on public information, however, will identify specific jurisdictions. The Commission will be ready to release the full report—the full text of its report no later than following your August recess.

Although the Voting Rights Act prohibits State and local officials, as well as private citizens, from intimidating minority registrants and voters, intimidation and harassment of minorities still persist in jurisdictions subject to preclearance.

Some minority citizens stated that some registrars often ask detailed questions about their employment and housing status.

In 1980, a black 25-year-old female attorney attempted to register in a jurisdiction in Virginia. She reported the attitude of the white person who registered her was "nasty," and that the "atmosphere was uncomfortable." The respondent also noted that after asking about her occupation, the registrar then wanted to know the name

of her employer. The Virginia registration form does not contain any specific question on the name of an employer.

The registrant said this kind of questioning could easily deter some blacks from registering, because:

> They are scared of whites asking them questions. They, especially some of the older population, still remember the way things used to be to register, and having to go through a lot of questions reminds them of those times.

In a Mississippi jurisdiction, the white city clerk who was the registrar for city elections described the registration process as being simple and quick. According to her, registration is an informal procedure whereby the registrant give his or her name, address, and employment. According to Mississippi law, every person entitled to be registered shall sign his or her name in the registration book, and thereupon be registered.

The black county tax assessor explained that the registration of a white may be a simple process, but that the registration of blacks may take up to an hour to complete.

According to the tax assessor, the questioning of black applicants by the registrar is intimidating. The registrar asks blacks unrequired questions, such as: "Do you own the house you're staying in?" and "Does your employer know you're here registering?"

Once, he observed the clerk asking an elderly black woman such questions. The woman became so nervous that she could not answer any of the questions. Questions about an individual's employment can be more intimidating to older black persons because, according to the respondent:

> To an older black, this type of questioning is fearful. The fear is that the white employer will find out. For the older black, it's a scare tactic. The older black person also feels that the employer knows who he or she is going to vote for.

Given the economically dependent position of minorities, and the history of discrimination and economic retaliation against them, questions about their employment status can discourage them from participating further in the political process.

Minority respondents in the Commission's survey have also stated that election officials remain openly hostile to them when they attempt to vote. For example, the officials challenge their eligibility to vote, when they do not challenge whites in similar circumstances.

In one jurisdiction in Georgia, hostile whites with guns visible reportedly congregated around the polling place and heckled black people who were attempting to enter the polls to vote, making them fearful for their physical safety.

In another jurisdiction in Texas, a Mexican American candidate reported that Mexican Americans were afraid to vote because of potential economic reprisal. He said that people are just too scared. I don't blame them. If they vote for someone that their boss doesn't want them to, and he finds out, they will lose their jobs.

An Hispanic election worker in that jurisdiction said: "The attitude among election personnel toward Mexican American voters is bad." She reiterated, "They treat them bad."

In another jurisdiction in Texas, an official said that some white election judges.

Make things more difficult for the Hispanics voting, so that they are not comfortable at the polls. The negative attitude of election judges easily discourages people from voting.

According to a paralegal in that country: "Mexican Americans want more Mexican American election judges. They do not feel at ease at the polls."

A county commissioner reported that there have been complaints that "election judges are being sarcastic" to Mexican American voters, and have "tried to discourage them from voting."

Minorities seeking to run for office also face intimidation and harassment, sometimes even before they have actually declared their candidacy.

After one potential candidate indicated to several people, both black and white, in a Georgia community his interest in running for sheriff, shots were fired into his home, wounding one of his daughters. Two whites were arrested in the incident. Not surprisingly, the man subsequently decided not to run for sheriff.

In another instance, a cross was burned on the lawn of a minority candidate for the South Carolina State Legislature.

Still other minority candidates in North Carolina and Mississippi have received threatening telephone calls and, in some cases, reported that they have armed themselves or, alternatively, have taken steps never to travel alone.

Due to the expedited schedule under which the Commission completed its 1981 investigation of the impact of the Voting Rights Act, we did not study the Department of Justice's enforcement of the act's preclearance provisions. However, data from the Department of Justice, from the Southern Regional Council, and from court cases indicate the need for systematic and rigorous enforcement of the preclearance provisions.

In 1980, the Department of Justice sent 124 letters requesting submissions to jurisdictions subject to preclearance, where it was believed that changes had been made in violation of section 5. Of these, 79 jurisdictions responded with 78 changes that had taken place without preclearance.

The Southern Regional Council in Atlanta, Ga., a representative of which I understand will be testifying here today, has collected preliminary data on nonsubmissions by covered jurisdictions in South Carolina, Georgia, Alabama, and Louisiana.

In March 1981, the council estimated that since passage of the Voting Rights Act, over 500 changes had been made in jurisdictions in those States, without submitting them for preclearance.

These data provide additional evidence on the extent of noncompliance with section 5 preclearance procedures, despite the fact that the Voting Rights Act has been in existence for 16 years.

The Department of Justice also has been involved in litigation against jurisdictions that implemented changes over its objections. Information provided by the Department indicates that as of December 1980, it has been involved in 47 cases since 1975, involving noncompliance with an objection interposed by the Attorney General, under section 5. The Department of Justice was the plaintiff in 28 of these cases.

In many of these instances when the Department of Justice or a private organization have discovered that a jurisdiction failed to

preclear a change in voting practices or procedures the Department has objected to the change after it was submitted because the jurisdiction could not prove lack of discriminatory purpose or effect.

The change that was not precleared could have had a discriminatory purpose or effect on the voting rights of minorities in the jurisdiction. For example, in *McKenzie* v. *Giles*, the failure of Dooly County, Ga., to preclear a change from a single-member district election system, which increases the likelihood of electing minority candidates to office, to an at-large election system, which decreases the likelihood of electing minority candidates to office, had a discriminatory effect on the voting rights of minority citizens in the county.

In that case, the Southern Regional Office of the American Civil Liberties Union challenged the at-large election system for electing members to the Dooly County Board of Commissioners on grounds that the at-large system had not been precleared under section 5. In fact, Dooly County's method of electing county commissioners on an at-large basis was implemented in 1967 in violation of the Voting Rights Act. Prior to these changes members of the county commission had been elected from single-member districts.

After the ACLU filed suit against Dooly County, alleging noncompliance with the Voting Rights Act, the county submitted its at-large election system for county commissioners to the Department of Justice, some 13 years after the election system had been implemented.

In July 1980 the Department of Justice objected to the change in the method of electing county commissioners. In a consent decree entered the same month the court in the *McKenzie* case directed that the board of commissioners be elected from three single-member districts, including one majority-black district.

Section 5 is a strong remedy to deal with the deeply entrenched problem of discrimination in voting. The problem of discrimination will remain, however, as long as the remedy is not used. Failure to comply with the law means that minorities in jurisdictions subject to preclearance will continue to be denied their full voting rights.

The issue before this committee and the Congress is not only that there is a continuing need for the Voting Rights Act, but also that the enforcement of the preclearance provisions needs to be strengthened.

The Commission believes that provision should be made for the assessment of civil penalties and damages against State and local officials who fail to comply with preclearance provisions and that the act should place an affirmative responsibility on the Attorney General of the United States to develop an effective enforcement program.

The Commission believes that the special provisions of the Voting Rights Act should be extended for yet another reason; that is, many voting practices and procedures used in jurisdictions subject to preclearance continue to have a discriminatory effect on minority political participation.

Earlier in my discussion of progress achieved as a result of the Voting Rights Act I noted increasing minority registration rates.

Nevertheless, black registration rates continue to lag behind those of whites.

In its November 1976 survey of reported registration the Bureau of the Census found few jurisdictions covered by the preclearance provisions of the Voting Rights Act in which the reported registration rates of minorities approached those of whites. In North Carolina and South Carolina the gap between white and black registration rates has increased since 1974. In Louisiana, the rate has remained constant over this period.

Two reasons why the registration rates of blacks are low compared to those of white are that (1) Blacks continue to have relatively less access to the registration process; and (2) registration officials have resisted taking steps that would increase their opportunities to register.

In some of the jurisdictions studied by the Commission, registrars have refused to use mechanisms that could ease the registration process for minority registrants who are low-income or who live in rural areas.

Despite State laws permitting the appointment of deputy registrars or permitting alternative registration times and places, registrars often refuse to implement these measures on behalf of minority citizens. This has been true even when minority organizations have volunteered to help facilitate the process with community registration drives.

Even under court pressure some jurisdictions have moved so slowly that the positive impact of changes in registration procedures has been minimal. For example, the U.S. Court of Appeals for the Fifth Circuit found in *Lodge* v. *Buxton* that Burke County, Ga., a jurisdiction subject to preclearance, had been unresponsive to the needs of the black community. One example of this lack of responsiveness was the county's resistance to making registration more accessible to the black community.

Another jurisdiction in Georgia was similarly reluctant to adopt measures to facilitate minority registration. After intense pressure from the black community, however, black deputy registrars were subsequently appointed. The duties of these new registrars, however, did not involve registering voters. Instead, they were only allowed to transport potential registrants to the courthouse. Moreover, these deputy registrars were appointed only one week before the end of the registration period for the local primary. It is clear that without affirmative efforts on the part of registrars and election officials throughout many of these jurisdictions, minorities will not have equal access to registration and minority registration rates therefore will continue to languish.

Earlier in my discussion of progress under the Voting Rights Act I noted that the number of minority elected officials has increased in jurisdictions subject to preclearance. These increases do not necessarily indicate that minorities are achieving fair representation, however. Moreover, most minority elected officials are concentrated in local, part-time positions which rarely provide them with the resources or power necessary to affect policy. In this respect, the increased number of minority elected officials cannot be said to be a significant increase in minority political access.

The Commission found that numerous barriers continue to limit the opportunities of minorities to be elected in many jurisdictions. In some jurisdictions subject to preclearance election systems and voting rules are used which have a severely discriminatory impact upon minorities. For example, when members of governing bodies are elected at large rather than from single-member districts the opportunities for minorities to gain elective office can be severely circumscribed.

The negative effect of at-large election systems can be seen in jurisdictions that have changed their election systems to ones that provide more opportunities for minority representation. In the period 1970 to 1978, 29 jurisdictions in Texas changed from at-large election systems to single-member districts or mixed plans. Immediately prior to these changes the 29 systems elected 9 blacks and 8 Hispanics to office. Immediately after the respective changes, 26 blacks and 24 Hispanics were elected.

In Louisiana during the same period 12 jurisdictions changed to single-member districts or mixed plans. Before these changes there were three black elected officials in these jurisdictions. After these changes there were 24.

In one jurisdiction in Alabama the at-large election system for electing members to the city commission coupled with majority vote and staggered term requirements reportedly have a discriminatory effect on minority voting strength. The city commission in this jurisdiction is composed of three members who are elected at large. One of the commissioners also serves as mayor.

Despite the fact that the jurisdiction at one time had a near majority black population and in 1980 was 33 percent black, no black has ever been elected to the city commission. Between 1969 and 1978, four black candidates ran for places on the commission. All were defeated. Currently all three members of the city commission live in the predominantly white north side of the city.

The lack of opportunities for black candidates to gain election to the city commission is related to the interaction of the city's election system with the high degree of racial bloc voting. At-large elections, the majority vote rule, and staggered terms make it impossible for black candidates to be elected without white votes. However, no black candidate has ever won a single voting box precinct in the white community. The one black candidate who reached a runoff failed to attract the votes that had gone to white candidates defeated in the primary election.

The Commission found that redrawing the boundaries of election districts or changing actual boundaries of the jurisdiction can also have a discriminatory effect upon the opportunities of minorities to be elected. In the context of racial bloc voting, redrawing district boundaries in such a way that minority voters are a clear numerical minority, or changing the boundaries of a city or town to decrease the proportion of minority voters can insure defeat for minority candidates.

Discriminatory boundary changes will be of special concern in the 1980's. After the 1980 census population figures are completely released, States, counties, and municipalities again will be determining whether district lines will have to be redrawn. Of primary importance to minorities will be whether redistricting plans lessen

minority voting strength and whether they discriminate against minorities in purpose or effect.

Voting practices and procedures that may discriminate against minorities in purpose or effect, such as purging and reregistration, polling place location, at-large election systems, and statutes on assistance to illiterate voters are widespread. In numerous instances the section 5 preclearance process prevented implemention of these voting practices and procedures. Three examples illustrate the impact of section 5.

In one instance the section 5 preclearance process prevented implementation of a Mississippi law on assistance to illiterates that would have had a negative effect on the ability of illiterate voters to be helped by an individual of their choice. In 1975 the illiteracy rates for blacks and whites in Mississippi were 18.8 percent and 3.1 percent respectively.

Prior to the new law, Mississipppi's statute on assistance to illiterates provided that illiterate voters could receive assistance from the person of their choice, whether or not that person was a registered voter in the same precinct. One individual could assist any number of voters and no other person was permitted or required to be present when assistance was given. The new law required that the person giving assistance be a registered voter of the same precinct as the person receiving assistance, that one person could assist no more than five others, and that the poll manager must be present while assistance was given.

In May 1979 the new law was submitted to the Department of Justice for preclearance under section 5. In July 1979 the Attorney General was unable to conclude that the proposed system of assistance 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.

The Department also noted that it is common for more than five black voters to receive assistance from the same person and that there is no need for the person giving assistance to reside in the same precinct as the voters receiving the assistance. The Department of Justice further noted that the vast majority of voters who have requested voting assistance in Mississippi are black and their voting rights would be adversely affected by the provisions of the new law.

Another reported voting problem which the section 5 preclearance provision has helped to prevent is the location of polling places in areas that are at other times off limits to miorities. For example, in buildings which are regarded by minorities as symbols of exclusion. In such circumstances minority voters report that they feel intimidated and are often reluctant to vote in the building. In other instances a polling place is changed to a location that is inconvenient to minorities.

The preclearance process also has prevented gerrymandering of district lines, another voting practice that discriminates against minorities in purpose or in effect.

Included in my statement is a specific illustration of that point.

It is clear that a variety of barriers continues to undercut the opportunities of minorities to be elected to office. However, section 5 of the Voting Rights Act has been effective in preventing the implementation of voting practices or procedures that have a dis-

criminatory purpose or effect in jurisdictions covered by the preclearance provisions.

The Commission strongly recommends the extension of the special provisions of the Voting Rights Act for an additional 10 years. The continuing efforts by many of these jurisdictions to implement voting practices or procedures, regardless of their negative effects on their minority populations, makes such an extension an absolute necessity if the voting rights of minorities are to be protected.

In other jurisdictions similarly discriminatory practices, such as the use of election systems and voting rules that dilute minority voting strength, were in place prior to the effective date that the jurisdictions were covered under the special provisions of the Voting Rights Act. In such instances minorities have brought suits seeking to prove that jurisdictions have diluted their voting strength in violation of the 14th and 15th amendments, or section 2 of the Voting Rights Act.

Unconstitutional dilution has been made more difficult to prove as a result of a recent Supreme Court of the U.S. decision, *City of Mobile* v. *Bolden*. I discuss that in my statement. I will not include it in my oral testimony at this point.

I would now like to discuss the continuing need for the minority language provisions of the Voting Rights Act. Before discussing the Commission's findings and recommendations with respect to these provisions I would like to note that Commissioner Stephen Horn dissents from this part of our report.

The background for that legislation I will skip.

In many jurisdictions the minority language provisions have been interpreted in the most narrow fashion, in conflict with Department of Justice guidelines for local compliance.

To begin with, jurisdictions often do not have registration outreach or voter education programs aimed at the language minority community. Despite the fact that the actual registration form may be in the applicable language, many minorities remain unaware of registration times and locations or are intimidated by a registration process that does not include oral assistance in the applicable language.

The Commission found that on election day the availability of a ballot in the applicable language is often not accompanied by effective oral assistance in that language.

Such assistance is a necessity to aid illiterates and also to create a nonintimidating and supportive atmosphere for other minority language voters.

Native American respondents in Oklahoma and Hispanic respondents in California and Colorado complained that at some polling places with significant numbers of minority language voters there was no oral assistance available in the applicable language. In some cases where this assistance was available, minority language voters did not vote because they were unaware of its availability and were reportedly embarrassed about voting without full command of the English language.

Current Department of Justice guidelines provide only that—

Materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities.

The Commission believes that lack of specific criteria has resulted in inadequate oral assistance to minority language voters. It has also resulted in the failure of local jurisdictions to develop programs that will reach minority language communities. So that covered jurisdictions may provide minority language assistance more thoroughly and efficiently, the Commission recommends that the Department of Justice develop criteria specifying what constitutes the effect of minority language assistance.

The Commission also found that for the majority of jurisdictions required to provide assistance to language minorities, there were minimal efforts by the appropriate U.S. attorney to insure compliance. Commission staff interviewed the eight U.S. attorneys that were responsible for the largest number of different types of minority language groups in the covered jurisdictions in their regions. None had any compliance procedures, and only three had implemented any type of enforcement activity to help assure compliance with the minority language provisions in their regions.

In general, the U.S. attorneys considered that it was not their role to seek out problems but to wait for submission of specific complaints. The Commission believes that effective enforcement of the minority language provisions would be enhanced if representatives of the U.S. attorneys were required to monitor regularly compliance with the provisions in every section 203 jurisdiction in their districts.

It is clear that members of minority language groups continue to face numerous barriers to full participation in the political process that stem from the refusal of local jurisdictions to comply fully with the Voting Rights Act. The provision of registration forms and ballots in the applicable language is only a small step in facilitating this participation.

Without registration outreach and voter education in the language minority community and oral assistance throughout the election process in the applicable language, increased numbers of language minorities will not register and vote. Additionally, without adequate monitoring by U.S. attorneys, jurisdictions covered under these provisions may not fully understand their responsibilities and also may lack key incentives to comply.

The minority language provisions are not due to be considered for extension until 1985. At this time, however, the Commission recommends that they be extended for 7 years. This extension would make the expiration date of all of the act's special provisions uniform. It would also provide more time to jurisdictions that have not yet fully implemented these provisions so that they can adequately plan and implement assistance to language minority citizens as intended by Congress.

The Voting Rights Act and its amendments constitute a major effort to fulfill the most basic right in our Nation. The act has certainly been an effective vehicle in guaranteeing that right; unfortuately, however, its goals have not yet been fulfilled. To continue the protections provided to minorities in jurisdictions subject to preclearance the Commission makes these recommendations:

One, that the special provisions of the Voting Rights Act being considered in 1982 be extended through 1992, an additional 10 years; and that those jurisdictions made subject to preclearance by

the 1975 amendments to the act be covered until 1992 as well, an additional 7 years;

Two, that the minority language provisions of the Voting Rights Act be extended through 1992, an additional 7 years;

Three, that section 2 of the Voting Rights Act be amended to prohibit all States or political subdivisions from maintaining or establishing voting practices or procedures that have the effect of discriminating on the basis of race, color, or inclusion in a minority language group;

Four, that Congress should amend the Voting Rights Act to provide for civil penalties or damages against State and local officials who fail to comply with the preclearance provisions of the act;

Five, that the Voting Rights Act be amended by adding a section which places an affirmative responsibility on the Attorney General to enforce more vigorously compliance with the preclearance provision of section 5;

Six, that the Department of Justice amend its guidelines on implementation of the minority language provision to include specific criteria for determining effective minority language assistance; and

Seven, that the Attorney General provide for effective enforcement of the minority language provision in jurisdictions subject to section 203 of the Voting Rights Act by requiring U.S. attorneys to monitor regular compliance with the provision in every section 203 jurisdiction in their district.

Mr. Chairman and members of the committee, I hope that we have been able to convey to you today that a lengthy journey lies ahead. Clearly, 17 years of remedial effort has not been enough in view of the continued persistent opposition to full voting rights for minority Americans. We belive that failure to pursue the goals of full and equal political rights for all of our citizens by not renewing and strengthening the Voting Rights Act would not only constitute abandonment of that journey, but it would also represent a signal to minority citizens that we no longer care.

Thank you very much.

Mr. EDWARDS. Thank you very much, Dr. Flemming. That indeed is a remarkable statement, and we appreciate the fact that you have suggested some strengthening amendments.

The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. I have no questions, other than to compliment the chairman and look forward to a full report of the Commission.

Mr. FLEMMING. Mr. Chairman, I might say—Congressman Hyde, the statement itself is longer than we would normally have made it, by reason of the fact that there will be some delay in the full text of the report. But as soon as we have complied with our statutory requirement on that, it will be made available.

Mr. HYDE. The sooner the better, because we're dealing with this right now.

Mr. FLEMMING. We're working on it with a sense of urgency, I can assure you.

Mr. EDWARDS. Dr. Flemming, in the letter that the President wrote the Attorney General yesterday, we were all pleased that he made a point of emphasizing his commitment to full equality for

all Americans regardless of race, color, or national origin. He did point out, however, that he is sensitive to the controversy which has attached itself to some of the act's provisions, in particular, those provisions which impose burdens unequally upon different parts of the country.

How do we respond to that controversy?

Mr. FLEMMING. Mr. Chairman, as you undoubtedly noted, the thrust of a good deal of my testimony was directed to that particular issue. First of all, you probably noted that our study was limited, by and large, to the jurisdictions that are covered by the special provisions of the Voting Rights Act. And the conclusions that we have reached are based on the evidence that was brought together from those jurisdictions.

On the basis of that evidence, there is no question in our minds but that as far as those jurisdictions are concerned, the Voting Rights Act should remain in effect, including, of course, the section 5 preclearance procedures.

It is not an unfair burden that has been placed on those jurisdictions; the requirement grows out of the discriminatory practices that prevailed in those jurisdictions which had the effect of bringing them in under the special provisions of the act. And those discriminatory practices still continue, calling for the preclearance procedure. So I don't think that the Congress has acted unfairly at all.

The Congress, in passing the Voting Rights Act, recognized that there might be other jurisdictions that from time to time would likewise engage in discriminatory practices in the area of voting, and established a procedure under which a citizen or the Attorney General can put the relevant facts before a court and request appropriate action which would have the effect of subjecting the additional jurisdiction to a preclearance procedure. I refer to section 3(c) of the Voting Rights Act.

I think that Congress has made provision for equitable treatment of the various jurisdictions.

Mr. EDWARDS. Did the investigation of the Commission produce any evidence that some of the jurisdictions covered by section 5 have so improved in attitude and in practice that they should be eliminated from coverage?

Mr. FLEMMING. Our investigation did not lead us to that conclusion. We did not study a particular jurisdiction, for example, that alleged that it had reached the place where it should no longer be subject to the special provisions of the Voting Rights Act.

But as a result of our field work, we did not identify any jurisdiction which we believe should be released from the provisions of section 5 of that act.

Mr. EDWARDS. The last question I have is that in our hearings, especially outside of this area, there was quite a lot of testimony about a very distressing phenomenon which is racial bloc voting, especially in the South, where the white voters just won't vote for a black candidate and to a certain extent vice versa.

Now, that is a rather regional phenomenon, because it doesn't necessarily take place in other parts of the country. I think in Massachusetts—in California, we have statewide officials from time to time who are black or Mexican-American, and I think in your

State also, Mr. Hyde, and certainly in Massachusetts and others. Los Angeles has a black mayor, and yet the population is immensely more white than black.

What are your observations on that? Why is this something that unfortunately takes place chiefly in the southern part of our country?

Mr. FLEMMING. I introduced at the beginning of my presentation Ms. Crivens, who in my judgment has done a superb job in providing leadership for this nationwide study, and in bringing together all of the evidence.

I would like to ask her if she would like to comment on your question growing out of her experiences in the field.

Ms. CRIVENS. Congressman Edwards, we did find, in juridictions the staff visited in the South, there were continuing problems of racial bloc voting. Although in many instances blacks may vote for whites, whites still are reluctant to vote for blacks. And this has prevented many minorities in jursidictions subject to preclearance from being elected to office.

Mr. EDWARDS. Thank you.

Mr. Hyde.

Mr. HYDE. Thank you.

I just want to clarify one point the chairman brought up. Is it your testimony, Dr. Fleming, that there are no jurisdictions in the old Confederacy who have lived up to the act, both letter and spirit, over the past years, which would entitle them to exempt themselves to bail out? I didn't think that was your testimony, was it?

Mr. FLEMMING. My testimony was that the evidence that we brought together in connection with our study did not identify a jurisdiction that might be described in the manner in which you have just described a jurisdiction. I don't think that one should reach a conclusion of that kind just on the basis of general observation and so on.

I think, before such a conclusion is reached there should be an opportunity for the presentation of evidence and the opportunity for rebuttal.

Mr. HYDE. Sure, when the question was asked, if you didn't find any, that's kind of meaningless, isn't it? Because we'd have to know how many you looked at, how many there are, how deeply you looked, whether you were looking for this, and all of that.

You know, I learned that judgment calls are important in this area, too.

The question of annexations—I can certainly understand where a city with an eroding tax base, with a deteriorating tax base, with a sewer system that's ancient and inadequate, may look with a gleam in its municipal eye on annexing some suburban territory to broaden the tax base, provide some revenues to upgrade necessary, indispensable services in the city, but in so doing it dilutes the minority vote that is enhanced by not annexing territories which don't have a large white population.

Don't you think it's fair to take into consideration—this is really a hypothetical question—all factors that justify or animate a proposed annexation, rather than just the proposition that in so doing you are diluting the minority voter strength.

Mr. FLEMMING. Well, I think, where you are confronted with a situation of that kind, you have got to consider all of the various alternatives that were available to the juridiction.

In the urban area situation to which you referred, it seems to me they could still handle it in such a manner as to provide opportunities for minorities to serve in public office and participate in a very meaningful and significant way in the expanded jurisdiction.

Consider, for example, the question of how the legislative body of that expanded jurisdiction is going to be elected, whether it's going to be elected in such a way as to insure blocking out the minority voters from representation on that legislative body, or whether they are going to set it up in such a way as to make reasonably sure that minorities are going to have a genuine opportunity to participate in that expanded——

Mr. HYDE. I'm just suggesting that there may be other considerations that are imperative which impact negatively on the overarching goal that we all agree that people in covered jurisdictions should not have their racial group's vote diluted. But I'm just suggesting, having once represented a municipality, that other considerations ought to be taken into consideration, depending on their actuality, their relevance and, as you suggest, if there's not another way to do it.

Adding to the tax base of these central cities which are in trouble by annexing other nearby communities ought not to be forbidden simply a priori because it's going to dilute Hispanic or black or other minority votes. It doesn't mean it's right, but it doesn't mean it's wrong either. We have to look at it in the totality of the situation.

Is that fair?

Mr. FLEMMING. Congressman Hyde, I do appreciate that that kind of a basic issue is raised a good many times.

Personally, I have come to the place where I believe the so-called pratical consideration should never be permitted to operate as roadblocks that stand in the way of an effective implementation of the basic civil rights of the citizens of the country.

Mr. HYDE. And you understand it to be a civil right to have a racial group's vote not diluted by an annexation which may also save the city, albeit temporarily, from economic disaster. That's first and foremost. And you rule out any annexation if it dilutes the minority voting. Is that what you're saying?

Mr. FLEMMING. As you say, we're dealing with a hypothetical case. And it's always dangerous, as you appreciate, to go too far in discussing hypothetical situations.

Mr. HYDE. But a sense of willing to be fair, with all of the problems cities have and officials have, I think is essential to evaluating the worth of testimony on this issue, because they have some awful problems. And if you're unwilling to give a half an inch, you know, then their problems are worse than I thought.

Mr. FLEMMING. I would still go back to my basic principle. I have the feeling that you can always apply that principle—in other words, give the top priority to civil rights when you are confronted with an actual situation if you work at it.

Back in 1933 I was a reporter in this city, and I covered the White House for what is now U.S. News & World Report. I used to

listen to the then President of the United States deal with what he called "iffy" questions; he wouldn't deal with them. He just said to reporters, "I am not going to deal with a hypothetical question. I have enough problems dealing with the real situation."

I've often thought about that in the years that I've been in public office. And I think one's position can be misunderstood, in discussing a hypothetical situation, because you don't have the benefit of all of the facts that one would have in front of him in connection with a real situation.

But I really want to go back to this basic position: the longer I work in the field of civil rights, the more convinced I am that civil rights objectives should not yield to what may appear to be, at a given point, pratical considerations.

Mr. HYDE. I just want you to know that I am not hypothecating for the mental exercise of it. There are real problems.

Mr. FLEMMING. I know it.

Mr. HYDE. These are real problems that happen to municipalities, and the poor city fathers sit down. And if they're going to be debarred from any economic aid other than Federal grants simply because an annexation will dilute a minority bloc's voting as a bloc; I just think we ought to understand that up in front.

But I grant you, I don't have a county in mind or a city in mind. I just have testimony in mind which we heard in Texas about that. But your point is clear. The voting rights must not be diluted, come hell or high water. And it may be hell for that city if that happens, in terms of police and fire and sewers and schools and everything else.

Mr. FLEMMING. My feeling is if they're not diluted, it won't be hell for that city; that will be all to the good as far as that city is concerned. The fact that that city has stood for the protection of civil rights and human rights in this particular instance will strengthen it.

Mr. EDWARDS. I think it's a very important question that my colleague from Illinois brought up, and it's one that I think we're going to have to address. Certainly cities are entitled to annex, entitled to redistrict, entitled to do everything a city is entitled to do.

But naturally we also, at the same time, don't want it to do great damage to the proportionate voting rights of anybody. You just can't do annexations for that purpose.

I think that as we move ahead that we will be able to put into the report to redefine—to define what we're talking about, because it is a very perplexing subject.

It must be clear to the city that it can annex and yet not violate rights.

Now, somehow or another we have to figure out——

Mr. HYDE. I think you and I are in perfect accord, Mr. Chairman. I would characterize any annexation that was designed to simply dilute the minority voting strengths as illegal, ab initio, as you lawyers say.

Mr. FLEMMING. I assumed that in your question.

Mr. HYDE. I think there are other considerations all of us ought to be thinking about, because there are other inhibitions to making a place a decent place to live, too.

Mr. FLEMMING. I certainly agree. It is a major issue because one can't travel over the country without being confronted with this kind of a development in one location after another.

Mr. EDWARDS. Ms. Davis.

Ms. DAVIS. Thank you, Mr. Chairman.

Ms. Crivens, I'd like to follow up on the question raised by Mr. Hyde and also the chairman regarding annexations or redistrictings.

In your review of the Department of Justice enforcement of section 5 and in your review of the litigation that has come under the Voting Rights Act or the Constitution, isn't it true that the Justice Department and the courts have not declared that the annexations cannot go forward, they have simply instructed the election officials to come back with a voting scheme which allows minorities to participate in the political process?

Ms. CRIVENS. That's exactly true. In fact, when a jurisdiction makes a submission to the Department of Justice, they can provide any supporting documentation for that particular change. And in providing that information, they can indicate their concerns and why they want to annex. And if the Department objects, it takes a lot of factors into consideration, one of which is the type of election system that a jurisdiction has, so that if a jurisdiction, for example, has an at-large election system and wishes to annex an area, if another type of election system would provide minorities an opportunity—a better opportunity to elect candidates of their choice and then the jurisdiction changes to that particular election system, then the annexation may be approved.

It's providing minorities a fair opportunity, at the same time taking into concern the needs of a particular jurisdiction.

Ms. DAVIS. Thank you.

Ms. Crivens, in your view or in your review of the implementation of the Voting Rights Act since 1975, do you feel that it's time to amend section 5, to limit the preclearance review to certain kinds of changes, such as redistrictings and annexations?

Ms. CRIVENS. It is my opinion that the section 5 preclearance provision should not be limited. There are many types of changes that can discriminate against minorities in purpose or effect. For example, placing polling locations in an area intimidating to minorities could deter minorities from registering to vote.

The section 5 preclearance process is used to prevent any type of practice that discriminates in purpose or effect, and limiting that process would be saying that you will deny minorities their voting rates in particular areas and not in others. It's a very important prevent to protect any type of infringement on minority political participation.

Ms. DAVIS. We have heard testimony, both here and in the field, that there are certain kinds of inconveniences to registration for minorities in the covered jurisdictions. I wonder, Ms. Crivens, if you might be able to tell us why those inconveniences, inconveniences such as limited hours or a location for registration, are discriminatory? Aren't they inconveniences for whites in those jurisdictions, as well?

Ms. CRIVENS. We found those practices were more inconvenient to minorities:

First, because some minorities are so intimidated by discourteous registrars or registering at places where the personnel is all white, that they are deterred from going to the registration location.

Second, a disproportionate of number rural or low-income persons are members of minority groups, which means they can least afford transportation to the registration location.

And given the history of voting discrimination against minorities in jurisdictions subject to preclearance, we feel that the boards of registrars should take more affirmative efforts to increase minority legislation.

Ms. DAVIS. Dr. Flemming, the duration of the special provisions was given 5 years in 1965, 5 years in 1970, and 7 and 10 years in 1975. I'd like to know why the Commission is now advocating a 10-year extension?

Mr. FLEMMING. We appreciate the fact that this is a matter of subjective judgment, to some extent. But our best judgment is that these issues are going to be with us over a span of 10 years. And we feel the Congress would be wise to extend the special provisions that for at least 10 years.

Ms. DAVIS. I wonder, Dr. Flemming—and this will be my final question—if you have any views on amending the bailout provision? Do you have any recommendations for how the bailout provision may be changed to allow for jurisdictions which no longer discriminate, let's say, to get out from coverage of the act?

Mr. FLEMMING. As a Commission, we have not given consideration to the possibility of an amendment to that particular provision of the act. I recognize the fact that there has been some discussion on that. I recognize that this is a very relevant issue in the consideration of the extension of the act. And the Commission would be very glad to react to any specific proposals that are made along this line and provide the members of the committee with our own views as to the standards that should be kept in mind in dealing with the bailout provisions.

We have not, as a group, done that up to the present time, but we would be very happy to do it if the committee would like to have us do it.

Ms. DAVIS. Thank you.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Dr. Flemming, you indicate in your statement that Commissioner Horn dissented from your support for an extension to the language—minority provision. Was he asked to accompany you here today?

Mr. FLEMMING. No. But I have his very brief statement if you are interested in his views. His views will be made a part of the report; that's our practice. But we can make a copy of it available right now.

Mr. BOYD. Could you summarize it for us?

Mr. FLEMMING. I'll read it.

Mr. BOYD. Mr. Chairman, I think it would be sufficient to take it for the record.

Mr. FLEMMING. It's very brief. I prefer to read it than attempt to summarize it.

Mr. HYDE. Would you read it in both Spanish and English to us? [Laughter.]

Mr. FLEMMING. Commissioner Horn states:

I do not concur with the arguments made by the Commission staff and my colleagues in chapter 7, which is that minority language provisions of the Voting Rights Act; nor do I concur with the recommendations. He refers to the number of the recommendations.

To argue that the provision of "equal protection of the laws," includes voting rights assistance in the language of some minority group members and not others is to pervert the meaning of a Constitution which was designed to protect the individual. Equal protection is not a matter of group protection. It is a matter of individual protection.

The 1970 national census recorded 96 mother tongues where languages other than English were the primary languages in the households in which many of our fellow citizens were raised. The 1980 census coded 387 non-English language possibilities, 180 of which were spoken by various tribes and groups of American Indians.

As we can readily see, to continue to aid with specialized electoral services those who are in a few but not most minority language groups, is in itself discriminatory. To provide governmental assistance to aid one or even a handful of speakers of any of these possible 387 languages is also absurd.

To assure equal protection of the law there is one solution which is dictated by commonsense.

If one wishes to cast a ballot in the United States of America, one should learn as much English as is necessary to fulfill that limited but fundamental aspect of citizenship.

Such a national policy would not stop a friend or relative who speaks the language from writing out instruction or from marking a sample ballot for the individual who needs assistance. Such a national policy would not stop community-based ethnic groups from rendering assistance to those less familiar with English than others. Such groups have been readily available for each immigrant wave.

What such a policy would stop is the illusion that for every language group in the Nation a Government agent must be employed or some sort of Government assistance must be made available, to aid all members who understand English less well than their native language.

Presumably naturalized citizens had to learn some English in order to receive citizenship. Before this Nation goes the way of Quebec or engages in the bitter language-based quarrels of some of the fragmented states of India, I recommend that we call a halt to what many of us have long recognized as a misguided experiment. I thus urge Congress not to extend the minority language provisions of the Voting Right Act.

Mr. HYDE. May we have copies of that?

Mr. FLEMMING. Yes, certainly.

[The complete statement follows:]

STATEMENT OF COMMISSIONER STEPHEN HORN ON THE MINORITY LANGUAGE PROVISIONS OF THE VOTING RIGHTS ACT

I do not concur with the arguments made by the commission staff and my colleagues in Chapter 7, "The Minority Language Provisions of the Voting Rights Act." Nor do I concur with Recommendations 1, 2, 4 and 5 in Chapter 8 as they pertain to the extension and implementation of that portion of the Act.

To argue that the provision of "Equal protection of the laws" includes voting rights assistance in the language of some minority group members and not others is to pervert the meaning of a Constitution which was designed to protect the individual. Equal protection is not a matter of group protection, it is a matter of individual protection. The 1970 national census recorded 96 mother tongues where languages other than English were the primary language in the households in which many of our fellow citizens were raised. The 1980 census coded 387 non-English language possibilities, 180 of which were spoken by various tribes and groups of American Indians. As we can readily see, to continue to aid with specialized electoral services those who are in a few but not most minority-language groups is itself discriminatory. To provide governmental assistance to aid one or even a handful of speakers of any of these possible 387 languages is also absurd. To assure equal protection of the laws, there is one solution which is dictated by common sense: "If one wishes to cast a ballot in the United States of America, one should learn as much English as is

necessary to fulfill that limited, but fundamental, aspect of citizenship." Such a national policy would not stop a friend or relative who speaks the primary language of the citizen from writing out instructions or from marking a sample ballot for the individual who needs assistance. Such a national policy would not stop community-based ethnic groups from rendering assistance to those less familiar with English than others. Such groups have been readily available for each immigrant wave. What such a policy would stop is the illusion that for every language group in the nation a government agent must be employed or some form of government assistance must be made available to aid all members who understand English less well than their native language.

Presumably, naturalized citizens had to learn some English in order to receive citizenship. Before this nation goes the way of Quebec or engages in the bitter language-based quarrels of some of the fragmented states of India, I recommend that we call a halt to what many of us have long recognized as a misguided experiment. I thus urge Congress not to extend the Minority Language Provisions of the Voting Rights Act.

Mr. BOYD. Thank you, Dr. Flemming. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much. Dr. Flemming, Mr. Nunez, Ms. Crivens, and Mr. Alexander.

Mr. FLEMMING. We appreciate this opportunity.

Mr. EDWARDS. There will be a vote in about 15 minutes on the House floor. We will recess until after that time, at which moment we will hear Raymond H. Brown, director of the voting rights research project, Southern Regional Council.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

We now are privileged to hear our next witness. Mr. Raymond H. Brown, director of the voting rights research project, Southern Regional Council.

Mr. Brown, we welcome you. Without objection your full statement will be made a part of the record and you may proceed as you please.

[The complete statement follows:]

STATEMENT OF RAYMOND BROWN, SOUTHERN REGIONAL COUNCIL

Mr. Chairman, my name is Raymond Brown, I am Director of a Special Project of the Southern Regional Council that is examining voting rights in the South. I am pleased to accept your invitation on behalf of the Southern Regional Council to share the information and analysis of our own studies on how the Voting Rights Act has helped the South reach the goals of full democracy and equal rights in voting.

Some members of this Subcommittee know, the Southern Regional Council has worked for more than 37 years to research and to undertake technical analysis to promote equal opportunity among all people in the South. In the very first year of our existence, the Council carried out a study of the remaining vestiges of the white primary system and since 1944 has had abiding concern for the enfranchisement of the poor, blacks, and other racial minorities in the South. During the 1950's, the Council gathered and reported information concerning voter registration; in the early 1960's it commenced the Voter Education Project in order to test the most effective means by which blacks could have the equal right to vote for their own political empowerment and for the sake of democracy for all in the region. In recent years, the Council has continued its active concern for the franchise and the project which I direct at the Council is designed to gauge the remaining barriers that prohibit the fulfillment of the right to vote by all citizens in the region. Today, I appear before you on behalf of the Council's Executive Director, Steve Suitts, and it's President, Alabama State Representative Tony Harrison.

Since the commencement of these hearings more than a month ago, this subcommittee has received a wealth of testimony from community leaders, political candidates, public officials, and academicians who portrayed a vast range of local and statewide problems of discrimination in voting. From the lowlands of Virginia to the weather-baked soil of south Texas, witnesses have provided a wealth of information about the persistence of white resistence in local court houses and state houses to

equal rights in voting, in addition to the continued and widespread use of new and old methods of effective disfranchisement.

In light of this record already before the subcommittee, I want to share with you those portions of our own studies which are designed to test the effect which this catalogue of incidences has had throughout the Deep South upon both the right to register and vote and upon the right to have one's vote count. On the basis of data from four Deep South states—North Carolina, South Carolina, Georgia and Louisiana—where reliable information has been gathered to date, we have searched to answer the questions of how well established has the right to register and vote become in most communities in the South and what is the state of democratic government in light of remaining barriers and past accomplishments.

Since the end of the white primary system in the South, the most basic indication of the fulfillment of the right to register and vote has been the analysis of registration by race. Once the Supreme Court had dismantled the legal mechanisms by which blacks were excluded from the electoral process, white resistence intensified at the courthouses where blacks could register to vote. As the venerable V.O. Key, Jr., said in his panoramic work Southern Politics, each local registration officer became a law unto himself in determining the citizen's right to vote, and the machinery of registration in the hands of resisting white officials became the most evasive and effective method of denying the franchise. Of course, the 1965 Voting Rights Act recognized this basic problem and provided for the appointment of federal registrars and a preclearance of voting changes in order to overcome the local, rooted efforts of resistence.

After 15 years, the mechanics of the Voting Rights Act have improved the status of the right to vote for blacks, and the percentages of registered blacks have increased dramatically since 1965. For example, since 1962 the number of black registered voters has almost tripled in the 11 Southern States.

From available information, however, the Council analysis suggests that it would be a tragic mistake for this committee to assume that the right to register and vote has been accomplished in most areas of the South. Our analysis suggests that resistence continues to be widespread. Among 182 counties and parishes with more than 20 percent black population in North Carolina, South Carolina, Georgia, and Louisiana, the Council found only four counties where the rate of registered blacks among the black population was greater than the white rate of registration.

In Georgia if the difference between black and white rates of registration did not reach outlandish proportions, differences were extraordinary in a large number of counties. In Wilkins county, Georgia, where 45.9 percent of the population is black, the white rate of registration is 85.7 percent and the black rate of registration is 54.4 percent. Hence, the white rate exceeds the black rate by 35.3 percentage points. In Miller county, Georgia where there is a 28 percent black population, the difference between the black and white rate of registration is 32.8 percentage points. Uniformly and with the rarest exception, the rate of white registration continues to exceed, by a substantial margin, the rate of black registration throughout the Deep South. In the four states surveyed, the average rate of black registration is approximately 15 percentage points below the average rate of white registration. The differences in the rate of registration between blacks and whites in Georgia is 16.6 percent; in North Carolina it is 16.5 percent; in South Carolina it is 16.7 percent; and in Louisiana it is almost 20 percent.

Remarkably, in 57 of 182 and counties in these four states where the black population is 20 percent or more, 57 of the jurisdictions—nearly 1 in 3—have a white voter registration rate that exceeds the black rate by more than 20 percentage points. Clearly, problems of registration for blacks continue to have a formidable effect throughout the Deep South states.

This Subcommittee has received testimony by some state officials in the South who argue that there are now many counties "Where voter participation problems are far fewer than in the past and * * *, demographically, do not justify the use of preclearance procedures." As an example, these officials have usually pointed to those Southern counties without significant black populations as the areas within the South where black's problems with political participation no longer exist.

On the most basic measurement of political participation, the Council's analysis of selected jurisdictions without large black populations in these four Southern states belies the contention that the right to register and vote has become the equal right of both black and white citizens. In a representative group of 36 counties in Louisiana, Georgia, South Carolina, and North Carolina, where the black population was below 20 percent of the jurisdiction, the Council analyzed registration data. The black population of these counties ranged from 2 percent in Cherokee county, North Carolina to 19 percent in Cherokee county, South Carolina. By range of geography and population they constitute a representative sample of the Southern counties

with little black population. In these 36 counties, the data shows that in no jurisdiction does the rate of black registration equal the rate of white registration. In most of these counties in each of the four states the difference between the higher white rate and the lower black rate is comparable to the average differences among the heavily black populated counties. In Alleghany county, North Carolina, for example, where less then 2 percent of the population is black, the rate of registration among the white population exceeds the rate of registration among blacks by a difference of 20.2 percentage points—a difference that exceeds the average in North Carolina among the heavily black populated counties.

In Louisiana, La Salle parish has only a 9 percent black population, but the rate of registration among whites exceeds the rate of registration among blacks by more than 10 percentage points. Gwinnett county, Georgia also shows a particularly egregious example of depressed black registration. In this surburban Atlanta county where only 2 percent of the population is black, the rate of registration among that 2 percent is almost 18 percentage points below the rate of registration among the 98 percent white population. And in Henry county, Georgia, about which this committee has heard specific testimony concerning voting problems, the 17 percent black population has a registration rate that is more than 34 percentage points below the white rate.

Perhaps most remarkably, in almost half of these counties with less than 20 percent black population (15 or 36) the difference between the white and black rate of registration is greater than the average difference in the substantially black populated counties of the applicable state. In other words, by traditional indicators, the problems of registration in counties with smaller black populations in the Deep South continue to be as great, and in some instances greater, than the problems of registrations in largely black populated counties.

In order to understand this data in the context of the historic progress in voter registration in the South, the Council has examined the rate of improvement of registration in South Carolina and Louisiana over the past 23 years, from 1957 through 1980.

This analysis of the rate of improvement in closing the gap between the percentage of blacks among registered voters and the percentage of blacks among the population in the jurisdiction shows some surprising, sobering results.

Among the 78 counties and parishes examined, only three had a percentage of the black registered voters that was equal to or exceeded the percentage of the black population in the county or parish in 1980. At the same time, over the 23 year period, the difference in the percentage of blacks among the total registered voters and the total population had improved considerably. For example, while Chesterfield county, South Carolina had a 39.8 percent black population in 1957 and only 14.6 percent of the registered voters were black, by 1980 the percentage of black population was only 32.6 percent while the percent of blacks among registered voters had increased to 27.2 percent. Of course, the most remarkable changes occurred in the heavily black populated parishes and counties such as Madison parish in Louisiana, where in 1957, 67 percent of the population was black without any registered voters. By 1980 black population was about 58 percent and the percentage of blacks among registerd voters had increased to 48 percent. Obviously, the Voting Rights Act and local effort have changed nature of political participation dramatically. These changes have not been universal in every instance, however. For example, there has not been any improvement in the differences between the percentages of blacks among voters and the population in 3 counties and parishes. In these 3 jurisdictions the differences are greater today than they were in 1966. And in Greenwood county, South Carolina, the gap between black representation among registered voters and the total population exceeds what existed in 1957.

Tables follow:

RATE OF REGISTRATION AMONG POPULATIONS BY RACE IN JURISDICTIONS WITH LESS THAN 20 PERCENT BLACK POPULATION IN SOUTH CAROLINA, NORTH CAROLINA, GEORGIA, AND LOUISIANA

Jurisdiction (20-25 percent black population)	Percent black population	Total black population	Number of registered voters	Percent of whites registered as percent of white population	Percent of blacks registered as percent of black population	Difference
Georgia:						
Barrow	0.14	3,132	9,276	46.9	24.6	+22.3W
Brantley	.06	569	4,843	56.1	51.7	+4.4W

RATE OF REGISTRATION AMONG POPULATIONS BY RACE IN JURISDICTIONS WITH LESS THAN 20 PERCENT BLACK POPULATION IN SOUTH CAROLINA, NORTH CAROLINA, GEORGIA, AND LOUISIANA—Continued

Jurisdiction (20-25 percent black population)	Percent black population	Total black population	Number of registered voters	Percent of whites registered as percent of white population	Percent of blacks registered as percent of black population	Difference
Clayton	06	10,494	54,980	38.6	16 3	+22.3W
Douglas	05	2,818	20,673	38 0	36.7	+1 3W
Effingham	.18	3,418	8,630	48 2	38.6	+9.6W
Franklin	10	1,533	8,387	58.1	30 9	+27.2W
Gwinnett	02	4,094	76,591	46 7	28.8	+17.9W
Habersham	05	1,321	9,967	41.5	15 6	+25 9W
Hall	.09	6,822	29,157	40.0	25 2	+14.8W
Henry	.17	6,363	17,168	49 5	15 6	+33.9W
South Carolina:						
Anderson	.17	22,895	36,479	29.4	18.5	+10.9W
Cherokee	.19	7,989	14,185	39.1	28 1	+11.0W
Greenville	.17	50,842	88,490	33.9	21.1	+12.8W
Lexington	.09	13,856	44,970	33.3	22.8	+10.5W
Oconee	.09	4,837	14,992	31.0	20.0	+11.0W
Pickens	.07	5,848	21,206	27.7	19.4	+8.3W
Louisiana:						
Acadia	.17	9,902	30,288	55.0	48.4	+6.6W
Beauregard	.16	4,756	14,725	53.1	33.1	+20.0W
Grant	.17	2,840	9,732	61.3	45.0	+16.3W
Jefferson	.13	63,001	181,538	42.8	29.7	+13.1W
Lafourche	.11	9,127	39,505	50.1	37.0	+13.1W
La Salle	.09	1,585	9,198	55.7	45.2	+10.5W
Livingston	.06	3,952	30,226	51.9	49.6	+2.3W
St. Bernard	.03	2,411	38,735	61.5	54.4	+7.1W
St. Tammany	.12	13,845	57,324	53.8	42.6	+11.2W
Vermilion	.13	6,425	28,246	59.5	53.4	+6.1W
North Carolina:						
Alexander	.06	1,668	14,621	59.6	45.3	+14.3W
Alleghany	.02	203	6,002	63.1	42.9	+20.2W
Buncombe	.08	13,997	76,431	49.0	34.5	+14.5W
Burke	.07	5,213	35,784	50.4	39.2	+11.2W
Cabarrus	.14	12,201	38,669	47.0	34.1	+12.9W
Caldwell	.05	3,874	32,291	48.0	43.5	+4.5W
Cherokee	.02	401	11,900	63.7	59.9	+3.8W
Currituck	.15	1,758	5,415	51.5	36.7	+14.8W
Davidson	.10	11,319	54,200	49.3	37.1	+12.2W
Davie	.10	2,556	13,278	56.0	37.7	+18.3W

Sources: 1980 census, Bureau of the Census; Registration figures provided by election officials in each of the named states.

RATE OF IMPROVEMENT IN COMPARISON OF PERCENTAGE OF BLACKS OF TOTAL REGISTERED VOTERS WITH PERCENTAGE OF BLACKS OF TOTAL POPULATION IN JURISDICTIONS IN LOUISIANA AND SOUTH CAROLINA, 1957–66 AND 1966–80

State (county)	Percent blacks of population			Percent of blacks of registered voters			Rate of improvement per year	
	1957	1966	1980	1957	1966	1980	1957–66	1966–80
South Carolina:								
Abbeville	33.8	32.0	33.0	2.1	13.3	21.9	1.44	0.54
Allendale	72.0	63.2	62.5	5.5	35.0	56.9	4.25	1.61
Bamberg	59.3	55.8	57.2	10.7	23.8	44.5	1.84	1.38
Barnell	59.7	43.3	41.5	10.0	20.0	37.4	2.86	1.39
Beaufort	59.8	38.7	32.9	31.1	38.5	34.0	.....	.....

RATE OF IMPROVEMENT IN COMPARISON OF PERCENTAGE OF BLACKS OF TOTAL REGISTERED VOTERS WITH PERCENTAGE OF BLACKS OF TOTAL POPULATION IN JURISDICTIONS IN LOUISIANA AND SOUTH CAROLINA, 1957–66 AND 1966–80—Continued

State (county)	Percent blacks of population			Percent of blacks of registered voters			Rate of improvement per year	
	1957	1966	1980	1957	1966	1980	1957–66	1966–80
Berkeley	64.1	49.6	24.7	27.1	30.6	30.7	.....	.....
Calhoun	72.6	66.9	54.9	4.2	37.8	49.9	4.37	1.72
Charleston	41.6	36.5	34.3	16.5	24.8	32.6	1.49	.71
Chester	43.3	39.9	38.6	7.4	18.6	28.2	1.62	.77
Chesterfield	39.8	37.1	32.6	14.6	27.2	27.2	1.7	.32
Clarendon	72.2	68.3	57.4	8.6	49.5	51.3	5	.91
Colleton	54.5	51.1	45.4	11.4	24.0	39.3	1.83	1.49
Darlington	47.6	44.4	40.1	19.3	22.6	34.8	.72	1.17
Dillon	49.2	46.5	41.9	14.2	27.2	34.9	1.74	.88
Dorchester	56.3	48.8	25.5	7.2	31.3	27.8	.....	.....
Edgefield	61.8	58.2	49.8	7.6	19.8	27.8	1.76	1.17
Fairfield	61.0	59.5	58.4	15.1	31.2	50.4	1.96	1.45
Florence	45.9	43.2	37.5	10.4	23.8	32.6	1.79	1.04
Georgetown	53.9	52.1	44.8	16.3	33.2	44.3	2.1	1.3
Greenwood	30.5	29.6	28.9	29.3	15.4	20.1	.....	.....
Hampton	57.4	53.9	52.6	7.2	32.5	48.9	3.2	1.26
Jasper	65.5	62.3	57.1	19.8	41.9	53.4	2.81	1.19
Kershaw	48.4	39.8	31.2	11.1	20.9	24.1	2.04	.84
Laurens	31.9	29.6	29.0	8.4	35.8	21.4	.....	.....
Lee	69.2	65.8	61.2	15.1	35.7	51.6	2.67	1.46
McCormick	64.4	61.6	60.7	0	31.1	46.7	3.77	1.18
Marion	57.2	55.0	52.0	15.5	29.7	46.7	1.82	1.42
Marlboro	53.4	48.8	46.3	5.8	15.1	36.6	1.54	1.71
Newberry	38.1	35.5	31.6	6.8	14.8	18.3	1.18	.53
Orangeburg	64.5	60.1	56.0	18.1	34.3	50.1	2.29	1.42
Richland	35.7	32.6	38.7	17.2	25.7	34.2	1.29	.17
Saluda	43.7	36.6	35.3	5.0	16.5	22.5	2.06	.52
Sumter	56.1	46.8	44.2	21.9	40.0	40.7	3.04	.24
Union	32.5	29.6	29.5	8.4	11.6	19.6	.68	.58
Williamsburg	69.3	66.5	62.3	3.7	38.4	53.4	4.17	1.37
Louisiana:								
Allen	24.4	24.8	20.4	20.0	15.9	17.9	.....	.....
Ascension	35.4	31.9	22.4	21.5	22.7	19.9	.52	.48
Assumption	43.1	41.2	31.6	29.6	27.1	29.3	.....	.....
Avoyelles	27.8	27.8	25.4	12.2	14.9	20.7	.30	.84
Bienville	51.6	49.4	42.3	.6	24.8	37.6	.....	.....
Caddo	38.8	36.5	37.7	8.0	14.3	24.4	2.93	1.42
Calcasieu	22.6	20.9	21.7	15.2	16.0	17.2	.96	.63
Catahoula	36.1	35.2	25.8	7.8	15.6	21.1	.27	.03
Claiborne	53.0	50.3	46.8	.3	20.2	38.1	.97	1.06
Desoto	58.4	57.5	44.7	8.1	28.3	39.3	2.51	1.53
East Baton Rouge	33.0	31.8	31.3	14.3	16.6	21.9	.38	.39
East Carroll	61.2	61.2	61.6	0	51.4	49.7	.....	.....
East Feliciana	60.1	54.0	48.5	15.4	28.9	40.1	2.17	1.4
Evangeline	25.8	26.8	24.0	19.4	20.0	21.6	.....	.....
Franklin	38.8	40.6	32.0	6.0	8.1	22.7	.03	1.66
Iberia	32.5	28.7	27.6	22.1	21.1	23.2	.31	.23
Iberville	49.3	49.0	47.9	24.7	40.1	43.1	1.71	.29
Jackson	32.0	32.4	31.8	6.8	19.1	26.2	1.32	.55
Lafayette	28.1	24.0	20.2	17.5	15.0	16.5	.17	.38
Lincoln	41.5	41.8	36.6	9.2	19.6	30.0	1.12	1.11
Madison	67.0	64.0	57.8	0	47.9	48.0	5.7	.45
Morehouse	49.6	46.9	40.1	4.2	12.4	30.2	1.17	1.76
Natchitoches	46.1	43.7	36.2	18.7	29.1	30.4	1.42	.63
Orleans	34.1	37.4	55.2	16.1	24.3	44.1	.54	.21
Ouachita	34.1	32.2	29.1	3.4	19.6	21.3	2.01	.34

RATE OF IMPROVEMENT IN COMPARISON OF PERCENTAGE OF BLACKS OF TOTAL REGISTERED VOTERS WITH PERCENTAGE OF BLACKS OF TOTAL POPULATION IN JURISDICTIONS IN LOUISIANA AND SOUTH CAROLINA, 1957-66 AND 1966-80—Continued

State (county)	Percent blacks of population			Percent of blacks of registered voters			Rate of improvement per year	
	1957	1966	1980	1957	1966	1980	1957-66	1966-80
Plaquemines	38.1	28.8	21.2	.8	11.7	20.2	2.24	1.15
Pointe Coupee	54.9	53.6	41.5	16.7	38.1	39.2	2.52	.94
Rapides	33.3	30.5	26.8	9.4	16.8	18.9	1.13	.41
Red River	51.9	47.5	36.3	.8	21.0	30.7	2.73	1.49
Richland	43.2	44.4	35.3	4.0	11.0	25.9	.64	1.71
St. Charles	31.5	27.1	25.4	22.3	23.5	22.3	.62	.04
St. Helena	55.2	55.5	51.4	8.4	39.5	46.9	3.42	.82
St. Landry	45.3	4.3	37.9	31.7	33.4	36.0	.44	.62
St. Martin	38.4	37.2	32.7	26.0	25.9	30.5	.12	.65
St. Mary	37.1	30.9	28.7	19.0	24.4	24.3	1.28	.15
Tangipahoa	33.6	33.9	30.1	16.5	17.3	23.6	.01	.72
Tensas	65.3	65.0	54.6	0	24.3	48.6	2.73	2.48
Union	36.7	36.8	29.1	8.6	14.0	24.5	.59	1.3
Washington	33.5	33.9	30.1	11.7	17.0	24.6	.54	.82
Webster	37.1	34.5	31.9	1.0	22.3	25.1	2.65	.39
West Baton Rouge	52.8	49.3	39.9	43.8	31.5	32.8		
West Feliciana	72.9	66.1	57.9	0	62.0	46.6		

Sources 1957 Registration figures are listed in "The Negro Voter in the South," By Margaret Price (Atlanta, 1957); 1966 figures are listed in VEP's Computation of Black Registered Voters, (Atlanta, 1966)

The most important element of this analysis is the rate of change in improving black registration. In the case study of the parishes and counties in these 2 Southern states, the council has found that in more than 80 percent of the 74 parishes where improvements have been made in closing the gap between the percentage of blacks registered and the percentage of the black population, the improvements occurred at a faster annual rate between 1957 and 1966 than from 1966 to 1980. In other words, during the 9 years from 1957 to 1966 the annual rate of improvement of black registration was greater over time than it has been for the 14 year period from 1966 to 1980.

While a bevy of factors probably account for this sobering finding, this analysis clearly indicates that the drive to establish the equal right to vote has slowed, perhaps, more than many realized. In many jurisdictions, the rate of improvement in registration has been diminutive. To be sure, even with all the qualifications and limitations of this historic comparison, the data offer an unmistakable warning that the fulfillment of the most basic right to vote has not yet been fully achieved, and the progress to its fulfillment has not proceeded in recent years with the vigor and results that it did in the early 1960's.

Hence, Mr. Chairman, I think the analysis of past and present registration data offers us some important observations:

1. The differences between the rate of registration among blacks and whites continues to be substantial and widespread;

2. The differences between rates of black and white registration, and probably the problems which accompany such substantial differences, exist in those areas of the South where the black population is not subsantial as much as it does where the black population is 20 percent or more;

3. The improvement in registration has continued over the past 23 years although the rate of improvement has slackened since 1966.

With these observations in mind, I would now like to turn the Subcommittee's attention to how well full political participation has been accomplished today in the South. While we know that barriers and difficulties with registration have been the starting point of frustrating blacks' right to vote, and to have that vote count, they have certainly not been the only techniques.

According to the preliminary analysis on the composition of countywide governing bodies, we found relatively few jurisdictions whose governing bodies reflected the racial composition of its population. While we are not advocating proportional representation as such, the data does point to the widespread and massive under-

representation of blacks on countywide governing bodies, in spite of increased registration rates and the overwhelming black majorities in many of these jurisdictions. Of the approximately 168 counties included in this part of our survey, all of which are above 20 percent black, 102 were underrepresented by a full 100 percent. In 16 other counties, blacks were underrepresented by 50 percent or more. In only 8 of the 168 counties, were blacks represented on county governing bodies in parity with their local population percentages.

This widespread and pervasive pattern persisted throughout all of the states included in our survey which are also covered jurisdictions under the Voting Rights Act. Implicit in this analysis is the true status of black political strength in the South since the Voting Rights Act was originally passed in 1965. The analysis shows the effect of what it means to blacks not to have their votes counted. So long as the barriers to effective black participation in government exist in the South, there can be little accountability or fair, open decision-making in government. Lest it be forgotten, the goal of fair representative government for blacks is also as important to whites. Until the primary obstacles to black participation in the electoral process is removed, public confidence in the processes of government, citizens access to government, and public accountability of government officials will be unreached goals for both black and white citizens.

By banning literacy tests and other similar devices used historically to exclude eligible black voters, and with the use of other potent provisions, the Voting Rights Act established unprecedented procedures to enable dramatic gains in the registration of blacks on the voting rolls. While the Deep South states have the highest percentages of black elected officials in the country, the difference between the percentage of the black population and the percentage of black elected officials in all these states is also the greatest. The cause of these disappointing results often lies in the subtle, legal and practical barriers which prevent effective political participation. Especially damaging are those practices which appear racially neutral but, in fact, have an adverse racial impact. These include multimember districts with at-large voting, gerrymandered reapportionment, anti-single shot voting laws, pre-registration requirements, discriminatory registration purges, unnecessarily complex voting mechanisms, lack of aid for illiterates, limited access to voter registration, numbered posts, majority vote requirements, reductions in the number of positions on local commissions and councils as well as untold numbers of other practices such as economic intimidation, and abuse of absentee voting procedures.

The continuing problem of underrepresentation of blacks in the political process stems from many of these factors, not withstanding the primary factor-at-large election procedures. This method of electing public officials may not have been designed with the specific intent of diluting the voting strength of blacks, rather some of its proponents have argued that they were proposed by white middle to upper class Americans to destroy the institutional bases for urban political machine domination. Others have argued that at-large election methods were proposed as one method of diluting the political strength of newly arrived immigrants, who were becoming increasingly powerful in ward politics, and ultimately citywide political activities. In any event, regardless of whose arguments prevail, these methods have effectively shut the door to blacks gaining countywide offices in most areas throughout the covered jurisdictions.

At-large election methods, coupled with the high incidence of racial polarization, in voting have proven to be insurmountable barriers for minorities to overcome in seeking to have their interest represented on countywide governing bodies. As this committee was told a few weeks ago, racial bloc voting has posed a real problem for blacks seeking office in jurisdictions that are not overwhelmingly black. Even in jurisdictions that are not overwhelmingly black, minority candidates often find it difficult to win elections, in spite of having the numbers of their side.

Of the states surveyed, the state of Georgia has the least number of blacks represented on its countywide governing bodies. In Georgia, 45 counties were underrepresented by a full 100 percent. In one county blacks were underrepresented by 50 percent or more. In only 2 of the counties included in the survey were blacks adequately represented on countywide governing boards, though, they served on only 5 of 49 counties examined. Four of these 5 commissioners were elected from counties that maintain district election procedures. Only in one county, Turner, which has a black population of 37 percent, was a black able to get elected under an at-large election procedure. Even though 29 of the 49 countries surveyed employed some form of district election methods, blacks still were unable to get elected in at least 25 of such jurisdictions. Some of the counties that do not include a black on their governing bodies contain black populations in excess of 64 percent. This massive underrepresentation is partially reflected in the fact that in 15 of the 22

counties where blacks are a signifcant majority, no black has ever been elected at any level of government.

The inability of black candidates to win elections in jurisdictions that utilize district election procedures stems from many factors. Chief among these are economic intimidation, racial bloc voting, racial gerrymandering, low black voter registration rates, and the abuse of absentee voting procedures. In Georgia the instances of white officials successful attempts at diluting the voting strength of their minority constitutents, particularly in the rural areas of the state, has been more than adequately documented by previous witnesses (Bond, Sherman, McDonald, etc.).

This committee has been constantly apprised since the beginning of its hearings on the extension of the Voting Rights Act, of the brutal and often harsh actions by white public officials in South Carolina to dilute the voting strength of its black citizens. The success of these efforts is reflected in the fact that in a state that has approximately 38 percent black population, only 24 black South Carolinians have made it to the county courthouse in the capacity as a County Councilor (out of approximately 270 county-level elected commissioners). In addition, South Carolina has only 15 black state representative (out of a body of 124), and no black person has sat in the state's senate since the first successful effort of disfranchising black citizens which occurred shortly after Reconstruction. The state has one of the most sordid and shameful histories of race realtions over the past century.

Our analysis reveals that in 14 of the surveyed counties, blacks were underrepresented by 100 percent. These counties included substantial black populations without any representation. Two good examples: Williamsburg county which has a black population of 62 percent, but no black elected officials, and Edgefield county which also has about a 50 percent black population, and no black has ever been elected to the local commission.

There are six counties in which blacks are underrepresented by more than 50 percent. Only in one county were blacks adequately represented. Of the 11 counties where blacks comprise the majority, only 6 have black representation at all, and all of these include only token representation. Among the remaining counties surveyed only 10 have black representation within their county governing bodies.

Among the covered jurisdictions included in SRC's analysis, only in the state of Louisiana have blacks been elected to countywide governing boards with some frequency. However, even in Louisiana, where district election methods are mandated by state law, there is still substantial lack of black representation on local governing bodies. In the state there are 9 parishes in which blacks are represented by less that 50 percent on local parish boards. Only in 3 parishes are blacks adequately represented, reflecting their numbers in the parish population. These figures, even though they reveal inadequate representation in Louisiana by blacks, are in dramatic contrast to Georgia and the other jurisdictions covered in our analysis throughout the South. The analysis suggest that if certain barriers (such as at-large election methods) that hinder blacks from exercising their franchise in an unencumbered manner were removed, black candidates could be elected to office with some frequency.

The Committee has not focused on the state of North Carolina during its hearings; perhaps it stems from the notion that historically racial moderation has been a trademark of the state; however, the state has one of the lowest rates of black representation on county governing bodies in the South. Of the counties under Section 5 application, and included in our analysis, blacks are underrepresented by at least 80 percent. Blacks serve on the governing bodies of only 10 counties, in spite of large black populations and increased black registration rates. For most jurisdictions in the state, blacks still have not been able to win a single county commission post. In 34 of the North Carolina counties, blacks are underrepresented by 100 percent. In 1 county blacks are underrepresented by 50 percent, only in 2 of the counties surveyed were blacks adequately represented.

According to a case study undertaken by the Southern Regional Council, it appears that electoral schemes in many of the counties were changed when blacks reached a specific percentage of the counties' registration rate. While Justice Stewart admonishes that "Past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful" the history of racial discrimination in voting in North Carolina intimates that the absence of blacks in public office is not the offspring of immaculate conception. Between 1965 and 1980, in the face of the most stringent executive procedures and the development of the most sympathetic law case on voting, white North Carolina officials in the county courthouses and the state assembly maintained a quiet campaign of resistence in hauntingly familiar ways. As in the past, the events unfold from the pages of work on the North Carolina legislature.

In an analysis of the acts of the North Carolina legislature, 193 separate enactments have been identified since 1965 that concern voting changes in the 39 counties covered under Section 5 of the Voting Rights Act. They represent a considerable dedication of legislative time to matters of local governance and electoral schemes. Compared to the number of similar kinds of enactments passed by the General Assembly for all 100 counties from 1925 to 1940, during disfranchisement, these figures represent twice as many changes for less than half the number of counties. It also appears that this remarkable interest in local elections and forms of government occurred after the Voting Rights Act's passage.

Although the legislature has been greatly interested in voting changes in 40 of North Carolina's counties, it and the local governments have not been eager to inform the Justice Department of their work. As Table I demonstrates, the Justice Department records verify that barely 20 percent of these legislative acts have been submitted for review under the requirements of Section 5. Although there is some margin of error because of the imprecise means of identification by the Justice Department, the overwhelming majority of legislative changes have not been submitted for review and do not comply with the law. Most of these changes were made as long as 10 years ago and are probably in full implementation at this time.

The failure to submit changes by local governments and legislative officers cannot be attributed to a lack of knowledge about the Voting Rights Act's requirements. The Justice Department has received submissions about changes in the form of legislative acts, annexations, or revised practices about each of the counties under the Act; moreover, the fact that 39 of the legislative acts, from at least 15 of the 40 counties, have been submitted, demonstrates a selective judgment about compliance.

Table I confirms that selective judgments have been made about changes that are submitted for review. Thirty-one of the 39 acts submitted for review between 1965 and 1979—80 percent—have been approved by Justice, and the figure may be higher because some submissions are still pending. There is a possible explanation for what appears to be massive non-compliance. It may well be that the local governments or the officers of the general assembly do not consider the legislative acts to be "changes" relating to voting or electoral schemes. It may also be possible that white officials do not believe that all the enactments concern voting although each clearly touches upon such matters as terms of offices, methods of selection, and procedures for voting. Since it can be assumed that even the most inefficient legislative body would not pass 154 separate local acts to simply restate existing law, and that all public officials are aware of the connection between voting and elections, a benign explanation for these non-submissions has not been readily apparent.

Throughout North Carolina, during the last 15 years, changes have occurred in practices relating to methods of election, numbers of commissioners, and terms of office. The trends have shown increasing preference for at-large elections and decreasing preference for nominations and elections by districts.

Tables follow:

TERMS OF OFFICE IN NORTH CAROLINA COUNTY COMMISSION, CHANGES IN PRACTICES, 1965–78

Term of office	Percentage of counties, 1965	Percentage of counties, 1978
2-yr term	29	4
4-yr term	20	17
4-yr staggered term	47	69
6-yr staggered term	1	0
Combination	3	10
Total	100	100

Sources: "Cases and Material on Local Reapportionment," Institute of Government, UNC-Chapel Hill (Dec. 15, 1965); "Form of Government of North Carolina Counties, 1978," Institute of Government, University of North Carolina, Chapel Hill. (1978).

LAWS AFFECTING LOCAL ELECTORAL SCHEMES PASSED BY NORTH CAROLINA LEGISLATURE, 1965–79—ANALYSIS OF LAWS IN COVERED JURISDICTIONS UNDER SUBMISSION REQUIREMENTS OF SECTION V, VOTING RIGHTS ACT

Year	Total Number of legislative acts	Number of acts submitted	Number of acts approved
1965	36	2	2
1967	30	4	2
1969	22	6	5
1971	28	6	6
1973 to 1974	33	9	8
1975	17	5	4
1977	12	4	4
1979	15	3	1
Total	193	39	31

Sources "Session Laws of North Carolina," 1965–69; Print-Out "Index of Section 5 Submissions as of June 1980 by Location and Date," U.S. Justice Department.

METHOD OF ELECTION FOR NORTH CAROLINA COUNTY COMMISSIONS CHANGES IN PRACTICES, 1965–78

Method of election	Percentage of counties, 1965	Percentage of counties, 1978
At-large election	52	56
At large with required residency in district	36	32
Nominated by districts; elected at large	10	4
Elected by districts	2	3
At large and at large with residence requirement	0	4
At large and district elections	0	1
Total	100	100

Some changes in terms of office show the greatest shifts. In 1965, 29 counties made straight two-year terms. By 1978, the number had dropped to four. The preference has been for staggered terms; in 1965, 48 counties preferred some form of staggered term but by 1978, 69 staggered their commission terms.

Changes in any of these areas vitally affect voting. For blacks who are a minority among registered voters in any jurisdiction, multimember, at-large elections can dilute voting strength, and a small number of elective county commissioners decreases the opportunity for blacks to aggregate their voting strength. While the term of office obviously decides the frequency of elections, the staggering of terms can lessen the number of members who would be before voters in any election.

While the analysis suggests that black counties had substantial moves in some areas to negate black voting strength, the pattern does not appear consistent. In fact, of the changes that were made in electoral schemes only by black counties, more appeared positive than negative. Yet, no one element of an electoral scheme stands alone and only in combination with others and in the context of local black voting strength can the full impact of any scheme be understood. For example, in Blandon county where 39 percent of the population is black, an at-large election procedure predates 1965. Since passage of the Voting Rights Act, the county has increased the number of members on its board but has changed the term of office from two straight years to four staggered years. With the positive increase in the numbers and the negative decrease in the term of office, the effects might be considered the same in 1978 as in 1965 since the two changes would balance out.

TESTIMONY OF RAYMOND H. BROWN, DIRECTOR, VOTING RIGHTS RESEARCH PROJECT, SOUTHERN REGIONAL COUNCIL

Mr. BROWN. Thank you, Mr. Chairman.

Mr. Chairman, my name is Raymond Brown. I am director of a special project of the Southern Regional Council that is examining voting rights in the South.

I am pleased to accept your invitation on behalf of the Southern Regional Council to share the information and analysis of our own studies on how the Voting Rights Act has helped the South reach the goals of full democracy and equal rights in voting.

As some members of this subcommittee know, the Southern Regional Council has worked for more than 37 years to research and to undertake technical analysis to promote equal opportunity among all people in the South.

In the very first year of our existence the council carried out a study of the remaining vestiges of the white primary system and since 1944 has had abiding concern for the enfranchisement of the poor, blacks and other racial minorities in the South.

During the 1950's the council gathered and reported information concerning voter registration; in the early 1960's it commenced the voter education project in order to test the most effective means by which blacks could have the equal right to vote for their own political empowerment and for the sake of democracy for all in the region. In recent years the council has continued its active concern for the franchise and the project which I direct at the Council is designed to gage the remaining barriers that prohibit the fulfillment of the right to vote by all citizens in the region.

Today, I appear before you on behalf of the council's executive director Steve Suitts, and its president, Alabama State representative Tony Harrison.

Since the commencement of these hearings more than a month ago this subcommittee has received a wealth of testimony from community leaders, political candidates, public officials and academicians who portrayed a vast range of local and statewide problems of discrimination in voting. From the lowlands of Virginia to the weather-baked soil of south Texas, witnesses have provided a wealth of information about the persistence of white resistence in local court houses and State houses to equal rights in voting, in addition to the continued and widespread use of new and old methods of effective disenfranchisement.

In light of this record already before the subcommittee, I want to share with you those portions of our own studies which are designed to test the effect which this catalog of incidences has had throughout the Deep South upon both the right to register and vote and upon the right to have one's vote count.

On the basis of data from four Deep South States—North Carolina, South Carolina, Georgia and Louisiana—where reliable information has been gathered to date, we have searched to answer the questions of how well established has the right to register and vote become in most communities in the South and what is the state of democratic government in light of remaining barriers and past accomplishments.

Since the end of the white primary system in the South the most basic indication of the fulfillment of the right to register and vote has been the analysis of registration by race. Once the Supreme Court had dismantled the legal mechanisms by which blacks were excluded from the electoral process, white resistence intensified at the courthouses where blacks could register to vote.

As the venerable V. O. Key, Jr., said in his panoramic work southern politics, each local registration officer became a law until

himself in determining the citizen's right to vote, and the machinery of registration in the hands of resisting white officials became the most evasive and effective method of denying the franchise. Of course, the 1965 Voting Rights Act recognized this basic problem and provided for the appointment of Federal registrars and a preclearance of voting changes in order to overcome the local rooted efforts of resistance.

After 15 years the mechanics of the Voting Rights Act have improved the status of the right to vote for blacks and the percentages of registered blacks have increased dramatically since 1965. For example, since 1962 the number of black registered voters has almost tripled in the 11 Southern States.

From available information, however, the council analysis suggests that it would be a tragic mistake for this committee to assume that the right to register and vote has been accomplished in most areas of the South. Our analysis suggests that resistence continues to be widespread. Among 182 counties and parishes with more than 20 percent black population in North Carolina, South Carolina, Georgia, and Louisiana, the council found only 4 counties where the rate of registered blacks among the black population was greater than the white rate of registration.

The most important element of this analysis is the rate of change in improving black registration. In the case study of the parishes and counties in these two Southern States, the council has found that in more than 80 percent of the 74 parishes where improvements have been made in closing the gap between the percentage of black registered and the percentage of the black population the improvements occurred at a faster annual rate between 1957 and 1966 than from 1966 to 1980.

Hence, Mr. Chairman, I think the analysis of past and present registration data offers us some important observations.

No. 1, the differences between the rate of registration among blacks and whites continues to be substantial and widespread;

No. 2, the differences between the rates of black and white registration and probably the problems which accompany such substantial differences exist in those areas of the South where the black population is not substantial as much as it does where the black population is 20 percent or more; and No. 3, the improvement in registration has continued over the past 23 years although the rate of improvement has slackened since 1966.

With these observations in mind, I would now like to turn the subcommittee's attention to how well full political participation has been accomplished today in the South. While we know that barriers and difficulties with registration have been the starting point of frustrating blacks' right to vote and to have that vote count, they have certainly not been the only techniques.

According to the preliminary analysis on the composition of countywide governing bodies, we found relatively few jurisdictions whose governing bodies reflected the racial composition of its population. While we are not advocating proportional representation as such, the data does point to the widespread and massive underrepresentation of blacks on countywide governing bodies, in spite of increased registration rates and the overwhelming black majorities in many of these jurisdictions.

Of the approximately 168 counties included in this part of our survey, all of which are above 20-percent black, 102 were underrepresented by a full 100 percent. In 16 other counties blacks were underrepresented by 50 percent or more. In only 8 of the 168 counties were blacks represented on county governing bodies in parity with their local population percentages.

This committee has not focused on the State of North Carolina during its hearings. Perhaps it stems from the notion that historically racial moderation has been as trademark of the State. However, the State has one of the lowest rates of black representation on county governing bodies in the South. Of the counties on the section 5 application and included in our analysis, blacks are underrepresented by at least 80 percent. Blacks serve on the governing bodies of only 10 counties, in spite of large black populations and increased black registration rates.

For most jurisidictions in the State, blacks still have not been able to win a single county commission post. In 34 of the North Carolina counties blacks are underrepresented by 100 percent. In one county blacks are underrepresented by 50. Only in two of the counties surveyed were blacks adequately represented.

According to a case study undertaken by the SRC it appears that electoral schemes in many of the counties were changed when blacks reached a specific percentage of the county's registration rate.

While Justice Stewart admonishes that past discrimination cannot in the manner of original sin condemn governmental action that is not itself unlawful, the history of racial discrimination in voting in North Carolina intimates that the absence of blacks in public office is not the offspring of immaculate conception.

Between 1965 and 1980, in the face of the most stringent executive procedures and the development of the most sympathetic case law on voting, white North Carolina officials in the county courthouses and State assembly maintained a quiet campaign of resistance in hauntingly familiar ways. As in the past, the events unfold from the pages of work on the North Carolina Legislature.

In an analysis of the acts of the North Carolina Legislature, 193 separate enactments have been identified since 1965 that concern voting changes in the 39 counties covered under section 5 of the Voting Rights Act. They represent a considerable dedication of legislative time to matters of local governance and electoral schemes.

Compared to the number of similar kinds of enactments passed by the general assembly for all 100 counties from 1925 to 1940, during disfranchisement, these figures represent twice as many changes for less than half the number of counties. It also appears that this remarkable interest in local elections and forms of government occurred after the Voting Rights Act's passage.

Although the legislature has been greatly interested in voting changes in 40 of North Carolina's counties, it and the local governments have not been eager to inform the Justice Department of their work. As table I demonstrates, the Justice Department records verify that barely 20 percent of these legislative acts have been submitted for review under the requirements of section 5.

Although there is some margin of error because of the imprecise means of identification by the Justice Department, the overwhelming majority of legislative changes have not been submitted for review and do not comply with the law. Most of these changes were made as long as 10 years ago and are problably in full implementation at this time.

The failure to submit changes by local governments and legislative officers cannot be attributed to a lack of knowledge about the Voting Rights Act's requirements. The Justice Department has received submissions about changes in the form of legislative acts, annexations, or revised practices about each of the counties under the act; moreover, the fact that 39 of the legislative acts from at least 15 of the 40 counties have been submitted demonstrates a selective judgment about compliance.

Table I confirms that selective judgments have been made about changes that are submitted for review; 31 of the 39 acts submitted for review between 1965 and 1979—80 percent—have been approved by Justice, and the figure may be higher because some submissions are still pending.

There is a possible explanation for what appears to be massive noncompliance. It may well be that the local govenments or the officers of the general assembly do not consider the legislative acts to be changes relating to voting or electoral schemes. It may also be possible that white officials do not believe that all the enactments concern voting although each clearly touches upon such matters as terms of offices, methods of selection, and procedures for voting.

Since it can be assumed that even the most inefficient legislative body would not pass 154 separate local acts to simply restate existing law, and that all public officials are aware of the connection between voting and elections, a benign explanation for these nonsubmissions has not been readily apparent.

Throughout North Carolina, during the 15 years, changes have occurred in practices relating to methods of election, numbers of commissioners, and terms of office. The trends have shown increasing preference for at-large elections and decreasing preference for nominations and elections by districts.

Some changes in terms of office show the greatest shifts. In 1965 29 counties had straight 2-year terms. By 1978 the number had dropped to four. The preference has been for staggered terms; in 1965 48 counties preferred some form of staggered term but by 1978 69 staggered their commission terms.

Changes in any of these areas vitally affect voting. For blacks who are a minority among registered voters in any jurisdiction, multimember, at-large elections can dilute voting strength, and a small number of elective county commissioners decreases the opportunity for blacks to aggregate their voting strength.

While the term of office obviously decides the frequency of elections, the staggering of terms can lessen the number of members who would be before voters in any election.

While the analysis suggests that black counties made substantial moves in some areas to negate black voting strength, the pattern does not appear consistent. In fact, of the changes that were made in electoral schemes only by black counties, more appeared positive

than negative. Yet no one element of an electoral scheme stands alone and only in combination with others and in the context of local black voting strength can the full impact of any scheme be understood.

For example, in Blandon County where 39 percent of the population is black, an at-large election procedure predates 1965. Since passage of the Voting Rights Act the county has increased the number of members on its board but has changed the term of office from 2 straight years to 4 staggered years. With the positive increase in numbers and the negative decrease in the term of office, the effects might be considered the same in 1978 as in 1965 since the two changes would balance out.

The political arithmetic of voting does not add up on that fashion. In Blandon and in other counties, one positive change may be overcome by a more decisive negative change. In Blandon in 1965, blacks constitute 39 percent of the population and 21 percent of the total registered voters. In 1965 blacks had an opportunity at every election to vote for five members in an at-large scheme. After 1971 with the elimination of the antisingle-shot voting law, Blandon voters could use bullet ballots to improve their chances of electing a sympathetic candidate.

By 1978, the change to staggered terms not only nullified the positive effect of increasing the number of positions for which voters could cast ballots in any election. Hence, the effects of voting change in Blandon County has been to substantially dilute black voting strength.

In fact, 18 of the 50 counties with 25 percent or more black population or under section 5 reduced significantly the maximum number of candidates to be elected in any at-large election for county commission in any election year; 8 of the 18 are covered under the Voting Rights Act.

Remarkably, only two black counties increased the number of positions for any election year and both added an additional at-large position to an electoral scheme which already had candidates elected at-large. For example, Richmond County changed from electing two commissioners at-large with residency requirements and one commissioner without a requirement of residency, to an election scheme with two at-large commissioners and to other at-large commissioners with residency requirements.

There are also 10 black counties which moved away from district requirements for residence or single-member districts. In Onslow, a county covered by section 5, the 1965 electoral scheme provided for five members of the county commission who were nominated by districts and elected at-large. By 1978 the scheme provided for only three commissioners to be elected in any election and all were nominated and elected at-large.

As a matter of fact, only 2 of the 50 black counties provide for elections by districts. In Camden County, two candidates are elected from districts and one from the county at-large, and in Washington three candidates run from separate districts. These exceptions to the rule may be no exception at all, however. In both counties the distribution of population within districts shows that no district, as presently constituted, probably has a majority black population.

Given the presence of racial bloc voting, the overall effect of these changes in electoral schemes is apparent when correlated with the percentage of black registered voters. In most jurisdictions every registered black voter would have to turn out to the polls and use single-shot voting, in order to have even a chance of electing a responsive candidate, unless whites forgot election day. In 37 of the 60 counties, the turnout of all registered black voters to exercise a single-shot vote would not be sufficient mathematically to assure the election of a responsive candidate by their own votes. In effect, short of a political miracle, they are locked out of the political system.

Of the 10 counties which have a black elected official, only two have more than one. Both have at-large procedures, but both also have five elected members who appear before the voters in every election year. In Durham and Jones Counties, the method of election that existed in the first county commissions in North Carolina are the methods which now permit the greater representation of black voters.

Finally, most black counties which changed their electoral schemes from 1965 to 1978 are counties where blacks either increased substantially their representation in the registered voting list or where blacks constitute more than 40 percent of the registered voters. Hence, changes occurred where the political arithmetic showed threatening signs of increased black voting participation.

In concluding this analysis on what has happened to the voting rights of minorities in the South, since the passage of the Voting Rights Act in 1965, a disturbing trend continues to emerge, particularly in two areas: the right of minorities to exercise their franchise, and the right to have that vote counted.

What we find is that once black registration comes within striking distance of electing candidates responsive to their needs, the county courthouses and the State assemblies become genuinely interested in proposing and implementing new election schemes. These manipulations have resulted in the massive underrepresentation of blacks that is reflected in our analysis. This trend of underrepresentation is pervasive, even in jurisdictions where one could reasonably expect black candidates to easily defeat unresponsive elected officials.

This committee, since the beginning of its hearings, has received a broad range of testimonies from public officials, academicians, organizations, and private citizens on how the South is continuing to deny black citizens equal access to the political processes. The SRC's analysis concludes, without a shadow of a doubt, that these continuing problems have been manifest in the black registration data and in the composition of local governing bodies throughout the South.

The fact that a full 102 counties, of the 168 counties surveyed, are 100 percent underrepresented reminds us that the progress envisioned since the last renewal of the act has not materialized. Rather, what stands out, is that the impact of the flurry of legislative activity under 1965 is directly reflected in the lack of black representation on the countywide governing bodies.

It was hoped by blacks and others that after passage of legislation like the Voting Rights Act with provisions to monitor, the impact of election changes, the absence of problems that had previously hampered blacks, such as literacy tests, poll taxes, and the like, would open the way for blacks and other minorities to vote and insure that their vote was counted. However, the underlying premise behind this wishful thinking rested on the fact that white officials would comply with the law and be fair in their treatment of all people in the South, allowing them equal access to the franchise.

What our analysis shows is that very few white officials, who control southern politics and southern government, find it in their best interest to comply or to apply the law uniformly. What we find, instead, are new means to prevent minorities from truly exercising their franchise. This results in continuing widespread disparity between the rate of registration among blacks and whites. This disparity exists all over the South, both in the areas where blacks represent a substantial majority, or where they represent 20 percent or less of the population.

Even more importantly, though the rate of registration for minorities has improved in the last quarter of a century, the rate of improvement has slackened since the passage of the Voting Rights Act in 1965.

I submit to you, ladies and gentlemen of the committee, that much of this is due to the fact that white officials choose to disregard the law and fail to submit changes as required by the Voting Rights Act. As the SRC analysis indicates, many southern officials have found it more convenient to not make the necessary submissions.

The analysis clearly indicates that none of the white elected officials who are in positions to influence the outcome of State election procedures, in terms of insuring that they are equitable, has in the words of my 96-year-old grandmother in Alabama "confessed religion and been baptized."

Rather the data shows that the "mourners bench is still filled with sinners and the revival must continue." Perhaps some of the officials have started to pray, but have a long way to go before the continuing need for the revival can be called into question. In the State of South Carolina, as in other jurisdictions in the South, there is no county where blacks are in firm control of their political destiny. Rather the evidence continues to show that election schemes are being manipulated to continue the repressive and unresponsive regimes that have come to symbolize the State's history.

Even in counties where blacks are overwhelmingly the majority—60 percent and above—the most they can do is elect a small percentage of the total number of county councilors. The evidence suggests that these egregious actions by State officials are not coincidental.

Thank you.

Mr. EDWARDS. Thank you, Mr. Brown.

That is a very sophisticated study, and we're going to take it up right after this vote.

We will recess for 5 minutes.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

I think that all of us up here would agree that a number of facts, trends, whatever you might call them, have become evident in the series of hearings that we have had. One is that a lot of voting changes never get submitted; it's a voluntary system; there are no sanctions to be imposed when a jurisdiction just decides not to submit or doesn't know that the jurisdiction is supposed to submit. And your testimony seems to indicate that there is a lack of diligence or a lack of attention paid by the Justice Department in finding out about some of these submissions. Is that correct?

Mr. BROWN. It certainly does. But with the limited budget that the Justice Department has, I don't know whether or not they can be faulted 100 percent for all of the nonsubmissions. I think elected officials, at least when a person wins office and swears to uphold the public trust, have certain responsibilities that come with that trust. And to me, part of that trust is upholding the laws, as they are enacted either by the Congress, the statehouse, or the county commissions. And I certainly think that by our analysis that has not happened.

Now, one of the other things that we've done—well, let me just backtrack for a second. We have another project in Atlanta that is looking exclusively at nonsubmissions. We were unable to have that information available for this committee at this time, but we are certainly trying to have this report available by the end of July.

And just from looking at some of the preliminary data in these reports, particularly in Georgia and Louisiana and North Carolina and South Carolina, there are laws that have been changed—and I would imagine the other members of the county commissions don't necessarily know that they have been changed, because they have pretty much been enacted by the State legislature or by the legislative delegation from those particular areas, and they are very egregious acts in many cases.

They have had the effect of diluting black political participation in most of the jurisdictions that we have looked at.

Mr. EDWARDS. Well, people aren't necessarily going to change—I think that's a dream—without something more. I think it's a little bit of a dream that you think you can just expect people to do, which, if it worked, it would be a wonderful world if we expect everybody to behave as the law might intend them to behave and make their submissions with regularity and faithfulness and so forth when they know it does affect people's voting rights.

Let's take North Carolina for the moment. Apparently you are testifying that your organization has found out that North Carolina, through its legislation, has, in effect, violated the Voting Rights Act in quite a number of instances by passing laws having to do with local jurisdictions and the voting laws there that have—the results of which have been to deny minorities their electoral rights. Is that correct?

Mr. BROWN. That appears to be precisely what our analysis indicates, because in most of those areas where the laws have been changed and have not been submitted, particularly in the predominantly black counties blacks are not in any visible role in the

government. And we find—well, the trend apparently is that as soon as the blacks reach a certain percentage point of the total number of registered voters, then there is some interest expressed in the electoral schemes.

So we can only conclude that these changes were undertaken solely for the purpose of diluting the increased black voting strength in these particular jurisdictions.

We also take exception with the number of people who say that the jurisdictions do not know what kind of changes should be submitted. We have lived under this act for the last 15 years, and I think that through the courts' interpretations, through the Justice Department regulations, through the city attorneys, I certainly believe that these local officials know what kind of changes should be submitted to the Justice Department.

But I think it is done for the purpose of canceling out this increased voting strength, because after all, these county officials and the State assemblymen can count, they have calculators at their disposal, and the same census information and the same voter registration information that is made available to anybody else is at their disposal as well.

I see, when the figures reach 35 to 40 percent, then there's an interest in tinkering with the scheme.

Mr. EDWARDS. Well, you are recommending and your organization recommends that this piece of legislation that we are considering be reported favorably. That's the first recommendation you have made.

Mr. BROWN. Exactly.

Mr. EDWARDS. What recommendation are you going to make to this subcommittee so that in the event the extension does go through that it is not made a nullity or weakened considerably by nonenforcement? What's your recommendation?

Mr. BROWN. We have not reached that stage at this point. The report that we are preparing will certainly contain recommendations directed at both the Congress and the Justice Department on ways to strengthen the enforcement and monitoring of section 5.

There's one other thing we found, too, about the changes. In most jurisdictions, the changes take place—well, the changes generally take place in jurisdictions that don't have an active citizen group—perhaps: might not have an NAACP, League of Women Voters group, or any other group that monitors the election process. It generally happens in areas that are predominantly rural and that, as I said, contain large black populations where nobody is looking over their shoulders to see what it is that they are doing. So they do it very quietly, because it is not discussed in the State legislatures.

Generally the legislators introduce the changes, and by a gentleman's agreement, the bills are not even discussed. They just pretty much move on through the legislative process.

So to reiterate what I said earlier, the report that we are preparing will contain recommendations to address some of these problems that our analysis has uncovered.

Mr. EDWARDS. Thank you. You'd sort of like to hear what they say in private, wouldn't you—discussing them over a drink or a glass of water or something?

Ms. Davis?

Ms. DAVIS. Thank you, Mr. Chairman.

Mr. Brown, it's your statement that the analysis which SRC has conducted shows that the gap between registration between white voters and black voters is as significant in jurisdictions with small numbers of blacks as the jurisdictions with large black populations. Is that true?

Mr. BROWN. That's right.

Ms. DAVIS. Does your analysis review the kinds of voting changes that have occurred in those jurisdictions? For example, I think your suggestion is where you have a significant black population, you've noticed changes in the electoral system and the voting laws. Do you notice any changes in the jurisdictions that have minimal black populations as well?

Mr. BROWN. According to the computer analysis that we did of the 168 majority black counties in the South, the average—I guess the average gap that existed between the black and white registration rate was somewhere around 20 percent.

Now we also found that the same 20-percent gap existed in the small counties as well, even in counties that only had a 2-percent black population. We also feel that these kinds of actions, such as, you know, the lack of having an accessible voting mechanism, have added greatly to the underrepresentation that has been reflected here in this testimony. We find that it's just totally unconscionable, that in a State that is 38-percent black, that you can only elect 10 people throughout the State to sit on a county commission. And we feel that the registration gap, the changes in electoral schemes, and all of these factors have added greatly to this massive underrepresentation.

Ms. DAVIS. Let me ask you this question. During testimony in the field hearing in Montgomery last week, I believe one of the witnesses suggested that Congress might consider changing or amending the Voting Rights Act such that some jurisdictions that are presently covered would no longer be covered by section 5. I believe the suggestion was that in jurisdictions within insignificant minority populations, it was not necessary to have a section 5 preclearance provision.

Do you have any response to that?

Mr. BROWN. I certainly think the data shows the same kind of disparities that exist in the counties with large black populations exist in areas with small black populations. And our position down in Atlanta is that the 15th amendment does not mandate a percentage of the population before the protection can be invoked that is provided in the amendment. We also believe that as long as the disparities that are reported here in the computer analysis exist, then of course there certainly should be some continuing protection afforded black folks, even in counties that are perhaps under 20 percent black.

Ms. DAVIS. In your review of the impact of the Voting Rights Act in the covered jurisdictions, I believe you also looked at Alabama to some degree. Again back to our hearings in the field, there was some suggestion—we've had testimony on various reidentification bills that have been introduced in the Alabama legislature and the apparent gentlemen's agreements between local legislators and

other members of their body—there was a suggestion by one of the witnesses that the reidentification bills were not racially motivated. Do you have any information available to you that suggests that was not the case in all the——

Mr. BROWN. Absolutely not. I think there is a fine line, a line that is totally indistinguishable, between the two acts. You know, the kind of reidentification bills that have been proposed there for the black belt counties are clearly egregious, and regardless of whether or not they were undertaken with the intent of diluting black votes, they certainly have had that effect. And I personally would like to say that the race factor was the only and the sole motivating factor behind these kind of actions.

I have not seen these types of reidentification bills introduced for other parts of the States where the black population is not so great. We're talking about a region of Alabama where the black population for the average county there is 64 percent. And these counties have never been able to elect a black or even a responsive legislator.

So I certainly think that it is racially motivated. And even if it wasn't, it certainly has had that effect. And the effects certainly have been very devastating.

Ms. DAVIS. One final question. Do you have any recommendations on how the bail-out provision might be amended to encourage jurisdictions to improve their election processes and to enable jurisdictions that don't discriminate to get out——

Mr. BROWN. We have not given very much thought to that process because most of the jurisdictions that we've looked at, clearly have problems. The registration gaps are very wide, if you just look at or if you would even visit some of these smaller populated, small black populated counties and just look at where the voting precincts are, they oftentimes are far removed from the black areas. People generally have to drive long distances. They are oftentimes located in places where blacks know that they are not welcomed.

For example, in Moultrie, Ga., the Lions Club there conducts the elections, and the Lions Club has had a segregated history in the city since its creation. These are the kinds of things that we find. And perhaps they may appear racially neutral on their face, but of course these kinds of things have had a devastating impact resulting in the lack of black elected officials in these areas.

So regarding bailouts, we really have not gotten to that point yet, because we feel that the jurisdictions that are under coverage now have not complied with the present provisions of the act. Perhaps there might be some jurisdictions somewhere that are nondiscriminatory in their actions, but in our analysis we have not found any. We have not looked at every little town in the South that's under coverage, but we certainly looked at 168 counties that are majority black, or at least over 20-percent black; we looked at 36 counties that have a black population that ranged from 2 to, say, 10 percent, and in those areas we found no difference in how the black citizens' right to vote is manipulated by white officials in all these areas.

So, again, I will welcome the time when we can find some jurisdictions that are not discriminating in our region and these juris-

dictions can come forth and prove that they are not discriminating. But at this point we have not found such jurisdictions.

Ms. DAVIS. Thank you.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Brown, do I understand your testimony, then, to be that so far as your organization is concerned, you are unable to find any jurisdictions in the South which have conformed to the 1965 act by submitting all those proposals they were obligated to submit, and by avoiding the use of test or devices in accordance with provisions of the act?

Mr. BROWN. I certainly did not say that, Counsel. I've said that nonsubmissions are so pervasive and so massive, we have not had the opportunity to look at the jurisdictions that have, perhaps, complied fully with the law. But there have been a substantial number of jurisdictions that have not complied with the law, and until compliance with the law is made, then of course I cannot imagine anybody talking about coming out from under coverage.

Mr. BOYD. I think coming out from under coverage would only impact on those jurisdictions which have complied.

Mr. BROWN. As I said earlier, we've not found such jurisdictions.

Mr. BOYD. You also said you haven't looked for them.

Mr. BROWN. Exactly.

Mr. BOYD. Throughout these hearings we've spoken in terms of extending the act in the case of H.R. 3112 for a period of 10 years. As I read the statute, there is no date of expiration applied to the act. In fact, all provisions of the act, including administrative preclearance are permanent. The only thing that expires on August 6 of 1982 is the 7-year prohibition against eligibility for bailout. It doesn't mean that the jurisdiction is automatically able to receive bailout by way of declaratory judgment by that date, and if that jurisdiction fails, after August 6 of 1982 it still is subject to administrative preclearance under section 5.

Is that your understanding as well?

Mr. BROWN. Would you repeat that again—the last part of what you said?

Mr. BOYD. If they fail pursuant to their filing for declaratory judgment in the district court for the District of Columbia on August 7, 1982, they're still covered by administrative bailout.

Mr. BROWN. Exactly.

Mr. BOYD. Would it be better from the standpoint of minority voters in certain portions of this country if bailout were available now rather than prohibited until 1982 and perhaps beyond with the passage of H.R. 3112, if bailout created an incentive for positive improvement, given the fact that the Voting Rights Act only requires the maintenance of the status quo?

Mr. BROWN. As I said earlier, Counsel, we have not had the opportunity to look very closely at any bailout provisions. As I said, perhaps there are jurisdictions that are nondiscriminatory in their actions, but most of our efforts have been directed at trying to counteract some of the massive discrimination that continues to exist in the States that are presently under coverage.

Perhaps at some time, we will start looking at that.

You know, the situation there in the South is terrible. I find that it is totally unfounded that black folks cannot elect candidates to office that they want to represent them. I think that does not exist for other people in this country, perhaps, except the Hispanics in the Southwest.

But I just find it very painful that in a county that is 64- to 70-percent black, that black folks cannot elect a candidate, not to say a black candidate, but a responsive candidate to even consider part of their needs. So that is where the bulk of our efforts have been in the South.

Mr. BOYD. Do you agree then with my reading of the statute, to the effect that bailout, to the extent it exists in the statute, only comes into play in 1982 at the earliest and then—even then it does not permit the Department of Justice opposing bailout, to take into consideration jurisdictions which, as you have said, have failed continuously to submit that which they were obligated to submit or, alternatively, have had objections consistently to that which they have indeed submitted.

Mr. BROWN. I don't necessarily subcribe to that reading, you know, of the statute. As I said earlier, Mr. Counsel, we are not in a position to talk about the bailout provisions as of today.

Mr. BOYD. I'm talking about reading the statute.

Mr. BROWN. I still maintain that we are not in a position to talk about that today, because we have just not given consideration to any of those issues that you have raised.

We feel that if the special provisions of the act, with an effects test, are not extended beyond their expiration date——

Mr. BOYD. That's where we go back to this whole argument that the special provisions don't expire, what expires is the prohibition against eligibility for a bailout. The special provisions never expire.

Mr. BROWN. It's my understanding the only thing that would perhaps permit a jurisdiction to bail out would be to show that they have not used the test or device.

Mr. BOYD. Anywhere in their territory for a period of 17 years or 27——

Mr. BROWN. As I said, we have not looked that far. All of our efforts are going toward trying to extend special provisions and, if possible, strengthening the enforcement of the act to get at some of the nonsubmissions that we have documented in our analysis.

Mr. BOYD. Thank you. I have no further questions, Mr. Chairman.

Mr. EDWARDS. I'm not sure if it was your testimony, but one of the witnesses today pointed out that the registrars have become little dictators in different parts.

Mr. BROWN. Exactly.

Mr. EDWARDS. This happened in California, too, with the language provisions, where they decided what the law would be and all of their prejudices and racial animosities came to the fore, and they made it as difficult as possisble. I should think, if we are ever going to even consider a bailout, that one—before we even consider it, we ought to find some jurisdictions where the State or the county would have instructed their registrars to behave themselves.

Mr. BROWN. Exactly.

Mr. EDWARDS. They would have manuals and everything else.

We had a witness in Alabama where they were—the registrar would hide the registration book under the judge's desk and things like that, so that people would be afraid to go into the judge's office and register.

Mr. BROWN. Exactly, Mr. Chairman.

We also believe the States are equally as guilty, and it becomes difficult to distinguish who is to bear the blame, because the Governor signs all of the special legislation before it becomes law, in spite of the fact that he knows the egregious nature of some of the local acts that have been passed through the different legislatures.

So, I certainly agree with you. I think it was V. O. Keyes who originally said that in the South the county registrars become one-man dictators themselves. He said that to be a fact. And that certainly has happened.

And I think as long as these kind of actions happen, it's impossible to talk about bailouts.

I think the State of Alabama is as much responsible for those bailout provisions—I'm sorry, those reidentification bills that were discussed during the field hearings—as the State legislators who introduced the bills, because they were passed by the full legislature and signed into law by the Governor, even though they only applied to the local counties.

So, I find it extremely difficult to distinguish at this point how an effective bailout provision would even work.

So perhaps when we cross that bridge, we will start looking at that. But as I said, most of our efforts have been trying to counteract some of the continued repression that exists in our region.

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

Excellent testimony. Thank you.

We are adjourned.

[Whereupon, at 5:55 p.m., the hearing was adjourned.]

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