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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EXTENSION OF THE VOTING RIGHTS ACT

WEDNESDAY, JUNE 17, 1981

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

The subcommittee met at 2:05 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: Helen C. Gonzales and Ivy Davis, assistant counsel; Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

Today we're going to continue our hearings regarding the need to extend the Voting Rights Act of 1965.

The Attorney General of the United States, or his designee, was invited on May 20 to testify today, after a number of telephone calls, in which we made it clear to the Department of Justice that the scope of their testimony could be limited to factual data only.

I was informed by the Department yesterday that our invitation had been declined. However, they hope that the new Assistant Attorney General, in charge of civil rights, will be confirmed within the next 10 days, so that they feel they would be able to testify in early July.

Our hearings are going to conclude, however, on June 25. And I do hope that the Department may be able to present testimony before that time. If they don't, it will be the first time that this committee has held hearings on the Voting Rights Act without testimony from the Justice Department, which is, of course, the primary enforcer of this act.

We are very pleased to announce and to have with us today the former Assistant Attorney General for the Civil Rights Division, Stanley Pottinger, who has agreed to come here today on very short notice, for which we are most appreciative.

Mr. Pottinger has been before this subcommittee on numerous occasions and is one of the heroes of the civil rights movement in the United States. We're certainly delighted to have him.

I yield to the gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

And I welcome you, too, Mr. Pottinger, indeed one of the heroes.

And I wish to impose upon you briefly to make a statement concerning the legislation I'm introducing this afternoon pertaining to the Voting Rights Act.

Mr. Chairman, during the past 2 months, two things have become very clear to me about the Voting Rights Act:

First, there are some jurisdictions which deserve to remain covered, both because there are persistent vestiges of discrimination present in their electoral system and because no constructive steps have been taken to alter that fact.

Second, the bailout provision which is contained in the law now serves as a disincentive to progressive change, while locking in those jurisdictions which have tried to improve conditions and which have abided by the law for nearly 17 years.

It is somewhat misleading to suggest that any part of the Voting Rights Act expires. Most of the act is totally permanent, while that portion which is subject to a term of years does not result in the expiration of section 5—administrative preclearance.

What happens after 17 years is that jurisdictions covered in 1965 become eligible to apply for bailout.

Under the provisions of section 4(a), a covered jurisdiction may not escape the administrative preclearance requirements of section 5:

> Unless the U.S. District Court for the District of Columbia, in an action for declaratory judgment brought by such State or subdivision against the United States, has determined that no such test or device has been used during the 17 preceding the filing of the action, for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

This means that under present law, without the extension, on August 7, 1982, some of the jurisdictions now covered by section 5 will be eligible to file for a declaratory judgment in the U.S. District Court for the District of Columbia.

Having filed, the United States, in the person of the Attorney General may oppose bailout on the grounds that such jurisdiction, or any part of it, has not operated with clean hands during the 17-year period.

I intend to submit a new proposal, pursuant to an evolutionary process which my thinking has undergone during these hearings. My bill would extend the administrative preclearance provision indefinitely, subject to a possibility for a jurisdiction to bailout, effective immediately.

In my judgment, this new proposal would strengthen the act, not weaken it, by providing incentives for jurisdictions now covered to do more than maintain the status quo presently required under the 1965 act.

Under my proposal, a covered jurisdiction, be it a State or political subdivision thereof, will be eligible to file for a bailout if it can show to the satisfaction of the local Federal court that:

One, it has not discriminated by way of a test or device for 10 years preceding the filing of the action.

Two, that it has not had a substantial objection during that same 10-year period.

And three, that it submitted all proposals which it was legally obligated to submit.

By "substantial," I mean not insignificant. And I would leave to report language and to the interpretation of the appropriate Federal court—I would leave it to them for the definition.

By requiring a jurisdiction to submit a proposal which it is legally obligated to submit, I would take into account those issues

which were legitimately under controversy. However, once the law is clear, a jurisdiction must submit or be ineligible for bailout.

My bill would also require one last category. It would require that a local Federal court be satisfied that the covered jurisdiction applying for bailout had made constructive efforts to enhance minority participation in the electoral process. Such efforts could include the lengthening of registration hours, the lengthening of voting hours, creating of same-day registration, a shift from at-large to single-member districts and the like. This provision is designed to encourage jurisdictions to reevaluate their existing practices with an eye toward making the electoral system more accessible to all eligible voters.

My bill also provides that the court granting bailout would retain jurisdiction for 5 years and that the case could be reopened upon notice of the Attorney General or an aggrieved party should any backsliding occur.

I would like to point out that I picked the local Federal court, rather than one in the District of Columbia, to facilitate availability and attendance and participation by local people. Not everyone can jump on the Amtrak and get up to Washington. That's negotiable, but I think it's better if the court is the local Federal court. And I do have confidence in the Federal courts as a general proposition.

I recognize that this newest proposal creates a bailout provision which is more restrictive than that which is in the current statute.

However, that which is in the current statute does not even come into play until after 17 years have passed since 1965, and if H.R. 3112 becomes law, until 27 years have passed.

I think we must, in fairness, recognize progress and compliance with the letter and the spirit of the law where it has occurred and provide an incentive for jurisdictions to comply, while retaining administrative preclearance for those areas as yet recalcitrant.

Thank you, Mr. Chairman.

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

I want to say at this time that the gentleman from Illinois, Mr. Hyde, has been the most diligent member of this subcommittee in all of the hearings and has studied the issues in depth and has made an enormous contribution already to our proceedings.

And I am sure that his suggested bill will receive most respectful and careful consideration by all of the members of the subcommittee and, indeed, the House of Representatives.

Mr. HYDE. Mr. Chairman, thank you.

And I am second only to you, I would say, in your diligence and attention. And I know if I keep filing bills, the President's economic recovery program will receive a fatal setback. So, I hope to not keep doing this. [Laughter.]

Mr. EDWARDS. Thank you.

Now, we're very pleased to have the former Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice, appointed by, as I recall, President Nixon and serving under President Ford.

Mr. POTTINGER. That's correct.

Mr. EDWARDS. And doing a splendid job, and we appreciate your coming today.

You may proceed.

TESTIMONY OF J. STANLEY POTTINGER, FORMER ASSISTANT ATTORNEY GENERAL, CIVILS RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. POTTINGER. Thank you, Mr. Chairman.

I am pleased to be here today to give you my views on the Voting Rights Act.

As you may recall, I was here back in 1975 for the same purpose, but my role, as you suggest, was somewhat different then. At that time, I was the Assistant Attorney General in charge of the Civils Rights Division, having been appointed in 1973. I was accompanied at that time by other staff members from the U.S. Department of Justice, and I was giving the official views of the United States.

Both Presidents Nixon and Ford signed bills extending the Voting Rights Act of 1965. They acted in the finest tradition of bipartisan support in committing the Federal Government to protecting the right to vote. As a lifelong Republican, I am proud to be here to support that tradition.

In 1977, I left the Justice Department in order to enter private practice. I have had no official connection with the Voting Rights Act for some period of years. Nevertheless, I hope that my comments will be of some value to you and the committee now.

In 1975, I testified in support of extending the Voting Rights Act, based upon my experiences with voting rights during my tenure as the Government's chief enforcement officer in this area after the 1975 extension of the act.

In light of the opportunity I have had to review some of the evidence that has been presented to the subcommittee during the last few days, I have to conclude that factual circumstances have not changed sufficiently to have finished the work that Congress deemed essential in 1975. Therefore, I believe the act should be extended.

In 1975, I testified before Congress that the protections of section 5 should be extended, because:

First, it had been effective in preventing discrimination.

Second, it had never been completely complied with in the covered jurisdictions.

Third, the guarantees it provided were more significant to the country than the slight interference to the Federal system.

I believe every one of those things is still true today.

Having reviewed some of the recent testimony which this committee has heard, I would like to add two more reasons for a 10-year extension of section 5 until 1992.

First, the potential for discrimination and the inclination to discrimination in the covered jurisdictions does not appear to have abated significantly or sufficiently since my 1975 appearance before this committee. The number of objections which the Department of Justice has interposed to changes in voting laws since 1975 shows that there is still a need for Federal legislation which protects minority voters from exclusion from the political process. There have been more objections since 1975 than in the 10 years from 1965 to 1975.

The need for section 5 protection is even more keen in my view in light of the trend toward disbursement of Federal funds in block grants to the States. If the minority community is to have a chance to fight for a fair share of these Federal funds, it must be able to compete equally at the ballot box and be able to participate effectively in the political process at the State and local level.

Second, section 5 should be extended for 10 years to cover reapportionment, in line with the 1990 census. Just as the protections of the act work to increase the numbers of minorities who are registering and voting, as well as the numbers of minority elected officials, so the act is necessary to monitor the efforts of jurisdictions who may try to dilute the effectiveness of an increased minority voting strength.

In my experience administering section 5, and in light of testimony about the objections interposed since 1975, it appears that many discriminatory election law changes are timed to coincide with evolving minority voting strength. This should not be surprising.

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. Section 5 should be extended to cover post-1990 census redistricting.

I will briefly describe, by way of example, three objections which Justice filed after the 1975 extension of the Act while I was still Assistant Attorney General.

In Tunica County, Miss., in January 1977, the Department objected to a change in the method of selecting the county superintendent of education. Tunica County was 73 percent black. In 1975, blacks, who were already a majority of the population, became a majority of the county's registered voters. Blacks won the circuit clerk position in November 1975, and their first seat on the local school board in November 1976.

It was immediately thereafter, with blacks voting in significant numbers, that the county attempted to make the county superintendent of education an appointive rather than elective office. Of course, this attempt was made over strong black opposition. Since the county could not meet its burden of showing that this change had neither the purpose nor the effect of discriminating, we objected.

Another post-1975 objection which we filed while I was Assistant Attorney General shows how the covered jurisdiction attempted to use the election laws to dilute the effectiveness of the minority vote, and thus to maintain control over the outcome of county elections despite a growing minority concentration. Before January 1965, county commissioners in Hale County, Ala., had been elected by single-member districts. The county, which was 66 percent black and had no black elected officials countywide, changed its method of election in 1965, but did not submit the change for section 5 preclearance until July 1974 about 9 years late. The Hale County commissioners, who were elected at large from 1965 through 1976, as a result of the uncleared change, were all white. We objected to this change because it was so obviously discriminatory.

In Bishopville, N.C., the town council was elected in at-large elections, but only a plurality vote was required for election. Blacks were almost half the town's population and were registering to

vote in increasing numbers. Faced with the possibility that a black might be elected with a plurality of the vote, in 1976, a full year after the last extension of the act, the city moved to head off this threat by adopting a majority vote requirement with staggered terms, a fairly classic device.

The Department objected to this change. Interestingly, the change to which we objected in 1976 also included a change to staggered terms, even though the town had tried that particular change 2 years before and we had objected then to that same change.

In 1975, many argued that because the affected jurisdictions had made significant strides, and many had, the act's preclearance requirement was no longer necessary. It turned out not to be true. In 1976, we objected to as many or more proposed changes from some affected States as we had in any previous year.

I was optimistic when I testified 6 years ago. I told this committee that I hope we would not need the Voting Rights Act in 1980. I said then:

> It should be our goal to end the need for the special coverage provisions, of course. A 5-year extension would provide a greater incentive to the covered jurisdictions to eliminate the need for special coverage. Indeed, I believe that the progress which has been made during the past 5 years warrants considerable optimism that we could complete the job in the next 5 years.

That, Mr. Chairman, was 6 years ago. Unfortunately, a significant amount of discriminatory action has continued past the optimism of my earlier statement. I respectfully urge the committee to extend the crucial protections of section 5 of the Voting Rights Act for another 10 years.

Thank you.

[The statement of Mr. Pottinger follows:]

STATEMENT OF J. STANLEY POTTINGER, FORMER ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Thank you, Mr. Chairman. My name is Stanley Pottinger, and I am pleased to be here today to give you my views on the Voting Rights Act.

I was here back in 1975 for the same purpose but my role was somewhat different then. At that time, I was Assistant Attorney General in charge of the Civil Rights Division, having been appointed to that position in 1973. I was accompanied by other staff members from the United States Department of Justice and I was giving the official views of the United States.

Both Presidents Nixon and Ford signed bills extending the Voting Rights Act of 1965. They acted in the finest tradition of bipartisan support in committing the federal government to protecting the right to vote. As a life-long Republican, I am proud to be here to support that tradition.

In 1977, I left the Justice Department in order to enter private practice. I have had no official connection with the Voting Rights Act in the past few years but I hope that my experiences in enforcing and administering the Voting Rights Act then will be of some value to you now.

In 1975, I testified in support of extending the Voting Rights Act, based upon my experiences with voting rights during my tenure as the government's chief enforcement officer in this area. Based on the year and a half that I continued in this position after the 1975 extension of the Act, and in light of the opportunity I have had to review some of the evidence that has been presented to this Subcommittee, I have to conclude that factual circumstances have not changed sufficiently to have finished the work that the Congress deemed essential in 1975. I therefore believe that the Act should be extended.

In 1975 I testified before Congress that the protections of Section 5 should be extended because first, it had been effective in preventing discrimination; second it had never been completely complied with in the covered jurisdictions; third, the

guarantees it provided were more significant to the country than the slight interference to the federal system.

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Second, Section 5 should be extended for 10 years to cover reapportionment in line with the 1990 census. Just as the protections of the Act work to increase the numbers of minorities who are registering and voting, as well as the numbers of minority elected officials, so the Act is necessary to monitor the efforts of jurisdictions who may try to dilute the effectiveness of an increased minority voting strength. In my experience administering Section 5, and in light of testimony about the objections interposed since 1977, it appears that many discriminatory election law changes are timed to coincide with evolving minority voting strength. 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. Section 5 should be extended to cover post-1990 census redistricting.

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for special coverage. Indeed, I believe that the progress which has been made during the past five years warrants considerable optimism that we could complete the job in the next five years."

That, Mr. Chairman, was six years ago. Unfortunately, a significant amount of discriminatory action has continued past the optimism of my earlier statement. I respectfully urge the Committee to extend the crucial protections of Section 5 of the Voting Rights Act for another ten years.

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

The gentlemen from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. And I too thank you, Mr. Pottinger, for your usual succinct and useful contribution. It's probably too soon to ask you for an opinion on my bailout provision, but we will send you a copy and would love to have you study it and see if you have any suggestions for improving it. But generally, the idea of an improved bail out where those jurisdictions—and I don't have any in mine, because I don't know, but I'm assuming there are some jurisdictions that have lived up to the act, both the letter and the spirit, and deserve to be treated like everyone else, and even if there aren't, the prospect that there is some way to get out for good behavior has this incentive factor that will enhance, really, the purposes of the act.

Would you agree with that statement?

Mr. POTTINGER. Yes, I think I do, if I may qualify my statement briefly. It has been my position based upon the scenario I painted in my testimony, of recognizing that although I have not been responsible for the enforcement of the act for the last 6 years, there ought to be a very heavy burden on any of us—and I think collectively we have the same objectives in mind, namely, to protect the democratic process through the right to vote—on any of us who propose a change to section 5. I do start from that position. Maybe you are ahead of me in that regard, and I would respect that if so, but my views are, unless we have a very clear showing, factual and evidentiary showing of the need for modification of the existing bail-out position which you have very nicely pointed out exists, it has been time-tested and should continue.

So I would begin by saying it isn't clear to me that the so-called pure or saintly districts—political subdivisions that might otherwise avail themselves of the bail out—have been unable to do so if they are, in fact, truely pure and saintly. I am aware, however, that there have been additional discussions along the line of what you have proposed, and my initial reaction to the proposal is, if there is going to be any compromise in this direction, and again, I don't suggest that that's necessary at all, that all of us should examine the proposals that you have made very carefully.

A couple of things appear on the face of it to me, that I would just throw out quickly, and this is meant only in the spirit of cooperation and contribution. I am, for instance, a little bit concerned in light of my experience about abandoning the central administration in the the District of Columbia Federal Court System.

Mr. HYDE. My only reason for that was to make it available to local people—we've been out in the field, Austin, Tex., and Montgomery, Ala. A lot of people have something to tell us, and I just want them to be able to tell us without coming up here. It isn't a crucial matter to me. But on balance more people could go get into

the courthouse and say, "Here's what we do in this county," and that county and that, I think, overrides bringing it to the District of Columbia. But I could be wrong.

Mr. POTTINGER. The impulse that you have on this, it seems to me, is a sound one, if I may use the word impulse for a moment. By that I mean that you have identified the reason for it, which is to enhance the democratic process, and there is an aspect of democracy in the courts, as much as there is in the political system. My only concern about it, based upon 5 years with this, Mr. Hyde, is that our experience was in Federal courts through section 2 cases and through other enforcement actions we brought in Federal courts in those jurisdictions that are under the most intense pressure to bail out. In many Federal courts there was great pressure to satisfy the desire for greater remedial discretion, even though the facts might not have warranted it.

This led to very spotty and checkered enforcement results, and I suspect, even though I wish I didn't have to say this, I suspect that if there were a bailout provision modification, and it did include the use of the local district courts involved, we might find ourselves back here regretting it. I really believe that that would happen, because of our experience.

Mr. HYDE. You feel that the local district court would be less able, for whatever reasons, to be tough-minded on something like that?

Mr. POTTINGER. I think it varies. I can think—if you will allow me not to name names—I can think of specific judges who would be not only excellent, but every bit as good as anybody we can propose in Washington, D.C. I'm not saying Washington, D.C., because it's Washington, D.C., has any lock on expertise or experience. I'm not concerned about them. Indeed, it would be wonderful if they could somehow be brought into this process. I am concerned deeply about those judges who are in areas or States that have the most recalcitrant problems, the most recalcitrant districts, and who inevitably, because they're human beings, at least one hopes the judges are human beings, because they are, find themselves——

Mr. HYDE. They're nominated by Senators and confirmed by the other body. You know, they can't be far wrong. [Laughter.]

Mr. POTTINGER. Because of that, sometimes what we do by putting the action in their court, is to—and I'm now speaking of those judges who either by inclination or even by ideological commitment are disposed against enforcement—by putting it in their court, we would not only be betraying those people who we are hoping to protect, but would be inviting the kind of pressure on them that I think could be withstood in a centralized——

Mr. HYDE. The trade-off would be then to make sure we got the best judges out here in the District rather than out in the field, but denying access, you know, to a lot of people who might want to have something to say. But isn't that a serious indictment of the Federal court system, though? We put Federal judges out there. They are supposed to be for life, immune from the political swamps, and they're good enough to send people to jail for long periods. I mean, I'm not disagreeing with you one bit, but we've got a bigger problem than we think, maybe.

Mr. POTTINGER. I think we do.

In a wholly different vein, sometime, I think it would be instructive to me to have a chance to talk to you about the federal system in connection with other parts of civil rights enforcement I was involved with, including investigations for——

Mr. HYDE. Let me say, I have no problem with the District Court up here, if that's what the civil rights community wants. If this is what they want, fine. I just want you to know my only reason was so people could walk into that courthouse and tell their story, that might not be able to do that up here.

Mr. POTTINGER. As I said, I think that that observation and impulse on your part it is a worthy one, and one that all of us, even those of us who are most frightened by the prospect of change in enforcement, ought to pay more than a passing bow to. I know what you are speaking of. In 1970, we tried to segregate school systems from Washington. Then we changed and went on the road, and we had an enormously different kind of process, and to our delight, a more successful one. I am very keenly aware of the desire you have to have democatic access exist everywhere, including the court systems. But I would have to say that like the civil rights community, of which I have affiliation and affection, in this particular case I would object to doing so.

Mr. HYDE. I will consider that. OK. Well, I am not sure I understood what you said about the present bailout, because as I understand, and I am subject to correction by majority counsel and minority counsel, and anybody else in the room, there is no way to bailout, by definition, if you get another extension.

Mr. POTTINGER. We had some bailouts. I grant you, they're not a large number. I think I cataloged them briefly when I testified in 1975. It's my understanding there have been a few more since 1975. The bailout provision is tough, no question about it. I think, equally, there is no question that it does work when one can show—when one carries the burden of compliance, of showing a history of compliance. I'm not suggesting here that in the sense that I gave you what I consider to be a very firm, and I hope, thoughtful opinion about the abandonment of the D.C. system, I'm not suggesting that I have such an opinion about barring any discussion about a new bailout.

I only approach it very cautiously, as I think, properly, the civil rights community does, because of the enormous implications for a rollback, an undetected rollback. It's bad enough to have to go with a rollback, but when you don't know about it, because the political entities involved are no longer under your jurisdiction, or despite your careful, courteous Federal monitoring of what's going on, then we have truly betrayed the most fundamental American right we all have.

Therefore, I comment very cautiously on bailout. I had some occasion to look at the so-called Butler bailout that you had endorsed in 1975, cosponsored, and I am not prepared to give a careful analysis of that or any other provision, in light of your new bill, at the moment.

I can see some similarities in it, and I appreciate your invitation to me to have an opportunity to look at and to comment on them. The Butler bailout seems to me to have had some tighter standards than what I understand your current bill to have. But I also see

much of the same philosophy operating in it, and I do believe it's worthy of examination.

Mr. HYDE. We have some new players on the field, and that may justify some different perspective on what is doable in the totality of the legislative process.

Mr. POTTINGER. One example I noticed in part 2 of the standards, the three standards that you named is that there should not be a substantial objection during their 10-year period. That would also, I hope you would agree, require some fairly careful examination as to not only what is substantial when abstractly defined, but how one determines in an administrative sense what is substantial.

Mr. HYDE. I agree. That word is fraught with ambiguity. And yet I'm trying to get at the erroneous, the frivolous, the punctilious, the objection that really, you know, was insubstantial—maybe, you know, it was like a Saturday night special. How do you define them?

Mr. POTTINGER. I would like to put in one pitch for my old colleagues at the Justice Department. I have not sensed a level of criticism of the Department in this area that we sometimes see in other areas of civil rights enforcement.

Mr. HYDE. But it's subject to that manipulation. That's what we have to watch.

Mr. POTTINGER. I understand it is subject to that manipulation. I think it's fair, however, to comment on such factors. I believe, for instance, in the first few years of enforcement, perhaps the first 10 years, we had roughly 2 percent, maybe 3 percent, at most, objections that we entered out of all submissions received. Very rare, when you consider the flow that came in.

Second, I know from my own personal experience—and this is to the credit of those who were around me and before me, not to my credit—but I know that the division was a highly disciplined agency of the Federal Government, as highly disciplined as any I have either had experience with as a private attorney or with whom I was associated as a Government official. The group—the voting rights section, the Deputy Assistant Attorney General in charge, and I'd like to think that the Assistant Attorney General, whoever he or she may be—are very cautious about not interposing frivolous objections.

I think that it would be fair for this committee, indeed, I would hope this committee would entertain anybody's claim to the contrary. But I also think if you examine the facts of every objection, I dare say I don't honestly know of one that I would not be completely willing to lay in front of you, Mr. Hyde, and say blindly, "I'll take your judgment on it. You tell me how you would view these facts, and whether you would or would not object, and I will accept it, regardless of what I believe myself."

I believe that our ability to judge the facts was so conservative in that regard, that there is virtually no one on this committee who would not have agreed case by case. I know you have other things to do than go back into 10 years of cases, but I would not, for my own part, and, indeed, for my successors and predecessors, be afraid to stand up to that test.

Mr. HYDE. Thank you.

Mr. EDWARDS. Mr. Pottinger, I think that it is accurate to say that the testimony we have had to date, both here and in the field, and in, I guess, 12 or 13 days of testimony by witnesses from different parts of the country, would generally support your testimony that the extension should be granted. I wish I could say that the last category in Mr. Hyde's bailout bill, which I will read here,

> That it will require the court to be satisfied that the covered jurisdiction had made constructive efforts to enhance minority participation in the electoral process, including the lengthening of registration hours, the lengthening of voting hours, creation of same-day registration, a shift from at-large to single-member district.

I wish we could say that that has happened.

We haven't had any testimony, and people might say we haven't sought it out, but I assure you, we have sought it out, and we are waiting for somebody from a covered jurisdiction to come in here and tell us, and especially minority people, that those things are happening in some of the covered jurisdictions. They really aren't, at least as far as we know, and certainly we invite covered jurisdictions to come in and certify the opposite. I am sorry to say but it is true.

There are an increased number of objections, as you pointed out in your testimony, rather than fewer objections all the time. And I think one of the most disturbing things I'd like you to comment on, was the testimony yesterday from a study made of the State of North Carolina, which I believe is about half covered, to the effect that there are dozens, perhaps scores of nonsubmissions, many, many, many changes in electoral laws that are never submitted and never found out about by the Department of Justice.

Is that possible?

Mr. POTTINGER. Yes, it is very definitely possible.

I'm sorry to say it's possible, but as one of my examples indicated, there have been 9 years of official de jure action that substantially affected voting rights, none of which had been submitted to the Justice Department.

Mr. EDWARDS. We've also had testimony to the effect that in some parts of the covered jurisdictions, in particular around the delta of the Mississippi River, that it is just in the last very few years that the black people there are finding out about the existence of section 5, that preclearance is required under the law, and that is one of the reasons for the increased number of objections.

Is that possible?

Mr. POTTINGER. It is possible. It not only is possible, it was known to the Civil Rights Division before I got there in 1973 that nonsubmissions were significant in number. And as you may recall, an outreach program was devised by which the Justice Department notified the State attorneys general and various county and local officials of their obligation.

It didn't cost the Government very much to send out those letters.

I think that that did have an important impact. It didn't cure the problem completely. But it was a courteous and proper way of communicating and it may very well be the Justice Department ought to do that again. If an outreach program isn't built into your new legislation, it wouldn't hurt at all to have some legislative history urging the Department to do that.

Mr. HYDE. What would you think of a provision making it a misdemeanor with a pretty good fine for willfully and knowingly failing to make a submission on the part of the highest official responsible for such submission, clerk of the county or something like that? It's really a toothless tiger, isn't it?

Mr. POTTINGER. It is.

Mr. HYDE. If they ignore it, they go ahead and have the election and never the twain shall meet.

Mr. POTTINGER. My initial reaction to your suggestion is that it's a great idea, and I'll tell you why. Of all the friends I've made among elected officials as well as citizens in the South in the last 10 years, I could regale you with a half hour's worth of examples of people who would not publicly acknowledge or endorse what you just suggested, because to do so is politically difficult, but who privately would say that your suggestion would relieve them of an immense burden by having such a law. Because if I am a local official, I can say to everybody who comes in, no matter who they are, "Look, I'll go a long way with you. I'm a good old boy. But I am not going to jail for you." And at that point you cut off the kind of pressure that right now there is no way to construct a defense against.

Mr. HYDE. You take away their discretion which they are being asked to abuse by some political figure?

Mr. POTTINGER. Precisely. I think it's difficult ever to take away discretion, but the way you just framed it is very careful. You said deliberate.

Mr. HYDE. Willfully and knowingly fail to submit legislation which they know or which are reasonable. You know, some of this stuff could be pretty iffy, but I think if we draft it right putting teeth into the submission section might be useful.

Mr. POTTINGER. I think it's a brilliant idea myself.

Mr. HYDE. Well, thank you. [Laughter.]

Mr. POTTINGER. Do you want to ask me about another part of your bill?

Mr. HYDE. We'll pick one at random. [Laughter.]

Mr. EDWARDS. Mr. Pottinger, we'll give you an opportunity to revise and extend your remarks at a later time.

Another phenomenon we found in these extended hearings is that although the Voting Rights Act and the different civil rights laws that have been enacted in the past 10 or 15 years have made it easier to register and vote, although there are exceptions to what I just said, generally speaking it might be easier to vote now in the current jurisdiction, and particularly in a State like Texas, but it is still darn hard to get elected. The devices that have developed, sophisticated schemes and gerrymandering, at-large elections, annexations, et cetera, make it most difficult to cast a vote that really counts insofar as the people that you would like to elect.

What do you think about that? Is that true?

Mr. POTTINGER. Yes, it is. It raises perhaps the most difficult, final barrier, too, that people who believe in democracy have to face in that area; that is, you can help create the conditions by which registration and voting occur on a fair basis and you can create conditions that encourage everyone, minority or majority race, to avail themselves of it. But at some point soon thereafter

everyone competes in the marketplace alone, without any Federal or governmental interference or shaping.

I think it's correct that this act, much as I believe that it may be the crowning jewel of civil rights legislation since Reconstruction, and even though I would do everything in my power to help preserve and extend it, is not a perfect act. It does not do enough. It does not go far enough to guarantee the right to participate in the free market of political voting and elections.

Now, obviously that's sort of a general statement. It gets us back to what can we do to tighten it. Because I don't understand from Mr. Hyde or from you or from anyone else any difference of opinion about the objective of the act which is to secure this most precious right. I don't think the act does all that it could do. I think in many ways it could be tougher. That's one of the reasons I reacted so strongly to the misdemeanor idea. It may be a very good idea.

Mr. EDWARDS. Well, obviously attitudes are going to change, and a whole atmosphere which we hope is changing now, because another phenomenon we've learned a lot about in these hearings is bloc voting where in so many jurisdictions white people are not going to vote for a black candidate and they go out of their way to find out if the candidate is black or white. Also, I'm sorry to say that black people are often not particularly interested in voting for white candidates. So pretty soon you get down to whoever has the political power to gerrymander can almost elect anybody they want.

Mr. POTTINGER. I think that dilemma that you have just defined bumps right up against the outer reaches of the act. It begins to lead to discussions of effect, quotas, all those things that have been posed as inimical to democracy. I for one would therefore not wish to propose a system in this act that would deal with bloc voting in a way that raises the specter of those nondemocratic results.

I have heard no one in the civil rights community, literally no one, suggest, for instance, that to deal with the problem of bloc voting, even that bloc voting which can be identified as having the purpose of trying to keep blacks out of office, there has to be proportional representation. No one has suggested that. In fact, I think you will find that the civil rights community, knowing the reaction that such an idea would create, and knowing the antidemocratic nature of it, is more careful to steer away from it than other people who come to this subject might be willing to discuss.

Mr. EDWARDS. Well, those are very wise words.

Ms. Gonzales?

Ms. GONZALES. Thank you, Mr. Chairman.

Mr. Pottinger, we have previously had a concern expressed before the subcommittee with regard to the consideration of the number or type of objections as a factor, maybe as a key factor, in a bailout formula, and the concern that has been expressed is basically that a lot of the discriminatory practices in the covered jurisdictions were in fact grandfathered in under the act so that in many places you still have electoral schemes, at-large schemes or whatever, that have not been precleared. Therefore, they have not been objected to. I guess the concern they raise is that in fact if people can meet the test as of today, that once these discriminatory

practices are struck down, that their replacements will not be able to go through the preclearance procedure.

Do you have any comments on that kind of a concern?

Mr. POTTINGER. In a sense, as I understand it, Ms. Gonzales, you are concerned about those—like somebody who hasn't filed a tax return for so many years they become afraid to do it even though they want to do it because the penalty is so high. Is there some way to give credit to a district which, unlike a human person, is run by a succession of different people and the different new people may be better, more sensitive to voting rights than their grandfathers? Is there any way to take recognition of that change of attitude and therefore not penalize them in a time sequence because of the actions of their grandfathers?

I think that philosophically posing the question that way it's hard to say they should be penalized, and I would not penalize them.

My concern comes from a person who has been in the pit in this program, like my colleagues in the Voting Rights Section. You always have to reduce an enforcement objective to rules, regulations, and administration. And to administer a program toward that objective—that is, to give credit where credit is due—is a very tricky thing. It goes back to the point I made at the outset, which is that it's hard for anyone to say that there shouldn't be a realistic bailout provision that pays attention, indeed gives incentives, to those who are sensitive to the voting rights of everyone.

But I am concerned about how you do it without throwing out good enforcement where it's needed. If you can devise a way to take a count through time sequence or through a finding that there has been complete change—I wouldn't even say substantial change—complete change and complete compliance for a significant period of time, then I suggest that no one, including former enforcement officials and civil rights officials, would object to that. It's finding that formula that is at issue, I think.

Ms. GONZALES. One of the concerns that has been raised again during the course of these hearings is that the section 5 administrative remedy as opposed to a judicial remedy does not take into account the due process rights of the jurisdictions that are covered. Would you have a response for that concern as well?

Mr. POTTINGER. Yes, I do. Again it comes from experience with administration. What you find is that virtually all State and local officials prefer coming to the Justice Department than to going to court. And I think that it's fair to say partly for the reasons I gave before about the splendid record of enforcement in the Civil Rights Division. But it's also because you have a much quicker, speedier determination, and a much less costly determination.

The Division is under a 60-day limit with one possible extension. My experience is that that is lightning speed. The Civil Rights Division's Voting Rights Section is a Silver Streak compared to other agencies of the Government, and that would include the courts. Other than preliminary injunctive relief, I don't know of any court that would act on the substance of a submission as fast as the Justice Department does in these cases.

Now, that only partly answers your question, because you talked about due process. Especially when an objection is interposed, sup-

pose someone says, "I haven't been treated right." Of course, if the Justice Department in 30 days says there's no problem, no one's going to say, "I've been denied my due process." On the other hand, when Justice interposes an objection there are due process rights available, appeal rights, and I think you get into those appellate procedures much more quickly with a record that is virtually made by a submitting jurisdiction, not in an adversary proceeding, and therefore, if anything, due process is sort of weighted in favor of the submitting jurisdiction.

Mr. HYDE. Would you yield to me.

Mr. Pottinger, one of the problems we heard in Alabama from some official was that we passed the law but Justice didn't send them any guidelines, any checklists, any guidance, really, and that really hampered compliance; that, you know, it read like putting a bicycle together on Christmas Day. You've got the parts but how do you put it together. Did we fail these jurisdictions, many of which are quite rural, by not providing them with readable, understandable guidelines as to what the law meant and how to assist them in complying?

Mr. POTTINGER. I think not. In 1971 the Division did provide guidelines, and like any set of guidelines that are made up by people who are dealing with a new subject, they had a certain organic change to them that arose with experience. I wouldn't say they were perfect and I wouldn't say they're perfect now, but I think they were basic enough to give satisfactory guidance to those local officials and State officials who truly were seeking compliance.

My experience in this area—I don't mean to sound cynical about this, but I do want to be honest about it. My experience in this area is similar to school desegregation. Local officials would come and say "We don't know what to do, oh me, oh my, oh dear, what do we do?" Then they would submit a plan which you can say is discriminatory, and then they would say, "Well, fine, this one is discriminatory. You're going to object to this. Now what do we do?"

Frequently, not always, but frequently you have to be cautious about engaging in an advisory process for a host of reasons.

First, because that's when you really begin to get into an intrusive position in the federal system, one that all of us would be a little more worried about. We are literally telling people who votes and doesn't vote.

Mr. HYDE. You mean you got the nose of the camel in the tent but you're trying to keep the shoulders out?

Mr. POTTINGER. I'd say we got the nose and the neck in but we're trying to keep the—that's right. I think that's not unfair. The nose is under the tent and it would be disingenuous to pretend it's not. It is. But that doesn't mean we have to bring in the whole camel if we don't need to. And sometimes people would say let's drag in the whole camel, let's get Jerry Jones and Jim Turner and others at Justice to tell us exactly what to do, because the minute we get it we're going to go to Senator so and so and we're going to bomb them for Federal interference. And it will be bombs over Washington the minute we get into that advisory role.

I in my naive way occasionally decided to get gratuitously helpful, and I have scars all over my back to show you for it. It just

doesn't work most often. That doesn't mean that everyone who comes before you and says "We don't know what to do" and "There's no one to help us" is being dishonest.

Mr. HYDE. Wasn't there a hot line where a local county official could call and say here's what we are planning to do, what do you want from us?

Mr. POTTINGER. During election—at election time we have, through monitors, civil rights attorneys from the division who have gone onsite, there have been many, many efforts to be helpful. My exposition to you about a desire to stand back and not give any advice would be overstated if I left it at that. There has been lots of advice. If someone said, "If we shut down the place of registration known to the black community (and the white community) the night before registration begins and we move the place of registration, is that a violation?" we would not say, "Well, submit it and we'll just object or not object." We say "That's a violation. You've got to be kidding."

If someone said we are going to go from single member districts to at-large districts, and we were also told or can see that blacks were accreting voting power, we would say, informally as well as formally, that that's a mistake.

I think the folks who I am most concerned about are those who are searching for an accommodation to the majority white community. They are looking as elected officials for some way to throw a bone to the white electorate who is getting nervous and worried about the rise of black voting power, at the same time not wanting to submit something that on its face is clearly a violation.

So they are searching for a crack, and they will come to you and to me and others and say, "Gee, why don't you give us the crack? Where's the place we can go here?" And what we end up saying to them is, "There isn't any place for you to go. Everybody votes." And then they say, "Well, that's no answer. What kind of answer is that? That's no help. We could have figured that out if we had read the Voting Rights Act." And then we say, "You're catching on." [Laughter.]

Mr. EDWARDS. Is it your testimony, Mr. Pottinger, that the process insofar as the local and State governments are concerned is simple, fair and inexpensive?

Mr. POTTINGER. Yes.

Mr. EDWARDS. Mr. Hyde?

Mr. HYDE. I have nothing further.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. No questions, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. Pottinger. You've been very helpful.

There is a vote in the House of Representatives at this time, so we will recess for about 10 minutes.

[Recess.]

Mr. EDWARDS. The committee will come to order. Our last witness today is Mr. Eddie N. Williams. Mr. Williams is the president of the Joint Center for Political Studies here in Washington, D.C.

Without objection, Mr. Williams' statement will be made a part of the record.

Mr. Williams, we welcome you and you may proceed.

[The complete statement follows:]

STATEMENT OF EDDIE N. WILLIAMS, PRESIDENT OF THE JOINT CENTER FOR POLITICAL STUDIES

Mr. Chairman and members of the subcommittee, thank you for your invitation to present some of my thoughts on the need to strengthen and continue the Voting Rights Act. I am accompanied by Attorney Armand Derfner, one of the nation's leading lawyers in voting rights cases, who directs the Joint Center's voting rights project.

The Joint Center for Political Studies is a nonpartisan nonprofit organization. It was founded in 1970 to conduct research, technical assistance, training and information programs designed to advance the participation of blacks and other minorities in the political process, and to assist members of such groups who are elected or appointed to public office to serve their constituents effectively.

The Joint Center is nationally known for its research and publications dealing with various aspects of black political participation. These include analyses of the black vote in national, state and local elections; assessments of participation in the presidential selection process; and annual surveys of black elected officials.

Throughout our 11-year history, we have taken a special interest in the Voting Rights Act which, in many ways, is the most far-reaching piece of civil rights legislation ever passed. In 1974, along with the Lawyers Committee for Civil Rights Under Law and the Voter Education Project, we published a book called Federal Review of Voting Changes: How to use Section 5 of the Voting Rights Act. In 1976, after Congress last continued the Act, we published a second edition of this publication. The book has been widely circulated, not only among minorities in the covered jurisdictions, but also among public officials and city and county attorneys in those jurisdictions, and in the Justice Department itself. I would like to think that the use of our publication by all these categories of people, some with different roles and attitudes toward the Act, is a sign that the publication is both fair and comprehensive. I must say, Mr. Chairman, that we are looking forward to publishing a third edition next year because we believe that the evidence that this Subcommittee has amassed will result in renewal of the Voting Rights Act.

I appeared before this Subcommittee in 1975, and I am especially pleased to be here again because the Chairman, Members, and Staff of this Subcommittee have been extraordinarily conscientious in studying this Act. The Members have been extremely patient and thoughtful in attending many days of hearings and in giving the most careful consideration to the law and to what the various witnesses have presented.

On June 16 we learned that the President of the United States has requested the Attorney General to conduct a study of the Voting Rights Act and make recommendations by October 1. While we would of course prefer it if the Administration would take a position now in support of renewal and while we believe that all the information that anyone would need has been gathered by this Subcommittee, we certainly respect the President's desire to examine the Act thoroughly before coming to any conclusion. We believe that once he has the facts, he will come to the same conclusions that others have reached, including some who were initially uncertain or even doubtful, namely that the Act should be carried forward in the form set forth in H.R. 3112.

We have been able to meet with the Attorney General and other Administration officials to carry on a dialogue on the continuing need for the Voting Rights Act, and we hope to keep on doing so. In that connection we hope that the inquiry carried out by the Attorney General will be as open and thorough as the hearings conducted by this Subcommittee.

A recent event points up the critical importance of the Voting Rights Act and its continuing usefulness. Just two weeks ago, on June 1, 1981, the U.S. Supreme Court decided the case of *McDaniel* v. *Sanchez*, a redistricting case from Texas. The decision underlined the major role played by the Voting Rights Act in reapportionment cases and also emphasized the value of keeping the review of changes centralized in the Department of Justice or the U.S. District Court for the District of Columbia.

The *McDaniel* case involved a county redistricting plan in Kleberg County, Texas, which the U.S. District Court in Texas held was exempt from Section 5 review because it had been adopted in the course of a one-person one-vote lawsuit. The Supreme Court held this was erroneous because the protection afforded by Section 5 review was just as critical in such cases as in the cases where a state or local government reapportioned on its own. The Supreme Court quoted the 1975 Senate Committee report: "Approximately one-third of the Justice Department's objections have been to redistrictings at state, county, and city levels. This past experience ought not be ignored in terms of assessing the future need for the Act. It is ironic

that the Supreme Court's 'one-man one-vote' ruling has created opportunities to disfranchise minority voters. Having to redraft district lines in compliance with that ruling, jurisdictions may not always take care to avoid discriminating against minority voters in that process." [*McDaniel* v. *Sanchez*, 49 U.S.L. Week 4615, 4620n.26 (June 1, 1981) (citations omitted).]

Later in the opinion, the Supreme Court made the equally important point that the centrailzed review provided in the District of Columbia or the Justice Department has played a major role in making Section 5 work efficiently and fairly: "Because a large number of voting changes must necessarily undergo the preclearance process, centralized review enhances the likelihood that recurring problems will resolved in a consistent and expeditious way . . . The federal interest in evenhanded review is furthered by the application of the statute in cases such as this." [*McDaniel* v. *Sanchez*, at p. 4621.]

Thus the Supreme Court found that the procedures established in the Voting Rights Act are admirably suited to the intentions expressed in the legislative history of the Act.

This Subcommittee's hearings have been espeically valuable because they have made it possible to take a hard look at the facts about the Voting Rights Act, as opposed to notions and impressions that have resulted in some myths about the Act. I do not intend to repeat the detailed and impressive record that has already been made here. However, I do want to address briefly some of the myths which threaten to gain some currency in the absence of a restatement of certain facts.

Mr. Chairman, I will focus on four of those myths.

Myth No. 1: The Voting Rights Act has done its job, and minority voters have progressed so much that the Act is no longer needed.

This point of veiw sometimes comes from people who focus on sharp increases in registration and voting among blacks and Mexican-Americans. I believe the members of this Subcommittee are aware that these data are only a small part of the story. They do not account for what happens to these votes after they are cast. As the Supreme Court recognized in *Allen* v. *State Board of Elections*, the first major Section 5 case, "the right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot."

Another version of this myth focuses on the increases among minority office holders since the passage of the Voting Rights Act, and I think these increases need further examination.

Many of the figures showing the number of black elected officials come from the Joint Center's research, which we publish annually in our National Roster of Black Elected Officials. Those figures show undeniable progress, but I do not see anything in them that suggests that the need for the Voting Rights Act has diminished. On the contrary, I think the figures tell us just how far we have to go.

I have brought some of these figures with me. Table 1 shows the number of black elected officials, for the years 1968 and 1980, in each of the original covered states. You will notice that this table shows a growth in the absolute number of black elected officials between 1968 and 1980. Yet, the number of black elected officials is still only five percent of the total number of elected officials in those states where the total black population is more than 25 percent. In making this point, Mr. Chairman, let me hasten to add that I do not believe in any requirement of a quota system or proportional representation for minorities. Nor am I saying that equal voting rights suggest that black voters should elect only black candidates. It is because the figures about black candidates are the ones cited by opponents of the Voting Rights Act that I am using them for closer scrutiny.

Next I call your attention to Table 2. This table lists, for each of the original covered states plus Texas, the number of black elected officials in each of a number of categories, from state legislators to local school board members. The table shows a high concentration of black elected officials in local and often less influential positions.

Finally, Table 3 looks at the cities in which blacks are mayors. The table shows that notwithstanding the widely publicized examples of black mayors elected in Atlanta, New Orleans, and Birmingham, the overwhelming number of black mayors are chief executives of small towns which are essentially all-black or nearly so. Specifically, one-half of the 70 black mayors in these states are in towns whose population is under 1,000 and at least 80 percent black.

In short, whether we look at the proportion of black elected officials, the types of offices they hold, or the places in which they serve, it is clear from our research that the existence of only 1,813 black elected officials in the covered states, is a signal to keep the Voting Rights Act at work, not to turn it out to pasture.

Myth No. 2: The covered jurisdictions have changed enough that the preclearance provisions of the Voting Rights Act are no longer necessary to protect against discrimination.

This is a variation of the first myth. It asks us to assume that habits and folkways that have been built up over generations can be dissipated in a few short years. Now, I am a believer in the proposition that laws can bring about changes in attitudes, but that is a process that takes time. A recent case in South Carolina speaks to this point. The secretary of a County Democratic Executive Committee was asked about evidence showing the wholesale exclusion of blacks from the election process, including a consistent refusal to appoint blacks as managers and clerks at precinct polling places. He was asked why this existed, and his answer was that it was traditional. He was asked how long it would take to change, and his answer was that it would take until there was a court order.

Not every place is like that county, but the evidence presented before this Subcommittee has made it clear that the election process in the covered jurisdictions is filled with discriminatory barriers and mechanisms, and that as black voters have begun to register and vote in larger numbers, previous barriers have all too often been replaced by new barriers.

This Subcommittee has heard voluminous and eloquent testimony about what the covered jurisdictions have been doing since 1975 to erect new barriers for minority voters. Specific instances have been cited in every major state covered by Section 5. In those states various changes have been used to dilute the votes of minority citizens. According to the figures of the U.S. Department of Justice, over 500 voting changes have been objected to as discriminatory since 1975. This is more than half of all the changes blocked in this way since 1965 when the Voting Rights Act was passed. I realize, of course, that this comparison is not precise. The number of submissions in the early days of the Act was small and the coverage of the Act has expanded. But the point is that if the need for the Act were diminishing, one would expect to see the number of objections dropping drastically, and that has just not happened.

We have looked at some of the submissions and objections under Section 5 to see what types of discrimination they have involved. They are the barriers, which Congress had correctly anticipated, barriers which witnesses have verified in graphic detail before this Subcommittee: dilution of minority votes through gerrymandering and related practices; redistricting of election boundaries; annexations superimposed on unfair election systems; shifts to majority-runoff requirements, numbered posts, and anti-single shot laws. These are the types of discriminatory changes that Section 5 has confronted and must continue to confront.

We asked the law firm of Hogan & Hartson if it would analyze the objection letters, and I have included their preliminary analysis in my testimony. It is based on only a fraction of the letters, and it obviously does not try to examine every single objection, but I think it gives a graphic picture of the importance of Section 5. It shows that the violations cut across different types of voting practices, different states and at different times. It also shows an enormous number of tardy submissions, many of which came in only after the Justice Department or some citizens pressed jurisdictions to file.

I would like to supplement the Hogan & Hartson memorandum with just two examples of very recent objections, one from Holly Springs, Mississippi, and one from the Burleson County Hospital District in Texas. The dates of these objections are also instructive for they show that problems are occurring right now. At the beginning of these hearings, there were questions raised by some about whether the voter discrimination problems that were prevalent in 1965 and 1970 are the problems experienced today or whether they had ended. These hearings have shown how persistent these problems really are. These two objections are not even from 1979 or 1980, they are from June 1981: this month and this year.

The Burleson District objection is dated June 5, 1981. Ironically, Mr. Chairman, it was signed on the day this Subcommittee was holding hearings in Austin, Texas, just 75 miles from Caldwell, Texas, the principal city in Burleson County.

The Holly Springs objection is dated June 9, 1981, just eight days ago!

In both cases, the nature of what went on is spelled out in the objection letters, the central portions of which are as follows:

Burleson County, Texas, Hospital District: "In our consideration of your submission, we have considered carefully the information furnished by you, along with information and comments provided by other interested parties. Our review and analysis of this matter reveals the following facts: The Burleson County Hospital District has boundaries coterminous with Burleson County which has a population of 12,313, of whom twenty-two percent are black and ten percent are Mexican American. The number of polling places in the District was reduced from thirteen

throughout the county to a single location in the City of Caldwell. One effect of this reduction in the number of polling places was a drop in voter participation from approximately 2,300 voters participating in the 1977 election to approximately 300 voters participating in the 1979 and 1980 elections.

"The bulk of the black population is concentrated in an area known as Clay Station, which is over thirty miles from the District's single polling place in the City of Caldwell. A large percentage of the county's Mexican-American population is found within the City of Somerville which is about nineteen miles from the City of Caldwell. Both of these areas had polling places that were eliminated by the change to a single polling location.

"We understand that for the April 4, 1981, election, minorities from the Clay Station and Somerville areas were able to meet the burden placed on them by the use of a single polling place in Caldwell only through a concerted effort with other county voters with similar interests whereby they themselves successfully provided publicity for the election and transportation to the single poll. However, this additional burden imposed upon the minority voters to obtain access to the single poll was caused by the elimination of polling places in areas which are centers of minority population. Thus, the removal of polling places in the minority areas had a disparate impact on minority voters." Letter to Frank E. M'Creary, attorney for Burleson County, Texas, Hospital District, June 5, 1981

Holly Springs, Mississippi: "We have carefully considered the submitted materials, 1980 Census data, the comments of other interested persons and relevant court decisions. The statistics provided by the city in support of the submitted redistricting plan show an estimated city population of 7,269 of whom 4,327 or 59.5 percent are black; that Ward 1 would have 1,825 persons of whom 81.9 percent would be black; Ward 2 would have 1,825 persons of whom 62.5 percent would be black; Ward 3 would have 1,802 persons of whom 48.1 percent would be black; and Ward 4 would have 1,817 persons of whom 45.5 percent would be black.

"However, according to 1980 Census data, the city's population is 7,285 of whom 4,618 or 63.3 percent are black. Our analysis of the submitted plan, using Census data, shows, that Ward 1 would have 2,543 persons of whom 88.8 percent would be black; Ward 2 would have 2,049 persons of whom 61.2 percent would be black; Ward 3 would have 1,251 persons of whom 38 percent would be black; and Ward 4 would have 1,443 persons of whom 43.5 percent are black. Thus, our analysis has revealed that, even though the city's statistics reflect a well apportioned plan for the election of its council, this conclusion is not supported by the Census data just recently published. To the contrary, Census data show that the two wards containing the bulk of the black population (Wards 1 and 2) are substantially overpopulated (underrepresented) while the predominantly white wards (Wards 3 and 4) are substantially underpopulated (overrepresented). According to 1980 Census data the plan results in an overall deviation of over 70 percent with the burden of this malapportionment falling on the black electorate." Letter to William C. Spencer, June 9, 1981

Myth No. 3: The small number of objections, compared to the large number of voting changes that have been submitted, proves that the preclearance process is neither efficient nor necessary.

This is another instance in which some people have been misled by looking at the statistics hastily rather than carefully. There have been over 400 separate letters of objection issued by the Justice Department, which have included objections to more than 800 specific discriminatory voting changes. (Many of the objection decisions cover more than a single discriminatory act, such as an objection to a combination of numbered posts and a majority requirement, or an objection to several annexations conducted at different times but submitted together.) Considering that each one of these objections is equivalent to a lawsuit and an injunction, the number is phenomenal. It is many times higher than any comparable figures for the number of lawsuits that have struck down discriminatory voting practices. For example, the total number of voting discrimination cases brought by the Department of Justice from 1965 to 1977 (not counting Voting Rights Act cases) was only 46. Even if you multiply this figure several times to take into account suits brought by private litigants, the total is a small fraction of the Section 5 objections.

These objections result from a process that is much more expeditious and more efficient than any litigation. As this Subcommittee has heard repeatedly, litigation is the most inefficient way to proceed, and the time required to resolve traditional litigation can be measured not only in years, but sometimes in decades. In contrast, the Section 5 review process is unburdensome, prompt and fair.

It is unburdensome because the covered jurisdiction need only mail in the voting change with an explanation and certain background and demographic information that is clearly specified in the Code of Federal Regulations. Witnesses and travel are not required. The Justice Department gathers the information together and, if more

information is needed, it will write or call the jurisdiction, indicating the additional information required. The information can be sent back by mail. Most submissions are cleared in this routine fashion, but the ones that are objected to are thoroughly re-examined through several levels of supervision. The entire process is handled within the Justice Department by a Section 5 unit consisting of fourteen professionals and a small number of clerical employees, on an annual budget, according to the Los Angeles Times, of approximately $500,000.

The Section 5 review process is prompt because the law gives the Justice Department only 60 days within which to decide on a submitted voting change, or a maximum of 120 days if the Department requires further information. There is no backlog and no delay because the law provides that after the 60-day or 120-day period, the covered jurisdiction is free to enforce the law if the Justice Department has not taken action.

Finally, the review process is fair because the Justice Department has built up an expertise and a set of guiding principles that have produced a high degree of uniformity and consistency in its Section 5 decisions. Moreover, the Justice Department is not the final authority if a covered jurisdiction is dissatisfied with an objection. The jurisdiction is free to go to the U.S. District Court. (Interestingly enough, if voters are dissatisfied with a no-objection decision, they have no such appeal.)

I think it is appropriate here, Mr. Chairman, to underscore the fact that the Attorney General is widely perceived as being fair as well as responsive in the preclearance process. It is instructive to note that although the covered jurisdictions are free to go to the U.S. District Court and then to appeal to the Supreme Court, in fact only 23 of the Justice Department's 400 objection letters have been taken to court. Two other voting changes were taken directly to court without being submitted first to the Department of Justice. Of these 25 law suits, only four have been successful. The Attorney General's even-handedness may thus be seen in the relatively small number of law suits that have been filed.

These facts confirm numerous witnesses, observers and politicians have conceded. The preclearance process is fair, efficient, and a prime example of an effective regulatory process.

Myth No. 4: The Voting Rights Act should be extended nationwide.

This is one of the most common areas of misunderstanding. Many parts of the Voting Rights Act already apply nationwide. The preclearance procedure itself applies in all or part of 22 states around the country, according to a uniform statutory formula that the Supreme Court has held is well-designed to meet the specific problem of voting discrimination. In any event, it is not always clear what people mean when they talk about nationwide extension. Do they mean to extend preclearance nationwide or just to have some other procedure be nationwide?

First, as to preclearance, I should note that no one on this Subcommittee has suggested making Section 5 preclearance nationwide. As Representative Hyde has pointed out, to do so would be tantamount to "strengthening it to death." I agree that a nationwide preclearance procedure would be unwieldy, and I believe that it might also raise serious constitutional questions. I am not a lawyer, but I understand that the preclearance remedy was upheld by the Supreme Court in 1966 and reaffirmed in 1980, based on the record made before this Subcommittee and in the Senate—a record of violations in the covered states that justified the use of the preclearance remedy. There has been no such record made about the rest of the nation. Indeed, while a number of witnesses have suggested that problems of voting discrimination in the rest of the country are similar to those in the covered jurisdictions, no witness has presented a single example of voting discrimination in another area that could call for a Section 5 remedy. Without such examples, I suggest there would be no sound basis for Congress to make the remedy nationwide and there might not be a basis for the Supreme Court to uphold it.

The other aspect of the call for a nationwide extension assumes a remedy that is different from Section 5, a remedy other than preclearance. There is no basis for abandoning the only remedy that has ever worked in covered states just because other places that have far different histories and far different conditions today do not have the same remedy. We must not abandon a real remedy simply to achieve a meaningless symmetry.

This is not to say that voting problems do not exist in other areas. No doubt they do, but there are other remedies for those problems. Indeed, the Voting Rights Act itself includes some of those remedies. For example, Section 2 allows the Attorney General or private citizens to go to court to prove discrimination. Right now, Section 2 has been severely restricted by the Supreme Court's decision in *Mobile* v. *Bolden*, but if it is amended it will be a realistic remedy, though certainly not an easy one. Secondly, Section 3(c) of the Voting Rights Act provides that a court can impose the

preclearance procedure on a jurisdiction found guilty of voting discrimination, even in an area not already covered by Section 5.

Finally, Section 11(a) of the Voting Rights Act provides that in any jurisdiction in the country, "no person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote." That Section applies everywhere. It is not dependent upon a showing of racial discrimination, and it is perfectly suited, for example, to deal with vote fraud.

Remedies should be tailored to fit the need. The Voting Rights Act is a well-tailored law, and we need to wear it a while longer.

I want to address one other argument: that it is an indignity upon the covered jurisdictions to have to gain preclearance of their voting changes and that it is an affront to federalism. I do not put that view in the category of myth because it is a serious view put forth in many instances by people of good will. I do believe, though, that it is a curious sort of upside-down notion because I thought the Voting Rights Act was about the indignity of denying or diluting a person's right to vote.

States are not abstract entities, they are collections of people. We hear a lot of talk about federalism, but we should not forget that in our federal system, a principal purpose of state government is to protect every person's right to vote. If the state cannot or will not do so, it becomes the responsibility of the federal government, and the preclearance process of the Voting Rights Act is the only method ever devised which has done that.

I should add at this point that I also support the continuation of the language minority provisions of the Voting Rights Act, which are equally fundamental protections of the right to vote. Those provisions insure that citizens who are not proficient in English are nonetheless included within the political process which affects their lives.

In conclusion, Mr. Chairman, I return to the central question in these hearings: Is the Voting Rights Act, as proposed in HR 3112, still needed in the decade ahead? The answer presented here by most witnesses and by most of those who have voiced a public view is a resounding "yes, it is still needed in spite of the racial progress, however defined, that has been made since 1965." I fully concur with this view. The evidence in support of it is overwhelming, and I am pleased to note that more and more Americans, including some members of this committee, are beginning to share this view.

Nevertheless, there remain those who look at the powerful evidence in support of renewal as either inconclusive or inconsequential and those who would rather see the Act diverted from its original purposes or allowed to lapse altogether. My perception, Mr. Chairman, is that their argument, when stripped to the bone, is simply that this nation can now afford to gamble that the inequities the Voting Rights Act has begun to correct will not reappear. This would be a very dangerous gamble.

It would be dangerous because racism persists and cannot be wished away.

It would be dangerous because much of the limited progress that has been made is fragile and can be easily reversed.

It would be a serious mistake to abandon the protection of minority voting rights at the very time our nation is undergoing a systematic reassessment of many national policies, commitments, and even beliefs. There is concern that in our haste to solve the nation's economic problems we might ignore some of our most important values and achievements, or run roughshod over those who are the most vulnerable among us. Already the potential effects of a drastic reduction in the federal budget are well known. There is genuine fear among those who now are strapped in poverty and defenseless against the knives of the budget-cutters. There is fear also that the retreat of the federal government from the management and oversight of certain social programs will inevitably mean that minorities and the poor will have an even harder time making their voices heard and getting their needs met. This fear, if combined with political impotence, could be explosive.

In times like these, when so much is at stake and when new political and economic realities are having a wrenching effect, the voting rights of the most disadvantaged in our society must be protected. The Voting Rights Act, more than any other piece of legislation, provides this protection. It ensures a fair opportunity to participate fully in the political system that decides who gets what and how much. In the final analysis, it is the only safety net that minorities can rely on.

Good government has always meant and must always mean the creation of political processes and structures—like the Voting Rights Act—which guide and contain selfishness and predictable lapses in reason and virtue. Even at the time

our Constitution was framed, the Federalists admonished the new nation on this point. It is an admonition that we ignore at our own peril.

No, this is not a time for gambling the most precious rights of minorities. Rather, it is a time to reaffirm those rights and to renew the Voting Rights Act.

TABLE 1.—NUMBER AND PERCENT OF BLACK ELECTED OFFICIALS IN STATES ORIGINALLY CONVERED BY THE VOTING RIGHTS ACT, 1968 AND 1980 [1]

State	Percent black population	Number of elective offices, 1968	Number of black elected officials, 1968	Percent of elective offices held by blacks, 1968	Number of elective offices, 1980	Number of black elected officials, 1980	Percent of elective offices held by blacks 1980
Alabama	24.5	4,060	24	0.59	4,151	238	5.73
Georgia	26.2	7,226	21	.29	6,660	249	3.74
Louisiana	29.6	4,761	37	.78	4,710	363	7.71
Mississippi	35.1	4,761	29	.61	5,271	387	7.34
North Carolina	21.5	5,504	10	.18	5,295	247	4.66
South Carolina	31.0	3,078	11	.36	3,225	238	7.38
Virginia	18.7	3,587	24	.67	3,041	91	2.99
Total	25.83	32,977	156	.47	32,353	1,813	5.60

[1] Source: National Roster of Black Elected Officials—1980. Joint Center for Political Studies, Washington, D.C.

TABLE 2.—NUMERICAL AND PERCENT DISTRIBUTION OF BLACK ELECTED OFFICIALS BY CATEGORY OF OFFICE IN VOTING RIGHTS STATES, 1980

State	Total	Federal		State		Regional		County		Municipal		Judicial/law enforcement		Education	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Alabama	238	0	.....	15	6.3	0	.....	26	10.9	131	55.0	40	16.8	26	10.9
Georgia	249	0	.....	23	9.2	0	.....	23	9.2	150	60.2	8	3.2	45	18.1
Louisiana	363	0	.....	12	3.3	0	.....	86	23.7	131	36.1	42	11.6	92	25.3
Mississippi	387	0	.....	17	4.4	0	.....	54	13.9	164	42.4	78	20.2	74	19.1
North Carolina	247	0	.....	5	2.0	0	.....	20	8.1	152	61.5	8	3.2	52	25.1
South Carolina	238	0	.....	14	5.9	0	.....	38	16.0	100	42.0	20	8.4	66	27.7
Texas	196	1	0.5	13	6.6	2	1.0	5	2.6	75	38.3	21	10.7	79	40.3
Virginia	91	0	.....	5	5.5	0	.....	30	33.0	52	57.1	4	4.4	NA	.....
Total	2,009	1	.5	104	5.2	2	1.0	282	14.0	955	47.5	221	11.0	444	22.1

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

TABLE 3.—POPULATION DISTRIBUTION OF CITIES WITH BLACK MAYORS WITHIN STATES TOTALLY COVERED BY THE VOTING RIGHTS ACT

State	Number of cities with black mayors	Total population: Number of cities with a total population of—			Percent black population: Number of cities with a black population of—		
		Under 1,000	1,000 to 3,000	Over 3,000	Under 60 percent	60 to 79 percent	80 percent or more
Alabama	15	8	2	5	1	6	8
Georgia	6	3	1	2	2	4	0
Louisiana	11	4	3	4	3	3	5
Mississippi	17	10	6	1	0	7	10
South Carolina	13	11	0	2	3	2	8
Texas	13	3	0	2	0	0	5
Virginia	3	0	0	3	3	0	0
Total	70	39	12	19	12	22	36
Percent		55.7	17.1	27.1	17.1	31.4	51.4

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

ATTACHMENT TO TESTIMONY OF EDDIE WILLIAMS, PRESIDENT, JOINT CENTER FOR POLITICAL STUDIES

[MEMORANDUM, JUNE 16, 1981]

Re objection letters under section 5 of the Voting Rights Act: The continuing need for preclearance.

Under the preclearance procedure of section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, the United States Department of Justice reviews election law changes submitted from covered states. While the vast majority of these submissions do not prompt an objection, many still involve discriminatory changes of the type section 5 was designed to prevent. An examination of approximately 100 recent objection letters illustrates that section 5 preclearance continues to be necessary to prevent egregious discrimination in the organization and conduct of elections.

The need for preclearance remains for two reasons. First, many of the most recent submissions actually involve changes which were implemented many years ago, without preclearance and in violation of the Act, and which are only now coming under section 5 scrutiny. Second, even in 1980, localities in covered states continue to adopt election law changes which deny minorities equal access to the political process. As will be evident in the following discussion, these changes involve, at one extreme, registration procedures fundamental to the individual exercise of the franchise, and, at the other extreme, structural questions concerning the very existence of governmental entities. Often, these discriminatory changes were adopted as a reaction to the greater equality of political access resulting from the basic substantive provisions of the Voting Rights Act.

I. VOTER REGISTRATION PROCEDURES

Recent objection letters in the following cases indicate that the fundamental registration process remains an area of continuing section 5 activity. Discrimination is still a real danger as long as registration laws can be used to hinder registration of new minority voters, or to remove minority voters from the rolls.

A. De Kalb County, Ga.: September 11, 1980

In 1980, the Department objected to the proposed ban on neighborhood voter registration drives in DeKalb County, Georgia. Evidence indicated that blacks constituted 32 percent of the voting age population, but only 13 percent of the County's registered voters. Of the black voting age population, only 24 percent were registered to vote, while 81 percent of the white voting age population were registered. Under the existing registration system, deputy registrars went into local communities to register voters, and many persons, particularly blacks, had taken advantage of this opportunity. The county tried to justify the change by arguing that such registration drives might be illegal. The Department of Justice rejected this argu-

ment, noting that according to the Georgia Attorney General, state law permitted neighborhood registration.

B. Lee County, Miss.: April 4, 1977

In 1977, the Department of Justice objected to a mandatory reregistration program in Lee County, Mississippi. Voters were to receive no notice of the need to reregister, and personal reregistration was required. Reregistration at the County courthouse was to occur only during regular business hours and on a limited number of Saturdays. Plans for reregistration in the precincts were uncertain, but limited in any event. And, in the City of Tupelo, which contained the greatest concentration of blacks in the county, a substantial proportion of the county's residents recently had already been required to reregister. Evidence also indicated that black residents had not been involved in the formulation of the registration plan, that there were no black deputy registrars, "nor are blacks in any other way intended to be involved in the conduct of the reregistration." The Department's objection letter stated that the objection would be reconsidered if the county conducted the reregistration in a manner that would "make the process more convenient and accessible to the minority community."

II. POLLING PLACES

Other recent objections indicates that polling place changes also have retained much of their potential to discriminate where new polling places are in intimidating or inconvenient locations, or where the change is inadequately publicized.

A. Raymondville Ind. School Dist., Tex.: March 25, 1977

In 1977, the Raymondville Independent School District, Raymondvile, Texas, moved a polling place from city hall to the local American Legion Hall. In objecting, the Department of Justice observed that the change in location "will result in a significant inconvenience for many Mexican-American voters," and that "the American Legion Hall appears to be the place where many Mexican-Americans feel unwelcome." The evidence also indicated that the school district had rejected available alternatives which would have overcome the administrative problems connected with the continued use of city hall as a polling place location.

B. Kingsland, Ga.: August 4, 1978

In 1978, the Department of Justice objected to a similar intimidating polling place location in Kingsland, Georgia. Ostensibly to avoid congestion at city hall, a polling place has been moved to a meeting hall jointly owned by two private organizations. The precinct had a substantial number and percentage of black voters, but the meeting hall was less conveniently located for minority residents than city hall. More critically, neither of the private organizations which owned the meeting hall—the Kingsland Women's Club and the local American Legion Post--had any black members. Blacks did not serve either as managers or any of the assistant managers of the polling place, members of the black community stated that use of the meeting hall would deter black participation in elections, and other possible sites were apparently available.

C. Taylor, Tex.: December 3, 1979

In 1979, similar factors prompted an objection to a polling place change in Taylor, Texas. While the previous polling site at city hall had been centrally located and accessible to all voters in the city, the new polling place was in a predominately white area and a "significant inconvenience" to minority voters. Statistics suggested that the change actually detered minority voter participation. For example, in the 1972 election held at city hall, three minority candidates participated, and 2,231 votes were cast. In 1973, the first election year after the polling place change, there were no minority candidates, and only 717 votes were cast. Based on this information, and on the availability of less discriminatory alternative sites, the Department of Justice interposed an objection.

III. AT-LARGE ELECTIONS AND OTHER CHANGES IN THE METHOD OF ELECTION

In a typical city or county, a substantial minority population may be theorically capable of electing one or more members of the city or county governing body. Historically, however, white majorities have used the election laws to dilute the effectiveness of the minority vote, and thus to maintain total or near total control over the outcome of city or county elections.

Dilution occurs most obviously through the at-large election, in which all seats on a governing body are elected from district-by-district basis. In addition, "anti-single-

shot" or "anti-bullet-voting" devices prevent minority voters from having even a small voice in at-large elections. It is assumed that without such devices, candidates with concentrated minority support may be elected while white voters' support is spread out among a larger number of white candidates. These "anti-single-shot" devices include: (1) a requirement that a candidate must receive a majority vote to be elected; (2) "numbered posts," or dividing the field in at-large elections into as many separate races as there are vacancies to be filled; (3) a requirement that each candidate live in a certain district even though candidates are voted on at-large; and (4) staggering the terms of office. "Anti-single-shot" devices have one thing in common: they all force minority candidates, in practical effect, to run one-on-one against a white candidate, thus minimizing the chances that minority candidates will win election.

A. Clarke County, Alabama: February 26, 1979

A simple case of an at-large objection is Clarke County, Alabama, where the County Commission has consisted of four commissioners and a probate judge, each elected for four-year terms. A majority vote was required for nomination in the Democratic primary. Before the change, the four commissioners had been elected from single-member districts. According to the 1970 Census, blacks constituted 44 percent of the county population, but no black had ever been elected to the Commission. Evidence indicated that a system of fairly drawn single-member districts probably would have yielded at least one district with a substantial black majority. Against this background, in 1971 the county shifted to a system of at-large elections. The county's section 5 submission was not complete until December 27, 1978, or seven years later. The county argued that at-large elections were necessary to comply with the one person-one vote requirement. However, it did not explain why it did not simply redistrict within the pre-existing single-member district system, and the Department of Justice objected.

B. Bainbridge, Ga.: June 3, 1977

In Bainbridge, Georgia, the Department of Justice objected to a combination of various anti-single-shot devices. Bainbridge adopted two changes in 1966 and 1968, but did not submit them to the Department for preclearance until April 4, 1977. Taken together, they reduced the number of aldermen from eight to six, required a majority vote for mayor and aldermen, and instituted a numbered post requirement for election to the Board of Aldermen. In objecting, the Department of Justice noted that in spite of a 41 percent black city population, only one black had been a candidate for alderman during the past 12 years, and that no black had ever one election to the board.

C. Hale County, Ala., April 23, 1976

Before January 1965, county commissioners in Hale County, Alabama had been elected by single-member districts. The county changed its method of election in 1965, but did not submit the change for section 5 preclearance until July 1974. After the change, commissioners were elected in the county at-large, with districts used only for residency requirements. Evidence showed that the black population was concentrated in certain areas, there was a pattern of racial block voting in the County, and no black had ever been elected to county-wide office. The Department of Justice objected after concluding that the change from single-member to at-large elections was a dilutive and discriminatory.

D. Barbour County, Ala.: July 28, 1978

Until 1965, six of the seven members of the Barbour County Commission had been elected from single-member districts, and the seventh member had been elected at-large. In 1965, legislation provided for the at-large election of all members, with districts retained as residency districts only. In 1967, further legislation reduced the size of the governing body from seven to five members and divided the County into four residency districts, with two members requird to reside in one district and one member in each of the other three. The two positions for the first district were numbered. Continuing pre-existing law, a majority vote was required for nomination, and terms of office were staggered. These changes were submitted to the Department of Justice for section 5 preclearance on May 30, 1978, over eleven years after their adoption. In objecting, the Department pointed out that according to the 1970 Census, the county had a 46 percent black population. No blacks had ever been elected to the governing body under the at-large system, even though some of the pre-1965 districts and some of the residency districts established in 1967 had black population majorities. Under a system of fairly drawn single-member districts, some black majority districts could be expected to result. The Department also noted that "the at-large election system was adopted soon after the Voting Rights Act of 1965

enabled substantial numbers of blacks to participate in the electoral process for the first time."

E. Kosciusko, Miss.: September 20, 1976

Discriminatory measures were also adopted by Kosciusko, Mississippi, which sought to elect aldermen at-large, with numbered posts and a majority vote requirement. This change was apparently an effort to circumvent *Stewart* v. *Waller*, 404 F. Supp. 206 (N.D. Miss. 1975), which had outlawed a prior 1962 at-large election statute and ordered the city to return to a single member district system of aldermanic elections. In objecting to a reinstatement of the at-large method of election, the Department of Justice noted "the history of exclusion of minorities from the political process, the degree of responsiveness of the elected representatives to the needs of the minority community, and the history of governmental discrimination in the area."

F. Dooly County, Ga.: July 31, 1980

In 1980, the Department of Justice objected to a proposed change in Dooly County, Georgia. Until 1967, the Board of Commissioners had been elected from single-member districts. The change provided for at-large election of the Board of Commissioners, from residency districts, to staggered terms. The change was actually enacted in 1967, or 13 years before the county actually submitted the change for section 5 preclearance. In objecting, the Department of Justice noted that although the 1970 Census indicated a 50.7 percent black county population, no black had ever been elected to the Board. The Department noted that "a fairly-drawn single-member district system would probably contain at least one district with a population majority of blacks." In view of racial bloc voting, at-large elections would render "very improbably" the election of a black candidate for the board.

G. Alapaha, Ga.: March 24, 1980

Another 1980 letter objected to a proposed change in Alapaha, Georgia. Soon after the election of the first minority town council member, 1979 legislation changed town council elections to require a majority vote, and to provide for numbered posts. The legislation also required voters to register both with the county and with the town to vote in municipal elections, and it made discriminatory changes in the required filing fees.

H. Bishopville, S.C.: November 26, 1976

In Bishopville, South Carolina, the town council had been elected at-large, but with non-staggered terms, and with only a plurality vote required. Blacks constituted about 49 percent of the population of Bishopville, but until May 1975, no black had ever been elected to the city council. In implementing South Carolina Home Rule Act, the town decided that in the future a majority vote would be required for election, and that council-manic terms would be staggered. In objecting, the Department of Justice noted that it had interposed a similar objection on September 3, 1974, to proposed staggered terms for the same council.

IV. REDISTRICTING

Legislative redistricting has a significant impact on the ability of voters to elect the candidate of their choice. For example, redistricting can be discriminatory if a district where minorities constitute a working majority is overpopulated, with the result that persons in that district are underrepresented. Redistricting can also be discriminatory if district lines are drawn so as to minimize the number of districts in which minority voters can elect candidates of their choice. Recent objections interposed to discriminatory redistricting indicate that section 5 continues to prevent these and other forms of discriminatory redistricting. With the forthcoming availability of the 1980 Census data, redistricting will be a likely area of intense section 5 activity in the first few years of the extended Voting Rights Act.

A. Jim Wells County, Tex.

(1) Objection: July 3, 1978.—In Jim Wells County, Texas, section 5 has foiled repeated efforts to adopt a redistricting plan which would discriminate against minority voters. Although Mexican-Americans constituted 64 percent of the population in Jim Wells County, in 1978 only one of the four commissioners was a Mexican-American. The county election returns revealed a clear pattern of racial bloc voting. One redistricting plan, adopted 1974 pursuant to federal court order, deviated from equal population by 28.4 percentage points. A new plan, adopted in 1975 for uncertain reasons, had an even greater deviation—40 percentage points. Under this 1975 plan, the Mexican-American population would have been above 65

percent in only one precinct, and above 60 percent in one other precinct. These figures raised the specter of a district in which Mexican-Americans would constitute a slim majority, but where whites would still control the outcome because more whites would be of voting age and would be registered. The Department of Justice accordingly objected.

(2) Objection: February 1, 1980.—Jim Wells County submitted another redistricting plan, and the Department of Justice issued another objection. The Department noted that the proposed redistricting would dilute minority voting strength by distributing the Mexican-American population among all four districts. The plan "realistically yields only one district from which a Mexican-American may be elected and distinguishes that district as one that is overpopulated and of little practical significance in view of the paucity of road mileage and budget funds allocated to it." Evidence also indicated a "conspicuous lack of input from interested members of the minority community, including the current Mexican-American commissioner, in the development of the plan."

(3) Objection: August 12, 1980.—Jim Wells County submitted a third redistricting plan to the Department of Justice, which interposed a third objection. The Department stated that "the plan continues to dilute the voting strength of the minority . . . 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." Again, the Department noted that the affected minority group had not had significant input into the formulation of the plan.

B. Batesville, Miss.: September 29, 1980

Batesville, Mississippi presents another recent example of attempted discriminatory redistricting. The plan was based on a local census conducted in September 1978, which indicated a 24.8 percent black population in the city. The redistricting yielded four single-member districts, of which proposed ward No. 2 would contain a borderline black majority of 51.4 percent (but probably a black voting-age minority). Moreover, that ward would be significantly overpopulated, while wards 3 (95.3 percent white) and 4 (97.5 percent white) would be substantially underpopulated, resulting in a deviation of 54 percent with a corresponding overrepresentation of white voters. The objection letter from the Department of Justice noted that alternative plans were available which would be more fairly drawn, but that these plans has been rejected. The letter pointed out that adoption of a plan that would maintain minority voting strength at a minimum level would suggest "an impermissible racial purpose in its adoption."

V. ANNEXATIONS

Annexations have discriminatory potential where white suburbanites are added to a city, thus decreasing the minority percentage of the population. The Department of Justice may object to the annexation entirely, but in virtually all cases it has allowed the annexation if the locality adopts an election method which more fairly reflects minority voting strength, for example, if in the future the city council or other governing body is elected by districts rather than at-large.

A. Statesboro, Ga.

Two recent objections involving Statesboro, Georgia, illustrate how section 5 has blocked annexation plans which would have seriously undermined minority political access. The pre-1967 population of Statesboro consisted of 5,223 whites and 5,454 blacks. In 1967, when city expansion was being planned, "the predominantly black Whitesville community on the edge of the city voiced its desire to be included. Nonetheless, the extended city limits were carefully drawn to fence out the Whitesville area." Objection letter of December 10, 1979. When this plan was first submitted to the Department of Justice in 1979, no objection was interposed.

(1) Objection: December 10, 1979.—Then, on May 1, 1979, Statesboro enacted an ordinance which would have further reduced the city's black population percentage by annexing an area in which it was expected that only whites would reside. Evidence indicated that blacks had been excluded from meaningful access to the political process in Statesboro, and that the annexation would exacerbate the problem. Although black candidates had run on several occasions, no black had ever been elected to city office in the context of the city's at-large election system. Further, evidence showed that the city had been unresponsive to black needs and had denied requests for enhanced voter registration opportunities. The Department of Justice objected to the annexation on the ground that it was "part of a series of racially selective annexations" and would constitute an impermissible further dilu-

tion of black voting strength. The objection letter volunteered that the earlier decision in July 1979 not to object to the 1967 annexation had been wrong. The Department stated that it would reconsider the objection if the city adopted "an electoral system, such as single-member districts, which fairly recognizes the political potential of blacks in the city." It added, however, that due to the evident racial selectivity in designating areas for annexation, "we believe that the city also has an obligation to give prompt consideration to the possible annexation of the predominantly black Whitesville area."

(2) Objection: August 15, 1980.—After the December 10, 1979, objection letter, Statesboro enacted another annexation ordinance on February 5, 1980. This time, the annexation involved uninhabited land scheduled for residential development. The landowner's stated plan was to build multi-family apartment buildings under a grant from the Department of Housing and Urban Development. If the plan were implemented, a significant number of blacks might reside there. But if the owner did not pursue his plan or if the grant were not obtained, virtually all of the new residents were expected to be white. The objection letter noted that the city had failed to demonstrate that development would be completed as planned. It again reminded the city that the dilutive effects of the annexation could be removed by adopting district elections, but noted that the city apparently had not considered the annexation of the predominantly black Whitesville area.

B. Pleasant Grove, Ala.: February 1, 1980

In 1980, the Department of Justice objected to an annexation plan submitted by Pleasant Grove, Alabama. The city population was 6,500 and exclusively white. The areas proposed for annexation were also expected to be inhabited exclusively by whites. Several indentifiably black areas had petitioned for annexation so as to derive the benefits of inclusion in the city, but the city had taken no action to annex these areas. Finally, the objection letter noted reports of "activities indicating the presence of considerable antagonism toward black persons in the vicinity of Pleasant Grove."

VI. GOVERNMENTAL STRUCTURE AND OPERATIONS

Other recent objections demonstrate that fundamental changes in government structure and operations have a continuing potential to discriminate against minority voters.

A. Hayneville, Ala.: December 29, 1978

Hayneville, Alabama, is located in Lowndes County, where, according to the 1970 Census, blacks constitute 77 percent of the population. The preincorporation contiguous community known as "Hayneville" was also predominantly black. Before the passage of the Voting Rights Act in August 1965, few blacks in Lowndes County had been registered to vote, but by 1967, black political strength in the county was growing. In 1967, the residents of a predominantly white area within the unincorporated community of "Hayneville" established a new incorporated town where whites constituted a majority and could retain political control. In carrying out this "secession," the whites in Hayneville deliberately excluded many of the remaining black sections of unincorporated Hayneville. The incorporated town did not submit the annexation for section 5 preclearance until 1978, but when it did, the Department of Justice objected.

B. Orange Grove, Miss.: June 2, 1980

Orange Grove, Mississippi, provides another example of discriminatory incorporation. Evidence available to the Department of Justice indicated that "racially invidious considerations played a significant role both in the decision to create a new city and in determining which areas and which people would be included." The objection letter also noted that "those few blacks who would be within the proposed corporate limits will be transferred from a governmental system, in which there is some promise of effective political participation through fairly drawn single-member districts, to one which does not hold such promise."

C. Todd & Shannon Counties, S. Dak.: October 22, 1979

In 1979, the Department of Justice objected to new governmental systems for Todd and Shannon Counties, South Dakota. Before the court decision in *Little Thunder* v. *South Dakota*, 518 F.2d 1253 (8th Cir. 1975), for many years the predominantly native American residents of unorganized Todd and Shannon Counties had not been permitted to vote for the officials of organized, predominantly white Tripp and Fall River Counties, which provided them with government services. *Little Thunder* held that this restriction violated the equal protection clause of the

fourteenth amendment, and thus provided native Americans in Todd and Shannon Counties with political access to county government for the first time. In response, the white residents of Tripp and Fall River Counties sought to nullify *Little Thunder* by severing Todd County from Tripp County, and Shannon County from Fall River County. These new native American counties would be formally independent, but they would be severely and uniquely limited, primarily due to insufficient revenues in their ability to carry out normal government functions. The change would thus have returned Todd and Shannon Counties to dependence on Tripp and Fall River Counties for government services, while eliminating effective representation of the voters in Todd and Shannon Counties.

D. Tunica County, Miss.: January 24, 1977

Another potentially discriminatory change is to make a particular office appointive rather than elective in the face of growing minority voting strength. In Tunica County, Mississippi, blacks had won the Circuit Clerk position in November 1975, and their first seat on the local school board in November 1976. At about this time, blacks became a majority of the county's registered voters. The county then changed the office of Superintendent of Education from elective to appointive over strong black opposition. The Department of Justice objected accordingly.

CONCLUSION

This review is subject to several limitations and thus is only preliminary. First, of the over 400 objection letters issued since 1965, only about 100 of the most recent letters have been considered. Second, the facts of each objection are taken entirely from the letter itself, not from other Department of Justice materials or from local information. Third, the letters were selected for discussion because they illustrate the continuing need for the section 5 procedures, but they are not intended to constitute a general legal analysis of the Department's section 5 policy, which will require review of more materials. Nevertheless, the foregoing summaries of recent objection letters issued by the Department of Justice amply demonstrate that the need for section 5 preclearance is as urgent as it was in the first few years after passage of the Voting Rights Act.

HOGAN & HARTSON.
SARA-ANN DETERMAN.

LETTERS SUMMARIZED

I. Voter registration procedures

A. DeKalb County, Ga., September 11, 1980.
B. Lee County, Miss., April 4, 1977.

II. Polling places

A. Raymondville ISD, Tex., March 25, 1977.
B. Kingsland, Ga., August 4, 1978.
C. Taylor, Tex., December 3, 1979.

III. At-large elections and other changes in the method of election

A. Clark County, Ala., February 26, 1979.
B. Bainbridge, Ga., June 3, 1977.
C. Hale County, Ala., April 23, 1976.
D. Barbour County, Ala., July 28, 1978.
E. Kosciusko, Miss., September 20, 1976.
F. Dooly County, Ga., July 31, 1980.
G. Alapaha, Ga., March 24, 1980.
H. Bishopville, S.C., November 26, 1976.

IV. Redistricting

A. Jim Wells County, Tex., July 3, 1978, February 1, 1980, and August 12, 1980.
B. Batesville, Miss., September 29, 1980.

V. Annexations

A. Statesboro, Ga., December 10, 1979 and August 15, 1980.
B. Pleasant Grove, Ala., February 1, 1980.

VI. Governmental structure and operations

A. Hayneville, Ala., December 19, 1978.
B. Orange Grove, Miss., June 2, 1980.
C. Todd and Shannon Counties, S. Dak., October 22, 1979.
D. Tunica County, Miss., January 24, 1977.

TESTIMONY OF EDDIE N. WILLIAMS, PRESIDENT, JOINT CENTER FOR POLITICAL STUDIES, WASHINGTON, D.C., ACCOMPANIED BY ARMAND DERFNER, ATTORNEY, DIRECTOR OF VOTING RIGHTS PROJECT, JOINT CENTER FOR POLITICAL STUDIES

Mr. WILLIAMS. Thank you very much, Mr. Chairman. I really appreciate this opportunity to present some of my thoughts on the need to strengthen and continue the Voting Rights Act.

I'm accompanied today by Attorney Armand Derfner, one of the Nation's leading lawyers in voting rights cases, who directs the joint center's voting rights project.

Mr. EDWARDS. We welcome Mr. Derfner, also.

Mr. WILLIAMS. The Joint Center for Political Studies is a nonpartisan, nonprofit organization. It was founded in 1970 to conduct research, technical assistance, training, and information programs designed to advance the participation of blacks and other minorities in the political process, including assistance to members of such groups who are elected or appointed to public office. In my prepared statement I have included a broader description of the work of the joint center.

This subcommittee's hearings have been especially valuable because they have made it possible to take a hard look at all the facts about the Voting Rights Act, as opposed to notions and impressions that have resulted in some myths about the act. I do not intend to repeat the detailed and impressive record that has already been made here. However, I do want to address briefly some of the myths which threaten to gain some currency in the absence of a restatement of certain facts.

Mr. Chairman, I will focus on four of those myths.

Myth No. 1. The Voting Rights Act has done its job, and minority voters have progressed so much that the act is no longer needed.

This point of view sometimes comes from people who focus on sharp increases in registration and voting among blacks and Mexican Americans. These data are only a small part of the study. They do not account for what happens to these votes after they are cast. As the Supreme Court recognized in *Allen* v. *State Board of Elections,* the first major section 5 case, "the right to vote can be affected by a dilution of voting power as well as by an absolute prohibition in casting a ballot."

Another version of this myth focuses on the increases among minority office holders since the passage of the Voting Rights Act, and I think these increases need further examination. The following findings are from research conducted by the joint center.

First, in each of the original covered States, there was an increase in the number of black elected officials between 1968 and 1980. Yet, the number of black elected officials is still only 5 percent of the total number of elected officials in those States where the total black population is more than 25 percent. In making this point, Mr. Chairman, let me hasten to add that I do not believe or suggest any requirement of a quota system or proportional representation for minorities. Nor am I saying that equal voting rights suggest that black voters should be represented only by black candidates. It is because the figures about black candi-

dates are the ones cited by opponents of the Voting Rights Act that I am holding them up for closer scrutiny.

Second, in each of the original covered States plus Texas, black elected officials, from State legislators to local school board members, are concentrated in local and often less influential positions.

Finally, notwithstanding the widely publicized examples of black mayors elected in Atlanta, New Orleans, and Birmingham, the overwhelming number of black mayors are chief executives of small towns which are essentially all black or nearly so. Specifically, one-half of the 70 black mayors in these States are in towns whose population is under 1,000 or at least 80 percent black.

In short, whether we look at the proportion of black elected officials, the types of offices they hold, or the places in which they serve, it is clear from our research that the existence of only 1,813 black elected officials in the covered States is a signal to keep the Voting Rights Act at work, not to turn it out to pasture.

Myth No. 2. The covered jurisdictions have changed enough that the preclearance provisions of the Voting Rights Act are no longer necessary to protect against discrimination.

This is a variation of the first myth. It asks us to assume that habits and folkways that have been built up over generations can be dissipated in a few short years. Now, I am a believer in the proposition that laws can bring about or help to bring about changes in attitudes, but that is a process that takes time.

The subcommittee has heard voluminous and eloquent testimony about what the covered jurisdictions have been doing since 1975 to erect new barriers for minority voters. Specific instances have been cited in every major State covered by section 5. In those States various changes have been used to dilute the votes of minority citizens. According to the figures of the U.S. Department of Justice, over 500 voting changes have been objected to as discriminatory since 1975.

If the need for the act were diminishing as some would suggest, one would expect to see the number of objections dropping drastically, and that has just not happened.

At the Joint Center we have looked at some of the submissions and objections under section 5 to see what types of discrimination they have involved. They are the barriers which Congress had correctly anticipated, barriers which witnesses have verified in graphic detail before this subcommittee: dilution of minority votes through gerrymandering and related practices; redistricting of election boundaries; annexations superimposed on unfair election systems; shifts to majority-runoff requirements, numbered posts, and anti-single-shot laws. These are the types of discriminatory changes that section 5 has confronted and must continue to confront. They are documented in a research memorandum prepared by the law firm of Hogan & Hartson and attached to my prepared statement.

I would like to supplement the Hogan & Hartson memorandum with just two examples of objections issued just this month, June 1981, one from Holly Springs, Miss., and one from the Burleson County Hospital District in Texas. The dates of these objections are also instructive for they show that problems are occurring right up to now.

In Burleson County, Tex., the number of polling places was cut from 13 to 1, forcing most of the blacks and Mexican-Americans in the county to travel between 20 and 30 miles to vote.

In Holly Springs, Miss., the population was grossly gerrymandered by a reapportionment plan in which the majority black districts were drawn far larger and therefore underrepresented than the majority white districts—in one case twice as large.

Myth No. 3: The small number of objections, compared to the large number of voting changes that have been submitted, proves that the preclearance process is neither efficient nor necessary.

This is another instance in which some people have been misled by looking at the statistics hastily rather than carefully. There have been over 400 separate letters of objection issued by the Justice Department, which have included objections to more than 800 specific discriminatory voting changes. Considering that each one of these objections is equivalent to a lawsuit and an injunction, the number is phenomenal. It is many times higher than any comparable figures for the number of lawsuits that have struck down discriminatory voting practices.

These objections result from a process that is much more expeditious and more efficient than any litigation. As this subcommittee has heard repeatedly, including from Mr. Pottinger, litigation is the most inefficient way to proceed, and the time required to resolve traditional litigation can be measured not only in years, but sometimes in decades. In contrast, the section 5 review process is unburdensome, prompt and fair.

Myth No. 4: The Voting Rights Act should be extended nationwide.

This is one of the most common areas of misunderstanding. It is not always clear what people mean when they talk about nationwide extension. Do they mean to extend preclearance nationwide or just to have some other procedure be nationwide?

First, as to preclearance, I should note that no one on this subcommittee has suggested making section 5 preclearance nationwide. As Representative Hyde has pointed out, to do so would be tantamount to "strengthening it to death." I agree.

The other aspect of the call for a nationwide extension assumes a remedy that is different from section 5, a remedy other than preclearance. There is no basis for abandoning the only remedy that has ever worked in covered States just because other places that have far different conditions today do not have the same remedy. We must not abandon a real remedy simply to achieve a meaningless symmetry.

Remedies in my view should be tailored to fit the need: the Voting Rights Act is a well-tailored law, and we need to wear it a while longer.

I want to address one other argument: that it is an indignity upon the covered jurisdictions to have to gain preclearance of their voting changes and that it is an affront to federalism. I do not put that view in the category of myth because it is a serious view put forth in many instances by people of good will. I do believe, though, that it is a curious sort of upside-down notion because I thought the Voting Rights Act was about the indignity of denying or diluting a person's right to vote.

States are not abstract entities, they are collections of people. We hear a lot of talk about federalism, but we should not forget that in our Federal system, a principal purpose of State government is to protect every person's right to vote. If the State cannot or will not do so, it becomes the responsibility of the Federal Government, and the preclearance process of the Voting Rights Act is the only method ever devised which has done that.

I should add at this point that I also support the continuation of the language minority provisions of the Voting Rights Act, which are equally fundamental protections of the right to vote. Those provisions insure that citizens who are not proficient in English are nonetheless included within the political process which affects their lives.

In conclusion, Mr. Chairman, I return to the central question in these hearings: Is the Voting Rights Act, as proposed in H.R. 3112, still needed in the decade ahead? The answer presented here by most witnesses and by most of those who have voiced a public view is a resounding "yes, it is still needed in spite of the racial progress, however defined, that has been made since 1965." I fully concur with this view. The evidence in support of it is overwhelming, and I am pleased to note that more and more Americans, including some members of this subcommittee, are beginning to share this view.

Nevertheless, there remain those who look at the powerful evidence in support of renewal as either inconclusive or inconsequential and those who would rather see the act diverted from its orginal purposes or allowed to lapse altogether. My perception, Mr. Chairman, is that their argument, when stripped to the bone, is simply that this Nation can now afford to gamble that the inequities the Voting Rights Act has begun to correct will not reappear. This would be a very dangerous gamble.

It would be dangerous because racism persists and cannot be wished away.

It would be dangerous because much of the limited progress that has been made is fragile and can be easily reversed.

It would be a serious mistake to abandon the protection of minority voting rights at the very time our Nation is undergoing a systematic reassessment of many national policies, commitments, and even beliefs. There is concern that in our haste to solve the Nation's economic problems we might ignore some of our most important values and achievements, or run roughshod over those who are the most vulnerable among us. Already the potential effects of a drastic reduction in the Federal budget are well known. There is genuine fear among those who now are strapped in poverty and defenseless against the knives of the budget cutters. There is fear also that the retreat of the Federal Government from the management and oversight of certain social programs will inevitably mean that minorities and the poor will have an even harder time making their voices heard and getting their needs met. This fear, if combined with political impotence, could be explosive.

In times like these, when so much is at stake and when new political and economic realities are having a wrenching effect, the voting rights of the most disadvantaged in our society must be protected. The Voting Rights Act, more than any other piece of

legislation, provides this protection. It insures a fair opportunity to participate fully in the political system that decides who gets what and how much. In the final analysis, it is the only safety net that minorities can rely on.

Good government has always meant and must always mean the creation of political processes and structures—like the Voting Rights Act—which guide and contain selfishness and predictable lapses in reason and virtue. Even at the time our Constitution was framed, the Federalists admonished the new Nation on this point. It is an admonition that we ignore at our own peril.

No, this is not a time for gambling the most precious rights of minorities. Rather, it is a time to reaffirm those rights and to renew the Voting Rights Act.

Thank you very much.

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

Does Mr. Derfner have a statement?

Mr. DERFNER. I have nothing to add to Mr. Williams' eloquent statement.

Mr. EDWARDS. It is an eloquent statement, and we thank you very much. I'm glad you documented those myths.

One of the myths that has been disposed of, I'm happy to say, in the last few days—and you only mentioned it in passing, Mr. Williams—is the matter of the high cost of the language provisions of the Voting Rights Act.

The testimony of Mr. McCloskey of California the other day laid that to rest, where he pointed out that all of the recent studies indicate that the costs of the minority provisions are infinitesimal; they're not worth discussing. Even though Mr. McCloskey doesn't like that part of the act, it's not on the basis of cost; it's on the basis of other philosophical reasons.

But with—as we continue these hearings, at least a couple of problems have emerged, that at least I haven't thought of before. You mentioned them briefly in your excellent testimony.

The first is this matter of nonsubmissions that Mr. Hyde seeks to remedy with his Federal criminal law.

Second, there is the dilution of the voting. That is something that is very important. Yes, people can register and vote, but their vote really isn't worth much.

Those two subjects—nonsubmissions on a wholesale basis, especially in the few jurisdictions where they learned how to do it—and second the dilution of voting.

Why doesn't this bill—why doesn't this law that's been in existence 16 years take care of those two items? If either you or Mr. Derfner would care to tackle those questions.

Mr. WILLIAMS. Mr. Derfner will no doubt care to comment on some of it, Mr. Chairman.

I do think, on the nonsubmission question, it is a matter of serious concern, and we know that at the Joint Center, as I think the committee knows.

We have produced several publications that have been aimed at some of the covered States, on how to use section 5, where section 5 pertains, so as to make minorities themselves more knowledgeable, so that they can be more vigilant about changes going on, and

changes that are subject to preclearance, so, from a citizen's point of view, they can exercise some initiative.

I was particularly impressed by Stan Pottinger's enthusiastic response to Mr. Hyde, about coming up with some criminal sanctions. I'm not a lawyer. That's not an area in which I care to present some expertise.

But clearly, in our democratic form of government, it is a matter of some serious concern about nonsubmissions.

On the dilution, I think the record is amply clear. Certainly, in some of the examples presented by the Hogan & Hartson memorandum, and obviously many examples documented by this committee; and as the Supreme Court has said, it's not just a matter to cast the physical act of a vote, but it is a matter of whether that vote is diluted and it has some significance in the political process.

Mr. EDWARDS. Well, one of the witnesses in Montgomery, Ala., was asked the question—the witness was from Mississippi—one of the members of the subcommittee asked the witness if the States were doing their job as they are supposed to. The point was that if the State legislatures and the local governments would provide legislation that would insure the right to vote and insure the right to register, and to participate in voting, then the Federal Government would not have any need to be involved in this, which would be something we would all like very much.

Are there areas—in jurisdictions covered by section 5—where States and local governments are working hard to insure that minorities participate and are able to have at least a fair shot at being elected to public office?

Mr. WILLIAMS. Mr. Chairman, I wish I could come here with documented evidence of that. That is not to suggest that in some isolated cases one might not find that; but the overwhelming case, based on our research, based on our observations, and based on testimony, is that that clearly is not happening.

As a matter of fact, the law is needed just in order to have these jurisdictions measure up to minimal requirements—meeting the requirements of the Voting Rights Act.

I think that is an optimum situation that we need to pursue and aspire to. I think that time clearly is not here yet. All of the evidence suggests that.

Mr. EDWARDS. Well, the facts are overwhelming that a pretty good percentage now—not the ideal percentage of blacks and Hispanics can register and vote; but the number of elected officials is still infinitesimal. Isn't that correct?

It is much larger than it was, but you're really starting at almost zero?

Mr. WILLIAMS. That is correct, sir. The time that the Voting Rights Act was passed—and I'll address my comments to black elected officials, on whom we've done some research—it's estimated there were only 300 or 400 in the United States as a whole, and most of them outside of the South.

When the Joint Center's first survey was taken in 1970, we counted about 1,000 black elected officials. Today, some 10 years later, there are just under 5,000. And one could look at a range of from 1,000 to 5,000 over a 10-year period, and perhaps it would be debatable what kind of progress that is.

But the hard reality is that it was only in 1980, with the documentation of about 5,000 black elected officials, that we were able to say that black elected officials constituted 1 percent—just barely 1 percent of all of the elected officeholders in the United States.

Mr. EDWARDS. Thank you.

Ms. Gonzales?

Ms. GONZALES. Thank you, Mr. Chairman.

Mr. Williams, as one who is familiar with the progress and problems that still exist in spite of the Act, maybe you can help the subcommittee have a sense of how to respond to people who want us to be able to answer the question of how we will know when we don't need section 5 anymore?

What factors should we keep our eyes open for in the future, if not now?

Mr. WILLIAMS. Well, Ms. Gonzales, I think certainly one thing we ought to look for is the ultimate realization of the American dream across a very broad sector of activity throughout our human endeavor; certainly in terms of the political arena, where we do not find slick devices and other schemes that are used to dilute, to manipulate, to finesse black or Hispanic voter participation; and when we see in any realistic way a broader participation by these minorities in the political processes of our country.

The chairman mentioned Mississippi a few minutes ago. I'm reminded that despite the fact of the size of the black population in the State of Mississippi, as I recall, proportionately speaking, there are more blacks in that State than in any other State in the United States—that it was not until recently—with Supreme Court intervention, I believe, in certain reapportionment cases—that there was any appreciable number of blacks in the Mississippi State Legislature.

So, until we can see some change in that process, the Voting Rights Act continues to be very real. And until we can see that beyond the physical act of registering and voting, that minorities have the rights other Americans have—namely, to protect their interests in the political process—the need will still be there. I tried to make a point in my testimony, of linking politics and economics.

In America they go hand in hand; they cannot be separated. Registering and voting are not ends unto themselves. They are a means by which our citizens participate in the act of governance of our society, and a means by which they take part in deciding and determining who gets what, when, and how much.

That's extremely important, especially in times such as we are confronted with today, with notable changes in our political system and particularly in our economic system.

Ms. GONZALES. I have two more questions. One of the suggestions that has been made is that, given the small number of objections that have been interposed by the Department of Justice, relative to the number of submissions, that maybe the preclearance requirements should apply only to major changes, such as annexations and redistricting; changes in location of polling places and the more minor—so-called minor—changes would not have to be submitted for preclearance.

What is your response to that suggestion?

Mr. WILLIAMS. First of all, it sort of reminds me of the question of whether one wants to be killed by a knife or by a gun or by strangulation. It's just a question of how you go.

If you're going to be—have your vote diluted by minor procedures or diluted by major procedures, the major effect is that your vote is diluted.

It seems to me all such acts must be considered and must be cleared.

Ms. GONZALES. Finally, I would like to get on the record your immediate thoughts on the Hyde suggestion—Mr. Hyde's suggestion for changing the bailout procedure. If you need to think about it a little bit more, you may also want to submit something for the record in response to the Hyde proposal.

Mr. WILLIAMS. I'd like very much to do that. I was very much interested in the suggestion made by Mr. Hyde, in particular by Mr. Pottinger's response to it.

I would very much like to have an opportunity to review it carefully and get back to the committee.

I would say for the record, I think all of us appreciate Mr. Hyde's continuing concern about the whole question of incentive. I would say, based on my quick reading and listening to the discussion, there are some nagging concerns I have.

It probably is not strong enough to do the job. But I won't commit myself to that. I do have that nagging concern. Again, I'm not a lawyer, but I know, as my lawyers tell me, that there are certain language and certain provisions in legislation in which lawyers have a field day.

And I see some of those vagaries inherent in this suggestion: words like "substantial," like "enhancing," like "local effort." What does all that mean? Who defines that?

I would say also we have great concern about the need for a centralized review process—we have learned over time there is inherent advantage in having a preclearance centrally, in having the review here in the U.S. District Court of the District of Columbia.

I am not impressed by the argument that people don't have the money to get to Washington. Members of Congress know that people from all over this country have the money to come to Washington to lobby, or to do other things that they find important.

But again, I would like very much to get back to the committee.

I just want to say that certainly at this point, I'm deeply concerned about that suggestion.

Ms. GONZALES. I would also note that in the longer statement which you submitted for the record, you indicate on this issue of centralization that in fact a recent Supreme Court decision recognized the importance of that also.

Mr. WILLIAMS. Absolutely.

Ms. GONZALES. Thank you.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman.

I will ask the witness—we were talking about the use of the local Federal court, as opposed to the District of Columbia Federal court.

Were you talking about administrative procedures?

Mr. WILLIAMS. Centralized review. I think we could be talking about both.

I was referring to the use of the U.S. District Court of the District of Columbia, as compared to the utilization of local courts.

Mr. BOYD. That's what I thought you were talking about.

Mr. Chairman, along the lines of the criminal penalty which Mr. Pottinger discussed earlier, for the purposes of the record it's worth noting that section 12 of the act now may provide criminal penalty for violations of section 5, that penalty is $5,000 or imprisonment for not more than 5 years, or both.

And that would apply both to section 5, as well as sections 2, 3, 4, 7, 10 and 11(a). I have confirmed that interpretation with representatives of the Department of Justice present in this room, as well as Mr. Pottinger when he was here.

It might not be necessary, therefore, to put in further language.

Mr. EDWARDS. Thank you for that information.

Mr. BOYD. Thank you, I have no further questions.

Mr. EDWARDS. Unless counsel has any more questions, I don't have any.

Mr. Williams and Mr. Derfner, we thank you very much for your testimony.

Mr. WILLIAMS. Mr. Chairman, thank you very much.

Mr. EDWARDS. That was an excellent presentation.

The subcommittee now will adjourn until 9:30 tomorrow morning.

[Whereupon, at 3:45 p.m., the hearing was adjourned, to reconvene at 9:30 a.m. Thursday, June 18, 1981.]

[The bill introduced by Congressman Hyde follows:]

97TH CONGRESS
1ST SESSION

H. R. 3948

To amend the Voting Rights Act of 1965.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 1981

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

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A BILL

To amend the Voting Rights Act of 1965.

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

SECTION 2 AMENDMENT

SEC. 2. Section 2 of the Voting Rights Act of 1965 is amended—

(1) by inserting "(a)" after "SEC. 2."; and

(2) by adding at the end the following new subsection:

"(b) No State or political subdivision shall enact or seek to administer any voting qualification, or prerequisite to voting, or standard, practice, or procedure with respect to voting, different from that in force or effect on the date of enactment of the Voting Rights Act Amendments Act of 1981, for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2).".

SECTION 3 AMENDMENT

SEC. 3. Section 3(c) of the Voting Rights Act of 1965 is amended by striking out "If" and all that follows through "during such period" and inserting in lieu thereof "If an aggrieved person or the Attorney General prevails in a proceeding instituted by either person against a State or a political subdivision under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment the court may, and if the Attorney General prevails in any proceeding instituted against a State or a political subdivision under section 12(g) the court shall, in addition to such other relief as the court shall grant, order that, for a period of not more than four years after the order is made,".

SECTION 4 AMENDMENTS

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

(1) by striking out "in any State with respect to which the determinations have been made under the first two sentences" and all that follows through "District of Columbia" and inserting in lieu thereof "in any State with respect to which the determinations have been made under subsection (b) or in any political subdivision of such State, whether or not such determinations were made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations were so made, unless the appropriate United States district court";

(2) by striking out "that no such test or device has been used during the seventeen years" and all that follows through "occurred anywhere in the territory of such plaintiff." the second place it appears and inserting in lieu thereof "that (1) no such test or device has been used by such State or subdivision during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2); (2) such State or subdivision has during that ten-year period made all the submissions to the Attorney General required under section 5; (3) the Attorney General has not successfully interposed any substantial objection

with respect to any such submission; and (4) such State or subdivision has engaged in constructive efforts designed permanently to involve voters whose right to vote is protected by this section in the electoral process. The State or subdivision bringing such action shall publicize the intended commencement of such action in the media serving such State or subdivision and in appropriate United States Post Offices. Any aggrieved party may intervene in such action.";

(3) by striking out the sentence beginning "An action pursuant to this subsection shall be heard";

(4) by striking out "and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, on in contravention of the guarantees set forth in section 4(f)(2)." and inserting in lieu thereof "and may reopen the action upon motion of the Attorney General or any aggrieved party alleging that such State or subdivision has engaged in conduct which, had that conduct occurred during the ten-year period referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection.";

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

(6) in the second sentence beginning "If the Attorney General determines that he has no reason", by striking out "the second sentence of".

SECTION 5 AMENDMENT

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

SECTION 12 AMENDMENT

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

"(g) Whenever the Attorney General has reasonable cause to believe that any person or governmental entity or group of persons or governmental entities is engaged in a pattern or practice which has the purpose or effect of denying the full enjoyment of any of the rights granted or protected by this Act, or that any group of persons has been denied any of the rights granted or protected by this Act and such denial raises an issue of general public interest, the Attorney General may bring a civil action in any appropriate United States

district court by filing with that court a complaint setting forth the facts and requesting such relief, as the Attorney General deems necessary to assure the full enjoyment of the rights granted or protected by this Act.

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

SECTION 14 AMENDMENTS

SEC. 7. (a) Section 14(b) of the Voting Rights Act of 1965 is amended by striking out "the District Court for the District of Columbia" and inserting in lieu thereof "a United States District Court".

(b) Section 14 of the Voting Rights Act of 1965 is amended by striking out subsection (d).

EXTENSION OF THE VOTING RIGHTS ACT

TUESDAY, JUNE 18, 1981

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

The subcommittee met at 9:45 a.m., in room 2141, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, and Washington.

Also present: Hon. Peter W. Rodino.

Staff present: Ivy L. Davis and Helen C. Gonzales, assistant counsel, and Tom Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

Mr. Kastenmeier?

Mr. KASTENMEIER. Mr. Chairman, I ask unanimous consent that the committee permit the meeting this morning to be covered in whole or in part by television broadcast, radio broadcast, and/or still photography, pursuant to rule 5 of the committee rules?

Mr. EDWARDS. Is there objection?

[No response.]

Mr. EDWARDS. The chair hears none. It is so ordered.

Today, we resume our ongoing series of hearings on legislation to extend and amend the Voting Rights Act.

This morning, we will hear from a distinguished group of witnesses, among them our esteemed former colleague, Barbara Jordan, who will address the effect which the act has had in Texas and the Southwest.

It is really a pleasure to have Ms. Jordan here. Our colleague from Texas, Mr. Sam Hall, just said: "Well, she really ought to be up here," and I know Mr. Kastenmeier and I, and all of us say that instead of being the witness, even though we are so delighted to have you here, you really should be right back where you belong—in the battles, and giving the great support that you gave the country in the Judiciary Committee, the House and the Senate, in all of the issues that you were so skilled.

When we talk about civil rights, we're really talking about Barbara Jordan. When we talk about due process and civil liberties, we're talking about Barbara Jordan. So much of the Voting Rights Act was actually written by Barbara Jordan. Certainly, I could go on and on.

But we're simply delighted to have you here.

I yield to our colleague from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. I certainly join the chairman in extending greetings to our former colleague. We miss her leadership here in the Congress, particularly I think now more than ever. But nonetheless, we're very pleased to have you here today. Glad to see you again.

Mr. EDWARDS. You may proceed—before you proceed, Ms. Jordan, I yield to the gentleman from New Jersey, the distinguished chairman of the full House Judiciary Committee, Mr. Rodino.

Chairman RODINO. Thank you very much for yielding, Mr. Chairman.

It's a real delight to be here once again, sitting up here and seeing my good friend and our former colleague, a great voice for all the people of America.

I recall Barbara Jordan in this room, some years ago, when this country was confronted with a great constitutional crisis, and I remember the words "we, the people"; and those words are indelibly impressed in my heart. And I know that they have echoed throughout this Nation, and have given us a greater awareness of really who we the people are.

Barbara, I am delighted to welcome you here, and especially to know that again you are adding your voice to this great measure which we again are confronted with, and find a challenging situation. Hopefully, with your testimony, once again the people of America will know the importance of extending the Voting Rights Act.

Mr. EDWARDS. Ms. Jordan.

[The prepared statement of Barbara Jordan follows:]

PREPARED STATEMENT OF BARBARA JORDAN

Mr. Chairman, members of the subcommittee, this is my second appearance before this subcommittee to testify in support of the Voting Rights Act. In 1975, I testified in support of extending the act for 10 years, until 1985. The bill which passed the House did extend the act until 1985. But the Senate, in an agreement designed to break a filibuster, returned a bill with a 7-year extension. And the House agreed to it. Extension is therefore before this subcommittee somewhat earlier than I initially hoped.

In 1975 I also testified in favor of my own bill, the first bill introduced to expand coverage of the act to areas of the country where voting rights violations were documented to be pervasive. I said at that time that the same tactics used to deny blacks the right to vote prior to 1965 were being used against blacks and Hispanics in Texas and the Southwest in 1975. The same denials suffered by blacks in the Deep South were being felt by other minority citizens in the Southwest. As the record before the Congress in 1965 justified the original act, the record 10 years later justified its expansion.

I decided in 1975 to introduce a bill to expand the act for two principal reasons. First, I thought my constituents in the 18th Congressional District of Texas, and other Texans would benefit from its provisions. I knew the act had worked to the benefit of citizens in Alabama, Mississippi, Georgia, and the other covered jurisdictions. I wanted the act's provisions to work to benefit Texans in the same way. Second, I wanted the actions of local officials who denied minority voting rights to be scrutinized in an efficient manner. The preclearance provisions of section 5 of the Voting Rights Act provided the right mechanism. I thought that the city councils of the Uvaldes, Pecoses, and Rusks of Texas, and the county commissioners courts of the Crocketts, Medinas, and Wallers of Texas would be less likely to try to attempt subtle forms of voting rights discrimination if the U.S. Department of Justice were monitoring their actions

Now, nearly 6 years later what has been the result? I have traveled from Texas to Washington, D.C., to tell this subcommittee that the Voting Rights Act works. It has

changed politics in Texas for the benefit of Texans. You can measure it in the number of newly registered minority voters: about 420,000.

You can measure it in the number of newly elected minority office holders: about a 220 percent increase.

You can measure it in the city councils which have changed from at large to single member districts: San Antonio, Houston, Waco and others.

You can measure it in the county commissioner courts whose discriminatory redistricting plans did not take effect: Jim Wells, Crockett, Aransas, Medina, and Brazos.

One of the reasons I pushed to expand the act into the Southwest was because I wanted it to work for Texans. It has worked. Another reason was because I thought local officials would be less likely to discriminate against black and Hispanic voters in the future. To some extent that has happened. In other cases it has not. Discrimination against minority voters continues. Earlier this month the Texas legislature adopted a redistricting plan for the Texas House of Representatives. The plan divides Harris County (Houston) into single member districts. One of the seats could conceivably be won by an Hispanic. That sounds acceptable on its face. However, there are 400,000 Hispanics in Harris County. Each State legislative district contains an average of 96,000 persons. Among 400,000 people it seems strange only one 96,000 segment can be found. The redistricting plan will be submitted to the Attorney General for preclearance. I do not want to prejudge what might happen, but the plan for Harris County seems odd.

The case of Jim Wells county redistricting is another pending example. Only after a court order did the county submit a redistricting plan for preclearance. Over the past 5 years, three different redistricting plans have been submitted to the Attorney General. Each one has been objected to as racially discriminatory. This matter is now being litigated. The plaintiffs have asked the Federal Courts to impose a fair redistricting plan.

These are instances of continuing violations. They are taking place today. So today is not the day to repeal, compromise, weaken or dilute the Voting Rights Act. And yet pending before this subcommittee are bills which would undermine the effectiveness of the act.

One of those bills is H.R. 3473 sponsored by Mr. Hyde. This bill would eliminate the present section 5 preclearance requirement. In its place would be substituted the possibility that preclearance could be imposed on a case-by-case basis only after plaintiffs had prevailed in Federal Court. My reaction to this proposal is: "Haven't we learned anything?" I thought we learned that case-by-case litigation failed to provide a speedy and effective remedy for voting rights denials. I thought we learned from the Supreme Court that the present preclearance provision was constitutional because the case-by-case approach proved ineffective when met with obstructionist tactics. I thought we learned in voting rights cases that to delay a remedy is to deny a remedy. In 1924 a black citizen named Nixon attempted to vote in a Texas primary election. He was refused. It wasn't until 30 years and six Supreme Court decisions later that blacks could vote in a primary election in Texas. Mr. Nixon never did vote in a primary.

Another bill before this subcommittee is H.R. 2942 by Mr. Thomas and numerous cosponsors. This bill proposes to eliminate the requirement of the Voting Rights Act that certain jurisdictions must provide bilingual election materials. Actually this bill would have a more far-reaching effect. It would also eliminate the requirement to preclear election changes for all the jurisdictions newly covered by the act in 1975. My response to this proposal is: "How soon we forget!" The 1975 hearing record before this subcommittee contains more than ample justification for the action of the 94th Congress. That Congress extended the act, expanded its coverage, and mandated bilingual election materials. To retreat as if the record did not exist would be a terrible mistake.

I have never understood the opposition to bilingual ballots. The ultimate question in my opinion is: What language do our voting citizens understand so they can vote intelligently?

For those who wish to modify the Voting Rights Act or for those who wish to see its preclearance provisions expire altogether, where is the record to support either position? Where are the incidents of jurisdictions changing their election laws to benefit minority voters? Where are the State legislatures which have enacted statutes mandating enforcement by local cities, counties, and school boards of 14th and 15th amendment voting rights? Where are the State attorneys general who provide positive guidance to local governmental attorneys? Where are the minority citizens who testify to the good deeds of their elected officials? If they exist at all, they have not come before this subcommittee. There may be Members of Congress who wish to dilute or abandon the Voting Rights Act. They are entitled to their personal

opinion. But the overwhelming weight of the evidence supports extension of the Voting Rights Act. The record speaks for itself: Extension of the Voting Rights Act is warranted beyond a reasonable doubt, to a moral certainty. The evidence is clear and convincing. All that remains is for this subcommittee, the Judiciary Committee, the House of Representatives, the Senate and the President to act based upon the record. It is a small task really. It would mean equiping citizens with the help they need to govern themselves.

In William Gillette's book, "The Right to Vote: Politics and the Passage of the Fifteenth Amendment," he concludes that the ". . . politics of the 15th amendment represented the needs of the Republican Party." The amendment was ". . . framed, championed, and secured by generally Republican moderates." Republicans in early 1869 thought that by enfranchising blacks in the North, which is what the amendment sought first to do, they would gain voters for the Republican Party. The debate on ratification in the Illinois Legislature serves as an example. Illinois became the sixth state to ratify the amendment. It was debated and passed in the State Senate and House on the same day: March 5, 1869. All Republican Illinois legislators voted for ratification with only one dissenter. The Republican leadership of the Legislature had passed the word that ratification was needed for the health of the Party.

Now in 1981, I wish the descendents of Lincoln's Republican Party would be as forward looking as their Party forebearers. I wish that the current Republican President, the Republican majority in the Senate, and Republicans in the House, would agree to champion the Voting Rights Act, a tool for enforcing the 15th amendment. The Republican Party has an increasing base of support among southerners and voters in my State of Texas. At the same time citizens of these States have come before this subcommittee with passionate arguments favoring and justifying extension of the Voting Rights Act. Could it be possible that the Voting Rights Act could help the Republican Party in the covered jurisdictions? Could it be possible that extension would be in the best interest of the party? Could it be possible that by supporting the Voting Rights Act Republicans would gain supporters for their Party? But most importantly, the Voting Rights Act should be extended because it is needed. That need is based on evidence which should not be ignored but instead acted upon responsibly.

Mr. Chairman, the last time I was before you I testified in favor of Barbara Jordan's bill. Having left your ranks, I appear as a private and concerned citizen who endorses Mr. Rodino's bill.

TESTIMONY OF HON. BARBARA JORDAN, FORMER MEMBER, U.S. HOUSE OF REPRESENTATIVES, ACCOMPANIED BY ROBERT ALCOCK

Ms. JORDAN. Mr. Chairman and members of the subcommittee, and chairman of the full Judiciary Committee, thank you very much.

Thank you for what you, Mr. Chairman, and Bob Kastenmeier had to say about my service here. I want you to know that even though I am no longer a part of your ranks, I have not left the fight for which we have all devoted so much of our time, effort, and energy—and that is the right of decency and dignity among the peoples of this world, and the peoples of this country.

The Voting Rights Act—I support it. That comes as no surprise.

In 1975, I testified before this subcommittee and asked that the act be extended for 10 years, until 1985. The Senate had other ideas. In a move which was designed to break a filibuster, the Senate returned us a bill with a 7-year extension. We agreed to it.

Now, that extension—of 10 years—is before the subcommittee earlier than I thought.

In 1975, I testified in favor of my own bill. That was the first that was introduced to change the coverage, expand the coverage of the act in areas of the country where voting rights violations were known to be pervasive.

I said at that time that the same tactics used to deny blacks the right to vote prior to 1965 were being used against blacks and Hispanics in Texas and in the Southwest in 1975. The same denials suffered by blacks in the Deep South were being felt by other minority citizens in the Southwest.

The record before this Congress justified the original act in 1965; it justified the extension in 1975; and it justifies expansion further 10 years later.

There were two principal reasons in 1975 that I introduced a bill to expand the act. I thought my constituents of the 18th Congressional District of Texas and other Texans would benefit from the provisions of the act. The act, I knew, had worked for the covered jurisdictions in Alabama, Mississippi, and Georgia.

I wanted the act to work for the benefit of Texans in the same way. I wanted the actions of local officials who denied minority voting rights to be scrutinized in an efficient manner.

The preclearance provisions of section 5 have provided the right mechanism. I thought that the city councils of the Uvaldes, Pecoses, and Rusks of Texas, and the county commissioners of such counties as Crockett, Medinas, and Wallers would be less likely, I felt, to attempt subtle forms of voting rights discrimination if the Department of Justice were monitoring their actions.

Now, 6 years later, what has been the result?

Mr. Chairman and members of the subcommittee, I have traveled from Texas to Washington, to tell you that the Voting Rights Act works. It does work.

You might say, then: Why are you here? Why are we still trying to extend it? Why are we trying to expand it, if it has worked? Perhaps the job is done, and we can relax and let the act expire of its own legislative provisions.

That cannot happen.

Yes, the act has worked. It has changed the politics of Texas for the benefit of Texans. You can measure that by the number of newly registered minority voters: about 420,000.

You can measure it in the number of newly elected minority officeholders: a 22-percent increase.

You can measure the effectiveness of this bill in the city councils which have changed from at-large to single-member districts: city councils in San Antonio, Houston, Waco, and others.

You can measure the effectiveness of the act in the county commissioner courts whose discriminatory redistricting plans did not take effect—and there were some bad ones which did not take effect: Jim Wells County, Crockett, Aransas, Medina, and Brazos.

One of the reasons I pushed to expand the act into the Southwest was because I wanted it to work for Texans, and I thought local officials would be less likely to discriminate against black and Hispanic voters in the future.

Now, to some extent, this has happened. In other cases, this has not happened. Discrimination against minorities continues.

Earlier this month, the Texas legislature adopted a redistricting plan for the Texas House of Representatives. The plan divides Harris County—Houston—into single-member districts. One of the seats could conceivably be won by an Hispanic.

That sounds acceptable on its face. However, there are 400,000 Hispanics in Harris County. Each State legislative district contains an average of 96,000 persons. Among 400,000 people, it would seem strange that only one 96,000 segment could be found. The redistricting plan will be submitted to the Attorney General for preclearance. I do not want to prejudge what might happen. I can only say to you that the plan for Harris County seems a bit odd.

The case of Jim Wells County redistricting is another pending example. Only after a court order did the county submit a redistricting plan for preclearance. Over the past 5 years, three different redistricting plans have been submitted to the Attorney General. Each one has been objected to as racially discriminatory. This matter is now being litigated. The plaintiffs have asked the Federal courts to impose a fair redistricting plan.

These are instances of continuing violations. These are violations which are taking place today. So, today is not the time to repeal, compromise, weaken, or dilute the Voting Rights Act.

And yet, pending before this subcommittee, are bills which would undermine the effectiveness of the act.

One of those bills is H.R. 3473, sponsored by Mr. Hyde.

Mr. Chairman, at the time that this testimony was prepared, Mr. Hyde's bill, 3473, was in place and he, at that time, would eliminate in that bill the section 5 preclearance requirements. I understand Mr. Hyde introduced a new bill yesterday, with some bailout provisions; and I do not and cannot testify to the efficacy or validity, or the goodness or badness, or rightness or wrongness of that legislation.

I would simply say here that, on the bill first introduced by Mr. Hyde, which would eliminate present section 5 preclearance requirements would have presented a result which was totally unacceptable. In its place would be substituted the possibility that preclearance could be imposed on a case-by-case basis, only after plaintiffs had prevailed in Federal court.

My reaction to that proposal is: Haven't we learned anything?

I thought we learned that case-by-case litigation failed to provide a speedy and effective remedy for voting rights denials.

I thought we learned from the Supreme Court that the present preclearance provision was constitutional, because the case-by-case approach proved ineffective when met with obstructionist tactics.

I thought we learned that in voting rights cases, that to delay a remedy is to deny a remedy. And that continues to be the case.

In 1924, a black citizen named Nixon attempted to vote in a Texas primary election. He was refused. It wasn't until 30 years and six Supreme Court decisions later that blacks in Texas could vote in the Democratic primary—in any primary election in Texas, Mr. Nixon, that plaintiff, never did vote.

There's another bill before this subcommittee, by Mr. Thomas and numerous cosponsors, and that bill proposes to eliminate the requirement in the Voting Rights Act of bilingual election materials.

This bill by Mr. Thomas and others would have more far-reaching effect than was originally obvious. It would eliminate the requirement to preclear election changes for all jurisdictions newly covered by the act in 1975.

We forget soon. We forget quickly. We cannot afford to retreat, Mr. Chairman, given the record which is before this subcommittee, of continuing violations of voting rights.

I don't understand the opposition to bilingual ballots. The ultimate question, in my opinion, is what language do our voting citizens understand, so that they can vote intelligently.

For those who would modify the Voting Rights Act, for those who wish to see the preclearance provisions expire all together, where is the record to support either position?

Where are the incidents of jurisdictions changing their election laws to benefit minority voters?

Where are the State legislatures which have enacted statutes mandating enforcement by local cities, counties, and school boards, of 14th and 15th amendment voting rights?

Where, Mr. Chairman, are the State attorneys general who provide positive guidance to local governmental attorneys?

Where are the minority citizens who could come before us and testify about the good deeds of their State and local officials? If they exist at all, they have not come before this subcommittee.

There may be members of this committee and Members of the Congress who wish to dilute or abandon the Voting Rights Act. They are entitled to their opinion. But the overwhelming weight of the evidence supports extension of the Voting Rights Act, and the record speaks for itself.

People are entitled to be able to govern themselves without being impeded and interfered with.

In William Gillette's book, "The Right to Vote: Politics and the Passage of the Fifteenth Amendment," he concludes that the "politics of the 15th amendment represented the needs of the Republican Party. The amendment was "framed, championed, and secured by generally Republican moderates."

It is possible that the Republican Party could benefit from the extension and expansion of the Voting Rights Act. That is conceivable. It happened more than 100 years ago; it could happen now. The Republican Party enjoys significant support in the State of Texas, and certainly in other places. The decendants of Lincoln's Republican party should, I would hope, develop the kind of feeling for representation of people in this country, which their party forebearers had.

I wish the current Republican President, the Republican majority in the Senate, the Republicans in the House, would agree to champion the Voting Rights Act. That would be a good tool for enforcing the 15th amendment, if they would agree to it.

It could be possible that the party would benefit from the strengthening of the act.

Mr. Chairman, the last time I was before you I testified in favor of my own bill. Having left your ranks, I appear as a private and concerned citizen who endorses Mr. Rodino's bill.

And, Mr. Chairman, I endorse extension of the Voting Rights Act because it's the right thing to do.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much for your very compelling testimony, Ms. Jordan.

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Mr. Kastenmeier asked me to tell you that he appreciated your testimony very much, that he regretted that he had to leave. He is the floor leader in the bill to extend the life of the Legal Services Corporation, which is on the floor today. Otherwise he wanted to stay and converse with you more.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Good morning, Ms. Jordan.

Ms. JORDAN. Good morning, Mr. Washington.

Mr. WASHINGTON. I am honored to be among those to greet you this morning. I wish to convey to you that your many, many friends in Chicago wish you well.

I just wish that you were still on this committee, because your strong voice and cogent arguments are really needed. I have a feeling that we are in serious trouble, and based upon some of the testimony we have been getting in various places, this is not going to be a cakewalk in terms of getting this reauthorization.

On page 5 you—I think you put your finger on it—about the middle of the page there you challenge these various States attorneys—States and municipalities—to have done something to implement this act on their own. They have not done so.

And, based upon the testimony that we have gotten from secretaries of States in Alabama, State representatives in Mississippi, et cetera, et cetera, it is my distinct impression that they have no intention of doing so.

The bailout thing is quite a knotty proposition. And in many of these counties we have had county officials come forward and testify as to the purity of their motives and as to the fact that they have clinched their procedures and have appealed to the Congress, or rather to this committee to provide some bailout provisions.

The concomitant and necessary evidence to support that has not come forward. But, we are somewhat intrigued by that thing. And it is getting to be a rather knotty proposition.

What is your attitude about various counties within the covered States being permitted to bail out?

Ms. JORDAN. Mr. Washington, I am not hostile to the development of some mechanism which would allow counties to be able to bail out from under the operation of the Voting Rights Act, provided a mechanism could be developed which would be fair, equitable, and protect the integrity of the act.

Now, so far, Mr. Washington, I have not seen that kind of a bailout provision developed. My feeling is that if the local jurisdictions are in compliance with the law, if they are not impeding and interferring with one's access to the right to vote, where is the onerous burden which the Voting Rights Act imposed upon them? I don't know where it is. Preclearance is no big burden. My State of Texas, of course, has been the worst offender of anybody, and we've had 85 objections, 85 or 86 objections made by the Attorney General of the United States lodged against changes in voting practices or procedures in Texas.

And I know that people don't like it, do not like having to change their election laws or make adjustments to comply with the act. But it can be done, and I think it is rather painless. So in answer to your question, as I began, I am not hostile to the development of some bailout mechanism, but I have yet to see that

mechanism which is fair, equitable, and preserves the integrity of the Voting Rights Act.

Mr. WASHINGTON. Yes; and I think the burden should remain upon the entire State and all of its political subdivisions because of the onerous history of this whole business, which led up to the act. The attorney general of New York came forward and, to supplement what you're saying, testified there was no administrative burden upon that State to administrate the act, and he was quite clear. And even those who claimed that there was a burden couldn't demonstrate it with any tangible evidence. So clearly it's not a burden.

Our trip to Montgomery was an interesting trip. It was a pleasant trip in one sense because so many, many people are vitally concerned with perpetuation of this act, black State senators and various mayors, League of Women Voters, and people like that. On the other hand, it was somewhat a shattering experience to see so many white elected officials who were adamantly opposed to the perpetuation of the act. It seems as though there is a polarization going on in that area over this issue.

This is, of course, unfortunate. I don't recall a single solitary white official—I don't want to do a disservice to anyone—who came forward and unequivocally stated that the act should be perpetuated. This says something to me and I know, based upon your experience, both as a legislator and as a person, it says something to you, too.

How do we get over this polarization? How do we impress upon the good people of the South that it is not theirs to deny people the right to vote, that in sharing of the goodies of this country they have a responsibility to assist others in sharing it as well.

But how do we get it across to them in as nonabrasive as possible manner?

Ms. JORDAN. Well, Mr. Washington, you're asking a very large question, of how we cause the polarization of the races in the South to cease.

As you well know, the polarization developed over a period of centuries. And the polarization is not going to cease with any instantaneous passage or extension of the Voting Rights Act.

I am a child of the South and I love it. I think the South is going to be the mainstay of equal justice in this country, because it has been so difficult and so painful for adjustments to be made to change history—history, as far as the South is concened.

But because—if it's any consolation to you, Mr. Washington—because the South is so tough a reed to bend, once it is made straight, it will remain straight much longer than many of those areas in your State of Illinois or other places around—in the Northeast or in the Far West.

So, whereas I can't give you any quick, easy answer as to how we end racial polarization, I can tell you that I have faith that it is going to end. And the Voting Rights Act is a step in that direction.

The very fact that you talked about going to Alabama, where you encountered opposition on the part of white officials in Alabama, and also said, "I talked to black State senators." It is encouraging that that's a black State senator in Alabama, Mr. Washington, who

would not be there if it were not for this bill and changes that gradually and reluctantly take place.

So, have faith and take heart.

Mr. WASHINGTON. I needed that. Really. [Laughter.]

But my State is not so pristine either. We were just talking about the Voting Rights Act as it's applicable mainly to the South, but the North has a lot of problems of its own. It's just that their acts of discrimination are more subtle, not as obvious.

But thank you very much, Ms. Jordan.

Ms. JORDAN. Sure.

Mr. EDWARDS. Well, certainly the evidence that we have gathered in the dozen days of testimony here indicate that things are better. There's no doubt about that. The Voting Rights Act has been very effective; however, attitudes have not really changed.

And I think when we start to talk about bailout—and I'm glad you brought the subject up, because we've had quite a lot of discussion about bailout—isn't the first question to ask, like you asked on page 5 of your testimony:

Where are the incidents of jurisdictions changing their election laws to benefit minority voters? Where are the State legislatures? What are they doing? Where are the State attorneys general who provide positive guidance to local government attorneys?

We haven't seen them. They haven't come forward and outlined what they have done to take the burden off the Federal Government in this area. We don't want to have to have a voting rights bill. Isn't it really up to the State of Texas to do its work? And if it doesn't, is not the Federal Government constitutionally charged with that responsibility?

Ms. JORDAN. Of course, Mr. Chairman. And you understand it is not an easy job for those in the South, who are accustomed to doing business in a certain fashion, to change. But change they must. And that's why we have the Voting Rights Act of 1965, 1975 and, hopefully, 1982. We would hope that that would occur.

But, yes, it is the obligation of the State of Texas to make the adjustments and to make the change. What we're talking about here is so basic and so fundamental and so right. It just almost defies one's judgment or imagination to think about people who would object to the fundamental basic pursuit of a right that is so deep and so substantive as that of access to vote, access to the polls.

Yes, the State of Texas has its responsibility, as each of the covered jurisdictions has that basic responsibility to see that people have access to the polls without impediment, and the State of Texas should not be allowed to bail out until they have done their job.

And we know, in Texas, that we haven't done our job. And we will never be happy about the Attorney General of the United States monitoring our actions. That will never please us. But we know that it is necessary, because we're a little weak of spirit.

Mr. EDWARDS. I think one of the phenomenon that we also found in Texas—perhaps also to a certain extent in the other covered jurisdictions was that although it is much easier to register to vote for blacks and Hispanics, it is still terribly difficult to get elected, not only because of racial-bloc voting, but because of the many new

devices, or old devices made more sophisticated, such as gerrymandering, at-large voting, annexations, redistricting, and so forth which dilute minority voting strength.

Do you think that if Congress does not extend section 5, that these kinds of devices will continue to be used and accelerated?

Ms. JORDAN. Mr. Chairman, Congress must extend section 5. That is the heart of the protection that we have against the very devices that you have mentioned. If section 5 were not there, these devices would proliferate and become even more ubiquitous than they are.

Section 5 is crucial. And we have to have it. It is a must, because we will not change our errant ways voluntarily.

Mr. EDWARDS. Ms. Jordan, you also mentioned the President of the United States and our friends in the Republican Party. We have invited the Attorney General and the new Assistant Attorney General in Charge of Civil Rights—who has not yet been confirmed—to testify. And I am sure they will next month.

But we all share your feeling that the party of Lincoln will do as President Ford and President Nixon did, and President Eisenhower, in the early civil rights bills. This is a nonpartisan issue. It's a bipartisan issue.

So I appreciate what you said—and we all do—about that great political party and the White House today endorsing this modest bill that merely continues something that's working very well.

I have one question about the language provisions which you authored 5 or 6 years ago and have been working really very well.

One of the concerns expressed by some of the witnesses regarding the bilingual provisions of the Voting Rights Act is that the act is a disincentive for language minority citizens to integrate into the political and social mainstream of American life. How do you respond to that?

Ms. JORDAN. Because I am speaking over a microphone and publicly, I will respond in a calm and diplomatic and judicious fashion. [Laughter.]

I think people who assert that the bilingual election provisions have had a disincentive effect on the integration and movement and participation of people in diverse backgrounds in the life of this country—the people who feel that way, Mr. Chairman, are sadly, woefully, and overwhelmingly in error. That is as nicely as I can put that. [Laughter.]

We know there are many reasons why there are objections to bilingual elections. And for those who say that it fosters divisiveness, that is not true. What bilingual election provisions have done, what those provisions have accomplished is to bring into the integral and integrated workings of the communities of America with substantial minority language populations, bring those people into a sense of camaraderie and participatory democracy in a basic and fundamental way.

Minority language citizens are still citizens. They want to be a part of whatever the boom and sway of the life of America is. In order to be a part of that movement and what I am calling the boom and sway of life in America, one thing which is crucial is that the language minority citizens be able to participate in that basic fundamental right, and that is vote in an election and under-

stand and read the election materials, and really feel that they are participating in governing themselves.

That's what expanding the Voting Rights Act to language minorities has done; it has helped these language minority citizens feel one more time that we are a part of America and we can participate in governing ourselves, because America is big enough to help us understand how to govern ourselves. I think it is a very positive feature.

Mr. EDWARDS. That is a very eloquent and satisfying answer to that very difficult question.

Mr. Washington, do you have any further questions?

Mr. WASHINGTON. No.

Mr. EDWARDS. Counsel, Ms. Davis.

Ms. DAVIS. Thank you, Mr. Chairman.

Ms. Jordan, you indicated that you had not yet had an opportunity to look at the provisions of Mr. Hyde's bill, introduced yesterday, amending the bailout provision. But I wonder if you have had an opportunity to consider any problems that might arise from political subdivisions in covered States being able to bail out from coverage while the State is still under coverage of section 5?

Ms. JORDAN. One thing, Ms. Davis, that we know would be a problem is that the city is a creature of the State. The city does not have an autonomous existence apart from its creator, the State.

Now, if the creator is a violator in a major way and the creature tries to bail out of the act because the creature says, "I have done these things and that sets me aright," and out comes this local jurisdiction, then we have the State in error—errant as far as the law is concerned. We have a city out saying, "We are pure, and we are right." And that then poses conflict within a single jurisdiction, a State and its creature, the creator and its creature at odds—at odds.

That could pose a very difficult situation in trying to enforce the provisions of the act in all covered jurisdictions if you're going to have this kind of difference between the activities of constituents of a given current, covered jurisdiction. And that's about—that's why I think that that would be—to use the vernacular and a very common word, that would be very messy.

Ms. DAVIS. Thank you.

Mr. EDWARDS. Counsel? Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Ms. Jordan, when we were in Austin 2 weeks ago, Attorney General Mark White appeared before the subcommittee. He appeared briefly, but he did say, while he did speak to us, that he was strongly in opposition to the extension of section 5 in its present form. And he spoke with some fervor about the burdens which are involved.

Now, you have directed some of your comments to the burdens of compliance with section 5, but I wonder how you might respond to the belief that Attorney General White has that the burdens in the State of Texas are particularly difficult.

Ms. JORDAN. Now, counsel, Attorney General Mark White is a good, noble, and honorable man. He was opposed to expansion, extension, of the Voting Rights Act in 1975 to include Texas. I was carrying that provision and he was in opposition at that time. He

was a secretary of state. And the Governor was a person named Briscoe. And they, along with most of the officialdom of Texas, which Chairman Edwards will remember, did not want that Voting Rights Act expanded to include Texas. But it happened anyway, because the Congress prevailed, and it happened.

So you have got to understand, counselor, that the Attorney General does not come to this matter of extension having been a long supporter of section 5 preclearance provisions. But he comes having been in opposition when it was initially proposed; and since it was done anyway, just living with it.

Let us call it a rather ragged coexistence between section 5 and the State of Texas. Mark White is a friend of mine. And I am going to continue to try to educate him on what section 5 preclearance really means, and how it really is not a burden, and how it is a simple matter. And inasmuch as the attorney general is a man who knows how to read and understand and think, I feel that ultimately he is going to believe—believe—that it is a good thing for Texas to be under the aegis of section 5 preclearance.

But you understand, counselor, that it was the original disappointment in having Texas have to submit anything it does to the Attorney General of the United States. We are Texans, and we don't like that. And I, of course, joined and take full share of the blame for doing that to Texas. But there are some things which cause us to reduce our strong feelings of independence and autonomy. And I think when it comes to the right to vote, that is a logical and sensible time to reduce our machismo Texas feeling.

So don't worry about the attorney general. We're going to do all right. [Laughter.]

And the people of Texas are going to do all right. And just keep the law intact, and extend it for 10 years. We'll need it another 10 to work through it.

Mr. BOYD. Thank you.

Congressman Hyde's bill, introduced yesterday—I understand you haven't had a chance to review it—but it is designed to require jurisdictions to do that which they are not obligated to do under the existing act, that is, to improve their voting conditions, rather than to maintain the status quo—which is all the Voting Rights Act now requires because of the provisions which were grandfathered in by the 1965 act.

It does, however, raise what I suppose is an inevitable question—and it is just now surfacing, and that is whether local Federal courts are indeed competent to entertain civil rights cases where voting rights are involved.

I wonder if you might have some comments about that.

Ms. JORDAN. Counselor, I hesitate to even move into this area in response to your question, because I am not sure exactly what the effects of using the local Federal courts in voting rights matters would be.

Let me just say that my feeling, my inclination, my inner reaction, is that it probably would not be in the best interest of the full and fair enforcement of the Voting Rights Act to leave it up to the local Federal courts to take care of disputes and litigation coming under the Voting Rights Act. That probably would not be a good idea.

Mr. BOYD. Is that same problem present with regard to other civil rights acts as well? Should we not have all civil rights acts litigated in the district court for the District of Columbia?

Ms. JORDAN. I wish you would let me just hedge on that, because I haven't given it any thought, and to give an answer just in response, not having thought through it, I might find out that tomorrow I gave a wrong answer. I will just decline to answer that.

Mr. BOYD. I understand. Thank you.

Mr. EDWARDS. I apologize for not recognizing a friend of the committee and a personal friend of many years, Mr. Bob Alcock, who is former administrative assistant to Barbara Jordan. We are delighted to see you again. We miss you in the House, too.

Ms. JORDAN. I still need him, Mr. Chairman.

Mr. EDWARDS. I would like to point out that we had the privilege in Austin of the testimony of Douglas Caddy, who is former director of elections in the State of Texas, which is in the secretary of state's office, and he spoke in strong support of extension of the bill. He is a Republican and a member of the Young Americans for Freedom, an organization that has not yet endorsed the reelection of either Mr. Washington or myself. [Laughter.]

He is a former counsel to the National Conservative Political Council. He gave very impressive testimony in favor of the extension and the operation in Texas of the bill.

I have no further questions. And again, thank you very much for being here today.

Ms. JORDAN. Thank you, Mr. Chairman and members of the committee.

Mr. EDWARDS. Our next witness is Vilma Martinez, the very distinguished general counsel of the Mexican-American Legal Defense and Education Fund, which we know as MALDEF.

Without objection, Ms. Martinez' full statement will be made a part of the record.

[The complete statement follows:]

PREPARED STATEMENT OF VILMA S. MARTINEZ, PRESIDENT AND GENERAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Mr. Chairman, members of the Subcommittee, my name is Vilma Martinez. I am the President and General Counsel of the Mexican American Legal Defense and Educational Fund. MALDEF is a national civil rights organization dedicated to the protection of the civil and constitutional rights of Mexican Americans and other Hispanics, who make up close to 15 million of our nation's people.

I am delighted to appear before you today in support of H.R. 3112. This bill would extend the 1975 minority language amendments to the Voting Rights Act, including pre-clearance for Texas and the Southwest for seven years, extend the special provisions for ten years; and amend Section 2 to incorporate a result standard which would enable victims of voting discrimination to challenge practices without the necessity to show discriminatory intent.

The Voting Rights Act is important both symbolically and substantively. Its substance guarantees that the voting rights of all Americans are protected. It is a symbol of the strides our government has made in assuring that our Fourteenth and Fifteenth amendment rights are a reality. It is a symbol too of a fact about which our nation has little to be proud: that there are many parts of the country in which many millions of Americans have not historically been accorded their voting rights under the law. The Voting Rights Act is still needed in those areas and for those people. Any weakening of the substance of the Voting Rights Act by this Congress will be perceived as an abandonment of our national commitment to securing the voting rights of all U.S. citizens.

It has been asked us many times why we are seeking to extend the 1975 amendments—that is, those which affect Hispanics—at this time rather than wait until

they expire in 1985.[1] The answer is quite simple, these provisions are under attack now. There are currently three identical bills in the House and the same bill in the Senate which would eliminate all 1975 amendments to the Voting Rights Act which protect Hispanics and other language minority citizens.

These bills would eliminate the totality of protections for Hispanics under the Act. They would eliminate Section 5 for Texas, Arizona and Alaska and other jurisdictions covered under the trigger in Section 4(b); eliminate Section 2 protection for Hispanics and other language minorities; and would eliminate all types of registration and voting assistance to U.S. citizens who are not fluent in English. These bills would also deprive Hispanics of Section 3 special court remedies and the Section 6 provision for Federal examiners. These bills would also eliminate references to the Fourteenth Amendment in Sections 3 and 6. This is significant because it is unclear that Hispanics are protected as a racial group under the Fifteenth Amendment. Without reliance on the Fourteenth Amendment, Hispanics may be unable to obtain the Section 3 and Section 6 remedies. I urge members of Congress to reject these bills.

I would like now to turn to the overwhelming need for the provisions of the Voting Rights Act contained in H.R. 3112.

SECTION FIVE

The importance of Section 5, always considered the heart of the Voting Rights Act, cannot be overemphasized. One of the provision's most important features is the shifting of the burden of proof from the victim of discrimination to the jurisdiction proposing to make an election change. Also central to the significance of Section 5 is the fact that it obviates some litigation in challenging discriminatory election changes. In large part because of the prevailing constitutional standards which require demonstrating that the intent to discriminate was the primary motive in making the election change, litigation is extremely ineffective in this area. Litigation is not only ineffective in preventing discriminatory election laws but it is costly and time-consumming.

Among the actions which MALDEF was forced to litigate in Texas before the 1975 amendments were two cases whose history illustrates the wisdom and efficiency of the pre-clearance procedures. In one case [2] the trial court found unconstitutional a law that denied illiterates assistance at the polls which was given to blind persons and others with physical handicaps. It required several years of litigation and two separate appeals to secure the constitutional rights of illiterate citizens, most of whom were minorities, to vote. In another case, [3] a state law which required voters to register every year during a four month period was held to disenfranchise a large class of citizens arbitrarily and without justification. The state's response to this ruling was to enact a series of alternative measures to purge the voter rolls in an attempt to evade the court's ruling.

One of these alternatives, enacted in 1975, became subject to Section 5 preclearance. It was, in fact, the first proposed election change objected to in Texas. SB 300 would have purged the voter rolls for the entire State of Texas and would have had a devastating effect on the political participation of Mexican Americans and blacks in Texas for years to come. Today, Mexican Americans account for 21 percent of Texas' population and blacks for 12 percent.

SB 300 was only the first of the approximately 85 letters of objection Texas has received since 1975. In six short years, Texas has received more letters of objection than any state covered under Section 5 for 16 years, giving credence to the very eloquent statement made earlier in these hearings by Dr. Charles Cotrell who said, "Texas yields to no state in the area of voting rights violations. . . . When attempting to describe Texas' long train of voting abuses, one is faced with the imposing challenge of where to begin."[4]

We must begin with the fact that Mexican Americans in Texas have been barred from equal access to the political process by laws such as those I have described above as well as by at-large election systems, racial gerrymandering, violations of the one person/one-vote principle and by extensive racially polarized voting. These practices and conditions singly and together, created the need for Section 5 in Texas in 1975. The fact that these practices and conditions continue in 1981 lead us irrefutably to the conclusion that Section 5 must be continued.

The approximately 85 letters of objection issued to Texas have included objections to proposed changes at the state, county, city and school district levels in north, south, east, and west Texas, in rural areas and urban areas. There have been objections issued to statewide puring laws, annexations, redistricting plans, majority vote requirements and polling place changes. Virtually no type of election change,

even those which appear innocuous, has escaped the attention of officials who seek to minimize the voting strength of Mexican Americans in Texas.

MALDEF's Associate Counsel in San Antonio, Joaquin Avila, appeared before this subcommittee in Austin recently and presented extensive testimony on the letters of objection issued in Texas. I would like to reiterate briefly several of the situations in which a letter of objection prevented the implementation of a discriminatory change and, more than that, encouraged the adoption of a law that would enhance Mexican American participation.

In 1977, the Raymondville ISD moved a polling place from city hall to the local American Legion Hall. In objecting, the DOJ observed that the change in location "will result in a significant inconvenience for many Mexican American voters," and that "the American Legion Hall appears to be the place where many Mexican Americans feel unwelcome." The evidence also indicated that the school district has rejected available alternatives which would have overcome the administration problems connected with the continued use of city hall as a polling place location.

The very positive effects of Section 5 have been shown in the objections to annexations in San Antonio where, prior to 1975, the city council elected its members at large. In a city that has a majority of Mexican Americans, Mexican Americans only accounted for twenty-seven percent of all city council members between 1955 and 1975. Following objections to annexations, San Antonio instituted single-member districts and the number of minority members on the city council increased to six—comprising over fifty prcent of the council. Henry Cisneros, a city council member, was elected to be the first Mexican American mayor of San Antonio earlier this year.

The election of Henry Cisneros was only one of the many benefits that came to Mexican Americans in San Antonio as a result of the move to single-member districts. Of more immediate concern to the city's Mexican American population was the election of representatives from San Antonio's Mexican American barrios who could directly serve its needs, needs as basic as adequate drainage on the streets and the construction of streets and sidewalks where they had never existed before.

These are but a few examples of the positive effects Section 5 has had for Mexican Americans in Texas. Yet the need for Secton 5 is far from over. In addition to the election changes that take place routinely during the year that must be pre-cleared, the Congressional and state legislative redistricting plans that are currently being considered in Texas, must also be pre-cleared. These new districts will govern the political life of Mexican Americans in Texas for at least the next ten years. It is vitally important that the voting strength of Mexican American voters not be minimized or rendered ineffective as new district lines are created. Pre-clearance of the redistricting will be crucial to insure fairness and equity.

It is very important, in light of the proposed shifts in government from the federal to the state and local levels, that Hispanics have equal access to the political process, lest we be barred from the local-decision making bodies that may soon have the responsibility to provide goods and services now provided by the federal government.

PROPOSALS THAT WOULD WEAKEN SECTION 5 OF THE VRA

In addition to bills that would eliminate the 1975 amendments to the Voting Rights Act, there are many other proposals under discussion which would weaken the Voting Rights Act considerably. Congressman Hyde's bills would eliminate pre-clearance for the jurisdictions brought in in 1965 and 1970 and require pre-clearance for four years only after case-by-case litigation and a finding of a pattern or practice of voting discrimination. I was very pleased to hear that at the hearing in Austin two weeks ago, Mr. Hyde changed his mind and said he was now interested in some form of extension of Section 5.

I would like now to examine some of the proposals that have not been introduced as legislation but which are being circulated in the press and informally by members of the Administration and the Department of Justice. I met earlier this year with President Reagan and he said that his only opposition to the Voting Rights Act is that it is not "nationwide." To many people, "nationwide coverage" has the ring of fairness and equity. But it is vitally important to point out that nationwide application of Section 5, which I assume is what the President was referring to, is very questionable on Constitutional grounds. I understand Representative Hyde also believes that nationwide coverage might not stand up to judicial scrutiny.

As you know, the Supreme Court in *South Carolina* v. *Katzenbach* was very clear on this point: pre-clearance of state and local election changes by the federal government could be justified only if evidence of discrimination, such as a literacy

test, could be demonstrated. It is therefore unclear that the court would uphold a requirement of federal intervention in state and local elections unless discrimination had been shown.

Nationwide coverage is questionable not only on Constitutional grounds but also on a number of other counts. At a time when the federal government is attempting to reduce its reach and its jurisdiction, it would be highly inconsistent to expand pre-clearance to every state in the union, particularly if a need for it has not been demonstrated.

On the practical level, nationwide coverage would burden the Department of Justice with submissions to a point where the Department could not assess the impact of any submission judiciously. On the political level, it must be noted that nationwide coverage was rejected in 1975 in both the House and Senate by members who knew that it would have been the end of an administrative procedure that is, for the most part, prompt, cost-effective, easy to comply with and, most of all, extremely effective in preventing the adoption of discriminatory election laws.

Also being considered are proposals that would limit the types of election changes that must be pre-cleared. It must be remembered that Section 5 pre-clearance was developed by Congress in 1965 in order to prevent discriminatory election changes that arose once the ban on literacy tests was imposed. Based on experience in court, Congress knew that once one discriminatory election practice was outlawed, another quickly sprang up to take its place and to disenfranchise minority voters. The past sixteen years have shown indisputably how wise it was to require pre-clearance of all election changes. Once literacy tests were banned, a host of other more subtle means of diluting minority voting strength appeared. Given the record of persistent discriminatory election practices before us, there is every reason to believe that if only certain types of election changes were required to be pre-cleared, jurisdictions that wanted to discriminate would be free to do so in election laws that did not have to be pre-cleared.

Also being discussed is the possibility of a different bail-out from Section 5 coverage. As the law is currently written, a state or political subdivision cannot bail-out unless it can show that it has not used a "test or device" for the "purpose or with the effect of denying or abridging the right to vote on account of race or color" for seventeen years for the jurisdictions covered by the 1965 and 1970 bills and for ten years for those jurisdictions covered by the 1975 amendments.

It is important to note that it is possible, under current law, to bail-out of the pre-clearance requirement. Counties in New Mexico and Oklahoma covered under the language minority amendments successfully bailed out because they could demonstrate precisely what the law requires: that test or devices had not been used for the purpose or with the effect of discriminating. Texas, by contrast, is unable to meet the burden of proof for a very good reason: state and local election laws and practices continue to discriminate against Hispanics and other minorities.

It is precisely in those areas where discriminatory tests and devices were used and where discriminatory election practices continue to this day that pre-clearance must be retained. During the course of these hearings, no evidence was presented which shows that any of the covered jurisdictions should be permitted to bail-out. I see little logic in developing a new bail-out when the law now provides for one designed to keep jurisdictions which discriminate under pre-clearance.

These are but a few of the proposals being discussed to alter the Voting Rights Act. Each of them weakens the Act under the guise of making pre-clearance "less burdensome." These hearings have shown that compliance with Section 5 is a simple, inexpensive procedure whose benefits far outweigh whatever "burdens" or "stigmas" opponents of pre-clearance would have us believe exist.

I understand that during your Austin hearing, no public officials from Texas expressed opposition to Section 5. It may well be that public officials in the state realize how easy the law is to comply with and how beneficial it has been to the state's 33 percent minority population.

THE NEED TO AMEND SECTION 2

Section 5 has been a powerful tool for eradicating some of the most discriminatory voting practices in Texas and other jurisdictions with substantial minority language populations. Yet, Section 5 only covers voting changes which have been implemented after November 1, 1972. Out of 254 counties in Texas, 59 have not redistricted since 1970 and have therefore not been reviewed by DOJ for possible discriminatory districting. The widespread violation of the one-person one-vote principle continues in many counties in Texas and other covered jurisdictions. In order to challenge these preexisting election systems, minorities must rely on Section 2 protections and constitutional lawsuits. Unfortunately, Section 2 as presently interpreted by the

courts and specifically the Supreme Court decision in the case of *Bolden* vs. *City of Mobile*, 100 U.S.C. 1490 (1980) has not served as an effective mechanism for challenging pre-1972 discriminatory systems for Hispanics and other language minorities.

Section 2 states "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right to any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in Section 4 (f)(2)." The standard of proof as delineated in *Mobile* by the Supreme Court may be impossible to meet. The standard enunciated in *Mobile* requires proof of discriminatory purpose or intent. Attempts to gather evidence of what the intent or purpose of those who implemented election system changes many years ago would be an almost impossible task. In Scurry County, Texas, with an 18.7 Hispanic population and no Hispanic representation, there has not been a redistricting since 1886. To prove in 1981 that those who instituted this change nearly one hundred years ago did so with the intent to minimize the Mexican American vote would be an impossible burden.

The proposed amendment to Section 2 in H.R. 3112 is intended to provide statutory relief to language minorities whose access to the political process has been diluted by election schemes instituted prior to 1972. Realistic and pragmatic standards must be delineated which will give meaning to the statutory right as intended by the Congress when it passed Section 2. Factors such as prior history of discrimination, exclusion or substantial under-representation of minorities from elected office, racial bloc voting, discriminatory elements of the electoral system such as majority vote requirements, anti single-shot provisions, numbered post and discrimination in slating of candidates are some of the factors which would be considered by the courts in determining and finding violations under Section 2.

Another illustration of why Section 2 must be amended was cited by MALDEF's Assosicate Counsel, Joaquin Avila when he testified on June 5, 1981 at Austin, Texas. According to the 1980 Census, Beeville had a population of 14,575 of which over 56.8 percent 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 two out of five 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 five 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 four 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 an evidentiary result test will minorities have a reasonable opportunity of effectively challenging the maintenance of at-large election schemes whose adoption pre-date the November 11, 1972 preclearance deadline.

As I mentioned earlier, several bills have been introduced to eliminate the minority language provisions and Section 5 coverage for language minority citizens. These bills will also in all likelihood deprive Hispanics and other language minority citizens of the protection of Section 2 of the Voting Rights Act. Protections for language minority citizens were added to Section 2 in 1975. Section 2 lawsuits on behalf of Mexican Americans were not brought prior to 1975 when the Act referred

only to "race or color" so there is a serious question as to whether Section 2 lawsuits on behalf of Mexican Americans could be brought if the 1975 amendments were deleted from the Voting Rights Act.

SECTION 203—BILINGUAL ELECTIONS

Congress' 1975 decision to provide voting assistance for non-English speaking U.S. citizens was as important for Hispanic voters as the original suspension of literacy tests by Congress in 1965 was for blacks. In both bases, Congress recognized that "tests or devices" requiring literacy in the English language presented participation by U.S. citizens who are not literate in English.

The inability of many adult Mexican American citizens who were both here or came here as young children to speak English is a direct consequence of the denial of educational opportunities to them as children. Many Mexican American children have been denied a chance to learn English by virtue of their confinement, as a result of de jure segregation practices to predominantly or completely Mexican American schools, known colloquially as "the Mexican schools." Federal courts have recently found such segregation in dozens of localities across the state of Texas, including Austin, [5] El Paso, [6] Corpus Christi, [7] Waco, [8] Lubbock, [9] Midland, [10] Uvalde, [11] and Del Rio. [12] Just in this past year, a federal judge who surveyed this sorry record has twice concluded, in separate decisions, that the State of Texas has practiced intentional discrimination against Mexican American students on a statewide basis. [13] In many of these cases, the former existence of one or more "Mexican schools," expressly maintained to isolate Mexican American students in Spanish speaking schools, was provided. In January 1981, a Federal Court found that "the 'Mexican schools' were invariably overcrowded and were inferior in all respects to those open exclusively to Anglo students." [14] The decision goes on to say that "There can be no doubt that the principle purpose of the practices described above was to treat Mexican Americans as a separate and inferior class."

Nor is the history of segregation of Mexican Americans into separate schools limited to the State of Texas. A federal court struck down intentional segregation of Mexican Americans in Orange County, California in 1946, [15] and another did likewise in Oxnard, California in 1974. [16] Federal courts found that Arizona school districts had intentionally segregated Mexican Americans in cases from Tolleson, Maricopa County, [17] and Tucson. [18] And the same segregation has been found in Colorado's largest district in Denver. [19]

The eradication of discriminatory educational practices will not automatically produce well-educated, well-adjusted students. In Texas, for example—

"While many of the overt forms of discrimination wreaked upon Mexican Americans have been eliminated the long history of prejudice and deprivation remains a significant obstacle to equal educational opportunity for these children. The deep sense of inferiority, cultural isolation, and acceptance of failure, instilled in a people by generations of subjugation, cannot be eradicated merely by integrating the schools and repealing the 'No Spanish' statutes. . . . The severe educational difficulties which Mexican American children in Texas public schools continue to experience attest to the intensity of those lingering effects of past discriminatory treatment. [20]

The effects of educational policies such as the ones we have worked to eliminate can be seen most clearly in statistics which characterize our population, particularly older Mexican Americans. I would like to submit for the record two tables which examine educational achievement levels for Hispanics and non-Hispanics. Only 7.1 percent of all Mexican Americans 65 years or olders have completed four years of high school or more compared to 38.6 percent of all non-Hispanics. These figures improve considerably for younger Mexican Americans. Fifty-one percent of Mexican Americans between 25 and 29 years old have completed four years of high school or more. Yet, this figure is shockingly low compared to non-Hispanics in this age group, 87.1 percent of whom have had four years or more of high school.

Using another measure, again, older Mexican Americans are the least well-educated of any group of Hispanics and fall far below the educational achievement of non-Hispanics. Sixty-five percent of Mexican Americans 65 years or older have had less than five years of school, compared to 8.7 percent of non-Hispanics. Younger Mexican Americans, those between the ages of 25 and 29, fared much better off than their parents and grandparents but fell significantly below their non-Hispanic counterparts. More than seven percent of Mexican Americans in this age group had fewer than five years of school, compared with non-Hispanics, who accounted for only .6 percent of those with fewer than five years of school.

The fact that younger Mexican Americans are receiving better educational opportunities than did their parents should give us reason to hope that this trend will continue. Yet we must not forget that there are millions of Mexican Americans who are not fluent in English. It is for these citizens, and other non-English speaking U.S. citizens, that bilingual assistance in registration and voting were intended.

When Congress enacted bilingual election requirements in 1975, it did so based on a series of judicial findings which can be summarized in this decision in *Torres* v. *Sachs:*

"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 voter of Spanish-speaking citizens is not to be seriously impaired."[21]

Also significant was the Seventh Circuit affirmation of the lower court holding in *Puerto Rican Organization for Political Action* vs. *Kusper,* which found 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 understand."[22] Based on this decision and others brought on behalf of Puerto Ricans under Section 4(e), which was part of the original Voting Rights Act, bilingual elections have been conducted in New York, parts of New Jersey, Philadelphia and Chicago since the mid-1970's.

Representative McCloskey and other opponents of bilingual elections have alleged that bilingual elections discourage non-English speaking U.S. citizens from learning English. Last week before this subcommittee Mr. McCloskey said that minorities "ought to be encouraged as rapidly as possible to have full social and economic equality." I could not agree with him more. Yet I would like to remind him and to remind members of this subcommittee that six years ago, the House Judiciary Committee was quite clear as to the purpose of bilingual elections. The purpose of bilingual elections was not to teach non-English speaking citizens how to speak English, nor specifically to encourage or discourage them from learning English. I quote now from the 1975 House Judiciary Committee Report on the Voting Rights Act:

"To be sure, the purpose of suspending English-only elections and requiring bilingual elections is not to correct the deficiencies of prior educational inequality. It is to permit persons disabled by such disparities to vote now. [Bilingual elections] are a temporary measure to allow such citizens to register and vote immediately; it does not require language minorities to abide some unknown, distant time when local education agencies may have provided sufficient instruction to enable them to participation meaningfully in an English-only election."[23]

I would only add that when this Congress suspended the use of literacy tests in 1965, it did not send out a message advocating illiteracy. It was not suggested that any person should be satisfied with not knowing how to read or write. Similarly, bilingual election materials do not limit the primacy of the English language. To the contrary, they stimulate interest and participation in a system in which voters feel they have a voice. This feeling of belonging further stimulates and encourages active citizens to improve their English language skills.

For the past six years, bilingual elections have been attacked viciously by the public, the press and by members of Congress. We have heard allegations that bilingual elections are too costly to be justified. We have heard allegations that they will discourage U.S. citizens from learning English and encourage "cultural isolation" and "separatism." Last week, Representative McCloskey suggested that the concept of bilingual elections ran counter to a desire to upgrade the economic status of minorities. I would like to address each of these points in turn.

Before doing so, I would like to discuss briefly the administration of the bilingual election requirements. Bilingual elections have suffered from much more than public hostility. They have suffered from vague and ineffective guidelines from the Department of Justice charged with enforcing the law. In 1978, the Comptroller General reported:

"According to most election officials contacted, the guidelines should have been more specific, especially regarding compliance plans, methods of performing needs assessments, and types of registration and voting assistance required. Furthermore, they indicated that the Department provided minimal guidance for developing and implementing methods for meeting the Act's requirements."[24]

Poor guidelines from the Department of Justice have been aggravated by hostility and reluctance to comply on the part of local election officials charged with implementing the law. A study conducted by the Federal Election Commission and

released in 1979 found in case after case that local election officials had not been vigilant in enforcing the letter and the spirit of the law.

For example, despite guidance from the Department of Justice to the effect that cooperation between local election officials and community organizations was extremely important in reaching language minority voters (DOJ Guidelines, July 20, 1976), only 20 percent of the election officials surveyed by the FEC made any claim to having surveyed local community organizations in order to determine the need for bilingual assistance.

The importance of registration efforts for language minority citizens cannot be over-emphasized. Bilingual election materials were intended, in large part, for voters who had been kept from the political process because of inability to communicate in English. Unless concerted efforts are made to reach these citizens and let them know the voting process is now available to them in their own language, they will continue to be isolated. Despite the overwhelming importance of community outreach and special registration efforts to reach these citizens, only one-half of the FEC respondents indicated they had initiated some type of program designed to assist language minority citizens with voter registration. Close to two-thirds indicated that their registration offices did not display notices that inquiries regarding voter registration and/or voter registration itself could be conducted bilingually.

The importance of and inadequacy of under-registration efforts were summarized in the FEC Report: "At the present time, however, registration is the key to language minority voters participation since it is both the greatest hurdle for non-voting language minority citizens and, all too frequently, the area of activity most neglected by local officials." [25] I would like to submit for the record the Executive Summary of this Report so that the subcommittee may become more familiar with what appeared to be widespread reluctance to comply with the letter and spirit of the bilingual requirements of the Voting Rights Act and thus continue to limit access to the electoral process for millions of citizens.

Despite poor guidance from the Department of Justice and widespread recalcitrance at the local level, bilingual elections have shown to be very effective in welcoming into the system U.S. citizens who had never before participated. Despite five years of charges that bilingual elections were too costly to justify, I'm pleased to see that their cost has decreased dramatically. Even Mr. McCloskey had to conclude, as he did before you last week, that "it can no longer be argued that the cost is excessive for the bilingual ballot." Nevertheless, it is a sad comentary on our society that the cost of election assistance for any U.S. citizen needs to be justified, least of all by an elected official.

Los Angeles and San Diego Counties, in which most of California's Spanish speaking citizens live, have developed extremely effective "targeting" programs that reach tens of thousands of voters and which are cost-effective. I'm sure you are familiar with the dramatic decrease in cost for bilingual compliance in Los Angeles to the point that bilingual compliance in the 1980 general election accounted for only 1.9 percent of the total election cost of $7 million. San Diego reduced its cost for bilingual compliance by more than 50 percent between 1976 and 1980. The cost in 1980 was $54,000. The San Diego Registrar of Voters has a list on his computer of 75,000 voters who have requested Spanish language materials at some point during the last four years.

By contrast, San Bernardino, which has 100,000 fewer Hispanics than San Diego, [26] spent almost twice as much money as San Diego in 1980 because San Bernardino chooses to "blanket" rather than "target" bilingual printed material. All printed material, of which there is a great deal in California elections, is printed bilingually for all voters. The experience in Los Angeles and San Diego leads us to believe that "targeting" is much more cost-effective than "blanketing," and yet many jurisdictions choose to blanket, which may be easier but is clearly less efficient.

As to the charge that bilingual elections will foster "cultural separatism," I believe that the record at these hearings has shown very clearly just the contrary. Bilingual elections in New Mexico since its statehood in 1912 have produced a state with the highest Hispanic participation and representation of any state in the country. The recent mayoral election in McAllen, Texas, in which a Chicano was running against an incumbent Anglo, brought out Mrs. Dominga Sausedo to vote for the first time in her life. Mrs. Sausedo, who was born in Texas 48 years ago, does not speak English and had never voted until she pulled the lever for Dr. Ramiro Casso last month in McAllen. I would like to submit for the record an article from the New York Times in which I learned of Mrs. Sausedo's story. In the article, Mrs. Sausedo reveals that the language and information barrier which existed until recently kept her from voting. "There are so many things that can go wrong," she

said, "to pull the wrong lever and make a mistake." She went to the polls in May and found a bilingual elections official and voting instructions in Spanish.

Mrs. Sausedo is one of thousands of Mexican Americans who has been encouraged to participate in recent years because of the Voting Rights Act. She exemplifies a growing population of Spanish speaking citizens who listen to Spanish language TV and radio stations, read Spanish language newspapers and who have the opportunity to be as informed as English-speaking voters. Today there are 139 Spanish language radio stations throughout the country, thirteen Spanish language television stations, eight Spanish daily newspapers and scores of weekly and bi-weekly newspapers and magazines. I am deeply troubled by some of the comments made here last week by Representative McCloskey. In my earlier comments on educational neglect of Mexican Americans, I have tried to answer Mr. McCloskey's suggestion that Mexican Americans "have not taken advantage of the educational system," and that bilingual elections "recognize a future right not to attend school." As I have pointed out, in many cases Mexican American students were not permitted to take advantage of the educational system. And yet, Mr. McCloskey said here last week that he has "no sympathy with that person's inability to find and understand the materials on how to vote." How can our society have sanctioned educational neglect of Hispanics and now penalize them for not being proficient in English?

The Supreme Court has called the right to vote a "fundamental political right for it protects all rights." Yet last week, Mr. McCloskey seemed to suggest the right to vote had fallen in importance when he said that "economic progress is what makes all of the other rights worthwhile."

Mr McCloskey and others who persist in believeing that most Mexican Americans are recent immigrants from across the border must be reminded that many of us came to the United States before the Pilgrims did and that a little more than one hundred years ago most of the Southwest United States was Mexico. Mrs. Sausedo did not, in Mr. McCloskey's word, "choose" to come to the United States; she was born in Texas, as I was and as my own mother was.

Mr Chairman, members of the Subcommittee, I am well aware of the hostility to bilingual elections that exists in this country and in this Congress. The hositility that a piece of paper written in Spanish engenders in many Americans is irrational. This hostility is one sign of a much larger anti-alien, anti-foreign feeling that I see in so many places. Indeed, anti-alien feeling is so strong that the issue of the voting rights of U.S. citizens has become confused with the issue of immigration. A member of Congress recently suggested to a member of my staff that bilingual elections should be eliminated because they enabled "illegal aliens" to vote.

The rights of U.S. citizens of Mexican descent to vote has been elusive for generations. It was only when the Voting Rights Act was extended to Hispanics in 1975 that my community was given the opportunity to participate meaningfully in the political process. Six years is a short time in which to eradicate the effects of over one hundred years of discrimination in the electoral process.

I urge the members of this Subcommittee and this Congress to support H.R. 3112 and in so doing, to support the fullest possible protections for all U.S. citizens in the exercise of the most fundamental right of our democracy.

Thank you.

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24. GAO Report, "Voting Rights Act Enforcement Needs Strengthening", 1978.
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26. San Bernardino: 165,295; San Diego: 275,176; California State Census Data Center, April 1980.

[From the New York Times, May 22, 1981]

Hispanic Vote Gains as Debate on Rights Act Swirls

(By John M. Crewdson)

McAllen, Tex.—Dominga Sausedo was nervous as she walked from her 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 uncounted thousands of American citizens, Mrs. Sausedo speaks no English, and 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 both a bilingual elections official and voting machines with instructions in Spanish and English. Her confidence increasing by the moment, Mrs. Sausedo strode into the booth and pulled the lever for Ramiro Casso, a McAllen physician challenging the incumbent Mayor, Othal Brand. Then, feeling "contento," she said, she went home.

PROTECTION OF VOTING RIGHTS ACT

Dominga Sausedo has never heard of the Voting Rights Act of 1965. But without the protections the act extends 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; 41 percent of eligible Hispanic Americans cast ballots in the 1980 Presidential election. But the minority is also a rapidly growing one. The number of Hispanic Americans who voted last November was 20 percent higher than in 1978.

Despite such advances, the Voting Rights Act is not universally admired, particularly in those Sun Belt states where it has been most widely applied. Many election officials, asserting that their jurisdictions have been unfairly singled out, argue that such stringent provisions are no longer needed, or they agree with President Reagan that the law should be rewritten to apply to the entire country. But civil right leaders contend that such a move would make effective enforcement impossible.

Some critics also contend that bilingual elections foster cultural separatism, an argument rejected by Archibald Cox, the Harvard law professor who is chairman of Common Cause, a public affairs lobbying organization. "The best way to avoid a separatist movement in this country," Mr. Cox asserted in testimony before the House Judiciary Committee's Subcommittee on Civil and Constitutional Rights, "is to encourage participation in the exercise of the right to vote."

Central provisions of the 15-year-old act are due to expire next year, and Congress is currently considering whether to allow it to lapse, to extend its provisions for 10

more years or to adopt a series of amendments that would dilute the law's force and thus weaken its impact.

While the debate over extending the act has centered on the black vote, the law has also taken on a critical, but less recognized, importance for voters who speak little or no English, particularly Hispanic Americans in Texas and the Southwest.

In 1975, Congress broadened the act to protect the rights of such voters by requiring that bilingual ballots, voting materials and other assistance be made available in certain areas.

KEY PARTS OF LAW TO END IN 1985

The bilingual provisions are due to expire in 1985, and minority rights groups are asking that they also be extended until 1992. But there are now three bills pending in the House and one in the Senate that would do away with the bilingual provisions altogether.

The debate over the act's extension reflects a larger national controversy over Government efforts to accommodate those who speak no English. Some call such policies short-sighted and paternalistic and that others say are simply a natural extension of the developing concept of "language rights."

The bilingual provisions to help them now have been invoked in counties throughout the Southwest where residents who do not speak English make up more than 5 percent of the population and where illiteracy rates have been higher than the national average and voter turnouts have been lower. The areas covered include all of Texas, Arizona and Alaska, much of California, Colorado and New Mexico and parts of Florida.

There are other non-English-speaking communities elsewhere in the United States that are covered by the bilingual provisions of the Voting Rights Act, most made up of those who speak only Spanish. Under the law, for example, Manhattan, Brooklyn and the Bronx, all of which have significant numbers of Puerto Rican residents, must conduct elections in Spanish as well as English.

Other counties in New York State have been included in the bilingual elections provisions as a result of lawsuits, and several in Mississippi, New Mexico, North Carolina, South Dakota and Oklahoma must make special provisions for non-English speakers.

There are large numbers of older citizens like Mrs. Sausedo in Texas and the Southwest, most of them native-born Americans, who grew up without the opportunity to learn English. No solid estimates of their number are available, but David Hall, the director of Texas Rural Legal Aid, estimated that 40 to 45 percent of the adult population of the Rio Grande Valley was "monolingual in Spanish."

In the five years that the bilingual provisions have been in force, they have had a substantial impact in some areas of the nation, particularly here in the Rio Grande Valley. In McAllen, for example, the number of registered voters in predominantly Hispanic-American neighborhoods increased by nearly 14,000 over the past year, to the point where they now represent a majority of the town's voters.

But such successes are not universal, and there have been other problems that have not been overcome in the past five years, including lower-than-average turnouts of Hispanic-American voters and the reluctance of many municipalities to redraw voting jurisdictions to give minority-group voters maximum strength at the polls.

Moreover, a study two years ago by the Federal Election Commission asserted that the nation had been "quite reluctant" as a whole to face up to the problem of non-English-speaking voters. The commission found what it called "minimal" compliance with the bilingual provisions of the voting act in some areas, including Texas, where some local elections officials acknowledged that they had never even read the law.

According to the most recent census figures available, there are about 13 million residents of Hispanic descent in the United States, of whom some 5.8 million, or about 44 percent, are eligible to vote. Recent studies by the Southwest Voter Registration and Education Project estimate, however, that only 3.4 million, or about 59 percent, were registered in last year's Presidential election, and that only about 2.1 million, fewer than half of those eligible, actually cast votes.

Partly as a result of low registration and turnouts, Hispanic citizens are badly under-represented at all levels of government. There are currently only six Hispanic members of Congress, all of them in the House of Representatives and, except in New Mexico, no Hispanic Americans now hold statewide offices anywhere in the country.

At the local level, conditions are not much different. Here in Texas, where about one resident in five is of Mexican descent, only 12 percent of the state's legislators

are Hispanic Americans, as are less than 10 percent of the members of city councils and school boards, according to the Mexican American Legal Defense and Educational Fund, one of the groups leading the fight to extend the Voting Rights Act.

The city of McAllen, whose population is 60 percent Hispanic, has never elected a Hispanic Mayor, Mr. Brand defeated Dr. Casso in the runoff election, and until last month there had never been more than one Hispanic American on the five-member City Commission.

EFFECTIVENESS OF VOTES

In addition to attempting to enhance the political participation of minorities, the Voting Rights Act also contains provisions aimed at increasing the effectiveness of their votes, principally by requiring that the Justice Department approve potentially discriminatory changes in local voting laws.

Foremost among these changes has been the Justice Department's repeated objections to the election of officials on a citywide, or at-large basis, rather than electing them by single-member districts, along the lines of the "ward" system used for years in many Northern cities.

Some of the resulting changes have been dramatic. Until 1975, when the "preclearance" requirement was extended to include Texas, Mexican-Americans in San Antonio had never made up a majority of the City Council's membership even though they were a majority of the city's residents. After Justice Department objections led to the creation of single-member City Council districts, five Hispanic Americans, a majority of the City Council, were elected. One of them, Henry Cisneros, recently became the city's first Hispanic Mayor.

The issue of single-member districts is important because of what Chandler Davidson, a professor of sociology at Rice University in Houston, calls "racial-bloc voting." Professor Davidson's studies have shown that Mexican-Americans like Mrs. Sausedo tended to vote in large numbers for Mexican-American candidates, and, indeed, when Mrs Sausedo was asked why she had voted for Dr. Casso her only answer was that he was "Mexicano."

TESTIMONY OF VILMA MARTINEZ, GENERAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND (MALDEF), ACCOMPANIED BY ANTONIA HERNANDEZ, ASSOCIATE COUNSEL AND DIRECTOR OF MALDEF'S WASHINGTON, D.C. OFFICE

Mr. EDWARDS. We welcome you, Ms. Martinez. Will you be so kind as to introduce your colleague, and you may proceed.

Ms. MARTINEZ. Thank you, Mr. Chairman, for this invitation. I am accompanied this morning by Antonia Hernandez, director of MALDEF's Washington, D.C., office.

I am delighted to appear before you today in support of H.R. 3112. This bill would extend the 1975 minority language amendments to the Voting Rights Act, including preclearance for Texas and the Southwest for 7 years, extend the special provisions for 10 years, and amend section 2 to incorporate a result standard which would enable victims of voting discrimination to challenge practices without the necessity to show discriminatory intent.

The Voting Rights Act is important both symbolically and substantively. Its substance guarantees that the voting rights of all Americans are protected. It is a symbol of the strides our Government has made in assuring that our 14th and 15th amendment rights are a reality. It is a symbol, too, of a fact about which our Nation has little to be proud: that there are many parts of the country in which many millions of Americans have not historically been accorded their voting rights under the law.

The Voting Rights Act is still needed in those areas and for those people. Any weakening of the substance of the Voting Rights Act

by this Congress will be perceived as an abandonment of our national commitment to securing the voting rights of all U.S. citizens.

It has been asked us many times why we are seeking to extend the 1975 amendments—that is, those which affect Hispanics—at this time, rather than wait until they expire in 1985.

The answer is quite simple: These provisions are under attack now. There are currently three identical bills in the House and the same bill in the Senate which would eliminate all 1975 amendments to the act. These bills would eliminate the totality of protections for Hispanics under the act.

I would like to turn to the overwhelming need for the provisions of the Voting Rights Act contained in H.R. 3112 in section 5. The importance of section 5, always considered the heart of the Voting Rights Act, cannot be overemphasized.

One of the provision's most important features is the shifting of the burden of proof from the victim of discrimination to the jurisdication proposing to make the election change. Also central to the significance of section 5 is the fact that it obviates some litigation in challenging discriminatory election challenges.

Litigation can sometimes be ineffective in preventing discriminatory election laws because of some of the prevailing constitutional standard requiring a demostration of intent to discriminate. Litigation is also costly and time consuming.

We have been forced to litigate many actions in Texas before the 1975 amendment, and I'll briefly talk about two of them.

In one case, the trial court found unconstitutional a law that denied illiterates assistance at the polls—assistance which was given to blind persons and others with physical handicaps. It required several years of litigation, two separate appeals, to secure the constitutional rights of illiterate citizens, most of whom are minorities, to vote.

In another case, a State law which required voters to register every year during a 4-month period was held to disenfranchise a large class of citizens arbitrarily and without justification. The State's response to this ruling was to enact a series of alternative measures to purge the rolls in an attempt to evade the court's ruling.

As you have heard this morning from Congresswoman Jordan, in 6 short years, Texas has received more letters of objection than any State covered under section 5 for 16 years, giving credence to the very eloquent statement made earlier in these hearings by Dr. Cottrell who said, "Texas yields to no State in the area of voting rights violations."

The facts are, Mexican Americans in Texas have been barred from equal access to the political process by laws such as those I have described above, as well as by at-large election schemes, racial gerrymandering, violations of the one-person, one-vote principle, and by extensive racially polarized voting.

These practices singly and together created the need for section 5 in Texas in 1975. The fact that these practices and conditions continue in 1981 lead us irrefutably to the conclusion that section 5 must be continued.

The approximately 85 letters of objection issued to Texas have included objections to proposed changes at the State, county, city

and school district levels in north, south, east, and west Texas, in rural areas and urban areas. There have been objections issued to statewide purging laws, annexations, redistricting plans, majority vote requirements and polling place changes. Virtually no type of election change, even those which appear innocuous, has escaped the attention of officials who seek to minimize the voting strength of Mexican Americans in Texas.

The very positive effects of section 5 have been shown in objections to annexations in San Antonio, where, prior to 1975, the city council elected its members at large. In a city that has a majority of Mexican Americans, Mexican Americans accounted for only 27 percent of all city council members between 1955 and 1975.

Following objections to annexations in 1976, San Antonio instituted single-member districts and the number of minority members on the city council increased to six. Henry Cisneros, a city council member, was elected to be the first Mexican American mayor of San Antonio earlier this year.

This is but one example of the positive effects section 5 has had for Mexican Americans in Texas. Yet the need for section 5 is far from over. In addition to election changes that take place routinely during the year that must be precleared, the congressional and State legislative redistricting plans that are currently being considered in Texas must also be precleared. These new districts will govern the political life of Mexican Americans in Texas for the next 10 years.

It is vitally important that the voting strength of Mexican American voters not be minimized or rendered ineffective as new district lines are created. Preclearance of the redistricting will be crucial to insure fairness and equity.

It is very important, in light of the proposed shifts in government from the Federal to the State and local levels, that Hispanics have equal access to the political process, lest we be barred from the local decisionmaking bodies that may soon have the responsibility to provide goods and services now provided by the Federal Government.

In addition to bills that would eliminate the 1975 amendments, there are many other proposals under discussion which would weaken the Voting Rights Act considerably. Congressman Hyde's earlier bills would have eliminated preclearance for 4 years only after case-by-case litigation and a finding of a pattern or practice of voting discrimination. I was very pleased to hear that at the hearing in Austin 2 weeks ago, Mr. Hyde changed his mind and said he was now interested in some form of extension of section 5.

In my written statement I discussed proposals for nationwide coverage limiting the types of election changes and different bailouts. I would refer you to those comments.

In closing my discus ion on section 5, I would only say that during your Austin hearing, I understand that no public officials from Texas expressed opposition to section 5. It may well be that public officials in the State realize how easy the law is to comply with, and how beneficial it has been to the State's 33-percent minority population.

I would like now to address section 2. Section 5, is powerful as I have noted, and yet it covers only voting changes in Texas which

have been implemented after November 1, 1972. Of the 254 counties in Texas, 59 have not redistricted since 1970, and have therefore not been reviewed by the Department of Justice for possible discriminatory redistricting.

The widespread violation of the one person, one vote principle continues in many counties in Texas, and other covered jurisdictions. To challenge effectively these violations we need to amend section 2. The proposed amendment to section 2 in H.R. 3112 is intended to provide statutory relief to language minorities whose access to the political process has been diluted by election schemes instituted prior to 1972.

Let me turn now to section 203, popularly called the bilingual elections provisions. Congress 1975 decision to provide voting assistance for non-English-speaking U.S. citizens was as important for Hispanic voters as the original suspension of literacy tests by Congress in 1965 was for blacks. In both cases Congress recognized that tests or devices requiring literacy in the English language prevent participation by U.S. citizens who are not literate in English.

The inability of many adult Mexican-American citizens who were born here or came here as young children to speak English is a direct consequence of denial of educational opportunities to them as children. Many Mexican-American children have been denied a chance to learn English by virtue of their confinement, as a result of the de jure segregation practices to predominantly or completely Mexican-American schools, known colloquially as "the Mexican schools or Mexican-race schools." Federal courts have recently found such segregation in dozens of localities across the State of Texas.

Just in this past year, a Federal judge who surveyed this sorry record has twice concluded, in separate decisions, that the State of Texas has practiced intentional discrimination against Mexican American students on a Statewide basis. Although Texas was a part of the Deep South and mandated the segregation of children of the white and black races into separate schools, when we went into court in Texas in the late sixties and early seventies to prove that we had been segregated by State law, and cited *Brown* v. *Board of Education* as authority for desegregation, we were told that they had always considered us white.

We proved that they might have considered us white, but that they had treated us black. We sustained that burden of proof in each and every instance. In January of this year a Federal court found that "the 'Mexican schools' were invariably overcrowded and were inferior in all respects to those open exclusively to Anglo students." The decision goes on to say that "There can be no doubt that the principal purpose of the practices described above was to treat Mexican Americans as a separate and inferior class."

Nor is the history of segregation of Mexican Americans into separate schools limited to the State of Texas. A Federal court struck down intentional segregation of Mexican Americans in Orange County, Calif., in 1946, and another did likewise in Oxnard, Calif., in 1974. Federal courts found that Arizona school districts had intentionally segregated Mexican Americans in cases from Tolleson, Maricopa County, and Tucson. And the same segregation has been found in Colorado's largest district.

In 1975, Congress enacted bilingual elections based on findings that voting discrimination against language minority citizens had been pervasive and national in scope, and that they had been denied equal educational opportunties resulting in severe disabilities and continuing illiteracy in the English language.

I would also like to note one of a series of judicial findings made shortly after 1975 which concluded that English-only elections for citizens who are not fluent in English have the same effect on political participation of these citizens as literacy tests had had on blacks. In *Puerto Rican Organization for Political Action* vs. *Kusper,* the Seventh Circuit Court of Appeals found 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 understand.

Representative McCloskey and other opponents of bilingual elections have alleged that bilingual elections discourage non-English speaking U.S. citizens from learning English. Last week before this subcommittee Mr. McCloskey said that minorities "ought to be encouraged as rapidly as possible to have full social and economic equality." I could not agree with him more. Yet I would like to remind him and to remind members of this subcommittee that 6 years ago, the House Judiciary Committee was quite clear as to the purpose of bilingual elections. The purpose of bilingual elections was not to teach non-English-speaking citizens how to speak English, nor specifically to encourage or discourage them from learning English.

I quote now from the 1975 House Judiciary Committee Report on the Voting Rights Act:

> To be sure, the purpose of suspending English-only elections and requiring bilingual elections is not to correct the deficiencies of prior educational inequality. It is to permit persons disabled by such disparities to vote now. Bilingual elections are a temporary measure to allow such citizens to register and vote immediately; it does not require language minorities to abide some unknown, distant time when local education agencies may have provided sufficient instruction to enable them to participation meaningfully in an English-only election.

I would only add that when this Congress suspended the use of literacy tests in 1965, it did not send out a message advocating illiteracy. It was not suggested that any person should be satisfied with not knowing how to read or write. Similarly, bilingual election materials do not limit the primacy of the English language. To the contrary, they stimulate interest and participation in a system in which voters feel they have a voice.

For the past 6 years, bilingual elections have been attacked viciously by the public, the press and by Members of Congress. We have heard allegations that bilingual elections are too costly to be justified. We have heard allegations that they will discourage U.S. citizens from learning English and encourage cultural isolation and separatism. Last week, Representative McCloskey suggested that the concept of bilingual elections ran counter to a desire to upgrade the economic status of minorities.

Because these points are so important, I want to address them in turn. Despite 5 years of charges, as even Mr. McCloskey had to conclude, as he did before you last week, that "it can no longer be argued that the cost is excessive for the bilingual ballot." Never-

theless, it is a sad commentary on our society that the cost of election assistance for any U.S. citizen needs to be justified, least of all by an elected official.

Los Angeles and San Diego Counties, although of course there are increasing numbers in your district, Mr. Edwards, in which most of California's Spanish-speaking citizens live, have developed extremely effective "targeting" programs that reach tens of thousands of voters and which are cost effective. I'm sure you are familiar with the dramatic decrease in cost for bilingual compliance in Los Angeles to the point that bilingual compliance in the 1980 general election accounted for only 1.9 percent of the total election cost of $7 million. San Diego reduced its cost for bilingual compliance by more than 50 percent between 1976 and 1980. The cost in 1980 was $54,000. The San Diego Registrar of Voters has a list on his computer of 75,000 voters who have requested Spanish language materials at some point during the last 4 years.

As to the charge that bilingual elections will foster cultural separatism, I believe that the record at these hearings has shown very clearly just the contrary. Bilingual elections in New Mexico since its statehood in 1912 have produced a State with the highest Hispanic participation and representation of any State in the country. The recent mayoral election in McAllen, Tex., in which a Chicano was running against an incumbent Anglo, brought out Mrs. Dominga Sausedo to vote for the first time in her life. Mrs. Sausedo, who was born in Texas 48 years ago, does not speak English and had never voted until she pulled the lever for Dr. Ramiro Casso last month in McAllen. I would like to submit for the record an article from the New York Times in which I learned of Mrs. Sausedo's story. In the article, Mrs. Sausedo reveals that the language and information barrier which existed until recently kept her from voting. "There are so many things that can go wrong," she said, "to pull the wrong lever and make a mistake." She went to the polls in May and found a bilingual elections official and voting instructions in Spanish.

Mrs. Sausedo is one of thousands of Mexican Americans who have been encouraged to participate in recent years because of the Voting Rights Act. She exemplifies a growing population of Spanish-speaking citizens who listen to Spanish language television and radio stations, read Spanish language newspapers and who have the opportunity to be as informed as English-speaking voters. Today there are 139 Spanish language radio stations through the country, 13 Spanish language television stations, 8 Spanish daily newspapers and scores of weekly and biweekly newspapers and magazines.

I am deeply troubled by some of the comments made here last week by Representative McCloskey. In my earlier comments on educational neglect of Mexican Americans, I have tried to answer his suggestion that Mexican Americans have not taken advantage of the educational system, and that bilingual elections recognize a future right not to attend school. As I have pointed out, in many cases Mexican-American students were not permitted to take advantage of the educational system. And yet, Mr. McCloskey said here last week that he has no sympathy with that person's inability to find and understand the materials on how to vote. How can

our society have sanctioned educational neglect of Hispanics and now penalize them for not being proficient in English?

The Supreme Court has called the right to vote a fundamental political right for it protects all rights. Yet last week, Mr. McCloskey seemed to suggest the right to vote had fallen in importance when he said that, "economic progress is what makes all of the other rights worthwhile."

Mr. McCloskey and others who persist in believing that most Mexican Americans are recent immigrants from across the border must be reminded that many of us came to the United States before the Pilgrims did and that a little more than 100 years ago most of the Southwest United States was Mexico. Mrs. Sausedo did not, in Mr. McCloskey's word, "choose" to come to the United States; she was born in Texas, as I was and as my own mother was.

Mr. Chairman, members of the subcommittee, I am well aware that the hostility that a piece of paper written in Spanish engenders in many Americans is irrational. This hostility is but one sign of a much larger anti-alien, antiforeign feeling that I see in so many places. Indeed, anti-alien feeling is so strong that the issue of the voting rights of U.S. citizens has become confused with the issue of immigration. A Member of Congress recently suggested to a member of my staff that bilingual elections should be eliminated because they enabled illegal aliens to vote.

The rights of U.S. citizens of Mexican descent to vote has been elusive for generations. It was only when the Voting Rights Act was extended to Chicanos in 1975 that my community was given the opportunity to participate meaningfully in the political process; 6 years is a short time in which to eradicate the effects of over 100 years of discrimination in the electoral process.

I urge the members of this subcommittee and this Congress to support H.R. 3112 and, in so doing, to support the fullest possible protections for all U.S. citizens in the exercise of the most fundamental right of our democracy.

Thank you.

Mr. EDWARDS. Thank you very much, Ms. Martinez. That's really an excellent statement. It's very helpful and answers so many of the questions that we have been faced with in these hearings and before.

The gentleman from Illinois.

Mr. WASHINGTON. Thank you, Mr. Chairman.

Ms. Martinez, I understand you met earlier with President Reagan this year, and he indicated to you that his only opposition to the Voting Rights Act was that it was not nationwide. I assume he was referring to the preclearance sections.

How do you feel about a nationwide Voting Rights Act?

Ms. MARTINEZ. Well, the way I feel about it is pretty much the way that Congressman Hyde feels about it. As an attorney, I would have to say that I fear it would prejudice the constitutionality of the act.

As you know, and as I appreciate also, this is an unusual exercise of the Federal power, based on findings of discrimination and an effort to redress what those findings show. And if we were to have nationwide coverage, I feel that it would clearly prejudice the constitutionality of the act. That's for starters.

The other concerns that I have, also outlined in my written presentation, are that in many ways, nationwide coverage has been a code word for "gutting" the act.

Another concern I have is that if, really, one goes the route of nationwide coverage, then clearly you are doomed to fail. If you really want to protect voting—protect citizens from voting discrimination, then it seems to me you go where the discrimination is the greatest. That is how the act is now devised and written.

I think it's working. It's working well. And I would hope that we wouldn't fall into this trap.

Mr. WASHINGTON. Did you have an opportunity to express your feelings to the President?

Ms. MARTINEZ. Unfortunately, I only had the opportunity to ask the question; and from there, he went on to the other guests. Therefore, I wasn't able to give him my full explanation.

Fortunately, however, Congressman, since that time my staff and I have met with the Attorney General, with the Deputy Attorney General, and with other members of their staffs, to discuss these very real concerns. And during those discussions, we certainly have addressed the nationwide coverage issue.

Mr. WASHINGTON. In his letter to the Attorney General, the President asked the Attorney General to report back to him—by October 1, I think it was—on this act, and to talk with various State officials and interested individuals. This was after, of course, you had met with the Attorney General.

Ms. MARTINEZ. Indeed.

Mr. WASHINGTON. Did the Attorney General express any sentiment, one way or the other, relative to the preclearance section or the bilingual section?

Ms. MARTINEZ. The methodology used during the various meetings has been to discuss various proposals, without their taking a stance on saying "we are really considering this proposal or favoring that proposal." So it's certainly unclear to me—as I think it is equally unclear to other people who have participated in these meetings—what really they might be supporting.

But the kinds of things that they are looking at are different bailout provisions. They're looking at limiting the kinds of changes that would be precleared. Those are the various approaches that they are looking at.

Mr. WASHINGTON. Did you get an opportunity to express—either to the President or the Attorney General—your sentiments relative to the opposition to the language section, being basically an anti-alien drive; and that the so-called technical and cost factor arguments were simply a coverup for a basic feeling which is anti-alien?

Ms. MARTINEZ. Yes; those sentiments have been expressed to the Attorney General and Deputy Attorney General.

Mr. WASHINGTON. No response?

Ms. MARTINEZ. No; it was not really an exchange so much as—you know, they want to hear from us as to what we are thinking about, how important we consider this piece of legislation, what it means to us.

We have been proceeding jointly and separately; jointly with other civil rights and black groups who are interested and con-

cerned on voting rights; separately with other Hispanic groups. And we have dealt primarily on the bilingual elections provisions.

But I'm happy to report to you that, unlike other occasions, there has been a tremendous cohesiveness in the—not only civil rights community, between blacks, browns, and other interested folks—but the Common Cause people, the League of Women Voters, the various church organizations have been very supportive of the need for extending the Voting Rights Act once again.

So that kind of cohesiveness is building. I'm glad to see it there, and I'm glad to see it there for the bilingual election provisions, in particular, because they are subject to such hostility in these times.

Mr. WASHINGTON. Thank you, Ms. Martinez.

Mr. EDWARDS. Ms. Martinez, at one of the meetings you had with the administration and with the Deputy Attorney General, he said that one of the options under consideration was limiting the kinds of election changes that needed to be precleared.

What would you think of that idea?

Ms. MARTINEZ. Not too much. The difficulty with that idea is that if you look at the very many different kinds of objections that have been lodged by the Department of Justice as to Texas practices, you see that they cover a wide range of changes. Some appear to be innocuous—the polling booth change.

And I have a letter here, dated June 5, from the Department of Justice to Mr. Frank McCreary, in Houston, Tex., attorney for the Burleson County Hospital District, in Burleson County, Tex., objecting to a polling booth change.

And it very clearly indicates that the minority populations in this district—they are 22 percent black and 10 percent Mexican American—would not have been able to vote as conveniently, if at all, as the anglo population in this district, if that had not been objected to.

With your permission, I would like to make this a part of the record.

I know that people think it's silly that a jurisdiction would have to preclear something as innocuous as a polling booth change; and yet there's nothing innocuous about it when minority people would have had to travel 20 miles to vote, and other people could just walk around the block and vote.

Mr. EDWARDS. Without objection, that letter will be made a part of the record.

It's an old and well-used—badly used—device for discouraging minority voting; for example, in some States, to put the polling place in the sheriff's office, or in the part of town where minorities are not greeted in a hospitable manner.

[The document follows:]

U.S. DEPARTMENT OF JUSTICE,
CIVIL RIGHTS DIVISION,
Washington, D.C., June 5, 1981.

FRANK E. MCCREARY, Esq.,
Vinson & Elkins,
Houston, Tex.

DEAR MR. MCCREARY: This is in reference to the reduction in polling places, from thirteen to one, for the Burleson County Hospital District in Burleson 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 April 7, 1981.

In our consideration of your submission, we have considered carefully the information furnished by you, along with information and comments provided by other interested parties. Our review and analysis of this matter reveals the following facts: The Burleson County Hospital District has boundaries coterminous with Burleson County which has a population of 12,313, of whom twenty-two percent are black and ten percent are Mexican American. The number of polling places in the District was reduced from thirteen throughout the county to a single location in the City of Caldwell. One effect of this reduction in the number of polling places was a drop in voter participation from approximately 2,300 voters participating in the 1977 election to approximately 300 voters participating in 1979 and 1980 elections.

The bulk of the black population is concentrated in an area known as Clay Station, which is over thirty miles from the District's single polling place in the City of Caldwell. A large percentage of the county's Mexican-American population is found within the City of Somerville which is about nineteen miles from the City of Caldwell. Both of these areas had polling places that were eliminated by the change to a single polling location.

We understand that for the April 4, 1981, election, minorities from the Clay Station and Somerville areas were able to meet the burden placed on them by the use of a single polling place in Caldwell only through a concerted effort with other county voters with similar interests whereby they themselves successfully provided publicity for the election and transportation to the single poll. However, this additional burden imposed upon the minority voters to obtain access to the single poll was caused by the elimination of polling places in areas which are centers of minority population. Thus, the removal of polling places in the minority areas had a disparate impact on minority voters.

Under Section 5, the Burleson County Hospital District has the burden of proving that the reduction in the number of polling places from thirteen to one does not represent a retrogression in the position of minority voters in the district (see *Beer* v. *United States*, 425 U.S. 130 (1976)); and that the submitted change has no discriminatory purpose or effect. See e.g., *Georgia* v. *United States*, 411 U.S. 526 (1973); see also Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). 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. Thus, on behalf of the Attorney General I must interpose an objection to the continued use of a single polling place in future elections held by the Burleson County Hospital District.

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 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection and in that connection we have noted your request for a conference "in the event clearance is not anticipated". Because insufficient time remains to grant such a conference during the 60-day period allowed by statute to object we are sending this notification without affording such a conference. However, we would be pleased to hold a conference under the reconsideration procedures referred to above, if you desire and request it. In any event, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the use of a single polling place for elections held by the Burleson County Hospital District 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 the course of action the Burleson County Hospital District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Carl W. Gabel (202-724-7439), Director of Section 5 Unit of the Voting Section.

Sincerely,

JAMES P. TURNER,
Acting Assistant Attorney General.

Ms. MARTINEZ. Exactly. So that's why we would certainly object to taking the approach that we can limit the preclearance to two or three different kinds of practices. Because my experience has been that election officials can be very creative in finding different ways in which to discriminate against you.

Mr. EDWARDS. A second alternative under consideration is a new bailout formula. We've had considerable discussion about that in these last few hearings, especially this morning with Barbara Jordan.

What do you think about making a part of the extension a new bailout formula?

Ms. MARTINEZ. I suppose my problem with that is partly the administrative difficulties that you and Congresswoman Jordan spoke about this morning.

But the bottom line problem I have with that is that I do not see a need to develop a new bailout. There is a bailout in the act. Certain counties have availed themselves of that bailout, certainly. And I don't understand the need.

In the meantime, I think there's a very strong record which indicates why we continue to need the Voting Rights Act. We know it's been effective.

Father Hesburgh, in 1975, called it the most effective piece of civil rights legislation every passed. I think he was right then; and I think it's been equally true for Mexican Americans who've had the coverage, now, since 1975. And I think it works rather nicely.

I hear many people talk about how burdensome it is, and yet I was going to cite to you the very thing you cited.

Mr. Caddy, an election official in Texas, points out it's not that burdensome. All we have to do is submit the change. There's no particular form. We do it however we want to, send it in, and the Department of Justice has 60 days to respond.

Mr. EDWARDS. Thank you.

Counsel?

Ms. DAVIS. Thank you, Mr. Chairman.

Ms. Martinez, I neglected to raise a question with Ms. Jordan, which I thought appropriate for her, as a former Member of Congress. I think Members of Congress—former Members of Congress—can be, to use the vernacular, a bit more audacious than many other witnesses sometimes are. And I would encourage you to do that now, in responding to this question.

If you will indulge me just a bit. The subcommittee has been holding hearings since May 6. We will have a very extensive hearing record on the need to continue the Voting Rights Act. As Mr. Washington has pointed out today, we have been hard pressed to find white officials in the covered jurisdictions who are willing to speak unqualifiedly for the extension of the Voting Rights Act, although we will have one from a covered jurisdiction next week, who will do that.

And as Mr. Edwards, our chairman, has pointed out from time to time, there are certainly many public officials who are willing to support extension of the act privately, but not willing to do that on the record.

As we are all aware, the President has issued a letter to the Attorney General, encouraging the Attorney General to continue what he's been doing; and that is: Meeting with the various public officials and interested persons, on extension of the Voting Rights Act.

He's done that with you, and I wonder if you might respond to the following:

What would be your view on the importance of the Attorney General looking at the findings of this subcommittee and its hearing record?

Second, before making its recommendation to the President, do you have any views on whether the statements that are made to the Attorney General in these meetings should be publicly stated or off the record kinds of statements?

Ms. MARTINEZ. Well, let me say a variety of things in response to both your comments and your question.

In terms of your comments, you indicate you've been hard pressed to find white officials from covered jurisdictions to come in and support extension. My understanding, though, is that you found someone. You've had the attorney general from South Carolina, who did say it wasn't burdensome; although maybe he didn't come out and say, "I support full extension," he clearly said it wasn't burdensome.

I believe you also had the attorney general of New York, a Mr. Abrams, who was here and testified that he did support extension, because he found it to be beneficial. So that's good.

But you specifically asked me what my views would be with respect to the importance of having the Attorney General be familiar with the record that has been made here.

And I would have to say that clearly, if I were the Attorney General, and there was a civil and constitutional rights subcommittee of the Committee on the Judiciary looking into this matter, and compiling a record, I would want to read every word, and know who said what and when. And then try to reflect on why.

And I would certainly—will urge the Attorney General to do just that. I have had the opportunity to work with him as a fellow member of the board of regents of the University of California, so I very clearly will make that personal as well as professional request of him and his staff. And I hope they would heed that advice.

As to whether the statements made to the Attorney General should be in public or in private, I think there is room for both. I was very happy to make my statements, privately and publicly; after the meeting with the Deputy Attorney General, we went and spoke with members of the press who were interested in what we had to say. And I think that's appropriate.

I think any public official, however, should feel some need to have more of a public record in a public forum, rather than private talks. So I would certainly temper whatever I heard in a private talk with what people are willing to say publicly.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman.

I take it, then, from your testimony, that you would support the views of Mr. Caddy, as he gave them to the subcommittee in Austin?

Ms. MARTINEZ. I'm not willing to go that far, because I haven't read his entire statement.

I am willing to support his assertion that it is not burdensome to comply with the preclearance provisions of the Voting Rights Act.

Mr. BOYD. OK. Because he also indicated that he thought that it would be appropriate to have a bailout provision which would create an incentive to improve conditions.

You mentioned the bailout provision that's now in the act, and speak as though it were effective and workable.

Ms. MARTINEZ. Yes. My judgment is that they are.

Mr. BOYD. Well, my understanding is that those jurisdictions which you mentioned, which have bailed out under the existing bailout procedure, did so only because, though they had tests or devices in effect in 1965, they didn't use them; or if they did use them, they did not use them in a way which had a purpose or effect of being discriminatory.

That's the only means by which they were able to bail out. Jurisdictions which were covered before 1965 and did, unfortunately, use such devices in a discriminatory manner, are not even eligible for bailout for quite some time to come. And if the bill is extended—as Mr. Rodino's bill would be extended for 10 years—they would not be eligible for 27 years.

Do you view that as being a fair bailout procedure——

Mr. EDWARDS. I'm sorry. We have a vote before the House. A second bell has rung. Please hold your answer until we get back.

[Recess.]

Mr. EDWARDS. The subommittee will come to order.

Miss Martinez, you may respond to the question asked by counsel.

Ms. MARTINEZ. Thank you.

Mr. Boyd, I would like to say that I would like to respond as thoughtfully as I can to your question. And therefore, I would like to submit something in writing at a later date, giving our analysis, for example, of Mr. Hyde's new bill, which I gather he had presented yesterday and we have not had the opportunity to read, study, and analyze.

I would like to note that we are not as familiar with the Southern States which have been covered since 1965 as we are with the States that became covered as a consequence of the 1975 amendments.

But I think a very important question is whether the fully covered States have truly changed their behavior sufficiently to warrant bailing out. And I would hope that would be a threshold question.

And I would have to say that certainly for Texas we do not consider Texas to be eligible for bailout when you look at the history.

Mr. BOYD. It wouldn't be until 1985 under the present system.

Ms. MARTINEZ. Right.

And in terms of the bailing out of counties, outside of States or hospital districts, or whatever, we have very serious reservations and worries about it, because is this act really going to be then designed to protect voting rights of people? Or will the energies be redirected toward finding out who can be bailed out and who can't?

We have that level of concern. And I would be less than candid if I didn't share it with you. But I will say that we are very anxious to be thoughtful, and we will look with care at any proposal, because that it's very important to see what results after pen gets put to paper.

Mr. BOYD. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. It seems to me we have always had a sort of bailout provision in the Voting Rights Act, and that is if the affirmative things that Barbara Jordan mentioned in her testimony had been attended to by the States and local governments in the covered jurisdictions, we wouldn't be sitting here today worried about extending the act. It would be all over.

That's the pie in the sky that we hope will happen, but we haven't seen any real indication of it yet. Isn't that the real problem?

It's really up to the States. We would not extend the act if the States and the local governments and the covered jurisdictions—and that includes California, my home State—didn't require us, under the Constitution, to proceed.

Ms. MARTINEZ. I believe that's where I started my analysis. Thank you though for your comments.

Mr. EDWARDS. Thank you for really splendid testimony.

Ms. MARTINEZ. Thank you for your interest.

Mr. EDWARDS. Our next witness is David Dunbar. Mr. Dunbar is General Counsel for the National Congress of American Indians.

Mr. Dunbar, we welcome you.

Without objection, your statement will be made a part of the record and you may proceed.

[The complete statement follows:]

PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS IN SUPPORT OF EXTENDING THE VOTING RIGHTS ACT

Mr. Chairman and members of the committee, my name is David Dunbar. I am General Counsel for the National Congress of American Indians and an enrolled member of the Blackfeet Tribe of Montana.

The National Congress of American Indians is the oldest and most representative national Indian organization in America today. Since its formation in 1944, NCAI has served to represent the interests of Indian Tribes throughout the country. We have approximately 160 member tribes whose combined population is over 4,000.

We appreciate the opportunity to testify today in support of H.R. 3112, a bill to extend key provisions of the Voting Rights Act. This Act has been one of continuing importance to Indian Tribes across this country, and we are here to support the extension of these provisions.

The United States and Indian Tribes have a special relationship based upon the unique legal status of Indians under federal law. Federal policy has long recognized that Indian Tribes within the boundaries of the United States are "distinct, independent political communities, retaining their original natural rights" in matters of self-government. The Supreme Court has repeatedly held that the tribes have surrendered only those powers of sovereignty which are inconsistent with their dependent status. All other governmental powers still remain. As a result, Indian Tribes and the United States exercise a direct government-to-government relationship with one another. (See "Analysis of the Budget Pertaining to Indian Affairs, Fiscal Year 1982", A Report of the Select Committee on Indian Affairs of the United States Senate, Committee Print, June 1981.)

We find some of the discussion that has preceded our testimony today particularly interesting from the perspective of a people who were here long before the first immigrants arrived from across the Atlantic. Our languages clearly are, anthropologically and historically, the first languages of this land.

There are 206 different spoken Indian languages among the tribes today. Of this number, only 80 have writing systems, most of which have not been tribally endorsed. The percentage of adults living on reservation lands who are not fluent in English ranges from zero to between 60 and 70 percent, and generally, where there is no fluency in English, there is a correlative lack of literacy in the native language. Therefore, oral translations and interpretations of ballot information are of maximum assistance on voting within Indian communities.

Our support for the Voting Rights Act stems from a long history of trying to secure the vote for our people. The people of this country are too willing to forget

the history of Indian people. Some of the comments made by other Congressmen regarding the Voting Rights Act ignore the situation of Indian people. This country and Congress should remember that American Indians were not accorded citizenship until 1924 and therefore, we were not eligible to vote. Yet it wasn't until the 1960's that Indians were able to fully secure the right to vote in federal elections. We would also hope that members of Congress would recognize that we are not immigrants or so-called aliens. Our history of having democratically elected leadership far exceeds the history of the western world. The Indian Tribes in the area called the United States were practicing the concepts of democratically-elected governments when the rest of the world was still worshipping Kings and Queens.

Yet Indian people have been frustrated in securing their right to participate in various elections even as we set here today. We have reviewed the records of the Office of Indian Rights within the Department of Justice and have found that approximately 20 percent of the cases they handled were Voting Rights cases. And this only refers to those situations where litigation was necessary.

Indian people have experienced a considerable amount of blatent discrimination in voting rights during recent years. One Wisconsin town attempted to gerrymander Indians out of their voting district (in the tradition of *Gomillion* v. *Lightfoot*) in an active attempt to keep them from voting. *United States* v. *Bartleme, Wisconsin,* Civil Action No. 78-C-101 (E.D. Wisc. 1978). In a Nevada county, county registrars refused to register Indians for such reasons as failing to fill out registration cards properly, while non-Indians were not subject to the same fine scrutiny. *United States* v. *Humboldt County, Nevada,* Civil Action No. R78-0144 HEC (D. Nev. 1979). Nebraska and New Mexico countries were successfully sued for attempting to dilute (and thereby effectively destroy) the Indian vote by instituting at-large voting schemes. *United States* v. *Board of Supervisors of Thruston County, Nebraska,* Civil Action No. 78-0-380 (D. Neb. 1979); *United States* v. *San Juan County,* Civil Action No. 79-507JB (D.N.M. 1979). In South Dakota there was an attempt to deny an Indian candidate the right to run for office. *United States* v. *South Dakota and Fall River County,* Civil Action No 78-5018 (S.D.). Indians have found themselves purged from election rolls without notification, or their polling places closed.

The Voting Rights Act has been a key element in the drive to bring the vote to Tribal people.

One of our primary concerns is in relation to the bilingal provisions of the Voting Rights Act (Sections 203 and 4), which have been under heavy attack almost from inception. In testimony before this Committee Congressman McCloskey categorically declared the bilingual provisions as "wrong" and "bad for the very people (they) seek to assist" since, in his opinion, it is more important to earn a good living than it is to vote. He seems to feel that to provide bilingual election assistance is to encourage neglect in learning English.

We find this dichotomy between economic achievement and the right to vote a strange one. Why must such a choice be forced upon us? Often within the Indian community it is the elders who preserve the culture—through traditional skills, including the richness of a native language with which to tell the stories of the people, essential to understanding our history and traditional ways of thinking.

A Voting Rights case brought under the bilingual election law provisions in New Mexico resulted in a 1977 federal court determination that the Navajo people had been denied the right to vote because of lack of information provided through radio and television outlets in their own language, and failure of the county to provide interpreters at the polls. Even where translators were provided, they were inadequately trained in cross-cultural interpretation. For example, there is no translation of "bond election" into Indian culture. (See attached affidavit of Dr. Robert Young and Dr. William Morgan.) One on-reservation precinct translated the bond election ballot and placed it on cassette tapes which where available in each of the polling booths to assist Navajo language voters. From information provided to NCAI, this was an inexpensive and effective procedure—one we hope might be expended to other tribes.

Another area of concern to Indian people is the preclearance provision of the Voting Rights Act. Section 5 of the Act requires covered jurisdictions to submit all changes in laws, practices, and procedures affecting voting for a ruling that the changes do not discriminate against racial or language minorities.

Under this section, the Justice Department's Office of Indian Rights brought three cases since Section 5 was extended to language minorities in the 1975 Amendments. *United States* v. *South Dakota,* Civil Action No. 79-3039 (D.S.D. 1979); *United States* v. *Tripp County, South Dakota,* Civil Action No. 78-3045; *Apache County High School District No. 90* v. *United States,* Civil Action No. 77-1815 (D.D.C. three-judge court, 1977). Additionally, preclearance has been a component of other cases

brought by the Justice Department under the Act. These provisions have been very important in the protection of Indian voting rights.

Additionally, we feel that any attempt to bar the votes of other minorities affects us, too. For example, if there is a bar based upon Hispanic surname or facial characteristics, many Indians would also be included.

Therefore, Mr. Chairman, we wholeheartedly support H.R. 3112.

Mr. Chairman, we have come here today to ask the Congress's help in protecting the rights of American Indians who want to vote in various elections. At the same time we are asking you to help in our work to protect and preserve the culture of our people. We recognize that it may be a difficult decision for you to make—as difficult as the task we face in trying to protect our Indian people.

Our people strive to preserve our culture and tradition of which our native language is the most vital part. Our history and religion are intertwined with the continuation of the language of our people. And yet our people seek to understand the dominant society that has grown up around us and which controls almost every aspect of our lives. Our people are learning that they must vote if they are to protect themselves and their way of life.

It doesn't seem necessary for us to give up our language just so that we might have the right to vote. In other words, Mr. Chairman, all we are asking is that we be allowed to preserve our language while voting to protect those things we cherish most.

We would appreciate an opportunity to submit additional documentation for the record. Thank you very much for allowing us to present this statement.

AFFIDAVIT

CITY OF ALBUQUERQUE,
State of New Mexico.

I, Dr. Robert Young, and I, Dr. William Morgan, being first duly sworn, state the following:

We are experts in the Navajo language. Attached to this affidavit in offer of substantiation of this fact are a Curriculum Vitae of Dr. Young and a résumé of Dr. Morgan. We have worked as a team in translating a number of documents and works, a list of which is also attached. In our work for the United States Department of the Interior in the 1930's, we developed what is now the accepted and most widely used form of written Navajo. In addition we state:

A great number and variety of techniques have been applied over the course of the years as succeeding generations of Americans searched for an effective solution to Indian problems. At one period, Indian children were removed from their homes and placed in distant boarding schools in an effort to disassociate them from their tribal language and way of life, on the theory that the vacuum thus created would be filled by English and the Anglo-American cultural system. The results were disappointing; although many variations of the approach were tried, success was elusive and minimal. The result among the Navajo is that the culture and the language remain very strong to this day. The use of the Navajo language is widespread throughout the Navajo Reservation.

Culture, as used in this discussion, refers to the varied systems developed by human societies as media for adaption to the environment in which their members live; in its totality, a cultural system constitutes the means through which the group to which it pertains achieves survival as an organized society. Such systems range from the simple to the complex and sophisticated and, among themselves, they exhibit a wide variety of differences in form and content.

When we speak of the culture of a society or community, we refer to the entire gamut of tools, institutions, social values, customs, traditions, techniques, concepts and other traits that characterize the way of life of the group.

The content of a given cultural system is determined by a wide range of factors, including the physical environment, inventiveness, influence of surrounding communities, trade, opportunities for borrowing, and many others.

Borrowing and trade have had a tremendous influence on cultural content, in modern as well as in ancient times, and a cursory glance at the present day Navajo or, for that matter, virtually any community of people anywhere on earth, is sufficient to reflect the importance of these avenues for cultural change and growth.

Horses, sheep, goats, iron tools, wagons, automobiles, radio, television, and many other elements have been borrowed by, and have become part of the cultural systems of such people as the Navajo since their first contact with Europeans.

The fact is that a culture is more than a system of material and non-material elements that can be listed, catalogued and classified. A culture constitutes a

complex set of habits of doing, thinking and reacting to stimuli—habits which one acquires in early childhoods and which, for the most part, he continues to share, throughout his life, with fellow members of his cultural community. In its totality, a cultural system is a frame of reference that shapes; and governs one's picture of the world around one. Within this framework and within the frame of reference imposed by the structure of the language one speaks, one is conditioned to look upon the world about one in a manner that may differ substantially from that characterizing another and distinct cultural system.

The nature and function of language assume different perspectives as they are examined by different disciplines—the psychologist, the philosopher, the linguist, the physiologist and the anthropologist are each concerned with different facets of the phenomenon of speech—but, from the standpoint of the social scientist, a language becomes an integral part of the culture of the people who speak it or, for that matter, who use it in any of its several secondary forms (writing, gestures, signals, signs, mathematical formulae, artistic and other representations). Whatever its form, language comprises a set of signals that serve the need, in human society, for the inter-communication of ideas and concepts. In addition, the structure and content of a given system of speech—in combination with associated cultural features—establishes a frame of reference within which the process of reasoning itself takes place; it is a framework that molds the world-view of the speakers of a given language, and one that tends to confine that view to the boundaries and perspectives of the cultural system in which such speakers are participants. Like the rest of culture, a system of language, with its characteristic patterns of expression, elements of phonology and structural features, comprises a complex set of distinctive habits. In short, the sum total of the values, attitudes, concepts and mode of expression of a community constitute the frame of reference within which its members conceive of, look upon, describe, react to, and explain the world in which they live and their relationships with it—it is their window on the universe.

The lexicon, or elements of vocabulary of a speech system can be compared to the material elements (tools, weapons, etc.) of culture. Such elements of speech, like tools, may be borrowed from another language system, or existing terms, like existing tools, may be modified to meet new requirements. Words, as these units are commonly called, again like tools, may come and go.

As cultures change—and none are static—those changes reflect in language, because, as we have pointed out, language itself is a reflection of the total culture of its speakers—a catalog and transmitter of the elements and features of the entire social system.

A great many concepts are widely dispersed among human societies across the globe, shared in one form or another by the people of widely separated communities. Some are inherent in the very nature of things—all people share the concepts denoted by walk, run, eat, talk, see, sleep, hear, for example. Although different speech communities may conceive and express these ideas in a variety of forms and patterns, the basic concepts are the common property of all cultures.

Thus, both English and Navajo include terms with which to express the concept "walk." However, they do not express it within the same frame of reference. Among the distinctions with which both languages are concerned is the number of actors: English "he walks" (singular) and "they walk" (plural); Navajo: yigáál, he is walking along; yi'ash, they (two) are walking along; and yikah, they (more than two) are walking along. Both languages express the concept "walk," and both concern themselves with the number of actors, but here the similarity ends between the two speech forms. Unlike English, Navajo is here concerned with distinguishing number in three categories as one, two, or more than two actors. Furthermore, if more than two actors are involved, their action of walking may be conceived as one which is performed en masse—collectively: yikah, they (a group of more than two actors) are walking along; or it may be viewed as an action performed by each individual composing the group in reference: deíkááh, they (each of a group of more than two actors) are walking along.

Both languages can express the simple command, "Come in," but the English form does not concern itself even with the number of actors. "Come in" may refer to one person or to a plurality of persons. In Navajo, the feature of number remains important: Yah'aninááh, come in (one person); Ya 'oh'aash, come in (two persons); Yah 'ohkááh, come in (more than two persons). In addition, the action as it involves a plurality of more than two persons may be conceived, from the Navajo viewpoint, as one in which they respond one after the other—collective in contrast with segmental action. Yah 'ohkááh directs a group of more than two persons to come in en masse; if the group is too large to permit the action to be performed simultaneously by all of the actors, the form yah 'axokhááh is more appropriate since it has

the force of directing each member of the group to perform the action, one after another—segmentally.

Although Navajo and English share the concepts involved, the pattern governing their expression in the two languages is highly divergent. The two speech communities differ from each other in this aspect of their world view.

The basic concept expressed by the English term "Come in" and its Navajo correspondents, is no doubt held in common by all people, irrespective of cultural-linguistic differences, but the pattern governing the manner in which the action is conceived and expressed differs radically between the two languages. However, given that all the essential elements requiring expression with regard to the idea are known (number of actors, manner of performance of the action) to the translator, there is no difficulty involved in conveying it from the English to the Navajo language. It is merely a matter of selecting an appropriate Navajo form to fit the situation as it is conceived from a Navajo viewpoint. And the same idea, as variously expressed in Navajo, can readily be conveyed in English by simply ignoring the several connotations that require expression in Navajo, but which are customarily left to the imagination of the listener in English. Neither is there any essential difficulty involved in expressing, in Navajo, concepts relating to come, go, walk, arrive, meet, join, etc. providing certain essential elements such as number of actors, identity of verb subject, mode and other features attaching to the action are known to the translator.

This relative ease of translation attenuates and finally disappears as the range of concepts held in common gives way to conceptual areas that are not shared by the two contrasting cultural-linguistic systems. At this point translation becomes impossible for the obvious reason that a language does not include terms for the expression of concepts that lie entirely outside the culture to which it belongs. Therefore, interpretation enters as the medium for cross-cultural communication. Sleep, walk, eat, axe, needle, hat, good, high, sharp are common to both Navajo and English; atom, rhetoric, navigate, one-fourth, two-sixths, acre-foot, and the like represent concepts that are not shared by Navajo culture and for which, consequently, there are no convenient labels in the Navajo language. The latter terms represent ideas that lie outside the Navajo world. As a result, they can be communicated from English to Navajo only by a descriptive, explanatory process to which we are here applying the term interpretation—in contradistinction to translation, which we are reserving to describe the process of trans-cultural, trans-linguistic communications by applying approximately corresponding word labels available in both languages.

To be effective, the interpreter must be thoroughly bi-lingual and bi-cultural. He must himself understand a concept sufficiently to describe it is terms that are meaningful to, and related to the experience of, his audience. Anyone who has listened to the interpreter at the Navajo Tribal Council has been aware of the greater length of time required for the communication of certain ideas, in the Navajo language, than was necessary for their original expression in English. In such situations the process reflects the necessity on the part of the interpreter to develop, define, and describe an alien concept through a clever descriptive process. If such an idea is involved as that conveyed, in English, by the term "acre-foot," the interpreter may need to begin by reminding his audience of the existence of a coined Navajo term náxásdzo xayázhí (small delimited area) which is used with a fair degree of frequency as the Navajo label for "acre." Assuming that all of his listeners appear to recognize and understand the term, he can then proceed to describe an acre-foot of water as the amount necessary to cover one acre of land to a depth of one foot. If, on the other hand, his listeners do not have the concept denoted by acre, he may have to begin by defining náxásdzo zayázhí as a square whose sides each measure about 208 feet. Having established the concept acre, he may then proceed to describe an acre-foot. Obviously, to accomplish his purpose, he himself must know the concepts involved in the English terms.

The demand on the interpreter, in the sense in which we are applying the term, can be much greater than those placed on the translator. A translator of English into Spanish does not, in fact, need to know what an acre-foot is in order to convey the idea to a Spanish speaking audience. It is enough that he know the term "acrepié"; it is not necessary that he be able to define it.

And, of course, the process of interpretation across cultures goes in both directions. There are concepts in Navajo culture that are absent in Anglo-American society. The Navajo term ńditíłh attaches to an object that is not used by Anglo-Americans—consequently, there is no convenient corresponding English label with which to describe or identify it. It must be described in terms of its physical characteristics and its functions, as "a broom-like thing made of the wing feathers of the eagle, tied together at the quill end, and used ceremonially to brush away evil from a sick or moribund person." This description is sufficient to convey as much of

the concept involved to the English speaking listener as was conveyed to the Navajo listener by simple definition of the term "acre-foot." Actually, in both cases, full understanding can take place only with description of the alien concept in much greater depth and detail.

Interpreters serving the Navajo and other Indian tribal needs were poorly selected and underpaid for many years. Underpayment and poor selection reflected an abysmal lack of understanding of the complex problems involved in cross-cultural communication, and the "economies" effected were offset by a correspondingly enormous cost in the form of both money and human misery. It was too commonly assumed that the interpretational process involved little more than inter-linguistic translation—a service that any school-boy could perform. Janitors, cooks, and scrubwomen were drafted into service as intermediaries between doctors and patients in the diagnosis of disease; members of an audience, or other persons selected at random, had the responsibility for explaining complex technical concepts involving ideas as vague and foreign to their experience as the Quantum Theory is to most laymen in our own society.

Tests were administered in the early 1960's to a variety of interpreters who had acted as intermediaries, for long periods, in the communication of data and concepts relating to such fields as medicine, social welfare and soil conservation. The results have all too often reflected a shocking lack of understanding of the technical concepts with which they were concerned, and the need for interpreter training began to receive due emphasis—along with the need to select and pay these valuable technicians on a more realistic basis.

Cross-cultural interpretation involving, as it does, the explanation of concepts which lie outside the experience of the cultural-linguistic system of the receiver, requires special training and highly developed communicational skills on the part of the interpreter. Just any bilingual person, chosen at random, is not sufficient. In fact, the effectiveness of cross-cultural communication can be greatly enhanced if the English speaking technician, for whom an interpreter acts as intermediary, himself has some modicum of understanding of the cultural and linguistic factors that limit ready understanding on the part of the receivers—i.e., if he himself has a degree of insight into the culture and language—the world-view—of the people to whom he addresses himself. To draw an analogy, the lawyer is more likely to succeed in explaining the bonding process to the layman-interpreter if he knows something of the educational background and previous experience in these matters on the part of the person or audience to whom he addresses himself. If he uses the somewhat esoteric language of lawyers, he may find that his listener-interpreter has received little or no insight into the subject. If, on the other hand, having informed himself previously regarding the educational and experimental characteristics of his listener-interpreter, he couches his explanatory remarks in terms that lie within the scope of their experience and understanding, the effectiveness with which he communicates is likely to be greatly increased. If the listener-interpreter then has a sufficient understanding of the language into which he is to interpret this material, he will be much more effective.

We received from Lawrence R. Baca, Attorney for the United States, a copy of the Order and Call of the August 31, 1976, Apache County High School District No. 90 Special Bond Election. Attached to this affidavit is a copy identical to that given to us. Mr. Baca instructed us to translate the document into the Navajo language. He instructed us to translate it in such manner that a voter who spoke only the Navajo language would be able to understand the document and be able to vote in the said election leaving out the list of polling places. Working as a team as we always have in translations, we took the following steps: Dr. Young went to the School of business library and got some books on general obligation and other types of bonds and bonding generally so that we would have a clear idea of how he wanted to approach the idea of a general obligation bond. Dr. Young then took the original document and rewrote it in a form that lent itself to translation into Navajo. He avoided to the maximum extent possible the use of any terms for which there is no Navajo equivalent, such as the word "bond." With those words for which there is no Navajo equivalent it was necessary to define and explain the term and then use the English word. This is the same approach that is used by the interpreter for the tribal council, and that we have always used. In this case, we used the word bond after having described and defined it. This should give the listener an adequate understanding of what one means when one uses that word. Thereafter in the translation, one simply uses the English word that one has so defined, and it will have meaning to the listener. This step took approximately two hours. Then Dr. Morgan took the English version that Dr. Young had drafted and translated it into Navajo. It took Dr. Morgan approximately eight hours to do the translation from English into Navajo. Then we went over the translation together and translated it

back into English to find what was said in Navajo. There were a couple of areas where Dr. Morgan had gone off on a slight tangent because he had not fully understood Dr. Young's explanation of what it was necessary to say. After a discussion of these areas, Dr. Morgan spent three more hours in retranslation of the parts we felt needed more work. The total time necessary for these final corrections was five hours. We worked together two more hours to assure ourselves of a good translation. The total time that we took to do this translation, not counting typing of drafts and final copy, was twenty-one man hours. This translation is not perfect. It is very good, however. The subject matter and kind of material is very difficult to translate. It is our expert opinion that this is far better than any that would have been done on the reservation unless someone went to the great lengths that we did.

It was necessary to go to these great lengths because of the subject matter. The subject matter is foreign to the Navajo culture. If it is foreign to the culture, it is foreign to the language. There is no Navajo word for bond. This concept is one that has not been introduced into the Navajo world sufficiently for it to have been adopted or borrowed as part of the Navajo world. Therefore, one has to force the language to somehow represent the basic concepts that one is trying to get across. To accomplish this, one must do a lot of explaining and defining of terms and ideas in order to pull it all together and say what has been said in English. The English version is part of the non-Navajo culture, and it is, of course, adequately expressable by the language to which it pertains. This is true because the language and concept of bond are a part of the same culture. When you attempt to put this concept into a language of a culture that it is not a part of, you must begin by having a good understanding of the concept you will translate. When translating we have always taken the steps listed above. Dr. Young would take highly technical documents like statutes of Congress and study, analyze, rephrase, and rewrite them in the kind of English that one would use to explain it to someone whose experience this was not a part of. He would, of course, draw on his own background, knowledge, and experience with the Navajo language, knowing what could be readily translated and what would be difficult. For those things that would be difficult, Dr. Young would have to determine some manner in which the translator could approach it. This is what must always occur in translation. The translator must reduce the matter to something that he himself clearly understands. Once he works it out on that basis, he can proceed to apply the Navajo language to the expression of those concepts. In some instances this was not easy with the Order and Call of the election. The entire last section discussing the repayment and maturity of the bonds was somewhat difficult to clearly express in Navajo. The English version may sound somewhat naive, but that is the way it will have to be explained in Navajo.

In our expert opinion, it would not be possible for someone to read this and do a simultaneous or extemporaneous translation. One would have to study it and determine how one is going to express it in Navajo. Any material that has technical language or overtones must be defined and explained. Simultaneous or extemporaneous translation is only possible between two groups that share the same cultural concepts. The words or labels represent short cuts. One does not have to define or describe terms because the listener will have learned them as part of his socialization process. The translator for the Navajo Tribal Council will take three or four times as long as the original speaker does to explain what has been said if the material has some technical or legal terminology with which the audience is not familiar. We know from personal contacts with that he likes to have any of this difficult material in advance so that he can study it and work up an explanation to use in his translation before the council. The result in extemporaneous translation of difficult material is that the translator will gloss over those things of which he does not have a firm understanding. We have witnessed this at meetings where there is not proper preparation of the translator or where some member of the audience is asked to please step up and translate.

Mr. Baca has explained to us the steps that were taken to publicize the bond election on the Navajo Reservation. As we understand them, they were: (1) A written notice in the Navajo Times legal notice section for five weeks prior to the election; and (2) Postings of the same written notice at the polling places and two public buildings for twelve days prior to the election. That written notice was the same Order and Call that we have translated. It is our expert opinion that these acts would not have notified the Navajo people adequately about the bond election. Those who could read would have found out, at most, that there was an election. If we were to publicize such an election, we would use the radio. We would use the chapter meetings also, but rely very heavily on the radio. Most of the Navajo people still live in rural areas on the reservation. They do not live in clustered communities. Communities have been developing over the last thirty years, but the people generally live out in the countryside. The roads that serve these people are poor. If

there is a heavy snow or a fair amount of rain, one cannot travel anywhere. One gets snowbound or mud-bound. To really reach these people with information, one must use the radio. Almost all of the Navajos living out in the countryside have radios, and they constantly listen to the Navajo language programs. One could use the same kind of translation that we have done and tell them where to get more information. If they were to get no more information than is in Order and Call, most Navajos would think that the money was going to be for the benefit of their schools. They would think that if it were not for the benefit of their schools, that they would not be asked to vote. Navajo people are very interested in education. They believe that the education of their children is essential. The Navajos who have gone away from the reservation during the war or for some other reason quickly realized the difficulty in getting along in the outside world without knowledge of the English language. They have demanded for many years that education be provided for their children. Because of the importance that Navajos place on education, they would have been very interested in knowing what benefit or effect this bond election has on their schools.

All bilingual people are not necessarily good translators. To some extent there is the depth of understanding that the person has of the two languages. If the two languages involve cultural systems that are as far apart as Navajo and English, then the individual who does the interpretation has to know the two cultural systems in great depth. He must be more than just able to communicate in both languages. He must be educated on the English side so that he understands all of the particulars of this bonding procedure. It would be important to know how local government relates to the community, what a school district is, and how it serves the community. He should know how the school system gets its money, and how it pays it back. All of these aspects of this process called bonding are important. Having this complete understanding on the one hand and understanding that his other linguistic personality (Navajo) does not contain these things, the translator is going to have to determine what aspects on the English side are going to require careful or detailed explanation to the Navajo side. The translator must also have a depth of command of the Navajo language that permits him to find the right terminology to express these unfamiliar concepts. This means that you must have an individual who has been specially trained. In our opinion, there are not many Navajos in Navajo country who possess these abilities.

However, if one has an individual who is bilingual, and who has a good depth of understanding of the Navajo language, one can develop a good translation. If the original speaker takes the time to explain the bonding process to the bilingual interpreter so that he thoroughly understands it, he will then be able to develop a fairly good interpretation. If, however, the bilingual interpreter does not completely understand the process, he will simply gloss over those parts that he does not understand. Since the person he is speaking to does not read English, he will not complain that the translation is poor or imcomplete. If one took twenty-two people who are bilingual and asked them to translate this document (the Order and Call) without any training or explanation, one would face disaster. One cannot pick translators off of the street and expect them to do a good job without a good explanation. Thus, the steps taken by the Apache County High School District No. 90 to publicize the bond election in question appear, in our opinion, to be wholly inadequate.

ROBERT W. YOUNG
WILLIAM MORGAN, Sr.

Subscribed and sworn to before me this 26th day of October, 1978.

WANDA E. DUDLEY, *Notary Public.*

TESTIMONY OF DAVID DUNBAR, GENERAL COUNSEL, NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI), ACCOMPANIED BY JUDY LEAMING-ELMER, LEGAL STAFF

Mr. DUNBAR. Thank you, Mr. Chairman.

To my immediate left is Judy Leaming-Elmer, who is a member of our legal staff at the National Congress of American Indians.

As my statement says, I'm an enrolled member of the Blackfeet Nation of Montana.

The National Congress of American Indians is the oldest and most representative national Indian organization in America today.

Since its formation in 1944, NCAI has served to represent the interests of the Indian tribes throughout the country. We have approximately 160 member tribes whose combined population is over 400,000.

We appreciate the opportunity to testify today in support of H.R. 3112, a bill to extend key provisions of the Voting Rights Act. This Act has been one of contining importance to Indian tribes across this country. And we are here to support the extension of these provisions.

The United States and Indian tribes have a special relationship, based upon the unique legal status of Indians under Federal law. Federal policy has long recognized that Indian tribes within the boundaries of the United States are "distinct, independent political communities, retaining their original natural rights" in matters of self-government.

The Supreme Court has repeatedly held that tribes have surrendered only those powers of sovereignty which are consistent with their dependent status. All other governmental powers still remain. As a result, Indian tribes and the United States exercise a direct government-to-government relationship with one another.

We find some of the discussion that has preceded our testimony today particularly interesting from the perspective of a people who were here long before the first immigrants arrived from across the Atlantic. Our languages clearly are, anthropologically and historically, the first languages of this land.

There are 206 different spoken Indian languages among the tribes today. Of this number, only 80 have writing systems, most of which have not been tribally endorsed. The percentage of adults living on reservation lands who are not fluent in English ranges from zero to between 60 and 70 percent.

And generally, it has been found, where there is no fluency in English, there is a correlative lack of literacy in the native language. Therefore, oral translations and interpretations of ballot information are of maximum assistance on voting within Indian communities.

Our support for the Voting Rights Act stems from a long history of trying to secure the vote for our people. Some of the comments made by other Congressmen regarding the Voting Rights Act ignore the situation of Indian tribes today. This country and Congress should remember that American Indians were not accorded citizenship until 1924, and therefore we were not eligible to vote. Yet, it wasn't until the sixties that Indians were able to fully secure the right to vote in Federal elections.

We would also hope that members of Congress would recognize that we are not immigrants or aliens. Our history of having democratically elected leadership far exceeds the history of the western world. The Indian tribes in this country were practicing the concepts of democratically elected governments when Europe toiled under the feudal system.

Yet, Indian people have been frustrated in securing their right to participate in various elections even as we sit here today. We have reviewed the records of the Office of Indian Rights with the Department of Justice and have found that approximately 20 percent

of the cases they handled were voting rights cases. And this only refers to those situations where litigation was necessary.

Indian people have experienced a considerable amount of blatent discrimination in voting rights during recent years. One Wisconsin town attempted to gerrymander Indians out of their voting district in an active attempt to keep them from voting. In a Nevada county, county registrars refused to register Indians for such reasons as failing to fill out registration cards properly, while non-Indians were not subjected to the same fine scrutiny. Nebraska and New Mexico counties were successfully sued for attempting to dilute the Indian vote by instituting at-large voting schemes. In South Dakota there was an attempt to deny an Indian candidate the right to run for office. Indians have found themselves purged from election rolls without notification, or their polling places closed.

The Voting Rights Act has been a key element in the drive to bring the vote to tribal people.

One of our primary concerns is in relation to the bilingual provisions of the Voting Rights Act, which have been under heavy attack almost from inception. In testimony before this committee Congressman McCloskey categorically declared the bilingual provisions as "wrong" and "bad for the very people (they) seek to assist" since, in his opinion, it is more important to earn a good living than it is to vote. He seems to feel that to provide bilingual election assistance is to encourage neglect in learning English.

We find this dichotomy between economic achievement and the right to vote a strange one. Why must such a choice be forced upon us? Often within the Indian community it is the elders who preserve the culture through traditional skills, including the richness of a native language with which to tell the stories of the people, essential to understanding our history and traditional ways of thinking.

A voting rights case brought under the bilingual election law provisions in New Mexico resulted in a 1977 Federal court determination that the Navajo people had been denied the right to vote because of lack of information provided through radio and television outlets in their own language and failure of the county to provide interpreters at the polls.

Even where translators were provided, they were inadequately trained in cross-cultural interpretation. For example, there is no translation of "bond election" into Indian culture.

One onreservation precinct translated the bond election ballot and placed it on cassette tapes which were available in each of the polling booths to assist the Navajo language voters. From information provided to our organization, this was an inexpensive and effective procedure—one we hope might be expanded to other tribes.

Another area of concern to Indian people is the preclearance provision of the Voting Rights Act. Section 5 of the act requires covered jurisdictions to submit all changes in laws, practices, and procedures affecting voting for a ruling that the changes do not discriminate against racial or language minorities.

Under this section, the Justice Department's Office of Indian Rights brought three cases since section 5 was extended to language minorities in the 1975 amendments.

Additionally, preclearance has been a component of other cases brought by the Justice Department under the act. These provisions have been very important in the protection of Indian voting rights.

We feel that any attempt to bar the votes of other minorities affects us, too. For example, if there is a bar based upon Hispanic surname or racial characteristics, many Indians would also be included.

We have come here today to ask Congress' help in protecting the rights of American Indians who want to vote in various elections. At the same time, we are asking you to help in our work to protect and preserve the culture of our people. We recognize that it may be a difficult decision for you to make—as difficult as the task we face in trying to protect our Indian people.

Our people strive to preserve our culture and tradition, of which our language is the most vital part. Our history and religion are intertwined with the continuation of the language of our people. And yet our people seek to understand the dominant society that has grown up around us and which controls almost every aspect of our lives. Our people are learning that they must vote if they are to protect themselves and their way of life.

It doesn't seem necessary for us to give up our language just so that we might have the right to vote. All we are asking is that we be allowed to preserve our language while voting to protect those things we cherish most.

There is additional material attached which I would like made part of the record.

Thank you very much for allowing us to present this statement.

Mr. EDWARDS. Without objection, the additional material that you have provided will be made a part of the record, and we thank you for this excellent testimony, Mr. Dunbar.

You are general counsel for the organization and you are a member of the Blackfeet Tribe of Montana. Is that different from the Blackfeet Tribe of Idaho.

Mr. DUNBAR. The Blackfeet Nation of Montana, is a distinct Indian tribe.

Mr. EDWARDS. It's different?

Mr. DUNBAR. Yes.

Mr. EDWARDS. Do you generally represent in your organization Indians on reservations or urban Indians off the reservation?

Mr. DUNBAR. We have a constituency which includes reservation-based Indians as well as urban Indians. Many of the rights we seek to protect are common rights which are secured through treaty and which are applied whether the Indian lives on the reservation or off.

Much of the legal rights are directed individually toward a tribe as a political unit, however.

Mr. EDWARDS. Would many Blackfeet Indians of Montana live on a reservation?

Mr. DUNBAR. There are approximately 12,000 members of my tribe of which 7,000 reside on the reservation. Approximately 5,000

are dispersed throughout the various States surrounding the reservation, with many of them living in the urban centers.

Mr. EDWARDS. Where this particular group of Americans are concerned, the 7,000 living on the reservation, does the Voting Rights Act protect them? Is it important to them?

Mr. DUNBAR. The Voting Rights Act can be seen in various levels of importance throughout the reservations that are affected. Primarily the reservations who have remained intact as far as language and other cultural aspects utilize the Voting Rights Act more extensively than those reservations which have become more acculturated to the dominant society.

The drive during the early years of this country to extinguish the language of the native people is well documented. The religious organizations which sought to change the religious beliefs of the Indians also prohibited the use of the native language.

The Federal agencies which provided educational services prohibited the use of the Indian languages, and the English language was forced upon the people. But in many parts of the country the traditional language still is in existence. It's primarily in these areas of the country that the Voting Rights Act is of importance, especially the bilingual provisions.

During the Second World War it is well noted that the drive of the Japanese war machine was successfully frustrated with the help of Navajo language interpreters and radio men. It was one of the languages that the Japanese never were able to break even though they managed to break all other coded radio transmissions that the United States had devised.

Mr. EDWARDS. In the Navajo reservations, do the Navajos vote in Navajo?

Mr. DUNBAR. Approximately 90 percent of the Navajos still speak their native language and it is on the increase. So the need to have bilingual provisions for voting is very apparent there, and they do have to have interpreters to explain provisions, technical provisions in the voting procedure. Often these procedures are hard to explain and translate into Navajo and it takes a very extended period of time to communicate the technical provisions and the language that is associated with the vote.

Mr. EDWARDS. Wouldn't it be in the general public interest also to assist the Navajos in voting so that they know what they are voting about and all of the facts? Wouldn't it make it easier for them to cast an intelligent vote if they had assistance at the polls and assistance in their own language, the language that they are most comfortable in?

Mr. DUNBAR. Yes; it would. I couldn't agree with you more. It would vastly help the voting process, and they do attempt to provide interpreters for their people regardless of whether the election procedures in the Voting Rights Act are adhered to or not, because without them the people do not understand what the vote is or who they are voting for or what they are doing.

Mr. EDWARDS. It's very good having you here today. This subcommittee is doing some other work that we consider of some importance, having to do with the role of the Department of Justice and the FBI on Indian reservations, and we are trying to encourage the FBI and the Department of Justice to assist in the upgrading of the

tribal criminal justice system so that there will be less need for the FBI to be a sort of police force and for the Federal district courts to be less needed as the judicial arbitrator where American Indians are involved. And I am sure that you are interested in that subject also, are you not?

Mr. DUNBAR. Yes; I am. I have been following the hearings you've been having on the topic. I discussed that matter with a number of people in the Interior and with members of your staff.

Mr. EDWARDS. Thank you.

Counsel, Ms. Davis?

Ms. DAVIS. Thank you, Mr. Chairman.

Mr. Dunbar, it is true, is it not, that there are a number of Indian languages and those languages are not necessarily in written form.

Mr. DUNBAR. There are many languages that are not written. There have been recent attempts to initiate efforts to write some of the Indian dialects down. Of course, the wide range of tribal groups in the country makes that effort rather hard. There are approximately 478 distinct tribes of which 230 are federally recognized. There are still over 200 native languages which remain intact in this country which are drastically different from each other.

Ms. DAVIS. We will hear testimony later today from a witness--the thrust of his statement is that section 203 of the Voting Rights Act has attempted or made demands on local election officials to be more creative than they've had to be in the past in relating to various language minority groups, and I wonder if you can point to any examples where election officials have used their creativity in providing what the Department has indicated to jurisdictions they should provide, which is effective assistance to language minorities, whether that assistance is in oral or written form.

Mr. DUNBAR. Well, the only instances of creativity which I can call creativity was the use of cassette tapes for the voting booths, which was very economically feasible as well as effective. Other than that, the utilization of translators for the people is, of course, mandatory for them to become involved in the voting process. I would hope that the officials in charge of voting could assess their own individual problems concerning bilingual translations and come up with effective ways to cure the problems that go with those.

Ms. DAVIS. Thank you, Mr. Chairman.

Mr. EDWARDS. My last question has to do with the local registrars, election officials. In California where Spanish speaking people are concerned the local registrars—and this also occurs in Texas—have in the past set themselves up as arbiters and as making decisions as to how the law shall be enforced or not and have showed great reluctance to comply with the Federal regulations and so forth and have created a climate in California where the general public just doesn't understand at all what you have been talking about, that people are more comfortable and that many Americans have been here for hundreds of years and are more comfortable in other languages than in English.

Have you found registrars in your experience that have set themselves up in this arbitrary and inappropriate fashion as judges and juries in these cases?

Mr. DUNBAR. I have found many instances where people have attempted to impose their own thoughts of right and wrong on various situations, not necessarily within the voting rights exclusively, but in many areas where we at the Congress of American Indians have been advocating for effective tribal consultation.

I think the abuses that are being experienced by registrars could be alleviated somewhat if their concerns were communicated and addressed prior to any election held, and this would allow effective tribal input and Indian voice into helping cure the problems that they are alluding to rather than unilaterally attempting to impose their own answers.

Mr. EDWARDS. Well, I'm happy to say that generally now in California the registrars are paid much better. Mr. McCloskey, my colleague from an adjoining congressional district, testified a couple of days ago to the effect that although he was against the act, the language provisions of the act from its inception, because of cost, now he finds out that the costs are infinitesimal in California, and that although he has other reservations and is against the law for other reasons, cost is no longer an item.

Well, if you have no further questions, thank you very much. We appreciate your testimony.

Mr. DUNBAR. Thank you, Mr. Chairman.

Mr. EDWARDS. The subcommittee will recess now until 1 o'clock when we will hear the testimony of Mr. John Trasvina, who is commissioner, Citizens Advisory Committee on Elections in San Francisco.

[Whereupon, at 11:50 a.m. the hearing was recessed to reconvene at 1 p.m. this same day.]

AFTERNOON SESSION

Mr. EDWARDS. The committee will come to order.

I ask unanimous consent to include in the record as if read, a statement by our colleague, Congressman Henry J. Hyde, that has with it a letter dated June 2, 1981, from our colleague from the Fifth District of Mississippi, Trent Lott; and an affidavit signed by Grady Palmer; and a letter to Mr. W. O. Luckett, Sr., chairman, General Election Commission, City of Clarksdale, Miss., signed by A. David Califf, chairman, and others.

Mr. HYDE. Mr. Chairman, during testimony before the subcommittee on May 28, 1981, Mr. Aaron Henry made reference to municipal elections held earlier that month in Clarksdale, Miss. According to Mr. Henry, a candidate, Mr. James Hicks, who happened to be black, ran against another candidate, Mr. Grady Palmer, who happened to be white. According to Mr. Henry, the difference between Mr. Hicks and Mr. Palmer was "either one vote more than a majority or two votes more than a majority. There was a big discussion about that."

The implication clearly is that there is some significant question about the legitimacy of Mr. Palmer's victory. Mr. Henry goes on to say that he called Mr. Gerald Jones of the Voting Section of the Civil Rights Division, Department of Justice, and was assured that a Federal investigaiton would be initiated to clarify the result of the Clarksdale election.

Last week, I received a letter from Congressman Trent Lott of Mississippi, in which Mr. Lott enclosed a sworn affidavit by Mr. Grady Palmer. In the affidavit, which I offer today as part of the subcommittee's record, Mr. Palmer swears that of the 4,662 votes cast on May 12, he received 2,333 and Mr. Hicks received 2,066. A third candidate, according to Mr. Palmer, received 263 votes.

In paragraph 4 of his affidavit, Mr. Palmer contends that he received two votes more than 50 percent of the total vote and was declared the winner of the primary.

Mr. Chairman, I offer this affidavit at the request of Congressman Lott, to appear in the record next to the testimony of Mr. Henry. (See p. 2210.)

Mr. EDWARDS. We now have the pleasure of hearing from our patient witness, John Trasvina, commissioner, Citizens Advisory Committee on Elections in the great State of California, city of San Francisco.

Mr. Trasvina, we welcome you and without objection your statement will be made a part of the record, and you may proceed.

TESTIMONY OF JOHN TRASVINA, COMMISSIONER, CITIZENS ADVISORY COMMITTEE ON ELECTIONS, SAN FRANCISCO

Mr. TRASVINA. Thank you very much, Chairman Edwards.

It indeed gives me great pleasure to come before the Subcommittee on Civil and Constitutional Rights of the Judiciary Committee today.

I speak in support of what many consider to be the most important piece of legislation facing this 97th Congress, H.R. 3112, which will extend the bilingual provisions of the Voting Rights Act for 7 years.

At the present time I serve on the Citizens Advisory Committee on Elections for the city and county of San Francisco. This committee was designated by the city and county to act as a task force to monitor enforcement and implementation of the Voting Rights Act in San Francisco pursuant to a consent decree entered into by the city and the local U.S. attorney's office.

My appearance today is not on behalf of the committee per se, but rather as someone actively involved in implementation and study of the act in California, Hawaii, and New York. Nevertheless, I am in complete agreement with the official position of the San Francisco board of supervisors, which voted 8 to 3 in January to oppose repeal of the bilingual portions of the Voting Rights Act.

As you may already know, San Francisco has been covered by title 203 of the Voting Rights Act since 1975. Ours is the only jurisdiction which provides both Spanish bilingual and Chinese bilingual voter services. Even before 1975, however, State law also required bilingual oral assistance at the polls, where 3 percent of the precinct was non-English speaking.

One would think, therefore, that the Voting Rights Act would have been a logical step complementary to State provisions, and not overly burdensome for local officials.

Implementation in the early days of the Voting Rights Act should not have been as difficult as it turned out to be. I will relate

implementation in San Francisco from 1979 through—1975 to 1979. This will be compared with both the experience of other counties in those years, and the much more positive events surrounding implementation by San Francisco in the 1980 elections.

You will find a consistent trend over time of better and cheaper implementation of the Voting Rights Act.

The city's first Voting Rights Act election in November 1975 was as one member of the registrar of voters office volunteered, "a flop." The city spent $40,000 to print multilingual sample ballots, and over $100,000 for multilingual notices sent to all of the city's 271,000 voters asking them if they preferred their voting materials in Chinese, Spanish, or English.

The $100,000 would have been better spent registering the unregistered instead of trying to determine whether those who had already participated in English-only elections were proficient in English.

There is no indication that San Francisco took any steps to register language minorities for the November 1975 election. Although the city charter required voter information to reach the voters 10 days before the election, the chief deputy registrar told the San Francisco Examiner the day before the election, that new voters have not received the voter's handbooks, nor instructions on where to vote.

Any impact outside organizations might have had in registration, in the absence of a city outreach plan, was rendered nugatory by the lack of distribution of the required voter information.

San Francisco is by no means the only jurisdiction to take costly alternatives to outreach and registration. As the Federal Elections Commission reported in 1979:

> Many election officials reported few requests for minority language voting materials prior to the 1976 election. Much of the explanation for this low demand is simply that those who most needed such materials, were never in a position to request them; that is, they were not registered.

Let us turn for a moment to Los Angeles County, which spent over $800,000 in the June 1976 election. As in San Francisco, money spent on blanket enforcement in Los Angeles could have been spent more effectively on targeting and outreach.

Unlike San Francisco, Los Angeles had no problem distributing voter information pamphlets and sample ballots. This may not have pleased one Los Angeles candidate in the first bilingual election, however. His ballot designation of "small businessmen" was translated on the Spanish language version to "shoptending dwarf."

As we look back, we can observe that the antagonism to the Voting Rights Act stems directly from the early days of costly enforcement by local officials. Subsequent elections have demonstrated that the high costs were unnecessary. So, too, was the antagonism avoidable.

Well-publicized commentary by local and State officials only served to inflame a situation which required their sensitivity. Voting officials in San Francisco and Ventura Counties readily supplied data for two prominently placed articles in the L.A. Times entitled, "San Francisco Multilingual Voting Effort Admittedly a Flop" and, "Cost of Three Spanish Ballots Cast in Ventura Set at

$3,000." Implying that the law was unneeded and unwanted, even by its intended beneficiaries, one election official noted in the article, "From the information that we have, very few people took advantage of our assistance, and a lot of foreign people actually objected to the idea."

In 1978, the local chapters of the League of United Latin American Citizens, Mexican-American Political Association, League of Women Voters and Chinese for Affirmative Action compiled voter registration data from around San Francisco for a superior court suit to order the registrar to develop an outreach program as required by State law.

The groups found that in supervisorial district 3, Chinatown and North Beach, the number of registered voters was just 60 percent of the best registered district.

District 6, the Mission district with the greatest concentration of Hispanics, had just 58 percent of the number of voters in the highest district.

Neighboring district 7 with heavily black and Latino precincts, had fewer than half the registered voters in the top district, district 5.

With such low registration in heavily minority areas, it would seem easy to target effectively.

The registrar cited in his outreach plan that each of the 28 public library branches, and 30 public health hospitals and health centers had voter registration cards in the three languages. Yet, the survey conducted by MAPA and the other groups found that 40 percent of the health centers lacked cards. Only two libraries had voter registration signs posted, while the General Hospital had no cards at all.

Even when the cards were distributed, they were not fully effective. Chinese bilingual cards were found at the Silver Avenue Health Center serving the Outer Mission and Bayview area, where many Latinos live; and Spanish bilingual cards, on the other hand, were available at the North Beach Library and Galileo Community College Center in Chinatown.

In terms of oral assistance at the polls, San Francisco's first attempts at VRA implementation suffered from marked ineffectiveness. In the June 1978 election, just 2 of 5 polling officials were fluent in Spanish in the 64 Spanish-language designated precincts.

In the 56 precincts designated by the U.S. Attorney's Office as in need of Chinese bilingual assistance, just 38 had bilingual officials. And, within these 38, 19 of the Chinese surnamed election judges were Mandarin speaking and had some difficulty explaining the vote machine operations to voters in Chinatown, where Cantonese is the primary dialect.

As to a similar situation a year later, the registrar remarked: "As far as I'm concerned, Chinese is Chinese and that's the best I can do."

While it is difficult to hire election workers for the 13-hour, $32 jobs, the problems of 1978 compared with the success of the present registrar in the 1980 elections, is striking as I will discuss later.

In 1978, however, even when bilingual officials were found, like the voter registration cards, they sometimes went to the wrong areas.

Two Spanish bilingual poll officials were placed in the polling place at the Sam Wong Hotel in Chinatown, where they were of little help to the Chinese-speaking voters. Situated in Chinatown, also the pair could not assist the Spanish-speaking voters in need of assistance across town in the Mission district.

Now I would like to turn and emphasize the recent positive advancements made by the city and county of San Francisco, and what the new registrar termed 13 months ago as a whole new attitude and outlook in his office.

It is now clear that what was considered burdensome legislation early in the life of the VRA was not difficult to implement. It was only made so in something of a self-fulfilling prophecy.

The misguided attacks have been concentrated not on the ineffective implementation efforts by local jurisdictions, but on the act itself. One wonders if these same opponents would advocate the repeal of statutes criminalizing rape and murder because the rising crime rate points to their ineffectiveness.

Los Angeles County, for example, initiated an election day needs assessment survey in the June 1976 primary, in order to avoid further blanketing of bilingual election materials.

The survey of each primary voter as to preference for Spanish-language materials, reaped 60,000 names.

In the November election of 1976, materials were then targeted to these voters, as well as newly registered ones who requested materials. The result, election costs plummeted by one-half of a million dollars.

Since the 1978 general elections, bilingual costs have fallen from $290,000 to just $135,200 in November 1980.

Today Los Angeles spends just one-sixth of what it cost to blanket materials in June of 1976. On a percentage basis, bilingual costs which were 9.1 percent of total election costs in 1978, now comprise just 1.9 percent of total costs.

Los Angeles has a Mexican-American population of just under 28 percent.

Farther south in San Diego County, Registrar Ray Ortiz has significantly increased registration and turnout while reducing costs of compliance. Bilingual compliance costs have dropped over 50 percent and are now under $60,000 as of the November 1980 election. The Hispanic vote was better than 75,000 in that same election.

But some of the most exciting developments and advances I am happy to tell you, are coming out of San Francisco. It prides itself on being the city that knows how, and expectations are that it will show that it can truly reach all of our citizens who want to vote.

Most apparent since the new registrar came aboard early in 1980, is as he says, "a totally new attitude and outlook," particularly true in the cooperation with community groups.

The office now conducts street-corner voter registration in minority-language communities. Input is solicited from community residents as to the most effective places for high visibility and foot traffic to set up registration booths.

The registrar's office master plan calls for assistance to community-based registration groups in the form of voter registration workshops. There is also more effective cooperation with other

governmental agencies. Efforts are made to get the right cards in the appropriate neighborhoods.

Within city hall itself, voter registration cards are now available in 17 different locations and city employees are encouraged to register voters.

Any position which deals extensively with the public, particularly in such an important function as voting, demands creativity and the incentive for innovation.

One effort of the registrar which I believe deserves special mention, is the sending of two of his staff to the citizenship conferment ceremonies conducted by the Federal Immigration Office to welcome new citizens and register them to vote.

In my estimation, that is but one way in which the registrar has demonstrated a willingness to make the law work.

As for oral assistance at the polls, again there has been an improvement in complying with the laws. In contrast to the previous problems of attracting bilingual polling officials, targeting precincts and getting them to those precincts, for the June 1980 election, all 92 Chinese bilingual precincts had Chinese bilingual officials with 20 standbys in case others did not show up.

For Spanish-language precincts, all 60 were filled, in addition to having 9 standbys.

In the November 7, 1980, election, every Chinese and Spanish bilingual designated precinct had a bilingual polling official. Sometimes they had two or three at one polling place. If a voter had other problems on election day, such as losing the address of his polling place, an election hotline was staffed by English, Spanish, and Chinese-speaking operators at the registrar's office from 6 a.m. to 8 p.m. on election day.

Part of the success of the implementation of bilingual elections can also be attributed to a greater use of the extensive minority language media of San Francisco. The registrar has used the Chinese- and Spanish-language press in San Francisco both to publicize voter registration and to solicit polling officials for election day.

Of great value to the registrar's efforts have been the CETA Outreach workers. They have been of great value to the distribution of bilingual services, working with community groups, speaking on Chinese and Spanish-language programs, and manning the registration booths at night and on weekends.

Much has been made of the difficulties and supposed costliness of the Voting Rights Act. In counties where no efforts were made to register new voters as was required by California Election Code Section 302, and as would logically be expected under the Federal law, of course there would be fewer requests for materials than anticipated. Those who most needed the bilingual materials remained unregistered.

For local officials to ignore the great need for improved outreach, and to turn around and complain that nobody was requesting bilingual materials, could only lead to an undercutting of public support for the law. Many of the horror stories you have heard about costs of bilingual voting, came from those same blanketing counties.

Blanketing is generally more expensive than targeting. More importantly, in a blanketed county, no requests for bilingual materials are made, since they do not have to be. Everyone gets bilingual materials.

It is from many of these counties that we hear the outrageous dollars per request figures. The expenditures are unnecessarily high and the requests do not accurately describe usage.

Equally illogical are the cost estimates which measure requests for State-produced materials divided by local expenditures, and magically devise a local cost per request formula.

Finally, in some areas, ballot costs are higher than necessary for all election services, because of the voting machine apparatus used.

I have described many of the difficulties with local implementation in the early days of the act. Many have been rectified as early as 1977. Yet, it would be misleading and unfair to place the full responsibility of poor early implementation on local officials. Many observers and participants have concluded that counties took the easier, but more expensive, blanketing approach largely because Justice Department guidelines were vague and not helpful.

DOJ interim guidelines in 1975 stated that "targeting would be acceptable if it was guaranteed to reach persons desiring bilingual materials."

Reluctant to take a chance, Los Angeles and other counties blanketed. As was shown, it was an overkill approach. Los Angeles later targeted for the November 1976 elections, and saved $500,000.

At a time when thoughtful and forward-looking counties were beginning plans for implementation, the requirement of "equal access" from the Justice Department without further explanation or condition, deterred targeting and experimentation. The confusing messages from DOJ were not conducive to comprehensive implementation.

I feel compelled to concur in Representative Cecil Heftel's resolution and conclusion as stated in HCR 127: The lack of clear DOJ guidelines brought about the unnecessarily high cost and, to the extent the inadequate guidelines caused ineffective implementation plans, language-minority citizens were being ill-served.

Successful implementation of the Voting Rights Act should not depend on the good faith or expertise of local officials alone. It requires DOJ to provide effective support through appropriate guidelines to be carried out locally. Effective guidelines from DOJ mean that the act can be applied in a cost-effective and broad manner, and its success or failure does not turn on who the local administrator is in any particular locale.

There have been many improvements on implementation of the Voting Rights Act since 1977. They have been witnessed in San Francisco only recently. It is too early to reach a verdict on the ultimate effectiveness of the VRA. That is why we should give the Voting Rights Act more time.

By way of historical comparison, while women won the vote prior to the election of 1920, the 19th amendment was not fully used to any extent until the early 1930's.

Similarly, while 18-year-olds first cast ballots in the 1972 Presidential election, registration and turnout for those between 18 and 29 years of age is still very low.

As political scientists will tell you, voting must become a habit. It takes some time to assess the effectiveness of all laws newly enfranchising citizens.

H.R. 3112 is appropriate at this time. More guidance from DOJ is essential, however, to effectuate comprehensive Outreach programs which will ultimately determine the success of the act. Outreach is the key.

Not until efforts are made to register the previously unregistered, will the intent of the Congress to increase voter participation among our language minorities be realized.

The Voting Rights Act is working, and working well. I, as one person involved in bilingual election compliance, only ask that you support H.R. 3112 and make the 14th and 15th amendment guarantees a reality for all citizens.

The U.S. Supreme Court in *Meyer* v *Nebraska* put it best 56 years ago:

> The protection of the Constitution extends to all; to those who speak other languages as well as to those who are born with English on the tongue.

Thank you very much. (See p. 2190 for prepared statement.)

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

You say that the minority language provisions are working well in San Francisco, and we've had other information to the effect that that is a true statement. Can you explain to the committee, however, why so many people in San Francisco would disagree with you, including, I believe, the two major newspapers?

Mr. TRASVINA. I think their analysis of the situation, if one can call it that, comes not from a real examination of the costs and the figures. It is a visceral approach, as one person called it. A feeling that it is not legitimate for a city to spend money on bilingual services. Rarely have we ever witnessed in the papers or on the talk shows or from the few opponents on the board of supervisors, any close analysis of the figures. And, in fact, when that has been attempted, when people try to get on talk shows, such as I have, to discuss the realities of the act, it's not been very successful.

I think the public perception comes from the early implementation of the act which was very poor, and it seems that we have had a self-fulfilling prophecy of, "Well, it's not going to work and it's not a good idea, anyway, so let's not bother with it."

I think that one side has had a great deal of publicity, but the other side, I think the most reasonable approach, hasn't been publicized.

I don't know whether it would be perfectly accurate to say that San Francisco—that the general perception in San Francisco is that the act is not working well. I think if one went to all sectors of the community, they would find out that it was acceptable, and the people were anxious to see the act implemented, and implemented well, as we have done lately.

Mr. EDWARDS. In other words, your testimony is that the situation is improving, insofar as public perception?

Mr. TRASVINA. That's true, yes, and I think that the sentiments of Mr. McCloskey last week, that the election costs are not high, I think that was, a major reversal. And I would hope that the word got out that even someone who was adamantly opposed to the act realized that it's not expensive, and it has not been burdensome.

Mr. EDWARDS. Was that noted in the newspapers, or did you hear it elsewhere?

Mr. TRASVINA. I was here at the hearings last week. I was very disappointed that the San Francisco Chronicle did not mention the fact. It hasn't been mentioned, as far as I know, in the papers in San Francisco.

Mr. EDWARDS. Did the board of supervisors have public hearings before they cast their vote?

Mr. TRASVINA. Yes and no. What happened was, that one supervisor—Carol Ruth Silver—had a resolution opposing the repeal, and there was a hearing on that idea. Close to the end of the meeting, the chairman of the subcommittee, Mr. Kopp, brought in his substitute resolution—this was back in December—supporting the repeal of the bilingual provisions. When it got to the full board, that was defeated by a full vote of 8 to 3, and the original resolution opposing the repeal was brought back before the board, and that was passed 8 to 3.

So there were hearings in December, and I think there was a adequate discussion on both sides.

Mr. EDWARDS. Have efforts been made by your organization and others to communicate in depth with the newspapers and with the radio stations?

Mr. TRASVINA. Not as the committee as a whole, but individual members have and, in fact, the hearings were publicized, and I think publicized fairly and reasonably on both sides. I think both sides of the discussion were publicized in the papers in regards to that hearing.

Mr. EDWARDS. Have some of you people talked to a couple of those columnists?

Mr. TRASVINA. I have, and the response I got from one of the columnists was, "Well, you're wrong, but you're young enough to change your mind later on." I assume that meant he was too old to do so.

Mr. EDWARDS. I see. Counsel?

Ms. DAVIS. Thank you, Mr. Chairman.

Mr. Trasvina, you mention in your testimony your familiarity with implementation of the language minority provisions in California, Hawaii, and New York. Might you be able to present to the committee your views on how the section is being implemented in Hawaii and in New York.

Do you have any views on that?

Mr. TRASVINA. If I could start with the latter State first, the State of New York. I understand that it is being implemented very well, and that the local officials have found it is not burdensome at all. I believe the attorney general of New York, Mr. Abrams, testified to that effect last week. The local people—director of board of elections, Betty Dolan, has said it's just another part of the system. It's working well. I think the community people in Kings County are very supportive of it, and there's good cooperation.

As far as I can tell, it's working well in the State of New York. It's not burdensome, and the bilingual provisions are going out at a very low cost.

In terms of Hawaii, there are other problems. And I think part of it has to do with the type of voting machine that's used there. It is inherently more expensive to conduct elections with that type of system they use in Honolulu than if they used the other type of machine, which is called a Votamatic, which 70 percent of California uses. I think about a third of the ballots cast around the country are used on the other type of computer card system.

So I think in Hawaii, there has been some sentiment that the act was not tailored well to their specific needs, although I understand their bailout suit was not successful. I'm not particularly clear on that.

I have looked at a lot of data on materials and on costs in Hawaii, and I have not been at all persuaded that the act is not needed there. I think while some officials in Hawaii say that there is no need, we still see low registration and turnout figures, as least as of 1978. I think that a lot of the advancements made in San Francisco would be very well used in Hawaii.

Ms. DAVIS. I suggested earlier to one of the previous witnesses that the thrust of your testimony suggested that the Voting Rights Act has required a certain creativity on the part of election officials, that perhaps they were not required to manifest prior to its enactment. Might you share with the committee, based on our experience with implementation of section 203, the kind of ingredients, let's say, that would be necessary in order to implement section 203 effectively, so that there's participation, both from the beneficiaries of the act and from those who were required to implement the act.

Mr. TRASVINA. I've included some of the details of what San Francisco has done within my written testimony. I think the Federal Election Commission stated very well in its 1979 study, that you can't just get the voter registration cards and put them out somewhere. There has to be links between the community groups and the community that is to be served and the local officials.

And I think the pamphlets, the voter registration cards, won't do anyone any good, unless they're really being used. And we have to take that creative step to make sure that they're being used. For example, California has voter registration cards at the McDonald's restaurants, which are used by a lot of low-income people, and they are in the appropriate neighborhoods. So I think just steps like that will make sure that the right to vote and the ability to vote is made available to all citizens, and a lot of our efforts in San Francisco, although they have been tailored to meet the requirements of the act, go beyond just dealing with the Hispanic and the Asian communities in San Francisco.

They affect all sectors of the city, and every citizen, I believe, has been benefited by the Voting Rights Act, regardless of their ethnic background.

Ms. DAVIS. Thank you.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. No questions.

Mr. EDWARDS. Your testimony was very helpful, and we appreciate the good news from San Francisco and from California, generally. There has been very wide misunderstanding of the purposes and implementation of the act in California, but California, our own

State, doesn't have too good a history on civil rights, anyway, as you know.

Mr. TRASVINA. That's a sad fact; yes, sir.

Mr. EDWARDS. Something that's not too well known, but it's improving all the time. And certainly, organizations like your committee and the kind of work that you do are very, very helpful, and we appreciate your coming here today and helping the subcommittee arrive at an appropriate disposition. Thank you.

Mr. TRASVINA. Thank you. I appreciate your patience as well.

Mr. EDWARDS. The committee is adjourned.

[Whereupon, at 1:50 p.m., the hearing was adjourned.]

EXTENSION OF THE VOTING RIGHTS ACT

TUESDAY, JUNE 23, 1981

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

The subcommittee met at 2 p.m., in room 2141, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

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

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

Mr. EDWARDS. The subcommittee will come to order. We are continuing hearings on the extension of the Voting Rights Act of 1965. We are pleased as our first witness today to have Mark Stepp, who is vice president of the International Union of the Auto Workers. Mr. Stepp, we welcome you. Will you introduce your colleague, and you may proceed.

[The prepared statement of Marc Stepp follows:]

PREPARED STATEMENT OF MARC STEPP, VICE PRESIDENT, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

Mr. Chairman, I would like to thank the members of this Subcommittee for permitting me to appear before you today as an advocate of House Bill 3112 which will extend the Voting Rights Act of 1965. My testimony reflects the consensus of UAW leadership and membership.

We join with numerous organizations affiliated with the Leadership Conference on Civil Rights and concerned Democrats and Republicans in support of House Bill 3112 because this bill guarantees continuation of the open door policy which will permit more of our citizens to vote.

Those who are familiar with the South are aware of the pressures that have been used to keep black people from voting. In addition to the literacy tests, there has been violence, irregular registration hours, loss of jobs, reprisals, evictions, loss of credit, and many other forms of intimidation and retaliation to keep these citizens from exercising their right to vote.

The following incidents occurred during peaceful efforts to register blacks in Alabama in 1965, before the Voting Rights Act became law:

February 18, 1965—Jimmie Lee Jackson, a Selma black, was shot in the stomach and clubbed in the head by Alabama State Troopers, according to his own statement and died February 26, 1965.

On March 7, 1965, Alabama State Troopers, under orders from Governor George Wallace, used tear gas, nightsticks, and whips to halt a march from Selma to Montgomery, the state capitol. About 40 persons were severely injured in this march in support of voting rights.

A white Unitarian minister from Boston, James Reeb, 38, died March 11, 1965, of skull fractures by white men who clubbed him in the head on March 9, 1965 in Selma.

It was violence of this nature that caused Congress to act and pass the Voting Rights Act which President Lyndon B. Johnson signed into law on August 6, 1965.

Based on a reasonable degree of certainty, we believe that if the Act is not extended as proposed, intimidation and retaliation on a large scale will return. We should not forget the Northern states also have provisions in their laws which place educational, economical, or other barriers in the paths of those who seek to exercise their constitutional rights.

An Office of Education study has determined that there are 23 million Americans, age 16 and over, who are functionally illiterate. The study further indicated that 26 million citizens cannot pass the written requirement of a driver's test nor can they complete a job application. Many cannot even read the "help wanted" ads. The study did not conclude, however, that these millions could not exercise their right to vote with prudence and good judgment. While the educational system has failed these individuals, the political system must not compound this injustice by denying this group their constitutional rights. It is essential, therefore, that Section 4 and Section 201 which ban literacy tests nationwide be continued.

We must restore Section 2 of the Act, which addresses the 15th Amendment of the U.S. Constitution, to the original understanding before the 1980 *Mobile* vs. *Bolden* U.S. Supreme Court decision that suggested direct evidence of specific intent is necessary to prevail in court. It should be noted that the Act with its original meaning (i.e., any voter can sue in Federal Court if his or her right is abridged or denied on account of race) did not result in a large number of court cases.

The Constitution and Federal Government made a fundamental commitment to the black America people over 100 years ago. America has yet to fulfill this basic constitutional guarantee of providing every American, regardless of race or color, the right to register and vote. It is essential that we at least continue to make good this century-old promise of the 15th Amendment. We also note that the women of America were given the right to vote under the 19th Amendment some 50 years after the effective date of the 15th Amendment.

Is it asking too much today that every American, regardless of race, color, creed, sex or national origin, has an opportunity to participate in the democratic process of registration and voting?

We are indeed in critical times in our nation, with widespread disenchantment over the gap between principle and practice in our society, and what Congress does now with respect to extension of the Voting Rights Act of 1965 can contribute substantially to a restoration of faith in the democratic process.

As you are aware, the pre-clearance provisions of Section 5 are due to expire after August 6, 1982. We believe that any change in voting or election procedures that could have the potential for discriminating against minority voters in covered states must require pre-clearance under Section 5. We all recognize that a shift from literacy tests to racial gerrymandering, at-large elections and other methods of manipulating the election system and diluting the votes of minority voters continues. For example, additional sophisticated methods have emerged for diluting the minority vote such as discriminatory annexations, switching from election to appointment of public officials, polling place changes, all designed to nullify the minority vote. You find yourself with the right to vote in one hand and that right being sabotaged by these discriminatory techniques in the other. Section 5, therefore, continues to play an important role in curbing these abuses.

It is evident that Section 5 has had significant results in covered states where Black and Hispanic citizens have increased in both registration and voting in the democratic process. It can further be demonstrated by the rise in minority elected officials, which would not have been possible without Section 5.

According to the National Coalition on Voter Participation, some 11 percent of the 160 million eligible voters in America are black. Blacks constitute 16.8 percent of the southern electorate, more than is found in the other regions of America. Approximately 60 percent of the almost 5,000 black elected officials are in states covered by the Voting Rights Act.

Voter registration figures indicate the number of blacks registered to vote in southern states covered by the Act has doubled since 1965. Voter registration information indicates Hispanic registration has increased by 30 percent nationwide and 44 percent in the Southwest since passage of the 1975 amendment.

We must point out, however, that in those states covered by Section 5 of the Voting Rights Act, the percentage of eligible blacks registered is still disproportionately lower than the percentage of eligible whites registered, and black elected officials hold only 5.6 percent of the elected offices, most of them relatively minor positions. We are all aware that prior to Section 5 being adopted, over 100 years of litigation under the 14th and 15th Amendments, along with earlier civil rights laws, did not work.

We are aware that there are those in Congress who propose the elimination of Section 5 of the 1965 Voting Rights Act. Others would like Section 5 applied to all the States, but we, in the UAW, believe that Section 5 as it is presently tailored, is proper and correct.

Let us examine the rate of the Attorney General's objections to discriminatory voting law changes which will demonstrate that the protection of the Voting Rights Act is as important today as when first enacted.

During the ten-year period between 1965 and 1975, the Attorney General lodged 404 objections to proposed election law changes.

Since 1975 when Section 5 coverage was expanded geographically, another 411 objections have been lodged. The Justice Department since 1975 has initiated or intervened in 53 Voting Rights Act lawsuits and has been defendant in another 39.

The 1970 and 1975 amendments to the Act expanded pre-clearance provisions to include all or part of 22 states, including portions of California, Connecticut, Massachusetts, Michigan, New Hampshire, and New York.

The pre-clearance requirement properly applies to those areas of the country where there have been the most problems with voting discrimination because of the use of literacy tests and other discriminatory procedures which have resulted in extremely low rates of registration and voter turnout.

We believe the fact that the Attorney General has lodged over 800 Section 5 objections to discriminatory voting law changes in those areas since the enactment of the Act indicates there are still serious problems in those areas covered.

Expansion of the Act to cover all 50 States would not be cost efficient since it is presently estimated that the number of staff needed to handle the increased volume of election law submissions would quadruple. The paperwork alone would be astronomical and would certainly be counter to the present call for less bureaucracy. It would also divert attention and resources from the areas where the problems are most acute.

Let's deal with the cancer, not with the entire body.

I am sure that those who wish to expand Section 5 to cover the entire country are aware that Section 3(c) of the pre-clearance requirement may be imposed in any state or political subdivision not presently covered under Section 5. Section 3(c) may be applied to any state in the country in the event a Federal District Court finds a violation of the 14th or 15th Amendment to the Constitution.

The fact that this provision has seldom been invoked demonstrates that the present coverage of the pre-clearance requirement has been appropriately tailored to meet the need.

Looking at the approximate 35,000 election law changes submitted for federal pre-clearance under Section 5 of the Act and the fact that the Attorney General has objected to about 2 percent, or 815, has resulted in some people suggesting that the Act may no longer be necessary.

In the first place, most state and local governmental units covered by Section 5 are aware of the requirement and are cautious about proposing changes that they know would be objectionable under Section 5.

Section 5 was constructed on the notion that case-by-case litigation was time-consuming and when finally adjudicated, the election is long over.

Were it not for the federal pre-clearance requirement, over 800 lawsuits would have had to be filed by the Justice Department or private plantiffs to obtain relief from discriminatory voting law changes. We believe, therefore, that the cost of enforcing Section 5 is low compared to cost of lawyer time, court time, litigant time and money which litigation to remedy these changes would have required.

We believe that the federal pre-clearance procedure is one of the most simple and expeditious administrative procedures provided by the Federal Government. A covered state or political subdivision must show that voting law changes are not discriminatory in purpose or effect, either to the Attorney General or the District Court for the District of Columbia. For example, when changes are submitted to the Justice Department, there are no forms to fill out and no formal hearings or presentation of witnesses. All the proceedings can be conducted by phone or mail. It is amazing that those proponents of less government are in this instance proposing more red tape and bureaucracy.

In most cases, the covered jurisdictions have chosen to submit the necessary information indicating the non-discriminatory purpose and effect of the change to the Justice Department rather than the District Court for the District of Columbia.

The present staff in the Justice Department, working under the supervision of the Department attorneys, operates efficiently, without backlog.

Since 1965, this nation has taken great strides—we cannot take even one little step backwards. Without the extension of the Voting Rights Act, the Justice Depart-

ment may lose the authority to send federal observers to elections where possible violations are expected.

The 1975 amendment under Section 203, requiring that certain states and local jurisdictions provide assistance in other languages, must be extended in tact. We recognize that in some areas of the nation hostility exists towards Hispanics, Native Americans and other U.S. citizens, resulting in the inadequate enforcement of the bi-lingual election process. On the overall, bi-lingual elections have opened up the process to many first-time voters.

We believe that Section 203 should be extended seven (7) additional years as proposed in this bill, from 1985 to 1992, to insure uniform protection. If the Voting Rights Act provisions are not extended, Blacks, Hispanics, and Native Americans, now registered, would in many cases follow the path of retrogression, for the process of re-registering would be a screening of present registrants through the mill of exclusion. If Congress does not extend the Voting Rights provisions until 1992, this process of exclusion might well go on indefinitely.

On January 28, 1981, Secretary of State Alexander M. Haig, Jr., in a news conference stated, "International terrorism will take the place of human rights in our concern because it is the ultimate of abuse of human rights." He further stated. "It's been my view, human rights is an essential and fundamental aspect of American foreign policy and domestic policy."

The present activities by domestic terorists like the Ku Klux Klan and the American Nazi Party, in reviving racial polarization and violence, make it even more critical that we continue the Voting Rights Act of 1965.

We are sure that every one is familiar with the midnight rides of—not Paul Revere—but the K.K.K. These domestic terrorists have intimidated, beaten and murdered blacks as they attempted to exercise the fundamental rights to register and vote.

Now that the Klan has increased their activities, it would be ill-advised for the Federal Government to back off of its commitment to the citizens the Voting Rights Act was intended to protect.

Any backward move would be a signal to these domestic terrorists to increase those acts of violence that mark their past.

The Voting Rights Act of 1965 is an important, lasting product of the civil rights movement of the sixties. It was through the dreams and blood of such individuals as Dr. Martin Luther King, Jr., leader of the peaceful marches in Selma—President John F. Kennedy—President Lyndon B. Johnson, who submitted the Act proposals to Congress and then signed it into law—Rosa Parks—Viola Liuzzo—and countless others who risked their very lives to ensure the civil rights of others—that 1965 Voting Rights Act became a reality.

It further saddened us to note that during the period from 1960 to the spring of 1965 over 25 Americans, both black and white, died at the hands of domestic terrorists while working for every American's "Civil Rights" in the South.

We cannot afford to remove this safeguard that allows United States citizens to participate fully in our nation's democratic process. This nation is indeed in troubled times, and Congress cannot afford to send any signals to domestic terrorist groups, or others, that the safeguards of the gains as a result of the Voting Rights Act will not be continued intact. We of the UAW believe that the foregoing, together with the other provisions of H.R. 3112, will demonstrate that there can be no compromise with the right to register and vote or with those forces who would deny this right.

Once again, thank you.

TESTIMONY OF MARC STEPP, VICE PRESIDENT, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW, ACCOMPANIED BY DAVID OFFENHEISER

Mr. STEPP. Thank you, Mr. Chairman. I do have with me Mr. David Offenheiser.

Mr. Chairman, I would like to thank the members of the subcommittee for permitting me to appear before you today, as an advocate of House bill 3112, which will extend the Voting Rights Act of 1965. My testimony reflects the consensus of the UAW leadership and membership.

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Based upon a reasonable degree of certainty, we believe that if the act is not extended as proposed, intimidation and retaliation on a large scale will return. We should not forget the northern States also have provisions in their laws which place educational, economical, or other barriers in the paths of those who seek to exercise their constitutional rights.

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We believe that section 203 should be extended 7 additional years as proposed in this bill, from 1985 to 1992, to insure uniform protection. If the Voting Rights Act provisions are not extended, blacks, Hispanics and native Americans, now registered, would in many cases follow the path of retrogression, for the process of reregistering would be a screening present registrants through the mill of exclusion. If Congress does not extend the Voting Rights

Act provisions under 1992, this process of exclusion might well go on indefinitely.

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It further saddens us to note that during the period from 1960 to spring of 1965 over 25 Americans, both black and white, died at the hands of domestic terrorists while working for every American's civil rights in the South.

We cannot afford to remove this safeguard that allows U.S. citizens to participate fully in our Nation's democratic process. This Nation is indeed in troubled times, and Congress cannot afford to send any signals to domestic terrorist groups, or others, that the safeguards of the gains as a result of the Voting Rights Act will not be continued intact.

We of the UAW believe that the foregoing, together with the other provisions of H.R. 3122, will demonstrate that there can be no compromise with the right to register and vote or with those forces who would deny this right.

Once again, thank you.

Mr. EDWARDS. Thank you very much, Mr. Stepp, for very clear and most scholarly and lawyerlike testimony. We appreciate it very much.

Mr. Hyde?

Mr. HYDE. Mr. Chairman, I ask unanimous consent that the committee meeting this afternoon be permitted to be covered in whole or in part by radio broadcast, television broadcast, and/or still photography pursuant to rule 5 of the committee.

Mr. EDWARDS. Is there objection?

[No response.]

Mr. EDWARDS. The Chair hears none; it is so ordered.

The Chair would like to announce that after the July recess which I believe ends around July 7 or 8, in the middle of next month, the subcommittee plans to mark up this piece of legislation and, hopefully, report it to the full committee.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. I also wish to thank you for your very cogent testimony, Mr. Stepp. One of the recurring cries in opposition that we have heard to the reauthorization of section 5, the preclearance section, has been that it places an onus upon the covered States, the covered jurisdictions. And this argument has been made time and time again. But for my purposes, you answer that very, very well on page 7, when you point out that under section 3(c), any jurisdiction can be covered if they go through the process of the district courts and indicate that the same tripping mechanisms which exist in other States to bring about the trends, can also be used there.

I think that is an adequate answer to the argument that they have been singled out. It is true, is it not, sure that those States singled out were done so because of a pattern of conduct stretching over a period of years, and that the States not covered in the main didn't have that pattern, but notwithstanding that, I think Congress was very fair in indicating quite clearly that if anyone resorted to that kind of activity, they could be covered under section 3. And I assumed that is the purport of your comments on page 7.

Mr. STEPP. That is correct, Congressman.

Mr. WASHINGTON. On page 10, another very keen observation you make here, you talk about violence, and you quote Secretary Haig. Are you now, in effect, saying here that if section 5 is not extended it would, in effect, make it more difficult for minorities to be elected in the covered States? Since they could not be adequately elected in those covered States, it would follow that they would have less control over government and less control over police, and consequently, violence might reign again in those covered jurisdictions? Is that your point?

Mr. STEPP. Yes, sir, that is quite our point, Congressman.

Mr. WASHINGTON. It is an excellent point, and I would it would be repeated over and over again, because some people miss the purport. They seem to think that registering and voting is just some esoteric experience one goes through just to call himself a citizen, but it has very practical results, very practical manifestations, and one is to control the machinery of government that controls violence, that can see that city services are given, et cetera, et cetera, and that is a very good point. And I am glad you brought it to our attention, Mr. Stepp.

Mr. STEPP. Thank you.

Mr. WASHINGTON. I yield the balance of my time.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. If I may impose on the subcommittee to briefly—let me say that I have no questions of this witness. His statement was very cogent and complete. And I have no questions, if he wishes to be on his way.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. I would like to commend the witness on his statement. I have no questions, and I understand you are off to the airport.

Mr. EDWARDS. Thank you very much.

Mr. STEPP. Thank you very much.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you very much, Mr. Chairman. Last week I introduced H.R. 3948, the bill designed to create a bailout system for jurisdictions covered under the Voting Rights Act and extend the section 5 provisions in place indefinitely. Controversy has developed over the language contained in section 5 of my bill. Majority counsel believes it might alter existing section 5 by affecting the types of submissions sent to Washington.

Legisative counsel who drafted the bill believes no such effect would occur.

In order to avoid misunderstanding, I intend at the appropriate time to offer a technical amendment striking section 5 of my bill, thereby retaining without change, section 5 of the Voting Rights Act. It is not my intention to alter in any way the obligations section 5 requires from covered jurisdictions. I am informed that the language in section 5 of my bill was included for purposes of drafting clarity. Unfortunately, it has had the opposite result.

I will, therefore, move to strike it during subcommittee markup.

Mr. Chairman, on Wednesday, June 10, 1981, the Subcommittee heard testimony by the Honorable Daniel R. McLeod, attorney general of the State of South Carolina. During the question and answer period I expressed my very deep concern for the fact that the South Carolina Senate, though it represents a black population of nearly 950,000, has no blacks among its 46 members.

Mr. McLeod, in response to a question I asked about the way senatorial districts were drawn, responded that the South Carolina reapportionment decisions had been litigated and upheld in *Morris* v. *Klinger.* I have since discovered that the correct title of the case is *Morris* v. *Gressette,* 432 U.S. 491(1977) and that the South Carolina reapportionment decisions were indeed upheld, though not on the merits, as Mr. McLeod suggested.

As you know, Mr. Chairman, section 5 requires that the Attorney General object within a 60-day period or whatever the State and local jurisdiction passes with regard to elections goes into effect. Section 5 does not require an affirmative statement by the Attorney General that the relevant change is without racially discriminatory purpose or effect.

In *Morris* v. *Gressette,* a reapportionment plan for the South Carolina Senate was enacted into law on May 6, 1972, and because it had been consolidated with a previous plan tried in the District Court for the District of South Carolina, it was filed with that court and submitted to the U.S. Attorney General on May 12 for preclearance under section 5. On June 30, over a month later, the Attorney General notified South Carolina that he would interpose no objection to the plan but rather would defer to whatever the District Court for the District of South Carolina decided.

His failure to object was challenged in a suit brought in the District Court for the District of Columbia and the Attorney General, in response, stated that in his view the South Carolina reappor-

tionment plan was unconstitutional but that he would not interpose an objection in deference to the ruling of the District Court for the District of South Carolina.

On July 19, 1973, more than 60 days following the original submission under section 5, the District of Columbia District Court directed the Attorney General to consider the plan without regard to the South Carolina District Court's decision, and the next day, July 20, the Attorney General interposed an objection to the plan. The title of the District of Columbia case is *Harper* v. *Kleindienst.* Mr. McLeod also makes reference to it in his testimony.

The Supreme Court reviewed the Attorney General's right to make an objection after the expiration of the statutory 60-day period. In so doing, it once again noted, as I have done throughout these hearings, that the section 5 remedy is an "unusual" and "severe" procedure and that compliance with it is measured "solely by the absence," for whatever reason, of a timely objection on the part of the Attorney General.

The Court went on to hold that the Attorney General's objection in *Morris* v. *Gressette* was untimely and therefore procedurally invalid.

Having read the transcript of our June 10 hearing, I noted the concerns of my colleague from Illinois, Mr. Washington, that Mr. McLeod's recollection of the *Morris* case was somewhat different from his. I hope this clarification will be of assistance to him and the membership of the subcommittee.

Thank you, Mr. Chairman.

Mr. WASHINGTON. Mr. Chairman.

Mr. EDWARDS. The gentleman from Illinois.

Mr. WASHINGTON. I wonder if Mr. Hyde might make a copy of that available. I might want to respond for the record.

Mr. EDWARDS. We will have to recess for about 10 minutes, because there is a vote in the House of Representatives, after which time we will have the great pleasure and honor of hearing from Coretta Scott King and Geraldine Thompson. We'll move right along.

[Recess.]

Mr. EDWARDS. The subcommitee will come to order.

It is our pleasure now to hear from Mrs. Coretta Scott King, who is president of the King Center in Atlanta, Ga., and, of course, one of America's leading advocates and champions of civil rights.

And accompanying Mrs. Coretta Scott King is Ms. Geraldine Thompson. Ms. Thompson is the executive director of the voter education project in Atlanta, Ga.

And before you begin your testimony, I would yield to the gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Yes. Mrs. King, I want to join the chairman, with gusto, in welcoming you before this committee, not just because of the greatness of your late husband, who was greatly responsible for the passage of the Voting Rights Act, but also because, in your own right, you have shown a continuing interest to the whole gambit of human rights.

At this time, we need your voice, we need your cogent arguments, we need your presence, we need your credibility in this country to let people know that this act, perhaps above any other,

must be continued for the good of the country, not just for black people or Spanish people. But unless these people are brought into the mainstream of the whole electoral process, the country is not only a sham and a joke, but there will be trouble.

So, I welcome you here today. I know you've been here more times than I have, but it is a pleasure to see you here.

Thank you very much.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I associate myself with the remarks of my two colleagues. Mrs. King, what you have to say will be important and will be influential. And I, too, welcome you.

Mr. EDWARDS. You may proceed.

[The prepared statement of Coretta Scott King follows:]

PREPARED STATEMENT OF CORETTA SCOTT KING ON EXTENSION OF THE VOTING RIGHTS ACT OF 1965

Mr. Chairman, your distinguished colleagues, I am honored to testify in behalf of the extension of the Voting Rights Act of 1965.

More than any other piece of legislation in the history of the Nation, the Voting Rights Act of 1965 stands as a monument to America's commitment to genuine democracy. Although this Nation was founded on the sacred promise of democracy, and although the fifteenth amendment to the Constitution promised to extend the franchise to people of all races, until 1965, democracy was just another broken promise to America's black citizens.

Except for a brief interlude during the "reconstruction" period of the 1870's, Black Americans had not been permitted to freely exercise their democratic rights until the Voting Rights Act of 1965 was passed. In fact, the experience of reconstruction is a good illustration of how fragile hard-won gains can be without a solid legislative guarantee. That is why the minority leadership of this country are virtually unanimous on extending the Voting Rights Act with key provisions intact and that is why this legislation is vitally important to the future of democracy in the United States.

In a word, extending the Voting Rights Act means everything to minorities who want to be a part of the political life of this Nation.

Mr. Chairman, I am aware that there is a proposal which would eliminate section 5 of the Voting Rights Act, the "preclearance" provision. In my opinion this would be a national tragedy and make a mockery out of one of the most important laws in American history. Any proposal which eliminates or in any way weakens section 5 of the Voting Rights Act will have the effect of rendering this legislation meaningless.

This is because section 5 is really the heart of this historic legislation. As you know, one of the effects of the Voting Rights Act has been the virtual elimination of the shameful practices of literacy tests and requiring poll taxes in elections in the United States. This is a great victory for democracy. These, however, are only the most crude forms of discrimination which have been employed to deny minority citizens their voting rights.

In their wisdom, the authors of the Voting Rights Act of 1965 anticipated the use of increasingly sophisticated devices that would be used to prevent minorities from voting. As the testimony submitted to this committee so clearly illustrates, they were absolutely right. These devices include: At-large elections; racial gerrymandering; changing polling places; and annexation to dilute minority votes.

By requiring Federal review of proposed election law changes, section 5, more than any other provision of the Voting Rights Act of 1965, enforces the 15th amendment to the Constitution. I can not agree with those who say that section 5 is unfair in its application or that it labels certain States as "racist." This is nonsense. The nine States and scores of localities around the Nation are required to obtain preclearance because they have a history of abusive and discriminatory election practices. These are also precisely the States which have the highest proportion of potential minority voters, so it comes as no surprise that preclearance is required.

Mr. Chairman, a succession of distinguished witnesses have appeared before this committee to show why preclearance is desperately needed. In addition, it is a matter of record that the Justice Department has objected to some 800 preclearance

requests since the Voting Rights Act was signed in 1965. Fully half of these proposed changes in local election laws have been blocked. Yet, even if this occurred only once, instead of four hundred times, the preclearance requirement is worthwhile. Free exercise of voting rights are so fundamental to American democracy that we can tolerate no incidents of tampering with elections.

As it happens, the Justice Department has objected to more election proposals in my home State of Georgia than in any other State. Over the years, proposed election changes in Georgia have been challenged by the Justice Department 225 times, out of a total of 811 for the entire Nation. I think Professor Sherman, in his testimony before this committee, showed quite clearly exactly how voter discrimination works in Georgia and other areas subject to preclearance.

Mr. Chairman, the preclearance requirement is the most simple and cost-effective way to insure that the spirit and intent of the fifteenth amendment to the Constitution is honored. In an age when Americans are becoming increasingly concerned about the costs and paperwork of the business of government, section 5 of the Voting Rights Act has saved the taxpayer enormous sums in costly litigation and court backlogs. There can be no question that this is the most inexpensive approach to challenging abuses of voting rights.

In the years since the Voting Rights Act was passed, Black Americans have made impressive progress in the area of political representation. The number of Blacks registered to vote in key Southern States has doubled since 1965. This would not have been possible without the Voting Rights Act. Equally, registration of Hispanic citizens has increased thirty percent since 1975 when Congress strengthened the act by adding provisions for bilingual materials and assistance.

We still have a long way to go, however, before we can say that minorities need no longer be concerned about discrimination at the polls. Blacks, Hispanics, Native Americans and Asian Americans are grossly under-represented at every level of government in America. If we are going to make our timeless dream of justice through democracy a reality, the Voting Rights Act must not be weakened. It must be strengthened and extended until all Americans achieve fair representation in Government.

I therefore strongly support the legislation providing for extension of the Voting Rights Act introduced by Chairman Rodino in the House and the identical versions introduced by Senators Kennedy and Mathias in the United States Senate. This legislation will extend to 1992 the provisions of the Voting Rights Act, including section 5, the preclearance provision.

In closing, Mr. Chairman, let me just say that I was privileged to join my husband, Martin Luther King, Jr. during the Selma to Montgomery march for voting rights in 1965, which resulted in the legislation we are discussing today. As the parents of four young children, we were often cautious about marching together for security reasons. But voting rights was of such great importance that we decided to march together. If necessary, I'm ready to march again because genuine voting rights for Americans of all races and ethnic groups is really the heart and soul of the American dream.

TESTIMONY OF CORETTA SCOTT KING, PRESIDENT, THE KING CENTER, ATLANTA, GA.

Mrs. KING. Thank you, Mr. Chairman and your distinguished colleagues, Mr. Washington and Mr. Hyde.

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tive guarantee. That is why the minority leadership of this country are virtually unanimous on extending the Voting Rights Act with key provisions intact, and that is why this legislation is vitally important to the future of democracy in the United States.

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Thank you.

Mr. EDWARDS. Thank you very much, Mrs. King, for excellent testimony. And it is most helpful to the committee.

Mr. Washington.

Mr. WASHINGTON. I pass at this time, Mr. Chairman.

Mr. EDWARDS. Mr. Hyde.

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

Mr. EDWARDS. Mr. Lungren.

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

Mr. EDWARDS. Mr. Washington.

Mr. WASHINGTON. Yes, Mrs. King, this act has been described as the most successful civil rights act that we have passed in this

country. And that may well be true. But in our hearings in Montgomery, it was pretty clear that a lot had to be done. The horror stories go on and on and on, not just violations of the section 5 preclearance section, which terminates next year, but the rest of the act, which is permanent. For example, a violation of the secret ballot; changing voting places without notice; registrars being exclusively Caucasian, to the detriment of blacks; having registration—voting in people's homes which are inconvenient and which place many blacks in a tremendously negative psychological position. This goes on and on and on and on.

So, notwithstanding the fact that the act has been successful in terms of registration and need, and even the election of black officials, there is a lot to be done. I am certain, with your closeness to the South, that you could probably multiply those horror stories by the thousands.

Would you embellish on that point, please?

Mrs. KING. Having lived in the South in my early years and returning to the South in 1954, and having lived there continuously since that time, I was hoping that somehow by this time that this would not even be an issue, the right to vote, that blacks and other minorities would have all been registered and would all be voting freely. But this is just not the case.

In many of the rural communities in the South—and I heard of a situation not too long ago, that some friends reported, that a teacher was involved in a community where she had been working to get blacks registered. And as a result of her activities, she had been fired from her position. We were told that this needed to be looked into because this particular person had been so intimidated that she was not in a position to reach out to anyone. We did have someone to check on it and found that this is still true, that intimidations—people are harassed, they are fired from their positions as a result of just trying to work in the community to get people registered to vote. Some people are so intimidated that they don't even try. And so that somehow we have got to create a climate in which people are no longer afraid, that they know they can register freely and that they will not be penalized for what is, I think, the most basic right, the right to vote.

And it just seems such a tragedy that we have to spend large sums of money working in communities across the nation, across the South, in particular where I live, trying to educate people to the importance of this right, because it is so hard for them to find out information about voting. It is still not enough—I mean, it shouldn't be that difficult.

I would hope the time would come, if I might say, that we would use a much simpler method. It just seems—even though we are trying to get this extended for another 10 years—but the fact is that, by virtue of being born a citizen, one should have the right to vote. And there should be some process that is very, very simple to almost automatically register people. And that is what would happen.

Mr. WASHINGTON. We both do. And we haven't reached that point. And that is why it is necessary that we continue along this route.

Mrs. KING. That's right. Since we haven't reached that point, it is extremely necessary that we have this protection and this guarantee that this piece of legislation offers.

Mr. WASHINGTON. Thank you, Mrs. King.

Mr. EDWARDS. Miss Thompson, you may proceed.

TESTIMONY OF GERALDINE THOMPSON, EXECUTIVE DIRECTOR, VOTER EDUCATION PROJECT, ATLANTA, GA.

Ms. THOMPSON. Thank you, Mr. Chairman and members of the subcommittee for the opportunity to participate in these hearings on the Voting Rights Act. The views I express today are based on the experience of the Voter Education Project, Inc., which is a nonpartisan organization active in 11 Southern States from Virginia to Texas, that has worked with more than 1,700 local groups since its inception.

It is the oldest organization whose sole purpose has been to advance voter education, registration and participation. During 19 years of existence, VEP has sponsored or conducted voter registration drives, political research, technical assistance programs, and educational programs/campaigns to achieve full participation by all Americans in our Nation's political system. As a result of our intricate work in the voting rights field, I come today to state emphatically that VEP finds the Voting Rights Act to be the most effective piece of civil rights legislation ever passed and, therefore, supports and will vigorously work for its reauthorization.

Before the Voting Rights Act was adopted, black registration was very low throughout the south. In Mississippi, an estimated 7 percent of the black population was registered; in Alabama, 23 percent; in Virginia, 29 percent; and in Louisiana, 32 percent. About 41 percent of the area's voting age blacks were registered as compared with 63 percent of the white voting age population.

Today 58 percent of the black southern voting age population is registered, as compared with 80 percent of the white voting age population. This resulted from an elevenfold increase in the number of black registrants in Mississippi, or an increase of 1,138 percent, and increases of more than 100 percent in the other States. Despite these gains, it should be noted that black registration is still more than 20 percent lower than white registration.

Just before the act was adopted, the number of southern black elected officials was estimated to be less than 100. Today there are over 2,400. This is a dramatic increase; however, it should not be allowed to obscure how far we are from fair representation. For example, the two black U.S. Congressmen from the South represent only 2 percent of the area's representatives. Only 3 percent of the area's State senators and 8 percent of the State representatives are black. Blacks make up 5 percent of the members of county governing boards and less than 1 percent of these boards has a black majority. Of the area's mayors, 3 percent are blacks. These actual percentages of black elected officials show that race is still an overwhelming factor in southern politics.

These gains in registration and in the number of elected officials, though few, would not have been possible without the Voting Rights Act. The experiences VEP has had in connection with these gains show unequivocally that the extension of the Voting Rights

Act, and especially section 5, is the only hope of further gains being made and is the only available instrument that will preserve those gains made in the past.

The preclearance provision of section 5 is the essential protector of gains already made and the instrument for further progress in minority political rights. It prevents State and local governments from evading the consequences of a law being found unconstitutional by merely passing another law to achieve the same effect. It also has a chilling effect upon the resistance State and local governments have demonstrated toward attempts by minorities to exercise their political rights.

Even with the act many changes are not reported as required, as you have heard in numerous testimonies in hearing prior to this; and even when the local officials are notified of lack of compliance, some persist in their defiance of the law which, by the way, can be done with apparent impunity since there is no instance of such an official being convicted of violating the act.

Hence, it would be naive to assume that without this provision, Southern State and local governments would not do what they have always done when free to treat minorities as they wished; that is, find tests and devices, both simple-minded and sophisticated, to eliminate or render meaningless the practical exercise of political rights by blacks and other minorities.

A further benefit of section 5 is that it provides a central location for the receipt and storage of these proposed changes in election laws and procedures. This makes enforcement of the act feasible, whereas without this provision it would be necessary to inspect the election laws and procedures of each of the political subdivisions covered by the act.

The argument most frequently used against the extension of the act's special provisions is that an unfair burden is placed upon State and local government administrators who must send in notices of proposed changes in election laws, and that this burden outweighs the benefits to be gained from the act.

Political subdivisions already are required to notify their citizens of proposed changes in election laws, therefore it takes little more effort to include a notification to the Justice Department. The so-called burden of preclearance is usually a light one involving little more effort than is required to notify their citizens. Numerous precedents are available to guide compliance with preclearance reporting.

In virtually every case, covered jurisdictions can be told prior to formal submission whether or not a change will be approved. The staff in the attorney general's office very freely gives assistance both in filling out the necessary forms and in answering questions about possible problems that they might have with the proposed change.

If the attorney general does not render a decision after 60 days, the change is automatically permitted; however, the attorney general may exercise an option to extend the decisionmaking period by another 60 days. Whether 60 or 120 days, the time and costs involved are minuscule when counterbalanced or compared to the increased minority participation in the electoral process.

It is difficult to put a value on increased voter participation, but surely those who value democratic ideals, such as yourselves, must conclude that the facilitation of voter rights should more than outweigh the minor administrative costs. Further, it should be noted that absent the act, other costs would arise; the costs of litigation to be borne by the victims of insidious changes together with the possible costs which would follow widespread disillusionment when minorities are faced with the prospect of seeking meaningful change through the courts, which could mean months, even years of delay.

Some opponents of the act argue that the coverage should be national so that the South is not unfairly singled out. This confuses the purposes and application of the act. Coverage is based upon a history of discrimination by State or local governments against the blacks and other minority groups exercising their voting rights. More States outside the Confederate South are covered wholly or in part than States within the Confederate South. Extended coverage would either add to the costs of administration or stretch the current resources so that a good job could not be done in the areas that really need coverage. Such a move can only serve to weaken or destroy the act.

Discrimination is alive and well in the Deep South as is shown in a recent publication of ours entitled "Barriers to Effective Participation in Electoral Politics." In that report is listed most of the known barriers to full minority participation.

A few examples are: Inconvenient and/or irregular times for registration; inconvenient locations for registration; inadequate number of minority poll watchers; inadequate number of assistants for illiterates; lack of bilingual materials for non-English-speaking citizens; misuse of absentee ballots; inadequate cooperation with candidates by election officials about requirements for qualification; expensive filing fees; restrictions on third party or independent candidates; minority candidates' poll watchers not being allowed to challenge ineligible voters, point out and correct errors in the election operations, or to be present at the counting of the ballots; eliminating an office or changing it from elective to appointive, when it appears that it may be won by a minority candidate in the near future; gerrymandering, drawing election district boundaries so that the number of election districts which could probably be won by minorities is reduced; requirements that a majority rather than a plurality is required to win an election; separation of one electoral contest into a number of individual contests to the disadvantage of minorities, including elections for single posts or multimember districts, at-large voting for district positions, staggered terms of office, reducing the number of seats for a given office, which increases the number of votes required to get elected to that office; extending the terms of nonminority incumbents to delay minority election to office; and inequitable redistricting and reapportionment following census reports.

Along with these other barriers to full political participation are reports of increased Klan and Nazi activity and of terrorism directed against blacks and other minorities. Persons wearing three-piece suits rather than white sheets, using less blatant forms of economic and political intimidation, are hard at work to minimize the fruits

of this act and preparing to turn back the clock as soon as the act is weakened or terminated.

We should never forget what happened in the South a century ago when the political rights initiated and mandated by congressional interest and protection, including the Civil War amendments and the ERA's strong civil rights legislation, were so reduced and abridged after congressional interest and protection waned as to make government in the South a cruel and terrible mockery of democratic ideals and values. Never again.

Weakening the act would be a clear signal to those State and local officials who seek ways to continue and intensify their efforts to ignore and evade the constitutional amendments and congressional legislation which guarantee—at least on paper—the political rights which the act made a reality. It would also inadvertently provide a certain acceptability to what has been done by those outside of government whose sole intention is to hinder minority participation and would abet their more extreme measures.

The hope provided by the act of peaceful progress within the established institutions of the South will turn to despair. Committed as we are to democratic processes, VEP would deplore the consequences that would be experienced in the South and this great Nation as a whole, if this act is terminated or weakened.

I implore you, therefore, to not just stand at the helm of the ship and watch minorities tread in the dark waters of the deep, without throwing out the lifeline to save the political gains that have been made and can be made through extending the Voting Rights Act and all its provisions to 1992.

Mr. EDWARDS. Thank you very much, Ms. Thompson, for very helpful testimony, and obviously well documented.

Mr. Washington?

Mr. WASHINGTON. Yes. Ms. Thompson, this is an extremely powerful statement and I think you point out something on page 8 that we all should be very aware of, and that is that the historical comparison between the Reconstruction period and what might happen now is something we should think very strongly about. And I want to thank you. I would yield.

Mr. EDWARDS. Mr. Hyde?

Mr. HYDE. I have no questions, thank you.

Mr. EDWARDS. Mr. Lungren?

Mr. LUNGREN. Thank you, Mr. Chairman.

Ms. Thompson, I would also like to thank you for your persuasive testimony and hopefully direct one line of inquiry where you may be able to be of some assistance to me, particularly, and that is as one who does believe the Voting Rights Act has done a tremendous amount of good for the entire country and one who believes that if States are to come out from under the preclearance requirements they have a very heavy burden to prove to convince Members of Congress that is so. What indices do you think we ought to use to make that determination?

In other words, you have given us a number of illustrations of how black voters and public officials are doing far better now than before the bill. But you have also given us some litany of abuses that have still occurred. And you have suggested that that litany of abuses indicates that without the power of this law, and I take it

that means the preclearance provision of section 5, it would be naive to assume that Southern State and local governments would not do what they have always done when free to treat minorities as they wish. And then indicated about how they have mistreated minorities with respect to electoral votes.

I guess my bottom line is this: Do you see any hope for improvement in terms of the individuals involved? Or is this going to be a mechanism we are have to have in place permanently?

Ms. THOMPSON. I would like to say that it is an impossibility for me to speak to the permanence of this. I would like to see the Voting Rights Act permanent, simply because it is a covering, so to speak, to those who have felt intimidated through the years. It is hard to simply wash away intimidation. Intimidation is an attitude, an attitude of those who are, in fact, intimidating and it is an attitude that is assumed by those who are intimidated.

Those who have experienced intimidation and have been on the receiving end for years need something to hold onto, and I feel that the Voting Rights Act is something for us to hold onto. Those who have been intimidating, those who have been giving out the acts of intimidation through the years, need to know that when one has knowledge of action that can be taken, when one can appeal to a higher body that would have a listening ear, that in fact they will take a lesser amount of action than they have in the past.

Now, we know that hatred and prejudice cannot be something that will be dealt with in 5 years, 10 years, 25 years, or 30 years. It is something that is imbedded in the hearts of each and every individual. The degree of that hatred or prejudice differs by individual.

I am not saying that the Voting Rights Act will address that, but it certainly will substantially decrease the kinds of intimidating actions that have occurred through the years. I can't say that it will cut it out completely; no, I doubt that it will ever be completely cut out because people will always find a way to cover their actions, to very carefully move around situations and try to come up with other insidious devices to deal with what they consider problems. And in many instances, minority participation is a problem that looms in the minds of those that are doing the hating or the intimidating.

So the bottom line is that I would like to see the Voting Rights Act permanent, because there is a need for that covering, a need for a sense of security, a sense that the government does care, the Federal Government does care, and that citizens do have a right to appeal to a higher body for assistance when there is the need.

If there is no one to appeal to, if there is going to be a need for excessive expenditure of funds, then that will discourage people from even reporting that such acts of intimidation have occurred.

Mr. LUNGREN. Well, I guess the question—maybe I didn't frame my question very well. I guess what I am trying to ask is this: I am an outsider from California and have observed this since childhood, and one of those who saw the civil rights movement, in my own way supported it and thought that I was empathetic with it. People in my area of the country don't have a higher authority to appeal to, and yet we have created one in the South because of historical precedent, obvious historical precedent.

But I would just hope that we wouldn't be so pessimistic as to assume that people who happen to be in the South are forever going to be more evil than those of us elsewhere, in terms of allowing voting rights for minorities.

And what I am trying to grasp at is what sort of indications do you think we ought to look at, to show us that progress has been made for hope that maybe the imposition of preclearance and the stigma attached—that is, the assumption that otherwise people would do evil—could ever be eliminated. I mean, are you telling me there is no hope in that regard?

Ms. THOMPSON. No; I am not saying that. I am saying that when it gets to the point when you don't have any additional complaints in that particular community, then perhaps it would be appropriate for Congress to look at the possibility of dealing with that locale in a reasonable fashion.

Actually, I would like very much to give some very careful thought to this particular question and submit to the committee in writing recommendations.

Mr. LUNGREN. I would appreciate it.

Ms. THOMPSON. When you talk about indices, I really think it's the responsibility of the body making the final decision to recommend the indices that would be used in making such judgment. I would be very happy to make recommendations to you, and I would like to do that in writing.

Mr. EDWARDS. Without objection, it will be received and made a part of the record.

[The prepared statement of Geraldine G. Thompson and a Voter Education Project report follow:]

PREPARED STATEMENT OF GERALDINE G. THOMPSON, EXECUTIVE DIRECTOR, VOTER EDUCATION PROJECT, INC.

Thank you, Mr. Chairman and members of the subcommittee for the opportunity to participate in these hearings on the Voting Rights Act.

The views I express today are based on the experience of the Voter Education Project, Inc. (VEP), which is a nonpartisan organization active in eleven southern states from Virginia to Texas that has worked with more than 1,700 local groups since its inception in 1962.

It is the oldest organization whose sole purpose has been to advance voter education, registration and participation. During 19 years of existence, VEP has sponsored or conducted voter registration drives, political research, technical assistance programs and educational programs/campaigns to achieve full participation by all Americans in our nation's political system. As a result of our intricate work in the voting rights field, I come today to state emphatically that VEP finds the Voting Rights Act to be the most effective piece of civil rights legislation ever passed and, therefore, supports and will vigorously work for its reauthorization.

BLACK REGISTRATION INCREASES

Before the Voting Rights Act was adopted, black registration was very low throughout the south. In Mississippi an estimated seven percent of the black population was registered; in Alabama, 23 percent; in Virginia, 29 percent; and in Louisiana, 32 percent. About 41 percent of the area's voting age blacks were registered as compared with 63 percent of the white voting age population.

Today, 58 percent of the black southern voting age population is registered as compared with 80 percent of the white voting age population. This resulted from an elevenfold increase in the number of black registrants in Mississippi (or an increase of 1,138 percent); and increases of more than 100 percent in the other states. Despite these gains, it should be noted that black registration is still more than 20 percent lower than white registration.

CHANGE IN NUMBER OF BLACK ELECTED OFFICIALS

Just before the act was adopted the number of southern black elected officials was estimated to be less than 100. Today, there are over 2,400. This is a dramatic increase; however, it should not be allowed to obscure how far we are from fair representation. For example, the two black U.S. Congressmen from the South represent only 2 percent of the area's representatives. Only 3 percent of the area's state Senators and 8 percent of the state representatives are black. Blacks make up 5 percent of the members of county governing boards and less than 1 percent of these boards has a black majority. Three percent of the area's mayors are blacks. These actual percentages of black elected officials show that race is still an overwhelming factor in southern politics.

These gains in registration and in the number of elected officials, though few, would not have been possible without the Voting Rights Act. The experiences VEP has had in connection with these gains show unequivocally that the extension of the Voting Rights Act, and especially section 5, is the only hope of further gains being made and is the only available instrument that will preserve those gains made in the past.

SECTION 5

The preclearance provision of section 5 is the essential protector of gains already made and the instrument for further progress in minority political rights. It prevents states and local governments from evading the consequences of a law being found unconstitutional by merely passing another law to achieve the same effect. It also has a chilling effect upon the resistance state and local governments have demonstrated toward attempts by minorities to exercise their political rights. Even with the act many changes are not reported as required, as you have heard in numerous testimonies in hearings prior to this, and even when the local officials are notified of lack of compliance some persist in their defiance of the law which, by the way, can be done in apparent impunity since there is no instance of such an official being convicted of violating the act. Hence, it would be naive to assume that without this provision, southern state and local governments would not do what they have always done when free to treat minorities as they wished; e.g., find tests and devices, both simple-minded and sophisticated, to eliminate or render meaningless, the practical exercise of political rights by blacks and other minorities.

A further benefit of section 5 is that it provides a central location for the receipt and storage of these proposed changes in election laws and procedures. This makes enforcement of the act feasible, whereas without this provision it would be necessary to inspect the election laws and procedures of each of the political subdivisions covered by the act.

THE EASE OF PRECLEARANCE REPORTING

The argument most frequently used against the extension of the act's special provisions is that an unfair burden is placed upon state and local government administrators who must send in notices of proposed changes in election laws, and that this burden outweighs the benefits to be gained from the act.

Political subdivisions already are required to notify their citizens of proposed changes in election laws, therefore it takes little more effort to include a notification to the Justice Department. The so-called burden of preclearance is usually a light one involving little more effort than is required to notify their citizens. Numerous precedents are available to guide compliance with preclearance reporting. In virtually every case, covered jurisdictions can be told prior to formal submission whether or not a change will be approved. The staff in the Attorney General's Office very freely gives assistance both in filling out the necessary forms and in answering questions about possible problems that they might have with the proposed change. If the Attorney General does not render a decision after 60 days the change is automatically permitted; however, the Attorney General may exercise an option to extend the decisionmaking period by another 60 days. Whether 60 or 120 days, the time and costs involved are miniscule when counterbalanced or compared to the increased minority participation in the electoral process.

It is difficult to put a value on increased voter participation, but surely those who value democratic ideals, such as yourselves, must conclude that the facilitation of voter rights should more than outweigh the minor administrative costs involved. Further, it should be noted that absent the act, other costs would arise: the costs of litigation to be borne by the victims of insidious changes together with the possible costs which would follow widespread disillusionment when minorities are faced with

the prospect of seeking meaningful change through the courts, which could mean months, even years of delay.

NATIONWIDE EXTENSION

Some opponents of the act argue that the coverage should be national so that the South is not unfairly singled out. This confuses the purposes and application of the act. Coverage is based upon a history of discrimination by state or local governments against the blacks and other minority groups exercising their political rights. More states outside the Confederate South are covered wholly or in part than states within the Confederate South. Extended coverage would either add to the costs of administration or stretch the current resources so that a good job could not be done in the areas that really need coverage. Such a move can only serve to weaken or destroy the act.

CLOSING STATEMENT

Discrimination is alive and well in the Deep South as is shown in a recent publication of ours entitled "Barriers to Effective Participation in Electoral Politics." In that report is listed most of the known barriers to full minority participation. A few examples are:

1. Inconvenient and/or irregular times for registration;
2. Inconvenient locations for registration;
3. Inadequate number of minority poll watchers;
4. Inadequate number of assistants for illiterates;
5. Lack of bilingual materials for non-English speaking citizens;
6. Misuse of absentee ballots;
7. Inadequate cooperation with candidates by election officials about requirements for qualification;
8. Expensive filing fees;
9. Restrictions on third party or independent candidates;
10. Minority candidates' poll watchers not being allowed to challenge ineligible voters, point out and correct errors in the election operation, or to be present at the counting of the ballots;
11. Eliminating an office or changing it from elective to appointive when it appears that it will be won by a minority candidate in the near future;
12. "Gerrymandering": drawing election district boundaries so that the number of election districts which could probably be won by minorities is reduced;
13. Requirements that a majority rather than a plurality is required to win an election;
14. Separation of one electoral contest into a number of individual contests to the disadvantage of minorities, including:
(A) Elections for single posts or multimember districts,
(B) At-large voting for district positions,
(C) Staggered terms of office,
(D) Reducing the number of seats for a given office (which increases the number of votes required to get elected to that office);
15. Extending the terms of nonminority incumbents (to delay minority election to the office); and
16. Inequitable redistricting and reapportionment following census reports.

Along with these and other barriers to full political participation are reports of increased Klan and Nazi activity and of terrorism directed against blacks and other minorities. Persons wearing three-piece suits rather than white sheets, using less blatant forms of economic and political intimidation, are hard at work to minimize the fruits of this act and preparing to turn back the clock as soon as the act is weakened or terminated. We should never forget what happened in the South a century ago when the political rights initiated and maintained by congressional interest and protection, including the Civil War amendments and the ERA's strong civil rights legislation, were so reduced and abridged after congressional interest and protection waned as to make government in the south a Cruel and terrible mockery of democratic ideals and values. Never Again.

Weakening the act would be a clear signal to those state and local officials who seek ways to continue and intensify their efforts to ignore and evade the constitutional amendments and congressional legislation which guarantee—at least on paper—the political rights which the act made a reality. It would also inadvertently provide a certain acceptability to what has been done by those outside of government whose sole intention is to hinder minority participation and would abet their more extreme measures. The hope provided by the act of peaceful progress within

the established institutions of the South will turn to despair. Committed as we are to democratic processes, VEP would deplore the consequences that would be experienced in the South and this great nation as a whole if this act is terminated or weakened.

I implore you, therefore, to not just stand at the helm of the ship and watch minorities tread in the dark waters of the deep, without throwing out the lifeline to save the political gains that have been made and can be made through extending the Voting Rights Act and all its provisions to 1992.

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BARRIERS TO EFFECTIVE PARTICIPATION IN ELECTORAL PROCESSES

by

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BARRIERS TO EFFECTIVE PARTICIPATION IN ELECTORAL PROCESSES

Blacks and other minorities historically faced a number of barriers in their attempts to use their voting potential to attain a better life. These barriers involved the following electoral processes:

A. registration

B. voting

C. candidacy

D. physical and economic intimidation

E. fair representation

F. effective representation

Some of these barriers may apply to your community, while others may not; and there may be barriers which do apply t your community which do not appear on the list. And some barriers may have applied before the Voting Rights Act of 1965, but do not now apply--although they might come to be applied to your community in the event that the Voting Rights Act is not extended in 1982. The following details these barriers to effective electoral participation.

Registration

The South has a long history of tests and devices used to exclude blacks and other minorities from registration. The Voting Rights Act of 1965 resulted in the elimination of some of these tests and devices, at least while the Act is in effect. The Act also has a chilling effect upon efforts to create and implement new tests and devices to disfranchise

blacks and other minorities. The following barriers to registration are often found even while the Act is in effect:

1. lack of interest and of affirmative attempts to register voters by registration officials
2. inconvenient and/or irregular times for registration
3. inconvenient locations for registration
4. purging and re-registration practices which disadvantage minorities
5. inadequate number of minority registration personnel
6. inadequate information about registration policies and procedures
7. physical, economic, and other forms of intimidation

Voting

Registration does not necessarily mean voting. Efforts have been made to prevent or discourage registrants from voting and to make their votes less effective. These efforts include the following which are found while the Act is still in effect:

1. lack of interest and of affirmative attempts to encourage minority voting by election officials
2. failure to locate registrants' names on precinct lists and/or questionable challenges of right to vote
3. inconvenient locations of polls, including locations where minorities feel unwelcome or uncomfortable
4. inadequate number of minority election personnel
5. inadequate number of minority poll watchers
6. inadequate number of assistants for illiterates
7. lack of bilingual materials for non-English-speakers
8. misuse of absentee ballots
9. inadequacy of voting facilities

10. inadequate information about the location of the polls and the area served by each poll

11. physical, economic, and other forms of intimidation

Candidacy

Potential minority candidates are more likely to be inexperienced in politics and in the laws, policies, and practices involved in becoming a candidate and in the process of campaigning. They are also less likely to have the good will and cooperation of the officials involved. The following barriers to candidacy have been found:

1. lack of interest and affirmative attempts to encourage candidacy of minorities by election (and other) officials

2. inadequate cooperation with candidates by election officials about requirements for qualification

3. expensive filing fees (minorities are often poor)

4. restrictions on third party or independent candidates

5. the way candidates are listed on the ballot

6. inadequate knowledge of opposing candidates

7. inadequate knowledge of registered voters

8. regulations and the inequitable enforcement of regulations which disadvantages minority candidates, including the access to voters on election day at the polls and the removal of only minority candidates' campaign posters by officials

9. minority candidates' poll watchers not allowed to challenge ineligible voters, point out and correct errors in the election operations, or to be present at the counting of the ballots

10. the climate in many southern communities which prevents black and other minority candidates from being invited to campaign before business, political, and other organizations in the white community--and to whom non-minority candidates have access

11. minority candidates unequal access to television, radio, newspapers, and other mass media (often owned by non-minorities)

12. unequal access to participation in political organizations

13. difficulties of running as independents or as members of third parties, including getting on the ballot and having their poll watchers recognized

14. preventing successful minority candidates from taking office or receiving the primary nomination

15. reducing the power or effectiveness of the office when a minority candidate is elected or when such an election seems likely in the near future

16. eliminating an office or changing it from elective to appointive when it appears that it will be won by a minority candidate in the near future

17. physical, economic, and other forms of intimidation

Intimidation

Southern history describes many means of subordinating blacks and other minorities so they would remain in "their place." These means include murders, beatings, and threats of physical attack together with economic means involving jobs, credit, housing, and business as well as other social and cultural means. The following barriers have been found:

1. lack of interest and affirmative attempts to protect minorities in the exercise of their rights and privileges to participate in electoral politics

2. inadequate cooperation between officials and those minorities who are threatened or attacked by one or more of these physical, economic, or other means of subordination

3. killings, beatings, threats, and other forms of physical subordination

4. loss of jobs, credit, housing, health care, business, property, or other assets and income together with economic threats

5. Other social and cultural means used to subordinate minorities or to reduce the effectiveness of their participation in electoral politics

Fair Representation

One aspect of representation is having minority votes count the same as other votes. The vote can be watered down in numerous ways, including the way boundaries of election districts are drawn and the way voting rules are enforced. The following are some of the barriers to fair representation:

1. "gerrymandering:" drawing election district boundaries so that the number of election districts which could probably be won by minorities is reduced

2. requirements that a majority rather than a plurality is required to win an election

3. full-slate requirement (prevents minorities from concentrating their votes behind a limited number of candidates who might win as a result)

4. separation of one electoral contest into a number of individual contests to the disadvantage of minorities, including:

   a. elections for single posts or multi-member districts

   b. at-large voting for district positions

   c. staggered terms of office

   d. reducing the number of seats for a given office (which increases the number of votes required to get elected to that office)

5. extending the terms of non-minority incumbents (to delay minority election to the office)

6. use of nonpartisan elections when it would disadvantage minority candidates

7. inequitable redistricting and reapportionment following census reports

8. physical, economic, and other forms of intimidation

Effective Representation

This aspect of representation concerns the better life which should be the result of participation in electoral politics. This would include employment, housing, health services, business, recreation, and other aspects of a better life for minorities. The willingness of elected officials to work for a better life as well as the ability and the power of elected officials to gain actual results is involved. The barriers to effective representation include:

1. lack of interest and affirmative attempts of officials after they are elected to work for a better life for minorities

2. responsive officals being outvoted by non-responsive officials on governing boards

3. responsive officals' inability to get the necessary cooperation from the other elected and appointed officials to make the changes required

4. reluctance of responsive officials to take a stand which would mean controversy, conflict, and strained relationships with important individuals and groups

5. physical, economic, and other forms of intimidation directed against responsive minority elected officials

Mr. EDWARDS. Mr. Lungren, if there are no further questions—we thank you, Ms. Thompson, very much for very helpful testimony.

Our next witness is the Honorable Mary Estill Buchanan, who is the Secretary of State of the great State of Colorado.

We welcome you, Ms. Buchanan, and without objection your full statement will be made a part of the record, and you may proceed.

TESTIMONY OF MARY ESTILL BUCHANAN, SECRETARY OF STATE, STATE OF COLORADO

Ms. BUCHANAN. Thank you, Mr. Chairman.

I am here to testify against the bilingual provisions and amendments to the U.S. Voting Rights Act and to urge their removal, or at least a mechanism provided whereby an immediate bailout can occur to these provisions. I do this on the basis not so much of direct cost as I do on the basis of hidden and statewide cost that has not yet been brought forward in any public body that I am aware of, but most particularly I do it on the basis that these provisions do not reach the language minority they are intended to reach and frustrate rather than further the efforts to allow for full participation by language minority groups.

There is a basic fallacy in the notion that an English ballot is a discriminatory election test or device. An inherent "catch-22" lies in provisions which require written materials in a foreign lan-

guage, specifically in Spanish insofar as Colorado is concerned, for a group of people who cannot read or write English and who in fact also cannot read or write Spanish.

Instead of requiring written ballots, I would like to see these provisions, if the Federal Government must act at all, work toward requiring oral language assistance by election judges, just as is normally available for illiterate English-speaking people. In my personal opinion, oral language assistance need not be federally imposed and is better left to the States.

Let me review for you briefly the Colorado experience and the Colorado story, as I believe it illustrates these points.

Nineteen seventy-six was the first year we were required to use bilingual materials in all 34 of Colorado's counties which are determined to be covered by these requirements because of the 5-percent Spanish-surnamed census count from 1972 and the 5-percent apparent illiteracy rate of that language minority group.

Being caught off guard and having local election officials who did not know what to do, what occurred was the printing in all covered jurisdictions of bilingual ballots; 1976 had a very long ballot. There were 10 Statewide initiative and referendum measures on that ballot. Two counties where election jurisdictions used the "Data Vote" voting system, which is a series of punchcards with ballots stubs which are torn off, in order to provide for a long enough ballot to cover all 10 amendments that ballot envelope had a series of seven punchcards. Voters, as well as election judges, were sufficiently confused when they stuck the ballots back into the envelope that some ballot cards went in upside down. When the stubs were torn off, then we had mutilated and destroyed ballots to the tune of having Colorado's Second Congressional District, presently represented by Tim Wirth, in a disputed election where a count could not be completed on time and ran a significant risk which, if it weren't for the labored reconstruction of every ballot card in that entire county, which took about 10 days, if it were not for that reconstruction that election would have had to be reconducted.

In 1978, as Secretary of State of Colorado, I extended to the edge of my constitutional authority to control elections through the ballot certification process and certified only Spanish ballots and only English ballots. Therefore, no bilingual ballots could be used, but rather we had, if you'll forgive the phrase, separate but equal election experience in those 34 counties with separate English ballots and separate Spanish ballots.

That enabled each covered jurisdiction to have a measure of the extent of use of Spanish ballots and to have a measure of the cost. All paper and punchcard counties had these separate ballots.

Counties which had voting machines, AVM and Shoup being the two systems in use in Colorado, had Spanish ballot strips. These were very inexpensive and they were just a facsimile. About 11 counties used that. The remainder were the 23 paper ballots and data vote counties.

Of those 34 counties, 4 had any usage of Spanish ballots. In those four counties the total usage was 65 specific ballots. Those 65 ballots were concentrated in seven precincts out of those 34 counties. The preponderance of use obviously was zero, in response to a question from Congressman McClory. Therefore I resubmit the

letter and summary of that experience in Colorado which was sent 2 years ago to Congressman Thomas, and I would like that to be incorporated into the record.

The highlights of this which I wish to point out, in addition to the only 65 ballots being used and their concentration in seven precincts, is to look at the remaining 30 counties. Of those, most of them in fact should not have been covered. They are considered covered only because of errors in the 5-percent numbers as they relate to Spanish interpretation.

In the first place, the 1970 census from which the 1972 figures were evolved included counts of all State institutions. In our mental institutions and in our penitentiaries unfortunately we have more than a county's proportionate share of Spanish-surnamed individuals. These people, by virtue of their commitment, are not eligible citizens during the term of their commitment and are not entitled to vote, but they were nevertheless counted in the population. Their surnames put at least two of those counties into the covered category when they would not have been had those individuals not been counted.

Two other counties, specifically Clear Creek and Jackson, where you will see a zero usage, as having zero precincts which are covered, were in fact covered nevertheless because Spanish-surnamed transitory workers, construction crews building tunnels were counted in the census. Without them, these counties would not have been covered.

In addition to that, there is an inherent error in the census count trying to reach a language minority through the use of surnames, because when they go to households where you have in fact language minority, in our case Mexican people, who are aliens and not citizens, they will not answer directly to the question. Particularly if you hear a baby crying in the back room, that baby is born in America, that baby is a citizen, the parents are not. And they are tremendously afraid of being exported and so therefore they answer that they are citizens. And there is an inherent overcount.

Colorado has urged, and I would like to submit, resolutions at my urging which were adopted by the National Association of Secretaries of State in 1977, that specific instructions be given if bilingual provisions are to be maintained, that specific instructions be given to the U.S. Census Bureau that would have them include in their count questions: Are you a citizen? If so, are you natural born or are you naturalized? If naturalized, count as literate, because to be naturalized you pass a naturalization test which has a high literacy requirement. If natural born to ask, are you literate in English? If not, are you literate in Spanish?

And I would like to submit this as part of the record also.

Most importantly, out of the results in these 34 counties I think is the evidence for you to look to the seven counties which have significant Spanish-surnamed populations. You will find they, too, had zero use of their Spanish ballots. You will also see that those counties where two-thirds or more of the precincts are covered precincts had the highest voter registration in Colorado, something like 70 or 75 percent, and of those registered had the highest turnout.

Much of the Spanish-surnamed, Spanish-speaking community in Colorado is not illiterate in English, does vote, and does participate. Much of the rest of the Spanish speaking community is substantially noncitizens. Of those who are citizens, unfortunately too many who are illiterate in English and cannot benefit from an English ballot are also illiterate in Spanish and get no use and no value from having Spanish ballots.

The direct cost of these 1978 ballots being targeted only to the precincts which met the requirements and not used on a blanket base throughout the counties was $35,000. If you divide that by the roughly 70 ballots you see a direct cost of $500 each for those 70 ballots. And I submit to you that is a rather heavy price to pay for the symbolic value of language materials to include the Spanish culture.

On this basis, in 1980, last year's elections, the secretary of state made one further ruling. Having in 1978 said that bilingual ballots could not be used and Spanish only must be used, in 1980, the last election, the secretary of state did not certify a general Spanish only ballot. Rather, I took the position that proper names are not translatable. My name is Buchanan in any language. And we took the position that the offices in American government are not translatable. A U.S. Representative is a U.S. Representative; a President is a President; and a U.S. Senator is a Senator. So there is nothing to translate or certify differently.

With the exception that Colorado, like at least two other covered States with which I am familiar, California and Florida, has a very active citizens' initiative program. That is an inherent part of our constitution. We have both ballot issues to change and alter and amend the constitution of the State and we have many referred referenda from the legislature which appear on our ballots as ballot issues. These were translated into Spanish and certified for use on separate sample ballots. The Colorado constitution requires that every ballot issue be published two times in at least one legal newspaper in every county. Because, according to the bilingual provisions, Colorado has 34 counties, this means that two times during the general election the English newspapers—they have no Spanish newspaper—the English newspapers must carry about five pages of Spanish translations of those ballot initiatives. This cost ranges between $150,000 and $200,000 in each election season.

So while we can conduct, in compliance with these requirements, elections with a nominal direct cost through the use of Spanish instructions and facsimile or sample ballots for only the ballot initiatives, we cannot rewrite our constitution and we are stuck with the publication requirement which has English language newspapers carrying text of Spanish translations which clearly nobody can read who cannot also at least read newspaper English.

This focuses, I think, the basic issue, which in my opinion is inherently wrong with these bilingual provisions. Namely those people who are citizens and eligible to vote, and also are illiterate in English are also illiterate in their native spoken tongue, in Spanish.

You must pause and ask yourself, who votes? The only people who vote are citizens. You're a citizen only one of two ways. Either you are naturalized, you came here as an adult and have passed

your naturalization process, which has an English language requirement far superior to most sixth grade educations that many natural born Americans receive. Or, you were native born. If you are a native-born American you have the ability and the access of an English speaking school to go to. Unfortunately, too many minority individuals, minority children drop out for too many problems and too many reasons, which I think is a tragedy in our educational system. But be that as it may, they drop out. They have not learned to read or write English. Nor have they learned to read or write in Spanish.

And so the written ballot does them absolutely no more good in Spanish than it does in English. I believe it is a significant error in public policy to attack the illiteracy in this country and to attack our bicultural failing, through our election laws which can deal only with the results of educational failures.

The only people who conceivably are reached by these provisions are those who are native born, so therefore they are citizens, those who did not attend schools, did not learn to read or write in English, and somehow, someplace, from someone, learned to read and write Spanish well enough to understand the text of a constitutional question and issue. I have not found any of those individuals in Colorado.

Rather, what we need are oral provisions, provisions that enable bilingual judges to be present in every covered precinct so that the same assistance and the same access to the ballot exists for minority language groups who are illiterate as exist for American English speaking groups who are also illiterate.

I would be pleased to answer any questions.

Mr. EDWARDS. Thank you very much.

The gentlewoman from Colorado?

Mrs. SCHROEDER. Thank you, Mr. Chairman.

And, Mary, we welcome you. It's very nice to have you here this afternoon. My understanding was that the Department of Justice guidelines said that you were allowed some flexibility in how you applied this language minority provisions, and the effectiveness, and I understood—and I may be wrong—and I would like to check with counsel—if what you are saying is true, it would be feasible that Colorado may provide oral bilingual assistance, and they would still be in compliance.

So if that is true, then why did we do the written—or is my reading of the guidelines incorrect?

Ms. BUCHANAN. I would like to think that your reading of the guidelines is correct. Colorado also passed in 1978 its own provision putting a requirement ceiling of 3 percent Spanish surnames rather than 5 percent, which is a more restrictive requirement than the Federal statute for providing oral assistance in every precinct with 3 percent Spanish surnamed population.

In addition to this, to meet what are the written requirements that I am unsure—as a point of fact—as to where the Justice Department stands on it. Having available sample ballots in Spanish in those precincts only costs pennies. And it wasn't worth the fight or the effort to try to clear that one through.

I rather am raising my objection over the requirement of publishing the ballot initiatives and constitutional amendments in a

legal newspaper two times in each of the covered counties. That is where the cost is. It is not, in our State, it is not in the direct cost of conducting the elections themselves.

In addition to that, by the Colorado statute, we require voting instructions, voter registration instructions, and signs to be bilingual, and in Spanish, but these are one-time pieces. They are not multiple pieces, like ballots.

The main problem with the bilingual provisions and the Federal jurisdiction of them is that they do not respond to the States. They in general are not aware of the unique aspects of each State.

In Colorado, the unique aspect is this constitutional requirement for publishing ballot initiatives, and they don't take into account the fact that this written material benefits very few, if anybody, of the targeted group, who we all seek to ease, and find ways to enable them to participate in our system with the same and equal access as English-speaking citizens.

Mrs. SCHROEDER. Now, wait a minute. There was testimony from someone who talked to the Denver registrar who felt that the Spanish costs weren't prohibitive. So you would not disagree with that.

You are saying that it is the printing of the sample ballots in Spanish doesn't bother you?

Ms. BUCHANAN. That is correct.

Mrs. SCHROEDER. You are only concerned about the publishing?

We also have to print on the sample ballots the constitutional amendments.

Ms. BUCHANAN. I have Senator Baca-Baragan's testimony in front of me, and she spoke to Dale Noffsinger, who is director of the Denver Election Commission, in Denver. As you know, you have those AVM systems which have ballot strips. So the availability of a facsimile on the ballot strip costs pennies.

By using sample ballots, which was the way the absentee ballots in Denver were used, there were only English absentee ballots. Those are paper ballots. But anybody who requested a sample Spanish absentee ballot could have one. And then they could overlay the sample on top of the real one in order to vote in Spanish.

Interestingly enough, of course, because ballot applications were all in English, there were no requests for Spanish copy.

The point that I am making is the constitutional amendments and the referred legislation, which are also on all of our general election ballots, these, the complete text, must be translated, which costs $400 or $500. That is no big deal—but then must be published two times, by our own Colorado constitution, in each legal newspaper, which now covers each legal newspaper in the 34 covered counties. That is where the cost is.

Mrs. SCHROEDER. So your complaint is with the publishing, and the cost of translating because of our unique State laws?

Ms. BUCHANAN. That is correct.

Mrs. SCHROEDER. I just wanted to make that clear. Thank you again.

Ms. BUCHANAN. Thank you.

Mr. EDWARDS. Mr. Hyde?

Mr. HYDE. Thank you, Mr. Chairman.

And thank you very much for an interesting insight into a problem that hadn't occurred to me, the illiteracy. We have been tending to think of single-language minorities as being illiterate only in English, but if they are illiterate in Spanish, they have a unique problem.

You do have bilingual voter assistance in the polling places?

Ms. BUCHANAN. That is correct.

We now have a Spanish-speaking election judge in each precinct, which meets these criteria.

Mr. HYDE. Do you have a Republican Spanish-speaking judge and a Democractic Spanish-speaking judge?

Ms. BUCHANAN. Ideally, we would. But I am sorry to say we don't.

Mr. HYDE. Do you see a problem with having the inside track with the voter being a member of the opposite party?

Ms. BUCHANAN. Technically, of course; but in practical measures, no, because all this person is doing is reading a translation, and usually there is somebody else there.

Mr. HYDE. Don't they get into the booth with them and assist them there?

Ms. BUCHANAN. We have a provision now in Colorado, statutes—that says a family member may—as may a judge of the voter's own choosing. But only under one of the two of those circumstances.

Mr. HYDE. I suppose if the voter chooses the judge, that helps a little, but we have the experience in Chicago of the assistance voter actually doing the voting. And that can be an abuse, too.

I suppose in communities where there are single-language minority groups, it isn't much of a problem to produce in all of these polling places all of these bilingual judges. But I can see where it could be costly and difficult, in other areas, maybe.

Ms. BUCHANAN. It shouldn't be a problem. If they have enough population of that language minority, it should be very easy, and it should be very easy for the political parties, each of them, to recruit one.

Mr. HYDE. Do you suggest some changes in our census laws?

Ms. BUCHANAN. If you are going to continue with the written provisions, I think it is essential that you have the changes in the census law that are spelled out in these National Association of Secretary of State resolutions. If you will get rid of these written requirements and move to oral, I think it is a moot point.

Mr. HYDE. Have you studied the operation of the single-language minority provisions in Texas? Or some other area?

Is Colorado unique, do you think, in the circumstances you have related to us?

Ms. BUCHANAN. I don't believe that Colorado is unique. Again, in Colorado State Senator Baca-Barrigan's testimony, she highlights New Mexico as a State with a significant language minority and significant voter participation, and election results—and elected officials of that minority. She says this is because they have always had bilingual elections.

I will cite to you Colorado, and I believe Colorado is very similar in many ways to New Mexico. A third of our State was originally part of Mexico. Those people were there before the English people

came. Those people were there when Colorado was a territory, before it became a State.

They participate, they serve, in elected office. And we are very similar to New Mexico in that respect. But it is not because of bilingual elections. These people are literate in English, and educated in English.

On the other hand, in recent times, because Colorado is an agricultural State, we have had many migrant workers who come across the border from Mexico, more similar to Texas. These people tend not to be citizens; therefore, they are not eligible to vote.

And until we can find a way to bring them into the system, until they can participate as citizens and pass the citizenship test, while they are in fact counted in the census, they really ought not to be counted. And their illiteracy, while it is a humane concern to all of us, is not a concern as far as the election process goes.

So to this extent, I would say we were similar to Texas.

Now, beyond that, Texas may have its own problem of second generation, uneducated, Spanish language minority, who create a different kind of a problem, but I would submit to you that I would suspect their literacy in Spanish is not significantly greater than their literacy in English. And so what good are you doing by printing all of these Spanish materials that they can't read either?

Mr. HYDE. I will yield to Señor Edwards.

Mr. EDWARDS. I thank the gentleman for yielding.

Your chief objection is, however, because of the constitutional requirement that this elaborate and expensive printing be done in two newspapers; is that correct?

Ms. BUCHANAN. That is correct.

But, to me, that highlights and focuses the basic issue of providing written materials that nobody can read.

Mr. EDWARDS. But you certainly agree that American citizens who happen to be illiterate, usually because the local governments didn't provide any education, are entitled to vote?

Ms. BUCHANAN. Absolutely; and they should have the same assistance and the same encouragement, and that is oral assistance in their language.

Mr. EDWARDS. Thank you.

Mr. Washington?

Mr. WASHINGTON. No questions, Mr. Chairman.

Mr. EDWARDS. Mr. Lungren?

Mr. LUNGREN. Thank you, Mr. Chairman.

Madam Secretary, I was somewhat interested in the comments you made with respect to miscounts, as you saw them, in different areas of your State, because, as I read the law, it requires these bilingual election standards when there is more than 5 percent of the citizens of voting age in such State or political subdivision.

And I have sort of dealt with this subject in a slightly different area, or arena, in the Immigration Subcommittee, where we have been attempting to determine what the dimensions are of the numbers of undocumented workers in this country. The GAO just recently came out with a report and said they estimate anywhere from 500,000 to 12 million, depending upon which official Federal report you have looked at in the last decade.

And we were told that the census could not give us any good material on that, any real good estimate. And we are told by the census they can't give us any estimate of how many of those people they are counting in the census that are not citizens, or not here on some sort of legal status, permanent residence and so forth.

How does the Census Bureau, by your familiarity with it, come to the conclusion of assessing what percentage of a language minority is in fact citizenry?

Ms. BUCHANAN. The Census Bureau has not, and that is the problem with it. I have come to that conclusion based upon our experience in this document that I presented to you, of voting patterns, and through discussions with many people who have worked themselves in the gathering of the census.

What their experience is, if you walk with them, particularly when they go into these apparently migrant communities and little trailer parks, these people are scared when the census people come up. And if they have a child are going to say they are a citizen, and without further question the census worker just checks it off and goes on and asks them how many toilets they have, and goes on to the next house, and does not pursue the credibility of citizenship.

So that there is an error of overcounting the Spanish population as citizens. There is a bias toward overcounting, which can only be demonstrated when you get down to the fact of what the population count supposedly is, and you use that as an eligible base; and then you look at how many people in fact are able to register to vote.

Mr. LUNGREN. Is it a fact that the person, when asked whether he or she is a citizen, is not required to answer?

Ms. BUCHANAN. They just answer, and say, "Uh-huh." The bias is toward overcounting.

I am not saying that is what the census people say; I am saying that is what——

Mr. LUNGREN. I was just asking what you were saying.

Ms. BUCHANAN. That there is a bias for a significant overcount of citizens. Not necessarily of people.

Mr. LUNGREN. Thank you very much.

Mr. EDWARDS. Madam Secretary of State, the committee must recess now.

We have some conflict in your testimony and that of a previous witness from Colorado. So without objection we may send you a couple of further questions that you could look at and respond to in writing.

Would that be agreeable with you?

Ms. BUCHANAN. I would be delighted to.

Mr. EDWARDS. Would Spanish-speaking people in Colorado agree with you?

Ms. BUCHANAN. I believe they would. Let me, as you go, if I might read four sentences again from Baca-Baragan's testimony. I think they point out of the conflict, the fact that we're really talking about different things. She says:

> The bilingual provisions address the specific need of many U.S. citizens who do not speak English. There are vast numbers of citizens who do not speak English and who have a right to voting assistance, as surely as a black who does not read English. Bilingual election materials make that right reality for these citizens. The bilingual provisions are temporary provisions. I submit to you that bilingual elec-

tions will be necessary as long as there are citizens who are not fluent in English, largely because of the failures of our education system.

I am saying exactly the same thing, except that because of those failures, they don't read or write in Spanish either and bilingual election materials is not the solution.

Mr. EDWARDS. Well, that is very clear. Thank you very much. The subcommittee must recess now for 10 minutes, and upon our return, we will hear from Dr. Foy Valentine, executive director of the Christian Life Mission.

[Recess.]

Mr. EDWARDS. Let me apologize to the witnesses for the interruptions and so forth, and thank the witnesses for their cooperation and patience with us. We have some difficult times these days.

The subcommittee will come to order.

We are really honored today to have with us our former good friend and colleague, who I might say in the past when he was one of our valued Members gave tremendous help in issues that have to do with human rights, civil rights and constitutional rights, and whose eloquence in legislation on the floor of the House and elsewhere earned the gratitude of minority Americans everywhere, and certainly of majority Americans everywhere, because John Buchanan made an immense contribution to understanding and goodness in our society. And I want to certify that we miss him very, very much in the House of Representatives.

So it is my pleasure to welcome you, John Buchanan, and you are going to honor our witness by your introduction.

Mr. BUCHANAN. Thank you, Mr. Chairman, for your most gracious welcome. In all candor, Mr. Chairman, I was strongly inclined to seek time to come and personally testify in strong support of the extension of Voting Rights Act of 1965, because in my years of experience as a Representative from the Deep South, from the All-American city of Birmingham and beautiful State of Alabama, I came to the conclusion that the Voting Rights Act of 1965 was one of the best things that ever happened to the people of my city, of my State, and of our sister States.

It became apparent to me that the Voting Rights Act did for our politics what our emancipation at the University of Alabama did for our football and for Bear Bryant's team, and that is to improve the whole quality of political life in Alabama for all the people. And so not only was an unconscionable denial of right ended, but life was made better, not just for the minority voters who came to have the opportunity to vote for the first time but for all the people of our State. And therefore, I was inclined to testify in support of this extension of this legislation.

But at the present time, I am a staff person who has the privilege of working with a number of Members of Congress who have varying views on issues such as this, and I thought it might not be proper for me to testify personally, but if you have any question about my position, Mr. Chairman, I would be pleased to respond to questions later.

It is my happy duty, however, to present to you a man who I deeply admire, who has given great and shining leadership to the people of our Southern Baptist Convention for many years.

Dr. Foy Valentine is executive director of the Christian Life Commission of the Southern Baptist Convention with which I am pleased to be associated. For 30 years he has given powerful leadership to the Nation's largest non-Catholic denomination and in the whole area of race relations. He works nationally and internationally in the area of social concern and social action. He is an author, lecturer, and Christian statesman. He has served as chairman of the Baptist World Alliance Christian Ethics Commission, and last year he served on President Carter's Commission for a National Agenda for the eighties.

He is truly a strong voice and a courageous leader, and it is my privilege to present him to this distinguished subcommittee today.

Mr. EDWARDS. Thank you, Mr. John Buchanan, and welcome Dr. Foy Valentine, and you may proceed.

TESTIMONY OF DR. FOY VALENTINE, EXECUTIVE DIRECTOR, THE CHRISTIAN LIFE COMMISSION, SOUTHERN BAPTIST CONVENTION

Dr. VALENTINE. Mr. Chairman, as executive director of the Southern Baptist Convention's Christian social concerns and Christian social action agency, I am responsible for working with 13½ million Southern Baptists in 35,000 churches in the whole field of Christian social ethics. I do not speak for all Southern Baptists, for, Mr. Chairman, no Baptist on Earth speaks for another. [Laughter.]

I do, however, speak out of a lifetime of commitment to justice, to the worth of every person, to the civil and other human rights guaranteed to all Americans, to the moral value without which no nation can long endure, and what may still be unblushingly called public righteousness.

I came here today, in the company and with the support of the chairman of the agency with which I work, to support the extension of the Voting Rights Act.

I offer this support not only as a Christian, as a Southern Baptist, and as an American deeply committed to civil rights, but also as a southerner, whose ancestors have been southerners since they first arrived here in this country as French Huguenots in the 1650's. My interest in the subject at hand is supported by the fact that more than 30 years ago I wrote my doctoral dissertation on Southern Baptists and race relations.

The rationale for my support of the extension of the Civil Rights Act is uncomplicated.

I stood beside Lyndon B. Johnson in the rose garden at the White House and heard the President of the United States of America plead with Southern Baptists for help in passing the most important civil rights legislation to come before Congress in 100 years. This Voting Rights Act was a vital part of that legislation.

That President and that Congress worked together then to frame a law that substantially clarified the American dream that all of us are created equal, that all of us stand equally before the law, and that all of us live equally under the role of law. They mandated a simple and speedy enforcement system that has worked. It has not just worked. It has worked amazingly well.

What they courageously inaugurated and what subsequent Presidents and Congresses have consistently shored up, this President and Congress ought not now to relinquish and repudiate.

We may not rightly assume that now in 1981 racial discrimination has been eradicated, that institutionalized racism has not been happily overcome, that the demons of racial and ethnic prejudice have now all been cast out, and that the devil is now dead.

On the contrary, discrimination persists, institutionalized racism is finding new and subtle ways to rear its ugly head, and the evil spirits of prejudice are at work at many levels of our national, political, and personal lives.

From my perspective, the force of the Federal Government needs for the time being to continue to be used to prevent voting changes which would have the effect of unlawfully discriminating. For the Government of the United States of America now to take this pearl of great price and toss it back to some who might not yet treasure it would be to make an unconscionable and, in my opinion, a morally indefensible move. As you know, these other units of government have had more than 800 proposals for changes in voting laws rejected as discriminatory since the law was passed; and more than half of the Justice Department's objections have come in the last 5 years.

The law is still needed. It should not yet be abandoned. History would not deal gently with the perpetrators of so grave an injustice.

The mills of improved race relations are grinding in this country. They are grinding slowly, but they are grinding in the right direction. I plead with you not to allow the dismantling of this program that has served our Nation well.

Thank you for the privilege of providing this testimony.

Mr. EDWARDS. Dr. Valentine, we thank you also. I am particularly interested in a number of things that you have said, all of which I found most important. You point out that the mills of improved race relations are grinding in this country, and I believe that—and I hope that. And I was disturbed, and I am sure you were, to hear Geraldine Thompson say that she really didn't have much hope for the mills to ever finally stop, when we have reached an era in this country when such a law, a Federal law, will be no longer necessary.

Such a law is not necessary in some parts of the country, even in parts where there are quite a number of minorities.

So I would like your views on the progress that we can make, so that we can look forward to not another extension some day.

Dr. VALENTINE. Mr. Chairman, I am 57 years old, and I am immensely sympathetic and empathetic with the black testimony that was given, to which you have referred. They do come at this thing differently from what most whites can possibly come at it from. And so I am not unsympathetic with them, but I have to say that I am remembering what Lyndon Johnson did. I'm remembering even what Richard Nixon did. I'm remembering what other Presidents have done and what the Congress of the United States has done, and what Sam Rayburn, the tutor of Lyndon Johnson, did. And what John Kennedy did. And what lots of others have done and are now doing in this Congress.

And I have to tell you that from the standpoint of one who has worked hard in race relations for 40 years, that I am encouraged that progress has been made. I am not satisfied. I'm saying, let's press on, but let's do so in great hope. For we live in a country that is characterized by a vision and hope and good prospects for the future.

Mr. EDWARDS. Well, why haven't we had, then, people coming forth from some of the covered States, and generally speaking, these are States of the Deep South, with evidence that the States are taking over this responsibility? This is primarily a State and local responsibility to make certain that minority citizens have an opportunity to register and vote and participate in the American political process.

Dr. VALENTINE. Mr. Chairman, I come from Tennessee and my State has never been under that. We are very much a Southern State. I am originally a Texan—a fifth-generation Texan—and while Texas is under the requirements of the law at the time, it is basically because of the Hispanic concerns, but our concerns in the area of black/white relationships have been pretty well worked out satisfactorily for the most part, in Texas.

So here is a man from Alabama who has come forward. Here is one from Tennessee and Texas who has come forward, who is identified by his very name as a Southern Baptist. That means a Baptist from south of God. And we are trying to bear testimony to the fact that we are hopeful and that there are lots of folks who stand with you in this important effort that you are now seeking light on.

Mr. EDWARDS. Well, thank you. I am sure it is true, and I hope it is true. And I hope that the message gets back to our fellow Americans in the covered jurisdictions, that we would much rather not have to use Federal power, which we have to do under the Constitution at this time, that come another 10 years, 1992, or a little more than 10 years, that the evidence will be overwhelming that it is no longer necessary.

Dr. VALENTINE. Wonderful. Mr. Chairman, prejudice is not the original idea nor the continuing monopoly of southerners. And we recognize that the wages of sin is death. We lost the Civil War from the standpoint of race. We lost it for the right reason. The fact is that progress has been made for the last 100 years, and we are going to make some better progress in the years ahead.

In my lifetime, since that Rose Garden experience, 15 or 16 or 17 years ago, I have seen great progress, and we just have to rejoice in that and say, "Let's don't lose ground. Let's move forward."

Mr. EDWARDS. Well, I think it is just wonderful that the Southern Baptists have authorized you to come here and to give us this wonderful testimony and to carry the good word back there. It is really great.

Counsel?

Ms. GONZALES. Thank you, Mr. Chairman.

My question is directed to both of you, as people who are familiar with the South and the changes that have occurred and with how people characterize the Voting Rights Act. Have been claims made outside of the hearings, that, in fact, the Voting Rights Act has stigmatized the South unfairly and that it is time to remove the

stigma from the Southern jurisdictions. How would you respond to that? Do you think that the South has been stigmatized by the Voting Rights Act?

Mr. BUCHANAN. I think my first testimony in the Congress was before the distinguished Committee on the Judiciary against a law that applied only to seven States and for a nationwide voting rights law instead. As a freshman Member of the Congress, I, however, reached the point, by the last time the act was extended, that I had come to the conviction that, while I would like to see all Americans clearly covered and their rights protected—and I would—that if the Voting Rights Act applied only to the people I represented and only to the people of my State of Alabama, I would support it, because it protected their rights.

I do believe that States like my own State have made progress. I think the Voting Rights Act has improved the caliber and the quality of our politics. But if the committee, in its wisdom, should address any kind of bailout provisions, I would hope that you would do so with great care and with the understanding that that which is most basic and must come first is the protection of the rights of the citizens involved and the Federal responsibility toward such protection, so that if there is a way to recognize progress and to provide some means that a State could, in time, or a jurisdiction could, in time, work its way out of the Federal supervision structure, then that, in my view, could be a good thing if you are very careful to make your first priority the protection of the rights of the citizens involved and you do that with certainty.

Ms. GONZALES. Thank you, Mr. Chairman.

Mr. EDWARDS. That is a very good observation, and I'm glad you made that.

There is considerable discussion about a bailout and as an incentive—and I am all for incentives—but we have had no testimony or really evidence so far that any of the requirements to be met in any bailout have been met to date in any of the covered jurisdictions. I am sorry to say that, but that is true. And that seems to include all of the States.

Mr. BUCHANAN. Mr. Chairman, I could not challenge that at all. I would only say you may wish to look at a mechanism that would make it possible, based on some kind of a track record. But if you do that, I hope you will please be careful.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. No questions, Mr. Chairman.

Mr. EDWARDS. Thank you very much.

Our last witness is the patient State representative from the State of Florida, the Honorable Dr. George Sheldon.

Representative Sheldon, we are delighted to have you here. And would you please be so kind as to introduce your colleague.

And without objection, the full text of your testimony will be made a part of the record.

TESTIMONY OF DR. GEORGE SHELDON, STATE REPRESENTATIVE, FLORIDA, ACCOMPANIED BY BARBARA PHILLIPS, ATTORNEY, VOTING RIGHTS PROJECT, LAYWERS COMMITTEE FOR CIVIL RIGHTS UNDER THE LAW

Dr. SHELDON. Thank you, Mr. Chairman.

With me is Barbara Phillips, who is an attorney with the voting rights project of the Lawyers Committee for Civil Rights Under the Law.

Let me, first of all, take the opportunity to thank you for allowing me to be with you and to come to this committee as a white politician from the South, and congratulate this committee on its efforts to reaffirm, through the Voting Rights Act extension, our commitment to equality.

The Voting Rights Act, I think, has been the most powerful mechanism available to blacks and other minorities in guaranteeing their basic right to vote.

Perhaps I, as much as any other white politician in the South, understand the needs for extending the Voting Rights Act. I come from a State that is truly a "State of minorities"; a State where almost 14 percent of the citizens are black, almost 9 percent of the citizens are Hispanic, and an untold number of Haitians, Nicaraguans, Vietnamese, and other minorities.

I bring with me a legacy of the South's and Florida's commitment to good government and fairness to all of its citizens, a commitment that has been the foundation for southerners and Floridians who have served this Nation in various national capacities. I refer to the legacy of good government represented by the former Governor of Florida and former trade ambassador, Reubin Askew, a man whose guidance shaped my early political career.

I also bring with me the legacy of the commitment to equality represented by Florida's elder statesman, Leroy Collins, who fought so hard in the struggle during his tenure in the sixties as the director of the community relations services, the same time period within which we saw the passage of the Voting Rights Act, which, we must not forget, was drafted by another great southerner, Lyndon Johnson.

Lyndon Johnson publicly stated that he considered the Voting Rights Act the single most important civil rights law drafted by Congress. He hailed its enactment as a "triumph for freedom as huge as any ever won at any battlefield."

In my estimation, we have come far since 1965. We have done away with literacy tests and through the Voting Rights Act are now providing bilingual assistance during all phases of the election process when shown to be necessary.

Ladies and gentlemen, let us look specifically at what has happened in Florida.

In 1964, prior to passage of the Voting Rights Act, there were 300,000 blacks registered to vote in Florida. In 1976, this number had increased to 409,905. Blacks represented 10 percent of the registered voters in Florida.

While the initial increases in black voter registration were encouraging, since 1975 less than 50,000 blacks have been registered to vote in Florida. Blacks now represent only 9 percent of the registered voters in Florida.

In 1970, my State had a total of 36 black elected officals. Ten years later, the number of black elected officials has only increased by 70 persons. Blacks represent less than 1.5 percent of the total number of all elected officals in Florida.

Of the 120 State house districts in Florida, only 5 are held by blacks and only 1 by a Hispanic.

There are no blacks or Hispanics in the 40-member Florida Senate.

In fact, less than 2 percent of the elected officials in Florida are minority group members. Minorities constitute nearly a quarter of the population in Florida.

As you can see, we still have a way to go. Although Florida, as a whole, is not a covered State, extension of the Voting Rights Act will serve as a useful spur and reminder to the State legislature when passing laws not to dilute the impact of minority votes.

As you know, there are five counties in Florida covered by the preclearance provision of the Voting Rights Act: Collier, Hardee, Henry, Hillsborough, and Monroe. Two other counties, Dade and Glades, are covered by section 203, which basically requires bilingual elections and/or assistance.

Florida is covered by the preclearance provision of the Voting Act because of the presence of large language minority groups.

According to the 1980 census, Collier County is 11 percent Hispanic, Hardee County is 17 percent Hispanic, Henry County is 13 percent. All of the counties covered in Florida were brought under the act because of the presence of large language minority groups.

According to the 1980 census, Collier County is 11 percent Hispanic, Hardee County is 17 percent Hispanic, Henry County is 13 percent Hispanic, Hillsborough County is 10 percent Hispanic, Monroe County is 11 percent Hispanic, Glades County is 5 percent Hispanic, and Dade County is 35 percent Hispanic.

Of the 162 submissions to the Justice Department since 1975, the majority have come from either my home county of Hillsborough or the State itself. The remaining covered jurisdictions have sent few, if any, submissions.

What changes should have been submitted by these counties is probably unknown. Without increased education of private citizens and community groups and factfinding by the Justice Department, we will probably never know. According to a recent General Accounting Office report, reviewing and monitoring efforts by the Department of Justice, due in part to a lack of staff, have been minimal and ineffective.

While I realize that the minority language provision does not expire until 1985, I would urge extension of the language provision of the Voting Rights Act at the same time the rest of the act is extended.

Without the minority language provision, the sole Federal statutory basis for requiring bilingu elections will be gone.

Last year Dade County, in response to the Cuban boatlift and Haitian flotilla, passed an ordinance prohibiting the use of any language other than English in county government publications. Last month the Florida House of Representatives defeated a proposal that would have prohibited the use of any language but English in State publications.

Without the Voting Rights Act, there would be no more bilingual elections in Dade County. The Dade County ordinance would clearly prohibit the use of bilingual ballots.

Yet, 35 percent of the people in Dade County are Hispanic. This segment of the population could effectively be disenfranchised if the Voting Rights Act is not extended.

Florida's last general election included five detailed constitutional amendments. Even if English was your native language, the amendments were difficult to understand. Full copies of the amendment were available ahead of time, but only a 5- to 10-word summary was included in the ballot.

It is simply fundamental that voting instructions, ballots, or any other material which forms part of the official communication to registered voters prior to an election be in Spanish as well as English.

In order that the phrase "the right to vote" be more than an empty platitude, a voter must be able to effectively register his or her political choice. This involves more than just physically being able to pull a lever or mark a ballot.

Part of the Kennedy-Rodino bill before you would remedy the problems of proof raised by the Supreme Court's recent *City of Mobile* v. *Bolden* decision.

As the black voters of a north Florida County recently discovered, proving discriminatory intent is difficult if not impossible.

Escambia County had used an at-large system of electing county commissioners since such a system was mandated by a 1901 amendment to the Florida constitution. Despite considerable evidence that, at the time the constitutional amendment was adopted, the white citizens of Florida also adopted various legislative plans, either denying blacks the vote entirely or making their own vote meaningless, the fifth circuit held, in 1976, that the 1901 amendment to the Florida constitution was not racially motivated.

While the original decision to go on to an at-large system, or even to stay with an at-large system for the election of county commissioners in Escambia County may not have been racially motivated, the clear effect of such a decision was to prevent blacks from being elected.

Although black voter turnout was as high as white voter turnout when black candidates ran, and black voters almost unanimously voted for the black candidates, black candidates could not attain a majority of the votes in Escambia County because of the numerical inferiority of blacks, combined with a white bloc vote.

An at-large system that clearly had the effect of disfranchising blacks was allowed to stand because there was insufficient evidence of racial intent.

To allow the Voting Rights Act to expire is to require reliance for enforcement of voting rights solely upon the Federal courts—and enforcement mechanism full of inherent defects, individual cases are of a limited scope, hundreds of man-hours are necessary to gather and analyze the great amount of factual and statistical data necessary for proving racially discriminatory application of voter qualifications; and most important, there are almost limitless opportunities for delay in the judicial process.

Ladies and gentlemen, I, like you, would pray for the day when there will be no need for the Voting Rights Act. I wish that day was now. However, the testimony that you have heard throughout these hearings, and the data from my own home State of Florida,

does not show that time is yet at hand. Blacks and Hispanics in Florida still have not successfully been given the opportunity to exercise their franchise in the same number as the white citizens of my State.

The act must be extended and must include the provisions drafted by Senator Kennedy and Congressman Rodino, chairman of this committee. Those added provisions will make perfectly clear the intention of this body as it relates to the effect and intent of the Voting Rights Act.

I also urge steadfast support for the retention of section 5, its administrative preclearance provisions, and the extension of the language provisions for another 7 years.

To retreat from the full protection of the Voting Rights Act, which the Kennedy-Rodino bills represent, is to retreat from our Nation's commitment to equality of opportunity for all citizens.

Ladies and gentlemen, as a white politician from the South, I have a legacy to live up to, a legacy of struggle, of commitment to good government and equality for all. To do less than support the Voting Rights Act would be to deny that legacy, hard fought for and symbolized by such great southerners as the Reverend Martin Luther King, Jr., President Lyndon Johnson, and Rev. C. K. Steele, and Gov. Leroy Collins of Tallahassee, Fla.

The right to vote in a free American election is the most powerful and precious right in the world. It is the key to achieving all the other rights of American citizenship.

Thank you, Mr. Chairman.

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

And I wish that all of the other members of the subcommitee had been here to hear your very impressive testimony from, as you say, an elected official, a white elected offical of the Deep South.

And I am going to make sure that it is distributed to all of them, because it is very, very persuasive and important testimony.

Your left ear probably told you that the bells were ringing again in the legislature. You know that I have no choice but to recess the committee. And I believe you probably are going to catch an airplane.

If we have some questions, we will send them. But again, thank you very much for a splendid testimony

Dr. SHELDON. Thank you, Mr. Chairman.

[The prepared statements of George H. Sheldon and William Lucy follow:]

PREPARED STATEMENT OF GEORGE H. SHELDON, REPRESENTATIVE, FLORIDA LEGISLATURE

Mr. Chairman, thank you for the opportunity to appear before the subcommittee to urge you and the other distinguished members of this panel to reaffirm this Nation's commitment to equality. the Voting Rights Act has been the most powerful mechanism available to blacks and other minorities in guaranteeing their basic right to vote.

Perhaps I, as much as any other white politician in the South, understand the need for extending the Voting Rights Act. I come from a State that is truly a "State of Minorities", a State where almost 14 percent of the citizens are black, almost 9 percent of the citizens are Hispanic, and an untold number of Haitians, Nicaraguans, Vietnamese, and other minorities.

I bring with me a legacy of the South's and Florida's commitment to good government and fairness to all of its citizens. A commitment that has been the foundation for southerners and Floridians who have served this Nation in various

national capacities. I refer to the legacy of good government represented by the former Governor of Florida and former Trade Ambassador, Reubin Askew, a man whose guidance shaped my early political career.

I also bring with me the legacy of commitment to equality represented by Florida's elder statesman Leroy Collins, who fought so hard in the struggle during his tenure in the 1960's as the director of the Community Relations Services, the same time period within which we saw the passage of the Voting Rights Act which, we must not forget, was drafted by another great southerner, Lyndon Johnson.

Lyndon Johnson publicly stated that he considered the Voting Rights Act the single most important civil rights law drafted by Congress. He hailed its enactment as a "triumph for freedom as huge an any ever won at any battlefield."

In my estimation, we have come far since 1965. We have done away with literacy tests and through the Voting Rights Act are now providing bilingual assistance during all phases of the election process when shown to be necessary.

Ladies and gentlemen, let us look specifically at what has happened in Florida.

In 1964, prior to passage of the Voting Rights Act, there were 300,000 blacks registered to vote in Florida. In 1976, this number had increased to 409,905. Blacks represented 10 percent of the registered voters in Florida.

While the initial increases in black voter registration were encouraging, since 1975 less than 50,000 blacks have been registered to vote in Florida. Blacks now represent only 9 percent of the registered voters in Florida.

In 1970 my State had a total of 36 black elected officials. Ten years later the number of black elected officials has only increased by 70 persons. Blacks represent less than 1.5 percent of the total number of all elected officials in Florida.

Of the 120 State house districts in Florida only 5 are held by blacks and only 1 by a Hispanic.

There are no blacks or Hispanics in the 40-member Florida Senate.

In fact, less than 2 percent of the elected officials in Florida are minority group members. Minorities constitute nearly a quarter of the population in Florida.

As you can see, we still have a way to go. Although Florida, as a whole, is not a covered State, extension of the Voting Rights Act will serve as a useful spur and reminder to the State legislature when passing laws not to dilute the impact of minority votes.

As you know, there are five counties in Florida covered by the preclearance provision of the Voting Rights Act: Collier, Hardee, Hendry, Hillsborough, and Monroe. Two other counties, Dada and Glades, are covered by section 203 which basically requires bilingual elections and/or assistance.

All of the counties covered in Florida were brought under the act because of the presence of large language minority groups. (According to the 1980 census, Collier Country is 12 percent Hispanic; Hardee County is 17 percent Hispanic; Hendry County is 13 percent Hispanic; Hillsborough County is 10 percent Hispanic; Monroe County is 11 percent Hispanic; Glades County is 5 percent Hispanic; and Dade County is 35 percent Hispanic.)

Of the 162 submissions to the Justice Department since 1975, the majority have come from either my home county of Hillsborough, or the State itself. The remaining covered jurisdictions have sent few, if any, submissions.

What changes should have been submitted by these counties is probably unknown. Without increased education of private citizens and community groups and fact-finding by the Justice Department, we will probably never know. According to a recent General Accounting Office report, reviewing and monitoring efforts by the Department of Justice, due in part to a lack of staff, have been minimal and ineffective.

While I realize that the minority language provision does not expire until 1985, I would urge extension of the language provisions of the Voting Rights Act at the same time the rest of the act is extended.

Without the minority language provision the sole Federal statutory basis for requiring bilingual elections will be gone.

Last year Dade County, in response to the Cuban boatlift and Haitian flotilla, passed an ordinance prohibiting the use of any language other than English in county government publications. (Last month the Florida House of Representatives defeated a proposal that would have prohibited the use of any language but English in State publications.)

Without the Voting Rights Act there would be more bilingual elections in Dade County. The Dade County ordinance would clearly prohibit the use of bilingual ballots.

Thirty-five percent of the people in Dade County are Hispanic. This segment of the population could effectively be disenfranchised if the Voting Rights Act is not extended.

Florida's last general election included five detailed constitutional amendments. Even if English was your native language the amendments were difficult to understand. Full copies of the amendment were made available ahead of time, but only a 5- or 10-word summary was included in the ballot.

It is simply fundamental that voting instructions, ballots or any other material which forms part of the official communication to registered voters prior to an election be in Spanish as well as English.

In order that the phrase "the right to vote" be more than an empty platitude, a voter must be able to effectively register his or her political choice. This involves more than just physically being able to pull a lever or mark a ballot.

Part of the Kennedy-Rodino bill before you would remedy the problems of proof raised by the Supreme Court's recent *City of Mobile* v. *Bolden* decision.

As the black voters of a north Florida county recently discovered, proving discriminatory intent is difficult if not impossible.

Escambia County had used an at-large system of electing county commissioners since such a system was mandated by a 1901 amendment to the Florida Constitution. Despite considerable evidence that at the time the constitutional amendment was adopted, the white citizens of Florida also adopted various legislative plans either denying blacks the vote entirely or making their vote meaningless, the fifth circuit held, in 1976, that the 1901 amendment to the Florida Constitution was not racially motivated. See *McGill* v. *Gadsden County Commission*, 535 F.2d 277 (5th Cir. 1976).

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The act must be extended, and must include the provisions drafted by Senator Kennedy and Congressman Rodino, chairman of this committee. Those added provisions will make perfectly clear the intention of this body as it relates to the "effect and intent" of the Voting Rights Act.

I also urge steadfast support for the retention of section 5, its administrative preclearance provisions, and the extension of the language provisions for another 7 years.

To retreat from the full protection of the Voting Rights Act which the Kennedy/Rodino bill represents is to retreat from our Nation's commitment to equality of opportunity for all citizens.

Ladies and gentlemen, as a white politician from the South, I have a legacy to live up to: A legacy of struggle, of commitment to good government, and equality for all. To do less than support the Voting Rights Act would be to deny that legacy hard fought for and symbolized by such great southerners as the Reverend Martin Luther King, Jr., President Lyndon Johnson, and Rev. C. K. Steele and Gov. Leroy Collins of Tallahassee, Florida.

The right to vote in a free American election is the most powerful and precious right in the world. It is the key to achieving all the other rights of American citizenship.

PREPARED STATEMENT OF WILLIAM LUCY, SECRETARY-TREASURER OF THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO

Mr. Chairman, members of the Subcommittee, I am William Lucy, Secretary-Treasurer of the American Federation of State, County, and Municipal Employees (AFSCME), a labor union which represents more than one million public employees nationwide. I am pleased to present testimony in support of H.R. 3112, the "Voting Rights Act Amendments of 1981," which was introduced by Congressman Rodino. While my testimony is offered on behalf of AFSCME, I am also President of the Coalition of Black Trade Unionists (CBTU), an organization composed of black union members from all areas of the United States. I would appreciate having the record reflect that CBTU also endorses H.R. 3112 and will work toward the enactment of this legislation into law.

The Voting Rights Act (Act) is clearly one of the most important and successful Civil Rights laws ever passed. Though the 15th Amendment of the Constitution prohibits the denial or abridgement of the right to vote on account of race, color, or previous condition of servitude, years of litigation proved this basic right, in actuality, did not exist. Numerous devices continued to deliberately exclude blacks from politics and voting. Only since the historic march in Selma, Alabama, led by Dr. Martin Luther King, which visibly brought to light the discrimination and harassment encountered by black people who desired access to the voting booth, have we witnessed a dramatic increase in minority registration and voting. Since that march in 1965, the number of blacks registered to vote in South Carolina, Alabama, Mississippi, Louisiana, Georgia, Virginia and parts of North Carolina, has doubled. In Mississippi specifically, from 1870 to 1965, blacks brought cases in Court under the 15th Amendment to exercise their right to vote. Litigation proved fruitless and is evidenced by the fact that in 1965, the Mississippi Freedom Party documented that only approximately 6 percent of the black voting age population in Mississippi was registered to vote. However, since 1965 and the enactment of the Voting Rights Act, the burden of proof is on the jurisdiction to show lack of discrimination and the registration of Black Mississippians increased by 1976 to 67.4 percent, and this is in only 11 years. I question whether there would be a resurgence of the discriminatory tactics practiced by government officials in Mississippi for 95 years if the Voting Rights Act is not extended. The record in Mississippi before and after the Voting Rights Act speaks for itself. Moreover, since the Act was extended in 1975 to Hispanic-Americans and other language minorities who were victims of similar discriminatory voting practices as had been applied to blacks, Hispanic registration has increased by approximately 30 percent nationwide and approximately 44 percent in the Southwest. The dramatic increase in voter registration and participation have, in essence, guaranteed minorities the right to cast not only a ballot, but an effective ballot. The Act has provided minorities, who were once disenfranchised from the electoral process, a voice in the political decisions that affect their lives.

The increase in black elected officials can also be attributed to the success of the Voting Rights Act. A 1980 survey of black elected officials, carried out by the Joint Center for Political Studies revealed that blacks, for the first time, held one percent of the approximately 490,200 elective offices in the country. And it has been documented that over half of these officials are in states covered by the Act. Black elected officials have made meaningful contributions to the political and electoral process and have influenced policy decisions. Additionally, the fact that minorities hold elective office has, in my opinion, enhanced government by providing another voice to address the distribution of public benefits. The fact that a broader base of representation exists, works to improve the well-being of the community and all of its residents.

The increase in minority voter participation and the increase in black elected officials, however, does not negate the necessity of the Voting Rights Act. While the Act has eliminated such discriminatory practices as the poll tax and literacy tests, more subtle schemes, such as shifting to at-large elections, shifting from election to appointment of public officials, polling place changes, redistricting, majority runoff requirements, racial gerrymanders, and discriminatory annexations, have emerged. These changes in local voting laws often dilute minority voting strength so that, despite a large minority voter turnout, the minority vote will not have an effect. Weakening the Act's protections would allow discriminatory schemes to flourish and eliminate the participatory gains that have been achieved.

A good example of where the Voting Rights Act (Section 5) has halted a discriminatory voting scheme was Richmond, Virginia. Richmond has always used the at-large system for elections. However, when in 1970 the City developed a majority black population, a decision was made to dilute the black voting strength by annexing portions of a suburban, white county. The Justice Department objected to the

annexation and ruled that the annexation could be retained only if the City adopted a single-member district plan instead of the at-large system. The case was appealed and after the 1970 elections, the Supreme Court enjoined all City Council elections until litigation was completed in 1977. Since 1977, Richmond has a nine-member City Council, five of whom are black. Richmond now has a black mayor.

I raise the Richmond case because of AFSCME members' involvement in the 1977 elections. It was the first time that the nine-ward plan had been used. The issues were clear and similar to concerns in other municipalities: the need for more inner-city industry, rising real estate taxes, quality education, better police protection, etc. But the black residents of Richmond wanted their voice to be heard on these issues too. And it was. While our members participated in telephone bank operations, volunteer campaign services, and creating mechanisms to alert the public of the candidates and the issues through posters and other means; their most important role was to urge City residents to vote for the candidate of their choice. The results of the election reveal the choices of the people of Richmond.

AFSCME is particularly interested in the extension of the Voting Rights Act and casting an effective vote because of the nature of our organization: We represent public employees. AFSCME's Constitution points out that: "For unions, the workplace and the polling place are inseparable." Public employees—more than any other group—know that their well-being and the quality of services they perform are strongly affected by who holds public office. AFSCME members realize that basic services that are often taken for granted, such as well paved roads, environmental and sanitation services, the availability and quality of care in public hospitals, are decided by local and state officials. Our members also realize that those who participate in voting can affect the actions of government. For this reason, our members are politically active, and volunteer their services for various political activities. Declining voter turnout, which was evidenced in the last Presidential election, reveals the continued need for greater involvement by the public in the political arena. AFSCME believes that the Voting Rights Act will continue to play an important role in increasing the voter registration and participation levels. Moreover, we believe the Act has, and will continue to bring about social progress in electoral politics that is necessary for the healthy development of this society and our democratic form of government.

Mr. Chairman, in conclusion, AFSCME supports H.R. 3112 and all of the provisions therein. Specifically, we support a ten-year continuation of Section 5, the preclearance provision of the Act—which requires that covered jurisdictions must preclear any new changes in voting or election procedures with the Justice Department by showing that these changes will not discriminate against minority voters. Section 5 has protected gains in voter registration and must be continued at least until 1992 so that the extensive reapportionment and redistricting that results from the 1990 census will be covered. We also support the amendment to Section 2 of the Act with respect to the standards of evidence for proof of voting discrimination. This amendment is necessary because of the 1980 Supreme Court decision, City of Mobile v. Bolden, which, in essence stated that a plaintiff alleging that their voting rights have been denied based on racial grounds must prove that the "illegal" election practices was adopted or maintained for discriminatory purposes. The current Section 2 amendment will clarify the standard to be used. Additionally, we support a continuation of the protections of other minority groups (including Hispanics, Asian-Americans, American Indians, and Alaskan Natives) and the bi-lingual provisions so that they are co-terminous with other provisions in the Act.

The United States has a representational form of government which is based on democratic principles embodied in the Constitution. Voting is one of the most basic constitutional rights, however, history has shown that the fundamental right to vote, for many Americans, was not guaranteed. Moreover, present day attempts to make discriminatory changes in voting and election procedures reveals the continued need for the Voting Rights Act. For this reason, AFSCME disagrees with opponents of the Act who argue that it is no longer needed and that it is regionally punitive. We believe that the Voting Rights Act has proven to be effective in making the right to vote a reality and that, because of the Act, a more representational government now exists: a government of, by, and for the people. AFSCME urges the members of this body to support H.R. 3112, as drafted.

Mr. Chairman, again, thank you for the opportunity to appear before this Subcommittee. Attached to my testimony are copies of resolutions on the Voting Rights Act. On was passed by AFSCME's Executive Board, the other was passed by the Coalition of Black Trade Unionists. I would appriciate having both resolutions inserted as part of the official record.

CBTU RESOLUTION—VOTING RIGHTS ACT

Whereas the Voting Rights Act of 1965 is the most effective civil rights legislation ever devised by the Congress and has allowed minorities to cast an effective ballot;

Whereas in the last 16 years, black voter registration has more than doubled in the suspect states of South Carolina, Alabama, Mississisippi, Louisiana, Georgia, Virginia and parts of North Carolina;

Whereas between 1976 and 1980, Hispanic registration increased by 30 percent nationwide and 44 percent in the Southwest;

Whereas there are now more than 4,000 black elected officials;

Whereas the Voting Rights Act will expire by August 1982 if not reauthorized by the current Congress;

Whereas although literacy tests have been outlawed and minority voter participation has increased, other means have been devised such as at-large elections and discriminatory redistricting plans, to dilute the minority vote;

Whereas the 14th and 15th Amendments to the Constitution have not guaranteed effective voting participation for minorities; and

Whereas voting rights legislation providing for federal intervention in states involved in discriminatory practices has proven effective: Therefore, be it

Resolved, That CBTU supports and urges the Congress and the President to reauthorize the Voting Rights Act and extend the Act for a period of at least ten years.

AFSCME RESOLUTION—EXTENSION OF VOTING RIGHTS ACT

Whereas the Voting Rights Act was enacted to eliminate abuses directed at Blacks in the South who were subject to discrimination in voting; and,

Whereas in recent years the scope of the Act has been expanded to protect Hispanic and Native Americans through requirements for bi-lingual election procedures; and,

Whereas since Passage of the Act, minority voter registration has more then doubled in certain states where discrimination existed; and

Whereas the Act has made it possible for hundreds of thousands of minority citizens to cast ballots and to participate freely in the political process; and,

Whereas the Voting Rights Act expires in 1982 and legislation has been introduced for a ten-year extension; and,

Whereas some states and localities have developed more subtle discriminatory voting procedures by redistricting, annexations, shifting to at-large elections, and majority runoff requirements; and,

Whereas some Members of Congress seek to prevent the extension of the Voting Rights Act: Therefore, be it

Resolved, That AFSCME support H.R. 3112 and S. 895 which extend the provisions of the Voting Rights Act for ten years and urge the Congress to enact these measures into law and the President to sign such legislation; and be it further

Resolved, That AFSCME opposes any attempt to dilute the provisions of the Voting Rights Act.

Mr. EDWARDS. The committee is adjourned.

[Whereupon, at 4:45 p.m., the hearing was adjourned.]

EXTENSION OF THE VOTING RIGHTS ACT

WEDNESDAY, JUNE 24, 1981

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

The subcommittee met at 9:40 a.m. in room 2141 of the Rayburn House Office Building; Hon. Don Edwards (chairman of the subcommittee) presiding.

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

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

Mr. EDWARDS. The subcommittee will come to order. Today we are continuing testimony and consideration on the extension of the Voting Rights Act of 1965, and I recognize the gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman, I ask unanimous consent that the proceedings this morning, be authorized for coverage by television or camera pursuant to rule 5.

Mr. EDWARDS. Is there objection?

[No response.]

Mr. EDWARDS. The Chair hears none. It is so ordered.

It is our great pleasure to have as our first witness the very distinguished Delegate from the District of Columbia, who has been one of the great national heroes in the area of civil rights for many, many years, one of Dr. Martin Luther King's chief lieutenants and close personal friends, a close personal friend of mine and of many, many members of this Judiciary Committee.

Congressman Walter Fauntroy, we are delighted to have you with us. You are the chairman of the Congressional Black Caucus, and you may proceed.

TESTIMONY OF HON. WALTER E. FAUNTROY, DELEGATE TO THE CONGRESS OF THE UNITED STATES FROM THE DISTRICT OF COLUMBIA, AND CHAIRMAN OF THE CONGRESSIONAL BLACK CAUCUS

Mr. FAUNTROY. Thank you so very much, Mr. Chairman. It is my happy privilege to appear before the Committee on behalf of the Congressional Black Caucus, 18 of your colleagues in the House of Representatives who seek to move our Congress to deal with the basic problems confronting the Nation, problems that just happen to be reflected most acutely in the black experience. Our goal as a caucus is to, in short, move the Nation to the high grounds and principles that we enunciate, but so often fail to live.

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Certainly, there is no more glaring example over the history of our Nation of the failure to live up to our commitments to our citizens than that which has been practiced in the voting rights patterns of the country as related to black and other minorities over the past 100 years.

Mr. Chairman, I have a prepared statement which I would like to enter into the record at this point.

Mr. EDWARDS. Without objection, it shall be included in the record.

[The prepared statement follows:]

TESTIMONY OF WALTER E. FAUNTROY, CHAIRMAN, CONGRESSIONAL BLACK CAUCUS, ON EXTENSION OF THE VOTING RIGHTS ACT

Mr. Chairman and Members of the Committee, as Chairman of the Congressional Black Caucus, I would like to begin by thanking you for this opportunity to address the concerns of the Caucus over the pending reauthorization of the Voting Rights Act of 1965.

The reauthorization of this vital piece of legislation is a number one priority of the Congressional Black Caucus and we intend to aggressively seek to protect the integrity of this Act. Consequently, we unanimously support the two bills which have been introduced in the Congress, H.R. 3112 and S. 895. We urge you to report H.R. 3112 as introduced by the distinguished gentleman from New Jersey Congressman Peter Rodino, to the full Judiciary Committee without amendment.

The Caucus firmly believes that the language in H.R. 3112 is necessary and effective in redressing past violations of the voting rights of Black and Hispanic Americans in this country. Since the passage of the Act in 1965, the record clearly shows that hundreds of thousands of Black and Hispanic Americans have been able to exercise their most precious constitutional right—the right to vote—as a direct result of this vital legislation. Similarly, the number of Black officials throughout this country has significantly increased, for example:

In 1968 in the State of Alabama, there were only 24 black elected officials—in 1980 there were 238;

In Georgia in 1968 there were only 21—in 1980 there were 249;

In South Carolina in 1968 there were 11 black elected officials—in 1980 there were 238.

While it is clear that, as a direct result of the Voting Rights Act of 1965, the voter registration of blacks and other minorities, as well as the number of black elected officials, has significantly increased, the continued need for this legislation should not be underemphasized or overlooked. Let us reflect for a moment on the reason for its conception in 1965.

The hard won Civil Rights Acts of 1957, 1960, and 1964 were designed to enforce the fifteenth amendment to the Constitution by facilitating court challenges against voting discrimination. But, as any record of the history of the civil rights struggle in this country shows, such efforts proved inefficient and ineffective in opposing the creative, diversionary and obstructionist tactics of numerous elected and election board officials, particularly in the South. A better remedy had to be devised—the Congress acted and we witnessed the evolution of the Voting Rights Act of 1965.

Gentlemen of the Committee, I submit to you today that the same forces which sought to deny certain American citizens their right to vote before 1965 are still as skillful and determined today in achieving this end. That, gentlemen is the most pressing justification for the extension of the act. Some of you may suggest that times have changed and I again submit to you that they, unfortunately, have not. Moreover, if we as Members of Congress truly believe in the Democratic process, the preclearance provisions of this act, specifically, must be maintained, as it exists in present law and as it is reflected in H.R. 3112 and S. 895.

Section five, the so-called preclearance provisions, has indeed been a noticeable deterrent to the continuance of past efforts to obstruct equal access to the political electoral process in numerous states in this country. If things have changed, as many opponents of this bill and this section in particular suggest, we would not see an increase in the number of objections rendered by the U.S. Justice Department. Specifically, from 1965 to 1974, there were 273 objections rendered by the Department—from 1975 to 1980 there were 538, with 48 occurring in 1978, 45 occurring in 1979 and 51 in 1980. Subsequently, jurisdictions covered by section 5 of the voting rights have not evidenced that this provision is no longer necessary to insure equal

access to the political process by black and Hispanic American citizens. In this regard, I submit to you, members of the committee, that the Voting Rights Act with its preclearance section is a necessary tool to insure equal access, not a stick to mandate proportional representation. Thus, we of the Congressional Black Caucus, totally reject any statement which contends that it is anything more than that, and further suggest that such statements are merely attempts to discredit the true intent of the act—to insure equal access for all Americans to the electoral process. In addition, I would like to say that the preclearance provision absolutely does not create a burden on the covered jurisdictions. In fact, the only criticism made of the preclearance provision is that it stigmatizes the South, the suggestions that this small act imposes psychological hardship on an entire region, you must admit, is overstating the case.

As I understand it to be a concern of this committee, I would like to address an issue related to the preclearance section—the bail-out provision. The Congressional Black Caucus is totally opposed to a bail-out provision similar to that being considered by Congressman Hyde. We simply do not see the need for any language other than that which currently exists in present law. The present bail-out formula does not in our opinion, present any obstruction to bailing-out by a jurisdiction with a genuine record of non-discrimination. As it has already been demonstrated under current law, jurisdictions can show that they did not continue to implement discriminatory voting procedures and successfully get out of the preclearance coverage. Thus, this provision for bail-out does work and it is not restrictive or impossible to meet. The Caucus would not like to see in changed.

In closing, members of the committee, I would like to say that, on the eve of the implementation of reapportionment and redistricting plans across this Nation, the continued existence of the Voting Rights Act, in its present form, becomes even more critical to insuring the protection of the fragile voting rights of millions of black and Hispanic Americans. It is our duty as Members of Congress, and initially yours, as members of this committee to protect the integrity of this bill, and in so doing continue to insure that the Constitution of these United States is a document which represents and protects the rights of all its citizens.

Thank you for your consideration of these remarks and at this time I will be happy to entertain any questions you may have.

Mr. FAUNTROY. I will simply make a few summarizing comments and be available for any questions that members of the committee may have.

May I parenthetically say that it is a real privilege to be before the Civil and Constitutional Rights Committee again, the last time, of course, was on another voting rights matter, the voting rights of the District of Columbia residents, which were so masterfully handled by you and this committee and brought to a successful vote in the House and subsequently the Senate and which awaits ratification by the States of the Nation today.

Mr. Chairman, the Voting Rights Act of 1965, as amended, has been crafted, as you know, to deal with one of the basic problems in our country. That is the need to protect the constitutionally guaranteed voting rights of blacks and other minorities against voting discrimination. Voting rights is the one area in which black Americans have made significant and measurable strides toward freedom in the past 15 years. As I indicated, it is very clear to us as members of the black caucus that were it not for the passage of the Voting Rights Act of 1965, the 18 of us would not be colleagues in the Congress. Quite frankly, without the extension of it, we may have a repeat of the post-reconstruction period of 100 years ago, which would see large numbers of blacks and other minorities denied full participation in the electoral process, as well as representation in bodies like this.

The record as you know by now, having conducted so many of these hearings, clearly shows that since the passage of the 1965 Act, hundreds of thousands of black Americans who for nearly a

century have been systematically excluded from full participation in the voting process have gained meaningful access to the ballot box. As a result, for example, the number of black elected officials throughout the country has significantly increased.

You know by now that in 1968 in the State of Alabama, for example, there were only 24 black elected officials. Today, thanks to the implementation of the Voting Rights Act, there are over 238 black elected officials in Alabama. In Georgia in 1968, there were only 21 black elected officials. Today there are over 249. In South Carolina in 1968, there were 11 black elected officials. Today there are over 238.

So there has been significant measurable progress in terms of the impact of this very valuable legislation.

The essential point I wish to make in my testimony on behalf of the caucus today, however, is one perhaps that you've heard from a large number of witnesses heretofore. That is, that the continuing effort to deny blacks and language minorities protected under the act their rights to meaningful participation in the electoral process requires continued enforcement and strengthening of the Voting Rights Act. I need not remind you that in more recent history of our civil rights struggle, the hard-earned Civil Rights Act of 1957, 1960, and then 1964, were designed to enforce the 15th amendment to the Constitution by facilitating court challenges against voting discrimination.

I need not remind you also that those efforts to facilitate those challenges, in the long run, proved inefficient and ineffective in containing creative diversionary and obstructionist tactics employed by numerous State and local officials across this country to deny blacks and other Americans their constitutionally guaranteed rights.

It is for that reason that on the heels of your successful guiding, with the help of Mr. Celler and Mr. Rodino, the Civil Rights Act of 1964 through the House and the Senate, Dr. Martin Luther King, Jr., and several of us in the Southern Christian Leadership Conference, focused sharply on the situation in Selma, Ala. You may recall your trip with me, as a matter of fact, to Selma, when we were coordinating the Selma to Montgomery march. It was, as most people agree, the result of that effort that produced the most effective civil rights bill in the history of this country, the Voting Rights Act of 1965.

In the long sweep of history, the Voting Rights Act will, I think, be revered, because it has effectively protected those rights. And the long sweep of history also suggests that if the act is not extended this year and by this Congress for the next 10 years as called for by H. R. 3112 and S. 895, we may be in real danger of repeating a very painful lesson of history, because, as was pointed out in *Allen* v. *The State Board of Elections,* the right to vote can be affected by the dilution of voting power, as well as by an absolute prohibition on the right to vote itself, on casting a ballot.

And so we have been treated, as you have been treated in the last few months, to a plethora of instances where, by means of annexations and gerrymandering and commitment to at-large races and other means of frustrating the participation of blacks and other minorities in the political process, the struggle goes on to

assure and guarantee and enforce the 15th amendment rights of all American citizens.

You have no doubt heard in the course of your hearings accounts, for example, of the situation in Jackson, Miss., which remains in violation of section 5, where recently a mayoral election was held and where in preparation for that election, members of the Congressional Black Caucus, your colleague, Mr. Conyers on the committee and others, met with the Attorney General, with a view to seeking to have them enforce section 5 and rule out of order some 23,000 citizens who, with the latest of annexations to the city of Jackson, in an obvious and blatant effort to dilute the impact of the black vote—you know, for example, in Mississippi which has a 37 percent black population and all too few statewide black elected officials, in recent years not less than 14 counties have attempted gerrymandering the boundaries to dilute the power of the black vote, that 13 counties in that State have attempted to switch to at-large races with the obvious purpose of frustrating the efforts of blacks to be represented in their local governments.

You have taken testimony, I'm sure, by now on numerous efforts to frustrate blacks who seek public office, whether it is by increasing the number of signatures required for qualifying petitions or manipulating qualifying deadlines or abolishing party primaries or requiring a majority vote in general elections, to win.

All of these are abundant evidence that the Voting Rights Act of 1965 needs to be extended, as you have proposed, and as the committee has before it in H. R. 3112.

Let me conclude my opening remarks by saying, Mr. Chairman, that in addition to the many well-documented reasons for extension of the Voting Rights Act, I think we ought to also be very careful that we not repeat a very painfully acknowledged lesson of 100 years ago when, in an effort to enforce the 15th amendment in 1870 in the same manner in which we sought to enforce it in 1965, it was soon realized that a developing mood in the country that was bringing about a reversal, an insensitivity to the problems of the newly freed slaves, at that time, the act of 1870 was roundly ignored. The door was open for the shameful 100 years of voting rights denial which black Americans experienced, as a result.

It was Chief Justice Warren who in 1966 in the *South Carolina* v. *Katzenbach* case pointed out on that era, that as the years passed and the fervor for racial equality wanted, enforcement of that law became ineffective and spotty.

I submit to you that we are in a period in our Nation's history when the fervor for racial equality is waning and without the extension of this Voting Rights Act, we will see not only the reversal of the gains that have been made in the past 15 years, but I fear the clock may be turned back as far as 1870.

With that, Mr. Chairman, let me thank you again for the privilege of sharing the strong view of the Congressional Black Caucus that this Voting Rights Act must be extended 10 years as recommended by you in the Rodino bill.

Mr. EDWARDS. Thank you very much, Mr. Fauntroy. Our thanks to all the members of the Black Caucus for this very helpful and impressive testimony.

The gentlewoman from Colorado.

Mrs. SCHROEDER. Thank you, Mr. Chairman. I too want to join the chairman in thanking you for being here with your eloquent, as always, testimony. We appreciate your support. I pledge to do everything I can to help you in this. Thank you.

Mr. FAUNTROY. Thank you.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. As always, Mr. Fauntroy has made a substantial contribution to the dialog on this important legislation. Without disagreeing with anything you've said, I just submit that I think we are undercutting the value and significance of the rest of the Voting Rights Act, the bulk of which does not expire and is permanent law and will continue. There are lots of good things in that law, and the automatic preclearance sections which are, indeed, important, I'm convinced are indispensable, really, to guaranteeing voting rights to minorities in many sections that are presently covered.

But I just hate to see the rest of the act kind of downgraded. I think the whole act is very important, and while the preclearances are of immense significance, the rest of the act is pretty good too.

Mr. FAUNTROY. Thank you, Mr. Hyde. It is without question my view, as so many have stated, the most effective civil rights legislation ever passed by this Congress.

Mr. EDWARDS. The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. I want to join the chairman, Mr. Fauntroy, in greeting you this morning. I want to let you know it's been a singular honor to serve with you on the Congressional Black Caucus for these past 6 months. You travel extensively through the South, touching many, many churches and community groups. What is your assessment, insofar as you can tell, of the attitude of the grass-roots people toward the Voting Rights Act? What is the feeling about it?

Mr. FAUNTROY. I think that feeling is going to become evident as this committee moves toward a vote on the measure, and as it becomes apparent that the House will take action on it. Let me suggest to you that one measure of the concern and enthusiasm with which those in the South with whom I have worked over the years viewed this act, is the insistence now on two occasions that I and other members of the caucus join them in marches in Selma, Ala., 3 weeks ago. And on August 9 there will be another march on the part of—we expect 5,000 or 6,000 people, simply to say to the Nation and to say to the Congress that this most valuable civil rights legislation ever must be extended, if we are to be equipped with the basic tools by which we can protect our interests as citizens across this Nation.

Mr. WASHINGTON. And failure to extend this act would throw out a definite signal to all these people that you are speaking of.

Mr. FAUNTROY. Without question. Were this act not to be extended, I think it would be a signal to so many whose voices we tempered during the decade of the 1960's, as a result of our nonviolent activity, that the system does not mean to include us in peaceful, nonviolent means. I know that not to be the case. I know the overwhelming sentiment of the majority of the people in this country would not support that view, and the resurgence of violence against blacks by such radical organizations as the Ku Klux

Klan, notwithstanding, I am confident that you are going to do the right thing, that the Members of the House are going to do the right thing in extending this measure, and that the Senate will, therefore, be persuaded, with the help of the President, to do the same.

Mr. WASHINGTON. I hope your optimism is not misplaced.

Mr. FAUNTROY. Pray for me.

Mr. WASHINGTON. I will yield.

Mr. EDWARDS. Thank you very much, Mr. Fauntroy. As I pointed out to you earlier, the subcommittee intends to meet shortly after the July recess and report the bill, I hope unanimously, to the full Judiciary Committee. The full Judiciary Committee intends to bring up the bill shortly before the August recess in the middle of July, and we hope to have it on the floor immediately after the August recess and with an overwhelming vote. And with the help of you and the other members of the Black Caucus I know we will have a great measure of success. But thank you for very excellent testimony.

Mr. FAUNTROY. Thank you, Mr. Chairman. That news is music to my ears and will be to many who have been eagerly awaiting the setting of a timetable for consideration of the measure by your committee, but the full committee, and by the House of Representatives.

Mr. EDWARDS. Thank you.

Joining us next is the distinguished president of the United Steelworkers of America, Mr. Lloyd McBride. We are delighted to have you, Mr. McBride, here today expressing your support for extension of the Voting Rights Act.

I understand that your members are meeting here in Washington today. You have the best wishes for a most successful meeting from all of us, the members of the House Judiciary Committee.

Would you be so kind as to introduce or have someone introduce your colleagues? We welcome all of you. Without objection, the full, excellent statement will be made a part of the record and you may proceed.

TESTIMONY OF LLOYD McBRIDE, PRESIDENT, U.S. STEELWORKERS OF AMERICA, ACCOMPANIED BY JEAN VON HOFF, LEGAL DEPARTMENT; THURMAN PHILLIPS, DIRECTOR-ELECT OF SOUTHERN DISTRICT; SAM DAWSON, UNION REPRESENTATIVE FROM TEXAS; FRANK MONT, DIRECTOR, CIVIL RIGHTS DEPARTMENT; AND ALFREDO MONTOYA, LACLA REPRESENTATIVE

Mr. MCBRIDE. With me on my far left is Jean Von Hoff of our legal department. To her right is Mr. Thurman Phillips, director-elect of the district which includes the Southern States of Alabama, Louisiana, and others. To my immediate left is Mr. Sam Dawson, whom you have met, who had the privilege of testifying on this subject in Houston. He is our associate and is a representative of our union in the Texas area. To my immediate right is Mr. Frank Mont who is the director of our civil rights department, headquartered in Pittsburgh, Pa.; and to his right is Alfredo Montoya, who represents LACLA. He's been a long associate of the United Steelworkers of America and a firm believer in the area

that we hope to perpetuate and to extend with respect to the Voting Rights Act.

As you indicated, we have prepared a statement which represents our viewpoint, and I would like to read a summary of that and then respond to questions that may be posed.

As you indicated, I am Lloyd McBride and I am privileged to be the president of the United Steelworkers of America. As part of our continuing commitment to civil rights, we urge the committee to extend the Voting Rights Act for 10 more years and to retain the preclearance mechanism of section 5. We also encourage you to extend the protections for language minority groups and to amend section 2 so that the victims of discrimination do not face the often impossible task of proving discriminatory intent.

The Voting Rights Act is one of the most effective civil rights laws ever passed. Today a greater number of minority citizens are registered and voting more than at any other time in our history. Greater political participation by black and Hispanic voters has caused an important increase in the number of minority elected officials throughout the country.

The success of the Voting Rights Act however, has not eliminated the need for the act. The number of minority elected officials has not kept pace with gains in voter registration. Although blacks constitute almost 12 percent of the population, they hold less than 1 percent of the Nation's elected posts. Hispanic-American citizens are similarly underrepresented.

As more minority citizens have been able to register and to vote many communities have found more sophisticated but no less powerful ways to deny minority voting strength. The most common discriminatory practice is to manipulate election districts so that minority candidates can never win through racially motivated redistricting, annexations and at-large elections.

When judged in light of the still-common practice of racial block voting, these techniques deny the power of the vote to minority citizens. They make it difficult for minority groups to elect candidates of any race who will respond to their needs. Minority voters who can never elect a candidate of their choice because or racial discrimination, lack the full power of their franchise.

American citizens of all races and nationalities are losing the talents of our black and Hispanic citizens who would serve well as public officials. When minority voting rights are abridged, all Americans suffer.

The preclearance process of section 5 is still necessary to protect voting rights in those communities with a history of discouraging voting. The Justice Department has objected to more changes in the past 5 years than in the preceeding five.

If preclearance were eliminated, the only alternative would be to use the courts to challenge every discriminatory voting practice. Lawsuits are expensive and time consuming. The stubborn discriminator can prolong a lawsuit for many years while voters' rights are denied. In many cases, a judicial finding that a practice is discriminatory leads only to the adoption of another, equally discriminatory device. Congress designed the preclearance process to solve the problems of a judicial delay and the repeat offender.

Furthermore, if the administrative preclearance were dropped, the burden and often the expense of proving discrimination would shift to the victims of that discrimination. Under the current procedure a government with a past history of discrimination must prove that a voting change will not discriminate.

Section 5 strikes the proper balance between local control and constitutional rights. Where a community has discouraged voting, the law throws its weight on the side of the voter.

Preclearance also provides the most efficient use of the Government's resources in enforcing the Voting Rights Act. The Justice Department would be able to prosecute far fewer violations of the act if it were forced to bring every case to court.

Furthermore, the preclearance process does not over burden State and local governments. It is a relatively informal process allowing the opportunity for a speedy interchange of information and views. Nor does section 5 unfairly single out one part of the country. The preclearance procedures apply to parts of 23 States, and the act itself does not mention any State.

Congress recognized a serious problem and defined the coverage of the act in terms of that problem. The courts have consistently upheld congressional power to address the problem of voting discrimination.

The extension of section 5 is especially important today as we face massive redistricting following the 1980 census. Steelworkers in jurisdictions covered by section 5 tell us that they feel this redistricting will lead to an increase in racial gerrymandering. They tell us that the very existence of section 5 serves as a deterrent to those who contemplate redistricting which would destroy minority voting power.

We oppose any attempt to expand section 5 to cover the entire Nation, because that expansion can only undermine the strength of the act. The current Justice Department staff would face an overwhelming workload if section 5 were expanded. Given the efforts by Congress to cut the budget, it is unlikely that more resources will be granted to enforce voting rights. What resources there are should be allocated to those areas where the problem is known to exist.

The Steelworkers Union also supports the language of H.R. 3112, which would clarify section 2. In order to establish a violation of section 2, plaintiffs should be allowed to prove either the discriminatory intent or the discriminatory effects of a voting practice. The rules of evidence often make it impossible to prove discriminatory intent, even when it clearly exists. The discriminatory effects of a voting procedure usually provide commonsense proof that the change was meant to discriminate, although they may not be sufficient to prove intent in a court of law.

Furthermore, as discrimination becomes more complex, intent becomes more difficult to prove. But the denial or abridgement of voting rights is no less serious in these cases.

We feel that the bilingual provision must also be extended. We urge you to continue and extend the provisions of the act addressed to the needs of language minority citizens. The dramatic increases in voter registration among Spanish speaking citizens during the past 5 years affirms the impact and the continuing need for the

bilingual provisions of the act. The extension of section 5 to cover Hispanic citizens and to the wider use of bilingual voting information have together encouraged many non-English speaking citizens to vote with understanding, dignity, and power for the first time.

Bilingual election assistance does not cause cultural separatism, as some have claimed. On the contrary, it is bringing language minority citizens into the mainstream of American life by giving them the fundamental ability to participate in the electoral process.

In conclusion, the United Steelworkers of America recognizes the overwhelming importance of the right to vote. From experience with our own organization, we understand that a democratic institution is strengthened by the act of participation of all its members. The right to vote is the most fundamental democratic right. It is especially important to those who suffer other forms of discrimination because it gives them an opportunity to redress their political and legal grievances through the electoral process.

Voting discrimination in this country has not ended. Instead, it takes more subtle and more sophisticated forms. But the victims of discrimination know that the new forms are just as powerful as the literacy test and the poll tax of yesterday. The only way to deal with this blot on the fabric of democracy is to reauthorize and amend the Voting Rights Act, as proposed in H.R. 3112.

Thank you, Mr. Chairman. My associated and I will be happy to respond to any questions that might be posed to us.

[The complete statement follows:]

STATEMENT OF LLOYD MCBRIDE, PRESIDENT, UNITED STEELWORKERS OF AMERICA, ON THE VOTING RIGHTS ACT

The United Steelworkers of America, as part of our continuing commitment to civil rights, urges the Committee to extend the Voting Rights Act for ten more years, and to retain the pre-clearance mechanism of Section 5. We also encourage you to extend the protections for language minority groups and to amend Section 2 so that the victims of discrimination do not face the often impossible task of proving discriminatory intent.

The Voting Rights Act is one of the most effective civil rights laws ever passed. Today, a greater number of minority citizens are registered and voting than at any time in our history. Greater political participation by black and Hispanic voters has caused an important increase in the number of minority elected officials throughout the country.

The success of the Voting Rights Act, however, has not eliminated the need for the Act. The number of minority elected officials has not kept pace with gains in voter registration. Although blacks constitute almost twelve percent of the population, they hold less than one percent of the nation's elected posts. Hispanic-American citizens are similarly underrepresented.

As more minority citizens have been able to register and to vote, communities have found more sophisticated—but no less powerful—ways to deny minority voting strength. The most common discriminatory practice today is to manipulate election districts so that minority candidates can never win, through racially-motivated redistricting, annexations and at-large elections. When judged in the light of the still common practice of racial bloc voting, these techniques deny the power of the vote to minority citizens. They mke it difficult for minority groups to elect candidates of any race who will respond to their needs.

Minority voters who can never elect the candidate of their choice because of racial discrimination, lack the full power of their franchise. American citizens of all races and nationalities are losing the talents of black and Hispanic citizens who would serve well as public officials. When minority voting rights are abridged, all Americans suffer.

THE PRE-CLEARANCE PROCEDURES OF SECTION 5

The pre-clearance of Section 5 is still necessary to protect voting rights in those communities with a history of discouraging voting. The Justice Department has objected to more changes in the past five years than in the preceding five. If pre-clearance were eliminated, the only alternative would be to use the courts to challenge every discriminatory voting practice. Lawsuits are expensive and time-consuming. The stubborn discriminator can prolong a lawsuit for many years, while voters' rights are denied. In many cases, a judicial finding that a practice is discriminatory leads only to the adoption of another equally discriminatory device. Congress designed the pre-clearance process to solve the problems of judicial delay and the repeat offender.

Furthermore, if the administrative pre-clearance process were dropped, the burden—and often the expense—of proving discrimination would shift to the victims of that discrimination. Under the current procedure a government with a past history of discrimination must prove that a voting change will not discriminate. Section 5 strikes the proper balance between local control and constitutional rights: where a community has discouraged voting, the law throws its weight on the side of the voter.

Pre-clearance also provides the most efficient use of government resources in enforcing the Voting Rights Act. The Justice Department would be able to prosecute far fewer violations of the Act if it were forced to bring every case to court. Furthermore, the pre-clearance process does not overburden state and local governments. It is a relatively informal process, allowing the opportunity for a speedy interchange of information and views.

Nor does Section 5 unfairly single out one part of the country. The pre-clearance procedures apply to parts of 23 states, and the Act itself does not mention any state. Congress recognized a serious problem and defined the coverage of the Act in terms of that problem. The courts have consistently upheld Congressional power to address the problem of voting discrimination.

The extension of Section 5 is especially important today as we face the massive redistricting following the 1980 census. Steelworkers in jurisdictions covered by Section 5 tell us that they fear this re-districting will lead to an increase in racial gerrymandering. They tell us that the very existence of Section 5 acts as a deterrent to those who contemplate re-districting that would destroy minority voting power.

We oppose any attempt to expand Section 5 to cover the entire nation because that expansion can only determine the strength of the Act. The current Justice Department staff would face an overwhelming workload if Section 5 were expanded. Given the current budget-cutting efforts by Congress, it is unlikely that more resources will be granted to enforce voting rights. What resources there are should be allocated to those areas where the problem is known to exist.

THE NEED TO CLARIFY SECTION 2

The Steelworkers also supports the language of H.R. 3112 which would clarify Section 2. Plaintiffs in voting rights lawsuits should be allowed to prove either the discriminatory intent behind or discriminatory effects of a voting practice in order to establish a violation of Section 2.

The rules of evidence often make it impossible to prove discriminatory intent, even when it clearly exists. The discriminatory effects of a voting procedure often provide common-sense proof that the change was meant to discriminate, although they may not be sufficient to prove intent in a court of law.

Furthermore, as discrimination becomes more complex, intent becomes more difficult to prove. But the denial or abridgement of voting rights is no less serious in these cases.

BILINGUAL PROVISIONS MUST BE EXTENDED

Finally, we urge you to continue and extend the provisions of the Act addressed to the needs of language minority citizens. The dramatic increases in voter registration among Spanish-speaking citizens during the past five years affirms the impact—and the continuing need—for the bilingual provisions of the Act. The extent of Section 5 to cover Hispanic citizens and wider use of bilingual voting information have together encouraged many non-English-speaking citizens to vote—with understanding, dignity, and power—for the first time. Bilingual election assistance does not cause cultural separatism, as some have claimed. On the contrary, it is bringing our language minority citizens into the mainstream of American life by giving them the fundamental ability to participate in the electoral process.

CONCLUSION

The United Steelworkers of America recognizes the overwhelming importance of the right to vote. From experience with our own organization we understand that a democratic institution is strengthened by the active participation of all its members. The right to vote is the most fundamental democratic right. It is especially important to those who suffer other forms of discrimination because it gives them an opportunity to redress their political and legal grievances through the electoral process.

Voting discrimination in this country has not ended. Instead it takes more subtle and more sophisticated forms. But the victims of discrimination know that the new forms are just as powerful as the literacy test and the poll tax of yesterday. The only way to deal with this blot on the fabric of democracy is to reauthorize and amend the Voting Rights Act, as proposed in H.R. 3112.

STATEMENT OF LLOYD MCBRIDE, PRESIDENT, UNITED STEELWORKERS OF AMERICA, ON THE VOTING RIGHTS ACT

Mr. Chairman, Members of the Committee, I am Lloyd McBride, President of the United Steelworkers of America. Our Union is one of the largest in the nation, representing more than one million workers in basic steel and other industries. On behalf of our members and as part of our long, proud history of commitment to civil liberties and equal rights, we today urge you to extend and amend the Voting Rights Act in the method proposed by H.R. 3112.

As Steelworkers, we have devoted ourselves to civil rights since the earliest days of our Union. Our Constitution states as its first objective, "to unite in this industrial union, regardless of race, color or nationality, all workers" employed in our jurisdiction. Our Constitution also pledges us "to protect and extend our democratic institutions and civil rights and liberties; and to perpetuate and extend the cherished traditions of democracy and social and economic justice in the United States. . . ."

The Steelworkers were among the first unions to win non-discrimination clauses in our labor contracts. We were among the unions that lobbied for enactment of the Civil Rights Act of 1964. In 1974, we negotiated the Consent Decree in basic steel which established non-discriminatory plantwide seniority systems as the basis for granting competitive employment benefits. We have also negotiated voluntary affirmative action training and apprenticeship programs and helped establish their legality in *United Steelworkers of America* v. *Weber*, 99 S. Ct. 2721 (1979). Throughout our history we have supported the concept of equal pay for equal work, regardless of the race, sex or geographic location of the worker.

Our civil rights record has drawn praise from many sources. In one recent decision, the United States Court of Appeals for the Fifth Circuit observed that our union "has a well-known history of striving to achieve racial equality and integration in the labor movement.[1]

Our commitment to civil rights brings us here today to urge you to extend the Voting Rights Act. The considerable progress towards full voting rights made during the past fifteen years unfortunately has not eradicated the need for the Act. Thus, we encourage the Committee to extend the Act for another ten years, and to retain the pre-clearance mechanism of Section 5, which requires certain jurisdictions to clear changes in voting procedures with the federal government before they go into effect. We also encourage you to extend the protections for language minority groups and to amend Section 2 so that the victims of voting discrimination do not face the often impossible task of proving the intentional denial of their rights.

THE SUCCESS OF THE VOTING RIGHTS ACT

The Voting Rights Act has been called the most effective civil rights law ever passed. Today, a greater number of minority citizens are registered and voting than at any time in our history. One need only compare pre-Act with post-Act figures for minority voter registration to gauge the impact of the Voting Rights Act. In 1975, the U.S. Civil Rights Commission reported that black voter registration in the South had virtually doubled since the passage of the Act.[2] Recently, the Voting Rights Act helped produce a dramatic increase in the registration of Hispanic voters in the Southwest when the 1975 amendments mandated bilingual voter registration infor-

[1] *Terrell* v. *United States Pipe & Foundry Co.*, 644 F.2d, 1112, 1121 (4th Cir. 1981).

[2] "The Voting Rights Act: Ten Years After," A Report of the United States Commission on Civil Rights, January 1975.

mation in those areas. The Southwest Voter Registration Education Project reports that the number of Hispanics registered to vote in Texas increased 64 percent between 1976 and 1980.[3]

Greater political participation by black and Hispanic citizens has produced an important increase in the number of minority elected officials throughout the country. The number of black elected officials has risen by over 200 percent since 1969; over 60 percent of them are located in the South, where the largest voter registration increases have been concentrated.[4]

THE CONTINUING NEED FOR THE VOTING RIGHTS ACT

These dramatic statistics tell only half of the story, however. Although the number of minority officials has increased, electoral successes have not kept pace with voter registration gains. Black officials as yet hold only 1 percent of the nation's elected posts, even though blacks total nearly 12 percent of the population.[5] *The Atlanta Constitution*, in a recent series of articles entitled, "Voting, A Right Still Denied," reported that out of 22 counties in Georgia with majority black populations, 15 still have no black county commissioners.[6] The experience of Hispanic citizens is similar: Mexican-Americans hold only 3 percent of the county commissioner seats in 98 counties in Texas with substantial Hispanic populations.[7]

As more minority citizens have been allowed to register and to vote, communities have found more sophisticated ways to deny the power of their vote. If the ingenuity used to deny the vote had gone into protecting it instead, we would not need to discuss this legislation today. In many communities, racial gerrymandering of election districts is common. Cities have annexed adjoining land in order to dilute the voting strength of blacks and Hispanics who have achieved majority status within the city. Some communities have changed to at-large or multi-member voting districts because smaller districts where minority groups predominate are more likely to elect minority officials.

These devices must be judged in light of the still common practices of polarized racial voting, voter intimidation and election abuse. The Atlanta Constitution reports that racial bloc voting is common in the South: Fifteen years after passage of the Voting Rights Act, voter studies conducted in the South show that whites, almost without exception, still vote exclusively for white candidates. Blacks, meanwhile, tend to vote heavily for black candidates when they are on the ballot—but usually not in the same solid blocs as whites.[8]

Racial bloc voting and other forms of discrimination create the climate in which racially-motivated re-districting, annexations and at-large elections operate to deny the power of the vote. When political leaders manipulate boundaries of election districts so that whites will always constitute a majority of the voters, they diminish the impact of minority votes. They make it impossible for minority candidates to be elected and for minority voters to select the representatives of their choice. They make it easy for white candidates to completely ignore minority voters, since they need only white votes to win. Indeed, these practices make it difficult for minority groups to elect candidates of any race or nationality who will respond to their needs, since white candidates fear the loss of the majority white bloc if they openly support minority concerns.

Steelworkers from several parts of the country have informed us about how the Voting Rights Act has or can be used to eliminate voting discrimination in their communities. A Steelworker representative from Houston described the at-large election format in his city which prevented the election of more than one minority city councilman for many years, even though the city has a minority population of more than 30 percent. A lawsuit brought under the Voting Rights Act has finally produced a re-districting plan which no longer unfairly dilutes minority votes. Shortly after the plan went into effect the number of minority city council men increased from one to four. This result would not have been possible without the Voting Right Act.

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[3] Testimony of the Southwest Voter Registration Education Project on the Voting Rights Act before the House Judiciary Committee, May 6, 1981.

[4] New York Times, Dec. 26, 1980, p. 1, reporting on a study conducted by the Joint Center for Political Studies.

[5] *Ibid.*

[6] The Atlanta Constitution, Dec. 7, 1980, p. 1A.

[7] Testimony of the Southwest Voter Registration Education Project before the House Judiciary Committee, May 6, 1981.

[8] The Atlanta Constitution, Dec. 8, 1980. p. 12-A.

A Steelworker staff representative in El Paso has told us about another problem which weakens the Mexican-American vote in Texas. Specifically, election districts are being drawn with population figures which include large numbers of undocumented aliens who cannot vote. This practice dilutes the voting strength of Hispanic citizens. We urge Congress to review this problem and to solve it in a way which grants full voting power to our Mexican-American citizens.

A voter who can never elect the candidate of his or her choice, because of racial discrimination, lacks the full power of the franchise. Minority candidates who cannot win elections because of white bloc voting and racial gerrymandering may abandon the attempt. In many communities, citizens of all races and nationalilties are losing the talents of black and Hispanic citizens who would make good public officials. When minority voting rights ae abridged, all Americans suffer.

THE PRE-CLEARANCE PROVISIONS OF SECTION 5

I wish that I could tell you today that the pre-clearance procedures of Section 5 were no longer necessary. It is clear, however, that a legacy of 100 years of voting discrimination has not been reversed in the last fifteen years. Old forms of intimidation and complicate new forms of discrimination demand federal action. For this reason we urge you to extend Section 5, which requires communities with a history of discrimination to gain federal approval for voting chnges. Section 5 is the best mechanism in the Voting Rights Act to ensure that minority voters are not being denied full voting rights.

Those who would delete the pre-clearance requirement from the Act contend that most voting discrimination has ceasd and that the remainder of the problem should be addressed through lawsuits. But the data does not show that the problem of voting discrimination has shrunk to a size where pre-clearance is no longer necessary. The Department of Justice, which investigates submitted voting changes, objected to more changes in the past five years (400) than in the preceding five (386). Over 800 objections have been filed since the Act was passed.

Litigation is the only alternative to the administrative pre-clearance process of Section 5. Lawsuits, however, can last a very long time under the best of circumstances. A stubborn discriminator can prolong a lawsuit for years, while voters' rights are systematically denied. For this reason Congress abandoned the litigation approach of earlier civil rights' laws when it adopted the Voting Rights Act. The House Judiciary Committee Report which accompanied the passage of the Act in 1965 described the reasons for this change of approach, "The judicial process affords those who are determined to resist plentiful opportunity to resist. Indeed, even after defeat resistors seek new ways and means of discriminating. Barring one contrivance too often has caused no change in results, only in methods."[9] Congress designed the pre-clearance process to solve the problems of judicial delay and the repeat offender. These problems are still with us, as some communities adopt one plan after another to destroy minority voting power.

Furthermore, if Congress were to abandon the pre-clearance process, then the burden—and perhaps the expense—of eliminating voting discrimination would shift to the victims of that discrimination. Under the current process a government which has a history of past discrimination must prove that a proposed voting change will not discriminate. Section 5 strikes the proper balance between local control and constitutional rights. Where a community has discouraged voting, the law throws its weight on the side of the voter.

Pre-clearance also provides the most efficient use of government resources in enforcing the Voting Rights Act. Litigation is much more costly and time-consuming than administrative review. If the Justice Department were forced to bring every voting rights case to court, it would be able to handle far fewer violations of the Act. Voters whose cases were not taken by the Justice Department and who could not afford to bring private suits would suffer the loss of their rights.

The administrative mechanism of Section 5 does not overburden state and local governments. The Department of Justice must approve, reject or request more information about a voting change within 60 days of its original submission, or it goes into effect automatically. After all relevant information is received, 97 percent of submissions are disposed of within 60 days.[10] A community may request an expedited decision if the need for the change is immediate. Pre-clearance is relatively informal, allowing the local government and the Justice Department the opportu-

[9] House Judiciary Committee Report No. 439, June 1, 1965. Legislative History of the Voting Rights Act, U.S.Code Cong. & Admin. News, 89th Congress, First Sess., p. 2441.

[10] "Voting Rights Act—Enforcement Needs Strengthening," Report of the Comptroller General of the United States, 1978.

nity for a speedy exchange of information and views. Local governments may provide requested information about voting changes in an informal way. Pre-clearance also allows local individuals and citizen groups who will be affected by voting changes to comment about their impact directly to the Department of Justice.

Section 5 does not unfairly single out one part of the country. The pre-clearance procedures apply to parts of 23 states, including areas as diverse as South Dakota and South Carolina, New Hampshire and Arizona, Hawaii and New York. Furthermore, the Act itself does not mention any state. Rather it establishes several formulas, based on factors such as low voter registration, which are tailored to identify voting discrimination. Congress recognized a serious problem, and defined the coverage of the Act in terms of that problem. The existence of the problem and of Congressional power to deal with it have been affirmed in many court decisions.

The extension of Section 5 is especially important today as we face massive reapportionment and re-districting in the wake of the 1980 national census. Steelworkers in jurisdictions covered by Section 5 have informed us that they fear that re-districting will lead to an increase in racial gerrymandering. They fear that they will be less able to elect responsive candidates after this re-districting if the protections of Section 5 are removed now. They tell us that the very existence of Section 5 acts as a deterrent to those who contemplate re-districting which would destroy minority voting power.

Some have suggested that Section 5 should be expanded to cover the entire nation. Most of the Act already applies nationwide, and the pre-clearance provisions can be extended to any area where there has been a judicial finding of serious voting discrimination. But the evidence does not support the need to expand the Act, to every part of the country. The Justice Department has periodically looked for evidence of widespread voting discrimination in areas of the country not now covered by Section 5. It has been unable to locate a pervasive nationwide pattern of voting discrimination despite the widespread existence of other forms of discrimination.

Expanding the pre-clearance procedures to every local government in the nation would render the Act totally ineffective. The Department of Justice is likely to produce violations. The Department does not have the resources today to ensure that jurisdictions covered by the Act are submitting voting changes, or to ensure that communities are not implementing changes to which the Department has objected.[11] The current efforts by Congress to cut government spending make it highly unlikely that additional resources will be granted to enforce voters' rights. What resources there are should be allocated to those areas where the problem is known to exist. Pre-clearance offers the most effective and efficient way to protect voting rights. We oppose any attempt to expand the Section 5 protections to cover the nation because that expansion can only undermine the strength of the Act.

THE NEED TO CLARIFY SECTION 2

The Steelworkers also support the language of H.R. 3112 which would clarify Section 2. This section is an important part of the Voting Rights Act because it allows citizens anywhere in the country to challenge laws or rules which deny or abridge the right to vote. It also allows plaintiffs in communities covered by Section 5 to challenge regulations which were in effect before the jurisdiction came under pre-clearance review.

The Supreme Court's recent decision in *Mobile* v. *Bolden*, 100 S. Ct. 1490 (1980), suggests that plaintiffs must prove intentional discrimination in order to prove a violation of Section 2. We support the efforts to restore Section 2 to its original meaning and to expand voting protection by allowing a plaintiff to prove either discriminatory purpose or discriminatory effects under Section 2.

Legal rules often make it impossible to prove intentional discrimination, even when it clearly exists. The best evidence of discriminatory intent in a voting rights case, for example, would be records of public statements by government officials saying that the purpose of the action was to deny voting rights. It is unlikely, however, that any official would openly so declare today, after more than fifteen years of well-publicized civil rights legislation and litigation in this country. Furthermore, the discriminatory effects of a change often provide a common-sense indication that the change was meant to discriminate, though those effects may not be sufficient to prove intent in a court of law.

As methods of voting discrimination become more sophisticated, intent becomes more difficult to prove. Even poll taxes and literacy tests appear to have some

[11] "Voting Rights Act—Enforcement Needs Strengthening," Report of the Comptroller General of the United States, 1978.

purpose other than racial discrimination. How much more difficult will it be to prove that complicated annexation schemes and reapportionment plans were adopted in order to infringe voters' rights?

The Voting Rights Act was intended to reach the effects of discrimination, the denial or abridgment of voting rights. This denial is no less serious when discriminatory intent cannot be proven.

BILINGUAL PROVISIONS MUST BE EXTENDED

Finally, we urge you to continue and extend the provisions of the Act addressed to the needs of language minority citizens. The dramatic increases in voter registration among Spanish-speaking citizens during the past five years affirms the impact—and the continuing need—for these measures. Bilingual information at the voting booth has made it possible for some of our non-English speaking citizens to vote—with understanding and dignity—for the first time. Bilingual election assistance does not cause cultural separatism, as some have claimed. On the contrary, the bilingual provisions of the Voting Rights Act are bringing our language minority citizens into the mainstream of American life by giving them the fundamental ability to participate in our electoral process.

The costs of providing bilingual election information have been exaggerated. In addition, several witnesses have already testified about ways in which the bilingual provisions can be implemented more economically. In jurisdictions with heavy concentrations of language minority voters, for example, officials can target specific precincts to receive bilingual information.

CONCLUSION

The United Steelworkers of America recognize the overwhelming importance of the right to vote. We are one of the few large unions which elects its officers by referendum election and thus provides each member the right to vote directly for his leaders. We understand that a democratic institution is strengthened by the active participation of all its members.

The right to vote is the most fundamental democratic right, the key to participating in all other areas of life in a democracy. It is especially important to those who suffer from other forms of discrimination, because it gives them an opportunity to redress their political and legal grievances through the representatives of their choice. When this right is infringed in any way, for any of our citizens, we all lose.

The United Steelworkers is committed to the struggle of those who have been systematically denied the free exercise of the right to vote for far too long. Voting discrimination in this country has not ended. Instead it takes more subtle or more sophisticated forms. But the victims of discrimination know that the new forms are just as powerful as the literacy test and the poll tax of yesterday. The only way to deal with this blot on the fabric of democracy is to reauthorize and amend the Voting Rights Act, as proposed in H.R. 3112.

Mr. EDWARDS. Thank you, Mr. McBride. It's really splendid testimony, and all who had a part in researching and preparing it should be commended.

There is a vote on the floor of the House. The committee will be forced to recess for not more than 5 minutes.

[Recess.]

Mr. WASHINGTON [presiding]. Will the committee please come to order.

Mr. McBride, I'm particularly pleased, though hardly surprised, to see you here today. Few unions have compiled a stronger and more consistent pro-civil rights record than your fine Steelworkers organization.

Directing your attention to page 3, Mr. McBride—about the middle of the page—you say electoral successes have not kept pace with voter registration gains.

That argues, am I not correct, for clear extension of section 5 preclearance?

In other words, I suppose what you're saying here is that although the act has been instrumental in getting many, many

blacks, Latinos and other language minorities on the registration books, the various methods utilized by political leaders in the covered jurisdictions have diluted that vote; and so, the representation has not kept up with the registration gains. I take it that's what you're alluding to there?

Mr. McBRIDE. Yes. That's the direction in which we are pointing.

I'm not certain I have the same place. You're working from the full text or the summary?

Mr. WASHINGTON. I was on page 4, about the middle of the page there.

I think your point is very salient, and I think it's one which has been not the easiest to impress on certain opponents of the extension of section 5 preclearance. That is, that so many mechanisms have been used to dilute the representation—but we focused on registration and voting, assuming that was the be-all and end-all of the act.

But section 5, as you know, is designed to make certain that the vote counts. And through gerrymandering, and through redistricting, and through annexation, et cetera, that vote has been diluted; and, consequently, representation has not kept up with registration figures.

Mr. McBRIDE. That's what our research tells us.

With me today are various associates and representatives of our union, from many parts of the country. And we find that there is that undercurrent of effort to dilute the voting strength of the minorities, through these various techniques.

They've become apparent, of course, by the preclearance requirements required for those areas where there is a history of discrimination in voting. And I think that puts it in clear focus, that the problem is still there and the need for this act is still there, very clearly.

We would add to that the very clear argument that it has not been burdensome, it has not been the kind of thing that people can point to and say, "this has resulted in excesses."

If anything, it has been a moderate resolve, but in the right direction, and if we could find a way to even increase its effectiveness, why that would be perhaps the better direction than some who argue that we don't need the law anymore.

Mr. WASHINGTON. Further, in determining whether the needs do exist for a special temporary provision such as section 5 what, in your view, should be considered as to when we should permit the act to phase out?

When will it have served its purpose? Under what circumstances?

What would you visualize as the temperature of the country, or the climate of the south or those covered jurisdictions?

Mr. McBRIDE. There is some conversation in the back that is interfering with my ability to hear you clearly, and I wish you would restate that.

Mr. WASHINGTON. Would the conversation stop interfering with Mr. McBride.

Under what circumstances do you think—what kind of a climate should exist in the covered jurisdictions, before we should entertain the idea of letting section 5 abate?

Mr. McBRIDE. Well of course, the simple response would be: When its purpose has been achieved. And I don't see that anywhere near over the horizon.

It's very clear that the problem is still there.

Until such time as the problem has been eliminated, it seems to me that we simply should not consider doing away with the act. But 10 years' extension is what we are advocating.

Perhaps in another 10 years, we would have come to that point where it would be reasonable then to discontinue the preclearance provision of the act.

Mr. WASHINGTON. I hope you're right. But based on some of the testimony and some of the attitudes which I have heard and detected, it might well take an additional 10 years after that.

Mr. McBRIDE. I wouldn't argue with you; in fact, I share your view.

But the proposal, as I understand it, that's under consideration is for 10 years. Given my preference, it would be longer. But we are here officially advocating the 10-year extension.

Mr. WASHINGTON. Thank you, Mr. McBride.

Mr. Chairman.

Mr. EDWARDS [presiding]. Thank you, Mr. Chairman.

Mr. Dawson gave very impressive testimony when we were in Texas. I think we were impressed in Texas, more than in any other place, with the devices that are used—not perhaps to prevent people from registering and voting, but to prevent Hispanics and blacks from being elected to public office.

Mr. Dawson?

Mr. DAWSON. Mr. Chairman, being from Texas, we were familiar with boll weevils a long time before they were in Washington.

We have had some problems. It has not been just with blacks and Hispanics, but within the Democratic Party. The executive committee of the Democratic Party—the elected official that is the Democratic executive committeeman by precinct—we have situations where the other element of the party has, through the courthouse, manipulated and cut precincts in half, where there were a thousand people in a precinct, to give them the numbers to control that Democratic executive committee.

And in labor boxes and in black boxes, there would be as many as 3,000 and 4,000 people to a precinct; whereas in the other precincts, there would be 500, 600.

We feel that this would still go on, were it not for the Voting Rights Act to prevent it.

Mr. EDWARDS. Well, the evidence was really overwhelming that it would. As a matter of fact, I'm sorry to say we've had no testimony—or no testimony offered to us—that would indicate otherwise.

Gerrymandering, redistricting, devices such as at large——

Mr. DAWSON. We have just redistricted the house of representatives in the State of Texas. There are 60 to 65 percent Hispanic population in the county of El Paso, and I don't know how it was possible, but it appears that they have drawn five legislative districts with only one Hispanic district.

It seems impossible to do that, but I think that they have succeeded.

Of course, we're using the Voting Rights Act again, to counteract that and to possibly reverse it, and we feel like we will reverse the redistricting that they've just done last month, in the county of El Paso.

Mr. EDWARDS. It's an old gimmick, to pour all of one particular type of person into one district. That is the classical gerrymander, and that, I'm afraid, is what would happen on a wholesale basis, if section 5 were not extended.

But I thank you very much for a splendid testimony, Mr. McBride. It's a pleasure having you here.

Mr. MCBRIDE. Thank you.

Mr. WASHINGTON. Thank you.

Mr. MCBRIDE. Thank you very much.

Mr. EDWARDS. We now turn to consideration of section 2 of the Voting Rights Act.

Members of our first panel today are historians who have studied voting discrimination against blacks in the South, following the Civil War. They will discuss why withdrawal of the Federal presence, following the Hayes-Tilden compromise, led to total disenfrachisement of blacks, and why the analysis is relevant to the extension effort in this Congress.

We are pleased to welcome here today:

C. Vann Woodward, professor emeritus of History, Yale University; a most distinguished author who really needs no introduction.

Joining Professor Woodward is J. Morgan Kousser, professor of history from my home State, who is at the California Institute of Technology. I should add that Professor Kousser testified for the plaintiffs in the retrial of the *Bolden* case, which trial ended last month.

Without objection, all of the statements will be a part of the record.

Professor Woodward, are you first?

We certainly welcome you. It's an honor to the subcommittee to have you here.

PREPARED STATEMENT OF C. VANN WOODWARD

My name is C. Vann Woodward, and I am a historian by profession. Although I have taught at Yale University for fifteen years and still live and work there, my main identifications have been with the Southern states. Born and reared in Arkansas, educated in Georgia and North Carolina, I taught at Georgia Tech, the University of Florida, and the University of Virginia before joining the faculty of the Johns Hopkins University for fifteen years and then moving to Yale in 1962. The main subject of both my teaching and my books (the first of which appeared in 1938) has always been the history of my native region, especially that of the post-Civil War period. In that period, as in my writings about it, the history of race relations has naturally played an important part.

The last forty years have been an exciting time for the historian of race and race relations. Exploring the past, I was continually encountering the present—or something strikingly like it—and living in the present, I was constantly running head-on into the past. I never had any trouble in my teaching and writing with the demand for what students used to call "relevance." The danger was in confusing past with present and committing the offense historians call "presentism." One such danger lay in the tempting comparison between events of the 1860s and 1870s with events of a century later. I must assume responsibility for giving currency to the term "Second Reconstruction" as applied to events of our own time and for encouraging the development of some aspects of the analogy between the First and the Second Reconstruction. The analogy was almost inescapable, given the new confrontation between North and South, between white and black, between federal and state

government and the daily evocation of the constitutional amendments, federal laws, government policies, and court decisions of the 1860s and 1870s.

Historical analogies are notoriously dangerous things. I shall spare you a lecture on the differences between the First and Second Reconstruction, but I do believe that there is one experience of the Reconstruction in the previous century that should be of special interest to your committee in its deliberations regarding changes in the Voting Rights Act of 1965. I have in mind the fateful decisions of the federal government that climaxed in 1876-1877 and led to the virtual abandonment of federal efforts to enforce the rights of the freedmen in the Southern states. Those rights, including the right to vote, were guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution and Federal law to enforce them. The winning and guarantee of those rights were essential parts of the justification of the bloodiest war in our history that cost the lives of 600,000 Americans as well as the justification of the struggle for reconstruction that followed. Yet the white electorate, North as well as South, was wearied and disillusioned with the struggle and a majority was ready to give it up. In turning their back on promises, commitments, and principles of long standing, Republicans knew that the honor of their party was at stake.

Before taking the final step and turning over to the Southern states and the opposition party that would control them the defense of black rights they were abandoning, the Republicans demanded formal pledges from Southern officials and leaders, guarantees that they would assure full protection to the rights of blacks, including the right to vote. All of the Southern states were deeply involved in these negotiations, but Louisiana and South Carolina, for special reasons, took the lead. They were the last two Southern states under Republican government and under the new policy of the Republican President Rutherford B. Hayes, those governments of those states would collapse and be replaced by governments of the opposition. This in spite of the fact that Hayes's election as president depended on the assumption of Republican victory in both states.

Guarantees of protection for black rights were requested of Louisiana a few days before the Compromise of 1877 was consumated and Hayes was inaugurated president. The incoming Governor Francis T. Nicholls promptly wired his spokesman in Washington that a joint caucus of his party's members of both houses had adopted a resolution, "that the guarantees asked for, of order, peace, and protection of law to white and black, no persecution for past political conduct, no immunity for crime, can be freely given." The spokesman forwarded this resolution to representatives of Hayes together with "The Nicholls government guarantee:" as follows: "1st. The acceptance of the civil and political equality of all men, and agree not to attempt to deprive the colored people of any political or civil right, privilege, or immunity enjoyed by any class of men.

"2nd. The enforcement of the laws rigidly and impartially, to the end that violence and crime shall be suppressed and promptly punished, and that the humblest laborer upon the soil of Louisiana, of either color, shall receive full protection of law in person and property.

"3rd. The education of the children of white and black citizens with equal advantages.

"4th. The promotion of kindly relations between white and colored citizens of the State, upon a basis of justice and mutual confidence."

[House Miscellaneous Documents, 45 Cong., 3 Sess., Doc. 31, p. 622]

The incoming Governor Wade Hampton of South Carolina also waiting to take power after the downfall of the state Republican administration, was already on public record in a pamphlet published in 1876 entitled, Free Men! Free Ballots!! Free Schools!!! The Pledges of Gen. Wade Hampton, Democratic Candidate for Governor to its Colored People of South Carolina, 1865-1876. In this he promised that, "Not one single right enjoyed by the colored people today shall be taken from them. They shall be the equals, under the law, of any man in South Carolina. And we further pledge that we will give better facilities for education than they have ever had before." And again, "I pledge my faith, and I pledge it for those gentlemen who are on the ticket with me, that if we are elected, as far as in us lies, we will observe, protect, and defend the rights of the colored man as quickly as [of] any man in South Carolina."

Comparable promises for the protection of black rights were forthcoming from other Southern states and continued to appear after federal withdrawal. Two years after the compromise of 1877 was closed three of the South's most prominent leaders, L.Q.C. Lamar, of Mississippi, Alexander Stephens, of Georgia, and Wade Hampton agreed in a public statement that the disfranchisement of blacks was not only impossible but undesired by the whites of the South. Lamar declared that it was "a political impossibility under any circumstances short of revolution," and that

even if it were possible the South would not permit it. [A Symposium, "Ought the Negro to be Disfranchised," North American Review, CXXVIII (1879), 231-32, 241-42].

Northern Republican white leaders who had supported the Compromise of 1877 professed complete faith in its workability and trust in the pledges from the South. James G. Blaine wrote in 1879, "there will be no attempt made in the Southern States to disfranchise the negro by any of those methods which would still be within the power of the State. There is no southern state that woud dare venture on an educational qualification [for the franchise], because by the last census there were more than one million white persons over fifteen years of age, who could not read a word. . . . Nor would the property test operate with any greater advantage to the whites." [Ibid.] In Atlanta President Hayes told blacks in his audience that "their rights and interests would be safer if this great mass of intelligent white men were let alone by the general government," safer in fact than if the federal government were still custodian of their rights. [Charles R. Williams, Life of Rutherford B. Hayes, II, 252].

It was not that these Republican leaders were excessively naive nor blind to political realities that were making a farce of their faith all around them. Rather they chose to believe what they wanted to believe, or what was consistent with their policies. Nor was it that the prominent Southern, leaders whose solemn promise I have quoted were bald faced and unconsionable liars. I realize that I am somewhat more charitable about the good faith and intentions of these gentry than some of my students. But I find other explanations more plausible than the assumption of deliberate falsehood and deception. Actually some of the southern conservatives, Hampton and Nicholls for example, made efforts to fulfill their promises and for a short time enjoyed a measure of success and white support. But their prestige and popularity—even that of a Hampton—was no substitute for the power and authority of the federal government. And once that authority, or the will to enforce it, was withdrawn a vacuum of permissiveness expanded that the prestige and influence of no leader could fill. The will of the white majority asserted itself or acquiesced in the face of extremists who set out to destroy black rights utterly at the cost of popular government and democratic principles.

The farcical nature of the 1878 congressional elections in the South should have made plain the bankruptcy of the Compromise of 1877. Coercion, intimidation, and fraud were the means used in '78, but the more subtle legal devices of attrition to diminish, curtail, and dilute the black votes were quickly developed and intimated. by 1882 Georgia and Virginia had adopted poll taxes and South Carolina had developed the eight-ballotbox law. These together with innocent-looking registration and secret-voting laws sharply reduced voting among illiterate and impoverished blacks. Yet a majority of black men continued to vote (or to be counted) in nine of the eleven states through the 80s. It was not until toward the end of the century and the first years of the next that the reactionary revolution, the all-out revolt against democracy was carried out in the south. This resulted in the almost total disfranchisement of blacks, sharp reduction of white voters, reduction of the overall voter turnout by an average of 37 percent (66 percent in Louisiana), the elimination of opposition parties, and the establishment of one-party rule that lasted half a century.

I do not expect so drastic a counter-revolution to end the Second Reconstruction or anything so extreme to result from your decision about the Voting Rights Act of 1965. I do think it reasonable, however, to warn that a weakening of that act, especially the preclearance clause, will open the door to a rush of measures to abridge, diminish, and dilute if not emasculate the power of the black vote in southern states. Previous testimony before your committee has shown how persistent and effective such efforts have been even with the preclearance law in effect. Remove that law and the permissiveness will likely become irresistable—in spite of promises to the contrary. The coming reallocation of congressional seats in the South as a consequence of the 1980 consensus will open many temptations for manipulation of laws affecting voting. I hope that retreat from the Second Reconstruction will not make it necessary for some future generation to face a Third.

TESTIMONY OF DR. C. VANN WOODWARD, PROFESSOR EMERITUS OF HISTORY, YALE UNIVERSITY; AND DR. J. MORGAN KOUSSER, PROFESSOR OF HISTORY, CALIFORNIA INSTITUTE OF TECHNOLOGY

Dr. WOODWARD. Mr. Chairman, I thank the committee for this opportunity. Although I have taught at Yale University for 15

years, and still live and work there, my main identifications have been with the Southern States.

I was born and reared in Arkansas, educated in Georgia and North Carolina, taught at Georgia Tech and the University of Florida and the University of Virginia, before going to Johns Hopkins and later to Yale.

The main subject of my teaching and my books has always been the history of my native region, and especially the post-Civil War years.

Of course in that period, as in my writings about it, the history of race relations has played a very important part. The last 40 years have been an exciting time for the historian of race and racial relations.

Exploring the past, I was continually encountering the present, or something strikingly like it; and living in the present, I was constantly encountering the past.

I never had any trouble with the student demand for relevance in these matters. The danger was in confusing the past with the present, and committing the offense that historians call "presentism."

One such danger, I think, lay in attempting comparison between the events of the 1860's and 1870's with events a century later. I must assume responsibility for giving currency to the term "Second Reconstruction," as applied to events of our own time, and for encouraging the development of some aspects of the analogy between the first and the second Reconstruction.

But the analogy was almost inescapable. The new confrontations between North and South, between white and black, between Federal and State government; and the daily citation of constitutional amendments, Federal laws, policies, and court decisions of a century ago.

Historical analogies can be very dangerous things. I will spare you a lecture on the differences between the first and the second Reconstruction, but I do believe there is one experience of the Reconstruction of the previous century that should be of special interest to your committee in its deliberations about the changes in the Voting Rights Act of 1965.

I have in mind the fateful decisions of the Federal Government that climaxed in 1876 and 1877, and led to the virtual abandonment of Federal efforts to enforce the rights of the freedmen in the Southern States.

Those rights, including the right to vote, were guaranteed by the 14th Amendment to the Constitution, and Federal laws to enforce them.

The winning and the guarantee of those rights were essential parts of the justification of the Civil War, which cost hundreds of thousands of American lives; yet the white electorate—North as well as South—was by this time wearied, disillusioned with the struggle, and a majority was ready to give it up.

In turning their backs on promises and commitments and principles of such long standing, Republicans knew that the honor of their party was at stake. Before taking the final step and turning over to the Southern States and the opposition party that would control the defense of the black rights they were abandoning, the

Republicans demanded formal pledges from southern officials and leaders, guarantees that they would assure full protection to the rights of blacks, including the right to vote.

All of the Southern States were involved deeply in these negotiations, but two of them—Louisiana and South Carolina—took the lead for special reasons.

They were the last two States under Republican government, and under the new policy of the Republican President, Rutherford B. Hayes, those governments of the two States would collapse and be replaced by governments of the opposition.

This, in spite of the fact that Hayes' election as President depended on the assumption of a Republican victory in both States.

Guarantees of protection for black rights were requested of Louisiana just a few days before the Compromise of 1877 was consummated and Hayes inaugurated President.

The incoming Governor, Francis Nicholls of Louisiana, promply wired his spokesman in Washington that a joint caucus of the party's members of both houses had adopted a resolution:

> That guarantees asked for—of order, peace, and protection of law to white and black, no persecution for past political conduct, no immunity for crime—can be freely given.

Then the spokesman forwarded this resolution to representatives of Hayes, together with the Nicholls government guarantee:

> First, the acceptance of the civil and political equality of all men and agreement not to attempt to deprive the colored people of any political or civil right, privilege, or immunity enjoyed by any class of men.
>
> Second, enforcement of the laws rigidly and impartially to the end that violence and crime shall be supressed and promptly punished, and that the humblest laborer upon the soil of Louisiana, of either color, shall receive full protection of law in person and property; education of the children of white and black citizens, with equal advantages; the promotion of kindly relations between white and colored citizens of the State, upon a basis of justice and mutual confidence.

[House Miscellaneous Documents, 45 Cong., 3d Sess., Doc. 31, p. 622.]

In the other State involved, the incoming Governor, Wate Hampton of South Carolina, was also waiting to take power, once the downfall of the State Republican administration took place, and was already on public record, in a pamphlet published in 1876 and addressed to the "colored citizens" of the State.

In this, he promised—and I quote:

> Not one single right enjoyed by colored people today shall be taken from them. They shall be the equals under the law of any man in South Carolina. And we further pledge that we will give better facilities for education than they have ever had before.

And again:

> I pledge my faith, and I pledge it for those gentlemen who are on the ticket with me, that if we are elected, as far as in us lies, we will observe, protect, and defend the rights of the colored man as quickly as of any man in South Carolina.

Comparable promises of protection for black rights were made by other Southern States, and continued to appear after the Federal withdrawal of troops.

Two years after the Compromise of 1877, three of the south's most prominent leaders—Lamar of Mississippi, Stephens of Georgia, and Hampton of South Carolina—made a public statement

that disenfranchisement of blacks was not only impossible but undesired by the whites of the South.

Lamar declared that it was "a political impossibility, under any circumstances short of revolution," and that even if it were possible, the South would not permit it. ["Ought the Negro to be Disfranchised," North American Review, CXXVII (1879), 231-32, 241-42].

Northern Republican white leaders who had supported the Compromise of 1877 professed complete faith in its workability and trust in the pledges given by the South, I quote James G. Blaine in 1879:

> There will be no attempt made in the Southern states to disfranchise the Negro by any of those methods which would still be in the range and power of the state. There is no Southern state that would dare venture on an educational qualification for the franchise, because by the last Census, there were more than 1 million white persons over 15 years of age who could not read a word. * * * nor would the property test operate with any greater advantage to the whites. [Ibid.]

In Atlanta, President Hayes told the blacks in his audience that "their rights and interests would be safer if this great mass of intelligent white men were left alone by the general government," safer, in fact, than if the Federal Government were still custodian of those rights. [Charles R. Williams, Life of Rutherford B. Hayes, II, p. 252.]

Mr. EDWARDS. Professor Woodward, I regret to say that we will have to recess for 5, 6, or 7 minutes because of a vote in the House.

[Recess.]

Mr. WASHINGTON [presiding]. Will the Committee again come to order. Professor Woodward, we regret the delay and interruptions, but you know, we are having a roll-call vote, so would you proceed, sir?

Professor WOODWARD. When the recess occurred, I was talking about the pledges given to protect the rights after the withdrawal of the Federal enforcement and protection in the State. Now these pledges seemed to have persuaded Republican and Northern people that the rights that had been legally guaranteed would be enforced.

I don't think that it was a fact that these Republican leaders were terribly naive or blind to political realities. Rather, they chose to believe what they wanted to believe, and what was consistent with the policies that they had advocated. Nor do I think that the prominent Southern leaders, whose promises and solemn pledges I have quoted, were bald-faced liars. I realize that perhaps I am somewhat more charitable about their good faith and intentions than some of my students, but I find that other explanations are more plausible than the assumption of deliberate deception.

Actually, some of the Southern conservatives made attempts to carry out their pledges and gain some success and white support. But their prestige and popularity, even that of a Hampton, was no substitute for the power and authority of the Federal Government. Once that authority or the will to enforce it was withdrawn, there was a vacuum of permissiveness created, that the prestige and influence of no leader could fill.

The will of the white majority asserted itself or acquiesced in the face of the extremists who set out to destroy black rights utterly at the cost of popular government and democratic principles.

What politician can summon the energy and interest and courage to oppose measures which will incapacitate or eliminate his opposition? These people are not necessarily evil. They were simply doing what normal political animals do in permitting this to come about. The farcical nature of the 1878 Congressional elections in the South should have made plain the bankruptcy of the Compromise of 1877. Coercion, intimidation, and fraud were the means used in 1978, but more subtle legal devices of attrition to diminish, curtail, and dilute the black votes were quickly developed and imitated. And virtually all of them that are used today have their precedents in that era.

By 1882, Georgia and Virginia had adopted poll taxes. South Carolina had developed the 8 ballot box law. These, together with innocent-looking registration and secret voting laws, sharply reduced voting among illiterate and impoverished blacks.

The majority of black men continued to vote or to be counted in 9 of the 11 states through the 1980's. Not until toward the end of the century and the first years of the next century oddly enough, in the period known as the "Progressive Period," was the all-out revolt, the reactionary revolution carried out in the South. This resulted in the almost total disfranchisement of blacks, sharp reduction of white voters, reduction of the overall voter turnout by an average of 37 percent, the elimination of the opposition party, and the establishment of one-party rule that lasted for a half century.

Now I do not expect so drastic a counterrevolution to end the "Second Reconstruction" or anything so extreme to result from this committee's decision about the Voting Rights Act of 1965. I do think it reasonable, however, to warn that a weakening of this act, especially the preclearance clause, will open the door to a rush of measures to abridge, diminish, dilute, if not emasculate the power of black votes in Southern states.

Previous testimony before your committee has shown how persistent and effective such efforts have been, even with the preclearance law in effect. Remove that law and the permissiveness will likely become irresistible, in spite of promises to the contrary.

The coming reallocation of Congressional seats in the South, as a consequence of the 1980 Census, will open many temptations for the manipulation of laws affecting voting. I hope that retreat from the "Second Reconstruction" will not make it necessary for some future generation to face a "Third Reconstruction."

I thank you, Mr. Chairman.

Mr. WASHINGTON. Prof. Kousser, you had some remarks.

Dr. KOUSSER. Yes; my name is Morgan Kousser, professor of history and social science at the California Institute of Technology. Like Professor Woodward, I am a native of the South and like him, I have spent a great deal of my adult life studing the South, specifically studying voting practices therein.

I'd like to read a very abridged version of my rather long written testimony.

Despite the guarantee of racially impartial suffrage in the 15th amendment, blacks gradually lost the right to vote after the end of the first Reconstruction. That fact should caution policymakers against a second abandonment of national regulation of elections.

But beyond this obvious parallel, what lessons for the present can be drawn from the earlier period, by what legal and extralegal means was black political power diluted and blacks eventually almost totally disfranchised? How exact is the parallel, and therefore, how relevant are the lessons? Have the conditions of blacks and the current and likely actions of white changed so much that we have little to learn from history?

There were four overlapping stages, four sets of distinct tactics in the late 19th and early 20th century attacks on black voting rights: The Klan stage, the dilution state, the disfranchisement stage, and the lily white stage.

In the first era, which is best known, the basic tactics were violence, intimidation, and fraud. These methods continued to be used in later periods as they were needed to reinforce other subtler devices, and the fact that they were available often deterred blacks from challenging white political domination.

Coordinated and deftly targeted white violence and fraud in the South from 1870 to 1876 gradually overthrew every southern Republican government. Much less well understood or known is the second or dilution phase, which was much more subtle. It aimed at reducing the threat of black political power efficaciously but quietly, so as to decrease the possibility that the National Government would again intervene to protect black from white southerners.

The third, or disfranchisement stage is familiar to every student of the South, so I shall skip that in this part of the paper and turn back to the second stage in more detail. Black economic status is sufficiently secure and national public opinion committed enough to racially impartial suffrage in the 1980's, that it is improbable to expect a return to the days when widespread violence, intimidation, fraud, literacy tests, or a poll tax could be imposed, in order to deny black voting rights altogether.

Nevertheless, more sophisticated means of abridging black political power are presently in use in numerous areas, and if the preclearance provisions of section 5 of the Voting Rights Act are repealed, such means might well be employed much more in the future than they are today.

But the abridgement, as well as the denial of impartial suffrage is against the 15th amendment and subtle, as well as blatant discrimination can undermine the effective exercise of citizens's right. It is, therefore, appropriate to take a closer look at the historic record in the two less well known stages of the four, particularly, the second stage: Reconstruction and post-Reconstruction southern Democrats used at least 16 different techniques to hamper black political power without actually denying the franchise to sufficient numbers of voters to invite a strengthened Federal intervention.

Many of these devices were facially neutral and might possibly be upheld by courts even today. Indeed, some of them, adopted as long as a century ago, are still in effect and have recently been ruled not to violate the Constitution or laws of the United States. I refer, of course, to the *Mobile* v. *Bolden* decision.

Thus by looking at the past, we also see the possible future, a future which may well come about, if continued Federal supervision of election practices is withdrawn from areas where racial

block voting is still prevalent, a future of relatively subtle, but nonetheless effective, racially discriminatory electoral procedures. Although they have the same purpose, the minimization of office-holding by black or black-influenced white officeholders, the specific schemes vary, because of differences in the black percentage of the population and its geographic distribution.

I have found 16 different schemes used in the late 19th and early 20th centuries, many still used today, used to hurt black political power. We all know about gerrymandering. It is also true that at-large elections were used as early as 1868, when blacks first voted, to deny black political power. These were especially helpful, if used combined with white primaries, as was the case in Mobile from 1873 on, where you had white primary ward elections and at-large general elections.

Registration acts, poll taxes, secret ballot acts, which were used as literary tests. Multiple box laws, also literacy tests or petty crimes provisions could cut black majorities down, so that other tactics like at-large elections could be used to deny them any political influence altogether.

For temporarily white-controlled cities, annexation or in certain circumstances, the strikingly inventive technique of deannexation or retrocession of territory used in Montgomery, Ala., in the 1870's, were available. If the majorities were too large to be overcome, bonds for officeholders could be set so high as to deter any but the extremely affluent or those with rich friends, from running, or the authorities might arbitrarily refuse to accept bonds as valid, or election officials might consolidate polling places to such an extent as to make the trip to the polls or the line at the polls intolerably long, or they might just fail to open the polls altogether, as they did all over the black belt of Alabama in the 1870's.

In extremes, the legislatures could impeach or otherwise displace the elected officials or do away with local elections altogether and vest the power to choose local officials in the legislature or the Governor or their appointees.

Gerrymandering was an interesting technique. It was used to the greatest extent, I believe, in the South Carolina congressional districts of the 1870's and 1880. Known at the time as the "Black District," the South Carolina Seventh District sliced through county lines and ducked around Charleston back alleys, picking up every possible black, while avoiding as many whites as it could. It was contiguous at one point, only by considering the Atlantic Ocean a land mass. It contained nearly a third more people than another of the State's districts, and it was shaped, according to the New York Times in the 1880's, "like a boa constrictor," the color of its intended victim clear.

At-large city elections were also used, clearly motivated by racial purposes, from the 1870's on. According to one scholar, to guard against the possibility of the election of black city officials, white Atlanta Democrats in 1868 secured from the legislature the general ticket system. Two years later after a temporarily Republic Georgia Legislature restored the ward system, 2 of the 10 candidates elected were black. When the GOP lost control of the legislature in 1871, the Democrats went back to the at-large system and no more

blacks were elected to the Atlanta city government until 1953, a period of 80 years.

Now what conclusions can we draw from the review of the 19th century dilution phase? First, since as every politician knows, politics is often a matter of small margins and any change in the rules can potentially make a large difference in outcomes, it follow that even minor alterations in election structures can be extremely important.

Many of the 19th century dilutive devices had no impact or only a marginal impact on blacks' ability to vote per se, but they often made the difference between winning and losing. That is to say, the difference between having some political influence and little or none.

Second, many of the schemes were ingenious and their exact form could not readily have been predicted in advance. Any attempt to prohibit discriminatory voting devices must have built into it sufficient administrative flexibility to be able to deal with schemes which cannot be precisely anticipated.

Third, many of the means of abridgement depended largely on discriminatory administration of seemingly fair laws. Such practices are particularly difficult for courts to evaluate, and since ligitation tends to drag on for many years, perhaps allowing the discrimination to continue, while lawyers delay and judges make up their minds, it's preferable to vest oversight power in an executive administrative agency, if one really wants to prohibit this kind of discrimination.

Fourth, many of the existing practices and structures which were, in effect, grandfathered in, at least by the current legal interpretation of section 2, by the Voting Rights Act of 1965, were adopted as long as a century ago for purposes which historians would probably be willing to conclude were discriminatory. Although it is difficult and extremely time consuming to uncover evidence of their exact intent which would convince an unsympathetic judge, and nearly impossible to find guns still merrily smoking after so long a time, it is possible to discover quite a lot about motives in many instances.

If Congress really wishes to guarantee fair and effective suffrage for discrete and insular minorities, it ought to consider removing its own grandfather clause from practices which clearly have the effect of disadvantaging such people, and which in the instances in which they have been most closely studied so far, have been shown to have been enacted with discriminatory purposes in mind.

Sanguine 19th century supporters of black rights sometimes contented themselves after Reconstruction with the idea that the constitutional protections of those rights would be enforced by the courts, even if Congress and the States reneged. That those hopes proved ill founded by the turn of the century is well known, and the parallels between past and current judicial language and decisions are close enough to give pause to any who would offer as alibis for inaction or timid action on renewal of the Voting Rights Act, the excuse that the courts will still be around to protect constitutional rights.

Let me quickly summarize the main trends in the cases in both periods, which I deal with in more detail in my written statement.

Around the turn of the century, as now, the Supreme Court was concerned with intent questions in civil rights cases. Then, as now, it waffled on the degree to which intent, or effect, or some combination thereof, was the criterion for an unconstitutional violation of civil rights.

Finally, in the 1899 case of *Cummings* v. *Richmond County Schools*, it set such a strict "smoking gun" criterion for intent, that it became impossible to see how a discriminator who had any craft whatsoever could be caught.

In *Giles* v. *Harris* in 1903, the Court decided that disfranchisement was a political question which had no judicial remedy.

Interestingly, in the same year, the quasi-judicial elections committee of this House declared, in a ruling which set an important precedent, that black disfranchisement was a judicial question which had no political remedy.

I see close parallels between these cases, and the slide since *Fortson* v. *Dorsey*, in 1965, to a stricter and stricter intent criterion, which often leaves minorities with only the barest hope for a judicial remedy in voting rights cases involving laws adopted before 1965.

It's difficult for a historian of 19th century race relations to maintain much optimism. Long and difficult crusades by men and women of good faith, black and white; a terribly bloody Civil War; a constitutional revolution; a muted but meaningful post-Reconstruction struggle by thousands of individuals, to retain the advanced ground gained. All this ended in something closer to defeat than to victory.

As a 19th century pessimist, let me then present you with the dreary scenario which it is in your power to prevent:

Congress, in a fit of optimism or conservatism, emasculates the Voting Rights Act, declaring in effect, as Congress did with respect to disenfranchisement in 1903, that the protection of minority political rights is a judicial question.

States, cities, towns throughout the South—and perhaps elsewhere—where there are sufficiently large minority populations, rush to adopt subtle forms of electoral discrimination.

Liberal organizations respond with a spate of lawsuits, but have difficulty locating the carefully hidden smoking guns.

The Supreme Court, bolstered by new members, either by demanding ultrastrict standards for proving motive or by declaring, as it had in 1903, the whole morass a political question, offers no relief.

The abridgement of minority voting rights becomes, again, a reality.

In a very real sense Congress, in facing the decision on whether to renew or scuttle the Voting Rights Act, has the power to declare whether history will or will not repeat itself.

Thank you.

[The full statement follows:]

WRITTEN TESTIMONY OF DR. J. MORGAN KOUSSER

THE UNDERMINING OF THE FIRST RECONSTRUCTION: LESSONS FOR THE SECOND

It is not only historians who name eras, make analogies, draw lessons from the past. As the Selma March was approaching Montgomery, Alabama in 1965, and as

Congress was pushing House Resolution 6400 toward passage, the Montgomery Advertiser, sensing the strong national current, remarked "It is almost certain that President Johnson's reconstruction bill will be enacted."[1] The President Johnson referred to was not Andrew, but Lyndon, the "reconstruction" alluded to was not the first, but the second, and the bill was not the "Force" or "Ku Klux" laws, but the Voting Rights Act. Currently up for renewal, the Voting Rights Act is under attack as anti-Southern, an infringement on matters better left to state and local governments, and, most importantly, as unnecessary. It is therefore both desirable and safe, we are told, to dismantle at least this vestige of the Second Reconstruction.

The fact that, despite the guarantee of racially impartial suffrage in the Fifteenth Amendment, blacks gradually lost the right to vote after the end of the First Reconstruction should caution policymakers against a second abandonment of national regulation of elections. But beyond this obvious parallel, what lessons for the present can be drawn from the earlier period? What were the terms of the national suffrage guarantees passed by Congress in the 1860's and 1870's? What promises did Southern white leaders of a century ago make in an attempt to convince Northerners that black rights would be safe under "home rule" for Dixie? By what legal and extra-legal means was black political power diluted and blacks eventually almost totally disfranchised? How exact is the parallel, and, therefore, how relevant are the lessons? Have the conditions of blacks and the current and likely actions of whites changed so much that we have little to learn from history?

I. THE FIRST FEDERAL VOTING RIGHTS MACHINERY

During the first Reconstruction, the national government made two attempts by constitutional amendment and four attempts by law to protect black voting rights. Section two of the Fourteenth Amendment held out to the states the carrot of increased representation in Congress if they would repeal laws or state constitutional provisions excluding blacks from the right of suffrage. Less than a year after that amendment's ratification, however, Congress passed the more explicit provisions of the Fifteenth Amendment, which absolutely precluded state or national authorities from denying—or *abridging*—the right of citizens to vote on account of race, color, or previous condition of servitude. The 40th Congress considered, but, after discussion, rejected broader versions of the Fifteenth Amendment which would have banned literacy and property tests and other similar devices.[2]

Yet Congress recognized that the Amendments, as well as the Military Reconstruction Acts which, even before the adoption of the Fifteenth Amendment, had enfranchised blacks in the seceding states were not self-executing. To preclude official or unofficial violence, intimidation, or election irregularities from robbing citizens of any color of the right to vote and to have their ballots counted as cast, Congress in 1870 and 1871 passed the so-called Enforcement, Force, and Ku Klux Acts, and in 1890 considered, but shelved by one vote in the Senate, the Lodge Fair Elections Bill.[3] Both the enforcement and Ku Klux Acts made interfering with the right of citizens to vote a federal crime, and the Force Act went farther, requiring federal courts, upon a petition from two resident citizens, to appoint federal officers to oversee the registration and election process in cities or towns containing 20,000 or more inhabitants. The Lodge Bill in 1890 sought to extend the provisions of the Force Bill to all voters, rural as well as urban.

II. NINETEENTH CENTURY SOUTHERN WHITE PROMISES TO RESPECT BLACK VOTING RIGHTS

The first southern white response to threats of Reconstruction was defiance.[4] Believing that the Civil War had settled only the questions of secession and slavery, but that those who retained power in the states would be allowed to set the status of freedmen approximately equal to that of the antebellum free people of color, white

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[1] March 17, 1965, quoted in Steven F. Lawson, "Black Ballots: Voting Rights in the South, 1944-1969" (New York: Columbia University Press, 1965), 314.

[2] A convenient source on these matters is Bernard Schwartz, ed., "Statutory History of the United States: Civil Rights," 2 vols., (New York: Chelsea House Publishers, 1970), I, 184, 371-74, 385-87, 392-95, 408-20.

[3] 3. *Ibid.*, 445-53, 548-58, 593-96 give provisions of the first three laws. On the Lodge Bill, see J. Morgan Kousser, "The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910" (New Haven, Conn.: Yale University Press, 1974), 29-31, and the sources cited there.

[4] See Michael Perman, "Reunion Without Compromise: The South and Reconstruction, 1865-1868" (Cambridge, Eng.: Cambridge University Press, 1973).

southerners virulently and often violently opposed all efforts to guarantee blacks equal rights, notably in the 1866 Civil Rights Bill, the Reconstruction Acts, the Fourteenth and Fifteenth Amendments, the various enforcement acts, and the 1875 Civil Rights Act. That the Republican majority, with substantial support from northern public opinion, continued for a time to insist on equal rights, however, convinced white southern Democrats to alter their tactics. While a "white line" faction continued and even, in the mid-1870s, intensified the forcible intimidation of black voters, a more moderate "New Departure" faction of southern Democrats emerged at the same time, assuring northerners that black rights would be safe if federal protection were withdrawn. The left or moderate hand, the Wade Hampton, L.Q.C. Lamar, and Francis T. Nicholls faction of the party, at least claimed not to know what the right or extreme racist hand, the Martin W. Gary and Ben Tillman faction, was doing. But the combined one-two punch was devastating to black political power in the Deep South.

The moderates' paper pledges were strong, and they persuaded those northerners who, like President Rutherford B. Hayes, were anxious to believe them. The Mississippi state Democratic platform of 1875 affirmed a belief in "the civil and political equality of all men as established by the Constitution of the United States and the amendments thereto." In the words of the authoritative work on Mississippi Reconstruction, however, "the majority of the delegates did not take the document very seriously."[5] Similarly, in Lousiana in 1876, in the words of the leading historical work on Reconstruction in that state, "The Democratic Platform also explicitly recognized the binding effect of the 13th, 14th, and 15th amendments to the United States Constitution, and the party pledged itself to protect every citizen, regardless of race, in the exercise of his rights. Every one of these pledges, except possibly the acknowledgement of the 13th Amendment, would be broken within a few years."[6]

In Virginia in 1873, the state Democratic party platform, again according to the standard scholarly monograph on the subject, "promised to administer equal justice to both races." Nevertheless, the Democrats, including even moderate gubernatorial candidate James L. Kemper, "made the color line" during that campaign, and, as we shall see below, the Virginians took action in the 1874 and 1876 legislative sessions to reduce the black vote.[7]

In South Carolina, which had the largest black percentage of any state in the union at the time, the 1876 Democratic state platform announced: "We declare our acceptance, in perfect good faith, of the thirteenth, fourteenth, and fifteenth amendments to the Federal Constitution." The South's best known moderate Redeemer, South Carolina gubernatorial candidate Wade Hampton, promised repeatedly that "not one single right enjoyed by the colored people today shall be taken from them. They shall be the equals, under the law, of any man in South Carolina." Blacks would soon convert to the Democratic party, Hampton prophesied, "because they will find that their rights will be better protected by that party."[8]

Many observers at the time recognized the cynicism which involved in such pledges and prognostications. As Amos Akerman, who had returned to the South after serving briefly as Attorney-General under Grant, remarked at the time, "when speaking for effect at the North" the southern Democrats "say much about accepting the results of the war in good faith, and respecting the rights of everybody," but contradicted those statements by their "drastic policy and unguarded untterances" in the South.[9] Even the oft-mentioned moderate policy of appointing blacks to some offices was mostly window-dressing. As Gov. Francis T. Nicholls of Louisiana, one of the most prominent New Departure Democrats, noted: "[I] appointed a number of [blacks] to small offices sandwiching them on Boards between white men where . . . they were powerless to do harm."[10]

The southern Democrats' promises had been, in fact, violated even as they were uttered. As U.S. Senate investigations in 1877 and 1878 documented, widespread Ku Klux and Red Shirt violence kept many blacks from the polls, racially discriminato-

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[5] William C. Harris, "The Day of the Carpetbagger: Republican Reconstruction in Mississippi" (Baton Rouge & London: Lousiana State University Press, 1979), 654-55.

[6] Joe Gray Taylor, "Louisiana Reconstructed, 1863-1877" (Baton Rouge: Louisiana State University Press, 1974), 483-84.

[7] Jack P. Maddex, Jr., "The Virginia Conservatives, 1867-1879" (Chapel Hill, N.C.: University of North Carolina Press, 1970), 108, 195.

[8] All quoted in George B. Tindall, "South Carolina Negroes, 1877-1900" (Columbia, S.C.: University of South Carolina Press, 1952), 12.

[9] Quoted in William Gillette, "Retreat From Reconstruction, 1869-1879" (Baton Rouge & London: Louisiana State University Press, 1979), 313.

[10] Quoted in William J. Hair, "Bourbonism & Agrarian Protest: Louisians Politics, 1877-1900" (Baton Rouge: Louisiana State University Press, 1969), 22.

ry voting restrictions and facially neutral laws administered in a discriminatory fashion discouraged other, and blatant ballot box stuffing and fraudulent counting negated the votes of many who managed to overcome other obstacles to voting.[11] By 1880. even President Rutherford B. Hayes, whose southern policy was built on the assumption that white moderates would live up to their promises, hold the more openly racist whites in check, and join a Whiggish alliance with Republicans, recognized the southern violations and asked Congress to pass more legislation to protect black rights effectively.[12]

III. FOUR STAGES IN THE ATTACK ON BLACK VOTING RIGHTS AFTER THE FIRST RECONSTRUCTION

There were four overlapping stages, four sets of distinct tactics in the late nineteen and early twentieth-century attacks on black voting rights: the Klan stage, the diluton stage, the disfranchisement stage, and the lily-white stage. In the first era, which is the best known, the basic tactics were violence, intimidation, and fraud. These methods continued to be used in later periods, as they were needed, to reinforce other, subtler devices, and the fact that they were always available itself often deterred blacks from organizing challenges to white political domination. Coordinated and deftly targeted white violence and fraud in the South from 1870 to 1876 gradually overthrew every southern Republican government.

Much less well known or understood, the second or "dilution" phase was much more subtle. It aimed at reducing the threat of black political power efficaciously but quietly, so as to decrease the possibility that the national government would again intervene to protect black from white southerners.

The third or "disfranchisement" phase is familiar to every student of the South. Beginning as early as the 1870s and culminating in the constitutional conventions from 1890 on, white Democrats passed literacy and property tests and poll taxes with the expressed intent and demonstrated effect of disfranchising the vast majority of blacks. Though they provided loopholes for poor or illiterate whites—the grandfather and "fighting grandfather" clauses and the "understanding" clause—they also meant to and did disfranchise large numbers of lower-status white people. Nonetheless, the prime object of all these attacks on universal or impartial suffrage was the black man.[13]

The final or "lily white" stage generally succeeded disfranchisement of most blacks. Its aim was to crush any elevation of blacks above the distinctly secondary political status into which the disfranchisement measures had forced them, and to reduce, from very slim to non, any chances of blacks being elected or appointed to office or exercising any political muscle whatsoever. Some blacks remained on the voter rolls even after the turn of the century constitutions and anemdnemts went into effect, and had the registration procedures been at all fair, many more could have registered. According to the U.S. Census of 1900, for instance, close to half of the adult black males in the South were literate, and others were direct descendants either of whites or of the more than 200,000 blacks who had served in the Civil War or earlier wars. Republican and even Democratic administrations in the late nineteenth century had appointed blacks to federal offices—postmasterships, tariff and other tax colletion posts, as well as many positions in the justice system. Yet during the so-called "Progessive Era," white southern politicians considered the prospect of any black at or near an office of responsibility as an inpudent and intolerable attack on the newly established racial status quo, and they tried to insure, through further "reforms" of local government, that never again could a black be elected to even a minor office within the South.[14]

IV. NINETEENTH-CENTURY DILUTION OF BLACK POLITICAL POWER—LESSONS FOR THE 1980'S

Black economic status is sufficiently secure and national public opinion committed enough to racially impartial suffrage in the 1980s that it is improbable to expect a return to the days when widespread violence, intimidation, or fraud, literacy tests, or poll taxes could be reimposed in order to deny black voting rights altogether. Nevertheless, more sophisticated means of abridging black political power are pres-

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[11] U.S. Senate Report 855, 45th Cong., 3d Sess.; U.S. Senate Report 704, 44th Cong., 2d Sess.

[12] Rayford W. Logan, "The Betrayal of the Negro: From Rugherford B. Hayes to Woodrow Wilson" (New York: Collier Books, 1965), 45.

[13] See, in general, Kousser, "Shaping of Southern Politics."

[14] It should be noted that the various disfranchisment measures were generally described as "reforms" during this period and that suffrage restriction was a central part of southern "Progressivism." See e.g., *ibid.*, 257-61.

ently in use in numerous areas, and, if the pre-clearnace provisions of Section Five of the Voting Rights Act are repealed, such means might well be employed much more in the future than they are today. But the abridgement as well as the denial of impartial suffrage is against the Fifteenth Amendment, and subtle as well as blatant discrimination can undermine the effective exercise of citizens' rights. It is therefore appropriate to take a closer look at the historical record in the two less well known of the four stages, particularly at the second stage. By what means was black political power diluted in the post-Reconstruction South?

Reconstruction and post-Reconstruction southern Democrats used at least sixteen different techniques to hamper black political power without actually denying the franchise to sufficient numbers of voters to invite a strengthening of federal intervention. Many of these devices were facially neutral and might possibly be upheld by courts even today. Indeed, some of them, adopted as long as a century ago, are still in effect and have recently been ruled not to violate the Construction or laws of the United States.[15] Thus, by looking at the past, we see also a possible future, a future which may well come about if continuous federal supervision of election practices is withdrawn from areas where racial bloc voting is still prevalent, a future of relatively subtle, but nonetheless effective racially discriminatory electoral procedures.

Although they all had the same purpose—the minimization of officeholding by black or black-influenced white officeholders—the specific schemes varied because of differences in the black percentage of the population and its geographic distribution. If the blacks were geographically concentrated within the politically relevant area, judicious *gerrymandering* could minimize the number of seats they could hope to win, but single-member districts, always preferred by most whites, could be maintained.[16] If Afro-Americans were in minority, *at-large elections* could deny them any representation at all, especially when combined with *white primaries,* which minimized defections by disgruntled white factions in the general elections. If they had clear, but not substantial majorities, *registration* acts, *poll taxes, secret ballot* or *multiple-box* laws, or *petty crimes* provisions could cut those majorities down, so that the previously mentioned tactics could be used. For temporarily white-controlled cities in such binds, *annexation,* or, in suitable circumstances, the striking inventive device of *de-annexation or retrocession* of territory were available. If the majorities were too large to be overcome, *bonds* for officeholders could be set so high as to deter any but the extremely affluent or those with rich friends from running, or the authorities might arbitrarily *refuse to accept the bonds* as valid, or election officials might *consolidate polling places* to such an extent as to make the trip to the polls or the line at the polls intolerably long, or they might just *fail to open the polls* altogether. In extremes, the legislatures could *impeach or otherwise displace* elected officials or *do away with local elections* altogether and vest the power to choose local officials in the legislature or governor or their appointees. Since many areas still lack detailed political histories, this list, and historians' current knowledge of the incidence of all these practices, are necessarily incomplete. Nonetheless, some illustrations are useful to lend concreteness to the catalogue.

Racially motivated gerrymandering was widely employed in cities as well as states, for legislatures as well as Congress, Whereas more than sixty percent of South Carolina's people were black in the 1880's, only one of her seven Congressional districts has a secure black majority. Known at the time as the "black district," the South Carolina Seventh sliced through county lines and ducked around Charleston back alleys picking up every possible black, while avoiding as many whites as it could; was contiguous at one point only by considering the Atlantic Ocean a land mass; contained nearly a third more people than another of the state's districts; and was shaped, the New York Times said, like a boa constrictor, the color of its intended victim clear.[17] Similarly, partisan and racial considerations—the two correlated almost perfectly in the Deep South at the time—gave North Carolina its "Black Second" Congressional District, Alabama its "Black Fourth," and Mississippi its notorious "Shoestring District," which tracked the Mississippi River down the whole length of the state in order to concentrate as much of the Negro vote as possible in one seat.[18] In the Texas legislature, the boundaries of all the black belt

[15] *Mobile* v. *Bolden,* 100 S. Ct. 1490 (1980).

[16] The 16 devices will be italicized in this section to assist the reader.

[17] "New York Times," July 13, 1882, p. 5.

[18] Eric Anderson, "Race and Politics in North Carolina, 1872-1901: The Black Second" (Baton Rouge & London: Louisiana State University Press, 1981); Sarah Woolfolk Wiggins, "Alabama: Democratic Bulldozing & Republican Folly," in Otto H. Olsen, ed., "Reconstruction and Redemption in the South" (Baton Rouge & London: Louisiana State University Press, 1980), 68-69; New York Times, July 27, 1882, p. 5.

multi-county "floater" districts, in the words of the standard work on race relations in that state, "were gerrymandered in order to create a white majority." [19] Similar racially tainted gerrymanders "whitened" state legislatures all across the South, as well as in the cities of Richmond, Nashville, Montgomery, Raleigh, Chattanooga, Jackson (Mississippi), and doubtless others which have not yet received intensive study.[20]

At-large city elections, clearly motivated by racial purposes, appeared in the South as early as the first elections in which blacks were allowed to vote. "To guard against the possibility of the election of black city officials," white Atlanta Democrats in 1868 "secured from the legislature the general ticket system." [21] Two years later, after a temporarily Republican Georgia legislature restored the ward system, two of the ten candidates elected were black. But when the G.O.P. lost control of the legislature in 1871, the Democrats went back to the ward system, and no more blacks were elected to the Atlanta city government unitl 1953.[22] In Mobile, Alabama, as research for the recent retrials in the *Brown* and *Bolden* cases has shown, the rabidly racist 1874 and 1876 Redeemer legislatures mandated explicit at-large systems for the election of school board and city government officials. In the case of the school board, this replaced a system which had been designed to guarantee "minority representation," and in the instance of the city government, it was a substitute for a vague 1870 law which a local racist faction of white Republicans had interpreted, under Democratic pressure, to require at-large elections. No black has even been elected to either governmental body under an at-large system, which persists in Alabama law to this day.[23] Chattanooga, Memphis, and Nashville "reformers," too, introduced and at times succeeded in getting the Tennessee legislature to pass at-large election statutes for their cities. "Their efforts stemmed from partisan and racial motives," says the leading authority on the subject, who titles his chapter on the topic: "Urban Reform: The Nemesis of Black Power." [24]

The Democratic primary was not at first principally a disfranchising device, for the vast majority of blacks wished only to cast Republican or independent votes and have them counted as cast, and, in fact, a few blacks were often allowed to vote in such primaries, in return for pledges of allegiance to the Democrats, in order to cut down the Republican totals in the general elections. But the local primary soon became the real election in many areas, and it was restricted to whites only in certain Texas counties from 1874 on, in Edgefield and Charleston counties in South Carolina from 1878 on, in Birmingham from 1888 on, and in Atlanta for various periods before 1895 and from that date until at least the *Smith* v. *Allright* decision in 1944.[25]

By lengthening residency requirements, by requiring periodic voter registration at centrally located places during working hours and presentation of registration receipts at the polls (which burdened lower-class voters who were not accustomed, in those pre-bureaucratic days, to keeping records), by demanding copiously detailed information, which sometimes had to be vouched for by witnesses, before a voter could register, by allowing registration boards sufficient discretion to enable them to pad or unfairly to purge the rolls, by not guaranteeing equal party representation on such boards, and by permitting widespread challenges to voters at the polls, nineteenth century southern Democrats could keep the black vote under control.

Speaking for local Democrats in February 1875, for instance, the Montgomery Daily Advertiser pleaded that "if the Legislature does not come to the aid of the negro [sic] dominated communities then there is no help for this portion of Alabama." The legislature responded with a strict local registration law.[26] In Mississippi in the same year, according to a leading modern scholar, "the new registration

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[19] Lawrence D. Rice, "The Negro in Texas, 1874-1900" (Baton Rouge: Louisiana State University Press, 1971), 101, 132.

[20] Howard N. Rabinowitz, "Race Relations in the Urban South, 1865-1890" (New York: Oxford University Press, 1978), 270-73, 323; Joseph H. Cartwright, "The Triumph of Jim Crow: Tennessee Race Relations in the 1880's" (Knoxville: University of Tennessee Press, 1976), 158.

[21] Eugene J. Watts, "Black Political Progress in Atlanta, 1868-1895," "Journal of Negro History," 59 (1974): 273.

[22] Watts, "Black Political Progress," 273; Rabinowitz, "Race Relations in the Urban South," 269.

[23] These statements are based on documents introduced in the April and May 1981, trials in the Federal District Court, in which I testified as an expert witness.

[24] Cartwright, "Triumph of Jim Crow," 119-160, quote at 159.

[25] Rice, "Negro in Texas," 113-27; Tindall, "South Carolina Negroes," 26, 33; Carl V. Harris, "Political Power in Birmingham, 1871-1921" (Knoxville: University of Tennessee Press, 1977), 58; Eugene J. Watts, "The Social Bases of City Politics: Atlanta, 1865-1903" (Westport, Conn.: Greenwood Press, 1978), 24, 30, 31.

[26] "Advertiser," Feb. 6, 1875, quoted in Rabinowitz, "Race Relations in the Urban South," 274.

law provided an excellent means for local Democrats to reduce Negro voters to a manageable proportion—an opportunity many seized upon immediately."[27] Texas in 1874 gave city councils the right to delete "ineligibles" from the rolls after the close of registration, a measure "undoubtedly motivated," in the words of Lawrence D. Rice, "by the mobility of certain portions of the population—principally the Negroes."[28] In Tennessee, a municipal registration act was beaten in 1885 only when the Republicans in the state senate walked out, breaking the quorum. When it passed, along with a secret ballot act (which served as a de facto literacy test, since illiterates were not allowed assistance in voting) in 1889, registration devastated the black vote in the four major Tennessee cities, as it was intended to.[29]

The South Carolina registration and eight-box law was one of the most clever strategems, and its provisions illustrate better than any other instance how ingenious southern authors could twist seemingly neutral devices for partisan and racist purposes. As first introduced, the bill took the "Neutral principle" of voter registration and turned it into a literacy test by requiring potential registrants to sign their names. Its author, the "patrician" Edward McCrady, Jr., estimated that this would disfranchise a majority of the blacks. To those who pointed out that a literacy test would also affect many whites, McCrady proposed as an escape mechanism the first form of the grandfather clause. Massachusetts in 1857 had required literacy of all future voters, but allowed those already on the rolls to stay. McCrady simply adopted the principle of the Massachusetts provision, along with its 1857 date, which, as everyone realized, predated black suffrage. As the bill finally passed, the literacy test was shifted into a new section of the law which provided for separate ballot boxes for each of eight offices, required election officials to shift the boxes around during the voting to make it impossible for a literate friend to put an illiterate's tickets in the correct order before he entered the polling place, and prohibited anyone but the election officers (all but one or two of whom in the entire state seem to have been Democrats) from assisting unlettered voters. In place of the grandfather clause, the registration provision which finally passed allowed the registrar at the close of the registration period to add to the list any voter who had failed to register if the official, to quote the law, "upon such evidence as he may think necessary, in his discretion" judged that the voter should be on the rolls. This open invitation to fraud and discrimination was designed to let registrars enfranchise all whites. Black turnout in South Carolina in the Presidential election of 1884 dropped by an estimated 50 percent from its 1880 level.[30]

Although some scholars have doubted the effect of the poll tax on black voting, contemporaries knew better. It was "the most effective instrumentality of Negro disfranchisement," according to a member of the 1890 Mississippi Constitutional Convention's Franchise Committee, and "practically disfranchised the Negroes" in Georgia, according to a prominent North Carolina disfranchiser. And it was adopted early in some states. Georgia Republicans suspended the tax as a suffrage prerequisite in 1870, but the Democratic Redeemer legislature promptly restored it in 1871, and the 1877 Georgia constitutional Convention not only fixed it in the fundamental law, but made it cumulative—i.e., taxes for all previous years had to be paid before one could vote. Tennessee Democrats in 1870 and Virginia Democrats in 1876 followed Georgia's lead, but anti-Democratic "independent" movements, which were allied with the heavily black Republican parties in each state, made poll tax repeal one of their first orders of business during the 1870s. As is well known, by 1908, all southern states had made the poll tax a suffrage prerequisite, and the Afro-American was always its chief intended victim.[31]

Less well known were laws and constitutional provisions disfranchising people for having committed various crimes. While the effect of such provisions is unclear, since many were apparently adopted primarily as insurance if courts struck down more blatantly unconstitutional clauses or mandated fair implementation of those clauses, their intent is obvious. According to the Richmond State and the Petersburg Index and Appeal, Virginia's petty crimes provision, along with the poll tax, effected "almost . . . a political revolution" in cutting down the black vote.[32] Mississip-

[27] Harris, "Day of the Carpetbagger," 701.
[28] Rice, "Negro in Texas," 130.
[29] Cartwright, "Triumph of Jim Crow," 134-35, 223-254; J. Morgan Kousser, "Post-Reconstruction Suffrage Restrictions in Tennessee: A New Look at the V. O. Key Thesis," Political Science Quarterly, 88 (1973), 655-83.
[30] Kousser, "Shaping of Southern Politices", 84-92.
[31] *Ibid.*, 63-72 and *passim*.
[32] Quoted in Maddex, Jr., Virginia Conservatives, 198. Similarly, see Paul Lewinson, "Race, Class, and Party: A History of Negro Suffrage and White Politics in the South" (New York, Russell and Russell, Inc., 1963), 66.

pi's infamous 1875 "pig law" defined the theft of property valued at ten dollars or more, or of any cattle or swine, whatever their value, as grand larceny, thus bringing those convicted of such minor offenses under the previous state constitutional suffrage ban.[33] During debate in the 1895 South Carolina Constitutional Convention, a delegate moved to add to the list of disfranchising crimes housebreaking, receiving stolen goods, breach of trust with a fraudulent intention, fornication, sodomy, assault with intent to ravish, miscegenation, incest, and larceny, and to strike out theft and the middle-class crime of embezzlement. The conventioneers agreed, as they did to another member's proposal to include wife-beating. Murderers, however, were allowed to vote.[34] The framer of the crimes provision in Alabama Constitutional Convention of 1901 thought that its wife-beating provision alone would disqualify sixty percent of the black males.[35] Recent attempts to have the South Carolina and Alabama petty crimes provisions declared unconstitutional have failed in federal courts.[36]

To reduce a black majority in 1877, Montgomery de-annexed a predominantly black section, even though the area contained enough valuable industrial property that its retrocession noticeably reduced the city's tax base.[37]

To discourage black candidates, the town of Huntsville, Texas, raised the required bond for constables during the 1880's to twenty thousand dollars.[38] In Vance County, North Carolina, in 1887, a sheriff's bond was fixed at fifty-three thousand dollars and a treasurer's, at eighteen thousand dollars. Since few Republicans were wealthy enough to sign such bonds, only those acceptable to rich Democrats could serve. Even if they had affluent friends, successful candidates sometimes had their bonds arbitrarily refused by the Democratically-appointed county commissioners in North Carolina. In Warren County in 1886, the commissioners turned down a candidate, because he "was a colored man." His white opponent, rejected by the voters, was given the office.[39]

Fraud, notorious and ubiquitous in the postbellum South, was supplemented by somewhat less blatant polling place irregularities, which are best illustrated by one scholar's description of the 1876 election in the Alabama black belt: "On election day some polls opened and closed at the whim of election officials while other polls moved several times during the day. Some election officials refused to open the polls at all, and others announced that they were not going to remain at the polls all day to permit blacks to make 'radical majorities.' The failure to open polls in Republican strongholds in Hale, Perry, Marengo, Bullock, Barbour, Greene, Pickens, Wilcox, and Sumter counties undermined Republican strength as effectively as the earlier terror of the Ku Klux Klan, and it involved no bloodshed."[40]

If all else failed, officials could be impeached or forced from office, often on trumped-up charges, and local governments could be made appointive. Thus, North Carolina Governor William W. Holden was impeached in 1870 for trying to put down the Klan, and Mississippi Governor Adelbert Ames, whom no one credibly charged with any illegal act, was pressured out of office during impeachment proceedings, which also led to resignations by other statewide executive and judicial officials, as well as circuit judges, in that state and in South Carolina.[41] In Tennes-

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[33] C. Vann Woodward, "Origins of the New South, 1877-1913" (Baton Rouge, Louisiana: Louisiana State University Press, 1951), 212-13.

[34] South Carolina Constitutional Convention of 1895, Journal of the Preceedings (Columbia, South Carolina: Charles A. Calvo, Jr., 1895), 298, 487; Tindall, "South Carolina Negroes", 82.

[35] Jimmie Frank Gross, "Alabama Politics and the Negro, 1874-1901" (unpublished Ph.D. Thesis, University of Georgia, 1969), 244; Malcom Cook McMillan, "Constitutional Development in Alabama, 1798-1901: A Study in Politics, The Negro, and Sectionalism" (Chapel Hill, North Carolina: University of North Carolina Press, 1955), 275. That this delegate was undoubtedly grossly exaggerating only strengthens the case for the racist motivation behind the provision.

[36] *Allen* v. *Ellisor*, No. 79-1539, Fourth Circuit Court of Appeals, en banc, January 6, 1981; *Underwood* v. *Hunter*, No. 80-7084, Fifth Circuit Court of Appeals, July 15, 1980.

[37] Rabinowitz, "Race Relations in the Urban South," 323.

[38] Rice, "Negro in Texas," 88-89.

[39] Anderson, "Race and Politics in North Carolina," 162-65. For other examples, see Wiggins, "Democratic Bulldozing," 67; Allen J. Going, "Bourbon Democracy in Alabama, 1874-1890" (University, Alabama: University of Alabama Press, 1951), 33; Cartwright, "Triumph of Jim Crow," 152-53.

[40] Wiggins, "Democratic Bulldozing," 71-72. For examples of such tactics in South Carolina, see Tindall, "South Carolina Negroes," 72; in Mississippi, see the contested congressional election cases of *Buchanan* v. *Manning* and *Chalmers* v. *Morgan*, in Chester H. Rowell, Comp., "Digest of Contested Election Cases, 1789-1901" (Washington: Government Printing Office, 1901), 373-75, 457-58; in Virginia, see *Stovell* v. *Cabell*, *Waddill* v. *Wise*, and *Langston* v. *Venable*, in Rowell, Digest, 393, 452-54, 457-60.

[41] Anderson, "Race and Politics in North Carolina," 3; Harris, "Day of the Carpetbagger," 694-98; Tindall, "South Carolina Negroes," 15-18.

see in 1869 and in Virginia in 1870, conservative state legislatures summarily ousted the Nashville and Richmond city governments and replaced Republicans with Democrats. The Alabama legislature abolished the Dallas county criminal court because the black Republican judge refused to resign, and did away with the elective office of county commissioner in at least five black belt counties during the 1870's, substituting gubernatorially appointed officers. The purpose of Alabama's action was later openly avowed by state legislator James Jefferson Robinson:

"Montgomery county came before us and asked us to give them protection of life, liberty and property by abolishing the offices that the electors in that county had elected. Dallas asked us to strike down the officials they had elected in that county, one of them a Negro that had the right to try a white man for his life, liberty and property. Mr. Chairman, that was a grave question to the Democrats who had always believed in the right of the people to select their own officers, but when we saw the life, liberty and property of the Caucasians were at stake, we struck down in Dallas county the Negro and his cohorts. We put men of the Caucasian race there to try them . . ."[42]

In North Carolina, the state legislature first divested the voters of the right to elect county commissioners and justices of the peace, then arrogated to itself the power to name justices of the peace, then gave the justices of the peace the responsibility of choosing the commissioners. The complexion of the county government in Wake and other Republican counties changed immediately and irredeemably.[43]

What policy conclusions can we draw from this review of the nineteenth century dilution phase? First, since as every politician knows, politics is often a matter of small margins and any change in the rules can potentially make a large difference in outcomes, it follows that even minor alterations in election structures can be extremely important. Many of the nineteenth century dilutive devices had no impact or only a marginal impact on blacks' ability to vote *per se,* but they very often made the difference between winning and losing—that is to say, between having some political influence and little or none. Second, many of the schemes were ingenious and their exact form could not have readily been predicted in advance. Any attempt to prohibit discriminatory voting devices must have built into it sufficient administrative flexibility to be able to deal with schemes which cannot all be prcisely anticipated. Third, many of the means of abridgement depended largely on discriminatory administration of seemingly fair laws. Since such practices are particularly difficult for courts to evaluate, it is preferable to vest oversight power in an executive administrative agency, if one really wants to prohibit this type of discrimination. Fourth, many of the existing practices and structures which were grandfathered in by the 1965 voting Rights Act were adopted as long as a century ago for purposes which historians would probably be willing to conclude were discriminatory. Although it is difficult and extremely time-consuming to uncover evidence of their exact intent which would convince an unsympathetic judge, and nearly impossible to find guns still merrily smoking after so long a time, it is possible to discover quite a lot about motives in many instances. If Congress really wishes to guarantee fair and effective suffrage for "discrete and insular minorities," it ought to consider removing its own 1965 grandfather clause from practices which clearly have the effect of disadvantaging such people, and which in the instances which have been most closely studied so far have been shown to have been enacted with discriminatory purposes in mind.

V. MUNICIPAL "REFORM" AND THE LILY-WHITE STAGE

In his plurality opinion in *Mobile* v. *Bolden,* Mr. Justice Stewart contends that "It is noteworthy that a system of at-large city elections in place of elections of city officials by the voters of small geographic wards was universally heralded not many years ago as a praiseworthy and progressive reform of corrupt municipal government." In support of this view, Justice Stewart cites only one pertinent source, Banfield and Wilson's City Politics, blatantly misreads the relevant sentence on the page he cites, and fails to note that Banfield and Wilson elsewhere in the book devote a full page to the deleterious effect of at-large systems on black representation.[44] Moreover, Justice Stewart's summary is at least a generation out of date, and

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[42] Rabinowitz, "Race Relations in the Urban South," 267-69; Wiggins, "Democratic Bulldozing," 68; Montgomery Advertiser, Apr. 23, 1899.

[43] Rabinowtiz, "Race Relations in the Urban South," 269-70; Anderson, "Race and Politics in North Carolina," 56-57.

[44] 100 S.Ct. 1490 at footnote 15 of Mr. Justice Stewart's opinion; Edward C. Banfield and James Q. Wilson, City Politics (Cambridge, Massachusetts: Harvard University Press and Massachu-

the view he expresses no longer commands the respect of the community of professional historians, if it ever did. In the nation as a whole, it is clear that commission government and at-large elections had as one of their prime purposes the strengthening of upper-class influence and the corresponding weakening of lower-class influence in politics. In the south, a large part of that lower-class was black. Municipal reform in the region was often part and parcel of the movement to insure that government would remain lily-white.

The recent historiography of municipal political reform during the early part of the twentieth century has been dominated by the so-called "Weinstein-Hays Thesis." In seminal articles in 1962 and 1964, James Weinstein and Samual P. Hayes examined the social origins and consequences of the city commission and manager movements. Their conclusions, now widely accepted by historians, were summarized by Weinstein: ". . . the heart of the [commission] plan, that of electing only a few men on a citywide vote, made election of minority or labor candidates more difficulty and less likely. Before the widespread adoption of commission and manager government it was common for workingmen to enter politics and serve as aldermen, or even mayor . . . But once the commission plan was in effect this became rare. Working-class aldermen were hard hit because the resources needed to conduct a citywide campaign were much greater than those needed for a ward election, and because minorities—political, racial, or national—were usually concentrated in specific wards . . . The nonpartisan ballot, a feature of most commission-manager plans and widely heralded as a great advance in democracy, also tended to operate against minority groups . . . The end result of the movements was to place city government firmly in the hands of the business-class."[45]

Hays' description of the origins of the municipal reform movement makes clear that these consequences were foreseen and intended: "The movement for reform in municipal government, therefore, constituted an attempt by upper-class, advanced professional, and large-business groups to take formal political power from the previously dominant lower- and middle-class elements so that they might advance their own conceptions of desirable public policy."[46]

Historical works written since the Weinstein and Hayes articles have broadened and deepened their research, but have left their conclusions essentially unchanged. In Galveston, fount of the twentieth century commission idea, businessmen led the drive for both at-large elections (which preceded commission government in that city) and the abolition of the mayor-council structure. But the movement was damaging to blacks, as Bradley Rice notes in his recent book: "As some black leaders had anticipated, the at-large feature of the 1895 charter effectively terminated Negro office-holding in Galveston despite the fact the race comprised twenty-two percent of the city's population in 1900. The black incumbent whom the People's Ticket endorsed carried his district but fell victim to city-wide prejudice in the total vote."[47] All across the nation, Rice finds, minority and lower-status groups opposed at-large during this era: "The lower classes correctly perceived that the at-large election of a small board would make it difficult for people of limited means to be elected. They expected that governmental schemes devised and promoted by business interests would be run for the benefit of those same interests."[48] Appealing for black votes against the commission in Des Moines, Iowa, in 1908, for instance, an orator told the Trades and Labor Assembly that "This is the Galveston system pure and simple to keep the so-called white trash and colored vote of the south from exerting itself in participation of [sic] the affairs of the city."[49]

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setts Institute of Technology Press, 1963), 151, 307-08. what Banfield and Wilson actually say on p. 151 is merely that "nonpartisanship, the council-manager plan, and at-large election are all expressions of the reform ideal and of the middle-class political ethos." That they are not uncritical of that ideal and that ethos is one of the signal features of their book.

[45] Weinstein's "Organized Business and The Commission and Manager Governments" first appeared in The Journal of Southern History, 28 (1962), and was reprinted in his book, "The Corporate Ideal and The Liberal State, 1900-1918" (Boston: Beacon Press, 1968), in which the quoted passage appears on 109-10, 115.

[46] Hays' "The Politics of Reform in Municipal Government in The Progressive Era" first appeared in Pacific Northwest Quarterly, 55 (1964), and was reprinted in his book, "American Political History as Social Analysis" (Knoxville: University of Tennessee Press, 1980), in which the quoted passage appears on 215-16.

[47] Bradley Robert Rice, "Progressive Cities: The Commission Government Movement in America, 1901-1920" (Austin and London: University of Texas Press, 1977), 5.

[48] *Ibid., 29.* For a similar treatment, see Martin J. Schiesl, "The Politics of Efficiency: Municipal Administration and Reform in America, 1800-1920" (Berkeley, Los Angeles, and London: University of California Press, 1977), 133-48.

[49] Quoted in Rice, Progressive Cities, 47.

But why, after the passage of constitutional disfranchisement measures had devastated the black vote in the South, was further "reform" necessary? Whatever the impetus of "reform" electoral structures elsewhere in the nation or before "hard" suffrage restriction laws went into effect in the South, weren't most of the post-1900 changes passed in "race-proof" situations? To understand why the implications of this question are misleading requires a deeper look at both disfranchisement and at the lily-white "progressive" impulse.

Never after the passage of the Fifteenth Amendment were all southern blacks disfranchised. In every state, and particularly in southern cities, where the literate, and, relative to sharecroppers, comparatively wealthy black middle-class congregated, thousands of Afro-Americans remained on the voting rolls.[50] In close elections, especially in the often desultory municipal election contests, geographically concentrated minority votes might hold the balance of power. In Mobile in 1908, for instance, nearly 200 blacks were registered, in an era when the normal turnout was about 3,000 in municipal campaigns, and when the legislature temporarily shifted to a scheme in which the members of one part of the bicameral city governing body would be selected on a ward basis, there was a real fear that blacks might influence the selection of a member from one or two wards. The answer to this threat was first, to ban blacks altogether from the local Democratic primary—some had previously been allowed to vote, and others then apparently desired to—and second, to return to totally at-large elections, which the legislature ordered in 1911.

In fact, throughout the South, whites in the "progressive era" feared that their "solution" to the "Negro problem" might unravel. To counter the possibility that blacks might be able to take advantage of splits within the white community, the Democrats sought to impede the growth of any potential opposition party by legalizing the direct primary and banning defeated primary candidates from running in the general election. All White, they hoped, would come to consider the primary the real election, and organized party opposition would fade. As we know, th scheme succeeded. Increasingly completely excluded from what became known at that time as the "white primary," blacks could thereafter no longer cherish even the slightest hope that they could ally with a disgruntled white faction or party and thereby regain some political influence.[51]

Two famous incidents underscore the extent to which southerners in the early part of this century insisted upon absolutely lily-white government, help us understand the prevasiveness and depth of racial motives, the lengths to which white southerners of the time were willing to go to eliminate even the least vestige of black political power, and therefore the improbability that any political change which affected blacks could have been devoid of a racial purpose.

The first incident involved Mrs. Minnie Cox, who had been postmistress at Indianola, Mississippi, during the Harrison and McKinley administrations and had been continued in her job when McKinley's assassination brought Theodore Roosevelt to the Presidency. Wealthy and college-educated, Mrs. Cox was widely respected in the white community in Sunflower County, and there was never any question of her competence or probity. In 1902, however, a complicated series of maneuvers by opportunistic local, state, and national politicians led to such loud demands for her replacement that the unoffending third-class post-mistress in the tiny Mississippi town became the subject of numerous editorials in national newspapers, cabinet meetings, a U.S. Senate debate, and a formal Congressional investigation! Mrs. Cox was eventually replaced by a white man.[52]

In the second black cause celebre of the Theodore Roosevelt administration, the U.S. Senate, responding to southern white protests, held up for two years, solely on racial grounds, the appointment of an affluent, college-educated black doctor for the collectorship of the Port of Charleston. The prolonged struggle and agitation over the issue of appointing an Afro-American to this comparatively unimportant post was enough to win Roosevelt the virtually unanimous support of Negroes throughout the country at the same time that it scotched any hopes the President, previously immensely popular in the South, had for reviving the Republican party in the region.[53]

Along with the Cox affair, the Crum controversy makes clear the heavy burden borne by present-day defenders of laws originally passed in the lily-white era and still in force today, if they claim that those laws were passed without discriminatory

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[50] For figures on post-disfranchisement black registration, see Kousser, "Shaping of Southern Politics," 61.

[51] See *ibid.*, 72-82.

[52] Willard B. Gatewood, Jr., "Theodore Roosevelt and the Art of Controversy" (Baton Rouge: Louisiana State University Press, 1970), 62-89.

[53] *Ibid.*, 90-134.

intent. Would people who had been about the job of manipulating electoral structures to reduce black influence for over a generation, people who would openly and repeatedly defy a charismatic President in an attempt to keep political offices pure white be likely to have been unconscious that one of the most widely noted effects of a particular change in the political rules, such as a shift from ward to at-large elections, would be to make it virtually impossible for the forseeable future to elect a black to office? I find this "race-proof situation" argument completely implausible, and hope that congress will take into account that period's overwhelming racism and the persistence of political structures dating from that time, which still often hinder blacks in the full exercise of their franchise, in considering what practices are to be forbidden and what administrative mechanisms are to be established or maintained under the Voting Rights Act.

VI. THE SUPREME COURT THEN AND NOW

Sanguine nineteenth century supporters of black rights sometimes contented themselves after Reconstruction with the idea that the constitutional protection of those rights would be enforced by the courts, even if Congress and the states reneged. That those hopes proved ill-founded by the turn of the century is well known. And the parallels between past and current judicial language and decisions are close enough to give pause to any who would offer as alibis for inaction or timid action or renewal of the Voting Rights Act the excuse that the courts will still be around to protect constitutional rights.

The Supreme Court's retreat in such major cases as *Slaughter House, The Civil Rights Cases,* and *Plessy* v. *Ferguson* is common textbook knowledge. Rather less widely known, often mistakenly interpreted, and more closely analogous to more recent decisions is the Court's series of turn-of-the century opinions on black voting rights and the intent to discriminate.

In *Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886), an attorney for Chinese laundrymen in San Francisco had presented an extensive factual brief detailing both the open avowal of an intent to disadvantage Chinese laundrymen during the San Francisco city council's debate over adoption of the facially neutral ordinance at issue, and the discriminatory effect on the Chinese of the ordinance as administered. In a rather expansive opinion, parts of which it later in effect declared dicta, the Supreme Court found an equal protection violation. Reading Yick Wo too broadly, Cornelius J. Jones, a clever but inexperienced black lawyer from Greenville, Mississippi, challenged a client's murder conviction on the grounds that the jury panel had been drawn from the voting rolls, from which blacks had been excluded by the 1890 Mississippi constitution. Quoting extensively from newspaper reports of the debates at the Mississippi disfranchising convention, but offering no direct evidence of the notorious fact that the intent of the delegates had been carried out, Jones asked the Court to declare the Mississippi voting rules unconstitutional and to let his client go free.[54] The court easily sidestepped Jones, declaring the proof of intent was insufficient, that one had to prove effect as well.[55]

In the next case after the *Williams* debacle, a more savvy black lawyer, Wilford Smith of New York, was secretly hired by Booker T. Washington essentially to plug the loopholes in Jones' case. Challenging the 1901 Alabama Constitution's suffrage provisions directly, Smith's brief charged that the state constitution's "fighting grandfather" clause was a blatant attempt to subvert the Fifteenth Amendment, that the debates provided plentiful evidence that the whole scheme was designed to disfranchise blacks both through provisions which the delegates knew would have a disproportionate impact upon them and through pre-planned discrimination in the administration of provisions which appeared neutral on their face, and finally, that the plot had been carried out, since Mr. Giles and other literate Negroes had been denied the right to register.[56] Since it could no longer use the impact/intent ploy, the Court turned to another classic dodge in the equal protection game, the question of relief. Smith had contended that the suffrage provisions of the Alabama constitution were so tainted with racist intent that the Court should declare the whole package unconstitutional, but also that it should order the Montgomery registrar to add Mr. Giles to the rolls. But, responded Mr. Justice Holmes, suppose the Court attacked administrative discrimination by ordering Giles and his class registred, but left the suffrage provisions otherwise intact. Wouldn't the discrimination complained of still persist for most Negroes? Conversely, suppose the Court threw out the provisions altogether. Then there would be no law under which Giles or anyone

[54] National Archives file on *Williams* v. *Mississippi,* 170 U.S. 213 (1898).
[55] See the opinion of the court in *ibid.*
[56] *Giles* v. *Harris,* 189 U.S. 475 (1903).

else could register, and again, blacks would get no relief. Anyway, Holmes concluded, grasping either horn of the dilemma would involve the courts to deeply in "political questions," which were best left to Congress and the state legislatures. It was a constitutional violation which the judiciary could not relieve.

Interestingly enough, Congress was considering the same question simultaneously. At the same time that he brought the *Williams* case in court, Cornelius J. Jones had challenged the seating of three Congressmen from Mississippi before the quasi-judicial House Elections Committee on the grounds that blacks had been unconstitutionally excluded from the electorate and that therefore the elections were illegal per se. While he had not presented a full-fledged case, other lawyers who followed Jones's lead later did, and the committee had put off ruling on the issue until the *Dantzler* challenge from South Carolina in 1903. In that case, decided within six months of Giles, the House committee invoked what might be called, in analogy to the "policial questions" doctrine, a "judicial questions" doctrine, ruling that such charges of discrimination were best left to the courts. The Alphonse-Gaston routine of Congress and the Supreme Court in *Dantzler* and *Giles* left blacks with no rights that the white men of the national government were bound to protect.[57]

In another turn-of-the-century case, the Supreme Court used an extremely stringent intent criterion to slam the door on efforts to mandate as much equality as was possible in a segregated system.[58] If Mr. Justice Harlan's opinion in *Cumming* v. *Richmond County School Board,* 175 U.S. 528 (1899) had been precisely followed, it would have made it practically impossible to prove a constitutional violation against a prudent discriminator. The Augusta, Georgia, school board in 1897, claiming financial stringency and a desire to use available moneys for black elementary education, had cut off funds for a black high school, while continuing to subsidize two high schools for whites. Pointing out that the school board had just received a very large increase in appropriations from the state government and that, if more money was to be needed for black elementary schools, it could come from the state supplement or from funds previously devoted to white as well as black schools, black parents charged that the school board's action was unconstitutional. But since school board members had not openly said that they acted because they wished to disadvantage black children, Justice Harlan treated their economic distress excuse as a "rational basis", and disregarded the view, strenuously pressed by one of the great constitutional lawyers of the day, former U.S. Senator George F. Edmunds, that the discriminatory impact of the law should be considered dispositive as to its real intent.[59]

Although I am not a lawyer and do not claim to be an expert on modern constitutional law, the trend in recent cases on voting rights discrimination appears to pose, even to a layman, disturbing parallels to the Supreme Court's post-Reconstruction restriction of constitutional protection of minority rights. Although it denied the requested relief in the first multimember districting case, *Fortson* v. *Dorsey,* 379 U.S. 433 (1965), the Court did proclaim a generous and perhaps even workable standard for proving a violation. Those who claimed that a multimember scheme disadvantaged "racial or political elements" of the population could prevail if they could show that the scheme "designedly *or otherwise*" discriminated against them.[60] In *Whitcomb* v. *Chavis,* 403 U.S. 124 (1971), the Court denied that the lawyers for the Indianapolis blacks had proved either discriminatory intent or effect, but did not foreclose an attack on either ground. *White* v. *Regester,* 412 U.S. 755 (1973) held a Texas multimember scheme invalid on the basis of a "totality of the circumstances" approach which blended both "design and impact." And in *Connor* v. *Johnson,* 402 U.S. 690 (1971), the Court directed a federal district court to devise a reapportionment scheme which did not include multimember districts, presumably because it recognized the unfairness of such districts to minorities.

In related areas of equal protection law, the Court zig-zagged. *Palmer* v. *Thompson* 403 U.S. 217 (1971), held that Jackson, Mississippi's decision to close its swimming pools could not be reversed on the grounds of discriminatory motive, which

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[57] See the House Elections Committee cases of *Brown* v. *Allen, Newman* v. *Spencer, Ratliff* v. *Williams, Carter Glass, Dantzler* v. *Lever, Prioleau* v. *Legare,* and *Myers* v. *Patterson* in Rowell, "Digest of Contested Election Cases," 540–41, and Moores, "Digest of Contested Election Cases," 3, 16, 25–28. See also H.R. 2915, 57th Cong., two sess.; and H.R. 1638, 1639, and 1640, 60th Cong.

[58] I use "equal" here, of course, only in the very restricted sense of schools in which the expenditures per child, the physical facilities, and the teacher qualificaitons are roughly the same for children of every race.

[59] See J. Morgan Kousser, "Separate but not-Equal: The Supreme Court's First Decision on Racial Discrimination in Schools," Journal of Southern History, 46 (1980), 17–44.

[60] Italics supplied. See the discussion in Lawrence H. Tribe, "American Constitutional Law" (Mineola, N.Y.: The Foundation Press, Inc., 1978), 750–55.

was established in the record, alone. Impact became the key element.[61] Yet in a series of cases beginning with *Washington* v. *Davis*, 426 U.S. 229 (1976), the Court applied an ever stricter "motive test." Although he held that on equal protection violation "must ultimately be traced to a racially discriminatory purpose" in Washington, Mr. Justice White did rule that a disproportionate effect on minorities was "not irrelevant" to an inquiry into purpose and that intent was to be assessed by looking at the "totality of the relevant facts."[62] In *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 97 S. Ct. 555 (1977), The Court appears to have dismissed the discriminatory impact of the Chicago suburb's zoning ordinance on racial minorities as irrelevant to a determination of motive, and it readily accepted the Village's non-racial explanation for its action. And in *Personnel Administrator of Massachusetts* v. *Feeney*, 442 U.S. 256 (1379), impact became even less relevant to motive, since the Court held that the challenged action had to be shown to have been taken "at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group."[63]

These two streams flow together in *Mobile* v. *Bolden*, a confusing hodgepodge of opinions headed by Mr. Justice Stewart's for a four person plurality. Pushing *Feeney* further, Justice Stewart found impact largely irrelevant, dismissed the view that the failure of the state of Alabama to take positive steps to remedy the historical pattern of past discrimination by itself constitutes a violation of the Constitution, and, according to one reading of the opinion, limited "the constitutional inquiry to a search for a smoking gun."[64] Like *Cumming* before it, *Bolden* is both a seal of approval on an unjust status quo and an invitation to engage in soft-pedaled discrimination, an announcement that a credulous Court is ready to defer to any state and local authorities who can offer plausible reasons besides race for their actions.[65] Take away section 5 pre-clearance, or relax its heretofore fairly stringent controls, and *Bolden* opens the door to widespread electoral changes, aimed at reducing minority political power, but adopted either so quietly or accompanied by such heated denials of any discretionary purpose as to make the true motives difficult if not impossible to prove in court.

It is difficult for a historian of nineteenth-century race relations to retain much optimism. Long and difficult crusades by men and women of good faith, black and white, a terribly bloody civil war, a constitutional revolution, a muted but meaningful post-Reconstruction struggle by thousands of individuals to retain the advanced ground gained—all this ended in something closer to defeat than to victory. As a nineteenth-century pessimist, let me then present you with a dreary scenario, which it is in your power to prevent. Congress, in a fit of optimism or conservatism emasculates the Voting Rights Act, declaring, in effect, as Congress did with respect to disfranchisement in 1903, that the problem of minority political rights is a judicial question. States, cities, and towns throughout the South and perhaps elsewhere where there are sufficiently large minority problems rush to adopt subtle forms of electoral discrimination. Liberal organizations respond with a spate of lawsuits, but have difficulty locating the carefully hidden smoking guns. The Supreme Court, bolstered by new Members, either by demanding ultra-strict standards for proving motive or by declaring, *Giles*-like, the whole morass a "political question," offers no relief. The abridgement of minority voting rights becomes again a reality. In a very real sense, Congress, in facing the decision of whether to renew or to scuttle the Voting Rights Act, has the power to declare whether or not history—for me, a terrible, nightmarish history—will repeat itself.

Mr. EDWARDS. Thank you very much, Professor Kousser and Professor Woodward.

We're going to have to again, I regret to say, recess for about 5 minutes. But please remain, because I have some questions and I know the other members do.

[Recess.]

Mr. WASHINGTON [presiding]. Will the committee please come to order.

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[61] *Ibid.*, 1025-28.

[62] *Ibid.*, 1028-32; Aviam Soifer, "Complacency and Constitutional Law," Ohio State Law Journal, 42 (1981), 388.

[63] 442 U.S. 256, 279 (1979).

[64] Soifer, "Complacency and Constitutional Law," 404.

[65] It is interesting to note that Mr. Justice Blackmun concurred in *Bolden* upon the same grounds that Justice Holmes toyed with in *Giles*—relief.

I want to thank both of you gentlemen for your testimony.

One of the difficulties in discussing the need for legislation such as the Voting Rights Act is that Americans have so little sense of history, and I suppose that can be both a strength and a weakness.

Your testimony helps to fill that void.

I was especially interested, Professor Woodward, in your statement about events surrounding the compromise of 1877. When assurances were given that the rights of blacks to vote would not be denied, but because these assurances were given without any real administrative mechanism to protect and enforce them, they quickly turned out to be not worth the paper they were written on, as you so clearly indicated.

So, I appreciate your reminding us of that very salient fact.

Professor Woodward, in view of its history of racial discrimination in voting rights, has the South been unfairly singled out in the covered jurisdictions of section 5 of the Voting Rights Act?

Have they been unfairly singled out?

Dr. WOODWARD. I think the act itself doesn't designate the South. It designates a condition which, wherever it exists, could be affected.

The fact of the history and of the record will, of course, affect those parts of the South and elsewhere that have been found to have neglected or to have violated the law, or to have disenfranchised its citizens.

So, my answer to your question, Mr. Washington is: No. I do not think it unfair. I think fairness demands the right of our citizens, wherever they are, to vote; and if that applies to some parts of the country more than others, that is the result of a long and well-established record.

Mr. WASHINGTON. So, preservation of the franchise is the dominant issue, and not some "onus" placed upon a State or covered jurisdiction?

Dr. WOODWARD. Yes.

Mr. WASHINGTON. Toward the end of the first Reconstruction in the 19th century, did white southerners promise to protect black civil rights?

And how well did they keep this promise?

Dr. WOODWARD. I'm sorry—the last part?

Mr. WASHINGTON. Did white southerners promise to protect black civil rights during the Reconstruction period?

Dr. WOODWARD. Of course, during the Reconstruction period, the power of the Federal Government was authorized and used, to some extent. It was always protested by white southerners that this was unnecessary, and that they would obey the law.

But the fact is that without the force of Federal authority, those laws were not obeyed, and were evaded effectively, even in the Reconstruction period, when the enforcement was in effect.

Mr. WASHINGTON. Was this an attempt to lull blacks to sleep?

I see a correlation between then and now. We have well-meaning white southerners, in my opinion, who are indicating that the Voting Rights Act has been on them long enough, and that they will make certain that there will be no slippage, if it's released—section 5.

But I see a similarity between the two historical periods. Almost 1 to 1, isn't it?

Dr. WOODWARD. I'm afraid so. I don't think that means necessarily these people are trying to deceive the country, but the fact is that the permissiveness—that the reliance on States, without Federal supervision, would be a temptation that very few, over the long run, would be able to resist.

Already, your committee has heard testimony about how effective resistance to the law that is now on the books is, and it would be even more permissive when that Federal authority is removed.

Mr. WASHINGTON. One last question. You have written that progressivism in the South was for whites only.

Weren't early 20th century progressives in the South generally sympathetic to blacks?

Or were blacks just left out of the southern progressive era?

Or were there some reforms which acted to make blacks worse off, at least in comparison to whites?

Dr. WOODWARD. I think one of the great and pathetic ironies of our history is that the most reactionary period of racial legislation got tied with the name of "progressivism." That was the period when the great bulk of the discriminatory laws about voting and civil rights were put on the books, when the northern opinion was most lax and permissive about those laws.

And it was in that very period that some of the most terrible restrictions and eliminations of black enfranchisement were made.

Mr. WASHINGTON. Thank you, Professor Woodward.

Professor Kousser, were Federal courts, around the turn of the century, generally sympathetic to black voting rights?

Do you see any parallels between those court decisions and recent ones by the Supreme Court?

Dr. KOUSSER. Unfortunately, Federal courts in the late 19th century and early 20th century were not sympathetic to black voting rights.

In *Williams* v. *Mississippi,* in 1898, for example, the Supreme Court decided that the overwhelming evidence of intent for the Mississippi disenfranchising convention of 1890 that was offered by the plaintiffs' lawyer, was insufficient; that he had not proved effect.

At that point, there was an "effect" criterion just put into force by the Supreme Court for that particular purpose. And so they turned away the challenge, despite the fact that it was notorious, and it was a matter of Federal judicial record at that time, that blacks had overwhelmingly been denied the franchise in Mississippi.

I see some parallels between the civil rights litigation of the late 19th and early 20th centuries and today.

A 1971 case, *Palmer* v. *Thompson,* there was an effect criterion put into effect. There was later an intent criterion, and it got stricter and stricter until some legal authorities have read *Mobile* v. *Bolden* as requiring the finding of an absolutely still-smoking gun.

Either from 1911, 1876, 1874, or 1870, it's still got to be smoking, after all this time, and you've got to be able to convince the judiciary that it is still smoking. That is their interpretation of

section 2 of the Voting Rights Act, that it requires a strong intent criterion, that effect is simply not enough.

It is their interpretation of the 14th and 15th amendments.

I'm disturbed by this trend, and I would be very disturbed if the Congress now, in its consideration of the Voting Rights Act, convinced itself that it could simply rely upon the judiciary, that the judiciary would always be around to protect black rights.

Lots of people thought that in the 19th century. It simply proved not to be so. I hope it won't happen again, but it could.

Mr. WASHINGTON. The fifth circuit court of appeals case that just came down in March, *Lodge* v. *Buxton,* does that give you any hope?

Dr. KOUSSER. It gives me some hope, but I have difficulty interpreting what the Supreme Court's attitude will be on the current appeal of *Lodge* v. *Buxton.* I would hope that they would be as favorable as the fifth circuit was in that case, but it does not seem to me terribly likely, after having read the *Bolden* decision.

Mr. WASHINGTON. The interesting thing in *Lodge* v. *Buxton* is that the intent criterion, the indicia of intent that the court finds, is a lexicon or list of the various things which led to the Voting Rights Act of 1965, in the first instance.

So, they've just turned the court's decision upside down.

In view between the parallels between the trends of U.S. Supreme Court decisions in the post-Reconstruction era and these recent decisions, can we safely rely on the courts to protect minority voters' rights, if Congress fails to renew the preclearance provisions of the Voting Rights Act?

In other words, does history provide us with any guidance on this issue?

Dr. KOUSSER. I think history does provide us with guidance. The nadir of black rights in the Supreme Court was *Giles* v. *Harris,* in 1903. What had happened was that things had gotten to a point in denying blacks the franchise in the South, so that the Court intervention, if it came at all, would have to be overwhelming and continuous. There would have to be judicial supervision of every election administration throughout the whole South, to have any effect.

At that point, the Supreme Court threw up its hands and said, "No, this is a question for Congress or the State legislatures, or for the black citizens to manage to get through the Congress or their State legislatures."

But they couldn't do that, of course, because they were disenfranchised.

Giles v. *Harris* is a terribly bothersome and disturbing case. I hope we don't get to the point again where things will be so overwhelming, things will seem so overwhelming to the courts, the conditions will be so bad that the courts will have to throw up their hands and say, "We simply can't do anything because we can't do everything," which is what they said in *Giles* v. *Harris.*

But I am afraid if the Voting Rights Act is not renewed, if section 2 is not strengthened, section 5 is scuttled in some sense, that we might get to a point similar to that again; and that, either through a very strict intent criterion requiring a smoking gun, or

through a political questions doctrine, as in *Giles,* the judiciary will just kiss off black voting rights.

Mr. WASHINGTON. If I understand you correctly, the 19th century cases stress the factor of effect; whereas the *Bolden* case talks about intent?

Dr. KOUSSER. Sometimes they stressed effect; sometimes they stressed intent. It depended upon what the attorneys asked them to do.

If a black attorney appeared before them, and he presented an intent case, they said, "No, unfortunately, it's effect." If he presented an effect case, they said, "Well, sorry. It's intent this week."

That parallel goes through the seventies cases, too, I believe.

Mr. WASHINGTON. I yield to the Chairman.

Mr. EDWARDS [Presiding]. I find the testimony of both you scholars fascinating. I am just finishing up the biography of Walt Whitman, and have been reading the last few weekends about the post-Civil War days in his life, featured by the total materialism of America after the Civil War, and, of course, the corruption that existed in Government at that time. But we won't get into that.

But the materialism is something that I see a parallel in today. I don't think I've ever seen in my lifetime—except, perhaps, during the twenties—the emphasis on money, on taxes, on this and that having to do with the physical well-being of an income of the majority of Americans, and the rather disinterest in the income of the less favored.

Is there a parallel in the second Reconstruction, if that's what we're going to call it, with that era where materialism was so emphasized?

Professor Woodward?

Dr. WOODWARD. I'm afraid I would have to agree with Mr. Kaplan's characterization of the post-Civil War/post-Reconstruction period, and the emphasis on those values, and the neglect of other values in our own time.

That is something, I'm happy to hear the Congressman is aware of and conscious of. You'll have to guard against the forces of materialistic predominance today.

Mr. EDWARDS. The dialog in those days was much less polite than ours today. Carlyle was writing from England that Americans were fools and dolts to encourage the franchise for black Americans. Most of the European countries hoped that the North would lose the war. Isn't that also correct?

Dr. WOODWARD. The dominant classes, particularly in Britain and France, certainly seemed to sympathize heavily with the South, though Britain was getting very rich off of a war that the North was winning for them by eliminating their competition on the high seas, and enriching their industries by the war materials which they bought.

Mr. EDWARDS. Well, the elitism that a great number, certainly not all, of the European nations favored in that day—doesn't that also have to do with the people in power seeking, generally, to keep the vote to themselves and not to have a widespread enfranchisement?

Professor Kousser, would you give me your views on that, please?

Dr. KOUSSER. There was certainly a good deal of that. There were some extensions of suffrage in the late 19th century, in Britain, notably, in 1867 and later in the 1880's. And there was a considerable liberalization of Government after that point.

Previous to that point, even after the Reform Act of 1832, the British Government had been a preserve of the upper classes, for the most part.

The difference in policies in the late 19th century, in social policies, with a vastly widened suffrage, which included large sections not only of the middle but the working class, and the policies that were carried out in the 1830's, 1840's, and 1850's, in which the suffrage did not include those people in Britain, those differences were very, very wide—similar to the differences in the United States at the same time.

Mr. EDWARDS. Thank you.

Counsel?

I want to announce that we have just another 5 or 6 minutes. And I do apologize for all of the bells you hear ringing. I think there's some kind of a filibuster going on.

Ms. DAVIS. Professor Woodward, at page 6 of your prepared statement, you substantiate a point which has been raised before this subcommittee, at least by other witnesses, which suggests that one of the advantages of having the Voting Rights Act is that well-meaning white southerners can often point to the forceful hand of the Federal Government in insuring that the voting rights of minorities are protected in the covered jurisdictions. You indicate in your testimony that the popular political leaders in the South, following the Civil War, lacked the power and authority of the Federal Government—even though these leaders were popular and quite prestigious in their own States.

I'd like to know how you would respond to the following point, that what you have brought to us today is, in fact, history; that this country has moved beyond the point of the first reconstruction. We have heard the term "second reconstruction" very often before this subcommittee in testimony, and been poo-pooed by some people about that. What is the lesson about the first reconstruction and why should we be concerned about that in 1981?

Dr. WOODWARD. I think for one thing that it makes evident and clear that revolutions and advances in popular rights and democratic rights can be reversed; that history can move backward; that enormous gains can be lost and jeopardized, eroded, or diluted, and abridged in spite of the enormous cost that those advances have made.

The first reconstruction cost us our greatest bloodshed and tragedy. It would seem that if anything has been paid for at a higher price, it was these advances. And yet, they were eroded and lost, and only a century later they were restored.

My history teaches me that if it can happen once, it can happen again.

Ms. DAVIS. Thank you.

Dr. Kousser, can you explain to the committee how historians go about determining intent of the framers of a particular law?

Dr. KOUSSER. Well, that is very often a very difficult thing to do. You have the Congressional Record. The Congress now fairly care-

fully tries to indicate what its intent is, as it tried to do in indicating its intent about the intent of section 2 or the way the intent was used in section 2 of the Voting Rights Act. Even with all that record, rational men can disagree, and sometimes judges can at least arguably distort.

The situation is much different and much worse when one is dealing with the 19th century legislature. There is no legislative record in most instances. There are no committee reports in most instances. There are only the sketchiest reports in the newspapers of what goes on in each committee. We have the roll calls. That's about all. One is extremely lucky if one finds a single statement from a single legislator crucial to the passage of an act, saying why he wanted to do it.

Some peroration could go on for 3 hours, and maybe if you are lucky, you'll find a newspaper report of one sentence.

If they're trying to hide anything, they can sure do it, and it is extremely difficult to find, particularly with regard to local acts, such as the establishment of at-large voting systems in a local jurisdiction, exactly why the State legislature passed an act.

Now, historians go at it by looking for needles in haystacks like that, and also by looking at what one finds in other places where similar laws were adopted. Very often, a law will be taken from one State and they will just copy it out of the law book and maybe change a few phrases, and put it into effect in another State, moving from city to city. So if you know about one, you can gather something about the intent of framers in another.

But it is almost impossible for historians in most cases to find smoking guns, and although, I believe, in the retrial of *Mobile* v. *Bolden,* we did indicate sufficiently that we had a smoking gun, it remains to be seen whether the local district judge will conclude that, indeed, what we found and contended was a smoking gun was still smoking sufficiently. And then the appeals court judges and the Supreme Court may reverse him, anyway.

If you have to depend upon looking for smoking guns 100 years ago, it is extremely difficult to find them. And historians may conclude that they have found them, but it may not be evidence that will satisfy a court.

Ms. DAVIS. Thank you.

Mr. EDWARDS. Professor Woodward, Professor Kousser, we thank you very much for very helpful and impressive testimony.

The subcommittee will now recess until 1:15, at which time the legal panel will be heard.

[Whereupon, at 11:40 a.m., the hearing was recessed, to reconvene at 1:15 p.m. this same day.]

AFTERNOON SESSION

Mr. EDWARDS [presiding]. The subcommittee will come to order.

Our second panel today is comprised of attorneys who have extensive experience in litigating voting rights cases, and who address how the *Bolden* decision and the Supreme Court's interpretation of section 2 of the Voting Rights Act has affected such litigation.

Our first witness and member of the panel is David Walbert. Mr. Walbert is an assistant professor at Emory University School of Law in Atlanta, Ga. Mr. Walbert has successfully represented the plaintiffs in a recent post-*Bolden* decision, *Lodge* v. *Buxton.*

Mr. Walbert, you are welcome.

Without objection, all of the statements provided by the witnesses will be made a part of the record, and you may proceed.

TESTIMONY OF DAVID WALBERT, ESQ., ASSISTANT PROFESSOR OF LAW, SCHOOL OF LAW, EMORY UNIVERSITY, ATLANTA, GA; JAMES BLACKSHER, ESQ., MOBILE, ALA.; AND ARMAND DERFNER, ESQ., COORDINATOR, VOTING RIGHTS ACT PROJECT, JOINT CENTER FOR POLITICAL STUDIES.

Professor WALBERT. Thank you, Mr. Chairman, I appreciate this opportunity to testify today. I have been involved in election litigation in Georgia for most of the past decade, in addition to practicing in the State, generally, and teaching at Emory University this past year.

In terms of the "purpose or intent" issue that we are focusing on, by way of background, I would like to focus the attention of the committee on the historical context of this whole legal issue.

Almost entirely throughout the history of this country, the constitutional law and the election law litigation were devoid of any kind of requirement of proving purpose or intent. If one goes all the way back to Justice Marshall's decisions at the beginning of this country, when the Constitution was first put into operation, Justice Marshall wrote for a unanimous court in *Fletcher* v. *Peck* in 1810 that you should never look into the intention or motivation in legislation. That rule of law was generally followed throughout all American litigation and case decisions up until the 1970's. In *Palmer* v. *Thompson,* which was a Montgomery desegregation case, Justice Black wrote that the intent behind municipal action was not to be considered as an essential element in proving a case.

Justice Black also wrote back in the 1940's in *Colgrove* v. *Green,* an old reapportionment case, that the law is unconstitutional where it has discriminatory results, whether they are the product of "negligence or a willful effort to derpive some citizens of an effective vote." Justice Black stated what was assumed to be the law at that time. I know when I was in law school a dozen years ago, we all studied constitutional law, and we never heard of an intent requirement. It really wasn't until the Supreme Court's *Washington* v. *Davis* decision in 1976, an employment case, that this whole idea even cropped into constitutional law and created a new thing for us law professors to deal with.

Of course, it was in 1980 when the intent requirement was first interjected into the area of election law and voting rights litigation, when the plurality opinion in *Bolden* held that you have to prove intent as a prerequisite to challenging election schemes as being discriminatory under the U.S. Constitution. It's a particularly anomalous result, because in certain other areas of constitutional litigation that are all less important to our scheme of rights, an intent requirement is not imposed.

For instance, under the commerce clause if you show that State law has the effect of burdening interstate commerce unduly, then

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it violates the commerce clause. There's no requirement of proving intent, when you are talking about commerce. Neither should there be in dealing with voting rights and racial discrimination, which are the highest level of right which our Constitution is designed to protect.

I think that covers my view of the constitutional history of the country. I think that the same thing can be said about the voting rights legislation itself. If we go back to this Congress original understanding in 1965, I don't think you can find any evidence for the plurality opinions holding that intent is required under section 2 of the Voting Rights Act.

The only specific evidence on that I'm aware of is when Attorney General Katzenbach came down to the Senate and he said section 2 will reach anything with a purpose or effect. That's exactly his words under section 2. He expressly said that, and the Senate passed that bill he was testifying on. That was, of course, the administration bill. Also, if you look into the act, even in the criminal provisions, in the 1965 act, requirements of "knowingly or willfully" depriving someone of a right to vote were deleted in the conference report, because the Congress wanted to make it absolutely clear how powerful the reach of that law should be.

I think that being the approach that Congress took to the criminal law, it is particularly odd that we would now be having civil remedies in *Bolden* being cut back even further than the original design of the criminal law. Also before the *Bolden* decision, you can point to every case I'm aware of by lower Federal courts that have construed the Voting Rights Act and they have all said that section 2 was an effect statute. The fifth circuit came to that conclusion in *Toney* v. *White,* and then in the en banc decision, too, where I think the vote was 14 to 1. There was only one dissent that I remember, saying that intent might be a requirement. The whole remainder of the fifth circuit, conservative and liberal wings both, found that an effects tests was the appropriate one under section 2.

I think what we are talking about here is not an amendment so much to the act, as we are talking about restoring it to what it was originally written to be and what it was understood to be by Congress.

I would also like to mention just what it means to be operating under the *Bolden* type of theory, and the impact of having an intent or purpose requirement. As the chairman mentioned, I represented individuals and have prevailed, both in the district court and the fifth circuit, recently, in the case of *Lodge* v. *Buxton,* where we challenged at-large elections as being maintained purposely with the intention to discriminate.

We did prevail in that case with one dissent on the three-judge panel. The case is on appeal to the Supreme Court.

I guess the most important thing to realize is what we proved in that case. We literally spent 3,000 hours or maybe more of just lawyer time in that case. We examined all aspects of public and private life in that community and showed, as the fifth circuit concluded, that racism permeates every single government action in that country. They found that the overwhelming and shocking evidence, as the court put it, is that racism is the driving motivation behind all types of official conduct.

Just to read, if I could, one paragraph from our brief that we will be filing in the Supreme Court to give the Congress a flavor of the type of evidence we had.

Our brief reads:

> The defendants in *Lodge*, were not even particularly coy about their own attitudes on race. Several admitted their adherence to segregation, although the chairman of the county commission ventured the opinion that desegregation might someday be accepted in Burke County, maybe in another 30 years. Another commissioner testified that blacks are still referred to openly as "niggers" in county commission meetings. The "colored" and "white" signs are still fully visible on the courthouse rest room doors, and the "nigger hook" still remains in the courthouse as a reminder of white attitudes toward black. Only a block away from the courthouse, the white laundromat is as segregated today as it was 20 years ago, a fact that no County Commissioner has ever found objectionable. Indeed, a black witness testified that she had been thrown out of that laundromat just a few days before trial.

That is one of the thousands of types of evidence that were put on about the extraordinarily pervasive, extreme racism that exists in Burke County. We had a very conservative panel in the fifth circuit, and they were literally shocked by the kind of evidence we presented, and we prevailed under those circumstances.

At the same time, I had another case that day that was decided that people tend to forget, the *Thomas County* case. In *Thomas County,* the district judge had decided the case on two bases. We already had him reversed one time. The fifth circuit had remanded and said decide this on the basis of *White* v. *Register,* in a 1977 opinion. The district court went through that in the old *Zimmer* analysis and said, "Yes, you are entitled to win." However, this decision was written a few days after the *Bolden* decision, so he said, "But I must now look at everything on the basis of *Bolden,* and you lose. You have not shown the kind of intent and purpose required"—even though the kind of discrimination we showed was still very pervasive in that case.

That leads us to the situation where one judge, based on very similar facts, who is less hostile to black rights will, on occasion, when the evidence is overwhelming, say, "Yes, it's intentional." In another situation where there is more hostility to black rights, a judge can say, and will always say, "This may be very discriminatory," as they said in Thomas County, "but there is no intent to discriminate."

I think that kind of finding is going to be virtually irreversible on appeal. It is so discretionary and so much a matter of judgment and assessment of credibility of the witnesses and so on, that you will have a very difficult time ever getting those decisions reversed. I think that that leads to a very bad situation. Literally in adjacent counties where the electoral system may be identical, you might win a case in one because of the particular Federal judge that has that county in his domain, and then lose in the adjacent county where the facts are exactly the same and the judge is different.

This, again, is predicated on the assumption that you even have lawyers who can spend 2 to 3,000 hours putting a case together, which is obviously not a practical reality. *Bolden* would mean the extreme slowdown of election litigation throughout the South.

So I would strongly urge the committee to restore this law to what its original function, intent, and purpose was, and to overrule and eliminate the requirement that the *Mobile* plurality is inject-

ing into the law. There are now two phases to an election case. You've got to prove that election practices and laws discriminate. But that is not enough. After you prove that, you now must also show that it is done intentionally with the purpose to discriminate.

I would like to urge this committee to remove that bifurcation and say that if you show that it discriminates, that is enough, and that the intent and the purpose behind the law is not an essential prerequisite to victory.

[Complete statement follows.]

TESTIMONY OF DAVID F. WALBERT, ASSISTANT PROFESSOR OF LAW, EMORY UNIVERSITY AND COUNSEL TO THE FIRM OF ARRINGTON, RUBIN, WINTER, KRISCHER & GOGER

Good morning, Mister Chairman and members of the Subcommittee. I am David Walbert from Atlanta, Georgia. I am an assistant professor of law at Emory Univerisity, where I primarily teach constitutional and election law. I have resided and practiced law in Georgia for the past eight years, and since joining the University, I have maintained my practice with the Atlanta firm of Arrington, Rubin, Winter, Krischer & Goger. I have specialized over the years in voting rights and election litigation.

I would like to thank the Committee for inviting me to testify before you today, and I hope my comments can be of some value to you. I have been asked to address the "purpose or intent" issue that has cropped up in constitutional and election litigation in the past few years. At the outset, let me say that I am firmly opposed to the newly created intent requirement that has been injected into the law for the first time in our Nation's history. I am opposed to this development not only because it contradicts our historical legal traditions, but also because of the practical consequences of the new doctrine. I firmly believe that the Congress should amend §2 of the Voting Rights Act to eliminate the intent requirement from litigation involving racial discrimination in the electoral process.

By way of background, I should first point out that the requirement of purpose and intent traditionally has had no place whatsoever in our legal system. Since 1790, the Supreme Court has repeatedly refused to consider the intent and motive that lay behind the adoption or retention of a particular or legislative scheme. The constitutionality of official action has always hinged on the impact, not its motivating purposes. That was the rule set down in the landmark opinion of Chief Justice Marshall in the 1810 decision, *Fletcher* v. *Peck,* 6 Cranch 87, 130 (1810). That position was reiterated by our Supreme Court on many occasions in the nearly two centuries that followed, and was most recently restated in *Palmer* v. *Thompson,* 403 U.S. 217 (1971).

In the voting area in particular, there had never been any dispute that the discriminatory effect was enough in its own right to raise a constitutional question. Justice Black stated what he felt was a self-evident constitutional rule in his opinion in the 1946 decision in *Colgrove* v. *Green,* 328 U.S. 549, 572 (1946). In Justice Black's words, the Supreme Court has a "Duty to invalidate [a] state law" where discrimination results from either "negligence or a willful effort to deprive some citizens of an effective vote." Even the most conservative wing of the Supreme Court that dissented in the historic *Baker* v. *Carr,* 369 U.S. 186 (1962) reapportionment case agreed that the constitutionality of a statute was tested by its consequences, not by the intent that may have motived the adoption of the statute. Justice Frankfurter stated that it "is settled that whatever [constitutional] consequences may derive from a discrimination worked by a state statute must be the same as if the same discrimination were written into the State's fundamental law." *Id.* at 325-26. Thus, where a statue "works" some form of discrimination—i.e., where it had the effect of discriminating in actual implementation—its constitutionality was tested by these consequences, and not by some underlying motivations that may have been expressed on the face of the statute or otherwise. A "purpose of effect" type of standard was reiterated subsequently by the Supreme Court and lower federal courts, and by the Supreme Court at least as recently as 1973 in the case of *White* v. *Regester,* 412 U.S. 755 (1973). In that case, the Supreme Court unanimously struck down certain countywide elections that had the effect of discriminating against blacks and hispanics in the State of Texas. The district court of the Supreme Court found those elections to be unconstitutional, notwithstanding the complete absence of any evidence whatsoever of an intent to discriminate in eigher the adoption or maintenance of the countywide election scheme.

The historic American principle that the Constitution of the United States was concerned with effects and consequences, and not motivations, first began to change in 1976 with the Supreme Court's decision in *Washington* v. *Davis,* 426 U.S. 229 (1976), an employment discrimination case involving Washington, D.C. For the first time, the Supreme Court held that intent to discriminate was necessary in maintaining a Fourteenth Amendment equal protection challenge. Then in the 1980 decision in *City of Mobile* v. *Bolden,* 446 U.S. 55 (1980), a number of the Justices of the United States Supreme Court imposed the newly created intent standard in the area of election litigation.

Concerning today's problem, the most disturbing aspect of the *Mobile* decision in the plurality's construction of §2 of the Voting Rights Act. The plurality's construction of §2 of the Voting Rights Act. The plurality concluded that §2 of the Act reached only a narrow class of cases, and that a plaintiff could not ever prevail unless he or she proved that the discriminatory practice was actually motivated, in its adoption or retention, by an invidious racist intent to discriminate. This interpretation of §2 was without support in history or logic.

First of all, the plurality concluded that §2 did absolutely nothing more than the Fifteenth Amendment in and of its own right. That idea makes no sense, since surely this Congress did not intend in 1965 to pass a meaningless piece of legislation. Section 2 was designed for a specific purpose by you, and that purpose certainly was not just to restate law that was already on the books in the form of the Fifteenth Amendment. Your predecessors in the 1965 Congress would not have enacted that legislation unless they firmly believed that it added something to the law.

Indeed, that may be particularly obvious because there were already other general provisions of law on the books that proscribed racial discrimination in the electoral process. Unless one takes the ridiculous view that this Congress intends to repeatedly pass the same meaningless law, one cannot possibly conclude that §2 was intended to have the narrow and cramped meaning given it by the plurality in the *Mobile* case.

Secondly, it is interesting to see how the plurality comes to its view of §2. For the most part, they merely refer to some legislative history in which there is testimony and statements by members of the Congress that the substantive standard of §2 would be like that of the Fifteenth Amendment. The Court then says that, since intent is required in a Fifteenth Amendment case, it must also be a requirement in a §2 case. This "logic" makes no sense whatsoever, because the Fifteenth Amendment did not have any intent requirement in 1965 when this body was considering the Voting Rights Act. At that time, as I hope I have illustrated, all constitutional lawyers believed that the Constitution was aimed at consequences and effects, not motivations and intent.

It was not until the plurality's 1980 opinion in *Mobile* that anyone ever conceived that intent might be a prerequisite to a Fifteenth Amendment case. The Supreme Court's own reading of the legislative history should have produced the opposite result with regard to §2 in *Mobile.* Since the members of this body would have assumed that a Fifteenth Amendment case would not require intent when §2 was passed in 1965, that law should have been construed in *Mobile* to be aimed at consequences and effects, rather than international discrimination.

The key witness who testified concerning §2, Attorney General Katzenbach, also made it clear that §2 would reach discriminatory practices, regardless of their intent. He testified that §2 would ban "any kind of practice * * * if its purpose or effect was to deny to abridge the right to vote on account of race or color." *Allen* v. *Board of Elections,* 393 U.S. 544, 566 n. 31 (1969).

There are many other reasons which clearly indicate that Congress' original intention in 1965 was to pass an effect type of standard under §2. The language of the statute itself is much more "effect oriented" than other civil rights statutes which have never been construed to require an intent element. For example, Title VII requires that an employer "intentionally" engage in an unlawful employment practice, 42 U.S.C. §2000e-5(g), but that provision has been construed to be an effect test. By comparison, the language of §2 of the Voting Rights Act is far more of an effect standard, particularly in light of the "imposed or applied" phrase in the voting law.

The overall theme and context of the 1965 Voting Rights Act also shows that an effect test must have been contemplated by Congress at that time. It is undisputed that Section 5 of the Act, 42 U.S.C. §1973c, prohibits practices whenever their effect is discriminatory. Yet the general "coverage clause" of both Sections 2 and 5 are the same. They both reach any "voting qualification or prerequisite to voting, or standard, practice, or procedure." The language is identical in both sections, and there is

no rational reason to believe that Congress intended their substantive coverage to be different.

Similarly, § 1973a(b) bans "tests or devices" in certain cases where used "for the purpose or with the effect of denying or abridging the right to vote on account of race." In the criminal provision of the 1965 Act, the Conference Committee expressly deleted any requirement that a defendant act "willfully and knowingly" or "fraudulently," limitations that had been included in the Senate bill. 42 U.S.C. §§ 1973j(a)-(c). See Conf. Rep. No. 89-711, 89th Cong., 1st Sess. (1965), reprinted in the U.S. Code Cong. & Admin. News (1965), at 2581. The Senate had tried to include those restrictions simply "to make it clear, for example, that no criminal violation is involved where a person acts inadvertantly." S. Rep. No. 89-162, 89th Cong., 1st Sess., reprinted in U.S. Code Cong. & Admin. News (1965), at 2567.

Given this very stringent criminal provision, one would be hardpressed to conclude that "intent" or "purpose" should be a part of the civil remedy under Section 2. Since all of the other sections of the Act, including the criminal ones, and Section 5, eschew any requirement of intent, intent and motive should similarly be irrelevant in a Section 2 case such as the present one. All sections should be read *in pari materia*.

Prior to the *Mobile* decision in the Supreme Court, those courts which had addressed this purpose and intent issue also agreed that § 2 was an effect statute. *Toney* v. *White*, 476 F.2d 203 (5th Cir. 1973), *aff'd*, 488 F.2d 310 (5th Cir. 1973) (*en banc*); *Gremillion* v. *Renaudo*, 325 F.Supp. 375, 377 (E.D.La. 1971); *Nevett* v. *Sides*, 571 F.2d 209, 237-38 (5th Cir. 1978) (J. Wisdom, concurring).

Thus, the element of intent was never supposed to be a part of § 2 of the Voting Rights Act. I urge this Committee to restore that provision of the law to its original position. There is simply no place in our legal system for an intent requirement in election litigation. The most important and fundamental right we have is the right to vote. It holds our entire system of government together, and maybe more importantly, it provides the very legitimacy upon which the government is founded. Where the election mechanisms themselves are fundamentally unfair and operate to discriminate on the basis of race, the government does not have the legitimate claim to govern under our democratic principles. Whether these discriminatory practices have been adopted or retained with the specific intent to discriminate, or whether they are the results of negligence, political self-protection, ignorance, or whatever other reason there might be, is simply irrelevant.

The very basis of the United States, and our sole claim to historical significance, is the promise that our government will affirmatively seek to maintain a true democracy on behalf of all citizens. We live on the promise that we will make our government open to all people, and not that we will allow the callous exclusion of people who may be powerless to force their way in by themselves.

It is the privilege of this Congress to reaffirm America's most fundamental commitment by amending § 2 to explicitly state the assumptions that underlay the Act when originally passed in 1965, and reject the distressing construction imposed on § 2 by the *Mobile* plurality. The explicit rejection of the purpose or intent standard in § 2 by the Congress would restore the Act to its original salutary function.

In addition to these historical considerations concerning the intent standard, I would also like to share with the Committee my personal experience in litigating since the purpose or intent standard has been created by the Supreme Court. One might recall that a principal reason for the passage of the broad and powerful Voting Rights Act of 1965 was the futility at the time of case by case litigation. The Congress concluded that case by case litigation was largely ineffective because of the great amount of time necessary to present the facts of voter registration cases, for example. As the Supreme Court noted in *South Carolina* v. *Katzenbach*, 388 U.S. 301, 314 (1966): "Voting suits are unusually onerous to prepare, sometimes requiring as many as six thousand man hours spent combing through registration records in preparation for trial." Ironically, the time required in proving purposeful and intentional discrimination makes the effort in a simple voter rregistration suit pale by comparison. Take, for example, a challenge to an at-large election scheme which happens to be the most significant discriminatory device now used in the South that abridges black voting rights and excludes blacks from the political process. Once in a great while, an attorney can find a "smoking gun" in the adoption of at-large elections. In some cases, for example, at-large elections were adopted right after some civil rights victory by blacks in the courts or in the Congress, and it is clear that the at-large election scheme was implemented specifically in order to undercut the preceding victory. E.g., *Paige* v. *Grey*, 538 F.2d 1103 (5th Cir. 1976) (City of Albany switched to at-large elections immediately after the white primary had been struck down).

But in the vast majority of cases where there is no such smoking gun type of evidence, the proof of purposeful and intentional discrimination can be a tremendous burden. In *South Carolina* v. *Katzenbach,* the Court spoke of spending six thousand hours combing through registration records to prove a voter registration discrimination suit, while that kind of proof would be only one small component of the challenge in an at-large case. One would not only be combing through the registration records, but all sorts of different evidence considering the political climate of the community, the behavior of the elected government and all aspects of its operations, the private lives of the political powers in the state or county, etc. The plaintiffs have to look everywhere for possible circumstantial evidence that would support an inference of intentional discrimination in the absence of smoking gun evidence, and finding that kind of circumstantial evidence is an overwhelming task. In one case I have been handling where the question of intentional discrimination was addressed by the Fifth Circuit and the District Court, *Lodge* v. *Buxton,* 639 F.2d 1358 (5th Cir. 1981), the several attorneys who have participated in that case have expended several thousand hours already and the case is not yet final.

Another very real problem, I am sorry to say, is the continued reality that too many Southern district court judges are simply unalterably opposed to fair treatment of black citizens. Other judges who are not so adamant still give every possible break to the white defendants in election type litigation. With judges like that, there is really no way that plaintiffs can ever hope to prevail if intent is required. The ultimate question of intent is based on an assessment of all the evidence and the inferences the judge might draw from a whole range of circumstantial evidence. A great deal of discretion is inevitably invested in the district court, and these kinds of discretionary decisions will be relatively immune from reversal because of the clearly erroneous rule and other aspects of appellate practice. In counties where the presiding federal judge is not particularly sympathetic to black claims, the proof of purposeful discrimination in election litigation may prove to be impossible.

This tremendous vesting of discretion in the district court judges is distressing and highly inappropriate. For one thing, it means that adjacent counties, with identical factual situations, may have different legal results because of one judge's predilections in view of the evidence as compared to another judge's different predilections and analysis of the evidence. Both decisions, even though diametrically opposite and based on identical evidence, would be affirmed by a court of appeals because of the discretion given the district court judges. That kind of result, which is inevitable if the intent standard is allowed to remain in the law, is wholly inappropriate in our legal system, particularly where the fundamental right to vote is involved.

But maybe more importantly, the simple fact that, in those areas where a non-sympathetic federal judge may be sitting, purposeful discrimination will not be found, and that very simply and directly means that the United States Constitution does not apply in those areas. Intent has no proper role in these kinds of cases.

Thus, I strongly urge the Committee to reject the purpose and intent standard and reaffirm the original understanding of the Congress in 1965; an effect type of test is the traditional type of test that should be expressly adopted at this time. A showing of discriminatory effect should constitute a *prima facie* case of illegality, and the defendant should then have the burden of showing that there are substantial or compelling justifications for maintaining the challenged practice that are independent of race. In addition, the defendants would have the burden of showing that there is no other means of substantially satisfying the interests identified with an electoral mechanism that would be free of discrimination. The greater the degree of discrimination, the heavier the burden the defendants would be put to. For example, where at-large elections are used and the effect is substantial discrimination and the general inability of black voters to elect any legislators of their choice, a new reapportionment scheme would be required because the government can satisfy its interests and function very well under different sorts of apportionment schemes that do not discriminate. On the other hand, if some device is in operation in a particular county and it has some slight but really insignificant discriminatory effect, the burden on the state to justify its use would be less. Still, though, the state could be required to adopt other means of achieving its goals if other less discriminatory means would substantially further the goals identified by the state.

Thank you again for this invitation to present testimony to this Committee.

Mr. EDWARDS. Thank you very much, Professor Walbert. We will now hear from James Blacksher. Mr. Blacksher is from Mobile and represented the plaintiffs in the *Bolden* case and has just completed the retrial of that case.

Mr. BLACKSHER. Thank you, Mr. Chairman. I am Jim Blacksher. I am a lawyer in private practice in Mobile. I have represented black plaintiffs in challenges to at-large election schemes in Mobile, Ala., and Pensacola, Fla.

I thank you for this opportunity to testify in support of the Rodino bill's proposed amendment of section 2 of the Voting Rights Act.

For black voters in the South, it is critical that any statutory relief from the effective dilution of their voting strength extend to election schemes originally adopted before 1965. You heard Drs. Woodward and Kousser testify here today that at-large elections have been an important weapon in the arsenal of white supremacy since Reconstruction. Most of the at-large plans for Southern cities, county commissions and school boards were created either during the so-called race-proof period, when all but a handful of blacks were disfranchised or during the late 1940s following the Supreme Court's ruling against the all-white primaries or during the late 1950s, when the Eisenhower administration introduced the first of the modern voting rights bills.

Of course, none of these pre-1965 schemes has been susceptible to challenge under section 5, which serves only to preserve the status quo. That, I think, is the provision that Professor Kousser referred to as the Voting Rights Act's own grandfather clause. Thus far, the Attorney General has not exercised his authority under Sections 2, 3, and 12 of the act to file lawsuits against the many pre-1965 at-large local elections, except in fewer than a dozen cases over the entire 15-year history of the act.

The race-proof era at-large plans, in particular, cry out for congressional action. If the Federal courts follow the presumption in *City of Mobile* v. *Bolden,* that such election plans could not be racially motivated, because they were adopted when blacks could not vote and thus were not an immediate political threat, black voters may be trapped in a tragic historical Catch-22. Their votes will continue to be submerged by an election system in whose adoption they had no voice, while the Supreme Court's demand for proof of invidious intent prevents them from attacking it in court.

At-large election schemes are today the principal barrier to Southern blacks' opportunity for equal political participation in the South. I think I am echoing a similar sentiment that was expressed this morning by Mr. McBride. I submit for inclusion my prepared statement today, a race-baiting pamphlet that was circulated in Pensacola, Fla., a few days before the May 26, 1981, city run-off elections, along with two recent articles from the Pensacola Journal describing how that pamphlet contributed to the uniform defeat of four black candidates in the at-large election in that city.

In my opinion, the amended section 2 in the Rodino bill would restore to black Southerners the opportunities to challenge racially discriminatory election schemes which were developing before *City of Mobile* v. *Bolden,* and I urge its passage.

In addition, I join those previous witnesses who have pleaded with this subcommittee to establish in the legislative history a clear notion of under what circumstances a multimember district election plan would result in effective, unlawful vote dilution. The absence of a clear, judicially manageable definition of dilution has

thus far frustrated the development of a rule protecting racial minorities against discrimination by a districting plan which perfectly satisfies the one person-one vote guarantee of majority rule.

Reynolds v. *Sims,* the Alabama reapportionment case in 1964 was, after all, a case in which white voters in Birmingham and Mobile persuaded the Supreme Court that the 14th amendment protected their voting rights, as well as blacks, but *City of Mobile* v. *Bolden* leaves us in the anomalous situation where a white majority needs only to demonstrate effective devaluation of its voting strength to obtain judicial relief, while a racial minority must additionally prove an invidious legislative purpose, even though the 14th and 15th amendments were intended primarily to protect blacks. However, any statement of the meaning of effective at-large dilution should avoid formulas that call for proportional representation or racial quotas or that depend on political and social factors which cannot be applied fairly and consistently by the courts.

At the same time it ought to measure as nearly as possible the same phenomenon of vote devaluation that occurs when legislative districts are not apportioned equally by population. I propose the following as one possible definition of at-large dilution, which I believe meets all these criteria:

Minority vote dilution occurs, in an at-large voting situation, when an election scheme for a State or local multirepresentational body permits a bloc-voting majority over a substantial period of time consistently to defeat minority candidates and candidates associated with a politically cohesive, geographically insular racial or language minority group.

This suggested definition of dilution measures the same kind of vote devaluation that would occur if all the minority voters resided in a district to which no representatives were assigned, while the majority's district was apportioned all the representatives. It focuses solely on observable, quantifiable election returns in a manner that can be applied consistently, without inquiring into subjects more difficult to standardize, such as the responsiveness of elected officials to minority concerns or the lingering sociological effects of historical discrimination or the operation of intracommunity politics.

This definition does not call for proportional representation. It takes into account the possibility that even where there is racial bloc-voting, the minority groups may be able to play coalition politics and have some of their favored candidates elected, as well as the possibiltiy that either white or black groups do not always vote as a bloc or favor candidates of their own race. It does not depend on a head count of the number or blacks or Mexican Americans actually elected. It allows for the occasional, purely episodic defeat of minority candidates by white bloc-voting.

In my opinion, it answers all the questions about manageability that are set out in footnote 25 of Justice Stewart's plurality opinion in *Bolden* and more.

I would be pleased to discuss this definition of dilution in much more detail.

Thank you.

TESTIMONY OF JAMES U. BLACKSHER, BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS, HOUSE COMMITTEE ON THE JUDICIARY

Thank you for this opportunity to testify in support of the Rodino Bill's proposed amendment of Section 2 of the Voting Rights Act.

For black voters in the South it is critical that any statutory relief from the effective dilution of their voting strength extend to elections schemes originally adopted before 1965. As Drs. Woodward and Kauser have testified, at-large elections have been an important weapon in the arsenal of White Supremacy since Reconstruction. Most of the at-large plans for Southern cities, county commissions and school boards were created either during the so-called "race-proof" period, when all but a handful of blacks were disfranchised, or during the late 1940's following the Supreme Court's ruling against the all-white primaries or during the late 1950's, when the Eisenhower Administration introduced the first of the modern voting rights bills. Of course, none of these pre-1965 schemes has been susceptible to challenge under Section 5, which serves only to perserve the status quo. And thus far, the Attorney General has not exercised his authority under Sections 2, 3 and 12 to file lawsuits against the many at-large local election plans except in fewer than a dozen cases over the entire 15-year history of the Act.

The "race-proof" era at-large plans, in particular, cry out for Congressional action. If the federal courts follow the presumption made in *City of Mobile* v. *Bolden* that such election plans could not be racially motivated because they were adopted when blacks could not vote and were not an immediate political threat, black voters may be trapped in a tragic historical "Catch-22": their votes will continue to be submerged by an election system in whose adoption they had no voice, while the Supreme Court's demand for proof of invidious intent prevents them from attacking it in court.

At-large election schemes are today the principal barrier to Southern blacks' opportunity for equal political participation. I submit for inclusion in the record a race-baiting pamphlet that was circulated in Pensacola, Florida, a few days before the May 26, 1981, city run-off elections, along with two recent articles from the Pensacola Journal describing how it contributed to the uniform defeat of four black candidates in the at-large election.

In my opinion, the amended Section 2 in the Rodino Bill would restore to black Southerners the opportunity to challenge racially discriminatory election schemes which were developing before *City of Mobile* v. *Bolden*. I urge its passage. But, in addition, I join those previous witnesses who have pleaded with this subcommittee to establish in the legislative history a clear notion of under what circumstances a multi-member district election plan would result in unlawful vote dilution. The absence of a clear, judicially manageable definition of dilution has thus far frustrated the development of a rule protecting racial minorities against discrimination by a districting plan which perfectly satisfies the one-person, one-vote quaranty of majority rule. *Reynolds* v. *Sims* was, after all, a case in which white voters in Birmingham and Mobile persuaded the Supreme Court that the fourteenth amendment protected their voting rights as well as blacks'. But *City of Mobile* v. *Bolden* leaves us in the anomalous situation where a white majority needs only to demonstrate effective devaluation of its voting strength to obtain judicial relief, while a racial minority must additionally prove an invidious legislative purpose, even though the fourteenth and fifteenth amendments were intended primarily to protect blacks.

However, any statement of the meaning of at-large dilution should avoid formulas that call for proportional representation or racial quotas or that depend on political and social factors which cannot be applied fairly and consistently by the courts. At the same time, it ought to measure, as nearly as possible, the same phenomenon of vote devaluation that occurs when legislative districts are not apportioned equally by population. I propose the following definition, which, I believe, meets all these criteria: Minority vote dilution occurs when an election scheme for a state or local multi-representational body permits a bloc-voting majority over a substantial period of time consistently to defeat minority candidates and candidates associated with a politically cohesive, geographically insular racial or language minority group.

This definition of dilution measures the same kind of vote devaluation that would occur if all the minority voters resided in a district to which no representatives were assigned while the majority's district was apportioned all the representatives. It focuses solely on observable, quantifiable election returns in a manner that can be applied consistently without inquiring into subjects more difficult to standardize, such as the responsiveness of elected officials to minority concerns, the lingering sociological effects of historical discrimination, or the operation of intra-community politics. Yet this definition does not call for proportional representation. It takes

Griffith filed the new disclosure with 12 minutes to spare Monday, but he now lists his contributions as $1,400.

CAMPAIGN WORKER TIED TO PAMPHLET

(By Craig Waters)

A witness to the mass mailing of a controversial pamphlet prior to the Pensacola City Council runoff election says he can identify the campaign worker who put the pamphlet into the mail.

The witness is Ray Hildebrand, vice president of the local Lupus Foundation, who has signed a sworn statement saying the campaign worker was Karen Preston.

Public campaign disclosures show that Preston was paid to work with the campaigns of City Council candidates Jim Reeves, an incumbent, and Brian Lang. Meanwhile, one of the election runoff winners, Cynthia Russell, director of a local rehabilitation institute, has confirmed that Preston was a volunteer worker in her election bid.

Furor is turning to brooding anger over the controversy surrounding the runoff election because one question still dogs local Democrats and Republicans, blacks and whites. Who was responsible for the last-minute election pamphlets, considered by some Pensacolians to be racist, that were mailed by the thousands to seven largely white voting precincts?

While the Hildebrand statement does not provide the answer, it may have opened a door leading to an answer.

Hildebrand, a service veteran and Pensacola Junior College student, said he saw Preston mailing a boxload of pamphlets labeled "Voter Apathy" at the Jordan Street Post Office a few days before the runoff election. When the Journal showed him one of the pamphlets distributed by the Committee for Good Government, Hildebrand identified it as one just like those he says Preston mailed.

Hildebrand recognized Preston because they both had worked with the 1980 congressional campaign of Warren Briggs.

Hildebrand says he was at the Jordan Street facility to mail bulk rate materials for the Lupus Foundation, an organization that helps people with the disease lupus.

More than a dozen attempts have been made to reach Preston for comment on Hildebrand's statement. But she has not returned any of the calls.

Preston's friends in the area said she returned unexpectedly to her home in Newman, Ga., because of an illness in the family.

The Journal made two calls to Preston's home in Newman. In the first, a woman who would not identify herself said Preston was "out." In the second, the woman would say only that Karen wasn't there.

The Hildebrand statement is among several developments that have come to light recently showing links between the campaign of three of the successful white candidates—Reeves, Lang and Russell—and the Committee for Good Government, parent of the controversial pamphlet.

The revelations began coming to light just days before the May 26 runoff election in which four blacks were defeated by four whites. The "Voter Apathy" pamphlet first appeared in Pensacola mailboxes in the last days before the runoff, and many who read it said they were annoyed.

The pamphlet implied that Pensacola could be ruined financially if a black-dominated city council were elected.

Local Republicans and Democrats immediately denounced the pamphlet as an attempt to inject racism into the quiet city elections. Supervisor of Elections Joe Oldmixon said he had seen nothing like the pamphlet since the early 1960s—when segregation was still openly practiced in the city.

The matter might have died gradually, but a mystery grew up around the pamphlet when its author, advertising consultant Odell Griffith, refused to reveal the identities of contributors to the Committee for Good Government. Florida law says this information must be made public.

Griffith, in statements to the Journal and The Associated Press, originally said that he and the committee were backed by businessmen whose names he would not reveal, despite the law.

Two separate public disclosures filed by Griffith said the contributions came from him—or from him, his advertising agency and his wife. They contradicted Griffith's spoken statements.

He later amended these two written disclosures to include the names of his contributors—filing the final disclosure 12 minutes before a state-mandated deadline. The action followed continuing exposure in the media and warnings from Oldmixon that the faulty disclosures could be used in investigations of the committee.

Griffith's reluctance to reveal the contributors, however, left some Pensacolians asking if there were other facts not revealed in Griffith's disclosures.

There were:

One man who is listed as contributing $100 to the Committee for Good Government—Berton L. Brown—is an accountant, a longtime friend of Reeves and a recent appointee to the city council's General Pension Board. The pension board controls the city's $22 million employee pension fund.

Supervisor of elections records also show Brown is a resident and registered voter of the City of Pensacola.

The address of his Pensacola residence, however, was not used in the Committee for Good Government's campaign disclosures. His address, on these documents, is listed as the farm he says he owns in Walton County near DeFuniak Springs.

Brown said he has known Reeves for a long time. But he declined comment when asked if he knew the committee intended to print the pamphlet, and he would not discuss his business ties with Reeves.

Newspaper files from 1974, however, say that Reeves and Brown once went into business to form the Southern Federal Savings and Loan Association. Brown, when asked if he had ever worked as Reeve's accountant, refused comment.

The Roy Saux and Associates advertising agency, which is listed as giving $400 to the Committee for Good Government, holds public relations contracts with the City Council and the Pensacola Escambia Development Commission.

Reeves serves on both.

The PEDC's advertising contract is $100,000 a year. The Saux agency gets 12 percent as its fee, according to Bill Mathers of the PEDC. The city's Energy Services of Pensacola contract with the Saux agency costs $156,000 a year and Saux gets about 15 percent as its fee, according to Frank Bennett of ESP.

Roy Saux, head of the agency, has not returned The Journal's repeated telephone calls to his offices and his home.

The Committee for Good Government's public disclosures show that Foxy Vans Inc. gave $500 to the committee—the largest single contributor.

Escambia County occupational licenses on file in the courthouse show that Foxy Vans is owned by a man named George W. Pape. Pape is vice president of Key Ford Inc., whose president is Ted Cianc.

Key Ford and Pape also donated money to Russell's campaign.

Pape, when contacted by The Journal, declined comment.

Two of the candidates linked with the Committee for Good Government, however, were happy to talk to The Journal.

Lang and Russell denied any prior knowledge of the pamphlet and sternly criticized it.

The Journal, in fact, never found any indication that any candidate participated in the production or distribution of the pamphlets.

Russell, the first woman elected to the City Council since the 1950s, said she couldn't believe that her volunteer campaign worker, Preston, had any connection with the pamphlet.

"I think he (Hildebrand) must be mistaken," she said, suggesting that Preston was mailing some flyers that only looked like the "Voter Apathy" pamphlets.

Russell also denied any acquaintance with Griffith, labeled the pamphlet "absurd" and said she had no prior knowledge of businesses or people who contributed money to the Committee for Good Government.

Lang, meanwhile, said Preston wasn't formally connected with his campaign. She had helped him identify voters who had participated in previous elections, and was paid for that work, he said.

"She had contacted me and offered some services which we basically used," said Lang, who labeled the pamphlet "ludicrous."

Lang also said that if Preston participated in distribution of the pamphlet, he was not told about it.

And, of the three candidates linked in some way with the Committee for Good Government, Lang is the only one who wasn't named in the pamphlet. The pamphlet dealt only with runoff candidates, and Lang had won his race against black candidate Lester Smith in the first election —about two weeks before the runoff was held.

Unlike Russell and Lang, however, Reeves has not made himself available to the press. Repeated calls all this week to his law offices on Garden Street, his Pensacola residence and his beach residence have not been returned.

The controversy over the pamphlet, meanwhile, continues to simmer.

At least two of the four black candidates defeated in the runoff elections say they are seeking legal advice because of the pamphlet. If they wish, the candidates can

file complaints with the state attorney or the Florida Division of Elections. They also can ask the Escambia or federal grand juries to investigate.

Part of the black candidates' concerns over the pamphlet stem from election returns in the seven precincts that received the mailing.

All seven voted in larger numbers than in the first election, and all overwhelmingly favored the white candidates. Oldmixon said he doesn't believe the pamphlet changed the outcome. But he said he does believe the pamphlet had a slight effect on the vote in the seven precincts.

These results could fuel an ongoing court challenge to the city's current at-large system of elections. The U.S. Supreme Court has been asked to review a lower court opinion overturning the at-large system and replacing it with seven single-member districts and three at-large seats.

The supervisor of elections said that if the high court orders a new trial, the pamphlet and the election results might be introduced as evidence that the city's electoral system is discriminatory.

One black candidate who was not included in the pamphlet's review, Lester Smith, said the pamphlet proves what the blacks have been saying about Pensacola's election system.

"It had an impact," said Smith. "But I think the thing that the pamphlet did more . . . was that it rekindled racism and polarized the election.

"It tainted the city council that we've got. It casts some doubt in the public mind as to what we have in this city that we have to resort to those kinds of things. I'd have the same comments if that pamphlet had come out of the black community."

Whites, too, have expressed dismay at the pamphlet. Local Democratic leader Hulda Carastro and Escambia Republican Chairman Diane Rittenhouse denounced it as racist.

Pensacola Mayor Vince Whibbs said he believed the pamphlet was an attempt to slant the election racially and he mourned the possible impact of the mailout.

Oldmixon, who has served as supervisor of elections since 1963, also criticized the pamphlet.

"I had hoped that we had passed this kind of politics" said Oldmixon, "and were voting strictly on qualifications, not because of race or sex.

"It certainly puts a blemish on us, that's for sure."

Mr. EDWARDS. Thank you, Mr. Blacksher.

Mr. Derfner.

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

I'm pleased to appear before the committee, which has been so conscientious in considering the questions arising under the Voting Rights Act and considering the future of that Act.

I'd like to associate myself with the views expressed by the other members of the panel. And rather than try to add any detail to what they have said, I would like simply to bring to the committee's attention three cases as examples of the difference between the requirements that an invidious discriminatory purpose be proved and a requirement that a violation of Section 2 can be made without such direct proof of purpose.

First is a case called *Brown* v. *Post*. The citation of that is 279 Federal supplement, page 60, from the western district of Louisiana in 1968. This case arose in Tallulah, La. It involved an election in which a black, Mr. Harrison Brown, won the primary and was faced with a write-in campaign. He did not have a regular opponent on the ballot. In that campaign, according to the proof in the case and the findings of Judge Ben Dawkins, the election officials apparently provided opportunities for whites in certain circumstances to vote by absentee ballots, without affording the same opportunities to blacks, specifically to whites in certain nursing homes, on certain plantations, and in other places.

The court found that the defendants acted at all times with good faith and without any discriminatory intention. Yet, nonetheless, the court found that there was discrimination in fact, and there-

fore that there was a violation of section 2 and, in fact, under the standards it understood at that time, of the Constitution. I'd just like to read a couple of short paragraphs from that, from page 63:

Defendants at all times acted in good faith, attempting to comply with Louisiana absentee voting laws, notwithstanding our findings that defendents acted entirely in good faith, they, in their official capacity as clerks of court, in fact, did discriminate against the Negro voting population in the November 8th general election in the following particulars.

Then there's a discussion of affording opportunities for whites to vote absentee without extending the same opportunities to blacks. Reiterating for emphasis:

We do not find defendants engaged in any intentional plan to deprive negroes of their constitutional right to vote. However, the manner in which they administered the absentee process was discriminatory in fact.

Continuing on page 65, the court concluded:

Failure of Defendants to comply in every detail with the Louisiana absentee voting laws does not serve to void the ballot of otherwise qualified voters. This opinion expressly so holds. However, if there is discrimination, in fact, in the administration of the voting process, this will be adequately legal grounds to void the election, regardless of the good faith intentions of the election officials.

The following year there is another case that arose from the same town, Tallulah, La. This was a case called *United States* v. *Post.* It's at 297 Federal supplement, page 46, from the western district of Louisiana in 1969.

In this case, there was a black candidate named Zelma Wyche who won the democratic nomination for town marshal. As I recall, this was a special election. So this election was being held at the same time as a parish-wide election, with other offices to be filled. Therefore, there were other candidates, and the campaign of Mr. Wyche had been premised on the idea of asking people or suggesting to his followers that they vote for him by voting for a straight party ticket. He was opposed by a Republican nominee who was white, who was the only Republican running in that election, although the initial instructions had been that a straight party ticket—that is, the master lever being pulled would cast a vote for everybody on that line, which meant for Mr. Wyche, as well as for the parish candidates.

For certain reasons having to do with the lines and the boundaries of the town and parish, the machines were changed shortly before the election, and this information was apparently not conveyed to Mr. Wyche or his supporters.

The court found that the net result was discriminatory. It first defined section 2 of the Voting Rights Act, which it said prohibits imposition of any practice of procedure which has the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color.

And I should interject at this point that I agree with Professor Walbert, that that was the universal understanding of the meaning of section 2 at that time.

The court went on and said,

This action by Defendant Post, was not in bad faith. He and all other Defendants at all times acted in good faith, never intending to deprive Negroes of their constitutional or statutory right to vote.

Again, this is on page 50:

The defendants had a duty under the 15th amendment to the Constitution of the United States and under sections 2 and 11(a) of the Voting Rights Act not to engage in any discriminatory acts or practices based upon race or color in the administration of Louisiana's election laws. This duty includes the duty from engaging in conduct which involves or results in any distinction based upon race and to refrain from applying any voting procedure which will have the effect of denying to Negro voters the right to cast effective votes for the candidate of their choice.

"Where, as was done here, public officials engaged in performing the duties of their offices, caused to be disseminated instructions to voters as to the manner of casting votes in a general election, and then, even though in good faith, without adequate notice to the voters, institute a new voting procedure, contrary to the instruction previously disseminated. And a substantial number of Negro voters are induced to vote according to such erroneous instructions and are thereby prevented from casting effective votes.

We conclude that negroes have been discriminated against in the administration of the voting process, in violation of the 15th amendment, and of sections 2 and 11(a) of the Voting Rights Act."

Finally, I just want to refer briefly to a case that has attracted some attention before the committee. That is the Edgefield County at-large case, called *McCain* v. *Lybrand.* This is a case in which District Judge Robert Chapman of the District of South Carolina heard the evidence in a lengthy trial and handed down a decision which I think has already been made a part of the record before this committee, but which I can provide to the reporter, dated April 17, 1980.

[Material provided for the record on May 19, 1981, pp. 301-326.]

The opinion is some 20 pages long, and I'll just read the pertinent portions.

This is from page 16.

Since the Plaintiffs have made a constitutional attack on the form of government now in use in Edgefield County, South Carolina, and the method of electing members of the County Council and the residential requirements of these members, the Plaintiffs have the burden of proof and must establish their claim by the greater weight or preponderance of the evidence in establishing that the political processes leading to the nomination and election of candidates to County Council are not equally open to participation by blacks and that members of the class have less opportunity than do white residents of the county to participate in the political process and to elect representatives of their choice.

White v. *Register* holds that it is not enough that a plaintiff show the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. It must prove that the election process is not equally open to participation by the minority group. This has been proved in the present case.

Then later, on page 18, the Court talked about some of the restrictions referred to in some of the cases.

While many of these restrictions have been removed, i.e., single-shot voting now allowed, no poll tax, no literacy test, unified school system, jury selection open to all registered voters, there is still a long history of racial discrimination in all areas of life.

There is bloc voting by the whites on a scale that this Court has never before observed. And all advances made by the blacks have been under some type of court order.

Participation in the election process does not mean simply the elimination of legal, formal, or official barriers to black participation. The standard is whether the election system as it operates in Edgefield County tends to make it more difficult for blacks to participate with full effectiveness in the election process and to have their votes fully effective and equal to those of whites.

Black voters have no right to elect any particular candidate or number of candidates, but the law requires that black voters and black candidates have a fair

chance of being successful in elections. And the record in this case definitely supports the proposition and finding that they do not have this chance in Edgefield County.

All these factors, when coupled with the strong history—

I should say I've skipped several pages, in which the Court went on and discussed additional factors.

All these factors, when coupled with the strong history and tradition of official segregation and discrimination, draws the Court to the inevitable conclusion that the rights of the blacks to due process and equal protection of the law in connection with their voting rights have been and continue to be constitutionally infringed and the present system must be changed.

That was April 17, 1980. Five days later, the following Tuesday, the *Mobile* decision came down. After receiving further briefs in the *McCain* v. *Lybrand* case, Judge Chapman was forced to come to the conclusion that although his findings hadn't changed, the *Mobile* case required him to reverse his decision. He then upheld the system in Edgefield County, remanded the case, and we're now into further proceedings to see whether we can meet the standards announced by the Supreme Court in *Mobile.*

The short of it is that if the proof is in the pudding, these three cases are as good as any to show what these rules mean.

In the two Tallulah cases, had the *Mobile* standards—had the requirement of purpose been understood to be in effect at that time, the judge's own findings would have dictated that those election practices had to be allowed to stand, because Judge Dawkins found no discriminatory purpose.

We have a case which was decided one way, just as Professor Walbert talked about in the Thomas County case, decided one way on the basis of overwhelming evidence before *Mobile* and had been decided the other way since *Mobile.*

I think these cases show, as well as anything, the perniciousness of the standard that we're faced with now and the importance of action by this subcommittee.

Thank you very much.

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

Thanks to all members of the panel.

The *Bolden* decision did create a very difficult situation and a difficult one of proof.

In order for this subcommittee to offer a response in the form of an amendment, I have asked Mr. Hyde and Mr. Rodino to describe in more detail their proposals to amend section 2 of the Voting Rights Act. Those letters will be made a part of the record.

CONGRESS OF THE UNITED STATES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., June 23, 1981.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, 2307 Rayburn Office Building. Washington, D.C.

DEAR DON: I am informed that you wish to have my views on section 2 of the Voting Rights Act in hand so that witnesses before the Subcommittee this Wednesday might better be able to address the language in Chairman Rodino's bill. I trust the following is informative.

First, the Chairman's bill would add new language to section 2 of the Act, recently interpreted by the Supreme Court in *Mobile* v. *Bolden,* U.S. (decided April 22, 1980). His bill would strike "to deny or abridge" from the Act and substitute in its place the phrase "in a manner which *results* in a denial or

abridgement of" (emphasis mine). Claims to the contrary notwithstanding, I am very concerned that this proposed language, never before interpreted by the Court, could cause proportional representation to be ordered when a showing of block voting and under-representation can be made. I prefer to retain the *Mobile* criteria, which I happen to believe are broader than advertised, rather than risk the unknown through such open-ended language. At-large voting systems exist all over this country and, in the words of Justice Stevens in his concurring opinion in *Mobile,* their selective condemnation for political purposes "would entangle the judiciary in a voracious political thicket."

My most recent bill, H.R. 3948, adopts the same section 2 language contained in its predecessor, H.R. 3473. In it I retain the language now in the law, as interpreted in *Mobile,* and add a prospective "effects" test tracking the language now contained in section 5. Since it is my understanding that submissions to the Justice Department, while they are judged according to their effect, are nevertheless viewed in their totality and that annexations, for example, which are rationally proposed are not automatically rejected because they might also have a dilutive effect, I have embraced the section 5 "effects" test for use nationwide through section 2.

Second. I believe *Mobile* has been maligned somewhat and that the "intent" test it uses is broader than some have asserted. Six justices of the Supreme Court upheld Mobile's at-large system of voting for the three positions of City Commissioner. Five of them, including Justices Burger, Powell, and Rehnquist, also supported the Court's ruling in *White* v. *Register,* 412 U.S. 755 (1973), a decision the dissenters embrace. Contrary to the claims of Justice Marshall, the plurality never rejects *White's* conclusion that

"To sustain such claims, (that multimember districts are being used invidiously) it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. The plaintiff's 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." (emphasis mine).

It is on the *underscored* language that the Justices, and I suspect your witnesses this Wednesday, disagree.

Very simply, I agree with the *White* v. *Register* standard and I do not believe that the Court in *Mobile* decicded otherwise. In fact, the plurality cites *White,* saying that it is consistent with the Fourteenth Amendment principle that an invidiously discriminatory electoral practice must be traced to its source. In *White,* the Court went on to say, the Court noted that "in each (Texas) county" additional factors, beyond the multimember districts in question, restricted access to the electoral system by blacks. In *Mobile,* the plurality took pains to point out that racially polarized voting is not the same as a "racially exclusionary primary" as had been used years ago in *Terry* v. *Adams,* 345 U.S. 461, and that the right of blacks to vote in Mobile, Alabama, "has not been denied or abridged by anyone" and that the Mobile system was constitutional. The dissenters parted company here; they claimed that the results were invidious because as Justice Marshall put it,

"The test for unconstitutional vote dilution, then, looks only to the discriminatory effects of the combination of an electoral structure and historical and social factors."

In sum, I agree with the standard of proof articulated in *White* v. *Register* and upheld, in my opinion, in *Mobile.* I am concerned, though, about the breadth of interpretation to which the Rodino language might be susceptible. I could, however, agree with the Rodino language, provided an amendment could be adopted which specifically states that proportional representation is not necessarily required as a result of statistical imbalance and polarized voting.

Sincerely,

HENRY J. HYDE, *Member of Congress.*

CONGRESS OF THE UNITED STATES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., July 14, 1981.

DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights,
Washington, D.C.

DEAR CHAIRMAN EDWARDS: You have asked me to submit comments on my proposal to amend Section 2 of the Voting Rights Act of 1965. I believe the Amendment

is necessary in light of the Supreme Court's interpretation of Section 2 in *City of Mobile* v. *Bolden.*

The proposed amendment to Section 2 of the Voting Rights Act of 1965 by H.R. 3112 clarifies that section's protection of the right to access to the political process which is as fundamental to our democratic system of government as the right to cast a ballot. Until the Supreme Court decision in *City of Mobile* v. *Bolden,* a violation of Section 2 would be established by a variety of direct or indirect evidence concerning the context, the nature, and the result of the practice in question. Because of the absence of a clear standard resulting from that decision, we should restate the earlier understanding that Congress intended that a violation of Section 2 could be shown by proof of a discriminatory result. The proposed amendment clarifies this legislative intent to prohibit policies and practices which deny racial and language minority groups access to the political process through vote dilution and other discriminatory devices and practices. The proposed amendment avoids highly subjective elements such as responsiveness of elected officials which create inconsistencies among court decisions and confusion about the law among government officials and voters.

The amended statute would continue to apply to different types of election problems. It would be illegal for an at-large election scheme for a particular state or local body to permit a bloc voting majority over a substantial period of time consistently to defeat minority candidates or candidates identified with the interests of a racial or language minority. A districting plan which suffers from these defects or in other ways denies equal access to the political process would also be illegal. Examples of other evidence that could show a violation are: (a) racial bloc voting; (b) discriminatory elements of the electoral system such as majority vote requirements, anti-single shot provisions, and numbered posts; (c) discrimination in slating or the failure of minorities to win party nomination; or (d) prior history of discrimination which continues to affect voting. Evidence of these factors is not required in every case. The relevancy of this evidence would depend upon the context of the challenged policy or practice.

Section 2 is not limited to districting or at-large voting. It would also prohibit other practices which would result in unequal access to the political process. For example, a violation would be proved by showing that election officials made absentee ballots available to white citizens at their residences or places of employment without a corresponding opportunity being given to black citizens similarly situated. As another example, purging of voter registration rolls would violate Section 2 if plaintiffs show a result which demonstrably disadvantages minority voters. Not all purges are prohibited because plaintiffs must meet their burden of proving a discriminatory result. Still another example is the majority vote requirement which would be prohibited under the standards governing other discriminatory vote dilution.

It is clear that the proposed amendment does not create a right to proportional representation. This amendment shows a substantial reliance upon *White* v. *Regester,* although that Supreme Court decision addressed the issue of a constitutional violation. As noted by that Court and as reflected in the meaning of the amendment, a showing that racial or language minorities are not elected to office in proportion to the minority voting potential is not sufficient proof of denial of equal access to the political process. Therefore, merely showing that minority candidates have not been elected would not prove a violation of Section 2. The proposed amendment continues the pre-*Bolden* understanding of the law that the courts will consider the context, the nature, and the consequences of a challenged practice or policy in determining discriminatory result.

The proposed amendment also incorporates as an alternative standard that a voting practice or policy is illegal if a discriminatory purpose was a motivating factor. As the Supreme Court held in *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.,* plaintiffs need not prove that a racial purpose was the sole, dominant or even the primary purpose for a challenged practice or policy.

It is my understanding that Mr. Hyde has offered his language prospectively because of concerns that it may open the door to a proliferation of Section 2 litigation. I would emphasize that we are not creating a new standard and that we have only to review the history of Section 2 litigation under the pre-*Bolden* standard.

I hope this will be helpful to the subcommittee in its review of the pending legislation.

Sincerely,

PETER W. RODINO, Jr.,
Chairman, House Judiciary Committee.

Mr. EDWARDS. Mr. Blacksher, on page 4, you offer the definition that defines dilution.

Does that definition meet with the approval of the other two lawyers?

Professor WALBERT. I think for one thing we all understand that to be just one way of doing it. It's not the exclusive way of proving it. But if that definition were satisfied, that would certainly be proof of an illegal at-large system.

In Georgia, for example, there are a lot of counties where there is not—even in Burke County, the *Lodge* v. *Buxton* case—I don't think there's anybody that ever ran for county commissioner. There might have been one or something in that county. Blacks would have to have been fools to run for the county commission in that county. There was no possibility of winning.

So, oftentimes you will not have a track record like that definition indicates. But yet we did prove that the at-large system is one of the thing that keep people from running, because they can't win. Since that was the device that excluded blacks from politics, it was found unconstitutional.

I think we all understand that the definition that Jim suggests is a sufficient one, but is not the exclusive one.

Mr. DERFNER. I, too, would think that the definition is a promising one and, at the same time, that it's not designed to cover every situation.

For example, the two *Tallulah* cases that I mentioned are cases that did not involve at-large elections. So they would be dealt with, obviously, with slightly different evidence.

But I think it is a promising approach to getting a definition.

Mr. BLACKSHER. Mr. Chairman, I would like to make sure that the record is clear that that definition is, as the other two gentlemen indicated, only one measure of effective dilution. It focuses on a specific practice; that is, the at-large election scheme. After all, at-large voting is not just another apportionment decision. It is a choice not to district, rather than a choice of how to district, and it presents its own special problems of distinguishing those situations where a minority group is being discriminated against from those situations where they are simply losing elections in a fair process.

So all of the other practices and procedures that may impede full and equal access to the system simply can't be subsumed in a single, neat definition even when that ought to work for a specific circumstance.

Mr. EDWARDS. Well, you could have a voting procedure established 100 years ago that—pre-*Bolden*, and under section 2 of the Voting Rights Act, could be challenged; is that correct?

Mr. BLACKSHER. I'm not sure I understand your question, Mr. Chairman.

Mr. EDWARDS. Let's assume that in a given covered jurisdiction, there is a law that is 100 years old, which has resulted for 100 years in blacks not having, really, an equal shot at being elected even though they are 30 or 40 percent of the population. Under pre-*Bolden* and pursuant to the provisions of section 2, that would be the kind of a lawsuit that would be made impossible by *Bolden;* isn't that correct?

Mr. BLACKSHER. *Bolden* certainly presents a serious threat. The reason I would hesitate to say it was impossible is that we are struggling now both in Mobile and Pensacola, to meet whatever it is that the Supreme Court is saying to the lower court should be the standard. But there is no doubt, no one disputes the extreme disadvantage and unlikelihood of finding the kinds of smoking guns that Professor Kousser described this morning.

If that's what the Supreme Court is looking for, we are going to have situations where, as in Florida, for example, the 1901 Constitution of Florida, adopted at a time when blacks had been disfranchised in Florida, a system for electing all the county commissions in Florida which requires at-large elections in the general election. But Florida operated a Democratic all-white primary from 1901 until 1954, which provided for district elections.

Nevertheless, even in that circumstance, because blacks could not vote in 1901, if you read *Bolden* one way, that particular scheme is insulated from attack, which is clearly an inequitable result both legally and historically.

Mr. EDWARDS. Well, we've had one or two jurisdictions, or representatives of one or two jurisdictions, come before this subcommittee and say look here, we shouldn't be covered by section 5 because we haven't made—we've made very few submissions of voting changes, election law changes none has been objected to by the Justice Department, and therefore we are perfectly clean.

I am afraid that our response to that is, well, you just haven't changed old laws that discriminate. Is that correct?

Mr. BLACKSHER. In many instances in the Southern States that is precisely the situation. The laws were established particularly during the so-called progressive reform period, to buttress the system of exclusion against that day that southerners knew eventually would come, when the National Government would once again attempt to enforce the 14th and 15th amendments. The remand trial in *Mobile* has demonstrated that the historical record produces evidence, sometimes open admissions, that that is precisely what they were doing.

They were preparing for that day when once again the National Government would look at practices in the South. Most of these States had laws, Mississippi, Louisiana, Georgia, Florida, Alabama, which were established, adopted, during those days and don't need to be changed. Section 5 never begins to touch—it touches the tip of the iceberg.

Mr. EDWARDS. Were there some successful lawsuits pursuant to section 2 before *Bolden,* in some of the States that you mentioned?

Mr. BLACKSHER. There were successful lawsuits challenging at-large election systems, particularly in the fifth circuit. Section 2 was one of the legal grounds relied on in some of them. There was no question that the case law was there. It really began in 1973 with the Supreme Court's decision in the Texas reapportionment case, *White* v. *Regester.*

Later on, in 1973, the fifth circuit in particular began acknowledging the viability of challenges to at-large elections. At the time that *Mobile* was decided last year, there was a useful body of law that supported these challenges and presented a real opportunity for black plaintiffs on their own, as I have indicated, without

substantial assistance from the Department of Justice, to seek self-help relief.

Even in that situation, though, as Mr. Walbert has indicated, the investment of lawyer time, resources, and money was overwhelming and prohibitive in most cases. So the self-help relief that even section 2 affords is really a limited one.

Mr. EDWARDS. Mr. Washington?

Mr. WASHINGTON. Gentlemen, I regret getting back late, and I missed your testimony, unfortunately. I shall however, read your submissions.

Mr. Walbert, in the post-Bolden voting case of *Lodge* v. *Buxton* , which I just glanced through last night, the court seems to rely on factors such as responsiveness of election officials to minority concerns in determining discrimination. What factors did the court use in establishing discrimination in that case?

Professor WALBERT. Congressman, I did read a little bit of some of the evidence we had in that case before you were able to get here. As Jim has just mentioned, we spent thousands of hours looking at that case, looking at private and public life in Burke County to find out what made that place tick.

We discovered that racism of the rawest sort dominated every aspect of that county's public and private behavior. The trial court so found and the fifth circuit so found. And they repeatedly characterized the evidence as shocking and overwhelming.

That kind of evidence exists in a lot of Southern communities, the rural ones still. On the other hand, you have to look at every single thing that has occurred in that county with a microscope to prove that kind of case. We literally shocked very conservative Federal judges in that case, to come up with the decision they did.

The court also did go into such things as responsiveness and the like. I think that is probably quite inappropriate. The court there held that you must show unresponsiveness as a prerequisite to winning a case. That certainly isn't how the law should be. What they're saying is you have to show not only that the election scheme discriminates. Even if you show that, you haven't necessarily won, which they expressly held in a companion case, *Cross* v. *Baxter*, which involved Moultrie, Ga. There was no finding of unresponsiveness so the court said you lose.

What you can have is announced white supremacists running for office saying that we will maintain this election system solely to keep blacks out of office. But unless you also prove that they then take the Government and turn it to discriminatory ends once they get in office, discriminate in street paving for example, employment and everything else, unless you show that, too, you don't prevail, which doesn't make any sense. If you lose the right to vote you should be entitled to prevail, even though you haven't proved that the Government also discriminates in its other behavior.

I think unresponsiveness is some kind of circumstantial evidence of discriminatory intent in other contexts. And if we show, like in Burke County, that blacks have been discriminated against in every single thing the county commission had done since the Civil War, without exception, that is some kind of circumstantial evidence that they discriminate and maintain an at-large election system for the specific purpose of discriminating. That is what we

did in that case. The fifth circuit, I think, overemphasized unresponsiveness in making that a prerequisite to victory.

Mr. WASHINGTON. It's not a judicially manageable standard?

Professor WALBERT. That's correct.

Mr. WASHINGTON. It shows the danger and the thicket we'll get into, and I am quoting.

Professor WALBERT. Even pre-*Bolden*. Quite candidly, Congressman, I think this committee should certainly be sure that whatever definitions it adopts, that it stay away from any kind of a responsiveness element. The *Moultrie* case I mentioned where the particular judge is extraordinarily hostile to black interests—no black has ever won a case in his court—in his findings of fact he said: "There is no proof of unresponsiveness in this case."

It's hard to get those overturned, notwithstanding the fact that they were wrong, just because it's a clearly erroneous rule and the way the courts operate. So it is certainly not only judicially unmanageable. It really doesn't make sense in this area and it is unmanageable, as you say.

Mr. DERFNER. If I could just add to that. One of the other reasons that it is so unmanageable is that the responsiveness of, say, a legislative body is made up of so many different things. It would be almost impossible for somebody, say, to look at the House of Representatives and say is that responsive or not. You might as well ask: What color is a rainbow? If somebody says the rainbow is red, that's right; if somebody says the rainbow is blue, that's right.

The problem, as Professor Walbert has pointed out, is that a judge can be—it's an indication that he is totally subjective and totally arbitrary, and pick out this or that factor which may be right on one side or right on the other side, or wrong, and then never get reversed.

Mr. WASHINGTON. So the Rodino bill, as amended, section 2, it must be passed if we are going to preserve this.

Professor WALBERT. Absolutely. It's interesting talking to different people who are involved in this with the committee, because the committee—there is a whole range of definitions and actions the committee could take, anywhere from almost passing like an Internal Revenue Code of what's legal and illegal in the voting area, down to really the simplest type of approach. I think everyone would agree on, Congressman Hyde and everyone, on the simple statement that intent should be eliminated from the law.

I think maybe the committee might consider several options here. One is passing a separate amendment to section 2 that specifically says intent and purpose is not a prerequisite to proving a case. And that would go a long way to getting rid of the plurality problem in *Bolden*.

Then, in addition, if the committee as a whole agrees on further definition, they can adopt that as well. But I think certainly the first and more important focus is to delete intent and purpose as a requirement of a section 2 case.

Mr. WASHINGTON. This latter suggestion, is that in your submission?

Professor WALBERT. No; it is not.

Mr. WASHINGTON. I yield.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Walbert, you've just alluded to the discussion you and I had earlier with regard to your suggestion about how section 2 might be modified. I was playing with some of these papers, so I didn't hear exactly what it was you said. It seems to me you said earlier that a mere sentence saying that intent alone was not required should be sufficient; is that correct?

Professor WALBERT. Yes; I think I said the first amendment, it is absolutely essential, is that proof of purpose or intent is not a prerequisite to prevailing in a section 2 case, if I understand that we're saying the same thing; that that is not an element of the case. It is sufficient—I shouldn't say it is not an element. It would also be sufficient to show that there is an intent to discriminate. You could also prevail on that element.

I think everyone should agree that the right to vote is a little too important. If it is denied or abridged, that should be enough to win. If we just eliminate intent, that might be something everybody can agree on to begin with. Then there is the question of should there be further, more elaborate definition than just that.

Mr. BOYD. Mr. Blacksher, your proposal on page 4 of your testimony would, I guess, be appended to section 2 of the act; is that correct?

Mr. BLACKSHER. I wouldn't suggest it. I presented it as a possible discussion of the meaning of effective discrimination as it applies to an at large situation. That might be included somewhere in the legislative history. But to include that kind of description of discriminatory effect as applied to one specific kind of discriminatory practice or procedure, invites further development of something like the Internal Revenue Code, I suppose. You would have to catalog how to describe effective discrimination as it involves each particular practice that affects voting. And certainly I don't think any lawyer would suggest that we engage in that. That is the task that is appropriate for judicial development.

Mr. BOYD. How do you respond to Mr. Walbert's suggestion that intent alone is not sufficient?

Mr. BLACKSHER. If I understand the suggestion, it would be that section 2 be amended simply to say that proof of intent is not absolutely required. It is not required, it is not a prerequisite.

Mr. BOYD. That is my understanding of your proposal.

Professor WALBERT. Right. It would not be relevant in its absence.

Mr. BLACKSHER. If it means the same thing as resulting discrimination, that's fine. But I think if that's what we mean, that's what we ought to say.

Mr. BOYD. I agree. That's why there's some concern on this side as to what the Rodino bill purports to say and what it ultimately will be interpreted to say.

Mr. Derfner, you quoted the test in *White* v. *Regester*, which was set forth in the dissenting opinion of Justice Marshall and also by reference in the plurality opinion in *Mobile*. Do you have any problem with that burden of proof?

Mr. DERFNER. No; again, except for the one issue that did come into a number of cases, which was the issue of responsiveness. And for the reason we discussed, I think responsiveness is just a kind of

murky, subjective standard which does put the courts at sea. Apart from that, the *White* standard, I think, was a manageable standard.

Mr. BOYD. Why shouldn't the subcommittee adopt that, then, in statutory form?

Mr. DERFNER. I'd have to look again at the exact language, but that might well be a promising approach.

Mr. BOYD. Let me read it to you. It says:

> It is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. The plaintiff's burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open—

And I underscore this language for my own purposes of emphasis—

> 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.

Mr. DERFNER. I think that's a good definition. Again, there is one caveat. Some people have argued that equally open has reference to former barriers, such as white primaries or such as formal or legal obstructions. I think that argument is not proper and has not been accepted in general. If there is no problem about that caveat, then I think that standard is good.

Mr. BOYD. That can take the form of report language, could it not?

Mr. DERFNER. Quite properly so.

Mr. BOYD. That's just a clarification?

Mr. DERFNER. I think so.

Mr. BOYD. Do you feel that *White* v. *Regester* was rejected by the plurality in *Mobile*?

Mr. DERFNER. Part of the problem with the *Mobile* case is that there is no majority vote, of course, for the court as a whole. Second, that the plurality opinion itself is quite confusing. What we are talking about here is our fear that the plurality opinion will be interpreted as narrowly as it looks in some instances. At the same time, it's conceivable that it can be interpreted in a much more generous way.

Part of the problem, as I say, is that it doesn't give courts or lawyers very much guidance. What guidance it gives is generally on the negative side. My own feeling is that the plurality rejected the *White* approach in the sense that the facts shown in the *Mobile* case seem to me to have fit the *White* standard. The words or the rule adopted by the plurality in *Mobile* may not have been so bad, but their treatment of the facts, I think, was erroneous.

Mr. BOYD. Justice Stevens who concurred in the judgment of the plurality, and also joined the majority in *White* v. *Regester,* seemed to take——

Mr. DERFNER. Justice Stevens was not on the Court at the time of the *White* decision. He came on the court in 1975, I think. The *White* case was in 1973.

Mr. BOYD. You're quite correct. Nevertheless, he seems to take the position that *Gomillion* v. *Lightfoot* and *White* v. *Regester* were distinguishable, because they involved registrations in the case of Texas, in which you had multimember districts next to single-

member districts. In the case of *Gomillion,* he had what he referred to as "grotesque figures" of gerrymandering which were enacted by the Alabama legislature.

He compared the act with *Mobile* in which it was the city of Mobile which had an at-large system. It didn't appear, at least in his judgment, to have those particular vestiges of discrimination.

Do you think the two particular circumstances—or three, if you include *Gomillion,* are distinguishable?

Mr. DERFNER. I think the problem with Justice Stevens' opinion is that he will accept, as he says he will, virtually any justification that the governmental body puts forward for what it has done. The testimony we heard this morning from the historians I think is a graphic illustration of just what happens when you are willing to take explanations at face value.

In a sense, all the jurisdiction has to do is pass what I think Justice Renquist has called the "straight-face" or the "red-face" test. If the city or the county can advance a justification without actually laughing while it says so, that would be accepted by Justice Stevens. I think he is much too willing to accept justifications that you wouldn't, and I wouldn't, and other committee members and staff wouldn't, and no reasonable person would accept.

Mr. BOYD. In *White* v. *Regester,* the circumstances which led the court to make the decision it did, or reach the decision it did—and I open this to any of the three of you—involved the Texas rule, electoral rule, which required a majority vote as a prerequisite to nomination in the primary election, and a Democratic, white-oriented organization which was called the Dallas Committee for a Responsible Government, which as recently as 3 years before the Supreme Court came down with its decision conducted openly racial campaigns, were any practices like that present in *Mobile* as recently as 3 years before *Mobile* came down?

Mr. DERFNER. I can't answer for Mobile. Jim Blacksher can do better on that. But what I would point out, as Professor Walbert mentioned, there are different ways to prove different things. The facts that you mentioned applied to Dallas County in the *White* case, but they did not apply to Bexar County. So I don't think these were regarded by the Supreme Court, which decided quite unanimously, as being essential elements to proof.

Professor WALBERT. The ultimate test in *White* v. *Regester* is does the minority group have equal opportunity to elect legislators of their choice? That is the ultimate question. If that standard is allowed to be proved, however it may operate in a particular county—because every place is different—than that makes a lot of sense—that type of test, I think, as Mr. Derfner has said.

The equally open language, on the other hand, in terms of reference to Dallas County, has been interpreted by some courts to say that unless there is a formal barrier to getting on the ballot, you lose automatically. If you don't have slating.

That kind of interpretation of the *White* language would certainly be inappropriate. It would really foreclose virtually all challenges.

Mr. BOYD. Were there any barriers like that, Mr. Blacksher, in *Mobile?*

Mr. BLACKSHER. Virtually all the barriers that were present in *White* v. *Regester* were present in *Mobile.*

Mr. BOYD. There were all white primaries since 1965 in Mobile?

Mr. BLACKSHER. White primaries ended in Mobile in 1946, and there was no formal slating group in Mobile. Those were about the only factors that weren't present in *Mobile* that were in *White* v. *Regester.*

Justice White's opinion, of course, points out—I think, in his words, the facts in *Mobile* prove a stronger case than in *White* v. *Regester,* which is obviously the cause of uncertainty about exactly what the plurality means when it says that *White* v. *Regester* is still good law, even though the facts in this case didn't satisfy it. Therein lies the problem.

Mr. BOYD. Especially if one considers that there are four members in the majority in *White* who are also in the plurality in *Mobile.*

Professor WALBERT. There's two halves to *White* v. *Regester.* There is the Dallas County aspect and there is Bexar County. And in Bexar County, they didn't have—essentially it shows how flexible they were in that case. Anyhow, in Bayer County, the fact of Hispanic segregation and socioeconomic differences, as I read the case, is it. That, plus the electoral results, was the evidence that they relied on in that case.

Mr. BOYD. That's correct.

Professor WALBERT. And if you have that kind of complete separation of the societies, so there is no give and take in the electoral process between groups, and you have that kind of socioeconomic difference, you should win. A lot of courts have recognized how important that is, you know. Money is very important in the political process as you all know.

Mr. BOYD. It seemed as though the test in *White* with regard to racial minorities was easier to meet than the test was with regard to Hispanics. I think you're correct in your analysis.

Mr. BLACKSHER. I would like to point out that the description of effective dilution by an at-large system that I set out in my statement is designed to demonstrate how the effective dilution presents itself by reference strictly to the election data, whether there is a bloc-voting majority that consistently defeats the electoral choices of this cohesive and racially insular minority in the same way that it would operate as if there had been a districting system which failed to satisfy one person-one vote population malapportionment standards.

If that proof is there, then the minority ought not be required to go further into the dynamics of the political process in its own community to show further entitlement to judicial relief, because it has already demonstrated the same thing that white voters in an overpopulated district have shown, and should be entitled to the same relief.

Mr. BOYD. You're aware that part of the problem with the language in title II of the Rodino bill, at least as it has been raised before the subcommittee, involves, potentially, in the view of some, for proportional representation to be the mandate pursuant to that new language. It was certainly a concern of the plurality in *Mobile,*

because the suggestion was made outright, that Justice Marshall wanted proportional representation.

Justice Marshall, in his dissent, disagreed with that analysis. But he does state in note 7 of his dissent that the test for unconstitutional vote dilution looks only to the discriminatory effects of the combination of an electoral structure and historical and social factors. Is that going to be a very easy test to apply for Federal courts?

Mr. BLACKSHER. I think that is a workable test. But I think that that itself is a more difficult test than the minority group ought to be required to satisfy. And I believe that you have got to remember that a voting minority whose vote is submerged by a block voting majority is in no different position than a group who is assigned to a district with literally no representatives. And it's the apportionment function itself which is the source of discrimination against it.

Mr. DERFNER. Mr. Boyd, in terms of the possibilities, I think, as I understand it, if there have been any concerns raised about the possibility that this language or that language might lead to proportional representation, I think those are really relative farfetched. I don't know of any court that has ever held—or any lawyer that has ever argued, or a party that has ever argued—for proportional representation. I don't think that the word "result" is susceptible to that. I don't think the word "effect" in the prospective portion of Congressman Hyde's amendment is susceptible to that.

I think if you take a look at the cases under section 5 of the Voting Rights Act, recognizing there is a different burden of proof, or if you take a look at the cases that have come along before *Mobile* under the *White* standard, I don't think you will find any basis for a fear that anybody is talking about proportional representation. I, for one, am happy to say that that's the furthest thing that I have in mind.

Mr. BOYD. Yours is the same disclaimer which was issued by Justice Marshall, but the plurality was not convinced by it. Similarly, in this case, there are some who are still not convinced by the argument that you make.

Would you have any objection, then, if a specific prohibition were integrated into the amendment in such a way as to eliminate that fear?

Mr. DERFNER. I'd be happy to put it in the language, put it in the amendment, put it in capital letters. And I think everybody would agree with me.

Let me just say this: I think proportional representation—I have trouble understanding the question when I see it in terms of a place like Mobile, that for 100 years has not had a single black on the governing body. We're talking about Edgefield County, which for 100 years has not had a single black on a governing body.

Mr. BOYD. But section 2 applies nationwide, and will reach far beyond Edgefield County.

Mr. DERFNER. And I assume that where there are places in which there has been a steady appearance of blacks or other minorities in elections, having one office or having had a fair shot at

those offices, then you can't win a case under section 5. In fact, I wouldn't bring one. I'm sorry—section 2.

Mr. BLACKSHER. The question is what you mean by proportional representation. I take it you mean that one would compare the number of minority persons elected with the percentage of minorities in the population of a community.

Mr. BOYD. That's what the plurality said in *Mobile*; yes.

Mr. BLACKSHER. There is no suggestion that that is a measure of whether there is effective discrimination in any of the standards that we have discussed here today. After all, if you take a look at what I have proposed, it doesn't make any reference to population percentages of the minority group, or even make a headcount of the number of minorities elected.

It rather focuses on the apportionment system to determine whether or not it's operating to defeat the candidates that the minority group favors. The minority group may not always favor candidates of its own race, or it might be able to succeed even in the face of block voting through other processes, to have some of its candidates elected some of the time. It doesn't call for proportional representation. It calls for a fair opportunity to avoid being totally submerged by the election process.

Mr. BOYD. That was what was interesting about your proposal, and also that of Professor Walbert.

Mr. DERFNER. If I could just add one more thing. We distinguish between the results of normal politics, with normal give and take, and politics where it's race that's resulting in the consistent defeats.

In other words, in *Whitcomb* v. *Chavis,* there were blacks who had lost elections, but it appeared that they had lost elections simply because they were running on the party—as I recall, they were Democrats, in a heavily Republican, continually Republican, county. The Supreme Court rejected that.

And I don't have any problems with saying that where minorities lose as a result of the normal give and take of politics, that is part of the game of politics—and not what section 2 should be aimed at.

Mr. BOYD. Thank you.

Thank you, Mr. Chairman.

Mr. HYDE. If I could just jump in—and we have preempted so much time, and you have been very generous.

I have been most interested in the discussion. If you could come up with some suggested language that would allay the fear that proportional representation might be mandated, that would go a long way toward resolving some of the concerns some of us have.

This is new language that hasn't been interpreted by the courts, and they're just not predictable. Well, they just aren't.

Professor WALBERT. *Bolden* would confirm that.

Mr. HYDE. So your point is that you wouldn't be disturbed by that? That is helpful, politically helpful, to get something like that in the words.

Mr. DERFNER. Let me say this, Congressman Hyde: My understanding of the word "result" is that it is not designed to introduce a new uncertainty into the area; that it is not designed to go any further, for example, than the word "effect," in your own amend-

ment. And in fact, the only objection that I would have to your amendment is that it is prospective only.

Mr. HYDE. The only reason it is a concern—well, there are a couple of concerns. We talk about strengthening the act to death by making preclearance nationwide, which I am sure would be totally unworkable.

But I have a concern about making preclearance retroactive, so to speak, on nationwide application—committees hunting around for places where litigation can be brought. I think it's a valid concern.

Mr. DERFNER. The problem with the prospective only section 2 would be that it wouldn't get the Mobiles, the Edgefield Counties. I think maybe if we have a chance to show you what the cases have been under *White*, and before *Mobile*, that you will see that there isn't any reason for concern on that score, and that you'd be persuaded that it is appropriate to have a prospective and retrospective amendment of section 2.

Mr. HYDE. Ideally, that's correct; if it is manageable. And your statement that proportional representation under whatever new language we would come up with is not necessarily mandated or required.

Mr. DERFNER. Not only "not necessarily," but not mandated at all.

Mr. HYDE. I'd prefer not mandated at all, because that leaves the door open. And my use of the word "necessarily" is wrong. So, if you give us some language, we'll play with some language, and maybe we can solve that problem.

Professor WALBERT. Congressman, I assume when we all talk about not mandating proportional representation, obviously, the number of blacks who have been elected in a particular community still is a very relevant fact in looking at whether or not the election procedure is discriminatory. I assume we all understand that.

Mr. HYDE. Sure. It's something that should be looked at. And in effect, as long as we're talking about it, I'd like to look at the totality of the situation, because I can conceive, as you can, of situations where there is a submergence or a dilution of minority voting strength, but the need for it outweighs that unhappy consequence. You know, like amputation is a terrible thing, but it may save the body.

Under any effects test that we crank in, I would hope that the court and the Justice Department could review the totality of circumstances in evaluating whether this in fact is a voting rights abuse. I think we understand each other on that, do we not? Would you agree.

Professor WALBERT. 100 percent.

Mr. HYDE. I am just thinking of annexations, where many central cities have some real serious problems. And their need could conceivably outweigh the unfortunate dilution of minority voting.

Professor WALBERT. I'm thinking about another area—like voter registration. There are a lot of voter registration laws in Georgia, for example, that have a discriminatory impact, because they're just onerous. I think some of those should be validated under section 2. Some of them, on the other hand, are—for example, the

prevention of fraud may be sufficiently great to maintain it, even though it has some discriminatory impact. Others should be illegal under your law.

Mr. HYDE. I thank you, Mr. Chairman. You have been extremely generous, and I appreciate it.

Mr. EDWARDS. Counsel?

Ms. DAVIS. Thank you, Mr. Chairman. I wonder if the panel might address the following: that is, what would be your response to bringing section 5 declaratory judgments in any district court, rather than the District Court of the District of Columbia?

Professor WALBERT. Unfortunately, in Georgia, the reason that the venue and jurisdiction were lodged in D.C. is still too much true: The middle district of Georgia has two judges. One of those judges has never ruled in favor of a black plaintiff. He has ruled that college graduates are not capable of passing the old pre-1965 law and of being qualified to vote. You will never win a case in front of that judge. Of course, it's a three-judge panel, as well.

There are fifth circuit judges today as well—whom I will not name, since I practice in front of them daily—and that makes two out of three judges that will give you that result. That's a very unfortunate fact of life. But that is a fact of life in Georgia.

Mr. HYDE. May I leap in at this point? What you say may well be true. I don't want to say it is, but I have practiced law before judges and thought the bartending business lost some great talent when they ascended to the bench. But are we going to pass a law based on forum shopping? The problem is, we're saying, "This Federal court is not worthy to handle this case, but this one is." That creates all kinds of implications and problems.

Now, my thought in having it brought in the local district court was local people could appear and could testify, whereas if you have to all come up to Washington, to the District of Columbia, you are putting an economic hardship in the face of local election officials, local civil rights leaders, local judges of election. Everyone ought to be able to go to the nearest courthouse. And it's a Federal courthouse, confirmed by the other body.

You know, if we're going to say, "Because this judge is really not sensitive to minority needs, but this one over here may be, we're going to make everybody come to the District of Columbia."

I have no hangup on that. I just think we're denying access to the courts to people who might have something to say.

Professor WALBERT. Congressman, I think there are a couple of important responses to that. One is, as a matter of getting the evidence in, of course, it's done through depositions and what have you, and as a practical matter, there isn't such a problem. I think the second thing is there is not that much litigation under section 5. Judicially, there's been very little. 99.99 percent of these things are handled administratively, with the Attorney General.

Mr. HYDE. But if jurisdictions want to bail out, and they have got a reasonable possibility of bailing out, under a proposal that I have made, we're talking about communities and we're talking about conduct in those communities. I'd just hate to think that in our system, we can't trust the courts, where we have got Federal judges appointed for life, confirmed by the Senate, and still sitting.

Professor WALBERT. Congressman, just to say one thing on that. Congress has never erred in overprotecting minority voting rights in history, and to say that we will add this in or we will take out the D.C. jurisdiction because it may be too much protection and not necessary——

Mr. HYDE. Not too much protection, but the physical problem of getting to the courthouse.

Mr. DERFNER. I would think, frankly, the physical problem is outweighed. When former Assistant Attorney General Stan Pottinger was here, he was eloquent on that. I agree with that.

I also think that the issue of uniformity is very important. This act has worked as well as it has—it's a complicated, strong law. It's worked as well as it has because there has been a single forum.

Mr. HYDE. I will say this: If that's the consensus of the civil rights community, far be it from me to be more protective of them than they want to be of themselves. If they feel the District of Columbia court is a better court, that the judges are somehow better judges in every sense of the term——

Professor WALBERT. And more uniform.

Mr. HYDE. Well, one court is going to be uniform, I'll grant you that. We ought to try criminal cases there, too, et cetera. You know, one's life is as important sometimes as voting, and maybe a little more important, sometimes.

I have no problem with it. But I just want to make it clear that I personally would like to have access to the courthouse to people who can drive there and not have to get on the train. Now, depositions, OK, they cost money, they take time, but I have no problem with that. If that's the feeling, we can do it that way.

Mr. DERFNER. My sense is that it would be the universal feeling of people who are interested in protecting rights.

Mr. HYDE. My motive with the local judge is access to the court. I really think it's a serious condemnation of our Federal judiciary system which you're making. Maybe you don't intend it as such, but it is. And maybe I agree with you.

Mr. WALBERT. I'm afraid it's a fact.

Mr. DERFNER. Let me just say this, Congressman. It also comes up in connection with your own bailout proposal.

Mr. HYDE. That's what I was talking about.

Mr. DERFNER. Because the more you talk about introducing more complex questions, I think that's all the more reason to have a single court deciding these questions.

Mr. HYDE. That applies to every facet of our Federal code, though, doesn't it really, when you get into it?

Mr. DERFNER. Some more; some less.

Mr. HYDE. OK. Thank you.

I appreciate your letting me interrupt.

Ms. DAVIS. Certainly, Mr Hyde. I have two more questions.

Following up on a point that was raised in a hearing last week, and I think was touched on somewhat today, about annexations—it is your understanding that annexations have not been disallowed by the Attorney General, when jurisdictions seek them. What the Attorney General has required the jurisdictions to do is to come up with an election scheme which does not dilute minority voting

strength. That's also been the case in any litigation that has arisen under annexations.

Is that true?

Mr. DERFNER. The Attorney General—the courts have never stood in the way of legitimate needs in the area of elections.

As you say, the rule with annexations has been that annexations that are legitimate are allowed, but the diluting effect has to be minimized in the same way purges or reregistrations have been allowed. But there has to be adequate notice. There has to be an adequate opportunity to make sure that those don't wind up to be discriminatory.

Mr. WALBERT. Ms. Davis, I might have to add to that that unfortunately in Georgia, the Attorney General hasn't even had that much strength in administering section 5. I don't know of a city that has ever had that type of objection, or any objection to annexations, in the State of Georgia.

There may be some, but I'm not aware of any. And there are many annexations I do know. In the past, due to the fact that the Attorney General was from Georgia, that might have had something to do with that for a few years.

Ms. DAVIS. Do you have any thoughts about limiting the kinds of changes that would be subject to section 5 review, limiting them to things such as annexations or at-large elections?

Mr. DERFNER. I think that would be dangerous. I think because the minute you say that area X or area Y is immune from section 5 protection, even if it seems innocuous, what you have is a hole in the dike; and suddenly all the water will go running through that hole.

I just think it would be a very dangerous precedent, even on some things that might, in the abstract, appear to be innocuous.

Ms. DAVIS. Finally, do you have any views on how the bailout provision can be amended to allow jurisdictions that no longer discriminate to get out from coverage of section 5?

Mr. WALBERT. The first thing I would say to that is, that as we look at the evidence of why there should be an amendment to allow local bailout, I question where it would be.

In the State of Georgia, you've got to remember that even in the last 15 years, nothing has been done voluntarily, that you can point at, that is right in the State of Georgia. There have been no voluntary changes to make the system more open—ever.

The whole idea of a local bailout is to give more local discretion to get out from under section 5 coverage. The question, then, is: What would they do without section 5 coverage?

If you look at the last 15 years of the historical record, we can say there is no evidence to think that anything good would happen with a localized bailout. There is nothing whatsoever to support that kind of inference.

Mr. BLACKSHER. I have only seen Mr. Hyde's proposed bailout today, and haven't had time to study it. I certainly wouldn't want to reject it out of hand. It has some interesting features to it.

Ms. DAVIS. One question for you, Mr. Blacksher.

The secretary of state from your State, Alabama, testified at our hearings in Montgomery, and he noted that there are some com-

munities in the State of Alabama that should not be covered, in his view, by section 5.

We did not have an opportunity to get a list of those jurisdictions.

But, based on your experience in that State, do any such jurisdictions come to mind?

Mr. BLACKSHER. I know of none. I'd be interested to know which ones he had in mind.

Let me say this. If I were asked the question, "Is there a jurisdiction in Alabama that deserves bailout, a county or a city?", my first question would be, "Have they voluntarily taken any actions on single-member districts or other changes that would allow blacks an opportunity, fully and equally, to participate and have some of their electoral choices registered?"

And I honestly can say that I can think of no county, commission, school board, or city government that has such an open election system, that has not been forced to do it—either through a section 5 objection, or through litigation.

Even in Montgomery County, and in some of the "black belt" counties, where blacks are approaching majorities, those changes have come about primarily through litigation. I can't think of a single example where it was done otherwise.

Ms. DAVIS. Thank you.

Mr. HYDE. If I may.

Are you saying that because you can't think of a single jurisdiction—and I'm not that familiar with every jurisdiction in the South—that a bailout provision that would recognize—should any exist—that they have been in perfect conformity with the law, in terms of making every submission required of them, and not having an objection—a substantial objection, as distinguished from technical—sustained; and that they had taken some affirmative action—constructive efforts—some outreach to get people registered, and get them—facilitate their voting, making polling places convenient, not racially intimidating?

Isn't that a useful thing to put into the act?

As a carrot, to say: "Look. Here's how you can get out. You're not locked into this thing in perpetuity." And then the court listens to all of the evidence, and listens to the equities of the matter, and retains jurisdiction for 5 more years.

Can't you have that much of a crack, you know, in the cement?

Mr. DERFNER. Let me suggest this, Congressman Hyde.

When Attorney General Abrams was here from New York, he spoke about the beneficial effects of the Voting Rights Act. And I know people, frankly, who won't come to testify, and who won't say so out loud, but who are my friends, and whom I know in South Carolina or Mississippi, but who say privately that the think the Voting Rights Act and the preclearance provision is a very helpful thing, because it's there as something that they can point to, to avoid the criticism of their neighbors.

It's also there as a reminder to them to be on their toes.

Mr. HYDE. Sure. There are criminal penalties in there that are really unused and unthought-of, that give a clerk a perfect out if he's being leaned on by the local politicians, to say: "Look. I'm not going to jail for anybody."

Mr. DERFNER. What I'm saying, Congressman, is this: That I, too, am unaware generally of any jurisdictions that would qualify to come out. I'm not saying that there aren't such jurisdictions.

What I am saying is that the fact that none of them has come forward, that none of them is known to us, suggests to me that perhaps if there are such, as you call them, "saintly or pure" jurisdictions, it may be that they don't have the same strong or burning desire to come out; that they're perfectly content to have this beneficial act there.

Mr. HYDE. Then they stay in.

What I'm saying—we're coming up to the District of Columbia court now. We're not going to be at your local, friendly judge. You have to have an escape hatch here for people who obey the law and who have done more than has been demanded of them by the law.

Otherwise, this is a package that I don't think is going to have that much appeal to everybody whom it has to appeal to to pass.

Mr. DERFNER. I understand what you're saying.

But what I am saying is that I'm not sure that a need has been shown to have a change.

Mr. HYDE. The psychological need is there, to say that there is a way for you, such-and-such a county, or you, such-and-such a State, to join ranks with the rest of the States, and not to have to sit in the back of the bus.

People say it's no big deal, but there's a stigma attached to it nevertheless.

I have mail from legislators and officials in the South who really feel that they're being unfairly treated; and I talk to them every day. You've got to give them something, but something that's going to be tough to meet, and something that ought to satisfy everybody that the purposes of the law are being fulfilled.

Mr. WALBERT. Congressman, I agree entirely with what Mr. Derfner is saying, in terms of what the evidence hasn't yet shown to date.

But I would like to suggest one thing to you that I think your bailout provision should include. Again, there should be no local bailout at this time. But, in your drafting of one, one thing that I think is absolutely essential is the other half of the carrot and the stick.

You don't just bail out based on doing X, Y, and Z. You can bail out after you do that. But there's also some kind of a mechanism so that you can be brought back under coverage.

Mr. HYDE. The court retains jurisdiction for 5 years; section 3[C] always applies; and if the jurisdiction has bailed out under 3[C], they can be brought right back in, and have preclearance mandated by the court.

My bill specifically says preclearance under 3[C].

Sure, they could be bailed back in. But once they're out, if they've obeyed the law.

Nebraska should be bailed in, as it can be under 3[C], and Minnesota. But if you pass the test on my bailout, there has to be some incentive for these communities to want to improve.

Mr. WALBERT. I'd like to look at your bill. I haven't really seen it.

Mr. HYDE. Sure. I understand.

Thanks again, Mr. Chairman.

Mr. EDWARDS. I certainly appreciate what the gentleman from Illinois points out. We're always interested in incentives.

But I think it's also important to point out that these extensive hearings, that have been deemed "overkill"—this must be the 15th or 16th hearing—is really a kind of bailout procedure.

If the evidence had been overwhelming or if these had been even modest evidence that the law is no longer needed—that section 5 is no longer needed, that there are jurisdictions all over the covered areas where the States and local governments have stepped in and taken steps so that this constitutional exercise of Federal power is no longer necessary. We would be more than happy to not extend it.

But the evidence certainly is not there, and to the people that write Mr. Hyde and write me, the answer to them is: "Come on in and tell us about the affirmative efforts that you've made."

Mr. HYDE. Well, Mr. Chairman, if I may.

There may be no such jurisdiction. I have not canvassed every nook and cranny of the old Confederacy. But at least having in the law books a proviso—and when someone complains, you say: "Can you measure up? If you can, you're out. If you can't, you're in." And it's that simple.

But we're saying to them: "No matter what you do, try another 10 years. No matter how good you are, try another ten years."

Mr. WALBERT. Congressman, but again you must look at the track record for the last 15 years. And we cannot see anything voluntarily done right in the South, in terms of voting practices.

Everything that has been done, all progress down there has been through Federal court order and through the Voting Rights Act from Washington. Nothing else has been voluntarily done, in terms of making registration more easy, in terms of switching to nondiscriminatory election mechanisms.

All the evidence that exists, throughout the State of Georgia—which I'm intimately familiar with—shows that the exact same commitment to minimizing racial participation is as strong as it ever was.

There just is no evidence to show——

Mr. HYDE. Is there something retrograde about white southerners?

Are they less human beings than, say, the whites out in Seattle?

Are they so permanently corrupted that they can never see the light?

You know, these——

Mr. WALBERT. Certainly not a permanent corruption, but we are talking about the facts that exist today.

Mr. HYDE. There are political struggles in Chicago which I dare say match what goes on in the deepest, darkest parts of Mississippi. And race may be a part of it, ethnicity. You know, the Croats and the Serbs don't get along; and the Democrats and the Republicans don't get along.

And those in power don't get along with those who are resisting, those who are out of power.

You're just painting such a bleak picture. And there are people in the South—God, there's media in the South, as you know, who are leading the clarion call for a better life for all.

I just think that you have to show people there is some incentive, so there will be recognition and incentive to improve.

Mr. WALBERT. Isn't the incentive that this bill is temporary legislation?

Mr. HYDE. Not if we keep extending it.

Mr. WALBERT. And if they would have come in with evidence—as the chairman is saying—that we have given up the past, we have given up the concerted effort to maintain the minimum amount of black participation, that we can get away with—that is the exact description of the southern political process now.

They have done the least they can possibly do. Whatever the Federal Government has forced on them, they've done that and not a bit more.

If they would have voluntarily done more in the last 5 or 10 years, they'd have a different case before the Congress today. And in the next 10 years, when those people call you and write you from Georgia and Mississippi, tell them that if you do things right voluntarily, if you open up your election system so blacks can start getting elected, if you liberalize your voting laws—that's going to be different evidence. And when the bill comes up again, it won't pass.

Mr. HYDE. I don't share your grim appraisal of attitudes in the South, although I can agree there's a long way to go. But there's a long way to go in everybody's heart, all across this country.

Mr. WALBERT. I lived in your area for a while, up in Illinois.

Mr. HYDE. So you know what I'm speaking about.

Mr. EDWARDS. We thank the legal panel very much, and we'll look forward to hearing from you with the answers to the questions in writing.

Mr. WALBERT. Thank you, Mr. Chairman.

Mr. EDWARDS. The subcommittee will adjourn now, to meet in this room at 9:30 a.m. tomorrow.

[Whereupon, at 2:50 p.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Thursday, June 25, 1981.]

EXTENSION OF THE VOTING RIGHTS ACT

THURSDAY, JUNE 25, 1981

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

The subcommittee met at 9:40 a.m. in room 2237 of the Rayburn House Office Building; Hon. Don Edwards (chairman of the subcommittee), presiding.

Present: Representatives Edwards, Washington, Schroeder, and Hyde.

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

Mr. EDWARDS. The subcommittee will come to order.

This morning's hearing on the Voting Rights Act extension brings us one step closer to the completion of this subcommittee's ongoing series of hearings. At this moment, we have only one more hearing planned after the July 4 recess. Then we plan to move immediately to subcommittee consideration of the legislation. We still hope, however, that the Justice Department will consider providing us with the benefit of its technical assistance by testifying before the Subcommittee immediately after the July 4 recess. And I have been in touch with the Deputy Attorney General, and he assured me that as soon as the confirmation of the new Assistant Attorney General in charge of civil rights is complete, that he can come over and testify. But we do need the technical assistance of the Department of Justice.

This testimony would be on how the voting section, including its section 5 unit, operates on a day-to-day basis. And we need that, as we weigh the testimony which we are going to receive this morning.

This morning, the primary focus of our hearing will be the adequacy of the Justice Department's enforcement of section 5 of the Voting Rights Act. Two of our witnesses will be addressing this issue. While both have concerns regarding the Department's enforcement efforts, they differ on how the enforcement problems should be resolved.

Now we are honored to have as our first witness today, the president of the Southern Christian Leadership Conference, SCLC, a very distinguished civil rights leader for many years. A friend of mine, a friend of the gentleman from Illinois and the gentlewoman from Colorado, and all of us.

We are delighted to have Dr. Lowery here, and I yield to the gentleman from Illinois.

Mr. WASHINGTON. Mr. Chairman, I want to join you in a wholehearted welcome to Joe Lowery here today. He and his fine organization have done a good deal of work throughout this country for the cause of civil rights, and you can bet your life that if any serious rights problem is in jeopardy, Joe Lowery will be here, as he is here today. And I am eager to hear him.

Mr. EDWARDS. Thank you. The gentlewoman from Colorado is also recognized.

Mrs. SCHROEDER. I just join you, Mr. Chairman, in saying how delighted and honored we are to have somebody who has credentials that are absolutely impeccable in this area.

Mr. EDWARDS. Dr. Lowery, you may proceed.

Without objection, your full statement will be made part of the record.

TESTIMONY OF JOSEPH E. LOWERY, PRESIDENT, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE

Reverend LOWERY. Thank you very much, Mr. Chairman, and distinguished Congresspersons from Illinois and Colorado, and counsel.

I am honored that you have invited me, and thank you very much for this privilege.

My name is Joseph E. Lowery. I am here today as president of SCLC and as vice chair of the Black Leadership Forum, an organization, a consortium of 16 percents who head national organizations.

Under the leadership of SCLS's first president, Dr. Martin Luther King, Jr., we conducted campaigns in the South designed to achieve political liberty and justice for those Americans who had historically been denied the right to vote and to hold elective offices. These campaigns were climaxed in the Selma to Montgomery march, where Dr. King named me chairman of a delegation to present our demands to Alabama Gov. George Wallace and to the Federal Government.

It was the drama of that Selma movement that led to the passage of the Voting Rights Act and opened the gates to a city previously off limits to millions of Americans. The American dream was closer to reality, because of the Voting Rights Act. SCLC and other groups, the NAACP voter education project and others engaged in intensive voter registration campaigns. Millions were added to the voting rolls. The number doubled and substantive gains were made in the number of black elected officials; however, in spite of these gains, blacks today hold less than 2 percent of the elected offices in the Nation. Many positions held are minor in nature and do not represent the power posts for policymaking.

But Mr. Chair and members of this distinguished committee, you have been adequately advised of the statistics on this issue. Testimony coming from many of my colleagues and other organizations have provided more than adequate tables of statistics and factual information. Therefore, I shall make only passing reference to these facts. I shall address the continuing need for the Voting Rights Act, its strengthening and the awesome consequence of failure to extend this legislation.

I do not speak today from the secluded suites of safety, but from the streets and byways, rural and urban. On the first Sunday in April, 5,000 of us crossed again the Edmond Pettis Bridge in Selma to express our concern about the possible loss of the Voting Rights Act. On the third Sunday in April, 10,000 of us marched in Mobile, Ala., to again express our concern about the nonextension of the Voting Rights Act and the lynching of a young black man in Mobile.

In Mississippi, Louisiana, Georgia, Virginia, I come to you this morning from the heart and hopes of those people. No one could be more saddened than those of us in SCLC and the Black Leadership Forum at the state of racial relations in America today. We led the struggle of the 1960's with marching feet, singing voice, and hopeful spirits. We proved that substantive social change could occur through nonviolence. Voter registration booths were opened to blacks; legalized segregation was struck down, and the plight of the poor and minorities was a priority item on the Nation's agenda.

We paid a heavy price for these wares. The roll of the martyred include names you would recall: Viola Liuzzo, shot down on the highway between Selma and Montgomery. It would include four lads buried in shallow graves in Mississippi. It would include ministers felled in Alabama, and it would include the life of our founding president, Martin Luther King, Jr.

But they knew the risk. They face death bravely, courageously, and bade us carry on. They died in the faith and with the faith that America had begun a march toward full emancipation and a full measure of liberty to all her sons and daughters.

What better memorial to our heroes than an America continuously marching toward that full measure of justice, liberty, and equity.

No one is more saddened than I to have to say that it is not so. We are experiencing a sad retreat from that full measure, with specific regard to voting rights. Hundreds of complaints have been registered within the past 4 years. Had it not been for section 5, the result would have been catastrophic. More violations have occurred than those that have been registered. Devious ways and means are still employed to dilute and suppress black voting strength. Inconvenient registration hours, intimidations, gerrymandering annexations, power-mad sheriffs, slick courthouse politicians, fearful members of boards of education.

Members of my staff were beaten by sheriffs' deputies in Johnson County, Ga., and kidnapped and driven out of the county and abandoned on a lonely rural road. All around the issue of voter registration.

These acts of discrimination regarding voting rights, however, do not occur in a vacuum, but in a broad environment of insidious insensitivity and horrendous hostility. The economic crisis has precipitated the resurfacing of racial attitudes that for a while seemed dormant and recessive, but now we are witnessing an assault on black life that is terrifying.

The Ku Klux Klan is resurging and has gained a new level of acceptability in the white community. In Texas the Klan was accepted by fishermen to be trained in a paramilitary killer training camp on how to combat Vietnamese fishermen in controversial

waters. In Alabama. In North Carolina, 45 percent of the vote in that State went for the Klan Nazi leader of North Carolina for the office, no less, than Attorney General.

In California—I hesitate to mention that great State, in the face of my distinguished chairman, but in one district in California, the head of the Klan was the Democratic nominee for the U.S. Congress. Blacks are being made scapegoats for the economic crisis. Thank God he didn't get elected.

And hate groups are exploiting the uncertainties and fears created by the economic crisis. Efforts to remedy the economic inequities between whites, blacks and browns are being attacked, while, ironically, the median income of blacks is lower now when compared to whites than it was in the early 1970's. And unemployment among blacks can be rated at at least 2½ times higher.

The lack of a representative government to which the Voting Rights Act contributes sends waves of lessened opportunity and inequities in employment, education, and criminal justice.

So the question of voting rights goes beyond voting to the full privilege of citizenship.

It is in this environment of retrogression that Congress comes to consider one of the most important pieces of legislation in modern history. Shall Congess at such a time as this refuse to extend and confirm this guarantee of voting rights? Shall the Congress give aid and comfort to the enemies of democracy and justice? Shall hooded hoodlums and rank racists feel affirmed by the failure of our highest legislative body to reaffirm the Nation's commitment to the full measure of liberty, justice, and equity? Shall Congress send a signal to those who would turn back the clock on racial progress and justice, a signal that encourages and inflames them in their turning back the clock. Should Congress say to millions of hopefuls in this Nation, that we too should join the ranks of those who would escalate discrimination?

Shall the Congress say to the black, the brown, the poor, that you may no longer look to us for help for the assurance of your rights?

I come today to pray that you will turn the tide, that you will halt the retreat and being a nenewed journey toward that full measure of liberty, justice, and equity.

Any retreat from the Voting Rights Act and its intent will expose blacks and poor to more intimidation and oppression.

In Rome, Ga., as I sit here today, elected school officials have been intimidated by the Ku Klux Klan, and a black student is being refused the right to attend public school. The board of education does not represent the community equitably.

What would happen without the preclearance requirement of section 5 of the Voting Rights Act? Today with it, State and local elected officials in northern Alabama permit a paramilitary killer training camp to exist, because elected officials are not representative. Ku Klux Klan terrorists from this camp shot four youths in the head in May of 1979, while also attempting to assassinate my wife, who has accompanied me here, and me.

With the Voting Rights Act today, there are no black Governors, few county commissioners, almost no school superintendents, very few sheriffs, practically no prosecuting attorneys, extremely few

judges participating in major and capital cases. There are few city council members and mayors in communities where white majorities exist, although there may be substantial black population.

The Voting Rights Act must be extended. It must strengthened, not only to establish equality but equity.

During the upcoming redistricting process, equity should be a prime objective. The issue is not simply whether black representation in local, State or Federal government will be proportionate to population, but also whether black representatives will have equity, where the important decisions are made.

In Alabama, where State Government has reestablished capital punishment, there is no black district attorney who determines when the death penalty is sought. There is no black judge who presides over capital cases. In the State of Georgia, there is no black sheriff and only 18 blacks elected to any countywide posts. In North Carolina, only 11 blacks have countywide posts.

I could go on and on, but the point is, that the Voting Rights Act has not serve out is purpose and should be extended, clarified and strengthened.

I deplore the labels that often divide us, and I do not believe that "authentic conservative" means the same as "racist," so sometimes it might seem that way. But perception cannot be ignored.

In California, again, I was called to give support to a family being harassed in their new home. The harassment escalated, and certain developments and rumors and proposals occurred in the Nation's Capital. In south Georgia, a former member of the Ku Klux Klan recently stated in an article in an Atlanta newspaper that he was abandoning his Klavern, because the conservatives now in charge rendered it unnecessary. I do not believe that being conservative makes one deny basic rights of fellow human beings, and yet that is the perception today.

The Nation needs the extension and the strengthening of the Voting Rights Act, both as fact and symbol of the Nation's continuing commitment to liberty and justice for all. The Nation needs the extension and strengthening of the Voting Rights Act as moral support for forces at work across the land, to insure justice and brotherhood. The Nation needs the extension of the Voting Rights Act as healing medication for a society sick from hatred and hostility.

The Nation needs the extension of the Voting Rights Act as reassurance that the Government of the people, by the people and for the people shall not let the hopes and dreams of millions of Americans for liberty and justice perish.

May God so help us.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Dr. Lowery, for a moving and persuasive statement, and we are grateful for your presence here today.

The gentlewoman from Colorado, Mrs. Schroeder..

Mrs. SCHROEDER. I thank you too for being here. As I say, your credentials are impeccable. I agree with you, and I am in total support. And I thank you for taking the time out of your very busy schedule to be here.

Reverend LOWERY. Thank you.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you. I regret not hearing Reverend Lowery's testimony, and I will read it very carefully, and I want to assure you that you are right, when you say that authentic conservative does not mean the same as racist.

Reverend LOWERY. Thank you, Mr. Hyde.

Mr. EDWARDS. The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Thank you. Mr. Lowery, one brief question. On page 4, four paragraphs down, you say any retreat from the Voting Rights Act would tend to expose blacks and the poor to intimidation. I assume you mean any retreat from the Act as constituted. The question is, do you agree that the administrative procedure which has been set out through the Justice Department is much better than perhaps the judicial procedure? What would be your feeling?

Reverend LOWERY. Yes, I would think so. I tremble to think what might have already happened, if we had not had the procedure outlined in section 5 and tremble even more to think that it might be removed. We are witnessing, particularly in the States I've just mentioned, a renewed effort, they feel encouraged by some developments in the Nation, and there are renewed efforts to circumvent the spirit of the act and of the Supreme Court decision to find more sophisticated means of diluting and suppressing black voting strength. And without the preclearance procedure, I would guarantee that chaos would result. And having to resort to the courts, quite often places the burden on those least able to assume it.

This would be de facto nonextension of the Voting Rights Act. It would be catastrophic, and it would be hurtful, and I would urge that the Congress not turn its back upon those who are still trying to fight through a maze of opposition and hostility to exercise a very basic, simple right of voting and holding elective office.

Mr. WASHINGTON. Also, with no exceptions, every witness who has appeared before this committee has supported the implementation of the preclearance procedures as is, through the Justice Department.

There seems to be—and justifiably so—tremendous disfavor for the judicial system at this stage. So I've got new support for maintaining the system exactly as it is, through the Justice Department.

Dr. LOWERY. I would urge it, sir. I would reiterate that in the State of Georgia, where we have made some progress, that we have not been able to elect one black sheriff.

We have conducted campaigns in several counties during the past 2 years, but the intimidation, the nonregistered efforts to change voting procedures and districts and things have intimidated blacks beyond my capacity to describe at this time.

The other thing I'd say, if I may, is that we are concerned—speaking of judicial procedure, we're very much concerned about the *Bolden* v. *City of Mobile* judicial ruling, which has now placed the additional burden upon plaintiffs of proving intent on the part of the city fathers and mothers.

We suggest this is almost an unbearable burden, and de facto discrimination, it seems to me, should be sufficient to require interference on the part of the Federal Government.

And I would urge that section 2 be strengthened so as to clarify the situation that is now very confused because of the additional ruling in *Bolden* v. *City of Mobile.*

Mr. WASHINGTON. You travel extensively throughout the country.

Do you know of any black leader—national, State, local, or grassroots level—who disagrees with your position?

Dr. LOWERY. I have not met one. I trust I don't.

Mr. WASHINGTON. Thank you.

Mr. EDWARDS. Thank you very much, Dr. Lowery.

Dr. LOWERY. Thank you very much.

[The prepared statement of Dr. Lowery follows:]

PREPARED STATEMENT OF DR. LOWERY

Under the leadership of SCLC's first president, Dr. Martin Luther King, Jr.—the Southern Christian Leadership Conference—conducted campaigns in the South designed to achieve political library and justice for those Americans who had historically been denied the right to vote and to hold elective offices.

These campaigns were climaxed in the Selma to Montgomery March where Dr. King named me the chair of a delegation to present our demands to Alabama's Governor George Wallace, and to the Federal Government. It was the drama of the Selma Movement that led to the passage of the Voting Rights Act and opened the gates to a city previously "off limits" to millions of Americans.

The American dream was closer to reality because of the Voting Rights Act.

SCLC and other groups engaged in intensive voter registration campaigns—millions were added to the voting rolls. The number of voters doubled. And, substantive gains were made in the number of officials.

However, in spite of these gains, blacks hold less than 2 percent of the elective offices in the nation. Many positions are minor in nature and do not represent the power posts for policy making.

But you have been adequately advised of the statistics involved on this issue. Testimony coming from many of my colleagues and other organizations have provided more than adequate tables of statistics and factual information. Therefore, I shall make only passing reference to these facts. I shall address the continuing need for the Voting Rights Act, its strengthening, and the awesome consequence of failure to extend this legislation.

No one could be more saddened than those of us in SCLC at the state of racial relations in America today. We led the struggle of the 60's with marching feet, singing voices and hopeful spirits. We proved that substantial social change could occur through non-violent means.

Voter registration booths were opened to blacks, legalized segregation was struck down, and the plight of the poor and minorities was a priority item on the nation's agenda.

We paid a heavy price for these wares of freedom. The roll of the martyred include names you would recall: Viola Liuzzo, shot down on highway between Selma and Montgomery it would include 4 lads buried in shallow graves in Mississippi; it would include ministers felled in Alabama; and it would include the life of our founding president, Martin Luther King, Jr.

But they knew the risk! They faced death bravely, courageously and bade us to carry on. They died in the faith—and with the faith that America had begun a march toward full emancipation and a full measure of liberty to all her sons and daughters. What better memorial to our heroes than an American continuously marching toward that full measure of justice, liberty and equity. No one is more saddened than I to have to say that it is not so.

We are experiencing a sad retreat from that full measure. With specific regard to voting rights, hundreds of complaints have been registered within the past four years. More violations have occured than those registered.

Devious ways and means are still employed to dilute and suppress black voting strength, i.e., inconvenient registration hours, intimidations, gerrymandery, annexations, etc.

These acts of discrimination regarding voting rights do not occur however in a vacuum, but in a broad environment of insidious insensitivity and hostility. The economic crisis has precipitated the resurfacing of racist attitudes that for a while seemed dormant and recessive. Now, we are witnessing an assault on black life that

is horrendous and terrifying. The Ku Klux Klan is resurging and has gained a new level of acceptability in the white community. (Example: Texas, Alabama, North Carolina and California). Blacks are being made scapegoats for the economic crisis, and hate groups and exploiting the uncertainties and fears created by the economic crisis. Efforts to remedy the economic inequities between whites blacks, (and browns) are being attacked while ironically the median income of blacks is lower now when compared to whites than it was in the early 70's, and unemployment among blacks can be rated at 2½ times higher.

It is in this environment of retrogression that Congress comes to consider one of the most important pieces of legislation in modern history. Shall Congress, at such a time as this refuse to extend, or confirm this guarantee of voting rights?

Shall the Congress give aid and comfort to the enemies of democracy and justice?

Shall Congress send a signal to those who would turn back the clock on racial progress and justice that is encouraging and inflammatory?

Shall the Congress say to millions of hopefuls in this nation that we too shall join the ranks of those who would escalate discrimination.

Shall the Congress say to the black, the brown, the poor, that you may no longer look to us for hope—for assurance of your rights?

I pray that you will turn the tide, that you will halt the retreat and begin the renewed journey to the full measure of liberty, justice and equity.

Any retreat from the Voting Rights Act and its intent will expose blacks and poor to intimidation and oppression. In Rome, Ga., today, school officials have been intimidated by the KKK and a black student has been refused the right to attend school.

The elective body does not represent the community equitably. State and local officials in Northern Alabama permit a para-military "killer" training camp to exist because elected officials are not representative. KKK terrorists from this camp shot 4 youths in May, 1979 while also attempting to assasinate me and my wife.

There are no black governors, few county commissioners, almost no school superintendents, very few sheriffs, no prosecuting attorneys, extremely few judges participating in major and capital cases. There are few city council members and mayors in communities where white majorities exist, although there may be a substantial black population.

The Voting Rights Act must be strengthened not only to establish equality but equity. During the up-coming redistricting process equity should be a prime objective.

The issue is not simply whether black representation in local, state or federal, government will be proportionate to population but also whether black representatives will have equity where decisions are made.

In Georgia there are only 18 blacks elected to county-wide governing posts. In North Carolina only 11 blacks have county-wide posts. I could go on and on but the point is that the Voting Rights Act has not served out its purpose and should be extended, clarified and strengthened.

I deplore the labels that often tend to identify and divide, but I do not believe authentic conservative means the same as racist, though somethimes it might seem so.

I do not believe that being conservative makes one deny basic rights of fellow human beings and yet that is the perception today.

The nation needs the extension and strengthening of the Act—both as fact and symbol of the nations continuing commitment to liberty and justice for all . . .

The nation needs the extension and strengthening of the Voting Rights Act as support for the moral forces at work across the land to insure justice and brotherhood.

The nation needs the extension of the Voting Rights Act as reassurance that the government of the people, by the people and for the people shall not let the hopes and dreams of millions for liberty and justice perish.

Mr. EDWARDS. Our next witness is Professor Howard Ball, of the political science department at Mississippi State University.

Dr. Ball, along with two colleagues, has recently completed a book, not yet published, which examines the enforcement efforts of the Department of Justice.

Professor Ball, we welcome you. Without objection, your statement will be made part of the record, and you may proceed.

Mr. HYDE. Mr. Chairman—would the chairman yield?

Mr. EDWARDS. I yield.

Mr. HYDE. Before we commence with the testimony of Dr. Ball, I recently received a copy of a letter that was sent to you, from Prof. William H. White of the University of Texas Law School.

I would ask unanimous consent that this letter and a statement of mine be entered into the record.

Mr. EDWARDS. Without objection, the request of the gentleman from Illinois is approved.

Mr. HYDE. Mr. Chairman, I have a further request, that Mr. Wilbur Colom be permitted to sit with Dr. Ball as a panel. We'll hear Dr. Ball first, if that is the desire of the chairman.

But Mr. Colom has indicated that he would welcome the opportunity to sit with Dr. Ball, and I would so request.

Mr. EDWARDS. I've read the testimony of both witnesses. It's very interesting testimony on each side. However, the testimony covers different areas of the situation, and I think I would rather proceed with the general plan.

As a matter of fact, we're going to have to recess now for about 10 minutes, while we go and vote.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

Professor Ball, you may proceed.

TESTIMONY OF PROF. HOWARD BALL, CHAIRMAN, DEPARTMENT OF POLITICAL SCIENCE, MISSISSIPPI STATE UNIVERSITY

Dr. BALL. Thank you very much, Mr. Chairman.

It's an honor for me to be here.

My name is Howard Ball. I am chairman of the political science department at Mississippi State University. I've been at Mississippi State University for 5 years, and for the past 4 years, colleagues of mine—Dr. Thomas P. Lauth of the University of Georgia, and Dr. Dale Krane, of Mississippi State University have been doing research on the implementation of the Voting Rights Act. Published by Greenwood Press, it is entitled: "Compromised Compliance: Implenentation of the 1965 Voting Rights Act."

Essentially, my statement reflects, to a great extent, the results of our research on the implementation of the Voting Rights Act.

The basic responsibility of the Department of Justice as a policy implementor has been to take the Voting Rights Act and to develop guidelines for compliance with the various sections of the Voting Rights Act, in particular section 5, the preclearance section of the act.

The basic task, as we have seen it, is to develop regulations that would be effective——

Mr. HYDE. Excuse me, professor. Are you going to be reading from this?

Dr. BALL. Yes, I am starting to read on page 1, sir.

Mr. HYDE. We'd best try to follow you, then? Is that it?

Dr. BALL. Right.

Mr. HYDE. OK.

Dr. BALL. Section 5 effectively controls all voting patterns in the covered jurisdictions, as of November 1964, 1968, and 1972, unless the Attorney General or the United States District Court in the

District of Columbia were convinced that the proposed voting change would not dilute black voting strength.

Section 5 was to be employed to break the cycle of substitution of new discriminatory laws and practices when old requirements were either suspended or declared unconstitutional.

Procedurally, the Congress intended to have the U.S. District Court in Washington examine all voting change proposals before they were implemented.

In an after-thought manner, as a less expensive and less onerous method of obtaining Federal approval of simple voting changes susceptible to quick and ready appraisal, the Department of Justice was added to the legislation.

Congress kept both avenues to preclearance open, but did not clearly delineate the responsibilities and differences between the kinds of submissions that ought to go to the district court and those that should be submitted to the Attorney General.

This last-minute legislative inclusion of the DOJ as joint administrator of section 5 has led to implementation problems.

Before turning to these problems, it is important to note the philosophic predisposition of the Department of Justice then and now.

As I'll point out, the Federal presence, the Department of Justice presence, is underwhelming in the South. What surprises me is the fact that civil rights groups are as supportive of the Voting Rights Act as they are found to be in our studies.

As I point out, there has been a great deal of informal negotiation between the attorneys in the Department of Justice and local white attorneys in cities, towns, and counties of the South—over the telephone, primarily.

We haven't seen what some people have referred to as begging or groveling on the knees, kissing the ring of the Federal bureaucrat. I think there has been the opposite.

There has been a very basic and informal activity that has reflected the DOJ position on implementation. That position has been—Burke Marshall put it best—"Blessed are the peacemakers, for they shall catch hell from both sides."

The position of the Department of Justice was that there should be as little national intrusion into the affairs of States and communities affected by the Voting Rights Act as possible.

I have a series of statements by Burke Marshall and others, that reflect this Department of Justice attitude from 1965 to the present:

Burke Marshall, in 1965:

> We must realize the constitutional rights of Negroes in States where they're denied, but we must do so with the smallest possible Federal intrusion into the conduct of State affairs.

Katzenbach:

> The Federal Government can't solve all the South's problems for it, and my task is to avoid, at all costs, an occupation of the South by Federal troops, lawyers, registrars, and marshals.

John Doar, in 1967:

> A political organization at the local level is needed, and the designation of examiners alone and the subsequent registration of negro electorate by the Federal Government cannot achieve this. Blacks would be better off not relying on Federal

action to increase black voter political participation. Federal action would only reinforce the caste system in the South.

And so on.

Drew Davis, most recently, said:

We are an enforcement agency. That is, we're charged with the responsibility for enforcing the Voting Rights Act through preclearance procedures, litigation, and examiner/observer activities. But we do not have the sole responsibility for vindicating voting rights under the Voting Rights Act. We share that responsibility with private litigants, as well as with the very jurisdictions subject to the act.

The DOJ attorneys have, from the inception of the act, underscored the fact that administratively, the Department of Justice would have a more effective role in implementing the act if it kept a low profile and relied instead on local forces, blacks and other minorities, and officials in the covered jurisdictions to work out problems to the satisfaction of both parties.

Resolution would then be routinely approved by the DOJ or by the U.S. District Court.

The key assumption and the catch-22 in the implementation strategy of the Department of Justice was the belief that there would be a viable minority political community in place in each jurisdiction covered by the act. Further, that this local minority political force would be a countervailing power in the town or county, and would be able to persuade local white powerholders to modify discriminatory practices, or generally prevent dilution of the black or minority vote.

Adhering to this basic assumption, the Department of Justice created, in 1971, administrative guidelines for implementing section 5.

If you turn to page 12, I think you'll find the mechanics of the implementation process. This is a table that we've developed, that tries to capture what happens when a submission is received by the Department of Justice voting section.

Let me preface that by saying that these regulations were developed by the Department of Justice in 1971, and they've been recently revised in January 1981.

The Department of Justice, I might add, has taken into account some of the criticisms leveled by the GAO and the U.S. Civil Rights Commission, in the revision of 28 CFR 51, specifically, section 51.31 to 51.37.

The preclearance submissions are reflections of weaknesses that have existed in the past, that these new, revised regulations will address.

There are two units in the voting section. There is the submission unit and the litigative staff.

On page 11, there is table 1, which gives you the information on both units, as of 1978.

There is, in the submission unit, a senior attorney adviser. Then you have a number of paraprofessionals, young men and women who are assigned, by the paraprofessional director, certain duties in reviewing the submission.

Then the litigative staff consists primarily of attorneys who deal with litigation involving, to a large extent, violations of section 5, where cities—such as Okonola or Indianola, Miss.—have for years, since 1965, refused to preclear.

So the litigative staff, in section 5, does get to the Federal courts to seek the enjoining of those voting changes.

From 1971, when regulations were promulgated, to 1981, there have been almost 35,000 submissions, with 815 of these objected to by the Department of Justice.

In the absence of any Federal presence in the local communities, these submissions must be initiated by the covered jurisdiction. My city attorney in Starkville, Miss., when there is voting change, must initiate the report to the DOT. There is no Federal presence in Starkville, Miss.

One of the basic criticisms of the Department of Justice implementation process is that there are many communities that have not precleared since the passage of the Voting Rights Act in 1965.

I know in Mississippi there are many cities and towns that have simply not submitted preclearances. One statement made to me by a Starkville public official, who is white, was that: "I'd love to do it the Indianola way." That is to say: "I would love not to file."

The fact is that in Starkville there are some people who remind the city mayor and the city attorney that there is a section 5.

The problem is that in Indianola and some other cities and towns—small, less than 10,000-population towns—there aren't people who suggest to the local attorney that he should preclear; and there aren't people who are able to call up the Department of Justice and tell them that this particular town has not precleared and "there is a voting change that will dilute my vote."

Some of the large cities do it. But let me point out that just yesterday, in the Jackson, Miss., Clarion-Ledger, we had the Fourth Congressional district runoff, and a major story appearing in the paper was that some of the registrars were asking for social security probes of the voters.

Now, in Jackson, Miss., this was dealt with because people were able to get on the phone and call up Henry Kirksey and others, and within a few hours the radios in Jackson broadcast statements that you don't have to bring your social security cards.

But I dare say that if something like this took place in a town 30 miles down the road, where you have 3,000 people and the local registrar is there, and there isn't the Clarion-Ledger, and there isn't Henry Kirksey; and he says, "Let me see your social security card or else you can't vote"—I dare say that many of those people would not vote, because they do not have the political organization that exists in Jackson, Hinds County, or some other larger counties and cities in Mississippi.

That's one of the concerns that I have about section 5.

As table 2 on page 12 suggests, paraprofessionals formally respond to all preclearances. When the letter from a city gets to the section 5 office, day 1 begins. They have in the statute 60 days to respond to the voting change. The paraprofessional staff member logs the submission in triplicate on an information card, and he or she knows various pieces of information about the submission, about the kind of change, the estimate of review and completion date.

And then that information is given to the paraprofessional director, an attorney, in the submission section, who reads the letter from the submitting authority and assigns the submission to a

paraprofessional. That director will give it back to one of the paraprofessionals in the submission section. That is when you get to phase 2.

That paraprofessional, who is not an attorney, who is a person who has been hired by the Civil Service people, then proceeds to a case analysis, where the previous record is checked for information, demographic and legal information about the proposed voting changes; obtains the nature of the area, and annexations, the location of new polling places, and so on.

Then, if there are concerns expressed by the paraprofessional, contacts are then made with minorities in the affected area. In other words, if Starkville submits a voting change, the paraprofessional might very well call the local director of the NAACP, Dr. Connors, or someone else in Starkville, if there are any questions raised in the paraprofessional's mind as to whether or not that voting change might be discriminatory.

On the basis of that research, the paraprofessional, within 45 days, recommends either additional information, objection, or no objection. That recommendation is passed on to the supervising attorney.

This is where you get to phase 3. The paraprofessional director makes a procedural review of the case analysis, a legal review, and a decision is then made by the senior attorney in the section 5 submission unit.

Then the section 5 office—and if the decision is either "no objection" or "change cannot be reviewed under section 5 at the time," the standard letter is returned to the submitting authority.

If the decision is to object, it then goes through a procedure whereby the assistant attorney general of the Civil Rights Division reviews and signs the letter of objection. This review, by the way, took place when Drew Days became assistant attorney general in 1978.

Then the letter of objection is mailed to the submitting authority by day 60. It has to be mailed by the 60th day, according to the regulations and the law.

Phase 4, if there has been a request for additional information by the paraprofessional, if there is a request for additional information, there is a rewinding of the 60-day clock, so that, in effect, they have additional time, pending the receipt of the additional information. So, essentially, that is the formal process for reviewing all preclearance submissions.

Besides this process, there has been an informal process that has developed, that we have discovered. The paraprofessional is trained to spot red flags such as reduction in the number of polling places, changes in polling places, redistricting, and annexations. Some of these are very complex.

One of the concerns we have in doing our research is whether or not these paraprofessionals have the tools, the training, the equipment, to make some very hard judgments, for example, about redistricting, because they are the ones that are dealing with this kind of submission. And they make the recommendation to the attorney in the submission unit.

The supervising attorney relies on their work to a certain extent. And I have a quote from one of these supervising attorneys in the Department of Justice:

I want them to do all the research on it and let the decision be made at a higher level than it is actually done. If they recommend objection and we are not objecting, we can just change it. If they recommend a no objection, and haven't done the homework on it, it's likely to go out that way. * * * I might not catch it, or it just might not be visible to me while I'm checking. It's better that they make mistakes, instead of doing too much.

These paraprofessionals work with minority representatives in those instances where there is concern that a voting change's purpose or effect is to dilute the vote of the minority population. Using the registry of interested persons prepared by the Department of Justice, these paraprofessionals seek to validate information presented to the Department of Justice by the local attorney. On the other hand, the supervising attorney corresponds or speaks only with his legal counterpart on the local level.

There are many preclearances where local minorities were unaware of submissions. The GAO survey pointed out that 35 percent of black contacts did not know that submissions had been precleared in their towns. There are many preclearances where the local minorities do not know of the submission itself or of the DOJ reaction because, after the initial phase, the paraprofessional is not involved in the decision process.

In a study we have done in Georgia and Mississippi, 58 percent of the local attorneys that we contacted indicated that they contacted the Department of Justice attorney prior to their formal submission, mostly by telephone. Many local attorneys write or phone the submission unit attorney before the formal submission.

And in the case of *United Jewish Organization* v. *Carey*, on page 229, you have the following note, in the *White* opinion:

A staff member of a legislative reapportionment committee testified that in the course of meetings and telephone conversations with the Justice Department, he got the feeling, he got the message from the attorney, that certain things should be done before the formal submission.

This is just an example of the kind of informal negotiations that take place as section 5 is administered today.

The presubmission counseling by the attorney leads to informal approval before filing, but without local minority participation. Said the DOJ attorney to me:

I have worked with them [local attorneys] quite a bit. * * * I get involved when the counties have problems and we don't, they just need a response from us; they need to know how to make a submission. They want guidance; they want to know what we are going to look for. They're going to revise their city charter and the city attorney will call me up to ask. Sometimes the State Attorney General's Office will ask if we are likely to have any problems with such and such legislation that they are going to propose.

One local attorney in Kosciusko, Miss., who has benefited from this type of communication told me: "It's easier to work with them"—the voting section attorneys—"than with the local electric power company." This informal intergovernmental communication process does act as an inducement to submit. It eases the pain of preclearance.

And I might point out, in the 1981 revision of the 1971 regulations, the statement the Justice Department spokeman wrote:

To satisfy some commentators would require an increase in the formality of the preclearance process. They advocate, for example, requiring a limitation on telephone communications between department personnel and submitting authorities, the inclusion of interested individuals and groups at any formal meetings held with the submitting authorities, because submission of changes to the Attorney General was designed to be an expeditious alternative to declaratory judgment, we believe the level of formality suggested is inappropriate. This case is a point that we have seen the informality of the process whereby county attorneys and the Justice Department attorney can work out some kind of submission that would then be formally approved later on.

There has been criticism of the preclearance process, formal and informal, that has come from the GAO, the Commission on Civil Rights, civil rights groups, and local attorneys in the covered jurisdictions. They fall into a number of clearly defined areas—administrative management, lack of enforcement, failure to deal with noncompliance.

Both the GAO's and our research in Georgia and Mississippi indicate clearly that the Department of Justice communications with covered jurisdictions is not good. In our survey, only 15 percent of the attorneys in Georgia and Mississippi received the 1971 guidelines; 81 percent of those attorneys in Georgia and Mississippi that responded to my survey indicated that they were unsure or unaware of Department of Justice guidelines.

The GAO reported that files in the Department of Justice were lost or misplaced and that there has been no computerized cataloging of the thousands of preclearance submissions—although this has been changed recently with the addition of a computer in the voting section. GAO's interviews with black leaders indicated that 90 percent were not on the mailing list, and that 80 percent had rarely been consulted by the Department of Justice.

With regard to assertive enforcement of section 5, this gets to the federalism dilemma and the low profile strategy of the Department of Justice. There never has been an effective monitoring of the actions in the covered jurisdictions. The GAO report indicated that 25 percent of the minority members interviewed knew of unreported changes in voting processes in their own towns; 16 percent of local officials interviewed by the GAO admitted to implementing changes without preclearance.

In our study of county attorneys in Georgia and Mississippi, 41 percent of the local attorneys had never submitted a request for preclearance since 1965; 40 percent admitted to holding elections while submissions were pending; and 60 percent said that elections were held even though the Department of Justice had objected to the voting change.

In 1978, for example, in Jackson, Miss., the night before the election, 38 polling places were changed. Many of these polling places were in black districts in the city of Jackson—were in churches that voters had used for decades—and there was no publicity surrounding the change. The Justice Department had not formally precleared it. But it was too late. The polling places were moved, and the morning of the election, voters came to vote at the AME Church but the voting machines were not there.

The polling place was moved 2 or 3 miles down the road. We don't know the exact number of people who didn't go to the new polling place, but given the fact that they were going there just

before work, some of them might not have made it to the new voting booth.

The field director of the NAACP, who was the pastor of that church—one of the 38 places that were moved—said that probably 10,000 to 12,000 blacks in Jackson and Hinds County, Miss., probably didn't vote that day, because of this last-minute change.

These are the kinds of things we have seen, that the 1978 GAO report has pointed out. Our studies indicate also that there are jurisdictions who do not preclear with the voting section. There have been hundreds of general sessions bills that were not reported in Mississippi cities such as Okolona, Indianola, and Jackson have introduced new voting changes without preclearing.

In Indianola's case, those changes were made in 1966, and only now do you have the litigation staff of section 5 going into the Federal district court in order to enjoin the annexations that have taken place without preclearance in Indianola.

The Voting Rights Act of 1965 is scheduled to expire in 1982. White city and county attorneys we have surveyed are fairly unanimous in calling for either the outright repeal or the demise of the Voting Rights Act at that time. "All other suggestions," said one attorney, "are unprintable."

For these men and women who have filed section 5 preclearance papers, only "civil rights lawyers, the NAACP organization, black racist groups, and known black agitators" have benefited from section 5 enforcement. I am quoting now from county attorneys' responses to our questionnaire.

In the eyes of some local white attorneys, Section 5 means "black incompetent so-called civil rights specialists who can't read * * * holding degrees in sociology, Greek history, English literature, or the Philosophy of Black Thought in America," positively responding to "attempts by political agitators or organizers to vote for [sic] large numbers of illiterate blacks."

If one talks to black political leaders in the south about the DOJ's less than satisfying section 5 policy of "compromised compliance," and then one raises the possibility of the repeal of the Act, minority political leaders think about a sudden end to an era of civil rights progress.

For them, the repeal of section 5 before there is full compliance would lead to a return of a system of white repression and coercion of blacks in the south.

Even though it has not been vigorously enforced, the act has helped to open voting booths and some positions of local political power to black citizens. If the VRA is not continued by Congress, even in its present form, there will be pervasive gloom in the civil rights community. Many fear that the "years of catching up" would be halted and possibly rolled back in the reshuffling of electoral districts following the 1980 census.

Which is the way to go? How does one answer the question of renewal of the Voting Rights Act? Examining the impact of the act, I believe that "compromised compliance," while it has some problems and is not good enough, has moved the affected groups along the road to an open society. But American society has not yet reached the final objective at the heart of the Voting Rights Act.

Continuation of the Voting Rights Act might very well move portions of our society closer to the ideal of representative government. I cannot say that this would be the case if the act and its section 5 were no longer in existence. I have attempted to understand and explain the nature and complexities of administrative implementation of national policy in the area of voting rights enforcement. I believe that it is imperative that the 1965 Voting Rights Act be extended for as long as it takes to educate the affected publics, black and white, to the meaning and responsibility of representative government in a free society.

To do less would be to lose sight of the goal of the 15th amendment. I believe that this ought not to happen; retention of the strengthened section 5 or some other mechanism that will enable voters to expeditiously challenge voting practices that they believe unfairly deprive them of their voting rights or that dilute the value of their vote, is one viable road that can be taken to maintain democratic, representative government in our society.

Thank you.

[The prepared statement follows.]

STATEMENT BY DR. HOWARD BALL

INTRODUCTION

The passage of the Voting Rights Act of 1965 represented both an affirmation of principles and a statement of objectives regarding abhorent practices of racial discrimination in voting in the United States. As is the case in most public policy situations, the policy formulators (Congress and the President) had delineated a policy objective, but it remained for the policy refiners (the Supreme Court and the bureaucracy) and the policy implementers (the buraucracy) to develop the guidelines for compliance with Section Five (preclearance) of the Act.

Section 5 effectively froze all voting patterns in the covered jurisdictions as of November, 1964, unless the U.S. Attorney General or the U.S. District Court were convinced that the proposed voting change would not dilute black voting strength. It was to be employed to break the cycle of substitution of new discriminatory laws and practices when the old requirements were either suspended or declared uncontitutional. Procedurally, the Congress intended to have the U.S. District Court in Washington, D.C. examine all voting change proposals before they were implemented and to issue a declaratory judgement if the change was not discriminatory in purpose or effect. In the legislative process, however, the Department of Justice was added—in almost an afterthought manner—as a less expensive and less onerous method of obtaining federal approval of "simple" voting changes "susceptible" to ready and quick appraisal.[1] (The Supreme Court, in *Perkins* 971, noted that the DOJ had limited resources to independently investigate all serious changes with respect to voting.) In the haste to bring the legislation to the public as soon as possible after the events of Selma, the Congress kept both avenues to preclearance open but did not clearly delineate the responsibilities and differences between the kinds of submissions that ought to go to the District Court and those that should be submitted to the Attorney General. This last minute legislative inclusion of DOJ as joint—administrator of Section 5, led to implementation dilemmas. Before turning to these problems, it is important to note the philosophic predisposition of the DOJ, then and now.

THE DOJ (CRD) POSITION ON IMPLEMENTATION

From the passage of the act in 1965 to the present, the DOJ has seen itself as caught in the middle of a volatile political situation involving civil rights groups on the one side and white southern power holders on the other side. Burke Marshall, Assistant AG/CRD, in the Kennedy Administration, had a sign in his office that best expressed the situation: "Blessed are the peacemakers—for they shall catch

[1] There was no debate in committee; consequently there is no legislative history that explains the addition of DOJ.

hell from both sides." The position of the DOJ, captured below, was that there should be as little national intrusion into the affairs of states and communities affected by the VRA as possible.

Burke Marshall, AAG/CRD, 1965: "We must realize the constitutional rights of Negroes in states where they are denied but we must do so with the smallest possible federal intrustion into the conduct of state affairs."

Nicholas Katzenbach, AG, 1965: " 'The federal government can't solve all the South's problems for it' and that (my task) 'is to avoid at all costs an occupation of the South by federal troops, lawyers, registrars, and marshalls.' "

John Doar, DOJ, 1967 "A political organization at the local level is needed and the designation of examiners alone and the subsequent registration of Negro-electorate by the federal government cannot achieve this. (Blacks would be better off not relying on federal action to increase black political participation. Federal action would only reinforce the caste system in the South)."

Stanley Pottinger, AAG/CRD, 1975: "It is fair to say that § 5 does represent a substantial departure from ordinary concepts of federalism."

David Hunter, CRD Submission Attorney, 1978: "(Local jurisdiction) want guidelines, they want to know what we are going to look for. They're going to revise their city charter and the city attorney will call me up to ask * * * and this is a widespread type of request * * * They have a job to do and they want to get our clearance * * * we'll do what we can for them * * * we try to make things go smoothly for them so they can hold elections."

Drew Days, III, AAG/CRD, 1978: "As a prelude to this response, it might be appropriate that we explain, generally, how we view the role of the Civil Rights Division in enforcing the Voting Rights Act. We are an enforcement agency—that is, we are charged with the responsibility for enforcing the Voting Rights Act through preclearance procedures, litigation, and examiner-observer activities—but we do not have sole responsibility for vindicating voting rights. Under the Voting Rights Act we share that responsibility with private litigants, as well as with the very jurisdictions subject to the Act."

The DOJ attorneys and political leaders have from the inception of the VRA underscored the fact that, administratively, the DOJ would have a more effective role in implementing the act if it kept a low profile and relied, instead, on local forces—blacks and other minorities and officials in the covered jurisdictions—to work out problems to the satisfaction of both parties. The resolution would then be routinely approved by the DOJ or by the U.S. District Court in D.C. The key assumption, and the Catch-22 in the implementation strategy of DOJ, was the belief that there would be a viable minority political community in place in each jurisdiction (over 7000) covered by the VRA. Further that this local minority political force, a countervailing power in the city or town or county, would be able to persuade local white power holders to modify discriminatory practices or generally prevent dilution of the black or minority vote. Adhering to this basic assumption, the DOJ created, in 1971, administrative procedures for implementing Section 5.

THE PRECLEARANCE PROCESS

In 1971, Federal Regulations, 28 CFR 51, were developed by the DOJ in order to begin the implementation of Section 5. These have recently (January, 1980) been revised. There are two units in the Voting Section associated with preclearance of submissions, the Submission Unit and the Litigative Staff. In both units there are approximately 13 paraprofessional 14 attorneys, and 2 staff assistants. (See Tables I and II). From 1971, when the Regulations were promulgated, to 1980, there have been almost 35,000 submissions[2] with 815 of these objected to by the DOJ (2.3 percent). In the absence of a federal presence in the local communities, these submissions must be initiated by the covered jurisdictions. (A basic criticism of the DOJ implementation process, inherent in the DOJ's perception of its role as administrator, is that there are many communities that have not precleared since the passage of the VRA in 1965. In its 1978 report, the GAO pointed out that 316 state session bills passed between 1970 and 1974 were never precleared. If these kinds of voting changes were not precleared by DOJ, changes passed in the state capital, what about the large number of small, rural, isolated towns in the South?)

As Table II suggests, paraprofessionals[3] formally respond to all preclearances. An informal dual track process has developed in the years since 1971 however, that is

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[2] The U.S.D.C. 1965-1980, received 23 suits; there were 10 published opinions.

[3] "No senior officer in the DOJ—much less the AG—could make a thoughtful, personal judgment on an average of 25 preclearance petitions per day. Thus, important decision made on a democratic basis * * * are finally judged by unidentifiable employees of a federal bureaucracy usually without anything resembling an evidentiary hearing." Justice L. Powell, USSC

reduction in number of polling places, changes in polling places, redistricting, annexations. The supervising attorney relies on their work to a certain extent.

I want them (paraprofessionals) to do all the research on it and let the decision be made at a higher level than it is actually done. If they recommend objection and we are not objecting, we can just change it It they recommend a no objection, and haven't done the homework on it, it's likely to go out that way * * * I might not catch it, or it just might not be visible to me while I'm checking. It's better that they make mistakes, instead of doing much.

These paraprofessionals work with minority representatives in those instances where there is concern that a voting change's purpose or effect is to dilute the vote of the minority population. Using the Registry of interested persons prepared by the DOJ, these paraprofessionals seek to validate information presented to DOJ by the local attorney. On the other hand, the supervising attorney corresponds or speaks only with his legal counterpart on the local level.

There are many preclearances where local minorities [4] do not know of the submission itself or of the DOJ reaction because, after the initial phase, the paraprofessional is not involved in the decision process. Many [5] local attorneys write or phone the Submission Unit attorney before the formal submission of a preclearance to seek advice and counsel about how best to change without receiving an objection letter by DOJ. Presubmission counseling by the Attorney leads to informl approval prior to filing but without local minority participation.

"I've worked with them (local attorneys) quite a bit * * * I get involved when the counties have problems and we don't, they just need a response from us; they need to know how to make a submission. They want guidance; they want to know what we are going to look for. They're going to revise their city charter and the city attorney will call me up to ask. Sometimes the State Attorney General's Office will ask if we are likely to have any problems with such and such legislation that they are going to propose."

One local attorney in Kosciusko, Miss., who has benefited from this type of communication told me: "It's easier to work with them (Voting Section, DOJ) than with the local electric power company." This informal intergovernmental communication process does act as an inducement to submit. It eases the pain of preclearance. Inherent in this process is the DOJ/VS standard as to what voting change will, either in its effects or its purpose, dilute the minority voting strength in that city. The standard simply put, is this: if the new voting change is only slightly "less worse" than the process being changed, it will be precleared. If it is obviously discriminatory in purpose or effect or if there is retrogression, then DOJ will object.

CRITICISMS OF THE PROCESS

Criticism of the proclearance processes, formal and informal, have come from many sources: The U.S. CCR; U.S. G.A.O.; civil rights groups, white political leaders in the covered jurisdictions, etc. The criticisms fall into a number of clearly defined areas:

(1) Administrative management/communications problems,
(2) Lack of enforcement of Section 5,
(3) Failure to deal with non-compliance;
  (a) No submissions from many covered jurisdictions,
  (b) No follow up on objections that have been sent,
(4) Lack of substantive standard defining "discriminatory purpose or effect."

(1) Both G.A.O., CCR, and my research in Georgia and Mississippi indicate clearly that DOJ's communications with covered jurisdictions was not good. In my survey, 15 percent of attorneys in Georgia and Mississippi did receive DOJ guidelines. 81 percent of those attorneys in Georgia and Mississippi that responded to my survey indicated that they were unsure or unaware of DOJ guidelines. GAO reported that files in DOJ were lost or misplaced and that there has been no computerized cataloging of the thousands of preclearance submissions. GOA's interviews with black leaders indicated that 90 percent were not on the DOJ mailing list.[6]

(2) Studies have clearly shown lack of positive, assertive enforcement of Section 5 of the VRA. There never has been an effective monitoring of the actions in the

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[4] The GAO Survey of minority leaders indicated that 35 percent did not know that submissions had been precleared.

[5] In a study of local attorneys in Georgia and Mississippi conducted by myself and two colleagues, 58 percent of the group responding to our questions indicated that they contacted the DOJ prior to formal submissions, mostly by telephone.

[6] 80 percent had rarely been consulted by DOJ.

covered jurisdiction. The GAO indicated that 25 percent of the minority members interviewed by GAO knew of unreported changes in voting processes in their towns. 16 percent of local officials interviewed by GAO admitted to implementing changes without preclearance. In my study of Georgia and Mississippi, 41 percent of the local attorneys never submitted a request for preclearance, 40 percent admitted to holding elections while the submissions were pending at DOJ, and 60 percent said that elections were held even though the DOJ had objected to the voting change. (The CCR has repeatedly called upon the Congress to provide the CRD with civil penalties to better enforce the VRA.)

(3) Although DOJ believes that most jurisdictions preclear, GAO, CCR, and our studies indicate that this is not the case. Hundreds of general sessions bills are not reported and Mississippi cities such as Okolona, Indianola, and Jackson have introduced new voting changes without preclearing with the DOJ. Nor does the DOJ have any way of knowing if a city, county, or state has accepted the objection filed by the DOJ. The litigative staff, 13 attorneys, according to the GAO report, has been involved in almost 200 cases since 1965, many of these involving litigation by DOJ to prevent a local jurisdiction from proceeding with a change that the DOJ had rejected as being discriminatory in purpose or effect.

(4) Given the informal "less worse," no retrogression preclearance process developed by the DOJ, some groups, especially the CCR and civil rights organizations, are extremely concerned about this impact on substantive voting protections. "The central problem is that dilution of the vote (continues because of arrangements between DOJ and the white power structure) by which the vote of a minority elector is made to count less than the vote of a white," wrote the CCR in 1975.

RECOMMENDATIONS

The Voting Rights Act of 1965 is scheduled to expire in 1982. White city and county attorneys I have surveyed are fairly unanimous in calling for either the outright repeal or the demise of the Voting Rights Act at that time. "All other suggestions," said one attorney, "are unprintable!" For these men who have filed the Sec. 5 preclearance papers, only "civil rights lawyers, the NAACP organization, black racist groups, and know black agitators" have benefited from Sec. 5 enforcement. In the eyes of some local white attorneys, Sec. 5 means "black imcompetent so-called civil rights specialists who can't read, * * * holding degrees in sociology, Greek history, English literature, or the Philosophy of Black Thought in America," positively responding to "attempts by political agitators or organizers to vote (sic) for large numbers of illiterate blacks."

By contrast, if one talks to black political leaders in the South about the DOJ's less than satisfying Sec. 5 policy of "compromised compliance" and then one raises the possibility of the repeal or demise of the 1965 Voting Rights Act, minority political leaders think about a sudden end to to the era of civil rights progress. For them, the repeal of Sec. 5 or its death before there is full compliance (that is, a genuine growth of a sense of black political power and the full development of local black political power) would lead to a return to a system of white repression and coercion of blacks in the South.

Even though it has not been vigorously enforced, the Act has helped open voting booths and some positions of local political power to black citizens (and other minorities in America). If the VRA is not continued in 1982 by Congress, even in its present form, there will be pervasive gloom in the civil rights community. With growing calls for retrenchment of affirmative action and other civil rights programs now moving to the conterstage of public opinion, the Act's expiration in 1982 could well be the signal to return black voting rights back to the pre-1965 reliance on costly and time-consuming litigation. The "years of catching up" could be halted and possibly rolled back in the reshuffling of electoral districts following the 1980 census.

Which is the way to go? How does one answer the question of renewal of the Voting Rights Act? Examining the impact of the Voting Rights Act on the South since 1965, I believe that "compromised compliance", while not good enough, has moved the affected groups—blacks, other minorities, and whites—along the road to an open society. But American society has not yet reached the final objective at the heart of the Voting Rights Act. Continuation of the Voting Rights Act, especially Sec. 5, might very well move portions of our society closer to the ideal of representative government.

I cannot say that this would be the case if the 1965 Act and its Sec. 5 were no longer in existence. I have attempted to understand and to explain the nature and the complexities of administrative implementation of national policy in the area of voting rights enforcement. I believe it is imperative that the 1965 Voting Rights Act

be extended for as long as it takes to educate the affected public, black and white, to the meaning and the responsibility of representative government in a free society. To do less would be to lose sight of the goal of the Fifteenth Amendment. I believe that this ought not to happen; retention of Section 5, or some other mechanism that will enable voters to expeditiously challenge voting changes that they believe unfairly deprives them of their voting rights or that dilutes the value of their vote, is one viable road that can be taken to maintain democratic, representative government in our society.

TABLE 1.—*Voting section professional and paraprofessional staffing as of July 1977*

CHIEF

Deputy Chief [1]

Submission unit:	Litigative staff:
1 Senior attorney advisor [2]	1 Assistant for litigation
1 Paraprofessional director	13 Attorneys
11 Paraprofessionals	2 Paraprofessionals

[1] Responsible for administration of the voting section and election coverage activity.

[2] Also performs litigative activity.

Source: U.S. Comptroller General, General Accounting Office, "Voting Rights Act—Enforcement Needs Strengthening," February 6, 1978, Appendix VI.

TABLE 2.—*Voting change preclearance process*

PHASE 1: INITIAL PROCESSING

1. Letter from submitting authority passes through DOJ mail sort and arrives at Section 5 office.
2. Paraprofessional staff member logs submission in triplicate on an information card which serves as (Day 1—60 day time limit begins here):
(a) A label for the submission file to be maintained,
(b) Input data for computer listings,
(c) A control card for compliance followup.
3. To complete the information card, the paraprofessional:
(a) Notes type of change(s) in the submission,
(b) Assigns each change in the submission an identification number (change number),
(c) Dates receipt of submission by Section 5 office,
(d) Estimates review completion date,
(e) Describes submitting jurisdiction, and
(f) Lists name of the paraprofessional assigned to analyze the submission.
4. Paraprofessional director reads letter from submitting authority and assigns the submission to a paraprofessional giving consideration to the geographical origin and complexity of the change and to the experience of the paraprofessional. (Some letters received by the Section 5 office are not submissions, but rather requests for information and receive appropriate response from the paraprofessional director at this point.)

PHASE 2: CASE ANAYLSIS BY PARAPROFESSIONAL

1. Previous record is checked for information, for example:
(a) Name(s) of city attorney,
(b) Form of government, and
(c) Population characteristics.
2. If no previous file exists, new record is developed.
3. Demographic and legal information about the proposed voting change obtained, for example:
(a) Nature of the area annexed,
(b) Location and number of new polling places, and
(c) Existence of petitions to annex.
4. Contacts made with minorities in affected area and officials of the submitting authority.
5. On the basis of this research, the paraprofessional recommends one of the following courses of action:
(a) The submission cannot be reviewed under Section 5 at the time,
(b) Additional information should be requested from the submitting authority,

(c) No objection should be interposed, or
(d) An objection should be interposed.

PHASE 3: FINAL DECISION

1. Paraprofessional director makes a procedural review of the case analysis (Day 45).
2. Legal review and decision made Senior Attorney, Section 5 Office (Days 45 to 60).
3. If decision is either "no objection" or "change cannot be reviewed under Section 5 at the time," then a standard letter is returned to the submitting authority.
End of preclearance process.
4. If decision is to "object", then
(a) Section 5 Attorney prepares letter of objection,
(b) Chief, Voting Section, reviews letter of objection,
(c) Deputy Assistant Attorney General, Civil Rights Division, reviews letter of objection,
(d) Asistant Attorney General, Civil Rights Division, reviews and signs letter of objection,
(e) Letter of objection mailed to submitting authority (Day 60).
End of preclearance process.
Litigation staff involved.

PHASE 4: FOLLOWUP ON REQUEST FOR ADDITIONAL INFORMATION

1. If submitting authority complies, then preclearance begins again at Day 1.
2. If thirty days elapse without receipt of additional information, Section 5 office initiates a memo requesting a F.B.I. investigation (Day 90).
3. Memo reviewed by Chief, Observer Program.
4. F.B.I. visits submitting authority.
5. Usually, submitting authority mails requested information.
Preclearance process begins again at day 1.

TABLE 3.—*Submission unit, communication links, CRD/VS*

Paraprofessional: Local minority (if identifiable on list of 408).
Attorney, CRD/VS Local attorney (for covered jurisdiction).

Mr. EDWARDS. Thank you, Professor Ball.

A lot of this valuable information which you've furnished in your statement is the kind of information we need officially from the Department of Justice. It would just fit right in with your testimony.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Yes. Mr. Ball, your testimony is, to put it somewhat mildly, shocking. Because I gather—if I can put your study into a nutshell—it simply says that there has been less than a maximum commitment on the part of the Department of Justice.

There has been administrative confusion, perhaps due to lack of requisite powers to do the job. And there has been a massive failure of communication between the Department of Justice and the local authorities and minority groups.

I guess that's what you're saying?

Dr. BALL. I would say so; yes, sir.

If reflects the Administrator's attitude that this is a very volatile issue when you deal with the question of race and voting changes in the covered jurisdictions.

Their strategy has been to have a low profile, and to try to work, as best they could, with the white attorneys in these jurisdictions, in the effort to reach the goal of the Voting Rights Act: full political participation by all citizens in the covered jurisdictions.

It's a very difficult task that they have, given the character of the issue, voting rights, and given the character of our Federal system. And they're very sensitive.

Our interviews with voting section attorneys—and we interviewed a number of them, and also white attorneys in the south—our interviews with both groups reflected the fact that there was an understanding of the political character of our society and the Federal character of our society.

Mr. WASHINGTON. But the bottom line is, as you indicate from black leaders throughout the South, that this does not argue for a transfer of this whole process from the Department of Justice to the local district courts.

Dr. BALL. From my discussions with leaders in Mississippi—and I can only speak about Mississippi minorities—the Voting Rights Act as it stands now, however weak it is, would be preferable to going into the Federal district courts, especially the southern district of Mississippi.

Mr. WASHINGTON. That's based on a lack of faith as perceived by the overwhelming number of blacks in the South. And I think one could say that if there's no faith in the process, then even though it does good, it is not perceived as doing good.

Your study is very interesting. It's somewhat disheartening to know that we haven't had that commitment from any Department of Justice official. This statement is somewhat tempered, but it's somewhat disheartening to find that the commitment is lacking, and the Justice Department chiefs don't want to do battle with the local officials who obviously and clearly, as you point out, are standing as a bulwark in the way of assuring the franchise to many people.

Dr. BALL. I think the Department of Justice, as administrators, have been given a very difficult task by the Congress. That task was to implement a piece of legislation that was somewhat different than earlier pieces of civil rights legislation, in that it went away from a litigative strategy to a strategy of a Federal presence in the localities that had been discriminating against blacks.

Mr. WASHINGTON. Let me ask you this: Wouldn't better oversight on the part of such instruments as this committee—a real thrust by the Members of Congress—put that shop in shape, in the way we should go?

Dr. BALL. I know, in terms of preclearances, if you had instead of 13 paraprofessionals 30 paraprofessionals, that there would be less chaos in the civil rights voting section, especially at this time. Elections are coming up; there are a lot of States and cities that are doing redistrictings.

And when those redistricting submissions appear—if they appear—with 11 to 13 paraprofessionals, you will have chaos. You have a lot of people working very hard; they work very hard.

So if you were to strengthen section 5 mechanics, you would want to have the Department of Justice increase the number of people who are reviewing the submissions.

Mr. WASHINGTON. I found, in my experience on the State level, that many very useful and well drafted civil rights laws fall down for the same reasons you've delineated: lack of commitment from the executive, lack of requisite money to do the job, and failure to

communicate with the people who are supposedly the beneficiaries of the act. That's what I see here.

I won't say that Congress has been penurious. But obviously, clearly, you point to a very simple solution, and I think we should go about that.

I want to thank you very much for this very interesting submission.

Where can I get your book?

Dr. BALL. It will be out in December 1981, sir.

Mr. WASHINGTON. Thank you.

Mr. EDWARDS. Mr. Hyde?

Mr. HYDE. Thank you, Mr. Chairman.

Politics raises its ugly head in this issue. For example, I'm at a loss to understand why the severe criminal penalties that are in the act, and are permanent in the act—although you'd never know it—have never been enforced.

I wonder if politics has something to do with that?

For example, you've talked about 60 percent, in some areas, failure to submit even election changes; 40 percent submit, don't get a ruling, and have elections: A total tearing up of Section 5.

Yet section 12[a] says: "Whoever shall deprive or attempt to deprive any person of any right secured by Sections 2, 3, 4, 5, 7, or 10, or shall violate Section 11[a], shall be fined not more than $5,000 or imprisoned not more than five years, or both."

Now, has your research included asking the civil rights community how many complaints they have collectively lodged with the Department of Justice on these situations, asking them to bring a criminal action against these officials?

Have you researched that?

Dr. BALL. Yes, we have, Congressman.

Mr. HYDE. What is the result?

Dr. BALL. The result is no action by DOJ, we raised that question ourselves, and not only with regard to the criminal sanctions. In the 1971 regulations you already have the power to institute civil actions against violators of the section 5 rules.

Mr. HYDE. Sure; under 3[c].

Dr. BALL. Right; I remember one civil rights attorney saying, in one of his law review articles, that if the Department of Justice brought criminal action against one person—in Jackson, Miss., let's say—within 45 seconds, there would be instant obedience to section 5 by many others.

Mr. HYDE. Sure.

How many demands have been made by the NAACP and the Southern Christian Leadership Conference, and all of the fine, good organizations that we've heard here?

How many demands have been made on the Department of Justice to bring criminal action?

Dr. BALL. The United States Commission on Civil Rights, in its 1975 report and its 1978 report and its 1968 report, repeatedly, asked for the Department of Justice to use civil remedies, and also to employ the statutory power to have criminal indictments brought against local leaders who did not obey the law.

But this goes against the philosophy of the Department of Justice voting section. They don't want to bring suit as we see it in our

research. To go to court would defeat the negotiation process that has developed over the years.

Mr. HYDE. Then the Department of Justice has just utterly failed to employ the weapons available, the resources available to get enforcement of the law?

Dr. BALL. What has happened in the years since these regulations were promulgated is that, as the political strength has developed in some of these cities and counties—for example, in Mississippi, in Starkville—there are people who know about the regs, and have in effect done the work of the Department of Justice, by telling the mayor or the county or city attorney he can't do that; he has to file.

But there are many other towns that you don't have people who can monitor for the Department of Justice.

Mr. HYDE. Well, you've got organizations whose existence is centered on voting rights, and I've listed them—twice now.

I want to know: Have they written to the Department of Justice and made formal demands that they enforce these criminal sanctions against clerks and election officials who are depriving minorities of the right to vote?

Dr. BALL. I know that the Civil Rights Commission has.

I can't say what the NAACP and other organizations have done. I would imagine they have.

Mr. HYDE. I would imagine so, too, because this is a powerful remedy—criminal sanctions. I can't think of any county clerk or election official that wants to go to jail to satisfy some political boss down there. Yet it just hasn't been used.

You know, we keep changing the laws when we don't use the laws we have. And maybe, as the gentleman from Illinois has said, we need a Department of Justice that's disposed to enforce the law, with all of its majesty and might.

We could get some adherence. As you say, if one or two people go to the slammer, they'd start to follow the law. And I'm really at a loss to understand why, under the last administration and the previous one, and the previous one all the way through 1965, this law hasn't been fully enforced.

I suspect it's politics. And I suspect that politics plays a role in preclearances, too. And that's the problem. Maybe we do need courts which, theoretically, are outside of the political swamps.

Now, I understood—and I obviously was misinformed—that you did support Professor Cochran's concept of resort to the courts as an alternative. I haven't heard that at all from your statement; so I've been misinformed.

Dr. BALL. Mr. Colom will be addressing himself to that.

Our research has been used by Professor Cochran and Judge Keady, as a basis for their assessments.

Obviously, politics does play a role in this, because the decision to file criminal sanctions and seek civil remedies is a judgment that will have to be made by the Assistant Attorney General of the civil rights division, who is a political appointee of the President.

So at that point you do get into politics. The decision to object goes to his desk; the others don't.

Mr. HYDE. It's clear, in so many areas—not just this—that laws do exist on the books, antidiscrimination laws, particularly with respect to women and things like that—equal pay for equal work.

If we just enforce the laws, we might not have to be casting about for new remedies which would themselves go unenforced, until we get back to the essential, basic need to enforce the laws that we have.

Dr. BALL. I think the only person who can answer the question sincerely is the Department of Justice, as to why they haven't used the criminal sanctions.

We've asked that. Others have asked for that kind of remedy. We don't know what would happen if they arrest a city attorney, and he goes to the district court, and he has to respond; and he probably will be found guilty because of his being in violation of the Voting Rights Act.

Mr. HYDE. Why sure. The consequences could be horrendous. So we have to deal with that reality.

Have you got any opinion on Professor Cochran's article? Have you read it?

Dr. BALL. I've read it. I received a copy of it a few days ago. It calls for the legal remedy. However, the litigative strategy prior to the 1965 Voting Rights Act, had not been successful. The 1957 act, the 1960 Civil Rights Act, the 1964 Civil Rights Act—all of those actions involved the Federal judiciary.

For example, between 1957 and 1960, there were only three cases that actually went to Federal court, and none of those three cases were resolved by the time that the 1960 Civil Rights Act was passed.

So, as a political scientist, I'm concerned about the litigative strategy as opposed to this kind of administrative strategy that has been in place. At least there has been some benefit, in that there are some jurisdictions who do submit.

So there has been some change. But, as I said before, it's somewhat underwhelming.

Mr. HYDE. Would you see, in the tradeoffs between the slow, costly, attenuated legal proceedings, as against the expeditious, effective, administrative preclearance—weighing in the balance the advantages and disadvantages of the two approaches—you've got a lack of due process, broadly considered, by having some paraprofessional decide, make judgments on this and run it past the attorney?

It's hardly an evidentiary hearing, as Justice Powell said, and you quoted. But you do get action when the submission occurs. But you get politics, too, which could very well play a determinative role.

At least in the court action, slow as it is, theoretically you should avoid politics because it's an open hearing, openly arrived at, with the press covering the deliberations, et cetera.

Even with that consideration, you still prefer the administrative preclearance?

Dr. BALL. My preference is for some mechanism that will enable citizens of the United States to get a hearing on a question of dilution of their voting rights.

If section 5's mechanics can be improved, if you can increase the number of paraprofessionals, if you can see about getting criminal sanctions used, then you might very well have a very expeditious method.

Mr. HYDE. What about the civil rights groups zeroing in on the most obnoxious situation and demanding publicly, in the press, by letter, certified mail, what have you, that the Department of Justice enforce the law?

And if they don't know what section 12[a] says, that they read it?

Don't you think that would get some action, and one by one the message would spread across the country, that the law is going to be enforced?

Dr. BALL. It sounds like it should. But it hasn't thus far.

That's the question we have. But only the Department of Justice people can answer that. They haven't answered it when we raised it with them.

Mr. HYDE. The answer is politics.

But I'm wondering what inhibits the NAACP or some of these organizations from going to the press and screaming to the heavens that this terrific remedy is here—a fearsome remedy, jail; no one wants to go to jail. And if they deprive anyone—and they do it routinely—failure to submit is punishable by jail. That's a good remedy, and it ought to be used.

Thank you very much.

Mr. EDWARDS. I think the testimony has been very interesting. As we go through these hearings, they might seem interminable, but almost every day we learn something new.

And I can see problems in the Department of Justice wanting to continue the negotiations with friendly telephone calls. The subcommittee has jurisdiction over the FBI also, and they go out of their way to have amicable relations with local police, because they are sister police organizations.

If the FBI agent has to tell a police officer with whom he works, "Incidentally, you're under investigation by me for brutality," then relations perhaps the next day aren't quite as good, and so forth.

Certainly this subcommittee could be faulted. We're supposed to have oversight jurisdiction on the operation of the Voting Rights Act.

The Voting Rights Act has been in our jurisdiction for many years, and some people should have come to us and said, "You should have oversight hearings on the implementation of the Voting Rights Act," and some of these things would have come to light for sure. But nobody did.

Actually, I didn't know that there were thousands of submissions not made, especially in North Carolina, for example. That's a specialty, apparently, according to the witnesses from North Carolina.

So the FBI would be authorized—$700 million to operate the FBI. They have a big office in Jackson. That's their responsibility, also.

And I might say that they've been in a lot of civil rights cases, thousands of civil rights cases; x millions of dollars in their budget is allocated to civil rights cases. And we'll have to ask them about that.

How many of those civil rights cases have to do with—as Mr. Hyde so cogently points out—how many have to do with violations of the criminal sections of the Voting Rights Act?

So I think that the testimony has been very valuable to us. Counsel, do you have any questions?

Ms. GONZALES. Thank you, Mr. Chairman.

Professor Ball, is it your suggestion—or I take it it's your suggestion, that one of the improvements that needs to be made, is that more paraprofessionals need to receive better training, and if true, that there may be a need for additional staff. I think in your statement or your book, you indicated that there also may be a need to have a demographic expert available; is that part of your testimony?

Professor BALL. Yes, it is, counsel. We, in interviewing people there in the voting section, had some difficulty in our interviews when we turned to demographics. They didn't have the experts. Experts in the field of redistricting differ over the "correct" redistricting plan. This plan will then be turned over to someone who might be 20 years old in the submissions unit of the voting section, someone who has no training, who might not have gone to college but who will have to determine whether the Mississippi districting plan, for example, will dilute the black vote in that State.

Certainly, there is no legal training. They are not lawyers, and then they are asked to decide whether or not that redistricting will have, as purpose or effect, dilution of the black vote or some other minority. And so it is a very difficult problem that we see, and it calls for training.

Another problem is the turnover problem. We have young men and women in there. They might decide to go to law school or take other jobs in the Federal, civil service. So while they work hard, there is, as we have seen it, a lack of expertise and high turnover. Now this can be remedied by the Congress, by the voting section, by getting better training for the paraprofessionals, by getting more paraprofessionals, on account of the massive submissions they receive.

Ms. GONZALES. Also in terms of solving the two problems that have been discussed here, in terms of monitoring submissions that have not been made, which has been a problem, and also in monitoring the jurisdictions to make sure that they don't go ahead and implement a change that has been objected to, would you also state that if there were more resources in terms of staff and increased computer capability, that may help to solve the problem, even if it doesn't solve it completely, but that may be a step in the right direction?

Professor BALL. Yes; that would be a major improvement.

Ms. GONZALES. So the focus really should be on increasing the good will of those jurisdictions who, in fact, have not wanted to make submissions. If jurisdictions become more law abiding, it would be a much easier process.

Professor BALL. Right. And at the same time this is going on, you're getting the growth of viable political forces, minority forces that will remind the local officials of their duty to follow the 1965 Voting Rights Act.

Ms. GONZALES. My last question is that you have mentioned that you had discussions with a number of officials in Mississippi and Georgia. In those discussions, have any of them indicated to you what may occur if section 5 is not kept in place?

Professor BALL. Not directly, but you see the gleam in some of their eyes. Some of them in Mississippi are saying, "You know, let's do it the Indianola way." They're just saying it now, because they, in effect, can almost get away with it, since there are no criminal sanctions that have been employed or civil penalties.

Mr. HYDE. And no demand for them by groups that ought to be overseeing them and demanding them.

Professor BALL. I think the civil rights organizations are in a quandry also, because if they press too hard, they might have difficulty with the Justice Department that they have to deal with. A good friend of mine who is a civil rights worker in Jackson, Miss., does have concerns about Justice Department politics.

Mr. HYDE. Excuse me, but I'd sure like to explore that. You mean a civil rights worker is concerned that the Justice Department won't like him because he demands enforcement of the law?

Professor BALL. Not that they won't like him; he just expressed his views that politics is present in these judgments.

Mr. HYDE. You mean party politics, and that a man like Benjamin Hooks or Vernon Jordan, who could get maximum press attention, they are unwilling to say, "Hey, the registrar in Jackson, Miss., or Columbia, Miss., or Atlanta, Ga., isn't enforcing the law, and I call upon the Justice Department to enforce section 12." You mean, is that the problem?

Professor BALL. That's a problem. Let me quote——

Mr. HYDE. That serious.

Professor BALL. Let me quote Luke Jarvis, who was Evers' backer during the 1978 campaign. This was during a time when the voting booths were switched. They called up the Justice Department, and the Justice Department simply refused to do anything at that late date, because the vote was going to be taken the following day.

One of the backers of the black candidate said that—

> Days was helpless to act, because he's under the Attorney General, Griffin Bell, and President Carter. Carter had bent over backward to endorse the Democrat in the Mississippi Senate race, and I'm sure Days got his marching orders.

This is a statement by someone in the heat of the night. This was after midnight when this statement was issued. This was a three-person race between Cochran, Maurice Stanton, the Democrat, and Charles Evers, the black Independent. This was a supporter of Evers. He was in the room when Evers and Frank Parker were on the phone with Drew Days, and when they hung up, his first comment, more of an expletive than anything was, "Well, he got his marching orders."

This is a feeling, perhaps, that is shared by some people, but it is a reality in the implementation of the act that we have perceived.

Mr. HYDE. Excuse me, and thank you.

Mr. EDWARDS. He said it that night, and he wished he hadn't said it the next morning.

Professor BALL. This made the front pages, it is kind of a reflection of what many people say as the reality of section 5 enforcement.

Mr. HYDE. Do you think there is too much political connection between some of the civil rights leaders and some of the major political parties, who shall be nameless, which makes them intimidated from asking or demanding that they enforce the law?

Professor BALL. I don't know.

Mr. HYDE. Just a thought.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

What is your judgment with regard to the Cochran proposal which was put together by Professor Cochran, as well as Judge William Keady of the Northern District of Mississippi, with regard to whether the subcommittee ought to consider it?

Professor BALL. Well, I am not an attorney, so I don't know very much about the legal specifics. I do know that in the past there have been problems with the litigative strategy. What this does have——

Mr. BOYD. It's significantly different, is it not?

Professor BALL. You do have a time limit. You do have a certain amount of time during which a decision has to be made.

Mr. BOYD. Yes; 60 days.

Professor BALL. How this would be enacted, I don't know. I really don't know what the impact would be. I don't know how it would impact on the workload of the judges in the Federal districts. Right now we have a steadily increasing workload. Each judge now has an average of almost 400 cases a year. One of the books I've done has been on courts and politics in the Federal judiciary, so I am familiar with the workloads. Given the number of submissions, you have 7,000 submissions in a year, and if they were all to go to the district courts, I would be seriously concerned whether about the 60-day time limit would work, especially if there was an evidentiary kind of hearing, rather than the informal administrative process that the voting section now employs.

That concerns me, and I voiced that concern to Professor Cochran, the fact that they have a heavy workload now. In Mississippi, we have hundreds of jurisdictions, hundreds of cities and towns and counties, and the State itself would fall under the jurisdiction of the Federal district courts.

I just don't know how the courts would handle this kind of a workload.

Mr. BOYD. Under Mr. Cochran's proposal, there would be no evidentiary hearing, unless there was objection from interested parties.

Professor BALL. I would imagine there would be a large number of objections, knowing some of the voting changes that have been implemented.

Mr. BOYD. Surely, and there would be evidentiary hearings, and a writ of mandemus, according to this proposal.

Professor Cochran also makes the statement in his conclusion that:

It is time, indeed, long past time, to invoke the full authority of the Federal judiciary throughout the United States in order to realize the fundamental objectives of section 5.

I take it you disagree with that statement?

Professor BALL. My view with regard to section 5 is that the Congress has a choice to strengthen the existing mechanics, which the Justice Department will hopefully talk about at some later time, or to go with some alternative strategy that expeditiously deals with the questions that we're very concerned with and the Congress is very concerned with, the assurance of voting rights.

This, as I told Professor Cochran, is an alternative that should be examined, and carefully.

Mr. BOYD. So you do think the subcommittee ought to take into consideration the Cochran proposal?

Professor BALL. I think the subcommittee should take into consideration any alternative, any suggestion that would improve the implementation of the Voting Rights Act?

Mr. BOYD. Do you agree or disagree with the statement I just read to you?

Professor BALL. Can I hear it again?

Mr. BOYD. Yes, sir.

It is time, indeed, long past time, to invoke the full authority of federal judges throughout the United States in an effort to realize the fundamental objections of Section 5.

Professor BALL. This is the judgment that the Congress has to make.

Mr. BOYD. Well, I am asking you, Dr. Ball.

Professor BALL. I'm quiet and hesitant, because I have seen that there has been progress made even with the compromised compliance with which section 5 has been implemented. Even with these infirmities, I have seen changes in Mississippi, especially in those cities where you have had the development of a viable black political force. Just in Jackson, you know, within 2 hours, the harrasment ended because Henry Kirksey was called up, and he called up the voting rights section. So there has been some impact on political practices in the covered jurisdictions by the DOJ, even though there has not been strenuous enforcement.

When you do get a viable political structure, in a small town, then the voting act works.

Mr. BOYD. This means section 5.

Professor BALL. Yes section 5 implementatons by DOJ has had an impact. It could be better. It's a less-than-perfect implementations strategy, so that's why I'm hesitant. But the Cochran/Keady proposal is an unknown, i.e., going to the Federal judges. It's a totally new scheme, and I'm very hesitant about going to the unknown. Like Hamlet. I know what we have here, and this can be improved, and over time there will be the development of black and other minority political forces that should be able to play a role in political life of local towns.

Mr. BOYD. So you disagree with the statement.

Professor BALL. I'm hesitant.

Mr. BOYD. Well, it's a pretty forthright statement. It's time or long past time. Would you agree or disagree?

Professor BALL. I would disagree. I don't know what would happen under this new system. I don't know how effective it would be. I don't know whether or not you can expedite, I am not an attorney. I am a social scientist responding to a difficult question.

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

Mr. EDWARDS. Thank you very much, Professor Ball. We appreciate your coming. It was very valuable testimony.

The last witness today is Mr. Wilbur O. Colom. Mr. Colom is a private practitioner in Columbus, Miss.

Mr. Colom, we are pleased to have you with us this morning.

TESTIMONY OF WILBUR O. COLOM, ESQ., COLUMBUS, MISS.

Mr. COLOM. Thank you, Mr. Chairman, members of the committee.

My name is Wilbur O. Colom. You have my résumé before you, and I will omit any reference to my background, other than to point out that I was born and spent my entire life in Mississippi, except for a period of 10 years when I was away in school.

This is a most difficult presentation for me to make, not because of any doubts regarding the Keady/Cochran proposal, but becasue I find myself isolated from men and women who have been heroic figures in my life. Some, even my personal friends. Aaron Henry, Charles Evers, and many others who testified before you, have been persons who fought critical battles that gave me the right to vote, gave me the opportunity to be a member of President Reagan's transition staff. They were out front, when bombs were the greatest tool of the opponents of equal opportunity. But I too was active in the civil rights movement in the midsixties, and I too recall the gross inequalities.

Add my voice to theirs in saying that the Voting Rights Act must be extended.

As an active Republican, I can state without hesitation that the Voting Rights Act and section 5 of the act are essential to the maintenance of the two-party system and necessary for the protection of fundamental rights. Indeed, my right and that of my child to participate in the electoral process is at stake. While we must acknowledge that voter intimidation, barriers to registration and even ballot box stuffing, the tools of the past, to a large extent have disappeared.

There still remains white bloc voting, subtle maneuvers to dilute black voting strength, and blatant efforts to negate black electoral gains.

Mississippi has changed. There is greater equality. Those who say that they have seen no discriminations against blacks in Mississippi must be blind. I understand that was said to you in Montgomery some weeks ago. Those who say that any change in the Voting Rights Act will turn back the clock on racial equality, refuse to acknowledge the progress our State has made.

Of course, we still have far to go. Resistance is not so much among the populace as it is among the political forces now in power, for they correctly see that the influx of blacks into the electoral process will offer the potential for new coalitions and new political alinements that may not allow their continued political dominance.

Nothing has done more to foster the development of the two-party system in Mississippi than the Voting Rights Act. We now find two parties competing for two large voting groups, with both parties being fundamentally strengthened in the process. It is critical to the Republican Party in the State of Mississippi that the rights of black voters be protected in the broadest of forms. To do otherwise would invite a return to the one party Dixiecrat days.

Now to the specifics of the Keady/Cochran proposal. William Keady is the chief judge for the U.S. District Court for the Northern District of Mississippi. I describe him as the Johnson of Mississippi. George Cochran is a professor of law at the University of Mississippi. He was law clerk for Supreme Court Justices Reed and Warren. He was head of the Poverty Law Center at Duke University prior to his clerkships.

Their proposal is outlined in their forthcoming article in the Kentucky Law Journal entitled "Section 5 of the Voting Rights Act, Time for Revision."

Mr. Chairman, if I may, I have a copy of the article here, and I'd like to offer it as part of the record.

Mr. EDWARDS. Is this the article there?

Mr. COLOM. Yes, sir.

Mr. EDWARDS. Without objection it will be made part of the record.

[Committee note: The article is retained in the committee's files; it is also published in the Kentucky Law Journal Vol. 69, Number 4, 1980-81.]

Mr. COLOM. The Keady/Cochran article relies on, among other things, one document with which I'm sure you're familiar—The GAO report on the Voting Rights section of the Justice Department, and also a book entitled "Compromise Compliance." Both lead to some unavoidable conclusions, which serve as the empirical foundation of the Keady/Cochran proposal.

First, there's an extremely high submission rate by covered jurisdictions of proposed changes. This submission rate has an incapacitating effect on quality review by the voting rights section.

Second, there are real and justifiable suspicions that administrative preclearance has neglected those interests it was designed to serve; 1980 statistics show that of 7,340 submissions, only 51 objections were interposed. The chaotic and hurried review given by the Civil Rights Division tends to bear out the conclusion that effective full enforcement is not now and cannot be achieved in the Department of Justice.

Third, the Supreme Court, in *Morris* v. *Gressett,* held that there is no judicial review of a departmental decision not to object to a submission. I would note that I do a great deal of civil rights litigation. My town, annexed a large area. The Justice Department approved annexation before anybody in the black community even knew about it.

There's a real problem with the input of the black community in the decisions of the Justice Department. Such an unreviewable power is foreign to our process, and has a potential for abuse. I prefer to vest the responsibility of protecting my rights to participate in the electoral process in the hands of a Federal judge subject to the review of the court of appeals than to invest that authority

in the hands of a political appointee whose position may be based upon his or her role in a campaign rather than his or her dedication to the law.

I trust Federal judges more, Federal judges in the South even, than I do political appointees. Quite frequently judges rise to the occasion when they're appointed, but I have the utmost of confidence in the fifth circuit should they not. I don't think there is any court or tribunal in this country any more sympathetic and any more zealous in its protection of the rights of blacks than the U.S. Court of Appeals for the Fifth Circuit.

Finally, in 1975 Assistant Attorney General Pottinger stated that a mechanism would be in place which would insure that covered jurisdictions comply with the preclearance requirement. Recently he acknowledged, after 6 years, that no such mechanism has been put in place. It is abundantly clear that no such technique is available in the department.

It is mandatory, considering the foregoing, that this committee explore alternatives which will cure the existing deficiencies of administrative preclearance and will extend the protection currently offered by section 5 to all minorities of the United States, no matter where they may be located.

It is in this context that I strongly urge that you support the Keady/Cochran proposal as found in the forthcoming article in the Kentucky Law Journal, and if I'm correct, a draft copy of this article has been distributed to each member of the committee. In its broadest outlines, the conclusion is that section 5 should be given nationwide application, and that the political unit be required to bring a declaratory judgment in a local district court for proposed electorial alterations.

The amended statute would contain the same requirements as now, with the United States being named as the defendant. Upon filing, appropriate notice would be required to inform interested parties. It would take two forms. First, publication in public newspapers for 3 consecutive weeks. Second, actual service of the complaint upon interested persons or organizations which have their names placed in a permanent registry maintained in the office of the district court clerk.

In the light of the current inability of minorities to have definitive input into the preclearance process, as well as the previously stated inability to secure judicial review of a decision not to object, this portion of the Keady/Cochran proposal is critical.

This statutory right of intervention by individuals would, among other things, make irrelevant a departmental decision not to object. If the Department fails to object, and intervention does not occur, an uncontested judgment would then be entered.

The problem with an unusually biased judge would be cured by the provision for an automatic stay coupled with an expedited appeal procedure. I recently had an expedited appeal to the fifth circuit, and we were at oral argument, all briefing completed, 60 days after notice of appeal was filed.

Moreover, the availability of a statutory right of mandamus would assure that these actions would be heard expeditiously. The bottom line is that the Voting Rights Act can and should be strengthened to assure effective enforcement. This proposal

achieves that goal, while, at the same time, allowing for a nationwide application and ending an inefficient administrative procedure.

In a candid moment, my friends from Mississippi, many of whom have testified before you, will admit that the Justice Department is doing less than a grand job of enforcing the provisions of section 5 of the Voting Rights Act.

They will acknowledge that it is difficult to find fault with the Keady/Cochran proposal. Yet they fear that any tinkering with the act will result in it being gutted with Republican amendments. I hope and I pray that the present administration and my fellow Republicans will prove them wrong.

The enforcement procedures of the Voting Rights Act are not written on a sacred scroll. While the principles embodied in the act should be sacred to all of us, for it was through much suffering that the gains were made, the mechanism for enforcement should be open for debate as Mississippi changes and as America changes. Innovative ideas on enforcement, such as the Keady/Cochran proposal, should be welcomed.

Thank you.

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

Mr. Hyde.

Mr. HYDE. Thank you. Mr. Colom, how long have you lived in Mississippi?

Mr. COLOM. All my life except for the period I was away in school.

Mr. HYDE. What changes have you seen in the racial and political climate in Mississippi in your lifetime?

Mr. COLOM. I want to preface my statement. Many people from Mississippi came to this committee and said things haven't changed. I was in Mississippi when we had nightriders, and you couldn't register to vote. That was extreme conduct. We see very little of that any more. There's little voter intimidation. It's rare that you have difficulty registering to vote.

The acts of discrimination are much more subtle now. It's through gerrymandering, diluting black voting strength through at-large voting systems; sophisticated techniques.

I recall the election in 1972, when white candidates would not openly solicit black votes. In the recent election in Jackson, the democratic candidate openly supported the extension of the Voting Rights Act. There are some changes in attitude and perceptions.

What I think my black friends fear is that if there's any changes now that progress will stop and we will not get the political strength necessary to make sure that there's no retreat. But Mississippi has changed enormously.

I was talking to minority counsel at one point about my practice. I said——

Mr. HYDE. Now, just a minute. You're a black lawyer in where? Columbus?

Mr. COLOM. Columbus, Miss.

Mr. HYDE. Do you have any white clients?

Mr. COLOM. I was going to tell you earlier the majority of my clients are white. I represent the Columbus Policemen's Association, that is 85-percent white. That was unheard of in Mississippi.

Mississippi has changed. We have a long way to go, but there are substantial changes occurring.

I want to make sure that nothing is done to slow up that progress.

Mr. HYDE. But you think that some changes that would strengthen the Voting Rights Act, depoliticize it, would be to the good.

Mr. COLOM. It's really amazing to me that civil rights groups support the present preclearance process. It doesn't work, it is subject to political manipulation. I'm a Republican and I tell you "No", I don't trust my voting rights to a Justice Department even if it is run by Republicans. I think we need to take it out of that process completely.

Mr. HYDE. You could be with the wrong faction of the right party, or the right faction of the wrong party.

Mr. COLOM. Yes; and I think civil rights groups are operating based on simple labels rather than substance. Either you're for the extension or you're against it, which is not true. They're operating out of labels about the Civil Rights Act. There were only 51 objections in 1981, the civil rights division is not doing us any great favors.

Mr. HYDE. Do you practice in the Federal courts in the South?

Mr. COLOM. Yes.

Mr. HYDE. We've heard testimony that it would be a cold day in July before we find a good judge, a trustworthy judge, a judge with integrity—I'm exaggerating for the sake of emphasis, but that's what they're saying—in the South. What's your reaction to that?

Mr. COLOM. We have some terrible local district judges, and we have some very good ones. I think we're very much like the rest of the country. We have an exceptional court of appeals.

Mr. HYDE. All appeals from civil rights actions and voting rights actions generally in that area would go to that court of appeals, is that right?

Mr. COLOM. That's true.

Mr. HYDE. Where are they located?

Mr. COLOM. New Orleans. It's broken into two divisions now. There will be a new court of appeals in Atlanta, and we'll have the one in New Orleans.

Mr. HYDE. Would you trust those two courts of appeals?

Mr. COLOM. Do I trust them? I only trust God with my voting rights, but if I have to choose a man, I would rather choose an article III judge than the Justice Department.

Mr. HYDE. Rather than a paraprofessional.

Now, Mr. Colom, if I may make a statement. I think it took some courage on your part to come up here today and differ with the views that we have repeatedly heard that no reasonable person would wish to alter the existing act because nothing has changed in the covered jurisdictions.

Since you decided to testify, have you encountered any pressure not to testify?

Mr. COLOM. I think I called up and I talked to the minority counsel. It stopped being pressure and started being intimidation at some point. Apparently, someone called most of my colleagues in Mississippi and I found my friends, my black friends in the Republican Party, calling me up asking if I was coming up here to testify

against the Voting Rights Act. They just simply didn't believe it, and even went so far, that my father—who's cochairman of the Democratic Party in one county—said that he had even heard such vicious things about his son.

Mr. HYDE. You were getting calls trying to persuade you not to come and testify?

Mr. COLOM. Yes. They were calls of disbelief. Actually, that's the reason it was so interesting. I mean, I do a great deal of controversial litigation. I'm an ACLU attorney.

Mr. HYDE. You're what we call a civil rights type.

Mr. COLOM. I do a great deal of civil rights litigation, but it was offensive to me when friends of mine called me and told me such things. It would be like someone, to use an example, a John Bircher having one of his friends call him up and say I understand you are Communist.

Mr. HYDE. That's the way you felt?

Mr. COLOM. That's the way I felt. I consider myself a strong advocate of civil rights. I think people are operating off of labels.

I'm also offended by this premise that blacks must be uniform, that we must all march to the same drummer, that when someone blows the horn up in New York or Washington or Atlanta, that we must all line up like ants and not say a word, contrary to what's being put forth as "the national black view."

Mr. HYDE. These attempts were made to discourage you from coming up here and testifying?

Mr. COLOM. I'm kind of a hard knocker. The talk made me more determined than ever.

Mr. HYDE. Did you get calls from any political figures?

Mr. COLOM. No political figures. Les Grange, another Republican and a close friend and the attorney for our black Republican organization, called me up because he said he had been contacted by Ed Cole of the Democratic Party in Mississippi.

Mr. HYDE. Do you know who contacted him? Who generated this heat on you to keep you from coming up here?

Mr. COLOM. I don't know.

Mr. HYDE. You don't know, but this man said the head of the Democratic Party in Mississippi called him to call you.

Mr. COLOM. Right.

Mr. HYDE. But the more they pressured you, the more determined you were to come up here and testify.

Mr. COLOM. Because I think it's my first amendment right.

Mr. HYDE. I do, too, and I think you've made a great contribution, and I'm very proud to be a member of the legal profession with someone like you. Thank you.

Mr. EDWARDS. I thank you also very much. Do you have any questions? Mr. Boyd?

Mr. BOYD. Yes, Mr. Chairman.

Mr. Colom, we talked a little bit earlier with Dr. Ball about the use of Federal courts under Professor Cochran's proposal. It was difficult for him to take a position with regard to the ability of local Federal courts. You've alluded to that in previous testimony to Mr. Hyde. Would you care to explain the extent to which a recalcitrant local Federal judge, under the Cochran proposal, could be avoided?

Mr. COLOM. Under the proposal you have an automatic stay and an expedited appeal. Again, an expedited appeal works, at least in the fifth circuit. I was shocked, in fact, a case I appealed on expedited appeal was a civil rights case brought by the ACLU, where a man was trying to get into Mississippi's all-female university. The local district judge summarily dismissed our case. The fifth circuit reversed within 5 months.

Mr. BOYD. Are the sort of politics to which you've alluded really avoidable in the sort of system we have now?

Mr. COLOM. I don't think so. I worked in the transition. I know how people were selected. You know, the role in the campaign is important. I'm not saying they were incompetent or have ill will, but, they were primarily campaign people who did a good job. They have a fundamental philosophy that the government should not interfere in State government, and you're going to find that many of the guys in the Justice Department who I know and who may be considered friends of mine will differ with me on questions of civil rights because they believe in minimal intervention.

Now I just don't want my civil rights to depend on who's in political office. The 15th amendment is going to be until this country amends the Constitution, and I don't want my rights to depend on a political appointee, whether we have a Democrat 4 years from now or a Republican 4 years from now. I think that's irrelevant.

Actually, I don't think there's any need for any extension. We need a permanent mechanism. You put something in place, and it stays there, because we don't know what's going to happen 20 years from now. We may have some kind of black backlash by whites against blacks. We need something that's going to be in place, for we may have difficulty with an extension in the future. Just because you haven't discriminated in the last 10 years doesn't mean you're not going to discriminate 20 years from now.

Mr. HYDE. Following up on what you're saying, I'll be very frank with you. Resorting to the courts on a nationwide basis for a submission, to me, is extremely costly, extremely cumbersome, and I just don't think is effective. But I promise to read the article again and digest it carefully. I've rushed to many judgments on this issue so far, and I don't want to do it now. But I just say to you, the remedy that you and Professor Cochran are suggesting seems to me to be excessively cumbersome.

At the same time, what you have said about the politicization of the administrative review process is so true. It's so true. Depending on the personality and values of the people sitting there with all this power to exercise it or not depends on your rights to vote, and that's a problem.

I suggest a remedy to that is what is in the law now—permanent law—namely, a litany of things that are illegal and criminal penalties for those people who abuse them and oversight by the civil rights organizations, who, I suggest, have not been doing their job in bringing this to the public attention of the Justice Department.

That may or may not be an answer, but it just seems to me that in view of what we've heard in areas—now take South Carolina where there isn't a black State senator, and you've got 39 percent of the State black, something is needed there. That calls for court action, I would say, by interested parties.

But nevertheless, I'm opting for continual administrative preclearance and hoping to light fires under civil rights groups to make it live and breathe by calling it to the attention of a foot-dragging Justice Department or a political Justice Department that the law is not being enforced and trusting on the media to keep the heat on until something happens, but then, giving those areas who may have lived up to the law—God help us, I hope there are some—an opportunity to prove their good record, to prove they've done affirmative things like extending voting rights hours and registration and making voting booths convenient and available and not intimidating and things like that—that they can stand with the rest of the country until they backslide.

This is an option that I am proposing and, I think, is a little more workable than Professor Cochran's. And I say that without adequately studying it, I concede. But I'd like you to digest my suggestion that keeping preclearance automatic with some vigilance on the part of civil rights organizations on the most egregious offenders—I think it will have a great therapeutic effect. That's my comment.

Mr. COLOM. Congressman, I've read your revised proposal, and I think it's an improvement over the last one. I wasn't very supportive of your last proposal.

Mr. HYDE. I've lost enthusiasm for it, too. [Laughter.]

Mr. COLOM. But I think we have the same thing here. One, there can be a sense out there in Indianola, Miss., that they can make a submission now because the administration, quote, "has changed", and there are some conservatives up there who are going to be sensitive to them, that they can make a change now and not get an objection, but in our proposal there are going to be black people who will get notice and an opportunity to participate, and this makes it irrelevant what the Justice Department does. And you know they will go to the fifth circuit, and believe me, there's nothing in the South that protect civil rights more than the fifth circuit.

Mr. HYDE. You wouldn't know that from hearing the litany of professors and historians and law professors from the South who haven't had a kind word to say about any judge who's below the Mason-Dixon Line. That's refreshing.

Mr. COLOM. That's local judges. Believe me, it's very difficult to find a bright star among local judges.

Mr. HYDE. You mean local district court judges?

Mr. COLOM. It's very difficult to find bright stars in that group.

Mr. HYDE. Are there any?

Mr. COLOM. A few.

Mr. HYDE. But you've got the fifth circuit anyway. What about amending section 5—and this is a great idea—to require a notice requirement that doesn't seem to be there now, to require a notice requirement to interested parties?

Helen, is there anything like that?

Ms. GONZALES. Yes, sir, Congressman Hyde. The regulations already provide—the Department of Justice has a registry with hundreds of names of interested individuals to whom notice is sent of all the submissions that they receive.

Mr. HYDE. There is adequate notice?

Ms. GONZALES. Right.

Mr. COLOM. It's a very inadequate notice procedure. If you're going to make a voter change in Columbus, Miss., you need to publish that in Columbus, Miss.

Mr. HYDE. I agree. It should be published in the newspapers of general circulation in the community, rather than some list of preferred professionals.

Mr. COLOM. Let me tell you how it happens. This is what really got me up on the Voting Rights Act. One of our local attorney calls the Justice Department to make his changes. Now I was told that the Justice Department asked him who to contact in the black community.

So who does he give? Not anybody who's going to be critical. That's why a simple notice requirement of people who specialize in civil rights litigation will pick it up. Our firm reads the newspapers and the notices in the newspapers every day as a matter of policy.

Mr. HYDE. Mr. Colom, I've just discussed with Mr. Boyd preparing an amendment which will require publication in all or no less than three newspapers of general circulation in every community where a voting rights change is going to be suggested, so that you and other people don't have to rely on a selective list that may be as political as the person doing the selecting.

Mr. COLOM. And very old.

Mr. HYDE. Yes, I daresay. I think that will improve the act, and it might make administrative preclearance a little more acceptable than going into court all over the country, which I do think has some problems.

But anyway, I thank you for giving me this time.

Mr. EDWARDS. Thank you very much. I appreciate your coming here and giving us this interesting testimony.

Mr. HYDE. Mr. Chairman, I would like to move that Mr. Colom's testimony be transcribed and submitted to the Justice Department for review to determine whether any violation of Federal law has occurred in the efforts to intimidate him from coming to testify.

Mr. EDWARDS. Well, I'm sure that we can get a copy for you right away of his testimony, and you can submit it.

Mr. HYDE. Then I'll submit it. Thank you, Mr. Chairman.

[The prepared statement of Mr. Colom follows:]

STATMENT OF WILBUR O. COLOM

Mr. Chairman and members of the committee, my name is Wilbur O. Colom. You have my résumé before you and I will omit any reference to my background other than to point out that I was born and spent my entire life in Mississippi, except for a period of 10 years when I was away in school.

This is a most difficult presentation for me to make; not because of any doubt regarding the merits of the Keady/Cochran proposal, but because I find myself isolated from men and women who have been heroic figures in my life, some even my personal friends. Aaron Henry, Charles Evers and many others who testified before you have been persons who have fought critical battles that gave me the right to vote, gave me the opportunity to be a member of President Reagan's transition staff. They were out front when bombs were the greatest tool of the opponents of equal opportunity. But I, too, was active in the civil rights movement in the mid 60's and I, too, recall the gross inequalities.

Add my voice to theirs in saying that the Voting Rights Act must be extended.

As an active Republican, I can say without hesitation that the Voting Rights Act and section 5 of the act are essential to the maintenance of the two party system and necessary for the protection of fundamental rights. Indeed, my right and that of

my child to participate in the electoral process is at stake. While we must acknowledge that voter intimidation, barriers to registration and even ballot box stuffing, the tools of the past, to a large extent, have disappeared. There still remains white block voting, subtle maneuvers to dilute black voting strength and blatant efforts to negate black electoral gains. Mississippi has changed. There is greater equality. Those who say they have seen no discrimination against blacks in Mississippi must be blind. Those who say that any change in the Voting Rights Act will turn back the clock of racial equality refuse to acknowledge the process our State has made. Of course, we still have far to go. Resistence is not so much among the populace as it is among the political forces now in power, for they correctly see that the influx of blacks into the electoral process will offer the potential for new coalitions and new political alignments that may not allow their continued political domination.

Nothing has done more to foster the development of the two party system in Mississippi than the Voting Rights Act. Now we find two parties competing for two large voting groups, with both parties being fundamentally strengthened in the process. It is critical to the Republican party in the State of Mississippi that the rights of black voters be protected in the broadest of forms. To do otherwise would invite a return to the one party Dixicrat days.

Now, to the specifics of the Keady/Cochran proposal. William Keady is the chief judge for the United States district court for the Northern District of Mississippi. George Cochran is a professor of law at the University of Mississippi law center. Their proposal is outlined in their forthcoming article in the Kentucky Law Journal entitled "Section 5 of the Voting Rights Act: A Time for Revision". The Keady/Cochran article relies on, among other things, one document with which I am sure you are familiar, the GAO report on the voting rights section of the Justice Department and a book entitled Compromise Compliance. Both lead to some unavoidable conclusions which serve as the empirical foundation for the Keady/Cochran proposal.

First, there is an extremely high submission rate by covered jurisdictions of proposed change, and this submission rate has an incapacitating effect on quality review by the voting rights sections. Second, there are real and justifiable suspicions that administrative preclearance has neglected those interests it was designed to serve. 1980 statistics show that of 7,340 submissions, only 51 objections were interposed. The chaotic and hurried review given by the civil rights division tend to bear out the conclusion that effective full enforcement is not now and cannot be achieved in the Department of Justice now or in the future. Third, the Supreme Court in *Morris* v. *Gressett* held that there is no judicial review of a departmental decision not to object to a submission.

Such an unreviewable power is foreign to our process and has a potential for abuse. I prefer to vest the responsibility of protecting my rights to participate in the electoral process in the hands of a southern Federal judge, subject to the expedited review of the fifth circuit, than to vest that authority in the hands of a political appointee whose position may be based upon his or her role in a campaign, rather than his or her dedication to the law.

Finally, in 1975, Assistant Attorney General Pottinger stated that a mechanism would be in place which would insure that covered jurisdictions comply with the preclearance requirement. Recently, he acknowledged, after six years, that no such mechanism has been put in place. It is abundantly clear that no such technique is available in the Department.

It is mandatory, considering the foregoing, that this committee explore alternatives which will cure the existing deficiencies of administrative preclearance and would extend the protection currently offered by section 5 to all minorities of the United States, no matter where they may be located.

It is in this context that I now strongly urge that you support the Keady/Cochran proposal as found in the forthcoming article in the Kentucky Law Review and, if I am correct, a draft copy of which has been distributed to each member of the committee.

In its broadest outline, their conclusion is that section 5 should be given nationwide application and that the political unit be required to bring a declaratory judgment in a local United States district court for proposed electoral alterations. The amended statute would contain the same requirements as now, with the United States being named the defendant. On filing, appropriate notice would be required to inform interested parties. It would take two forms. First, publication in local newspapers for three consecutive weeks. Second, actual service of the complaint upon interested persons or organizations which have their names placed in a "permanent registry" maintained in the office of the district court clerk. In light of the current inability of minorities to have definitive input to the preclearance process as well as the previously stated inability to secure judicial review of a decision not

to object, this portion of the Keady/Cochran proposal is critical. The statutory right of intervention by individuals would, among other things, make irrevelant a departmental decision not to object. If the department fails to object and intervention does not occur, an uncontested judgment would then be entered.

The problem with an unusually biased judge would be cured by the provision for an automatic stay coupled with an expedited appeal procedure. I recently had an expedited appeal to the fifth circuit and we were at oral argument, all briefing completed, sixty days after notice of appeal was filed. Moreover, the availability of a statutory right for mandamus would assure that these actions would be heard expeditiously.

The bottom line is that the Voting Rights Act can and should be strengthened to assure effective enforcement. This proposal achieves that goal while at the same time allowing for nationwide application and ending an inefficient administrative procedure. In a candid moment, my friends from Mississippi, many who have testified before you, will admit that the Justice Department is doing less than a grand job of enforcing the provisions of section 5 of the Voting Rights Act. They will acknowledge that it is difficult to find fault with the Keady/Cochran proposal. Yet, they fear that any tinkering with the Act will result in it being gutted with Republican amendments. I hope and I pray that the present administration and my fellow Republicans will prove them wrong.

The enforcement procedures of the Voting Rights Act are not written on a sacred scroll. While the principles embodied in the Act should be sacred to all of us; for it was through much suffering in my lifetime the gains were made, the mechanism for enforcement should be open for debate as Mississippi changes and as America changes. Innovative ideas on enforcement such as the Keady/Cochran proposal should be welcomed.

Résumé of Wilbur O. Colom

PERSONAL DATA

Date of birth: January 8, 1950.
Place of birth: Ripley, Miss.
Sex: Male.
Marital status: Married.

LEGAL WORK EXPERIENCE

September 11, 1978 to present: Senior Partner, Colom, Mitchell & Colom, attorneys at law, 406 Third Avenue North, Columbus, Miss. 39701.

November, 1977 to January, 1981: Director (part-time), Judicare of Mississippi, Inc., 824 Second Avenue North, Columbus, Miss. 39701.

June 1, 1977 to September 11, 1978: Sole private, practice of law, Columbus, Miss. 39701.

September 16, 1976 to June 1, 1977: Staff attorney, Federation of Southern Cooperatives, Post Office Box 95, Epes, Ala. 35460.

June to July, 1976: Instructor, Council on Legal Education Opportunity, Summer Institute, University of Mississippi, University, Miss. 38677. Reference: Tom Mason.

Summer 1975: Organizer, North-East Mississippi Voters League, (Alcorn, Tippah, Union, Benton, and Marshall Counties). Part-time Researcher, Ben Thomas Cole, II, attorney at law, Holly Springs, Miss.

April to June 1975: Judicial Intern, Office of the Administrative Assistant to the Chief Justice, The United States Supreme Court, Washington, D.C. Reference: Mark W. Cannon.

EDUCATION

September 1973 to May 1976: Antioch School of Law, 1624 Crescent Place, N.W., Washington, D.C. 20001, J. D. Degree, 1976. Howard University, Washington, D.C. Major: Political Science. Minor: Journalism.

GENERAL WORK EXPERIENCE

Summer 1974: Sojourner Truth Awards Dinner Coordinator, The Black Women's Community Development Foundation, 1028 Connecticut Avenue, N.W., Suite 1010, Washington, D.C. 20036. Reference: Inez Smith Reid.

December 1972 to September 1973: Editor of Publications, The Black Child Development, Institute, 1028 Connecticut Avenue, N.W., Washington, D.C. 20036. Reference: Alfred Herbert.

October 1971 to ?: Director Public Affairs, The National Welfare Rights Organization, 1424 Sixteenth Stret, N.W., Washington, D.C. 20036. Reference: Faith Evans.
June 1971 to October 1971: Intern Reporter, *The Washington Post*, 50 Fifteenth Street, N.W., Washington, D.C. 20005. Reference: William Raspberry.
Summer 1970: Director of Reading Program, SASA House, 963 P Street, N.W., Washington, D.C. 20001.

CONSULTANT WORK

National Council of Churches: 1972 General Assembly and 1973 Convocation of Conscience. Duties: Media Coordination.
The Black Women's Community Development Foundation. Preparation of 1972 Annual Report, several brouchures and promotional materials.
The Independent Foundation. Preparation of 1972 Annual Report.

OTHER ACTIVITIES

Writer-in-Residence for District of Columbia Commission on the Arts, 1973.
Extensive general subject matter writing, both fiction and non-fiction.
Co.author: Chapter on Appellate Advocacy in "Case Analysis and Legal Writing" by William Statsky and John Wernet, West, 1977.
Convenor of Mississippi Black Republican Council.
Member—Board of Directors, Tennessee Valley Center for Minority Economic Development.
Member, Board of Visitors, Antioch School of Law.
Legal Council, Lowndes NAACP.
Transition Team Captain, Office of the President-Elect, November 11, 1980 to January 16, 1981.
Moot Court Judge, University of Mississippi Law Center, Oxford, Miss., 1977, 1978, 1979, 1980.
Member, Board of Directors, National Employment Law Project, New York, N.Y.
Outstanding Member Award, 1979, Odyssey Club, Columbus, Miss.

Mr. EDWARDS. That concludes our hearing this morning. We have a hearing this afternoon with the Civil Rights Commission on another subject.

Thank you very much.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]

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EXTENSION OF THE VOTING RIGHTS ACT

MONDAY, JULY 13, 1981

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

The subcommittee met, pursuant to call, at 2 p.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Members Present: Representatives Edwards, Kastenmeier, Schroeder, Sensenbrenner, Washington, and Hyde.

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

Mr. EDWARDS. The subcommittee will come to order.

This afternoon is our 19th and final hearing on legislation to extend the Voting Rights Act. We have heard testimony in Washington, and in two regional hearings in Texas and Alabama, from over 100 witnesses. The overwhelming majority of these witnesses have expressed their strong support for the extension of the act.

Witness after witness has attested to the importance and effectiveness of the current section 5, administrative preclearance remedy, and the other special provisions.

Since this is our final hearing, we are not going to have the opportunity to hear from the Department of Justice. We did extend a formal invitation to the Department on May 20, 1981, at which time we offered them three different hearing dates from which they could choose the most convenient date. Once it became clear that the administration would not reach a formal position before October of this year, I personally extended an invitation to the Department to send witnesses at any point during our hearing process who could testify regarding the operation, the technical operation of the voting rights section.

Our friends from the Department responded that they would rather wait until Mr. William Bradford Reynolds was confirmed as the new Assistant Attorney General for the Civil Rights Division. Unfortunately, although we thought it would take place earlier, that confirmation has not yet taken place.

Since we are not going to have a chance to hear from the Department, I would like to insert into the record an exchange of correspondence which we have had with the Department seeking specific information regarding its enforcement process. Without objection, it will be inserted in the record.

[See pp. 2214-2375.]

Mr. EDWARDS. We do appreciate the information and assistance which the Department has sent us. The data which they have

provided will be most helpful as we proceed to subcommittee and full committee markup.

I also want to thank the subcommittee members for their patience, their attention, and also their assistance throughout this long hearing process. Sometimes we have been accused of overkill—having so many witnesses—in going into this issue in such depth. But I think it was well worthwhile.

The gentleman from Illinois, Mr. Hyde, the ranking Republican, is especially to be commended on the contributions that he has made to the discussions which have occurred throughout the process.

Now, before I call upon our witness, our very distinguished witness, I yield to the the gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman, and I especially thank you for your very generous comments. I received a letter from Edgefield County, S.C., and from Senator L. Marion Gresette, president of the South Carolina Senate. Both letters together with another from Mayor Billy Copeland of McDonough, Ga., take issue with parts of the testimony delivered to this subcommittee on June 3, 1981. With your permission, I would like to make them a part of the permanent record.

[The information follows:]

EDGEFIELD COUNTY COUNCIL,
Edgefield, S.C., June 23, 1981.

HON. HENRY J. HYDE,
House of Representatives,
Washington, D.C.

DEAR SIR: Edgefield County, South Carolina is located in the central section of the State on the Savannah River. It is a rural county, with a population of 17,528, of which 8,753 are white and 8,725 of which are black. There are 7,997 registered voters in Edgefield County, of which 4,460 are white and 3,537 are black. There is no enumeration as to the number of individuals 18 years and older in Edgefield County, and therefore, cannot give the breakdown as to the eligible voters and as to the percentage of black and white.

Prior to November 1, 1964, the government of Edgefield County had a board of County Commissioners which consisted of an elected County Supervisor and two commissioners appointed by the governor upon the recommendation of the County Delegation. The supervisor had general jurisdiction over roads, bridges, ferries and paupers and in all matters relating to taxes and disbursement of public funds for county purposes, and in other matters necessary for the internal improvements and local concerns of the county. The supervisor nor the county commissioners had power to tax, incur bonded indebtedness, prescribe procedures for budgeting and accounting, appoint or recommend the appointment of members to county boards, commissions and agencies or to exercise eminent domain. These governmental powers were retained and exercised by the members of the General Assembly from Edgefield County. In about November, 1964, the General Assembly was ordered to reapportion itself under the 1-man, 1-vote theory, and under this plan Edgefield County would lose its resident senator. Because of this reapportionment and the county losing its senator, the Edgefield County Council was established in order that residents of Edgefield County would maintain and control the government of the county. Several plans were considered and given careful thought and consideration, and in order to give each person the best representation and let each voter participate to the fullest in the governing affairs of the county, it was decided that there should be three County Councilmen, with residency requirement, with voting at large.

The original County Council was established in 1966, and the Act establishing the County Council was amended in June of 1971 to increase the membership of the Edgefield County Council to its present number of five, which is the same today. In 1976 the Home Rule Act was put into effect in the State of South Carolina allowing each county to choose among five various forms of government. The County Council of Edgefield remained the same in all respects and an ordinance was adopted to that effect, and the governing body of the county has remained the same since its

establishment in 1966, except to increase its members from three to five as noted in June of 1971. Edgefield County as noted, is divided into five districts along precinct lines, with each district having representation on the County Council.

The registration books of Edgefield County are maintained in the courthouse at its regular registration office, and the office is maintained on a daily basis five days a week, from 8:30 A. M. until 4:30 P. M. Monday through Friday. There is always someone present during these hours to register anyone desiring to vote. When the need is shown the books are taken into a community on any day, except Sunday, for the purpose of registering individuals in the community. During these special registration drives, the registrars give their time voluntarily for this duty.

It is to be noted that in the case of *Thomas C. McCain, et al* vs. *Charles E. Lybrand, et al,* which is presently pending in the United States District Court, one Frank Jenkins, now deceased, a black man, testified under oath that he first came to register in Edgefield County about 1949 or 1950, and there was some question as to whether he was entitled to register, and that he talked with one W. G. Yarborough who immediately opened all the registration books, and since that time until the date of his testimony in 1974, there had never been any problem of registration nor voting in Edgefield County by blacks.

There are several statements made by Thomas C. McCain to the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary House of Representatives on June 3, 1981, which are certainly incorrect. The Community Action for Full Citizenship was organized in early 1970's, but this Organization had a very short life, and it was during the initial stages of this Organization that Thomas C. McCain went to Strom Thurmond High School in Edgefield County, and then and there tried to incite a riot. Because of his failure in organizing the blacks, he made public certain statements which proved to be false and resulted in a suit for slander being filed against him by the local school board, one of its members being black.

In another of his statements, he is quoted as saying that in 1972 he qualified as the first black since Reconstruction to run for the County Council Seat in the Democratic Primary. It is first to be noted that the Council was established in 1966, and that at the time he announced and tried to register as a voter in Edgefield County, he had within two weeks prior to his registering to vote, participated in an election process in the State of Georgia, having cast his ballot in a municipal election in the City of Augusta. He was, at that time, employed as a professor at Paine College, living with his family in the State of Georgia. This was investigated by the State Board of Registration, and his name was removed from the Registration Rolls, not by the County Attorney, but by the State Election Commission. Carey Hill Baptist Church, as near as can be determined, burned from a faulty flue and not from anyone or group of individuals having burned the same as insinuated by Thomas C. McCain's remarks.

It is to be particularly noted that since 1976, Thomas McCain has presided as president of the Democratic Party in Edgefield County, the Executive Committeeman and Secretary all being black. It is also to be noted that a black has served on the Edgefield County School Board since prior to 1974, and has run without opposition, except for blacks, since that date. T. C. Owens, a black, has served on the Johnston City Council since 1974, and in each election has had a white opponent, and on each occasion has overwhelmingly defeated a white. It is true that a black has never been elected to the Edgefield County Council, but an example of blacks being elected to public office in Edgefield County, can be attested to by Willie Lewis who has been twice elected to the Edgefield County School Board and by T. C. Owens, a member of the Johnson City Council.

There are two blacks that have done much to promote the blacks in the election process of Edgefield County. First, to quote Willie Bright in a recent statement stated unequivocally that he had worn out four automobiles trying to get the blacks to register and vote, but to no avail. That the books are open and anyone desiring to register and vote may do so freely and voluntarily regardless of race, color or creed. Jerry Wilson, a former president of the NAACP and a forerunner in voting rights for blacks, stated that apathy rather than civil rights discrimination, is the main problem among the blacks in Edgefield County. In denying charges by Jesse Jackson that racial discrimination exists in the county, Jerry Wilson stated "If Jackson said there is discrimination in Edgefield County, he is way off his mark."

As far as can be determined by the Edgefield County Council all facilities, which include, but not limited to, the schools, jails, parks and recreation facilities are wholly and completely integrated. If an individual feels that he has been discriminated against, the courts are so attuned now and there are ample laws available to protect that individual regardless of what section or state or states of the United States he resides. For this reason, Edgefield County Council does not feel that there

is a necessity for the extension of the Voting Rights Act of 1965, and therefore, requests that the Congress of the United States repeal the same.

Respectfully submitted.

CHARLES E. LYBRAND,
Chairman, Edgefield County Council.

CITY OF MCDONOUGH,
McDonough, Ga., June 17, 1981.

Hon. HENRY J. HYDE,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE HYDE: I acknowledge receipt and thank you for your letter of June 8, 1981 and attachment.

I respectfully take exception to a statement made by Mr. J. F. Smith of Henry County, Georgia before your committee that a disparity exists in municipal services provided the citizens of the City of McDonough, Georgia.

Sincerely,

BILLY COPELAND, *Mayor.*

STATE OF SOUTH CAROLINA,
Columbia, S.C., June 26, 1981.

Hon. HENRY J. HYDE,
Congress of the United States, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HYDE: Thank you for your letter dated June 8, 1981 concerning statements made to the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee relating to the extension of the 1965 Voting Rights Act. I sincerely appreciate the opportunity to respond to certain statements made to your subcommittee which you have enclosed and particularly to statements attributed to me by Mr. Robert Woods in his presentation to the subcommittee. While I found several inaccuracies in his remarks, I feel that it would be only be appropriate to comment on the remarks he attributed to me.

In his statement to the subcommittee, Mr. Woods, a member of the South Carolina House of Representatives, attributed to me the following statement:

"Mr. Gressette also presides over redistricting in the Senate, and has stated publicly that he will wait until the Voting Rights Act expires in 1982 before he tackles the problem of redistricting the South Carolina Senate."

I have never made such a statement and furthermore, Mr. Woods knows that I have never made such remarks. Senate Reapportionment, just as House and Congressional Reapportionment will be handled through the normal legislative process in compliance with all constitutional and statutory requirements. That has been my position and will continue to be my position.

Again, thank you for the opportunity to respond to statements made to the subcommittee. I hope that you will consider making this letter part of the official record of your subcommittee.

With kindest regards, I am

Sincerely,

L. MARION GRESSETTE,
President pro tempore.

Mr. HYDE. Thank you, Mr. Chairman.

I welcome the windup of our hearings, which have been exhaustive and very educational. People named Henry write books about their education. The education of Henry Adams is a classic. I haven't written mine but I assure you I have been educated.

I think you have all done a superb job, and I thank you for everything that you have done to contribute to what I think will be a very important legislative step.

Thank you.

Mr. EDWARDS. Thank you, Mr. Hyde.

Another member that has given great attention and time and background is the gentleman from Illinois, Mr. Washington. We welcome you, Mr. Washington. You are recognized.

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

I also welcome Mr. Days.

I would also like to coauthor that book with Henry in terms of education. These have been very instructive hearings. I want to commend the staff for a tremendous job. I want to commend the chairman for presenting to the American people the thorough record on which I think we will have more than ample evidence to do a fair job in assessing just what value the Voting Rights Extension Act has.

Thank you very much for sharing with me these hearings.

Mr. EDWARDS. Thank you, Mr. Washington.

Today we are fortunate to have as our witness a long time friend of the subcommittee, someone the subcommittee worked with for many months and many years, Mr. Drew Days. Drew Days currently is a Professor of Law at Yale University. As the former Assistant Attorney General for the Civil Rights Division, we particularly look forward to his testimony.

Would you introduce your colleague as you progress?

TESTIMONY OF DREW S. DAYS, III, PROFESSOR OF LAW, YALE UNIVERSITY, ACCOMPANIED BY LANI GUINIER

Mr. DAYS. Thank you, Mr. Chairman. It is a pleasure for me to be here this afternoon to testify before this distinguished subcommittee. With me at the table this afternoon is Ms. Lani Guinier, who served as my right arm when I was head of the Civil Rights Division, as my Special Assistant. She has in typical fashion been very helpful to me in putting together much of the information included in my testimony.

Mr. EDWARDS. Ms. Guinier has been of great assistance to us in our work on the extension, too. We are very grateful.

Mr. DAYS. I would like to say that I taught her everything she knows about the Voting Rights Act, but I think it may be the other way around.

Mr. Chairman, with your permission, I would like to submit my full testimony for the record and simply summarize what I think are the salient points of that testimony, to allow adequate time for questions from you and the other members of the subcommittee.

Mr. EDWARDS. I do understand, Mr. Days, that the testimony is in excess of 40 pages. We are delighted to have it. Without objection, it will be made a part of the record.

[The prepared statement of Prof. Days follows:]

PREPARED STATEMENT OF PROF. DREW S. DAYS III

Mr. Chairman, I want to express my deepest appreciation to you and the other members of the Subcommittee on Civil and Constitutional Rights for inviting me to testify on extension of the Voting Rights Act. For it is my firm conviction that the need for the Voting Rigths Act continues to exist if fair minority access to the electoral process is to occur and that various proposals to alter or amend the Act will serve unjustifiable only to weaken not strengthen its protections.

I am aware that you have been holding hearings on this matter since May and have received testimony from a broad cross-section of people and organizations urging that the Voting Rights Act be extended beyond 1982. Nevertheless, I would like to think that I approach this subject from a unique perspective based upon my

nearly 4 years as the chief federal enforcer of this most important piece of civil rights legislation. As Assistant Attorney General for Civil Rights from March 1977 to December 1980, it was my responsibility to review, with the assistance of my staff, literally thousands of voting changes subject to the preclearance provisions of the Act, to lodge objections to those changes determined to have a discriminatory purpose or effect, to seek the assistance of the courts in enforcing such objections and to respond to litigation brought by covered jurisdictions challenging our refusal to grant preclearance. I want you to understand, moreover, that I speak today based not merely on my former ex officio status, but rather from 4 years of direct, personal involvement in the administration of the Voting Rights Act by the Department of Justice. I personally approved every objection lodged by the Attorney General during my nearly 4 years in office, save for a few occasions when I was absent from Washington and such decisions were made by my deputy pursuant to departmental regulations. By my rough estimate, I approved 120 objection letters covering several hundred changes from 1977 to the end lf 1980. I personaly meet with literally scores of local, county and state officials to discuss our concerns over certain proposed election changes. I personally reviewed and approved every court action, approximately 62 to count, filed by the Civil Rights Division to enforce the Voting Rights Act during my tenure. and I determined when and where Federal observers should be assigned, and recommended to the Attorney General new jurisdictions for the assignment of Federal examiners, pursuant to the Act. I stress this point, so that you understand that my unqualified support for extention of the Voting Rights Act grows out of a deep, direct and long-term involvement in its enforcement.

I.

The Voting Rights Act was passed in response to compelling evidence of continuing interference with attempts by black citizens to exercise the franchise despite prior Congressional efforts to end such practices. As the Supreme Court observed in *South Carolina* v. *Katzenbach:*

"Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims." 383 U.S. 301, 327-28 (1965).

Congress' decision to "shift the advantage of time and inertia" to the victims of voting discrimination has clearly paid dividends. Other witnesses have testified to the significant increases in voting turnouts by minorities, in the numbers of minority candidates running for office and in the number of minority-elected officials directly attributable to the operation of the 1965 Voting Rights Act. As one who was charged with enforcing a host of other Federal civil rights laws, I can attest that the Voting Rights Act of 1965 is by far the most effective statute on the books. While diligent effort have been made to achieve compliance with laws prohibiting discrimination in housing, education, employment and the like, meaningful remedies for proven violations in these areas have come only after years of litigation. Administration of the preclearance provisions of the Voting Rights Act has, in contrast, prevented in a matter of days electoral changes likely to undercut or retard meaningful minority participation at the ballot box.

It would be unfortunate, however, for anyone to take what I have just said or what others have said before me about the relative effectiveness of the Voting Rights Act to mean that over a century of injustice against minority voters has been remedied and that we need no longer fear that new strategies will be devised to reverse or retard what few gains have been achieved since the Act came into existence. Nothing could be further from the truth.

Though the Act has been on the books since 1965, any fair assessment of its enforcement history would have to conclude that it has been a meaningful weapon against other than the most direct forms of discrimination for less than a decade. It was not until 1969 that the Supreme Court made clear that private parties could sue to obtain compliance by covered jurisdictions with provisions of Section 5 (*Allen* v. *State Board of Elections,* 393 U.S. 54[1] (1969)) and not until 1971 that the Justice Department received explicit Supreme Court approval to require that changes in polling place locations and in boundary lines by means of annexations receive approval pursuant to Section 5 procedures. (*Perkins* v. *Matthews,* 400 U.S. 379 (1971)). As my predecessor, J. Stanley Pottinger, testified during hearings on the 1975 extension of the Act:

"The Congressional hearings on the 1970 Amendments to the Voting Rights Act reflect that Section 5 was little used prior to 1969 and that the Department of Justice questioned its workability. Not until after the Supreme Court, in litigation brought under Section 5, had begun to define the scope of Section 5 in 1969 (*Allen* v. *State Board of Elections,* 393 U.S. 544) did the Department begin to develop standards and procedures for enforcing Section 5.

"Congress gave a strong mandate to us to improve the enforcement of Section 5 by passing the 1970 Amendments. We subsequently promulgated regulations for the enforcement of Section 5 and directed more resources to Section 5 so that today enforcement of Section 5 is the highest priority of our Voting Section. Thus, most of our experience under Section 5 has occurred within the past 5 years." 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 Cong., 1st Sess. (1975)

Moreover, procedures for enforcing the Voting Rights Act have been the subject of broadly-based court challenges, several of which had to be resolved by the Supreme Court, almost every year since it was enacted. Just this term, in *McDaniel* v. *Sanchez,* 49 U.S.L.W. 4615 (June 1, 1981) the Supreme Court addressed the question of when reapportionment plans submitted by local legislative bodies to federal courts must satisfy Section 5 requirements. In October 1977, I argued for the Government the case of *United States* v. *Board of Commissioners of Sheffield, Alabama,* 435 U.S. 110 (1978) in which the Supreme Court was faced with the question of whether voting changes enacted by a city which is within a state designated for coverage under Section 5 of the Voting Rights Act of 1965 must be precleared under Section 5 before they become effective. The Court held that they did. One can gain some sense of the consequences for enforcement of the Voting Rights Act had Sheffield's challenge succeeded by looking at the Department's experience between 1965 and May 1977. During that period, it received more than 3,600 submissions of more than 8,100 proposed changes by political units like Sheffield. Fifty-six percent of all Section 5 submissions and 58 percent of the changes in all submissions during that period were from such entities. I mention these challenges not because I question the right of affected jurisdictions to have their day in court but rather to emphasize that effective enforcement of the Voting Rights Act has been significantly impaired pending resolution of such litigation. Between December 1976 when a three-judge court in *Sheffield* decided against Section 5 coverage and the Supreme Court's decision in March 1978, meaningful enforcement of Section 5 with respect to similar entities was effectively stalled.

One must also acknowledge, in assessing the Act's effectiveness, that covered jurisdictions have made literally hundreds of changes that have never met the preclearance requirement of Section 5. I do not think it extravagant to conclude that many of those changes probably worked to the serious disadvantage of minority voters. I am proud of the performance of the Civil Rights Division in enforcing the Voting Rights Act during my tenure. But I will not sit before you today and assert that even during what I think was a period of vigorous enforcement of the Act that the Department was able to ensure that every, or indeed most, electoral changes by covered jurisdictions were subjected to the Section 5 process. There was neither time nor adequate resources to canvas systematically changes since 1965 that had not been precleared, to obtain compliance with such procedures or even, in a few cases, to ascertain whether submitting jurisdictions had complied with objections to proposed changes. It was not uncommon for us to find out about changes made several years earlier from a submission made by a covered jurisdiction seeking preclearance of a more recent enactment. Take, for example, the case of the City of Greenville, Pitt County, North Carolina. In February 1980, the Department of Justice received a submission from Greenville, a city with a 25 percent black population, seeking preclearance of voting changes that became law in 1970, 1972, 1973, 1975, and 1977 without satisfying Section 5 requirements. In this instance, it should be noted, the submission was prompted by inquiries we made based upon an FBI survey conducted of voting changes in North Carolina, conducted at our request. Though the Department found most of the changes were nondiscriminatory, an objection was lodged to the city's switch from a plurality to majority vote system for election of its city council because of its discriminatory consequences for black voters. Viewed more positively, however, the Greenville experience does point up the fact that many unprecleared changes do come ultimately to the Department's attention. Extension of the Act should increase the likelihood that existing noncompliance with the law will be uncovered and remedied for the betterment of minority voters.

We must also recognize that electoral gains by minorities since 1965 have not taken on such a permanence as to render them immune to attempts by opponents of equality to diminish their political influence. I do not mean to be rhetorical or hyperbolic when I say that electoral victories, won by minorities in many communi-

ties through courageous and tenacious effort, could be swept away overnight were protections afforded by the Voting Rights Act removed. Shifts from ward to at-large elections, from plurality win to majority vote, from slating to numbered posts, annexations and changes in the size of electoral bodies, could, in any given community among those jurisdictions covered by the Act, deprive minority voters of fair and effective procedures for electing candidtates of their choice. "One swallow does not make a spring" and it is too early to conclude that the effects of decades of discrimination against blacks and other minorities have been eradicated and that they are now in a position to compete in the political arena against non-minorities on a equal basis without the assistance of the Voting Rights Act.

As recently as last month, a three-judge district court concluded that in Port Arthur, Texas where blacks constituted 45 percent of the population, city officials proposed redistricting plans subsequent to annexation of virtually all-white suburban areas, "which guaranteed that blacks would remain underrepresented on the City Council by comparision to their numerical strength in the enlarged community." *City of Port Arthur* v. *United States*, C.A. No. 80-0648 (D.D.C. June 12, 1981) (Slip op. at 57). Had it not been for Department of Justice opposition during my tenure to these proposals under the Voting Rights Act, they might well have gone into effect unchallenged.

Furthermore, it bears noting that Voting Rights Act enforcement still must be concerned with changes that have a direct effect upon the process of casting ballots, even though most of the serious challenges to minority electoral gains have come recently from redistrictings and annexations. In April 1978, for example, New Orleans, Louisiana submitted five proposed polling place changes 2 days after the changes went into effect for April 1 elections in that jurisdiction. We concluded that one of the changes had had discriminatory effects, in fact, upon the participation of black votes in the election. In that instance, the polling place was changed only 14 days before the election from a private home located in the 92 percent black district to an elementary school in another, non-contiguous district. Advertisements placed in the daily newspaper up to March 30 contained the address of the old polling place. On the day prior to the election and on election itself, the correct polling place location was given but the public school was incorrectly identified. The new polling place, located approximately 16 blocks from the old, required voters, many of whom were elderly, without automobiles or convenient access to public transportation, to cross an interstate highway approximately 170 feet wide in order to cast their ballots. Not unsurprisingly in view of the physical and other obstacles to casting their ballots I have just described, many black voters stayed at home on election day.

Between early 1977 and the end of 1980, the Attorney General, on my recommendation, authorized the assignment of over 3,000 federal observers to monitor elections in covered jurisdictions. In almost every case, observers were assigned based upon our judgment that physical interference, intimidation or pressure was likely to be directed at minority votes absent a federal presence. Minority advances in the electoral process would appear to me to be especially vulnerable during the next few years when thousands of jurisdictions will be reapportioning themselves and making other alterations in their political structures based upon results of the 1980 census. I can think of no worse time to pull out from under minorities the props contained in the Voting Rights Act than during this period.

I have attempted, thus far, to describe certain strengths and weaknesses of efforts to enforce the Voting Rights Act, particularly during the 4 years I headed the Civil Rights Division. One additional feature of this enforcement record, however, deserves mention. For while I regarded it as my central responsibility under the Act to ensure against changes having a discriminatory purpose or effect with respect to minority participation in the electoral process, I was also determined to carry out that mission in a manner that was fair to the submitting jurisdictions and properly respectful of the integrity of their electoral processes.

Consequently, we devoted a great deal of time and energy to obtaining voluntary compliance by covered jurisdictions with Section 5 procedures. We wrote and rewrote guidelines and advisories to make such procedures as clear and nonburdensome to covered jurisdictions as possible. When inadequate submissions were sent to us, we attempted by letter and telephone to ensure that the affected entity understood what additional materials we needed to make an informed judgment. And every effort was made, even when submissions were received on the eve of elections, to complete the preclearance process in an expeditious fashion. Pursuant to this practice, most submissions received preclearance. In those cases where objections were lodged, we attempted to explain the basis for our opposition and to suggest, but not dictate, approaches that might make the proposed changes acceptable under the Act. Where jurisdictions requested reconsiderations, we gave a second look and

were willing to withdraw objections if newly presented evidence convinced us that no discrimination would result from the proposed changes. In these respects, I do not believe my approach differed very much from that taken by Stan Pottinger and most of my other predecessors.

I have heard it suggested that contrary to what I have just described, Section 5 enforcement by the Attorney General has been designed to ensure "proportional representation" or "quotas" for minorities in the electoral process. Let me take a few moments of your time to explain, by way of describing procedures the Department follows, why such allegations are completely unfounded.

Under Section 5 the Attorney General must determine whether an electoral change submitted for preclearance has the purpose or will have the effect of denying or abridging the right to vote on account of race or color. Once the Department receives a submission, the first step is to discern whether the covered jurisdiction has provided enough data on the change to allow a meaningful evaluation of its nature and impact. If the information is insufficient, than the Department requests further data. Among the types of information needed by the Department are population and voting figures (by race or national origin), election results showing the degree of racial bloc voting or polarization and the extent to which minorities have been able to elect candidates of their choice, census maps, and some explanation of what, if any, alternatives were considered before the submitted change was adopted. The Department also seeks the identity of knowledgeable minority persons and organizations in the submitting jurisdiction in order to elicit their concern on the proposed change.

An analysis of all this information is ultimately designed to assess the pre-change level of minority political power and to decide whether that power is augmented, diminished or not affected at all by the change. Where the change augments the ability of minority groups to participate in the political process and to elect their choices to office, that is, gives greater recognition to legitimate minority political strength, then the core objective Congress sought to achieve under Section 5 has been satisfied. No objection is lodged, therefore. Where the chance promises to diminish or leave unaffected minority political power, further inquiries must be made. What they boil down to in many situations is a consideration of whether the submitting jurisdiction adopted the proposed change despite the availability of equally acceptable alternatives that would have given minorities a fairer opportunity to elect candidates of their choice. Take the case of redistricting plans. In a community with a 25 percent minority population, let us assume that local officials can create a compact and contiguous set of four city council districts where minorities are likely to have a sizeable population advantage in one district. When the jurisdiction submits instead, however, a plan that is not compact or contiguous reflects substantial population deviations from district to district or is otherwise drawn in a fashion that frustrates any prospect that minorities will gain control of one district in the plan, the Department is likely to object. On the other hand, we might assume another set of facts in which it can be shown that no fairly-drawn redistricting plan will result in minority control of one district, because of dispersed minority residential patterns, for example. The Department's response is not to demand that the jurisdiction adopt a crazy-quilt, gerrymandered districting plan to ensure that proportional minority representation. Nor is the Department going to object to a plan that does not ensure minority control of a district where a community can show that racial bloc voting is not a significant consideration and that minority candidates or candidates favored by minority voters regularly run and win even from districts where non-minority votes are in control. In each of these instances, the Department objective is not to dictate any particular result.

I am told, however, that several critics of the Department's practices have pointed to the Williamsburg case, *United Jewish Organizations* v. *Carey*, 430 U.S. 144 (1977), as evidence that Section 5 enforcement has been directed toward achieving proportional representation. While this controversy arose and was settled before I assumed office, I believe the facts show that the Department acted in a manner consistent with what followed during my adminstration. in January 1974, the State of New York submitted to the Attorney General for preclearance, a reapportionment statute that affected Kings, New York and Bronx Counties. The Attorney General concluded that with respect to certain districts in Kings County, approximately 35 percent minority, the state had not met its burden of demonstrating that the redistricting had neither the purpose nor the effect of abridging the right to vote by reason of race or color. More specifically, the New York State plan had created three state senate districts with nonwhite proportions of approximately 91 percent, 61 percent and 53 percent and seven state assembly districts, four between 85 percent and 95 percent nonwhite and three others approximately 76 percent and 52 percent. Since it is well-recognized that minority registration generally occurs at

rates far below those of non-minorities as compared against voting age populations in those groups, for there to be a meaningful chance for minorities to elect candidates from a particular district, that district must have a minority population significantly above the 51 percent mark. This is particularly true where, as was the case in Kings County, voters are likely to cast ballots along racial lines in any minority-non minority contest. It has also been acknowledged that lower rates of minority registration are the result, in significant part, of past racial discrimination in the electoral process.

Given these realities, I would assume that the Department questioned the extent to which the State of New York created one overwhelmingly minority senatorial district, appearing to "pack" minority voters into it, while leaving the remaining two districts at levels where the minority population was larger than the non-minority but so low as to produce a superior non-minority vote in any head-on minority-non-minority candidate contest. Similarly, one would have to probe the justifications for the state's creating four overwhelmingly nonwhite assembly districts and one other well above 50 percent while leaving two others at or just slightly above the bare majority level. Put differently, the question would have been whether New York State rejected without sufficient reason redistricting alternatives that would have resulted in the same number of non-minority districts but would also have produced percentages likely to provide minorities with a realistic opportunity to elect candidates of their choice.

Rather than carry this burden of justification, the state decided to rearrange the three senatorial districts to achieve between 70 percent and 75 percent minority populations and to increase the two smallest assembly districts from 61 percent and 52 percent to 65 percent and 67.5 percent respectively, reducing the two largest nonwhite minority assembly districts from greater than 90 percent to between 80 percent and 90 percent. A challenge by Hasidic Jews in Williamsburg that the revised plan violated their rights under the Act and the Constitution was rejected by the Supreme Court. It found that the state acted properly and that the plan did not seek nor achieve proportional representation for minorities, since non-minorities continued to control 70 percent of the electoral districts as compared to their 65 percent population proportion. In fact, under the approved plan, in four out of the five districts that were redrawn to establish minority populations in excess of 65 percent, non-minorities were subsequently elected.

On these and all other occasions, the Department's objective has been to ensure that the opportunity for but not the certainty of minority political advancement is provided. The goal is not to maximize minority political power at any cost but rather to protect against the creation of unfair obstacles to meaningful minority advancement. I sense that what those who level charges of "proportional representation" really object to is the fact that the long history of racial discrimination in the electoral process cannot be remedied and future discrimination prevented without explicit considerations of race in the process of devising voting changes and evaluating their effects. But this is precisely what Congress determined would be necessary when it passed the Voting Rights Act to ensure that the gains thus far achieved in minority political participation would not be destroyed through new discriminatory procedures and techniques.

II.

It must be clear to you by now, members of the Subcommittee, that the Voting Rights Act is needed now more than ever. It is my profound conviction, moreover, that any effort to tinker with the administrative preclearance mechanism of Section 5 would serve to weaken and dilute the Act's effectiveness. The problem which Congress documented in 1965, 1970 and 1975 is, as the record before this Subcommittee shows, still with us. Flagrant violations of the rights of blacks and Hispanics in the covered jurisdictions continue to be the rule rather than the exception. Only with continued enforcement of existing Section 5 preclearance requirements will these violations be monitored and in more and more instances deterred.

I am aware, however, based upon news reports and statements by congressional leaders and administration officials that have been brought to my attention, that there are certain proposals being considered by this Administration to modify the Voting Rights Act, particularly Section 5.

Let me address these proposals one at a time.

Nationwide preclearance

Some opponents of extension of the present preclearance mechanism argue that if the requirements of Section 5 are continued, then they should apply nationwide. As I understand it, these people argue that for 17 years the South has been in what

they call "a penalty box," and the time has come either to remove the preclearance stigma that was designed to punish the South for its past discriminatory conduct or to make all jurisdictions across the country subject to the same preclearance requirements.

It is my position, in response to these arguments for nationwide preclearance, that there are several basic misperceptions behind calls for nationwide coverage.

First, the preclearance provisions of Section 5 were not designed to punish anyone but were instead, in the wisdom of Congress, an effort to protect the voting rights of a previously disenfranchised minority. The triggering formula for preclearance automatically applies to parts of 22 states which employed a literacy test and where less than 50 percent of the voting age residents were registered or had voted in certain presidential elections. The trigger for coverage addresses a problem of substantial underrepresentation and under participation of minority citizens where that problem exists, and is not *per se* regionally biased. No states or other jurisdictions which are covered are named in the Act. Some Southern states, such as Tennessee and Arkansas, are not covered by Section 5. In contrast, three counties in New York City, Monterey, California and El Paso, Colorado are a few examples of covered jurisdictions outside the South.

The formula for coverage was tailored to meet a problem of discrimination in voter participation. The Supreme Court held in *South Carolina* v. *Katzenbach,* 383 U.S. 301, 330 (1966), "the coverage formula is rational in both practice and theory," and cited the extensive evidence of voting discrimination in the jurisdictions covered by Section 5. In 1980, the Supreme Court reaffirmed its position that Congress acted appropriately with Section 5 to enforce the Fifteenth Amendment, and that the preclearance requirement had not outlived its usefulness. *City of Rome, Georgia* v. *United States,* 446 U.S. 156 (1980).

The Supreme Court found the coverage formula fair and constitutional because of the congressional and judicial findings which preceded the legislative remedy in Section 5. Congress tailored the remedy to the nature of the problem. Absent similarly detailed and persuasive evidence of the need for preclearance in jurisdictions other than those presently covered, I believe serious constitutional questions may be raised by an application of this "uncommon exercise of congressional power" to the nation as a whole. Abstract or philosophical notions of fairness do not, by themselves, justify the nationwide approach to preclearance, where there has been no factual showing that the Act is unfair, and the Supreme Court has expressly said otherwise.

Perhaps those who argue for nationwide coverage do not understand that the Act already contains a section allowing a court to order preclearance in a state or political subdivision not presently covered by the triggering formula. Under Section 3(c), if a federal district court makes a finding of Fourteenth or Fifteenth Amendment violations, it may order preclearance with the Attorney General or the local district court of voting law changes. Section 3(c) can successfully reach patterns and practices of voting rights violations through case by case litigation in those jurisdictions where the facts suggest there is a need for remedial action to cover voting law changes.

Again, those who argue for nationwide preclearance in an effort to remove a perceived regional stigma or punishment do not really understand the nature of the preclearance process. Section 5 is forward looking. It covers voting law changes, and does not punish any jurisdiction for past practices absent a proposal by the jurisdiction to change its voting laws or practices. If the covered jurisdiction makes no voting law changes, it incurs no preclearance burden and is not subject to review by the Attorney General under Section 5.

Finally, there are serious administrative problems with nationwide preclearance. It is hard enough for the Department of Justice to enforce the present provisions with respect to existing covered jurisdictions. In many ways the Department relies on voluntary compliance to enforce Section 5. As far as I know, the Attorney General still has not divined a way to ferret out all changes that covered jurisdiction make but fail to submit. I can think of no way for the Attorney General even to begin to get notice of all affected changes if nationwide preclearance is adopted. Although parts of 22 states are already covered, nationwide coverage would require Justice Department review of the laws of 41 states not now covered and of tens of thousands more political subdivisions.

The cost of nationwide coverage would be inflationary. While a dozen Civil Rights Division employees presently review all submissions from covered jurisdictions, the staff would be inundated by the avalanche of voting change submissions from every state, county, and city in the country. Keep in mind, that Section 5 requires that the Department of Justice look at each of these submissions within 60 days. Already the impact of the 1980 census on voting changes and reapportionments was being

felt while I was still at the Department. And yet approximately the same number of people are being asked to review these reapportionment changes even though there are presently more jurisdictions covered in Texas alone than were submitting changes in 1970.

I simply cannot imagine burdening these people further and still expecting professional, timely review. Moreover, the tremendous volume of new submissions would divert, for no good reason, the Attorney General's resources from the presently covered areas where a showing has in fact been made of continued voting discrimination against racial and lauguage minorities. In view of present resource and enforcement limitations, it would appear that anybody proposing nationwide preclearance is either naive or cynical.

Restricting preclearance

As I understand it, the Department of Justice is studying a proposal to restrict the types of voting changes subject to preclearance review. One possibility under review would be to limit the preclearance requirement to those types of changes that have elicited the most objections from the Justice Department. I do not endorse this effort.

Clearly some changes have a greater impact than others. I would agree that the discriminatory redistricting of a state or the annexation of territory by a city which is already using an at-large method of election might affect adversely the minority population in the entire jurisdiction. On the other hand, changes in polling place locations from a housing project in the minority community to a distant location across town, as I mentioned earlier with respect to a New Orleans submission, may have precisely the type of discriminatory consequences Congress sought to prevent, even though the number of people adversely affected may be smaller. And there are polling place changes which substantially and adversely affect the entire minority community. Recently, the Department of Justice objected to a polling place change that illustrates very well my point. The Board of Directors of the Burleson County Hospital District, Texas reduced the number of polling places to be used in the hospital district election for board of directors from 13 to one, eliminating the polling places in the predominantely Mexican American and black communities. The one remaining polling place was 19 miles from the Mexican American community and 30 miles from the black community. Without Section 5, this polling place change, which was not submitted until the Justice Department wrote to the district, would have had a substantial discriminatory effect since the hospital district has significant taxing powers. I, for one, am not prepared to say that polling place changes no longer hurt.

The lesson of the pre 1965 experience is that jurisdictions did not limit their efforts to discriminate to one type of voting practice. Congress determined that a preclearance mechanism that monitored all perspective voting changes was necessary to reach and correct discriminatory practices that kept cropping up to replace schemes that had been successfully challenged.

The discriminatory potential in seemingly innocent or insignificant changes can only be determined after the specific facts of the change are analyzed in context. The present coverage formula allows for such a factual analysis. In addition, the present coverage formula is more manageable than one which attempts to specify or predict the really significant changes. The present categories of voting submissions are *a priori* clear to election officials whether the officials are acting in good or bad faith. If a complicated formula to limit preclearance were adopted, much activity might have to be spent just determining whether a change fell inside or outside the new coverage provisions. The present law, by defining changes broadly, places the emphasis properly on whether the jurisdiction, and not the change, is covered.

Mandatory notice provision

The New York Times report of June 4, 1981, indicate that the Administration is also considering a proposal to replace the preclearance requirement of Section 5 with a mandatory notice provision. According to the Times article, covered jurisdictions would have to inform the Justice Department of proposed voting changes, but the Attorney General would have to seek a court injunction in order to prevent a change from taking effect. The Attorney General could no longer simply object to a change and thereby preclude its implementation. This proposal would switch the burden of proof from the local authorities, where it presently lies, to the Attorney General.

In my opinion the mandatory notice provision would be an administrative nightmare. Whereas the present preclearance mechanism boasts a track record of cost effective enforcement, this proposal would undermine the efficiency of the Attorney General's 60-day review process. Instead of utilizing the accumulated expertise

already present in the streamlined administrative preclearance mechanism, this proposal creates another layer of mandatory review. By forcing the Attorney General to go to court, and then prove a case of discrimination, this proposal guarantees a decade of continuous and extended litigation. The cost to the affected jurisdiction, as well as to the Federal Government, would be staggering.

That the covered jurisdictions prefer the present administrative preclearance process to court review is evident from the overwhelming number of jurisdictions seeking Justice Department preclearance. At present, covered jusisdictions may seek preclearance administratively, or seek a declaratory judgment in court. Of the 35,000 voting changes which have been proposed by covered jurisdictions since Section 5 was enacted, less than two dozen have been reviewed by the D.C. District Court at the option of covered jurisdictions.

The mandatory notice provision does not address the preclearance process realistically. Since the Attorney General would be stripped of his authority to object to a discriminatory change, I believe he would also be perceived to lack authority to enforce a failure to comply with the notice provisions. The Attorney General would be in and out of court simply to get jurisdictions to notify him of changes. Under the present law where the Attorney General has an administrative veto over voting changes, he nevertheless depends on voluntary submission of voting law changes. Yet, many jurisdictions simply do not comply voluntarily. Unhappily, I must report that in 1980 the Department of Justice had to send 124 letters to 79 jurisdictions which had failed to submit voting changes for preclearance. And that was just one year and was by no means a complete followup of unsubmitted changes. If the Attorney General's authority is undermined as it would be with the mandatory notice provisions, I would hesitate to guess how many more nonsubmissions would result.

The mandatory notice provision would also be time-consuming. There is no way that the Department of Justice can make a determination whether to seek an injunction on the basis of a simple notice of a voting change. The Department would have to seek and review information supporting the change, in much the same way it does presently, and would then have to prepare court papers seeking in injunction against an objectionable change. Since the burden would be on the Attorney General to prove the discriminatory purpose or effect of the change, a full investigation into the past and current practices of the jurisdiction would be required.

Shifting the burden of proof to the Attorney General would not only be time-consuming in the initial stages, and in the resulting litigation clogging the dockets of already overburdened courts, it would also negate the lessons of history. As I quoted earlier in my testimony, the Supreme Court in *South Carolina* v. *Katzenbach* said, it is appropriate for the advantage of time and inertia to be with the victims of discrimination and not with the perpetrators.

Changing the trigger

I am also aware that a proposal has been made to consider changing the trigger formula for coverage of the special provisions. Again, there is no record to support such a change; indeed the record amply confirms the utility of the current trigger. Any changes would be called for only if under the current trigger some jurisdictions were covered that ought not to be or some jurisdictions are not covered that should be. The current trigger has neither of these problems. As to the jurisdictions that are covered, the number of objections and the persistence of voting discrimination problems—as amply shown before this Subcommittee in exhaustive detail—show that minority voters in these jurisdictions need the protections of Section 5. While there are a few small jurisdictions where the need may not exist, the effect on them is so minimal that they apparently do not choose to complain. As to the jurisdictions that are not covered, the absence of any evidence of a pattern and practice requiring Section 5 protection, indeed the absence of a single item of evidence before this Subcommittee, shows that there is no basis for thinking that the trigger needs to be expanded.

Moreover, the Act has safety valves for both overinclusion and underinclusion. If a jurisdiction is covered that need not be, it can bail out. If a jurisdiction is not covered that should be, that would be shown in a voting discrimination lawsuit which, under Section 3(c) of the Act, could result in placing that jurisdiction under preclearance.

Perhaps if the Act had been passed in 1965 and then stayed on the books without further attention by Congress, one could raise a question about the continued appropriateness of the trigger. But Congress has now reviewed the Act exhaustively five separate times, three times in extension hearings and twice in oversight hearings—not to mention the studies of the General Accounting Office and the Civil Rights Commission. The hearings have occupied thousands of printed pages, and I

am informed by the Subcommittee staff that the current hearings already fill several thousand pages of typed transcript. In short, the trigger formula has been tested and measured repeatedly. It has been found each time to be extraordinarily appropriate when tested by the reality of experience. I have no doubt that these hearings have warranted no different conclusion.

Bailout

I am aware that one of the topics being discussed most is the procedure for "bailing-out," that is, for terminating Section 5 coverage for a covered jurisdiction. There is a bail-out provision in the law as it stands, and it has always been there, so people who complain that there is no way for a covered jurisdiction to terminate its Section 5 responsibilities are misinformed. Moreover, that bail-out procedure, in Section 4(a), has been used successfully by 24 jurisdictions since 1975. Six such cases since 1975 have been unsuccessful, and, before 1975, New York succeeded in bailing-out but the case was later reopened and New York was brought back in.

The current bail-out allows jurisdictions with a genuine history of nondiscrimination to bail-out. Because there is a bail-out that works in the law as it stands, this Subcommittee should think very hard before deciding to change the procedure and venture out into uncharted territory. Bail-out is a complicated subject that should be complicated further by change only if the record requires it.

In that respect, as I understand it, the record is fairly clear: there is an absence of any clear basis or need for a change in the bail-out formula. First, while a number of representatives of covered jurisdictions complained about coverage and asked for an easier bail-out provision, such as the city attorney of Rome, the former mayor of Richmond, and a party official from Yazoo County, these witnesses seem to have come from jurisdictions that have records of significant violations and would not be eligible for bail-out even under an amended bail-out formula. There may well be places that have a good record and that would be good candidates for bailing-out and yet are unable to do so under the current bail-out formula; if there are such places, though, they did not come forward to testify at the hearings. Whether this is because they do not exist, or whether it is because places that would be ready to terminate coverage do not find coverage burdensome, I do not know. I do know that many local officials believe (although they are not in a position to say so publicly) that the Voting Rights Act is a useful reminder or prod for being certain that voting procedures are devised and applied in a way that focuses attention on the need to avoid diluting minority rights. Because of this, and the relatively little burden of complying with Section 5, it is quite likely that many jurisdictions have learned to live with Section 5 in a positive rather than negative way.

Representative Hyde, who I know has been considering this subject carefully, has, as I understand it, recognized that there may well be no jurisdiction that would be a proper candidate for bail-out now. But he has spoken of the value of giving jurisdictions an incentive to do better, essentially some higher standard of conduct to aim at.

If that is the case, then any substitute bail-out provision would have to be drafted very carefully, in order to make certain that it truly encouraged jurisdictions to be nondiscriminatory in their voting laws and procedures. Otherwise it will be too easy for a jurisdiction to do the minimum amount in order to terminate the Section 5 protections of its citizens, without having really changed its attitude.

I would suggest several major areas of caution if the Subcommittee thinks it would be appropriate to consider an alternative bail-out. First, there should be a stringent showing, over a significant period of time, of no violations of the Voting Rights Act or of the Constitution or other voting rights provisions, as well as no objections to proposed voting changes. In the category of no violations, I put a high value on a record of no implementation of Section 5 changes by the jurisdiction in question without submission and preclearance. During the past 5 years, there have been an alarmingly high number of nonsubmissions throughout the covered jurisdictions; these should not be tolerated in a jurisdiction seeking to show that it is "pure" or "saintly" and, therefore, entitled to bail-out.

Second, any bail-out formula should require a showing that the jurisdiction has taken affirmative steps to bring about full voting participation, and the steps to be taken should be specifically spelled out. If the bail-out procedure is to be an incentive, it ought to set standards high enough to discourage a jurisdiction that might want to be free of the submission obligation but not wish to undergo a true change of attitude and practice.

Third, there should be some measure of the practical effect of the things that the jurisdiction sets out to do, such as a significant increase in the rate of participation by minority voters, and, perhaps other measures as well.

Apart from the substantive showing to be made by a jurisdiction seeking to bail-out, I think there ought to be some careful attention to the procedural and jurisdictional details. For one thing, the standards ought to be as well-defined as possible. The current standards are well-defined, and this clarity has been useful to many local attorneys in deciding whether to bring a bail-out suit. Vague or subjective standards would be very unhelpful.

Next, a jurisdiction seeking to bail-out should have to establish not only that its record as a particular governmental body warrants Section 5 coverage termination, but that the same is true of all subunits of government located there. For example, it would not be sensible to allow a state to bail-out if there were violations within individual counties and cities within the state.

A question has arisen concerning the inability under current law of political subdivisions to be eligible for a bail-out suit if they are within an entirely covered state. I think there is a great danger in not keeping bail-out suits on the same level as the coverage trigger operated to bring jurisdictions in. The number of suits resulting and the drain on resources of the Justice Department and private intervenors could be enormous. If such a change were considered, the need for uniformity would become incalculably more important. It would be critical, consequently, for exclusive jurisdiction over such suits to remain in the District of Columbia court.

Congress has previously recognized the need for uniformity in administering this critical statute, and the Supreme Court in the recent 1981 case of *McDaniel* v. *Sanchez*, a case from Texas involving a reapportionment plan, affirmed the importance of uniformity in holding that even where a local district court had jurisdiction over the "one person-one vote" issues in a reapportionment case from a covered jurisdiction, the discrimination issues should be dealt with by following the uniform procedures under Section 5. The Court in *McDaniel* said:

"The procedures contemplated by the statute reflect a congressional choice in favor of specialized review—either by the Attorney General of the United States or by the United States 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 that recurring problems will be resolved in a consistent and expeditious way."

Of course, every law should be interpreted uniformly, so why should the Voting Rights Act be treated differently from other laws? The reason lies in its subject matter—the right to vote, and in its paramount importance in the congressional protection of our fundamental rights. Elections are critical yet short-lived events. Violations often emerge just before or even at an elecition; every violation takes a great toll, yet violations are impossible to redress fully; not only are money damages no remedy, but injunctions never catch up with violations.

This feature of elections was the cornerstone of the strategy that the covered states followed of changing their voting laws promptly when one type of discrimination was blocked by Congress or the courts. Indeed, a former governor of one of the covered states made the public statement that any legislature can pass a law faster than a court can strike it down. It was precisely these facts that led Congress to pass the Voting Rights Act, and in Section 5 to shift the "burden of inertia." Congress recognized that relief was slow, and sometimes ineffective, and in voting more than in any other area this was destroying the right irreparably. For this reason Congress included a provision designed to achieve a high degree of uniformity in the enforcement process along with the other aspects of the speedy and effective remedy.

Unfortunately, many of the decisions which have arisen in local district courts—in cases not committed to the exclusive jurisdiction of the United States District Court for the District of Columbia—have borne out the danger of allowing these cases to lose the uniform treatment that Congress intended. Whether the results are because of judges who allow their personal or ideological beliefs to overcome the law, or because of the enormous local pressure in Voting Rights Act cases, the fact remains that many of the decisions in the local district courts have been wholly out of line with the proper interpretation of Section 5, and each of these decisions has caused enormous delay, delay that in turn destroys the right to vote.

Congress recognized that every attack on the right to vote kills at least a part of it that can never be brought back—especially for minority citizens who have been bred to know that some people will stop at literally nothing to prevent them from having that right.

Make no mistake about it. My experience as Assistant Attorney General tells me that shifting jurisdiction from the District of Columbia to the local district courts would not be a simply jurisdictional modification; it would be a major undoing of an essential part of the congressional scheme that has helped make the Voting Rights Act as effective as it has been.

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Congress was entitled to think in 1965 (and reaffirm in 1970 and 1975) that the right to vote is different from other legal questions, and that a degree of diversity that may be permissible in cases having to do with securities transactions or utility rate disputes is not permissible in an Act born out of years of frustration with the Nation's most intractable and most disgraceful problem.

The record before this Subcommittee has shown the importance of other features of Section 5; I believe it equally well shows the importance and integral role of keeping jurisdiction in the District of Columbia.

These thoughts lead me to some conclusions about the bill recently introduced by Representative Hyde. While the bill does represent a desire to be cautious in allowing jurisdictions to bail-out, I believe it would still allow bail-outs by jurisdictions that had not truly changed their attitudes. First, the showing of a good record is not complete enough. It allows a jurisdiction to bail-out by showing that it did not use a test or device, that it submitted all its changes under Section 5, and that it drew no substantial objections. Yet a jurisdiction could have discriminated in other ways, even have judgments entered against it, and still meet the tests in the bill. Moreover, the use of the word "substantial" to describe the Section 5 objection that would block bail-out introduces major uncertainties. To my knowledge, the Justice Department has never objected lightly to submitted changes, and I, therefore, believe that all of the objections were substantial. The use of the word would invite a court, I fear, to start setting up its own standards. The same imprecision of language governs the requirement that the jurisdictions have engaged in "constructive efforts" designed permanently to involve minority voters. Without specifics, the term "constructive efforts" will be the target of ingenious efforts by many jurisdictions to bail-out without living up to the level that I know Representative Hyde would expect. Finally, while the bill requires that the constructive efforts be "designed" to involve minority voters, it says nothing about the results. It would be too easy for a jurisdiction to make efforts that looked good on the surface without making thoroughgoing attempts that work. One last matter concerns the venue of these suits. As I have noted, it is critical that these suits be kept in the District of Columbia. At present, the bill would instead lodge them in the local district courts, though I understand that Representative Hyde has recently expressed a willingness to change his bill in that regard.

Mr. Butler introduced a bill in 1975 which had somewhat tighter provisions on bail-out but had some of the problems I have described above, as well. Although the showing of a good record was more specific, it went back only 5 years—as opposed to the 10 years in Hyde's bill. It did not specifically guarantee a right of intervention.

What I think both the Hyde and Butler bills illustrate, however, is the great complexity involved in any attempt to draft a new bail-out provision that would work nearly so well as that already on the books.

III.

Before closing, I would like to address myself to two other matters which Congress is considering in connection with the extension of Section 5. I would like to take this opportunity to support extending the bilingual assistance provisions now and to endorse the Rodino/Mathias approach to amending Section 2.

Bilingual provisions

In 1975, Congress had before it overwhelming evidence that there are many U.S. citizens, most of them born here, who are not fluent in English because of little or no effective education. It enacted the bilingual election provisions because it determined, based upon this record, that English-only elections for non-English speaking Americans operated to prevent these citizens from voting, much the same way literacy tests had prevented black Americans from voting before the Voting Rights Act banned such tests.

Congress was right in thinking that non-English speaking citizens both deserved to and desired to participate in the electoral process. Bilingual elections have encouraged non-English speaking citizens to vote, many for the first time in their lives. Rather than fostering cultural separatism, as many opponents feel they might, bilingual elections have had just the opposite effect. They have encouraged all U.S. citizens to exercise the birthright of their citizenship—the right to vote. I understand that New Mexico, which held bilingual elections since its statehood, has the highest degree of minority participation and representation of any state in the country.

Those who object to bilingual election assistance point to the high cost of compliance and allegedly unreasonable demands made upon them by provisions of the Voting Rights Act. In most cases, however, while start-up costs may be relatively

high, the expense of providing such assistance in the context of a general election is truly modest. Some jurisdictions have misunderstood what the law requires, providing forms of assistance that were not needed by non-English speaking voters. And in at least a few cases, I got the distinct impression that election officials intentionally exaggerated bilingual requirements in order to open them up to public ridicule.

Extension of the bilingual provisions is both timely and necessary. Although the minority language provisions are not scheduled to expire until 1985, three House bills, introduced by Congressman McClory (H.R. 1731), Congressman McCloskey (H.R. 1407) and Congressman Thomas, et al., (H.R. 2942) would delete the automatic language minority trigger for Section 5 preclearance as of 1982 and would repeal the bilingual assistance provisions of Section 203. There is also a Senate bill which would repeal these provisions and severely curtail the bilingual protections of the Act. Specifically, the bills would eliminate Section 5 preclearance in Texas and Arizona. These jurisdictions have been covered under the Voting Rights Act since 1975 because Congress determined that their use of English-only elections was discriminatory.

While elimination of preclearance in Texas and Arizona would have a devastating effect on racial minorities as well, I would like to focus the Subcommittee's attention briefly on the role preclearance has played since 1975 for language minorities. There is still significant discrimination against language minorities in voting and access to the political processes which the protections of the Voting Rights Act were designed to address.

An objection which the Department made to a bond election in a predominantly Indian area (the Navaho nation) in Apache County, Arizona shows how important bilingual procedures are for effective exercise of the franchise. The Department objected to the grossly inadequate bilingual election procedures in a school board election. Two lawsuits in the county had (1) won Indians the right to vote, and (2) found unconstitutional the apportionment of Apache County Supervisor's District. Knowing that the 75 percent Navaho majority would soon take over the school board, the board, according to transcripts of board meetings, deliberately tried to "sneak" the bond election (which was for Anglo area schools only) by the Indians by disproportionately reducing the polling places on the reservation, only publicizing the election in predominantly white areas of the district, and using inadequate bilingual election procedures. For the Indian citizens in Apache County, Section 5 preclearance and the bilingual assistance provisions helped prevent their virtual exclusion from the political process during an important decision-making vote.

There are reasons to hope that the language minority provisions will help move non-English speaking American citizens into the mainstream. Our limited experience with bilingual assistance has certainly proven insufficient, however, to accomplish that goal. While these provisions may ultimately be transitional in character, I support their immediate extension to put them on the same track as the race provisions of Section 5, and to extend preclearance coverage for Arizona and Texas.

Section 2

I am in favor of the Rodino/Mathias clarification of Section 2 to address the confusion created by the Supreme Court's decision in *Mobile* v. *Bolden*.

In Mobile the Court held that under the Fourteenth and Fifteenth Amendments (and under Section 2 of the Voting Rights Act), language barring voting discrimination on account of race or language minority was limited to cases in which a specific intent to discriminate could be proved. The problem in the *Mobile* decision was not simply the requirement that intent be proved, by the Court's rejection of overwhelming evidence that the at-large elections in *Mobile* were in fact racially discriminatory. The evidence in *Mobile* was circumstantial, but it conformed to the requirements set out in earlier Supreme Court cases such as *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971) and *White* v. *Regester*, 412 U.S. 755 (1973).

These earlier cases, and others, have made it clear that there is no right to a "quota system" or proportional representation, and that the only right that anyone has is the right to an equal opportunity to run in a fair election. The proposed amendment to Section 2 simply clarifies that section's protection of the right to access to the political process, the right not only to cast a vote but to have that vote count.

The Mathias/Rodino bill modifies only the standard of proof that a litigant must meet. It does nothing to mandate, modify or even suggest the remedies that a court can impose if the burden of proof is met. The amendment to Section 2 also does nothing to predetermine the results of a particular election. It simply permits a litigant realistically to challenge the structural barriers that stand in the way of free and open competition at the polls without taking on the impossible task of reading the minds of those who erected those barriers.

I understand that some opponents to amending Section 2 are concerned that a standard that does not require proof of discriminatory purpose is a code for racial quotas. These opponents have argued that the amendment will mean that a jurisdiction can be punished for innocent conduct because of proof based on statistics.

I disagree with this interpretation of Section 2 as amended. The sole question is how overwhelming the proof has to be before a court can decide that there is voting discrimination. The Supreme Court's decision in *Mobile* made the requirement not only overwhelming but almost impossible, and the Rodino-Mathias bill is designed to return to the difficult but workable standards of earlier cases. For example, in *White* v. *Regester*, the Court held that proof of a violation would be made upon a showing that the political processes were not equally open to minority participation, that minority group members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice. The Court cautioned, however, against relying simply on a statistical showing of underrepresentation. The Court specifically said in *White*, "it is not enough that the racial group allegedly discriminated against has had legislative seats in proportion to its voting potential." 412 U.S. at 765–66.

I agree with the *White* v. *Regester* standard, upon which I believe the Rodino/Mathias bill relies. I support the amendment to Section 2, and I strongly disagree with anyone who suggests that it will lead courts to require proportional representation or quotas, or to order that minorities should be represented by members of their own racial or language group.

CONCLUSION

In upholding the constitutionality of the Voting Rights Act against an early challenge by the State of South Carolina, the Supreme Court concluded as follows:

"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 must live. We may finally look forward to the day when truly [t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous conditions of servitude.'" *South Carolina* v. *Katzenbach, supra*, at 337.

As I trust my testimony and that of many other witnesses before me have made unavoidably clear, Mr. Chairman and Members, that hope expressed over 15 years ago remains but a hope, not a reality.

Extension of the Voting Rights Act for another ten years offers, in my sincerest estimation, the only genuine prospect for ensuring that millions of minority citizens gain their rightful place in the political life of this Nation. With all due respect, the Act's preclearance provisions do not need to be amended or altered; the Act just needs the resources and vigilant oversight only this Congress can provide, to ensure its continued effectiveness. Finally, Congress must ensure that the current and all future Administrations faithfully enforce the provisions of this most vital law. Thank you.

Mr. DAYS. Thank you very much.

Once again, Mr. Chairman, thank you for the invitation to testify this afternoon, for it is my firm conviction that the need for the Voting Rights Act continues to exist if fair minority access to the electoral process is to occur. I also am happy to be here because I think there are various proposals to alter or amend particularly the special provisions of the Voting Rights Act that will serve unjustifiably only to weaken, not strengthen the protections of that act.

I am aware that you have had a number of witnesses testify before the subcommittee over the past couple of months, both individuals on their own and on behalf of organizations, urging extension of the Voting Rights Act, particularly the preclearance provisions. But I think I have come to the subcommittee with a unique perspective on the nature and scope and perhaps application of the Voting Rights Act. As you know, I served for almost 4 years as the chief Federal enforcer of the Voting Rights Act.

I also want to emphasize, and I do so perhaps beyond the bounds of good taste in my testimony, that I am here speaking not only ex-

officio, not only because I was the Assistant Attorney General in charge of the Civil Rights Division and had technical responsibility for enforcement of the Voting Rights Act, but also because during the time I was in the Department, I played a direct and personal role in its implementation.

It was not simply a matter of having the staff do work with respect to submissions and objections. I personally reviewed every objection letter that was sent out during the time that I was Assistant Attorney General except for those few occasions when I was able to escape Washington. In those instances, one of my deputies, pursuant to the Department regulations, signed the letters. So I speak from a deep, direct, and long-term involvement with the administration of the Voting Rights Act.

Insofar as current enforcement is concerned, as you undoubtedly know and have heard from witnesses before the subcommittee, the Voting Rights Act has been a major force in opening up opportunities for minorities insofar as the electoral process is concerned. I might add, however, that the Voting Rights Act ironically is needed now more than before. It is clearly the most successful civil rights legislation enacted by this Congress.

The Congress was right in shifting, as the Supreme Court said in the *South Carolina* v. *Katzenbach* case, in shifting the time and inertia from the perpetrators of the evil to the victims, giving those who were desirous—members of the minority community—a fair opportunity to participate in the electoral process. But I hope you won't take my respect for the Voting Rights Act, which I have set out in greater detail in my testimony, as some indication that we have reached the millenium, and that over a century of discrimination against minority voters has somehow been eradicated during the time that the Voting Rights Act has been on the books, and we can pat ourselves on the back and feel very comfortable in thinking that we have arrived at a point where minorities can participate in an equal fashion in the political process without the assistance of the act.

It is important to recognize that it has not been absolutely successful, but successful in a relative sense, when one puts the Voting Rights Act along side laws dealing with discrimination in education or housing or some of the other areas.

It is clear that while proven violations in those areas take sometimes years to remedy, it has been possible, using the special provision of the Voting Rights Act, to deal with violations of that act in a matter of days, in some cases overnight. But again, it is a relative assessment that I am making. I am not saying that the Voting Rights Act has been able to cure all discrimination.

There has been a lot of talk about the number of years that the Voting Rights Act has been on the books. People talk about covered jurisdictions having been in the penalty box—I take it that is a hockey phrase—for almost 17 years and they deserve to get out. Well, it is true that the law has been on the books since 1965, but I think it also bears recognizing that meaningful enforcement of the Voting Rights Act, particularly when one talks about other than direct interference with a physical act of voting, has been a feature for less than a decade.

I talk about several decisions the Department itself recognized in the testimony of my predecessor, Stan Pottinger, in 1975, gave the Justice Department the first indication that they could get at some of the most egregious forms of interference with the right to vote.

It is also important to point out, and I have done so in some detail, that every year since the Voting Rights Act was enacted, there have been broadly based and consistent court challenges to the very heart of the act. I talk about a case that I argued in 1977, referred to as the *Sheffield* case, involving Sheffield, Ala. There the Supreme Court was presented with the question of whether a community like Sheffield that was within a covered State, but did not register voters, was required to preclear changes.

Well, we thought the answer to that question was obvious, but it got to the Supreme Court, and between March 1976, and I believe December 1978, enforcement of section 5 with respect to literally thousands of jurisdictions like Sheffield, that enforcement effort was effectively stalled. So I think we have to recognzie that these challenges have had a significant impact on the ability of the Department and perhaps private parties to enforce the Voting Rights Act in an effective way.

I am certainly not here questioning the right of covered jurisdictions to have their day in court. But I think the subcommittee should recognize that it has not been a rose garden, if you will, in enforcing the Voting Rights Act. It has been tough going and there have been very hard and difficult problems to resolve, many of which had to be resolved by the Supreme Court.

It also bears recognizing that many jurisdictions covered by the Voting Rights Act simply have not complied. There are literally hundreds, I would think, of voting changes on the books that today and tomorrow and perhaps for years in the future, unless they are ferreted out, will affect the ability of minorities to participate meaningfully in the electoral process.

I give, for an example, a situation involving Greenville, N.C. It is a city with about a 25-percent black population. In 1980, in February, we got a submission from that community of voting changes that became law in 1970, 1972, 1973, 1975, and 1977. And in one of those changes our analysis concluded that there had in fact been a serious diminution and interference with the ability of blacks in that community to participate in the electoral process.

Another thing I would like to point out is, of course, while it is important to recognize that there have been minority gains as a result of the passage of the Voting Rights Act, in my estimation, given the thousands of cases that I saw when I was in the Justice Department, most of the minority electoral gains since 1965 are fragile things. I don't mean to be rhetorical or hyperbolic in the least when I say that many of these changes, many of these gains could be swept away literally overnight were it not for the protections that exist under the Voting Rights Act.

I am reminded of the old phrase that "one swallow does not make a spring." I think we are still unfortunately in a condition in this country where minorities are walking a tightrope between exclusion from the political process, and playing some meaningful role. Only last month, a district court here in the District of Columbia concluded with respect to Port Arthur, Tex., that city

officials had proposed a redistricting plan which guaranteed blacks would remain under-represented on the city council by comparison to their numerical strength in the enlarged community in the course of an annexation and redistricting plan.

The problems are not merely those of annexation or redistricting. Little things in this instance mean a lot. I point out an experience with a polling place change in New Orleans, La., that while not affecting the entire community, I think clearly had significant and long lasting impact on the ability of blacks who were voting in this district. In that particular instance, we received a request for preclearance two days after the election took place.

One of the polling place changes that we found was a devastating change insofar as minority or black voting was concerned; it involved changing a polling place 14 days before the election from a private home in a 92-percent black district to another noncontiguous district which was about 16 blocks away across a 170-foot wide interstate highway. Now, one has to remember that in this district the black voters are elderly, most without automobiles or without access to convenient public transportation. It was not surprising, given that set of circumstances, that many of the black voters decided to stay home on election day.

I am also required to point out that during the time that I was Assistant Attorney General, on my advice, more than 3,000 Federal observers were assigned to oversee the conduct of elections in covered jurisdictions. Those 3,000 observers were not sent merely because we wanted to have people who worked for the Federal Government travel and see these jurisdictions. They were sent because the record reflected there were serious instances of intimidation, physical and otherwise, prejudice of the most egregious sort with respect to minority voters. So they were sent to meet a crying need for protection in the context of the electoral process.

I think it is particularly cynical, if I may use the term, to consider knocking out from under minority voters the props that are provided by the Voting Rights Act at a time when most jurisdictions are going to have to go through reapportionment pursuant to the 1980 census and will probably be making a variety of other changes in their electoral systems. I think now is not the time to tamper with a law that in my estimation, and in the estimation of many other people, has been a bulwark against the types of discrimination that the record of this Congress and the record of the Supreme Court is so full of.

As Assistant Attorney General, I was concerned first and foremost with protecting the rights of minorities, making certain that there was a fair opportunity to participate in the electoral process. But I think this record should reflect the fact that what I attempted to do, and I think what people on my staff attempted to do, was carry out this responsibility in a way that was fair to the submitting jurisdictions and respectful of the integrity of their electoral processes.

It was not an effort to bulldoze over legitimate concerns of submitting jurisdictions. It was not an attempt to reject any explanations that they cared to offer. It was an attempt to be mindful of their concerns, to hear their views, and not turn a deaf ear to some of the explanations that they were inclined to offer for the changes

that we had problems with. And I think I can say that the approach that I took was one followed by most of my predecessors, Stan Pottinger and most of the other people who have sat in the position that I held in the Civil Rights Division.

Now, I have heard it suggested that what the Justice Department has been about since 1965 in enforcing the Voting Rights Act is trying to achieve proportional representation for minorities, or achieve some type of quota representation for minorities. I set out in my testimony in some detail procedures that the Justice Department followed while I was heading the Civil Rights Division. Again, I think an approach that was consistent with the efforts of my predecessors, which I think shows that the objective of the Department in enforcing the Voting Rights Act was not to insure the certainty of minority political advancement, but to make certain that there was a fair opportunity for minority participation in the electoral process.

Apparently the *Williamsburg*—Brooklyn, N.Y., case has been cited by some critics of our procedures as evidence that section 5 enforcement has been directed toward achieving proportional representation. I try to deal with that case as best I can in view of the fact that it arose and was resolved before I became head of the Civil Rights Division, to show that I think that the Department could well have raised legitimate questions about the results that flowed from the redistricting, the original redistricting plan in New York.

And to note with a certain amount of irony, given the allegations, that even though the Justice Department had generally suggested that the State of New York could achieve more compact and contiguous and meaningful black districts in Brooklyn, that in four of the five districts that were set up as 65-plus minority districts, no minorities were ultimately elected from those jurisdictions. So the record, as I have set it out, I think shows that it is not a result oriented effort. It is a process oriented effort that the Department follows.

If one wants to look at results, the results show that sometimes minorities get elected, sometimes they don't. But certainly the process has been fair and open in that regard. I hope it is clear to you by now, and if not, based upon my oral testimony, after you have had an opportunity to read my written statement, that it will be clear to you then that the Voting Rights Act really is needed now more than ever.

It is my profound conviction, moreover, that any effort to tinker with the administrative preclearance mechanisms of the Voting Rights Act would serve to weaken and dilute the effectiveness. It seems to me that the problems which Congress documented in 1965, 1970, and 1975, are still with us, and that flagrant violations of the rights of blacks and Hispanics in covered jurisdictions continue to be in some instances the rule, rather than the exception. It is my judgment that only with continued enforcement of existing section 5 preclearance requirements will these violations be monitored and in more and more instances, violations deterred.

I am aware that based upon news reports and statements by congressional leaders and certain things that have been said by officials in the new administration, that there are certain proposals

being considered by the Reagan administration to modify the Voting Rights Act, particularly section 5. I wanted to just touch on those proposed changes or suggestions for changes. Let me just say generally that I think that in every instance, the record that I am aware of doesn't justify making any alterations or amendments.

I am thinking specifically of a proposal for national or nationwide preclearance, for restricting preclearance, for mandatory notice, for changing the coverage trigger and for bailout. Let me deal with each of those in as brief a manner as I can.

My sense is, to quote some great American, that "if it ain't broke, don't fix it." I think insofar as nationwide preclearance is concerned, there has been absolutely no showing of need for that type of extension. Furthermore, there are serious, in my estimation, constitutional problems with attempting to extend based on no record whatsoever preclearance nationwide. After all, the Supreme Court upheld the preclearance provisions which it called an uncommon exercise of congressional power, because there was such an extensive record.

It seemed to me without such a record, nationwide preclearance makes no sense. Furthermore, the act is already nationwide. Section 3(c) of the act allows the preclearance provisions to be imposed even upon jurisdictions that are not covered by section 5. In fact, I am aware of a recent situation in Pensacola, Fla., where a judge granted exactly that type of relief. And, of course, the act and section 5 preclearance requirements apply not only to the Deep South, but to 9 States entirely and altogether, parts of 22 States. It applies to three counties in New York State, to Monterey, Calif., to El Paso, Tex. So it is hardly a situation where one part of the country has been singled out and required to meet responsibilities that other parts are not being asked to meet.

I see absolutely no intent to penalize parts of the country in the way that the Voting Rights Act has been written, the way the statute works. It is a forward looking statute. I know how to penalize places. And if I had been drafting the 1965 Voting Rights Act to penalize I wouldn't have made it a forward looking statute. I would have looked backward for about 100 years to make certain that all the discrimination that this Congress record reflected was got at and erradicated effectively.

Furthermore, if one puts to one side the constitutional problems, it seems to me that the administrative burden imposed by nationwide preclearance would be absolutely immense, and to nod in the direction of the present administration, let me add, inflationary. God knows, the Civil Rights Division and the gallant group of people in the Division who have to handle these responsibilities work hard enough as it is. And to think in terms of adding 41 additional States and tens of thousands of additional jurisdictions, to me is a formula for making the Voting Rights Act a dead letter.

I can't regard it as a serious proposition, if they are really interested in getting at continued violations in the covered jurisdictions of people's rights to vote in a fair and open way. I can certainly understand abstract and philosophical reasons for thinking that all parts of the country should be treated identically. But with all due respect, I don't believe that these abstract or philosophical or symmetrical concepts of fairness can override the fact

that there is no record, and that what we should be about is dealing with existing and well documented violations within the covered jurisdictions.

Insofar as to restricting preclearance is concerned, the Voting Rights Act has worked because it covers jurisdictions, not certain types of changes. Believe it or not there are some jurisdictions, like Sheffield, that continue to have problems even figuring out that they are covered as jurisdictions. And it boggles my mind to think of having to engage not only in the question of whether the jurisdiction is covered, but whether certain changes are covered within jurisdictions affected by the Voting Rights Act. It would literally be an administrative nightmare to determine whether a change was in fact a polling place change, or something else. Whether it fell in or out of the statute as it is proposed to be redrafted.

I think we have to recognize that little things do mean a lot. That while I talked about New Orleans, and the effect of a polling place change on a district, black voters in a district, there are polling place changes that have an impact that affect the entire community.

I set out in my testimony an experience with the board of directors of the Burleson County Hospital District in Texas. I won't go into that but I want you to recognize that in that case the polling place change really had demonstrable impact upon every minority voter in the entire district. And I think the shell game that the Congress was fearful of when it enacted the statute back in 1965 is still a problem.

Oh, you don't think that polling place changes are covered, says the jurisdiction, but redirectings are? Well, we will get at our objective using polling place changes instead of taking the approach that we know will be covered under the Voting Rights Act. I think the human mind is still as fertile as it was in 1965 to develop strategems that would work around the coverage of the Voting Rights Act. It seems to me trying to make a distinction between covered changes and uncovered changes would be an open invitation to that type of creativity.

Mandatory notice provisions. As I say, we have enough problem, or speaking realistically, enough problems trying to get many jurisdictions to submit in the first place. What mandatory notice would do is create another layer of enforcement responsibility for the Attorney General. The first name of the game would be getting notice of the change. And then once jurisdicitions gave notice, then there would have to be an attempt to get information on the nature of the change. Then once the change was evaluated, then the Attorney General could go to court.

I think that the record reflects that preclearance, as it exists has worked. There have been 35,000 submissions and I think only about two dozen lawsuits brought in the direct court to deal with assertions that the Attorney General was not carrying out his responsibilities effectively.

The same thing goes for changing the trigger. There is no indication that there is a problem. Changing the trigger, however one proposes it, does not it seems to me, make much sense under the circumstances.

And finally, I come to the whole question of bailout. There has been a lot of talk about the fact that existing bailout provisions don't provide enough incentive for saintly or so-called good guy or good person jurisdictions to make any real changes in their operations. I think the phrase was pure jurisdictions.

To really make changes that would improve minority access to the electoral process—I have looked high and low for some kind of indication of whether you had any saints coming before you or any pure as the driven snow jurisdictions coming before this subcommittee to talk about how bailout has been a retardant, as it is presently structured, and I have not been able to find such jurisdictions.

I know there was testimony from the city attorney of Rome, Ga., and former mayor of Richmond and a party official from Yazoo City, but it seems to me, based upon what I know of those records that they wouldn't have been able to bailout in any event. They are certainly not pure, saintly jurisdictions, however one defines those terms, and the bailout provision has been used.

There have been about 24 jurisdictions that have effectively bailed out. Only six cases that were brought since 1975 have been unsuccessful. I think what it reflects is that those who are entitled to bailout indeed are able to do so.

Now, I am aware of the fact, although I am not totally conversent with the proposals, that Mr. Hyde has made a recommendation for a new bailout provision. I think that his proposal, while it is designed to guard against bad jurisdictions getting out, does not go far enough. While I am not here to propose an alternative bailout provision, it seems to me that any bailout provision, if the subcommittee or the committee decides to consider it, ought to be done with a great deal of caution.

First of all, there ought to be a stringent showing over a significant period of time of no violations of the Voting Rights Act or of the voting provisions of the Constitution, as well as no objections to proposed voting changes.

I go, Mr. Hyde, into your proposal in some detail pointing out where I think the language is ambiguous or perhaps unduly permissive in that it does not get at the objective I know we share; namely, to insure that jurisdictions that are not doing a good job, stay in, and those that are doing a good job are let out.

I also make reference to another proposal that was made by Mr. Butler a few years ago, that perhaps contains some more stringent standards than your proposal, Mr. Hyde. But I think what your proposal and Mr. Butler's proposal reflects above all is how darn complex the bailout provision is as it presently exists. We know it has served its purpose, and that any attempts to alter it will undoubtedly cause the Congress to engage in some very refined, very tidy, and very nice questions about how to make certain that the underlying objectives of the act are not frustrated.

I am also concerned about the question of jurisdiction for the hearing of many of these issues, including bailout. I think that jurisdiction should remain exclusively in courts in the District of Columbia. I can string out for you a parade of horribles, but I won't do so. Suffice it to say that I think that there are sufficient examples of noncompliances, for whatever reason, with the spirit and

letter of the Voting Rights Act by local courts to justify leaving things as they are in the courts of the District of Columbia.

After all, we are talking about one of the most basic civil rights in this country. With all proper respect to stockholders', antitrust actions and insider trading and things of that nature, we are talking about the right to get into the ball game, to use other than a hockey phrase, Mr. Hyde, and play without limitation, and to make certain that one is really being given a fair opportunity to compete.

Before closing, I would like to just mention two other matters, the bilingual provisions. They are not part of the list of the administration, but what I say in my testimony is that bilingual provisions are necessary. Congress was right in 1975 in extending the protection to language minorities. The problem hasn't gone away, and to strike out the language minority provisions would have an incredibly devastating impact not only on the language minorities, but in at least two cases—Texas and Arizona—would allow those States to get out from under the preclearance requirements affecting all minorities who at the present time are protected by the Voting Rights Act.

Finally, the proposal to amend section 2, I think the Rodino-Mathias proposal makes sense and the *Bolden* decision does not, and that Congress has a responsibility to try to clarify the law, restore the original intent of section 2 and make certain that, not that there is proportional representation, not that there is an automatic right to some type of quota for minorities, that is not what the law said before *Bolden,* but rather that minorities have a fighting chance to make a case that their participation in the electoral process is being interfered with in a meaningful, significant way. I think the Rodino-Mathias bill does that.

Mr. Chairman, and members of the subcommittee, in upholding the constitutionality of the Voting Rights Act against early challenges by the State of South Carolina, the Supreme Court said that it hoped that millions of nonwhite Americans would now—speaking 15 years ago—be able to participate for the first time on a equal basis in the Government under which they must live, and that we might finally look forward to the day when truly the right to vote is not abridged based upon race, color, or previous condition of servitude.

As I hope my testimony and that of many other witnesses before you had made unavoidably clear, that hope expressed over 15 years ago remains but a hope, not a reality. Extension of the Voting Rights Act for another 10 years offers, in my sincerest estimation, the only genuine prospect for insuring that millions of minority citizens gain their rightful place in the political life of this Nation.

With all due respect to the work that has been done by members of the subcommittee and by the committee staff, the act's preclearance provisions do not need to be amended or altered. The act just needs the resources and vigilent oversight only this Congress can provide to insure its continued effectiveness.

And finally, Congress must insure that the current, that is the Reagan administration, and all future administrations faithfully enforce the provisions of this most vital law.

Thank you very much.

Mr. Chairman, I would be happy to answer any questions that you might have.

Mr. EDWARDS. Thank you very much, Mr. Days. Your testimony certainly is a suitable windup to our many, many days of hearings, and will be of enormous assistance to us.

The gentleman from Wisconsin, Mr. Kastenmeier, is recognized.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

I have no questions. I want to compliment the witness.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

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

We heard a list of horribles in our testimony about the practices that are going on in areas in Alabama, Mississippi, that were literally horrible. One of them was no polling booth. You vote on the table in front of the judges. Many people reregister and have the hours of registration from 9 to 4, and have to register in a different place in the county than for city elections. Now, as I read the act, I have heard so many witnesses say if preclearance goes, we are going back to the bad old days, and retrogression will recur. That sounds redundant, but nevertheless, that is about it.

What I am amazed at is why section 12 was never used. Section 12 provides criminal penalties. It is tough, it is strong, and with all of these egregious acts going on, I don't know why section 12 wasn't used. Why didn't somebody in Georgia go to jail, or somebody in Alabama go to jail? Were there political considerations which inhibited the strong—my Lord, "fine not more than $10,000 or imprisoned not more than 5 years or both"—was never used to my knowledge.

I have yet to learn of any urging by your Department when you were there and Mr. Pottinger, by the NAACP or the Southern Christian Leadership Conference, that it be used. South Carolina, 30 percent black and not a single black State senator. So the act is a tough act, preclearance aside. And I am not denigrating preclearance, but there is muscle in this act which has never, never been used. Why is that?

Mr. DAYS. That is a good question, Mr. Hyde. I certainly don't recall any instance while I was Assistant Attorney General where we used this provision, and I don't have the best of explanations. I know I was never advised to authorize criminal prosecution.

There may, however, have been a prosecution in Saint Landry Parish, La. I would have to ask the Department the details for this. That was a situation where vote buying was being used to frustrate the efforts of minority candidates to compete meaningfully and effectively in the political process.

But let me share with you an experience with criminal enforcement in other parts of the civil rights arsenal. It is a pretty dismal record. One talks about the most egregious examples of police brutality. For example it is touch and go when the department goes in to seek an indictment from a grand jury, or having gotten an indictment from a grand jury, has to go before the petit jury or judge to get a conviction.

As you may well know, in ordinary criminal prosecutions, once you have an indictment or some type of charge, your likelihood of getting a conviction or plea bargain is way up in the 90 percent range. The criminal provision of the Civil Rights Act in the area of

police misconduct, for example, I think our batting average was sometimes 40, 70 percent.

Mr. HYDE. If a couple of county officials, clerks were faced with criminal prosecution, wouldn't it reinforce their desire to say "Look, Mr. political boss, I am not doing this for anybody. I am not going to jail for you or for anybody." Wouldn't a few selective prosecutions have been great therapy? I don't mean to be critical. There is another side to people who say we are headed for dismal times. The act will be disemboweled. And I am for administrative preclearance. But this is a tough act. And I do think you were undermanned, you were overextended. But so much more could have been done that I think would have had, unless there were—and I am sensitive to those, too—political considerations.

Mr. DAYS. I don't know about political considerations but I wouldn't quarrel with your point. I think that this subcommittee and the committee and the Congress should remind the present administration of the fact that there is a section 12.

Mr. HYDE. I wish.

Mr. DAYS. And I urge it to look more diligently than we did into the possibility of using that provision.

Mr. HYDE. You have said of section 5, if it ain't broke don't fix it. I submit that it is a little ragged around the edges in the sense that I think it could be improved by requiring—and I will offer an amendment at the appropriate time—that public notice be provided in the community where changes are sought. I am told that you fellows had a list of civil rights types that when Axle Grease County sent in a change, that you looked and sent it down to whomever was on that list.

I think it could be much better if a public notice in newspapers of general circulation—not the local law bulletin or the Pharmacists Journal—be required, so that the people will have notice down there, and not just a select few who may or may not be the right people.

Mr. DAYS. I would support that.

Mr. HYDE. In that sense, we can enhance that.

Mr. DAYS. Indeed.

Mr. HYDE. Lastly, I didn't have your statement so I couldn't study your suggestion on how to improve my proposed bailout. It is a compromise and therefore imperfect as are all compromises, but on the subject of the District of Columbia court vis-a-vis the local courts, I am proposing a three judge court to hear these petitions not just your local judge, and an expedited appeal to the Supreme Court. And since the burden is on the jurisdiction seeking the baleout, why, we can assume that no significant aberrational results will occur.

The volume of cases that would be brought to the District of Columbia court could be prohibitive. They would be lined up for blocks trying to file their suit, assuming these jurisdictions exist that can qualify. I just think that as an inducement to get some southern support, that using the local—after all, you know, we have a Federal court system. It is made up of human beings, and maybe the judge in New York is better than the judge in Pittsburgh.

I know that there is a sensitive civil rights court in the District of Columbia, but you say they want to get in the ball game, they also want to pick their own umpire. It just seems to me if you have three judges out in the boonies with an appeal to the Supreme Court, the accessibility of local people to that operation, not just the civil rights establishment, which always has offices here in the District, but the local person who is victimized by what has been going on, has access to that court, it seems to me that is not a bad tradeoff, as long as you are getting three judges and as long and it is going to go to the Supreme Court expeditiously.

Mr. DAYS. I don't agree, Mr. Hyde.

Mr. HYDE. I understand that. And I have no theological objections to the District of Columbia Court handling it.

Mr. DAYS. For a moment I thought you were going to make a distinction between single judges and three judges.

Mr. HYDE. No, single judges may have more time to study the cases than the married judges.

Mr. DAYS. No, I was thinking of a distinction between one of God head and the trinity.

Mr. HYDE. No—I have to watch you Moral Majority types. [Laughter]

In any event, I will look over your statement quite carefully, and any suggestion that you have to improve what I am trying to do will be most gratefully received. I would like to call you if we need some further discussion.

Mr. DAYS. I would be happy to respond.

Mr. HYDE. Thank you very much.

Mr. EDWARDS. The gentlewoman from Colorado, Mrs. Schroeder.

Mrs. SCHROEDER. Thank you, Mr. Chairman.

I, too, want to compliment the gentleman on his testimony. He is an excellent ending witness, as we have to deal with all these bits and pieces and get so technical.

Your reason for wanting to keep it in the District Court is more of an expertise thing?

Mr. DAYS. It is an exptertise question and I think there are administrative issues that arise as well. I think any judge can tell you that it is very hard to convene a three judge court. In fact, the record the Congress developed on the extensive use of three judge courts pointed up there was a great deal of time, energy and delay bound up in getting a judge from Macon, and a judge from Birmingham with a judge from Jackson to hear a case.

I think what we have in the District of Columbia is a ready pool to form the three judge court.

I might add, Mr. Hyde, on our point about local judges versus judges that are here in the District of Columbia, the District of Columbia court is really a national court. I think that there is a sense that people come here to serve on the court not merely because they happen to be on hand in the District of Columbia when the selection is made. So I would see it as a national court, not a parochial or local court in the way that you might have suggested.

Mr. HYDE. If I may, do you think that view would be shared, though, by some Congressmen and Senators from the South who must be dealt with?

Mrs. SCHROEDER. If the gentleman would let me take my time back.

Mr. HYDE. I will, of course.

Mrs. SCHROEDER. All I have got to say is I guess the gentleman from Mississippi who just won his election, ran very firmly in favor of the Voting Rights Act and that is the old Confederacy, and he was elected on that premise. So maybe there is a new Old South that realizes that Washington really is the national Capital.

Mr. HYDE. Let's say it was a squeaker, Mrs. Schroeder, down there in the Old South in Mississippi. Republican resurgence indicates a new Old South, I believe.

Mr. DAYS. The Supreme Court just addressed this question of expedition and efficiency in a case—*McDaniel* v. *Sanchez*. I mentioned it in my testimony, but that is essentially the argument that I am making.

Mrs. SCHROEDER. You are not just here saying that it would be more convenient for the civil rights groups who have offices in Washington?

Mr. DAYS. No, I don't think so at all.

Mrs. SCHROEDER. Most of them have branch offices, I think, in most of the states that I am aware of.

Mr. DAYS. I think the feeling is we can be any place they are. That is not the issue.

Mrs. SCHROEDER. Thank you again.

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

Mr. SENSENBRENNER. Yes, thank you very much, Mr. Days. I, too, would like to commend you for your very excellent and comprehensive testimony.

So that I can better understand how the Justice Department considers section 5 preclearance matters, I would like to ask a couple of questions of how it was dealt with during your period as Assistant Attorney General for civil rights.

First of all, how did the Justice Department find out whether covered jurisdictions had submitted all changes in election law for preclearance pursuant to the law?

Mr. DAYS. Let me start, Mr. Sensenbrenner, by saying it was far from a perfect process. But one of the things we did was make annual reviews of session laws to see whether there were laws at the State level that had gone into effect without being precleared.

We tried to rely upon a network of people who were aware of the requirements of the Voting Rights Act, and they would bring it to our attention periodically, changes that had been made.

Often, as I have indicated in my testimony, changes that were unprecleared would come to our attention in the context of a request for preclearance of a more recent change. A jurisdiction would say "We have just made a change in the plurality win requirement in our jurisdiction. We would like you to look at that." In the process of evaluating that change, we have become aware of the fact that there are all kinds of changes that are related that have never been reviewed by the Attorney General.

Also, we have used the FBI from time to time to check certain areas of the country where we had the feeling that there was a great deal of silence, that there probably were things going on that

we had not heard of, there had not been the type of compliance with the Voting Rights Act that there ought to have been.

So it was far from systematic, I think is a fair characterization of what was going on.

Mr. SENSENBRENNER. Was a review of the change at the local level in covered jurisdictions done in as systematic a manner as review of changes in State law?

Mr. DAYS. Not at all. It was almost impossible, given the resources available to us to do that type of evaluation. In many of these changes—Mr. Hyde was talking about not the local law journal or legal paper, but a paper of general jurisdiction or general readership—many of the changes never get into a form that the average person would even know about—passage of changes in city council meetings where the minutes are not kept in any effective or systematic way. So it is a very difficult proposition trying to keep up with all of the local changes that take place.

Mr. SENSENBRENNER. Did the Department have a complaint system wherein a citizen in a covered jurisdiction could complain should a matter that was required to be submitted for preclearance not be?

Mr. DAYS. Absolutely. We, of course, had guidelines under section 5 that were made widely known to people around the country. I think of all the things that we did in the Civil Rights Division in terms of outreach, the outreach under the head of voting, protection of the Voting Rights Act was the most vigorous. I myself spoke a score of times to national organizations, to large conventions and groups, to groups of State legislators, to the little people who might be affected by changes to let them know what their rights were and how they could go about bringing changes to our attention.

Mr. SENSENBRENNER. Do you recall how many of the objections that were lodged by the Justice Department came as a result of citizen complaints of unsubmitted changes?

Mr. DAYS. I don't know the answer to that. I am sure the Department would have that information. I would suggest that you ask them about it. I don't have those materials available to me.

Mr. SENSENBRENNER. I would request that the staff do that.

I have one additional round of questions. Once you got a submission required by the act, how did you let other people know that the matter was pending in the Justice Department so that you could find out what the real effect of that submission was before the statutory time expired?

Mr. DAYS. One of the things that we required of every submitting jurisdiction in the submission itself was information about local minority organizations or persons who would be in a position to provide us with their perspective on the proposed change.

As a consequence of collecting that information over a period of some years, the Department now has a list of people that can be called upon to give something other than the party line, whether it be correct or not, on a proposed change. We also made groups aware of the fact that they could get on a mailing list which is sent out periodically, of changes that are pending before the Division, so that there is an opportunity for people on that list to let us know what, if any, views they may have on the proposals.

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Mr. SENSENBRENNER. Did the Department send out news releases to local media once a change had been submitted, saying that the Department was considering it, and if people wanted to comment, listing an address where the comments could be submitted?

Mr. DAYS. No; I don't believe that was done. One of the things that we did in the area of language minority rights was to translate a pamphlet on the work of the Civil Rights Division emphasizing particularly the role of the voting section so that people who were not able to read our English language press releases or publications would be able to understand that.

But the short answer to your question is, no, we did not do that.

Mr. SENSENBRENNER. In commenting on Mr. Hyde's suggestion of notice in newspapers of general circulation, don't you think that it probably would have a greater effect if a news release was sent out in compliance, rather than establishing a statutory requirement of notice? My experience has been that when the newspaper has a choice of print, be it the news release, or being required to accept a paid ad, they always take the latter. The paid ad is put in fine print near the obituary column so that very few people actually have an opportunity to read it, whereas a news release I think would probably get a little bit greater play.

Mr. HYDE. Would the gentleman yield?

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

Mr. HYDE. Legal descriptions and things like that are often tabled: people don't understand them, but the sharpshooters do. The people who buy land that is for public auction, and people who know what to look for, and I would hope that some attorney in town or in the county would look at the legal notices and be alerted to what they are. It is better than no notice, which is really what goes on now.

Mr. SENSENBRENNER. Well, if I can reclaim my time, the newspapers that circulate in my area of Wisconsin have a statutory requirement that the minutes of every city council and school board meeting be published in a newspaper of general circulation, and the type of those notices is usually finer than the print in telephone books, so everybody goes past that page rather quickly, and very few people actually see what it contained.

However, during the 10 years I spent in the State legislature, anybody who suggested this law requiring a paid ad be repealed brought the wrath of the newspapers from the weeklies on up, down on his head. So, as a result, notice requirement is somewhat of a newspaper man's advertising law, rather than something that actually imparts information to the citizens. That is why I expressed my concern about giving the newspaper business another one of those ads that nobody reads, which the taxpayers have to pay for.

Mr. HYDE. What suggestion do you have?

Mr. SENSENBRENNER. My suggestion would be to send out a news release. A Justice Department review of a local change is something that is newsworthy. I think there would be a far better chance that the news release would be read if sent out in that kind of form than having a statutory requirement of publication on the legal notices page.

Mr. HYDE. You mean a news release by the authority that seeks to change the law?

Mr. SENSENBRENNER. No; I am talking about a news release by the Department of Justice. We have public relations agents crawling out of practically every building downtown. I am sure they would be very happy to get out a few more press releases.

Mr. HYDE. There would be no requirement that the local newspaper print it, however.

Mr. SENSENBRENNER. Well, that would be a judgment of the local newspaper whether it would be newsworthy. But as Mr. Days said, the people who are the sharpshooters and who want to point these things out, can get on a mailing list and receive those notices merely for the asking.

Mr. HYDE. Thank you.

Mr. EDWARDS. Will you yield at that point?

Mr. SENSENBRENNER. I yield to the Chairman.

Mr. EDWARDS. Like Mr. Days, I was intrigued and liked the idea of Mr. Hyde's suggestion. But I wonder how we would resolve the problem of objections of the covered jurisdictions, school districts, sewer districts, et cetera, that once again, the Federal Government in Washington is providing the law, and mandating the costs to local governments without providing Federal resources. That is what we ran into on the language provisions and probably the chief reason why they got off to a bad start in California, for example.

Mr. DAYS. Mr. Chairman, perhaps it would be helpful to the subcommittee for it to know that when changes are submitted to the Justice Department for preclearance, that is news in most communities in this country. I think at that point everybody who reads the local newspaper knows that the mayor or the attorney general has stated that certain things can't happen until the Department has reviewed the change, and it becomes a matter of some public debate and some concern.

So while I am in favor of every additional effort within reason to make certain that people in the local community are aware of what is going on, I don't think the situation is quite so bad as I sense the discussion between Mr. Sensenbrenner and Mr. Hyde might lead one to believe.

Mr. HYDE. Then, if I may, because we are making some progress, I don't feel a requirement requiring publication of this notice would be necessarily—would be a good thing, because of what Mr. Edwards has said, there is a cost. As Mr. Sensenbrenner has said, it is in fine print. So we leave it to the Justice Department and their list of preferred people to call to let them know. Is that the best option?

Mr. DAYS. I would prefer not to give you a definitive response to that question at this point.

Mr. EDWARDS. Would you provide one later?

Mr. DAYS. Suppose I were to say under most circumstances I would say more is better, but I am not certain what more is under these conditions.

Mr. SENSENBRENNER. Mr. Chairman, I think it is time for me to yield back the balance of my time.

Mr. EDWARDS. We appreciate your sharing your time with us.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Yes, Mr. Days, I think your testimony was just brilliant. And this submission I would say should be a classic example of writing by a legal expert.

Mr. DAYS. I had some great educators, Mr. Washington.

Mr. WASHINGTON. One question the staff put together: In your view, why have the jurisdictions overwhelmingly sought preclearance of the voting changes through the Attorney General rather than through the district court?

Mr. DAYS. They have done so because it has, in my estimation, been fair and expeditious, that in the vast majority of cases, the Department has been able to get information about the proposed change, review it, and give an answer to the submitting jurisdiction within the 60 day period.

I think that jurisdictions have recognized that the Department is not operating in a way that is designed to frustrate their desire to change certain things about the electoral process.

I know that I spent some very unpleasant weekends when I was Assistant Attorney General trying to come to resolution on proposed changes that had been submitted by the jurisdicitions 3 and 4 days before the election, in one case, the day before the election. We stayed and we worked because we didn't want that jurisdiction to have to be put into the position, even though it missed the boat, of running an election that might be confronted with legal problems after the fact. I think jurisdictions know that.

Mr. WASHINGTON. Let me put it another way. Has that been true throughout the history of the act, that there has been a lopsided emphasis upon the Justice Department rather than the district court?

Mr. DAYS. Absolutely. Absolutely. As I indicated, 35,000 voting changes have been submitted to the Attorney General as compared to a couple of dozen suits brought in the court here in the District of Columbia.

Mr. WASHINGTON. That puts the lie to those who maintain there is an overwhelming desire that these matters be judicially determined, does it not?

Mr. DAYS. I think it does.

Mr. WASHINGTON. When they do have a choice they opt for the administrative procedure?

Mr. DAYS. That is right. It is done by letter; it is done over the telephone. I think particularly the major jurisdictions in the country that are covered know the people in the voting section, know the officials in the Department and feel comfortable going through the process. They realize in the vast majority of cases it is going to be painless.

Mr. WASHINGTON. Under that procedure they do get two bites of the apple. If the Justice Department is negative they can go to the district court. Do you think that is a factor?

Mr. DAYS. That they get two bites of the apple? Probably so, but I think for most jurisdictions, what the submission to the attorney general represents is about the fairest opportunity available. It is something that is perceived as being in the interest of those jurisdictions that are covered by the act.

Mr. WASHINGTON. Have you given consideration to permitting persons in these covered areas to also go to the district court to appeal from the Justice Department decision not to object? They are precluded from doing so now. Would you support such a change?

Mr. DAYS. I don't think anything would be gained from that, Mr. Washington. As you say, there is a second bit at the apple but it is an independent proceeding. It is not designed to look over the Attorney General's shoulder. I think were there some type of judicial review of the Attorney General's judgment, then the administrative process would lose its streamlined quality and would lose its expedition.

The Assistant Attorney General for Civil Rights and the Attorney General would be engaged in making what in effect would be an administrative record like an independent regulatory agency preparing a record similar to something that a district court would prepare, knowing that there was going to be this type of detailed review, as opposed to an independent evaluation.

Mr. WASHINGTON. One other line of inquiry. Are you familiar with Howard Ball's manuscript?

Mr. DAYS. No; I am not.

Mr. WASHINGTON. It makes three points in the conclusion of the study. I only have a synopsis of the study. They suggest—do you have a copy you can give the witness?

On page 3, bottom of the page, he deals with conclusions, recommendations for improving the administration of the Justice Department in terms of the preclearance problem. He says—

Although the authors see compromise compliances as a necessary element to the successful implementation of the Voting Rights Act, several suggestions were made to increase objectivity of the act:

One, use of mail order survey, et cetera.

Two, increased use of the FBI.

Three, systematically mapping the jurisdictions in establishing solid benchmarks against which to measure performance."

Could you respond?

Mr. DAYS. Well, I don't have any particular objections, as I said, to more. I just question whether these proposals are practical, given the realities of the age we are living in and limited resources that are made available to the Civil Rights Division. But in the best of all possible worlds, I think it certainly would improve the enforcement of the Voting Rights Act, having these features included.

Mr. WASHINGTON. Let me go to another line of inquiry. Representative Hyde raised an interesting question as to why there was not vigorous enforcement of the section 12 criminal provision. Did the Justice Department make a conscious decision relative to pursuing the criminal aspects with all of its attendant impediments, as against what I assume to be the right approach to make people whole?

Was that conscious decision made?

Mr. DAYS. I don't recall, during the time I was there, ever sitting down with my staff and opting for the approach that has been taken over the last few years as opposed to using criminal sanctions. There are serious questions, and I pointed out in my testimony, with determining how one makes a victim of voting discrimina-

tion whole. I think the way to make a victim whole is to overturn the election, halt the election until the offending practices can be evaluated and found either discriminatory or found appropriate, and then allow things to go forward.

While we all recognized that criminal sanctions can increase respect for particular requirements, I am not certain that there is a fair tradeoff between the approach that has been used, and devoting more resources to criminal enforcement.

Mr. WASHINGTON. I would yield the balance of my time.

Mr. EDWARDS. Mr. Days, an interesting aspect of the information we developed in these hearings is that we had very little evidence if any, that the procedures, the process of preclearance was burdensome. There was remarkable consensus on the good will and cooperation of the Department of Justice in the process. We did have complaints to the effect that bureaucrats in Washington were jumping all over local jurisdictions.

However, the other side of the coin is that we had quite a lot of evidence to the effect that the Voting Rights Act really should be more effective and that perhaps it wasn't being enforced vigorously enough. We have already talked a little bit about the nonutilization of the criminal provisions, and I think you responded to that appropriately.

We have had some witnesses who testified that there were probably hundreds of submissions that never were made, that discriminated, and the Civil Rights Division of the Justice Department never caught up with. How do you respond to that?

Mr. DAYS. I plead guilty, Mr. Chairman. I think that is true. That is why in my testimony, I have tried to emphasize the need to tighten up existing procedures for enforcing the laws we have, and not spending a lot of time developing new mechanisms and new complexities that I think would make even more difficult getting at some of the problems that you have just mentioned.

It is undoubtedly true that changes have occurred that have not been precleared. As I say in my testimony, we objected to changes and would not be in a position to follow up, to make certain that the change was not implemented in the teeth of the objection. So there are serious problems. But I think that those are the types of problems that, with a bit more money and a bit more urging by Congress, can be dealt with more effectively.

Mr. EDWARDS. Well, thank you.

We also have considerable testimony from black citizens, ordinary folk that testified, some of it very touching testimony, to the effect that old fashioned intimidation and discrimination, such as Mr. Hyde touched on, still exists, still is pervasive. Where the registration book to register is in the magistrate's office, and in his desk; where we have dual registrations required. Whereas Mr. Hyde pointed out, you have to vote, and there are white people standing there and they can see how you vote.

What about those aspects of what I referred to as old-fashioned intimidations?

Mr. DAYS. Well, in many instances those don't involve changes, so we are not talking about preclearance. I think it points out the continued need for the Federal observer. That in many instances, while I was Assistant Attorney General, I have heard from local

people who said thank you for sending those observers. Just their presence was enough to cause people I know would have tried to interfere with what I was doing or interfered with someone else from doing that.

Oddly enough, when one talks about penalty boxes, and unfair burdens on officials in covered jurisdictions, I have been surprised at the extent to which local officials who are right thinking and responsible, black and white, have requested that observers be sent to make certain that problems that they didn't feel they could get at were nevertheless addressed by the Federal Government.

So while I have to admit to you when I became Attorney General I had some concern about the use of Federal observers and the extent to which it might exacerbate relationships between the Federal Government and localities, and that maybe we better cut back on use of that program, I was reminded again and again, and went through an education, too, Mr. Hyde, that these people were really necessary. That in so many instances they stood between the most outrageous forms of intimidation directed toward minorities who were attempting to cast their ballot.

Mr. HYDE. Would the gentleman yield for a second?

Mr. EDWARDS. Yes, sir.

Mr. HYDE. It is interesting. What is an abuse in one area is something that is welcomed in another. For example, in Chicago we like to have a policeman, really, sitting in the polling area. They sit there and read a magazine, but they are there and they are visible and they are in uniform. But we all kind of like that. In Alabama, we heard that is an intimidating thing, to have a policeman there they felt was a bad idea. And I can understand that, too. I suppose in a community where everybody knows everybody, the local gendarme watching you vote may be intimidating. But, gee, we like it in Chicago. That is interesting.

Mr. DAYS. Have you told Commissioner Brezak that?

Mr. HYDE. No, I did not, just because I did not think to. But I will. We do welcome them. I think they are a useful tranquilizing force in certain areas of Chicago.

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

Counsel, Ms. Davis.

Ms. DAVIS. Thank you, Mr. Chairman.

Mr. Days, as you know, the Rodino and Hyde [the Rodino and Hyde section 2 proposals differ] proposals, section 2, differ in two respects. One is the language. The Rodino proposal uses the term "purpose or results." The Hyde proposal uses "purpose or effect." They differ also in that the Hyde proposal would apply the effects test prospectively.

I have two questions. One is, in your view would the courts interpret the word results as set forth in the Rodino bill to require proportional representation or quotas of minority elected officials? I know you addressed in your testimony how the courts have interpreted the phase purpose effect under section 5. My question goes to how might results be interpreted by the courts.

Mr. DAYS. No one can be absolutely certain what the courts will do; witness the Supreme Court's decision in *Bolden*. But I believe with proper report language and explanation of what is being attempted that the courts would not have any problem seeing

"result" as very much like "effect," not dictating any particular result. But getting at the nature of proof from the burden relating to allegations of discrimination under section 2.

Ms. DAVIS. Would you comment on the prospective application of the effects test in the Hyde proposal?

Mr. DAYS. If I understand what both Mr. Hyde and Mr. Rodino are attempting to do, namely, set right what the Supreme Court has complicated by *Bolden,* to essentially let everybody know that the task of showing certain types of discrimination is not an impossible one, I see no great problems. I think there are all types of situations in existence now that would have been subject to challenge prior to *Bolden,* and I do not feel that insofar as the Congress is concerned, *Bolden* ought to immunize those particular changes and simply give those changes a pass because the Supreme Court decided to write six opinions instead of one, and let us get a clearer sense of what the 14th and 15th amendments are all about. So I see it as restoring the situation ante, and not creating some novel or extraordinarily different basis for establishing discrimination in the electoral process.

Mr. HYDE. Would counsel yield?

What would happen to the proliferation of complaints, let us say, if we are going backward, retroactively, and look at every jurisdiction in the country, really, to see if there have been results that show discrimination—this is a practical problem. We are covering the country now. And the proliferation of complaints could be enormous, could they not? This is a consideration that animated me in making it prospective rather than retroactive. I grant you ideally it would clean up everything. But it seems to me it is going to be an incredibly burdensome process if we go retroactively nationwide.

Mr. DAYS. I am not really in a position to speculate on that. But I am reminded of how the Supreme Court normally views the question of prospective as opposed to retrospective application. I think one of the considerations is one of reasonable expectation on the part of a person or entity that might be affected by a particular interpretation. It seems to me that up until *Bolden* occurred, most jurisdictions that cared about these issues understood that they might be subject to suit if they had situations that appeared to exclude minorities from a meaningful role. And so I do not see any fundamental unfairness in making this restatement, if you will, of what section 2 is all about, retroactive.

Mr. HYDE. Thank you.

Ms. DAVIS. I am a little confused, in that I believe your concern, Mr. Hyde, is that to apply the test as stated in the Rodino provision would in some way encourage a proliferation of litigation.

Mr. HYDE. Well, I am just thinking that if we are going to subject every election law broadly considered under an effects test, nationwide, what the impact would be in terms of volume of litigation.

Ms. DAVIS. I would think, however, that we could look at what the impact had been historically, given the fact that section 2 has and continues to be nationwide in application, and prior to *Bolden,* the tests that litigators were operating under was similar to the purpose or effect test.

Mr. DAYS. These are tough cases, Mr. Hyde.

Mr. HYDE. It may well be. I have two objections to the Rodino proposition. The one is proportional representation. I think somehow we have to specifically exclude that. That allays one fear. The second one of volume, one of inviting, you know, proliferation of litigation. Everybody who wants their name in the paper, who feels they are aggrieved, rush in and say the result has been discriminatory. And that could weaken the administration of the whole law. Maybe I am wrong. As counsel has just suggested, prior to *Bolden,* it was no big deal. And maybe it would not be after Rodino.

Mr. DAYS. I think that is probably the right answer. In terms of proportional representation I think the law prior to *Bolden* was that you get no free ride. That the fact that there is not exactitude between the number of minorities on a governmental body and the percentage of minorities in the community is no persuasive evidence that there is a violation, and one has to show more.

Mr. HYDE. There is sensitivity to goals and quotas and such as that in view of some Supreme Court opinions. In the long, arduous task of getting a coalition to support this act, that fear is a fear which is reasonable and desparately needs to be allayed.

Mr. DAYS. I think we can point to *Whitcomb* v. *Chavis,* a Supreme Court decision that predates *Bolden,* where this issue of proportional representation is dealt with very directly and exclusively, and the answer is that you have no right to proportional representation.

Mr. HYDE. Maybe we can put that in the statute.

Ms. DAVIS. It is your testimony that the bailout provision does not need to be amended. Since presently covered jurisdictions that have not discriminated are able to bail out. I am wondering if you have any comments on recommendations that would, if there is a change in the bailout provision, allow political subdivisions to get out from coverage even though the State remains covered.

Mr. DAYS. I am opposed to that. I think that it would add an incredibly burdensome and perplexing level of compliance to try to determine whether bailout is appropriate. In many situations local jurisdictions, Sheffield is a good example, do not register voters. That is done by the State, yet it has application to local jurisdictions, counties and cities. I think what would have to be done in every instance is to try to figure out what role does that jurisdiction play? What control does it have on the electoral process? Does the city do it, does the county do it, does the State do it? I do not think much constructive would be accomplished in creating that particular arrangement. I think the best answer is to maintain symmetry between the coverage trigger and the bailout provision so that jurisdictions go out the way they came in.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Days, when you were Asistant Attorney General, what criteria did you apply to annexation submissions? To what extent were economic considerations relevant in the approval or disapproval of an annexation submission?

Mr. DAYS. I do not quite understand what you mean by economic considerations.

Mr. BOYD. Many arguments which are put forward with regard to the need to annex have to do with tax base.

Mr. DAYS. Yes, sir.

Mr. BOYD. I am asking to what extent are the tax-base considerations relevant to the form that annexation submissions must take?

Mr. DAYS. Well, it is a piece of evidence that we utilized in trying to evaluate whether the annexation would have a discriminatory impact, or whether there was a discriminatory purpose behind the annexation. In other words, where there appeared to be strong economic justification for annexation, that tended to undercut any fear that there was a discriminatory purpose behind the change.

Mr. BOYD. So a mere statistical imbalance would not be enough to defeat an annexation proposal as long as there is an overriding need on the other side?

Mr. DAYS. It is a bit more complicated than that. I think the annexation situation is one where the law applied resulted from a compromise by the Supreme Court, quite frankly. In two cases decided a few years back affecting Richmond, Va., which was a Supreme Court case, and Petersburg, Va., which was decided by a three-judge district court here in the District of Columbia, affirmed by the Supreme Court, the difficult issue was this. If the Voting Rights Act is interpreted as establishing that minimization of minority electoral strength is a violation, then any annexation by a major city in this country is likely to have that type of discriminatory impact, or minimization. So what I understood the Supreme Court to do in the Richmond case was work out a tradeoff. That was cities would be allowed to annex, which would have a minimizing effect, often, on minority political strength. But the result had to be that minorities would end up with some fair representation given their percentage in not the old city, but the enlarged city.

Now what does that all mean? It means that even though a city may have and often does have economic justification for annexation, if the annexation minimizes what was the minority electoral strength in the old city, then there is going to have to be some accommodation for that minimization.

Houston, Tex., is a good example of that. Houston, which has, or had at the time three-quarters of a million people, wanted to annex areas that were largely white involving, I believe, around 150,000 people. The minority percentage in the old city was about 40 percent. And yet with this annexation, minority political strength would have been substantially reduced. So the arrangement that ultimately resulted from an objection that I lodged was to arrive at some fair protection for minority votes in the larger city, not to bar the annexation.

If one compares an annexation situation to, for example, a change from plurality win to majority vote, there are a number of occasions where the Department has simply said you cannot make the change at all, whatsoever. For one thing, it is often hard for jurisdictions to come forward with some economic justification. What I want to do is make a distinction between a change that has a dilutive effect upon minority political strength, and nevertheless has been approved by the Supreme Court in its interpretation of

section 5. But the tradeoff is that minorities have to be left with something after the annexation takes place.

Mr. BOYD. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Washington, further questions?

Mr. WASHINGTON. No, sir.

Mr. EDWARDS. Well, thank you very much, Mr. Days. Incidentally, the subcommittee, we plan to mark up the bill at 9 a.m., on Wednesday this week if nothing intervenes. Without objection, the letter of July 9 and the attachments of our colleague from Mississippi, Mr. Trent Lott, will be made a part of the record.

[See p. 2210.]

Mr. EDWARDS. Again we thank you for creating terribly helpful testimony.

Mr. DAYS. Thank you, Mr. Chairman.

Mr. HYDE. Thank you.

[Whereupon, at 3:30 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

APPENDIXES

APPENDIX I—PREPARED STATEMENTS SUBMITTED BY WITNESSES

Bliley, Hon. Thomas J., a Representative in Congress from the State of Virginia (3rd District).

Cox, Archibald, chairman, Common Cause.

Ford, Hon. Harold E., a Representative in Congress from the State of Tennessee (8th District).

Gray, Fred, Esq., Tuskegee, Alabama.

Hinerfeld, Ruth J., President, League of Women Voters of the United States.

Jackson, Rev. Jesse L., National President, Operation PUSH (People United to Save Humanity).

Lodge, Herman, Waynesboro, Georgia.

McLeod, Daniel R., Attorney General of the State of South Carolina.

Mondragon, Hon. Roberto, Lt. Governor of the State of New Mexico.

Sutton, A. C., President, Texas State Conference, National Association for the Advancement of Colored People.

Trasvina, Hon. John, Commissioner, Citizens Advisory Committee on Elections, City and County of San Francisco.

STATEMENT OF HON. THOMAS J. BLILEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, members of the committee, I want to thank you for granting me the opportunity to appear before you today.

First, as you well know, the entire Voting Rights Act does not expire, only those sections establishing trigger mechanisms in section four and preclearance provisions in section five. It is important to keep this fact in mind during the discussion. These provisions have served their purpose and should be allowed to expire. The remaining sections should be retained, and continue to apply to all States. Further, I would suggest that you consider expanding definitions of Federal offenses for interfering with a person's right to register or vote, and set forth stiffer penalties for such violations.

Sections four and five, establishing and requiring preclearance, should be allowed to expire next year for the following reasons:

(1) Congress should never enact legislation dealing with such a basic right as a person's right to vote unless it applies universally. These sections as now written apply only to a limited number of States and communities. If it is a basic right, then it should be dealt with in such a way that the right is protected throughout the Nation.

(2) Once a State is covered there is almost no way to get out. Virginia has been under the Act since its inception, some 17 years now. Yet there has not been one claim of a person being denied the right to vote since that time. Voter registration has consistently increased, as has the number of voters participating in elections.

(3) In 1965 when the Act was passed into law, Congress did not realize it would be extended to cover annexations. Indeed it was not until the Supreme Court decided *Perkins* v. *Matthews* in January, 1971, that it was established that annexations are covered by the Act. In Virginia, cities are completely independent of counties and have been since the time of Thomas Jefferson. Likewise, until recently, cities such as Richmond have had the power to annex through the State courts. In the course of her 200-year history, Richmond has used the procedure more than ten times. As recently as 1969, this procedure was used so that on January 1, 1970, Richmond acquired some 23 square miles of Chesterfield County. In May, 1970, a council election was held on an at-large basis, with both old and new residents voting. In 1971, following *Perkins* v. *Matthews*, the city submitted the annexation to the Justice Department and the Justice Department noted an objection, instructing the city to go to a ward system, electing councilmen from single-member districts. The city objected, for also in 1971 the courts and the Justice Department approved a plan for electing 5 delegates to the General Assembly of Virginia from Richmond on an at-large basis. In addition they approved a floater seat for all of Richmond and all of an adjoining county. The city asked if the addition of new citizens is non-dilutive in a General Assembly election why should it be so in a councilmanic

election. However, the Justice Department maintained its position, blocked an election scheduled for May, 1972, and the matter was litigated for 5 years with no elections until it was settled in 1977.

My colleagues, I don't believe that the Congress ever intended for this situation to occur, but it has and is throughout the areas covered by the Act. Richmond has had four forms of government: the commission form; the strong mayor-bicameral council; the council-manager with nine councilmen elected at-large: and the council-manager with nine councilmen elected from single-member districts. Each of these was approved by the citizens of Richmond in referendum, except for the last, which was ordered by the Justice Department.

This country was founded on the principle of "government by the consent of the governed," and I think it is time we returned to that principle.

There may be some who claim that were Virginia let out of the Act that Richmond would return to at-large elections. This is not necessarily so. Richmond and other cities do not have "home rule" and any change in city or town council elections is, as required by the Virginia General Assembly, subject to the approval of the voters of the locality in question.

No matter what improvements or internal controls are established, Virginia has virtually no opportunity to be bailed out of the Voting Rights Act preclearance provisions, until the applicable time period, now seventeen years, expires next August. I believe that Virginia has shown that the provisions which encumber her should indeed be allowed to expire.

I endorse the permanent provisions of the Voting Rights Act and applaud the significant role it has played in escalating the exercise of the franchise throughout the land. I appreciate that these provisions are applied nationally and equilaterally, and hope to continue its protections by enforcing our commitment to equality as a Nation, by originating laws from Washington equitably and impartially in meting out justice throughout the United States.

Preclearance has served its purpose. It has erased the State-to-State differences in registration and voter turnout. The permanent provisions of the Voting Rights Act will continue to guarantee equal access to the ballot box, as provided in sections 2, 11, 12, et al. Indeed, violations of the Act as defined in these sections are punishable as felonies. This provision should continue by all means. If the members of this committee desire to expand those penalties, I will be willing to work with the committee in that effort.

No less an instrument than the Constitution of the United States provides that "the right of citizens of the United States to vote should not be abridged by the United States or by any State on account of race, color, or previous condition of servitude." Let us carry forth this national commitment.

Testimony of Archibald Cox, Chairman, Common Cause, on Extension of the Voting Rights Act

Mr. Chairman, I appreciate this opportunity to express my strong support and the strong support of Common Cause for the proposed ten-year extension of the Voting Rights Act. We applaud the leadership that you and Chairman Rodino continue to provide on this vital issue.

The Voting Rights Act is justly acclaimed as one of the most important and effective pieces of civil rights legislation ever passed by Congress. The Act is an essential part of the process of opening up governmental institutions to all citizens and actively involving more citizens in self-government. This has been a major goal of Common Cause from its beginning.

By the Voting Rights Act, hundreds of thousands of black and Hispanic Americans were enabled to exercise the most precious of constitutional rights—the right to vote. By enfranchising these citizens, the Act also has removed barriers that previously barred the election of members of minorities to public office. These two changes have greatly strengthened the legitimacy of representative government in America.

But the hard-won gains under the Voting Rights Act are fragile, and we should not be complacent about the future. The patterns and habits of discrimination became engrained over the century preceding the Voting Rights Act. It would a naive to suppose that such deeply engrained ways of political thought have been removed so quickly.

I would like first to discuss briefly the history that led to passage of the Voting Rights Act, the progress made under the Act, and the reasons why Common Cause believes an extension of the Act is essential. I would then like to describe the elements we view as crucial to preserving the effectiveness of the Act.

BEFORE THE VOTING RIGHTS ACT

Former President Lyndon Johnson spoke for the nation when he signed the Voting Righs Act into law in August, 1965. "This Act flows from a clear and simple wrong," Johnson said. "Its only purpose is to right that wrong. Millions of Americans are denied the right to vote because of their color. This law will ensure them the right to vote. The wrong is one which no American in his heart can justify. The right is one which no Amercan, true to our principles, can deny * * * "

Nine-five years after the enactment of of the Fifteenth Amendment, the Voting Rights Act finally implemented the amendment's guarantee that the right to vote shall not be denied or abridged by reason of race, color, or condition of servitude. The hard won Civil rights Acts of 1957, 1960, and 1964 had been designed to enforce this constitutional right by facilitating court challenges against voting discrimination. But case-by-case litigation under these acts proved insufficient in the face of what former Attorney General Nicholas Katzenbach called "evasion, obstruction, delay, and disrespect." During this period, it became clear that some state legislatures were prepared to raise new obstacles to black registration as fast as existing laws were held unconstitutional, thus delaying black voting for the duration of each round of litigation.

SIXTEEN YEARS UNDER THE ACT

The 89th Congress enacted the Voting Rights Act of 1965 with broad bipartisan support in response to a growing public concern about voting discrimination. Events of the last sixteen years have proven the wisdom of the Congress' action.

The members of this Subcommittee are certainly fully aware of the extraordinary accomplishments that have resulted from this Act. As the U.S. Commission on Civil Rights has said: "It has led to greatly increased registration, voting, and election of blacks to public office in most Southern States." More than one million black voters were added to the registration rolls from 1965 to 1972. In Mississippi, for example, less than seven percent of the black voting age population was registered before 1965; by 1976, 67 percent was registered (compared to 78 percent of whites). Similar dramatic increases occurred in other Southern States. In addition, there were less than one hundred black public officials in the South in 1965 but almost 3,000 by 1980.

THE NEED FOR EXTENSION IS CLEAR

Despite the gains we cannot relax. There is urgent need for further progress. The Atlanta Journal/Constitution concluded after a 1980 series on the Act that "the promise of equal participation for blacks in the electoral process is still unfulfilled in large parts of Georgia and the South." The newspaper noted that in the twenty-two Georgia counties with black majority populations, blacks were represented on elected county commissions in only seven.

Equally important—perhaps more important—if the Act is not renewed, the hard won gains may quickly dissipate Failure to renew would open the door to wide-scale resumption of the discriminatory and restrictive practices of the previous century. The success of the Voting Rights Act does not make the Act unnecessary.

THE NEED FOR EXTENSION OF PRE-CLEARANCE IS ALSO PLAIN

Specifically, Section 5 should be extended. Without the pre-clearance of new state laws affecting voting rights, many of the advances of the past decade could be wiped out overnight with new schemes and devices.

In the past, each time the Congress or a federal court prohibited one form of test or device to limit minority voting, ingenious State and local election officials came up with another. For example, a new generation of discriminatory measures replaced grandfather clauses, the poll tax and the literacy test. Racial gerrymandering, switches from district elections to at-large races, and annexations have been employed in efforts to dilute minority voting strength at the ballot box. Without pre-clearance under Section 5, further backsliding is likely to occur through re-registration requirements and other devices to dilute minority voting. The powerful deterrent effect of Section 5 discourages circumvention and evasion.

The force of these generalizations is readily demonstrated by specific data and illustrations. Even though we must leave full documentation to others, enough specifics have come to our attention to document the overwhelming need for continuance of pre-clearance procedures of Section 5.

Even after 16 years some jurisdictions fail to submit for pre-clearnce changes in their election laws affecting voting rights.

Unlawful changes denying voting rights are still submitted to the Department of Justice with great frequency. During the past five years 400 changes were found to be objectionable—no fewer than in the preceding five-year period.

It took fourteen years of action under the Voting Rights Act and litigation to force the Mississippi Legislature to abandon the discriminatory use of multi-member legislative districts. Black citizens are still significantly underrepresented in the Legislature.

A pending suit asserts that Edgefield County, S.C., Senator Strom Thurmond's home county, never submitted its 1966 at-large election plan for Justice Department review; and that the county went ahead despite the Department's objections to modifications in the plan made in 1976.

When San Antonio, Texas attempted to annex a number of predominantly white areas, the Justice Department concluded that the annexations would discriminate against minorities because of the city's system of at-large city council elections. As a result of the Department's 1976 objection, the city adopted a council election system with members elected from single-member districts.

THE ESSENTIAL ELEMENTS NEEDED FOR EFFECTIVE ACTION

Common Cause believes there are four essential elements that should be embodied in the legislation extending the Voting Rights Act.

First, the Act's crucial pre-clearance provisions should be continued. As I have said, Common Cause believes that the need to extend the pre-clearance provisions can be readily demonstrated. Objectionable practices continue in the covered States and would likely multiply in the absence of an effective deterrent. The contitutionality of the pre-clearance provisions has been upheld time and again; it is beyond doubt. The prompt administrative process established by the Act has minimized the need for long and complicated legal battles.

Some members of Congress have questioned whether it is appropriate to continue to subject a single region of the country to the Act's special provisions. Some have proposed extending the coverage of the pre-clearance provisions nationwide. Others, including Representative Hyde of this Subcommittee, have proposed eliminating the present pre-clearance and substituting a process whereby the Attorney General or an aggrieved person may bring an action to apply the pre-clearance procedures anywhere a pattern or practice of voting rights abuse is found.

Common Cause opposes both of these approaches. The Voting Rights Act already is a national rather than a regional act. The Act's permanent provisions apply nationwide and already provide for bringing additional jurisdictions under court-ordered pre-clearance procedures. Even the special provisions of the Act cover all or parts of twenty-two States touching the four corners of the nation. In fact, there are more people in three covered counties in New York than in four of the six southern States fully covered. Broader national coverage would waste valuable resources and overburden the existing enforcement staff.

The vice of Representative Hyde's proposal is that it would bring back in this important area the very same evils that the Voting Rights Act was designed to eliminate: the heavy expense and long delays of litigation, the denial of the most fundamental of citizens' rights during the years of investigation, trials and appeals necessary to prove a pattern or practice of discrimination. The use of law suits and judicial machinery to protect voting rights was tried from 1957 to 1965 under the Civil Rights Act of 1957. Congress found, and the U.S. Supreme Court agreed, that the process is simply too slow and too burdensome to right so grievous a wrong.

Experience also showed that some States or subdivisions would resort to the strategem of contriving new rules pertaining to the electoral process each time an instance of discrimination was established and struck down by court decree. Then a new round of racially-discriminatory interference with voting, investigation, litigation, delays and appeals and more delays would begin. Meanwhile the burden of all the delay fell upon the citizen seeking but denied the opportunity to exercise the most precious of rights. To change this, Congress enacted and the Court upheld Section 5.

I recognize that the Hyde amendment applies only to the strategem of changing election laws so as to deny or restrict the voting power of minorities, but in that important area it would, indeed, restore the old regime. Furthermore, proving a pattern or practice of changing voting laws in order to defeat the voting rights of black and Hispanic citizens would be extraordinarily difficult and time-consuming. Changes in voting laws or districting do not take place with such frequency as to lend themselves to proof of a pattern or practice.Meanwhile, while the Department of Justice was waiting for enough instances to constitute a pattern, the rights of minority citizens would be open to denial and often denied.

The system of prompt administrative action applicable to States and political subdivisions where there is evidence of past discrimination is not only more effective and more efficient, it is the only way promptly to assure minority citizens the most precious of their rights. If the Department of Justice errs, its error can be corrected by the courts. During the period, however, the presumption should be in favor of voting and effective voting power—not against the opportunity for the effective exercise of the most important of rights.

In *South Carolina* v. *Katzenbach*, 383 U.S. 301, the Court has upheld the constitutionality of the pre-clearance provisions. Last year, in *Rome* v. *U.S.*, 100 S.Ct. 1548, the Court explicitly approved Congress's 1975 judgment that an extension of the Act was necessary to preserve its fragile achievements and to prevent further voting discrimination. (It is important to note that the pre-clearance provisions have only been actively enforced since 1971.) Furthermore, in cases from *South Carolina* v. *Katzenbach* through *Rome* v. *U.S.*, The Court has supported the congressional determination that case-by-case adjudication, as proposed by Representative Hyde, is too slow and too unsure a method of barring voting discrimination.

Second, the special enforcement provisions of the Voting Rights Act should be extended for a full ten years to ensure coverage of the redistricting that follows the 1990 census. By gerrymandering congressional, legislative, and local government district boundaries, incumbent legislatures can negate the voting gains achieved by minorities. For example, pockets of minority voters can be dispersed throughout many districts or packed into a few districts to dilute minority representation.

Under the Voting Rights Act, the Justice Department is obligated to object to any redistricting ploy that has the purpose or effect of discriminating against minorities in covered jurisdictions. The record shows that the threat of racial gerrymandering is real. Since the Act's inception in 1965, the Justice Department has objected to more than one hundred redistricting changes. In 1975, Congress extended the Act for seven years to ensure coverage of redistricting following the 1980 census. This important principle should be retained in the pending extension legislation.

Third, Congress should relieve the uncertainty created by *City of Mobile* v. *Bolden*, by exercising its power to enact prophylactic measures preventing devices that create undue risk of violation of the Fifteenth Amendment. The plurality, concurring, and dissenting opinions in *City of Mobile* v. *Bolden*, 100 S. Ct. 1490, leave much uncertainty concerning the proof necessary to establish a denial or abridgement of the right to vote on account of race or color in violation of the Fifteenth Amendment. Congress cannot and should not attempt to overrule specific Supreme Court decisions interpreting the Constitution. Congress cannot and should not attempt to change the meaning of the Constitution. Congress clearly does have power to enact measures going beyond any constitutional requirement in order to protect citizens against undue risk that the right to vote is being denied or will be denied in violation of the Fifteenth Amendment. That point was clearly established by *South Carolina* v. *Katzenbach*, 383 U.S. 301, and has not been challenged in subsequent years.

Although the problem of draftsmanship is difficult, we believe that Congress could usefully relieve the confusion and establish a more workable and more protective test than that set forth in the plurality opinion of Justice Stewart in the *City of Mobile* case—not as a test of what violates the Fifteenth Amendment but as separate, additional, statutory protection which Congress believes necessary and proper to ensure the protection of the voting rights guaranteed by the Fifteenth Amendment.

Fourth, existing bilingual election requirements should be included in any extension of the Voting Rights Act. In adopting the bilingual election provisions, Congress recognized that English-only election materials and voter assistance can constitute a barrier to voting similar to literacy tests. Requirements for bilingual elections have enabled and encouraged minorities to become active participants in the great work of governing ourselves.

I am not unmindful of the argument that the bilingual provisions will tend to polarize American society. Surely, bilingual voting will have just the contrary effect. The best way to avoid a separatist movement in this country is to encourage participation in the exercise of the right to vote. For participation in the electoral process without language barriers makes it plain to all that we are one Nation with one government for all the people.

Others criticize the bilingual provisions as excessively costly. Testimony at these hearings, however, has and will continue to demonstrate the need for these important provisions. In addition, I am fully confident that the seven-year experience under these provisions has demonstrated ways in which costs can be trimmed. Los Angeles and Santa Clara counties in California provide examples of how the bilingual provisions have been implemented in a cost effective manner through special

targeting and other methods. With the good faith efforts of local election officials and more effective guidance from the Department of Justice, the precious right to vote of minority language citizens need not be denied.

CONCLUSION

During the past six years, the Voting Rights Act has continued to build on the successes of the previous ten. We have witnessed unprecedented advances in opening up the political process to fuller particpation by minorities. Nevertheless, there is hard evidence that discrimination, though significantly lessened, has not been eradicated. The important gains of the last sixteen years are fragile. Continued vigilance is essential if the promise of the Fourteenth and Fifteenth Amendments is to be fulfilled.

Common Cause urges this Subcommittee and the full House Judiciary Committee to act promptly to report a ten-year extension of the Voting Rights Act with the essential elements I have discussed above. History has proven the wisdom of the Congress in framing this important remedial legislation. This is no time allow backsliding on the right to vote.

TESTIMONY OF CONGRESSMAN HAROLD FORD ON THE VOTING RIGHTS ACT OF 1965

Mr. Chairman, I would like to thank members of the subcommittee for permitting me to speack before you, my colleagues, today on behalf of the Voting Rights Act of 1965.

I stand 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 standing 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 special meaning to me, and that undiminished meaning is even more significant today.

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 one hundred 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 its specfic language that neither the federal government nor any state could deny the right to vote because of race, color or previous condition of servitude, the 15th Amendment of the U.S. Constitution, ratified in 1890, had not been successful in ensuring 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 devises 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 the result of the enactment of the Voting Rights Act of 1965, black voter registration and participation increased dramatically. For example, in the seven years, from 1965 to 1972, the percentage of blacks who registered to vote in seven 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 Mississip-

pi, almost 70 percent of black citizens are registered and there are approximately 400 black elected officials.

Even given these impressive statistics, there are some that 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 that 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 whites.

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" would seriously erode these gains.

One of the important factors of the Voting Rights Act is Section Five 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 ensure the proposed change does not discriminate on the basis or 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, 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 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? 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's 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 Action. All Southern States are not involved in the pre-clearance provision. I hardly consider states such as Oregon, Arizona, California, Alaska, Hawaii, and New York as Southern states. They are included in the Section Five Pre-Clearance 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.

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 pre-clearance 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, Mississippi, moved 38 polling places located in predominantly black areas to white areas and announced the changes one 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?

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 pre-clearance is no longer necessary, or the burden of proof of discrimination should be on the complaining party. This is not the time to retreat.

The Act should be extended for ten additional years. During this period, 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.

Thank you.

TESTIMONY OF FRED GRAY, FORMER ALABAMA LEGISLATOR

Mr. Chairman, my name is Fred Gray and I'm a lawyer from Tuskegee, Alabama. I appreciate the invitation of this sub-committee asking that I appear and testify about the Voting Rights Act (VRA) of 1965.

For most of my adult life I have worked in courtrooms, legislative chambers, churches, and meeting halls to guarantee all citizens, regardless of color, the right to vote and enjoy equal protection of the laws. These decades of experiences have taught me lessons about human relations, the dynamics of southern change, and the needed role of the Federal Government in the protection of rights of black citizens. I want to share a few of those experiences and observations with you today.

My own social concerns were developed at an early age from the teachings of my parents and in reaction to conditions which I witnessed growing up in the south. Fortunately, life in Alabama and the rest of the south began to change as I left my schooling and started practicing law. Slowly, step by step, repressive segregationist practices did yield to the pressures of legal action, boycotts, and other means of protest. It never came easy, however, and at almost every moment of change, the protective mechanics of Federal law were necessary to expand the civil rights of Black Alabamians.

When I stood beside Rosa Parks in December, 1955 in the police court of Montgomery, Alabama, the judge would not entertain any serious question of the constitutionality of segregationist laws that kept Mrs. Parks from sitting near the front of municipal buses. Only after a long and expensive process of appeal to the highest Federal court were the laws finally struck down.

In March 1956, when I represented Dr. Martin Luther King, Jr., Dr. Ralph David Abernathy, and other ministers in Montgomery in State court, the charges against my clients, essentially, were that they had exercised their constitutional rights of peaceful protest against those who maintained segregationist laws; nevertheless, local white municipal officials would not budge from their efforts to prosecute until Federal law duly established the rights of these ministers and many thousands of other members of the Montgomery Improvement Association to protest peacefully.

As the lawful, peaceful protest of black Alabamians spread across Alabama against segregation after the Montgomery Bus Boycott, the White resistance also became widespread, intransigent, and supported by local and State public officials. Because of its efforts to protect the rights of black citizens, the National Association for the Advancement of Colored People was held in civil contempt by the Alabama courts for its refusal to provide the names and addresses of all its Alabama members and agents. Because this attempted exposure was aimed at economic reprisals and physical coercion of NAACP members, my colleagues and I found it necessary to appear before the U.S. Supreme Court to protect the rights of black citizens to organize and protest.[1]

In 1957, the Alabama Legislature passed act No. 140 which changed the boundaries of the city of Tuskegee from a square shape to a 28-sided object. The clear intent and effect of this extraordinary redistricting of political boundaries was the removal of black citizens' right to vote within the city. Because access to the ballot could not be denied effectively in Tuskegee at the polling place on election day, the Alabama Legislature resurrected an old, more indirect yet effective method of denying the franchise to black citizens. After exhausting all other available remedies and with the passage of three long years, I finally agrued before the Supreme Court in 1960 that it was a constitutional violation "where a State in exercise of its power to rechart the boundary lines of one of its geographic subdivisions utilizes

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[1] See *NAACP* v. *Alabama*, 357 U.S. 449 (1958).

that power to deny the Negro the rights and benefits of residence in a municipality including the right to vote in municipal elections." [2]

Distinguishing other cases which had fenced off the jurisdiction of the Federal courts from the "political thicket" of reapportionment and redistricting, Justice Felix Frankfurter held for the Supreme Court that the Constitution forbade denial of the effective right to vote even when it was accomplished through indirect and circuitous means.[3]

I am pleased that this case provided an important precedent that permitted the Federal courts to move further in protecting the constitutional and civil rights of black citizens in the important area of the franchise; however, other cases and an increased role of the Federal Government were necessary for these rights to become more secure. During the 1960's as a member of the Alabama Advisory Committee of the U.S. Commission of Civil Rights, I listened to scores of black and white Alabamians tell of their problems in registration and voting especially in the black belt areas of the State. These witnesses often told of how once one local technique of resistance was removed by court action, organized protest or negotiation, another barrier—just as effective—was put in its place. Added to my own experiences, this testimony for the victims of political and racial discrimination convinced me that the 1965 Voting Rights Act was a necessary and primary means to halt the momentum of resistance by local and State white officials to the voting rights of black people.

After the act was passed by Congress, I recall that many observers speculated that the struggle for equal political rights had been won and that 1966 would see a new day in Alabama and the rest of the South. Regrettably, the passage of the act did not prompt an immediate respect for the lawful political rights of all Alabama citizens.

When I entered the chambers of the Alabama House of Representatives in the building that served once as the capitol of the "confederacy", I was grateful to be the first black Alabamian in the 1900's to serve in that high capacity. Because of continued opposition to an equitable legislative districting that recognized the voting strength of Alabama's 25 percent black population, I could share the honor of this service with only one other black representative for almost eight years.

As a State legislator I witnessed the continued use of local and State government to frustrate legal rights that had been guaranteed by both Federal court interpretation and Federal statutory enactment. Up to the last hearing on the last day, Alabama State and local officials continued to search for ways to keep from integrating Alabama's public schools. While the Federal court finally ordered statewide desegregation in 1967, it required three years of on-going litigation to force the State to permit black and white children in Macon County, Alabama to go to the same school. For other schools in the State, the enforcement of this basic right by court order required several more years, and some school districts are still actively in Federal court because of continued resistance to desegregation.

The resistance also continued to center on the franchise. In the face of the Voting Rights Act, white officials in Greene County, Alabama in 1968 stole the election from black candidates under the supervision of Federal officials who finally provided a fair election which blacks won in 1970. In the early 1970's, the number of black elected officials evidenced the results of continued resistance and remained only a token of the black population in the State. In 1973, I remained one of only two black State legislators, and only 9 other blacks sat on any county governing boards throughout the entire State. Only one black served as probate judge, the chief administrative officer of the 67 counties of Alabama.

By 1975 when the Voting Rights Act was to expire, Alabama had made dramatic improvements from the days when segregationist laws attempted to keep Rosa Parks on her feet. A 1974 Federal court order had required the Alabama legislature to redistrict once more, and black legislators from Birmingham, Mobile, and Montgomery were elected to serve. Yet, Alabama had not changed voluntarily nor so deeply that the Voting Rights Act was no longer needed.

Without exaggeration, I can tell this subcommittee truthfully that the same momentum of resistance which I witnessed in the 1950's has continued in different parts of Alabama in the late 1970's. Even so, as we make some gains in those districts and counties where our numbers are significant, our legislators and county officials have begun to conspire to turn back the clock in an effort to dilute the black vote.

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[2] 5 L.Ed2d 909 (1960).

[3] See *Gomilion* v. *Lightfoot*, 5 L.Ed.2d 110 (1960).

VOTING PROBLEMS AND STRATEGIES TO DILUTE THE BLACK VOTE

In municipal elections, one of the most blatant practices being used more and more to dilute the black vote is for city clerks to omit the names of scores of black voters from the voting list. While this is being done, the poll officials do not make the voters aware that they can vote a challenge ballot if their names are not on the list. In 1972, I represented *Andrew M. Hayden* v. *The City of Uniontown*, where approximately 200 black voters in that city were left off the official voting list. We won the suit, which resulted in the election of a black mayor and three black council members. Last July, a city clerk in Evergreen, Alabama, omitted approximately 200 black voters from the voting list. One black candidate who was an incumbent lost his race to a white opponent by only four votes.

Although the Alabama legislature passed a law in 1978 giving boards of registrars the authority to appoint deputy registrars, less than 15 out of 67 counties have appointed any blacks as deputy registrars. The present law says that boards "may" appoint deputy registrars. Therefore, the boards use the permissive language of the law to subvert the spirit and intent of the law. Even a letter from Governor Fob James last year urging boards to appoint deputy registrars did not cause many boards to do so. In most instances where black deputies have been appointed, it has been only for a short time. Boards of registrars often require the deputies to turn in all registration forms issued the next day.

Poll workers often refuse to allow voters who are illiterate or who need assistance in voting to select someone of their own choosing to assist them.

In Alabama, very few new polling places have been established in the black community since the passage of the Voting Rights Act. On the other hand, it is a fairly common practice for election officials to select white churches, country stores, and white businesses as polling places. Since there is a direct correlation between voter turnout and proximity to the polling place, black votes are diluted because of the distances we usually have to travel to go vote.

The number of blacks serving as poll workers at the polls rarely approximates our numbers in the population. However, during the 1980 November elections, less than 12 blacks out of nearly 150 poll workers in Conecuh County, Alabama, were appointed. Conecuh County has a black population of nearly 44 percent.

Out of the 201 members of boards of registrars in Alabama, less than 12 are are black. Few counties have boards of registrars who initiate an active voter outreach program. Registration is still a courthouse operation for the most part in most counties.

Changes in annexation and in districts have taken place which were not precleared by the Justice Department. For instance, in Conecuh County, Alabama, the county changed from single-member districts to multi-member districts in 1971. One of the single-member districts had a black population of over 60 percent. After the consolidation, no district has over 50 percent black population. The change was not reported. There are other places in Alabama where the same thing happened.

Blacks are grossly underrepresented on the county Democratic executive committees in most counties. In many counties, blacks are apparently not aware that they can qualilfy and run for slots on the county Democratic executive committees. In Alabama, they rarely meet.

For those who oppose the Voting Rights Act extension on the grounds that the Act has a regional bias against the South, and feel that it should be extended nationally to ensure fair coverage, I would like to offer a moral response to rebut that position. Throughout biblical history, God targeted specific places to root out evil. He sent Jonah to Nineveh. The whole point is to limit or to allow for God and man to concentrate on the problems or evils in a given area. Since human resources are limited, it would be an exercise in futility for the Justice Department to attempt to monitor the entire Nation when there is simply no need, and knowing that the Department does not have the staff to do so anyway.

Any effort to convince black people or to convince me that we no longer need the Act because we have become too successful in registering folk or in electing blacks will fail. Although black registration figures in Alabama are believed to be between 350,000–375,000, it is believed that there may be some 250,000 more blacks in Alabama who are not registered. Moreover, approximately 250 black elected officials in Alabama is nothing to rave about. For there are over 1,000 elected officials in the State, all told.

Ultimately, I long for the day, Mr. Chairman, when there will be no need for the Voting Rights Act. But since the amendment which guaranteed blacks the right to vote never did work, we must not be too hasty in eliminating this Act. Indeed, unless a law has some teeth in it, it doesn't amount to much. For this reason, the Voting Rights Act should be extended as is. If anything, all we need to do now is to

monitor more effectively the provisions of the act in order to ensure that we will begin to take full advantage of the protections which are now provided.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF RUTH J. HINERFELD, PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

Mr. Chairman, members of the Subcommittee, I am Ruth Hinerfeld, President of the League of Women Voters of the United States. Accompanying me today is Fumi Sugihara, chair of Government issues for the LWVUS. We thank you for this opportunity to present the views of our members about the Voting Rights Act and HR 3112, the Voting Rights Act Amendments of 1981.

The League of Women Voters of the United States, a nonpartisan citizen organization, has members in all 50 states as well as the District of Columbia, Puerto Rico and the Virgin Islands. Ours is an organization whose very existence is based on citizen participation in government—and specifically on expanding and protecting voting rights. In fact, the League was established in 1920 by the women who had finally won the battle for female suffrage. And League members are as committed now as they were in the beginning to making the right to vote a reality for all citizens. I address this subcommittee, therefore, on behalf of a representative, an informed, and a concerned constituency who have perhaps longer and more consistently than any other citizen group studied, analyzed and struggled to overcome the obstacles that keep citizens from full participation in the electoral process.

Every school child learns that no right is more fundamental to the full exercise of American citizenship than the right to register and vote, and to have that vote count on an equal basis. Yet, in many States and localities, systematic denial of that right kept generations of minorities out of the political process and ensured that their citizenship remained second-class. It is precisely because the Voting Rights Act at last unlocked this first, key door to political participation that it has been called the most important of the civil rights gains of the 1960's.

I am here today in support of HR 3112. We support the extension of Sections 4 and 5 of the Voting Rights Act for 10 years. We support extending the Bilingual Election provisions for seven years, in order to put those provisions on the same timetable as other sections of the Act. And, the League also supports Chairman Rodino's proposal in HR 3112 to amend Section 2 to clarify what we believe was Congress' original intention that both existing and new instances of voting discrimination could be proved by showing direct and indirect evidence of discriminatory effect. This change is necessary in order to restore the protections against voting discrimination that were in effect before the Supreme Court's decisions in *City of Mobile* v. *Bolden*, which introduced confusion into the area of voting rights litigation. We believe that a ten year extension of the Act's special provisions is imperative to ensure that the extensive reapportionment and redistricting following the 1990 Census are subject to Section 5 review.

The Voting Rights Act and its special provisions have accomplished what two constitutional amendments and a hundred years of litigation could not accomplish: the enfranchisement of hundreds of thousands of miniority Americans. Since its enactment, registration and voting rates for minorities have risen dramatically.

Yet, the tremendous progress made under the Voting Rights Act does not mean that threats to minority voting rights are a thing of the past. Minority registration still lags behind non-minority registration, and minorities remain underrepresented on elected bodies at all levels of government.

Therefore, we are here today to testify that the special provisions of the Voting Rights Act must be retained until all citizens are afforded an equal opportunity to register, to vote, to run for office—in short, to exercise those rights which we all believe are ours under the Constitution.

Other organizations and individuals will come before this subcommittee to testify to the important role that the Voting Rights Act and Section 5 must continue to play in order to remove subtle and invidious barriers to effective minority representation. But members of the League of Women Voters know that even in the area of voter registration, where the greatest progress under the Act has been made, the continued existence of Section 5 is necessary to perserve and protect the fragile gains made in minority registration and political participation.

The League is well credentialed to make the case that Section 5 ensures the continued fair administration of the voter registration process. Voter registration is an area with which the League has long been closely identified; no other organization has our history of service to voters and commitment to the principle that all citizens have the right to make their way, on an equal footing with every other eligible citizen, through the formal system of regulations and procedures that sur-

round the casting of a ballot. For over 60 years, local Leagues across the country have conducted grassroots voter registration and voter outreach efforts, and have worked to eliminate the barriers to voter registration that stand in the way of full citizen participation in the political process.

For minorities, registration is the first, the most crucial step toward full political participation. In this context, the experiences of minority citizens who seek to register are extremely important. If the cost of registering in terms of time, energy, inconvenience and personal pride is too high, the individual may choose not to register or not to vote. And when minority citizens are discouraged from registering or voting, there is little likelihood that they will be able to elect candidates of their choice to public office or have any meaningful voice in political decisionmaking in their communities.

We have asked local Leagues in areas covered by Section 5 of the Voting Rights Act to describe for us the manner in which voter registration is conducted in their areas. Based on this information, we have reached the conclusion that the persistence of subtly discriminatory attitudes and practices in covered jurisdictions toward registering minorities has inhibited progress toward the goal of full minority political participation, and indicates a climate that is still hostile to the idea of equal minority participation and representation in all facets of political life.

Many of the incidents cited in this testimony document the widespread use of practices and procedures that serve to discourage minority registration. While some do not involve express violations of the Voting Rights Act, they are cited in order to convey to you a sense of climate in which voter registration is administered in covered jurisdictions, despite the Act's protections.

We believe that seventeen years (six years in the case of bilingual elections) can only begin to exorcise the discriminatory attitudes that led to 100 years of violent abridgement of the constitutionally guaranteed voting rights of minority Americans. In the words of the President of the Roanoke Area, Virginia League of Women Voters:

"I am convinced that unless there are federal requirements regarding voting that even the minimal attention given to minorities would be forsaken."

While the Voting Rights Act has succeeded in unlocking the outer door to full minority participation, it is Section 5 that keeps the door open; and it is Section 5 that is the key to unlocking the inner door to meaningful representation.

The attitude expressed by then Lt. Governor of Virginia John Dalton in a letter to the League of Women Voters of Virginia well sums up the approach to registration taken by many election officials and legislators: "My feeling is that registering to vote should be easy, but not effortless." Behind this statement lies the pervasive viewpoint that registration should not come too cheap. It does not take too great a stretch of imagination to see how this attitude could again legitimize the use of discriminatory registration tests and overtly exclusionary practices if these jurisdictions were removed from under the watchful eye of Section 5.

The 20th century notion that voting is a right not a privilege has yet to be integrated into the customs and laws governing voter registration in most jurisdictions covered by the Voting Rights Act. To quote Penn Kimball, author of "The Disconnected:"

"The assumption that voting is a privilege to be selectively earned has left the most fundamental act of citizenship at the mercy of a whole series of discretionary obstacles. Once voting is regarded instead as an inherent attribute of citizenship, the ideals of democracy can be more effectively realized." [1]

Despite the protections afforded by the Voting Rights Act, Leagues in covered jurisdictions report that registration costs continue to be high. Inconvenient registration times and places, lack of outreach to the minority community, and unwillingness on the part of registration officials to cooperate or work with community groups, or to voluntarily take steps that would make registration more convenient and accessible continue to discourage minority registration. These practices work hardships on all potential voters, but the hardships fall most heavily on the minority population, who are more likely to be poor, transient and under-educated. One does not need to be black or a member of a language minority to recognize the latent hostility of some officials to minority registration and political participation. Patronizing treatment and laggard service to minority registrants are all too familiar tactics for discouraging minority citizens from registering and voting.

The widely held belief that voting is a privilege, not a right has inevitably affected the conduct of voter registration, and has led to the retention of practices that make registration less, rather than more, accessible in most covered jurisdic-

[1] Penn Kimball, *The Disconnected*, 1972.

tions. For example, many counties have only one permanent registration place, located in the town hall or county courthouse, and persons in rural areas, or those who work or lack transportation, are often inconvenienced. The Mississippi League reports that:

"Current registration laws in Mississippi impose a hardship on blacks and poor people. Getting to the city hall or the county courthouse during regular working hours makes it difficult for working people and persons dependent on others for transportation to register. Also, these locations are intimidating because they are symbols of white domination and white control."

According to the Charlottesville-Albemarle County, VA LWV: "The principal barrier [to minority registration] is the law which requires citizens to appear in person to register. Minority and low income citizens often are employed in jobs where absenting themselves to register would endanger their jobs."

Furthermore, registration times, places and headlines may only be publicized through a small legal notice in the local newspaper, or in a few libraries—usually not in minority neighborhoods. According to the Alexandria, Virginia League of Women Voters:

"* * * not everyone subscribes to the local newspaper or goes to two particular libraries. Community groups must take it upon themselves to produce and/or distribute their own materials and do their own voter outreach."

These community groups, however, get little indication that official voter registrars can or want to work with community groups to make voter registration uniformly available.

The efforts of minority community groups to service the minority community with registration drives and voter information are frequently obstructed of hampered by the negative attitudes they encounter when they request assistance or authorization from election officials. The Goldsboro-Wayne County, North Carolina League of Women Voters explains:

"An attitudinal problem exists. Last year, the Wayne Citizens for Minority Affairs wanted to hold registration drives throughout the county at various intervals. Upon discussion with the Board of Elections chairman, the election supervisor commented 'the League (LWV) knows what they are doing, we have no problems with them. Your people make so many errors. Why don't you just let the League hold the drives?' The lack of respect and overall cooperation is evident to minority groups."

In New York City, minority groups who request quantities of the voter registration forms for a planned registration drive report that the Board of Elections is unwilling to cooperate with them or comply with their request, yet a telephone call from the League of Women Voters of New York City usually suffices to obtain the forms.

The presistence of these discriminatory attitudes has led local Leagues in covered jurisdictions to the conclusion that their areas are still unwilling to recognize or accept the concept of full and equal minority political participation. We believe that until these jurisdictions recognize that voting is a right, not a privilege, and until they can prove that their aim is to encourage, not frustrate minority exercise of the franchise, then it is imperative that the effective preventative mechanisms in Sections 4 and 5 be renewed.

This discriminatory attitude sets the stage for the disparaging treatment minority registrants often receive, and for the pervasive use of tactics and practices that serve to discourage minorities from even attempting to register. Harassment is subtle, but can nonetheless be as effective in inhibiting minority registration as the terror tactics and reprisals of old. The Goldsboro-Wayne County, North Carolina League of Women Voters testifies to the psychological pressures that minority registrants are frequently confronted with:

"* * * Persons in low income projects are fearful of registering to vote because they feel information obtained will be given to the Housing Authority and the Department of Social Services. This is an imbedded fear * * *. Many rural persons are told by their employer or landlord when to register and who to vote for."

The often inadequate training given to voter registrars has result of reinforcing uncooperative or discriminatory attitudes, and contributes to the frequency of irregularities and "errors" in the administration of registration and voting—particularly in heavily minority precincts or districts. One such incident was reported to us by the Edinburg-McAllen, Texas League of Women Voters:

"In north Mission [Texas], the business manager of the school district ordered only one [voting] machine, even though the turnout was predicted to be high. That machine was filled up by 3:30 p.m. For about 45 minutes, until another machine was brought in, voters were not able to vote in the school election. The election judge for the school told me all the trouble started last year when 'those Mexicans

started to vote.' Too many election judges and clerks are untrained and racist; they are not cooperative; in some cases they don't know enough about Spanish pronunciation and spelling to find names of minority people on the registration lists. Training sessions are not mandatory and are pretty much of a joke anyway."

According to ther Goldsboro-Wayne County, North Carolina League: "Two years ago when black commissioners were appointed by the Wayne County Board of Elections, the Board of Elections supervisor would not provide them with adequate training. As they began to work, there were areas they did not understand. One commissioner, Mr. William, was repeatedly harassed by the supervisor * * *."

Local election officials are generally given broad discretionary powers to implement state law. This discretion was ostensibly provided so that local election administrators would have the margin of flexibility they need to assure the access of all citizens to vote under the varying social, economic and geographic conditions that exist within each state. However, this discretion is often exercised in a manner that impedes rather than enhances a citizen's right to vote.

Registration officials are rarely willing to use their power and authority to take steps that might increase minority registration and political participation, or that would make the registration process easier or more accessible for minorities. The use of volunteer deputy registrars to conduct voter registration is a common example of a statutory power that, even when expressly authorized by state law, is rarely execised on the local level. For example, the Georgia state code permits local election boards to appoint volunteer deputy registrars. Yet, according to the Griffin-Spalding GA League of Women Voters, the current registrar of voters in Spalding County has chosen to interpret the state law as not permitting voter registration to be conducted outside of one permanent registration office. The Griffin-Spalding League feels that registrar's unwillingness to make use of such procedures as deputy registration, or to institute Saturday or evening hours for registration, or set up satellite registration sites in more convenient locations, has inhibited minority registration in that community.

The Virginia election code stipulates that "no registrar shall actively solicit any application for registration or any application for ballot." This rule is frequently cited by local voter registrars as the reason they are unable to comply with requests for more and convenient places for registration, despite another provision of the state code specifying that "The appearance by the general registrar or assistant registrar in public places at preannounced hours shall not be deemed solicitation of registration.[2] According to the Virginia Beach LWV, voter outreach or special efforts to increase registration are rare because of this rule:

"The present interpretation of the no soliciting rule * * * allows registrars to run their offices under the narrowest definition of service to the public."

Furthermore, deputy registrars in Virginia Beach are almost always merchants, yet the League reports that "there is nothing in their stores to indicate that they can register. A pharmacist once placed a small sign in his window saying 'register here' and it had to be removed—no soliciting!"

Local Leagues report that when election authorities do exercise their option to appoint volunteer deputy registrars, minority registration invariably increases. A large number of the local Leagues surveyed attribute increases in minority registration in their areas to the registration and voter outreach efforts of minority group organizations such as the NAACP. However, many covered jurisdictions fail to make use of the options and resources available to them for increasing minority registration.

Section 5 review is truly the heart of the Voting Rights Act. Enacted in response to the "legislate and litigate"[3] strategy of southern governments, Section 5 was designed to prevent new discriminatory practices from replacing the old ones once they were enjoined by court orders—a common cycle before 1965. The Voting Rights Act's effectiveness lies in the potent combination of remedial measures in Section 2, and the preventative mechanism of Section 5, working in tandem to eliminate longstanding discriminatory election schemes and prevent new ones from taking their place. Without Section 5, attempts to make discriminatory voting changes would go unchallenged, and enforcement of the Voting Rights Act would be a futile expercise.

The League of Women Voters does not believe that Section 5 is an unduly complicated or burdensome process. Section 5 review is a simple administrative procedure, and submissions that are clearly nondiscriminatory are routinely expe-

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[2] Virginia Election Laws, Sections 24.1-46. 24.1-49.

[3] Harvard, The South: A Shifting Perspective in the Changing Politics of the South, 19 (W. Harvard, ed. 1972).

dited by the Department of Justice, rarely requiring more than 60 days. Furthermore, the Department of Justice's guidelines for the administration of Section 5 contain provisions for providing expedited consideration of a proposed change if the submitting authority finds it necessary to implement a change within the 60 day review period. Without Section 5, the only recourse to minorities to enjoin discriminatory election practices and eliminate barriers to registration and voting would be case-by-case litigation, whose tediousness and financially draining nature have been well documented. Surely it is simpler to eliminate discriminatory laws and practices before rather than after they are put into effect.

The Supreme Court has upheld the constitutionality of Section 5 in numerous court challenges, most notably in *Allen* v. *State Board of Elections* [393 U.S. 544,567 (1969)]. In that ruling, the Supreme Court recognized that even minor changes in election procedure, such as changes of polling places, can, in fact, be used to perpetuate discrimination and should be subjected to Section 5 scrutiny. To those who encounter it, after all, it is the fact of discrimination that is important, and not how purposefully or innocently it came about. The Edinburg-McAllen, Texas League of Women Voters attests to the ease with which such seemingly minor changes can frustrate citizen exercise of the right to vote:

"The most obvious change that the Voting Rights Act has brought about is that the practice of changing polling places at whim has stopped; it used to be 'great fun' every election day to try to find out where you were supposed to vote this time."

Such practices impose a particular hardship on minority voters, who may not have access to the communication channels by which other voters are informed of changes, or who may experience greater difficulty getting from one location to another.

Section 5 also provides an important vehicle for interested citizens to have input into the Department of Justice's decision on proposed voting changes. There is no belief more central to the League's raison d'etre than the belief that informed citizen participation is essential to the healthy working of democracy. Citizens and community organizations are often able to recognize problems in election procedures that officials tend to overlook or deny. We know that citizen input, while rarely sought by local officials, can provide valuable insights into proposals for changing the electon system. Section 5 regulations require that the Department of Justice maintain a registry of interested citizens and minority group organizations who wish to be notified when a voting change is submitted for preclearance. This gives citizens a rare opportunity to share information about the effect a proposed change will have on minority political participation—information that the Department of Justice may have no other way of obtaining.

That Section 5 has accomplished its purpose, and that states should not continue to be "punished" for the transgressions of old is another argument that does not hold water. Section 5 is the bulwark against harmful changes in registration or election procedures, and the important role it has played in combatting voting discrimination in recent years cannot be overstated. Texas, on record as denying the existence of "any significant racially motivated impediment to voting," has sustained more Department of Justice objections to proposed voting changes in five years, than any other state has in sixteen. As long as minority voting rights continue to be denied in any way, the offense to state sensibilities caused by the requirement of preclearance is a poor excuse for allowing the Act's special provisions to expire.

The fact that Section 5 continues to serve a positive function in protecting minority voting rights is illustrated by recent events in DeKalb County, Georgia. During the 1980 election year, the DeKalb County Board of Elections abruptly discontinued its practice of authorizing the League of Women Voters and other civic groups to register voters in such places as supermarkets and libraries. In response to this change in policy, the DeKalb County League of Women Voters and the DeKalb County chapter of the NAACP filed law suits asserting that the board acted illegally by not submitting the policy change to the Justice Department for Section 5 review.

Members of the DeKalb County Board of Elections justified this change in policy by citing the low voter turnout in DeKalb County as an indication that increased emphasis should be placed on voter education rather than voter registration. Yet according to the DeKalb County LWV, this policy change had the effect of making voter registration less accessible, particularly to minority citizens, who had been registered in significant numbers as a result of these drives. (Although blacks make up 27.1 percent of the population in DeKalb County, they are only 16.6 percent of the registered voters.) In a newspaper editorial, the DeKalb LWV explained:

We see registration by civic organizations as filling a need in the community. We register voters on evenings and Saturdays when many other registration places are

closed. At no extra cost to taxpayers, we serve people whose work schedules prevent their registering at established registration sites. In fact, 1,302 DeKalb citizens were registered by League volunteers at the four major DeKalb shopping sites on Saturday, February 2. By comparison, during the entire month of January, only 2,700 citizens were registered at the 115 established county sites."

In June of 1980, a federal court agreed with the League and the NAACP. The Department of Justice subsequently rejected the proposed change and the Board of Elections rescinded the policy.

The DeKalb County story illustrates our major point, which bears repeating: even in the area of voter registration, where we all admit the greatest progress has been made, it is Section 5 which protects and preserves those gains. Without Section 5, to continue to register voters in DeKalb County, the League and the NAACP would have had the burden of proving the discriminatory nature of the change. Although this particular League may have been able to sustain the expenditure of time and money to pursue the matter to its conclusion, I can safely say that many Leagues would not have been able to do so. Without Section 5, then, this change and probably an undocumented number of other subtly discriminatory changes in election policy, practice and procedure would go into effect virtually unobstructed.

Merely the existence of Section 5 has deterred covered jurisdictions from making changes in election procedures that they know the Department of Justice will find objectionable. In the words of the Brazos County, Texas League: "The Voting Rights Act is like Big Brother; election officials don't like him, but they're not going to cross him either."

The Charlottesville-Albemarle County, Virginia League of Women Voters feels that Section 5 preclearance has protected minority voting rights by "* * * ruling out, in advance, possible actions which might have limited minority political participation. One gets the impression (although this would be difficult to prove) that some actions are not proposed because of the Voting Rights Act and that others would not be taken without it."

We believe that the remarkable success of the Voting Rights Act in increasing minority registration and removing many of the barriers to minority political participation is the best argument for retaining the act's highly effective enforcement mechanisms for another ten years. Although the statistics show progress, they also show that there is still a long way to go before all traces of the discriminatory systems of the past are erased. Even with the outer door to political participation unlocked, the doors to elective office and political power, for example, have proven to be difficult ones for minorities to push open. And if increased registration rates are to be meaningful, they must go hand in hand with increased participation in all facets of American political life.

Discriminatory attitudes and practices in the administration of voter registration, when combined with the use of election schemes that have the effect of diluting minority voting strength or that make it difficult for minorities to elect public officials who will represent their concerns, will inevitably result in decreased minority voting participation. For many minorities, registering to vote is not worth the effort when it does not result in increased minority representation or access to the political system. The converse is also true. For example, the Tupelo, Mississippi League of Women Voters attributes the increase in minority registration in their city to the change of the election system for the city Board of Aldermen from at-large elections to wards. According to the President of the Tupelo League: "Most of the blacks [in Tupelo] live in one section of the town, and with ward elections they can, and did, elect a black citizen to the board."

Unfortunately, such voluntary changes in election procedures that result in increased minority representation and political participation are the exception rather than the rule. According to a report issued by the Lawyers' Committee for Civil Rights Under Law,[4] thirteen counties in Mississippi have attempted to switch to at-large elections for members of the county boards of supervisors, and 22 counties have attempted to switch to at-large elections for county school board members with the purpose or effect of preventing the election of blacks. Efforts to implement these changes persisted as late as 1977, but were blocked by Section 5 objections and court challenges. Without the protections afforded by Section 5, many—if not most—of these switches to at-large voting would be in effect today.

Even with Section 5, the only way for minorities—or the Justice Department—to challenge discriminatory practices that were in place before the Voting Rights Act was adopted is through case-by-case litigation. And last year, even this type of

[4] Frank Parker, "Voting in Mississippi: A Right Still Denied." Lawyers' Committee for Civil Rights Under Law, April 1981.

remedy was suddenly undermined by the Supreme Court's decision in *City of Mobile* v. *Bolden,* which contradicted precedents set in the early 1970's for proving voting discrimination. In order to preserve the ability of minorities to challenge longstanding as well as proposed voting changes under the Voting Rights Act, we support the proposal to add language to Section 2 of the law prohibiting practices that "result in the denial or abridgement of voting rights." It is hoped that this key change will firmly establish that both intent and effect are legitimate grounds for overturning old forms of discrimination as well as preventing new ones.

I think that it's important to note that while voter turnout and voter registration rates for the nation have steadily declined, the South is the only region in the country that could boast of increased voter registration rates. This positive example must be nurtured and protected. However, lasting gains will not be achieved until the climate in this country is one that actively seeks to ensure full and equal minority political participation at all levels of government. At a time when many covered jurisdictions are still marked by racially polarized voting patterns, unequal and inconvenient registration opportunities, and persistent attempts by state and local officials to make discriminatory changes in voting and election procedures, there is little evidence that covered jurisdictions are ready to accept full minority political participation without the effective protections of the Act's special provisions.

The League reaffirms its strong support for the 1975 expansion of the Voting Rights Act to protect the voting rights of Hispanic Americans and other language minorities. We believe that the bilingual election provisions have played an important role in increasing the voter participation and representation of language minorities. The best justification for extending these crucial protections for non-English speaking citizens can be found in the 1975 law itself:

"The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal eductional opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the U.S. Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices."

There is little doubt in the minds of our membership in covered jurisdictions that repeal of the bilingual election provisions would effectively deny non-English speaking Americans any voice in the political decision-making process in their communities. Compliance with these requirements, however, has been half-hearted, and language minorities are often frustrated by some of same discriminatory attitudes and practices that discourage minority registration in areas covered by the original trigger of the Voting Rights Act.

The League believes that great strides in increased language minority political participation have been made in the six short years since the bilingual election provisions were added to the Voting Rights Act. That is not to say that the process is not in need of refinement. Local election officials need to be educated on how to more effectively target bilingual services to voters in order to reach those who are most in need of them. The series prepared by the Federal Election Commission Clearinghouse on Election Administration on bilingual election services is a step in the right direction. But most importantly, we urge this Subcommittee to reaffirm its original commitment to the voting rights of minority language Americans by extending the bilingual election provisions.

The Voting Rights Act has been of great symbolic importance to the nation as a statement of national commitment to equal access of all to the ballot. Many Leagues believe that their area's coverage under the Act's special provisions has made public officials more accepting and sensitive to the needs of the minority community. The Voting Rights Act has created a climate of awareness in covered jurisdictions that has made minority citizens more conscious of their right to participate fully in their communities' political decision-making process, and has made election officials wary of abridging that right. In the words of the League of Women Voters of Norfolk-Virginia Beach, Virginia:

"Longtime residents of both our cities (Norfolk and Virginia Beach) tell wondrous tales of discrimination: 'white paper' registrations where the applicant was handed a piece of blank paper and asked to interpret a section of the Constitution. Others tell of having to produce their poll tax receipts. We have not progressed very far from

that sort of mind-set when so many employees of the registrar still argue that 'registration should be made hard so they appreciate the right.' The Voting Rights Act has made many people aware that voting is an inalienable right that cannot be denied. Without the Voting Rights Act hanging over Virginia, any gains made would quite dissolve."

I wish to again thank this Subcommittee for this opportunity to present the views of our members on extension of the Voting Rights Act. I know that all of us in this room share a deep and abiding commitment to the preservation and protection of our constitutionally guaranteed right to vote. We look forward to working together with you to ensure that the process is meaningful to all American voters.

STATEMENT OF REV. JESSE L. JACKSON

Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is Jesse Louis Jackson, I am President of Operation PUSH, a Chicago-based human rights organization dedicated to the goals of freedom and justice for all people throughout the world. Accompanying me today are Lamond Godwin, who is a special advisor to me; Les McLemore, Professor of Political Science at Jackson State College in Mississippi; and John Harper, an attorney from Columbia, South Carolina, who is a Voting Rights Act litigation specialist.

I am here today to inform you of my unequivocal support of the Voting Rights Act which is, unquestionably, the most effective civil rights law ever enacted by the Congress in the entire history of this nation.

This law, which should never have been needed in a democratic society in the first place—was enacted in 1965 and extended in 1970 and 1975, because 100 years of litigation under the 14th and 15th Amendments and other so-called civil rights laws proved to be useless in combatting blatant racist tyranny against blacks and other racial minorities, especially in the Southern states. The Voting Rights Act is the only piece of national legislation that has succeeded in transforming the vague guarantees provided to blacks, other monority groups, and poor whites under the Constitution from hollow half-hearted promises into legally enforceable rights. Moreover, one of the most important—but least appreciated—accomplishments of the Voting Rights Act is the fact that by striking down literacy tests and other undemocratic voting restrictions, this law has liberated and enfranchised millions of poor whites.

Because of this law, the number of blacks registered to vote in South Carolina, Alabama, Mississippi, Louisiana, Georgia, Virginia, and parts of North Carolina has doubled since 1965; Hispanic registration has increasee by 30 percent nationwide and by 44 percent in the Southwest. Thousands of black and Hispanic men and women have been elected to public office; and the U.S. Department of Justice has developed special expertise in fighting racial discrimination in voting that is otherwise would not have. This vital piece of legislation places the full force and power of the Federal Government on the side of those millions of citizens who have been systematically denied the right to vote, or had that right compromised.

Unless the Congress takes action to preserve the Voting Rights Act, its key provisions—especially Section 5 which is the heart of this law—will expire after August 6, 1982. I am here today to urge that you not only extend these provisions but also that you strengthen the voting rights Act to combat new forms of denials and to correct a misinterpretation of the Act resulting from the recent Supreme Court decision inthe *City of Mobile* v. *Bolden* case. I therefore endorse H.R. 3112, introduced by Congressman Rodino and S. 895 co-sponsored by Senators Mathias and Kennedy. These identical legislative initiatives would:

(1) Provide for a 10-year extension of Section 5 which requires that certain state and local governments demonstrate to the U.S. Department of Justice, prior to their implementation, that new changes in voting or election procedures will not discriminate against blacks and other racial minorities.

(2) Continue the requirement that certain state and local jurisdictions provide assistance in other languages to voters who are not literate or fluent in English.

(3) Amend Section 2 of the Act to clarify the confusion caused by the *Bolden* decision concerning standards of evidence for proof of voting discrimination.

We must not allow this vital legislation to expire because, despite the progress that has been achieved, there are still large concentrations of unregistered black and brown voters in the South and Southwest. I tell you that black and Hispanic people are still being denied the right to vote in the jurisdictions covered by the Voting Rights Act. Although we may have moved from blatant tyranny and terror to equal protection under the law, we have a long way to go to achieve equal protection within the law, because new and subtle forms of denial have replaced the literacy test and the poll tax. For example: Discriminatory annexation schemes are a

new form of denial; The use of inconvenient registration times and polling places is new forms of denial; Shifting from district or ward elections to at-large elections is a new form of denial; Prohibition of single-shot voting is a new form of denial; and Racial gerrymandering of district lines is a new form of denial.

Although we changed the law, we simply moved from blatant tyranny to surreptitious tyranny in many of the jurisdictions covered by the Voting Rights Act because we left the foxes in charge of the hen house. We have abundant evidence to substantiate the continuing denial of the voting rights of black citizens in the South. Edgefield County, South Carolina, the home of Strom Thurmond, Chairman of the Senate Judiciary Committee, is a notorious example of this. One year after the Voting Rights law was enacted, the Edgefield County government was illegally restructured in flagrant violation of Section 5.

On two separate occasions, once in 1966 and again in 1976, changes in the county's political system were made without pre-clearance from the Department of Justice, as is required by the Voting Rights Act. I am telling you that the Edgefield County Government broke the law and the Federal Government has done nothing about it. The Justice Department was not even aware that these violations had occurred until black citizens filed complaints, because the Federal Government's monitoring procedures are inadequate. And when the complaints were filed, they were ignored. At this very moment, Edgefield County is in violation of the law!

I challenge this subcommittee to go with me to Edgefield County to investigate these violations. You need to hear testimony directly from the people who have been victimized. You need to learn first-hand why no black person has been elected to county office in Edgefield in this century, even though the population of this county was 70 percent black in 1970 and is roughly 50 percent black today. Many black people in Edgefield County believe that certain members of the Congress are more interested in placating the Chairman of the Senate Judiciary Committee, than in protecting their civil rights.

I challenge you to examine first-hand the violations of the Voting Rights Act in Senator Thurmond's home town.

Jackson, Mississippi provides evidence of another form of denial. The City of Jackson annexed white areas in a clear effort to dilute the black vote. The Department of Justice registered an objection under Section 5 in 1976. The city refused to honor the objection, continued to allow residents of the illegally annexed areas to vote, and the Justice Department has taken no action to enforce the law. Section 12 of the Voting Rights Act prescribes penalties for such violations; the Justice Department has never invoked them. Next month, a black person running for mayor of Jackson is likely to lose the election because the Justice Department has failed to invoke the remedies available under the Voting Rights Act. I urge you to inquire about the Justice Department's inaction, and I challenge you to go with me to Jackson to see the effect of this new form of denial.

The State of Mississippi also provides evidence of another form of denial—racial gerrymandering. Historically, Congressional districts in Mississippi have run from North to South.

But in 1966, one year after the passage of the Voting Rights Act, Mississippi restructured its Congressional districts so that they now run from East to West, a deliberate and successful effort to dilute the voting strength of blacks who are concentrated in the Delta region.

Throughout the South, the powers that congrol state and local governments have made it as difficult as possible for blacks to register to vote. Again in Mississippi, for example, you have to register twice—once with the county clerk to vote in state and county elections, and then with the city clerk for city elections. You have to register twice for three different types of elections. If you live in northern Sunflower County, Mississippi, you have to drive 50 miles to the county seat in Indianola to register for state and county elections. Then you have to drive 50 miles back to your home town to register for city elections. And you have to register for the county elections first! How would you feel it you had to travel 100 miles round trip to register to vote? And, I should add, you have to register between 9 a.m. and 5 p.m. on weekdays!

Mr. Chairman, I would also like to introduce for the record a series of articles that appeared recently in the Atlanta Constitution. The articles which are entitled, "Voting: A Right Still Denied", document that discrimination against blacks in the electoral process is also widespread in rural Georgia.

In sum, the Voting Rights Act legislated blacks into the political process, but new forms of denial at the state and local levels have regulated blacks out of the political process.

We are on the verge of nationwide redistricting following the 1980 census. Without the protections provided by the Voting Rights Act and major improvements in

enforcement, the political gains achieved by blacks and Hispanics over the past 15 years can be wiped out in a matter of months.

It is painfully clear to those of us who literally put our lives on the line to secure enactment of the Voting Rights Act, that there are forces in this land who want to turn back the clock—to weaken or destroy this legislation as a first step toward the re-disenfranchisement of black and Hispanic people. We are aware that some Members of this Congress are attempting to weaken this law in order to work out a compromise between those who support its extension and those who would allow it to die.

The proposed Hyde Amendments, for example, would repeal Section 5 and put in its place the same litigation strategy that proved so inadequate and discouraging before the enactment of the Voting Rights Act. Regardless of the intent of these amendments, their effects would be disastrous. I therefore oppose the Hyde Amendments. In my view, the right to vote is the very essence of citizenship, and therefore is non-negotiable. Members of Congress may compromise on budgets and on tax policies and on other pieces of legislation. But the right to vote is too precious and too fundamental to be compromised.

In answer to those who argue that the racism that justified the Voting Rights Act no longer exists, let me remind you that we are experiencing a frightening revival of racial polarization and violence. The Ku Klux Klan is more active today than at any period since the passage of the Voting Rights Act, and has established a paramilitary training camp near Birmingham, Alabama. Just last month, a 19-year-old black youth was lynched in Mobile!

The current mood in the nation is such that poor people in general and minority groups in particular are increasingly being blamed for the country's economic problems. Affirmative action programs are being dismantled, funds for black colleges are being drastically reduced, programs to help the poor are being abolished. The President and other members of the current Administration have re-invoked the old "states' rights" code word, which for us has always meant states' wrongs. The Supreme Court which is the guardian of our constitutional rights, has dealt a severe blow to the struggle for political equality by confusing the very meaning of discrimination and by establishing unrealistic standards for proof of its existence. The Court's decision in the *Bolden* case actually encourages the abridgment of voting rights, so long as politicians conceal their racist intent.

It is in this environment that you deliberate the fate of the Voting Rights Act, the only effective protection of the political rights of black, Hispanic and other disadvantaged people. Passage of the Rodino bill will help to ensure a federal presence in the South and in other areas where voting rights are threatened. Failure to pass it will send a clear message of encouragement to the racists who are already armed to deprive blacks of their basic rights.

In conclusion, let me say that we not only need to extend the Voting Rights Act and improve its enforcement, we also need new legislation and programs to make the Federal Government as aggressive in getting people registered to vote, as it is in getting people to pay taxes or register for the draft. If taxation without representation is tyranny, then aggressive collection of taxes and passive registration of voters is surreptitious tyranny.

Each year Operation PUSH conducts special voter registration drives for young people in Chicago. We have declared the month of May our National Citizenship Education Month. Last year we registered 10,000 high school seniors and other young people in Chicago. This year we plan to register 20,000 to 25,000 young people. Our goal is to ensure that when a student graduates from high school, he should march across the stage and get a diploma in one hand and a voter registration card in the other—knowledge in one hand, power and responsibility in the other.

I hope that at some future time I will be able to discuss this in greater detail with this subcommittee.

Mr. Chairman, this concludes my formal statement.

STATEMENT OF DANIEL R. MCLEOD, ATTORNEY GENERAL, STATE OF SOUTH CAROLINA

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 United States Supreme Court entitled *South Carolina* v. *Ketzenbeck* 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. 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 have in the sixteen (16) years of the coverage of the Act, been very few complaints regarding voting rights problems made to my Office.

The Voting Rights Act has had a profound effect on South Carolina in terms of numbers of peopole 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 for election frauds bear this out.

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 person will attempt to tamper with their or any other person's right to vote.

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 orgnization to bring each state of the Union under the coverage of the Act.

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. 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 the 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 United States 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.

Testimony of Herman Lodge

I am Herman Lodge, a life long resident of Waynesboro, Burke County, Georgia. During my life time I have only left Burke County to serve in the military during the Korean War and to attend college. Burke County is geographically the second largest County in Georgia, but more importantly, it is among the poorest in the state. It also has one of the highest Black populations in the state, the worst housing stock, and formally had the highest infant mortality rate in Georgia.

For many years as a community leader, I petitioned, without success, county and city government to address the problems of the Black community. Only since the passage of the Voting Rights Act of 1965, have people began to register but Blacks

still have no influence in county government. Every single gain we have made has either been the result of litigation or non-violent protests such as boycotts and marches. The power of our ballots is only now beginning to be felt in city elections.

The Fifth Circuit Court of Appeals wrote on March 20, 1981 that:

"The county commissioners, acting in their official capacity have demonstrated such insensitivity to the legitimate rights of the county's Black residents that it can only be explained as a conscious and willful effort on their part to maintain the invidious vestiges of discrimination." 639 F.2d. 1358 and 1377

After reviewing evidence on street paving, the Fifth Circuit observed:

"Our review of the evidence in this case leads us to the conclusion that these patent examples of discriminatory treatment by Burke's County Commission typify the treatment received by Blacks in Burke County in every interaction they have with the White controlled bureaucracy." 639 F.2d at 1377 at note 37

Before the passage of the Voting Rights Act, Black registration was virtually non-existent, now it is 38 percent. 639 F.2d. at 1377-8

The reality is that everything and nothing has changed in Burke County. In a desperate attempt to defend a lawsuit roads have been paved; employment opportunities increased, Black social workers hired; infant and maternal care programs created (with a dramatic drop in the infant mortality rate); all this and much more has changed and will remain changed only so long as the law mandates the change. For this reason the Fifth Circuit held that:

"The vestiges of racism encompass the totality of life in Burke County. The discriminatory acts of public officials enjoy a symbiotic relationship with those of the private sector. The situation is not susceptible to isolated remedy. While this Court is aware of of its inability to alter private conduct, we are equally aware of our duty to prevent public officials from manipulating that conduct within the context of public elections * * *." 637 F.2d at 1381

The Black citizens of Burke County ask the Congress and this Committee to do no more than the Fifth Circuit has done in standing with us for continued progress. Unless the Voting Rights Act is extended and strengthened things will regress to a point at or near where they were in 1965.

I have brought with me a wish to tender to the Committee the final Orders: in *Sapp* v. *Rowland* the law suite which so recently put Blacks on Burke County's Juries; the final order in *Sullivan* v. *DeLoach* the Section 5 law suite which put two Blacks on the Waynesboro City Counsel and the District Court Order, transcript and Fifth Circuit Opionion in *Lodge* v. *Buxton*, the case I have so extensively quoted from. The *Lodge* case is currently on appeal to the United States Supreme Court.

The attitude of the Whites in Burke County was well-described by one nonresident white witness, who testified in the Lodge trial, Ms. Francis Pauley. Ms. Pauley visited Burke County and many other counties in Georgia and throughout the South in her capacity as a civil rights enforcement officer for HEW during school desegregation periods. She also visited the County in her capacity as a member of the Georgia Human Relations Council, an organization set up by Blacks and Whites to facilitate desegregation. She described the attitude of Whites as follows: "It seems to me quite considerable feeling on the part of Whites that they didn't want to meet with the Blacks because they felt they (Whites) would just be in tremendous horror of Blacks coming into power there. That is their fear. The Blacks had a terrific fear of actually being hurt." (T. 115) She also noted the attitude of some Whites, that they "felt that Black people were less than human." (T. 118) In comparing the attitudes of Burke County's Whites to her experiences in other Georgia, Mississippi, and Alabama counties, Ms. Pauley testified: "I never went to a community in Mississippi, even in the Delta area, where I felt there was any greater discrimination, and particularly deep-seated fears, as I felt in Burke County, Georgia." (T. 120)

This is only a fraction of all the testimony which provided a basis for the Judge's ultimate conclusions about Burke County. Witness after witness testified to the continuing absolute separation of the races, the continuing discrimination, and the continuing resistance of Whites to Black progress in Burke County.

Finally, the County Commission claimed that the exclusion of Blacks from the political process is somehow a mere historical accident, and not an obvious and direct product of past and continuing discrimination and purposeful exclusion from the political process. The evidence is to the contrary. Until very recently, voter registration in 800-square-mile Burke County was allowed only at the county courthouse. That practice was changed only after the *Lodge* case was filed, and only at the insistence of Judge Alaimo. The county courthouse, of course, was the very sumbol of white supremacy in Burke County, and it largely retains that character to this day. It is no wonder that Blacks would not often and easily register to vote there, regardless of any other more formal barriers. As defendant Marchman testified, the Burke County courthouse was the scene of at least one lynching. (T. 244-

45) Another witness with vast experience throughout the black community in Burke County testified that fear, a product of past public and private white supremacy, remained in active force in deterring Blacks from registering today. (T. 153, 177) I testified at length that the reason Blacks failed to register was largely fear. (T. 675–76) This is certainly not surprising in light of the Ku Klux Klan activity in the county, as explained by Ms. Lattimore. (T. 156) I also testified about bomb threats, threatening phone calls, and a shooting incident. (T. 672-73, 682) All of these incidents arose out of my civil rights activity and they came well after the enactment of the Voting Rights Act of 1965. Indeed, I was threatened for the very reason that I filed this lawsuit. (T. at id.) This fear, plus the socioeconomic factors that derive from past purposeful discrimination, and the array of other discriminatory factors testified to at length in the case, provide a much different explanation for low black voter registration that the "mere accident of history" explanation urged by the defendants.

If we are to continue to make progress, we must have the Voting Rights Act. I urge you to read the transcript and the Orders in the *Lodge* case especially because they demonstrate beyond any doubt that in Burke County things have not yet really changed. Our progress is dependent on the Act, therefore, I urge you to extend and strengthen it.

PREPARED STATEMENT OF ROBERTO MONDRAGON, LIEUTENANT GOVERNOR OF NEW MEXICO

My name is Roberto Mondragon. I am the Lieutenant Governor of New Mexico. I am honored to have been asked to testify before this subcommittee on the Voting Rights Act. I am confident that the many complex issues surrounding this vitally important legislation will be addressed and considered by you in the weeks and months to come.

There is no issue more important to the Hispanic community than the extension of the Voting Rights Act. We fully support the continuation of bilingual elections, the continuation of Section 5 pre-clearance for all of those areas currently covered, and an amendment to Section 2 which would clarify standards of evidence in voting discrimination challenges. Without these protections, Hispanics throughout the country, from New York to California and from Florida to New Mexico, would be deprived of the most basic right of our democracy, the right to vote.

Spanish-speaking U.S. citizens in New Mexico have always had bilingual ballots and bilingual assistance at the polls. As a state we have always tried to accept rather than to deny the linguistic and cultural differences amongst our diverse populations. Many of New Mexico's minorities are descendants of Spanish settlers who came to Santa Fe in 1609 when New Mexico was a part of Mexico. Many other of our minority citizens are Indians who settled in New Mexico long before the Spanish did.

The history of New Mexico is in many respects the history of the Southwest. The land was settled by Indians and Spaniards and ceded to the U.S. by Mexico for $15 million in the 1848 treaty of Guadalupe-Hidalgo. Article IX of the Treaty guaranteed to Mexican-origin people "the enjoyment of all the rights of the citizens of the United States according to the principles of the Constitution * * * free enjoyment of their liberty and property, and free exercise of their religion without restrictions."

The Treaty of Guadalupe-Hidalgo was ignored in most parts of the Southwest. Legislative, financial and other maneuvers were used to deprive Mexicans of their ranches and farms. In New Mexico, heavy taxes were placed on land. Many Mexicans lacked the money to pay and sold their land to Anglos at auction. Soon after, the high tax levies were abolished. In some areas, Mexicans were suddenly required to register their land. This fact was not publicized and many failed to meet the deadline and lost vast estates.

The newly-American Mexicans were not familiar with United States politics and politicians did nothing to educate them. A small group of Anglos who arrived in El Paso, Texas after the 1848 war, immediately took control of local politics. They "managed" the Mexican vote through agents who were rewarded by patronage. By 1870, El Paso had 12,000 inhabitants. Only 80 of them were Anglos, yet most of the elected offices and the county's wealth were controlled by Anglo-Americans.

In California, Mexican-origin people were crowded out of the State Legislature until, by the 1880's no Spanish-surnamed people could be found in public office. As early as 1856, Democratic party bosses called a special convention in Los Angeles to consider splitting the county in two to increase Anglos' political influence. It was the beginning of gerrymandering against Mexican Americans which still limits our political voice in many parts of the Southwest.

Unlike many of these areas, New Mexico has a long, rich tradition of political participation by our state's Hispanics. Our state constitution, written in 1910, required that all government documents be written in Spanish as well as English for at least twenty years. Unlike any other state in the Southwest, New Mexico has throughout most of our history conducted elections bilingually and, in many areas, tri-lingually, for our American Indian populations. We have always had assistance at the polls for voters who do not speak English.

Many Members of Congress have expressed grave doubts about the need for bilingual elections. I am sure you are familiar with the arguments espoused by those who would like to eliminate bilingual elections. They contend that bilingual elections should not be conducted in a country whose official language is English. They contend that bilingual elections promote cultural separatism, that it is only a matter of time before the United States will find itself with another Quebec. They contend that bilingual elections "cost too much money."

As an official elected statewide from New Mexico, a state which has conducted bilingual elections since our statehood in 1912, I can assure you that each one of these contentions is without foundation. I would like first to address the concern raised that bilingual elections will promote cultural separatism, that if citizens vote in a language they understand, they will never become integrated into the political process. New Mexico has a Hispanic population of 36.6 percent and a long tradition of political participation by Hispanics. Today in New Mexico, there are ten statewide elected positions, including governor lieutenant governor, attorney general and secretary of state. Hispanics hold 40 percent of these statewide offices. We are the only state in the country where Hispanics hold statewide offices. We are the only state in the country in which Hispanics account for 35 percent of our state senators and 28 percent of our state representatives. We are the only state in the country where Hispanics make up 32 percent of all school board members and 30 percent of all county commissioners. We are also the only state in the country which conducted bilingual elections prior to 1975, when the Voting Rights Act required them throughout Texas, Arizona and in over 200 counties around the country.

I am proud to represent a state whose tradition of bilingual elections has guaranteed access to the political process at all levels of government to all of its citizens. It is my hope that New Mexico's acceptance of all of its cultures and languages will serve as a show piece for the rest of the nation at a time when it seems to be fashionable to blame Hispanics, Indians and Asians and other people who "look foreign" for the ills of our society.

The other Southwestern states have a long way to go before they demonstrate that the Voting Rights Act is no longer necessary. California, where Hispanics account for about 20 percent of the state's population, have only 6 Chicano state legislators. Los Angeles County, whose Hispanic population is 27 percent, does not have a single Mexican American on its city council. Hispanics make up about 50 percent of all grade school children in Los Angeles, yet there is not a single Mexican American on the school board. Examples of this kind can be found throughout the Southwest. In many areas, the Voting Rights Act has begun the long, slow process of reversing this century-old practice of excluding millions of citizens from the political process.

I understand that the cost of bilingual elections is another issue of concern to members of Congress. As you know, hostility to the cost of bilingual elections has come almost exclusively from California where the costs of all elections are extremely high because of the vast amounts of printed materials produced for all elections. In my state, the cost of bilingual elections has never been an issue. As required by the federal Voting Rights Act, each county is responsible for implementing bilingual elections. In most states in the Southwest, that means that individual counties also are responsible for funding their bilingual elections. In New Mexico, the state has assumed some of the costs for bilingual elections. The state pays for local election supplies. In 1980, the New Mexico state legislature appropriated $250,000 to provide bilingual elections in my state. Of that, $150,000 was appropriated for the primary election and $100,000 for the general election. I am proud that elected officials in my state regard bilingual elections as a fundamental right and that they are willing to appropriate special funds to ensure that right. I know of no other state in the Southwest which has made a similar financial commitment to its non-English speaking citizens.

The state of New Mexico is unique in yet another respect. It is the only Southwest state in which counties covered under Section 5 of the Voting Rights Act have successfully bailed out of Section 5 pre-clearance. In 1975, three counties in New Mexico, Curry, McKinley and Otero, became covered under Section 5 pre-clearance. In late 1975, we were able to demonstrate to the satisfaction of the U.S. Department

of Justice that "tests or devices", as defined in the Voting Rights Act, had not been used for the purpose or with the effect of denying citizens the right to vote. Because of this bail out suit, none of our counties is required to submit election changes to the Department of Justice.

I do not mean to suggest here that New Mexico is completely free from discrimination in voting. But I am pleased to say that voting discrimination against Hispanics in my state is the exception rather than the rule. In the remainder of the Southwest it is still the rule. It is for this reason that the Voting Rights Act continues to be necessary.

Thank you.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

State of New Mexico, Curry, McKinley and Otero Counties, plaintiffs, v. United States of America, Defendant. Civil Action No. 76-0067, filed July 30, 1976, James F. Davey, Clerk.

JUDGMENT

Plaintiffs having filed their complaint demanding declaratory relief as appears more fully in the complaint in the above-styled case and prayer for relief therein, and the Attorney General of the United States having determined that he has no reason to believe that any test or device has been used during the ten years preceding the filing of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees set forth in 42 U.S.C. § 1973b(f)(2), and the Plaintiffs and Defendant having agreed upon a basis for the adjudgment of the matters alleged in the Complaint and entry of a judgment in this action, and having entered into a stipulation, original of which is being filed with the Court, and due deliberation being had thereon, now, on Motion of counsel for the Plaintiffs, it is

Ordered, adjudged and decreed, that final judgment in favor of the Plaintiffs is hereby granted and ordered entered as a judgment in this action as follows:

1. No test or device has been used in Curry, Otero, or McKinley Counties during the ten years preceding the filing of this action for the purpose of or 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 42 U.S.C. § 1973b(f)(2).

2. No court has entered a final judgment during the ten years preceding the filing of this action declaring that Curry, Otero or McKinley Counties have used a test or device to deny or abridge the right to vote on account of race or color in contravention of the guarantees set forth in 42 U.S.C. § 1973b(f)(2).

3. The application of the provisions of 42 U.S.C. § 1973b to the Plaintiffs in this cause is hereby enjoined.

4. This Court shall retain jurisdiction of this action for five years after the date of this judgment and shall reopen the action should there be made during that period of time a motion by the Attorney General of the United States alleging that a test or device has been used in or by the Plaintiff counties, for the purpose or with the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees set forth in 42 U.S.C. § 1973b(f)(2).

Dated July 30, 1976.

———— ————,
U.S. District Judge.

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STATEMENT OF A. C. SUTTON, PRESIDENT, TEXAS STATE CONFERENCE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the subcommittee, my name is A. C. Sutton; I am the president of the Texas State Conference of Branches of the National Association for the Advancement of Colored People.

The conference is appreciative that the committee is holding these hearings in Austin, Texas, the capital of our state on the extension of the voting rights act. We strongly support HB 3112 the Rodino bi'l 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 was already made in the spring or summer with a poll-tax fee for the privilege along with the restrictions as in other southern states.

Although the law has been changed, the attitude of the controlling element remains the same, thus they continue to devise systems and procedures to make voting as difficult as possible. The like of moving polling places just prior to elections, as far as possible from the blacks and other minorities, at large elections,

hard to get to locations to vote, harassment of voters, harassment of minority candidates, or poll watchers, holding precinct conventions or meetings at hours when it is difficult for blacks to attend and many others. (LTR County Clerk).

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 electoral processes of the state. Much of this presentation will indicate the ratio between Texas and the other seven southern States covered by the act. During my research I found that Texas is the second largest State in the union in size and the third largest in population. according to the census population of 1980. There are 14,228,383 persons in Texas of whom 2,985,643 (21 percent) are Mexican American and 1,710,250 (12 percent) are black. There are more counties in Texas (254) than any other State.

Of the 1,016 county commissioners in Texas only less than 1 percent were black and 54 (513 percent) were Mexican American in 1978. According to the percentage in the State's population there ought to be at least 213 Mexican American, and 122 black county commissioners. Of the 150 State Representatives in Texas only 19 (13.6 percent) are Mexican American and 13 (9 percent) are black. According to their percentage in state population there ought to be at least 32 Mexican American and 18 black State Representatives.

Of 31 State Senators in Texas, only 3 (10 percent) are Mexican American and there are no black. According to their percentage in the States population there ought to be at least 7 Mexican Americans and 4 black Senators. Several of the other seven States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, North Carolina, Virginia have black State Senators, except South Carolina is like Texas with none.

Of the 24 current Congressman from Texas, only 2 (8 percent) are Mexican American and 1 (4 percent) is black. According to their percentage of the States population in regards to the 1980 census when Texas will be allotted 27 congressmen, there ought to be at least 5 Mexican Americans and 3 blacks. (I) there are no congressmen from the other seven southern States nor Mexican American or black U.S. Senators from any of the southern States. (II) which is an indicator of why we need the extension of the VRA. Further there is not a female in Texas either in the Congress or the U.S. Senate since Barbara Jordan stepped down from her congressional seat.

When we take a broader view comparatively speaking Texas ranks seven out of the eight in total number of black elected officials, 196 of the 2,009, with Virginia saving Texas from the bottom with 91. Yet Texas is last in county governing boards with 5, up to fourth in law enforcement officials with 21, up to third in local school board with 77, a tie for third with Alabama with State house seats with 13 (Texas delegation has three women), in other county officers such as clerks or other officers there are reported none in comparison with 27 in Mississippi and only Alabama shows a zero as Texas. In municipal offices Texas ranks seventh with 5, Mississippi again the leader with 17, governing body finds Texas number seven with 68 just above Virginia with 48 but no comparison with Georgia with 139, other elected positions, Texas ranks fifth with 2 and number one with 4 in other officials. I.

But when you look at the over all picture, Texas is last compared with the other seven States relative to black elected officials as percentage of all elected officials with 12.5 using the 1970 census figure. II and VIII.

As Congresswoman Barbara Jordan testified for the extention of the present act "Among all the civil rights legislation enacted in 1960's the voting rights act epitomizes the black struggle for 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 participation by blacks as voters in the political process. But for many the promise is yet unfulfilled. A few electoral victories should not mask reality: The voting rights act may have overcome blatant discriminatory 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 meaningful participation in democratic institutions. Allowing the Voting Rights Act to lapse this year would vitiate the progress made in only four years".

Further excerpt from Ms. Jordan's presentation gives account of political career where in 1962 she ran for the Texas house, Harris County, (Houston) was not divided into single member districts thus she lost. She lost again in 1964 for the same reason. In 1966 the Texas legislature was forced to reapportion itself. In *Reynolds* v. *Sims* the U.S. Supreme Court has applied one man-one vote rule of *Baker* v. *Carr* to State Legislative districts. The reapportionment created a new single member state senatorial district where she lived thus she ran and won. Except for the Supreme Court ruling she perhaps would have run and lost again. The same reapportionment which created single member districts in Harris County

created at large districts in Bexar County (San Antonio) and Dallas County (Dallas) another reapportionment in 1972 kept Bexar and Dallas at large. Had the voting rights act of 1965 applied to Texas, the State would have had to submit the 1966 and 1972 reapportionments to the Attorney General. He probably would have objected. But the Act did not apply to Texas. The Attorney General did not object. It was not until 1973 that the U.S. Supreme Court once again intervened. It held at-large elections in Bexar and Dallas Counties had a discriminatory effect on Blacks and Browns and were thus unconstitutional. The same discriminatory practices which moved the Congress to pass the voting rights act of 1965 and review in 1970 are practiced in Texas today. End of excerpt VI.

From the list of objections pursuant to section 5 of the voting rights act of 1965 it is evident that the act must be extended. Dating back to December 10, 1975, the objection: purge of currently registered voters, there have been filed some 84 case of which 13 have been withdrawn. IV. These objections do not actually reflect the message because many of the blacks in communities of over 20 percent do not know the process of filing of an objection. They feel that after they have appeared before a municipal body requesting districting they have done all that is necessary. Thus the educational process has not taken its effect at this time.

To state more clearly, Texas has 44 counties with 20 percent or more black population, yet there are only 4 on county governing boards, 8 on law enforcement officials, 37 local school boards, on other county positions as of July 1980 and in 20 of the 44 there are no black county elected officials. And as we look at the one county. V. In Texas with 50 percent or more of the population there is only 1 on the county governing board and 2 on the local school board showing a great disparity in the system. VI

Where there has been motivation as in Falls County in central Texas, the population is approximately 39 percent, there is 1 black commissioner, 1 justice of peace, the city of Marlin, 1 school board and 1 city council. Rosebud a section of Falls County, 1 city council. Several other counties as Robinson, Barazos have initiated efforts. This was brought about because of the voting rights act.

Perhaps one of the most vital groups as a minority in our society that are usually over looked are the senior citizens. Since voting has been indicated as a habit more than any other factor: They seem to have the experience, according to an ongoing survey by the senior citizens of Bexar County. A 15,000 member organization that run surveys at regular intervals. Their records show that seniors in Bexar County total approximately 110,000 (1970 census) and vote over 65 percent in all elections, thus because of their voting strength have maintained the proper pressure on the structure for programs effecting seniors.

Much of their success in getting out the vote has been the ease of voting because of the close coordination between the county clerk, Bob Green, and the tax assessor and collector, Ben Shaw. Seniors can vote absentee or at the side of the court house along with the handicapped on election day with all of the safe guards observed.

There are other areas in Texas that are contrary such as Timpson, Texas where blacks feel intimidated and need the security of the Voting Rights Act. This is so vital in these small communities because of economics, since elective bodies have the taxing power that take the property.

The inflation ideology is having effect upon the all elections as commissioner courts are attempting to economicise and will be reducing the absentee voting places. There has been discussion of combining precincts to use less help which will reduce the opportunities of people to vote thus we must not let any of this happen to the people who may for the first time be involved in the democratic process of voting.

If America is going to reach its great potential power and strength it will be through the attitudes of its people and has it has been said a vote-less people are power-less people. Thus every effort should be made to raise the voting percentage of the people to insure good representative government. Thus by extending the Voting Rights Act (HR 3112, the Rodino bill) will be closer in reality to that goal and I wish to thank the U.S. Commission on Civil Rights for their information in Texas. "The State of Civil Rights 10 years later 1968-1978." And again the privileldge to speak before this body.

[Exhibits follow:]

COUNTY OF BEXAR,
OFFICE OF THE COUNTY CLERK,
San Antonio, Tex., June 3, 1981.

Mr. A. C. SUTTON,
President, NAACP,
San Antonio, Tex.

DEAR MR. SUTTON: The following are what I consider valid reasons for maintaining the Voting Rights Act as it is.

(1) Continuation of this act prevents any gerrymandering of precincts in order to complicate the voting process. Any changes in voting precincts under the present system must be cleared through the Justice Department.

(2) This will prevent the moving of a polling place from one location to another in different elections. This tends to confuse the voter and discourage his participation in elections.

(3) Under the present system we must clear any combination of precincts for any special election with the Justice Department. This is advantageous and prevents the authorities responsible for conducting elections from combining too many precincts and making the voting process too complicated for some of our senior citizens.

(4) Any change in the type of voting equipment used must be cleared through and I feel that this is advantageous in that the voter is familiar with the type of voting equipment used from one election to the next.

For these reasons I feel that it would be favorable to continue the Voting Rights Act as it is now.

Sincerely,

ROBERT D. GREEN,
Bexar County Clerk.

EXHIBIT I.—TABLE 2.1. BLACK ELECTED OFFICIALS IN THE EIGHT SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT, JULY 1980

	U.S. Congress	State Legislature		County officers				Municipal offices				
		Senate	House	County governing board	Law enforcement officials	Local school board[1]	Other positions	Mayor	Governing body	Other	Other officials	Total
Alabama	0	2	13	18	40	26	8	16	110	5	0	238
Georgia	0	2	21	20	8	45	3	7	139	4	0	249
Louisiana	0	2	10	85	42	91	1	12	119	0	1	363
Mississippi	0	2	15	27	78	74	27	17	143	4	0	387
North Carolina[2]	0	1	4	18	7	62	2	13	136	3	1	247
South Carolina	0	0	14	34	20	66	4	13	86	1	0	238
Texas	1	0	13	5	21	77	0	5	68	2	4	196
Virginia	0	1	4	27	4	(3)	3	4	47	1	0	91
Total	1	10	94	234	220	441	48	87	848	20	6	2,009

[1] Includes school board members elected at municipal level or independent school districts.
[2] Statewide data, including the 37 covered counties.
[3] Not an elective position.

Source: Joint Center for Political Studies, National Roster of Black Elected Officials, vol. 10, 1981.

EXHIBIT II.—TABLE 2.4. BLACK ELECTED OFFICIALS AS PERCENTAGE OF ALL ELECTED OFFICIALS IN THE EIGHT SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT, JULY 1980

[In percent]

State	U.S. Congress	State Legislature		County governing body	Local school board	Municipal governing bodies	Population percent black, 1970[1]
		Senate	House				
Alabama	0.0	5.7	12.4	6.6	7.4	5.3	24.5
Georgia	0.0	3.6	11.7	3.4	6.2	5.2	26.2
Louisiana	0.0	5.1	9.5	13.2	13.3	9.4	29.6
Mississippi	0.0	3.8	12.3	6.6	13.1	10.4	35.1
North Carolina[2]	0.0	2.0	3.3	3.7	7.9	6.0	21.5

EXHIBIT II.—TABLE 2.4. BLACK ELECTED OFFICIALS AS PERCENTAGE OF ALL ELECTED OFFICIALS IN THE EIGHT SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT, JULY 1980—Continued

[In percent]

State	U.S. Congress	State Legislature		County governing body	Local school board	Municipal governing bodies	Population percent black, 1970 [1]
		Senate	House				
South Carolina	0.0	0.0	11.3	11.7	13.7	6.7	31.0
Texas	3.4	0.0	8.7	0.5	1.0	1 3	12.5
Virginia	0.0	0.2	4.0	5.4	([3])	3.4	18.7

[1] 1980 population figures not yet available.
[2] Statewide data, including the 37 covered counties.
[3] Not an elective position.

Sources: U S Department of Commerce, Bureau of the Census, *Popularly Elected Officials*, vol. 1 number 2, GC77(1)-2, 1979, and Joint Center for Political Studies, *National Roster of Black Elected Officials*, vol. 10, 1981.

EXHIBIT III.—EXCERPT OF TESTIMONY OF HON. BARBARA JORDAN, A REPRESENTATIVE IN CONGRESS FROM THE 18TH CONGRESSIONAL DISTRICT OF TEXAS

Mr. Chairman, members of the Subcommittee, I appreciate your granting me this opportunity to appear and testify in support of extension of the Voting Rights Act of 1965. Among all the civil rights legislation enacted in the 1960's, the Voting Rights Act epitomizes the black struggle for 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 participation by blacks as voters in the political process. But for many the promise is as yet unfulfilled. A few electoral victories should not mask reality: the Voting Rights Act may have overcome blatant discriminatory 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 meaningful participation in democratic institutions. Allowing the Voting Rights Act to lapse this year would vitiate the progress made in only the last four years. As a co-sponsor of H.R. 3343, which extends the Act for ten years and places a permanent ban on literacy tests, I would urge this subcommittee to do no less than report favorably this simple extension bill. That is the minimum which should be done.

My first attempts to become a member of the Texas House of Representatives were thwarted by the same type of discriminatory voting practices forbidden by the Voting Rights Act. In 1962, when I first ran for the Texas House, Harris County (Houston) was not divided into single member districts. I had to run at large—against all other candidates. I lost. I lost again in 1964. I could not get elected in an at-large election. In 1966 the Texas legislature was forced to reapportion itself. In *Reynolds* v. *Sims* the United States Supreme Court had applied the "one man—one vote" rule of *Baker* v. *Carr* to state legislative districts. The reapportionment created a new, single-member State Senatorial District in which I lived. I ran and won. Absent the Supreme Court ruling, I would have lost again. The same reapportionment which created single-member districts in Harris County created at-large districts in Bexar County (San Antonio) and Dallas County (Dallas). Another reapportionment in 1972 kept Bexar and Dallas at-large. Had the Voting Rights Act of 1965 applied to Texas, the state would have had to submit the 1966 and 1972 reapportionment to the Attorney General. He probably would have objected. But the Act did not apply to Texas. The Attorney General did not object. It was not until 1973 that the United States Supreme Court once again intervened. It held at-large elections in Bexar and Dallas counties had a discriminatory effect on blacks and browns and were thus unconstitutional. Only two weeks ago the State of Texas pleaded in Supreme Court chambers that at-large elections for the Texas House of Representatives in eight other Texas counties are not discriminatory. The minorities in Fort Worth, Lubbock, Midland, Odessa, El Paso and other Texas cities will have to wait for the Court to rescue their voting rights.

My political career was not assisted through passage of the Voting Rights Act. I know firsthand the difficulty minorities have in participating in the political process as equals. The same discriminatory practices which moved the Congress to pass the Voting Rights Act in 1965, and renew it in 1970, are practiced in Texas today.

In 1965 this Committee heard testimony that school teachers lose their jobs if they try to register. Mexican-Americans in Texas have lost their teaching jobs as the result of filing as a candidate.

COMPLETE LISTING OF OBJECTIONS PURSUANT TO

SECTION 5 OF THE VOTING RIGHTS ACT OF 1965

STATE: TEXAS

DIVISION	OBJECTION	DATE OF OBJECTION
exas	S.B. No. 300--purge of currently registered voters	12-10-75
tate (Jefferson & Tarrant Ctys. and single member districts for Nueces Cty. included)	H.B. No. 1097 (1971 reapportionment)--nine multi-member State Representative Districts	1-23-76
tate	S.B. No. 11, Section 6--requiring certain parties to choose candidates by convention instead of holding primary elections	1-26-76
yler (Smith Cty.)	Redistricting	2-25-76
arris County	Precinct election judges	3-5-76 1/
orney ISD* (Kaufman Cty.)	Numbered posts; majority vote requirement	3-9-76
exas City (Galveston Cty.)	Numbered posts	3-10-76
onahans (Ward Cty.)	Numbered posts	3-11-76 2/
umas ISD* (Moore, Cty.)	Numbered posts; majority vote requirement	3-12-76
range Grove ISD* (Jim Wells Cty.)	Numbered posts	3-19-76
ecos (Reeves Cty.)	Numbered posts	3-23-76
hapel Hill ISD* (Smith Cty.)	Majority vote requirement	3-24-76
uling (Caldwell Cty.)	Numbered posts	3-29-76

Independent School District

/ Withdrawn 3-11-76

/ Withdrawn 6-1-76

STATE: TEXAS

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Lockney ISD* (Floyd Cty.)	Numbered posts; majority vote requirement	3-30-76
San Antonio (Bexar Cty.)	Thirteen annexations	4-2-76 1/
Victoria County	Consolidation of two school districts	4-2-76 2/
Frio County	1973 redistricting	4-16-76
Liberty ISD* (Liberty Cty.)	Numbered posts; majority vote requirement	4-19-76
Pettus ISD* (Bee Cty.)	Numbered posts	5-5-76
Lockhart (Caldwell Cty.)	Majority vote requirement	5-11-76
Rusk (Cherokee Cty.)	Numbered posts	5-17-76
Trinity ISD* (Trinity Cty.)	Numbered posts	5-21-76
Hereford ISD* (Castro, Deaf Smith & Parmer Ctys.)	Numbered posts; majority vote requirement	5-24-76
Crockett County	Redistricting	7-7-76
Waller County	Redistricting (commissioner and justice of the peace precincts)	7-27-76
Marshall ISD* (Harrison Cty.)	Majority vote requirement	7-29-76
Hawkins ISD* (Wood Cty.)	Numbered posts; majority vote	8-2-76
Midland ISD* (Midland Cty.)	Numbered posts; majority vote requirement	8-6-76 3/
Uvalde County	Redistricting	10-13-76

* Independent School District

1/ Withdrawn 1-24-77

2/ Withdrawn 8-16-76

3/ Withdrawn 11-12-76

STATE: TEXAS

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Woodville (Tyler Cty.)	Numbered posts	11-12-76
Westheimer ISD* (Harris Cty.)	Special election implementing Westheimer ISD	1-3-77
South Park ISD* (Jefferson Cty.)	Numbered posts	2-25-77
Somerset ISD* (Atascosa and Bexar Ctys.)	Numbered posts	3-17-77
Ralls ISD* (Crosby Cty.)	Majority vote requirement	3-22-77
Lufkin ISD* (Angelina Cty.)	Numbered posts; majority vote requirement	3-24-77
Raymondville ISD* (Willacy Cty.)	Polling place	3-25-77
Comal ISD* (Comal Cty.)	Numbered posts	4-4-77
Prairie Lea ISD* (Caldwell Cty.)	Numbered posts	4-11-77 1/
Fort Bend County	Polling places	5-2-77
Clute (Brazoria Cty.)	Majority vote requirement	6-17-77
Caldwell County	Redistricting	8-1-77
Lamar CISD** (Fort Bend Cty.)	Bilingual oral assistance program	10-3-77 2/

* Independent School District

** Consolidated Independent School District

1/ Withdrawn 3-3-78

2/ Withdrawn 11-15-77 after modifications to program procedures

STATE: TEXAS

UBDIVISION	OBJECTION	DATE OF OBJECTION
State	H.B. No. 2152--delayed implementation of single-member districts (Fort Worth ISD*)	1-16-78
Fort Worth ISD* (Tarrant Cty.)	Delayed implementation of single-member districts (Section 23-023(h), Texas Education Code)	1-16-78 1/
Harris County	Polling place	3-1-78
Waller CISD** (Waller Cty.)	Election date	3-10-78
Nueces County	Redistricting	3-24-78
Southwest Texas Junior College District (Uvalde and Zavala Ctys.)	Polling place	3-24-78
Port Arthur (Jefferson Cty.)	Consolidation of the Cities of Lakeview and Pear Ridge with the City of Port Arthur; redistricting of residency districts	3-24-78
Neches ISD* (Anderson Cty.)	Numbered posts, majority vote requirement	4-7-78
Medina County	Redistricting	4-14-78
Edwards County	Redistricting	4-26-78
Kansas County	Redistricting	4-28-78
Corsicana ISD* (Navarro Cty.)	Numbered posts; majority vote requirement	4-28-78

Independent School District

Consolidated Independent School District

Partial withdrawal 2-17-78

STATE: TEXAS

JEDIVISION	OBJECTION	DATE OF OBJECTION
Harris Cty. School District	Election date	5-1-78
Brazos County	Redistricting	6-30-78 1/
Jim Wells County	Redistricting	7-3-78
Ector County ISD* (Ector Cty.)	Numbered posts; majority vote requirement	7-7-78
Harrison County	Redistricting	8-8-78
Terrell County	Redistricting	12-27-78
Hereford ISD* (Deaf Smith Cty.)	Numbered posts	1-18-79
Beeville (Bee Cty.)	Single-member district plan	2-1-79
Alto ISD* (Cherokee Cty.)	Numbered posts; majority vote requirement	5-11-79
Houston (Harris Cty.)	Fourteen annexations	6-11-79 2/
San Antonio (Bexar Cty.)	Polling place	8-17-79 3/
Comal ISD* (Comal Cty.)	Numbered posts	9-12-79
Lockhart (Caldwell Cty.)	Home Rule Charter	9-14-79
Taylor (Williamson Cty.)	Polling place	12-3-79
Atascosa County	Redistricting	12-7-79
Medina County	Redistricting	12-11-79

* Independent School District

1/ Withdrawn 11-15-78

2/ Withdrawn 9-21-79 upon adoption of hybrid 9-5 plan

3/ Withdrawn 3-24-80

STATE: TEXAS

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Port Arthur (Jefferson Cty.)	Referendum election	12-21-79
La Porte (Harris Cty.)	Home Rule Charter	12-27-79
Port Arthur (Jefferson Cty.)	Referendum election	1-15-80
Harris Cty. School District	Election date change	1-17-80
Comal County	Redistricting	2-1-80 1/
Jim Wells County	Redistricting	2-1-80
Cochran County	Redistricting; additional voting precincts; polling places	2-25-80
Port Arthur (Jefferson Cty.)	Annexation	3-5-80
Corpus Christi ISD* (Nueces Cty.)	Apportionment plan (four single-member districts, three at-large)	4-16-80
Nacogdoches ISD* (Nacogdoches Cty.)	Apportionment plan (five single-member districts, two at-large)	4-3-80
Port Arthur (Jefferson Cty.)	Referendum election procedures	7-23-80
Cleveland ISD* (Liberty Cty.)	Numbered posts	8-8-80
Jim Wells County	Redistricting	8-12-80
Victoria (Victoria Cty.)	Four annexations	9-3-80
Wilson County	Polling place	11-4-80
West Orange-Cove Consolidated ISD* (Orange Cty.)	Numbered positions; majority vote requirement	2-9-81

*Independent School District

1/ Withdrawn 9-22-80

EXHIBIT V.—TABLE 2.5. BLACK ELECTED COUNTY OFFICIALS IN THE EIGHT SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT, IN COUNTIES WITH 20 PERCENT OR MORE BLACK POPULATION, JULY 1980

State	Counties at least 20 percent black	Offices held				Counties with no black county elected officials	
		County governing board	Law enforcement officials	Local school board	Other county positions	Number	Percent
Alabama	37	18	39	25	8	22	59.4
Georgia	111	19	8	35	0	82	73.8
Louisiana	49	78	40	86	0	8	16.3
Mississippi	68	27	76	73	26	32	47.0
North Carolina [1]	57	16	6	46	0	26	45.6
South Carolina	40	32	20	61	4	11	27.5
Texas	44	4	8	37	0	20	45.4
Virginia	48	27	3	(2)	3	31	64.6

[1] Statewide data, including the 37 covered counties.
[2] Not an elective position.

Source: Joint Center for Political Studies, National Roster of Black Elected Officials, vol. 10, 1981

EXHIBIT VI.—TABLE 2.6. BLACK ELECTED COUNTY OFFICIALS IN THE EIGHT SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT, IN COUNTIES WITH 50 PERCENT OR MORE BLACK POPULATION, JULY 1980

State	Counties at least 50 percent black, 1970 [1]	Offices held				Counties with no black county elected officials	
		County governing board	Law enforcement officials	Local school board	Other county positions	Number	Percent
Alabama	10	16	25	21	8	2	20.0
Georgia	22	7	6	11	7	12	54.5
Louisiana	9	23	11	25	0	1	11.1
Mississippi	25	21	62	55	23	4	16.0
North Carolina [2]	5	2	0	7	0	1	20.0
South Carolina	12	16	12	11	3	2	16.7
Texas	1	1	0	2	0	0	0.0
Virginia	13	14	3	(3)	0	3	23.1

[1] 1980 population figures not yet available.
[2] Statewide data, including the 37 covered counties
[3] Not an elective position.

Source: Joint Center for Political Studies, National Roster of Black Elected Officials, vol. 10, 1981

EXHIBIT VII.—TABLE 2.3. BLACKS AS PERCENTAGE OF POPULATION AND ELECTED OFFICIALS IN THE EIGHT SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT, JULY 1980

State	Population percent black, 1970 [1]	Elected officials		
		Total officials	Black officials	
			Number	Percent of total
Alabama	24.5	4,151	238	5.7
Georgia	26.2	6,660	249	3.7
Louisiana	29.6	4,710	363	7.7
Mississippi	35.1	5,271	387	7.3
North Carolina [2]	21.5	5,295	247	4.7

EXHIBIT VII.—TABLE 2.3. BLACKS AS PERCENTAGE OF POPULATION AND ELECTED OFFICIALS IN THE EIGHT SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT, JULY 1980—Continued

State	Population percent black, 1970[1]	Elected officials		
		Total officials	Black officials	
			Number	Percent of total
South Carolina	31.0	3,225	238	7.4
Texas	12.5	24,728	196	0.8
Virginia	18.7	3,041	91	3.0

[1] 1980 population figures not yet available.
[2] Statewide data, including the 37 governed counties

Source: Joint Center for Political Studies, National Roster of Black Elected Officials, vol. 10, 1981

TESTIMONY OF

COMMISSIONER JOHN TRASVINA

CITIZENS ADVISORY COMMITTEE

ON ELECTIONS

CITY AND COUNTY OF SAN FRANCISCO

Mr. Chairman Edwards and members of the Committee:

It gives me great pleasure to come before the Subcommittee on Civil and Constitutional Rights of the Judiciary Committee today. I speak in support of what many consider to be the most important piece of legislation facing this 97th Congress -- H.R. 3112-- which will extend the bilingual provisions of the Voting Rights Act for seven years.

At the present time, I serve on the Citizens Advisory Committee on Elections for the City and County of San Francisco. This committee was designated by the City and County to act as the Task Force to monitor enforcement and implementation of the Voting Rights Act in San Francisco pursuant to a consent decree entered into by the City and the local United States Attorney's office. (U.S. vs. City and County of San Francisco. USDC No. C78-2521 CFP) My appearance today is not on behalf of the committee per se, but rather as someone actively involved in implementation and study of the Act in California, Hawaii and New York. Nevertheless, I am in complete agreement with the position of the San Francisco Board of Supervisors which voted 8-3 to oppose repeal of the Voting Rights Act.

As you may already know, San Francisco has been covered by Title 203 of the Voting Rights Act since 1975. Ours is the only jurisdiction which provides both Spanish bilingual and Chinese bilingual voter services. Prior to 1975, however, state law required bilingual oral assistance at the polls where 3% of the precinct was non-English speaking. Significantly, California Flection Code Section 1635 covered more languages than the Voting Rights Act and contained an easier trigger mechanism. In addition, Election Code Section 302 required local voter outreach and registration in areas of historically underrepresented, underregistered, low turnout citizens. One would

think, therefore, that the Voting Rights Act would be a logical step, complementary to state provisions and not overly burdensome for local officials. Implementation in the early days of the Voting Rights Act should not have been as difficult as it turned out to be.

In this portion of my presentation I will relate implementation in San Francisco from 1975 through 1979. This will be compared with both the experience of other counties in those years, and the much more positive events surrounding implementation by San Francisco in the 1980 elections. You will find a consistent trend over time of better and cheaper implementation of the Voting Rights Act.

The city's first Voting Rights Act election in November 1975 was, as one member of the Registrar of Voters Office volunteered, " a flop". Given four months to prepare after the passage of the Voting Rights Act in August, the city spent $40,000 to print multi-lingual sample ballots and voter information pamphlets and around $100,000 for multi-lingual notices sent to all of the city's 271,000 voters asking them if they preferred their voting materials in Chinese, Spanish or English. Only 1540 voters returned cards requesting bi-lingual materials.

Such a limited response was not surprising. Most non-English speakers were unaware that bilingual assistance was a right offered them under state and federal law and were therefore reluctant to make a request. It would have made more sense for the city to spend those monies on effective targetting and assessment of language need before blanketting materials citywide. San Francisco had twelve months from the previous election to assess the needs of its minority language voters for state law purposes and about eight months from the first indications the city would be covered by the Voting Rights Act to prepare for the November 1975 election. The $100,000 would have been

better spent registering the unregistered instead of trying to determine whether those who had already participated in English only elections were proficient in English.

There was no indication that San Francisco took any steps to register language minorities for the November 1975 election. Even if it had, these voters would probably not have received a bilingual Voter Information Pamphlet anyway. Amidst widespread charges of voter fraud relating to suburban residents who worked and registered to vote in San Francisco the Registrar's Office lost 250 official registration booklets with the names of over 6000 newly registered voters in the weeks prior to the election. Although the City Charter required voter information to reach the voters ten days before the election, the Chief Deputy Registrar told the San Francisco Examiner the day before the election that those new voters "have not received the voter's handbooks nor instructions on where to vote." Any impact outside organizations might have had in registration in the absence of a city Outreach Plan was rendered nugatory by the lack of distribution of the required voter information. It could not be said that state law provisions or the Voting Rights Act to protect the right to vote for language minorities were made effective by the local implementation in 1975.

San Francisco was by no means the only jurisdiction to take costly alternatives to outreach and registration. As the Federal Elections Commission reported in 1979,

> Many election officials reported few requests for minority language voting materials prior to the 1976 election. Much of the explanation for this low demand is simply that those who most needed such materials were never in a position to request them; that is, they were not registered. (FEC, Bilingual Election Services. Vol. I, p. 39)

One can also examine the first Los Angeles County efforts to conduct bilingual elections and discover what turned out to be costly, overbroad implementation. As political scientist G.G. Gutierrez reported to the Western Political Science Association meeting in 1976, in the ten month span between passage of the Voting Rights Act in August 1976 and the June 1976 Presidential primary in Los Angeles "no systematic effort was made to ascertain probable need for language assistance among the Spanish origin voting age population" of approximately 500,000 or 12% of the eligible electorate. Funds spent on preparing and mailing 3.5 million packets of bilingual voting materials could have been more wisely spent on registration of the county's 1 million unregistered eligible voters. As a result of rejecting the targetting idea as early as December 1975, county officials distributed bilingual voter handbooks which by definition were unneeded by at least 88% of the recipients.

As in San Francisco, money spent on blanket enforcement in Los Angeles could have been spent more effectively on targetting and outreach. Unlike San Francisco, Los Angeles had no problems distributing Voter Information Pamphlets and sample ballots. This may not have pleased one Los Angeles candidate in the first bilingual election. His ballot designation of "small businessman" was translated on the Spanish language version to "shop-tending dwarf".

As we look back, we can observe that the antagonism to the Voting Rights Act stems directly from the early days of costly enforcement by local officials. Taxpayers, Hispanics and non-Hispanics alike, do not like to see large expenditures on what their public officials term as a waste. Subsequent elections have demonstrated that the high costs were unnecessary; so, too, was the antagonism avoidable.

Well publicized commentary by local and state officials only served to inflame a situation which required their sensitivity. For example, it is not commonplace for any official to readily admit failure. Yet voting officials in San Francisco and Ventura Counties readily supplied data for two prominently placed articles in the Los Angeles Times entitled "San Francisco Multi-lingual Voting Effort Admittedly a Flop" and "Cost of 3 Spanish Ballots Cast in Ventura Set at $3,000." Implying that the law was unneeded and unwanted even by its intended beneficiaries, one election official noted in the article, "From the information we have, very few people took advantage of our assistance...and a lot of foreign-born people actually objected to the idea." (L.A. Times, Nov. 7, 1975, p.3)

For her own part, California Secretary of State March Fong Eu estimated the cost at $20 million for tri-lingual voter information pamphlets to be sent to every registered voter in the state. While the estimate may have been accurate for that level of service, the Act in no way required such implementation and no one ever sought such implementation. Ms. Eu's office also predicted that the printing of a tri-lingual voter pamphlet would consume a full one-third of the total uncommitted current newsprint supply available in the United Stated and Canada.

In 1978, the local chapters of the League of United Latin American Citizens, Mexican American Political Association, League of Women Voters and Chinese for Affirmative Action compiled voter registration data from around San Francisco for a Superior Court suit to order the Registrar to develop an outreach program as required by state law. The groups found that in Supervisorial District 3 (Chinatown-North Beach) the number of registered voters was just 60% of the best registered district, District 5 (Castro-Upper Haight). District 6 (Mission District), with the greatest concentration of Hispanics, had just 58% of

the number of voters in the highest district. Neighboring District 7 (Potrero Hill-Hunter's Point) with heavily black and Latino precincts had fewer than half the registered voters as District 5.

With such low registration in heavily minority areas, it would seem easy to target effectively. For voter registration in a state like California which utilizes the postcard system, one simple outreach method suggested by DOJ is to distribute cards in cooperation with other govermental agencies such as post offices, libraries, Social Security offices, state employment offices and health centers. Of 56 of these type offices surveyed in San Francisco, only 19 had registration forms. But in almost one-third of these 19 offices, the cards were not readily available to the public. None of the eleven post offices, four state Employment Development Department field offices, seven mental health facilities or Social Security offices had cards.

The Registrar cited in his Outreach Plan that each of the 28 public library branches and 30 Public Health hospitals and health centers had voter registration cards in the three languages. Yet the survey conducted by MAPA and the other groups found that 40% of the health centers lacked cards, only two libraries had voter registration signs posted, while the General Hospital had no cards at all. Even when the cards were distributed, they were not fully effective. Chinese bilingual cards went to the Silver Avenue Health Center serving the Outer Mission/ Bayview area which has more Latinos than Chinese. Spanish bilingual cards, on the other hand, were available at the North Beach library and Galileo Community College Center in Chinatown. (Motion for Preliminary Injunction and Memorandum of Points and Authorities", MAPA et al. v. City and County of San Francisco, Sept. 25, 1978, pp 7-8)

Even if the Registrar had successfully distributed the registration cards to the appropriate offices, our experience shows that reliance solelyon other agencies does not satisfactorily address the voting needs of language minorities. As the FEC report advised,

> The temptation is to place the cards in public places and then rely on individuals to find them and send them in . . . California's mixed experience with postcard registration suggests that they simplify registration, but do not reduce the need for community organization links to reach unregistered potential voters. Not the cards themselves, but how they are delivered to the community will determine their impact on language minority registration. (FEC, Bilingual Services, vol III, p. 59)

The human links between communities to be served by the Voting Rights Act and the local Registrar were almost nonexistent during this period. While community leaders sought to persuade the Registrar to hire a Spanish bilingual employee, his only response was that "it would be nice but not really necessary" to have one. MAPA and other groups thereupon sought to utilize the concept of CETA employees as outreach workers under the Registrar's office. The Registrar was reluctant to have them and when they did finally come aboard they were given clerical work in the office and very little outreach duties. Frustrated, they all left the Registrar. CETA workers were successfully introduced in Registrars of Voters Offices in at least three other counties yet attempts to have them in San Francisco were effectively stymied by reluctance of the Registrar and Labor Department Officials. Significantly, however, the Federal Elections Commission specifically recommended that the possibility of CETA registration workers should be exploited to the fullest, particularly when a county said it was otherwise strapped for funds.

In terms of oral assistance at the polls, San Francisco's first attempts at VRA implementation suffered from marked ineffectiveness.

In the June 1978 election, just two of every five polling officials were fluent in Spanish in the 64 Spanish language designated precincts. In the 56 precincts designated by the U.S. Attorney's Office as in need of Chinese bilingual assistance, just 38 had bilingual officials. Within these 38 precincts, 19 of the Chinese surnamed election judges were Mandarin speaking and had some difficulty explaining the vote machine operations to voters in Chinatown where Cantonese is the primary dialect. As to this situation, the Registrar remarked, " As far as I'm concerned, Chinese is Chinese and that's the best I can do." (SF Progress, Bilingual Vote Snafu, Nov. 4, 1979) While it is difficult to hire election workers for the 13 hour, $32 jobs, the problems of 1978 compared with the success of the present Registrar in the 1980 elections is striking as will be shown later. In 1978, however, even when bilingual officials were found, like the voter registration cards, they sometimes went to the wrong areas. Two Spanish bilingual poll officials were placed in the Sam Wong Hotel in Chinatown where they were of little help to the Chinese speaking voters. Situated in Chinatown, the pair could not assist the Spanish speaking voters in need of assistance across town in the Mission District.

Yet another problem in San Francisco's implementation of the VRA came during the debate over acquisition of new computer card voting machines. In addition to a long dispute over who in city government was empowered by local and state law to actually select the new machines, a furious debate centered between the Datavote system, cheaper to buy but more costly to operate, and the Votomatic system which was cheaper to operate but more costly to buy. Both were basically good systems, fairly evenly matched in terms of their ability to serve the city and county but with one exception. Votomatic was considered by far the

better system for tri-lingual ballots. In fact, the swing vote on the Board of Supervisors supported the system for just that reason. It placed all three languages side by side which meant that a special request did not have to be made for a particular language (the method preferred by DOJ) and eased the job of the polling official who, if mono-lingual, could always read at least one of the languages on the ballot. The other system had a separate card for each language. In this circumstance, the English-only poll official would be hard pressed to read the Spanish or Chinese-only ballot card. What was significant about the debate over the machines was the apparent absence from the decisional process of many Votomatic opponents of an analysis of the impact their choice would have on the ease of implementing the VRA. While Votomatic was winning raves from election officials in neighboring counties (both those covered and not covered by the VRA), many of its opponents felt that the selection of Votomatic constituted special treatment for non-English speaking voters at the expense of the rest of the city.

I could continue with an analysis of San Francisco's troubled early implementation of the Voting Rights Act. However, you have already heard excellent testimony from Mr. Henry Der of Chinese for Affirmative Action last week who discussed the other aspects. Instead, I would like to emphasize the recent positive advancements made by the City and County of San Francisco in guaranteeing the right to vote to all of its citizens and what the new Registrar termed thirteen months ago as "a whole new attitude and outlook" in his office. It is now clear that what was considered burdensome legislation early in the life of the VRA was not difficult to implement. It was only made so in something of a self-fulfilling prophecy. Poorly designed but widely publicized efforts at implementation fueled public antagonism which remains today even though the Act is working well throughout California. In general, the misguided attacks have been concentrated not on the ineffective implementation efforts by local jurisdictions but on the Act itself. One wonders if these same opponents would advocate the repeal of statutes criminalizing rape and murder because the rising crime rate points to their ineffectiveness.

Before examining the good work being done in San Francisco, it is

important to point out that in other jurisdictions much of it had been done as early as right after the 1976 election. While some counties were slow in developing improved compliance methods, other counties were effectively targetting, conducting outreach and dramatically reducing bilingual compliance costs.

Los Angeles County, for example, initiated an Election Day needs assessment survey in the 1976 primary in order to avoid further blanketting of bilingual election materials. The survey of each primary voter as to preference for Spanish language materials reaped 60,000 names. In the November general election of 1976, materials were targetted to these voters as well as newly registered ones who requested materials in Spanish. Election costs plummeted by one half million dollars. Since the 1978 general election, bilingual costs have consistently fallen from $290,000 to just $135,200 in November 1980. Today, Los Angeles spends just one sixth of what it cost to blanket materials in June 1976. On a percentage basis, bilingual costs which were 9.1% of total election costs in 1978 now comprise just 1.9% of total costs. Los Angeles has a Mexican-American population of just under 28%.

Further south in San Diego County, Registrar Ray Ortiz has significantly increased registration and turnout while reducing costs of compliance. Bilingual compliance costs have dropped over 50% and are now under $60,00 as of the November 1980 election. The Hispanic vote was better than 75,000 in that same election. Recently, as you may be aware, San Diego conducted one of the first full scale elections entirely by mail. In a special election, costs were greatly reduced by this system while turnout was well over 60%, an astronomical figure for a one issue, special vote.

San Franciscians are also considering a vote by mail plan. What all this goes to show is that now is a time that local officials are taking creative new steps to faciliate the vote for all citizens and in the process reduce costs of delivery. The Voting Rights Act goes hand in hand with these efforts as a cost effective method to make it easier for more language minority voters to cast knowledgeable votes.

Some of the most exciting developments and advances, I am happy to tell you, are coming out of San Francisco. It prides itself on being "the City That Knows How" and expectations are that it will show that it can truly reach all of our citizens who want to vote. Last year, the Mayor and Board of Supervisors appointed the Citizens Advisory Committee on Elections, the board on which I serve. Although it has a very limited budget, the CACE monitors compliance with the requirements of the consent decree, studies and evaluates the general operations of the Registrar's Office, overse s compliance of other election laws, and makes recommendations on legislation affecting elections and the electoral process. As a member of the Multi-lingual Compliance Subcommittee, I have been able to observe the Registrar's efforts in many areas.

Most apparent since the new Registrar came aboard early in 1980 is what he calls "a totally new attitude and outlook", particularly true in the cooperation with community groups. The office now conducts street-corner voter registration in minority language communities. Input is solicited from community residents as to the most effective places for high visibility and foot traffic to set up the registration booths. The Registrar also has an

extensive list of places within these communities--be they city offices, community agencies, McDonald's restaurants--where it would make sense to have voter registration cards available.

The Registrar's Office Master Plan calls for assistance to community based registration groups in the form of registration workshops going over the requirements of the California voter registration postcard. Also provided is a written briefing on the various deadlines for registration absentee ballot procurement and return. The office does assist with the registration drives of outside organizations such as the local partisan groups, Labor, language minority and other political and community associations.

There is also more effective cooperation with other governmental agencies. I am informed that registration activities go on at the public libraries, public health centers, mental health centers and daycare centers. All of these places are regularly stocked with voter registration cards. All of the cards are either Spanish bilingual or Chinese Bilingual. Efforts are made to get the right cards in the appropriate neighborhoods.

Within City Hall itself, voter registration cards are available in seventeen different locations and city employees are encouraged to register voters. Offices where cards are available include: Job Information office, Recorder's office, Small Claims Department, the Tax Collector, Board of Supervisors and their adminstrative assistants, Municipal Court, County Clerk, Sheriff's department and, of course, the Registrarof Votes. It all becomes part of the municipal function.

Any position which deals extensively with the public, particularly in such an important function as voting, demands creativity and the incentive for innovation. One effort of the Registrar which I believe deserves mention is the sending of two of his staff to the Citizenship conferment ceremonies conducted by the federal immigration office to welcome new citizens and register them to vote. In my estimation that is but one way in which this Registrar has demonstrated a willingness to make the law work. Other important steps taken have been a High School Voter Registration Week which I was involved in last April and voter registration of parents in the schools' annual Parents' Night Affairs. Other methods for publicizing voter registration at the behest of the U.S. Attorney's Office have been tri-lingual notices going out with Pacific Telephone and utility bills. I am unaware of whether this last step has been carried out. I believe these utilities require a year's advance notice. Finally, yet another significant step was the Registrar's booth at Chinatown and Mission Street fairs. Placed in the context of the previous experience with registration, it signaled that the office could make a presence in the Asian and Latino communities for voter outreach.

As for oral assistance at the polls, again there has been improvement in complying with the laws. In contrast to the previous problems of attracting bilingual polling officials, targetting precincts and getting them to those precincts, for the June 1980 primary election all 92 Chinese bilingual precincts had Chinese bilingual officials with 20 standbys in case others did not show up. For Spanish language precincts, all 60 were filled in addition to having 9 standbys. In the November 7, 1980 general election,

every Chinese and Spanish bilingual designated precinct had a bilingual polling official, sometimes they had two or three at one polling place. If a voter had other problems on Election Day such as losing the address of his polling place, an Election "hotline" was set up staffed by English, Spanish and Chinese speaking operators at the Registrar's office from 6 am.. -8 p.m. on Election Day.

Part of the success of implementation of bilingual elections can also be attributed to a greater use of the extensive minority language media of San Francisco. The registrar has used the Chinese and Spanish language press in San Francisso both to publicize voter registration and to solicit polling officials for Election Day. The Registrar has said he has sent out press releases at the rate of one per week to each newspaper, radio or TV station starting six weeks prior to Election Day with more publicity generated during the closing stages. The Registrar and his outreach staff have also gone on the air to make public service announcements and appear on both English language and bilingual programs to publicize the election. Our local, state and federal candidates as well as supporters and opponents of the numerous local and state ballot propositions have utilized these media services for years to reach minority language voters. It is heartening to see the Registrar and his staff do the same.

Of great value to the Registrar's efforts have been his CETA outreach workers. They have been of great value to the distribution of bilingual services--working with community groups, speaking on Spanish and Chinese language programs, and manning the registration

booths at night and on weekends. They have provided the significant staff time to keep these programs in operation. Unfortunately, it appears that with the loss of CETA funding that they will be lost as of the end of the fiscal year June 30. It is unclear for how long the city will fund any replacement employees.

Must has been made of the difficulties and supposed costliness of the Voting Rights Act. As has been demonstrated by this historical development of bilingual voting in San Francisco and by speakers before you concerning other counties, complaints of high costs and low utilization by local officials created a self-fulfilling prophecy of calamity. In counties where no new efforts were made to register new voters as required by California Election Code Section 302 and as would logically be expected under the federal law, of course there would be fewer requests for materials than anticipated. Those who most needed the bilingual materals remained unregistered. For those already voting in the English-only system, it made sense to assume their language needs were less great. Yet, the easy but expensive implementation mode was taken: send bilingual materials to all of those then-registered prior to the Voting Rights Act. Blanketting was more expensive, and, to the extent it down-played the need for outreach, artificailly reduced the number of requests a local registrar would get for the bilingual materials. For local officials to ignore the great need for improved outreach and to turn around and complain that nobody was requesting bilingual materials could only lead to an undercutting of public support for the law.

Many of the horror stories you have heard about costs of bilingual voting came from those same blanketting counties. Blanketting

is generally more expensive than targetting. More importantly, in a blanketted county, no requests for bilingual materials are made since they do not have to be. Everyone gets bilingual materails. It is from many of these counties that we hear the outrageous dollars per request figures. The expenditures are unnecessarily high and the requests do not accurately describe usage. Equally illogical are the cost estimates which measure requests for state-produced materials, divide by local expenditures, and magically devise a local cost per request formula. Finally, in some areas ballot costs are higher than necessary for all election services because of the voting machine apparatus used.

I have described many of the difficulties with local implementation in the early days of the Act. Many have been rectified as early as 1977. It would be misleading and unfair to place the full responsibility of poor early implementation on local officials. Many observers and participants have concluded that counties took the easier but more expensive blanketting approach largely because DOJ guidelines were vague and not helpful. DOJ interim guidelines in 1975 stated that targetting would be acceptable if it was "guaranteed" to reach persons desiring bilingual materials. Reluctant to take a chance, Los Angeles and other counties blanketted. As was shown it was an overkill approach. Los Angeles later targetted for the November 1976 elections and saved $500,000.

In a Justice Department letter to the Senate Judiciary Subcommittee on Constitutional Rights on July 8, 1975, it was stated that,

> What Title III would appear to require is that each registered voter have equal access to that specified material in which ever language designation that he prefers.

At a time when thoughtful and forword-looking counties were beginnning plans for implementation (instead of waiting for certain designation by the Census Bureau), the requirement of "equal access" without further explanation or condition deterred targe'.ting and experimentation. The confusing messages from DOJ were not conduc.ve to comprehensive implementation.

According to a Report of the Comptroller General fo the United States entitled Voting Rights Act--Enforcement Needs Strengthening, in which the GAO surveyed VRA counties,

> Many election officials contacted indicated that... existing guidelines were vague and that the Department needed to give more assistance in developing compliance aporoaches. For example, the guidelines indicated that plans which provide language assistance to less than all persons might meet compliance requirements, but it does not specify how language needs could be determined nor does it explain what an effective alternative method might be. Additionally, while the interim guidelines suggested development of a compliance plan, the final guidelines did not. (Report, at 37.)

I feel compelled to concur in Representative Cecil Heftel's conclusion as stated in HCR 127 that the lack of clear DOJ guidelines brought about the unnecessarily high costs and that to the extent the inadequate guidelines caused ineffective implementation plans, language minority citizens were being ill-served.

Successful implementation of the Voting Rights Act should not depend on the good faith or expertise of local officials alone. It requries DOJ to provide effective support through appropriate guidelines to be carried out locally. Effective guidelines from DOJ mean that the Act can be applied in a cost-effective and broad manner and that success or failure does not turn on who the local administrator is in any particular locale. Assistance from DOJ will enable the local administrator to better serve voters in the procurement of bilingual polling officials, training them to meet the needs of all of their voters in the precincts, and more effective targetting of

areas of need. In terms of written assistance, the bilingual glossary of terms provided by the Federal Elections Commission does, I understand, help the local officials. Voter Information pamphlets should be made more readily available to the voters. They contain a wealth of information but lay wasted if they do not reach the hands of, and are used by, the voters.

There have been many improvements on implementation of the Voting Rights Act since 1977. They have been witnessed in San Francisco only recently. It is too early to reach a verdict on the ultimate effectiveness of the VRA. That is why we should give the Voting Rights Act more time. By way of historical comparison, while women won the vote prior to the Election of 1920, the 19th Amendment was not fully used to any extent until the early 1930's. Similarly, 18 year olds first cast ballots in the 1972 Presidential election, yet registration and turnout for those between 18 and 29 years of age is still very low. As political scientists will tell you, voting must become a habit. It takes some time to assess the effectiveness of s.. laws newly enfranchising citizens.

H.R. 3112 is appropriate at this time. Local officials now are comfortable with the requirements of the Act, as has already been discussed by previous witnesses. More guidance from DOJ is essential however to effectuate comprehensive outreach programs which will ultimately determine the success of the Act. Outreach is the key. Not until efforts are made to register the previously unregistered will the intent of the Congress to increase voter participation among our language minorities be realized.

The Voting Rights Act is working and working well. It can be said that San Francisco is now doing the job as well. Passage of H.R. 3112 is essential for the efforts to be sustained in VRA counties. Effective voter outreach and timely guidelines from DOJ are fundamental to VRA implementation. I, as one person involved in bilingual election compliance, only ask that you support H.R. 3112 and make the 14th and 15th amendment guarantees a reality for all citizens.

Thank you very much.

APPENDIX 2—DOCUMENTS INSERTED BY MEMBERS OF THE SUBCOMMITTEE

[Mailgram]

ROME, GA., *May 19, 1981.*

Hon. DON EDWARDS,
House of Representatives,
Washington, D.C.

The Rome Georgia Council on Human Relations, an interracial, interdenominational civic organization, urges the extension of the Voting Rights Act, as vital to the interests of the black citizens of our city. Although some progress has been made in registering black voters and, last fall in electing a black city commissioner, a great deal of work remains, the accomplishment of the work that lies ahead would be unutterably impeded by the loss of section 5 of the Voting Rights Act, as one of the few integrated organizations in the city, we urge you not to abandon our black colleagues by withdrawing your support from their struggle for fair representation.

MYRTLE JONES, *Chairperson.*

[Mailgram]

ROME/FLOYD COUNTY CHAPTER NAACP,
Rome, Ga., May 19, 1981.

Hon. DON EDWARDS,
House of Representatives,
Washington, D.C.

We live in the city of Rome, Georgia where the Ku Klux Klan holds meetings in the cities civic center, marches around high schools, and engages in harassment of individual citizens. We live and work in Rome, Georgia where racism and discrimination in employment and housing are rampant, and where the vast majority of social and civic clubs, public housing projects, private neighborhoods, and even churches, are racially segregated.

In a city in which we comprise 25 percent of the population, we have 4 blacks among 57 deputy voting registrars; we have never elected a black man or woman to any position in the county government; but we have 1 black representative on the city school board, and have just elected the first black man in the cities history to the Rome city commission.

Even these modest achievements were made possible by the intervention of the attorney general prior to our last city election. We are writing to urge your committee not to abandon us by failing to extend the Voting Rights Act.

JIMMY MCBEE, *President.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 2, 1981.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: At the request of Mr. Brady Palmer, Commissioner, Post 2, of the City of Clarksdale, Mississippi, I am submitting to the Subcommittee on Civil and Constitutional Rights, his sworn affidavit regarding his election as Commissioner, Post 2, on May 12, 1981. Mr. Palmer prepared the affidavit in response to the testimony by Mr. Aaron Henry before the Subcommittee last week on the extension of the Voting Rights Act of 1965.

Mr. Palmer asked that this affidavit be received as a part of the Subcommittee's record of hearings on the Voting Rights Act extension.

With best wishes, I am

Sincerely yours,

TRENT LOTT.

Enclosure.

AFFIDAVIT—STATE OF MISSISSIPPI, COUNTY OF COAHOMA

This day personally appeared before me, the undersigned authority within and for the County and State aforesaid, Grady Palmer, who, after being duly sworn, stated under oath as follows:

1. I, Grady Palmer, am an adult resident citizen of the City of Clarksdale, Coahoma County, Mississippi, residing at 375 Clark Street, Clarksdale, Mississippi;

2. I was a candidate in the Democratic Primary Elections held on May 12, 1981, for the office of Commissioner, Post 2, City of Clarksdale, Mississippi; and I am a member of the white race;

3. There were two other candidates in the Democratic Municipal Primary Election, these candidates being James Hicks, a black incumbent who presently holds the office of Commissioner, Post 2, City of Clarksdale, Mississippi, and another black candidate, Phillip Banks III;

4. There were a total of 4,662 votes cast in the election on May 12, of which votes I received 2,333, the incumbent James Hicks received 2,066, and the third candidate, Phillip Banks, received 263 votes, a copy of the certification of the election returns being attached to this Affidavit and made a part hereof;

5. Inasmuch as I received in excess of 50 percent of the vote (50 percent of the vote being 2,331), I was declared the winner of the Primary Election without the necessity of a runoff;

6. The confusion as to whether or not I won by 1 vote or 2 votes arose as result of semantics, that is to say, that some said that since I received 2 more than exactly 50 percent of the votes, I won by 2 votes, whereas others reported that I received 1 vote more than was necessary to be declared the winner;

7. I am a former holder of the same office to which I was elected in the Democratic Primary Election, having been defeated by the present incumbent, James Hicks, in the General Election held in 1977.

And affiant further saith not.

GRADY PALMER.

Sworn to and subscribed before me this the 29th day of May, 1981.

[SEAL]

CAROLYN H. WORD,
Notary Public.

My Commission expires: September 7, 1984.

MAY 13, 1981.

Mr. W. O. LUCKETT, Sr.,
Chairman, General Election Commission,
Clarksdale, Miss.

DEAR MR. LUCKETT: In the Democratic Primary Election held on Tuesday, May 12, 1981, four thousand six hundred and sixty-two (4,662) votes were cast. Of that number, four thousand six hundred and fifty-two (4,652) votes were cast on machines or by Absentee Ballot issued and received by the City Clerk according to law. Twenty-one (21) Affidavit Ballots were cast out of the one hundred fifty-four (154) persons who came to the Affidavit Table. (Only the twenty-one (21) were certified as registered in the City of Clarksdale by the City Registrar's office.) Of this twenty-one, only ten (10) were certified by the Executive Committee as being valid votes after the Committee had checked each registration card as well as the Registration Book.

A tabulation of votes for each candidate is as follows:

Post No. 1:	
Robert Ewing Hart	1,394
Richard M. Webster, Jr	3,200
Post No. 2:	
Phillip Banks III	263
James Hicks	2,066
Grady Palmer	2,333
Post No. 3:	
Charley B. Newson	2,045
Claud Williams, Jr	1,945
Post No. 4: Henry W. Espy, Jr. (Unopposed)	3,513
Post No. 5:	
Anderson Lenard, Jr	168
Buster Moton	1,918
Charles T. "Charlie" Phillips	2,514

The Democratic Primary Executive Committee had only five candidates in this election as follows: Mrs. Vincent J. Brocato, Mr. George W. Foster, Mr. Ed Lanham, Mr. Owen Mayfield, and Mrs. William E. Miller and their names were not required to be placed on the ballot since they had no opposition. Their names will appear on the ballot in the General Election to be held on June 2, 1981.

Since the vote in Post No. 2 was exceedingly close, the Executive Committee met at the City Hall on Wednesday morning, May 13, 1981, to recount and certify the

vote. All machine votes were tabulated, all Absentee Ballots were tabulated, and all affidavit Ballots were checked carefully with the registration cards and book.

After re-tabulating all of the above, the Executive Committee certified that Grady Palmer had received a total of 2,333 votes and the other two candidates in that post received a combined count of 2,329 votes. It was, therefore, necessary for Grady Palmer to have a vote of 2,332 votes which constituted a majority of the votes cast. As recorded above, Grady Palmer received 2,333 votes, which constituted a clear majority and did not necessitate a run-off in this post.

All ballots, machine tally sheets, absentee ballots, and affidavit ballots, along with other materials used in the election process are on file in the office of the City Clerk of Clarksdale, Mississippi.

Since there has been only one Republican candidate to announce to a post on the City Commission and no Independent candidate has announced, the Democratic Primary Executive Committee hereby declares that Richard M. Webster, Jr. is the winner in Post No. 1, Mayor, and has been duly elected by the voters of the City of Clarksdale, Mississippi, for the coming four-year term but will be on the ballot in June.

The Committee certifies that the following have been duly elected to the posts as indicated in the Democratic Primary Election since they will have no opposition in the General Election:

Post No. 2, Grady Palmer; Post No. 4, Henry W. Espy, Jr.; and Post No. 5, Charles T. "Charlie" Phillips.

In the General Election on June 2, 1981, Charley B. Newson will be the Democratic candidate for Post No. 3 with the Republican candidate, Kerney McNeil, as his opponent.

We, the undersigned members of the Democratic Primary Executive Committee, respectfully submit the above as being true and correct for the 1981 Democratic Primary Election of city officials on May 12, 1981.

A. DAVID CALIFF, *Chairman.*
Mrs. VINCENT J. BROCATO.
ED LANHAM.
O. OWEN MAYFIELD.
Mrs. WILLIAM E. MILLER, *Secretary.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 9, 1981.

Hon. HENRY HYDE,
Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, Rayburn House Office Building, Washington, D.C.

DEAR HENRY: I have followed the course of your subcommittee's investigations into the workings of the Voting Rights Act of 1965 with some interest. As you know, my home state is covered by the Act, and it is my conviction that the incidence of actual racial discrimination in voting is as low, if not lower, in Mississippi as in any other state. I am therefore disturbed that the majority of the subcommittee has paid insufficient attention to the great strides we have been making, and I would like to call your attention to recent events in the largest city in my district, Biloxi.

One of the concerns of the Act's proponents is the continued existence of city governments elected at large. While I do not believe that this practice violates either the Constitution or the Act, Biloxi has shown itself sensitive to these concerns. Without pressure from either the Justice Department or the federal courts, Biloxi voters debated and decided to change from the existing at-large system to a system of single-member districts. As the enclosed articles from the Sun-Herald demonstrate, the debate was conducted, not along racial lines, but in accordance with the best interests of the entire community.

Before the referendum was held in 1978, Biloxi had never elected a black, a woman, or a Republican to its city government. The first election under the new system was held last month. Of the seven members of the new City Council, one is black, two are women, and four are Republicans.

Again, I believe that the organization of local governments is entirely a matter for local citizens to decide. However, Biloxi has clearly shown that a city can and will act without any federal provocation to expand minority participation in government. I am convinced that Biloxi is not alone among Southern cities and that, at the very least, some modification of the Act is necessary to protect cities that have behaved in a responsible fashion.

With kind regards and best wishes, I am

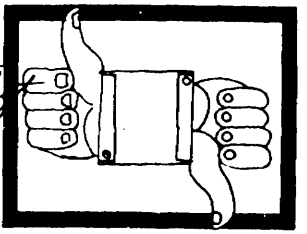
Sincerely yours,

TRENT LOTT.

Enclosure.

The Sun Herald Biloxi-Gulfport-Ocean Springs-Pascagoula, Miss., Saturday, October 7, 1978

Should Biloxi change its form of government?



Pro

By ROLAND SKINNER

AFTER 17 MONTHS OF STUDYing the various forms of government available to Mississippi cities, it is with great enthusiasm that I support the mayor-council form of government for the City of Biloxi.

It represents a refreshing change in government for us, yet proven successful in areas where applied. It meets the latest guidelines established by the United States Supreme Court and yet represents the most basic and fundamental concepts of the representative form of government assuring an equal vote for every citizen and an equal voice in his government.

I am eager to live in a city where I know my representative and know that he represents me. I delight in the thought that my public official has exactly the same amount of authority as responsibility and vice versa.

I do not imply that the mayor-council form of government is a utopia by pointing out its advantages over the alternate forms of municipal government but, it is a fair and workable system.

Comparison with commission form:

An understanding of the distinctions between the alternate forms of municipal government depends upon one's understanding of the concept of separation of powers in government. There must be a clear distinction between the policy-making branch of government and the executive branch which is charged with administering the policy as set by the policy-making body. In our national government, the policy-making branch is the Congress and the president is the chief executive charged with carrying out those laws established by Congress.

On the state level, the legislature is the policy-making authority which makes the state laws and the governor is the chief executive whose responsibility it is to carry out those laws established by the legislature. To maintain stability and permanance, honesty and justice in government, it is essential that there be a separation of the responsibilities of executive and legislative branches and that they be equal in power.

This basic concept of separation of powers is maintained in the mayor-council form of government for municipalities. The council is the legislative or congressional branch in that it makes the city ordinances. The mayor is the chief executive charged with the responsibility of carrying out that policy set by the council.

The council is made up of individuals elected from each of the respective areas of the community so that each councilman is elected by the people who reside in his district — a truly representative form of government. This insures that every area of the city is equally represented on the council. The mayor and his staff directly under his control is charged with the responsibility of running the city in accordance with the policy, programs and ordinances established by the council. His duties and responsibilities are clearly defined and identifiable as being solely his responsibilities. Likewise, the authority, duties and responsibilities of the council are clearly identified as being solely theirs.

In the commission form of government, the mayor and two commisioners sit as the city council to make the policy of the city and also serve as three executives to run the city. In the commission form there is no separation of powers between the individuals running the executive and legislative branches and therefore no balance of powers.

Additionally, the executive responsibilities of the three individuals charged with the administration of the city are often overlapping, resulting in confusion and frustration both to the governing authorities and to the governed.

In the commission form of government, the mayor and two commissioners are elected at large, usually resulting in an election of the most affluent individuals from a controlling political party. Such a system precludes the representation of all other factions which make up the city's population, including the members of other political parties, minorities, newly annexed areas, etc.

Comparison with aldermanic form:

In the aldermanic form, the aldermen are elected from single-member districts and at large throughout the community so that all areas of the city are in fact represented. However, there is no clear delineation of the legislative and executive responsibilities. Often the councilmen are in the position of trying to perform the duties of the mayor or the mayor is trying to perform the duties of the councilmen.

This results in chaos as the mayor usually has far more responsibility than authority. The citizens are left without a public official authorized to effectively operate the executive functions of the city. When there are problems with city departments, etc., the mayor is often not authorized to take the issue at hand and deal effectively with it.

In comparing the aldermanic and mayor-council forms of government, the mayor-council form has been referred to as the strong mayor type. This misnomer has discouraged responsible citizens who desire a voice in their government from giving fair consideration to the mayor-council form. This unfortunate misnomer resulted because the authority of the mayor under the mayor-council form is distinctly and specifically set out in the law, and is precisely commensurate with his responsibility. The councilmen under that form are precluded by law from acting in the executive capacity.

Other considerations:

The mayor, under the commission form, is much stronger than the mayor under the mayor-council form. In the commission form of government, the mayor has both executive and legislative powers. The mayor and his commissioners make the ordinances which they themselves are charged with administering.

While small towns are often able to get by with the aldermanic, commission, or city manager form of government, those forms of government have in the past been found totally inadequate for average to larger size cities for the reasons mentioned above. Accordingly, as our coastal towns increase in size and complexity, it becomes more important that we adopt a managerial system designed to effectively deal with those complexities.

Another factor for consideration is that the United States Supreme Court has ruled in many instances that the commission form of government is unconstitutional as it violates the basic concepts of due process and equal protection under the laws. I submit, therefore, that it is far better that we adopt a workable system ourselves rather than to have some federal judge impose something on us which we have not been a part of creating for ourselves —as our city government should be a government of the people, by the people and for the people.

Mr. Skinner, who practices law in Biloxi, is chairman of the Biloxi City Government Study Committee. He received his BS in geology from the University of Southern Mississippi, his MS in science from the University of Tennessee and his law degree from South Texas College School of Law in Houston.

Con

By THOMAS J. WILTZ

LEGISLATION PROVIDING FOR the commission form of government in Mississippi was first enacted in the year 1908 and with some subsequent modifications and variations, still continues on the statute books at this date. The City of Biloxi, previously operating under the aldermanic form of government, adopted the commission form of government in 1918.

The commission form of government has not been widely used in Mississippi due to the many small municipalities which have employed a different form, but the larger cities have tended to adopt it. Jackson, Hattiesburg, Vicksburg, Laurel, Greenwood, Gulfport, Biloxi and Clarksdale have used this form.

The governing body in the commission form of government is the council, which consists of a mayor and two councilmen, known as commissioners, and the vote of all three have equal weight in the council. The mayor and commissioners are elected at large. The council, acting as a body, is responsible for the exercise of all the corporate powers, duties and obligations conferred on municipalities. The commissioners, by ordinance, divide the executive and administrative duties and assign these duties by a majority vote to a specific commissioner. The council, acting collectively, serves as a policy-making (legislative body) for the city; as to administrative functions the councilmen and mayor, acting separately, serve as the department heads.

The mayor, in the commission form of government, is little more than one of three equals. He presides over meetings of the council but cannot veto a council measure. Of the three commissioners, the mayor is the nominal head with little more unless he chooses, by force of his personality, to exert greater influence.

As authorized by statute, the City of Biloxi has ordained that the commissioners be elected to posts—Commissioner Post No. 1 and Commissioner Post No. 2. In Biloxi the setup for Post No. 1 (commissioner of finance and utilities) is allocated voter registration, tax collecting, accounting, city clerk, budgeting, purchasing, personnel, property, water and sewer. Under Post No. 2 (commissioner of public works) is allocated streets, drainage, sanitation and cemetery.

Under the mayor, we have administration, city attorney, city judge, city prosecutor, civil defense, fire department, police department, public maintenance, library, planning, permits, code enforcements, parks and recreation, stadium and community center.

The mayor is president of the council and presides at all meeting thereof, but has no veto power, has general supervision of the affairs of departments of city government and is, from time to time, to report in writing to the council any matters requiring its attention.

Except as limited by law, the council shall have, exercise, and perform all executive, legislative and judicial powers, duties and obligations bestowed upon governing bodies of municipalities by applicable law.

In meetings of the city council, a majority of the members thereof constitutes a quorum and the affirmative vote of a majority of all members of the council is necessary to adopt any motion, regulation or ordinance, or to pass any measure unless a greater number is provided for under applicable law in specific cases.

Under the commission form of government, the mayor and councilmen (or commissioners) are required to have an office in the city hall and to have regular office hours each day, except Sundays and legal holidays, which office hours are to be fixed by ordinance.

It is under the law, further, the duty of the mayor and councilmen to efficiently and economically administer every department of the city government, and they are to devote as much of their time to the business of the city as shall be necessary to accomplish this result.

We believe the commission form of government provides a good form and method for the handling of the city business and if conducted as contemplated under the applicable law, serves to furnish the municipalities an efficient and economical government.

We have taken note of the movement in the City of Biloxi seeking a change in the form of government to the mayor-council form, which contemplates the election of seven councilmen from seven wards, and the mayor from the city at large.

While we understand the contemplated change would furnish a representative on the city council from seven different wards of the city, with each councilmen being elected from that particular ward, and will serve to give representation on the council from the various areas of the city, full consideration should be given to all factors involved in deciding whether or not this change may be desirable.

In the election to be held to determine if the commission form —the present form—will be abandoned and the mayor-council form installed, the electorate will not know in advance what it is actually voting on because the wards and districts will be created after the election, and further, the districts will be created by the present mayor and commissioners within 120 days after the election in the event the election for the new form carries.

The new form of government would not go into effect until approximately three years hence, when the term of the present mayor and commissioners expires. Then the law requires that the city be redistricted in six months after the official publication by the United States of the population of the municipality and within six months of the effective date of any expansion of municipal boundaries, and this may entail another redistricting before the present administration terminates its present term. Then, any division or redistricting would have to have the approval of the United States attorney general's office.

Under the mayor-council form, the city's business is conducted by the seven council members who elect one of the members as president and who presides. And the executive power of the municipality is exercised by the mayor, and the mayor is authorized to veto the passage of city ordinances, and in such case, it requires the vote of two-thirds of the council members present and voting to override the mayor's veto. The mayor may attend meetings of the council and take part in discussion, but has no vote on the council except in the case of a tie on the question of filling a vacancy in the council in which case he may cast the deciding vote. Under the mayor-council form, the mayor is required to maintain an office at the city hall, but the councilmen are not required to so maintain offices and would not devote full time to the conduct of city government.

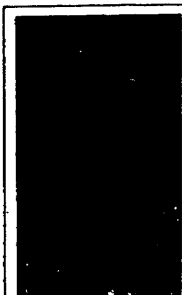
Both of the forms of city government have merit. However, we note that those seeking to promote the change, among other things, urge that if the change is not made that the federal courts are going to step in and do so. We do not believe that the voters should be coerced into voting for the change just for this reason, because it is not certain at this point the commission form of government in the City of Biloxi would be invalidated in any event, and we note the commission form has been recently upheld in the City of Jackson by the United States District Court sitting there.

We would point out further that under the commission form of government, each commissioner is charged with the overall operation of his department, and so far as pertains to all areas of the city concerned, and all people of the city concerned, and is charged with the overall welfare of the entire city, being elected from the city at large.

Under the mayor-council form of government, each councilman will be elected from one particular ward, and the normal thing is that each councilman would be seeking to promote the interest of his particular district and while this might be desirable from the standpoint of the particular district involved, it is conducive to sectionalism and tends to create bickering and arguments and confrontation among the council members, and this does not always provide for an efficient city government operation.

However, it might be said that some proponents of the new form urge that this is a healthy situation which might be produced under the new form. It is believed the citizens and tax payers of Biloxi should take a good look at both forms of government before deciding to vote for or against the change.

If those seeking the change or voting for the change do so because they believe the new form will cure all ills of present city government, I predict these individuals will be sadly disappointed after a short period of operation under the new form if the proposal is passed.



Mr. Wiltz, who practices law in Biloxi, is a former attorney for the City of Biloxi and a past president of the Biloxi Chamber of Commerce. He received his law degree from the Cumberland (Tenn.) University School of Law.

The constitutional question

By MIKE WALLACE

THERE IS AN OLD STORY THEY TELL about one of Earl Long's races for governor of Louisiana. Earl had been in the state hospital drying out, and his doctors released him just in time to qualify for the race. Earl stumped his way around the state that summer, waving his discharge before one and all: "I've got me a paper signed by three doctors that says I'm not insane; you look at these other guys, and you know they're nuts!"

Last month, United States District Judge Walter Nixon Jr., certified that Jackson's commission form of government is not insane. The United States Constitution marks the boundaries of political sanity in our federal system, and, despite many arguments and a few judicial decisions to the contrary, the commission system is not so irrational as to be unconstitutional.

It is important for the citizens of Biloxi to understand when they vote in the Nov. 7 referendum on Biloxi's form of government that both the current commission system and the proposed mayor-council system are permissible under the constitution. It is even more important that they understand that the merely permissible is not necessarily the most desirable.

Under the proposed mayor-council system only the mayor is elected at large; the remaining members of the council are chosen from single-member districts. Under the current system the mayor and both commissioners are elected at large, which has led to claims that the commission system "dilutes" minority voting strength. Opponents argue that blacks can never be elected by a predominantly white electorate, and conclude that they are thereby denied representation in the governing body. The United States Court of Appeals for the Fifth Circuit has adopted this theory, approving the imposition of the mayor-council system on cities such as Mobile and Shreveport by federal court decree.

The notion that citizens can only be properly represented by persons of their own race is poor law and poorer philosophy. The Fifth Circuit has never satisfactorily explained either the source of its authority to restructure city governments or the advantages minorities obtain from the Court's favored system. No simplistic majoritarian system can insure political power for a minority. Minority voting strength is equally "diluted" whether the governing body votes against them 3-0 or 6-3.

For these reasons the United States Supreme Court may well reject the dilution theory altogether. In June four members of the Court went out of their way to remind the Fifth Circuit that the Court had never determined whether "this highly amorphous theory may be applied to municipal governments." Just this week, the Court agreed to hear oral arguments in the Mobile case, indicating possible disapproval of the Fifth Circuit's position.

The great virtue of the at-large system is that it fosters the democratic ideal that elected officials represent all the people, not narrow segments of the populace. If the public accepts the Fifth Circuit's idea that only black officials can represent black citizens, white officials may stop trying to do so. As in so many other areas, the federal courts' efforts to remedy racial discrimination may succeed only in increasing race consciousness. If white members of a mayor-council government come to feel they can legitimately ignore black voters living outside their districts, blacks will enjoy only the form of political representation, but none of the substance. The white majority will be free to make all the decisions, immune from the retribution of black voters.

The commission system, then, is not only constitutional but may also be a highly desirable way of avoiding potential divisiveness. However, since there appears to be little threat of racial polarization in Biloxi, other features of the commission system militate against its retention. The combination of legislative and executive authority in the mayor and two commissioners violate a basic principle of republican government—the separation of powers. Under the commission system, the same persons who formulate policy are also responsible for its execution. Because of the time and effort required in execution, only full-time politicians can serve in the city government and determine policy.

The mayor-council system solves this problem by vesting executive power in the mayor and legislative power in the council. Since council members need not spend full time in the daily execution of policy, citizens will not have to abandon their businesses and other personal concerns to run for office. The participation of businessmen, housewives, and other non-politicians in council decisions will bring a broadening of perspective sorely needed by the city government. As Jefferson intended, citizens will make the decisions while professional politicians will merely carry them out.

THROUGHOUT THE DEBATE OVER the referendum, it must be remembered that forms of government cannot assure quality of government. The electorate has the continuing duty of elevating the best men and women to public office. Still, as Madison knew so well, governmental structures can assist in restraining the worst in men and effectuating their best:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

Whatever happens on Nov. 7, Biloxi will be governed by men, and men more often resemble Earl Long than angels. Nevertheless, the mayor-council system will give more of our best men a chance to take an active part in their government, and it ought to be adopted.

Mr. Wallace is a member of the Biloxi law firm of Sekul, Hornsby, Wallace & Teel. He has served as law clerk to Justice Harry Walker of the Mississippi Supreme Court and to Justice William Rehnquist of the U. S. Supreme Court. He received his BA in government from Harvard University and his law degree from the University of Virginia.

Congress of the United States
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Telephone: 202-225-3951

December 1, 1980

The Honorable Drew Days
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Drew:

As you know, portions of the Voting Rights Act (VRA) are due to expire in August, 1982. Consequently, one of the major priorities for the Subcommittee on Civil and Constitutional Rights during the next Congress will be a complete review of the Act.

I wish to begin hearings regarding the Voting Rights Act as soon as possible next year, in order to have ample time to do a careful and thorough job. Accordingly, I am writing to request your Division's assistance in providing background information and material to the Subcommittee and staff, at this time, so that the Subcommittee can begin now to prepare for those hearings.

I am interested in obtaining information regarding your Section 5 preclearance activity and the appointment of federal examiners and observers, both as they relate to covered jurisdictions in the South and in the Southwest. In addition, even though the minority language provisions do not expire until 1985, I expect that the Subcommittee will also be reviewing these provisions next year.

I realize that some of the information I am requesting may not be available at all and that other data may be in the midst of being complied. With that understanding, I will proceed, in any event, to list some specific information which would be most useful to the Subcommittee. I would very much appreciate whatever assistance you can provide.

First, with regard to the preclearance of voting changes under Section 5 of the Voting Rights Act, can you provide the following:

--the number and type of voting changes which have been submitted under Section 5 since 1974

--the number of objections to Section 5 submissions entered by the Division since 1974

-how many of these objections were entered at the initiation of the Civil Rights Division and how many at the request of private parties?

--Can you provide a breakdown of the submissions and objections by state, county, and municipality?

--Based on post-1970 Census redistrictings and on the annual number of submissions since then, how much of an increase in submissions do you forsee as a result of the post-1980 census redistrictings?

--How does the Division seek to uncover voting related changes which occur in covered jurisdictions without such changes first being submitted to the Division?

-What has been the result of such efforts?

--How does the Division ensure that a voting change to which it has objected is not implemented?

--Can you provide us with a list and/or a summary of all VRA litigation, by type and locality, in which the Division has been involved since 1974? Please specify whether the Division initiated the suit or intervened in the case.

Second, the Subcommittee would like to know how effective the federal examiner and observer sections of the VRA have been. Specifically:

--How many federal examiners and observers have been used since 1974?

--Can you provide information regarding the locality where they were assigned and why (i.e., who requested they be sent, etc.)?

--How many individuals were registered to vote by federal examiners in each locality were they were assigned?

--What follow-up is done by the Division regarding problems federal examiners or observers see firsthand or are told about?

--Do you have any narrative or other summaries of what federal examiners and observers experienced in their assigned localities?

Lastly, the Subcommittee is interested in learning about the usefulness and effectiveness of the 1975 minority language provisions of the VRA. Specifically, the Subcommittee would like to know the extent to which oral and/or written assistance has been provided under these provisions. In this regard, the following information would be most helpful:

--What activity has been undertaken by the Civil Rights Division relating to these provisions?

--Can you describe the transfer of primary responsibility regarding these provisions to the U.S. Attorneys and the effect the transfer has had on enforcement and implementation?

--What has the Division or the U.S. Attorneys done to assure compliance with these provisions?

--How many complaints have been received by the Division or by the U.S. Attorneys regarding non-compliance with these provisions? Do you have a breakdown, by locality, of these complaints?

--How and where has non-compliance been challenged either by the Division or U.S. Attorneys? What has been the result of any such challenges?

I want to reiterate my understanding that, at this point, much of the information I am requesting may not be available. However, whatever assistance you can offer at this time will be appreciated. Please advise me if some of this information is not available, at all, to the Division, so that I can attempt to seek in elsewhere. Of course, any additional information in these areas which the Division can supply -- either now or later -- will greatly assist the Subcommittee's task. Also, as the Subcommittee work proceeds in this area over the next few months, we may request additional information.

With kind regards,

Sincerely,

Don Edwards

Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights

DE/hgl

U.S. DEPARTMENT OF JUSTICE,
CIVIL RIGHTS DIVISION,
Washington, D.C., December 24, 1980.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reference to your letter of December 1, 1980, in which you requested our assistance in providing background information and material to the Subcommittee on Civil and Constitutional Rights regarding our activity under the Voting Rights Act. Some of the information that you requested is available now and is set out below and in attachments to this letter. Information contained in Attachments 1 through 5 is based upon computer records and, accordingly, is subject to the classification limitations indicated on Attachment 1. In later communications we will forward to you as much of the remaining information you request as is available to us.

I. QUESTIONS RELATING TO SECTION 5

Question A. The number and type of voting changes which have been submitted under Section 5 since 1974.

Answer. Attachments 1 and 2 are tables containing this information. These are routinely updated as of the beginning of each fiscal and calendar quarter. (See Attachments 1 and 2 to April 9, 1981 letter.)

Question B. The number of objections to Section 5 submissions entered by the Division since 1974.

Answer. Attachments 3, 4 and 5 are tables containing this information. Attachment 6 is a chart listing the changes to which objections have been interposed. (See note on Attachment 4 regarding the distinction between submnissions and changes submitted.) (See Attachments 3, 4, 5, and 6 to April 9, 1981 letter.)

Question C. How many of these objections were entered at the initiation of the Civil Rights Division and how many at the request of private parties?

Answer. The question of the number of objections interposed at the initiative of the Division as opposed to those done at the request of private parties appears to be based on a misunderstanding of the Section 5 review process. All objections represent our independent findings that the submitted changes cannot be found nondiscriminatory in purpose or effect on the record before us. In some cases private parties, on their own initiative, present comments to our staff urging us to object. In all cases we solicit the views of minority contacts or other interested parties. We consider all comments, solicited and unsolicited, along with the factural record developed by our staff, including all information presented by the submitting authority. Based on our own assessment of all of this information, we decide whether or not an objection is warranted. We keep no records as to how many of our objections involved submissions for which written comments from private parties were received, but this data could be generated from inspection of our files should you think it helpful.

Question D. Can you provide a breakdown of the submissions and objections by state, county, and municipality?

Answer. Attachment 7 is a computer printout of submissions with the requested breakdown for 1980 activity. The printout for the previous years is being updated and corrected; a copy will be forwarded as soon as possible. [Committee note.—Attachment 7 is available in the committee's files]

Question E. Based on post-1970 Census redistricting and on the annual number of submissions since then, how much of an increase in submissions do you foresee as a result of the post-1980 Census redistrictings?

Answer. We are in the process of completing a chart summarizing the results of a recent survey conducted in the covered states in an attmept to determine the increase in submissions that should be expected as a result of post-1980 Census redistrictings. A copy of the completed chart, and of another chart showing post-1970 Census redistricting submission patterns, will be forwarded to you as soon as possible.

Question F. How does the Division seek to uncover voting related changes which occur in covered jurisdictions without such changes first being submitted to the Division?

Answer. The Section 5 program of the Civil Rights Division focuses its efforts on conducting timely and thorough evaluations of the thousands of changes affecting voting that are submitted to the Attorney General pursuant to Section 5, on litigating actions we bring to enforce Section 5, on supporting private litigants in action

where significant questions are involved, and on defending lawsuits brought by jurisdictions to obtain Section 5 preclearance from the District of Columbia federal court. The allocation of resources for the discovery of unsubmitted changes has been dictated both by the structure of Section 5, which places upon covered jurisdictions at affirmative obligation to submit changes, and by budgetary constraints. In fact, our experience is that local jurisdictions generally have recognized their responsibility and voluntarily have submitted changes, however minor. Nevertheless, the Civil Rights Division has made significant affirmative efforts to encourage compliance with Section 5.

Through letters and meetings we have sought actively to educate responsible officials and private parties in covered jurisdictions as to their responsibilities under Section 5.

We also undertake periodic review of state session laws to determine whether any statewide changes requiring preclearance have been enacted. In addition, the Voting Section's Weekly Notice, which lists all incoming submissions, all requests for additional information, and all objections inteposed by the Attorney General, is mailed to over 400 interested organizations and individuals who collectively constitute an informal monitoring force. Whenever submitted voting changes are evaluated, any prior voting changes discovered during that analysis are checked for compliance with Section 5. Changes uncovered through these mechanisms, changes we discover during our regular pre-election surveys conducted before statewide elections in most of the specially covered states, and changes that are otherwise brought to our attention by interested persons, result in written requests by the Department to the appropriate parties for the submission of unprecleared changes. In fiscal year 1980 we sent 135 such letters requesting that changes covered by Section 5 be submitted for the required federal preclearance.

In the past, the Department also has utilized the Federal Bureau of Investigation to conduct periodic broad-ranging compliance investigations. The Bureau will continue to be used to investigate Section 5 compliance where appropriate. In this regard, we note that in some instances the United States Attorneys' offices have served useful local monitoring functions as well.

Question G. What has been the result of such efforts?

Answer. In the fiscal year of 1980 we sent 135 letters requesting that unsubmitted changes be submitted for the required federal preclearance. So far in calendar 1980 we have sent 105 such letters. We are currently compiling information concerning the results of these letters requesting submissions, and will furnish this compilation to the committee in the future.

Question H. How does the Division ensure that a voting change to which it has objected is not implemented?

Answer. All letters of objection request that the submitting authority inform the Department within 20 days as to whether or not the objection will be complied with. Objections are also reported on our Weekly Notice sent to all interested parties who have requested this weekly publication of all Section 5 submission activities. Local contacts will generally inform us if a Section 5 objection is not being complied with. Where non-compliance is discovered, the option of litigative enforcement in the local federal district court pursuant to 42 U.S.C. § 1973j(d) is considered and we will be providing in the near future a listing of our litigation efforts in this area.

II. QUESTIONS RELATING TO THE FEDERAL EXAMINER AND OBSERVER PROVISIONS

As you know, Federal examiners have two primary functions under the Voting Rights Act. Federal examiners conduct listing (voting registration) activities under Sections 6 and 7 of the Act, 42 U.S.C. 1973d and 1973e, and they are available to receive complaints for a period of 48 hours after the close of polls under Section 12(e) of the Act, 42 U.S.C. 1973j(e). In order to perform the latter function, that of "complaints examiner," a federal examiner is assigned to each county in which federal observers are present on election day, and a central state examiner is assigned to receive complaints from all other counties that have been certified by the Attorney General under Section 6 of the Act. Your requests for information, however, primarily appear to address the functions of federal examiners with respect to their voter registration activities, and our responses are directed to this area unless otherwise noted.

Question A. How many Federal examiners and observers have been used since 1974?

Answer. From January 1, 1975, to the present, federal examiners have conducted listing activities in two counties, and 5,273 federal observers have served during elections.

Question B. Can you provide information regarding the locality where they were assigned and why (i.e., who requested they be sent, etc.)?

Answer. The federal examiners were sent to Madison and Humphreys Counties, Mississippi. Federal examiners were assigned to Madison County after the county registrar allowed whites, but refused to grant to blacks, the opportunity for voter registration in outlying areas of the county, and the registrar closed his office to avoid registering blacks, refused to allow black applicants to be assisted by other blacks, and displayed a pistol while ordering a black registration worker and two black prospective applicants out of his office. Federal examiners were assigned to Humphreys County after the county registrar caused lengthy delays in the registration of illiterate black voters, closed his office during the usual hours for voter registration, and refused to allow voter registration in the evening or on weekends, the only time available to many black field workers for registration.

Our requests for the appointment of federal examiners are based on our inquiries and investigations which allow us to make factual determinations with respect to the need for federal listing activity in accordance with the standards set out in the Voting Rights Act. While our factfinding efforts involve discussions with persons who may request the presence of federal examiners, and some of our inquiries may be initiated after the receipt of such requests, our decisions to appoint examiners are not conditioned on the receipt of requests for examiners, nor are our decisions made solely in response to such requests.

Similarly, our decisions regarding the need for federal observers are made on the basis of information gathered through our own inquiries and investigations. In making the determination that federal observers are needed, we consider three basic areas: (1) the extent to which those who will run an election are prepared, e.g., whether there are sufficient voting hours and facilities, whether procedural rules for voting have been adequately publicized, and whether polling officials have been nondiscriminatorily selected and are instructed in election procedures; (2) the confidence of the minority community in the electoral process and in the individuals conducting the election, including the extent to which minorities are allowed to be poll officials, and (3) the possibility that forces outside the official election machinery, such as racial violence or threats of violence or a history of discrimination in areas other than voting, may interfere with the election. Such factors are particularly important in an election where a minority candidate or a candidate who has the support of minority voters has a good chance of winning the election, because federal observers provide a calming, objective presence in an otherwise charged political atmosphere, and the observers serve to prevent intimidation of minority voters at the polls and to assure that illiterate voters are provided with noncoercive assistance in voting.

For most of the states covered by the special provisions of the Act, our fact-finding efforts with regard to the need for federal observers have been systematized through standard pre-election surveys. Our surveys begin with telephone inquiries to election officials in counties with significant minority populations. These inquiries are followed by telephone discussions with minority contacts in counties where minority and white or Anglo candidates are contesting a local office, and in counties where we have received complaints of discrimination in election procedures. Our surveys conclude with field investigations in counties where our telephone inquiries show that the assignment of federal observers may prove to be necessary. The final decision regarding the assignment of federal observers is made by the Assistant Attorney General on the basis of written recommendations that set out the facts obtained in the pre-election surveys.

Information regarding the localities where federal observers have been assigned since January 1, 1975, is set out in Attachment 8, which also indicates the date of the election in question and the number of federal observers that were assigned to each locality for each election.

Question C. How many individuals were registered to vote by federal examiners in each locality where they were assigned?

Answer. Federal examiners assigned to Madison County, Mississippi, in May and June, 1975, registered 404 persons. Federal examiners assigned to Humphreys County, Mississippi, in September, 1975, registered 261 persons.

Question D. What follow-up is done by the Division regarding problems federal examiners or observers see firsthand or are told about?

Answer. Whenever federal observers are present in a county on election day we assign an attorney from the Civil Rights Division, usually a member of our Voting Section, to coordinate activities within the county. Immediately prior to the election our attorneys discuss planned election day activities and polling place procedures with local officials, with minority leaders, and with federal observer supervisors. On election day our attorneys are in constant contact with these groups and with the

federal examiner for the county. Therefore, we are able to immediately learn of problems that come to the attention of observers and examiners, and our attorneys are normally able to resolve the problems immediately by gaining the intercession of the county officials with the polling place workers who are involved. When appropriate, problems that we learn of but which we are unable to resolve on election day, and problems that come to our attention from observers or examiners after the close of polls, are pursued in the first instance through investigation and/or communications with election officials following the election.

Question E. Do you have any narrative or other summaries of what federal examiners and observers experienced in their assigned localities?

Answer. All Federal observers complete a report of the activities and procedures they witnessed during their assignment. A copy of each of these reports is furnished to the Attorney General pursuant to Secton 8 of the Voting Rights Act. Federal examiners who serve during elections furnish us with a written summary of those complaints they receive which have not been communicated to us on election day.

As we noted, this response contains the information that we have readily available in the form requested by your letter, and we will provide the remaining information you requested in the near future insofar as we can.

Sincerely,

JAMES P. TURNER,
Acting Assistant Attorney General,
Civil Rights Division.

Attachment 8

Number of Federal Observers Assigned

January 1, 1975

through

December 19, 1980

ALABAMA

Election		
1975	No observers used in 1975.	
Election	**(2) Counties**	**No. of Observers**
May 4, 1976 Primary	Dallas	42
	Wilcox	44
		86
Election	**(2) Counties**	**No. of Observers**
May 25, 1976 Primary Run-Off	Choctaw	14
	Wilcox	20
		34
Election	**(1) County**	**No. of Observers**
August 10, 1976 Municipal	Sumter (Gainesville)	3
Election	**(3) Counties**	**No. of Observers**
November 2, 1976 General	Perry	25
	Sumter	21
	Wilcox	12
		58
Election		
1977	No observers used in 1977.	
Election	**(5) Counties**	**No. of Observers**
September 5, 1978 Primary	Hale	47
	Marengo	101
	Pickens	27
	Sumter	48
	Wilcox	16
		239
		+3*
		242

*Reserves which were never used.

Election	(5) Counties	No. of Observers
September 26, 1978	Hale	35
Primary	Marengo	94
Runoff	Russell	65
	Sumter	7
	Wilcox	21
		222

Election	(2) Counties	No. of Observers
Nov. 7, 1978	Bullock	32
General	Wilcox	105
		137

Election	
1979	No observers used in 1979.

ALABAMA

Election	(2) Counties		No. of Observers
July 8, 1980	Pickens	(Aliceville)	15
Municipal	Sumter	(Epes & Geiger)	6
			21

Election	(4) Counties	No. of Observers
September 2, 1980	Conecuh	68
Primary	Hale	49
	Pickens	16
	Wilcox	30
		163

Election	(1) County	No. of Observers
September 23, 1980 Primary Run-Off	Conecuh	25

Election	(1) County	No. of Observers
November 4, 1980 General	Sumter	63

CALIFORNIA

Election	(1) County	No. of Observers
November 7, 1978 General	San Francisco	146

Election	(1) County	No. of Observers
December 11, 1979 Run-off	San Francisco	140

Election

1980 — No observers used in 1980.

GEORGIA

Election	(1) County	No. of Observers
December 10, 1975 Municipal	Terrell (Dawson)	11

Election	(3) Counties	No. of Observers
August 10, 1976 Primary	Meriwether	15
	Stewart	13
	Terrell	27
		55

Election	(1) County	No. of Observers
August 31, 1976 Primary Run-Off	Stewart	12

Election

1977 — No observers used in 1977.

Election	(1) County	No. of Observers
April 10, 1978 General	Hancock (Sparta)	4

Election

1979 — No observers used in 1979.

Election	(8) Counties	No. of Observers
August 5, 1980 Primary	Bulloch	9
	Calhoun	18
	Early	19
	Johnson	33
	Mitchell	19
	Sumter	26
	Telfair	18
	Tift	14
		156

LOUISIANA

Election	(3) Parishes	No. of Observers
November 1, 1975 Primary	E. Carroll	38
	Madison	56
	DeSoto	5
		99

Election	(2) Parishes	No. of Observers*
December 13, 1975 Primary Run-Off	E. Feliciana	13
	St. Helena	4
		17

Election	(2) Parishes	No. of Observers
August 14, 1976 Primary	E. Carroll	30
	E. Feliciana	3
		33

Election	
1977	No observers used in 1977.

Election	
1978	No observers used in 1978.

Election	(3) Parishes	No. of Observers
October 27, 1979 Primary	Plaquemines	27
	East Carroll	11
	St. Helena	44
		82

Election	(2) Parishes	No. of Observers
December 8, 1979 Primary Run-Off	East Carroll	34
	St. Helena	14
		48

Election	(1) Parish	No. of Observers
Special School Board April 5, 1980	St. Landry	12

* Figures obtained from Civil Service Commission - 4/28/78.

MISSISSIPPI

Election	(10) Counties	No. of Observers*
August 5, 1975 Primary	Benton	11
	Claiborne	38
	Hinds	14
	Leflore	81
	Madison	63
	Marshall	65
	Noxubee	57
	Sunflower	71
	Warren	42
	Yazoo	46
		4 (Reserves)
		492

Election	(9) Counties	No. of Observers*
August 26, 1975 Primary Run-Off	Benton	6
	Clay	16
	Hinds	12
	Holmes	14
	Humphreys	8
	Madison	67
	Marshall	42
	Noxubee	12
	Oktibbeha	16
		8 (Reserves)
		201

Election	(15) Counties	No. of Observers*
November 4, 1975 General	Benton	12
	Bolivar	55
	Claiborne	38
	Holmes	20
	Humphreys	59
	Issaquena	2
	Jefferson	26
	Leflore	81
	Madison	57
	Marshall	110
	Noxubee	57
	Sharkey	20
	Tallahatchie	6
	Tunica	8
	Wilkinson	20
		24 (Reserves)
		595

* Figures obtained from Civil Service Commission - 4/28/78

MISSISSIPPI

Election	(1) County	No. of Observers
September 7, 1976 Special Election	Grenada (City of Grenada)	9

Election	(1) County	No. of Observers
September 14, 1976 Run-Off	Grenada (City of Grenada)	10

Election	(5) Counties	No. of Observers
November 2, 1976 General	Clay	16
	DeSoto	51
	Issaquena	4
	Noxubee	26
	Tunica	16
		113

Election	(7) Counties	No. of Observers
May 10, 1977 Primary	Noxubee (Macon)	7
	Sunflower (Sunflower & Moorhead)	6
	Bolivar (Shaw)	4
	Hinds (Edwards)	3
	Leflore (Itta Bena)	4
	Tallahatchie (Tutwiler)	2
	DeSoto (Hernando)	2
		28

Election	(1) County	No. of Observers
Primary Re-run May 16, 1977	Bolivar (Shaw)	5

Election	(1) County	No. of Observers
May 17, 1977 Primary Run-Off	Marshall (Holly Springs)	5

Election	(2) Counties	No. of Observers
June 7, 1977 General	Bolivar (Shaw)	5
	Holmes (Tchula)	5
		10

Election	(1) County	No. of Observers
June 28, 1977 Special	Tunica	24

MISSISSIPPI

Election	(1) County	No. of Observers
August 16, 1977 Special	Marshall	14

Election	(1) County	No. of Observers
September 13, 1977 General	Leflore(Sidon)	3

Election	(1) County	No. of Observers
April 3, 1978 General	Yazoo(Yazoo City)	16

Election	(1) County	No. of Observers
Nov. 14, 1978 Special	Tunica	5

Election	(1) County	No. of Observers
Nov. 28, 1978 Runoff	Tunica	5

Election	(1) County	No. of Observers
Dec. 11, 1978 Municipal	Bolivar (Rosedale)	5

Election	(10) Counties	No. of Observers
August 7, 1979 Primary	Bolivar	13
	Covington	21
	Greene	15
	Humphreys	30
	Jasper	18
	Kemper	44
	Marshall	105
	Tallahatchie	52
	Wilkinson	26
	Yazoo	19
Election		343

August 28, 1979 Primary Runoff	(7) Counties	No. of Observers
	Covington	8
	Greene	8
	Humphreys	38
	Kemper	11
	Marshall	136
	Tallahatchie	33
	Yazoo	34
		268

Election	(1) County	No. of Observers
October 2, 1979 Special	Yazoo	7

MISSISSIPPI

Election	(10) County	No. of Observers
November 6, 1979 General	Bolivar	32
	Covington	12
	Claiborne	73
	Greene	10
	Holmes	33
	Humphreys	38
	Marshall	136
	Noxubee	65
	Tunica	28
	Yazoo	34
	Total	461

Election	(1) County	No. of Observers
November 27, 1979 Special Election	Warren	89

Election	(1) County	No. of Observers
Special Run-Off December 11, 1979	Warren	44

Election	(1) County	No. of Observers
Special Election (Supt. of Education) May 13, 1980	Humphreys	21

Election	(6) Counties	No. of Observers
November 4, 1980 General	Claiborne	54
	Clay	36
	Humphreys	27
	Noxubee	71
	Quitman	20
	Yazoo	23
		231

Election	(2) Counties	No. of Observers
November 18, 1980 Run-off	Noxubee	15
	Yazoo	7
		22

Nevada

Election	(1) County	No. of Observers
September 12, 1978 Primary	Humboldt	3

SOUTH CAROLINA

Election	
1975	No observers used in 1975.

Election	
1976	No observers used in 1976.

Election	
1977	No observers used in 1977.

Election	(1) County	No. of Observers
June 27, 1978 Primary Run-Off	Marion	12

Election	(1) County	No. of Observers
Nov. 7, 1978 General	Darlington	55

Election	
1979	No observers used in 1979.

Election	
1980	No observers used in 1980.

TEXAS

Election	(4) Counties	No. of Observers
May 1, 1976 Primary	Wilson	18
	Uvalde	24
	Medina	57
	Fort Bend	18
		117

Election	(3) Counties	No. of Observers
November 2, 1976 General	Bee	24
	Frio	26
	LaSalle	26
		76

Election	(1) County	No. of Observers
May 6, 1978 Primary	Reeves	59

Election	(1) County	
June 3, 1978 Primary Run-Off	Reeves	15

Election	(1) County	No. of Observers
Aug. 12, 1978 Special Run-off	Crockett	8

Election	(1) County	No. of Observers
Nov. 7, 1978 General	El Paso	8

Election	(1) County	No. of Observers
November 4, 1980 General	Atascosa	19

WISCONSIN

Election	(1) County	No. of Observers
February 21, 1978 Primary	Shawano (Bartelme)	3

Election	(1) County	No. of Observers
April 4, 1978 General	Shawano (Bartelme)	3

U.S. DEPARTMENT OF JUSTICE,
CIVIL RIGHTS DIVISION,
Washington, D.C., April 9, 1981.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reference to our letter of December 24, 1980, and in further response to your letter of December 1, 1980, in which you requestd our assistance in providing background information and material to the Subcommittee on Civil and Constitutional Rights regarding our activity under the Voting Rights Act. As we promised in our letter of December 24, we are sending more of the information you requested.

QUESTIONS RELATING TO SECTION 5 AND TO LITIGATION

One of the questions we partially responded to in our letter of December 24, 1980, was—What has been the result of our efforts to pursue unsubmitted voting changes? At that time we indicated that in fiscal year 1980 we had sent 135 letters requesting submission of changes requiring preclearance under §5 and that so far we had sent 105 in calendar year 1980. We now have determined that actually we sent 134 letters in fiscal 1980, which have resulted in 89 responses to date. Of these 89 responses, 84 were submissions of unprecleared changes. The other five indicated that the unprecleared practice had been discontinued or that no change had occurred.

We also now have complete statistics for the 1980 calendar year. During 1980, we sent 124 letters requesting submission of a change and as of January 27, 1981, we had received 79 responses. Seventy-eight of the responses were submissions; the one remaining response indicated that the change is not being implemented. Follow-up action by letters, telephone calls or FBI investigations has been or will be taken to encourage compliance with the Act on the part of those jurisdictions from which we have not received a response.

We have recently updated our tables showing the number and type of voting changes which have been submitted under Section 5 since 1974, our tables showing the number of objections to Section 5 entered by the Division since 1974, and our chart listing the changes to which objections have been interposed, all of which were sent to you as Attachments 1 through 6 to our letter of December 24, 1980. The updated information is included as Attachments 1 through 6 to the instant letter. Our previous letter also forwarded, as Attachment 7, a computer printout of submissions for 1980 by state, county and municipality, the breakdown you requested. A computer printout showing similar information for the years prior to 1980 is now available and is included as Attachment 7 to the instant letter.

[COMMITTEE NOTE.—Attachment 7 is available in the committee's files.]

In our previous letter we indicated that we would forward to you a chart showing the increase in Section 5 submissions that should be expected as a result of post-1980 census redistrictings, and a chart showing post-1970 census redistricting submission patterns. In this regard, Attachment 8 is a chart of all post-1970 census submissions which relate to reapportionment actions as shown by our computer listings. These listings include in the category of redistricting such changes as modifications of candidate residency districts and modifications of precinct lines to conform to newly adopted voting districts.

With respect to the number of post-1980 census redistrictings, we have found that because of several variables it is not possible to estimate the timing and volume of submissions with precision. These variables include the extent of voluntary compliance during a period when Congress is likely to be considering whether to extend the coverage of §4 for an additional period of time, the ability and will of covered jurisdictions to fashion timely redistricting plans, the extent of reapportionment litigation, and the possibility that census figures will not require redistricting in some jurisdictions. Our best estimate is that covered jurisdictions will submit approximately 1,000 redistricting plans between January 1, 1981 and August 6, 1982. The estimate is based on: (a) experience during the comparable period after the 1970 Census; (b) submissions received after additional jurisdictions were covered in 1975; and (c) informal contacts with state officials regarding their plans for redistricting.

Another question which we only partially answered in our previous letter was—How does the Division ensure that a voting change to which it has objected is not implemented? In that letter we promised to provide a listing of our relevant litigation efforts. In this response we are providing that information, along with information in response to the following question you raised:

Can you provide us with a list and/or summary of all VRA litigation, by type and locality, in which the Division has been involved since 1974? Please specify whether the Division initiated the suit or intervened in the case.

Attachment 9 is a list of all civil rights voting cases in which the Civil Rights Division participated from January 1, 1975, through December 31, 1980. The list sets out the name of the case, the date of our initial participation in the case, the court in which we initially participated, our status as a litigant in the case, the issue or issues in the case, and the jurisdiction involved in the case. Among the cases listed, those that relate to the provisions of the Voting Rights Act are designated by the initials VRA, and the initials are preceded by the specific section or sections of the Act at issue in the case, e.g., §5 of VRA. Those cases which involve non-compliance with objections interposed by the Attorney General are denoted by an asterisk. In addition, for those cases in which the United States was a party the list indicates which cases have been concluded, and whether the plaintiff or the defendant was the prevailing party. Civil rights voting cases handled by U.S. Attorneys are included on the list of lawsuits since the Civil Rights Division played a substantial role in coordinating with and advising the U.S. Attorneys in those cases.

[COMMITTEE NOTE.—See attachment 7 to June 17, 1981 letter.]

We are preparing narrative summaries of lawsuits in which we have been involved since 1974. These summaries are similar to those which were presented to the Subcommittee on Civil and Constitutional Rights in 1975, and will be forwarded to you when they are completed.

Additional responses to questions posed in your December 1 letter are set forth below.

QUESTIONS RELATING TO THE 1975 LANGUAGE MINORITY PROVISIONS

Question A. What activity has been undertaken by the Civil Rights Division relating to these provisions?

Answer. The primarily enforcement responsibilities within the Department of Justice for the special language minority provisions of the Voting Rights Act are divided between the Civil Rights Division and the United States Attorneys. The U.S. Attorneys are primarily responsible for enforcing these provisions for counties that are covered solely by §203, while the Civil Rights Division is primarily responsible for enforcement in counties covered by §4. Individual counties that are covered under both §4 and §203 are within the enforcement responsibilities of the Civil Rights Division. The Civil Rights Division coordinates generally with the U.S. Attorneys regarding actions involving the language minority provisions.

Jurisdictions covered under §4 of the Act are also subject to §§5, 6 and 8 of the Act, the special provisions relating to preclearance, federal examiners and federal observers, respectively. Accordingly, the activity of the Civil Rights Division with regard to the language minority provisions in §4 jurisdictions is conducted mainly through our procedures for examining voting changes submitted for §5 preclearance and our procedures for conducting surveys and investigations under §§6 and 8. However, any complaints that are received by the Division regarding possible violations of the language minority provisions in §4 jurisdictions are appropriately evaluated and investigated. To facilitate coordinated efforts by the Civil Rights Division and the U.S. Attorneys in districts with one or more §203 counties, we sent a memorandum on May 17, 1978 to those U.S. Attorneys advising them of the Department's policy for enforcement of §203. Attachment 10 is a copy of the memorandum from Gerald W. Jones, Chief of the Voting Section. In addition, the Division communicates with U.S. Attorneys with respect to overall enforcement activities in particular districts, the evaluation of specific matters, and the litigation of §203 cases.

Question B. Can you describe the transfer of primary responsibility regarding these provisions to the U.S. Attorneys and the effect the transfer has had on enforcement and implementation?

Answer. The decision that the U.S. Attorneys should be responsible for the enforcement of §203 was made by the Deputy Attorney General in connection with the Civil Rights Division's September 10, 1975, Fiscal Year 1976 supplemental budget request.

The effect of giving the U.S. Attorneys this responsibility has been an overall increase in the enforcement and implementation of civil rights voting laws because the U.S. Attorneys have assumed the traditional enforcement activities for §203, leaving the Civil Rights Division free to concentrate on other matters and cases. These traditional enforcement activities include communicating with election officials regarding the substance of the law, communicating with minority group members regarding factual matters relating to the law and to invite further communica-

tion should the need arise, undertaking specific investigative programs under § 203, and litigating cases under § 203.

Question C. What has the Division or the U.S. Attorneys done to assure compliance with these provisions?

Answer. The activities of the Civil Rights Division and the U.S. Attorneys in this regard are described in our answers to questions A and B, above. Although we do not have a complete inventory of all actions taken by the Department of Justice to assure compliance with the language minority provisions, we can describe some specific steps that serve as examples of these kinds of activities. We note that these examples specifically relate to language usage as distinguished from other matters, like reapportionment, which affect language minority groups but do not directly address the use of minority languages.

Immediately after the enactment of the 1975 Amendments to the Voting Rights Act the Civil Rights Division sent letters to each newly covered state and county explaining the special provisions of the Act and the obligations of covered jurisdictions. Personnel from the Civil Rights Division traveled to seven states which became subject to the language minority provisions (Arizona, California, Colorado, Hawaii, New Mexico, Oklahoma and Texas) to speak to assembled state and local election officials regarding the requirements of the Act. Other Division activity of general application has included amending the U.S. Attorneys Manual to address enforcement of the language minority provisions, and direct communication between the Civil Rights Division and the U.S. Attorneys as described in the memorandum included as Attachment 10 to this letter.

Some examples of the kinds of actions U.S. Attorneys have taken with regard to state and local officials, and with regard to language minority group members, are contained in the attached (Attachment 11) copies of communications we receive from the U.S. Attorneys for North Dakota, for Colorado, for the Western District of Oklahoma, and for the Central District of California. Other activities of U.S. Attorneys in this regard have included investigations requested from the FBI, discussions and conferences with language minority group representatives and with election officials, and monitoring election day procedures. The U.S. Attorney for the Eastern District of California supervised the development of a manual (Attachment 12) that can be used by U.S. Attorneys to set up a program in their offices for monitoring compliance with the language minority provisions of the Voting Rights Act. We have been informed that the manual was sent to all U.S. Attorneys, and to persons or organizations who requested copies.

Compliance with the language minority provisions also has been assured through the Section 5 preclearance process, the use of federal observers, and litigation. Two examples of our actions under Section 5 are objections that were interposed on May 26, 1976, and March 4, 1977, respectively, to the bilingual election procedures of Yuba and Monterey Counties, California. Our letter of objection, and our subsequent letters to those counties in this regard are collected in Attachment 13.

[COMMITTEE NOTE.—Copy available in committee's files.]

The case of *Apache County High School District No. 90* v. *United States*, C.A. 77-1815 (D.D.C., June 12, 1980), is an example of the effective combination of the Section 5 administrative and litigative processes in assuring compliance with the language minority provisions. On October 4, 1976, we inteposed an objection to minority language procedures used by the jurisdiction in connection with a bond election. The jurisdiction then filed a declaratory judgment suit seeking Section 5 preclearance of the procedures from the United States District Court for the District of Columbia. The court, however, agreed with our position that the jurisdiction had violated the language minority provisions of the Act, and that practices that violate the language minority provisions cannot pass review under Section 5. The decision of the court appears as Attachment 14.

Illustrative of our use of federal observers in connection with the language minority provisions is our action in requesting the assignment of observers to Bee County, Texas, for the November 2, 1976, general election, where our sole concern was whether Spanish speaking voters would be provided the opportunity for effective oral communication at the polls. Perhaps the most dramatic use of federal observers in connection with minority language procedures occurred in San Francisco, California, where 146 observers served on November 7, 1978, and 140 observers served on November 6, 1979, to determine whether Chinese and Spanish speaking voters were able to effectively participate in the electoral process.

Since San Francisco is not covered under Section 4 of the Voting Rights Act, the San Francisco observer activity was authorized by court order under Section 3 of the Act in the case of *United States* v. *City and County of San Francisco* C.A. No. C-78 2521 CFP (N.D. Cal.). This case also serves as an example of the Department's actions in assuring compliance with the language minority provisions through liti-

gation. The case was authorized by the Civil Rights Division and filed by the U.S. Attorney's office on October 27, 1978, to protect the rights of Chinese and Spanish speaking voters under Section 203 of the Voting Rights Act. Preliminary relief was granted by the court on November 1, 1978, and on October 23, 1979. On May 19, 1980, a three-judge court entered a comprehensive consent decree that details steps the city must take to provide minority language voter outreach, voter registration, and polling place aids, and contains reporting provisions and authorization for our use of federal observers to monitor city elections. A copy of the consent decree is included as Attachment 15.

Question D. How many complaints have been received by the Division or by the U.S. Attorneys regarding non-compliance with these provisions? Do you have a breakdown, by locality, of these complaints?

Answer. Our procedures for docketing the correspondence we receive are clerical functions designed to capture only as much information as will allow us to properly file and retrieve the correspondence and related papers, and to record subsequent actions regarding the correspondence. Accordingly, our docket records do not give such information as would enable us to furnish a count of the complaints received by the Division regarding non-compliance with specific provisions of the Voting Rights Act. Moreover, our communications with the U.S. Attorneys about enforcement of the language minority provisions most often have dealt with matters of policy and approaches to fact-finding and to litigation. Accordingly, we do not have a count of the complaints received by the U.S Attorneys regarding non-compliance with these provisions and it does not appear that any uniform method of record-keeping has been followed among the U.S. Attorneys' offices that could be used to compile this information.

Question E. How and where has non-compliance been challenged either by the Division or U.S. Attorneys? What has been the result of any such challenges?

Answer. These matters are discussed above in our response to your question regarding the actions of the Department in assuring compliance with the language minority provisions of the Voting Rights Act. In addition to the actions described in that response, other objections to Section 5 submissions involving minority language programs are included in Attachment 6, the chart listing the changes to which objections have been interposed; minority language programs which have been precleared under Section 5 are noted as "bilingual" on Attachment 7, the computer printout of submissions prior to 1980, by state, county and municipality (Attachment 7 to our previous letter shows similar information for 1980); and other lawsuits involving the language minority provisions include those that are set out on Attachment 9 (the list of cases) as pertaining to issues under § 203, and the following five cases that are noted as bailout suits under § 4: *Yuba County, California* v. *United States* (filed on December 30, 1975); *State of New Mexico, Curry, McKinley & Otero Counties* v. *United States* (filed on January 12, 1976); *Counties of Choctaw, McCurtain, State of Oklahoma* v. *United States* (filed on July 6, 1976); *Board of County Commissioners of El Paso County, Colorado* v. *United States* (filed on February 1, 1977); and *State of Alaska* v. *United States* (filed on March 21, 1978).

We believe that the information provided in this letter and in our letter of December 24, 1980, answers all of the requests set out in your letter of December 1, 1980, with the exception of your request for summaries of our Voting Rights Act litigation since 1974. We will provide the case summaries as soon as they are completed.

Sincerely,

JAMES P. TURNER,
Acting Assistant Attorney General,
Civil Rights Division.

NUMBER OF CHANGES SUBMITTED UNDER SECTION 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY STATE AND YEAR, 1965-DECEMBER 31, 1980

STATE	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
ALABAMA	1	0	0	0	13	2	86	111	60	58	299	349
ALASKA***	0	0	0	0	----	0	0	0	----	----	0	3
ARIZONA****	0	0	0	0	0	0	19	69	33	28	52	228
CALIFORNIA*	----	----	----	----	----	0	0	6	1	5	0	382
COLORADO*	----	----	----	----	----	----	----	----	----	----	0	12
CONNECTICUT**	----	----	----	----	----	----	----	----	----	0	0	0
FLORIDA*	----	----	----	----	----	----	----	----	----	----	1	57
GEORGIA	0	1	0	62	35	60	138	226	114	173	284	252
HAWAII*	0	0	0	0	0	0	0	0	0	0	0	6
IDAHO*	0	0	----	----	----	0	0	0	0	0	0	0
LOUISIANA	0	0	0	0	2	3	71	136	283	137	255	303
MAINE*	----	----	----	----	----	----	----	----	----	0	0	3
MASSACHUSETTS**	----	----	----	----	----	----	----	----	----	0	0	11
MICHIGAN **	----	----	----	----	----	----	----	----	----	----	0	3
MISSISSIPPI	0	0	0	0	4	28	221	68	66	41	107	152
NEW HAMPSHIRE**	----	----	----	----	----	----	----	----	----	0	0	0
NEW MEXICO*	----	----	----	----	----	----	----	----	----	----	0	65
NEW YORK*	----	----	----	----	----	0	4	----	----	84	78	106
OKLAHOMA*	----	----	----	----	----	----	----	----	----	----	0	1
NORTH CAROLINA*	0	0	0	0	0	2	75	28	35	54	293	125
SOUTH CAROLINA	0	25	52	37	80	114	160	117	135	221	201	419
SOUTH DAKOTA	----	----	----	----	----	----	----	----	----	----	0	0
TEXAS	----	----	----	----	----	----	----	----	----	----	249	4,694
VIRGINIA	0	0	0	11	0	46	344	181	123	186	259	301
WYOMING*	----	----	----	----	----	----	0	0	0	1	0	0
TOTALS	1	26	52	110	134	255	1,118	942	850	988	2,078	7,472

*Selected county (counties) covered rather than entire state.
**Selected town (towns) covered rather than entire state.
***Entire state covered 1965-1968; selected election districts covered 1970-1972; since 1975 entire state covered.
****Selected county (counties) until 1975; entire state now covered.
----Not covered for years indicated.

ATTACHMENT 1

NUMBER OF CHANGES SUBMITTED UNDER SECTION 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY STATE AND YEAR, 1965-DECEMBER 31, 1980

STATE	1977	1978	1979	1980	TOTAL
ALABAMA	153	146	142	295	1,715
ALASKA***	0	25	1	8	37
ARIZONA****	180	311	163	655	1,738
CALIFORNIA*	99	105	8	89	695
COLORADO*	4	34	147	36	233
CONNECTICUT**	0	0	0	0	0
FLORIDA*	8	46	28	28	168
GEORGIA	242	444	371	689	3,091
HAWAII*	0	0	0	3	9
IDAHO*	0	0	0	1	1
LOUISIANA	460	254	336	356	2,596
MAINE*	0	0	0	0	3
MASSACHUSETTS**	0	6	0	0	17
MICHIGAN**	0	0	0	0	3
MISSISSIPPI	114	123	112	153	1,189
NEW HAMPSHIRE**	0	0	0	0	0
NEW MEXICO*	----	----	----	----	65
NEW YORK*	96	72	27	25	492
OKLAHOMA*	0	0	----	----	1
NORTH CAROLINA*	183	156	89	158	1,198
SOUTH CAROLINA	299	212	138	192	2,402
SOUTH DAKOTA	0	2	4	0	6
TEXAS	1,735	2,425	2,917	4,188	16,208
VIRGINIA	434	314	267	464	2,930
WYOMING*	0	0	0	0	1
TOTALS	4,007	4,675	4,750	7,340	34,798

NUMBER OF CHANGES SUBMITTED UNDER SECTION 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY TYPE AND YEAR, 1965-DECEMBER 31, 1980

TYPE OF CHANGE	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
REDISTRICTING	----	2	4	----	12	25	201	97	47	55	53	335
ANNEXATION	----	1	2	----	2	6	256	272	242	244	571	1,499
POLLING PLACE	----	2	4	4	7	28	174	127	131	154	408	1,983
PRECINCT	----	2	9	7	11	22	144	69	55	81	82	608
REREGISTRATION	----	----	1	----	----	2	52	15	6	4	46	147
INCORPORATION	----	----	1	----	----	----	4	1	3	1	5	15
ELECTION LAW 1/	1	18	24	96	67	105	226	332	258	422	620	1,831
BILINGUAL	----	----	----	----	----	----	----	----	----	----	22	781
MISCELLANEOUS 2/	----	----	----	3	14	8	15	26	99	12	65	168
NOT WITHIN THE SCOPE OF SECTION 5	----	1	7	----	21	59	46	3	9	15	206	105
TOTALS	1	26	52	110	134	255	1,118	942	850	988	2,078	7,472

Note: These figures are based on computer tabulations. The computer program is limited to the above general classifications.

1/ Ordinance or other legislation affecting election laws; this category was replaced in 1980 by several others. See page 2.

2/ Miscellaneous change not included in the above classifications.

ATTACHMENT 2

NUMBER OF CHANGES SUBMITTED UNDER SECTION 5 AND REVIEWED BY THE DEPARTMENT OF JUSTICE, BY TYPE AND YEAR, 1965-DECEMBER 31, 1980

TYPE OF CHANGE	1977	1978	1979	1980	TOTAL
REDISTRICTING	79	48	53	85	1,096
ANNEXATION	939	880	1,130	1,205	7,249
POLLING PLACE	844	1,402	1,122	3,058	9,448
PRECINCT	266	299	542	982	3,179
REREGISTRATION**	366	162	271	5	1,077
INCORPORATION	12	5	11	58	116
ELECTION LAW 1/***	1,094	1,450	1,230	----	7,774
BILINGUAL	171	280	294	201	1,749
MISCELLANEOUS 2/	150	65	68	284	977
NOT WITHIN THE SCOPE OF SECTION 5***	86	84	29	----	671
METHOD OF ELECTION*	----	----	----	196	196
FORM OF GOVERNMENT*	----	----	----	41	41
CONSOLIDATION OR DIVISION OF POLITICAL UNITS*	----	----	----	14	14
SPECIAL ELECTION*	----	----	----	369	369
VOTING METHODS*	----	----	----	93	93
CANDIDATE QUALIFICATION*	----	----	----	11	11
VOTER REGISTRATION PROCEDURE*	----	----	----	738	738
TOTALS	4,007	4,675	4,750	7,340	34,798

*New computer classifications beginning in 1980.
**Modified in 1980; does not include other registration procedures listed above.
***Not used in 1980.

NUMBER OF SECTION 5 SUBMISSIONS WHICH HAVE BEEN OBJECTED TO
BY STATE AND YEAR FROM 1965 - FEBRUARY 28, 1981

STATE	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
ALABAMA	-	-	-	-	10	1	3	6	1	2	5	10
ALASKA	-	-	-	-	-	-	-	-	-	-	-	-
ARIZONA	-	-	-	-	-	-	-	-	1	-	2	1
CALIFORNIA	-	-	-	-	-	-	-	-	-	-	-	1
COLORADO	-	-	-	-	-	-	-	-	-	-	-	-
CONNECTICUT	-	-	-	-	-	-	-	-	-	-	-	-
FLORIDA	-	-	-	-	-	-	-	-	-	-	-	-
GEORGIA	-	-	-	4	-	-	5	11	9	10	13	7
HAWAII	-	-	-	-	-	-	-	-	-	-	-	-
IDAHO	-	-	-	-	-	-	-	-	-	-	-	-
LOUISIANA	-	-	-	-	2	-	21	8	6	2	3	2
MAINE	-	-	-	-	-	-	-	-	-	-	-	-
MASSACHUSETTS	-	-	-	-	-	-	-	-	-	-	-	-
MICHIGAN	-	-	-	-	-	-	-	-	-	-	-	-
MISSISSIPPI	-	-	-	-	3	1	12	2	7	2	9	5
NEW HAMPSHIRE	-	-	-	-	-	-	-	-	-	-	-	-
NEW MEXICO	-	-	-	-	-	-	-	-	-	-	-	-
NEW YORK	-	-	-	-	-	-	-	-	-	2	1	-
OKLAHOMA	-	-	-	-	-	-	-	-	-	-	-	-
NORTH CAROLINA	-	-	-	-	-	-	6	-	-	-	3	-
SOUTH CAROLINA	-	-	-	-	-	-	-	4	3	13	2	8
SOUTH DAKOTA	-	-	-	-	-	-	-	-	-	-	-	-
TEXAS	-	-	-	-	-	-	-	-	-	-	1	30
VIRGINIA	-	-	-	-	-	1	5	1	-	3	1	-
WYOMING	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	0	0	0	4	15	3	52	32	27	34	40	64

ATTACHMENT 3

NUMBER OF SECTION 5 SUBMISSIONS WHICH HAVE BEEN OBJECTED TO
BY STATE AND YEAR FROM 1965 - FEBRUARY 28, 1981

STATE	1977	1978	1979	1980	1981	TOTAL
ALABAMA	1	2	1	3	-	45
ALASKA	-	-	-	-	-	0
ARIZONA	-	-	-	1	-	5
CALIFORNIA	1	-	-	-	-	2
COLORADO	-	-	-	-	-	0
CONNECTICUT	-	-	-	-	-	0
FLORIDA	-	-	-	-	-	0
GEORGIA	8	5	3	5	1	81
HAWAII	-	-	-	-	-	0
IDAHO	-	-	-	-	-	0
LOUISIANA	1	3	-	2	-	50
MAINE	-	-	-	-	-	0
MASSACHUSETTS	-	-	-	-	-	0
MICHIGAN	-	-	-	-	-	0
MISSISSIPPI	6	2	3	3	1	56
NEW HAMPSHIRE	-	-	-	-	-	0
NEW MEXICO	-	-	-	-	-	0
NEW YORK	-	-	-	-	-	3
OKLAHOMA	-	-	-	-	-	0
NORTH CAROLINA	2	2	1	2	-	16
SOUTH CAROLINA	5	7	4	-	-	46
SOUTH DAKOTA	-	1	1	-	-	2
TEXAS	12	17	12	13	1	86
VIRGINIA	-	-	1	1	-	13
WYOMING	-	-	-	-	-	0
TOTAL	36	39	26	30	3	405

NUMBER OF CHANGES* TO WHICH OBJECTIONS HAVE BEEN INTERPOSED
BY STATE AND YEAR, 1965 - FEBRUARY 28, 1981

STATE	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
ALABAMA	-	-	-	-	10	1	3	9	1	6	16	16
ALASKA	-	-	-	-	-	-	-	-	-	-	-	-
ARIZONA	-	-	-	-	-	-	-	-	1	-	2	2
CALIFORNIA	-	-	-	-	-	-	-	-	-	-	-	3
COLORADO	-	-	-	-	-	-	-	-	-	-	-	-
CONNECTICUT	-	-	-	-	-	-	-	-	-	-	-	-
FLORIDA	-	-	-	-	-	-	-	-	-	-	-	-
GEORGIA	-	-	-	6	-	-	12	18	15	22	83	12
HAWAII	-	-	-	-	-	-	-	-	-	-	-	-
IDAHO	-	-	-	-	-	-	-	-	-	-	-	-
LOUISIANA	-	-	-	-	2	-	36	13	6	10	5	52
MAINE	-	-	-	-	-	-	-	-	-	-	-	-
MASSACHUSETTS	-	-	-	-	-	-	-	-	-	-	-	-
MICHIGAN	-	-	-	-	-	-	-	-	-	-	-	-
MISSISSIPPI	-	-	-	-	4	1	19	4	7	2	17	7
NEW HAMPSHIRE	-	-	-	-	-	-	-	-	-	-	-	-
NEW MEXICO	-	-	-	-	-	-	-	-	-	-	-	-
NEW YORK	-	-	-	-	-	-	-	-	-	4	1	-
OKLAHOMA	-	-	-	-	-	-	-	-	-	-	-	-
NORTH CAROLINA	-	-	-	-	-	-	10	-	-	-	8	-
SOUTH CAROLINA	-	-	-	-	-	-	-	7	7	26	4	11
SOUTH DAKOTA	-	-	-	-	-	-	-	-	-	-	-	-
TEXAS	-	-	-	-	-	-	-	-	-	-	1	48
VIRGINIA	-	-	-	-	-	1	6	1	-	3	1	-
WYOMING	-	-	-	-	-	-	-	-	-	-	-	-
TOTALS	0	0	0	6	16	3	86	52	37	73	138	151

*Some submissions include more than one change affecting voting. Thus the number of changes to which objections have been interposed exceeds the number of submissions which have resulted in objections.

ATTACHMENT 4

NUMBER OF CHANGES TO WHICH OBJECTIONS HAVE BEEN INTERPOSED
BY STATE AND YEAR, 1965 - FEBRUARY 28, 1981

STATE	1977	1978	1979	1980	1981	TOTAL
ALABAMA	1	3	1	5	-	72
ALASKA	-	-	-	-	-	0
ARIZONA	-	-	-	3	-	8
CALIFORNIA	2	-	-	-	-	5
COLORADO	-	-	-	-	-	0
CONNECTICUT	-	-	-	-	-	0
FLORIDA	-	-	-	-	-	0
GEORGIA	34	8	5	10	1	226
HAWAII	-	-	-	-	-	0
IDAHO	-	-	-	-	-	0
LOUISIANA	1	3	-	8	-	136
MAINE	-	-	-	-	-	0
MASSACHUSETTS	-	-	-	-	-	0
MICHIGAN	-	-	-	-	1	0
MISSISSIPPI	8	2	3	3	-	78
NEW HAMPSHIRE	-	-	-	-	-	0
NEW MEXICO	-	-	-	-	-	0
NEW YORK	-	-	-	-	-	5
OKLAHOMA	-	-	-	-	-	0
NORTH CAROLINA	37	3	1	3	-	62
SOUTH CAROLINA	8	7	7	-	-	77
SOUTH DAKOTA	-	1	1	-	-	2
TEXAS	13	22	26	18	2	130
VIRGINIA	-	-	1	1	-	14
WYOMING	-	-	-	-	-	0
TOTALS	104	49	45	51	4	815

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

TYPE OF CHANGE	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
REDISTRICTING	-	-	-	-	-	1	32	11	6	5	11	11
ANNEXATION	-	-	-	-	-	-	2	2	2	3	86	68
POLLING PLACE	-	-	-	-	-	-	6	2	1	3	3	-
PRECINCT	-	-	-	-	-	-	3	1	-	1	-	-
REREGISTRATION OR VOTER PURGE	-	-	-	-	-	-	1	-	-	-	1	-
INCORPORATION	-	-	-	-	-	-	-	-	1	-	-	-
BILINGUAL PROCEDURES	-	-	-	-	-	-	-	-	-	-	-	3
METHOD OF ELECTION	-	-	-	-	4	1	35	29	23	57	31	61
FORM OF GOVERNMENT	-	-	-	-	-	-	2	-	-	2	1	1
CONSOLIDATION OR DIVISION OF POLITICAL UNITS	-	-	-	1	-	-	1	-	-	-	1	2
SPECIAL ELECTION	-	-	-	-	-	-	-	1	-	-	-	1
VOTING METHODS	-	-	-	-	-	-	-	-	-	-	-	-
CANDIDATE QUALIFICATION	-	-	-	-	2	-	-	1	3	1	2	1
VOTER REGISTRATION PROCEDURE	-	-	-	1	-	1	3	-	-	-	1	-
MISCELLANEOUS	-	-	-	4	10	-	1	5	1	1	1	3
TOTALS	0	0	0	6	16	3	86	52	37	73	138	151

ATTACHMENT 5

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

TYPE OF CHANGE	1977	1978	1979	1980	1981	TOTAL
REDISTRICTING	3	12	2	9	-	103
ANNEXATION	55	1	15	9	1	244
POLLING PLACE	2	7	2	4	-	30
PRECINCT	-	-	-	2	-	7
REREGISTRATION OR VOTER PURGE	1	-	-	-	-	3
INCORPORATION	-	1	-	3	-	5
BILINGUAL PROCEDURES	2	-	-	1	-	6
METHOD OF ELECTION	38	24	17	14	3	337
FORM OF GOVERNMENT	1	1	2	-	-	10
CONSOLIDATION OR DIVISION OF POLITICAL UNITS	-	1	1	-	-	7
SPECIAL ELECTION	1	-	1	3	-	7
VOTING METHODS	-	-	1	1	-	2
CANDIDATE QUALIFICATION	-	-	-	1	-	11
VOTER REGISTRATION PROCEDURE	1	-	-	2	-	9
MISCELLANEOUS	-	2	4	2	-	34
TOTALS	104	49	45	51	4	815

ATTACHMENT 6

Department of Justice
Civil Rights Division
February 1981

COMPLETE LISTING OF OBJECTIONS PURSUANT TO

SECTION 5 OF THE VOTING RIGHTS ACT OF 1965

STATE: ALABAMA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
State	Act No. 243 (1969), Garrett Act--Independent candidate qualification deadline	8-1-69
Baldwin County	Act No. 60 (1966)--poll list signature requirement	11-13-69
Dale County	Act No. 126 (1967)--poll list signature requirement	11-13-69
Morgan County	Act No. 221 (1965)--poll list signature requirement	11-13-69
Montgomery County	Act No. 112 (1966)--poll list signature requirement	11-13-69
Mobile County	Act No. 812 (1965)--poll list signature requirement	11-13-69
Lee County	Act No. 552 (1965)--poll list signature requirement	11-13-69
Escambia County	Act No. 479 (1967)--poll list signature requirement	11-13-69
Russell County	Act No. 119 (1967)--poll list signature requirement	11-13-69
Mobile County	Act No. 1052 (1969)--poll list signature requirement	12-16-69
State	Act No. 604 (1970)--absentee registration literacy requirement	3-13-70

STATE: ALABAMA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Birmingham (Jefferson Cty.)	Numbered posts	7-9-71
Talladega (Talladega Cty.)	Anti-single shot	7-23-71
Birmingham (Jefferson Cty.)	Numbered posts	9-14-71
Autauga Cty. Board of Education	At-large elections; residency requirement	3-20-72
Autauga County	At-large elections; majority vote requirement; residency requirement	3-20-72
State	Act No. 2239 (1972)--assistance to illiterates restricted	4-4-72
State	Act No. 2230 (1972)--assistance to illiterates restricted	4-4-72
State	Independent candidate petition signature requirement	8-14-72
State	Elective to appointive judges	12-26-72
Mobile (Mobile Cty.)	Candidate qualification procedures	8-3-73
Pile County	At-large elections, majority vote requirement; residency requirement; staggered terms	8-12-74
Sumter Cty. Democratic Executive Committee	Multi-member districts; anti-single shot	10-28-74
Talladega (Talladega Cty.)	Ordinance 997--numbered posts	3-14-75
Fairfield (Jefferson Cty.)	Annexation	4-10-75 1/

1/ Withdrawn 10-8-76

STATE: ALABAMA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Alabaster (Shelby Cty.)	Six annexations	7-7-75
Bessemer (Jefferson Cty.)	Seven annexations	9-12-75
Phenix City (Russell Cty.)	Act No. 98 (1975)--staggered terms	12-12-75
State	Act No. 1196, Sections 5, 43, 44--primary date contested elections	1-16-76
Pickens County	Reapportionment of Democratic Party Executive Committee	2-18-76
State	Act No. 1205--combines two counties for judicial district	2-20-76
Mobile (Mobile Cty.)	Act No. 823 (1965), Sections 2 and 12--form of city government and specified duties for commissioners	3-2-76
Pickens Cty. Board of Education	Act No. 72 (1975)--redistricting	3-5-76
State	Act No. 475 (1973)--at-large nomination and election of county commissioners	3-8-76
Chambers County	Act No. 843 (1975)--at-large election of board of education and commissioners with numbered post and majority vote requirements and staggered terms	3-10-76
Hale County	At-large elections	4-23-76
Sheffield (Colbert Cty.)	At-large elections; residency requirement	7-6-76
Hale County	Act Nos. 320 (1965), 2022 (1971) and 620 (1973)--at-large elections	12-29-76

STATE: ALABAMA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Alabaster (Shelby Cty.)	Annexations	12-27-77
Barbour County	Act Nos. 10 (1965) and 171 (1967)--method of election of members of county commission	7-28-78
Hayneville (Lowndes Cty.)	Incorporation	12-29-78
Clarke County	Act No. 2446 (1971)--at-large election of county commission	2-26-79
Pleasant Grove (Jefferson Cty.)	Annexation	2-1-80
Selma (Dallas Cty.)	Redistricting	4-28-80
Sumter County	Act No. 79-729 (1979)--voting machines; number of beats; polling places	10-17-80

STATE: ARIZONA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
State	Method of circulating recall petitions	10-9-73 1/
Cochise Cty. School Board	Redistricting	2-3-75
Cochise County	Redistricting of college governing board	2-3-75
Apache Cty. High School District No. 90	Bond election; multilingual procedures	10-4-76
Apache Cty. High School District No. 90	Special dissolution election and changes relating to election, including polling places and multilingual procedures	3-20-80 2/

1/ Withdrawn 3-15-74

2/ Withdrawn 5-7-80

STATE: CALIFORNIA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Yuba County	Bilingual punch cards; ballots; candidate qualification requirements	5-26-76 1/
Monterey County	Bilingual election and postcard registration procedures	3-4-77

1/ Withdrawn 5-19-78 upon receipt of revisions to procedures

STATE: GEORGIA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
State	Assistance to illiterates	6-19-68
State	Assistance to illiterates; literacy tests; poll officials' qualifications	7-11-68
State	Literacy test for registration	8-30-68
Webster County	Polling place consolidation for special election	12-12-68
Clarke Cty. Board of Education	Reduction in size of board; redistricting	8-6-71
Hinesville (Liberty Cty.)	Annexation; numbered posts and runoff; dates and times of elections; registration dates	10-1-71
Newnan (Coweta Cty.)	Numbered posts	10-13-71
Albany (Dougherty Cty.)	Polling place	11-16-71 1/
Conyers (Rockdale Cty.)	Terms of office; numbered posts; majority vote requirement	12-2-71
Waynesboro (Burke Cty.)	Numbered posts; majority vote requirement	1-7-72
Albany (Dougherty Cty.)	Dates and places of elections	1-7-72 1/
Jonesboro (Clayton Cty.)	Numbered posts; majority vote requirement; election date	2-4-72
State	Congressional reapportionment	2-11-72
State	State Senate and House redistricting	3-3-72
State	State House redistricting	3-24-72

1/ Withdrawn 12-7-73

STATE: GEORGIA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Newnan (Coweta Cty.)	Numbered posts; majority vote requirement	7-31-72
Twiggs County	At-large elections; residency requirement	8-7-72
Thomasville School Board (Thomas Cty.)	At-large elections; numbered posts	8-24-72
Atlanta (Fulton Cty.)	Polling places; precinct lines	11-27-72
Harris County	Numbered posts	12-5-72 1/
Cochran (Bleckley Cty.)	Majority vote requirement	1-29-73
Cuthbert (Randolph Cty.)	Numbered posts	4-9-73
Ocilla (Irwin Cty.)	Majority vote requirement; filing fee increase	6-22-73
Sumter Cty. School Board	Redistricting; at-large elections; residency requirement	7-13-73
Hogansville Board of Education (Troup Cty.)	Act No. 1052 (1973)--numbered posts; majority vote requirement	8-2-73
Hogansville (Troup Cty.)	Act No. 1053 (1973)--majority vote requirement; staggered terms	8-2-73
Perry (Houston Cty.)	Majority vote requirement	8-14-73
Thomasville Board of Education (Thomas Cty.)	Majority vote requirement; residency requirement	8-27-73

1/ Withdrawn 3-30-73

STATE: GEORGIA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Albany (Dougherty Cty.)	Filling fees	12-7-73
East Dublin (Laurens Cty.)	Numbered posts; staggered terms; increased filing fee	3-4-74
Ft. Valley (Peach Cty.)	Numbered posts; majority vote requirement (city council and utility board)	5-13-74
Fulton County	Numbered posts; majority vote requirement	5-22-74 1/
Clarke Cty. Board of Education	Reduction in size of board; majority vote requirement	5-30-74
Louisville (Jefferson Cty.)	Numbered posts; majority vote requirement; staggered terms	6-4-74
East Dublin (Laurens Cty.)	Postponement of election	6-19-74
Meriwether County	At-large elections; numbered posts	7-31-74 2/
Jones County	Polling place	8-12-74
Thomson (McDuffie Cty.)	Numbered posts; staggered terms; expansion of council; extended terms; majority vote requirement (mayor only)	9-3-74
Wadley (Jefferson Cty.)	Numbered posts; majority vote requirement	10-30-74

1/ Withdrawn 7-2-76

2/ Withdrawn 10-25-74

STATE: GEORGIA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Stockbridge (Henry Cty.)	Registration procedures	5-9-75
Newnan (Coweta Cty.)	Act No. 675 (1973)--staggered terms	6-10-75
Macon (Bibb Cty.)	Redistricting	6-13-75
Madison (Morgan Cty.)	Act Nos. 58 (1975) and 826 (1974)--numbered posts; majority vote requirement	7-29-75
Rome (Floyd Cty.)	Sixty annexations	8-1-75 1/
Harris Cty. Board of Education	Act No. 179 (1975)--at-large elections; residency requirement	8-18-75
Covington (Newton Cty.)	Act No. 514--city charter provisions for majority vote requirement; numbered posts; staggered terms	8-26-75
Ocilla (Irwin Cty.)	Increase in candidates' filing fees	10-7-75
Rome (Floyd Cty.)	Residency wards for board of education; majority vote and numbered post requirements with staggered terms for board of education and city commissioners	10-20-75
Crawfordville (Talliaferro Cty.)	City Charter; majority vote requirement; numbered posts (city charter)	10-20-75
Athens (Clarke Cty.)	Majority vote requirement (mayor, aldermen and recorder)	10-23-75

1/ Partial withdrawal 10-25-75; final withdrawal 8-5-80

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STATE: GEORGIA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Newton Cty. Board of Education	Act No. 163 and Act No. 332--staggered terms; majority vote requirement	11-3-75
Glynn County	Act No. 398 and Act No. 292--majority vote requirement; staggered terms	11-17-75
Newton County	Act No. 293 (1967) and Act No. 436 (1971)--at-large elections; staggered terms; residency requirement	1-29-76
Sharon (Taliaferro Cty.)	Act No. 409 (1975)--residency requirement	2-10-76
Wilkes Cty. Board of Education and Commissioners	At-large elections; residency requirement	6-4-76
Social Circle (Walton Cty.)	Act No. 307--staggered terms	6-18-76
Long Cty. Board of Education	Residency requirement	7-16-76
Monroe (Walton Cty.)	Two annexations	10-13-76 1/
Rockmart (Polk Cty.)	At-large elections; residency requirement	11-26-76
Palmetto (Fulton Cty.)	Numbered posts	4-27-77
Bainbridge (Decatur Cty.)	Reduction in size of board of aldermen; majority vote requirement; numbered posts	6-3-77
Charlton County	Act No. 1222 (1974), Section 2--numbered posts; Section 3--staggered terms	6-21-77
Charlton Cty. Board of Education	Act No. 360 (1975), Sections 2, 3 and 9--at-large elections; residency requirement; numbered posts; staggered terms	6-21-77 2/

1/ Withdrawn 11-25-77

2/ Declaratory judgment received 11-1-78

STATE: GEORGIA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Moultrie (Colquitt Cty.)	Act No. 277 (1965) and Act No. 1448 (1972)--majority vote requirement	6-27-77
Rockdale County	Act No. 119 (1977)--at-large elections; majority vote requirement; numbered posts; staggered terms	7-1-77 1/
College Park (Fulton Cty.)	Redistricting; seventeen of thirty-two annexations	12-9-77 2/
Terrell Cty. Board of Education	At-large elections; staggered terms	12-16-77
Quitman (Brooks Cty.)	Majority vote requirement	6-16-78
Savannah (Chatham Cty.)	Annexation; method of election	6-27-78 3/
Kingsland (Camden Cty.)	Polling place	8-4-78
Mitchell Cty. Board of Education	Act No. 832 (1970), Section 4--at-large elections; numbered posts; majority vote requirement	9-15-78
Lakeland (Lanier Cty.)	Act No. 1053 (H.B. 1278) (1974)--numbered posts	10-17-78
Pike Cty. Board of Education	At-large elections; residency requirement	3-15-79
Henry County	At-large elections; residency requirement	7-23-79
Statesboro (Bulloch Cty.)	Annexation	12-10-79

1/ Withdrawn 9-9-77

2/ Withdrawn to annexations only 5-22-78

3/ Withdrawn 10-2-78

STATE: GEORGIA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Alapaha (Berrien Cty.)	Act No. 227 (H.B. No. 551) (1979)--numbered posts; majority vote requirement; filing fees; dual registration (county and city) as a prerequisite to voting in municipal elections	3-24-80
Henry County	Five single-member districts	5-27-80
Dooly County	Act No. 237 (1967)--at-large elections; residency requirement; staggered terms	7-31-80
Statesboro (Bulloch Cty.)	Annexation	8-15-80
DeKalb County	Disallowance of neighborhood voter registration drives	9-11-80
Statesboro (Bulloch Cty.)	Increase in terms of office from two to four years	2-2-81

STATE: LOUISIANA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
State	Act No. 445 (1968)--parish police jury at-large elections	6-26-69
State	Act No. 561 (1968)--parish school board at-large elections	6-26-69
St. Helena Parish	Police jury redistricting; at-large elections	5-14-71
Jefferson Davis Parish	Police jury redistricting; multi-member districts	6-4-71
Assumption Parish	School board redistricting; at-large elections	7-8-71
Franklin Parish	Police jury redistricting; at-large elections	7-8-71
Lafayette Parish	Polling place	7-16-71
St. Charles Parish	Police jury redistricting; at-large elections	7-22-71
Jefferson Davis Parish	School board redistricting; at-large elections	7-23-71
Ascension Parish	Police jury redistricting; multi-member districts	7-23-71
Bossier Parish	School board redistricting	7-30-71
DeSoto Parish	Police jury redistricting; at-large elections	8-6-71
East Baton Rouge Parish	Parish council expansion	8-6-71 1/
Webster Parish	Police jury district consolidation	8-6-71 2/

1/ Withdrawn 10-1-71

2/ Withdrawn 9-14-71

STATE: LOUISIANA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Pointe Coupee Parish	Police jury redistricting	8-9-71
State	Redistricting--House multi-member districts; numbered posts; district lines	8-20-71
State	Redistricting--Senate multi-member districts; numbered posts; district lines	8-20-71
Natchitoches Parish	School board redistricting; at-large elections	9-20-71
East Feliciana Parish	Police jury redistricting; at-large elections	9-20-71
St. Helena Parish	Police jury redistricting; at-large elections	10-8-71
Caddo Parish	School board redistricting	10-8-71
St. James Parish	Police jury redistricting	11-2-71
East Feliciana Parish	Police jury redistricting	12-28-71
St. Mary Parish	School board redistricting: legal authority, multi-member districts	1-12-72
St. Helena Parish	School board redistricting; staggered terms	3-17-72
Ascension Parish	School board redistricting; multi-member districts	4-20-72
East Feliciana Parish	School board redistricting; multi-member districts	4-22-72
Pointe Coupee Parish	School board redistricting	6-7-72
Lafayette Parish	School board redistricting	6-16-72
Lake Providence (East Carroll Parish)	Annexation	12-1-72

STATE: LOUISIANA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
St. Landry Parish	Polling place	12-6-72
New Orleans (Orleans Parish)	Redistricting	1-15-73
State	Numbered posts for all at-large and multi-member districts	4-20-73
Newellton (Tensas Parish)	Annexation	6-12-73
New Orleans (Orleans Parish)	Redistricting	7-9-73 1/
New Orleans (Orleans Parish)	Polling place	7-17-73
Bogalusa (Washington Parish)	Residency requirement	10-29-73
Evangeline Parish	School board and police jury multi-member districts; numbered posts; majority vote requirement; staggered terms; anti-single shot voting	6-25-74
Evangeline Parish	School board and police jury multi-member districts; numbered posts; majority vote requirement; staggered terms; anti-single shot voting	7-26-74
Orleans Parish	Redistricting (Executive Comm.); numbered post; majority vote requirement	8-15-75
State	Act No. 432--full slate requirement for school board	12-15-75
Rapides Parish	Redistricting of police jury and school board	12-24-75

1/ Declaratory judgment received 7-29-76

STATE: LOUISIANA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Shreveport (Caddo Parish)	Fifty-one annexations	3-31-76 1/
Many (Sabine Parish)	Reapportionment Plan "C"	4-13-76
State	Louisiana Constitution of 1974, Article VIII, Section 10(b)--school board elections (Ouachita Parish)	3-7-77
New Orleans (Orleans Parish)	Polling place	5-12-78
Pointe Coupee Parish	Polling place	8-11-78
Pointe Coupee Parish	Polling place	10-20-78 2/
Baton Rouge	Ordinance No. 3103 (1973)--the creation of City Court Division "C" judgeship, to be elected at-large by majority-vote to a designated post	2-7-80 3/
State	Act No. 522 (1979)--the creation of City Court of Baton Rouge Division "D" judgeship, to be elected at-large by majority-vote to a designated post	2-7-80 4/

1/ Withdrawn 5-12-78 upon annexation of minority area and change in electoral system

2/ Withdrawn 4-17-79

3/ Withdrawn 10-10-80

4/ Withdrawn 10-10-80

STATE: MISSISSIPPI

SUBDIVISION	OBJECTION	DATE OF OBJECTION
State	Appointment of county superintendents of education	5-21-69
State	Optional at-large election of county boards of supervisors; increase in qualification requirements of independent candidates in general elections	5-21-69
State	Repeal of assistance to illiterates	5-26-69
Copiah County	Redistricting	3-5-70
Leake County	Redistricting	1-8-71
Warren County	Redistricting	4-4-71
Marion County	Redistricting	5-25-71
Attala County	Numbered posts; at-large elections	6-30-71
Jasper County	Re-registration	6-7-71
Grenada County	At-large elections; multi-member plan; numbered posts	6-23-71
Hinds County	Redistricting	7-14-71
Lafayette County	Polling place	7-16-71
Yazoo County	Redistricting	7-19-71
State	At-large elections; numbered posts	9-10-71
Tate County	Redistricting; precinct lines; polling places	12-3-71

STATE: MISSISSIPPI

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Marshall County	Precinct lines; polling places	12-3-71
Grenada (Grenada Cty.)	At-large elections; numbered posts; majority vote requirement	3-20-72
Tate County	Redistricting	11-28-72
Warren County	Redistricting	2-13-73
Indianola (Sunflower Cty.)	Numbered posts	4-20-73
McComb (Pike Cty.)	Annexation	5-30-73 1/
Hollandale (Washington Cty.)	Appointment of city clerk	7-9-73
Grenada County	Redistricting	8-9-73
Pearl (Rankin Cty.)	Incorporation	11-21-73 2/
Shaw (Bolivar Cty.)	Appointment of City Clerk	11-21-73
State	Open primary	4-26-74
Attala County	Redistricting	9-3-74
Grenada (Grenada Cty.)	Annexation	2-5-75 3/

1/ Withdrawn 9-12-73

2/ Withdrawn 1-3-74 upon modification of annexation policies

3/ Withdrawn 6-25-76 upon annexation of minority area

STATE: MISSISSIPPI

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Bolivar Cty. Board of Education	District to at-large elections	4-8-75
Grenada (Grenada Cty.)	Seven annexations	5-2-75 1/
State	S.B. No. 2218 (1975)--qualifying date for independent candidates	6-4-75
State	S.B. No. 2976 and H.B. 1290--State Senate and House redistricting	6-10-75
Warren County	Polling place	6-16-75
Lowndes Cty. Board of Education	Districts to at-large elections	6-23-75
Clay County	Two polling places	7-25-75
State (Kemper, Warren, Marshall, Benton and Leake Ctys.)	Section 37-5-13 (1972 Code)--districts to at-large elections (board of education)	12-1-75
State	H.B. Nos. 197 and 114--open primary	8-23-76
Kosciusko (Attala Cty.)	At-large elections; numbered posts; majority vote requirement	10-1-76
Vicksburg (Warren Cty.)	Annexation	10-1-76 2/
Jackson (Hinds Cty.)	Annexation	12-3-76
Grenada County	Redistricting	3-30-76

1/ Withdrawn 6-25-76 upon annexation of minority area

2/ Withdrawn 4-28-77 upon submission of single-member-district plan

STATE: MISSISSIPPI

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Tunica County	Elective to appointive (superintendent of education)	1-24-77
Lexington (Holmes Cty.)	At-large elections	2-25-77
Lee County	Re-registration	4-4-77 1/
Canton (Madison Cty.)	Redistricting	4-13-77
State	Section 37-5-15 (1972 Code)--board of education in certain counties elected at-large with residency districts	7-8-77
Sidon (Leflore Cty.)	Annexation	10-28-77
State	Redistricting of State House and Senate enacted by Mississippi Legislature	7-31-78 2/
Walthall County	Redistricting (supervisors' districts)	11-27-78
State	Chapter 452 (S.B. No. 2802)(1979)--"open primary" law	6-11-79
State	Chapter 433 (H.B. No. 854)(1979)--assistance to illiterates, blind and physically disabled voters	7-6-79
Tunica County	Use of electronic punch card system	10-16-79
Louisville Municipal Separate School District (Winston Cty.)	Majority vote requirement for election of members of the board of trustees	3-28-80

1/ Withdrawn 8-19-77 upon submission of modications to procedures

2/ Declaratory judgment received 6-1-79

STATE: MISSISSIPPI

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Orange Grove (Harrison Cty.)	Incorporation	6-2-80
Batesville (Panola Cty.)	Redistricting	9-29-80
Mendenhall (Simpson Cty.)	Annexation	1-12-81

STATE: NEW YORK

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Kings, Bronx and New York Counties	State Assembly and Senate and Congressional redistricting	4-1-74
New York, New York	Polling places	9-3-74 1/
Democratic Party (New York Cty.)	Consolidation of Representational Parts A and B in Assembly District No. 62	9-3-75

1/ Withdrawn 11-14-77

STATE: NORTH CAROLINA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Plymouth (Washington Cty.)	At-large elections	3-17-71
State	Test or device for registration	3-18-71
State	Test or device for registration	4-20-71
State	Senate and House districts; numbered posts	7-30-71
State	House districts; numbered posts	9-27-71
State	Senate districts; numbered posts	9-27-71
Lumberton City School District (Robeson Cty.)	Three annexations	6-2-75
Craven Cty. Board of Education	Redistricting; method of election	9-23-75 1/
Robeson Cty. Board of Education	At-large elections; staggered terms; voter qualifications	11-29-75
Williamston (Martin Cty.)	Staggered terms	2-4-77
Rocky Mount (Edgecombe Cty.)	Thirty-six of sixty-seven annexations	12-9-77 2/
Pasquotank County	Polling place	1-3-78
Laurinburg (Scotland Cty.)	Majority vote requirement and separation of electoral contests of the two-year term and the four-year term councilmanic positions	12-11-78
Reidsville (Rockingham Cty.)	Staggered terms	8-3-79
Greenville (Pitt Cty.)	Majority vote requirement	4-7-80
New Bern (Craven Cty.)	Two annexations	9-29-80

1/ Withdrawn 3-15-76

2/ Withdrawn 6-9-78

STATE: SOUTH CAROLINA

SUBDIVISION	OBJECTION	DATE OBJECTION
State	Senate redistricting: multi-member districts; numbered posts; majority vote requirement	3-6-72
State	Numbered posts--all multi-member offices	6-30-72
Aiken County	Numbered posts	8-25-72
Saluda County	School district referendum	11-13-72
State	Senate redistricting--multi-member districts; numbered posts; majority vote requirement	7-20-73
Darlington (Darlington Cty.)	Majority vote requirement; residency requirement	8-17-73
Clarendon County	Elective to appointive (superintendent of education)	11-3-73
State	House redistricting--multi-member districts; numbered posts; majority vote requirement	2-14-74
Dorchester County	At-large elections	4-22-74
McClellanville (Charleston Cty.)	Two annexations	5-6-74 1/
Walterboro (Colleton Cty.)	Residency requirement	5-24-74

1/ Withdrawn 10-21-74 upon modification of annexation policies

STATE: SOUTH CAROLINA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Lancaster Cty. Board of Education	Residency requirement; staggered terms	7-30-74
Calhoun Cty. Board of Education	At-large elections; staggered terms (members of school district boards of trustees)	8-7-74
Bishopville (Lee Cty.)	Staggered terms	9-3-74
Bamberg County	Residency requirement; staggered terms	9-3-74
Bamberg County	At-large elections	9-20-74
Charleston (Charleston Cty.)	Annexation	9-20-74 1/
Charleston County	Consolidation Charter--at-large elections; multi-member numbered posts; majority vote requirement; residency requirement	9-24-74
Lancaster County	Numbered posts; majority vote requirement; residency requirement; staggered terms	10-1-74
York County	At-large elections	11-12-74
Charleston (Charleston Cty.)	Three of four redistricting plans	2-18-75 2/
Clarendon County	Elected to appointed county supervisor	9-8-75
Bamberg County	Act R626--redistricting	7-30-76 3/
Seneca (Oconee Cty.)	Majority vote requirement	9-13-76

1/ Withdrawn 5-13-75 upon adoption of single-member districts

2/ Subsequent resubmission of fourth plan precleared 5-13-75

3/ Withdrawn 11-1-76

STATE: SOUTH CAROLINA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Sumter Cty. School District No. 2	At-large elections; residency requirement; appointment of one trustee	10-1-76
Horry County	Act R546--majority vote requirement	11-12-76
Cameron (Calhoun Cty.)	Majority vote requirement	11-15-76
Bishopville (Lee Cty.)	Majority vote requirement; staggered terms	11-26-76
Sumter County	Act No. 371--at-large elections (county commission and 1976 ordinance for Home Rule Act)	12-3-76
Calhoun Falls (Abbeville Cty.)	Majority vote requirement	12-13-76
Pageland (Chesterfield Cty.)	Majority vote requirement	3-22-77
Hollywood (Charleston Cty.)	Majority vote requirement	6-3-77
Charleston County	Home Rule Act--at-large elections with residency requirement	6-14-77
Bamberg County School Board	At-large elections	8-31-77
Chester County	Act Nos. 823 (1966) and 826 (1966)--at-large elections for county council and county school board	10-28-77
Allendale County	Act R329--elected seven-member board of education	11-25-77
Colleton County	Home Rule Act-changed form of government to a council-supervisor form with five members and the supervisor elected at-large by majority vote	2-6-78
Mullins (Marion Cty.)	Majority vote requirement	6-30-78

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STATE: SOUTH CAROLINA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Marion (Marion Cty.)	Majority vote requirement (non-partisan elections)	7-5-78
Nichols (Marion Cty.)	Majority vote requirement (non-partisan elections)	9-19-78
Lancaster (Lancaster Cty.)	Majority vote requirement	9-19-78
St. George (Dorchester Cty.)	Staggered terms	10-2-78
Rock Hill (York Cty.)	Majority vote requirement (non-partisan elections)	12-12-78
Edgefield County	Home Rule Act--at-large elections; residency requirement	2-8-79
Colleton County	Act R82 (1979)--devolving authority to levy taxes for school purposes to the Colleton County Council from the Colleton County State Legislative delegation	9-4-79
Chester County	Act R293 (1979)--postponement of elections under single-member districts; extending terms under at-large system	9-26-79
Colleton County	At-large elections	12-19-79

STATE: SOUTH DAKOTA

SUBDIVISION	OBJECTION	DATEOF OBJECTION
Tripp and Todd Counties	Redistricting	10-26-78
Tripp, Todd, Fall River and Shannon Counties	H.B. No. 1197 (1979) (Chapter 45) "Unorganized Counties Act"--severance of Tripp County from Todd County and Fall River County from Shannon County	10-22-79

STATE: TEXAS

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Texas	S.B. No. 300--purge of currently registered voters	12-10-75
State (Jefferson & Tarrant Ctys. and single member districts for Nueces Cty. included)	H.B. No. 1097 (1971 reapportionment)--nine multi-member State Representative Districts	1-23-76
State	S.B. No. 11, Section 6--requiring certain parties to choose candidates by convention instead of holding primary elections	1-26-76
Tyler (Smith Cty.)	Redistricting	2-25-76
Harris County	Precinct election judges	3-5-76 1/
Forney ISD* (Kaufman Cty.)	Numbered posts; majority vote requirement	3-9-76
Texas City (Galveston Cty.)	Numbered posts	3-10-76
Monahans (Ward Cty.)	Numbered posts	3-11-76 2/
Dumas ISD* (Moore Cty.)	Numbered posts; majority vote requirement	3-12-76
Orange Grove ISD* (Jim Wells Cty.)	Numbered posts	3-19-76
Pecos (Reeves Cty.)	Numbered posts	3-23-76
Chapel Hill ISD* (Smith Cty.)	Majority vote requirement	3-24-76
Luling (Caldwell Cty.)	Numbered posts	3-29-76

* Independent School District

1/ Withdrawn 3-11-76

2/ Withdrawn 6-1-76

STATE: TEXAS

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Lockney ISD* (Floyd Cty.)	Numbered posts; majority vote requirement	3-30-76
San Antonio (Bexar Cty.)	Thirteen annexations	4-2-76 1/
Victoria County	Consolidation of two school districts	4-2-76 2/
Frio County	1973 redistricting	4-16-76
Liberty ISD* (Liberty Cty.)	Numbered posts; majority vote requirement	4-19-76
Pettus ISD* (Bee Cty.)	Numbered posts	5-5-76
Lockhart (Caldwell Cty.)	Majority vote requirement	5-11-76
Rusk (Cherokee Cty.)	Numbered posts	5-17-76
Trinity ISD* (Trinity Cty.)	Numbered posts	5-21-76
Hereford ISD* (Castro, Deaf Smith & Parmer Ctys.)	Numbered posts; majority vote requirement	5-24-76
Crockett County	Redistricting	7-7-76
Waller County	Redistricting (commissioner and justice of the peace precincts)	7-27-76
Marshall ISD* (Harrison Cty.)	Majority vote requirement	7-29-76
Hawkins ISD* (Wood Cty.)	Numbered posts; majority vote	8-2-76
Midland ISD* (Midland Cty.)	Numbered posts; majority vote requirement	8-6-76 3/
Uvalde County	Redistricting	10-13-76

* Independent School District

1/ Withdrawn 1-24-77

2/ Withdrawn 8-16-76

3/ Withdrawn 11-13-78

STATE: TEXAS

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Woodville (Tyler Cty.)	Numbered posts	11-12-76
Westheimer ISD* (Harris Cty.)	Special election implementing Westheimer ISD	1-3-77
South Park ISD* (Jefferson Cty.)	Numbered posts	2-25-77
Somerset ISD* (Atascosa and Bexar Ctys.)	Numbered posts	3-17-77
Ralls ISD* (Crosby Cty.)	Majority vote requirement	3-22-77
Lufkin ISD* (Angelina Cty.)	Numbered posts; majority vote requirement	3-24-77
Raymondville ISD* (Willacy Cty.)	Polling place	3-25-77
Comal ISD* (Comal Cty.)	Numbered posts	4-4-77
Prairie Lea ISD* (Caldwell Cty.)	Numbered posts	4-11-77 1/
Fort Bend County	Polling places	5-2-77
Clute (Brazoria Cty.)	Majority vote requirement	6-17-77
Caldwell County	Redistricting	8-1-77
Lamar CISD** (Fort Bend Cty.)	Bilingual oral assistance program	10-3-77 2/

* Independent School District

** Consolidated Independent School District

1/ Withdrawn 3-3-78

2/ Withdrawn 11-15-77 after modifications to program procedures

STATE: TEXAS

SUBDIVISION	OBJECTION	DATE OF OBJECTION
State	H.B. No. 2152--delayed implementation of single-member districts (Fort Worth ISD*)	1-16-78
Fort Worth ISD* (Tarrant Cty.)	Delayed implementation of single-member districts (Section 23-023(h), Texas Education Code)	1-16-78 1/
Harris County	Polling place	3-1-78
Waller CISD** (Waller Cty.)	Election date	3-10-78
Nueces County	Redistricting	3-24-78
Southwest Texas Junior College District (Uvalde and Zavala Ctys.)	Polling place	3-24-78
Port Arthur (Jefferson Cty.)	Consolidation of the Cities of Lakeview and Pear Ridge with the City of Port Arthur; redistricting of residency districts	3-24-78
Neches ISD* (Anderson Cty.)	Numbered posts, majority vote requirement	4-7-78
Medina County	Redistricting	4-14-78
Edwards County	Redistricting	4-26-78
Aransas County	Redistricting	4-28-78
Corsicana ISD* (Navarro Cty.)	Numbered posts; majority vote requirement	4-28-78

* Independent School District

** Consolidated Independent School District

1/ Partial withdrawal 2-17-78

STATE: TEXAS

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Harris Cty. School District	Election date	5-1-78
Brazos County	Redistricting	6-30-78 1/
Jim Wells County	Redistricting	7-3-78
Ector County ISD* (Ector Cty.)	Numbered posts; majority vote requirement	7-7-78
Harrison County	Redistricting	8-8-78
Terrell County	Redistricting	12-27-78
Hereford ISD* (Deaf Smith Cty.)	Numbered posts	1-18-79
Beeville (Bee Cty.)	Single-member district plan	2-1-79
Alto ISD* (Cherokee Cty.)	Numbered posts; majority vote requirement	5-11-79
Houston (Harris Cty.)	Fourteen annexations	6-11-79 2/
San Antonio (Bexar Cty.)	Polling place	8-17-79 3/
Comal ISD* (Comal Cty.)	Numbered posts	9-12-79
Lockhart (Caldwell Cty.)	Home Rule Charter	9-14-79
Taylor (Williamson Cty.)	Polling place	12-3-79
Atascosa County	Redistricting	12-7-79
Medina County	Redistricting	12-11-79

* Independent School District

1/ Withdrawn 11-15-78

2/ Withdrawn 9-21-79 upon adoption of hybrid 9-5 plan

3/ Withdrawn 3-24-80

STATE: TEXAS

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Port Arthur (Jefferson Cty.)	Referendum election	12-21-79
La Porte (Harris Cty.)	Home Rule Charter	12-27-79
Port Arthur (Jefferson Cty.)	Referendum election	1-15-80
Harris Cty. School District	Election date change	1-17-80
Comal County	Redistricting	2-1-80 1/
Jim Wells County	Redistricting	2-1-80
Cochran County	Redistricting; additional voting precincts; polling places	2-25-80
Port Arthur (Jefferson Cty.)	Annexation	3-5-80
Corpus Christi ISD* (Nueces Cty.)	Apportionment plan (four single-member districts, three at-large)	4-16-80
Nacogdoches ISD* (Nacogdoches Cty.)	Apportionment plan (five single-member districts, two at-large)	4-3-80
Port Arthur (Jefferson Cty.)	Referendum election procedures	7-23-80
Cleveland ISD* (Liberty Cty.)	Numbered posts	8-8-80
Jim Wells County	Redistricting	8-12-80
Victoria (Victoria Cty.)	Four annexations	9-3-80
Wilson County	Polling place	11-4-80
West Orange-Cove Consolidated ISD* (Orange Cty.)	Numbered positions; majority vote requirement	2-9-81

*Independent School District

1/ Withdrawn 9-22-80

STATE: VIRGINIA

SUBDIVISION	OBJECTION	DATE OF OBJECTION
Portsmouth*	Vote margin to gain election	6-26-70
Richmond*	Annexation	5-7-71
State	Redistricting--House multi-member districts	5-7-71 1/
State	Redistricting--Senate multi-member districts	5-7-71
Caroline County	Precinct boundaries; polling place	9-10-71
Mecklenburg County	Redistricting--multi-member districts	12-7-71
Petersburg*	Annexation	2-22-72
Martinsville*	Precincts	4-19-74
Newport News*	Polling place	5-17-74
Suffolk	Polling place	9-23-74 2/
Lynchburg*	Annexation	7-14-75 3/
Gretna (Pittsylvania Cty.)	Staggered terms	9-27-79
Hopewell*	Decrease in number of councilmembers from seven to five	10-27-80

* Independent City

1/ Withdrawn 6-10-71

2/ Withdrawn 10-24-74

3/ Withdrawn 4-12-76 upon change in electoral system

ATTACHMENT 8

REDISTRICTING AFTER THE 1970 CENSUS
TIMING OF SECTION 5 SUBMISSIONS 1/

	1/1/71-8/6/72 Number of Submissions	8/7/72-8/6/75 Number of Submissions	8/7/75-12/31/79 Number of Submissions
ALABAMA	8	9	22
ALASKA	0	0	2
ARIZONA	2	6	9
CALIFORNIA	1	5	4
COLORADO	0	0	2
CONNECTICUT	0	0	0
FLORIDA	0	0	0
GEORGIA	26	18	28
HAWAII	0	0	2
IDAHO	0	0	0
LOUISIANA	93	32	44
MASSACHUSETTS	0	0	3
MICHIGAN	0	0	0
MISSISSIPPI	57	18	52
NEW HAMPSHIRE	0	0	0
NEW YORK	2	7	2
NORTH CAROLINA	3	7	9
SOUTH CAROLINA	22	16	29
SOUTH DAKOTA	0	0	1
TEXAS	0	0	193
VIRGINIA	104	9	15
WYOMING	0	0	0
ALL STATES	318	127	417

1/ This chart reflects the number of redistricting plans listed on the Section 5 computer printout. Included in addition to legislative redistricting plans are changes in residency district boundary lines and any other enactments relating to reapportionment or redistricting by all jurisdictions.

UNITED STATES GOVERNMENT

Memorandum

TO : All Affected U. S. Attorneys DATE: May 17, 1978

FROM : Gerald W. Jones
Chief, Voting Section
Civil Rights Division

SUBJECT: Department Policy for Enforcing Section 203 of the Voting Rights Act

Mr. Civiletti has requested that we forward to you his memorandum dated May 15, 1978, regarding the Department's policy for enforcing the language minority provisions of Section 203 of the Voting Rights Act. That memorandum is enclosed.

The federal civil rights voting laws enforced by the Department are discussed in Title 8 of the United States Attorneys' Manual, 8-2.280 through 8-2.284. Set out at 8-2.281 of the Manual are the basic provisions of the Voting Rights Act, the judicial and administrative enforcement actions available to us under the Act, and the division of responsibilities between your offices and mine for those enforcement actions. Please note, as addressed under the 8-2.281 subheading Language Minority Groups, that your offices have primary enforcement responsibility for jurisdictions covered solely by Section 203 while we have that responsibility for any jurisdiction covered jointly by Sections 4 and 203 or covered solely by Section 4.

Please feel free to call me (202-739-2167) or Voting Section Deputy Chief Barry Weinberg (202-739-3168) to talk about any aspect of this matter. With respect to the coordination procedures set out in 8-2.281 of the Manual, Barry and I would be happy to talk with you or the person in your office principally responsible for Section 203 enforcement regarding your compliance program plans and progress. Our phone numbers can be dialed through FTS or commercially.

ATTACHMENT 10

UNITED STATES GOVERNMENT

Memorandum

TO : All Affected U.S. Attorneys DATE: May 15, 1978

FROM : Benjamin R. Civiletti BRC
Acting Deputy Attorney General

SUBJECT: Department Policy for Enforcing Section 203 of the Voting Rights Act

This is in reference to the enforcement of the language minority provisions of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a. As you know, the minority language provisions were included in the Act by Congress' adoption of the 1975 Amendments to the Act.

In November 1975 the Deputy Attorney General decided that the U.S. Attorneys would be primarily responsible for Section 203. Since that time a memorandum was sent by the Civil Rights Division to all affected U.S. Attorneys on October 22, 1976, regarding enforcement of Section 203; on August 26, 1977, New Mexico U.S. Attorney Victor Ortega distributed to you a copy of Civil Rights Division, Voting Section Deputy Chief Weinberg's July 15, 1977 report and Assistant Attorney General Days' August 5, 1977 memorandum regarding the Department's Section 203 enforcement activities; on November 16, 1977, nearly all affected U.S. Attorneys met about this matter with Mr. Weinberg and Gerald W. Jones, Chief of the Civil Rights Division's Voting Section; and on December 13 and 14, 1977, the responsibility for enforcing Section 203 was discussed at a meeting of the Attorney General's Advisory Committee of U.S. Attorneys.

It appears that the Weinberg report and Mr. Ortega's actions regarding the report have served as a catalyst, prompting most of you to become aware of and/or seriously focus on the Section 203 enforcement responsibility. As communicated in your responses to Mr. Ortega, copies of which have been furnished to me, and from your other contacts with us and our staffs, it further appears that some of you are able to and desire to dispatch this responsibility along the lines set out in the Weinberg report and the October 22, 1976, memorandum, while others believe that they are unable to do so because of resource limitations, believe that they should not do so because the recommended enforcement approach is inappropriate, or believe that the recommended enforcement efforts are not needed because a lack of complaints in their Districts is a conclusive showing that no problem exists.

Associate Attorney General Egan, Mr. Days and I have carefully considered the questions of what the Department's approach to the enforcement of Section 203 should be and whether the primary responsibility for enforcing Section 203 should remain with the U.S. Attorneys. Our conclusions and the basis for our determinations are as follows:

Section 203 must be vigorously enforced. The civil rights laws were enacted to eliminate pervasive societal deprivations of fundamental rights. The Department's responsibility to enforce those laws is

also a responsibility to eliminate those deprivations. We have found that we do not receive complaints about many of the civil rights law violations that exist, including discriminatory voting practices and procedures. Accordingly, it is our policy to seek out those violations, and the enforcement approach previously addressed by the Civil Rights Division is necessary and appropriate.

The U.S. Attorneys will be primarily responsible for the Section 203 enforcement effort insofar as they dispatch that responsibility. This decision is in accordance with the Department's policy of decentralization where appropriate, and is based in large part on the present U.S. Attorneys' general support for the Department's civil rights programs and the reported actions of some U.S. Attorneys regarding Section 203 since the distribution of the Weinberg report.

Our performance of the Department's Section 203 enforcement responsibilities will not necessarily result in similar actions by all affected U.S. Attorneys. Given the different needs of particular language minority group members in different areas of the country or in different parts of a state, and the differing language needs of different language minority groups, the nature and extent of our enforcement efforts will differ among the affected Districts and sometimes among different counties in a single District.

Because of these differences, and since there are no court decisions yet regarding the provisions of this new law, our decisions about circumstances that may constitute violations of Section 203 will be based on our guidelines, 28 CFR Section 55 et seq., a copy of which is enclosed. The Department's position as to the basic requirement of Section 203, and thus the basic measure of compliance, is set out in Section 55.2(b) of the guidelines: jurisdictions must furnish such minority language materials and assistance, including oral assistance where needed, as to allow language minorities "to be effectively informed of and participate effectively in voting-connected activities." Determinations of whether this requirement has been met can usually be made on the basis of the factors listed for consideration in Subpart D of the guidelines, Sections 55.14-55.21.

While your Section 203 enforcement inquiries, investigations and litigation decisions can be based on the considerations set out in the guidelines with the advice of the Civil Rights Division regarding specifically proposed actions, some of you and members of your offices have requested more precise initial advice about what constitutes a violation of Section 203, and more direction relating to procedures for investigating Section 203 matters. An attachment to this memorandum responds to these requests in some detail.

The Civil Rights Division will advise and, where necessary, assist the U.S. Attorneys, and will coordinate the Department's Section 203 activities. Coordination with the Civil Rights Division regarding your enforcement activities will be essential to uniform nationwide enforcement of Section 203. Enforcement approaches in one District must be shared with other Districts. Moreover, our communications with persons outside of the Department, each of our proposed lawsuits, and our positions on the issues of each defense to a coverage termination ("bail-out") suit or suit challenging the provisions of Section 203 must reflect all of the Department's expertise regarding

the facts and legal issues involved as well as positions taken by the Department in similar or related civil rights voting matters. Accordingly, the procedures set out in the U.S. Attorneys' Manual, under the heading "Language Minority Groups" in Section 8-2.281, must be followed.

In addition, the Civil Rights Division will assume primary responsibility for Section 203 enforcement in those Districts where the U.S. Attorney requests that the Division do so, where the U.S. Attorney and the Division agree that the Division should do so, and where the Assistant Attorney General determines after consultation with the U.S. Attorney that enforcement of Section 203 will otherwise be lacking.

These policy decisions and directives settle the questions raised within the Department regarding our enforcement of Section 203 and provide you with a clearer picture of what our enforcement practices entail. Therefore, I believe that the procedures for coordination between your offices and the Civil Rights Division will now result in an effective continuing nationwide enforcement program. I feel especially confident in arriving at this conclusion because the coordination procedures set out above are nearly identical to those independently suggested by the Attorney General's Advisory Committee of United States Attorneys an the Civil Rights Division.

ATTACHMENT

Basically, the measure of whether a jurisdiction has done what it must under Section 203 is whether the jurisdiction has met the language needs of the local minority. Like most cases in equity, our ability to prove a violation depends on our ability to demonstrate that the defendant is responsible for an injury to the plaintiff or protected class.

To demonstrate such an injury under Section 203, generally stated we must show that a jurisdiction has not issued minority language information in the form (written or oral) needed by the local minority, has not directed minority language information through channels (newspaper, radio, posted notices) that reach the local minorities, has not conveyed minority language information correctly (in written translation, oral communication) to the local minority, or any combination of those failures.

Thus, for example, if we address the effectiveness of a jurisdiction's compliance with Section 203 in the voter registration process we would first determine from state law and local officials the procedural steps and voter qualification requirements necessary for registration in the jurisdiction, and the actions of the jurisdiction in providing for the minority language in the registration process (Sections 55.18(c) and (e) of the guidelines indicate some of the actions about which we can inquire in this regard).

Then we would talk with local minorities. We would first determine from them, unless we already know, general information regarding the usual methods of communication to and among the local minority. This will allow us to determine the form in which minority language information is needed by the local minority and the information channels that reach local minorities. For example, we would determine from local minorities the manner in which information of interest to the

minority group (about meetings, church events, etc.) or designed to reach the minority group (advertising, government program announcements) is normally conveyed, the extent to which particular individuals, groups or organizations (including churches) tend to have contact or communicate with a significant portion of the local minority community, where and when local minorities usually gather in significant number, the nature and frequency of usual contacts by minorities with local officials and offices, and the extent to which English and the minority language are actually used in the minority community. Then we would determine from minority contacts the extent to which the minority community knows about information regarding voter registration and knows how to find out about these matters.

In this connection, the failure of a jurisdiction to meet the basic measure of compliance can be shown either by what the minorities know or do not know. To illustrate the former, in one state where an ability to speak or read English was a past prerequisite to voter registration we found evidence that in one county many minorities thought the prerequisite still existed when, in fact, it had been eliminated six years earlier. As an example of the latter, in one county we found minorities were not aware registration materials were available in Spanish despite extensive discussion of bilingual procedures in English language newspapers of general circulation and the jurisdiction's action in having Spanish language post-card registration forms available in the minority community post office for a limited period.

Based on this information we would analyze what the jurisdiction has done in the light of the circumstances that apply to the local language minority, and determine whether the jurisdiction has met the basic measure of compliance with Section 203, as defined in Section 55.2(b) of the guidelines, and if not, why not. Based on this determination and subsequent investigation to obtain information that supports or documents our conclusions, we can request local officials to take appropriate action to comply with Section 203, and if they do not we can file suit.

There are several other points to bear in mind in pursuing violations of Section 203.

An initial approach to investigation of compliance with Section 203 should include researching available narrative and statistical material relating to the local language minority and to discrimination against language minorities generally. This material, which could include Census data (regarding size and age of population, income, etc.), legislative history, court decisions, and studies by agencies and groups (such as "The Voting Rights Act: Ten Years After," a report of the U.S. Civil Rights Commission, January 1975), enhances our knowledge and/or provides views different from ours about the attributes of the class protected by Section 203 and about the nature of discriminatory actions that affect the class.

Periodic inquiries of minority contacts are routinely made before elections and before the close of pre-election registration periods in problem or potential problem areas.

Inquiries and investigations under Section 203 can be conducted by paralegal personnel to the extent they are able to obtain and reliably report the necessary information. However, some attorney contact with minority

group representatives and persons generally knowledgeable about local minorities is necessary to provide the kind of overall understanding that must underlie our evaluation of whether a jurisdiction has met the basic requirement of Section 203. Particular minority persons or organizations are not to be avoided simply because they are considered to be more vocal than other persons or groups of the same minority group; as judges sitting without juries are prone to observe in the kinds of cases the Civil Rights Division litigates, we can accept the information and draw our own conclusions as to its reliability.

Once obtained, basic information about the local language minority as well as information about local voting-connected procedures will greatly facilitate future inquiries into Section 203 compliance and evaluations of possible violations of Section 203.

We have examined FBI reports of investigations conducted pursuant to the sample request attached to the Civil Rights Division's October 22, 1976, memorandum, and pursuant to more broadly worded requests that asked the FBI to determine whether information needed by language minorities is received and understood by those minorities. Based on this examination it appears that information contained in written FBI reports, without more, cannot be relied upon to determine whether violations of Section 203 exist.

The central problem is that the FBI reports provide no basis for evaluating statements, observations and opinions of local minority interviewees, and thus do not allow us to gain an overall understanding of the relevant circumstances that apply to the local language minority. Assistant U.S. Attorneys who have received the FBI reports and have also spoken with local minorities and persons knowledgeable about local minorities have reached a similar conclusion about FBI investigations in this area of law.

However, the FBI can provide valuable discrete information by obtaining interviews with victims of or witnesses to particular known practices, interviews with subjects regarding specific standards, practices or procedures, and quantitative data, e.g., voter registration lists, numbers of voter applications received or election results by precinct, and names and addresses of poll officials. Moreover, some U.S. Attorneys' offices may find that broader investigations by the FBI will, in their District, yield the kind of information necessary to our overall determinations regarding compliance with Section 203, and in those Districts requests for such investigation by the FBI are encouraged.

Some Districts contain several counties covered by Section 203 while other Districts have very few covered counties. As is true of our other areas of law enforcement, in enforcing Section 203 we may proceed by attacking the most obvious or widespread violations first. This would be an especially good approach under Section 203 since each decided case will result in precedential decisions regarding the meaning, scope and application of the statute.

Thus, an office responsible for a number of Section 203 counties may determine which of those counties deserve the most immediate attention under Section 203, and conduct investigation and inquiries in the problem county or counties without conducting equally intensive activity in the other counties. Contact with persons knowledgeable about minority groups' voting-connected problems can be particularly helpful in pinpointing problem counties and should be consulted in this regard. However, an office should have a general knowledge of circumstances in all covered counties in the District in order to select problem counties and to allow us to evaluate the extent of the enforcement effort needed in the District and whether additional resources should be committed to that enforcement effort.

Finally, there are some jurisdictions for which an office need do very little once initial information is obtained. An example of this in the extreme is Charles City County, Virginia, where the local language minority is comprised of an American Indian tribe that has no language of its own - no language other than English exists. Under these circumstances the U.S. Attorney's office needed to do no more than initially determine the facts and obtain the concurrence of the Civil Rights Division that no further action was necessary since there is nothing the county could do to meet the basic requirement of Section 203. Although a situation such as this is rare, initial information regarding a local minority group that has a language other than English may demonstrate that because of particular circumstances pertaining to that minority group no further action by the Department under Section 203, or only minimal further action, is necessary. Such decisions should, of course, be made with the concurrence of the Civil Rights Division.

Memorandum

Subject	Date
Minority Language Enforcement - State of Colorado	March 18, 1981

To Barry H. Weinberg
Deputy Chief, Voting Section

From David H. Hunter
Attorney, Voting Section

On June 12, 1980, the United States Attorney for the District of Colorado sent to the clerks of the 34 Colorado counties covered under Section 203 of the Voting Rights Act of 1965 a letter and questionnaire concerning compliance with the requirements of Section 203. On June 11, 1980, the United States Attorney sent to representatives of 17 organizations a letter concerning compliance with Section 203, with which was enclosed the same questionnaire. In addition, the United States Attorney's office has informed us that they recontacted several of the organizations that had responded and asked them for the names of other organizations that may be interested in the use of minority languages in the electoral process. The United States Attorney's office also informed us that they did not receive complaints of inadequate minority language procedures for the November 1980 election.

Attached are:

1. The letter sent to the 34 counties.
2. A list of the 34 counties.
3. The letter sent to the 17 organizations.
4. A list of the 17 organizations.
5. The questionnaire sent to the counties and organizations.

United States Attorney

Criminal Division
C-330 U.S. Courthouse
Drawer 3615
Denver Colorado 80294
303/837-2081
FTS/327-2081

Civil Division
674 Federal Building
Drawer 3615
Denver Colorado 80294
303/837-2065
FTS/327-2065

Dear

The Director of the Census has determined that your county, in addition to 33 other Colorado counties, is subject to the requirements of Section 203 of the Voting Rights Act.

Section 203 of the Act codified in 42 U.S.C. §1973 aa-1a requires that a language in addition to English must be incorporated into the electoral process in certain political subdivisions. A political subdivision is covered by Section 203 if the Director of the Census determines that more than 5% of the citizens of voting age are members of single language minority and that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. Within a covered political subdivision, all elections are subject to the requirements of Section 203, including national, state, local, school districts and water district elections. Section 203 covers a broad range of electoral activities, including voter registration, the provision of any registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, the appointment of poll-workers and the post-election purge of non-voters.

Section 205 of the Voting Rights Act, codified in 42 U.S.C. §1973 aa-3, provides for a fine of not more than $5,000 or imprisonment of not more than five years, or both, for anyone who deprives a person of rights secured by Section 203.

The United States Attorney for the District of Colorado is responsible for the enforcement of Section 203 in this state. So that our office can become more familiar with your Section 203 implementation methods and procedures, we would appreciate your prompt response to the enclosed questionnaire.

For further information concerning the Voting Rights Act and your obligations thereunder, please contact Carole C. Dominguin, Assistant United States Attorney, at 837-2081. Please consult the Colorado Secretary of State concerning election requirements under state law.

Thank you for your attention to this matter and we look forward to receiving your response and/or comments.

Sincerely,

JOSEPH DOLAN
United States Attorney

By: CAROLE C. DOMINGUIN
Assistant United States Attorney

The 34 Colorado Counties (Covered under Section 203(b) of the Voting Rights Act of 1965) to Which the Preceding Letter (Attachment 1) Was Sent, June 12, 1980

Adams	Lake
Alamosa	La Plata
Archuleta	Las Animas
Bent	Mesa
Boulder	Moffat
Chaffee	Montezuma
Clear Creek	Montrose
Conejos	Morgan
Costilla	Otero
Crowley	Prowers
Delta	Pueblo
Denver	Rio Grande
Eagle	Saguache
El Paso	San Juan
Fremont	San Miguel
Huerfano	Sedgwick
Jackson	Weld

U.S. Department of Justice

United States Attorney

Criminal Division
C-330 U.S. Courthouse
Drawer 3615
Denver Colorado 80294
303/837-2081
FTS/327-2081

Civil Division
674 Federal Building
Drawer 3615
Denver Colorado 80294
303/837-2065
FTS/327-2065

Dear

As you know, Section 203 of the Voting Rights Act, 42 U.S.C. §1973 aa-1a, requires that a language in addition to English must be incorporated into the electoral process in certain political subdivisions. Thirty-four Colorado counties are subject to the requirements of Section 203.

Our office is presently evaluating the effectiveness of the implementation of Section 203. We consider your office to be a key resource in assisting us in this evaluation, and we would appreciate your response to questions 8, 9 and 10 of the enclosed questionnaire. Additionally, we are interested in knowing whether your office has ever been contacted by county officials to assist in providing bilingual services during elections.

If you have any questions or comments concerning either the questionnaire or Section 203 of the Voting Rights Act, please contact Carole C. Dominguin, Assistant United States Attorney, at 837-2081.

Thank you for your attention to this matter. We look forward to receiving your response and comments.

Sincerely,

JOSEPH DOLAN
United States Attorney

By: CAROLE C. DOMINGUIN
Assistant United States Attorney

The 17 Organizations to Which the Preceding Letter (Attachment 3) was Sent, June 11, 1980

American GI Forum, Denver Outreach Program

Chicano Education Project, Denver

Chicano Education Project, Lakewood

Colorado Chicano Bar Association

Colorado Legal Services, Durango

Colorado Legal Services, Grand Junction

Colorado Legal Services, Greeley

Colorado Legal Services, La Junta

Colorado Legal Services, Montrose

Colorado Rural Legal Services, Alamosa

Colorado Rural Legal Services, Denver

Colorado Rural Legal Services, Trinidad

Latin American Research and Service Agency

LULAC Foundation

Mexican American Legal Defense and Education Fund

Mexican American Studies Program, University of Colorado

La Raja

QUESTIONNAIRE
_____ COUNTY

1. With regard to the July 8 to August 8 registration period, to what extent will bilingual personnel be provided where necessary?

2. To what extent will bilingual personnel be provided where necessary as pollworkers for the September 9th primary and the November 4th general election?

3. To what extent will there be Spanish language oral and printed publicity prior to the primary and general elections notifying Spanish speaking voters that bilingual information will be at polling places?

4. What methods have been or will be used to notify Spanish speaking voters that their registration may have or will be purged as a result of their failure to vote in a general election?

5. Are written materials, such as cards of instruction telling a voter how to prepare his or her ballot, instructions to voters regarding the use of voting machines and sample ballots printed in Spanish as well as English?

6. Are signs designating polling places printed in Spanish as well as English?

7. Has your office ever contacted representatives of Spanish speaking organizations to assist in providing bilingual services during elections? If so, when?

_____

_____

_____

8. Has your office been contacted by any language minority since July, 1976, with complaints regarding bilingual procedures established in your county?

_____

_____

_____

9. What is your evaluation of the effectiveness of bilingual procedures established in your county to encourage or assist language minorities' participation in the electoral process?

_____

_____

_____

10. What is your evaluation of the impact of bilingual procedures on voter participation by language minorities in your county since July, 1976?

_____

_____

_____

Completed on _____, 1980

By: _____

_____

Title or position

United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF NORTH DAKOTA
219 FEDERAL BUILDING & U.S. COURTHOUSE
655 FIRST AVENUE NORTH
FARGO 58102

MAILING ADDRESS:
P.O. BOX 2505
FARGO, N.D. 581

July 28, 1978

Mr. Vernon Lysne
County Auditor
Benson County
Minnewaukan, ND 58351

Dear Sir:

As you know, pursuant to the authority vested in the Director of Census by 89 Stat. 402, Act of August 6, 1975, 42 U.S.C.A. Section 1973, et seq., your county has been designated as one of those counties covered by the Voting Rights Act of 1965. The Act also vests authority in the Attorney General to ensure that the requirements of it are complied with. He in turn has delegated responsibility to this office to ensure compliance with Section 203 of the Act.

Pursuant to the rules and regulations issued thereto, this office is authorized to conduct "inquiries and surveys concerning compliance" with the Act. 41 Fed. Reg. 140, July 20, 1976, Section 55.14(b). Because elections are scheduled for this fall this office feels that now is an appropriate time to inquire of you as to what steps have been taken to comply with the Act.

The Act requires that certain steps be taken which will permit minority language members to effectively participate in the election process. Section 16-01, et seq. of the North Dakota Century Code imposes certain duties upon your office in the conduction of an election. The Voting Rights Act establishes effectiveness as a standard to be met. Essentially the standard is met where it is demonstrated that the implementations of the Act permit minority language members to participate effectively in the electoral process.

What this office would like to know is what steps have been taken either by your office independently or pursuant to instructions from the State Election Office to implement the Act. If none have been taken, this office would be glad to meet with you and the tribe in your area to develop a program which would satisfy the requirements of the Voting Rights Act.

We would appreciate a prompt reply to this inquiry and stand ready to assist your office if so requested in developing a program that will meet the standards established in the Voting Rights Act.

Sincerely,

JAMES R. BRITTON
United States Attorney

HERBERT A. BECKER
Assistant United States Attorney

HAB:s

cc: Mr. Barry H. Weinberg
Deputy Chief, Voting Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530

United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF NORTH DAKOTA
219 FEDERAL BUILDING & U.S. COURTHOUSE
655 FIRST AVENUE NORTH
FARGO 58102

MAILING ADDRES:
P.O. BOX 2505
FARGO, N.D. 5810

July 28, 1978

Ms. Judith G. Boppre
County Auditor
Rolette County
Rolla, ND 58367

Dear Madam:

As you know, pursuant to the authority vested in the Director of Census by 89 Stat. 402, Act of August 6, 1975, 42 U.S.C.A. Section 1973, et seq., your county has been designated as one of those counties covered by the Voting Rights Act of 1965. The Act also vests authority in the Attorney General to ensure that the requirements of it are complied with. He in turn has delegated responsibility to this office to ensure compliance with Section 203 of the Act.

Pursuant to the rules and regulations issued thereto, this office is authorized to conduct "inquiries and surveys concerning compliance" with the Act. 41 Fed. Reg. 140, July 20, 1976, Section 55.14(b). Because elections are scheduled for this fall this office feels that now is an appropriate time to inquire of you as to what steps have been taken to comply with the Act.

The Act requires that certain steps be taken which will permit minority language members to effectively participate in the election process. Section 16-01, et seq. of the North Dakota Century Code imposes certain duties upon your office in the conduction of an election. The Voting Rights Act establishes effectiveness as a standard to be met. Essentially the standard is met where it is demonstrated that the implementations of the Act permit minority language members to participate effectively in the electoral process.

What this office would like to know is what steps have been taken either by your office independently or pursuant to instructions from the State Election Office to implement the Act. If none have been taken, this office would be glad to meet with you and the tribe in your area to develop a program which would satisfy the requirements of the Voting Rights Act.

We would appreciate a prompt reply to this inquiry and stand ready to assist your office if so requested in developing a program that will meet the standards established in the Voting Rights Act.

Sincerely,

JAMES R. BRITTON
United States Attorney

HERBERT A. BECKER
Assistant United States Attorney

HAB:e

cc: Mr. Barry H. Weinberg
Deputy Chief, Voting Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530

United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF NORTH DAKOTA
219 FEDERAL BUILDING & U.S. COURTHOUSE
655 FIRST AVENUE NORTH
FARGO 58102

MAILING ADDRESS
P.O. BOX 2505
FARGO, N.D. 58102

July 28, 1978

Mr. Christ Wehrung
County Auditor
McKenzie County
Watford City, ND 58854

Dear Sir:

As you know, pursuant to the authority vested in the Director of Census by 89 Stat. 402, Act of August 6, 1975, 42 U.S.C.A. Section 1973, et seq., your county has been designated as one of those counties covered by the Voting Rights Act of 1965. The Act also vests authority in the Attorney General to ensure that the requirements of it are complied with. He in turn has delegated responsibility to this office to ensure compliance with Section 203 of the Act.

Pursuant to the rules and regulations issued thereto, this office is authorized to conduct "inquiries and surveys concerning compliance" with the Act. 41 Fed. Reg. 140, July 20, 1976, Section 55.14(b). Because elections are scheduled for this fall this office feels that now is an appropriate time to inquire of you as to what steps have been taken to comply with the Act.

The Act requires that certain steps be taken which will permit minority language members to effectively participate in the election process. Section 16-01, et seq. of the North Dakota Century Code imposes certain duties upon your office in the conduction of an election. The Voting Rights Act establishes effectiveness as a standard to be met. Essentially the standard is met where it is demonstrated that the implementations of the Act permit minority language members to participate effectively in the electoral process.

What this office would like to know is what steps have been taken either by your office independently or pursuant to instructions from the State Election Office to implement the Act. If none have been taken, this office would be glad to meet with you and the tribe in your area to develop a program which would satisfy the requirements of the Voting Rights Act.

We would appreciate a prompt reply to this inquiry and stand ready to assist your office if so requested in developing a program that will meet the standards established in the Voting Rights Act.

Sincerely,

JAMES R. BRITTON
United States Attorney

HERBERT A. BECKER
Assistant United States Attorney

HAB:s

cc: Mr. Barry H. Weinberg
Deputy Chief, Voting Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530

Dec. 11, 1978

Mr. James R. Britton
United States Attorney
Post Office Box 2505
Fargo, North Dakota 58102

Attention: Herbert A. Becker
Assistant United States Attorney

Dear Mr. Britton:

This is in reference to your letter of November 28, 1978, and previous communications regarding enforcement of the language minority provisions of Section 203 of the Voting Rights Act.

We appreciate your prompt response to our letter of November 21, 1978, which was indicative of the concern that you have shown in all of your actions in pursuit of this significant enforcement responsibility. Please do not hesitate to contact us should we be able to assist you in any further way on matters relating to federal civil rights voting laws.

Sincerely,

GERALD W. JONES
Chief, Voting Section
Civil Rights Division

ent of Justice

DOCKET 12/5/78

NOV 30

RECEIVED CIVIL RIGHTS DIVISION

UNITED STATES ATTORNEY
DISTRICT OF NORTH DAKOTA
FEDERAL BUILDING & U.S. COURTHOUSE
655 FIRST AVENUE NORTH
FARGO 58102

MAILING ADDRESS
P.O. BOX 2505
FARGO, N.D. 58102

November 28, 1978

Mr. Gerald W. Jones
Chief, Voting Section
Civil Rights Division
U. S. Department of Justice
Washington, D. C. 20530

Dear Mr. Jones:

Re: Voting Rights Act

In response to your request of November 21 regarding voting rights compliance, the following is submitted.

First, the counties provided interpreters to assist people at the polls.

Secondly, they met with the tribes and obtained their views on how best they could meet their obligation under the Voting Rights Act. In this regard, because the tribes in the areas in which the counties are located are the only viable Indian groups, it was felt that it was not necessary to seek out other Indian groups.

Thirdly, notice was obtained through the tribes. I had personally checked with some of the tribes and inquired whether or not any of their people complained or had a grievance over any assistance provided at the polls. The tribes assured me that they have received no complaints; that is the basis for my conclusion that no violation existed.

If there is further information that I can provide, please contact me.

Sincerely,

JAMES R. BRITTON
United States Attorney

Herbert A. Becker

HERBERT A. BECKER
Assistant United States Attorney

HAB:s

24 NOV 30 '78

CIVIL RIGHTS DIV.

DEC 5 1978

DEC 21 1978

Mr. James R. Britton
United States Attorney
Post Office Box 2505
Fargo, North Dakota 58102

Attention: Herbert A. Becker
Assistant United States Attorney

Dear Mr. Britton:

This is in reference to your letter of November 8, 1978, indicating that North Dakota counties were complying with Section 203 of the Voting Rights Act. Please let us know what the counties did, especially as regards obtaining the views of the minorities involved and providing for oral publicity and assistance in registration and voting, and, for each county, the basis on which you concluded that no violation existed.

Sincerely,

GERALD W. JONES
Chief, Voting Section
Civil Rights Division

United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF NORTH DAKOTA
219 FEDERAL BUILDING & U.S. COURTHOUSE
655 FIRST AVENUE NORTH
FARGO 58102

MAILING ADDRESS
P.O. BOX 2505
FARGO, N.D. 58102

November 8, 1978

Mr. Barry Weinberg
Deputy Chief, Voting Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530

Dear Barry:

This is to advise you that the counties covered by the minority language provisions of Section 203 of the Voting Rights Act were very cooperative during the election which was just held. As you recall, after the state indicated that they were not going to take independent steps to insure that the Act was complied with, this office contacted the counties directly. As a result of that contact, it was discovered that the counties had taken steps to voluntarily comply with the Act and were very cooperative in insuring that compliance was had.

In this regard, I had a meeting with one of the tribes and the county involved and both the tribe and the county indicated a willingness to work together in an attempt to have the county "bail out" of the provisions of Section 203. I anticipate that sometime in the future a declaratory action may be filed in an attempt to remove themselves from coverage of the Act.

If you have any questions or comments concerning this letter, please contact me.

Sincerely,

JAMES R. BRITTON
United States Attorney

Herbert A. Becker

HERBERT A. BECKER
Assistant United States Attorney

HAB:ls
cc: Mary L. Rolf, County Auditor, Montrail County, Stanley, ND 58784
Arne F. Boyum, Rolette County State's Attorney, Rolla, ND 58367
Marshall T. Bergerud, Dunn County State's Attorney, Killdeer, ND 58640
Christ Wehrung, McKenzie County Auditor, Watford City, ND 58854
Vernon H. Lysne, Benson County Auditor, Minnewaukan, ND 58351
Robert T. Brady, Asst. Attorney General, Bismarck, ND 58501

NOV 15 1978

United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF NORTH DAKOTA
219 FEDERAL BUILDING & U.S. COURTHOUSE
655 FIRST AVENUE NORTH
FARGO 58102

MAILING ADDRESS
P.O. BOX 2305
FARGO, N.D. 58102

Docketed 8/31/78

August 25, 1978

Mr. Barry H. Weinberg
Deputy Chief, Voting Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530

Dear Barry:

Re: Voting Rights Act of 1965

After we had talked on the telephone last month, I communicated directly with the counties covered by the bilingual election requirements of the Voting Rights Act. As you know, there are only five counties in North Dakota that are covered by the Act. Of those five, four have voluntarily taken steps to provide interpreters. The fifth, though recalcitrant, has agreed to participate in a meeting with the members of the tribe and this office to explore ways to implement the requirements of the Act. In light of the cooperation we have gotten from the other counties, I am certain that the fifth county will also comply with the Act by providing interpreters. If not, I will be back in touch with you.

Thanks for your suggestions and help in this matter. I look forward to seeing you again.

With warmest personal regards,

Herb -

HERBERT A. BECKER
Assistant United States Attorney

ls

United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF NORTH DAKOTA
219 FEDERAL BUILDING & U.S. COURTHOUSE
655 FIRST AVENUE NORTH
FARGO 58102

MAILING ADDRESS
P.O. BOX 2305
FARGO, N.D. 58108

July 28, 1978

Ms. Mary L. Rolf
County Auditor
Mountrail County
Stanley, ND 58784

Dear Madam:

As you know, pursuant to the authority vested in the Director of Census by 89 Stat. 402, Act of August 6, 1975, 42 U.S.C.A. Section 1973, et seq., your county has been designated as one of those counties covered by the Voting Rights Act of 1965. The Act also vests authority in the Attorney General to ensure that the requirements of it are complied with. He in turn has delegated responsibility to this office to ensure compliance with Section 203 of the Act.

Pursuant to the rules and regulations issued thereto, this office is authorized to conduct "inquiries and surveys concerning compliance" with the Act. 41 Fed. Reg. 140, July 20, 1976, Section 55.14(b). Because elections are scheduled for this fall this office feels that now is an appropriate time to inquire of you as to what steps have been taken to comply with the Act.

The Act requires that certain steps be taken which will permit minority language members to effectively participate in the election process. Section 16-01, et seq. of the North Dakota Century Code imposes certain duties upon your office in the conduction of an election. The Voting Rights Act establishes effectiveness as a standard to be met. Essentially the standard is met where it is demonstrated that the implementations of the Act permit minority language members to participate effectively in the electoral process.

What this office would like to know is what steps have been taken either by your office independently or pursuant to instructions from the State Election Office to implement the Act. If none have been taken, this office would be glad to meet with you and the tribe in your area to develop a program which would satisfy the requirements of the Voting Rights Act.

We would appreciate a prompt reply to this inquiry and stand ready to assist your office if so requested in developing a program that will meet the standards established in the Voting Rights Act.

Sincerely,

JAMES R. BRITTON
United States Attorney

HERBERT A. BECKER
Assistant United States Attorney

HAB:s

cc: Mr. Barry H. Weinberg
Deputy Chief, Voting Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530

United States Department of Justice

UNITED STATES ATTORNEY
DISTRICT OF NORTH DAKOTA
219 FEDERAL BUILDING & U.S. COURTHOUSE
655 FIRST AVENUE NORTH
FARGO 58102

MAILING ADDRESS
P.O. BOX 2505
FARGO, N.D. 5810[illegible]

July 28, 1978

Ms. Mary Stroh
County Auditor
Dunn County
Manning, ND 58642

Dear Madam:

As you know, pursuant to the authority vested in the Director of Census by 89 Stat. 402, Act of August 6, 1975, 42 U.S.C.A. Section 1973, et seq., your county has been designated as one of those counties covered by the Voting Rights Act of 1965. The Act also vests authority in the Attorney General to ensure that the requirements of it are complied with. He in turn has delegated responsibility to this office to ensure compliance with Section 203 of the Act.

Pursuant to the rules and regulations issued thereto, this office is authorized to conduct "inquiries and surveys concerning compliance" with the Act. 41 Fed. Reg. 140, July 20, 1976, Section 55.14(b). Because elections are scheduled for this fall this office feels that now is an appropriate time to inquire of you as to what steps have been taken to comply with the Act.

The Act requires that certain steps be taken which will permit minority language members to effectively participate in the election process. Section 16-01, et seq. of the North Dakota Century Code imposes certain duties upon your office in the conduction of an election. The Voting Rights Act establishes effectiveness as a standard to be met. Essentially the standard is met where it is demonstrated that the implementations of the Act permit minority language members to participate effectively in the electoral process.

What this office would like to know is what steps have been taken either by your office independently or pursuant to instructions from the State Election Office to implement the Act. If none have been taken, this office would be glad to meet with you and the tribe in your area to develop a program which would satisfy the requirements of the Voting Rights Act.

We would appreciate a prompt reply to this inquiry and stand ready to assist your office if so requested in developing a program that will meet the standards established in the Voting Rights Act.

Sincerely,

JAMES R. BRITTON
United States Attorney

HERBERT A. BECKER
Assistant United States Attorney

HAB:s

cc: Mr. Barry H. Weinberg
Deputy Chief, Voting Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530

UNITED STATES GOVERNMENT

Memorandum

Docketed 8/9/78

TO : Barry Weinberg
Civil Rights Division
Voting Section

DATE: August 4, 1978
KF:fe

FROM : Kathleen Flanagan, Assistant U. S. Attorney
Western District of Oklahoma

SUBJECT: Section 203 Voting Rights Act Enforcement

Enclosed you will find copies of letters sent to county election boards for the four covered counties in the Western District of Oklahoma: Blaine, Caddo, Harmon and Tillman. Also enclosed is a sample of letters sent to various language minority group individuals, organizations and media. We enclosed a partial listing of applicable language minority group individuals, organizations and media with the letter to election boards.

If you have any questions or suggestions regarding our enforcement activities in this area, please contact me.

Kathleen Flanagan

IN REPLY REFER TO INITIALS AND NUMBER

LDP:KF:fc

United States Department of Justice

UNITED STATES ATTORNEY
WESTERN DISTRICT OF OKLAHOMA

Room 4434, Federal Building
Oklahoma City, Oklahoma 73102
Telephone: (405) 231-5281

July 31, 1978

Tillman County Election Board
Mr. Alton Thompson, Secretary
Tillman County Courthouse
Frederick, Oklahoma 73542

Re: Section 203 Voting Rights Act
Enforcement

Dear Mr. Thompson:

As the United States Attorney for the Western District of Oklahoma, I wish to take this opportunity to remind county election boards and leaders of language minority groups of the provisions of the Voting Rights Act, as amended in 1975. This office places a high priority on enforcement of this Act, which provides civil remedies and criminal penalties for violations.

As you are aware, Tillman County is covered by and subject to Section 203 of the Voting Rights Act (42 U.S.C. 1973aa-1a et seq.). Tillman County is covered under the Act for the Spanish heritage language minority group.

As you know, we have a primary election August 22, 1978, a runoff election September 19, 1978, and a general election November 7, 1978.

As officials charged with the execution of election laws, your active cooperation is essential to achieve compliance with this law. The requirements of Section 203 apply with regard to all stages of the electoral process, from voter registration through activities related to conducting elections, including the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process. The

Congressional intent in enacting these provisions is to insure civil rights for all citizens to eliminate deprivation of fundamental rights. The measure of compliance is effectiveness in enabling members of language minority groups to be effectively informed of and to participate effectively in the electoral process. To this end, covered jurisdictions are required to take reasonable steps to achieve that goal.

ORAL ASSISTANCE AND PUBLICITY: To locate precincts with a need for minority language oral assistance, various methods should be used to insure accuracy. While census data are useful, they cannot be used alone. Population shifts subsequent to the census and the size of census tracts make it likely that sizeable groups of minority language voters will be overlooked. Census data should be used with other sources, such as the assistance of language minority community groups and individuals.

In addition, there should be service announcements on radio and television, as well as newspaper advertisements, to inform voters that assistance at the polls will be available in the minority languages relevant to your jurisdiction. Heavy emphasis should be placed on language minority group media.

To assist you in this process, you will find enclosed a partial listing of such language minority organizations, individuals, and media.

WRITTEN MATERIALS: All written materials used to assist voters (e.g., sample ballots, voting machine instructions, informational materials, etc.) must be readily available in Spanish as well as in English.

Again, let me reiterate that the Attorney General's view that compliance with the requirements of the minority language provisions is best measured by results, i.e., increased participation on the part of applicable language minority groups. A jurisdiction is more likely to achieve compliance if it has worked with the cooperation of organizations representing members of the applicable language minority groups.

The burden of compliance is placed on the administrators of electoral law in Voting Rights Act jurisdictions:

Specifically, "Whoever shall deprive or attempt to deprive any person of duly right secured by Sec. 203 of this Title III shall be fined not more than $5,000 or imprisoned not more than 5 years, or both." Relatedly, "aggrieved persons or their representatives may act in the same capacity as the Attorney General as "private Attorney Generals" in instituting a proceeding under any statute to enforce the voting guarantees of the 14th and 15th Amendments. If a Title III declaratory action is brought by aggrieved individuals and they prevail, the Court "may allow the prevailing party . . . a reasonable attorney's fee as part of the costs."

We hope that this information will be of assistance to you. Additionally, I have designated Assistant United States Attorney Kathleen Flanagan the responsibility for Voting Rights Act enforcement, monitoring and assistance. Please contact Ms. Flanagan to answer questions you may have regarding Federal voting rights and to assist you.

To assist us in monitoring compliance, your collection of the following information will be helpful:

1. The precincts that will have bilingual officials present on election day;

2. The number of such officials;

3. The minority language in which they are fluent;

4. A description of the method used to determine fluency;

5. A description of the method used to determine which precincts are in need of bilingual officials;

6. A description of efforts made to inform voters of the availability of minority language written materials and oral assistance (including telephone assistance); and

7. What training was given election officials with respect to minority language voting rights.

We look forward to a professional, cooperative relationship with your office, resulting in fulfilling the Congressional mandate to enforce the guarantees of the Fourteenth and Fifteenth Amendments.

Thank you.

Sincerely,

LARRY D. PATTON
United States Attorney

Enclosure

IN REPLY REFER TO INITIALS AND NUMBER

LDP:KF:fc

United States Department of Justice

UNITED STATES ATTORNEY
WESTERN DISTRICT OF OKLAHOMA

Room 4434, Federal Building
Oklahoma City, Oklahoma 73102
Telephone: (405) 231-5281

July 28, 1978

Blaine County Election Board
Virginia Loewen, Secretary
Box 670
Watonga, Oklahoma 73772

Re: Section 203 Voting Rights Act Enforcement

Dear Ms. Loewen:

As the United States Attorney for the Western District of Oklahoma, I wish to take this opportunity to remind county election boards and leaders of language minority groups of the provisions of the Voting Rights Act, as amended in 1975. This office places a high priority on enforcement of this Act, which provides civil remedies and criminal penalties for violations.

As you are aware, Blaine County is covered by and subject to Section 203 of the Voting Rights Act (42 U.S.C. 1973aa-1a et seq.). According to unpublished data furnished by the Department of Commerce, Bureau of the Census, for 1970, specified tribes in Blaine County and their population are as follows:

Arapaho	367
Cheyenne	388
Apache	33
Navajo	26

As you know, we have a primary election August 22, 1978, a runoff election September 19, 1978, and a general election November 7, 1978.

As officials charged with the execution of election laws, your active cooperation is essential to achieve compliance with this law. The requirements of Section 203 apply with regard to all stages of the electoral process, from voter registration through activities related to conducting elections, including the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process. The Congressional intent in enacting these provisions is to insure civil rights for all citizens and to eliminate deprivation of fundamental rights. The measure of compliance is effectiveness in enabling members of language minority groups to be effectively informed of and to participate effectively in the electoral process. To this end, covered jurisdictions are required to take reasonable steps to achieve that goal.

We note it has been determined by the Oklahoma State Election Board by letter of January 6, 1976, that Indian languages used in the Western District of Oklahoma are unwritten languages as defined by law. Oral assistance and publicity are required for unwritten languages.

ORAL ASSISTANCE AND PUBLICITY: To locate precincts with a need for minority language oral assistance, various methods should be used to insure accuracy. While census data are useful, they cannot be used alone. Population shifts subsequent to the census and the size of census tracts make it likely that sizeable groups of minority language voters will be overlooked. Census data should be used with other sources, such as the assistance of language minority community groups and individuals.

In addition, there should be service announcements on radio and television, as well as newspaper advertisements, to inform voters that assistance at the polls will be available in the minority languages relevant to your jurisdiction. Heavy emphasis should be placedon language minority group media.

To assist you in this process, you will find enclosed a partial listing of such language minority organizations, individuals, and media.

Again, let me reiterate that the Attorney General's view that compliance with the requirements of the minority language provisions is best measured by results, i.e., increased participation on the part of applicable language minority groups. A jurisdiction is more likely to achieve compliance if it has worked with the cooperation of organizations representing members of the applicable language minority groups.

The burden of compliance is placed on the administrators of electoral law in Voting Rights Act jurisdictions:

Specifically, "Whoever shall deprive or attempt to deprive any person of duly right secured by Sec. 203 of this Title III shall be fined not more than $5,000 or imprisoned not more than 5 years, or both." Relatedly, "aggrieved persons" or their representatives may act in the same capacity as the Attorney General as "private Attorney Generals" in instituting a proceeding under any statuto to enforce the voting guarantees of the 14th and 15th Amendments. If a Title III declaratory action is brought by aggrieved individuals and they prevail, the Court "may allow the prevailing party . . . a reasonable attorney's fee as part of the costs."

We hope that this information will be of assistance to you. Additionally, I have designated Assistant United States Attorney Kathleen Flanagan the responsibility for Voting Rights Act enforcement, monitoring and assistance. Please contact Ms. Flanagan to answer questions you may have regarding Federal voting rights and to assist you.

To assist us in monitoring compliance, your collection of the following information will be helpful:

1. The precincts that will have bilingual officials present on election day;

2. The number of such officials;

3. The minority language in which they are fluent;

4. A description of the method used to determine fluency;

5. A description of the method used to determine which precincts are in need of bilingual officials;

6. A description of efforts made to inform voters of the availability of minority language written materials and oral assistance (including telephone assistance); and

7. What training was given election officials with respect to minority language voting rights.

We look forward to a professional, cooperative relationship with your office, resulting in fulfilling the Congressional mandate to enforce the guarantees of the Fourteenth and Fifteenth Amendments.

Thank you.

Sincerely,

LARRY D. PATTON
United States Attorney

Enclosure

IN REPLY REFER TO INITIALS AND NUMBER

LDP:KF:fe

United States Department of Justice

UNITED STATES ATTORNEY
WESTERN DISTRICT OF OKLAHOMA

Room 4434, Federal Building
Oklahoma City, Oklahoma 73102
Telephone: (405) 231-5281

July 31, 1978

Harmon County Election Board
Douglas Burns, Secretary
Harmon County Courthouse
Hollis, Oklahoma 73550

Re: Section 203 Voting Rights Act Enforcement

Dear Mr. Burns:

As the United States Attorney for the Western District of Oklahoma, I wish to take this opportunity to remind county election boards and leaders of language minority groups of the provisions of the Voting Rights Act, as amended in 1975. This office places a high priority on enforcement of this Act, which provides civil remedies and criminal penalties for violations.

As you are aware, Harmon County is covered by and subject to Section 203 of the Voting Rights Act (42 U.S.C. 1973aa-1a et seq.). Harmon County is covered under the Act for the Spanish heritage language minority group.

As you know, we have a primary election August 22, 1978, a runoff election September 19, 1978, and a general election November 7, 1978.

As officials charged with the execution of election laws, your active cooperation is essential to achieve compliance with this law. The requirements of Section 203 apply with regard to all stages of the electoral process, from voter registration through activities related to conducting elections, including the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process. The Congressional intent in enacting these provisions is to insure civil rights for all citizens and to eliminate deprivation of fundamental rights. The measure of compliance is effectiveness in enabling members of language minority groups to be effectively informed of and to participate effectively

in the electoral process. To this end, covered jurisdictions are required to take reasonable steps to achieve that goal.

ORAL ASSISTANCE AND PUBLICITY: To locate precincts with a need for minority language oral assistance, various methods should be used to insure accuracy. While census data are useful, they cannot be used alone. Population shifts subsequent to the census and the size of census tracts make it likely that sizeable groups of minority language voters will be overlooked. Census data should be used with other sources, such as the assistance of language minority community groups and individuals.

In addition, there should be service announcements on radio and television, as well as newspaper advertisements, to inform voters that assistance at the polls will be available in the minority languages relevant to your jurisdiction. Heavy emphasis should be placed on language minority group media.

To assist you in this process, you will find enclosed a partial listing of such language minority organizations, individuals, and media.

WRITTEN MATERIALS: All written materials used to assist voters (e.g., sample ballots, voting machine instructions, informational materials, etc.) must be readily available in Spanish as well as in English.

Again, let me reiterate that the Attorney General's view that compliance with the requirements of the minority language provisions is best measured by results, i.e., increased participation on the part of applicable language minority groups. A jurisdiction is more likely to achieve compliance if it has worked with the cooperation of organizations representing members of the applicable language minority groups.

The burden of compliance is placed on the administrators of electoral law in Voting Rights Act jurisdictions:

Specifically, "Whoever shall deprive or attempt to deprive any person of duly right secured by Sec. 203 of this Title III shall be fined not more than $5,000 or imprisoned not more than 5 years, or both." Relatedly, "aggrieved persons

or their representatives may act in the same capacity as the Attorney General as "private Attorney Generals" in instituting a proceeding under any statute to enforce the voting guarantees of the 14th and 15th Amendments. If a Title III declaratory action is brought by aggrieved individuals and they prevail, the Court "may allow the prevailing party . . . a reasonable attorney's fee as part of the costs."

We hope that this information will be of assistance to you. Additionally, I have designated Assistant United States Attorney Kathleen Flanagan the responsibility for Voting Rights Act enforcement, monitoring and assistance. Please contact Ms. Flanagan to answer questions you may have regarding Federal voting rights and to assist you.

To assist us in monitoring compliance, your collection of the following information will be helpful:

1. The precincts that will have bilingual officials present on election day;

2. The number of such officials;

3. The minority language in which they are fluent;

4. A description of the method used to determine fluency;

5. A description of the method used to determine which precincts are in need of bilingual officials;

6. A description of efforts made to inform voters of the availability of minority language written materials and oral assistance (including telephone assistance); and

7. What training was given election officials with respect to minority language voting rights.

We look forward to a professional, cooperative relationship with your office, resulting in fulfilling the Congressional mandate to enforce the guarantees of the Fourteenth and Fifteenth Amendments.

Thank you.

Sincerely,

LARRY D. PATTON
United States Attorney

Enclosure

IN REPLY REFER TO INITIALS AND NUMBER

LDP:KF:fo

United States Department of Justice

UNITED STATES ATTORNEY
Western District of Oklahoma

Room 4434, Federal Building
Oklahoma City, Oklahoma 73102
Telephone: (405) 231-5281

July 28, 1978

Caddo County Election Board
Mildred Veltema, Secretary
Box 277
Anadarko, Oklahoma 73005

Re: Section 203 Voting Rights Act Enforcement

Dear Ms. Veltema:

As the United States Attorney for the Western District of Oklahoma, I wish to take this opportunity to remind county election boards and leaders of language minority groups of the provisions of the Voting Rights Act, as amended in 1975. This office places a high priority on enforcement of this Act, which provides civil remedies and criminal penalties for violations.

As you are aware, Caddo County is covered by and subject to Section 203 of the Voting Rights Act (42 U.S.C. 1973aa-1a et seq.). According to unpublished data furnished by the Department of Commerce, Bureau of the Census, for 1970, specified tribes in Caddo County and their population are as follows:

Cheyenne	115
Delaware and Stockbridge	141
Pottawatomie	50
Apache	459
Navajo	71
Cherokee	58
Caddo	289
Wichita	250
Pawnee	62
Chickasaw	30
Choctaw and Houma	56
Creek, Alabama, and Coashatta	25
Comanche	429
Yakima	178
Kiowa	1365

As you know, we have a primary election August 22, 1978, a runoff election September 19, 1978, and a general election November 7, 1978.

As officials charged with the execution of election laws, your active cooperation is essential to achieve compliance with this law. The requirements of Section 203 apply with regard to all stages of the electoral process, from voter registration through activities related to conducting elections, including the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process. The Congressional intent in enacting these provisions is to insure civil rights for all citizens and to eliminate deprivation of fundamental rights. The measure of compliance is effectiveness in enabling members of language minority groups to be effectively informed of and to participate effectively in the electoral process. To this end, covered jurisdictions are required to take reasonable steps to achieve that goal.

We note it has been determined by the Oklahoma State Election Board by letter of January 6, 1976, that Indian languages used in the Western District of Oklahoma are unwritten languages as defined by law. Oral assistance and publicity are required for unwritten languages.

ORAL ASSISTANCE AND PUBLICITY: To locate precincts with a need for minority language oral assistance, various methods should be used to insure accuracy. While census data are useful, they cannot be used alone. Population shifts subsequent to the census and the size of census tracts make it likely that sizeable groups of minority language voters will be overlooked. Census data should be used with other sources, such as the assistance of language minority community groups and individuals.

In addition, there should be service announcements on radio and television, as well as newspaper advertisements, to inform voters that assistance at the polls will be available in the minority languages relevant to your jurisdiction. Heavy emphasis should be placed on language minority group media.

To assist you in this process, you will find enclosed a partial listing of such language minority organizations, individuals, and media.

Again, let me reiterate that the Attorney General's view that compliance with the requirements of the minority language provisions is best measured by results, i.e., increased participation on the part of applicable language minority groups. A jurisdiction is more likely to achieve compliance if it has worked with the cooperation of organizations representing members of the applicable language minority groups.

The burden of compliance is placed on the administrators of electoral law in Voting Rights Act jurisdictions:

Specifically, "Whoever shall deprive or attempt to deprive any person of duly right secured by Sec. 203 of this Title III shall be fined not more than $5,000 or imprisoned not more than 5 years, or both." Relatedly, "aggrieved persons" or their representatives may act in the same capacity as the Attorney General as "private Attorney Generals" in instituting a proceeding under any statute to enforce the voting guarantees of the 14th and 15th Amendments. If a Title III declaratory action is brought by aggrieved individuals and they prevail, the Court "may allow the prevailing party . . . a reasonable attorney's fee as part of the costs."

We hope that this information will be of assistance to you. Additionally, I have designated Assistant United States Attorney Kathleen Flanagan the responsibility for Voting Rights Act enforcement, monitoring and assistance. Please contact Ms. Flanagan to answer questions you may have regarding Federal voting rights and to assist you.

To assist us in monitoring compliance, your collection of the following information will be helpful:

1. The precincts that will have bilingual officials present on election day;

2. The number of such officials;

3. The minority language in which they are fluent;

4. A description of the method used to determine fluency;

5. A description of the method used to determine which precincts are in need of bilingual officials;

6. A description of efforts made to inform voters of the availability of minority language written materials and oral assistance (including telephone assistance); and

7. What training was given election officials with respect to minority language voting rights.

We look forward to a professional, cooperative relationship with your office, resulting in fulfilling the Congressional mandate to enforce the guarantees of the Fourteenth and Fifteenth Amendments.

Thank you.

Sincerely,

LARRY D. PATTON
United States Attorney

Enclosure

IN REPLY REFER TO INITIALS AND NUMBER

LDP:KF:fc

The United States Department of Justice

UNITED STATES ATTORNEY
WESTERN DISTRICT OF OKLAHOMA

Room 4431, Federal Building
Oklahoma City, Oklahoma 73102
Telephone (405) 231-5281

August 4, 1978

Re: Voting Rights Act Enforcement

Dear

In 1975, Congress amended the Voting Rights Act to require that a language in addition to English be used in the entire electoral process in certain areas. In the Western District of Oklahoma, the following covered counties are the related language minority groups are included:

Political Subdivision	Language Minority Group
Blaine County	American Indian
Caddo County	American Indian
Harmon County	Spanish Heritage
Tillman County	Spanish Heritage

The United States Attorney's Office for the Western District of Oklahoma has the primary enforcement responsibility. This letter is to let you know what we will look for as we enforce the law.

It will greatly assist us in this effort if you will help determine:

1. The needs of your language minority group in reference to effective participation in the electoral process;

2. How to best provide for these needs;

3. How to adequately inform the language minority population of the existence and availability of bilingual assistance.

This office places a high priority on enforcement of this law. Compliance is to be achieved by determining if, in fact, language minorities know of and understand the electoral procedures and whether, in fact, these procedures make the right to vote effective for the language minority group in question.

Assistant United States Attorney Kathleen Flanagan has been designated the responsibility for Voting Rights Act enforcement, monitoring and assistance in the Western District of Oklahoma. Please contact her with any questions you may have.

As you may know, we have a primary election August 22, 1978; a runoff election September 19, 1978; and a general election November 7, 1978. Any assistance and information you can provide regarding the enforcement of the Voting Rights Act to this office and/or the county election board for your county before and/or after these dates will greatly facilitate our efforts.

Sincerely,

LARRY D. PATTON
United States Attorney

Enclosure -
Letter to County Election Board

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

ASO:ff

United States Department of Justice

UNITED STATES ATTORNEY

CENTRAL DISTRICT OF CALIFORNIA
U.S. COURT HOUSE
312 NO. SPRING STREET
LOS ANGELES, CALIFORNIA 90012

May 12, 1978

Mr. John E. Huerta
Deputy Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Huerta:

As promised, enclosed is a copy of the letter sent to the seven registrars of voters and county counsels in this District.

Each of us in California sent our own letters. I am sure you will be receiving copies of the others as well.

Sincerely,

Andrea Sheridan Ordin
United States Attorney

Enclosure

ADDRESS REPLY TO UNITED STATES ATTORNEY AND REFER TO INITIALS AND NUMBER

ASO:ff

United States Department of Justice

UNITED STATES ATTORNEY

CENTRAL DISTRICT OF CALIFORNIA
U. S. Court House
312 No. Spring Street
Los Angeles, California 90012

May 10, 1978

As the United States Attorney in the Central District, I wish to take this opportunity to remind county election officials of the obligations imposed by language minority provisions of the Federal Voting Rights Act, section 203. The four United States Attorneys in California place a high priority on enforcement of this Act, which provides civil and criminal penalties for violations. Therefore, we believe that this reminder will assist in assuring meaningful and effective compliance. As the enforcement agencies, we will be conducting selective monitoring of the June election with appropriate Justice Department resources.

Due to time constraints, we will not at this time discuss obligations with respect to voter registration. However, we will cover that topic in correspondence before the November election.

As you know, the intent of the law and the measure of compliance is effectiveness. Many of the requirements are remedial in nature, broadly designed to enable members of language minorities to be "effectively informed" and to "participate effectively" in the electoral process. To this end, covered jurisdictions are required to take reasonable steps to achieve that goal. U.S. Attorney General's Guidelines, 28 Code of Federal Regulations, section 55.2(b)[hereinafter, CFR].

Oral Assistance

Certain steps must be taken on election day to assure that language minority voters can fully participate in

the electoral process. Because coverage in your county is premised upon a relatively high illiteracy rate among language minorities, it is required that oral assistance be given where needed on election day. Voting Rights Act, section 203(b); 28 CFR, section 55.20; California Election Code, section 1635(c)

To locate precincts with a need for minority language oral assistance, various methods should be used to insure accuracy. While census data are useful, they cannot be used alone; population shifts subsequent to the census and the size of census tracts make it likely that sizeable groups of minority language voters will be overlooked. Census data should be used with other sources, such as the index of registered voters and the assistance of community groups.

In addition, there should be service announcements on radio and television, as well as newspaper advertisements, to inform voters that assistance at the polls will be available in the minority languages relevant to your jurisdiction. This would be in addition to signs outside the polling places informing voters of the availability of oral assistance and written materials in minority languages. Heavy emphasis should be placed on minority language media in order to assure an "effective opportunity to be informed about electoral activities."

Written Materials

All written materials used to assist voters (e.g., sample ballots, voting machine instructions, informational materials, etc.) must be readily available in the minority languages as well as in English. Voting Rights Act, section 203(c); 28 CFR, section 55.19; California Election Code, section 14203.

With reference both to voter registration and to targeting precincts for minority language assistance, it has been suggested that CETA (Comprehensive Employment and Training Act) resources can be used. There has been a

great increase in CETA funds in the past year, and not all CETA programs require training of participants. Your county's CETA office should have information on the availability of these funds.

We hope that this information will be of assistance to you. Additionally, we will be designating an Assistant United States Attorney in each office to be responsible for Voting Rights Act enforcement, monitoring and assistance. This action is in addition to the election day "hot line" that will be available. In the Central District, Assistant United States Attorney Richard Romero has been assigned to answer questions you may have regarding federal voting rights and to assist you.

To assist us in monitoring compliance, your collection of the following information will be helpful: The precincts that will have bilingual officials present on election day, the number of such officials, the minority language in which they are fluent, a description of the method used to determine fluency, a description of the method used to determine which precincts are in need of bilingual officials, a description of efforts made to inform voters of the availability of minority language written materials and oral assistance (including telephonic assistance), and what training was given election officials with respect to minority language voting rights.

We look forward to a professional, cooperative relationship with your office, resulting in fulfilling the Congressional mandate to enforce the guarantees of the Fourteenth and Fifteenth Amendments.

Thank you.

Sincerely,

Andrea Sheridan Ordin
United States Attorney

MAR 4 1977

Mr. Kenneth D. Webb
Registrar of Voters
Monterey County
P. O. Box 1848
Salinas, California 93901

Dear Mr. Webb:

This is in reference to the conversion to postcard registration forms and the bilingual election procedures for Monterey County submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on January 3, 1977, the date on which your most recent letter providing additional information was received.

The Attorney General does not interpose an objection to the conversion to postcard registration forms. 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 the submitted change.

With respect to the bilingual election procedures, we have made a thorough examination of all the information you have provided, demographic information concerning Monterey County, the views and comments of other interested parties, and the requirements of Section 203(c) of the Voting Rights Act of 1965, as amended. Our analysis has revealed several matters of concern.

Monterey County's plan for bilingual election procedures provides for three levels of bilingualism, depending on the percentage of voters requesting election materials in the Spanish language. Each voter in the county has been or will be asked but not required to fill out a postcard registration form. This form requests the voter to indicate whether he wishes to receive election materials in English or Spanish. If five percent or fewer of the county's registered voters request Spanish language materials, a "captioning" plan will be used; if six to twenty request Spanish language materials a "targeting" plan will be used; if more than twenty percent request Spanish language materials "blanket distribution" will be made. The statistics you provided indicate that 76,179 of the county's 100,790 registered voters, or seventy-six percent, have been converted to the postcard registration system. You conclude from a sampling you have conducted that 1.3 percent of the county's registered voters ultimately will request Spanish language materials. */

With regard to oral Spanish language assistance at the polls, all three plans state that "whenever the percentage of registered voters within a precinct requesting bilingual materials is equal to or more than 3% of the total registration of that precinct every reasonable effort shall be made to have at least one bilingual election official appointed to that precinct board." Even though in our letter of December 20, 1976, we requested an explanation for the use of this criterion, no such explanation has

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*/While our analysis has considered all three of the proposals you submit, we have focused mainly on the "captioning" and "targeting" plans since our review shows that the "blanket distribution" plan is not a realistic alternative in Monterey County. That plan requires a plus 20% request for Spanish language materials when the voting age population of Spanish Americans in the county is only about 18%.

been furnished. Thus, we are left in a position of being unable to determine the potential effectiveness of this approach since it well may be that most persons requesting Spanish language materials are able to read Spanish and therefore do not need oral assistance at the polls. On the other hand the Spanish heritage voter who can read neither English nor Spanish and who needs Spanish language oral assistance may be unable or reluctant to request Spanish language materials. It would seem to us that the experience gained in the November 2, 1976, general election would be more relevant for determining at which polling places Spanish language oral assistance is needed. In this connection, we note that during that election 58 of the county's 246 voting precincts were designated for such oral assistance apparently with the concurrence of a minority interest group, the California Rural Legal Assistance organization (see Section 55.16 of our guidelines).

In addition, all three plans would appear to provide for official ballots in English only. The descriptions of the "captioning" and "targeting" plans state: "Copies of the (Spanish language) ballot facsimile shall be provided to each polling place and will be made available upon request to the voters. The facsimile can be used to assist the voter in marking his English only official ballot." (Emphasis added). The "blanket distribution" plan does not contain this specific language but does except the official ballot from those polling place materials which will be made bilingual.

Section 203(c) of the Act, which applies to Monterey County, specifically includes ballots among the materials subject to its requirements: "Whenever any State or political subdivision subject to the

prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language. . . ." (Emphasis added). However, we have interpreted this statutory language as not requiring bilingual ballots in all circumstances. Section 55.18(d) of the guidelines provides, in part: "The Attorney General will consider whether polling place activities are conducted in such a way that members of the applicable language minority group have an effective opportunity to vote. . . . If very few of the registered voters scheduled to vote at a particular polling place need minority language materials . . ., the Attorney General will consider whether an alternative system enabling those few to cast effective ballots is available." Section 55.19(d) of the guidelines provides, in part: "Where voting machines that cannot mechanically accommodate a ballot in English and in the applicable minority language are used, the Attorney General will consider whether the jurisdiction provides sample ballots for use in the polling booths. . . ."

On the basis of information furnished, Monterey County does not qualify for either exception. First, while there may be some polling places in which bilingual ballots are not required, the data you have provided indicate that this is not the case for the county as a whole. For example, your sampling of precincts, which contain fewer than ten percent of the registered voters in the county, reveals that 5.5 percent of the registered voters of Greenfield 2 and 8.7 percent of the registered voters of Salinas 20 requested Spanish

language materials. More importantly, however, these percentages represent 25 of the 111 Spanish surname voters in Greenfield 2 and 36 of the 110 Spanish surname voters in Salinas 20 requesting Spanish language material. In our view, these statistics do not represent "very few of the registered voters" scheduled to vote at those polling places within the meaning of our guidelines.

Second, you have provided no information showing that the punch card voting system used in Monterey County cannot "mechanically accommodate" a bilingual ballot. In your December 31, 1976, letter you explain why you chose not to provide a separate Spanish-only official ballot, but there is no indication that the option of a ballot using both English and Spanish was considered. We iterate here our view that a separate minority language ballot is not required by the Act and, in fact, may not be appropriate. In this regard, Section 55.19(c) of the guidelines, states: "The Attorney General will consider whether a jurisdiction provides the English and minority language versions on the same document. Lack of such bilingual preparation of ballots may give rise to the possibility, or to the appearance, that the secrecy of the ballot will be lost if a separate minority language ballot or voting machine is used."

With respect to nominating petitions, your plans state that "instruction manuals, nomination petitions, office procedures, campaign expenditure forms, etc., used solely by candidates will not be prepared bilingually." It is our understanding that nominating petitions need to be read and understood by voters who are asked to sign them. These petitions are therefore of the type of material subject to the minority language requirement. Section 55.19(a) of the guidelines states, in part: "A jurisdiction required to provide minority language materials is only required to publish in the language

of the applicable language minority group materials distributed to or provided for the use of the electorate generally. Such materials include, for example, ballots, sample ballots, information materials, and petitions."

Under the "captioning" plan, none of the election materials mailed to all voters, including those voters who have indicated a preference for Spanish language materials, will be mailed in a Spanish version. Voters who wish to receive such materials in the Spanish language will have to make a special request. While this may be an acceptable approach in those parts of Monterey County having a small percentage of persons of Spanish heritage, this does not in our view satisfy the Act (see Sections 55.17 and 55.18(a) */ of the guidelines) for areas in Monterey County in which there is a high proportion of citizens of Spanish heritage or in which there has been a significant number of requests for Spanish language materials. For example, we note that persons of Spanish heritage constitute approximately 27% of the population of Salinas, approximately 65% of Gonzales, approximately 85% of Soledad, approximately 50% of Greenfield, and approximately 33% of King City, all located in Monterey County. As we observed earlier, your sampling showed that 8.7 percent of the registered voters of Precinct Salinas 20 and 5.5 percent of the

*/We regret that a printing error has obscured the meaning of the second sentence of Section 55.18(a). That sentence, which was partially transposed, should read as follows: "For example, a separate mailing of materials in the minority language to persons who are likely to need them or to residents of neighborhoods in which such a need is likely to exist, supplemented by a notice of the availability of minority language materials in the general mailing in English and in the applicable minority language and by other publicity regarding the availability of such materials, may be sufficient."

registered voters of Precinct Greenfield 2 have requested Spanish language materials. Nothing shows that the rate of Spanish language requests will not be comparable in other precincts with concentrations of Spanish heritage population even absent our observations that such requests may not in fact be indicative of actual minority language needs.

An associated problem attends the "targeting" plan. There, although persons requesting bilingual materials on their registration cards will be provided bilingual election information and materials, no notice that bilingual materials are available will be provided in the universal sample ballot mailings. Thus, minority language voters needing minority language assistance are subjected to the requirement that they either execute a registration card indicating their need for such assistance or forego assistance in a language they understand, a requirement to which other voters are not subjected.

In your letter of December 31, 1976, you state: "Our sole intent is to make the electoral process available to all citizens of this County in the most cost effective manner possible." This articulation is consistent with the position we take in Section 55.16 of our guidelines: "In planning its compliance with Section 4(f)(4) or Section 203(c), a jurisdiction may, where alternative methods of compliance are available, use less costly methods if they are equivalent to more costly methods in their effectiveness." According to the information you have provided, however, the county's cost per voter would have been reduced 7¢ per voter, or 4 percent, in the 1976 primary election, and 10¢ per voter, or 6 percent, in the 1976 general election if the "captioning" plan had been used. Given the serious questions that have been raised concerning the effectiveness of the "captioning" plan and the relatively slight

reduction in cost to the county, we cannot conclude that the "captioning" plan is what is contemplated by the Voting Rights Act, as amended in 1975 and as construed in our guidelines.

Finally, Section 55.16 of the guidelines also states: "A jurisdiction is more likely to achieve compliance with these requirements if it has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group." We have been informed that you met with members of the League of United Latin American Citizens (LULAC), but that this organization voted to oppose the adoption of the plan under review. We have also been notified of opposition to the plan from the Mexican American Legal Defense and Educational Fund (MALDEF).

As a result of consideration of all of these factors, we cannot conclude, as we must under Section 5 of the Voting Rights Act, that Monterey County's plan for bilingual elections will not have the effect of denying or abridging the vote on account of membership in a language minority group. Therefore, I must, on behalf of the Attorney General, interpose an objection to these plans in the respects discussed above.

Of course, Section 5 permits Monterey County to seek a declaratory judgment from the United States District Court for the District of Columbia that the plan for bilingual elections does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Until such a judgment should be obtained, the effect of the Attorney General's objection is to render the objected to changes in the procedures for bilingual elections unenforceable.

Sincerely,

DREW S. DAYS, III
Acting Assistant Attorney General
Civil Rights Division

NOV 18 1977

Mr. Kenneth G. Weeb
Registrar of Voters
Monterey County
Post Office Box 1369
Salinas, California 93901

Dear Mr. Weeb:

This is in reference to the Bi-Lingual Compliance Plan and the conversion to a new punchcard system submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on September 19, 1977.

The Attorney General does not interpose any objections to the changes in question. 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. The Attorney General's determination is based on our understanding that Monterey County will continue its efforts to recruit interpreters to provide bilingual oral assistance at additional polls where, on the basis of consultation with members of the Spanish-speaking community, a need for such additional assistance appears to exist.

We also understand that at some future date Monterey County plans to implement a targeting procedure for distributing mailed materials. Please be advised that if and when that plan is adopted that change will be subject to preclearance under Section 5.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

By:
GERALD W. JONES
Chief, Voting Section

MAY 26 1976

Mr. James A. Reichle
Deputy County Counsel for
Yuba County
Courthouse
215 - 5th Street
Marysville, California 95901

Dear Mr. Reichle:

This is in reference to your bilingual election program submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was completed on March 29, 1976.

The Attorney General does not, with the exception of Exhibits Nos. 154, 156, 45 and 54, interpose any objection to the changes in question. 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.

Regarding Exhibit No. 45, Absentee Voter's Ballots, and Exhibit No. 54, Official Ballots, we wish to point out that Section 4(f)(4) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973b(f), expressly provides that ballots must be provided in the language of the applicable language minority group, in this case Spanish, as well as in the English language. See also, Implementation of the Provisions of the Voting Rights Act regarding Language Minority Groups (41 Fed. Reg. 10774, April 21, 1976, §55.19(c)) and Interim

Guidelines Regarding Language Minority Groups (40 Fed. Reg. 46080, October 3, 1975, §§55.12 and 55.13). It is our understanding that the provision of bilingual ballots for your punch card machines is not physically impossible although it would involve additional expense.

With regard to the candidate qualification statement, this booklet which is prepared by county officials from information supplied by candidates and disseminated by the county along with sample ballots and other materials is subject to the bilingual provisions of §4(f)(4) of the Act. That section requires that "any registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process . . . ." to be provided in Spanish in Yuba County (see also 41 Fed. Reg. 16777, April 21, 1976, §51.19(a) and 40 Fed. Reg. 48082, October 3, 1975, §55.12). Under California law as interpreted by the state's highest court, county officials are compelled to prepare and disseminate such booklets regardless of prepayment by candidates, Knoll v. Davidson, 116 Cal. Rptr. 97, 525 P.2d 1273 (1974). Thus the preparation and mailing of these booklets constitute the implementation of a state system of providing voting information to the public. While the California statute extends the option to the candidate to determine if his material should be translated, in our opinion this is inconsistent with the requirements of federal law in jurisdictions covered by the Voting Rights Act and to that extent is superseded by federal law.

Accordingly, we must interpose an objection to use of the materials contained in Exhibits 15A, 15B, 45 and 54 because of their failure to follow the bilingual requirements of the Act. We note that it would be possible to comply with this Spanish-language requirement without blanketing all voters with translations via an effective targeting system as devised for other materials. (See 41 Fed. Reg. 16776, §55.17.)

Finally, with regard to candidate statements, the practice in Yuba County of requiring prepayment also does not seem to conform to the Knoll decision. Without regard to the propriety of such practice under state law, we are of the view that the prepayment requirement does not affect the above analysis under the Voting Rights Act.

Of course, the Attorney General will reconsider his decision should significant new information be brought to his attention regarding the changes objected to. 28 C.F.R. §51.23. However, the burden of proof remains on the submitting authority under Section 5 of the Act and the Attorney General's guidelines. 28 C.F.R. §51.19. See also Georgia v. United States, 411 U.S. 526 (1973).

In view of the imminence of the June 8 elections in California, please advise us within 10 days as to your intended procedures with regard to the changes objected to above.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAY 26 1977

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Mr. James A. Reichle
Deputy County Counsel for
Yuba County
Courthouse
215 - 5th Street
Marysville, California 95901

Dear Mr. Reichle:

This is in reference to our letter of May 26, 1976, regarding the submission to the Attorney General under Section 5 of the Voting Rights Act of 1965, of bilingual election procedures in Yuba County.

Following our May 26, 1976 letter we received information indicating that Yuba County would proceed with the use of the objectionable English-only ballots. Based on this information and information that we previously obtained in preparing to defend the county's lawsuit to terminate coverage under Section 4 of the Act, we recently conducted an investigation in Yuba County to determine whether there are any specific steps we could recommend to you to cure the objection under Section 5, and whether litigation might be necessary to enforce the bilingual requirements of the Voting Rights Act with respect to the English-only ballots or any other aspect of the county's bilingual electoral obligations.

Our investigation disclosed that the ballot system you have proposed, i.e., the provision of Spanish language sample ballots, and bilingual polling place officials along with the English-only official ballots, may be satisfactory under the standards of Section 5 if proper

publicity is accorded to availability of the county's bilingual procedures. We found that there is among Spanish language persons a need for Spanish language assistance and widespread lack of knowledge of the bilingual election procedures in the county. Spanish language persons, for whose benefit the procedures were intended, generally do not know that written bilingual materials and oral bilingual assistance are available, and we found many Spanish language persons who did not even know of the repeal of the English language literacy test for voter registration. A general impression pervades the Spanish language minority community that English must be understood to effectively enter and participate in the voting process.

Unless the county's bilingual procedures are made known to the county's Spanish language minority citizens, those procedures are virtually as ineffective as were the county's previous English-only procedures with respect to achieving participation in the electoral process by the county's Spanish language minority citizens. Thus, while the use of Spanish language sample ballots combined with the presence of Spanish language persons to assist voters in the polling places might become effective for use in balloting, those procedures are presently ineffective because they will not in fact be used unless they are known to people who need Spanish language balloting procedures.

By the same token, a great many people who need Spanish language balloting procedures in Yuba County will not begin participating in the electoral process by registering to vote unless they clearly know they can use the bilingual balloting procedures and the bilingual voter registration procedures, and for these people the bilingual balloting procedures are similarly presently ineffective because they have not been adequately publicized. Our attention to such matters

is part of our standard procedures in considering the efficiency of bilingual procedures. See Section 55.18 of our interpretative guidelines, a copy of which is enclosed.

However, we believe that the communication problem underlying the county's bilingual procedures can be easily resolved. In March of 1977, Departmental attorney John MacCoon discussed this problem with Mr. Cozad, the Yuba County Registrar. At that time Mr. Cozad expressed his willingness to take steps, including the use of the Spanish-speaking radio station, to inform the Spanish-speaking community of the availability of bilingual voter registration and election procedures.

In light of our findings, I would like to advise you that the Attorney General would be willing to reconsider his objection to the use of English-only ballots, if Yuba County will commit itself to a specific program whereby the availability and nature of the county's bilingual voter registration and election procedures are effectively made known and explained to the Spanish-speaking community.

While it appears to us that use of the Spanish language radio station would be an indispensable part of such a program, our experience has shown that any program designed to communicate minority language information about the electoral process is unlikely to succeed unless the officials responsible for the program determine how to best reach the intended audience by conferring directly with minority language persons familiar with the minority language needs and communication patterns of the particular minority language community involved, especially as regards the minority language citizens who do not now participate in the electoral process. Our

experience has shown that programs resulting from such coordination are likely to be the least expensive and the most effective. Moreover, it is from such minority language persons that we routinely obtain much of our information when reviewing the effectiveness of bilingual programs submitted under Section 5, and we will be contacting minority language persons in Yuba County in this regard should we have occasion to reconsider the objection interposed in Yuba County.

The procedures and circumstances regarding the submission of a request for reconsideration of objections under Section 5 are set out in Sections 51.23, 51.24 and 51.25 of the enclosed Section 5 guidelines.

If Yuba County will submit a specific program for effectively communicating to Spanish language citizens information about all of the county's bilingual registration and election procedures, together with a request for reconsideration of the objection, we will reconsider our objection of May 26, 1976.

Since I have the responsibility under the Voting Rights Act to seek judicial enforcement where necessary to achieve compliance with the Act's bilingual provisions, 42 U.S.C. 1973b(f) and 1973aa-1a, and since I believe that any such action with respect to Yuba County will be unnecessary given a satisfactory submission of your request to reconsider the objection in this matter, please inform me within 30 days of your receipt of this letter whether you intend to request reconsideration of the objection.

If you have any questions concerning any aspect of this matter, please do not hesitate to contact Mr. MacCoon at (202) 739-2138.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

MAY 19 1978

Mr. Walter I. Colby
County Counsel
Yuba County
Courthouse
215 5th Street
Marysville, California 95901

Dear Mr. Colby:

This is in reference to your request for reconsideration of our May 26, 1976 objection to Yuba County's use of English-only official ballots. Your request was initially received on August 4, 1977. Your request was completed on April 14, 1978 when we received your response to our letter of September 23, 1977 requesting more information in connection with your request for reconsideration. We have also taken into consideration information which you furnished Mr. MacCoon in your telephone conversation with him of May 1, 1978, the content of which is confirmed herein.

In our letter to Mr. Reichle of May 26, 1977, we noted that our field investigation of Yuba County had revealed that the major problem in regard to its bilingual electoral program was lack of publicity as to its nature and availability. In response to this letter, you requested reconsideration of our objection based on your proposal to remedy the lack of public knowledge of Yuba County's bilingual program through

the posting of public notices and the broadcasting of radio announcements.

In our September 23, 1977 letter requesting more information we asked:

1. Where the bilingual notices which you proposed would be posted;

2. Where the post-card registration forms would be placed and for what periods;

3. Who would translate the notices into Spanish and the qualifications of the translator;

4. Whether minority-group members would be consulted by you;

5. Whether publicity would be given to the availability of deputy registrars in the field and the location of polling places; and

6. Whether any plans exist to monitor the effectiveness of Yuba County's bilingual program.

We also included some revisions of your proposed notices for your consideration, which you apparently did not receive. On May 2, 1978 we forwarded you a copy of our September 23, 1977 letter including our suggested revisions.

From your letter which we received on April 14, 1978 and from your telephone conversation with Mr. MacCoon of May 1, 1978, we understand that the answers to the

above questions are as follows:

1. Notices will be posted at the C.R.L.A. Office; Post Office; Mi Tienditos; Tower Theater; and Welfare Office.

2. The post card registration forms are available at the locations listed in 1 above for 6 weeks prior to the registration deadline.

3. Bilingual notices are translated by the Spanish-language disc jockey at radio station KUBA.

4. The Spanish-language disc jockey referred to in 3 was consulted, as we suggested. No other minority leaders could be identified.

5. While field deputy registrar availability is not publicized, polling places are publicized through bilingual newspaper ads. Field deputy registrars are now of diminished importance due to mail registration.

6. No special monitoring devices are planned to evaluate the effectiveness of Yuba County's bilingual program other than the normal processes of responding to complaints received.

We also understand that you will give consideration to the revisions we have proposed to your notices.

In light of the program which Yuba County proposes to publicize its bilingual registration and voting procedures, as described in your letters of July 29, 1977 and April 10, 1978, and your telephone conversation with Mr. MacCoon of May 1, 1978, the Attorney General withdraws the objection interposed on May 26, 1976 to the use of English-only official ballots in Yuba County. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that failure of the Attorney General to object does not bar subsequent judicial action to enjoin the enforcement of a voting change.

Sincerely,

John Huerta
Acting Assistant Attorney General
Civil Rights Division

SEP 28 1977

Mr. James A. Reichle
Deputy County Counsel for
Yuba County
Courthouse
215 - 5th Street
Marysville, California 95901

Dear Mr. Reichle:

This is in reference to your letter of July 29, 1977, requesting reconsideration of our May 26, 1976 objection to Yuba County's bilingual electoral program pursuant to Section 5 of the Voting Rights Act of 1965. Your request was received on August 4, 1977.

As Mr. MacCoon informed you by telephone on September 2, 1977, more information concerning your proposed bilingual program will have to be obtained before the Attorney General can make a determination as to Yuba County's revised bilingual election procedures. In order to aid us in evaluating the submission we would appreciate your providing us with the information indicated below.

Your July 29, 1977, letter indicates that the notices, which will be read over radio station KUBA, will be posted in certain areas "where Spanish speaking persons are known to congregate." Please specify exactly what locations will be used for this purpose. In this regard, we would find it of particular significance if locations such as the Spanish-language movie theatre, the C.R.L.A. office, the food-stamp office, the post office, and the Spanish-language bookstore were among the locations used.

Your July 29 letter also reveals that post card affidavits of registration will be placed at certain locations. Please specify where these forms will be available and the time periods during which they will be placed at each location.

As to the notices that will be read on the air, please indicate who will translate the notices into Spanish, and the qualifications of such person or persons to act as a translator. Also, please advise us whether minority group members will be consulted in producing the translations and, if so, identify those persons.

Please also inform us whether any effort will be made to recruit bilingual translators for service at the polls, whether any publicity will be given to the availability of deputy registrars in the field, whether any measures will be taken to familiarize newly registered Spanish-speaking voters with the polling places in Yuba County, and whether any efforts are planned to monitor the effectiveness of your bilingual program in encouraging participation in the political process. Please provide us with the specifics of any plans you have in these areas.

As you know the Attorney General has 60 days in which to consider a submission pursuant to Section 5. This 60 day period will commence when this Department receives the information necessary to evaluate properly your request for reconsideration. However, we will give you a response as promptly as possible after that information is received.

Finally, the notices which you propose seem unduly legalistic and uninviting to prospective participants in the voting process. Attached, for your consideration, are revised forms which we believe might prove more appropriate for the purpose of encouraging political participation by those who may be unsophisticated in the process.

If you have any questions concerning the matters discussed in this letter or if we can aid you in any way, please do not hesitate to contact John MacCoon at (202) 739-2100. Please refer to file number XLLLL in any written response to this letter so that your correspondence will be properly channelled.

Sincerely,

JAMES P. MAYS III
Assistant Attorney General
Civil Rights Division

By:

GERALD W. JONES
Chief, Voting Section

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APACHE COUNTY HIGH SCHOOL DISTRICT NO. 90, APACHE COUNTY, ARIZONA,

Plaintiff

v.

CIVIL ACTION 77-1512

UNITED STATES OF AMERICA and BENJAMIN CIVILETTI,

Defendants

FILED

JUN 12 1980

JAMES E. DAVEY, CLERK

MEMORANDUM OPINION

Before the Court is Plaintiff's request for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, as amended in 1975 (VRA) 42 U.S.C. §1973(c). Plaintiff School Board submitted a plan to the Attorney General, and his preclearance was requested. The plan requested the approval of:

(1) Change of location of existing voting places;

(2) Spanish translation of all election materials; and

(3) Oral assistance at the polls for Spanish-speaking peoples and Indians.

The Attorney General objected to the "plan," and the School Board brought this suit, seeking a declaratory judgment that the election would not violate the Voting Rights Act of 1965, as amended in 1975. The facts may be succinctly summarized as follows:

According to the 1970 census, Apache County consists of 32,298 persons, 23,994 of whom are American Indian. There are 15,915 citizens over 18 in Apache County, of whom 11,091 are Indian and 1,093 are of Spanish descent. The vast majority of the Indians are Navajos, living primarily on the reservation in the northern part of the County. Nearly all Anglos live in the southern part of the county.

The Navajos have retained a great deal of their culture, and the Navajo language[1/] is spoken extensively

1/ Navajo is an oral language. The now accepted form of writing Navajo was developed in the 1930's by experts at the University of New Mexico.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APACHE COUNTY HIGH SCHOOL DISTRICT NO. 90, APACHE COUNTY, ARIZONA,

Plaintiff

v.

CIVIL ACTION 77-1515

UNITED STATES OF AMERICA and BENJAMIN CIVILETTI,

Defendants

FILED

JUN 12 1980

JAMES E. DAVEY, CLERK

JUDGMENT

Pursuant to the Memorandum Opinion issued by the the Court this date, it is by the Court this 12th day of June, 1980,

ORDERED, that JUDGMENT is hereby entered in favor of Defendants.

Aubrey E. Robinson, Jr.
United States District Judge
for the Court

throughout the reservation. Ninety percent of all Navajos living on the reservation speak Navajo, and all tribal council and governmental business is conducted in the Navajo language. It is undisputed that interactions with the Navajo must be conducted for the most part in the Navajo language. The primary method used by the Navajo Area School Board Association (NASBA) to disseminate information to the Navajos is to attend Chapter[2/] meetings and speak in Navajo. NASBA has attempted to communicate in written English, with little success. When it is important to get information out quickly, NASBA uses Navajo language radio announcements.

To successfully register voters, individuals must speak Navajo. An estimated fifty to seventy-five percent of the voters in Apache County need to receive information in the Navajo language, and candidates who run for office in Apache County rely on that language to communicate with Navajo voters. The radio has been adopted as a primary means of communication on the reservation. Almost all of the people living in the outlying areas own radios and rely on them for information.

A special bond election was called in and for the Apache County High School District to be held on August 31, 1976. The bond was necessary to finance the construction of a high school in the southern (Anglo) area of Apache County. The election was held on that date, and the bond issue carried.

The manner in which information was disseminated about the bond election brought about general knowledge of the election in the southern portion of the county, while the Navajos on the reservations were kept in relative ignorance. The only steps taken to advertise the election on a county-wide basis were the publishing of the Order and Call of

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2/ Navajo local government takes the form of chapters; these are roughly akin to town meetings.

the bond election in the two newspapers with the highest circulation in the county, and the posting of the notices at all of the polling places and five county buildings. One of the two newspapers serves the reservation. All of the publications were in English and Spanish, and thus did not communicate the election or the issues involved to the vast majority of Navajos who do not speak or read either of those languages.

The school district, through its financial advisors, prepared a pamphlet entitled "Planning for Tomorrow: Bond Issue Facts." About one thousand copies of this pamphlet were printed. The primary method of distribution was through the students of the four high schools run by Plaintiff. All of those schools are in the off-reservation part of the county, and the overwhelming majority of the students attending those schools are non-Navajo. The students were given instructions to give the pamphlet to their parents.

Several of the pamphlets were brought to the reservation, although it is unclear whether they were ever distributed. The pamphlet addresses the general purposes of the bond issue and explains where and how the money will be spent. The pamphlet also announced that four meetings would be held regarding the election, two on August 17, 1976 and two on August 19, 1976. The few pamphlets allegedly distributed on the reservation were taken to it on August 19, 1976. The meetings were all to be held in the communities farthest from the reservation, some ninety-nine miles from the nearest Navajo community. No presentations at any of these meetings were made in Navajo.

While provisions were made for absentee balloting, these provisions were never spelled out in Navajo. Furthermore, at no time prior to the date of the election was anyone fluent in Navajo briefed regarding the election issue. Nor was anyone fluent in Navajo available to answer questions

regarding absentee balloting.

Meetings were held by representatives of the school district with Rotary, Kiwanis, and Junior Chamber of Commerce Clubs to discuss the bond issue, and the school superintendent attended at least one political rally where he made a speech about, distributed leaflets, and showed slides supporting the bond issue. No meetings were held with any groups on the reservations, and no information was distributed there.

The principal of St. Johns High also assisted in the dissemination of information. He held a meeting in the school library, addressed members of the Catholic community through the Pastor of St. John the Baptist Catholic Church, and addressed the Chicano community. While Plaintiff solicited the support of the Chicano community, no such attempts were made to the Navajo community or to church groups on the reservation.

While the method of communication was sufficient to notify Anglo and Chicano communities, it failed to notify the Navajo community. Consequently, Navajo turnout was mostly de minimis. At those few voting places on the reservation where information was disseminated in the Navajo language by those other than Plaintiff, there was very good voter turnout. The percentage of registered voters off the reservation who voted was significantly higher than those domiciled on the reservation.

Plaintiff deliberately failed to inform the Navajos about the upcoming election and the issue therein. It did not consider disseminating information in Navajo. Nor did it send any information to Navajo Chapter officials to be disseminated at chapter meetings. Plaintiff did not inquire of any Navajo organization concerning an adequate means of communicating with the Navajo people. Superintendents of the various elementary schools on the reservation

did not know about the upcoming election until two weeks before its occurrence. Peterson Zah, the Executive Director of the Navajo People's Legal Services, testified that when he attended four Chapter meetings the weekend before the bond election, virtually none of the Navajos at the meetings had heard about the impending election.

The Rock Point School is located on the reservation. It sent notices home concerning the election in written Navajo with the children, and the director of the school attended the local Chapter meeting the Sunday before the meeting to speak in Navajo about the election. The turnout in the Rock Point School District was excellent.

Plaintiff provided for two Navajo poll workers at each polling place on the reservation. None of these workers was assigned the position of interpreter. Plaintiff did not consider the language needs of the county to require more than two Navajo language voter aides, and Plaintiff did not ponder how long it would take to assist a Navajo language voter.

The concept of a bond election is foreign to the Navajo culture; there is no word in Navajo for bond. The terms involved in a bond election are difficult to express in Navajo, and it is difficult, even for bilingual individuals, to explain to a Navajo who is not fluent in English what a bond election is about. Plaintiff did not instruct interpreters or provide a translation of the Order and Call. They did not set qualification standards for the interpreters, nor did they attempt to explain the ballot language, the purpose of the election, or the bonding process to the interpreters. Plaintiff did not ask the Navajos if they were bilingual, if they had received training, or if they had any expertise in translation. In fact, several of the so-called interpreters could not read or understand English. Because of the inherent difficulty in translating

the election issue, trained interpreters were needed. Moreover, it would take trained interpreters one week of preparation in order to do an adequate job communicating the election issue to potential voters.

Plaintiff also limited the number of polling places on and off the reservation. The last election prior to the bond election was the general election held on November 5, 1974. During that election there were 29 polling places, of which 20 were on the Navajo reservation. There were 17 polling places for the 1976 bond election, of which 11 were on the reservation. The closing of the 9 polling places on the reservation caused a significant hardship to the Navajos, and that hardship was proportionally greater than the inconvenience suffered by non-Navajos due to the closing of 2 polling places off the reservation. The average additional distances that had to be traveled because of the closings were 12.0 miles on the reservation and .25 miles off the reservation. These greater distances are compounded when the relative poverty of the Navajo is considered, and the reasonable inference made that people with a per capita income of $900 per year cannot afford to own an automobile.

The last bond election was held on May 17, 1966, when only property owners were given the franchise and there was only one polling place on the reservation. This limitation on the franchise was clearly unconstitutional. See Kramer v. Union Free School District No. 15, 395 U.S. 621 (1969).

The history of Apache County reveals pervasive and systemic violations of Indian voting rights. See Goodluck v. Apache County and U.S. v. Arizona (consolidated), C.A. No. 73-626 PCT (WEC) and 74-50 (WEC) (three judge court) (D. Ariz. Sept. 16, 1975), aff'd, 429 U.S. 876 (1976). The growing impact of the undiluted Indian vote has caused consternation among the non-Indian residents of Apache County.

During the time the bond election was being considered, a bill to divide the county, and separate the Anglos and Navajos, was also under discussion. At the time of the bond election, there was a general concern in the Anglo community that the Indians were going to "take over" through increasingly effective use of the franchise. Two members of Plaintiff school board testified that they shared this concern.

Plaintiff is the only high school district in Apache County. It runs four high schools, all in the southern part of the county. The three elementary school districts on the Navajo reservation teach high school; the six elementary school districts off the reservation teach grades Kindergarten through Eight. Elementary school districts are entitled to the elementary school tax base and bonding capacity for their district only, regardless of the range of grades taught. Plaintiff is entitled to the high school district tax base and bonding capacity for the entire county. Although Plainifff operates no schools on the reservation, over fifty percent of the taxes come from the reservation.

The bond issue in question would have the effect of tying up Plaintiff's entire bonding capacity for use in the off-reservation part of the county. Prior to the election, school officials made presentations concerning the bond issue. At those presentations, the officials stated that the bond issue should pass immediately, before the monies were lost to the reservation. The evidence establishes that fear of a Navajo take-over pervaded the Anglo community and Plaintiff school board. To effectuate the passage of the bond issue, Plaintiff attempted to and succeeded in maximizing Anglo participation and minimizing Indian participation. The two methods primarily used to achieve this result were exploitation of the Navajo language

barrier and closure of polls on the reservation.

Because of the above-stated facts, the Attorney General initially objected to, and subsequently refused to preclear the bond election pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. §1973(c). Plaintiff has sued, requesting declaratory and equitable relief.

Plaintiff's complaint premises relief on four theories, to wit: (1) that it is not a political subdivision within the meaning of the Voting Rights Act because it neither registers nor supervises the registration of voters, and thus Defendants are without jurisdiction to require Section 5 submissions; (2) that it was under no duty to orally publicize the election, and, assuming arguendo it was under such a duty, the withholding of Section 5 preclearance is violative of the Act, because the failure to orally assist the Navajos was not retrogressive; (3) that the Attorney General's finding that Apache County satisfied the provisions of 28 C.F.R. §§55.9 and 55.10, and was thus a political subdivision to be subject to Section 4(f)(4), was arbitrary and capricious; and (4) that the regulations promulgated by the Department of Justice, insofar as they include school districts as political subdivisions, are inconsistent with the Act, and therefore unenforceable. Three of these claims have not been pursued in Plaintiff's Motion for Partial Summary Judgment, and for good reason. The Supreme Court, in United States v. Board of Commissioners of Sheffield Alabama, 435 U.S. 110 (1978) held that school districts are political subdivisions within the meaning of the Act. This is dispositive of claims one and four. Plaintiff has also admitted that Apache County is a "covered" jurisdiction within the meaning of the third sentence of Section 4(b) of the Act, and has produced no evidence of the arbitrary and capricious

behavior alleged in claim 3. Thus, only claim 2 remains for disposition.

There are 2 issues underlying the remaining claim, viz., (1) was the Plaintiff obligated to get clearance for the changes pursuant to Section 5, and (2) if so, should Section 5 clearance be granted.

The preclearance section of the Act (§5) states that whenever a jurisdiction covered under the third sentence of §4(b)

> shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote . . . in contravention of the guarantees set forth in section 4(f)(2) [42 U.S.C. §1973b(f)(2)], and unless and until the court enters such judgment no person shall be denied the right to vote for failure to qualify with such qualification, prerequisite, standard practice, or procedure: Provided, that such qualification, standard, practice or procedure may be enforced [if it is precleared by the Attorney General].

Apache County is a covered jurisdiction under the third sentence of §4(b); and the School Board is a political entity within the meaning of §5. Section 5 preclearance is therefore required for any "standard, practice, or procedure with respect to voting." In Dougherty County Bd. of Ed. v. White, 439 U.S. 32 (1978), the Supreme Court defined the scope of that term. The Court first noted that "voting" meant "all action necessary to make the vote effective." Id., at 37. A "standard, practice, or procedure" was anything that could have a significant impact on the electoral process. Id., at 47. The Court in Dougherty held that a school board must get preclearance pursuant to §5 before it can force an employee running for office to take leave without pay. The

Court did not intimate whether the leave without pay regulation would ultimately violate the Act. Id., at 42.

Under the Dougherty rationale, the proposed changes must be scrutinized under §5, because the change in the number and location of voting places and the failure to disseminate information in Navajo constituted "standard[s], practice[s], or procedure[s]" that could have a significant impact on the electoral process. This conclusion is further buttressed by Section 4(f)(2) of the Act, specifically referred to in Section 5, which states that

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

The changes in the number and location of voting places and the failure to disseminate information in Navajo could certainly have a significant impact on the right of a language minority group to vote. Section 5 preclearance is required.

In Beer v. U.S., 425 U.S. 130 (1976), the Court interpreted the preclearance requirements of Section 5. The Court found that the "purpose of Section 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." Id., at 141. The Court concluded that ameliorative changes could not dilute the effective exercise of the franchise, and thus "cannot violate Section 5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution." Id., at 141.

Under Beer, this Court is required to (1) scrutinize the status quo, (2) analyze the "changes," (3) determine whether the changes are "retrogressive" or "ameliorative," (4) if the changes are retrogressive,

determine whether they violate the Act, and (5) if the changes are ameliorative, determine whether the altered status quo violates the Constitution. Beer defines retrogressive as a change that "diminishes the voting rights of protected groups." To ascertain the status quo, therefore, this Court must determine what the Navajos' voting rights were prior to the election in the instant case.

Plaintiff asserts that the Navajos' voting rights must be determined on the basis of the subject matter of the election in question, and that the 1966 bond election is the most recent election containing the same subject matter. As support for this proposition, Plaintiff points to Defendants' method of enforcing Section 5, which is premised on the election's subject matter. This Court, however, is not empowered to review the Attorney General's method of enforcing Section 5. Rather, it must make its own determination, based on the facts before it and the statutory criteria.

This Court rejects Plaintiff's contention that the subject matter of an election must be utilized to determine the status quo. Section 5 of the Act addresses "political entities"[3/] and "protected groups,"[4/] and prohibits the former from deleteriously affecting the voting rights of the latter. Nothing in the legislative history of the Act nor in any prior judicial decision indicates that the subject matter of an election is at all relevant. Indeed, insurmountable enforcement problems would necessarily result from Plaintiff's interpretation of the Act.[5/] The 1966 bond election is irrelevant to the instant case.

3/ See U.S. v. Board of Commissioners of Sheffield Alabama, supra.

4/ See Beer v. U.S., supra.

5/ Courts would be forced to ascertain when elections contained the same subject matter, and attention would be diverted from the primary thrust of the Act, viz. The relationship between political entities, protected groups, and the franchise.

Plaintiff contends alternatively that the status quo should be determined by the statute authorizing an election, that the last election conducted under the statute authorizing the election in the instant case was the 1966 bond election, and that no subsequent elections have been held pursuant to that statute. This analysis suffers from the same defects noted above. A state could merely enact a different enabling statute for each election, thus circumventing Section 5. Moreover, such an analysis precludes scrutiny essential to Section 5, namely how are the voting rights of a protected group affected by the actions of a political entity. To answer this question, the Court must compare the rights of the Navajos in the instant bond election with Navajo's voting rights in the last election involving Plaintiff.

Plaintiff finally contends that, assuming arguendo the 1966 bond election is not relevant, the relevant date for ascertaining the status quo is November 1, 1972. This assertion flies in the face of Beer, however, which stated that "Section 5 was intended 'to insure that [gains thus far achieved in minority political participation] shall not be destroyed through new [discriminatory] procedures and techniques.'" Id., at 140-141. Applying the November 1972 date would negate gains made in the 1974 election. The status quo, pursuant to Beer, is November 5, 1974.[6/]

6/ Our holding would be uneffected by a finding that the status quo is November 1, 1972. The status quo analysis in Beer contemplates reference to a time when constitutional procedures were in force. Id., at 141. Since the 1966 procedures were unconstitutional, this Court cannot assume that those procedures reflect the status quo in 1972. We must instead scrutinize the election closest in time to 1972 when constitutional procedures were employed. In the instant case, the closest reference point is the November 5, 1974 election.

Defendants allege that three changes were retrogressive, viz. (1) Plaintiff's failure to disseminate information in Navajo, (2) its failure to open all the polling places on the reservation, and (3) the fact that the bond election was held a week before the State primary. Even Defendants admit that the third violation is only a violation in tandem with the first two; thus, only those two claims need be considered. Moreover, it is apparent that the changes must be taken as a whole, even if only one "retrogressive" change is found.

It is clear on the record that the decreased number of polling places constituted a "diminuation" of voting rights within Section 5. See page 5, supra. Plaintiff does not dispute this point but rather contends only that the November 5, 1974, date is inapplicable. It is clear that the Navajos' voting rights were diminuted because of the decreased number of polling places, and a "retrogressive change" occurred.

There is no proof that the failure to provide information in oral Navajo was in and of itself retrogressive, because there is no evidence of record that the school board, in any election, ever disseminated information in oral Navajo. Without this evidence, retrogression could not occur within the meaning of Beer. This does not preclude an analysis of the dissemination question, however. Since one change was clearly retrogressive, and since Plaintiff's plan must be taken as a whole, this Court has jurisdiction over the whole plan under Section 5.

Since Plaintiff's plan is retrogressive, the Court must scrutinize whether the retrogressive changes have the purpose or effect of abridging a protected voting right.[7/]

7/ City of Rome, Ga. v. U.S., 48 U.S.L.W. 4463, 4467 (April 22, 1980).

It is clear that the diminution of voting places was done with that intent, and had that effect.

The failure to disseminate information regarding the bond election also violated the Act. 42 U.S.C. §1973b(f)(4) states that

> Whenever [a covered jurisdiction] provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as the English language: Provided, That where the language of the applicable minority group is oral or unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information related to registration and voting.

As was indicated in Dougherty Bd. of Ed. v. White, supra, at 37, "voting" entails "all action necessary to make the vote effective." Information regarding the existence of and pertaining to the subject matter of an election is surely information necessary to cast an effective vote. This information was admittedly not provided in oral Navajo, in violation of §4(f)(4).

Plaintiff responds with three arguments, to wit: (1) that its failure to disseminate information was "conduct," not a "standard, practice, or procedure" within the meaning of Section 5, (2) that jurisdiction for the §4(f)(4) claim rests in the District Court for the District of Arizona and (3) that all the violations of the Act occurred prior to 1964, and Section 5 is therefore inapplicable. Plaintiff relies on Beer v. U.S., supra, for the latter two propositions.

Plaintiff's allegation that the failure to disseminate information in Navajo was merely "campaign behavior," and "conduct" is contrary to the Act and developed Section 5 case law. As was noted earlier, Section 4(f)(4) precludes the type of "conduct" engaged in by Defendant. Moreover, Plaintiff was not behaving

randomly or unconsciously. Rather, its campaign behavior served to effectuate the unwritten but manifest policy of minimizing the effect of the Navajos' franchise, while maximizing the Anglo vote. As the Supreme Court noted in Dougherty, supra, at 43, 47, Section 5 must be given its "broadest possible scope," and therefore a "standard, practice, or procedure" is anything that could have a significant impact on the electoral process. That Congress envisioned the dissemination of information as having an impact on the voting rights of language minorities is uncontestable in light of §4(f)(4). Thus, the campaign behavior in question constitutes a "standard, practice, or procedure" within the meaning of Section 5.

Plaintiff next alleges that Beer v. United States, supra, precludes the use of §4(f)(4) as a basis for the denial of preclearance. Plaintiff's reliance on Beer is tenuous. While §4(f)(4) is not incorporated into Section 5, the Defendants did not exclusively rely on the §4(f)(4) violation for denial of preclearance. Rather, Defendants rely primarily on Section 5, which authorizes the denial of preclearance if a change has a discriminatory purpose or effect. See City of Rome, Ga. v. U.S., note 7, supra. Section 4(f)(4), while not dispositive in a Section 5 litigation, provides guidance regarding what constitutes discriminatory behavior against language minorities. Furthermore, in Beer the Court found that an apportionment plan did not constitute a retrogressive change, and that further scrutiny under the Act was unwarranted. In the instant litigation, the retrogressive nature of the change is apparent. Thus Defendants' application of Section 5 was appropriate.

Finally, Plaintiff contends that in no school board election has information been disseminated in oral Navajo, and therefore any violation of §4(f)(4) occurred

prior to 1964, and is not covered by the Act. Beer v. U.S., supra, at 138, is cited. Beer does stand for the proposition that Section 5 may not be employed to cure violations of the Act that occurred prior to 1964. Thus, if the failure to disseminate information in 1976 constitutes a violation that occurred prior to 1964, Plaintiff's assertion is valid.

Plaintiff's argument fails to recognize the important distinction between the effect of a past violation and a present violation. This distinction is cogently outlined in the Title VII area in United Airlines Co. v. Evans, 431 U.S. 553, 558 (1977). The Court in Beer deliberately refused to decide the issue. In Beer, the alleged pre-1964 violation was the existence of two at-large councilperson seats. The provision for two at-large councilpersons is incorporated in New Orleans' city charter, which predated the Act. No subsequent plan has contemplated changing this aspect of the charter or affecting the two at-large seats. The Court did not decide, however, whether a reenactment post-1964 of the exact statutory violation would be subject to Section 5 scrutiny. Beer v. U.S., supra, at 139 n.10. The instant case presents issues analogous to the latter situation, because they are based on post-Act actions and are not merely the discriminatory effects of pre-Act practices. Under Evans, reenactment of a statutory violation constitutes a present violation, and is therefore actionable. The Defendants correctly applied Section 5 in the instant case. Plaintiff's request for a declaratory judgment be denied. Summary Judgment is granted to Defendants.

HARRY T. EDWARDS
UNITED STATES CIRCUIT JUDGE

WILLIAM B. BRYANT
CHIEF UNITED STATES DISTRICT JUDGE

AUBREY E. ROBINSON, JR.
UNITED STATES DISTRICT JUDGE

DATE: JUNE 12, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vs. CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, etc., et al., Defendant.	Civil Number C-78 2521 CFP CONSENT DECREE THREE-JUDGE COURT

The plaintiff, United States of America, filed the complaint herein on October 27, 1978 alleging that:

a) Defendants have failed to conduct voter registration efforts in such a way as to provide Chinese and Spanish speaking citizens an effective opportunity to register, and have thereby made it difficult for Chinese and Spanish speaking citizens in the City and County of San Francisco to gain effective access to and use of Chinese and Spanish language registration materials and assistance in violation of 42 U.S.C. §1973aa-1a;

b) Defendants have failed to recruit, hire and train an adequate number of bilingual personnel to provide Chinese and Spanish speaking citizens residing in San Francisco with effective oral assistance in the registration process and have thereby made it difficult for Chinese and Spanish speaking citizens to have an effective opportunity to register to vote in violation of 42 U.S.C. §1973aa-1a;

c) Defendants have failed to recruit, hire and train an adequate number of bilingual poll officials to provide Chinese and Spanish speaking citizens with effective access to and use of voting materials and assistance and have thereby made it difficult for Chinese and Spanish speaking citizens to exercise the right to vote in violation of 42 U.S.C. §1973aa-1a; and that

d) Defendants have failed to effectively inform Chinese and Spanish speaking citizens residing in San Francisco of the availability of and have failed to provide effective access to Chinese and Spanish language registration and voting materials and assistance in violation of 42 U.S.C. §1973aa-1a.

On November 1, 1978, this Court entered a temporary retraining order directing defendants to comply with the provisions of 42 U.S.C. §1973aa-1a with respect to the general election of November 7, 1978.

On October 15, 1979, this Court entered a preliminary injunction enjoining defendants from failing or refusing to comply with the provisions of 42 U.S.C. §1973aa-1a with respect to all primary, special and general elections conducted within the City and County of San Francisco.

Pursuant to the applicable provisions of the Charter of the City and County of San Francisco, the conduct, management and control of the registration of voters, the holding of elections and of all matters pertaining to elections is vested exclusively in the Registrar of Voters (§9.102); subject to said provisions, the Chief Administrative Officer of the City and County of San Francisco is the "appointing officer," under the civil service provisions of said Charter, for the appointment, discipline and removal of the Registrar of Voters (§3.501).

San Francisco Charter Section 3.401 provides, in relevant part:

> "Except as otherwise provided in this charter he (City Attorney) shall not settle or dismiss any litigation for or against te City and County, unless, upon his written recommendation, he is ordered to do so by ordinance."

The parties wish to avoid the delay and expense of contested litigation and desire to ensure that any denials or abridgements of the right of Chinese and Spanish speaking citizens to register and vote which may have resulted from past practices engaged in

by defendants be remedied so that Chinese and Spanish speaking citizens residing in San Francisco shall be able to participate fully and freely in the electoral process.

The Court has jurisdiction over the parties and subject matter of this action.

The parties, by agreeing to the issuance of this order, waive a hearing and findings of fact and conclusions of law on all issues raised by the complaint.

Defendants, by entry into the Consent Decree, do not thereby admit any violation of law, rule or regulation with respect to the allegations made by plaintiff in its complaint. Defendants admit no wrongdoing with respect to the obligations expressed herein.

The only obligations of this Decree are those explicitly stated herein.

The Court, having been fully advised and informed of the facts and circumstances, and good cause appearing therefor,

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Defendants, together with their agents, employees, successors and all persons in active concert and participation with any of them shall provide Chinese and Spanish language voting and registration materials and assistance in such a way as to allow Chinese and Spanish speaking citizens residing in the City and County of San Francisco to be effectively informed of and effectively participate in the voting process for all primary, special and general elections in compliance with the provisions of this decree.

The appointment of Federal Examiners is hereby ordered in accordance with 42 U.S.C. §§1973a and 1973d for the life of this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. VOTER REGISTRATION AND OUTREACH PLAN.

1. The Registrar shall actively seek to establish a cooperative workng relationship between the Office of the Registrar and community groups in Chinese and Spanish speaking communities for the purpose of developing and implementing programs, plans and procedures designed to bring the City and County of San Francisco into compliance with the Federal Voting Rights Act.

2. The Registrar shall develop a voter registration outreach plan to actively seek out and register Chinese and Spanish speaking voters, which plan shall include:

(1) a timetable for distribution and collection of registration forms and related materials, and (2) procedures for identifying specific places in the community where registration materials should be distributed to effectuate said plan.

3. As part of the Voter Outreach Plan the Registrar shall:

a. Establish effective procedures for distribution of bilingual voting and registration materials to all Chinese and Spanish speaking citizens of voting age.

b. Initiate contact and work with community groups and members of the Citizens Task Force to identify and secure sites in Chinese and Spanish speaking neighborhoods to distribute and/or post voter registration forms with instructions for their distribution and display at least three (3) months in advance of the deadline for registration for any given election. The Registrar shall, at the end of forty-five (45) days, assign a staff member to determine by inspection or other inquiry whether forms are still available at said sites.

c. Assign appropriate staff resources to assist community-based voter registration groups located in

Chinese and Spanish speaking neighborhoods in the registration of language minority voters.

d. Inform and encourage city employees of the manner in which they may aid citizens to register to vote and authorize city librarians and assisant librarians to register citizens to vote.

e. Update and maintain a list of currently-registered voters in the City and County of San Francisco in compliance with State law.

f. Identify and maintain a listing of underregistered Chinese and Spanish speaking precincts.

g. Develop bilingual public service announcements with the assistance of Chinese and Spanish speaking community groups to encourage voter registration and to explain the bilingual provision of the Voting Rights Act.

h. Administer a "street corner" registration program in underregistered Chinese and Spanish speaking precincts, utilizing members of Chinese and Spanish speaking community groups to register citizens to vote. Said program shall commence no later than three (3) months prior to the deadline for registration for any regular election.

i. At least sixty (60) days in advance of the close of voter registration, the Registrar shall draft or shall cause to be drafted public service announcements for dissemination by press, radio and television encouraging voter registration, seeking bilingual poll officials, informing citizens that bilingual poll officials will be available in designated precincts and informing voters that they are allowed to bring a companion to the polls for assistance in the voting process. Such announcements shall be prepared in the English, Chinese and Spanish languages and shall be provided to English, Chinese and

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Spanish-language press, radio and television stations.

j. Secure the assistance of appropriate departmental heads and public officials to distribute bilingual voter registration forms in public offices.

k. Request the assistance of Pacific Gas and Electric Company and Pacific Telephone Company to encourage voter registration through trilingual announcements included in their monthly billings regarding the availability of voter registration forms.

l. Provide on request to community voter registration groups available lists of registered household addresses in Chinese and Spanish language precincts as designated by the Secretary of State.

m. Work with the San Francisco Unified Scool District, San Francisco Community College District and San Francisco State University to distribute voter registration forms to voting age students and their parents.

B. BILINGUAL POLL OFFICIALS

1. The Registrar shall develop and administer a program for recruitment of bilingual poll officials, said program to commence four (4) months prior to each election. Said recruitment efforts to be conducted through and with the cooperation and assistance of community groups in Chinese and Spanish speaking communities, and to include development and publication of public service messages via English and Chinese and Spanish language press, radio and television for the recruitment of such bilingual poll officials.

2. The Registrar shall establish effective procedures to determine well in advance of election day those Chinese and Spanish speaking voters who require Chinese and Spanish language assistance at polling places and shall establish procedures to insure that such assistance will be available when and where

needed. In furtherance of this goal, the Registrar shall:

a. Include in the voter's handbook, which shall be distributed no later than twenty (20) days prior to each election, a conspicuous solicitation for Chinese and Spanish speaking persons to serve as poll officials.

b. Designate a respresentative of the Office of the Registrar of Voters to speak before community groups for the purpose of recruiting bilingual poll officials.

c. Assign regular staff of the Office of the Registrar of Voters to manage the development and implementation of tasks necessary to bring the City and County of San Francisco into compliance with 42 U.S.C. §1973-aa-1a.

d. Provide appropriate training and written materials to all bilingual poll officials, including but not limited to, information and training related to the intent of the Voting Rights Act.

e. Develop a glossary of commonly used election terms in the appropriate minority languages.

f. 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.

g. Develop and administer a training program to instruct poll officials, both bilingual and monolingual, in the bilingual voting requirements of federal law, bilingual registration and voting procedure undertaken by the City and County of San Francisco in compliance with Federal law, and approved methods of rendering effective assistance to Chinese and Spanish voters.

h. Establish and publicize election "hot line" telephone numbers whereby Chinese and Spanish speaking voters can receive information in their respective languages on election day.

i. Work with community groups to list and detail common problems faced by Chinese and Spanish speaking voters at the polls.

j. Develop and administer a language assessment procedure to be approved by the parties to this Consent Decree to measure second language fluency of all bilingal poll officials.

k. 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.

C. CITIZENS TASK FORCE

In addition to the action set forth above, defendants shall establish a Task Force to advise and assist the Registrar of Voters.

D. REPORTING PROVISIONS AND RECORD KEEPING

Defendants shall file with this Court and simultaneously serve upon plaintiff:

1. A report, within sixty (60) days of this order, that describes in detail the steps defendants have taken and, where applicable, the steps defendants will continue to take in compliance with each of the above paragraphs, including each subparagraph, such description to include all dates and names relevant to the described actions. A copy of all described written materials shall be attached to the report. For any action not begun at the time the report is filed defendants shall describe in detail in the report the steps that will be taken, such description to include the date on which the steps will be taken (or if the described action is of a continuing nature, the date on which the action will begin), and all relevant names.

If plaintiff has any objection to the report, it shall mail to defendants written objections thereto within thirty (30) days

following delivery of the report. The parties shall have thirty (30) days from the date such objections are mailed to resolve their differences. If the parties are unable to reach agreement wihin said thirty (30) days, the issues in dispute shall be submitted to the Court for resolution. If no objections are mailed within thirty (30) days of delivery of the report, said report shall be deemed acceptable.

2. No later than fourteen (14) days prior to each election, defendants shall file a report specifying the actions taken in preparation for said election, a list of targeted precincts and the bilingual poll officials assigned to said precincts, and submit a specimen of all election materials prepared in English, Spanish and Chinese.

No later than thirty (30) days after each election, defendants shall file a report indicating the manner in which this order was complied with in said election.

If plaintiff has any objections to anything in the above reports or believes that anything done or omitted is inadequate to comply with the law, it shall mail to defendants written objections thereto within thirty (30) days following delivery of that report. The parties shall have thirty (30) days from the date such objections are mailed to resolve their differences. If the parties are unable to reach agreement within said thirty (30) days, the issues in dispute shall be submitted to the Court for resolution. If no objections are mailed within thirty (30) days of delivery of a report, said report shall be deemed acceptable.

3. Defendants shall maintain on file and present for public inspection and copying (1) a list of registered household addresses in Chinese and Spanish language precincts, and (2) a list of underregistered Chinese and Spanish language precincts referred to in paragraph A. 3. f., above.

4. The Registrar of Voters shall retain all records

relating to the actions required to be performed by this order until further order of Court. Counsel for the parties shall have the right to inspect and/or copy such records upon reasonable notice to the Registrar of Voters.

E. RESOLUTION OF AMBIGUITIES; SEVERABILITY

1. If any provision of this Decree causes a result unintended by all the parties or an ambiguous interpretation, the aggrieved party shall notify the other parties by mail of the unintended result or ambiguous interpretation. The parties shall have thirty (30) days after the date of such letter to resolve the problem. If the parties are unable to reach agreement within such thirty (30) days, the issue may be submitted to the Court for resolution.

2. In the event any provision of this Decree is held unlawful by a court, all other provisions of this Decree shall remain in effect and only the rights and/or obligations established in the voided provisions shall be extinguished.

F. TERMINATION DATE

This decree shall continue in full force and effect until August 6, 1985, or until such time as 42 U.S.C. §1973aa-1a may be substantively modified or repealed, whichever is earlier. At any time after entry of this decree, upon a showing of good cause therefor, defendants may petition the Court to review or modify the provisions of this decree, including the provisions of Part D hereof. This decree shall automatically terminate at midnight, Pacific Daylight Time, on August 6, 1985, provided, however, that defendants are under a continuing obligation to comply with federal law. The Court shall have continuing jurisdiction during the period of this decree to ensure compliance therewith.

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Consent to the entry of the foregoing Consent Decree is hereby given.

BENJAMIN R. CIVILETTI
Attorney General

DREW S. DAYS, III
Assistant Attorney General

DATED: _____

G. WILLIAM HUNTER
United States Attorney

DATED: May 7, 1980

AMANDA METCALF
Assistant United States Attorney

GERALD W. JONES
Attorney, Civil Rights Division
Department of Justice

Attorneys for Plaintiff

DATED: May 7, 1980

GEORGE AGNOST
City Attorney

DATED: May 7, 1980

Deputy City Attorney

Attorneys for Defendants

APPROVED AND ORDERED:

DATED: 19 MAY 1980

CECIL F. POOLE
CECIL F. POOLE, Judge
United States Court of Appeals
for the Ninth Circuit

DATED: 19 MAY 1980

ROBERT F. PECKHAM
ROBERT F. PECKHAM, Chief Judge
United States District Court
Northern District of California

DATED: 19 MAY 1980

WILLIAM H. ORRICK
WILLIAM H. ORRICK, Judge
United States District Court
Northern District of California

OFFICE OF THE CLERK OF
BOARD OF SUPERVISORS
CITY HALL

To

Your attention is hereby directed to the following, passed by the Board of Supervisors of the City and County of San Francisco:

After Amendment of
Consent Decree
4/28/80

FILE NO. 45-79-46 ORDINANCE NO. 179-80

AUTHORIZING SETTLEMENT OF LITIGATION OF THE UNITED STATES AGAINST THE CITY AND COUNTY OF SAN FRANCISCO, THE BOARD OF SUPERVISORS, THE MAYOR, THE CHIEF ADMINISTRATIVE OFFICER AND THE REGISTRAR OF VOTERS, IN ACCORDANCE WITH THE SUBSTANCE OF THE TERMS AND CONDITIONS OF A CONSENT DECREE PROVIDING FOR A VOTER REGISTRATION AND OUTREACH PLAN, A PROGRAM FOR RECRUITMENT AND ASSIGNMENT OF BILINGUAL POLL OFFICIALS, A CITIZENS TASK FORCE, REPORTING PROVISIONS AND RECORD KEEPING, AND AUTHORIZING THE CITY ATTORNEY TO EXECUTE THE SAME.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The City Attorney is hereby authorized and directed to settle "UNITED STATES OF AMERICA v. CITY AND COUNTY OF SAN FRANCISCO, et al.," United States District Court No. C-78-2521-CFP, in accordance with the substance of the terms and conditions of a Consent Decree which is on file with the Board of Supervisors in File No. 45-79-46 with appropriate modifications of form consistent with and in implementation of the substance of said Consent Decree.

APPROVED AS TO FORM
AND RECOMMENDED:
GEORGE AGNOST, City Attorney

By: Philip J. Hoagboom
Deputy City Attorney

Board of Supervisors, San Francisco
APR 28 1980
Ayes: Supervisors Burdin, Britt, Maroney, Hutch, Kopp, Lennitt, Molinari, Renne, Silver, Walker, Ward.
Noes: Supervisors BARGER, JOHP, LAWSON, MOLINARI
Absent: Supervisors
I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco.
GILBERT H. BOREMAN Clerk

45-79-46 File No. MAY 07 1980 Approved

MAY 5 1980
Ayes: Supervisors Burdin, Britt, Maroney, Hutch, Kopp, Lennitt, Molinari, Renne, Silver, Walker, Ward.
Noes: Supervisors BARGER, KOPP, LAWSON, MOLINARI
Absent: Supervisors
I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco.
GILBERT H. BOREMAN Clerk
Mayor

STATE OF CALIF
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GILBERT H. BOREMAN
Clerk of the Board of Supervisors, City and County of San Francisco

By

May 20, 1981

The Honorable William French Smith
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

On May 6, 1981, the subcommittee began its hearings on the several bills which have been introduced to extend and amend the Voting Rights Act of 1965. We invite you to appear before our subcommittee on one of the following dates - June 3rd, 10th or 17th.

As in previous hearings on extension, the subcommittee members look forward to reviewing with you how the Department carries out its §5 responsibilities. We therefore think it would be especially helpful if senior members of the §5 unit of the voting section of the Civil Rights Division, who are very familiar with the objections which have been interposed under §5 and with the review procedures for evaluating §5 submissions, accompany you and be available for questioning on that date.

In addition we ask that you provide the subcommittee with the following information for its review prior to your appearance.

1. Select a month in 1980 and forward a copy of all submissions and accompanying documentation from each state Attorney General or Secretary of State.

2. List all outstanding "please submit" requests since 1975.

3. Identify each state and county which has received requests for "additional information", and the number of such requests made to each jurisdiction since 1975.

4. Please describe the results of all objections interposed since 1975, i.e., those objections by jurisdictions which resulted in subsequent litigation, those with which the jurisdiction complied and those which were implemented by the jurisdiction despite objections.

5. Set forth the cost of running the §5 unit versus the cost of litigation, by year, since 1975.

6. List all submissions, by jurisdiction (with the racial make up noted), received by the Department since 1975 relating to registration - including, but not limited to, adding registration hours, and purging registered voters from registration rolls through reidentification schemes or some other method.

The subcommittee will complete its series of hearings on this issue by June 25th. Because I expect the Department's testimony will be its first major public statement of position on the extension of the Voting Rights Act, it is absolutely crucial to the legislative process that the subcommittee have ample time to analyze the Department's testimony. Accordingly, I hope you will accept the earliest possible of these three dates which best accommodates your schedule.

We thank you for your cooperation in this matter and we look forward to your upcoming testimony.

With kind regards,

Sincerely,

Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights

DE:idw

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., June 17, 1981.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Attorney General has asked me to respond to your letter of May 20, 1981, which, among other things, requested that we provide certain information to the subcommittee relating to our experience in administering the preclearance provisions of Section 5 of the Voting rights Act. We have assembled much of the information you requested, which accompanies this letter. The remainder of the information is being compiled insofar as it is available, and will be forwarded to you as soon as it is ready. These matters are discussed below as they relate to each of your specific requests.

1. Select a month in 1980 and forward a copy of all submissions and accompanying documentation from each state Attorney General or Secretary of State.

Attachment 1 to this letter is a copy of all Section 5 submissions, with the documentation which accompanied them, received by the Department of Justice during the month of June 1980.

[Committee Note: Attachment 1 is available in the committee's files.]

2. List all outstanding "please submit" requests since 1975.

Attachment 2 is a computer print-out of all outstanding "please submit" requests since January 1, 1980. These are letters we have sent to jurisdictions to tell them that we have received information indicating they have made voting-connected changes within the meaning of Section 5; to tell them that those changes are legally unenforceable unless they are precleared under Section 5; and to request that they obtain the required preclearance.

[Committee Note: Attachment 2 is available in the committee's files.]

The computer system that records our actions relating to Section 5 submissions prior to January 1, 1980, does not contain information in this regard. However, we are attempting to determine whether the information you desire for the period 1975 through 1979 can be obtained from other sources, and we will let you know of the results of these efforts.

3. Identify each state and county which has received requests for "additional information", and the number of such requests made to each jurisdiction since 1975.

Attachment 3 is a list showing the jurisdictions to which we have sent a request for additional information since January 1, 1979, and the number of such requests that were made to each jurisdiction. These are letters we sent to jurisdictions that had submitted voting-connected changes for preclearance under Section 5, to tell them that additional information is needed in order to allow a determination to be made for their submission under Section 5; to tell then what additional information is needed; and to request that the necessary additional information be submitted. As was true of the please-submit letters, our computer records of these requests begin in January 1, 1980, with the adoption of our present computer system. In compiling Attachment 3 we were able to obtain information from other sources regarding requests for additional information for the year 1979. We are continuing our attempts to determine whether data in this regard can be obtained for the four years prior to 1979.

4. Please describe the results of all objections interposed since 1975, i.e., those objections by jurisdictions which resulted in subsequent litigation, those with which the jurisdiction complied and those which were implemented by the jurisdiction despite objections.

5. Set forth the cost of running the § 5 unit versus the cost of litigation, by year, since 1975.

We are in the process of reviewing our records that pertain to these two requests. Such information as we are able to compile will be forwarded to you as soon as it is available.

6. List all submissions, by jurisdiction (with the racial make up noted), received by the Department of Justice since 1975 relating to registration—including, but not limited to, adding registration hours, and purging registered voters from registration rolls through reidentification schemes or some other method.

Attachment 4 is a computer print-out which we believe lists all submitted changes the Department received under Section 5 relating to registration for the period 1975 to 1980. This particular segment of our previous computer system was initiated to record submissions of changes that required the reregistration of voters, but then was used to record all submissions of changes that involved the voter registration

process. This accounts for the word "reregistration" in the upper left-hand corner of each page of this print-out. In our present computer system, we have attempted to list submitted changes that involve voter reregistration, voter reidentification and purging of voter registration rolls separately from submissions that involve other kinds of changes in the voter registration process. Attachment 5 lists the changes we have received since January 1, 1980, regarding voter registration, reidentification and purge procedures. Attachment 6 lists the other changes we have received since January 1, 1980, regarding voter registration procedures.

[Committee Note: Attachments 4, 5, and 6 are available in the committee's files.]

The racial make-up of the jurisdictions listed on Attachments 4, 5, and 6 is not noted in our Section 5 computer systems. However, the racial make-up of nearly all of the listed jurisdictions is information that is available to the public from data supplied by the Bureau of Census, as opposed to information that is uniquely available from the records of the Justice Department. Under these circumstances, we have not made plans to compile this information.

Finally, Attachment 7 is a list of all civil rights voting cases in which the Civil Rights Division participated from January 1, 1975, through December 31, 1980. Recently we discovered some minor errors in the list of these cases that was sent to you on April 9, 1981, and although the errors do not affect the number or nature of the cases listed, in the interest of accuracy we are sending the corrected list to you.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General.

REQUESTS FOR ADDITIONAL INFORMATION
UNDER SECTION 5 OF THE VOTING RIGHTS ACT,
January 1979 through April 30, 1981

STATE	COUNTY	No. of Requests to The State	No. of Requests To the County	Requests to Jurisdictions In the County
ALASKA				1**
ALABAMA		15		
	AUTAUGA			1
	BARBOUR			3
	BUTLER		1	
	CALHOUN			1
	CHAMBERS			2
	CHEROKEE		1	
	CHOCTAW		1	
	CLARKE			3
	CONECUH		1	
	CRENSHAW		1	
	DALE		1	1
	ELMORE			1
	ESCAMBIA		1*	
	GENEVA		1	
	HOUSTON		1	
	HALE		1	1
	JACKSON			1
	JEFFERSON		1	1
	LAUDERDALE		1	
	LEE			1
	MOBILE			2
	MONROE		1	1
	MORGAN		1	
	PIKE			1
	ST. CLAIR			2
	TALLADEGA			1
	TUSCALOOSA			1

*BOARD OF EDUCATION

**RELATES TO JURISDICTIONS WITHIN ELECTION DISTRICTS IN THE STATE OF ALASKA

Attachment 3

STATE	COUNTY	No. of Requests to The State	No. of Requests To the County	Requests to Jurisdictions In the County
ALABAMA (cont.)				
	WALKER			1
	WASHINGTON		1	
TOTAL ALABAMA:		15	15	26
ARIZONA		0		
	APACHE			3
	COCONINO		1	
	MARICOPA		3	7
	PIMA		2	1
	PINAL			1
	YAVAPAI			2
	YUMA		1	1
TOTAL ARIZONA:		0	7	15
CALIFORNIA		1		
GEORGIA		7		
	BRYAN		1*	
	BULLOCH		1*	4
	BURKE		1	
	CARROLL			1
	CHATHAM			1
	CLARKE			1

*BOARD OF EDUCATION

*BOARD OF EDUCATION

STATE	COUNTY	No. of Requests to The State	No. of Requests To the County	Requests to Jurisdictions In the County
GEORGIA (cont.)				
	COWETA		1	
	CHARLESTON			1
	COBB		1	1
	CRISP		1	
	DODGE		1	
	DOOLY		1	
	DOUGHERTY		1	
	FULTON		1	3
	GLYNN		1	
	GREEN			1
	HANCOCK		1	
	HART			1
	HENRY		2	
	JENKINS			1
	LOWNDES			1
	MARENGO			1
	McINTOSH		1	
	MONTGOMERY		1	
	MONTGOMERY		1	
	MONROE		1	
	PEACH		1	
	PULASKI			1
	ROCKDALE		1	
	SCREVEN			1
	SPALDING			1
	SUMPTER			1
	TELFAIR		1*	3
	TERRELL			1

*BOARD OF EDUCATION

STATE	COUNTY	No. of Requests to The State	No. of Requests To the County	No. of Requests Jurisdictions In the County
GEORGIA (cont.)				
	TIFT			1
	TOOMBS			1
	WARREN		1	
TOTAL GEORGIA:		7	21	27
LOUISIANA		2		
	ASCENSION			1
	CADDO			1
	DeSOTO			2
	EAST BATON ROUGE			4
	LaFAYETTE		1	
	LaSALLE		1	
	MOREHOUSE			1
	POINTE COUPEE		1	
	RAPIDES			1
	ST. CHARLES		1	
	ST. JOHN THE BAPTIST		2	
	ST. TAMMANY			1
	TANGIPAHOA			1
TOTAL LOUISIANA:		2	6	12
MISSISSIPPI		3		
	ALCORN			1
	CLARKE			1
	CLAY			1
	GRENADA			1

STATE	COUNTY	No. of Requests to The State	No. of Requests To the County	Requests to Jurisdictions In the County
MISSISSIPPI (cont.)		3		
	HARRISON			1
	HUMPHREYS		1	
	LAMAR			1
	MADISON			1
	MARSHALL			1
	PANOLA		1	2
	PEARL RIVER			1
	PIKE			1
	RANKIN		1	
	SIMPSON			1
	SUNFLOWER			2
	WASHINGTON		1	
	YAZOO		1	
TOTAL MISSISSIPPI:		3	5	15
NORTH CAROLINA		0		
	CLEVELAND			2
	CRAVEN			1
	EDGECOMBE			1
	GUILFORD			1
	ONSLOW		1	2
	PITT			2
	ROBESON			1
	ROCKINGHAM			1
	WAYNE			3
TOTAL NORTH CAROLINA:		0	1	14

STATE	COUNTY	No. of Requests to The State	No. of Requests To the County	Requests to Jurisdictions In the County
SOUTH CAROLINA		7		
	BAMBERG		1	
	BEAUFORT			1
	CHARLESTON			1
	CHESTERFIELD			1
	COLLECTON		1	
	DARLINGTON		2	3
	FLORENCE			1
	GEORGETOWN		1	
	GREENVILLE			1
	HORRY			1
	JASPER			1
	NEWBERRY			1
	RICHLAND			2
	SPARTANBURG			3
TOTAL SOUTH CAROLINA:		7	5	16
SOUTH DAKOTA		0		
	SHANNON TODD		1	
TOTAL SOUTH DAKOTA		0	1	0
TEXAS		13		
	ANDERSON			1
	BASTORP			1
	BEE			1
	BEXAR			2
	BRAZORIA			2
	BRAZOS			1
	BREWSTER			1

STATE	COUNTY	N o. of Requests to The State	No. of Requests To the County	Requests to Jurisdictions In the County
TEXAS (cont.)				
	BURLESON			1
	CALDWELL			2
	CAMERON		1	
	CASTRO			1
	CHEROKEE			1
	COLLIN			1
	COMAL		1	
	DALLAS		2	1
	DEAF SMITH		1	
	ECTOR			2
	ELLIS			5
	EL PASO			2
	GARZA			1
	GRAY		1	1
	GREGG			1
	GUADALUPE			1
	HALE			1
	HANSFORD		1	
	HARRIS			4
	HARRISON		1	1
	HOOD			1
	JEFFERSON			1
	JIM WELLS		1	
	KARNES		1	
	KENDALL			1
	KAUFMAN			1
	KLEBERG		1	
	LIBERTY			3
	LUBBOCK		1	3

STATE	COUNTY	No. of Request to The State	No. of Requests To the County	Requests to Jurisdictions In the County
TEXAS (cont.)				
	MADISON		1	
	MARION			1
	MATAGORDA		1	1
	MILAM		1	
	MORRIS		2	1
	NACOGDOCHES			1
	NUECES			2
	ORANGE			1
	PANOLA		1	
	PARKER			1
	REFUGIO			1
	ROBERTSON		1	1
	SAN PATRICIO			2
	SMITH		1	
	TARRANT			1
	TAYLOR			1
	TRAVIS			3
	VICTORIA			2
	WARD			1
	WILLIAMSON		4	2
TOTAL TEXAS:		13	24	67
VIRGINIA		0		
	PRINCE EDWARD		1	
CITIES				
	ALEXANDRIA			1
	CHESAPEAKE			1
	HAMPTON			1
	MANASSAS PARK			1
	SUFFOLK			1
TOTALS VIRGINIA:		0	1	5

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party **	Jurisdiction Involved
* U.S. v. Grenada County, Miss.	5/14/75	N.D. Miss.	Plaintiff	§5 of VRA	P	Grenada Co., Miss.
* U.S. v. Bolivar County, Miss.	6/4/75	N.D. Miss.	Plaintiff	§5 of VRA	P	Bolivar Co., Miss.
* Connor v. Waller (intervention)	6/11/75	S.D. Miss.	Plaintiff-Intervenor	§5 of VRA; dilution (42 U.S.C. 1971, §2 of VRA)	P	State of Mississippi
Harris, et al. v. Levi, et al.	7/18/75	D.D.C.	Defendant	§5 of VRA	P	Meriwether Co., Ga.
* U.S. v. The Board of Supervisors of Forrest County, Miss., et al.	7/21/75	S.D. Miss.	Plaintiff	§5 of VRA; dilution (§2 of VRA)	P	Forrest Co., Miss.
U.S. v. City of Albany, Ga., et al.	7/21/75	M.D. Ga.	Plaintiff	dilution (42 U.S.C. 1971, §2 of VRA)	P	Albany, Ga.
U.S. v. The Democratic Executive Committee of Noxubee County, Miss., et al.	7/29/75	S.D. Miss.	Plaintiff	candidacy (42 U.S.C. 1971, §2 of VRA)	D	Noxubee Co., Miss.
Dolph Briscoe, et al. v. Levi, et al.	9/8/75	D.D.C.	Defendant	special coverage (§4 of VRA)	D	State of Texas

*/ Cases with a single asterisk involve non-compliance with an objection interposed by the Attorney General under Section 5 of the Voting Rights Act.

**/ P indicates plaintiff, D indicates defendant. The prevailing party is indicated for cases in which the United States is a party, i.e., it does not apply to cases where the United States participated as amicus curiae or otherwise was not plaintiff or defendant. The prevailing party is not indicated for those cases, or for cases that are not concluded. The plaintiff is listed as the prevailing party where the lawsuit achieves its desired objective even though, for example, the lawsuit ultimately was resolved by consent of the parties.

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
*Kirksey v. Board of Supervisors of Hinds County, Miss.	9/24/75	5th Cir.	Amicus	§5 of VRA; reapportionment dilution (14th and 15th Amendments)		Hinds Co., Miss.
State of Maine v. U.S.	11/25/75	D.D.C.	Defendant	bail out (§4 of VRA)	P	18 Maine municipalities
Chinese for Affirmative Action, et al. v. Lawrence J. Leguennec, et al., and U.S.	12/23/75	N.D. Cal.	Defendant	§203 of VRA	D**/	San Francisco, Cal.
Yuba County, California v. U.S.	12/30/75	D.D.C.	Defendant	bail out (§4 of VRA); §5 of VRA (declaratory judgment)	D	Yuba Co., Cal.
Jackson v. State of New Hampshire & U.S.	12/30/75	D.D.C.	Defendant	candidacy fees as "poll tax" (28 U.S.C. 1361)	D	State of New Hampshire and nationwide
East Carroll Parish v. Marshall	1/7/76	S. Ct.	Amicus	§5 of VRA		East Carroll Parish, La.
State of New Mexico, Curry, McKinley & Otero Counties v. U.S.	1/12/76	D.D.C.	Defendant	bail out (§4 of VRA)	P	Curry, McKinley and Otero Counties, New Mexico
Glynn County, Georgia v. U.S.	1/12/76	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	D	Glynn Co., Georgia
*Morris, et al. v. Gressette, et al.	1/28/76	D.S.C.	Amicus	§5 of VRA		State of South Carolina

**/ U.S. was dismissed as party defendant; case not fully litigated, in the light of U.S. v. City and County of San Francisco, filed 10/27/78.

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
*Graves, et al. v. Barnes, et al.	2/3/76	W.D. Tex.	Amicus	§5 of VRA		Jefferson, Nueces and Tarrant Counties, Texas
*U.S. v. The Board of Commissioners of Bessemer, Alabama, et al.	4/2/76	N.D. Ala.	Plaintiff	§5 of VRA	D	Bessemer, Ala.
Town of Sorrento Democratic Executive Committee v. Reine	4/9/76	S. Ct.	Amicus	§5 of VRA		Sorrento, La.
*Broussard, et al. v. Perez, et al.	4/23/76	E.D. La.	Amicus	§5 of VRA		Plaquemines Parish, La.
Chinese for Affirmative Action, et al. v. Patterson, et al., and Levi, et al.	5/6/76	N.D. Cal.	Defendant	§203 of VRA	**/	San Francisco, Cal.
*Parnell, et al. v. Rapides Parish School Board, et al.	5/10/76	W.D. La.	Amicus	§5 of VRA		Rapides Parish, La.
Wilkes County, Georgia v. U.S.	6/14/76	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	D	Wilkes Co., Ga.
Wilkes County School District, et al. v. U.S.	6/14/76	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	D	Wilkes Co., Ga.
Helen R. Simenson; Roosevelt County Montana v. Levi, et al.	6/22/76	D. Mont.	Defendant	bail out (§203 of VRA)	D	Roosevelt Co., Mont.

**/ See footnote, previous page.

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
Counties of Choctaw, McCurtain, State of Oklahoma v. U.S.	7/6/76	D.D.C.	Defendant	bail out (§4 of VRA)	P	Choctaw and McCurtain Counties, Okla.
*U.S. v. County Commission of Hale County, Alabama, et al.	7/29/76	S.D. Ala.	Plaintiff	§5 of VRA	P	Hale Co., Ala.
*U.S. v. Board of Commissioners of Sheffield, Alabama, et al.	8/9/76	N.D. Ala.	Plaintiff	§5 of VRA	P	Sheffield, Ala.
U.S. v. East Baton Rouge Parish School Board, et al.	8/16/76	M.D. La.	Plaintiff	dilution (§2 of VRA; 42 U.S.C. 1971)	P	E. Baton Rouge Par., La.
Charles Whitfield v. U.S.	9/1/76	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	D	Grenada Co., Miss.
*U.S. v. The State of Georgia	9/17/76	N.D. Ga.	Plaintiff	§5 of VRA	D	State of Georgia
*DeHoyos, et al. v. Crockett County Texas, et al.	10/1/76 12/13/76	N.D. Tex.	Amicus Plaintiff-Invervenor	§5 of VRA	P	Crockett County, Tex.
U.S. v. St. Landry Parish School Board	10/6/76	W.D. La.	Plaintiff	§5 of VRA; vote buying	P	St. Landry Par., La.
U.S. v. State of Texas, et al.	10/14/76	S.D. Tex.	Plaintiff	voter registration (§§2 and 301 of VRA; 42 U.S.C. 1971)	P	Waller Co., Tex.

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
U.S. v. The New York State Board of Elections, et al.	10/30/76	N.D. N.Y.	Plaintiff	Overseas Citizens Voting Rights Act	P	State of New York
Benton Frost, et al. v. Ouachita Parish, Levi, et al.	11/10/76	W.D. La.	Defendant	§5 of VRA	D	Ouachita Par., La.
Independent School District No. 1 of Tulsa County, et al. v. Levi, et al.	11/12/76	N.D. Okla.	Defendant	§203 of VRA	P	Tulsa, Okla., I.S.D. No. 1
*City of Rome, et al., v. Levi, et al.	11/24/76	N.D. Ga.	Defendant	§5 of VRA	D	Rome, Ga.
Cheyenne River Sioux Tribe v. Andrus	11/24/76	D.S.D.	Defendant	26th Amendment	D	So. Dakota
Hechinger v. Martin	11/24/76	S. Ct.	Amicus	apportionment (1st, 5th and 14th Amendments)		Dist. of Columbia
*Garcia & U.S. v. Uvalde County, Texas	12/9/76	W.D. Tex.	Plaintiff-Intervenor	§5 of VRA	D	Uvalde Co., Tex.
*U.S. v. Interim Board of Trustees of the Westheimer ISD, Texas	1/20/77	S.D. Tex.	Plaintiff	§5 of VRA	P	Westheimer I.S.D., Tex.
*McCray v. Hucks	1/20/77	D.S.C.	Amicus	§5 of VRA		Horry Co., S.C.

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
*Hereford Independent School District v. Levi	1/28/77	N.D. Tex.	Defendant	§5 of VRA	D	Hereford ISD, Tex.
Board of County Commissioners of El Paso County, Colorado v. U.S.	2/1/77	D.D.C.	Defendant	bailout (§4 of VRA)	D	El Paso Co., Col.
Hale County, Alabama, et al. v. U.S.	2/16/77	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	D	Hale Co., Ala.
*Arturo Gomez, Jr., et al. v. John W. Galloway, et al.	3/21/77	S.D. Tex.	Amicus	§5 of VRA		Beeville, Tex.
*U.S. v. Board of Trustees of Midland Independent School District, et al.	3/24/77	W.D. Tex.	Plaintiff	§5 of VRA	P	Midland ISD, Tex.
*U.S. v. Hawkins ISD, et al.	3/26/77	E.D. Tex.	Plaintiff	§5 of VRA	P	Hawkins ISD, Tex.
*U.S. v. Trinity ISD, et al.	3/28/77	S.D. Tex.	Plaintiff	§5 of VRA	P	Trinity ISD, Tex.
*U.S. v. Board of Trustees of the Chapel Hill ISD	5/6/77	E.D. Tex.	Plaintiff	§5 of VRA	P	Chapel Hill ISD, Tex.
*U.S. v. City of Kosciusko, Miss.	5/9/77	N.D. Miss.	Plaintiff	§5 of VRA; reapportionment dilution (§2 of VRA)	P	Kosciusko, Miss.
City of Rome, Georgia v. Bell	5/9/77	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	D	Rome, Ga.

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
U.S. v. City Comm'n of Texas City, Texas	5/12/77	S.D. Tex.	Plaintiff	dilution (§2 of VRA; 42 U.S.C. 1971)	P	Texas City, Tex.
Blacks United for Lasting Leadership v. City of Shreveport	6/8/77	5th Cir.	Amicus	dilution (14th and 15th Amendments)		Shreveport, La.
Bolden v. City of Mobile, Alabama	6/8/77	5th Cir.	Amicus	dilution (14th and 15th Amendments)		Mobile, Ala.
Doi v. Bell	7/14/77	D. Haw.	Defendant	bail out (§203 of VRA)	D	Hawaii, Honolulu, Kauai Maui Counties, Hawaii
Williams v. Sclafani	9/16/77	S.D. N.Y.	Memo to Court	§5 of VRA		New York, N.Y.
U.S. v. Uvalde Consolidated ISD	9/19/77	W.D. Tex.	Plaintiff	dilution (§2 of VRA; 42 U.S.C. 1971)		Uvalde ISD, Tex.
Horry Co., S.C. v. U.S.	9/27/77	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	D	Horry Co., S.C.
Rosso v. Henigan	10/11/77	D.D.C.	Defendant	§5 of VRA	D	Yolo County, Cal.
Apache Co. H.S.D. No. 90 v. U.S.	10/20/77	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	D	Apache Co., Ariz.
Berry v. Doles	1/11/78	S. Ct.	Amicus	§5 of VRA		Peach Co., Ga.
U.S. v. Temple ISD	1/12/78	W.D. Tex.	Plaintiff	dilution (§2 of VRA; 42 U.S.C. 1971)	P	Temple I.S.D., Tex.

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
*U.S. v. Village of Dickinson, Texas	2/17/78	S.D. Tex.	Plaintiff	§5 of VRA	P	Dickinson, Tex.
U.S. v. Town of Bartelme, Wisconsin	2/17/78	E.D. Wisc.	Plaintiff	voter residency (§2 of VRA; 42 U.S.C. 1971)	P	Bartelme, Wis.
Donnell v. U.S. (Warren Co., Miss.)	3/7/78	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	D	Warren Co., Miss.
*U.S. v. Board of Trustees of Somerset ISD	3/10/78	W.D. Tex.	Plaintiff	§5 of VRA	P	Somerset I.S.D., Tex.
State of Alaska v. U.S.	3/21/78	D.D.C.	Defendant	bail out (§4 of VRA)	D	State of Alaska
Charlton County Board of Education v. U.S.	3/29/78	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	P	Charlton Co., Ga.
U.S. v. So. Dakota and Fall River County	4/4/78	D.S.D.	Plaintiff	candidacy (§2 of VRA; 42 U.S.C. 1971)	P	Fall River Co., S. Dakota
Wise v. Lipscomb	4/7/78	S. Ct.	Amicus	§5 of VRA		Dallas, Tex.
*U.S. v. The County Council of Chester Co., South Carolina	6/1/78	D.S.C.	Plaintiff	§5 of VRA	P	Chester Co., S.C.
*U.S. v. The County Council of Sumter Co., South Carolina	6/1/78	D.S.C.	Plaintiff	§5 of VRA		Sumter Co., S.C.

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
*U.S. v. County Council of Charleston Co., South Carolina	6/2/78	D.S.C.	Plaintiff	§5 of VRA	D	Charleston Co., S.C.
*U.S. v. Board of Commissioners of Colleton County, South Carolina	6/2/78	D.S.C.	Plaintiff	§5 of VRA	P	Colleton Co., S.C.
Blanding v. DuBose, Bell (3rd pty def.)	6/7/78**	D.S.C.	Defendant	§5 of VRA	D	Sumter Co., S.C.
Dougherty County, Georgia, Bd of Education v. White	7/19/78	S. Ct.	Amicus	§5 of VRA		Dougherty Co., Ga.
Lenud v. Bell	7/25/78	D.D.C.	Defendant	§5 of VRA	D	State of Alabama
State of Mississippi v. Bell	8/1/78	D.D.C.	Defendant	§5 of VRA (declaratory judgment - reapportionment)	P	State of Mississippi
U.S. v. Marengo County Commission	8/25/78	S.D. Ala.	Plaintiff	dilution (§2 of VRA; 42 U.S.C. 1971)		Marengo Co., Ala.
U.S. v. Bd. of Supervisors of Thurston Co., Neb.	8/30/78	D. Neb.	Plaintiff	dilution (§2 of VRA; 42 U.S.C. 1971)	P	Thurston Co., Neb.

* **Date 3rd party complaint filed. Private suit initiated 5/12/78.

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
City of Dallas, Texas, et al. v. U.S.	9/5/78	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	D	Dallas, Tex.
U.S. v. Humboldt Co., Nevada	9/7/78	D. Nev.	Plaintiff	voter registration (§2 of VRA; 42 U.S.C. 1971)	P	Humboldt Co., Nev.
*U.S. v. Barbour Co. Commission, et al.	9/8/78	M.D. Ala.	Plaintiff	§5 of VRA	P	Barbour Co., Ala.
Greater Houston Civic Council v. Mann	9/20/78	5th Cir.	Amicus	dilution (14th and 15th Amendments)		City of Houston
U.S. v. City of Hattiesburg	10/2/78	S.D. Miss.	Plaintiff	dilution (§2 of VRA; 42 U.S.C. 1971)	**/	Hattiesburg, Miss.
U.S. v. Dallas Co. Commission & School Board	10/19/78	S.D. Ala.	Plaintiff	dilution (§2 of VRA; 42 U.S.C. 1971)		Dallas Co., Ala.
*Arriola v. Harville	10/20/78	S.D. Tex.	Amicus	§5 of VRA		Jim Wells Co., Tex.
U.S. v. City & Co. of San Francisco	10/27/78	N.D. Cal.	Plaintiff	§203 of VRA	P	San Francisco, Cal.
*U.S. v. Tripp Co., So. Dakota	11/1/78	D.S.D.	Plaintiff	§5 of VRA	P	Tripp Co., So. Dakota
U.S. v. Uvalde CISD	11/13/78	W.D. Tex.	Plaintiff-Amended Complaint	dilution (§2 of VRA 42 U.S.C. 1971)		Uvalde Co., Tex.

**/ Case voluntarily dismissed by U.S.

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
U.S. v. City of Houston, Texas	12/13/78	S.D. Tex.	Plaintiff	§5 of VRA		Houston, Texas
*Calderon v. McGee	12/19/78	5th Cir.	Amicus	§5 of VRA		Waco I.S.D., Tex.
*Escamilla v. Stavley	1/22/79	W.D. Tex.	Amicus	§5 of VRA		Terrell Co., Tex.
Brown v. Bd. of School Commissioners of Mobile Co., Ala.	2/2/79 11/7/80	5th Cir. S.D. Ala.	Amicus Plaintiff-Intervenor	dilution (§2 of VRA; 14th and 15th Amendments)		Mobile, Co., Ala.
*U.S. v. Pike Co., Ala.	5/29/79	M.D. Ala.	Plaintiff	§5 of VRA	P	Pike Co., Ala.
U.S. v. County of San Juan, New Mexico	6/21/79	D.N.M.	Plaintiff	dilution (§2 of VRA)	P	San Juan Co., New Mex.
U.S. v. County of San Juan, New Mexico	6/21/79	D.N.M.	Plaintiff	§203 of VRA	P	San Juan Co., New Mex.
*U.S. v. State of So. Dakota, Tripp Co. and Fall River Co.	6/26/79	D.S.D.	Plaintiff	§5 of VRA	P	State of S. Dak and Tripp and Fall River Counties
Stokes v. Warren Co., Miss. Election Commission	9/14/79	S.D. Miss.	Amicus	apportionment (14th Amendment)		Warren Co., Miss.
*U.S. v. State of South Carolina and Horry County	12/21/79	D.S.C.	Plaintiff	§5 of VRA	P	Horry Co., S.C.
State of Mississippi v. U.S.	12/27/79	D.D.C.	Defendant	§5 of VRA (declaratory judgment - open primary bill)		State of Mississippi

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
*Forte, et al. v. Barbour County Commission	1/2/80	M.D. Ala.	Amicus	§5 of VRA; reapportionment (14th Amendment)		Barbour Co., Ala.
*U.S. v. County School Trustees of Harris County, Texas	1/18/80	S.D. Tex.	Plaintiff	§5 of VRA		Harris Co., Tex.
Co. Commissioners Court of Medina Co., Texas v. U.S.	1/25/80	D.D.C.	Defendant	§5 of VRA (declaratory judgment)	D	Medina Co., Tex.
City of Lockhart v. U.S.	2/6/80	D.D.C.	Defendant	§5 of VRA (declaratory judgment)		Lockhart, Tex.
County of Placer, Calif. v. Civiletti	2/20/80	E.D. Cal.	Defendant	bail out (§203 of VRA)	D	Placer Co., Cal.
City of Port Arthur v. U.S.	3/12/80	D.D.C.	Defendant	§5 of VRA (declaratory judgment)		Port Arthur, Tex.
*McRae v. Bd. of Education of Henry Co., Ga.	3/13/80	N.D. Ga.	Amicus	§5 of VRA		Henry Co., Ga.
*U.S. v. City of Port Arthur	3/14/80	E.D. Tex.	Plaintiff	§5 of VRA		Port Arthur, Tex.
*Garcia v. Decker	3/18/80	W.D. Tex.	Amicus	§5 of VRA		Medina Co., Tex.
*Garza v. Gates	3/18/80	W.D. Tex.	Amicus	§5 of VRA		Atascosa Co., Tex.
*Head v. Henry Co. Board of Commissioners	3/28/80	N.D. Ga.	Amicus	§5 of VRA		Henry Co., Ga.

Name of Case	Date of Initial Participation	Court	Status	Issue	Prevailing Party	Jurisdiction Involved
Reich v. Larson and Civiletti	4/3/80	E.D. Cal.	Defendant	§203 of VRA		Fresno, Cal.
U.S v. South Carolina	4/18/80	D.S.C.	Plaintiff	dilution (§2 of VRA)**/		State of So. Carolina
State of South Dakota v. U.S.	8/6/80	D.D.C.	Defendant	§5 of VRA (declaratory judgment)		Tripp, Todd, Sharon and Fall River Counties, So. Dak.
*U.S. v. Clarke County Commission	9/2/80	S.D. Ala.	Plaintiff	§5 of VRA; apportionment (§2 of VRA; 14th and 15th Amendments)		Clarke Co., Ala.
Lodge v. Buxton	10/2/80	5th Cir.	Amicus	dilution (§2 of VRA)		Burke Co., Ga.
City of Pleasant Grove, Ala. v. U.S.	10/9/80	D.D.C.	Defendant	§5 of VRA (declaratory judgment)		Pleasant Grove, Ala.
U.S. v. Santa Clara Co., Calif.	11/4/80	N.D. Cal.	Plaintiff	§202 of VRA		Santa Clara, Cal.
U.S. v. State of Florida	11/6/80	N.D. Fla.	Plaintiff	Overseas Citizens Voting Rights Act and Federal Voting Assistance Act (42 U.S.C. 1973cc and 1973dd)		State of Florida
McDaniel v. Sanchez	12/31/80	S. Ct.	Amicus	§5 of VRA		Kleberg Co., Tex.

**/ Case voluntarily dismissed by U.S.

U.S. DEPARTMENT OF JUSTICE,
CIVIL RIGHTS DIVISION,
Washington, D.C., August 20, 1981.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further response to your letter of May 20, 1981, in which you set out six requests for information relating to the experience of the Civil Rights Division in administering the preclearance provisions of Section 5 of the Voting Rights Act.

On June 17, 1981, Assistant Attorney General Robert A. McConnell sent to you information relating to four of those requests. We have been able to assemble information in response to the two remaining requests in your letter of May 20, 1981, and we are sending this information to you now. These items include your request that we describe the results of all objections interposed under Section 5 since January 1, 1975, and your request for the annual cost of running the Section 5 Unit versus the cost of litigation since January 1, 1975.

With regard to objections interposed since January 1, 1975, you requested that we indicate which objections resulted in litigation, which objections resulted in compliance by the jurisdiction, and which objections were implemented by the jurisdiction dispite the objection. Attachment 1 is a list that sets out the information you desire. The list includes four different categories of post-objection litigation to indicate the nature of the lawsuits and whether litigation to indicate the nature of the lawsuits and whether litigation involved the United States or private plaintiffs, and the list shows those instances in which a new submission was made following an objection and, if so, with what results. The list also includes 10 objections where the voting change was implemented over our objection and the Department is investigating those instances to determine what action is appropriate.

I note that this effort to describe post-objection actions allowed us to review the information contained in the list with regard to the objections themselves. Thus, in several instances the attached list is different from, and more accurate than, the list of objections that was sent to you on December 24, 1980 and April 9, 1981. First, the column "Subdivision" has been changed to "Jurisdictions Affected" which generally denotes those jurisdictions which both enact and administer the voting changes at issue. Some states, however (*e.g.,* Alabama, Georgia, South Carolina) enact voting changes that affect, and are administered by, only one county or city. To clarify this situation we have placed an asterisk beside all jurisdictions in which the objectionable change was enacted by the state. Second, the column "Objection" has been changed to "Types of Changes Objected To." The terminology used in this column (*e.g.,* numbered posts, filing fees) has been modified to correspond to the terminology used in our statistical charts (*e.g.,* method of election, candidate qualification) which were sent to you on December 24, 1980 and April 9, 1981. Third, we have eliminated duplications and added objections omitted from the list. Finally, the list has been updated to June 30, 1981. We are also forwarding, as Attachment 2, a list of pre-1975 objections which also contains the above-noted changes.

It has been more difficult to respond to your request for data on the annual cost of running the Section 5 Unit as opposed to the cost of litigation since January 1, 1975. However, I believe that the information we are providing in Attachment 3 will give you the answers you are seeking.

[Committee Note: Attachment-3 is available in the committee's files.]

The primary difficulty in this regard is that the Section 5 Unit does not operate separately from the overall functions of the Voting Section. In fact, it is an integral part of the Section, designed solely to improve the administration and management of the Section 5 review procedures. Moreover, administrative review of Section 5 submissions has always taken place within the Division's litigating sections because this administrative review is just one part of the Department's overall enforcement of civil rights voting laws.

The analysis of Section 5 submissions is performed by equal opportunity specialists with a senior paralegal to oversee procedures for processing submissions and a senior attorney to supervise the substantive analysis of the submissions and perform first-level substantive review of responses recommended to each submission. The Chief of the Voting Section reviews all submissions that present questions of policy or approach, including all submissions for which objection is recommended.

At times personnel who are primarily involved in the Section 5 submission process are called upon to assist in other law enforcement efforts of the Voting Section, and vice versa. Moreover, as shown by the list of cases we sent to you

previously, over 60 percent of the cases in which we initially participated from 1976 through 1980 involved Section 5 issues.

No budget exists for the Section 5 Unit separate from the budget of the Voting Section as a whole. However, in order to give a general idea of the costs of operating the Section 5 Unit as a portion of the total costs of the Voting Section we have estimated the number of attorneys, professional personnel (paralegal specialists and equal opportunity specialists) and clerical personnel that were permanently assigned to the Voting Section in each year since 1976, and we have estimated the annual average salary for the persons in each of these categories in the Voting Section. It was necessary to estimate the number of persons assigned to the Voting Section and the average salaries earned because of personnel and salary changes that occurred routinely throughout each year.

We have determined that salaries comprised approximately 73 percent of the budget of the Voting Section since January 1976. The period encompassed by the tables begins in 1976 because that was the year in which the Section 5 Unit was established within the Voting Section. Some relevant information is not reflected, such as overtime pay and costs attributable to part-time employees. Nevertheless, the information provided is a close approximation of basic personnel costs.

We have also enclosed as Attachment 4 summaries of the cases in which the Department has participated since 1974, which we promised in our April 9, 1981 supplemental reply to your letter of December 1, 1980.

I hope this information is helpful to you.

Sincerely yours,

WM. BRADFORD REYNOLDS,
Assistant Attorney General,
Civil Rights Division.

LISTING OF OBJECTIONS PURSUANT TO SECTION 5

OF THE VOTING RIGHTS ACT, NOTING POST-OBJECTION ACTION,

JANUARY 1, 1975, THROUGH JUNE 30, 1981

POST-OBJECTION ACTION CODE:

A. Compliance without litigation or new submission.
B. Litigation - Section 5 enforcement action - U.S.
C. Litigation - Section 5 enforcement action - private.
D. Litigation - Section 5 declaratory relief action.
E. Litigation - private non-Section 5 action mooted change (court altered procedures underlying the Section 5 change).
F. New Submission - no objection.
G. New Submission - objection.
H. Objection withdrawn.
I. Change implemented over the objection--appropriate action being considered.
J. Recent objection--compliance being monitored.

Attachment 1

STATE: ALABAMA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Talladega (Talladega Cty.)	Method of Election (numbered posts)	3-14-75	A
Fairfield (Jefferson Cty.)	Annexation	4-10-75 1/	H
Alabaster (Shelby Cty.)	Six Annexations	7-7-75	I
Bessemer (Jefferson Cty.)	Seven Annexations	9-12-75	A
Phenix City (Russell Cty.)*	Method of Election (staggered terms)	12-12-75	F
State*	Miscellaneous (party nomination date; contested election procedures)	1-16-76	F
Pickens County	Redistricting (Democratic Party Executive Committee)	2-18-76	E
Bibb and Hale Counties*	Consolidation of Political Units (two counties combined into one judicial district)	2-20-76	A
Mobile (Mobile Cty.)*	Form of Government (mayor-council); Miscellaneous (specified duties for commissioners)	3-2-76	A
Pickens Cty. Board of Education*	Methods of Election (at-large; numbered posts)	3-5-76	E

* State enactment
1/ Withdrawn 10-8-76.

STATE: ALABAMA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Chambers County*	Method of Election (at-large nomination of county commissioners)	3-8-76	F
Chambers County Board of Education*	Methods of Election (at-large; numbered posts; majority vote	3-10-76	F
Hale County*	Method of Election (at-large)	4-23-76	B, D
Sheffield (Colbert Cty.)	Methods of Election (at-large; residency requirement; numbered posts)	7-6-76	B
Hale County*	Method of Election (at-large)	12-29-76	B, D
Alabaster (Shelby Cty.)	Two Annexations	12-27-77	I
Barbour County*	Methods of Election (at-large; residency requirements)	7-28-78	B,
Hayneville (Lowndes Cty.)	Incorporation	12-29-78	F
Clarke County*	Method of Election (at-large)	2-26-79	B
Pleasant Grove (Jefferson Cty.)*	Annexation	2-1-80	D
Selma (Dallas Cty.)	Redistricting	4-28-80	C
Sumter County*	Voting Methods (voting machines); Polling Place Changes; Method of Election	10-17-80	J

STATE: ARIZONA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Cochise County College Board	Redistricting	2-3-75	I
Apache Cty. High School District No. 90	Special Election; Bilingual Procedures (oral publicity)	10-4-76	D
Apache Cty. High School District No. 90	Special Election; Polling Place; Bilingual Procedures (oral publicity)	3-20-80 1/	H

1/ Withdrawn 5-7-80.

STATE: CALIFORNIA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Yuba County	Bilingual Procedures (English-only ballots; candidate qualification statement)	5-26-76 1/	H
Monterey County	Bilingual Procedures (oral assistance; English-only ballots; English-only petitions and information materials)	3-4-77	F

1/ Withdrawn 5-19-78 upon receipt of revisions to procedures.

STATE: GEORGIA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Stockbridge (Henry Cty.)	Voter Registration Procedure	5-9-75	A
Newnan (Coweta Cty.)*	Method of Election (staggered terms)	6-10-75	A
Macon (Bibb Cty.)	Redistricting	6-13-75	F
Madison (Morgan Cty.)*	Methods of Election (majority vote; numbered posts)	7-29-75	E
Rome (Floyd Cty.)	Sixty Annexations	8-1-75 1/	H, D
Harris Cty. Board of Education*	Methods of Election (at-large; residency requirements)	8-18-75	A
Covington (Newton Cty.)*	Methods of Election (majority vote; numbered posts; staggered terms)	8-26-75	C, F
Ocilla (Irwin Cty.)	Candidate Qualifications (filing fees for aldermen and mayor)	10-7-75	A
Rome (Floyd Cty.) Board of Commissioners and Board of Education	Methods of Election (majority vote, numbered posts, staggered terms for County Commission and Board of of Education; residency requirement for Board of Education)	10-20-75	D
Crawfordville* (Talliaferro Cty.)	Form of Government (new charter); Methods of Election (majority vote; numbered posts)	10-20-75	A
Athens (Clarke Cty.)*	Method of Election (majority vote)	10-23-75	I

1/ Partial withdrawal (47) 10-20-75; final withdrawal (13) 8-5-80 upon change in electoral system.

STATE: GEORGIA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Newton Cty. Board of Education*	Methods of Election (at-large; multi-member districts; staggered terms; majority vote; residency requirement)	11-3-75	F
Glynn County*	Methods of Election (majority vote; staggered terms)	11-17-75	D, A
Newton County*	Methods of Election (at-large; multi-member districts; staggered terms; residency requirements)	1-29-76	F
Sharon (Taliaferro Cty.)*	Method of Election (residency posts)	2-10-76	A
Wilkes Cty. Board of Education and Commissioners	Methods of Election (at-large; residency requirements; staggered terms; numbered posts)	6-4-76	D
Social Circle (Walton Cty.)*	Methods of Election (staggered terms; increased term)	6-18-76	A
Long Cty. Board of Education*	Method of Election (residency requirement)	7-16-76	F
Monroe (Walton Cty.)	Two Annexations	10-13-76 1/	H
Rockmart (Polk Cty.)	Methods of Election (at-large; residency requirements)	11-26-76	A
Palmetto (Fulton Cty.)	Method of Election (numbered posts)	4-27-77	A
Bainbridge (Decatur Cty.)	Form of Government; Methods of Election (majority vote; numbered posts)	6-3-77	C

1/ Withdrawn 11-25-77.

STATE: GEORGIA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Charlton County*	Methods of Election (numbered posts; staggered terms)	6-21-77	I
Charlton Cty. Board of Education*	Methods of Election (at-large; residency requirement; numbered posts; staggered terms; majority vote)	6-21-77 1/	D
Moultrie (Colquitt Cty.)*	Method of Election (majority vote)	6-26-77	C
Rockdale County*	Methods of Election (at-large; numbered posts; staggered terms; majority vote)	7-1-77 2/	H
City of Palmetto (Fulton Cty.)*	Method of Election (majority vote)	7-7-77	A
College Park (Fulton Cty.)	Redistricting; Seventeen Annexations	12-9-77 3/	H, F
Terrell Cty. Board of Education*	Methods of Election (at-large; staggered terms; residency districts)	12-16-77	C
Quitman (Brooks Cty.)*	Method of Election (majority vote)	6-16-78	A
Savannah (Chatham Cty.)	Annexation; Methods of Election (at-large; numbered posts)	6-27-78 4/	H
Kingsland (Camden Cty.)	Polling Place	8-4-78	A

1/ Declaratory judgment received 11-1-78.

2/ Withdrawn 9-9-77.

3/ Withdrawn to annexations only 5-22-78.

4/ Withdrawn 10-2-78.

STATE: GEORGIA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Mitchell Cty. Board of Education*	Methods of Election (at-large; numbered posts; majority vote)	9-15-78 1/	H
Lakeland (Lanier Cty.)*	Method of Election (numbered posts)	10-17-78 2/	H
Pike Cty. Board of Education*	Methods of Election (at-large; residency requirement)	3-15-79	C
Henry County*	Methods of Election (at-large; residency requirement; staggered terms)	7-23-79	G
Henry Cty. Board of Education*	Methods of Election (at-large; residency requirement; staggered terms)	7-23-79	C
Statesboro (Bulloch Cty.)	Annexation	12-10-79	A
Alapaha (Berrien Cty.)*	Methods of Election (numbered posts; majority vote); Voter Registration Procedure (dual registration); Candidate Qualification (filing fees)	3-24-80	A
Henry County*	Redistricting; Method of Election (at-large)	5-27-80	C
Dooly County*	Methods of Election (at-large; residency requirement; staggered terms)	7-31-80	C
Statesboro (Bulloch Cty.)	Annexation	8-15-80	A
DeKalb County	Voter Registration Procedure (disallowance of neighborhood voter registration drives)	9-11-80	C
Statesboro (Bulloch Cty.)*	Method of Election (increased terms)	2-2-81 3/	H
Augusta (Richmond Cty.)*	Method of Election (majority vote)	3-2-81	J

1/ Withdrawn 5-2-79.
2/ Withdrawn 2-9-79.
3/ Withdrawn 5-13-81.

STATE: LOUISIANA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Orleans Parish*	Redistricting; Methods of Election (majority vote; numbered post)	8-15-75	F
State*	Method of Election (full slate requirement)	12-15-75	A
Rapides Parish	Redistrictings (police jury; school board)	12-24-75	E
Shreveport (Caddo Parish)	Fifty-one Annexations	3-31-76 1/	H, F
Many (Sabine Parish)	Redistricting	4-13-76	F
Ouachita Parish School Board (Ouachita Parish)*	Miscellaneous (disenfranchising residents of the City of Monroe from Ouachita Parish school board elections)	3-7-77	A
New Orleans (Orleans Parish)	Polling Place	5-12-78	A
Pointe Coupee Parish	Polling Place	8-11-78	G
Pointe Coupee Parish	Polling Place	10-20-78 2/	H
Baton Rouge (East Baton Rouge Parish)	Form of Government (creation of Division "C" judgeship)	2-7-80 3/	H
Baton Rouge (East Baton Rouge Parish)*	Form of Government (creation of Division "D" judgeship)	2-7-80 4/	H

1/ Withdrawn 5-12-78 upon annexation of minority area and change in electoral system.

2/ Withdrawn 4-17-79.

3/ Withdrawn 10-10-80.

4/ Withdrawn 10-10-80.

STATE: MISSISSIPPI

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Grenada (Grenada Cty.)	Annexation	2-5-75 1/	G, F, H
Bolivar Cty. Board of Education	Method of Election (at-large)	4-8-75	B
Grenada (Grenada Cty.)	Six Annexations	5-2-75 2/	F, H
State*	Candidate Qualification Requirements	6-4-75	A
State*	Redistrictings (House; Senate)	6-10-75	B, C, ?
Warren County	Polling Place	6-16-75	A
Lowndes Cty. Board of Education	Method of Election (at-large)	6-23-75	A
Clay County	Two Polling Places	7-25-75	F
Kemper, Warren, Marshall, Benton and Leake Counties*	Method of Election (at-large school boards in five counties)	12-1-75	A
Grenada County	Redistricting	3-30-76	B, C
State*	Method of Election (open primary)	8-23-76	G
Kosciusko (Attala Cty.)	Methods of Election (at-large; numbered posts; majority vote)	9-20-76	A
Vicksburg (Warren Cty.)	Annexation	10-1-76 3/	F, H
Jackson (Hinds Cty.)	Annexation	12-3-76 4/	H

1/ Withdrawn 6-25-76 upon annexation of minority area.

2/ Withdrawn 6-25-76 upon annexation of minority area.

3/ Withdrawn 4-28-77 upon submission of single-member district plan.

4/ Withdrawn 7-22-81.

STATE: MISSISSIPPI

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Tunica County	Method of Election (elective to appointive Superintendent of Education)	1-24-77	A
Lexington (Holmes Cty.)	Method of Election (at-large)	2-25-77	A
Lee County	Reregistration	4-4-77 1/	H
Canton (Madison Cty.)	Redistricting	4-13-77	E, F
Coahoma, DeSoto, Holmes, Humphreys, Leflore, Quitman, Sunflower, Tallahatchie, Tunica, and Yazoo Counties*	Methods of Election (school boards in 10 counties by at-large; residency districts)	7-8-77	A
Sidon (Leflore Cty.)	Annexation	10-28-77	A
State*	Redistricting (House; Senate)	7-31-78 2/	D
Walthall County	Redistricting	11-27-78	A
State*	Methods of Election (open primary; majority vote)	6-11-79	D
State*	Miscellaneous (three changes restricting assistance to illiterates)	7-6-79	A
Tunica County	Voting Methods (paper ballots to voting machines)	10-16-79	F
Louisville Municipal Separate School District (Winston Cty.)	Method of Election (majority vote)	3-28-80	A
Orange Grove (Harrison Cty.)	Incorporation	6-2-80	A
Batesville (Panola Cty.)	Redistricting	9-29-80	J
Mendenhall (Simpson Cty.)	Annexation	1-12-81	J
State*	Voter Purge; Miscellaneous (campaigning restriction near a polling place)	4-6-81	J
Indianola (Sunflower Cty.)	1965 Annexation	6-1-81	C
Holly Springs (Marshall Cty.)	Redistricting	6-9-81	J

1/ Withdrawn 8-19-77 upon submission of modifications to procedures.

2/ Declaratory judgment received 6-1-79.

STATE: NEW YORK

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
New York Cty. Democratic Party	Consolidation of Political Units (leadership areas in 62nd State Assembly District)	9-3-75	A

STATE: NORTH CAROLINA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Lumberton City School District (Robeson Cty.)*	Three Annexations	6-2-75	C
Craven Cty. Board of Education*	Redistricting; Method of Election	9-23-75 1/	H
Robeson Cty. Board of Education*	Methods of Election (at-large; staggered terms); Miscellaneous	12-29-75	F
Williamston (Martin Cty.)	Method of Election (staggered terms)	2-4-77	A
Rocky Mount (Edgecombe Cty.)	Thirty-six Annexations	12-9-77 2/	H
Pasquotank County	Polling Place	1-3-78	A
Laurinburg (Scotland Cty.)	Methods of Election (majority vote; separation of electoral contests)	12-12-78	A
Reidsville (Rockingham Cty.)	Method of Election (staggered terms)	8-3-79	A
Greenville (Pitt Cty.)	Method of Election (majority vote)	4-7-80	A
New Bern (Craven Cty.)	Two Annexations	9-29-80	J

1/ Withdrawn 3-15-76.

2/ Withdrawn 6-9-78.

STATE: SOUTH CAROLINA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Charleston (Charleston Cty.)	Three Redistricting plans	2-18-75	F
Clarendon County*	Method of Election (elected to appointed county supervisor)	9-8-75	A
Bamberg County*	Redistricting	7-30-76 1/	H
Seneca (Oconee Cty.)	Method of Election (majority vote)	9-13-76	A
Sumter Cty. School District No. 2*	Methods of Election (at-large; residency requirement; appointment of one trustee)	10-1-76	A
Horry County*	Method of Election (at-large)	11-12-76	C, D, F, H
Cameron (Calhoun Cty.)	Method of Election (majority vote)	11-15-76	F
Bishopville (Lee Cty.)	Methods of Election (majority vote; staggered terms)	11-26-76	F
Sumter County*	Method of Election (at-large)	12-3-76	B, C
Calhoun Falls (Abbeville Cty.)	Method of Election (majority vote)	12-13-76	A
Pageland (Chesterfield Cty.)	Method of Election (majority vote)	3-22-77	A
Hollywood (Charleston Cty.)	Method of Election (majority vote)	6-3-77	A
Charleston County	Form of Government	6-14-77	B, C

1/ Withdrawn 11-1-76.

STATE: SOUTH CAROLINA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Bamberg County School Board	Method of Election (at-large)	8-31-77	A
Chester County*	Methods of Election (at-large; residency districts for county council and county school board)	10-28-77	B
Allendale County*	Method of Election (at-large seats for board of education)	11-25-77	F
Colleton County	Form of Government; Method of Election (at-large)	2-6-78	B, G
Mullins (Marion Cty.)	Method of Election (majority vote)	6-30-78	A
Marion (Marion Cty.)	Method of Election (majority vote)	7-5-78	I
Nichols (Marion Cty.)	Method of Election (majority vote)	9-19-78	A
Lancaster (Lancaster Cty.)	Method of Election (majority vote)	9-19-78	A
St. George (Dorchester Cty.)	Method of Election (staggered terms)	10-2-78	I
Rock Hill (York Cty.)	Method of Election (majority vote)	12-12-78	A
Edgefield County	Form of Government	2-8-79	C
Colleton County*	Miscellaneous (transfer of power to unprecleared authority)	9-4-79	I
Chester County*	Miscellaneous (postponement of elections by single-member districts)	9-26-79	B
Colleton County	Method of Election (at-large)	12-19-79	B

STATE: SOUTH DAKOTA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Todd County	Redistricting	10-26-78	B
Todd and Shannon Counties*	Division of Political Units	10-22-79	B, D

STATE: TEXAS

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
State*	Voter Purge	12-10-75	F
State*	Redistricting (state House - Jefferson and Tarrant Counties)	1-23-76	E
State*	Redistricting (state House - Nueces County)	1-26-76	E
State*	Method of Election (convention requirement)	1-26-76	A
Tyler (Smith Cty.)	Redistricting	2-25-76	E
Harris County	Miscellaneous (composition of precinct polling staff)	3-5-76 1/	E
Forney ISD** (Kaufman Cty.)	Methods of Election (numbered posts: majority vote)	3-9-76	A
Texas City (Galveston Cty.)	Method of Election (numbered posts)	3-10-76	A
Monahans (Ward Cty.)	Method of Election (numbered posts)	3-11-76 2/	E
Dumas ISD (Moore Cty.)	Methods of Election (numbered posts; majority vote)	3-12-76	A
Orange Grove ISD (Jim Wells Cty.)	Method of Election (numbered posts)	3-19-76	A
Pecos (Reeves Cty.)	Method of Election (numbered posts)	3-23-76	A
Chapel Hill ISD (Smith Cty.)	Method of Election (majority vote)	3-24-76	E
Luling (Caldwell Cty.)	Method of Election (numbered posts)	3-29-76	F

** Independent School District

1/ Withdrawn 3-11-76.

2/ Withdrawn 6-1-76.

STATE: TEXAS

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Lockney ISD (Floyd Cty.)	Methods of Election (numbered posts; majority vote)	3-30-76	A
San Antonio (Bexar Cty.)	Thirteen Annexations	4-2-76 1/	F, H
Victoria County	Consolidation of two school districts	4-2-76 2/	H
Frio County	Redistricting	4-16-76	C, F
Liberty ISD (Liberty Cty.)	Methods of Election (numbered posts; majority vote)	4-19-76	G
Pettus ISD (Bee Cty.)	Method of Election (numbered posts)	5-5-76	A
Lockhart (Caldwell Cty.)	Method of Election (majority vote)	5-11-76	A
Rusk (Cherokee Cty.)	Method of Election (numbered posts)	5-17-76	F
Trinity ISD (Trinity Cty.)	Method of Election (numbered posts)	5-21-76	B
Hereford ISD (Castro, Deaf Smith & Parmer Ctys.)	Methods of Election (numbered posts; majority vote)	5-24-76	D, G
Crockett County	Redistricting	7-7-76	B, C
Waller County	Redistrictings (commissioner, justice, and election precincts)	7-27-76	E
Marshall ISD (Harrison Cty.)	Method of Election (majority vote)	7-29-76	A
Hawkins ISD (Wood Cty.)	Methods of Election (numbered posts; majority vote)	8-2-76	B

1/ Withdrawn 1-24-77 upon change in electoral system.

2/ Withdrawn 8-16-76.

STATE: TEXAS

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Midland ISD (Midland Cty.)	Methods of Election (numbered posts; majority vote)	8-6-76 1/	B, H
Uvalde County	Redistricting	10-13-76	B, C
Woodville (Tyler Cty.)	Method of Election (numbered posts)	11-12-76	I
Westheimer ISD (Harris Cty.)	Special Election (creation of a new school district)	1-13-77	C, B
South Park ISD (Jefferson Cty.)	Method of Election (numbered posts)	2-25-77	A
Somerset ISD* (Atascosa and Bexar Ctys.)	Method of Election (numbered posts)	3-17-77	B
Ralls ISD (Crosby Cty.)	Method of Election (majority vote)	3-22-77	A
Lufkin ISD (Angelina Cty.)	Methods of Election (numbered posts; majority vote)	3-24-77	A
Raymondville ISD (Willacy Cty.)	Polling Place	3-25-77	A
Comal ISD (Comal Cty.)	Method of Election (numbered posts)	4-4-77	G
Prairie Lea ISD (Caldwell Cty.)	Methods of Election (numbered posts; majority vote)	4-11-77 2/	H
Fort Bend County	Polling places	5-2-77	F
Clute (Brazoria Cty.)	Method of Election (majority vote)	6-17-77	A

1/ Withdrawn 11-13-78.

2/ Withdrawn 3-3-78.

STATE: TEXAS

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Caldwell County	Redistricting	8-1-77	I
Lamar CISD*** (Fort Bend Cty.)	Bilingual Procedure (oral assistance)	10-3-77 1/	H
Fort Worth ISD (Tarrant Cty.)*	Miscellaneous (delayed implementation of single-member districts)	1-16-78 2/	H
Harris County	Polling Place	3-1-78	A
Waller CISD (Waller Cty.)	Miscellaneous (election date)	3-10-78	F
Nueces County	Redistricting	3-24-78	F
Southwest Texas Junior College District (Uvalde and Zavala Ctys.)	Polling Place	3-24-78	A
Port Arthur (Jefferson Cty.)	Consolidation of Political Units; Redistricting (residency districts)	3-24-78	D, B
Neches ISD (Anderson Cty.)	Methods of Election (numbered posts; majority vote)	4-7-78	A
Medina County	Redistricting	4-14-78	G, D, F
Edwards County	Redistricting	4-26-78	C

*** Consolidated Independent School District

1/ Withdrawn 11-15-77 after modifications to program procedures.

2/ Withdrawn 2-17-78 upon satisfactory implementation.

STATE: TEXAS

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Aransas County	Redistricting	4-28-78	A
Corsicana ISD (Navarro Cty.)	Methods of Election (numbered posts; majority vote)	4-28-78	F
Harris Cty. School District	Miscellaneous (election date)	5-1-78	B
Brazos County	Redistricting	6-30-78 1/	H
Jim Wells County	Redistricting	7-3-78	C, G
Ector County ISD (Ector Cty.)	Methods of Election (numbered posts, majority vote)	7-7-78	F
Harrison County	Redistricting	8-8-78	E
Terrell County	Redistricting	12-27-78	C, F
Hereford ISD (Castro, Deaf Smith, & Parmer Ctys.)	Method of Election (numbered posts)	1-16-79	A
Beeville (Bee Cty.)	Method of Election (single-member district plan)	2-1-79	A
Alto ISD (Cherokee Cty.)	Methods of Election (numbered posts; majority vote)	5-11-79	A
Houston (Harris Cty.)	Fourteen Annexations	6-11-79 2/	B, C, F, H

1/ Withdrawn 11-15-78.

2/ Withdrawn 9-21-79 upon change in electoral system.

STATE: TEXAS

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
San Antonio (Bexar Cty.)	Polling Place	8-17-79 1/	H
Comal ISD (Comal Cty.)	Method of Election (numbered posts)	9-12-79	A
Lockhart (Caldwell Cty.)	Methods of Election (numbered posts; staggered terms)	9-14-79	D
Taylor (Williamson Cty.)	Polling Place	12-3-79	A
Atascosa County	Redistrictings (commissioners, justice, and constable districts)	12-7-79	C
Medina County	Redistricting	12-11-79	C, D, F
Port Arthur (Jefferson Cty.)	Special Election (referendum)	12-21-79	G
La Porte (Harris Cty.)	Form of Government; Redistricting	12-27-79	F
Port Arthur (Jefferson Cty.)	Special Election (referendum)	1-15-80	A
Harris Cty. School District	Miscellaneous (election date)	1-17-80	B
Comal County	Redistricting; Voting Precincts	2-1-80 2/	H
Jim Wells County	Redistricting	2-1-80	G
Cochran County	Redistricting; Voting Precincts; Polling Places	2-25-80	C, F
Port Arthur (Jefferson Cty.)	Annexation	3-5-80	D, B

1/ Withdrawn 3-24-80.

2/ Withdrawn 9-22-80.

STATE: TEXAS

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Nacogdoches ISD (Nacogdoches Cty.)	Redistricting	4-3-80	F
Corpus Christi ISD (Nueces Cty.)	Redistricting	4-16-80	F
Port Arthur (Jefferson Cty.)	Special Election (referendum)	7-23-80	B, D
Cleveland ISD (Liberty Cty.)	Method of Election (numbered posts)	8-8-80	A
Jim Wells County	Redistricting	8-12-80	A
Victoria (Victoria Cty.)	Four Annexations	9-3-80 1/	F, H
Wilson County	Polling Place	11-4-80	A
West Orange-Cove CISD (Orange Cty.)	Methods of Election (numbered posts; majority vote)	2-9-81	J
Liberty ISD (Liberty County)	Method of Election (numbered posts)	3-16-81	J
Burleson Cty. Hospital District (Burleson Cty.)	Polling Place	6-5-81	J

1/ Withdrawn 3-13-81 upon change in electoral system.

STATE: VIRGINIA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION	POST-OBJECTION ACTION
Lynchburg	Annexation	7-14-75 1/	F, H
Gretna (Pittsylvania Cty.)*	Method of Election (staggered terms)	9-27-79	A
Hopewell	Form of Government (decrease in number of council members)	10-27-80	J

1/ Withdrawn 4-12-76 upon change in electoral system.

LISTING OF OBJECTIONS PURSUANT TO SECTION 5

OF THE VOTING RIGHTS ACT, 1965 - DECEMBER 31, 1974

Attachment 2

STATE: ALABAMA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
State *	Candidate Qualification	8-1-69
Baldwin, Dale, Morgan, Montgomery, Mobile, Lee, Escambia, and Russell Counties *	Miscellaneous (poll list signature requirement in eight counties)	11-13-69
Mobile County *	Miscellaneous (poll list signature requirement)	12-16-69
State *	Voter Registration Procedure	3-13-70
Birmingham (Jefferson Cty.) *	Method of Election (numbered posts)	7-9-71
Talladega (Talladega Cty.) *	Method of Election (anti-single shot)	7-23-71
Autauga County *	Method of Election (at-large for school board and county commissioners; majority vote for commissioners)	3-20-72
State	Miscellaneous (two changes restricting assistance to illiterates)	4-4-72

* State enactment

STATE: ALABAMA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
State *	Candidate Qualifications (two changes in signature requirements)	8-14-72
State *	Method of Election (elective to appointive justices of the peace)	12-26-72
Mobile (Mobile Cty.) *	Candidate Qualification	8-3-73
Pike County *	Methods of Election (majority vote; residency requirement; staggered terms)	8-12-74
Sumter Cty. Democratic* Executive Committee	Method of Election (anti-single shot)	10-29-74

STATE: ARIZONA

JURISDICTION AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
State *	Miscellaneous (method of circulating recall petitions)	10-9-73 1/

1/ Withdrawn 3-15-74.

STATE: GEORGIA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
State *	Miscellaneous (assistance to illiterates)	6-19-68
State *	Miscellaneous (assistance to illiterates; literacy test; poll officials' qualifications)	7-11-68
State *	Voter Registration Procedure (literacy test for registration)	8-30-68
Webster County	Consolidation of Political Units (consolidation for special election)	12-12-68
Clarke Cty. Board of Education *	Form of Government (reduction in size of board); Redistricting	8-6-71
Bibb County Board of Education	Method of Election (at-large)	8-24-71
Hinesville (Liberty Cty.)	Methods of Election (majority vote; numbered posts)	10-1-71
Newnan (Coweta Cty.)	Method of Election (numbered posts)	10-13-71
Albany (Dougherty Cty.)	Polling Place	11-16-71 1/
Conyers (Rockdale Cty.) *	Methods of Election (term of office; numbered posts; majority vote)	12-2-71
Waynesboro (Burke Cty.) *	Method of Election (majority vote)	1-7-72
Albany (Dougherty Cty.) *	Miscellaneous (dates of elections)	1-7-72 1/
Jonesboro (Clayton Cty.)	Methods of Election (numbered posts; majority vote)	2-1-72
State *	Redistricting (congressional)	2-11-72
State *	Redistricting (state Senate and House)	3-3-72
State *	Redistricting (state House)	3-24-72

1/ Withdrawn 12-7-73 upon modification of plan.

STATE: GEORGIA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
Newnan (Coweta Cty.)	Methods of Election (numbered posts; majority vote)	7-31-72
Twiggs County *	Methods of Election (at-large; residency requirement)	8-7-72
Thomasville School Board * (Thomas Cty.)	Methods of Election (numbered posts; majority vote)	8-24-72
Atlanta (Fulton Cty.)	Polling Places; Voting Precincts	11-27-72
Harris County	Method of Election (numbered posts)	12-5-72 1/
Cochran (Bleckley Cty.)	Method of Election (majority vote)	1-29-73
Cuthbert (Randolph Cty.)	Method of Election (numbered posts)	4-9-73
Ocilla (Irwin Cty.) *	Method of Election (majority vote); Candidate Qualification (filing fee increase)	6-22-73
Sumter Cty. School Board	Methods of Election (at-large; residency requirement; majority vote)	7-13-73
Hogansville * (Troup Cty.)	Methods of Election (majority vote for city council; majority vote and numbered posts for school board)	8-2-73
Perry (Houston Cty.)	Method of Election (majority vote)	8-14-73
Thomasville Board of Education (Thomas Cty.) *	Methods of Election (majority vote; residency requirement)	8-27-73

1/ Withdrawn 3-30-73 because change was in effect in 1964, prior to coverage of the Act.

STATE: GEORGIA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
Albany (Dougherty Cty.)	Candidate Qualification (filing fees)	12-7-73
East Dublin (Laurens Cty.) *	Methods of Election (numbered posts; staggered terms)	3-4-74
Ft. Valley (Peach Cty.) *	Methods of Election (numbered posts; majority vote)	5-13-74
Fulton County *	Methods of Election (numbered posts; majority vote)	5-22-74 1/
Clarke Cty. Board of Education *	Methods of Election (at-large; majority vote; numbered posts)	5-30-74
Louisville (Jefferson Cty.) *	Methods of Election (numbered posts; majority vote)	6-4-74
East Dublin (Laurens Cty.)	Miscellaneous (postponement of election)	6-19-74
Meriwether County *	Method of Election (at-large)	7-31-74 2/
Jones County	Polling Place	8-12-74
Thomson (McDuffie Cty.)	Methods of Election (numbered posts; staggered terms; majority vote)	9-3-74
Wadley (Jefferson Cty.) *	Methods of Election (numbered posts; majority vote)	10-30-74

1/ Withdrawn 7-2-76.

2/ Withdrawn 10-25-74.

STATE: LOUISIANA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
State *	Method of Election (elimination of a minimum of 5 districts for parish police juries and school boards)	6-26-69 1/
St. Helena Parish	Method of Election (at-large police jury)	5-14-71
Jefferson Davis Parish	Method of Election (multi-member police jury districts)	6-4-71
Assumption Parish	Redistricting (school board)	7-8-71
Franklin Parish	Method of Election (at-large police jury)	7-8-71
St. Charles Parish	Method of Election (at-large police jury)	7-22-71
Jefferson Davis Parish	Redistricting (school board)	7-23-71
Ascension Parish	Redistricting (police jury); Method of Election (multi-member districts)	7-23-71
Bossier Parish	Redistricting (school board)	7-30-71
DeSoto Parish	Method of Election (at-large police jury)	8-6-71
East Baton Rouge Parish	Form of Government (parish council expansion)	8-6-71 2/
Webster Parish	Redistricting (police jury)	8-6-71 3/

1/ Withdrawn with respect to school boards 4-14-72, upon subsequent state action.

2/ Withdrawn 10-1-71.

3/ Withdrawn 9-14-71.

STATE: LOUISIANA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
Pointe Coupee Parish	Redistricting (police jury)	8-9-71
State	Redistrictings (House; Senate)	8-20-71
Natchitoches Parish	Redistricting (school board)	9-20-71
East Feliciana Parish	Method of Election (at-large police jury)	9-20-71
St. Helena Parish	Method of Election (at-large police jury)	10-8-71
Caddo Parish	Redistricting (school board)	10-8-71
St. James Parish	Redistricting (police jury)	11-2-71
East Feliciana Parish	Redistricting (police jury)	12-28-71
St. Mary Parish	Redistricting (school board)	1-12-72
St. Helena Parish	Method of Election (staggered terms for school board)	3-17-72
Ascension Parish	Redistricting (school board); Method of Election (multi-member districts)	4-20-72
East Feliciana Parish	Method of Election (multi-member school board districts)	4-22-72
Pointe Coupee Parish	Redistricting (school board)	6-7-72
Lafayette Parish	Redistricting (school board); Method of Election (multi-member districts)	6-16-72
Lake Providence (East Carroll Parish)	Annexation	12-1-72

STATE: LOUISIANA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
St. Landry Parish	Polling Place	12-6-72
New Orleans (Orleans Parish)	Redistricting (city council)	1-15-73
State *	Method of Election (numbered posts for all multi-member districts)	4-20-73
Newellton (Tensas Parish)	Annexation	6-12-73
New Orleans (Orleans Parish)	Redistricting (city council)	7-9-73 1/
New Orleans (Orleans Parish)	Polling Place	7-17-73
Bogalusa (Washington Parish)	Method of Election (residency requirement)	10-29-73
Evangeline Parish	Redistrictings (school board and police jury); Method of Election (multi-member districts)	6-25-74
Evangeline Parish	Redistrictings (school board and police jury); Method of Election (multi-member districts)	7-26-74

1/ Declaratory judgment received 7-29-76.

STATE: MISSISSIPPI

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
State *	Method of Election (elected to appointed county superintendents of education)	5-21-69
State *	Method of Election (at-large); Two Candidate Qualifications	5-21-69
State *	Miscellaneous (repeal of assistance to illiterates)	5-26-69
Copiah County	Redistricting	3-5-70
Leake County	Redistricting	1-8-71
Warren County	Redistricting	4-4-71
Marion County	Redistricting	5-25-71
Jasper County	Reregistration	6-8-71
Grenada County	Methods of Election (at-large; numbered posts)	6-30-71
Attala County	Methods of Election (numbered posts; at-large)	6-30-71
Hinds County	Redistricting	7-14-71
Lafayette County	Polling Place	7-16-71
Yazoo County	Redistricting	7-19-71
State	Methods of Election (at-large; numbered posts for county boards of supervisors)	9-10-71
Tate County	Redistricting	12-3-71

STATE: MISSISSIPPI

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
Marshall County	Voting Precincts; Polling Places	12-3-71
Grenada (Grenada Cty.)	Methods of Election (at-large; numbered posts; majority vote)	3-20-72
Tate County	Redistricting	11-28-72
Indianola (Sunflower Cty.)	Method of Election (numbered posts)	4-20-73
McComb (Pike Cty.)	Annexation	5-30-73 1/
Hollandale (Washington Cty.)	Method of Election (elected to appointed city clerk)	7-9-73
Grenada County	Redistricting	8-9-73
Pearl (Rankin Cty.)	Incorporation	11-21-73 2/
Shaw (Bolivar Cty.)	Method of Election (elected to appointed city clerk)	11-21-73
State *	Method of Election (open primary)	4-26-74
Attala County	Redistricting	9-3-74

1/ Withdrawn 9-12-73.

2/ Withdrawn 1-3-74 upon modification of annexation policies.

STATE: NEW YORK

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
Kings, Bronx and New York Counties *	Redistrictings (congressional; state Senate; state Assembly)	4-1-74
New York (New York Cty.)	Three Polling Places	9-3-74 1/

1/ Withdrawn 11-14-77 upon addition of other polling places.

STATE: NORTH CAROLINA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
Plymouth (Washington Cty.) *	Method of Election (at-large)	3-17-71
State *	Voter Registration Procedure (literacy test for registration)	3-18-71
State *	Voter Registration Procedure (literacy test for registration)	4-20-71
State *	Method of Election (numbered posts in state House and Senate)	7-30-71
State *	Method of Election (numbered posts in state House and Senate)	9-27-71

STATE: SOUTH CAROLINA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OBJECTION
State *	Redistricting (Senate); Methods of Election (multi-member districts; numbered posts; majority vote)	3-6-72
State *	Method of Election (numbered posts for all multi-member offices)	6-30-72
Aiken County *	Method of Election (numbered posts)	8-25-72
Saluda County *	Special Election (school district referendum)	11-13-72
State *	Redistricting (Senate); Methods of Election (multi-member districts; numbered posts; majority vote)	7-20-73
Darlington (Darlington Cty.)	Methods of Election (majority vote; residency requirement)	8-17-73
Clarendon County *	Method of Election (abolishment of elected superintendent of education)	11-13-73
State *	Redistricting (House); Methods of Election (multi-member districts; numbered posts; majority vote)	2-14-74
Dorchester County *	Method of Election (at-large)	4-22-74
McClellanville (Charleston Cty.)	Two Annexations	5-6-74 1/
Walterboro (Colleton Cty.)	Method of Election (residency requirement)	5-24-74

1/ Withdrawn 10-21-74 upon modification of annexation policies.

STATE: SOUTH CAROLINA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
Lancaster Cty. Board of Education*	Methods of Election (staggered terms; numbered posts); Form of Government (decreased board size)	7-30-74
Calhoun Cty. Board of Education *	Methods of Election (at-large, staggered terms)	8-7-74
Bishopville (Lee Cty.) *	Method of Election (staggered terms)	9-3-74
Bamberg County *	Methods of Election (at-large; residency requirement; staggered terms)	9-3-74 9-20-74
Charleston (Charleston Cty.)	Seven Annexations	9-20-74 1/
Charleston County *	Methods of Election (at-large; multi-member districts; numbered posts; majority vote; residency requirement)	9-24-74
Lancaster County *	Methods of Election (numbered posts; majority vote; residency requirement; staggered terms)	10-1-74
York County	Method of Election (at-large)	11-12-74

1/ Withdrawn 5-13-75 upon adoption of single-member districts.

STATE: VIRGINIA

JURISDICTIONS AFFECTED	TYPES OF CHANGES OBJECTED TO	DATE OF OBJECTION
Portsmouth	Method of Election (40% plurality requirement)	6-26-70
Richmond	Annexation	5-7-71
State *	Redistrictings (House multi-member districts; Senate districts)	5-7-71 1/
Caroline County	Voting Precincts	9-10-71
Mecklenburg County	Redistricting (multi-member districts)	12-7-71
Petersburg	Annexation	2-22-72
Martinsville	Voting Precincts	4-19-74
Newport News	Polling Place	5-17-74
Suffolk	Polling Place	9-23-74 2/

1/ Withdrawn re House plan 6-10-71.

2/ Withdrawn 10-24-74.

Attachment 4

SUMMARIES OF VOTING RIGHTS LAWSUITS
IN WHICH THE UNITED STATES PARTICIPATED, 1975-81

INDEX OF CASES

CASE TITLE: United States v. Jernigan

CIVIL ACTION NO.: 1741-N (M.D. Ala.) D.J. NO.: 166-2-11

POLITICAL JURISDICTION: Montgomery County, Alabama
(City, County, State)

DATE FILED: August 3, 1961

ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____
§5 Enforcement (Failure to Submit)	____	Other	X
§5 Enforcement (Noncompliance with objection)	____		

FACTS (Very brief): Montgomery County was under permanent injunction and continuous supervision of court regarding registration practices and procedures. On July 27, 1976 county petitioned court to remove from the voting rolls names of certain voters, including some who were federally registered, because they no longer lived in county.

ISSUE(S): Whether procedures outlined in Section 7(d) of Act and regulations implementing Section 7 should be followed before names of any federally registered voters are deleted.

STATUS:

DISTRICT COURT DECISION:

Date: August 9, 1976 Holding: Petition denied. Petitioner must follow the procedures as outlined in the Act and regulations.

APPELLATE COURT DECISION:

Date: ____ Holding: ____

None

CASE TITLE: Stewart v. Waller

CIVIL ACTION NO.: EC 73-42S(N.D. Miss.) D.J. NO.: 166-40-80

POLITICAL JURISDICTION: *City of West Point, Mississippi
(City, County, State)

DATE FILED: May 3, 1973

ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus ____ Intervenor X

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	X	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): The city's special charter (1892) required the 5 selectmen to be elected at-large.

ISSUE(S): Whether at-large method of election diluted black voting strength in violation of 14th and 15th Amendments.

STATUS:

DISTRICT COURT DECISION:

Date: December 29, 1976 Holding: District Court permanently enjoined at-large method of election as unconstitutional under the 14th and 15th Amendments; 4/25/77 - court denied city's motion to modify 12/29/76 order and ordered the city to adopt private plaintiff's 5 single-member ward plan to be implemented in 1977 and a court ordered election schedule.

APPELLATE COURT DECISION:

Date: None Holding:

*This summary pertains only to the City of West Point aspects of the Stewart v. Waller litigation.

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VOTING SECTION CASE SUMMARY SHEET

ASE TITLE: Beer v. United States
IVIL ACTION NO.: 1495-73 (D.D.C.) D.J. NO.: 166-012-3
OLITICAL JURISDICTION: New Orleans, Louisiana
(City, County, State)

ATE FILED: July 25, 1973
OLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

YPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1975/Other		§5 Preclearance	X

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____

ACTS (Very brief): In 1972 and 1973, the city submitted two different redistricting plans (Plan I and Plan II) for its seven member city council for preclearance. The Attorney General interposed an objection to both plans. Council members subsequently filed a declaratory judgment action, seeking preclearance of Plan II.

SSUE(S): Whether plaintiff had satisfied burden of demonstrating that the redistricting plan for city council had neither the purpose nor effect of denying or abridging the right to vote on the basis of race or color.

TATUS:
ISTRICT COURT DECISION:

DATE: March 15, 1974 Holding: The city's Plan II has the effect of impermissibly diluting and minimizing the voting strength of the black electorate. In light of the finding of discriminatory effect, the court did not determine whether Plan II was adopted with a discriminatory purpose. Beer v. United States, 374 F. Supp. 363 (D. D.C. 1974)

PPELLATE COURT DECISION:

DATE: March 30, 1976 Holding: The Supreme Court vacated the district court's decision, finding that the city's Plan II did not have the effect of diluting or abridging the right to vote on the basis of race. Plan II did not produce a retrogression in the exercise of the franchise by blacks. The Court vacated for further findings. Beer v. United States, 425 U.S. 130 (1976). On remand, the District Court entered a declaratory judgment that Plan II had neither a racially discriminatory purpose nor effect. Order dated July 29, 1976.

CASE NAME: United States v. Board of Supervisors of Warren County, Mississipp
CIVIL ACTION NO.: 73-W-48N (S.D. Miss.) D.J. NO.: 166-41-70
POLITICAL JURISDICTION: Warren County, Mississippi
(City, County, State)

DATE FILED: October 31, 1973

ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): In November 1970, the county submitted a county redistricting plan to the Attorney General for preclearance. Attorney General interposed an objection. The county held an election pursuant to the redistricting plan, despite its failure to obtain preclearance.

ISSUE(S): 1) Whether the Attorney General interposed a timely objection. 2) Whether a Section 5 court can order the implementation of a legislative redistricting plan, if the plan has not been precleared.

STATUS:

DISTRICT COURT DECISION:

Date: July 1, 1975 Holding: The Attorney General interposed a timely objection. The Court also held that it had the authority to order the implementation of a new redistricting plan which the county had submitted pursuant to its order, even though the Attorney General had objected to the plan under Section 5.

APPELLATE COURT DECISION:

Date: February 22, 1977 Holding: The Supreme Court reversed The district court exceeded its authority in a Section 5 enforcement action. The court could only determine whether the county could be enjoined from holding elections under the unprecleared 1970 redistricting plan. Court did not have authority to order new plan into effect. 429 U.S. 642 (1977).

CASE TITLE: Ferguson v. Winn Parish Police Jury, et al.
CIVIL ACTION NO. 18-748-A (W.D. La.) D.J. NO.: 166-33-41
POLITICAL JURISDICTION: Winn Parish School District, Louisiana
(City, County, State)

DATE FILED November 29, 1973
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus ____ Intervenor X

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): United States participation was ordered after remand from a 5th Circuit finding of malapportionment of districts for election of school board. 528 F.2d 592. The court appointed a special master. Plaintiffs and U.S. objected to the master's plan as dilutive of black voting strength. Adjacent districts were 100% and 49% black, respectively.

ISSUE(S): Whether the plan satisfied 14th and 15th Amendment requirements.

STATUS: On remand for consideration of 15th Amendment claims.
DISTRICT COURT DECISION:

DATE: October 12, 1976 Holding: As the Court of Appeals had already found that certain of the districts were within acceptable population norms and hence did not violate the 14th Amendment, these districts had been "approved" and the District Court was not free to alter them. Court did not address 15th Amendment challenges.

APPELLATE COURT DECISION:
DATE: February 6, 1979 Holding: District Court erred in failing to consider plaintiff's claims that the districts diluted minority voting strength. The District Court was not bound by the findings of the earlier appellate decision that the urban districts were not malapportioned; court should consider separate challenge to those districts. Remanded. 589 F.2d 173 (5th Cir. 1979).

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: United States v. Dallas County, Alabama
CIVIL ACTION NO.: 74-459-H (S.D. Ala.) D.J. NO.: 166-3-6
POLITICAL JURISDICTION: Dallas County, Alabama
(City, County, State)

DATE FILED: November 1, 1974
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	X	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____.

FACTS (Very brief): Dallas County probate judge disqualified five candidates of the predominately black NDPA party for failure to comply with procedural requirements of the Alabama Corrupt Practices Act. In previous years, election officials had qualified candidates of other political parties, despite similar noncompliance with the Act.

ISSUE(S): Whether election officials applied more stringent candidate qualification standards and procedures to NDPA candidates in violation of 42 U.S.C. 1971 and Section 2 of the Voting Rights Act.

STATUS:
DISTRICT COURT DECISION:

DATE: October 11, 1975 Holding: The court entered a consent decree enjoining county officials to apply the same qualification requirements for NDPA candidates as those applied for candidates of other political parties.

APPELLATE COURT DECISION:
DATE: ____ Holding: None

CASE TITLE: Reppa v. Bainbridge

CIVIL ACTION NO.: H-74-309 (D. Ind.) D.J. NO.: 166-26-2

POLITICAL JURISDICTION: Lake County, Indiana
(City, County, State)

DATE FILED: December 4, 1974

ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	X	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Plaintiffs, elected in a two-member Indiana House of Representatives district, alleged that the decision of House to conduct a recount, pursuant to an unsuctessful candidate's petition, was discriminatory. Plaintiff unsuccessfully requested the Attorney General to institute a voting rights suit on their behalf.

ISSUE(S): Whether the Attorney General's exercise of prosecutorial discretion in enforcing voting rights laws is subject to judicial review.

STATUS:

DISTRICT COURT DECISION:

Date: February 10, 1975 Holding: Voluntarily dismissed by plaintiffs after they found that the recount was conducted fairly by the state legislature.

APPELLATE COURT DECISION:

Date: ____ Holding: None

CASE TITLE: United States v. Grenada County Board of Supervisors
CIVIL ACTION NO.: WC-75-44-K (N.D. Miss.) D.J. NO.: 166-41-81
POLITICAL JURISDICTION: Grenada County, Mississippi
(City, County, State)

DATE FILED: May 14, 1975
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)	X		

FACTS (Very brief): County was attempting to use a 1972 redistricting plan to which an objection had been interposed.

ISSUE(S): Whether the county was implementing a change affecting voting which had not received Section 5 preclearance.

STATUS:
DISTRICT COURT DECISION:
DATE: May 30, 1975 Holding: Injunction granted. Court entered order restraining the conduct of the 1975 election under the 1972 plan. As a result of the injunction the county initiated attempts to obtain preclearance which resulted in the filing of Whitfield v. United States, (D.D.C.) and the subsequent preclearance of a plan by the Attorney General.

APPELLATE COURT DECISION:
DATE: Holding:

CASE NAME: United States v. Bolivar County, Mississippi
CIVIL ACTION NO.: DC75-52-K (N.D. Miss.) D.J. NO.: 166-40-32
POLITICAL JURISDICTION: Bolivar County, Mississippi
(City, County, State)
DATE FILED: June 4, 1975
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____
TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X
FACTS (Very Brief): 1972 Act changed method of electing the Board of Education from single-member districts to at-large. Elections pursuant to the Act held in 1972 and 1974, without preclearance. In March 1975, the county submitted the Act to the Attorney General for preclearance, and on April 8, 1975 the Attorney General interposed an objection.
ISSUE(S): Whether county may implement Act, providing for at-large elections for school board members, without obtaining preclearance under Section 5.
STATUS:
DISTRICT COURT DECISION:
Date: March 29, 1976 Holding: Court ordered that the Act was not legally enforceable because the county had failed to obtain preclearance under Section 5. The Court ordered a special election to be held in November 1976, pursuant to the single-member district plan.
APPELLATE COURT DECISION:
Date: ____ Holding: ____
None.

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Connor v. Finch
CIVIL ACTION NO.: 3830 (A) (S.D. Miss.) D.J. NO.: 166-0-2
POLITICAL JURISDICTION: State of Mississippi
(City, County, State)
DATE FILED: June 11, 1975 (intervention)
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus ____ Intervenor X

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	5th Preclearance	____
§5 Enforcement (Failure to Submit)		X	
§5 Enforcement (Noncompliance with objection)		____	

FACTS (Very brief): Beginning in 1965 when state's legislative districts for bicameral legislature were set aside on Fourteenth Amendment grounds, district court endeavored to reapportion 52 member Senate and 122 member House in compliance with Fourteenth and Fifteenth Amendments and the Voting Rights Act.

ISSUE(S): Appropriate legal standard to apply under Constitution and Section 5 in remedying the malapportionment of the Mississippi legislature.

STATUS:
DISTRICT COURT DECISION:
DATE: April 13, 1979 Holding: Final order of 3-judge court apportioned the Mississippi Senate into 52 single-member districts, and the House into 122 single-member districts, 469 F. Supp. 693 (1979). Court ordered plan was superceded by the legislative plan precleared in State of Mississippi v. United States, 490 F. Supp. 569 (D.D.C. 1979).

APPELLATE COURT DECISION:
DATE: ____ Holding: Prior to the final order of April 13, 1979, several orders of the district court had been reversed by the Supreme Court for failure to apply appropriate legal standards. Connor v. Waller, 421 U.S. 656 (1975); Connor v. Finch, 431 U.S. 407 (1977); Connor v. Williams, 404 U.S. 549 (1972); Connor v. Coleman, 425 U.S. 675 (1976); Connor v. Coleman, 440 U.S. 612 (1979).

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Harris v. Levi

CIVIL ACTION NO.: 75-1159 (D.D.C.) D.J. NO.: 166-19-33

POLITICAL JURISDICTION: Meriwether County, Georgia
(City, County, State)

DATE FILED: July 18, 1975

ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____
§5 Enforcement (Failure to Submit)	_____	Other	X
§5 Enforcement (Noncompliance with objection)	_____		

FACTS (Very brief): On 7-31-74 the Attorney General objected to the change from single-member district to at-large election of the board of commissioners. On 10-25-74 the objection was withdrawn.

ISSUE(S): Whether Attorney General followed required procedure in withdrawing objection; whether judicial review of decision to withdraw objection is available

STATUS:

DISTRICT COURT DECISION:

Date: June 4, 1976 Holding: The Attorney General followed the proper procedures in withdrawing the objection. Judicial review of the merits of the Attorney General's determination is not available. 416 F. Supp. 211 (D.D.C. 1976).

APPELLATE COURT DECISION:

Date: August 8, 1977 Holding: No. 76-1823, D.C. Cir. Action of Attorney General under §5 is not reviewable. 562 F.2d 772 (D.C. Cir. 1977).

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: United States v. Board of Supervisors of Forrest County
CIVIL ACTION NO.: H75-71(c) (S.D. Miss.) D.J. NO.: 166-41-112
POLITICAL JURISDICTION: Forrest County, Mississippi
(City, County, State)

DATE FILED: July 21, 1975
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): In 1973, district court in Fairley v. Patterson, 493 F.2d 598 (5th Cir. 1974) ordered redistricting plan to remedy malapportionment. United States alleged that plan is subject to Section 5 review and that it dilutes minority voting strength.

ISSUE(S): Whether apportionment plan is subject to Section 5 review; whether plan dilutes black voting strength.

STATUS:

DISTRICT COURT DECISION:

Date: December 31, 1975 & July 6, 1979 Holding: Plan is "court ordered" and thus not subject to preclearance; plan did not dilute black voting strength. On remand district court held that redistricting plan after revised by county does not dilute black voting strength and will ensure effective black participation.

APPELLATE COURT DECISION:

Date: April 24, 1978 Holding: Plan ordered in Fairley did not require §5 preclearance; vacated district court's decision regarding dilution and remanded for consideration in light of Kirksey v. Board of Supervisors of Hinds County, 554 F.2d 139 (1977). Reported at 571 F.2d 951.

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CASE TITLE: United States v. City of Albany
CIVIL ACTION NO.: 75-63314-Alb (M.D. Ga.) D.J. NO.: 166-19M-13
POLITICAL JURISDICTION: Albany, Dougherty County, Georgia
(City, County, State)
DATE FILED: July 21, 1975
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution	X	26th Amendment	
1973/Other		§5 Preclearance	

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection)

FACTS (Very brief): Change in method of electing city council from single-member districts to at-large, shortly after the "white primary" declared unconstitutional and blacks allowed to vote in the Democratic party primary, the only real city election contest. No black has ever been elected under the at-large system.

ISSUE(S): Whether the at-large electoral system violates the Fourteenth or Fifteenth Amendment, or Section 2.

STATUS:
DISTRICT COURT DECISION:
DATE: August 24, 1977 and August 16, 1975 Holding: On remand court held that at-large system violated the Fourteenth and Fifteenth Amendment. Ordered a remedial system of 6 single-member districts and 1 at-large seat. Paige v. Gray, 437 F. Supp. 137 (M.D. Ga. 1977). Earlier decision reported at 399 F. Supp. 459.

APPELLATE COURT DECISION:
DATE: September 15, 1976 Holding: Vacated 1975 decision of district court and remanded for determinations of whether the at large system dilutes minority voting strength in violation of the Fourteenth Amendment and whether provision of 2 at-large seats in the remedial plan conformed to Supreme Court preference for single-member districts in court-ordered reapportionment. Reported at 538 F. 2d 1108 (5th Cir. 1976).

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: United States v. Democratic Executive Committee of Noxubee Count
CIVIL ACTION NO.: E75-39(N)(S.D. Miss.) D.J. NO.: 166-41-86
POLITICAL JURISDICTION: Noxubee County, Mississippi (City, County, State)

DATE FILED: July 29, 1975
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	X	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): The county executive committee refused to qualify a black teacher as a candidate for county office. Although she had met the requirements for state certification, she had not, at the qualification deadline, received the necessary state notice of qualification.

ISSUE(S): Whether the executive committee had denied qualification based on teacher's race despite having the necessary qualifications.

STATUS:

DISTRICT COURT DECISION:

Date: August 11, 1975 Holding: The court denied motion for an order requiring the committee to place the black candidate on the ballot; later denied motion to amend complaint to allege the voting irregularities which occurred at the general election. Case dismissed without prejudice.

APPELLATE COURT DECISION:

Date: None. Holding:

CASE TITLE: Briscoe v. Levi

CIVIL ACTION NO.: 75-1464 (D.D.C.) D.J. NO.: 166-16-10

POLITICAL JURISDICTION: State of Texas
(City, County, State)

DATE FILED: September 8, 1975

ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____
§5 Enforcement (Failure to Submit)	_____	Other	X
§5 Enforcement (Noncompliance with objection)	_____		

FACTS (Very brief): The State of Texas challenged the determinations of the Attorney General and the Director of the Census Bureau which resulted in the State's coverage under Section 4 of the Voting Rights Act, as amended, in 1975.

ISSUE(S): Whether a federal court is precluded under the Act from reviewing coverage determinations made by the Director of the Census and the Attorney General.

STATUS:

DISTRICT COURT DECISION:

Date: September 12, 1975 Holding: Summary judgment for defendants. Preclusion of judicial review of determinations of coverage under Section 4 is not absolute; a court could consider whether executive officials had correctly interpreted the Act. Court rejected claim that coverage was improper.

APPELLATE COURT DECISION:

Date: April 19, 1976 Holding: 535 F. 2d 1259 - Affirmed - Court held that District Court correctly defined its scope of review. Supreme Court : 432 U.S. 404 (1977). Judicial review of determinations made by Attorney General and Director of Census is "absolutely barred." Only remedy available to State for incorrect determination is a Section 4 bailout action.

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VOTING RIGHTS ACT - SUMMARY SHEET

CASE TITLE: Kirksey v. Board of Supervisors of Hinds County, Mississippi
CIVIL ACTION NO.: 377-0075(N)(S.D. Miss.) D.J. NO.: 166-41-47
POLITICAL JURISDICTION: Hinds County, Mississippi (City, County, State)
DATE FILED: July 27, 1971
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus ____ X (on appeal)(9/24/75) Intervenor ____
TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): In 1969, Hinds County reapportioned itself into single-member districts. Plaintiffs challenged the reapportionment on the grounds that: it had not been precleared under Section 5; it unconstitutionally diluted black voting strength; and it was malapportioned in terms of one person, one-vote requirements.

ISSUE(S): Whether 1969 plan of reapportionment dilutes minority voting strength in violation of the constitution. (Plaintiffs moved to dismiss their Section 5 enforcement action in July 1972)

STATUS:

DISTRICT COURT DECISION:

Date: April 25, 1975 Holding: Initially, the district court approved a reapportionment plan for the Hinds County Board of Supervisors (402 F. Supp. 658), finding that it satisfied the one-person, one-vote requirement - and did not dilute black voting strength, under White v. Regester standards.

APPELLATE COURT DECISION:

Date: March 31, 1977 Holding: Reversed 554 F.2d 139 (5th Cir. 1977) (en banc) cert. denied 434 U.S. 968 (1977). The approved plan did not remedy the lingering effects of past discrimination. The court of appeals found that the plan fragmented the geographically concentrated minority community and thereby tends to dilute minority voting strength.

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Chinese for Affirmative Action v. Leguennes
CIVIL ACTION NO.: C 75-211 LHB (N.D.Cal.) J. NO.: 166-li-7
POLITICAL JURISDICTION: San Francisco, California
(City, County, State)

DATE FILED: October 21, 1975
ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus X (on appeal) (7/21/77) Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	X	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): City's 1975 multi-lingual election plan used English-only registration affidavits and voting machines equipped with English-only ballots and required Chinese-Spanish registered voters needing oral or written language assistance in voting to respond to a notice of inquiry.

ISSUE(S): 1) Whether city's election plan complied with §203 requirements 2) whether §203 guidelines (28 C.F.R. §55.1 et seq.) violated §203 provisions.

STATUS:

DISTRICT COURT DECISION:

Date: January 9, 1976 Holding: District court dismissed the action without prejudice to all defendants on the grounds that the action was premature and that there was no indication that the defendants had acted in other than good faith.

APPELLATE COURT DECISION:

Date: August 23, 1977 Holding: Court of Appeals (9th Cir.) vacated the district court's decision and remanded the case for a determination of the sufficiency of the city's current compliance with the bilingual requirements of §203 (580 F.2d 1006 (9th Cir. 1978); on remand, judgment was entered for the defendants on May 30, 1980 in accordance with court's order dismissing the action for lack of prosecution.

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: State of Maine v. United States
CIVIL ACTION NO.: 75-2125 (D.D.C.) D.J. NO.: 166-34-1
POLITICAL JURISDICTION: 19 Municipalities in Maine
(City, County, State)

DATE FILED: November 25, 1975
ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	X
§203 Enforcement	____	Bailout (§203)	X
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Pursuant to determinations by the Attorney General and the Bureau of the Census, 18 Maine municipalities became covered jurisdictions under §4 in 1974. In 1975, the Bureau of Census determined that an additional municipality was subject to the bilingual election requirements of §203.

ISSUE(S): 1) Whether, during the past 17 years the municipalities had used an English literacy requirement with a discriminatory purpose or effect.

STATUS:
DISTRICT COURT DECISION:

DATE: September 17, 1976; July 5, 1977 Holding: First order granted partial summary judgment with the consent of the United States to the 18 municipalities bailing out under §4. Second order dismissed by stipulation the §203 bailout claim.

APPELLATE COURT DECISION:
DATE: ____ Holding: ____
None.

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Yuba County v. United States
CIVIL ACTION NO.: 75-2170 (D.D.C.) D.J. NO.: 166-11E-3
POLITICAL JURISDICTION: Yuba County, California
(City, County, State)

DATE FILED: December 30, 1975
ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout ($4)	X
§203 Enforcement	_____	Bailout ($203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): On March 27, 1971 notice was published in the Federal Register that the Attorney General and the Director of the Census had determined that Yuba County, Ca. is a covered jurisdiction under §4 of the Voting Rights Act.

ISSUE(S): Whether, during the past 17 years, the county had used an English literacy requirement with a discriminatory purpose or effect.

STATUS:

DISTRICT COURT DECISION:
Date: May 25, 1976 Holding: County was granted a voluntary dismissal without prejudice.

APPELLATE COURT DECISION:
Date: _____ Holding: None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Jackson v. New Hampshire, Vermont, Massachusetts, Rhode Island, West Virginia, Arkansas and United States

CIVIL ACTION NO.: 75-2168 (D.D.C.) D.J. NO.: 166-47-2

POLITICAL JURISDICTION: States of New Hampshire, Vermont, Massachusetts, Rhode Island, West Virginia, and Arkansas
(City, County, State)

DATE FILED: December 30, 1975

ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____
		Other	X

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Plaintiff requested that his name be placed on the ballot of all 50 states as a candidate for President of the United States. He then received notice of the filing fees and/or petition requirement to qualify. He challenged these requirements as a violation of the Twenty-Fourth Amendment.

ISSUE(S): Whether candidate filing fees and petition requirements constitute a "poll tax" within the meaning of the Twenty-Fourth Amendment and/or Section 10(b) of the Voting Rights Act.

STATUS:

DISTRICT COURT DECISION:

Date: February 11, 1976 Holding: District entered an order dismissing the case against the United States for failure to state a claim upon which relief can be granted. Court also dismissed the complaint against the individual states for lack of jurisdiction.

APPELLATE COURT DECISION:

Date: ____ Holding: None

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: East Carroll Parish School Board v. Marshall
CIVIL ACTION NO.: 73-861 (W.D. La.) D.J. NO.:
POLITICAL JURISDICTION: East Carroll Parish, Louisiana
(City, County, State)

DATE FILED: January 7, 1976 (amicus)
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Plaintiffs challenged the single-member district system used to elect representatives to the East Carroll Parish Police Jury and School Board on the grounds that the single-member districts were malapportioned and violated the one man one vote principle of the Fourteenth Amendment.

ISSUE(S): 1) Whether the single-member districts were malapportioned in violation of the Fourteenth Amendment and 2) whether any violation should be remedied by an at-large plan or a properly apportioned single-member district plan.

STATUS:
DISTRICT COURT DECISION:

DATE: December 2, 1968 Holding: The district court found that the parish's single member districts were malapportioned. The court ordered at-large plan as a remedy. Sub nom Zimmer v. McKeithen, C.A. No. 13927 W.D. La.)

APPELLATE COURT DECISION:
DATE: September 12, 1973 Holding: 1) Panel of 5th Circuit affirmed the district court. Zimmer v. McKeithen, 467 F.2d 1381 (1972): 2) On rehearing en banc, the Circuit reversed the lower court holding that the at-large plan unconstitutionally dilutes black voting strength, 485 F.2d 1297; 3) the Supreme Court affirmed without approving the constitutional standard applied - held that when courts must fashion plan, single-member districts should be used absent unusual circumstances. Court ordered plans are not subject to Section 5 review. 424 U.S. 636 (1976).

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Glynn County, Georgia v. United States
CIVIL ACTION NO.: 76-0028 (D.D.C.) D.J. NO.: 166-20-46
POLITICAL JURISDICTION: Glynn County, Georgia
(City, County, State)

DATE FILED: January 7, 1976
ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): Method of electing the commission was altered by establishing new residency districts; elections were held without preclearance. Attorney General interposed an objection on November 17, 1975.

ISSUE(S): Whether plaintiff could satisfy burden of demonstrating that the voting change had neither the purpose nor effect of denying or abridging the right to vote on the basis of race.

STATUS:
DISTRICT COURT DECISION:
DATE: July 7, 1976 Holding: Plaintiff voluntarily dismissed the action without prejudice. The proposed election scheme was repealed, by the passage of an act providing for the election of seven commissioners, five from single-member districts and two at-large. The Attorney General precleared the new plan.

APPELLATE COURT DECISION:
DATE: _____ Holding: _____
None.

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: State of New Mexico v. United States
CIVIL ACTION NO.: 76-0067 (D.D.C.) D.J. NO.: 166-49-2
POLITICAL JURISDICTION: Curry, McKinley and Otero Counties, New Mexico (City, County, State)
DATE FILED: January 12, 1976
ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____
TYPE OF CASE:
§202 Enforcement: ____ Bailout (§4) X
§203 Enforcement ____ Bailout (§203) ____
1973/Dilution ____ 26th Amendment ____
1973/Other ____ §5 Preclearance ____
§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____
FACTS (Very brief): Curry, McKinley and Otero Counties had conducted English-only elections for 10 years prior to filing this bail-out action. Counties seek to bailout from Section 4 coverage.

ISSUE(S): Whether English-only elections had been used during the 10 years preceding the filing of the action for purpose or with the effect of denying/abridging the right to vote of language minorities.
STATUS:
DISTRICT COURT DECISION:
Date: July 30, 1976 Holding: Following plaintiff's motion for entry of a consent judgment, a single district judge entered an order which found, inter alia, that no test or device had been used during the prescribed period in contravention of the statute; the court also retained jurisdiction of the action for 5 years.

APPELLATE COURT DECISION:
Date: ____ Holding: None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Norris v. Oressette
CIVIL ACTION NO.: 75-1998 (D.S.C.) D.J. NO.: 166-12-3
POLITICAL JURISDICTION: State of South Carolina
(City, County, State)
DATE FILED: November 6, 1975
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (January 28, 1976) Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): In Section 5 review, the Attorney General deferred to the District Court decision in Twiggs v. West, No. 71-1186 (D.S.C.) aff'd, 413 U.S. 901 (1973) and did not object to the South Carolina Senate Reapportionment Plan. Following Harper v. Levi, 520 F. 2d 53 (D.C. Cir. 1975), (deferral inappropriate) a Section 5 objection was interposed.

ISSUE(S): Whether the objection interposed after the statutory 60 day period had expired was timely.

STATUS:
DISTRICT COURT DECISION:
DATE: September 12, 1976 Holding: The objection was untimely. The Attorney General's original decision not to object was not subject to judicial reivew; therefore it was irrelevant that this decision was made pursuant to a mistaken deference to a district court decision. 425 F. Supp. 331.

APPELLATE COURT DECISION:
DATE: June 20, 1977 Holding: Affirmed. Congress allowed for Section 5 review by the Attorney General to provide covered jurisdictions with an expeditious alternative to declaratory judgment actions under Section 5. Since judicial review of the Attorney General's actions would unavoidably extend the review period, it is necessarily precluded. The failure to object within 60 days constitutes preclearance. 432 U.S. 491 (1977)

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Hechinger v. Martin
CIVIL ACTION NO.: 74-1666 (D.D.C.) D.J. NO.: 166-16-12
POLITICAL JURISDICTION: Washington, D. C.
(City, County, State)

DATE FILED: January 28, 1976
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____
§5 Enforcement (Failure to Submit)		Other	X
§5 Enforcement (Noncompliance with objection)	____		

FACTS (Very brief): Affiliated members of political parties challenged the provisions of the D.C. Home Rule Act of 1973 which prohibited more than three members (including the Chairperson) from serving at large on the D.C. Council who are affiliated with the same political party. Under this plan, no party may hold more than 11 of the 13 seats on the Council.

ISSUE(S): Whether the pertinent portions of Section 401 of the D.C. Home Rule Act limiting the number of at large council seats that may be held by one political party violate the First and Fifth Amendments.

STATUS:
DISTRICT COURT DECISION:

DATE: March 24, 1976 Holding: The three judge court concluded that Congress' interest in facilitating some representation of political minorities on the D.C. City Council is a sufficiently important interest to justify the Act. The Court said the minority representation device did not abridge the plaintiffs' rights. 411 F. Supp. 650 (D.D.C. 1976)

APPELLATE COURT DECISION:
DATE: January 1977 Holding: Summarily affirmed, 429 U.S. 1030 (1977)

ASE TITLE: Graves v. Barnes
IVIL ACTION NO.: A-71-CA-142 (W.D. Tex.) D.J. NO.:
OLITICAL JURISDICTION: State of Texas
(City, County, State)
ATE FILED: October 22, 1971
OLE OF U. S.: Plaintiff ___ Defendant ___
Amicus X (2/3/76) Intervenor ___

YPE OF CASE:

§202 Enforcement	___	Bailout (§4)	___
§203 Enforcement	___	Bailout (§203)	___
1973/Dilution	___	26th Amendment	___
1973/Other	___	§5 Preclearance	___
§5 Enforcement (Failure to Submit)	___	14th Amendment	X
§5 Enforcement (Noncompliance with objection)	___		

ACTS (Very brief): The Texas State Redistricting Board devised a plan dividing the 50 member house among 79 single-member districts and 11 multi-member districts, prompting four different lawsuits, all of which were eventually consolidated.

SSUE(S): Whether the plan satisfies one person, one vote standard and whether the plan as it relates to Dallas and Bexar Counties unconstitutionally dilutes voting strength of black and Mexican-American voters.

TATUS:
ISTRICT COURT DECISION:
DATE: January 28, 1972 Holding: Plan violates one person, one vote standard, and dilutes the voting strength of black voters in Dallas County and Mexican American voters in Bexar County, in violation of Fourteenth Amendment. 343 F. Supp. 704 On remand from Supreme Court, court ordered a single-member district plan into effect because the remedy devised by the legislature was the subject of a Section 5 objection. 408 F. Supp. 1050

PPELLATE COURT DECISION:
DATE: June 18, 1973 Holding: Plan does not violate one person one vote standard; but multi-member legislative districts cancel out or minimize voting strength of minority voters in Dallas and Bexar Counties. Multi-member district plan does not allow minority voters a fair opportunity to participate in the political process and elect candidates of their choice to office. Sub nom. White v. Regester, 412 U.S. 755 (1973).

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Town of Sorrento Municipal Dem. Comm. v. Reine
CIVIL ACTION NO.: 73-120 (M.D. La.) U.S. NO.: 166-012-3
POLITICAL JURISDICTION: Sorrento, Ascension Parish, Louisiana
(City, County, State)
DATE FILED: March, 1976 (amicus participation)
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): White plaintiffs filed complaints alleging that elections in Sorrento were held in violation of the Voting Rights Act of 1965 and requested equitable relief. The town had implemented an unprecleared Louisiana Statute requiring numbered posts in all State and local at-large elections.

ISSUE(S): Whether white citizens have standing to challenge a Section 5 violation under the Voting Rights Act.

STATUS:
DISTRICT COURT DECISION:
DATE: April 18, 1975 Holding: The three-judge district court held that the plaintiffs had standing to challenge implementation of unprecleared voting change and that the election held by the Town of Sorrento on March 24, 1973 was in violation of federal law.

APPELLATE COURT DECISION:
DATE: April 26, 1976 Holding: Summarily affirmed by Supreme Court, sub nom. Town of Sorrento v. Reine, 425 U.S. 946 (1976).

VOTING RIGHTS ACT SUMMARY SHEET

CASE TITLE: United States v. Board of Comm. of Bessemer, Alabama
CIVIL ACTION NO.: CA 76-H-470-S (N.D. Ala.) D.J. NO.: 166-1-39
POLITICAL JURISDICTION: City of Bessemer, Alabama (City, County, State)

DATE FILED: April 2, 1976
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) X
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Alabama Act 245, enacted on September 2, 1964, provided that the annexation of the "Greenwood" area would become effective on January 1, 1965 if a majority in the Greenwood area voted in favor of the annexation; favorable referendum held March 30, 1965.

ISSUE(S): (1) Whether the annexation which became effective after November 1, 1964 (Voting Rights Act coverage date) but prior to the enactment of Voting Rights Act was subject to §5 preclearance requirements.

STATUS:

DISTRICT COURT DECISION:

Date: July 17, 1978 Holding: Plaintiff's request for declaratory and injunctive relief denied and complaint dismissed. The annexation was not subject to §5 preclearance on ground that §17 of Voting Rights Act "constitutes a clear and express prohibition" against imposing §5 on annexation which created voting rights prior to enactment of Voting Rights Act.

APPELLATE COURT DECISION:

Date: ____ Holding: None

CASE TITLE: Broussard v. Perez (School Board)
CIVIL ACTION NO.: 76-158 (E.D. La.) D.J. NO.: 166-32-37
POLITICAL JURISDICTION: Plaquemines Parish, Louisiana
(City, County, State)
DATE FILED: January 16, 1976
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (5/23/76) Intervenor ____
TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) X
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Method of election changed from election by district to election at large. When the plan was submitted for Section 5 review, the Attorney General determined that the plan could not be reviewed because the state statute under which the plan was adopted had been the subject of a Section 5 objection.

ISSUE(S): Whether the new election plan had satisfied preclearance requirements of Section 5.

STATUS:

DISTRICT COURT DECISION:
Date: July 6, 1976; July 28, 1976 Holding:
Defendant school board had not made adequate submission of change in method of election to Attorney General for preclearance. October 29, 1979 - Order: School board must redistrict in accordance with Master's 9-single member district plan.

APPELLATE COURT DECISION:
Date: May 12, 1978 Holding: Section 5 submission by school board of change in method of election in 1970 was premature and reapportionment under plan ineffective as school board adopted the at-large system pursuant to a statute to which the Attorney General had interposed an objection.

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Broussard v. Perez (Commission Council)
CIVIL ACTION NO.: 76-158 (B) (E.D. La.) D.J. NO.: 166-32-37
POLITICAL JURISDICTION: Plaquemines Parish, Louisiana
(City, County, State)
DATE FILED: January 16, 1976
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (4/23/76) Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

ACTS (Very brief): Five member, at-large system with residency requirement adopted in 1961; all members of commission (1976) were white; no black ever elected to elective office in Plaquemines, despite significant black population.

ISSUE(S): Whether election system for commission council (five members elected at-large) unconstitutionally dilutes the vote of black citizens in violation of Fourteenth and Fifteenth Amendments.

STATUS: Appeal Pending
DISTRICT COURT DECISION:

DATE: July 19, 1978 Holding: At-large method of electing commission council is unconstitutional under Fourteenth and Fifteenth Amendments by denying black electorate equal access to political process and minimizing voting strength; ordered to submit plan for 5-10 single member districts. Further proceedings stayed pending appeal.

APPELLATE COURT DECISION:
DATE: ____ Holding: ____

Defendants appealed from finding of unconstitutionality. Appeal argued on May 18, 1981.

VOTING LITIGATION CASE SUMMARY SHEET

CASE TITLE: Chinese for Affirmative Action et al. v. Patterson
CIVIL ACTION NO.: C 76-927 LHB (N.D. Cal.) NO.: 166-11-8
POLITICAL JURISDICTION: San Francisco, California
(City, County, State)

DATE FILED: May 6, 1976
ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	X	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): City's multilingual election plan used English-only registration affidavits and voting machines equipped with English-only ballots and required Chinese-Spanish registered voters in 1975 who desired oral or written assistance to respond to city's notice of inquiry.

ISSUE(S): 1) Whether city's election plan satisfied bilingual requirements of §203; 2) whether §203 guidelines (28 C.F.R. §55.1 et seq.) violated §203.

STATUS:

DISTRICT COURT DECISION:
Date: August 27, 1976 Holding: District court dismissed action without prejudice on plaintiffs' motion for voluntary dismissal.

APPELLATE COURT DECISION:
Date: _____ Holding: None

CASE NAME: Parnell v. Rapides Parish School Board
CIVIL ACTION NO.: 76-0364-A(W.D. La.) D.J. NO.: 166-33-70
POLITICAL JURISDICTION: Rapides Parish, Louisiana
(City, County, State)

DATE FILED: April 2, 1976
ROLE OF U. S.: Plaintiff _____ Defendant _____
Amicus X (5/17/76) Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) _____ §1983 Dilution X
§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): Plaintiffs challenged court-ordered reapportionment plan for Rapides Parish Police Jury and School Board, ordered in LeBlanc v. Rapides Parish Police Jury, (W.D. La. 1971). The plan was a mixed single member and multi-member plan. Plaintiffs also challenged the plan on 14th and 15th Amendment grounds.

ISSUE(S): Whether the "LeBlanc" plan satisfied standards for court-ordered plans; whether the "LeBlanc" plan satisfied constitutional requirements of the 14th and 15th Amendments.

STATUS:

DISTRICT COURT DECISION:
Date: September 30, 1976 Holding: 425 F. Supp. 399 (W.D. La. 1976)
LeBlanc plan violated standards that when remedying constitutionally infirm apportionment plan, federal courts must order single-member districts absent unusual circumstances. The plan also diluted minority voting strength. The court ordered the 9-single member district plan approved in Bradas v. Rapides Parish Police Jury, 376 F. Supp. 690.

APPELLATE COURT DECISION:
Date: November 17, 1977 Holding: 563 F.2d 180 (5th Cir. 1977)
affirmed holding that LeBlanc plan was inappropriate judicial remedy and that it diluted black voting strength; 9 single-member district plan upheld; modified the remedy ordered by remanding to district court with order that police jury election be scheduled as soon as reasonably practicable rather than wait for 1980 elections; terms of incumbents to be cut short.

CASE TITLE: Wilkes County v. United States

CIVIL ACTION NO.: 76-1045 (D.D.C.) D.J. NO.: 166-20-47

POLITICAL JURISDICTION: Wilkes County, Georgia
(City, County, State)

DATE FILED: June 14, 1976

ROLE OF U. S.: Plaintiff _____ Defendant x

Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout ($4)	_____
§203 Enforcement	_____	Bailout ($203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	x

§5 Enforcement (Failure to Submit) _____

§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): Wilkes County, Georgia, which is about 50% black, changed from electing its county commission from single member districts to electing it at large. The Attorney General interposed a Section 5 objection to the change.

ISSUE(S): Whether plaintiff had satisfied burden of proving that the at-large electoral system had neither the purpose nor effect of denying or abridging the right to vote on account of race or color.

STATUS:

DISTRICT COURT DECISION:

Date: April 20, 1978 Holding: Declaratory judgment denied. Where no evidence is presented by the plaintiffs beyond conclusory allegations that the adoption of at-large elections was without discriminatory purpose and where blacks would have a greater opportunity for influence under a system of fairly-drawn single member districts; plaintiff has not satisfied its burden of proof. 450 F. Supp. 1171.

APPELLATE COURT DECISION:

Date: December 4, 1978 Holding: Supreme Court summarily affirmed, 439 U.S. 999.

VOTING SECTION CASE SUMMARY SHEET

SE TITLE: Wilkes County School District v. United States
IVIL ACTION NO.: 76-1046 (D.D.C.) D.J. NO.: 166-20-50
OLITICAL JURISDICTION: Wilkes County, Georgia
(City, County, State)

ATE FILED: June 14, 1976
OLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

YPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____

ACTS (Very brief): The School District of Wilkes County, Georgia, which is about 50% black, changed from electing its board from single-member districts to electing it at large. The Attorney General interposed a section 5 objection to the change.

ISSUE(S): Whether plaintiff had satisfied burden of proving that the at-large electoral system had neither the purpose nor effect of denying or abridging the right to vote on account of race or color.

STATUS:
DISTRICT COURT DECISION:
DATE: April 20, 1978 Holding: Declaratory judgment denied. Where no evidence is presented by the plaintiffs beyond conclusory allegations that the adoption of at-large elections was without discriminatory purpose and where blacks would have a greater opportunity for influence under system of fairly-drawn single member districts, plaintiff has not satisfied its burden of proof. 450 F. Supp. 1171.

APPELLATE COURT DECISION:
DATE: December 4, 1978 Holding: Supreme Court summarily affirmed, 439 U.S. 999.

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Simenson v. Bell

CIVIL ACTION NO.: CV-76-59-HG (D. Mont.) D.J. NO.: 166-44-1

POLITICAL JURISDICTION: Roosevelt County, Montana
(City, County, State)

DATE FILED: June 22 1976

ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	X
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Roosevelt County, Montana was determined to be covered under §203 of the Voting Rights Act because of the presence of American Indians, the literacy rate of whom was greater than the national average.

ISSUE(S): Whether the literacy rate of American Indians in Roosevelt County had declined to be equal to or less than the national rate.

STATUS:

DISTRICT COURT DECISION:

Date: January 24, 1978 Holding: Plaintiff has failed to meet statutory burden of showing that the illiteracy rate of the language minority group (Sioux and Assiniboine Indians) has become equal to or less than the national average. Plaintiff's motion for summary judgment denied. Voluntarily dismissed without prejudice 3-17-78.

APPELLATE COURT DECISION:

Date: None Holding:

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ASE TITLE: Choctaw and McCurtain Counties v. United States
IVIL ACTION NO.: 76-1250 (D.D.C.) D.J. NO.: 166-59-1
OLITICAL JURISDICTION: Choctaw and McCurtain Counties, Oklahoma
(City, County, State)
ATE FILED: July 6, 1976
OLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

YPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	X
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____

CTS (Very brief): Counties were covered under 1975 Amendment to Act (Section 4). Prior to coverage counties had used English-only election process and a significant portion of the population is American Indian.

SUE(S): Whether the use of English only elections had the purpose or effect of denying American Indians the right to vote during the past ten years.

TATUS:
STRICT COURT DECISION:
DATE: May 12, 1978 Holding: Discovery demonstrated that plaintiffs were entitled to bailout and thus the United States consented to the bailout judgment. Investigation demonstrated that virtually all of the Indians in the county were fluent in English and thus the English election system did not have discriminatory effect, and was not used with a discriminatory purpose.

PELLATE COURT DECISION:
DATE: _____ Holding: _____

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CASE TITLE: United States v. Hale County Commission

CIVIL ACTION NO.: 76-403-P (S.D. Ala.) D.J. NO.: 166-3-44

POLITICAL JURISDICTION: Hale County, Alabama
(City, County, State)

DATE FILED: July 29,1976

ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	X	§5 Preclearance	____

§5 Enforcement (Failure to Submit) X

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): County changed method of electing commission from single-member districts to at-large. The change, although never precleared, had been implemented. In 1980 the Section 5 complaint was amended to challenge the constitutionality of the previously existing single-member district system.

ISSUE(S): 1) Whether the county is covered under §4 when only the State of Alabama had been designated in the Federal Register; 2) whether the changes in question were the type covered under §5.

STATUS:

DISTRICT COURT DECISION:

Date: ____ Holding: 1) October 18, 1976 - County is subject to the preclearance requirements and the changes at issue must be precleared. 425 F. Supp. 433. 2) September 7, 1978 - Probate Judge held in contempt for attempting to conduct 1978 elections at-large. 3) Single judge court found the previously existing districting plan unconstitutional and ordered county to devise a new plan (acting on 1980 amended complaint).

APPELLATE COURT DECISION:

Date: ____ Holding: ____

Court's ruling of October 18, 1976 - Summary affirmance reported at 430 U.S. 924 (1977).

ASE TITLE: United States v. Board of Commissioners of Sheffield, Alabama
IVIL ACTION NO.: 76-M-1086 NW (N.D. Ala.) D.J. NO.: 166-1-45
OLITICAL JURISDICTION: City of Sheffield, Alabama
(City, County, State)

ATE FILED: August 9, 1976
OLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

YPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)	X		
§5 Enforcement (Noncompliance with objection)			

ACTS (Very brief): City, which had been governed by a 3-member commission, changed to a mayor-council form of government with an at-large election scheme for the council members; Attorney General interposed §5 objection to at-large election feature.

SSUE(S): Whether city could conduct councilmanic elections on at-large basis in light of §5 objection.

TATUS:
ISTRICT COURT DECISION:

DATE: March 31, 1977 Holding: City is not a political subdivision within meaning of §14(c)(2) since city does not conduct voter registration and, for that reason, city is not subject to §5; Attorney General's failure to object to city's referendum on whether to adopt new form of government held as approval of mayor-council form of government.

PPELLATE COURT DECISION:
DATE: March 6, 1978 Holding: Supreme Court reversed decision of district court. The language, structure, history and purpose of the Act support the conclusion that §5 applies to all entities having power over any aspect of the electoral process within covered jurisdictions. Preclearance of referendum did not constitute preclearance of electoral change since only referendum was submitted for preclearance. 435 U.S. 110 (1978).

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CASE TITLE: United States v. East Baton Rouge Parish School Board

CIVIL ACTION NO.: 76-252 (M.D. La.) D.J. NO.: 166-32M-5

POLITICAL JURISDICTION: East Baton Rouge Parish, Louisiana
(City, County, State)

DATE FILED: August 17, 1976

ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): In this 30% black parish, the United States challenged the multimember ward system of electing members of the School Board. Under that system, 7 members were elected at-large from one of the wards and 5 other members were elected at-large from 2 other wards. No black had ever been elected under this system.

ISSUE(S): Whether the multi-member ward system of electing school board members in East Baton Rouge Parish violated the 14th and 15th Amendments, as well as Section 2.

STATUS:

DISTRICT COURT DECISION:

Date: June 6, 1980 Holding: Under the Consent Decree approved by the Court, the School Board would be required to implement a single-member district plan of election beginning in 1980. By 1982 all 12 members of the school board would be elected from single-member districts.

APPELLATE COURT DECISION:

Date: None Holding:

CASE TITLE: Whitfield v. United States

CIVIL ACTION NO.: 76-1636 (D.D.C.) D.J. NO.: 166-40-89

POLITICAL JURISDICTION: Grenada County, Mississippi
(City, County, State)

DATE FILED: September 1, 1976

ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout ($4)	_____
§203 Enforcement	_____	Bailout ($203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) _____

§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): County sought preclearance of a redistricting plan for the election of the board of supervisors. Following the filing of the lawsuit and as a result of negotiations the county adopted a different redistricting plan which was submitted to the Attorney General who did not interpose an objection.

ISSUE(S): Whether the county had met its burden of showing the plan did not have a discriminatory purpose or effect.

STATUS:

DISTRICT COURT DECISION:

Date: March 31, 1978 Holding: Dismissed. Court granted a joint motion for dismissal after the new plan had been precleared by the Attorney General.

APPELLATE COURT DECISION:

Date: _____ Holding: _____

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: United States v. Georgia

CIVIL ACTION NO.: C76-1531A (N.D. Ga.) D.J. NO.: 166-0-6

POLITICAL JURISDICTION: State of Georgia
(City, County, State)

DATE FILED: September 17, 1976

ROLE OF U. S.: Plaintiff x Defendant _____
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) x

§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): The 1964 Georgia Election Code contained provisions requiring numbered posts for all jurisdictions using at-large or multi-member district elections and requiring a majority vote in county office elections; the code provided that these changes would not be effective until 1965.

ISSUE(S): Whether (1) these changes enacted before November 1, 1964, but implemented afterwards are subject to Section 5 preclearance and (2) the changes had been previously submitted for Section 5 review.

STATUS:

DISTRICT COURT DECISION:

Date: September 30, 1977 Holding: The changes subject to Section 5 review, but the changes were deemed submitted and precleared because the state had sent the entire election code to the Attorney General to review any changes, and the Attorney General had not interposed an objection.

APPELLATE COURT DECISION:

Date: June 5, 1978 Holding: Summarily affirmed by the Supreme Court, 436 U.S. 941 (1978).

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: DeHoyas and United States v. Crockett County, Texas
CIVIL ACTION NO.: 6-76-26 (N.D. Tex.) D.J. NO.: 166-73-8
POLITICAL JURISDICTION: Crockett County, Texas
(City, County, State)

DATE FILED: July 27, 1976
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (10/1/76) Intervenor X (12/13/76)
TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): Crockett County adopted a redistricting plan for the county on November 19, 1975, and submitted the plan to the Attorney General for preclearance under Section 5. The Attorney General interposed an objection on July 7, 1976. The County implemented the redistricting plan in elections held in 1976, despite their failure to obtain preclearance.
ISSUE(S): 1) Whether redistricting of Crockett County should be enjoined because the county failed to obtain preclearance of the change under Section 5 of the Voting Rights Act; 2) whether the Attorney General interposed a timely objection to the voting change.
STATUS:
DISTRICT COURT DECISION:
Date: July 26, 1977 Holding: The change was subject to preclearance; Attorney General interposed a timely objection (court upheld method for computing the 60 day period). The court enjoined the implementation of the redistricting plan and ordered new elections pursuant to the old districting plan.

APPELLATE COURT DECISION:
Date: ____ Holding: None

ASE TITLE: United States v. St. Landry Parish School Board
CIVIL ACTION NO.: 76-1062 (W.D. La.) D.J. NO.: 166-33-71
POLITICAL JURISDICTION: St. Landry Parish, Louisiana
(City, County, State)

SUIT FILED: October 6, 1976
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other	X	§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)			

FACTS (Very brief): White candidate organized a vote-buying scheme aimed at black voters in order to defeat his black opponent in a black majority district. Representatives of the white candidate served as poll officials and "assisted" the voters who had sold their votes, to ensure that the votes were "correctly" cast.

ISSUE(S): Whether the vote-buying scheme constitutes a violation of Section 2. Whether the new form of "assistance" constitutes a change within the meaning of Section 5.

STATUS:

DISTRICT COURT DECISION:

DATE: April 12, 1977 Holding: The district court, prior to the convening of the three judge court, dismissed for failure to state a claim. On remand from the Court of Appeals (see below), the defendants consented to the relief requested in the complaint. In addition, each defendant pled guilty to one count of violating 18 U.S.C. 242 and received a one-year suspended sentence.

APPELLATE COURT DECISION:

DATE: August 30, 1979 Holding: Reversed the district court's dismissal of the Section 2 claim. Affirmed dismissal of the Section 5 claim - actions of individual poll commissioners, which deviate from state requirements (and are not authorized) do not constitute a Section 5 change. Single-judge may properly dismiss a claim under Section 5 if claim is insubstantial. Reported at 601 F.2d 859 (5th Cir. 1979).

ASE TITLE: United States v. State of Texas (Waller County)
VIL ACTION NO.: 76-H-1681 (S.D. Tex.) D.J. NO.: 166-74-24
OLITICAL JURISDICTION: Waller County, Texas
(City, County, State)
ATE FILED: October 14, 1976
OLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

YPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	X
1973/Other	X	§5 Preclearance	

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection)

CTS (Very brief): Waller County applied more stringent voter registration requirements to students attending Prairie View A & M College, virtually all of whom were black, than to other residents of the county. Students were required to meet a heavy burden to demonstrate their residency for voter registration purposes.

SSUE(S): Whether the voter registration standards applied to students at Prairie View A & M College violated 42 U.S.C. 1973 or the 14th, 15th or 16th Amendments.

TATUS:
ISTRICT COURT DECISION:
DATE: February 16, 1978 Holding: The application of registration requirements to students which are more stringent than the standards applied to other applicants violates the twenty-sixth Amendment. 445 F. Supp. 1248.

PELLATE COURT DECISION:
DATE: January 15, 1979 Holding: Summarily affirmed by Supreme Court, 439 U.S. 1105.

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: United States v. New York State Board of Elections

CIVIL ACTION NO.: 76-Civ-440 (N.D. N.Y.) D.J. NO.: 166-50-3

POLITICAL JURISDICTION: New York State
(City, County, State)

DATE FILED: October 30, 1976

ROLE OF U. S.: Plaintiff X Defendant _____
Amicus _____ Intervenor _____

TYPE OF CASE: OCVRA/FVAA Enforcement X

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) _____

§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): Due to the late mailing of absentee ballots by New York election officials in both the 1976 and 1980 general elections, a substantial number of overseas voters were unable to return their ballots by the close of the polls on election day, as required by New York law.

ISSUE(S): Whether the late mailing of absentee ballots denies to overseas citizens voting in New York the right to vote, guaranteed by the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act.

STATUS: _____

DISTRICT COURT DECISION:

Date: Nov. 4, 1976 & Nov. 10, 1980 Holding: Consent decree approved in 1976 and preliminary injunction granted in 1980 extending for short period beyond election day the deadline for receipt of absentee ballots for voters protected by the OCVRA (1976) and the OCVRA and FVAA (1980).

APPELLATE COURT DECISION:

Date: _____ Holding: _____

None

ASE TITLE: Frost v. Ouachita Parish School Board
IVIL ACTION NO.: 76-0999-M (W.D. La.) D.J. NO.: 166-33-74
OLITICAL JURISDICTION: Ouachita Parish, Louisiana
(City, County, State)
ATE FILED: November 10, 1976
OLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

YPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____
§5 Enforcement (Failure to Submit)	X		
§5 Enforcement (Noncompliance with objection)	_____		

ACTS (Very brief): The Ouachita Parish School Board adopted a change in method of electing board members. Private plaintiffs sued alleging that the School Board had failed to submit information needed by the Attorney General in reviewing the change under §5. The United States and the Attorney General also were named as defendants. Subsequently, a §5 objection was interposed.

ISSUE(S): Whether relief may be obtained against the United States and the Attorney General when it is alleged that a jurisdiction covered by §5 has failed to submit information necessary for §5 review.

STATUS:

DISTRICT COURT DECISION:

DATE: April 12, 1977 Holding: Claim against the federal defendants dismissed as the complaint alleged no improper action by them.

APPELLATE COURT DECISION:

DATE: _____ Holding: _____

None.

ASE TITLE: City of Rome, Georgia v. Bell
IVIL ACTION NO.: C-76-159R (N.D. Ga.) D.J. NO.: 166-19-34
OLITICAL JURISDICTION: Rome, (Floyd County), Georgia
(City, County, State)

ATE FILED: November 15, 1976
OLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

YPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____
§5 Enforcement (Failure to Submit)	_____	Other	X
§5 Enforcement (Noncompliance with objection)	_____		

\CTS (Very brief): In 1975 and 1976 the Attorney General interposed Section 5 objections to a number of voting changes in Rome. The city sued to compel the retraction of the objections pursuant to the Mandamus and Venue Act of 1962.

;SUE(S): Whether a U.S. District Court outside the District of Columbia has jurisdiction to hear challenges to the Attorney General's substantive and procedural decisions, under Section 5.

:ATUS:
:STRICT COURT DECISION:
DATE: February 24, 1977; July 18, 1977 Holding: The Court lacked subject matter jurisdiction to compel the Attorney General to withdraw objections to voting changes under Section 5.

'PELLATE COURT DECISION:
DATE: _____ Holding: _____
None.

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Cheyenne River Sioux Tribe v. Andrus
CIVIL ACTION NO.: 76-3062 (D.S.D.) D.J. NO.: 180-69-60
POLITICAL JURISDICTION: Cheyenne River Sioux Tribe, South Dakota
(City, County, State)
DATE FILED: November 24, 1976
ROLE OF U. S.: Plaintiff ____ Defendant __X__
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	__X__
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Tribal government sued the Secretary of Interior alleging that its tribal constitution (which limited the right to vote to persons 21 or older) governed the conduct of elections held pursuant to regulations of the Department of the Interior (which allowed 18 year olds to vote in such elections).

ISSUE(S): (1) Whether federal law or tribal law determined the age for secretarial elections (2) Whether the Secretary of the Interior properly determined that the 26th Amendment applies to secretarial elections.

STATUS:
DISTRICT COURT DECISION:

DATE: January 4, 1977 Holding: Tribal law, not federal law, sets the voting age for secretarial elections; the 26th Amendment does not apply to tribal elections; the Secretary of the Interior lacked authority to promulgate a regulation establishing an 18 year old voting age for secretarial elections. 424 F. Supp. 448.

APPELLATE COURT DECISION:
DATE: December 16, 1977 Holding: Reversed: Federal law not tribal law governs secretarial elections; the Secretary of the Interior properly determined that the 26th Amendment governs such elections and accordingly, his regulation establishing an 18 year old voting age is valid. 566 F.2d 1085.

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Garcia v. Uvalde County Commissioners Court
CIVIL ACTION NO.: DR-76-CA-24 (W.D. Tex.) D.J. NO.: 166-76-24
POLITICAL JURISDICTION: Uvalde County, Texas
(City, County, State)

DATE FILED: December 9, 1976

ROLE OF U. S.: Plaintiff _____ Defendant _____
Amicus _____ Intervenor X

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): On March 22, 1976 defendant submitted its 1973 reapportionment plan for Section 5 review. Subsequently the Attorney General made two requests for additional information and on October 13, 1976 interposed an objection under Section 5 to the plan.

ISSUE(S): Whether the Attorney General interposed a timely objection and whether the plan was subject to Section 5 review.

STATUS:

DISTRICT COURT DECISION:
Date: April 20, 1978 Holding: The plan was subject to Section 5 review. Attorney General may make one request for additional information which extends the 60 day period; may not extend the 60 day period with a second request for information.

APPELLATE COURT DECISION:
Date: January 8, 1979 Holding:
Supreme Court summarily affirmed, 439 U.S. 1059

CASE TITLE: McCray v. Hucks
CIVIL ACTION NO.: 76-2876 (D.S.C.) U.S. NO.: 166-67-52
POLITICAL JURISDICTION: Horry County, South Carolina
(City, County, State)

DATE FILED: December 28, 1976
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): Horry County changed from an appointive system of selecting its governing body to an at-large method of election. Upon submission of the change to the Attorney General in 1976, an objection was interposed. This lawsuit was initiated to bring Horry County into compliance with Section 5 of the Voting Rights Act.

ISSUE(S): Whether a jurisdiction that implements an objected-to voting change should be required to file a Section 5 declaratory judgment action in the D.C. Court in an effort to obtain preclearance of that change.

STATUS:
DISTRICT COURT DECISION:

DATE: March 22, 1977 Holding: A jurisdiction that administers a voting change that has been objected to by the Attorney General under Section 5 is required to institute a declaratory judgment action in the D.C. Court in an effort to obtain preclearance of that change.

APPELLATE COURT DECISION:
DATE: ____ Holding: None

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CASE TITLE: United States v. Board of Trustees of the Westheimer I.S.D.
CIVIL ACTION NO.: H-77-121 (S.D. Tex.) D.J. NO.: 166-74-27
POLITICAL JURISDICTION: Houston, Texas

DATE FILED: January 20, 1977
ROLE OF U. S.: Plaintiff __X__ Defendant: _____
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): Defendants implemented a plan for the establishment of a new school district and for the election of board members which failed to receive preclearance under Section 5. The Attorney General had interposed a timely objection.

ISSUE(S): Whether voting changes enacted or administered by the School District are subject to the preclearance requirements of Section 5.

STATUS:
DISTRICT COURT DECISION:
DATE: June 2, 1978 and July 1, 1980 Holding: Section 5 applies to voting changes enacted or administered by school districts in the State of Texas. Election held in violation of Section 5 is void. 494 F. Supp. 738. See Hereford Independent School District V. Bell, 454 F. Supp. 143 (N.D. Tex. 1978).

APPELLATE COURT DECISION:
DATE: February 23, 1981 Holding: Summarily affirmed by Supreme Court, 101 S. Ct. 1335.

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CASE TITLE: Hereford I.S.D. v. Bell
CIVIL ACTION NO.: CA-2-77-14 (N.D. Tex.) D.J. NO.: 166-73-9
POLITICAL JURISDICTION: Deaf Smith, Parmer and Castro Counties, Texas
(City, County, State)
DATE FILED: January 28, 1977
ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____
§5 Enforcement (Failure to Submit)	_____		
§5 Enforcement (Noncompliance with objection)	X		

ACTS (Very brief): The Hereford Independent School District adopted a numbered place and majority vote requirement in September 1974. Objection was interposed on May 24, 1976. Hereford filed action seeking declaration that School District not subject to Section 5 requirements. United States counterclaimed seeking enforcement of §5 objection.

ISSUE(S): Whether voting changes enacted or administered by Texas school districts are subject to Section 5 preclearance.

STATUS:
DISTRICT COURT DECISION:
DATE: June 2, 1978; March 2, 1979 Holding: Case was consolidated with seven others presenting same issue; court held that school district voting changes are subject to Section 5 review and ordered compliance with objections. 454 F. Supp. 143. On March 20, 1979, court set aside elections held in violation of Section 5 and ordered new elections.

APPELLATE COURT DECISION:
DATE: _____ Holding: _____
None.

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Board of County Commissioners of El Paso County, Colorado v. United States

CIVIL ACTION NO.: 77-0185 (D.D.C.) D.J. NO.: 166-13-8

POLITICAL JURISDICTION: El Paso County, Colorado
(City, County, State)

DATE FILED: February 1, 1977

ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	X
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) _____

§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): On July 20, 1976, notice was published in the Federal Register that the Attorney General and the Director of the Census had determined that El Paso County, Colorado is a covered jurisdiction within the meaning of §4 of the Voting Rights Act.

ISSUE(S): Whether, during the past 10 years preceding, the county had used English-only elections, with a discriminatory purpose or effect.

STATUS:

DISTRICT COURT DECISION:

Date: November 8, 1977 Holding: County was granted a voluntary dismissal without prejudice.

APPELLATE COURT DECISION:

Date: _____ Holding: None

CASE TITLE: Hale County Commission v. United States

CIVIL ACTION NO.: 77-0286 (D.D.C.) D.J. NO.: 166-3-43

POLITICAL JURISDICTION: Hale County, Alabama
(City, County, State)

DATE FILED: February 16, 1977

ROLE OF U. S.: Plaintiff _____ Defendant X

Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout ($4)	_____
§203 Enforcement	_____	Bailout ($203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) _____

§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): County sought preclearance of a 1965 change in the method of electing county commissioners from single-member districts to at-large as well as two later (1971 and 1973) changes in the use of residency districts.

ISSUE(S): Whether the county had shown that the change from single-member districts to an at-large method of election had neither a discriminatory purpose nor effect.

STATUS:

DISTRICT COURT DECISION:

Date: September 4, 1980 Holding: Preclearance denied. Court held that the county had failed to show that the change, enacted in 1965, following the enactment of the Voting Rights Act, did not have a discriminatory purpose. The court also determined that the at-large system was retrogressive when compared to the single-member district plan previously in effect. Reported at 496 F. Supp. 1206 (D.D.C. 1980).

APPELLATE COURT DECISION:

Date: _____ Holding: _____

None

CASE TITLE: Gomez v. Galloway

CIVIL ACTION NO.: 76-C-146 (S.D. Tex.) D.J. NO.: 166-74-28

POLITICAL JURISDICTION: Beeville, Bee County, Texas
(City, County, State)

DATE FILED: March 21, 1977 (by U.S.)

ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) X

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Beeville changed its method of election from at-large to single-member districts and failed to complete Section 5 submission.

ISSUE(S): Whether a municipality is subject to the Section 5 preclearance requirement.

STATUS:

DISTRICT COURT DECISION:

Date: June 2, 1978 Holding: Municipalities are subject to the preclearance requirement of §5. Beeville is enjoined from implementing the unprecleared change. Decided sub nom. Hereford Independent School District v. Bell, 454 F. Supp. 143 (N.D. Tex. 1978)

APPELLATE COURT DECISION:

Date: ____ Holding: ____

None

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CASE TITLE: United States v. Board of Trustees of Midland Independent School District

CIVIL ACTION NO.: MO-77-CA-17 (W.D. Tex.) D.J. NO.: 166-76-25

POLITICAL JURISDICTION: Midland County, Texas (City, County, State)

DATE FILED: March 24, 1977

ROLE OF U. S.: Plaintiff X Defendant ____

Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): School district adopted a majority vote requirement and numbered post requirement to be used in trustee elections. A Section 5 objection was interposed but the district did not comply with the objection.

ISSUE(S): Whether voting changes enacted or administered by Texas school districts are subject to the preclearance requirements of Section 5.

STATUS:

DISTRICT COURT DECISION:

Date: June 2, 1978 Holding: Case was consolidated with seven others presenting the same issue. Three-judge court held that Congress intended that all voting changes within a covered state be submitted for Section 5 preclearance, including those changes enacted or implemented by subunits of the state which do not conduct voter registration. 454 F. Supp. 143.

APPELLATE COURT DECISION:

Date: ____ Holding: ____

None.

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: United States v. Hawkins I.S.D.

CIVIL ACTION NO.: 2-77-14-CV-77-A1-C4 (E.D. Tex.) D.J. NO.: 166-75-7

POLITICAL JURISDICTION: Hawkins I.S.D., Wood County, Texas
(City, County, State)

DATE FILED: March 26, 1977

ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): Hawkins I.S.D. sought to implement numbered post requirement to which the Attorney General had objected on August 2, 1976.

ISSUE(S): Whether a school district is subject to the §5 preclearance requirement.

STATUS:

DISTRICT COURT DECISION.

Date: June 2, 1978 September 6, 1978 Holding: School districts are subject to the preclearance requirement of §5. Further use of the numbered post provision was enjoined and a new election was ordered. Decided sub nom. Hereford Independent School District v. Bell, 454 F. Supp. 143 (N.D. Tex. 1978).

APPELLATE COURT DECISION:

Date: ____ Holding: ____

None

CASE TITLE: United States v. Board of Trustees of Trinity I.S.D.
CIVIL ACTION NO.: 6:77-487 (S.D. Tex.) D.J. NO.: 166-74-29
POLITICAL JURISDICTION: Trinity I.S.D, Trinity County, Texas
(City, County, State)

DATE FILED: March 28, 1977
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): The Trinity ISD implemented a numbered post provision which had not satisfied Section 5 preclearance requirements. The Attorney General had objected on May 21, 1976.

ISSUE(S): Whether a school district is subject to the §5 preclearance requirement.

STATUS:

DISTRICT COURT DECISION:
Date: March 28, 1978 Holding: School districts are subject to the preclearance requirement of §5. The district consented to a judgment enjoining it from implementing an unprecleared numbered post provision and requiring it to hold a special election to replace an election held with numbered posts. See Hereford ISD v. Bell, 454 F. Supp. 143 (N.D. Tex. 1979).

APPELLATE COURT DECISION:
Date: None Holding:

CASE TITLE: United States v. Board of Trustees of Chapel Hill Independent School District
CIVIL ACTION NO. 2-77-14-TY-77-137 (E.D. Tex.) D.J. NO.: 166-75-8
POLITICAL JURISDICTION: Smith County, Texas (City, County, State)

DATE FILED: May 6, 1977
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)	X		

ACTS (Very brief): School district adopted a majority vote requirement to be used in trustee elections. A Section 5 objection to the change was interposed on March 24, 1976. School district did not comply with the objection.

ISSUE(S): Whether voting changes enacted or implemented by Texas school districts are subject to the preclearance requirements of Section 5.

STATUS:
DISTRICT COURT DECISION:
DATE: June 2, 1978 & Dec. 21, 1978 Holding: Case was consolidated with seven other cases presenting the same issue. Congress intended that all voting changes within a covered state be submitted for Section 5 preclearance, including those changes enacted or implemented by subunits of the state which do not conduct voter registration. 454 F. Supp. 143.

APPELLATE COURT DECISION:
DATE: Holding:
None.

CASE NAME: United States v. City of Kosciusko, Mississippi
CIVIL ACTION NO.: EC-77-72-K (N.D. Miss.) D.J. NO.: 166-40-98
POLITICAL JURISDICTION: Kosciusko, Attala County, Mississippi
(City, County, State)
DATE FILED: May 9, 1977
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____
TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	X	§5 Preclearance	____

§5 Enforcement (Failure to Submit) X
§5 Enforcement (Noncompliance with objection) ____
FACTS (Very Brief): In May 1966, the city expanded its municipal boundaries. In October 1976, the city submitted the voting change for preclearance. On November 1, 1976, the Attorney General requested additional information, which the city did not submit. The city had permitted residents of the annexed area to vote in elections.
ISSUE(S): 1) Whether the city should be enjoined from implementing the annexatic insofar as voting is affected; 2) whether the city's aldermanic wards are malapportioned in a manner that underrepresents blacks in violation of Section 2.
STATUS:
DISTRICT COURT DECISION:
Date: May 9, 1977 and October 3, 1977 Holding: The Court entered a consent order enjoining the enforcement of the voting change unless the city obtained preclearance and requiring the city to submit a reapportionment plan. On October 3, 1977, the Court entered an order reapportioning the city into five aldermanic wards, pursuant to the city's plan. Preclearance was obtained.
APPELLATE COURT DECISION:
Date: ____ Holding: ____
None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: City of Rome v. United States
CIVIL ACTION NO.: 77-0797 (D.D.C.) D.J. NO.: 166-19-35
POLITICAL JURISDICTION: Rome, Georgia
(City, County, State)

DATE FILED: May 9, 1977
ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	X

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): City sought preclearance of annexations and electoral changes including adoption of a majority vote requirement. City also sought to bailout from coverage under Section 4 and challenged constitutionality of Section 5.

ISSUE(S): 1) Whether the city, as a separate entity, could bailout of Section 4 coverage; 2) Whether the city met its burden of showing that the proposed voting changes did not have a discriminatory purpose or effect; and 3) Whether Section 5 is constitutional.

STATUS:

DISTRICT COURT DECISION:

DATE: April 9, 1979 Holding: Preclearance denied. Court held that when an entire state is covered individual sub-units may not bailout. The city had not met its burden of showing that the voting changes did not have a discriminatory effect. The constitutionality of Section 5 was re-affirmed. Reported at 472 F. Supp. 221 (D.D.C. 1979)

APPELLATE COURT DECISION:

DATE: April 22, 1980 Holding: Affirmed by Supreme Court. The court determined that the individual sub-units in a covered state are covered by Section 4 until the state bails out from coverage. The inability of the city to show that the changes did not have a discriminatory effect is sufficient to preclude preclearance. Section 5 is constitutional. Reported at 446 U.S. 156 (1980).

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VOTING SECTION 5 SUMMARY SHEET

CASE TITLE: United States v. City Commission of Texas City, Texas
CIVIL ACTION NO.: G-77-78 (S.D. Tex.) D.J. NO.: 166-74-21
POLITICAL JURISDICTION: Texas City, Galveston, County, Texas
(City, County, State)

DATE FILED: May 12, 1977
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Texas City was governed by a City Commission elected at-large. Blacks constituted 21% and persons of Spanish heritage constituted 11% of the population. Nevertheless, no black or person of Spanish heritage had ever been elected to the Commission. Racial bloc voting existed and the Commission was unresponsive to minority concerns.

ISSUE(S): Whether the city's at-large election system diluted the right to vote of minority residents in violation of Section 2.

STATUS:

DISTRICT COURT DECISION:
Date: February 17, 1978 Holding: Order dismissing the action on consent of the parties after city enacted a mixed district at-large election system, which resulted in the election of 2 minority commissioners to the 7-member Commission.

APPELLATE COURT DECISION:
Date: ____ Holding: None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Blacks United for Lasting Leadership Inc. v. City of Shreveport

CIVIL ACTION NO.: 74-272 (W.D. La.) D.J. NO.: 166-017-33

POLITICAL JURISDICTION: Shreveport, Caddo Parish, La.
(City, County, State)

DATE FILED: March 8, 1974

ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (on appeal) (6/8/77) Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): The 5 commissioners of the City of Shreveport are elected at large with a majority vote required. Although blacks constitute 34% of Shreveport's population, no black has been elected commissioner.

ISSUE(S): Whether Shreveport's at-large system of electing commissioners unconstitutionally diluted the vote of blacks.

STATUS:

DISTRICT COURT DECISION:

Date: July 16, 1976 Holding: As a result of the lack of openness of the political process to blacks, the history of racial discrimination, the lack of responsiveness to the black community, and the presence of enhancing factors, Shreveport's at-large system unconstitutionally dilutes the vote of blacks. 71 F.R.D. 623.

APPELLATE COURT DECISION:

Date: March 29, 1978 Holding: Reversed. The district court failed to make the required findings of fact to support its conclusion. 571 F.2d 248 (5th Cir.).

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Doi v. Bell

CIVIL ACTION NO.: 77-0256 (D. Hawaii) D.J. NO.: 166-21-3

POLITICAL JURISDICTION: Hawaii
(City, County, State)

DATE FILED: July 14, 1977

ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout ($4)	_____
§203 Enforcement	_____	Bailout ($203)	X
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) _____

§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): Hawaii sought "bailout" from coverage under §203 alleging that its updated information as to the illiteracy rates of Japanese - and Chinese-Americans within the state was below the 1970 national rate of 4.6% illiteracy, but above the 1976 updated national rate of 3.4%.

ISSUE(S): In deciding a §203 bailout action, should the illiteracy rate of the language minority be compared to the 1970 national rate or the national rate existing when suit is filed.

STATUS:

DISTRICT COURT DECISION:

Date: March 28, 1978 Holding:

Plaintiff's burden is to demonstrate that illiteracy rate of language minority is better than most recently available and reliable estimate of national average. Bailout was granted by consent with regard to the Japanese language minority in Maui County. Bailout was denied with respect to the contested groups.

APPELLATE COURT DECISION:

Date: _____ Holding:

None

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Williams v. Sclafani
CIVIL ACTION NO.: 77 Civ. 4355 (S.D.N.Y.) D.J. NO.: 166-52-7
POLITICAL JURISDICTION: New York, New York
(City, County, State)

DATE FILED September 9, 1977
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (9/16/77) Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____
§5 Enforcement (Failure to Submit)		X	
§5 Enforcement (Noncompliance with objection)		____	

FACTS (Very brief): New York State Court construed state election code and candidate qualification procedures in a manner different from the past procedure followed by the New York City Board of Elections; the state court disqualified minority candidates who followed procedures observed by Board of Elections.

ISSUE(S): (1) Whether state court's decision construing election law occasioned a change affecting voting within the meaning of Section 5; (2) whether disqualification of minority candidates violated 42 U.S.C. 1983.

STATUS:
DISTRICT COURT DECISION:

DATE: January 24, 1978 Holding: A three-judge court dismissed the Section 5 claim on the ground that Section 5 was not intended to cover a voting change occasioned by a state court decision construing an already precleared state statute. Relief was later granted under 42 U.S.C. 1983, i.e., a previously disqualified candidate was permitted to run in primary election. 444 F. Supp. 906.

APPELLATE COURT DECISION:

DATE: May 3, 1978 Holding: Affirmed sub nom. Williams v. Velez, 580 F.2d 1046 (2nd Cir. 1978).

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CASE TITLE: United States v. Uvalde Consolidated I.S.D.
CIVIL ACTION NO.: DR-77-CA-20 (W.D. Tex.) D.J. NO.: 166-76-12
POLITICAL JURISDICTION: Uvalde, Texas (City, County, State)

DATE FILED: September 19, 1977
ROLE OF U. S.: Plaintiff x Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	x	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Board of Trustees is elected on at-large basis to numbered posts with staggered terms. Until 1979 only 2 Mexican-American Trustees elected in district which is more than 50% Mexican-American in population.

ISSUE(S): Whether the at-large election system purposefully dilutes minority voting strength in violation of Section 2 and the Fourteenth and Fifteenth Amendments.

STATUS: In discovery

DISTRICT COURT DECISION:
Date: January 2, 1979 Holding: Dismissed the complaint for failure to state a claim under Section 2 of the Voting Rights Act. Section 2 does not authorize Attorney General to institute vote dilution lawsuits. On remand from the Court of Appeals, court established discovery schedule.

APPELLATE COURT DECISION:
Date: September 2, 1980 Holding: Complaint states a cause of action under Section 2 of the Voting Rights Act. Section 2 authorizes the Attorney General to institute vote dilution lawsuits. 625 F. 2d 547 (5th Cir. 1980), cert denied, 49 U.S. L.W. 3860 (May 18, 1981).

CASE TITLE: Horry County v. United States
CIVIL ACTION NO.: 77-1685 (D.D.C.) D.J. NO.: 166-67-55
POLITICAL JURISDICTION: Horry County, South Carolina
(City, County, State)

DATE FILED: September 26, 1977
ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____

ACTS (Very brief): Horry County changed from an appointive system of selecting its governing body to an at-large method of election. The Attorney General objected. A private suit (McCray v. Hucks) resulted in an order requiring Horry County to file a Section 5 declaratory judgment action in the D.C. Court. This suit is a result of the order in McCray.

ISSUE(S): Whether the change from an appointive method of selecting a governing body to an at-large method of election is a voting change that requires Section 5 preclearance.

STATUS:
DISTRICT COURT DECISION:

DATE: May 4, 1978 Holding: The change from an appointive system of selection to an at-large method of electing a governing body is a change that affects voting and hence must be precleared under Section 5. 449 F. Supp. 990.

APPELLATE COURT DECISION:
DATE: _____ Holding: None

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CASE TITLE: Rosso v. Henigan
CIVIL ACTION NO.: 77-1770 (D.D.C.) D.J. NO.: 166-11E-6
POLITICAL JURISDICTION: State of California (City, County, State)

DATE FILED: October 11, 1977
ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout ($4)	_____
§203 Enforcement	_____	Bailout ($203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): California amended its Constitution to insulate its public officials from recall elections for six months after their initial election. Plaintiff alleged that the new law was not properly submitted for preclearance and that the Attorney General failed to enforce the Act.

ISSUE(S): Whether complaint states a claim upon which relief can be granted.

STATUS:

DISTRICT COURT DECISION:
Date: December 14, 1977 Holding: Dismissed
Complaint fails to state a claim. The new law was submitted to the Attorney General, and the Attorney General did not object. Court cannot review the administrative determination of the Attorney General.

APPELLATE COURT DECISION:
Date: _____ Holding: _____
None

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VOTING [illegible] SUMMARY SHEET

CASE TITLE: Apache County High School District No. 90 v. United States

CIVIL ACTION NO.: 77-1815 (D.D.C.) D.J. NO.: 166-8-11

POLITICAL JURISDICTION: Apache County, Arizona
(City, County, State)

DATE FILED: October 20, 1977

ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): The District changed polling places and instituted plan for minority language elections for an August 31, 1976 bond election. A Section 5 objection was interposed to these changes.

ISSUE(S): Whether plaintiff had met burden of demonstrating that bilingual election plan and polling place changes were nondiscriminatory in purpose and effect.

STATUS:

DISTRICT COURT DECISION:

Date: June 12, 1980 Holding: Declaratory judgment denied. Section 4(f)(4) of the Voting Rights Act provides guidance regarding what constitutes discriminatory behavior against language minorities. Court found that bilingual election plan did not comply with standard established by Voting Rights Act and that polling place locations were discriminatory.

APPELLATE COURT DECISION:

Date: ____ Holding: ____

None.

VOTING SECTION CASE SUMMARY SHEET

ASE TITLE: Independent School District of Tulsa v. Bell
IVIL ACTION NO.: 76-C-573-B (N.D. Okla.) D.J. NO.: 166-59N-1
OLITICAL JURISDICTION: Tulsa, Oklahoma
(City, County, State)
ATE FILED: November 12, 1977
OLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

YPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____
§5 Enforcement (Failure to Submit)	_____	Other	X
§5 Enforcement (Noncompliance with objection)	_____		

ACTS (Very brief): Plaintiff alleged that Cherokee language is unwritten but that the Attorney General might require plaintiffs to provide written election materials in Cherokee. United States admitted that native language is historically unwritten and that the Section 203 does not require written bilingual election materials.

ISSUE(S): Whether a case or controversy exists.

STATUS:
ISTRICT COURT DECISION:
DATE: December 7, 1977 Holding: Summary judgment for the plaintiff. Despite the United States' position that plaintiff did not need to provide written election material in the Cherokee language the Court held that a controversy existed since Section 203 did not authorize written assurances of compliance and a subsequent Attorney General might contend that the plaintiff has not complied with the Act.

PPELLATE COURT DECISION:
DATE: _____ Holding: _____
None.

VOTING SECTION CASE SUMMARY SHEET

SE TITLE: Berry v. Doles
VIL ACTION NO.: 76-1690 (M.D. Ga.) D.J. NO.: 166-012-3
LITICAL JURISDICTION: Peach County, Georgia
(City, County, State)
TE FILED: January 11, 1978
LE OF U. S.: Plaintiff ____ Defendant ____
Amicus X Intervenor ____

PE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____
§5 Enforcement (Failure to Submit)		X	
§5 Enforcement (Noncompliance with objection)		____	

CTS (Very brief): In 1968, the Georgia legislature adopted staggered terms for the 3-members of the Peach County Commission. Private plaintiffs filed suit 4 days prior to the 1976 elections seeking to enjoin use of staggered terms on the grounds that Section 5 preclearance had not been obtained. The defendants conceded that the change was covered under Section 5.

SUE(S): Whether the fact that Section 5 preclearance had not been obtained required the overturning of election results and the holding of a new election.

TUS:
STRICT COURT DECISION:
DATE: April 26, 1977 Holding: The Court denied plaintiff's request to set aside 1976 elections. The Court reasoned that the change was "technical" and without any apparent invidious purpose or effect. The Court granted prospective relief only.

PELLATE COURT DECISION:
DATE: June 26, 1978 Holding: County is required to submit the change for preclearance within 30 days, and the case is remanded for reconsideration of the request for special elections after the Section 5 determination has been made. Only the United States District Court for the District of Columbia or the Attorney General can determine the discriminatory nature vel non of a change subject to Section 5 preclearance, 438 U.S. 190 (1978).

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ASE TITLE: United States v. Temple Independent School District
IVIL ACTION NO.: W-78-CA-10 (W.D. Tex.) D.J. NO.: 166-76-29
OLITICAL JURISDICTION: Temple, Texas
(City, County, State)
ATE FILED: January 12, 1978
OLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

YPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution	X	26th Amendment	
1973/Other		§5 Preclearance	

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection)

CTS (Very brief): The trustees of the Temple School District, which involved a 26% minority population, were elected at-large. The terms of the trustees were staggered.

SUE(S): Whether the at-large election scheme dilutes the voting rights of Mexican-Americans and blacks in violation of 42 U.S.C. 1971 and 1973 and the Fourteenth and Fifteenth Amendments.

ATUS:
STRICT COURT DECISION:
DATE: February 22, 1978 Holding: The April 1, 1978 election was to be postponed until a single-member district plan could be approved and implemented. The parties agreed to a plan which was implemented on May 20, 1978.

PELLATE COURT DECISION:
DATE: Holding:
None

CASE TITLE: United States v. Town of Bartelme
CIVIL ACTION NO.: 78-C-101 (E.D. Wis.) D.J. NO.: 180-85-16
POLITICAL JURISDICTION: Bartelme, Wisconsin (City, County, State)

DATE FILED: February 15, 1978
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other	X	§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)			

FACTS (Very brief): Following the election of several Indians to town office the county board divided the town along racial lines. The white residents of Bartelme reorganized as a new town and elected new town officials. The Indians were left without an organized town and, thus, were not provided ballots to vote in County primary election.

ISSUE(S): Whether the division of the town along racial lines which prevents the Indian residents on the reservation from voting violated Section 2 of the Voting Rights Act, 42 U.S.C. 1973a.

STATUS:
DISTRICT COURT DECISION:

DATE: February 17, 1978; October 11, 1978 Holding: Court issued order allowing the persons who lived within the "old" boundaries of the town to vote. The case was dismissed by order of October 11, 1978, after the defendants agreed to rescind the town division.

APPELLATE COURT DECISION:
DATE: Holding:

CASE TITLE: United States v. Village of Dickinson, Texas
CIVIL ACTION NO.: G-78-35 (S.D. Texas) D.J. NO.: 166-74-33
POLITICAL JURISDICTION: Dickinson, Texas
(City, County, State)
DATE FILED: February 17, 1978 (amicus)
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)	X		
§5 Enforcement (Noncompliance with objection)			

FACTS (Very brief): The Village of Dickinson, Texas held a referendum election to incorporate. After incorporation an election was held for governing officials. Section 5 preclearance of the voting changes occasioned by the incorporation was not obtained.

ISSUE(S): Whether voting changes enacted or administered by the Village of Dickinson are subject to Section 5 preclearance when the village does not conduct voter registration.

STATUS:
DISTRICT COURT DECISION:
DATE: May 2, 1979 Holding: Consent Judgment.
Village of Dickinson agreed to seek preclearance of the changes in question. Upon submission, the voting changes were precleared.

APPELLATE COURT DECISION:
DATE: Holding:
None.

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Donnell v. United States

CIVIL ACTION NO.: C.A. 78-0192 (D.D.C.) D.J. NO.: 166-41-139

POLITICAL JURISDICTION: Warren County, Mississippi
(City, County, State)

DATE FILED: March 7, 1978

ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): County sought preclearance of districting plan which did not, despite a 40% black population, contain a district which had a minority population over 60%. The plan fragmented the area of minority concentration into three districts. The previous election plan, adopted in 1929, had one district with a black population of 64%.

ISSUE(S): Whether the plaintiff had satisfied burden of demonstrating that the districting plan was without discriminatory purpose and effect.

STATUS:

DISTRICT COURT DECISION:

Date: July 31, 1979 Holding: Preclearance denied. Court held plan was retrogressive when compared to previous plan. The court also held that in view of past discrimination, racial bloc voting and other socio-economic factors a district must contain a minority population of 65% (60% VAP) to provide a fair opportunity for the minority community to elect a candidate of their choice.

APPELLATE COURT DECISION:

Date: ____ Holding: Summary Affirmance

Reported at 444 U.S. 1059

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CASE TITLE: United States v. Board of Trustees of Somerset ISD
CIVIL ACTION NO.: SA-78-CA-84 (W.D. Tex.) D.J. NO.: 166-76-30
POLITICAL JURISDICTION: Somerset ISD, Atascosa & Bexar Cos., Texas (City, County, State)
DATE FILED: March 10, 1978
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____
TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X
FACTS (Very brief): The Somerset ISD implemented a numbered post provision to which an objection had been interposed on March 17, 1977.

ISSUE(S): Whether a school district is subject to the Section 5 preclearance requirement.

STATUS:
DISTRICT COURT DECISION:
Date: December 26, 1978 Holding: School districts are subject to preclearance requirement of Section 5. The district consented to a judgment enjoining it from implementing a numbered post provision until it is precleared.

APPELLATE COURT DECISION:
Date: None Holding:

VOTING RIGHTS DATA PROJECT SURVEY

CASE TITLE: State of Alaska v. United States
CIVIL ACTION NO.: 78-0484 (D.D.C.) D.J. NO.: 166-6-1
POLITICAL JURISDICTION: Alaska (City, County, State)
DATE FILED: March 21, 1978
ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____
TYPE OF CASE:
§202 Enforcement _____ Bailout (§4) X
§203 Enforcement _____ Bailout (§203) _____
1973/Dilution _____ 26th Amendment _____
1973/Other _____ §5 Preclearance _____
§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____
FACTS (Very Brief): State sought to bailout from §4 coverage.

ISSUE(S): Whether the plaintiff can demonstrate that the English-only election system did not prevent Native Alaskans from effectively participating in the electoral process.
STATUS:
DISTRICT COURT DECISION:
Date: May 10, 1979 Holding:
The state voluntarily dismissed its lawsuit following discovery which showed significant shortcomings in the state's compliance with the provisions of the Act.

APPELLATE COURT DECISION:
Date: _____ Holding: _____
None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Charlton County School Board v. United States

CIVIL ACTION NO.: 78-0564 (D.D.C.) D.J. NO.: 166-20-54

POLITICAL JURISDICTION: Charlton County, Georgia
(City, County, State)

DATE FILED: March 29, 1978

ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): School Board changed method of selecting members from appointment to election on at-large basis.

ISSUE(S): Whether plaintiff had satisfied burden of demonstrating that the voting changes were nondiscriminatory in purpose and effect.

STATUS:

DISTRICT COURT DECISION:

Date: November 1, 1978 Holding: Preclearance granted. Court determined that the change was ameliorative under the Beer standard in view of the absence of racial bloc voting and ability of people to now vote for the office holder. The School Board also met its burden in showing the absence of racial purpose.

APPELLATE COURT DECISION:

Date: ____ Holding: ____

None

CASE TITLE: United States v. South Dakota
CIVIL ACTION NO.: 78-5018 (D.S.D.) D.J. NO.: 180-69-71
POLITICAL JURISDICTION: Shannon County, South Dakota
(City, County, State)

DATE FILED: April 4, 1978

ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	X	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Predominantly Indian Shannon County, an "unorganized" county, is governed by the "organized" Fall River County to which it is attached. In 1975, Indian residents of Shannon won the right to vote in Fall River elections. Fall River then refused to permit Shannon residents to become candidates in these same Fall River elections.

ISSUE(S): Whether this candidacy restriction violated Section 2.

STATUS: On remand to district court for entry of relief.

DISTRICT COURT DECISION:
Date: June 9, 1980 Holding: The candidacy policy was not racially motivated. Section 2 requires proof of racial motivation and therefore no violation occurred. There also was no violation of the equal protection clause of the Fourteenth Amendment.

APPELLATE COURT DECISION:
Date: December 29, 1980 (8th Cir.) Holding: The candidacy restriction had a real and appreciable impact on the voting rights of Shannon residents, and since no compelling interest supported the restriction it violated the equal protection clause of the Fourteenth Amendment. 636 F.2d 1. Cert. denied, 49 U.S.L.W. 3926 (June 15, 1981)

CASE TITLE: Lipscomb v. Wise
CIVIL ACTION NO.: 78-1666 (E.D. Tex.) D.J. NO.: 166-73-13
POLITICAL JURISDICTION: Dallas, Texas
(City, County, State)

DATE FILED: March 10, 1971
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (4/7/78) Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1971/Dilution	X	26th Amendment	____
1971/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): The at-large method of electing the eleven members of the Dallas City Council was challenged as being unconstitutionally dilutive of black and Mexican-American voting strength.

ISSUE(S): Whether the all at-large method of election diluted minority voting strength in violation of the Fourteenth Amendment.

STATUS:
DISTRICT COURT DECISION:
DATE March 25, 1975 Holding: Court found the at-large election method unconstitutional and directed council to propose a new method. The court approved the council's proposal that eight of the members be elected from single-member districts and three on an at-large basis (8-3 plan). Reported at 399 F. Supp. 782 (N.D. Tex. 1975).

APPELLATE COURT DECISION:
DATE: May 9, 1977 - June 22, 1978 Holding: Reversed. Court of Appeals determined that the 8-3 election plan was a judicial plan and was therefore subject to the prohibition against the use of multimember districts. Reported at 551 F.2d 1043 (5th Cir. 1977). The Supreme Court reversed the court of appeals; held that the plan was a legislative plan and therefore could use multimember districts. Reported at 437 U.S. 535 (1978).

CASE TITLE: Blanding v. DuBose
CIVIL ACTION NO.: 78-764 (D. S. C.) D.J. NO.: 166-67-59
POLITICAL JURISDICTION: Sumter County, South Carolina
(City, County, State)

DATE FILED: May 12, 1978
ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) X

ACTS (Very brief): Private plaintiffs sought to enjoin the implementation of unprecleared at-large elections in Sumter County. The Attorney General was named as a defendant, but upon the consolidation of this case with U.S. v. Sumter County Council, the Attorney General was dismissed as a defendant.

ISSUE(S): See U.S. v. Sumter County Council

STATUS:
DISTRICT COURT DECISION:
DATE: _____ Holding: _____

APPELLATE COURT DECISION:
DATE: _____ Holding: _____

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CASE TITLE: United States v. County Council of Chester County, South Carolina
CIVIL ACTION NO.: 78-881 (D.S.C.) D.J. NO.: 166-67-65
POLITICAL JURISDICTION: Chester County, South Carolina
(City, County, State)

DATE FILED: June 1, 1978
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)	X		

FACTS (Very brief): The Attorney General objected to the 1976 adoption of a council administrator form of government for Chester County and the change to elections at-large from single-member districts. The United States brought suit in 1978 to enforce the October 28, 1977 objection to the voting changes.

ISSUE(S): Whether Chester County enacted or administered voting changes covered by Section 5 of the Voting Rights Act, and if so, whether those changes had been precleared.

STATUS:
DISTRICT COURT DECISION:
DATE: June 6, 1978 Holding: Court enjoined defendants from holding elections pursuant to the voting changes until those voting changes are precleared under Section 5. Subsequent law, establishing single-member districts for the county council and school board was precleared by the Attorney General on August 21, 1979. By a consent decree dated October 25, 1979, plan was ordered into effect.

APPELLATE COURT DECISION:
DATE: Holding:

CASE TITLE: United States v. Sumter County Council, South Carolina
CIVIL ACTION NO.: 78-883 (D.S.C.) D.J. NO.: 166-67-59
POLITICAL JURISDICTION: Sumter County, South Carolina
(City, County, State)

DATE FILED: June 2, 1978
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)	X		

ACTS (Very brief): As a result of legislation in 1967 and 1976 the method of selecting the county governing body was changed from an appointment method to election at-large. A Section 5 objection to change was interposed. After court enjoined use of at-large system, the same system was approved by referendum vote; Attorney General declined to withdraw objection.

ISSUE(S): Whether change to at-large election system had satisfied preclearance requirements of Section 5.

STATUS: Notice of appeal filed by United States on April 17, 1981.
DISTRICT COURT DECISION:

DATE: June 21, 1978; February 17, 1981 Holding: June 21, 1978: Court enjoined use of at-large system unless and until Section 5 preclearance is obtained. February 17, 1981: Court held that the submission after referendum was a new submission not a request for reconsideration. Attorney General followed the "reconsideration" procedures, but did not object within 60 days -- Thus change was precleared.

APPELLATE COURT DECISION:
DATE: Holding:

CASE TITLE: United States v. County Council of Charleston County, South Carolina (Woods v. Hamilton)
CIVIL ACTION NO. 78-0905 (D.S.C.) D.J. NO.: 166-67-60
POLITICAL JURISDICTION: Charleston County, South Carolina (City, County, State)

DATE FILED: June 2, 1978
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)	X		

FACTS (Very brief): In implementing Home Rule, Charleston elected to use the at-large election system assigned by legislature; election system prior to Home Rule was also at-large. Attorney General had precleared state Home Rule bill; but objected to implementation of Home Rule in Charleston County.

ISSUE(S): Whether the adoption of the at-large election plan under Home Rule was subject to and had satisfied the preclearance requirements of Section 5.

STATUS:
DISTRICT COURT DECISION:
DATE: July 3, 1979 Holding: Implementation of Home Rule did not result in change subject to Section 5 review since at-large elections were used prior to Home Rule. The increased powers which the governing body acquired under Home Rule were precleared by the Attorney General when he precleared the State Home Rule bill. Woods v. Hamilton, 473 F. Supp. 341(D.S.C. 1979).

APPELLATE COURT DECISION:
DATE: Holding:

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VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: United States v. Board of Commissioners of Colleton County, South Carolina

CIVIL ACTION NO.: 78-903-8(D.S.C.) D.J. NO.: 166-67-58

POLITICAL JURISDICTION: Colleton County, South Carolina (City, County, State)

DATE FILED: June 2, 1978

ROLE OF U. S.: Plaintiff X Defendant ____

Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): Method of electing county governing body was changed from multi-member district method to at-large method. Section 5 objection to the change was interposed on February 6, 1978. A second Section 5 objection interposed on December 19, 1979.

ISSUE(S): 1) Whether change to at-large elections had satisfied the pre-clearance requirements of Section 5; 2) Whether United States complied with consent decree of March 7, 1979.

STATUS: Defendants' appeal pending before Supreme Court.

DISTRICT COURT DECISION:

Date: _____ Holding: _____

Consent decree entered on March 7, 1979 which resolved a factual dispute between the parties; provided that a new submission would be made after a referendum on an election plan, and Attorney General would give de novo review. Order of Feb. 11, 1981: Attorney General complied with consent order; gave de novo review and objected to at large plan approved by referendum

APPELLATE COURT DECISION:

Date: _____ Holding: _____

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CASE TITLE: White v. Dougherty County Board of Education
CIVIL ACTION NO.: 76-29Alb (M.D. Ga.) D.J. NO.: 166-017
POLITICAL JURISDICTION: Dougherty County, Georgia
(City, County, State)
DATE FILED: June 11, 1976
ROLE OF U. S.: Plaintiff _____ Defendant _____
Amicus X (7/19/78) Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____
§5 Enforcement (Failure to Submit)		X	
§5 Enforcement (Noncompliance with objection)		_____	

FACTS (Very brief): Board of Education enacted a rule which required teachers to take a leave without pay while campaigning for political office. The Board did not obtain Section 5 preclearance of the leave requirement. The rule was aimed at a black teacher who had filed for the state legislature.

ISSUE(S): Whether the adoption of the rule was a voting change within the meaning of Section 5.

STATUS:
DISTRICT COURT DECISION:
DATE: March 27, 1977 Holding: The court determined that the proposed rule affected voting in that the choice of candidates could be altered by the financial inability of candidates to take a leave without pay. This rule created a barrier to candidacy which required preclearance. Reported at 431 F. Supp. 919 (M.D. Ga. 1977).

APPELLATE COURT DECISION:
DATE: November 28, 1978 Holding: Affirmed. The rule is comparable to a filing fee and thereby imposes a financial burden on candidates. Thus, the potential for a discriminatory purpose or effect on the electoral process is sufficient to require preclearance. Reported at 439 U.S. 32 (1978).

CASE TITLE: Lenud v. Griffin Bell

CIVIL ACTION NO.: 78-1363 (D.D.C.) D.J. NO.: 166-1-53

POLITICAL JURISDICTION: State of Alabama
(City, County, State)

DATE FILED: July 25, 1978

ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____ Other X

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Alabama passed into law a code of ethics for public officials. Plaintiffs contend that the Act occasioned voting changes and had not been precleared: seek an order compelling the Attorney General to enforce Section 5.

ISSUE(S): Whether Alabama had obtained preclearance of the changes affecting voting.

STATUS:

DISTRICT COURT DECISION:

Date: November 29, 1978 Holding: Summary Judgment for defendant. The Attorney General had precleared the statute in question.

APPELLATE COURT DECISION:

Date: None Holding:

VOTING SEC. 5 CASE SUMMARY SHEET

CASE TITLE: State of Mississippi v. United States
CIVIL ACTION NO.: CA No. 78-1425 (D.D.C.) D.J. NO.: 166-41-143
POLITICAL JURISDICTION: State of Mississippi (City, County, State)

DATE FILED: August 1, 1978
ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:
§202 Enforcement _____ Bailout ($4) _____
§203 Enforcement _____ Bailout ($203) _____
1973/Dilution _____ 26th Amendment _____
1973/Other _____ §5 Preclearance X
§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): On July 31, 1978, Attorney General interposed Section 5 objection to statutory apportionment of Mississippi Legislature. 49 districts contained black majorities under plan ordered into effect in Connor v. Finch, C.A. No. 3830 (A)S.D. Miss. (May 31, 1979). Statutory plan contained 46 black majority districts.

ISSUE(S): Whether plaintiff met burden of demonstrating that statutory plan had neither the purpose nor effect of denying or abridging right to vote on account of race or color.

STATUS:

DISTRICT COURT DECISION:
Date: June 1, 1979 Holding: Statutory plan would not lead to retrogression in current position of minorities respecting effective exercise of their electoral franchise; slight differences in favor of pre-existing plan are not of such significance as to require finding of retrogression; purpose of plan benign. 490 F. Supp. 569 (D.D.C. 1979).

APPELLATE COURT DECISION:
Date: February 19, 1980 Holding: Summary affirmance.
United States v. Mississippi, 444 U.S. 1050 (1980)

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CASE TITLE: United States v. Marengo County Commission
CIVIL ACTION NO.: 78-474-H (S.D. Ala.) D.J. NO.: 166-3-30
POLITICAL JURISDICTION: Marengo County, Alabama
(City, County, State)

DATE FILED: August 25, 1978
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution	X	26th Amendment	
1973/Other		§5 Preclearance	

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection)

FACTS (Very brief): The members of the Marengo County Commission and the Board of Education are elected on an at-large basis with a residency requirement and by staggered terms. Private plaintiffs challenged scheme in 1977. U.S. suit consolidated with private suit.

ISSUE(S): Whether the challenged at-large election scheme dilutes minority voting strength in violation of 42 U.S.C. 1971 and 1973 and the Fourteenth and Fifteenth Amendments.

STATUS: Remand proceedings to be held in Fall of 1981.
DISTRICT COURT DECISION:

DATE: April 23, 1979 Holding: Court granted judgment for defendants and dismissed private suit and United States' suit. See Clark v. Marengo County, 469 F. Supp. 1150 (S.D. Ala. 1979).

APPELLATE COURT DECISION:
DATE: August 6, 1980 Holding: Court of Appeals for the 5th Circuit vacated judgment of district court and remanded the case for further proceedings including presentation of additional evidence as is appropriate in light of City of Mobile v. Bolden.

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CASE TITLE: United States v. Thurston County, Nebraska
CIVIL ACTION NO.: 78-0-380 (D. Neb.) D.J. NO.: 180-45-13
POLITICAL JURISDICTION: Thurston County, Nebraska
(City, County, State)

DATE FILED: August 30, 1978
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution	X	26th Amendment	
1973/Other		§5 Preclearance	

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection)

FACTS (Very brief): Thurston County commissioners were elected at-large. The county was 28% Indian but had never elected an Indian commissioner. It was alleged that the at-large electoral system diluted Indian voting strength in violation of Section 2.

ISSUE(S): Whether Thurston County's at-large electoral system for electing the county commission impermissibly dilutes Indian voting strength in violation of Section 2.

STATUS:
DISTRICT COURT DECISION:
DATE: May 9, 1979 Holding: Consent Decree entered providing for seven member board of supervisors to be elected from single member districts commencing in 1980.

APPELLATE COURT DECISION:
DATE: Holding:
None.

CASE TITLE: United States v. Humboldt County, Nevada
CIVIL ACTION NO.: 78-144 (D. Nev.) D.J. NO.: 180-46-6
POLITICAL JURISDICTION: Humboldt County, Nevada
(City, County, State)

DATE FILED: September 7, 1978
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	X	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): In August 1978, immediately prior to the registration cut-off date for the September primary election, a substantial number of Indians were prevented from registering by county officials who gave out misinformation regarding the date registration closed, and regarding deputy registrars.

ISSUE(S): Whether the actions of Humboldt officials violated Section 2 of the Voting Rights Act of 1965.

STATUS:

DISTRICT COURT DECISION:

Date: September 7, 1978 Holding: The court ordered that a deputy registrar from the Indian reservation be appointed, and that Indians registered by that deputy be allowed to vote in the September election, though the registration date had passed. A stipulated voluntary dismissal was thereafter entered.

APPELLATE COURT DECISION:

Date: ____ Holding: ____

None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: United States v. Barbour County Commission

CIVIL ACTION NO.: 78-348-N (M.D. Ala.) D.J. NO.: 166-2-40

POLITICAL JURISDICTION: Barbour County, Alabama
(City, County, State)

DATE FILED: September 8, 1978

ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): On July 28, 1978, a §5 objection was interposed to Act 10 (1965) and Act 171 (1967) which changed method of electing the Barbour County Commission from election by district to election at-large. County conducted 1978 elections pursuant to legally unenforceable procedures.

ISSUE(S): Whether, in the absence of §5 preclearance, incumbent commissioners should serve full term or whether new elections should be held pursuant to pre-existing 1919 election scheme.

STATUS:

DISTRICT COURT DECISION:

Date: October 23, 1979 Holding: Three-judge court held 1919 apportionment plan was controlling method of election and ordered terms of incumbents terminated within 120 days of judgment following special election under 1919 plan. A private suit, Forte v. Barbour County Commission, was subsequently brought to enjoin special election.

APPELLATE COURT DECISION:

Date: ____ Holding: ____

None

CASE TITLE: Greater Houston Civic Council v. Mann
CIVIL ACTION NO.: 73-H-1650 (S.D. Tex.) D.J. NO.: 166-74-55
POLITICAL JURISDICTION: Houston, Harris County, Texas
(City, County, State)

DATE FILED: December 6, 1973
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (on appeal)(9/20/78) Intervenor ____
TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): The 8 members of the Houston City Council were elected at large, 5 from residency districts, with a majority vote required. Blacks constituted 26% of the population and Mexican Americans 13%.

ISSUE(S): Whether Houston's at-large electoral system unconstitutionally diluted the vote of blacks and Mexican-Americans.

STATUS:
DISTRICT COURT DECISION:
Date: March 8, 1977 Holding: Plaintiffs failed to sustain their burden of establishing that impermissible minority voter dilution resulted from Houston's at-large system. 440 F. Supp. 696.

APPELLATE COURT DECISION:
Date: December 26, 1979 Holding: No. 77-2083 - Remanded without opinion (While case was pending on appeal Houston altered its at-large election structure in order to obtain a withdrawal of the Attorney General's Section 5 objection to annexations.)

VOTING LITIGATION CASE SUMMARY SHEET

CASE TITLE: United States v. City of Hattiesburg, Mississippi
CIVIL ACTION NO.: H-78-0147(C)(S.D. Miss.) D.J. NO.: 166-41-138
POLITICAL JURISDICTION: Hattiesburg, Forrest County, Mississippi
(City, County, State)

DATE FILED: October 2, 1978

ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Twenty-eight percent black populated city governed by Mayor and two-member commission elected at-large from posts with majority vote required for election; no black persons ever nominated or or elected to city office.

ISSUE(S): Whether the at-large election plan dilutes black voting strength in violation of the Fourteenth or Fifteenth Amendment, or Section 2.

STATUS:

DISTRICT COURT DECISION:
Date: July 8, 1980 Holding: United States voluntarily dismissed the lawsuit, without prejudice, following the decision of the Supreme Court in Bolden v. City of Mobile, 446 U.S. 55 (1980).

APPELLATE COURT DECISION:
Date: ____ Holding: ____
None

ASE TITLE: United States v. Dallas County Commission and School Board
IVIL ACTION NO.: 78-578H (S.D. Ala.) D.J. NO.: 166-3-29
OLITICAL JURISDICTION: Dallas County, Alabama
(City, County, State)
ATE FILED: October 19, 1978
OLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

YPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution	X	26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)			

ACTS (Very brief): Dallas County Commission and School Board elected at-large. No black has ever been elected to either governing body, yet 50% of the 1970 population was black.

ISSUE(S): Whether the at-large method of election for the governing bodies dilutes black voting strength in violation of the 14th Amendment, 15th Amendment and Section 2.

STATUS:
DISTRICT COURT DECISION:
DATE: Pending Holding:
Trial lasting three weeks was held in 1979-80. Supplementary Trial is to be held in October, 1981.

APPELLATE COURT DECISION:
DATE: Holding:
None.

CASE TITLE: Arriola v. Harville

CIVIL ACTION NO.: C-78-87 (S.D. Tex.) D.J. NO.: 166-74-54

POLITICAL JURISDICTION: Jim Wells County, Texas
(City, County, State)

DATE FILED: August 4, 1978

ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (10/20/78) Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) X

FACTS (Very Brief): Private suit was brought to enjoin enforcement of a 1975 redistricting plan for Jim Wells County, Texas, that had been objected to by the Attorney General under Section 5.

ISSUE(S): Whether the requirements of Section 5 are satisfied by a letter which informs the Attorney General that change was made but does not seek preclearance of the change.

STATUS:

DISTRICT COURT DECISION:

Date: October 9, 1979 Holding: A letter that is a mere notice and furnishes no information on the basis of which an evaluation could be attempted does not even substantially comply with applicable federal regulations (28 C.F.R. Part 51) and does not constitute a submission.

APPELLATE COURT DECISION:

Date: ____ Holding: ____

None.

CASE TITLE: United States v. City and County of San Francisco
CIVIL ACTION NO.: C-78-2221 CFP (N.D. Calif.) D.J. NO.: 166-11-10
POLITICAL JURISDICTION: San Francisco, California (City, County, State)
DATE FILED: October 27, 1978
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____
TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	X	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____
FACTS (Very brief): City of San Francisco failed to adequately provide bilingual election materials and assistance to Chinese and Spanish speaking voters. The U.S. Attorney's office sought preliminary relief for November 7, 1978 general election to enforce §203 and requested, inter alia, appointment of federal observers to monitor compliance with §2(
ISSUE(S): What constitutes satisfactory compliance with §203 prior to and during elections.

STATUS:
DISTRICT COURT DECISION:
Date: May 19, 1980 Holding: A three-judge court approved and ordered the entry of a consent decree which details the city's obligation to conduct voter registration and outreach activities, provide bilingual poll officials, establish an advisory citizen task force and maintain records and furnish reports concerning compliance with §203.
APPELLATE COURT DECISION:
Date: ____ Holding: ____
None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: United States v. Tripp County, South Dakota
CIVIL ACTION NO.: 78-3045 (D. S.D.) D.J. NO.: 180-69-103
POLITICAL JURISDICTION: Todd County, South Dakota
(City, County, State)

DATE FILED: November 1, 1978
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)	X		

FACTS (Very brief): Predominantly Indian Todd County, an "unorganized" county, is governed by the "organized" Tripp County to which it is attached. Tripp adopted a reapportionment plan for the Tripp/Todd County commissioner districts which substantially overpopulated the one majority Indian district. An objection was interposed but the plan was implemented.

ISSUE(S): Whether a jurisdiction covered by §5 may implement a reapportionment plan to which the Attorney General interposed an objection.

STATUS:
DISTRICT COURT DECISION:
DATE: November 1, 1978 Holding: Consent decree entered under which the results of the November 7, 1978 election for county commissioners were not to be certified unless the objection was withdrawn or a declaratory judgment was obtained under §5. The objection was not withdrawn and no declaratory judgment action was filed.

APPELLATE COURT DECISION:
DATE: Holding:
None.

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CASE TITLE: Calderon v. McGee

CIVIL ACTION NO.: W-74-CA-21 (W.D. Tex.) D.J. NO.: _____

POLITICAL JURISDICTION: Waco Independent School District, Texas (City, County, State)

DATE FILED: April 18, 1974

ROLE OF U. S.: Plaintiff _____ Defendant _____

Amicus X (12/9/78) Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout ($4)	_____
§203 Enforcement	_____	Bailout ($203)	_____
1973/Dilution	X	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) _____

§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): Plaintiffs, black and Mexican-American residents of 28% minority populated school district attacked at-large election of school trustees under 42 U.S.C. §1983 and the 14th and 15th Amendments, alleging dilution of their votes and lack of access to the political process.

ISSUE(S): Whether the at-large election system impermissibly dilutes minority voting strength and, if so, the proper procedure to follow in remedying the violation.

STATUS: _____

DISTRICT COURT DECISION:

Date: March 29, 1976 & April 13, 1976 Holding: District Court held that at-large election of school trustees illegally dilutes black and Mexican-American voting strength and denies them access to the political process. Court approved defendants' proposed remedial apportionment plan and ordered defendants to implement the plan in conformity with the Voting Rights Act.

APPELLATE COURT DECISION:

Date: November 11, 1978 & February 16, 1979 Holding: Affirmed district court insofar as apportionment plan had been treated as legislative plan subject to §5 review, 584 F.2d 66 (5th Cir. 1978). Remanded after rehearing en banc for reconsideration of whether Section 5 had been complied with since amicus, United States, advised that the plan had been considered court-ordered when submitted and had not been reviewed. 589 F.2d 909 (5th Cir. 1979).

VOTING SECTION CASE SUMMARY SHEET

SE TITLE: United States v. City of Houston
VIL ACTION NO.: 78-H-2407 (S.D. Tex.) D.J. NO.: 166-74-55
LITICAL JURISDICTION: Houston, Harris County, Texas
(City, County, State)

TE FILED: December 13, 1978
LE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

PE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____
§5 Enforcement (Failure to Submit)		X	
§5 Enforcement (Noncompliance with objection)		____	

CTS (Very brief): Houston annexed large areas populated almost exclusively by white persons; sought to conduct elections in the newly expanded city without preclearance. Annexations subsequently submitted and objection was interposed. Objection withdrawn when City abandoned at-large election system and adopted a new election plan.

SSUE(S): Whether the City was in violation of Section 5 by planning an election in which residents of annexed area would be allowed to participate.

TATUS:
ISTRICT COURT DECISION:

DATE: December 28, 1978 & July 19, 1979 Holding: Injunction will be granted if it appears that defendant will conduct election in violation of Section 5. City gave assurance that no election would be held without necessary preclearance; thus injunction not necessary.

PPELLATE COURT DECISION:
DATE: ____ Holding: None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Escamilla v. Stayley
CIVIL ACTION NO.: DR-78-CA-23 (W.D. Tex.) D.J. NO.: 166-76-40
POLITICAL JURISDICTION: Terrell County, Texas
(City, County, State)

DATE FILED: January 26, 1979 (amicus)
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): Terrell County was ordered on October 24, 1978 by the District Court to submit its reapportionment of commissioner districts, pursuant to Section 5. The submission was received on October 28, 1978. On December 27, 1978, a letter of objection was sent. It was received by the county on December 30, 1978.

ISSUE(S): Whether the Attorney General's objection was interposed in a timely fashion.

STATUS:

DISTRICT COURT DECISION:
Date: July 28, 1980 Holding: The case was dismissed upon settlement of the parties, after an alternative plan was submitted and precleared, mooting the question whether the objection was timely.

APPELLATE COURT DECISION:
Date: _____ Holding: None

ASE TITLE: United States v. Pike County Commission
IVIL ACTION NO.: 79-245-N (M.D. Ala.) D.J. NO.: 166-2-37
OLITICAL JURISDICTION: Pike County, Alabama
(City, County, State)
ATE FILED: May 29, 1979
OLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

YPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection) X

ACTS (Very brief): Act 156 (1969) changed method of election from single-member districts to an at-large with residency scheme. Objection interposed in 1974. County eliminated the residency requirement and adopted a numbered post provision, without preclearance. Modified scheme used in 1976 and 1978 elections.

SSUE(S): 1) Whether the Attorney General interposed objection to at-large elections or residency requirement; 2) whether county complied with objection; 3) whether change to numbered posts was subject to §5 preclearance.

TATUS:
ISTRICT COURT DECISION:

DATE: October 12, 1979 Holding: Act 156 and the numbered post provision were violative of federal law and the incumbents held office illegally. Incumbents' terms were cut short and special elections under pre-existing single member plan were ordered within 120 days. The court ruled, inter alia, that legal effect of an objection to part of a submission renders the entire change legally unenforceable.

PPELLATE COURT DECISION:
DATE: Holding:

None.

CASE NAME: United States v. County of San Juan, New Mexico
CIVIL ACTION NO.: CA 79-507 JB (D.N. Mex.) D.J. NO.: 180-49-32
POLITICAL JURISDICTION: San Juan Co., New Mexico
(City, County, State)

DATE FILED: June 21, 1979
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Indians constitute 35% of the population of the county and are concentrated on or near the Navajo Reservation. The county commission has 3 members elected at-large from residency districts. The district with the highest Indian percentage has the largest population. Indians have not been elected to the county commission.

ISSUE(S): Whether the county's at-large electoral system or unequal residency districts violate Section 2.

STATUS:

DISTRICT COURT DECISION:
Date: April 8, 1980 Holding: Resolved by consent decree. The county agreed to change from at-large to single-member district elections, with 5 districts, following the 1980 census. The county will adopt a plan by January 31, 1982.

APPELLATE COURT DECISION:
Date: ____ Holding: None

CASE TITLE: United States v. County of San Juan, New Mexico
CIVIL ACTION NO.: 79-508JB (D.N. Mex.) D.J. NO.: 180-49-48
POLITICAL JURISDICTION: San Juan County, New Mexico
(City, County, State)

DATE FILED: June 21, 1979
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement	X	Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection)

FACTS (Very brief): The minority language registration and voting procedures of the county were insufficient to enable Indians, who constitute 35% of the county's population, to participate effectively in the electoral process.

ISSUE(S): Whether the county's minority language procedures were in violation of Section 203.

STATUS:
DISTRICT COURT DECISION:

DATE: April 8, 1980 Holding: Resolved by consent decree. The county agreed to expand its voter registration program to actively register Navajo voters by increasing opportunities for registration and by providing language assistance in precincts 5% or more Navajo; and to take other necessary actions to ensure an opportunity to participate.

APPELLATE COURT DECISION:
DATE: Holding: None

VOTING AND THE VOTING RIGHTS ACT

CASE TITLE: United States v. State of South Dakota
CIVIL ACTION NO.: 79-3039 (D.S.D.) D.J. NO.: 180-69-189
POLITICAL JURISDICTION: Todd and Shannon Counties, South Dakota
(City, County, State)

DATE FILED: June 26, 1979
ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): Predominantly Indian Todd and Shannon Counties, as "unorganized" counties, are each governed by an attached "organized" county. The legislature enacted legislation to organize Todd and Shannon, with separate governing bodies and elections. An objection was interposed but the legislation was implemented.

ISSUE(S): Whether the voting changes resulting from the severance legislation could be implemented when a Section 5 objection had been interposed.

STATUS:

DISTRICT COURT DECISION:
Date: May 21, 1980 Holding: The court enjoined implementation of the severance legislation until Section 5 preclearance is obtained.

APPELLATE COURT DECISION:
Date: ____ Holding: None

ASE TITLE: City of Dallas v. United States
IVIL ACTION NO.: 78-1665 (D.D.C.) D.J. NO.: 166-73-13
OLITICAL JURISDICTION: Dallas, Dallas County, Texas
(City, County, State)
ATE FILED: September 5, 1979
OLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

YPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

ACTS (Very brief): City sought preclearance of an election plan for the city council which provided for eight single-member districts and three at-large seats. Minority community would have a reasonable opportunity to elect two candidates of its choice. Prior plan was found unconstitutional in (Wise v. Lipscomb, 399 F. Supp. 782. (see 551 F. 2d 1043; 437 U.S. 535).

SSUE(S): Whether plaintiff can satisfy burden of demonstrating that the voting changes are nondiscriminatory in purpose and effect.

TATUS:
ISTRICT COURT DECISION:
DATE: December 7, 1979 Holding:
Following a denial of summary judgment, the city revised the plan to provide the minority community a reasonable opportunity to elect candidates of its choice in three of the eleven districts; the new plan was precleared by the Attorney General. The lawsuit was dismissed on mootness grounds.
482 F. Supp. 183

PPELLATE COURT DECISION:
DATE: Holding:
None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Stokes v. Warren County Board of Election Supervisors
CIVIL ACTION NO.: J79-0425(c) (S.D. Miss.) D.J. NO.: 166-4I-166
POLITICAL JURISDICTION: Warren County, Mississippi
(City, County, State)
DATE FILED: September 9, 1979 (amicus)
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____
§5 Enforcement (Failure to Submit)		Other	X
§5 Enforcement (Noncompliance with objection)		____	

FACTS (Very brief): County planned to conduct elections under old districting plan following denial of the county's request for preclearance of a new election plan. Donnell v. United States (D.D.C.). White citizens sought to enjoin the election on the grounds that the old plan was malapportioned.

ISSUE(S): Whether a jurisdiction must utilize the previously-existing electoral system when a change in that system, although not precleared, has been proposed or enacted.

STATUS:
DISTRICT COURT DECISION:

DATE: September 20, 1979 Holding: Court held that the elections should be held but ordered all the parties to file proposed election plans for use as an interim plan. The plan proposed by the United States as amicus was ordered into effect and resulted in a black gaining a seat on the Board of Supervisors for the first time since Reconstruction.

APPELLATE COURT DECISION:
DATE: Holding: None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Forte v. Barbour County Commission
CIVIL ACTION NO.: 79-537-N (M.D. Ala.) D.J. NO.: 166-2-42
POLITICAL JURISDICTION: Barbour County, Alabama
(City, County, State)
DATE FILED: November 9, 1979
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (1/2/80) Intervenor ____
TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____
§5 Enforcement (Failure to Submit)	____	Other	X
§5 Enforcement (Noncompliance with objection)	____		

FACTS (Very brief): In a prior §5 action, United States v. Barbour County Commission, court held that the pre-existing 1919 electoral scheme was the controlling election plan and ordered a special election under that scheme. A private suit was brought to enjoin special election under a malapportioned system.

ISSUE(S): Whether the 1919 plan complied with the one person, one vote requirements of the Fourteenth Amendment.

STATUS: Pending

DISTRICT COURT DECISION:

Date: December 17, 1979 Holding: District Court enjoined special election and ordered parties to attempt agreement on a redistricting plan by March 18, 1980. Parties subsequently submitted proposed plans to court based upon 1970 Census data. On August 25, 1980, Court continued case until plans could be submitted based on 1980 Census data.

APPELLATE COURT DECISION:

Date: ____ Holding: ____

VOTING SECTION CASE SUMMARY SHEET

ASE TITLE: United States v. State of South Carolina and Horry County
IVIL ACTION NO.: 79-2467-5 (D.S.C.) D.J. NO.: 166-67-77
OLITICAL JURISDICTION: Horry County, South Carolina
(City, County, State)
ATE FILED: December 21, 1979
OLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

YPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)	X		

ACTS (Very brief): In 1976, the Horry County Council was changed from an appointive to an at-large election system. The Attorney General interposed an objection in 1976. Subsequently, the General Assembly enacted a single-member district plan, which was precleared in 1978. The United States filed suit after a state court invalidated the district plan.

SSUE(S): What remedy is appropriate to bring the jurisdiction into compliance with §5.

TATUS.
ISTRICT COURT DECISION:
DATE: April 4, 1980 Holding: Subsequent to the filing of the complaint, the South Carolina General Assembly enacted a single-member districting plan of election for the governing body of Horry County. The Attorney General precleared the legislation and a consent judgment and decree was entered on April 4, 1980 since all issues in the complaint had been resolved by the precleared legislation.

PPELLATE COURT DECISION:
DATE: Holding: None

ASE TITLE: State of Mississippi v. United States
IVIL ACTION NO.: 79-3469 (D.D.C.) D.J. NO.: 166-41-174
OLITICAL JURISDICTION: State of Mississippi
(City, County, State)
ATE FILED: December 27, 1979
OLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

YPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____

ACTS (Very brief): Mississippi seeks Section 5 preclearance of its "open primary" election system, which provides for a preferential election, in which all candidates regardless of party affiliation must run, three weeks prior to the general election. If no candidate receives a majority of the votes, the two top vote-getters run in the general election.

SSUE(S): (1) Whether plaintiff can demonstrate that the voting changes resulting from "open primary" system have neither the purpose nor effect of discriminating on the basis of race. (2) Whether §5 is constitutional.

TATUS: Proceedings stayed pending appeal of disqualification order; stay removed May 11, 1981.
ISTRICT COURT DECISION:

DATE: September 29, 1980 Holding: Court granted defendant's Motion for Order Disqualifying Plaintiff's Counsel. The Court barred plaintiff's counsel Jerris Leonard from representing the State since in 1970 as Assistant Attorney General of the Civil Rights Division he had reviewed a Section 5 submission of an identical open primary bill; thus Canon 9 required that Mr. Leonard be disqualified.

PPELLATE COURT DECISION:
DATE: April 27, 1981 Holding: The Supreme Court affirmed the judgment of the three-judge court, disqualifying Mr. Leonard. Mississippi v. Smith and United States, 49 U.S.L.W. 3806 (April 27, 1981).

ASE TITLE: United States v. County School Trustees of Harris Co., Texas
VIL ACTION NO.: H-80-143 (S.D. Texas) D.J. NO.: 166-74-58
OLITICAL JURISDICTION: Harris County, Texas
(City, County, State)
ATE FILED: January 18, 1980
OLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

YPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)	X		

ACTS (Very brief): The date for the holding of trustee elections was changed from November of odd numbered years to January of even numbered years. Section 5 objection to change was interposed on May 1, 1978, respecting January 1978 election date and on January 17, 1980, respecting January 1980 election date. Both changes implemented without preclearance.

ISSUE(S): Whether election date change is subject to Section 5 review and whether preclearance has been obtained.

TATUS:

ISTRICT COURT DECISION:

DATE: September 25, 1980; June 11, 1980 Holding: Consent Decree and Order entered setting aside 1978 and 1980 elections because conducted without preclearance. Permanent election date precleared by Attorney General. November 3, 1981 is appropriate date for special election to fill positions that were unlawfully filled in 1978 and 1980.

PPELLATE COURT DECISION:

DATE: Holding:

VOTING SECTION CASE SUMMARY SHEET

ASE TITLE: Commissioners Court, Medina County Texas v. United States
IVIL ACTION NO.: 80-0241 (D.D.C.) D.J. NO.: 166-76-45
OLITICAL JURISDICTION: Medina County, Texas
(City, County, State)

ATE FILED: January 25, 1980
OLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

YPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) _____
§5 Enforcement (Noncompliance with objection) _____

ACTS (Very brief): Section 5 objections interposed to 1978 and 1979 redistricting plans because the plans unnecessarily fragmented the Mexican-American community. Attorney General made no determination on the changes of justice of the peace and voting precincts, since those changes were dependent on final commission plan.

SSUE(S): Whether the plaintiff can demonstrate that the voting changes have neither a discriminatory purpose nor effect; whether no determination of dependent changes constitutes preclearance.

TATUS:
ISTRICT COURT DECISION:

DATE: December 18, 1980 Holding: During the discovery stage the parties entered into negotiations and the county adopted a new plan. The plan was submitted for administrative Section 5 review and no objection was interposed. The lawsuit was then dismissed as moot.

PPELLATE COURT DECISION:
DATE: _____ Holding: _____

None.

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Lockhart v. United States
CIVIL ACTION NO.: 80-0364 (D.D.C.) D.J. NO.: 166-76-44
POLITICAL JURISDICTION: Lockhart (Caldwell), Texas
(City, County, State)
DATE FILED: February 6, 1980
ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§703)	_____
1975/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	X

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): City adopted a home rule charter which required staggered terms and the expansion of the city council from three to five members. In addition, the charter included a numbered-post provision which previously had been utilized in municipal elections in violation of state law.

ISSUE(S): 1) Whether adoption of previously illegal numbered-post provision is a Section 5 change. 2) Whether the city could show that the voting chang did not have a discriminatory purpose or effect.

STATUS: Case submitted on October 27, 1980.
DISTRICT COURT DECISION:

DATE: _____ Holding: _____

APPELLATE COURT DECISION:
DATE: _____ Holding: _____

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: County of Placer v. United States
CIVIL ACTION NO.: S-80-123 MLS (E.D. Cal.) J. NO.: 166-11E-8
POLITICAL JURISDICTION: Placer County, California
(City, County, State)

DATE FILED: February 20, 1980
ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	X
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): County challenged determinations by the Director of the Bureau of the Census that more than 5% of voting age citizens were of Spanish heritage and that the illiteracy rate of those persons was worse than the national average. Also alleges that illiteracy rate of Hispanics is, in fact, better than national average.

ISSUE(S): Whether determinations of Director of Bureau of Census are subject to judicial review. Whether illiteracy rate of Hispanics is better than national average.

STATUS:

DISTRICT COURT DECISION:
Date: June 13, 1980 Holding: Lawsuit voluntarily dismissed by plaintiff.

APPELLATE COURT DECISION:
Date: ____ Holding: None

VOTING RIGHTS ACT SECTION 5 PRECLEARANCE RECORD

CASE TITLE: City of Port Arthur, Texas v. United States

CIVIL ACTION NO.: 80-0648 (D.D.C.) D.J. NO.: 166-75-18

POLITICAL JURISDICTION: Port Arthur, Texas
(City, County, State)

DATE FILED: March 12, 1980

ROLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) _____

§5 Enforcement (Noncompliance with objection) _____

FACTS (Very Brief): Port Arthur expanded its political boundaries by consolidating with two virtually all-white municipalities and by annexing a third area. The city's black population was on the increase at the time, nearing 45%. The city then adopted two election plans (an all at-large plan and a 4-5 plan). The Attorney General objected to all of these voting changes

ISSUE(S): Whether Port Arthur could show that the voting changes are without a racially discriminatory purpose or effect.

STATUS:

DISTRICT COURT DECISION:

Date: June 12, 1981 Holding: The court rejected the city's request for a declaratory judgment that the election plans for the enlarged city are without a racially discriminatory purpose or effect. The co approved the consolidation and annexation on the condition that the city adopt a new electoral plan that fairly affords the city's black community an opportu to elect candidates of their choice.

APPELLATE COURT DECISION:

Date: _____ Holding: _____

VOTING SECTION CIVIL DOCKET SHEET

CASE TITLE: McRae v. The Board of Education of Henry County
CIVIL ACTION NO.: C-79-2064A (N.D. Ga.) D.J. NO.: 166-19-43
POLITICAL JURISDICTION: Henry County, Georgia
(City, County, State)
DATE FILED: March 13, 1980
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X Intervenor ____
TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X
FACTS (Very brief): 1966 legislative act changed method of election from single-member districts to at-large. Section 5 objection interposed on May 22, 1979.

ISSUE(S): Whether the change to at-large elections was subject to and had satisfied the preclearance requirements of Section 5.

STATUS:
DISTRICT COURT DECISION:
Date: June 17, 1980 Holding:
Change is subject to preclearance; Attorney General interposed a timely objection. Single judge devised a properly apportioned single-member district plan to be used until legislature enacts plan.

APPELLATE COURT DECISION:
Date: ____ Holding: ____
None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: United States v. City of Port Arthur

CIVIL ACTION NO.: B-80-216-CA (E.D. Tex.) D.J. NO.: 166-75-17

POLITICAL JURISDICTION: Port Arthur (Jefferson), Texas
(City, County, State)

DATE FILED: March 14, 1980

ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) X

§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): City implemented a consolidation with two surrounding municipalities despite two Section 5 objections to the consolidation and at-large election plans. In addition, the three municipalities had not held elections since the consolidation in 1970. The city then attempted to impleme the voting changes in a referendum election.

ISSUE(S): Whether the consolidation of the municipalities and abolition of the separate town governments prior to obtaining the requisite Section 5 preclearance was a violation of the Voting Rights Act.

STATUS: Pending

DISTRICT COURT DECISION:

Date: September 3, 1980 Holding: The city violated Sectior 5 by implementing the consolidation. The conduct of a referendum in the city had not received preclearance. The Court did permit the election plan referendum for the sole purpose of presenting the election plan to the District Court for the District of Columbia for Section 5 preclearance in City of Port Arthur v. United States, C.A. No. 80-C648 (D.D.C.).

APPELLATE COURT DECISION:

Date: ____ Holding: ____

VOTING [illegible] SUMMARY SHEET

CASE TITLE: Garcia v. Decker

CIVIL ACTION NO.: SA-79-CA-414(W.D. Tex.) D.J. NO.: 166-76-43

POLITICAL JURISDICTION: Medina County, Texas
(City, County, State)

DATE FILED: October 25, 1979

ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (3/18/80) Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): Mexican American residents sought to enjoin implementation of redistricting plans for county commissioner precincts and changes in justice of the peace and voting precincts. Section 5 objections were interposed because the commissioner precinct lines unnecessarily fragmented the minority community in the county seat.

ISSUE(S): 1) Whether the voting changes had received the necessary Section 5 preclearance; 2) the appropriate remedy for malapportioned pre-existing plan if Section 5 violation found.

STATUS:

DISTRICT COURT DECISION:

Date: February 9, 1981 Holding:

Preliminary injunction entered against further implementation of the plans on January 18, 1980. The parties subsequently entered into negotiations and the county adopted a new plan which was precleared. On February 9, 1981, the court established a schedule for the holding of a special election under the new plan.

APPELLATE COURT DECISION:

Date: ____ Holding: None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Garza v. Gates
CIVIL ACTION NO.: SA-79-CA-413 (W.D. Tex.) D.J. NO.: 166-76-42
POLITICAL JURISDICTION: Atascosa County, Texas (City, County, State)

DATE FILED: October 25, 1979
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (3/18/80) Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout ($4)	____
§203 Enforcement	____	Bailout ($203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): Plaintiffs sought to enjoin implementation of an objected-to redistricting plan for county commissioner precincts adopted in 1973. The objection was interposed because the county failed to provide information requested by the Attorney General and thus failed to carry its burden of demonstrating that the changes are nondiscriminatory.

ISSUE(S): Whether the redistricting plan was subject to Section 5 preclearance and, if so, whether a timely objection had been interposed.

STATUS:

DISTRICT COURT DECISION:
Date: January 25, 1980 Holding: Plaintiffs' motion for preliminary injunction which was heard prior to U.S. seeking leave to participate was denied because the court preliminarily held the objection untimely. The parties later entered into a consent decree which prohibited further implementation of the redistricting plan because it was unconstitutionally apportioned.

APPELLATE COURT DECISION:
Date: ____ Holding: None

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Head v. Henry County Board of Commissioners
CIVIL ACTION NO.: C-79-2063A (N.D. Ga.) D.J. NO.: 166-19-46
POLITICAL JURISDICTION: Henry County, Georgia (City, County, State)

DATE FILED: March 28, 1980
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): 1969 legislative act changed method of election from single-member districts to at large. Change enacted because single-member districts were found to be malapportioned. Section 5 objection interposed to at-large system on July 23, 1979.

ISSUE(S): Whether the at-large plan, which was enacted to remedy a constitutional violation, is subject to Section 5 review.

STATUS:

DISTRICT COURT DECISION:
Date: June 17, 1980 Holding:
The change to at-large elections is subject to Section 5 review and is legally unenforceable. A single judge later devised a properly apportioned single-member district plan to be used until legislature enacts plan.

APPELLATE COURT DECISION:
Date: Holding:
None

CASE TITLE: United States v. State of South Carolina
CIVIL ACTION NO.: 80-730-8 (D.S.C.) I.J. NO.: 166-67-74
POLITICAL JURISDICTION: State of South Carolina
(City, County, State)

DATE FILED: April 18, 1980
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution	X	26th Amendment	
1973/Other		§5 Preclearance	

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection)

FACTS (Very brief): The South Carolina Senate is elected, to a significant extent, from multi-member districts; no black person has been elected to Senate.

ISSUE(S): Whether the use of multi-member districts for the election of state senators, with majority vote and numbered post requirements, abridges the right to vote of blacks in violation of Section 2.

STATUS:
DISTRICT COURT DECISION:
DATE: June 11, 1980 Holding: United States' complaint voluntarily dismissed without prejudice.

APPELLATE COURT DECISION:
DATE: Holding: None

ASE TITLE: Reich v. Larson
IVIL ACTION NO.: 80-69-EDP (E.D. Cal.) D.J. NO.: 166-11E-9
OLITICAL JURISDICTION: Sacramento, California
(City, County, State)
ATE FILED: June 24, 1980 (amended complaint)
OLE OF U. S.: Plaintiff _____ Defendant X
Amicus _____ Intervenor _____

YPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	X	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____
§5 Enforcement (Failure to Submit)	_____		
§5 Enforcement (Noncompliance with objection)	_____		

ACTS (Very brief): Candidate for public office filed suit in district court in California alleging that Section 203(c) of the Voting Rights Act infringed on his First Amendment rights because he did not wish his candidacy statement to be translated into Spanish as required by this statute.

SSUE(S): Whether section 14(d) of the Voting Rights Act grants the District Court for the District of Columbia exclusive jurisdiction over suits which seek to prevent enforcement of a provision of the Voting Rights Act.

TATUS: Appeal Pending.
ISTRICT COURT DECISION:

DATE: November 7, 1980 Holding: Order dismissing suit for lack of jurisdiction and holding that the District Court for the District of Columbia has exclusive jurisdiction over matters alleged in plaintiff's complaint.

PPELLATE COURT DECISION:
DATE: _____ Holding: _____

Appeal pending.

VOTING SECTION - CIVIL DIVISION

CASE TITLE: South Dakota v. United States

CIVIL ACTION NO.: 80-1976 (D.D.C.) D.J. NO.: 166-69-4

POLITICAL JURISDICTION: Todd and Shannon Counties, South Dakota
(City, County, State)

DATE FILED: August 6, 1980

ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Predominantly Indian Todd and Shannon Counties, as "unorganized" counties, are each governed by an attached "organized" county. After the Indians won the right to vote in the attached counties, the South Dakota Legislature enacted legislation to organize the counties, with separate governing bodies and elections.

ISSUE(S): Whether plaintiff can demonstrate that the voting changes resulting from the severance legislation have neither the purpose nor effect of discriminating against the Indian residents of Todd and Shannon.

STATUS: In discovery

DISTRICT COURT DECISION:

Date: _____ Holding: _____

APPELLATE COURT DECISION:

Date: _____ Holding: _____

CASE TITLE: United States v/ Clarke County Commission
CIVIL ACTION NO.: 80-0547-H (S.D. Ala.) D.J. NO.: 166-3-47
POLITICAL JURISDICTION: Clarke County, Alabama
(City, County, State)

DATE FILED: September 2, 1980
ROLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

TYPE OF CASE:

§202 Enforcement		Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution	X	26th Amendment	
1973/Other		§5 Preclearance	
§5 Enforcement (Failure to Submit)			
§5 Enforcement (Noncompliance with objection)	X		

ACTS (Very brief): County refused to comply with an objection to a change from district to at-large elections claiming that the District system, used from c. 1880 through 1970, was contrary to state law. Old districts were malapportioned. A fairly-apportioned plan would include one district with a substantial black majority.

ISSUE(S): Whether the change to at-large was subject to Section 5 preclearance; 2) whether the former districts were malapportioned in violation of the 14th and 15th Amendments and 42 U.S.C. 1973.

STATUS:
DISTRICT COURT DECISION:
Oct. 24, 1980 (3-judge panel)
DATE: April 17, 1981 (single judge) Holding: 1) (3-judge panel) The change to at-large was within the purview of Section 5. Terms of commissioners shortened. Remanded to single-judge court for consideration of malapportionment complaint. 2) (Single-judge court) The districts were malapportioned. The change to at-large elections was adopted with a racial purpose. New plan ordered.

APPELLATE COURT DECISION:
DATE: Holding:

CASE TITLE: Lodge v. Buxton

CIVIL ACTION NO.: No. 176-55 (S.D. Ga.) D.J. NO.: 166-20-75

POLITICAL JURISDICTION: Burke County, Georgia
(City, County, State)

DATE FILED: April 5, 1976

ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X (10/2/80) Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Black residents of Burke County, Georgia, a large rural county in southern Georgia, brought this action to have that county's system of at-large elections declared invalid under the Constitution and Section 2. No black has ever been elected to the Burke County Commission, yet a slight majority of the residents in the county are black.

ISSUE(S): Whether the at-large scheme used to elect the members of the Burke County Commission is violative of either the Fourteenth or Fifteenth Amendments, and Section 2.

STATUS:

DISTRICT COURT DECISION:

Date: October 26, 1978 Holding: The Court invalidated the at-large election process on the grounds that it was being maintained for the purpose of limiting black access to the political system in violation of the Fourteenth and Fifteenth Amendments. District Court ordered a redistricting of the county into 5 single-member election districts

APPELLATE COURT DECISION:

Date: March 20, 1981 Holding: Affirmed. Ct. of Appeal concludes that the lower court's finding that the at-large electoral scheme operated in conjunction with historical and present discrimination to unfairly limit black political participation was not clearly erroneous. See 639 F. 2d 1358 (5th Cir. 1981)

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: City of Pleasant Grove v. United States

CIVIL ACTION NO.: 80-2589 (D.D.C.) D.J. NO.: 166-1-64

POLITICAL JURISDICTION: Pleasant Grove, Jefferson, Alabama
(City, County, State)

DATE FILED: October 9, 1980

ROLE OF U. S.: Plaintiff ____ Defendant X
Amicus ____ Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	X

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): The Attorney General interposed a Section 5 objection to the annexation to Pleasant Grove of certain vacant land projected for all-white residential development because of the city's refusal to annex certain black areas.

ISSUE(S): Whether the City can satisfy its burden of demonstrating that the change is free of any invidious racial purpose or effect.

STATUS: Discovery completed; trial date not set.

DISTRICT COURT DECISION:

Date: _____ Holding: _____

APPELLATE COURT DECISION:

Date: _____ Holding: _____

ASE TITLE: United States v. County of Santa Clara
IVIL ACTION NO. C-80-4103 WWS (N.D. Cal.) D.J. NO.: 166-12C-11
OLITICAL JURISDICTION: Santa Clara County, California
(City, County, State)

ATE FILED: November 4, 1980
OLE OF U. S.: Plaintiff X Defendant
Amicus Intervenor

YPE OF CASE:

§202 Enforcement	X	Bailout (§4)	
§203 Enforcement		Bailout (§203)	
1973/Dilution		26th Amendment	
1973/Other		§5 Preclearance	

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection)

ACTS (Very brief): Due to the late mailing of absentee ballots by Santa Clara County election officials, a substantial number of eligible voters were unable, in the 1980 general election, to return their ballots by the close of the polls on election day, as required by California law.

ISSUE(S): Whether the late mailing of absentee ballots denied to citizens voting in Santa Clara County the right to vote a entee guaranteed by Section 202.

TATUS:
ISTRICT COURT DECISION:
DATE: March 26, 1981 Holding: After a TRO was granted providing relief to voters who were threatened with disenfranchisement in the 1980 election, a stipulated permanent injunction was entered. To avoid future late mailings, Santa Clara agreed to closely monitor the volume of absentee ballot requests, provide additional personnel and resources (as needed), and maximize the use of computer assistance.

PPELLATE COURT DECISION:
DATE: Holding:
None.

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: United States v. Florida

CIVIL ACTION NO. TCA-80-1055(N.D. Fla.) D.J. NO.: 166-17-6

POLITICAL JURISDICTION: Florida
(City, County, State)

DATE FILED: November 6, 1980

ROLE OF U. S.: Plaintiff X Defendant ____
Amicus ____ Intervenor ____

TYPE OF CASE: OCVRA/FVAA Enforcement X

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	____	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____

§5 Enforcement (Noncompliance with objection) ____

FACTS (Very brief): Due to the late mailing of absentee ballots by Florida election officials, a substantial number of overseas voters were unable to return their ballots by the close of the polls on election day (Nov. 4, 1980), as required by Florida law.

ISSUE(S): Whether the late mailing of absentee ballots denies to overseas citizens voting in Florida the right to vote guaranteed by the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act.

STATUS:

DISTRICT COURT DECISION:

Date: November 6, 1980 Holding: Temporary Restraining Order granted requiring Florida to count absentee ballots cast by voters protected under the two Acts before the close of the polls and received on or before ten days after election day.

APPELLATE COURT DECISION:

Date: ____ Holding: ____

None.

CASE TITLE: Brown and United States v. Board of School Commissioners of Mobile County, Alabama

COURT NO.: 75-298-P (S.D. Ala.) D.J. NO.: 166-3-46

JURISDICTION: Mobile County, Alabama
(City, County, State)

DATE FILED: November 7, 1980 (Complaint in Intervention)

ROLE OF U. S.: Plaintiff _X_ Defendant _____
Amicus _____ Intervenor _X_

TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_X_	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____
§5 Enforcement (Failure to Submit)		_____	
§5 Enforcement (Noncompliance with objection)		_____	

ACTS (Very brief): Black residents of Mobile County challenged at-large election system for Mobile County Board of School Commissioners as violative of the Fourteenth and Fifteenth Amendments and Section 2 of the Voting Rights Act of 1965.

ISSUE(S): Whether the at-large election system for county school commissioners dilutes minority voting strength in violation of Section 2, the Fourteenth Amendment and/or the Fifteenth Amendment.

STATUS: Hearings on intent issue held April 13-17, 1981.

DISTRICT COURT DECISION:

DATE: December 13, 1976 Holding: At large election system dilutes minority voting strength in violation of the Fourteenth Amendment (applying Zimmer v. McKeithen). Court ordered election of five commissioners from single-member districts. Brown v. Moore, 428 F. Supp. 1123 (S.D. Ala. 1976).

APPELLATE COURT DECISION:

DATE: _____ Holding: Fifth Circuit Court of Appeals affirmed District Court decision in unreported per curiam opinion. On April 22, 1980, Supreme Court vacated Fifth Circuit's opinion and remanded for further proceedings in light of City of Mobile v. Bolden, 446 U.S. 55 (1980), Williams v. Brown 446 U.S. 236 (1980).

VOTING LITIGATION CASE SUMMARY SHEET

CASE TITLE: McDaniel v. Sanchez
CIVIL ACTION NO.: C-78-11 (S.D. Tex.) D.J. NO.: 166-74-59
POLITICAL JURISDICTION: Kleberg County, Texas
(City, County, State)
DATE FILED: January 26, 1978
ROLE OF U. S.: Plaintiff _____ Defendant _____
Amicus X (12/31/80) Intervenor _____
TYPE OF CASE:

§202 Enforcement	_____	Bailout (§4)	_____
§203 Enforcement	_____	Bailout (§203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	X	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) X
§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): Plaintiffs alleged that commissioner precincts in Kleberg County, Texas were malapportioned and, unconstitutionally diluted Mexican-American voting power. County developed plan to remedy malapportionment and submitted it to district court.

ISSUE(S): Whether plan submitted by county to court, but not officially adopted by county, was subject to the preclearance requirements of Section 5.

STATUS:

DISTRICT COURT DECISION:
Date: January 14, 1980 Holding: District Court held that plan was not subject to Section 5 review since it was only proposed by the county and not adopted. Court approved plan and declared it to be a "court ordered" plan.

APPELLATE COURT DECISION:
Date: April 14, 1980 Holding: Court of Appeals (615 F. 2d 1023 (5th Cir. 1980)): Reversed - Plan was not court ordered but rather was legislative plan subject to Section 5 review. Supreme Court, 49 U.S.L.W. 4615 (June 1, 1981), affirmed. Proposal to court, which reflects the policy choices of elected representatives, must be submitted for Section 5 review.

VOTING SECTION CASE SUMMARY SHEET

CASE TITLE: Miller v. Daniels

CIVIL ACTION NO.: 80-Civ-7083 (ADS) D.J. NO.: 166-51-9

POLITICAL JURISDICTION: New York, New York (City, County, State)

DATE FILED: February 9, 1981 (Amicus)

ROLE OF U. S.: Plaintiff _____ Defendant _____

Amicus X Intervenor _____

TYPE OF CASE:

§202 Enforcement	_____	Bailout ($4)	_____
§203 Enforcement	_____	Bailout ($203)	_____
1973/Dilution	_____	26th Amendment	_____
1973/Other	_____	§5 Preclearance	_____

§5 Enforcement (Failure to Submit) X

§5 Enforcement (Noncompliance with objection) _____

FACTS (Very brief): An unsuccessful candidate for 71st Assembly District (Demo. primary 9/9/80) challenged certain election practices in 71st A.D. as violations of 42 U.S.C. 1971(a)(2)(A), 42 U.S.C. 1973 and 1973c, 42 U.S.C. 1983 and 14th and 15th Amendments. Defendants named were three opposing candidates and New York Board of Elections.

ISSUE(S): Legal standards governing claims under 42 U.S.C. 1973c and 1971 and 1973; jurisdiction of §5 court; 3-judge court requirement; what constitutes a change affecting voting within meaning of §5.

STATUS: Non-Section 5 claims remain pending.

DISTRICT COURT DECISION:

Date: March 2, 1981 Holding: In a March 2, 1981 decision, single-judge Court denied plaintiff's request for a 3-judge Court on the ground that the §5 claims were insubstantial and meritless and dismissed with prejudice the §5 claims of the complaint. The Court found that the formal election laws at issue had been precleared under §5 and held that alleged misconduct of local election officials in 71st A.D. is insufficient to invoke §5.

APPELLATE COURT DECISION:

Date: _____ Holding: _____

CASE TITLE: Edge v. Sumter County School Board
CIVIL ACTION NO.: 80-20-Amer. (M.D. Ga.) D.J. NO.: 166-19M-128
POLITICAL JURISDICTION: Sumter County School District, Georgia
(City, County, State)
DATE FILED: March 13, 1981 (Amicus)
ROLE OF U. S.: Plaintiff ____ Defendant ____
Amicus X Intervenor ____

TYPE OF CASE:

§202 Enforcement	____	Bailout (§4)	____
§203 Enforcement	____	Bailout (§203)	____
1973/Dilution	X	26th Amendment	____
1973/Other	____	§5 Preclearance	____

§5 Enforcement (Failure to Submit) ____
§5 Enforcement (Noncompliance with objection) X

FACTS (Very brief): Board was ordered in Carter v. Crenshaw (M.D. Ga.) to remedy malapportionment of election districts. In 1972, legislature passed an act shifting board elections to at-large. A Section 5 objection was interposed in 1973. Board failed to comply with objection.

ISSUE(S): 1) Whether the change is subject to Section 5 preclearance.
2) Whether the at-large system was maintained with a discriminatory purpose and effect.

STATUS: Pending
DISTRICT COURT DECISION:
DATE: ____ Holding: ____

APPELLATE COURT DECISION:
DATE: ____ Holding: ____

CASE TITLE: Kirksey v. City of Jackson
CIVIL ACTION NO.: J77-0075(N) (S.D. Miss.) D.J. NO.: 166-41-125
POLITICAL JURISDICTION: Jackson, Mississippi (City, County, State)

DATE FILED: March 10, 1977
ROLE OF U. S.: Plaintiff ___ Defendant ___
Amicus _X_ (appeal) (5/8/81) Intervenor ___

TYPE OF CASE:
§202 Enforcement ___ Bailout (§4) ___
§203 Enforcement ___ Bailout (§203) ___
1973/Dilution _X_ 26th Amendment ___
1973/Other ___ §5 Preclearance ___
§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection)

FACTS (Very brief): Since 1912, Jackson has been governed by a commission: a mayor and 2 commissioners elected at-large. A majority vote requirement is in effect for the primary election, and there is no district residency requirement. Single-shot voting is prohibited. Although about 40% of Jackson's population is black, no black has ever been elected to the city commission.

ISSUE(S): Whether the at-large method of electing the mayor and two commissioners of Jackson violates the 14th and 15th Amendments, and/or Section 2.

STATUS: Pending in the CCA5. Argued June 15, 1981. (No. 81-4058)

DISTRICT COURT DECISION:

DATE: August 28, 1978/January 22, 1981 Holding: In its 1978 decision, the district court found that plaintiffs had failed to establish intentional discrimination as a motivating factor in either the enactment or maintenance of the commission form of government or at-large method of election. 461 F. Supp. 1282. In 1981, the district court, on remand, again concluded that plaintiffs had failed to meet their burden of proof. See 506 F. Supp. 491.

APPELLATE COURT DECISION:

DATE: Pending Holding: In its first decision in this case (625 F.2d 21), the court of appeals vacated and remanded the district court's 1978 decision for reconsideration in light of City of Mobile v. Bolden. On remand, the district court ruled against the plaintiffs and the case is again pending before the Fifth Circuit.

CASE TITLE: Bolden and United States v. City of Mobile, Alabama
CIVIL ACTION NO.: 75-297-P (S.D. Ala.) D.J. NO.: 166-3-45
JURISDICTION: Mobile County, Alabama
(City, County, State)
DATE FILED: May 8, 1981 (Complaint in Intervention)
TYPE OF U.S.: Plaintiff ___ Defendant ___
Amicus X Intervenor X

TYPE OF CASE:

§202 Enforcement	___	Bailout (§4)	___
§203 Enforcement	___	Bailout (§203)	___
1973/Dilution	X	26th Amendment	___
1973/Other		§5 Preclearance	___

§5 Enforcement (Failure to Submit)
§5 Enforcement (Noncompliance with objection) ___

SUMMARY (Very brief): Black residents of City of Mobile challenged at-large, with numbered post and majority vote, election system of city commission, as violative of Section 2, the Fourteenth and/or Fifteenth Amendments.

ISSUE(S): Whether the at-large system dilutes minority voting strength in violation of Section 2, the Fourteenth Amendment and/or the Fifteenth Amendment.

STATUS: Hearings on the intent issue held May 18-27, 1981.

DISTRICT COURT DECISION:

DATE: October 21, 1976 Holding: District Court held that election system for three commissioners impermissibly diluted the voting strength of blacks, in violation of the 14th Amendment; Court ordered creation of mayor-council form of government with council members elected by district. Bolden v. City of Mobile, 423 F. Supp. 384 (S.D. Ala. 1976).

APPELLATE COURT DECISION:

DATE: March 29, 1978 Holding: Fifth Circuit affirmed District Court's finding of unconstitutional vote dilution under the 14th Amendment, applying Zimmer v. McKeithen. Bolden v. City of Mobile, 571 F.2d 238 (5th Cir. 1978). April 22, 1980: Supreme Court, in plurality opinion, reversed and remanded for further proceedings on the issue of racially discriminatory purpose. City of Mobile v. Bolden, 446 U.S. 55 (1980).

APPENDIX 3—DOCUMENTS INSERTED BY WITNESSES

"The Election of Blacks to Utility Councils: Clarifying the Impact of Electoral Arrangements on the Seats/Population Relationship," Richard Engstrom, Michael McDonald, American Political Science Review, June, 1981.

McDonald, Laughlin, Director, ACLU-Southern Regional Office, Exhibits 1-6.

"Voting Rights On the Chopping Block," Laughlin McDonald, reprinted from Southern Exposure, Spring, 1981.

"A Mississippi Case for the Continuation of the Voting Rights Act of 1965," Robert M. Walker, Mississippi Field Director, NAACP, 1981.

"Laurel and Laurel A City Divided," transcript of videotaped study prepared by the Mississippi State Advisory Committee of the U.S. Commission on Civil Rights, 1981, at pp. 2111-34.

"Voting: A Right Still Denied," The Atlanta Journal, December, 1980, at p. 499.

"The Voting Rights Act in Alabama: A Current Legal Assessment," Jane Reed Cox and Abigail Turner, June, 1981.

McCain v. *Lybrand*, Civil Action No. 74-281, April 17, 1980 and August 11, 1980 at pp. 302, 323.

"The Odd Evolution of the Voting Rights Act," Abigail Thernstrom, The Public Interest, No. 55, Spring, 1979 at p. 327.

The Election of Blacks to City Councils: Clarifying the Impact of Electoral Arrangements on the Seats/Population Relationship

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The notion that at-large elections for city council seats are discriminatory toward blacks has recently been attacked as empirically invalid. Recent studies have reached conflicting conclusions as to whether electoral arrangements or socioeconomic factors are the major influence on how proportionately blacks are represented. This article addresses this issue, using a regression-based analysis in which proportionality is treated as a relationship across cities with electoral structure as a specifying variable. Socioeconomic variables found to be important in other studies are included. The results support the traditional notion and suggest that the electoral structure begins to have a discernible impact on the level of black representation once the black population reaches 10 percent of the total municipal population. While one socioeconomic variable, the relative income of the city's black population, is found to affect the election of blacks, its impact is greater than that of the electoral structure only when the black population is less than 15 percent.

The notion that at-large elections for city council seats are discriminatory toward black Americans was once conventional wisdom in political science. Given that racially polarized voting patterns are not uncommon in American cities and that blacks are a minority which is usually concentrated within heavily segregated areas of a city, it has often been asserted that black candidates are far more likely to be elected to city councils through single-member district (or ward) electoral systems than through at-large arrangements. Recently, however, this traditional notion has come under serious question. Indeed, the literature now contains a complete range of possible conclusions about the discriminatory impact of at-large elections.

Susan MacManus has argued, for example, that the traditional view is "inaccurate" and "must be abandoned" (1978, pp. 158, 160). In her analysis of data for 243 central cities of Standard Metropolitan Statistical Areas (SMSAs), she finds that electoral arrangements have little or no direct impact on the election of blacks. When she imposed controls for various socioeconomic characteristics of cities, she discovered that the relationship between electoral format and black representation "virtually disappears" (1978, p. 159). Understandably, MacManus concluded that there is a need for "a reevaluation of the relative impact of electoral procedures" (1978, p. 160). Additional support for this revisionist argument is provided in an earlier, more limited study by Leonard Cole, whose examination of 16 New Jersey cities led him to conclude that the traditional notion had been "exaggerated" (1974, p. 26). Like McManus, Cole argues that the socioeconomic characteristics of a city's population are more important determinants of black electoral success. Albert Karnig (1979) has also raised some questions about the relative significance of electoral arrangements. Although Karnig is among those who have marshaled evidence in support of the traditional notion (Karnig, 1976; Karnig and Welch, 1978; see also Kramer, 1971; Jones, 1976), he has more recently argued that although the electoral system is not an unimportant variable in understanding the election of black council members, it is considerably less important than other variables which reflect black political resources, especially the socioeconomic status of the black community (1979, pp. 143-45, 148).

Several other recent studies, however, reach sharply contrasting conclusions. Theodore Robinson and Thomas Dye included various socioeconomic indicators for both the total population and black population in their investigation of councilmanic representation in central cities, yet concluded that the electoral framework is the "single most influential" variable. According to them, "At-large elections, independently of any other socioeconomic or structural variable, significantly reduce black representation on city councils" (1978, p. 139). In a study focusing on only southern cities, Margaret Latimer investigated socioeconomic variables for the black, white, and total populations of cities but still found that it

We wish to express our appreciation to Theodore P. Robinson and Thomas R. Dye for providing data used in this analysis and to John K. Wildgen for assisting with the preparation of the data.

was the electoral system that had "a preeminent causal effect" on the election of blacks (1979, p. 79). And Delbert Taebel, although not incorporating socioeconomic information into his analysis, has reported that the electoral arrangement is an important factor when blacks constitute between 20 and 40 percent of a city's population (1978, p. 149).

The conflict in these conclusions is of considerable interest for both theoretical and practical reasons. On the theoretical side, the revisionist position suggests that the electoral framework is really little more than a relatively unimportant structural dimension which happens to intervene between more explanatory socioeconomic factors and black representation. The electoral framework had appeared to be one structural variable that would surely survive the onslaught of "environmental determinism," but this now seems to be a matter for debate. On the practical side, the issue is enormously important to those wishing to bring about a more equitable proportion of blacks on city councils, for the electoral structure of a city is certainly more readily changed than the socioeconomic characteristics of a city's population. Changes in electoral structures may be mandated by courts, for example, and blacks have often resorted to litigation in their efforts to substitute single-member districts for at-large elections. Indeed, this is probably one of the litigation issues for which political scientists are most frequently called upon to testify as "expert witnesses" (see, e.g., Davidson, 1979), and many of the studies in this area have been cited in judicial opinions (see, for example, the dissenting opinion of Justice Thurgood Marshall in *City of Mobile* v. *Bolden*, 48 LW 4436, at 4449-4450, n. 3 [1980]).

Given both the theoretical and practical import of this issue, it seems especially important to clarify the impact of electoral arrangements on the election of blacks to city councils. In this article we employ an analytic design which we believe to be more appropriate, and even more powerful, than those used previously. This alternative approach, which avoids some significant methodological problems and conflicts present in the other studies, allows us to demonstrate more clearly the kind and degree of impact that different electoral arrangements and socioeconomic factors have on the election of blacks.

An Alternative Strategy

The disparity in conclusions across the various studies may be partly a function of different methodological choices. Two dimensions in particular—the measurement of the dependent variable and the criteria adopted for selecting the cities to be included in the analysis—may contribute to the inconsistent results. The dependent variable has in all cases been a measure of what Hanna Pitkin calls "descriptive representation," the correspondence between the percentage of a city's population which is black and the percentage of seats on a city's council held by black people (1967, pp. 60-91). Two different operationalizations have been employed, however. The measure most frequently used has been a ratio, i.e., the council percentage divided by the population percentage. None of the studies using this measure has concluded that the electoral system is an unimportant variable. The revisionist findings of both MacManus and Cole, however, are based on a different operation. They (as well as Taebel, who did not control for socioeconomic factors) calculate the *difference* between these percentages, i.e., population percentage subtracted from council percentage. Objections may be raised to both measures. The ratio has the undesirable consequence of scoring every city without a black person on its council as zero, regardless of the proportion of its population that is black. The subtractive measure avoids this particular problem, but will also produce quantitative equivalencies in cases that many analysts may feel to be qualitatively quite different. In particular, one city's score on this index may register the maximum degree of underrepresentation possible for that city (e.g., council percentage = 0; population percentage = 10), yet be identical to the score for another city in which the underrepresentation may be quite far removed from its theoretical maximum (e.g., council percentage = 35; population percentage = 45).

This latter consideration introduces another methodological issue: the criteria for determining which cities will be included in the analysis. All but MacManus and Latimer have established some black population threshold as a requirement for inclusion. The rationale, of course, is that there must be at least a minimum level of black population before the black community can have a realistic chance of electing one of its own to the council under any electoral arrangement. There has been no consensus on what that threshold should be, however. Analysts appear to have made little more than intuitive judgments on this matter, judgments that may reflect concern for sample size as well as minority population. Most have adopted a fixed percentage, requiring the black population to be at least 5, 10, or 15 percent of the total population. The only exception to the fixed percentage has been Taebel's requirement that the black population be equal to at least one-half of the population of a single-member district,

assuming the entire council is elected from districts (1978, p. 144).[1]

These methodological considerations undoubtedly influence what one discovers about the effects of different electoral systems. Unfortunately, there are no clearly objective nor widely agreed-upon guidelines for making these determinations, and the interpretation of findings must consequently be conditional to the research strategies adopted. Fortunately, however, a slight shift in approach provides another, more appropriate way to address this topic, one which also circumvents these difficult methodological choices.

There is a distinct similarity between these studies of descriptive racial representation and studies which examine the translation of votes for a political party's candidates into seats in a legislative body for that party. Both are primarily concerned with proportionality, in one case between population and seats, in the other, votes and seats. In the partisan studies, however, proportionality has been treated as a *relationship* between two variables across elections, rather than as a variable itself (e.g., Tufte, 1973). If this same approach is applied to the data on racial correspondence—treating proportionality as a relationship across cities rather than as a dependent variable—then the measurement and threshold issues discussed above virtually disappear. The proportion of council members who are black may simply be regressed onto the black proportion of the population. The resulting equation will provide an estimated slope coefficient, or "swing ratio" (Tufte, 1973, p. 542), for this relationship. As long as the intercept for the regression equation is fairly close to zero, this coefficient may be interpreted as a measure of proportionality (see, e.g., Rae, 1971, pp. 89-90). If the slope coefficient has a value of 1.0, the relationship is directly proportional. A slope greater than 1.0 would mean the proportion of blacks on city councils generally exceeds the proportion of blacks in the population, while a slope of less than 1.0 would mean the council proportion is generally lower than the population proportion.

There are definite advantages to addressing the substantive issue in this fashion. Not only does this obviate the measurement debate over division or subtraction, it avoids the major problems associated with each of these options as well. Under this approach, proportionality is a relationship across a set of data points, each of which reflects the specific black proportions of the population and the council for a city. The fact that all cities without a black council member do not have the same black population percentage is taken into account in estimating this relationship. All cities without a black council member are not, therefore, treated as empirically equivalent in this procedure, as is the case with the ratio measure. Likewise, all cities with the same deviation from proportional representation are not treated as empirically equivalent, as is the case with the subtractive measure. This procedure is sensitive to the fact that cities with identical or similar deviations may have widely varying percentages of blacks in their populations. Treating proportionality as a relationship across cities also obviates the need for a threshold. The use of a threshold is based on an assumption that only when the black population of a city exceeds a certain level can blacks expect to hold a seat on the council. In a regression-based analysis, this a priori assumption may be treated as an empirical question. If a threshold is indeed discovered, it may be taken into account by estimating the appropriate nonlinear swing ratio. In addition, if the electoral format is an important variable, this approach will allow one to estimate empirically the point at which structure actually begins to make a difference in how proportionately blacks are represented.

A regression-based analysis also permits one to examine the impact of electoral arrangements in the conceptually most appropriate way, as a *specifying variable* which establishes conditions under which the seats/population relationship varies, rather than as an independent variable with a direct impact. The traditional theoretical argument asserts that the major factor affecting the election of black council members is the relative size of the black electorate (although, due to the absence of voter registration figures by race in all but a few cities, the actual meaure has been the black proportion of the population). The influence of this variable, however, is viewed as conditional. Its influence is expected to vary across different electoral structures, having a much greater

[1]The threshold issue is related to the measurement issue in that the lower one sets the threshold requirement, the more important the difference in measurements becomes. It has been suggested that whether the ratio or subtractive measure is adopted is empirically unimportant, because essentially the same relationships appear regardless of which measure is used (Karnig and Welch, 1979, p. 466; and 1978). This is likely to be true, however, only if the threshold is set sufficiently high. Based on the Robinson-Dye data, the correlation between the two measures is only .45 across all cities (no threshold). Among cities that are at least 5 percent black in population, the correlation increases to .72. When the threshold is set at 10 percent or 15 percent, it increases to .83 and .92 respectively. Clearly, if one is willing to adopt one of the higher thresholds, the measurement issue is largely moot. If theoretical considerations or concerns for sample size dictate that either no threshold or a low threshold be adopted, however, the measurement issue is quite serious.

impact within the district format than in at-large arrangements. This may be tested by inserting electoral structure into the regression equation as a series of dummy variables that interact with the black population percentages. If the traditional notion is correct, the slopes for the seats/population relationship should be quite different across the election types, and should remain so when socioeconomic factors are also included in the equation.

The results of a regression-based analysis of this type are reported below. The data are taken from the *Population-Policy Data Base: U.S. Cities and Suburbs, Standard Metropolitan Statistical Areas* (PPDB), compiled under the direction of Thomas R. Dye. The information on electoral structure and number of black council members was collected during October 1976, by means of a telephone survey of city attorneys and clerks in the largest city of each SMSA (N = 243). All population figures and socioeconomic indicators were derived from the 1970 Census of Population. Because we are interested in the impact of different electoral structures on the black *minority*, the following analysis is based on the 239 central cities in which blacks constitute less than half of the total population.

Impact of Electoral Format and Socioeconomic Factors

Before comparing the impact of electoral structures and socioeconomic factors, we need to estimate the simple bivariate relationship between the black percentage of the population and the black percentage of the council. The data for the 239 cities result in the following regression equation:

$$BCC\% = -.498 + .593BP\% \text{ with } \bar{R}^2 = .471$$
$$(.041)$$

where *BCC%* is the black percentage of the council and *BP%* is the black percentage of the population. The intercept, —.498, is quite close to zero allowing us to treat the slope as a measure of proportionality. Using this equation, one can generally expect blacks to be "underrepresented" on city councils, with the amount of that underrepresentation becoming more acute as the black proportion of the population increases. The percentage of seats on a city council held by blacks tends to be only about .60 of the black percentage of the population.[2]

[2]It was suggested above that the notion of a threshold could be empirically tested through nonlinear regression. Logit transformation indicates that a linear fit is quite appropriate in this case, however, as the slope for the $\log_e$ of the population odds is .829.

Electoral Format. The existing literature on the election of blacks to city councils has been concerned, first and foremost, with the possible impact of different electoral arrangements. These have traditionally been classified into three groups: systems that elect all of the council members at-large, systems electing all members from districts, or mixed systems which use some combination of at-large and district elections. It has been argued that this classification scheme is not sufficiently discriminating, that at-large elections with place systems and/or district residency requirements should be distinguished from the "pure" at-large situation (MacManus, 1978). Although these differences are present across at-large elections, their conceptual linkage to the issue of vote dilution may be quite tenuous. Ultimate control over the outcome in these modified arrangements still remains with a *citywide* electorate (see Davidson, 1979, p. 337).[3] In addition, this more extensive classification may in some cases produce an empirical problem—the number of observations for each of the modified forms may be too limited for reliable analysis. For example, in the McManus study, based on 243 cities, the Ns for the different categories of the modified types were only 6, 7, and 16. Given these problems with the more extensive classification, we have adopted the traditional trichotomy for this analysis. This results in 128 at-large systems, 36 districted systems, and 75 mixed arrangements.

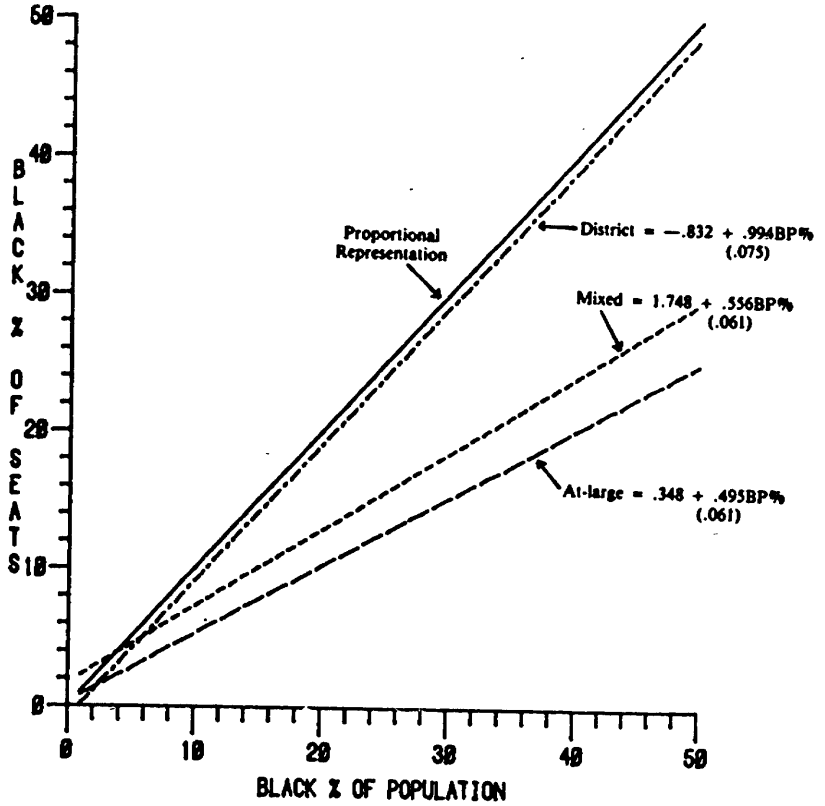
When the electoral format is introduced into the regression equation as dummy variables and interaction terms, the different types of elections have a rather dramatic impact on proportionality (Figure 1). The slope coefficient for districted cities is virtually equal to 1.0, whereas the slope for at-large systems is only about .5. The impact of mixed systems, not surprisingly, falls between that of the other two. Clearly, a black minority is more likely to attain proportional representation

[3]Residency requirements do result in council members whose residencies are geographically dispersed. Given control over the ultimate selection by the citywide electorate, however, this requirement does not assure that blacks will be elected to the council except in the extremely unlikely situation that all possible candidates in a "residency district" are black. If the city electorate is polarized along racial lines, the white majority may easily select a white candidate from a majority black residential district. Evidence from several studies suggest, in fact, that such requirements have not resulted in more proportionate black representation (see Karnig and Welch, 1978, p. 15; Robinson and Dye, 1978, p. 137; and MacManus, 1978, p. 157).

through an electoral system that does not have any at-large elections.[4]

Figure 1 not only shows that there is a tendency for blacks to be less proportionately represented in at-large systems than in districted systems, it also shows that the electoral structure begins to make a difference even when blacks constitute a fairly small percentage of the population. In order to estimate the point at which the electoral format can be expected to have an impact, we have added 90-percent confidence bands around the regression lines for both the districted and at-large cities. These bands are displayed in Figure 2, which shows that there is no overlap between them beginning at a point just below 10 percent. Thus, as a conservative estimate, one could con-

[4]Tests for nonlinear fits show that the reported linear fits within all three categories are quite appropriate.



Source: Compiled from Population-Policy Data Base, Florida State University, and 1970 Census of Population.

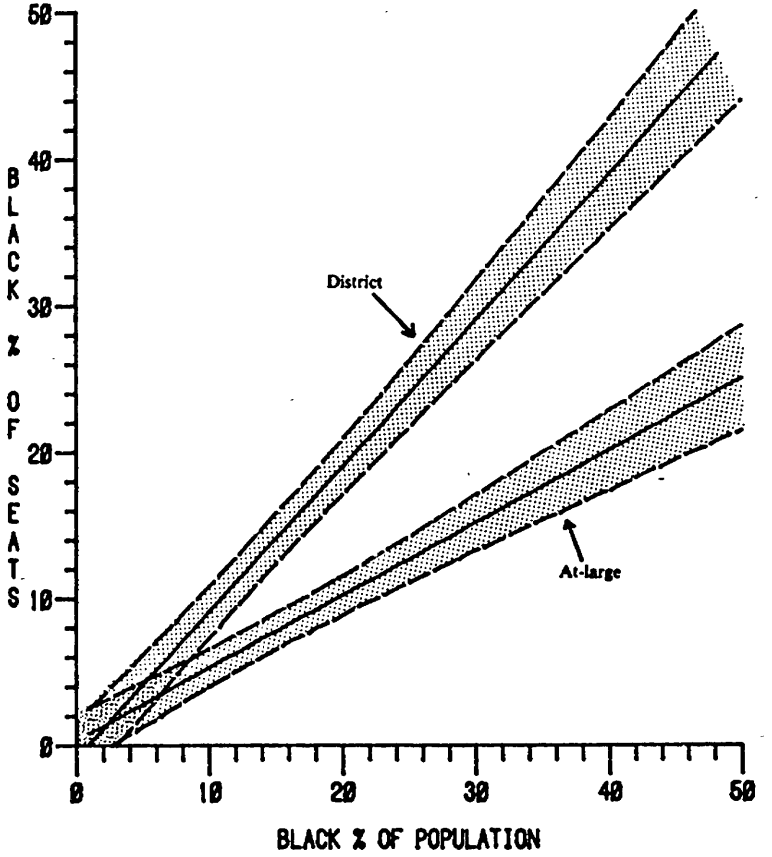
Note: The overall adjusted R^2 is .540 and the within group adjusted R^2s, which legitimately can be compared given the similar standard deviations for the black population percentages (for districted, 13.7; mixed, 12.3; at-large, 13.2), are .816 for districted cities, .510 for mixed cities, and .344 for at-large cities.

Figure 1. Relationship between Black Percentage of Population and Black Percentage of City Council in Different Electoral Formats

sider 10 percent to be a threshold or critical point at which at-large elections can be expected to have an adverse impact on black representation.[8]

[8]Although Taebel focuses on the 20 percent figure as a "tip-point," electoral arrangements clearly begin to have an impact in his analysis when the black population exceeds 10 percent (1978, p. 150).

Socioeconomic Characteristics. While the above analysis certainly supports the traditional notion concerning the effect of different electoral structures, the question remains whether that inference will withstand controls for various socioeconomic factors. MacManus (1978) found that there was no relationship between electoral format and black representation when controls were imposed for the size, growth rate, and income, educa-



Source: Compiled from Population-Policy Data Base, Florida State University, and 1970 Census of Population.

Figure 2. Estimated Seats/Population Relationships with 90-Percent Confidence Bands in Districted and At-Large Electoral Formats

tional, and occupational characteristics of a city's population. Cole (1974) also focused on income, educational, and occupational characteristics in arguing that electoral arrangements have only a minimal impact.

In order to test this revisionist argument, we have added to the regression equation the five variables for which MacManus controlled: population size (in ten thousands), rate of population change from 1960 to 1970, median family income, median school years completed by those over 25 years of age, and the percentage of the labor force employed in white-collar occupations. The results, reported in Table 1, do not support the alternative argument. The slopes for the seats/population relationship across the different electoral formats are affected only minimally, while the independent effect of these additional variables on the percentage of blacks on a city council is negligible when the black population percentage is also in the equation. It might be argued, however, that it is more reasonable to expect these environmental factors to have a conditional rather than uniform impact. In districted cities, the black population percentage may virtually be all that matters in explaining the level of black representation, while in cities with at-large elections the population characteristics may have a discernible effect. This does not appear to be the case either, however. Table 1 also contains the results of the regression analysis in which these environmental variables are entered as interaction terms. The slopes for the three seats/population relationships are again virtually unaffected, and the regression coefficients for the socioeconomic factors continue to suggest only minimal impact, if any.

While our findings clearly contradict those of MacManus (and Cole), it may be possible to reconcile the conflict. MacManus suggests that proportional racial representation is more likely to be found in "smaller cities, characterized by growth, greater wealth, and more highly educated populations" (1978, p. 160). These are also the types of cities that are more likely to have relatively small percentages of blacks in their populations. For example, the 25 cities in this analysis which are under 100,000 and above the mean on growth, income, and education have an average black population percentage of only 4.3, compared to 15.8 for the remaining cities. When the black percen-

Table 1. Seats/Population Relationships under Different Electoral Formats with Uniform and Conditional Impacts of Socioeconomic Characteristics

	Uniform Impact[a]	Conditional Impact[b]		
		Districted	Mixed	At-Large
Intercept	–	−.920	−10.208	11.630
Percent Black Population (Districts)	1.010 (.096)[c]	1.033 (.086)	–	–
Percent Black Population (Mixed)	.556 (.078)	–	.598 (.080)	–
Percent Black Population (At-large)	.512 (.054)	–	–	.474 (.062)
Total Population (10,000)	.000 (.131)	−.008 (.034)	−.003 (.024)	.110 (.037)
Population Growth Rate	.023 (.019)	.012 (.040)	.019 (.025)	.031 (.033)
Median Family Income	.000 (.001)	−.001 (.001)	.000 (.001)	.000 (.001)
Median School Years	−.471 (.930)	4.877 (2.676)	1.391 (1.588)	−1.472 (1.269)
Percentage White-Collar	.010 (.099)	−.130 (.348)	−.114 (.162)	−.038 (.151)

Source: Compiled from Population-Policy Data Base, Florida State University, and 1970 Census of Population.

[a]The slopes for the population percentage variable in the mixed and at-large cities are the actual estimates of the seats/population relation for these groups. The intercepts for districted, mixed and at-large cities are .956, 3.667, and 2.307, respectively, and the adjusted R^2 is .534.

[b]The overall adjusted R^2 is .545 and the within group adjusted R^2 s are .842 for districted cities, .506 for mixed cities, and .405 for at-large cities.

[c]The standard errors of the reported slopes are provided in parentheses.

tage of a city's population is small, the subtractive measure can register no more than a minimal level of underrepresentation, even if the council is all white. It may therefore be possible to restate MacManus' conclusion to hold that blacks are "better" represented in these cities not because they are small, growing cities with relatively well-educated and wealthy populations, but because there simply are not very many blacks in these cities and, given the subtractive measure, they are therefore fairly well represented by definition. MacManus' overall findings regarding the impact of environmental factors may also simply be reflecting the fact that there is a strong negative association between the black population percentage and the subtractive measure ($r = -.51$, using the data for the 239 cities in this analysis). Indeed, when we examine the five bivariate relationships between the environmental indicators and MacManus' subtractive measure of proportionality, controlling each time for the black population percentage, the partial correlations range from .0 for occupation to .10 for income. It is highly questionable whether these variables really have an independent impact of their own, separate from their association with the black population percentage.

It has been argued, however, that the relevant socioeconomic indicators are not those for the entire population of a city, but those for the black community within a city. Noting that an expanded black middle class means more blacks with "skills, time, and money for effective electoral politics," Karnig argues, "As blacks possess private-sector resources more competitive with those of whites, they are more likely to obtain reasonably proportional public-sector representation" (1979, p. 145). In Karnig's analysis, the variable which most influenced how proportionately blacks were elected was the black/white income differential; the closer black median income approached white median income, the more closely the percentage of seats held by blacks approached the black population percentage.

Consistent with the strategy employed thus far, we have added an income differential variable (the ratio of black median income to the median income for the entire city) to the regression equation used in Figure 1. (Because the census does not report the black median income for 15 of the cities, all of which have black population percentages less than 1.0, the following analysis is based on 224 rather than 239 cities.) Once again, the electoral format is of major importance. The slopes for the seats/population relation within each category of electoral structure remain virtually unchanged (districted = .999 [s_b = .103]; mixed = .555 [.075]; at-large = .501 [.055]). The regression coefficient for the income ratio is a not unimpressive 8.218, but its standard error (4.820) suggests that the estimate is not very reliable.

It may be more reasonable to expect a conditional rather than uniform impact for the income differential variable as well. Effective citywide campaigns are generally assumed to be more expensive and to require more extensive organizational support than district-based campaigns, and the relative "skills, time, and money" reflected by this variable may have the greatest impact, therefore, in at-large settings. To estimate the conditional effects, we have added this variable to the regression equation as a set of interaction terms. The results, which are quite intriguing, are reported in Table 2. The impact of the electoral structure on how proportionately blacks are represented remains, but a conditional impact for the income ratio is also apparent. The seats/population relationships within each of the electoral format categories are again virtually unchanged, although the additional variable does have the effect of separating out the intercepts for the three groups. The regression coefficients for the income ratio, however, do show a conditional impact on the black council percentage. The coefficient for the at-large setting is a very impressive 17.583, while that for the districted cities is —20.153, although this last value is not very reliably estimated (s_b = 12.142).

The information contained in Table 2 suggests that both electoral format and the income ratio have an effect on the level of black representation. This is consistent with Karnig's findings, although he further argues, based on a comparison of standardized regression coefficients, that the relative income of the black population has a *greater* effect than election structure on how proportionately blacks are represented. There is a problem, however, in trying to discuss standard deviation unit changes (the basic metric for the standardized coefficients) in a variable such as election format. It is difficult to imagine changing the electoral format by one standard deviation; these changes are, rather, from one structural type to another. An alternative way of making this comparison, which avoids this problem, is to estimate the expected consequence of changing the value of one variable while holding the other constant. When this is done, we discover that the relative impact of the two variables can be expected to differ dramatically, depending on the percentage of blacks in the city's population.

Figure 3 illustrates the different impacts of the two variables. The solid line serves as a baseline, and represents the relation between population and seats for cities with (1) at-large elections and (2) an average income ratio for at-large cities (.673). From this baseline the expected consequence of changing to district elections while

Table 2. Seats/Population Relationships under Different Electoral Formats and Conditional Impact of Income Ratio

	Districted	Mixed	At-Large
Intercept	12.690	−2.473	−11.733
Black Population Percentage	1.009	.554	.503
	(.081)	(.063)	(.061)
Income Differential	−20.153	6.180	17.583
	(12.142)	(7.257)	(5.802)

Source: Compiled from Population-Policy Data Base, Florida State University, and 1970 Census of Population.

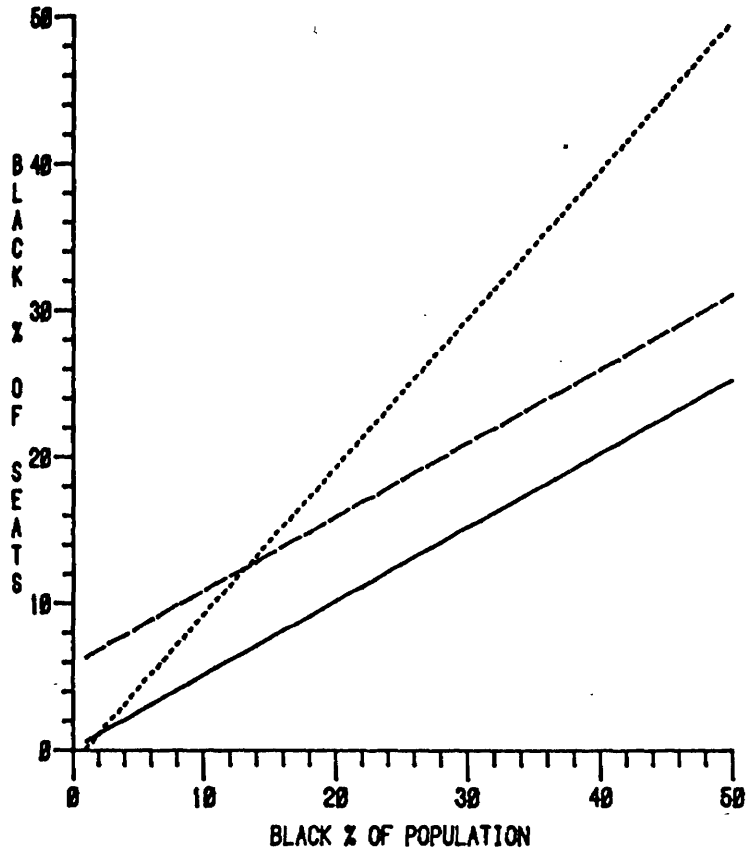
Note: The slope and intercept estimates are for the impacts of their respective variables within the particular electoral format groupings. The standard errors of the reported slope coefficients are in parentheses immediately below each term.

maintaining an average income ratio (the dotted line) can be compared to the expected consequence of increasing the income ratio to 1.0, an increase of almost three standard deviations above the mean, while retaining the at-large arrangement (the broken line). It is apparent from Figure 3 that both the structural and income changes increase the expected percentage of black council members across the entire range of black population percentages, but the relative implications of these changes are dependent upon that population percentage. At lower population percentages, achieving income equality is expected to add more than will a change in the electoral format, but at higher percentages changing the electoral format will have a much greater impact. For example, in cities where blacks comprise only 10 percent of the population, increasing the income ratio from .673 to 1.0 would be expected to increase the black percentage of the council by 5.9, compared to an expected increase of only 1.6 if the electoral structure were the variable that changed. If the black population percentage were 50, however, increasing to income equality would again be expected to add 5.9 to the council percentage, whereas a change to election by districts would be expected to add 24.3. From the data reflected in Figure 3, one could conservatively estimate that once the black population percentage reaches about 15, the electoral format has more impact than the relative income of the two racial groups.

Conclusion

The evidence reported above strongly supports the proposition that at-large elections, at least in comparison with district-based electoral systems, tend to "under-represent" black people. Districted systems may themselves be gerrymandered to reduce the level of black representation, of course (see, e.g., Engstrom and Wildgen, 1977), but as a general matter the black community can expect more proportionate representation through these systems than if at-large elections are used. From this analysis, we can conservatively estimate that the electoral format begins to make a difference when the black population constitutes around 10 percent of a city's population, and that the underrepresentation occurring in at-large cities becomes more acute as the black population proportion increases. This relationship between the electoral structure and black representation was found to be unaffected when various socioeconomic factors that have previously been suggested as important determinants of black representation were also investigated, although one socioeconomic variable—the relative income of the black population—did have an important impact on the percentage of black council members. This variable, in fact, appears to be a more influential determinant of black representation than is electoral format when the black population of a city is relatively small, but when blacks begin to constitute a fairly substantial minority of a city, then the electoral structure begins to be the more influential determinant. From the above analysis, we can estimate, again conservatively, that once the black population reaches about 15 percent of the total population, the electoral structure will have the greater influence.

The notion that differential electoral frameworks seriously affect how proportionately blacks are likely to be represented on city councils should not, as some have suggested, be abandoned. The evidence reported above strongly supports the proposition that, in comparison with single-member districts, at-large elections seriously reduce the level of black representation. This is not a novel conclusion, but it remains an important one, because at-large elections are a prevalent, yet alterable, structural dimension in American municipalities.



Source: Compiled from Population-Policy Data Base, Florida State University, and 1970 Census of Population.

Key: ——— Cities with at-large elections and average income ratio.
——— Cities with district elections and average income ratio.
– – – – Cities with at-large elections and income equality.

Figure 3. Comparing the Impacts of Changes in Election Format and Relative Black Income on the Election of Blacks to City Councils

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

WILLIE BAILEY, et al., :
Plaintiffs, :
vs. : CIVIL ACTION NO. 76-199-MAC
ROY L. VINING, JR., et al., :
Defendants. :

OWENS, District Judge:

This action is brought by Willie Bailey and other black plaintiffs representing all black citizens of Putnam County, Georgia, and of Eatonton, Georgia, as a class, claiming that the at-large method of electing the city's mayor and commissioners, the county commissioners, and the county board of education members abridges the rights of the city and county blacks under the First, Thirteenth, Fourteenth, and Fifteenth Amendments of the Constitution of the United States. After repeatedly encouraging the parties at the numerous conferences and hearings to resolve this matter without the intervention of the court, and after their apparent failure to so do, this order reluctantly constitutes the court's findings of fact and conclusions of law concerning the voting dilution claims raised by plaintiffs.

The court finds that all prerequisites for the maintenance of a class action are here satisfied and therefore certifies the class of plaintiffs to be all black residents of Putnam County, Georgia. Federal Rules of Civil Procedure 23(b)(2).

FINDINGS OF FACT

A. A History of Racial Segregation in Putnam County

Putnam County, Georgia, with its 1970 population of 8,394, is located approximately forty-one miles to the northeast of Macon, Georgia, and approximately sixty miles to the

southeast of Atlanta. According to the 1970 Federal Census 4,092 or 48.7% of the residents of Putnam County are black. The 1970 Census further indicates that 1,950 residents or 47.7% of the black population are "Under 18 Years" as compared to 1,359 white residents "Under 18 Years," or 31.66% of the white population. In 1976 the number of black registered voters was 1,311 (32%) in comparison with 2,847 (68%) white registered voters.

The City of Eatonton is Putnam County's only municipality. According to a 1978 special census conducted at defendants' request, 2,417 or 55.5% of the city's population totalling 4,353 are black and 1,931 or 44.5% of the city's population are white. Despite such numbers blacks have not shared equally in the political process in Putnam County.[1]

The depressed socio-economic status of the black community is but one reason advanced for this lack of black participation in the political process. Eighty-one percent (81%) of those over the age of 25 in Putnam County who had completed four years or less of schooling are black. The median number of school years completed for a white female in Putnam County is 10.4 and for a white male is 9.3. The corresponding numbers for blacks is 7.5 for a black female and 6.0 for a black male. Whites generally earn $3,500 or 78% more per year than blacks. Consistent with these figures, 45% of all black residents exist below the poverty level, blacks represent the greater percentages of those who rent homes, and blacks suffer from poor public services more than the whites. Seventy-six percent (76%) of those dwellings in the county that lack some or all plumbing within, are occupied by black families. In the City of Eatonton, 90% of such units are occupied by black families. Almost one in two black households lack some or all plumbing. The policy defining which streets within the county and city are to be paved is now and has been applied in a discriminatory manner. While many streets serving black families remained unpaved, the official minutes of the Board of Commissioners reflect that the county agreed to pave the road to the all-white private

school within a year after the institution was founded. Conversely it appears that only with commencement of federal revenue sharing funds has any paving been done in the black areas.

Other examples of this official discriminatory treatment can be readily gleaned from past records of the county and city officials. Examples of this conduct include the operation of white-only swimming facilities prior to 1968. For three years a private corporation, the Service League, was organized to operate the pool based upon an annual fee. The only "service" this league provided was to whites since blacks were still denied the use of the pool. In 1970 the city alleviated its problem by building a pool in the "colored section of town." Putnam County schools were totally segregated on the basis of race until the 1965-66 school year. Housing projects maintained by the Eatonton Housing Authority continue to be segregated on the basis of race. While the above represent but a few of the past official actions taken by county and city board members, they serve to highlight the double-standard with regard to whites and blacks within Putnam County.

Typical of many counties throughout the South, the winners of Putnam County's democratic primary elections also win the subsequent general elections to state and local offices. Putnam County's blacks could not vote in the democratic primary of this state until King v. Chapman, 62 F.Supp. 639 (M.D. Ga. 1945), aff'd, 154 F.2d 460 (5th Cir. 1946) was decided by this court. In an apparent attempt to counter the impact of the King decision,[2] Eatonton's city charter was legislatively amended in 1947 to abolish primary elections and literacy tests were introduced in 1946 as a prerequisite to voter registration throughout Putnam County. No blacks registered to vote in

Putnam County prior to 1948. The literacy tests effectively disenfranchised a large percentage of blacks until use of those tests was prohibited by the Voting Rights Act of 1965. Despite this court's decision in Anderson v. Courson, 203 F. Supp. 806 (M.D. Ga. 1962), outlawing the use of segregated voting lists, such lists were maintained in Putnam County until after the filing of this lawsuit in 1976. The designation found at the top of the 1976 list accurately depicts past and present reality: the black list was titled "Black Voters" and the white list "Voters." Voter registration cards were filed separately by race until just before this lawsuit commenced.

As already noted, actions of the local Democratic Party control elections in Putnam County. Until 1972 no blacks ever served on the Executive Committee of the local Democratic Party. Two blacks were appointed to the committee in 1972, which at that time numbered 18 to 20 members. Blacks have never been appointed as election officials in the rural precincts of Putnam County. In Eatonton black participation as election officials has been disproportionately low. Although repeated requests were lodged in hopes of improving black voter registration, no black was appointed to the Board of Registrars and no black was appointed as a deputy registrar until after this suit began.

Despite their high percentages in the Putnam County and Eatonton population, blacks have lost every opposed at-large election in this century.

In any area the size of Putnam County and Eatonton local government employment has a large impact upon income and status. Blacks are grievously underrepresented among county employees. In 1976 only nine of the sixty-six non-elected employees of Putnam County were black. Of the nine, five were employed as laborers or janitors.

While blacks are employed by the city in appropriate percentages, they remain relegated to the lower income, labor oriented jobs.[3]

Since desegregation of the school system the number of blacks employed as teachers, principals, and system-wide coordinators has dropped from 55% of the total educational employment pool in 1969-70 to 38% of such in 1977-78.

In addition to their underrepresentation in the local government employment pools, blacks are also underrepresented on boards and committees appointed by the Board of Commissioners and the Eatonton City Council. The evidence of records shows that the Board of Commissioners has failed to appoint a single black to the Putnam County Development Authority, the Putnam County Board of Tax Assessors, the Putnam County Forestry Board, or the Putnam County Airport Committee. In addition the Board of Commissioners has never appointed a black to serve as Civil Defense Director or as Putnam County Sanitarian. While blacks have been appointed to serve on some county committees, the reasons for their appointments stem not from the voluntary actions of county officials, but instead can be traced to other reasons. In 1973, when both the Board of Commissioners and City Council were informed that new regulations of the Oconee Area Planning Commission required the appointment of black persons to serve on the Oconee Area Planning and Development Commission, a black was appointed for the first time. Plaintiff Bailey is the first and only black member of the seven-member Putnam County Hospital Authority. His appointment seemingly results from an attempt on the part of the Board of Commissioners to appease the black community. The City of Eatonton has never appointed a black to serve as Building Inspector and has appointed only one black to serve as a member of the board of the Eatonton Housing Authority (EHA), a body whose primary function is to provide low income housing assistance, a service of substantial importance to the black community.

Perhaps it is the lack of membership by blacks on the Eatonton Housing Authority which has allowed that body to continue to operate on a racially segregated basis. A 1974 administrative investigation of the housing authority by the

Department of Housing and Urban Development (HUD) found that the project was maintained on a racially segregated basis; that "race-mixing" was not a goal of the Authority; that the white executive director would not meet with blacks to discuss housing problems; and, that the segregated assignment policies of the Authority resulted in blacks having to wait longer than whites to obtain project housing. It was not until 1976 that the Authority entered into a compliance agreement with HUD which required that it pursue a course of desegregation.

Without reciting a detailed account of the adjustment problems faced by the Putnam County school system and the Board of Education, suffice it to say that Putnam County, like numerous other counties -- north, south, east , and west -- has openly resisted change within the school system.

Finally, various isolated acts of the Board of Education and the Board of Commissioners are significant to this litigation. In 1974 the Board of Education denied a black group's request to use the gymnasium for a program to raise money for a class trip because it "would put the Board in the position of appearing to support segregated activities." Two years later the all-white Kiawanis Club was given permission by the Board of Education to use school property for a carnival.

In 1976 the Board of Education passed a resolution which provided job protection for teachers who teach in public schools but who have their children attend private schools. The only plausible aim for that resolution was to officially sanction white teachers sending their children to the all-white Gatewood Academy without having to risk losing their job with the Board of Education.

In late 1977 the white Chairman of the Board of Education recommended that the Board of Education terminate its sponsorship of the Headstart program, a program which greatly benefits black children and which was at the time headed by a black director. The recommendation was made even though the chairman was unaware of the services provided to the community.

In 1975 the Board of Commissioners denied a request by black citizens for a monetary contribution to a child care center [relying on the recommendation of the County Attorney that such a contribution would be illegal]. This action was taken even though the all-white private golf club was, and still is, located on land that belongs to the county. As late as March 1, 1973, the Board agreed to help the golf club "in any way" in keeping the golf course in condition.

Prior to the filing of this civil action black citizens wrote to the Board of Commissioners requesting that it take the necessary steps to see that legislation was introduced in the Georgia General Assembly to change the method of electing Commissioners from at-large to single member districts. The Board did not respond.

B. The Election Schemes at Issue

The Putnam County Board of Commissioners is composed of three elected officials who run at-large for numbered posts, must be freeholders, and must receive a majority of the votes cast. Pursuant to Ga. Laws 1921, p. 555, the Putnam County Board of Commissioners was authorized. The original legislation provided for three members elected at-large by a plurality of votes. No residency requirement was provided for and members of the Board were required to be freeholders. Georgia Laws 1943, p. 1110, imposed a numbered post requirement for candidates seeking a post on the Board of Commissioners in primary elections. Georgia Code §§ 34-1015 and 34-1513, sections of Georgia's state election code, imposed majority vote and numbered post requirements for persons seeking a post on the Board of Commissioners in both primary and general elections.

The Putnam County Board of Education is elected at-large with numbered post and majority vote requirements in effect. No residency requirement is in effect. Ga. Laws 1962, p. 776. Prior to 1962 members of the Board of Education were selected by the grand jury under Georgia's general constitutional scheme of election of members of boards of education.

Pursuant to Ga. Laws 1908, p. 620, the City Council of Eatonton was composed of a mayor and six aldermen. Subsequent to the filing of this action Ga. Laws 1977, p. 3236, was enacted[4] by the Georgia General Assembly. It provides for the election of four aldermen from single member districts and for the election at-large of the three remaining aldermen and the mayor. Defendants have conceded that the four wards created by Ga. Laws 1977, p. 3236, are unconstitutionally malapportioned on the basis of population. A majority vote requirement is in effect in Eatonton elections pursuant to Ga. Code § 34-1407 and a numbered post requirement is utilized for the election of the at-large aldermen as well as the aldermen elected from single member districts. No residency requirement is in effect for the at-large seats. In reviewing the events leading up to the proposed election change the court finds that the council members, because of a similar suit then proceeding against a neighboring county, were concerned about the possibility of a dilution suit in Eatonton. At trial defendant Vining stated that the council approved the legislation with the hope that it would stem the problem of a dilution suit. Council members were aware that all at-large seats would be controlled by white votes and of the likely outcome of voting in the proposed single member districts. For the 1977 elections registered white voters outnumbered black votes in all but one of the legislatively created wards. The inference to be drawn is that the present council members knew that the proposed election scheme would result in, at most, one or two black victories out of eight election contests. This is further evidenced by the remarks of State Senator Culver Kidd, legislative sponsor of the law, to plaintiff Bailey wherein Senator Kidd stated that blacks should be satisfied with the law in its final draft form or chance getting nothing. At that time and now, Eatonton's blacks outnumbered Eatonton's whites by at least 11%.

C. State Policy

Defendants have presented no proof of, nor is this court independently aware of, any State of Georgia policy favoring at-large elections.

CONCLUSIONS OF LAW

The Fourteenth Amendment to the United States Constitution provides in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

The Fifteenth Amendment to the United States Consitution provides in pertinent part: "The rights of citizens of the United States or by any State on account of race, color, or previous condition of servitude."

The question presented in this litigation is whether the facially neutral at-large electoral systems under attack were created or maintained for the purpose of limiting minority groups from effectively participating in the electoral process. If they were so created or maintained, then the plaintiffs' right to vote was unconstitutionally diluted and remedial action is required.

A. Proof of Intent

Inherent in every voting dilution case is the question of what evidence will suffice to establish a discriminatory purpose or intent. Seldom, if ever, will a plaintiff possess direct evidence of an election scheme created or maintained for the purpose of discrimination.[5] The plaintiffs must therefore rely on circumstantial evidence to establish a prima facie case. Undoubtedly a plaintiff will proffer to the court a plethora of social, demographic, and economic facts, all of which are designed to raise an inference of constitutional impropriety in the maintenance of an election plan. Historically, a party challenging an election scheme will also draw upon de jure acts of segregation, the majority of which pre-date the

mid-1960's, and which are not only without defense on the part of election officials but are readily admitted as the general custom and practice of that day. The past official vestiges of discrimination, when combined with the present day reality of socio-economic conditions within the discriminated class provide, according to plaintiffs, sufficient proof of an intent to create or maintain a system which promotes invidious discrimination. Until the United States Supreme Court decision in City of Mobile v. Bolden, 446 U.S. 55 (1980), such a standard has been authorized by the United States Court of Appeals for the Fifth Circuit in Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973)(en banc), aff'd on other grounds sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976). The test provided for the establishment of:

> ". . . two categories of inquiry in cases alleging dilution of a group's voting power: one composed of 'primary' criteria and concerning the history and performance of the at-large plan, the other containing 'enhancing' factors and going to the existence of certain systemic devices that may enhance the underlying dilution. The primary factors include the group's access to the political processes, e.g., slating; the responsiveness of the governing body to the particularized needs of the group; the gravity of the state policy behind the at-large method of election; and the present effect of past discrimination upon the group's ability to participate in the electoral process. Zimmer, 485 F.2d at 1305. The enhancing criteria are the size of the at-large district; the portion of vote required for election, i.e., majority or plurality; the presence or lack of an anti-single shot rule; and whether candidates must reside in subdistricts." Cordes v. Kirksey, 585 F.2d 708, 712 f.n.8 (5th Cir. 1978).[6]

The decision in Bolden called to question the validity of a litmus paper test such as that found in Zimmer. While the reporters and the appellate courts have not yet reached a consensus on the question of what impact Bolden has in the area of voting dilution cases, the recent decision of the Fifth Circuit Court of Appeals in Lodge v. Buxton, 639 F.2d 1358 (1981), involving a factual scenario similar to that presented

in the instant litigation, furnishes a thorough analysis of Bolden and reconciles it with the prior case law.

The rule established in Bolden, as interpreted by Lodge v. Buxton, provides:

> "A cause of action under the Fourteenth or Fifteenth Amendment asserting unconstitutional vote dilution through the maintenance of an at-large electoral system is legally cognizable only if the allegedly injured group establishes that such system was created or maintained for discriminatory purposes. A discriminatory purpose may be inferred from the totality of circumstantial evidence. An essential element of a prima facie case is proof of unresponsiveness by the public body in question to the group claiming injury. Proof of unresponsiveness, alone, does not establish a prima facie case sufficient to shift the burden of proof to the party defending the constitutionality of the system; responsiveness is a determinative factor only in its absence. The Zimmer criteria may be indicative but not dispositive on the question of intent. Those factors are relevant only to the extent that they allow the trial court to draw an inference of intent. The Zimmer criteria are not the exclusive indicia of discriminatory purpose and, to the extent they are not factually relevant in a given case, they may be replaced or supplemented by more meaningful factors. Even if all of the Zimmer and other factors are established, an inference of discriminatory purpose is not necessarily to be drawn. The trial court must consider the totality of the circumstances and ultimately rule on the precise issue of discriminatory purpose. Finally, given the reality that each case represents an extremely unique factual context for decision, this Court will give great deference to the judgment of the trial court, which is in a far better position to evaluate the local political, social, and economic realities than is this Court."

Applying the test laid down in Lodge, the court makes the following conclusions.

I. Lack of Responsiveness

To establish a prima facie case the plaintiff must provide sufficient evidence to demonstrate that the officials elected through the alleged unconstitutional schemes were unresponsive to the needs of the black community. The evidence presented in the instant case shows that the elected

officials who serve on the Putnam County Board of Commissioners, the Putnam County Board of Education, and the Eatonton City Council have been and are presently unresponsive to their black constituency which now comprise over fifty percent (50%) of the population in both the city and the county. The employment figures for the county and city governments establish that blacks are severely underrepresented in the overall employment picture. The figures for county employees at the time this lawsuit was filed show that blacks occupied only 13.6% of all county jobs, even though the 1970 Census county population is 48.7% black. Of the nine employees employed by the county, five are concentrated in the lowest level job categories. The same is true of the City of Eatonton, where the precentage of city employees is more representative of the city's population only because the city needs more labor-oriented jobs which are traditionally filled by blacks. A review of the county school system's employment picture shows that blacks are precluded from equally participating in local government employment. Not only has the percentage of black teachers dropped 25% in the course of nine years, but it is further apparent from the record that blacks face greater obstacles in reaching the upper echelon administrative posts within the system. This underemployment is especially significant in light of the number of black students within the system. Without reducing the 1970 Census figures to reflect white children who attend the county's all-white private academy, it appears that black students who were between the ages of six and seventeen when the census was taken represent 60% of all children included in that group.

The court therefore concludes that the failure of the white officials to hire more than a token number of blacks for city, county, and school system jobs demonstrates an unresponsiveness to the particularized needs of the black community.

The unresponsiveness of county and city officials can further be seen by the appointment of a relatively small number of blacks to the boards and committees of the city and

county government. This unresponsiveness is particularly true with respect to the Putnam County Board of Registrars and the Eatonton Housing Authority. The Board of Registrars appointed its first black after this suit was filed even though at the time a majority of the county's residents were black and even though blacks registered to vote in smaller percentages than whites. The Eatonton Housing Authority which is charged with the responsibility of providing housing for the city's low-income residents, of which 81% are black, had no black member until 1974. Since that time the city has appointed one black to serve thereon.

The road paving decisions at both the city and county level provide evidence of a lack of responsiveness to the needs of the black community. Shortly after the opening of all-white Gatewood Academy public funds were used to pave the road leading to that school. At the same time black streets in many neighborhoods remained unpaved. That many streets in black neighborhoods have recently received paving and attention seems due primarily to the pendency of this lawsuit and the availability of federal money.

Likewise a number of programs presently sponsored by the Board of Education for the benefit of blacks are not persuasive indications of that Board's present responsiveness because those programs are also heavily funded with federal money.

Forcing black citizens to take legal action to protect their rights to integrated schools and grand juries, and to register and vote without interference is another example of unresponsiveness to the black community. Blacks in Putnam County have been forced to litigate segregation in the school system, United States v. Georgia, Civ. No. 12972 (N.D. Ga. December 17, 1969); the unconstitutionality of a city curfew, Ruff v. Marshall, Civ. No. 77-61 (M.D. Ga. October 5, 1977); and in this case have raised meritorious constitutional questions as to the validity of the jury selection plan. Even after the

court admonished the county officials that blacks should be employed by the county in positions which have either a direct or indirect effect on the jury selection plan it was not until two years later and the threat of putting the county into receivership that the county and city officials took action.

Other factors which indicate unresponsiveness on the part of local officials include the operation of a segregated golf club on land owned by the county; the failure of the county and city officials to secure black deputy registrars until after this suit was filed; and the operation of a white-only swimming pool up through 1968. In addition, black requests that the city switch to single member districts met with what the court has found to be a clear attempt to keep the black vote diluted. A similar request directed to the county commissioners did not even elicit a response.

Finally, a number of white elected officials now in office testified that they were unaware of any past or present discrimination against blacks in Putnam County. The court cannot conscientiously find these officials to be responsive to black needs when they refuse to acknowledge awareness of even past discrimination against blacks. The court finds the factor of responsiveness to weigh heavily in favor of plaintiffs, particularly with respect to the Board of Commissioners and Eatonton officials.

2. Present Effect of Past Discrimination

A lengthy history of de jure and de facto discrimination has left Putnam County a racially polarized community. Because of the nature of politics in small communities, the past pattern of segregation operates to racially polarize voting in Putnam County. Local citizens usually vote for candidates with whom they are familiar. Because of a tradition of solely white leadership and business control, Putnam County's blacks are more familiar with white leaders and more prepared to vote for whites. Historically, they have had no other significant choice. Racially polarized white voting is in part

demonstrated by the dramatic lack of success of black candidates in Putnam County elections.

Putnam County's blacks are far less affluent and educated than whites. Black candidates are less likely to match a white candidate's campaign support. Blacks hesitate to campaign in white neighborhoods, and some older blacks are still afraid to vote [as is demonstrated by their low voter registration]. Many blacks are convinced that voting can make no difference.

The court concludes from all of this that past de jure and de facto segregation has a present adverse affect upon black access to the political process in Putnam County. This factor also weighs in favor of plaintiffs.

3. State Policy

As previously stated, defendants have presented no proof, nor is the court independently aware of, any State of Georgia policy favoring at large elections. This factor also weighs in favor of plaintiffs. The court notes that the conclusion to be drawn from state policy is essentially the same as that found by the district court and affirmed by the appellate court in Lodge v. Buxton, supra, at 5016, that is:

> ". . . while [the policy is] neutral in origin, it has been subverted to invidious purposes. (emphasis added). Since it is a statute of local application, its enactment, maintenance or alteration is determined by the desire of representatives in the state legislature of the county affected. Burke's representatives have always been Whites. Accordingly, they have retained a system which has minimized the ability of Burke County Blacks to participate in the political system."

4. Lack of Access to the Political Process

Despite their large population percentage, blacks have not shared equally in the political process. Each factor considered persuasive by the court in Lodge is found in this case. Blacks have been unable to participate in the operation of the local Democratic party; blacks have been precluded from

serving on local government committees in meaningful numbers. All of the above combined with the virtual nonexistence of black election officials in both the city and rural county precincts and with the absence of a registrar or deputy registrar until after this suit was filed explains to a great extent why no black has ever won an opposed at-large election in Putnam County in this century.

All of the foregoing persuades this court that blacks [under all three election schemes here challenged] have not had equal access to the political processes in Putnam County.

5. Enhancing Factors

Even though Putnam County is not large, a majority vote is required and candidates must run for numbered posts. These two factors impair the access of Putnam county blacks to the political process. On balance the court finds the enhancing factors to weigh slightly in favor of plaintiff.

B. Summation

Having concluded that all the relevant primary and enhancing factors are established in plaintiffs' favor, the only question which remains is whether the totality of the circumstances warrants the conclusion that the electoral schemes in Putnam County are maintained for the purpose of restricting the access of the county's black residents to that system. Without question, this is a classic example of the heretofore valid Zimmer test for establishing a conscious invidious discrimination on the part of the controlling political powers. Mindful of the caveat in Lodge, that a court must not measure the validity of an election scheme by which party proved the presence or absence of the greatest number of factors, the court must ultimately ask itself whether under the totality of the circumstances those in control of the political process possess the means sufficient to effectively deny blacks access to the ballot box. If they do, the court must be persuaded that blacks are rendered helpless to vote into office members of their own race.

In the absence of such control, the court would be bound not to intervene into the local affairs of Putnam County.

In the instant case black citizens now comprise a majority of the population within the county and the city. Demographic data forecasts that the black majority will continue to increase within the foreseeable future. Nevertheless blacks continue to lose every opposed at-large election; blacks continue to register to vote in smaller numbers than whites; and, blacks continue to vote in smaller numbers than whites. Several explanations may be offered to account for these trends. One answer is that blacks perceive their vote to be meaningless. A second is that they are unconcerned with the problems which confront them on a daily basis. Yet another is that blacks tend to vote for white candidates, and as a consequence slate fewer black candidates, because the white alternative is better qualified and more responsive to the black community's needs. Given the court's finding that white elected officials have been unresponsive to the black community, and given the existence of qualified black candidates who have been unsuccessful in their bid for public office in Putnam County, the last explanation can be readily discounted. Likewise, the court's common sense tells it that no human being enjoys living below the poverty level, living in substandard housing or living as a second-class citizen on unpaved streets. If the city and county officials could point to but a single period in this century when blacks have been able to meaningfully participate in the electoral process, the court would be receptive to the proposition that blacks just aren't as interested in politics. The court suggests that a careful review of discrimination in Putnam County indicates the contrary. Having concluded that blacks are interested in their standard of living, and that the present elected officials ineffectively represent them, the court must examine whether their vote is perceived to be meaningless. The past history of official segregation within Putnam County combined with both their inability to elect members of their own race and with low voter registration and turnout compels

but one conclusion -- Putnam County blacks, through the actions of white elected officials past and present, have been denied equal access to the political process to such an extent that they will continue, in spite of their popular majority, to be defeated at the polls. There is no doubt that the at-large electoral systems in Putnam County were in the past, and are today, maintained for the specific purpose of limiting the county's and city's black residents' ability to meaningfully participate therein. In addition, Ga. Laws 1977, p. 3236, was enacted with discriminatory intent to dilute the black vote. Accordingly, all of the challenged election schemes must be set aside.[7]

REMEDY

Within ten (10) days the parties are directed to advise whether or not they wish a further evidentiary hearing. Each party, within an additional thirty (30) days, shall submit a proposed remedial order and within fifteen (15) further days may comment on or criticize a party opponent's suggestion. The court will then prepare a final remedial order.

SO ORDERED this 13th day of May, 1981.

Wilbur D. Owens, Jr.
United States District Judge

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1

Putnam County
1970 U. S. CENSUS

	White Pop.	%	Black Pop.	%	Total Pop.
1. All Ages	4,293	51.3	4,092	48.7	8,394
2. 18 yrs. and up	2,934	57.8	2,142	42.2	5,076
3. 1976 registered voters by race	2,847	68.0	1,311	32.0	4,158
4. No. of residents who, according to 1970 census, would be 18 yrs. or older by 1980	797	41.5	1,122	58.5	1,919

City of Eatonton
1978 SPECIAL CENSUS

	White Pop.	%	Black Pop.	%	Total Pop.
1. All Ages	1,931	44.5	2,417	55.5	4,353
2. 18 yrs. and up	1,393	49.1	1,442	50.9	2,835
3. Under 18 yrs.	538	35.6	975	64.4	1,513

2

The amending act was introduced at the request of Eatonton's city officials by the state senator and representatives elected by the voters of Eatonton and Putnam County. As a matter of local courtesy it was then enacted into law.

3

A three year summary of the City of Eatonton's employment record is as follows:

	1976		1977		1978	
	Black	White	Black	White	Black	White
Supervisors	1	5	1	6	1	6
City Attorney	0	1	0	1	0	1
Clerical	0	4	0	4	0	4
Police Officer	2	6	2	6	1	6
Radio Dispatcher	0	3	1	2	1	2
Refuse Collector	8	0	8	0	6	0
Refuse Collector Driver	4	0	4	0	4	0
Utility Service Worker	2	1	3	0	3	0
Equipment Operator	2	1	1	1	1	1
Utility Service Helper	2	6	2	1	3	0
Laborer	2	1	0	0	3	0
Trainee	1	0	0	0	0	0
Totals	24	28	22	21	23	20

4
The defendants submitted this act under the Voting Rights Act for approval by the Attorney General, and it was approved.

5
Various attempts have been made by the courts to explain proof of invidious discriminatory purpose. "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). Such a discriminatory purpose may be gleaned from "a blend of history and an intensely local appraisal of the design and impact of past and present reality, political and otherwise." White v. Regester, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1972). In fact, to determine intent this court has relied in other cases upon the burden of proof necessary to sustain a criminal indictment, that is, "[i]ntent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer the defendants' intent from the surrounding circumstances. You may consider any statement made and done or omitted by the defendant, and all other facts and circumstances in evidence which indicate his state of mind." United States v. Chianlese, 560 F.2d 1244 (5th Cir. 1977).

6
The Zimmer criteria do not provide an exhaustive list of factors which may raise an inference of discriminatory intent. The court may consider, in addition to Zimmer factors, "similar ones." See Kirksey v. Board of Supervisors of Hinds County, 554 F.2d 139 (5th Cir. 1977)(en banc). One example of a "similar factor" considered in Kirksey is a depressed socio-economic status.

7
In so ruling the court follows the holding in Lodge, wherein the court stated at footnote 11, slip op. pg. 4999:

> "The rule we establish is for dilution claims brought under the Fourteenth and Fifteenth Amendments. We do not reach appellees First Amendment or statutory bases for affirming the District Court's judgment. With respect to the assertion that section 2 of the Voting Rights Act, 42 U.S.C. § 1973, provides a remedy for conduct not covered by the Fifteenth Amendment, we are bound by the expression of five Justices of the Supreme Court (see the opinions of Stuart, J. and Marshall, J., dissenting) that such is not the case. We do not express any opinions as to the application of the First Amendment or 42 U.S.C. § 1971 to this case. We believe such new courses should be charted by the Supreme Court which, as of yet, has not chosen to do so. We believe our restraint in this area is particularly appropriate given the fact that the District Court did not consider those grounds in its evaluation of the case."

§ 7-5-170. Necessity for written application for registration; form; oaths; decisions on applications.

(1) *Written application required.*—No registration certificate shall be issued except upon written application which shall become a part of the permanent records of the board to which it is presented and shall be open to public inspection.

(2) *Form of application.*—The application shall be on a form prescribed and provided by the executive director and shall contain the following information:

APPLICATION FOR REGISTRATION

Dated at _____, S.C., _____ day of _____, 19____.

I, _____ hereby apply for registration as an elector and certify under oath that:
Last Name-First Name-Middle Initial

male

1. I am a female, a member of the _____ race, born at _____, on _____. I reside at _____ Street in the town or city of _____ or on _____ Road in _____ Township or Parish in _____ County. My precinct is _____. My weight is _____ lbs., my height is ____ ft. ____ in., the color of my eyes _____, the color of my hair _____.

☐ 2. I am a resident of South Carolina, this county and in the voting precinct at which I will be entitled to vote if a registration certificate is issued to me upon this application.

☐ 3. I am not now under a court order declaring me mentally incompetent or confined in any public prison.

4. I will demonstrate to the registration board that:

☐ (a) I can read and write a section of the Constitution of South Carolina; or

☐ (b) I am otherwise qualified.

☐ 5. (a) I have never been convicted of any of the following crimes: Burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, larceny, murder, rape or crimes against the election laws; or

☐ (b) I have been legally pardoned for such conviction.

6. My social security or identification number is _____
If none, so state

7. My place of birth is _____.

8. I was last registered in _____ Precinct, _____ County, _____ State.

9. My occupation is _____.

10. My mailing address is _____.

WHOEVER SHALL, WILFULLY AND KNOWINGLY, SWEAR FALSELY IN TAKING ANY OATH REQUIRED BY LAW, ADMINISTERED BY ANY PERSON DIRECTED OR PERMITTED BY LAW TO ADMINISTER SUCH OATH, SHALL BE GUILTY OF PERJURY AND ON CONVICTION, INCUR THE PAINS AND PENALTIES OF THAT OFFENSE.

Sworn to and subscribed before
me this _____ day of
_____,19____

Member of Clerk of Registration Board

_____

_____
Applicant

(3) *Administration of oaths.*—Any member of the registration board, deputy registrar or any registration clerk shall be qualified to administer oaths in connection with such application.

(4) *Decisions on applications.*—Any member of the registration board, deputy registrar or registration clerk may pass on the qualifications of the prospective voter. *Provided, however,* in case of a question of an applicant being refused registration, at least one member of the board shall pass on the qualifications of the voter. A concise statement of the reasons for such refusal shall be written on the application.

HISTORY: 1962 Code § 23-68; 1952 Code § 23-68; 1950 (46) 2059; 1951 (47) 78; 1957 (50) 671; 1965 (54) 283; 1967 (55) 657; 1968 (55) 2316; 1974 (58) 2185.

Cross references—

As to punishment for false swearing in applying for registration, see § 7-25-10.

ATTORNEY GENERAL'S OPINIONS

Where application for registration and registration certificate must be signed.—According to the election law an application for registration must be signed in the presence of a member of the board or the clerk of the registration board and the registration certificate must be signed in the presence of a member of the board or clerk. 1968-69 Ops. Att'y Gen., No 2653, p 68.

The payment of taxes and the certification of residence for the purpose of motor vehicle registration are factors to take into consideration in determining the place of residence, but not conclusive factors. 1963-64 Ops. Att'y Gen., No 1729, p 216.

Registration of student.—A student may properly be asked under subdivision (4) if he is registered to vote in another county. Where do his parents live? What is his place of residence as shown upon the college records? Military records? Insurance records? Driver's license? Other documents? 1963-64 Ops. Att'y Gen., No 1729, p 216.

A student should particularly be asked if he intends to make the college area his permanent place of residence. Has he abandoned any intention of returning to his parental home? 1963-64 Ops. Att'y Gen., No 1729, p 216.

provided: "The payment of a poll tax shall not hereafter be a requisite for the exercise of the privilege of voting in any primary or election by the people."

The Act of 1945 was apparently superseded along with the remaining registration laws, but the payment of poll tax has not been restored as a requisite for voting. The Constitution of 1877, § 2-603, required payment of this tax as a requisite for voting, a provision absent from the Constitution of 1945. See Const., 1945, §§ 2-703, 2-5402.

Cited. 189 Fed. Supp. 121, 133.

Racial segregation: In an action, under Civil Rights Act of 1957, by Federal Attorney General to obtain preventive relief against alleged acts of defendants, registrars of Terrell county, Georgia, which would deprive other persons of rights and privilege of citizens of United States to vote—who are otherwise qualified—at any election by people of Georgia without distinction of race or color: Held: The Federal statutes prohibit use of different colored registration application forms for white and Negro voters, keeping separate registration and voting records for such voters, delaying action upon applications for Negroes while not delaying such action as to applications by whites, administering different literacy tests for whites and Negroes, and requiring higher standard of literacy for Negroes than whites. Injunction granted. 189 Fed. Supp. 121, 133 (2, 3).

Specific relief granted in injunction suit by Federal Attorney General under 1957 Civil Rights Act by declaring null and void registrar's action refusing to register named Negro voters. Id. 134 (5).

34-118. Oral examination of applicants on standard questions.—The examination which the registrars shall submit to an applicant who claims the right to register on the basis of good character and understanding of the duties and obligations of citizenship under a republican form of government, shall be based upon a standard list of questions, and the questions on this list and no others shall be submitted to such applicant. In order to ascertain whether an applicant is eligible for qualification as a voter in this classification, the registrars shall orally propound to him the 30 questions on the standardized list set forth hereinafter. If the applicant can give correct answers to 20 of the 30 questions as they are propounded to him, possesses the other necessary qualifications and is not disqualified in any other way, the card shall be marked approved and the applicant shall be considered a registered voter. Otherwise, the registration card shall be marked rejected. (Acts 1958, pp. 269, 279.)

34-119. Standard list of questions.—The standard list of questions which shall be propounded to each applicant is as follows:

1. What is a republican form of government?
2. What are the names of the three branches of the United States government?
3. In what State Senatorial District do you live and what are the names of the county or counties in such district?
4. What is the name of the State Judicial Circuit in which you live and what are the names of the counties or county in such circuit?
5. What is the definition of a felony in Georgia?
6. How many Representatives are there in the Georgia House of Representatives and how does the Constitution of Georgia provide that they be apportioned among the several counties?

7. What does the Constitution of Georgia prescribe as the qualifications of Representatives in the Georgia House of Representatives?
8. How does the Constitution of the United States provide that it may be amended?
9. Who is the Chief Justice of the Supreme Court of Georgia and who is the Presiding Justice of that court?
10. Who may grant pardons and paroles in Georgia?
11. Who is the solicitor general of the State Judicial Circuit in which you live and who is the judge of such circuit? (If such circuit has more than one judge, name them all.)
12. If the Governor of Georgia dies, who exercises the executive power, and if both the Governor and the person who succeed him die, who exercises the executive power?
13. (a) What does the Constitution of the United States provide regarding the suspension of the privilege of the writ of Habeas Corpus?
    (b) What does the Constitution of Georgia provide regarding the suspension of the writ of Habeas Corpus?
14. What are the names of the persons who occupy the following State offices in Georgia?
    (1) Governor
    (2) Lieutenant Governor
    (3) Secretary of State
    (4) Attorney General
    (5) Comptroller General
    (6) State Treasurer
    (7) Commissioner of Agriculture
    (8) State School Superintendent
    (9) Commissioner of Labor
15. How many Congressional Districts in Georgia are there and in which one do you live?
16. What is the term of office of a United States Senator?
17. What is the term of office of a State Senator?
18. What is the county site of your county?
19. How does the Constitution of Georgia provide that a county site may be changed?
20. What are the qualifications for jury service in Georgia?
21. What are the names of the persons who occupy the following offices in your county?
    (1) Clerk of the Superior Court
    (2) Ordinary
    (3) Sheriff
22. How may a new state be admitted into the Union?
23. On what day and how often is the general election held in Georgia at which members of the General Assembly of Georgia are elected?

24. What does the Constitution of the United States provide regarding the right of citizens to vote?
25. In what Federal Court District do you live?
26. What are the names of the Federal District Judges of Georgia?
27. Who are citizens of Georgia?
28. What is treason against the State of Georgia?
29. In what body does the Constitution of the United States declare that the legislative powers granted in such Constitution shall be vested?
30. How many electoral votes does Georgia have in the electoral college? (Acts 1958, pp. 269, 279.)

34-120. Permanency of registration; biennial revision of records; re-registration.—The electors who have qualified shall not thereafter be required to register or further qualify, except as provided by law. No person shall remain a qualified voter who does not vote in at least one election, as provided in this section, within a three-year period unless he shall specifically request continuation of his registration in the manner hereinafter provided.

Within 60 days after the first day of January, beginning in the year 1959, and biennially thereafter, the registrars shall revise and correct the registration records in the following manner: They shall examine the registration cards and shall suspend the registration of all electors who have not voted in any general election or primary, Federal, State or county within the three years next preceding said first day of January: Provided, however, that on or before March 1st of said year they shall mail in a sealed envelope by first class mail to each elector at the last address furnished by the registrant a notice substantially as follows: "You are hereby notified that according to State law, your registration as a qualified voter will be cancelled for having failed to vote within the past three years, unless before April 1st of the current year you continue your registration by applying in person to this office."

Effective April 1, 1959, and biennially thereafter, the registrars shall cancel the registration of all electors thus notified who have not applied for continuance, and the names of all such electors shall be wholly removed from the list of qualified voters prior to May 1st of that year. Any elector whose registration has been thus canceled may reregister in the manner provided for original registration in this law. No person shall remain a qualified voter longer than he shall retain the qualifications under which he is registered. (Acts 1958, pp. 269, 282; 1959, pp. 182, 183; 1961, p. 56.)

Editorial Note.—Acts 1961, p. 56, changed the period after which cancellation of registration will occur for persons who have not voted from a "two-year" period to a "three year" period.

34-121. Lists of persons disqualified from voting by reason of conviction of crime or mental incompetency.—The clerk of the superior court of each county shall, on or before the 20th day of April in each

Editorial Note.—This section was modified by Const. U. S., Amend. XIX. See § 1-827 and 152/283 (109 S. E. 666). The amendment of 1943 eliminated the word "male" preceding the word "citizen" in the first line and changed the voting age from 21 years to 18 years.

2-603. (6397) Par. III. **Who entitled to register and vote.** To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and in the county in which he offers to vote six months next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law. Such payment must have been made at least six months prior to the election at which he offers to vote, except when such elections are held within six months from the expiration of the time fixed by law for the payment of such taxes. (Acts 1908, pp. 27, 28, ratified Oct. 7, 1908; Acts 1931, p. 102, ratified Nov. 8, 1932.)

Editorial Note.—By the amendment of 1932 the provision, "all poll taxes that he may have had an opportunity of paying agreeably to law," was inserted in lieu of the provision, "all taxes which may have been required of him since the adoption of the Constitution of Georgia of 1877, that he may have had an opportunity of paying agreeably to law." See note following § 2-601.

2-604. (6398) Par. IV. **Qualifications of electors.** Every male citizen of this State shall be entitled to register as an elector, and to vote in all elections in said State, who is not disqualified under the provisions of Section II of Article II of this Constitution, and who possesses the qualifications prescribed in Paragraphs II and III of this Section or who will possess them at the date of the election occurring next after his registration, and who in addition thereto comes within either of the classes provided for in the five following subdivisions of this paragraph.

1. All persons who have honorably served in the land or naval forces of the United States in the Revolutionary War, or in the War of 1812, or in the War with Mexico, or in any War with the Indians, or in the War between the States, or in the War with Spain, or who honorably served in the land or naval forces of the Confederate States, or of the State of Georgia in the War between the States; or,

2. All persons lawfully descended from those embraced in the classes enumerated in the subdivision next above; or,

3. All persons who are of good character and understand the duties and obligations of citizenship under a republican form of government; or,

4. All persons who can corectly read in the English language any paragraph of the Constitution of the United States or of this State and correctly write the same in the English language when read to them by any one of the registrars, and all persons who solely because of physical disability are unable to comply with the above requirements but who can understand and give a reasonable interpretation of any paragraph of the

Constitution of the United States or of this State that may be read to them by any one of the registrars; or,

5. Any person who is the owner in good faith in his own right of at least forty acres of land situated in this State, upon which he resides, or is the owner in good faith in his own right of property situated in this State and assessed for taxation at the value of $500. (Acts 1908, pp. 27, 28, ratified Oct. 7th, 1908.)

2-605. (6399) Par. V. **Registrars to prepare roster.** The right to register under subdivisions 1 and 2 of Paragraph IV shall continue only until January 1st, 1915. But the registrars shall prepare a roster of all persons who register under subdivisions 1 and 2 of Paragraph IV and shall return the same to the clerk's office of the superior court of their counties, and the clerks of the superior court shall send copies of the same to the Secretary of State, and it shall be the duty of these officers to record and permanently preserve these rosters. Any person who has been once registered under either of the subdivisions 1 or 2 of Paragraph IV shall thereafter be permitted to vote: Provided, he meets the requirements of paragraphs II and III of this Section. (Acts 1908, pp. 27, 29, ratified Oct. 7th, 1908.)

2-606. (6400) Par. VI. **Appeal from decision of registrars.** Any person to whom the right of registration is denied by the registrars upon the ground that he lacks the qualifications set forth in the five subdivisions of Paragraph IV shall have the right to take an appeal, and any citizen may enter an appeal from the decision of the registrars allowing any person to register under said subdivisions. All appeals must be filed in writing with the registrars within ten days from the date of the decision complained of, and shall be returned by the registrars to the office of the clerk of the superior court to be tried as other appeals. (Acts 1908, pp. 27, 29, ratified Oct. 7th, 1908.)

2-607. (6401) Par. VII. **Judgment of force pending appeal.** Pending an appeal and until the final decision of the case, the judgment of the registrars shall remain in full force. (Acts 1908, pp. 27, 30, ratified Oct. 7th, 1908.)

2-608. (6402) Par. VIII. **Only qualified voters to participate in primary.** No person shall be allowed to participate in a primary of any political party or a convention of any political party in this State who is not a qualified voter. (Acts 1908, pp. 27, 30, ratified Oct. 7th, 1908.)

2-609. (6403) Par. IX. **Machinery for registration.** The machinery provided by law for the registration, of force October 1st, 1908, shall be used to carry out the provisions of this Section, except where incon-

Three Seek Mayor's Post; Council Race Draws Eight

The City of Thomson will be guided by a new mayor and at least two new city council members during the four years of 1976 through 1979.

In a surprise announcement last Wednesday, W. C. Leverette, now in his tenth year as Thomson mayor, said he would not seek re-election in the October 30 Democratic primary election. Asserting that "I did the very best that I could," the veteran city legislator said, "I feel that at this time I should step aside and leave the office open for new thoughts, new ideas and hopefully, and abundance of new energy on someone's part to carry on."

Three persons--a businessman, an attorney and an educator--have qualified to suceed Leverette. They are E. Wilson Hawes, William M. Wheeler and Luther Wilson Jr.

At least two new persons will take seats on the city council in January. One of the seats was held 10 years by attorney Warren Evans who announced he will not run for re-election since he has been elected to represent the 94th District in the Georgia General Assembly. Another new councilman is certain to take office since the new Thomson city charter has enlarged council membership from four to five persons.

Of the eight qualifying for city council before the noon Monday deadline are incumbents Adelle D. Adams, Robert L. Hammond and J. D. Mathews. Other candidates none of whom has ever run for elected office before, are John A. Bowman, Robert E. Knox Jr., C. Frank Lockett, Oakley L. Minton and Teddy Reese.

Thomson's 2,055 registered voters will have a wide range of issues to consider in selecting candidates for mayor and council. In brief interviews with the Progress, candidates mentioned as major issues before the mayor and city council matters ranging from annexation to school crosswalks. Yet, in an inflationary period which makes property tax bills harder than ever to pay, virtually every candidate interviewed called for tight-fisted spending of city tax dollars. Likewise most candidates said the Thomson mayor and city council need to help boost the city economy by attracting new industry and helping revitalize the city's central business district. Following are summaries of interviews with candidates.

MAYOR

E. Wilson Hawes, who owns Hawes - Knox Company, served six years on the Thomson City Council during the 1940's. A Thomson native, he made an unsuccessful bid in 1970 to unseat Mayor W. C. Leverette.

Hawes is concerned about Thomson's economy. "I think we need to give attention to revitalization of the downtown area," he said. Outlining other priorities before the council, he said, "I feel we need more police protection in the downtown area. Also, I'm in favor of taking advantage of as many federal programs as we can."

Asked if he knows of any federal assistance programs available to Thomson for which the present mayor and council have not applied, he said, "I don't know of any."

Would Hawes favor levying a local sales tax instead of raising property taxes, if the city needed to generate more revenue? "I'm not in favor of any increase in taxes and I would not favor a sales tax," he said.

Hawes is the only new candidate in the election who has held a city office before.

William Wheeler, a native of Mt. Vernon who has resided in Thomson about eight years, has been attorney for the McDuffie County Board of Commissioners seven years.

"I think the financial structure of the city government is going to be the new council's biggest priority," he said. "It costs more money than ever to operate a city government."

"I don't know of any particular changes that need to be made in the city government, but we do need help from the state with property tax relief," he said.

Wheeler said he would favor levying a local sales tax before increasing property taxes, if necessary, and he said the city government "needs to continue efforts made toward improvement of water and sewer facilities and maintenance and repair of city streets."

Luther Wilson, who has resided in Thomson 29 years, has been assistant principal of Thomson High School four years. He mentioned a number of matters he feels deserve priority consideration by the mayor and council.

Referring to the U. S. Department of Justice's recent ruling that certain provisions of the new city charter are " unenforceable," he said "The first thing is completion of the charter. The whole charter is not in effect at present and we need to get it completed."

He also mentioned annexation. "The city map looks like

(Continued on Page 4a)

same doodling. It [illegible] would do, be[illegible] have any unifo[illegible] annexation policy," he sai[illegible] I'm talking about private [illegible]ellings in particular. The[illegible] are some areas where t[illegible] majority of people desire [illegible]nexation--the Cherokee sec[illegible]'or ple--but the cit[illegible]n't ed them. I feel [illegible] city should have some typ[illegible] of procedure which would p[illegible]rmit annexation if 50 perce[illegible] the people in an area de[illegible]. I should better [illegible] it edures," he sai[illegible]

Wilson also called for "continued co[illegible]munications between all se[illegible]ments of the community."

He said, "The city should better utilize p[illegible] [illegible] recreation, an[illegible] necessary get more ar[illegible]. H[illegible] suggested "some type of municipal asse[illegible]ly building - an auditorium o[illegible] something of that nature."

Should the city require additional revenue, Wilson proposed legali[illegible]ion of beer and wine [illegible] alternative to i[illegible]reased pro[illegible]erty taxes or co[illegible]

[illegible]n now, you don't have to go more than four or five blocks to buy beer or wine," he said. With such ready access he said, "It wouldn't make that much difference if it were sold in the city."

P48.

Augusta Chronicle
Oldest Newspaper-Established 1785

Section B

Thursday Morning, October 24, 1974

Meeting decides

The Augusta Chronicle

candidate's fate

By VINNIE WILLIAMS

THOMSON, Ga. —A candidate for mayor of Thomson dropped out of the race Wednesday as a result of a meeting in Thomson City Hall.

Twenty-one men gathered there voted on which of two white candidates should drop out the race for mayor.

The loser was E. Wilson Hawes, Thomson businessman, who was regarded by many as the front runner in the Democratic primary scheduled for Wednesday, Oct. 30.

A "gentleman's agreement" was entered into by the two candidates that whoever lost would withdraw.

The two candidates regarded as running behind Hawes are Luther Wilson, a black educator, and William Wheeler, McDuffie County attorney.

The action has the effect, according to Wilson, of splitting the election along racial lines.

The office of mayor fell vacant two weeks ago when William Leverett, mayor for 10 years, announced he would not run again. Hawes, a Thomson native and owner of Hawes-Knox, was the first to offer for mayor.

Four years ago he was defeated in a bid for mayor by Leverett. Previously he served six years on city council in the 1940's.

Wilson, assistant principal at Thomson High School, offered next. A resident of Thomson for 28 years, he is an officer in the Thomson Progressive Civic Club, a black organization that pushes black rights.

Simultaneously with Wilson, Wheeler qualified. A native of Mt. Vernon, Ga., he has lived in Thomson eight years and became county attorney when long-time county attorney Lon Fleming, his father-in-law, resigned.

Interest in the contest has run high.

Today in Augusta

10 a.m.-1 p.m. — CSRA Blood Assurance Plan bloodmobile visits Citizens and Southern National Bank of Augusta, Broad Street.

Noon — Lunch hour service hears the Rev. Richard C. Long, associate pastor, St. John United Methodist Church. St. John Church, 726 Greene St.

1 p.m. — Augusta Chapter, AM-BUCs, hears Richard E. Gillock, administrator, Talmadge Memorial Hospital. Red Lion Restaurant.

1 p.m. — Augusta Civitan Club hears Catherine Robinson, mayor of Metter, Ga. Thunderbird Inn.

1 p.m. — Augusta Exchange Club meets. Quality Inn Towers.

1 p.m. — Augusta Bar Association hears James C. Dunlap, director of administrative office of courts, state of Georgia. Town Tavern.

7 p.m. — Augusta Toastmasters hears Toastmaster District Gov. Dick Anderson of Lithonia, Ga. Quality Inn Towers.

fall apart if he were elected."

Hawes, in his withdrawal statement Wednesday night, said only that he was quitting the race for "personal reasons" and urged people to "give support to anything that would work toward the betterment of Thomson."

Details of the meeting were confirmed by Hawes. He said that a group of men approached him Monday night and urged a meeting between him and Wheeler and their friends to discuss the race.

It was decided then that each man should nominate 12 persons whose judgement be respected and that these would gather, discuss the race and vote their preference. Each man pledged not to contact his nominees to try to influence the way they would vote.

When the meeting convened, 21 men were present, including a Methodist minister. The meeting was chaired by a former McDuffie County politician.

When the ballots were cast, Wheeler was the winner.

"It was a great surprise and disappointment," Hawes said. "I thought I had a good chance of winning."

He said it was "bad politics but done in good faith."

Hawes said he first suggested getting an out-of-town group and taking a poll, but was told there wasn't time. The alternate plan of 12 delegates each and a neutral bystander to break a tie was proposed.

"I didn't drop out because I was afraid of getting beat, but because it was the only thing to do after I gave my word," Hawes said. "It was a gentleman's agreement."

Luther Wilson said that Hawes' withdrawal strengthened his chances.

"Hawes was always the stronger candidate of the two," he said. "Now a lot of voters will stay home. What this comes down to is this, do the people of Thomson want a mayor who is elected or one who is appointed by a handfull of men behind closed doors.

Wilson said that Wheeler and his friends approached him for a meeting on Friday but he turned them down.

Wheeler had no comment on the meeting and of Hawes withdrawal he said only, "I understand this may be so, but you'll have to contact him."

THE ATLANTA CONSTITUTION
Georgia Today
Saturday, Oct. 26, 1974 Page 14-A

CANDIDATE SHUFFLE

Thomson's Mayoral Race Up in Air

By FRANK WELLS

The East Georgia town of Thomson will hold an election for mayor next Wednesday—if someone can finally decide who the candidates are.

The field had narrowed to two late Friday, but one of the candidates—once out, now back in — could not be reached for comment.

There were three candidates for the post at the beginning of the week, two white men and one black man. The two whites are E. Wilson (Shelk) Hawes, a Thomson businessman, and William Wheeler, an attorney.

The black man is Luther Wilson Jr., an educator at Thomson High School.

Wednesday, Hawes announced he was quitting the race as a result of a meeting between him and Wheeler and some of their friends Tuesday night. According to Hawes, the group decided which white man was to run, and Wheeler was the winner.

However, Hawes did not notify the local Democratic Committee that he was withdrawing.

Friday, however, Hawes said he was still in the race, but would make no further comment.

Wheeler would only say Friday that "I am not now a candidate." But he didn't seem happy about his announcement. He went on to say, "Somebody had to honor the gentlemen's agreement of Tuesday night and since Hawes didn't, I will."

Wheeler did say that he had given formal notification to the Democratic Committee that he was no longer a candidate.

In the meantime, black candidate Wilson said that "I do wish I could find out who my opponent is.

"I think all this confusion will increase my chances of winning. I have support in the white community, and the voters of Thomson are getting tired of this back-room politics.

"I just don't see how political leaders could turn to what seems to be anarchy. They are running around like a baby hunting his mama."

The city has 2,000 registered voters— about two-thirds of them white. Wilson had charged earlier that Hawes' withdrawal would split the city vote along racial lines, "but I don't know how. They can't decide on a candidate and I think the voters are tired of the shenanigans."

E. W. (Sheik) Hawes | Luther Wilson Jr. | William Wheeler

City Primary Scheduled Wednesday

Thomson's voters will go to the polls Wednesday October 30 to elect five city council members and a mayor. The eight candidates for council (pictures elsewhere) are Adelle Adams, John A. Bowman, Robert L. Hammond, Robert E. Knox Jr., Frank Lockett, J. D. Mathews, Oakley Minton and Teddy Reese. The three mayoral candidates are E. Wilson Hawes, Luther Wilson Jr. and William Wheeler.

Terms of office for councilmen and the mayor are four years. They will be elected by pluralities. The five council candidates drawing the most votes will be elected; and the mayoral candidate who polls the most votes, even if he does not earn a majority, will be elected.

While next week's polling is acutally a Democratic primary election, winners will be virtually guaranteed victory since no Republic candidates have entered December 4 general electio

Voters may cast ballots a.m. to 7 p.m. at City Ha according to a spokesm there.

The McDuffie Progress

ADELLE ADAMS

JOHN A. BOWMAN

ROBERT L. HAMMOND

BOB KNOX, JR.

FRANK LOCKETT

First Avenue Rezoning Requested

The Thomson - McDuffie County Planning and Zoning Commission voted unanimously at its regular meeting October 17 to recommend to the Thomson City Council that it rezone a tract of land on First Avenue for industrial use. The land is presently zoned for general business use.

Request for the rezoning was made by the Howell estate, which owns a building on First Avenue which it plans to lease to Camak Manufactring Company, whose owners, Nell Colvin and Robert Jackson, were present at the meeting. The Howell estate was represented by Ben Howell and his attorney Buddy Dallas.

Camak, a sewing concern whose main product is shirts for state prisoners, plans to move its operation from Pine Street to the Howell's warehouse formerly occupied by Rock City Packaging Company, the firm, which employs 47, currently occupies a building on Pine Lane.

Pine Lane is not zoned to permit Camak's operation and the firm had been ordered by building inspector Kenneth Usry to vacate the building by November 1. usry granted, at the planning commission's behest, an extension to November 15 to vacate.

A public hearing will be held on the rezoning request at the November 14 meeting of the Thomson Mayor and Council at 7:30 p.m.

The commission's recommendation that the area be rezoned includes a provision requiring the company to secure parking for employees and customers "which will not interfere with parking for downtown merchants." Colvin and Jackson said they would lease a nearby vacant lot.

William Drew, director of planning for the CSRA Planning and Development Commission, told the commissioners that rezoning the area may be tantamount to "spot zoning," thereby making the decision vulnerable to legal action. Moreover, he said the First Avenue building may not meet the city code's requirements for an industrial operation. While the commission then discussed amending the City Zoning code to permit the operation, the original rezoning motion was left intact.

Planning commissioners have also given the Thomson City Council its recommendation that land owned by Wilson Associates, Inc., on Fluker Street be rezoned from residential use to neighborhood business use. Council will also hold a public hearing on the request November 14 at 7:30 p.m.

In other business at the meeting, the commissioners reviewed proposed zoning maps of McDuffie County. The group, according to chairman Jack Harvey, will be ready by the November meeting to present to the county commissioners a comprehensive zoning ordinance. The ordinance has been in preparation about a year.

...ember 6, 1969 P51. ... NUMBER ...

Sheik Hawes Gallops To Mayor's Chair

E. Wilson (Sheik) Hawes was elected mayor of Thomson October 30 when voters in the Democratic primary handed the city businessman more than 72 percent of their votes for a 943 to 361 victory over Luther Wilson Jr.

All three incumbent candidates for the two-member city council were re-elected. They are Adelle Adams, J. D. Mathews and Robert Hammond. They will be joined on the council by two newcomers to city government, Robert Knox Jr. and Frank Lockett.

Council members were elected to four year terms by plurality, as was the mayor. Knox polled the most votes, 882. He was followed by Adams, 876; Hammond, 833; Mathews, 814; and Lockett, 704.

Other candidates in the eight-member council race were John A. Bowman, 528; Teddy Reese, 434; and Oakley Minton, 256.

Of 2,686 registered voters, 1,309 cast ballots in the election, with 71 thrown out.

While victory in last Wednesday's primary is tantamount to winning office since there are no Republican candidates for city office, candidates must be confirmed in a general election December 4.

Virtually the only way the primary outcome could be altered is by a successful write-in candidacy. Luther Wilson, asked if he plans to run in the general election as a write-in candidate, said, "I will make no comment at this time." Nor would Wilson comment on the election generally.

The new council and mayor will take office in January.

Hawes, who made an unsuccessful bid to unseat retiring Mayor W. C. Leverett in 1970, issued this statement:

"I am grateful for the record-breaking turnout and for the many forms of support shown me. I feel a great obligation to merit this support to the best of my ability for the next four years."

Owner of Hawes Kwik Copy, a print shop, Hawes has served six years on the city council in the 1960's.

In an interview with the Progress before last week's election, Hawes cited as priorities for the city, revitalization of the downtown business district and increased police protection. He said also that he would not favor tax increases of any kind.

Hawes' candidacy was in question for several days prior to the election. The mayoral race initially included a third candidate, attorney Bill Wheeler. Hawes announced that he would withdraw from the race, leaving Wheeler and Wilson. When he did not formally withdraw, Wheeler then withdrew.

Several changes in Thomson's new city charter prevailed during last week's election. First the council was expanded from a four-to a five-member body. Councilman Warren Evans did not run for re-election since he has been elected to represent the 84th District in the Georgia General Assembly. His vacancy and the addition of a new member made way for Knox and Lockett.

Council members and the mayor previously were elected to two-year terms. Under the new charter they will serve four-year terms.

Three election provisions of the new charter, rendered unenforceable by the U. S. Justice Department, did not prevail. Under the new charter, the candidates for council would have run for staggered terms. Second, the mayoral race would have required a majority vote of the winning candidate. Third council members would have run for numbered posts. Had the second provision been in effect during last week's election, the outcome would have not varied. However, had Wheeler remained in the race, a run-off might have been forced. Had the third provision been in effect, the council make-up might be different, unless Lockett and Knox ran for separate posts and not against incumbents.

Also elected last Wednesday were members of the Democratic Executive committee of Thomson. They are Jack Baston, chairman; Dan Farr, secretary; and J. W. Curtis, member. The three, all incumbents, were unopposed.

Public Officials to Sue For Punitive Damages

Seventeen McDuffie County and Thomson officials sued by five black residents in federal court will soon file their answers and most of them will file counter claims asking $5,000 in punitive damages.

The 17 officials met jointly with their attorneys last Wednesday. They include: Thomson Mayor Wilson Hawes and Thomson Council members J. D. Mathews, Adelle Adams, Robert Hamond, Robert Knox Jr. and James Lokey; Board of Education members Fred Blackmon, Bill Eubank, Joseph Greene, W. L. Howard, Pat Lemley, Tom Neal and Bobby Reese; Commissioners Bob Parr, Wayne Chalker, Darwin Hutcherson; and Probate Judge Mary Jane Locklear.

The 17 are defendants in a class action suit which alleges that methods of electing all but Mrs. Locklear are illegal because they dilute the voting strength of blacks. The suit was filed in the Augusta Division of the United States District Court by American Civil Liberties Union attorneys for Robert Bowdry Jr., Larry Adaway, Willie O. Harris, Jimmie L. Bowdry and J. L. Sturgis Sr. The suit asks that an injunction be issued to stop election of the first 16 defendants. (Mrs. Locklear is named a defendant because she is superintendent of McDuffie elections.

Attorneys for the county (Roger Dunaway and Bill Wheeler) and the board of education (Warren evans) said their clients will file counter claims asking $5,000 in punitive damages each, plus attorney fees. City Attorney Jack Evans would not comment as to whether the mayor and council would ask the same.

Reason for the counter claim is the plaintiffs' decision to sue the defendants in their capacities as public officials and as individuals. County Attorney Dunaway said suing the officials in that manner requires the defendants to hire attorneys at their own expense to prepare their defense "as individuals". Regularly employed county, boar of education and city attor neys will represent the de fendants at public expense i their "official capacities" While all the defendants wi probably use the same attor neys in both their individu and official capacities, the will have to pay for thei defense "as individuals' Dunaway said the "dual suing may constitute abuse o process.

Answers to the class actio suit, which was filed July 1 are due by August 2 Authorities do not know whe a hearing will be set, bu most doubt an injunction, if i is issued at all, will be issue before the August 10 primary. A hearing will have to be set before the injunction can be issued.

Replies of the public officials will be basically similar, simply denying allegations and demanding proof. Board of Education attorney Warren Evans noted at least one piece of wrong information in the plaintiffs' suit. The plaintiffs allege that a black person has never been elected to the board of education. Joe Greene, a black resident, was in fact elected. He first secured a seat on the board by an appointment but he was subsequently elected to the position.

No word has yet been received concerning the visit here last week by U. S. Justice Dept. officials. The officials, who claimed to have no knowledge of the class action suits, met with Mrs. Locklear, county attorney Bill Wheeler and polls manager Bob Knox Jr. to investigate election procedures here.

The meeting was conducted under the Voting Rights Act to determine whether federal poll watchers should be placed here to oversee elections.

McDuffie Progress
7-29-76

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

JACKIE JUDITH BAGGETT and RONALD JAMES CLARK, on their own behalf and on behalf of all others similarly situated,	:	Civil Action No. 74-30-ATH
Plaintiffs	:	
vs	:	
MRS. RUBY HARTMAN, individually, as Ordinary of Clarke County, Georgia, and on behalf of all other Ordinaries similarly situated,	:	
Defendant.	:	

RELEASE OF ALL CLAIMS

In consideration of the payment of Two Hundred Fifty and no/100 Dollars ($250.00), the receipt whereof is hereby acknowledged, JACKIE JUDITH BAGGETT and RONALD JAMES CLARK, Plaintiffs in the above styled action do hereby release Mrs. Ruby Hartman and all other officers and employees of Clarke County from any and all claims arising out of the failure of Mrs. Ruby Hartman to issue a marriage license to Plaintiffs in said case, which failure was the subject matter of said legal action, and do hereby further expressly consent and authorize the dismissal of said action with prejudice.

This 13 day of [illegible], 1975.

Jackie Judith Baggett

Witness

Ronald James Clark

Witness

DEC - 1 1974

FILED at ____ M

DEC - 6 1974

Deputy Clerk, U. S. District Court
MIDDLE DISTRICT OF GEORGIA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

JACKIE JUDITH BAGGETT, et al.	)	Civil No. 74-30-ATH
Vs.	)	
MRS. RUBY HARTMAN, Individually and as Ordinary of Clarke County, Ga., et al.	)	
	)	

ORDER

Let an Order be entered that the matter having been amicably resolved by the payment of $250 attorney's fees in full, final and complete settlement of damages and attorney's fees; and the Court being of the opinion that there is no other issue in the case, that the case stands dismissed.

SO ORDERED this 25th day of November, 1974.

United States District Judge

NOV 5 1974

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

JACKIE JUDITH BAGGETT and RONALD JAMES CLARK, on their own behalf and on behalf of all others similarly situated	:	Civil Action No. 74-30-ATH
Plaintiffs	:	
vs	:	DEFENSIVE PLEADINGS OF DEFENDANT MRS. RUBY HARTMAN
MRS. RUBY HARTMAN, individually, as Ordinary of Clarke County, Georgia, and on behalf of all other Ordinaries similarly situated	:	
Defendant	:	

Comes now MRS. RUBY HARTMAN, Defendant in the above styled action, and files these her Defensive Pleadings to Plaintiffs' Complaint.

FIRST DEFENSE

Plaintiff's Complaint fails to set forth a claim against Defendant upon which relief can be granted.

SECOND DEFENSE

On September 30, 1974, Defendant issued to Plaintiffs a marriage license in compliance with their application therefor rendering all issues in this action moot.

THIRD DEFENSE

At all times relevant to the issues in this action up to the time of the issuance of the marriage license by Defendant to Plaintiffs on September 30, 1974, Defendant acted in good faith and in conformity with the laws of the State of Georgia which specifically and unequivocally prohibit the issuance of a marriage license by Defendant to the Plaintiffs. The laws of the State of Georgia further render Defendant [illegible]

of a misdemeanor upon her issuance of such license to Plaintiffs as requested. Said miscegenation statutes of the State of Georgia were duly enacted by the General Assembly of said State and are entitled to Defendant's presumption of validity until such time as said statutes are repealed or are judicially determined to be violative of the Constitution of the United States or of the Constitution of the State of Georgia.

FOURTH DEFENSE

All actions of Defendant complained of by Plaintiffs were performed by Defendant according to the laws of the State of Georgia in her official capacity as Judge of the Court of Ordinary of Clarke County and Defendant is therefore not subject to or liable for damages to Plaintiffs relative to the performance of such acts under the doctrine of judicial immunity.

FIFTH DEFENSE

Defendant further answers Plaintiffs' Complaint as follows:

1.

In answer to Paragraph 1 of Plaintiffs' Complaint, Defendant denies that there is involved the sum of $10,000.00 as to each Plaintiff. The Complaint fails to set forth any facts to warrant the conclusion there is such an amount involved and Defendant therefore denies the jurisdiction of the Court on this basis, however, Defendant admits the jurisdiction of the Court under 42 U.S.C. Section 1983.

2.

In answer to Paragraph 2 of Plaintiffs' Complaint, Defendant admits that said action is brought for the purposes

tions of said paragraph are admitted.

6.

In answer to Paragraph 6 of Plaintiffs' Complaint, Defendant shows that Plaintiffs have failed to comply with all statutory requirements for marriage in Georgia, inasmuch as their application for a marriage license did not comply with Section 3-106 of the Georgia Code. The remaining allegations of said Paragraph are admitted.

In answer to Paragraph 7 of Plaintiffs' Complaint, Defendant admits that at the time of the initial application for marriage license by Plaintiffs, Defendant did advise Plaintiffs as to the existence of the state miscegenation statutes but denies that she still refuses to issue the Plaintiffs a marriage license and shows that she did in fact issue a marriage license to Plaintiffs on September 30, 1974.

8.

In answer to Paragraph 8 of Plaintiffs' Complaint, Defendant denies that she enforced or attempted to enforce any statutes in bad faith and shows to the Court that she had no knowledge of such statute's unconstitutionality inasmuch as said statutes have not been judicially determined to be unconstitutional and are therefore entitled to the presumption of validity. Defendant shows that Section 53-9902 of the Georgia Code provides that the issuance of such a license by an officer of the State shall render such officer guilty of a misdemeanor and that such statute has not been repealed nor has it been judicially determined to be unconstitutional as either violative of the Constitution of the United States or of the Constitution of the State

of Georgia. Additionally Defendant shows that upon being advised by local and Federal officials that said statutes would not bear the test of constitutionality should a judicial determination be made thereon, she thereupon issued the marriage license to Plaintiffs although she feared she may be contravening the laws of the State which her oath of office requires her to enforce.

9.

Defendant denies the allegations of Paragraph 9 of Plaintiffs' Complaint.

10.

The allegations of Paragraph 10 of Plaintiffs' Complaint are denied as no actual controversy exists between the parties inasmuch as the matter is moot, the marriage license so requested by the Plaintiffs having been issued to them on September 30, 1974.

WHEREFORE, Defendand respectfully demands:

(a) A trial by jury;

(b) That all of the prayers of Plaintiffs' Complaint be denied;

(c) That the Defendant be discharged from this action without cost.

John Ray Nicholson
Attorney for Defendant

P.O. Box 8026
Athens, Georgia 30601
546-8603

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing Defensive Pleadings upon Plaintiffs by mailing same, in a properly addressed and secured envelope, with sufficient postage thereon, to their attorney of record, Sarajane Love, 52 Fairlie Street, N.W., Atlanta, Georgia 30303.

This 1st day of November, 1974.

John Ray Nicholson

SEP 28 1974

FILED at 10:40 A.M.
SEP 27 1974
Deputy Clerk, U. S. District Court
MIDDLE DISTRICT OF GEORGIA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

JACKIE JUDITH BAGGETT and RONALD JAMES CLARK, on their own behalf and on behalf of all others similarly situated,	:	
Plaintiffs,	:	CIVIL ACTION NO. 74-30-Athens
-v-	:	
MRS. RUBY HARTMAN, individually, as Ordinary of Clarke County, Georgia, and on behalf of all other Ordinaries similarly situated,	:	
Defendant.	:	

ORDER DISMISSING COMPLAINT
ON ACCOUNT OF MOOTNESS

Upon being verbally notified by the clerk of this court of the filing of the within complaint, Mrs. Ruby Hartman requested the opportunity to discuss the matter with the undersigned judge. In accordance with that request the undersigned judge talked with her by telephone. In the course of that conversation Mrs. Hartman advised that she will voluntarily issue a marriage license to the plaintiffs in spite of the prohibition of Georgia law as set forth in the within complaint. Because of the willingness of Mrs. Hartman to voluntarily do what the plaintiffs seek to cause her to do by order of this court, the issues set forth in the within complaint from an injunctive standpoint are moot. Accordingly, so much of said complaint as prays for an injunction is dismissed on account of mootness.

There remains in said complaint a prayer for damages. Let summons issue and that portion of plaintiffs' complaint proceed in the manner contemplated by the federal rules.

SO ORDERED, this the 27th day of September, 1974.

Wilbur D. Owens, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA FILED at 10:05 M
ATHENS DIVISION

SEP 27 1974
Deputy Clerk, U. S. District Court
MIDDLE DISTRICT OF GEORGIA

JACKIE JUDITH BAGGETT and RONALD JAMES CLARK, on their on behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

MRS. RUBY HARTMAN, individually, as Ordinary of Clarke County, Georgia, and on behalf of all other Ordinaries similarly situated,

Defendant.

Civil No. 74-30-Ath

COMPLAINT

JURISDICTION

1. This action arises under the jurisdiction of the first, thirteenth and fourteenth amendments of the Constitution of the United States and 42 U.S.C. §§1981, 1983 and 1988. Jurisdiction is conferred on this court by 28 U.S.C. §§1331, 1343(3) and (4), 2201 and 42 U.S.C. §1983 and 1988. The matter in controversy exceeds exclusive of interest and cost the sum of $10,000.

2. This is an action for appropriate equitable relief, damages and declaratory judgment of the unconstitutionality of Georgia Code §§53-106, 53-313, 53-314, 53-9902 and 53-9903, and to prevent deprivation under color of state statute, ordinance, regulation, custom or usage of rights, privileges or immunities secured to plaintiffs by the first, thirteenth and fourteenth amendments of the Constitution of the United States.

3. The plaintiffs bring this action on their own

behalf and on behalf of all other persons similarly situated against the defendant individually, in her official capacity as Ordinary and as a representative of all Ordinaries or other officers with authority to issue marriage licenses in Georgia, pursuant to Rule 23 of the F.R.Civ.P. Plaintiffs' class consists of persons, one of whom is of African descent and the other a white person, who desire to be issued marriage licenses and to marry. The prerequisites of subsections (a) and (b)(1) and (b)(2) of Rule 23 are satisfied and all appropriate allegations are made.

4. Plaintiff Jackie Judith Baggett is a resident and citizen of Clarke County, Georgia and is 18 years of age. She is of the white or Caucasian race. Plaintiff Ronald James Clark is a resident and citizen of Clarke County, Georgia and is 18 years of age. He is of African descent. Plaintiffs sue on their own behalf and on behalf of all others similarly situated.

5. Defendant Mrs. Ruby Hartman is a resident and citizen of Clarke County, Georgia, is over the age of 21 years and is the Ordinary of Clarke County. As Ordinary she has the duty under Georgia Code §§24-1804 and 53-201 of granting marriage licenses which are to be issued in the county where the female to be married resides if she is a resident of Georgia. Defendant Hartman is sued individually, as Ordinary of Clarke County and as a representative of all other Ordinaries similarly situated.

6. Plaintiffs are residents and citizens of Clarke County, Georgia, and have complied with all lawful statutory requirements for marriage in Georgia, including those contained in Georgia Code §§53-101, 53-102, 53-202, 53-206, 53-215, 53-216 and 53-217, and labor under no lawful disability which would prevent them from being issued a marriage license and from marrying.

7. On or about September 20, 1974, plaintiffs presented

themselves at defendant's office, represented to defendant that they were parties able to contract and had contracted to marry, that they had reached the age of majority and had proof thereof, that there was not lawful impediment to their marriage, presented the certificates signed by a physician required by Georgia Code §§53-215, 53-216 and 217, and requested that they be allowed to apply for a marriage license. Notwithstanding, defendant Hartman refused and still refuses to issue plaintiffs a marriage license for the reason that plaintiff Clark is Negro and plaintiff Baggett is white and that issuance of a license where one party is of African descent and the other is of Caucasian descent is prohibited by the laws of Georgia.

8. Georgia Code §53-106 which makes it unlawful for any white person to marry anyone except a white person and any marriage in violation thereof void; Georgia Code §53-313 which requires any marriage in violation of Chapter 53-3 to be reported to the State Board of Health and the Attorney General of the State of Georgia; Georgia Code §53-314 requiring the Attorney General to institute criminal proceedings against parents of a child where one parent is white and one is colored; §53-9902 which makes it a misdemeanor for any officer to knowingly issue a marriage license to persons, either of whom is of African descent and the other a white person; and Georgia Code §53-9903 which makes it a felony for any person, white or colored, to marry or go through a marriage ceremony in violation of Georgia Code §53-106, are unconstitutional on their face in that the aforesaid statutes violate the rights of plaintiffs and their class of privacy, to marry and raise children, to due process and equal protection of the law, and are badges and indicia of second class citizenship of Negroes. Said statutes have been enforced by defendant in bad faith and with knowledge of their unconstitutionality in violation of the first, thirteenth and fourteenth amendments of the Constitution of the United States.

9. Plaintiffs have been denied the benefits of marriage and have been held up to ridicule and scorn by the acts of defendant as aforesaid and have been damaged in the amount of $100,000.00.

10. There is between the parties an actual controversy as herein set forth. Plaintiffs and others similarly situated and affected on whose behalf this suit is brought are suffering and will suffer irreparable injury in the future by reason of the acts of defendant herein complained of. They have no other plain, adequate or complete remedy to redress the wrongs and unlawful acts herein complained of other than this action for declaration of rights, damages and an injunction. Any other remedy to which they and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny substantial relief, would involve multiplicity of suits, cause further irreparable injury, damage and inconvenience to the plaintiffs and those similarly situated.

WHEREFORE, plaintiffs respectfully pray that this court will take jurisdiction of this cause and do the following:

1) Find that the named plaintiffs and defendant are adequate representatives of their respective classes and allow this cause to proceed as a class action.

2) Upon final hearing declare that Georgia Code §§53-106, 53-313, 53-314, 53-9902 and 53-9903 to be in violation of the first, thirteenth and fourteenth amendments of the Constitution of the United States.

3) Issue a temporary restraining order and preliminary injunction to be made permanent later enjoining defendant, her agents, officers, servants, employees and successors in office and all those acting in concert or participation with her, and the members of her class from:

a) enforcing the provisions of Georgia Code §§53-106, 53-313, 53-314, 53-9902 and 53-9903 as to plaintiffs and their class;

b) failing to issue a marriage license to plaintiffs.

4) Award plaintiffs their damages in the amount of $100,000.00.

5) Grant plaintiffs' their costs in this proceeding including their reasonable and necessary attorneys fees.

Respectfully submitted,

s/Sarajane Love
Sarajane Love
52 Fairlie Street, N.W.
Atlanta, Georgia 30303

American Civil Liberties Union
Foundation, Inc.

ATTORNEY FOR PLAINTIFFS

Of Counsel:

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LAUGHLIN MC DONALD

VOTING RIGHTS ON THE CHOPPING BLOCK

Editor's note: The century-long denial of voting rights in Edgefield, South Carolina, chronicled here by Laughlin McDonald, exemplifies the importance of the 1965 Voting Rights Act and the battle now shaping up in Congress over its extension.

In 1880, B.R. "Pitchfork Ben" Tillman was elected chairman of the Democratic Party of his native Edgefield County, South Carolina. In the years that followed, as a local politician, governor and United States senator, Tillman earned the reputation of being a savage racist and the single person most responsible for the total exclusion of blacks from state elective politics after Reconstruction. Nearly 100 years later, on a cool spring evening, Thomas C. McCain, a black man, was elected to Tillman's line of succession as the newest chairman of the county Democratic Party.

McCain's election is part of the dramatic racial change that has swept the South since the beginning of the Civil Rights Movement. But racial change in Edgefield, a rural county lying next to the Savannah River 15 miles north of Aiken, has often been more cosmetic than substantive. In spite of the fact that blacks hold local party positions, *no black in a century has ever been elected to the county government, nor has a black been elected to any countywide office running against a white candidate.* Ruling whites in Edgefield aim to keep it that way.

Voting rights have always been seen as key to racial equality – political, social and economic. George Tillman, Ben's older brother, stated the proposition succinctly in 1868: "Once you grant a Negro political privileges . . . you instantly advance his social status." If given the right to vote, said Tillman, blacks would vie with whites for the honors of state and support only those who treated "the nigger race as social and political equals."

George Tillman's worst fears were to be realized during Reconstruction. Edgefield's majority black population voted in their own town and county governments. By the mid-1870s, the county senator, county representatives, county commissioner, the coroner, sheriff, probate judge, school commissioner and clerk of court were all blacks. Blacks served on the school board, as magistrates, solicitors, wardens, and at every level of city and county government. Blacks in Edgefield were never better represented, before or since, nor had more opportunities for advancement, than during the period of Reconstruction government.

Whites never acquiesced to black rule. After general enfranchisement in 1867, local Democratic and agricultural societies sprang up; among other goals, they used social and economic coercion to deter blacks and white Republicans from voting. The Democrats failed in these early attempts to regain dominance, and turned increasingly to fraud and violence as a means of restoring political control. Rifle and sabre clubs were formed in virtually every township, and operated literally as a terrorist wing of the Democratic Party.

Ben Tillman was a charter member of one such club, the Sweetwater Sabre Club, organized in 1873. He became captain three years later, and was in command when two of his men executed Simon Coker, a black state senator from nearby Barnwell. According to Tillman's biographer, Coker had been seized for making an "incendiary speech." As the bound senator kneeled in prayer, he was shot in the head by one of the Sweetwater clubsmen, while another put a second bullet in the prostrate corpse to make certain he was not "playing possum."

Violence reached an apogee in Edgefield County in July, 1876, at the notorious massacre in the town of Hamburg. Ben Tillman, one of the participants, conceded that it "had been the settled purpose of the leading white men of Edgefield to provoke a riot and teach the Negroes a lesson – and if one did not offer, we were to make one." Rampaging whites attacked the town and killed a number of blacks. When none were tried or convicted for the murders, it was taken as a sign that Republican control had been broken, and that Reconstruction was coming to an end.

The results of the next election in 1876 were determined by the "Edgefield Plan" for redemption, authored by George Tillman and General Martin Witherspoon Gary, the fierce, unreconstructed "Bald Eagle of the Confederacy." The watch word adopted for the campaign was "Fight the Devil with Fire." Every Democrat, the standing rules provided, "must feel honor-bound to control the vote of at least one Negro, by intimidation, purchase, keeping him away or as each individual may determine, how he may best accomplish it." As for violence, never merely threaten a man: "If he deserves to be threatened, the necessities of the times require that he should die." Ben Tillman wrote later that "Gary and George Tillman had to my personal knowledge agreed on the policy of terrorizing the Negroes at the first opportunity."

Courtesy Voter Education Project

Black candidate campaigning for election in the South during the Reconstruction era

On election day, Gary and several hundred armed men seized the two polling places in Edgefield – the Masonic Hall and the Courthouse – and refused to allow blacks in to vote. Open race warfare, together with Gary's doctrine of voting "early and often," was enough to ensure a Democratic majority. The following year, the Edgefield Plan was essentially condoned by the Compromise of 1877, ending Reconstruction and withdrawing federal troops from the South. Control of Edgefield and South Carolina as a whole was left to men like Ben Tillman, who had vowed never again to see whites subjected to the humiliation of black rule.

The redeemers set about at once to institutionalize white supremacy. On the political front, the legislature passed in 1878 a law eliminating precincts in strong Republican areas and requiring voters to travel great distances to cast a ballot. Then in 1882, a complicated balloting procedure, amounting to a literacy test, was introduced; and another law required eligible voters to be registered by June, 1882. Those who failed to register were barred from registration thereafter, and the only additional registration was for those who became eligible after June, 1882. Local officials had full discretion in implementing the registration requirements, and aggrieved persons had to appeal within five days and institute suit within 15 days. The laws were an invitation to fraud, and were used for the sole purpose of disfranchising blacks.

Tillman was elected governor in 1890 on a platform of Negrophobia and agrarian discontent. Although there were still a few blacks in the legislature, in his inaugural speech Tillman could safely say, "Whites have effective control of the state government," and, he declared, "we intend at any and all hazards to retain it." In his second term as governor, the redeemed state legislature abolished elected local governments entirely to put it beyond all possibility that blacks, even in places where they were an overwhelming majority, could have any say about who their representatives would be. County and township commissioners were henceforth to be appointed by the governor, upon the recommendation of the local senator and representatives. All powers to tax, borrow money, appoint local boards or exercise eminent domain were reserved for the state legislature.

Ruling whites, however, still felt the need for more systematic means to take the actual ballot out of the hands of blacks, and to replace the despised Reconstruction Constitution of 1868, known as the "Radical Rag." Tillman took the lead in calling for a constitutional convention to accomplish both these purposes.

The convention was held in 1895. Tillman, by then a United States senator, was made chairman of the Committee on the Franchise. Under his leadership, the basic suffrage qualifications enacted were residence in the state for two years, in the county for one, and in the election district for six months, payment of a one-dollar poll tax six months before the day of the election; and registration. To register, the voter had to be able to read and write any section of the Constitution or prove that he owned or paid taxes on property in the state worth at least $300. For those who could not meet the literacy test by reading, there was an understanding test where the Constitution was read by a registration officer – who could be expected to be sympathetic to white and hostile to black illiterates. As D.D. Wallace, a contemporary historian, observed the year following the convention, "Such is South Carolina's suffrage law, under which it is hoped to put Negro control of the State beyond possibility and still preserve the suffrage for the illiterate whites of the present generation." So great was the fear of black participation in politics, however, that the year after the convention the all-white Democratic primary was adopted to exclude even those few blacks who were registered from voting in the only elections in the state which had any meaning.

Black disfranchisement, from the white point of view, was an incredible success story. In Edgefield, by 1900, not a single black remained on the county voter rolls, and none was to appear for nearly 50 years.

After years of protest, legal skirmishes and organized resistance within South Carolina's black community, the Edgefield Plan received its first official blow in 1947, when federal judge Waties Waring of Charleston, in an opinion passionately denounced by whites throughout the state, ruled that the segregated Democratic primary was unconstitutional. Frank Jenkins, a bus driver for the Edgefield public schools, and several other local blacks decided it was time to test the decision upholding their right to register and vote. They went to the courthouse, but nobody could tell them who or where the voter registrar was. They came again and this time were dealt with more directly. "The man said," recalls Mr. Jenkins wryly, "'If you don't leave, I'll kick your ass out of here.'" The group came back a

third time – with a lawyer from Charleston – and were allowed to register.

In the face of such open hostility by courthouse officials and continued use of the discriminatory literacy test, black registration remained depressed in Edgefield until the enactment of the Voting Rights Act of 1965. Immediately prior to the act, only 650 blacks were registered in the entire county – 17 percent of the eligible voter population. Nearly 100 percent of eligible whites, by contrast, were certified voters.

As one of the fruits of years of struggle by the Civil Rights Movement, the Voting Rights Act of 1965 formalized a major breakthrough in the legal rights of blacks in places such as Edgefield. Laws prohibiting discrimination in voting had been enacted by Congress before – in 1957, 1960 and 1964. These laws, however, depended mainly upon litigation for enforcement, which placed the advantages of time and inertia on the side of recalcitrant local officials. Moreover, *there was nothing to keep a jurisdiction from changing its laws and enacting new discriminatory election procedures, even after the old ones had been struck down by the courts as unconstitutional.*

To meet these problems, Congress adopted in 1965 an entirely new approach to voter legislation. It suspended literacy and similar "tests or devices" which had been used to exclude blacks from registering, and pursuant to Section Five of the law, placed supervision of new voting procedures in the hands of federal officials. Jurisdictions covered by Section Five – those with low registration or voter turn-out, and with a "test or device" in effect – were required to clear all changes in election laws with the U.S. attorney general or the federal courts in the District of Columbia before implementing the changes to make certain they did not affect a person's right to vote on account of race or color. The entire states of Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia and 40 counties in North Carolina were among the jurisdictions required to pre-clear their election law changes.

Southern resistance to the act was predictable. One of those who took the lead in denouncing it was Senator Strom Thurmond, born in Edgefield in 1902 and its former county attorney. The act trampled upon the rights of the sovereign states, he said, and made the South the whipping boy for the nation. Following Thurmond's lead, the state of South Carolina filed a lawsuit to strike down the law, but the Supreme Court in 1966 found the Voting Rights Act to be wholly constitutional. As Chief Justice Earl Warren wrote, "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."

The suspension of literary tests had a dramatic impact, and some Southern jurisdictions now register blacks at approximately the same rates as whites. But unfortunately, black registration has not meant equality of political participation. For one thing, many jurisdictions have ignored Section Five and made uncleared voting changes which blunted increased minority voter registration. Edgefield was one of those places.

In 1966, when it seemed likely that the county, because of its relatively small population, would lose a resident senator following reapportionment of the state legislature, and just as newly registered blacks were beginning to gain enough political clout to pressure their legislative delegation and the governor to appoint a black to county office, the method of selecting Edgefield's government was changed to provide for home rule. A three-member council was established with full power to tax, make appointments and regulate county affairs. Although the council could have been elected from districts – which in the absence of a racial gerrymander would have created at least one black district – the decision was made to elect all council members at-large. Since whites in Edgefield in 1966 were a majority

"The First Vote" for blacks in the South, a drawing from Harper's *magazine, circa 1867.*

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of registered voters, *and* a majority of persons eligible to be registered, the at-large plan ensured that whites could continue to control each local political office. And that is exactly what has happened.

Although the Voting Rights Act clearly required a federal review of this new voting procedure, state and local officials failed to submit the change. Two subsequent amendments to the 1966 law, one increasing the size of the council to five and establishing new residential districts for council members, and another enlarging the council's power to make appointments, were submitted for pre-clearance. But the underlying change from appointed to elected at-large government has never been given the required federal approval, even after 15 years. By similarly manipulating voting procedures, whites in dozens of other Southern communities like Edgefield have blocked the election of blacks despite vastly increased black registration.

In 1974, Tom McCain, then an assistant professor of mathematics at Paine College in Augusta, became the first black since Reconstruction to run for Edgefield county government.

A poster designed and widely distributed by the Voter Education Project in the 1970s

McCain was well respected in the black community and was an advocate of racial justice. He founded Community Action for Full Citizenship of Edgefield County in the early 1970s, and began systematically to challenge local racial discrimination. He led the bitterly resisted fight to desegregate the schools, organized the county's first black voter registration drive and successfully sued the Edgefield jury commissioners for excluding blacks from jury service – no blacks were allowed to serve on the grand jury and only a token number on trial juries.

As a result of his civil-rights activities, McCain has drawn the fire of local whites. Members of the school board have sued him twice. In the first case, they got an injunction against his further organizing, but when McCain was unable to get even a trial on the merits of the injunction, a federal judge, in an unprecedented move, stepped in and dissolved it. The second suit is pending, one in which the board seeks $240,000 in damages, claiming that McCain libeled them in a pamphlet which criticized the operation of public schools as discriminatory. Other local white officials display similar hostility toward McCain. Mary Ellen Painter, the head of the voter registration board, says he only wants "to cause trouble." County Attorney Charles Coleman was quoted recently in a Georgia newspaper that if McCain "were a white man, I think he'd be Grand Dragon of the Ku Klux Klan."

But Tom McCain is no racist and hardly a radical. His goal, he says, is merely for blacks to participate in the decisions that affect their lives. Level-headed and hard-working – he is now finishing work on a Ph.D. in education administration at Ohio State University – McCain moves easily and unself-consciously in the black community of Edgefield, urging people to register and become active in politics.

McCain's decision to run for office was completely logical. "We've got so many problems in Edgefield," he says, "we can't begin to make progress unless we get some responsive people in decision-making positions. The whites know they can just about get along without us politically. That means we get only what they want to give us."

County Attorney Coleman, however, scoffs at the notion that whites can't, or don't, adequately represent blacks. In fact he claims, "The blacks

get as much or *more* service than the whites" from the present council. McCain disagrees, and notes that the black complaint is in any case more basic than provision of services. "There's no question that we don't get services like we should," McCain says. "We never have. But even if we did, that would still miss the point. There was more to school desegregation than reading and writing, and there's more to biracial politics than paved roads. There's an inherent value in office-holding that goes far beyond picking up the garbage. A race of people who are excluded from public office will always be second class. I know it, and the people who keep Edgefield's government all white know it."

McCain lost the 1974 race for county council, and a second race two years later, because whites don't vote for blacks in Edgefield. A visual examination of election returns reveals the severe racial polarization in local voting. In predominantly white districts, where voting patterns are clearest, black candidates always get virtually the same number of votes – few, or none at all. Bloc voting has been confirmed by Dr. John Suich, a scientist in Aiken, who has analyzed elections in Edgefield in which blacks have been candidates. The statistical correlation between the race of voter and candidate was "extraordinarily high," in the range of 0.90 (on a scale of -1.00 to +1.00) for each election. "The correlations are not just statistically significant," says Suich, "they are overwhelming."

The election returns also show that if Edgefield were divided into five districts along its present residential district lines, two of the districts would have a majority of black registered voters. Candidates like McCain would stand a realistic chance of winning office in these districts, an opportunity currently denied them by the at-large system. Indeed, McCain won his position as chairman of the Democratic Party because the delegates to the county convention which chose him are elected from individual districts or precincts. Enough of the delegates were black to give him the margin of victory.

In 1974, McCain and two other blacks decided to do something about Edgefield's elections and filed a federal lawsuit charging that at-large voting unconstitutionally diluted their voting strength. While the lawsuit was pending, the county council adopted an ordinance in 1976 implementing statewide home rule, and providing for elections at-large. The ordinance was a change in voting but was not pre-cleared under Section Five of the Voting Rights Act. As a result, the elections of 1976 and 1978 were held in violation of the act. A belated submission was made and in February, 1979, the attorney general objected to the use of at-large elections, noting that if a new election system was adopted "that more accurately reflects minority voting strength, such as single-member districts," the objection would be reconsidered. A single-member plan was in fact prepared and approved by the council, but was never submitted under Section Five because the council later took the position that the attorney general's objection was not binding.

Archie E. Allen

John Lewis (then director of VEP) and Julian Bond on registration drive in S.C.

When it appeared that the administrative proceedings under Section Five had broken down in Edgefield, and that no new method of elections was being established to meet the attorney general's objection, the trial judge entered an order last April in favor of McCain and the other plaintiffs. The court reached "the inevitable conclusion" that Edgefield's at-large system was unconstitutional and "must be changed." Some of the court's findings were:

- "Until 1970, no black had ever served as a precinct election official, and since that year the number of blacks appointed to serve has been negligible."
- "Blacks were historically excluded from jury service in Edgefield County."
- "Blacks have been excluded from employment. . . . It was only when trial was about to begin that the county suddenly began hiring blacks in any numbers. . . . In addition, blacks are heavily concentrated at the lower wage levels."
- "Blacks have been excluded by the County Council in appointments to county boards and commissions."
- "There is bloc voting by the whites on a scale that this court has never before observed. . . . Whites absolutely refuse to vote for a black."

Four days after the court's opinion, the U.S. Supreme Court effectively overruled it by handing down *City of Mobile v. Bolden*, a decision which shocked even those civil-rights activists familiar with the conservative rulings of the Burger court. The case originated when a group of Mobile black plaintiffs brought a lawsuit in 1975 charging that the city's at-large elections diluted their voting strength in violation of the Fourteenth and Fifteenth Amendments and the

Voting Rights Act. The plaintiffs based their legal claim primarily upon a 1973 court of appeals decision, *Zimmer v. McKeithen*, which held that at-large voting can be shown to be unconstitutional through an accumulation of circumstantial evidence – such as by showing a history of racial discrimination in the city, a disproportionately low number of minorities elected to office, lack of responsiveness by elected officials to the needs of the black community, a disparate economic base, candidate slating, etc. – the same kinds of things relied upon by the judge in the Edgefield voting case.

According to the Supreme Court's *Mobile* decision, such factors do not in themselves establish an unconstitutional denial of voting rights. The court, in a split ruling, said that plaintiffs in vote dilution cases must prove *intentional* discrimination; they acknowledged that the Constitution protects the right to register and vote without hindrance, but held that it does not protect the right to have the vote count! That right would only be violated if the voting system where consciously conceived and operated as a *purposeful* device to further racial discrimination.

The *Mobile* decision places an all but impossible burden upon those challenging racially discriminatory election procedures. Invidious intent can no longer be shown by past deeds, a history of discrimination and its effects; only those challenges will win, presumably, when elected officials are caught making overtly racial defenses of voting procedures. None but the naive – or, apparently, Supreme Court justices – can expect that to happen very often. Public officials, especially those who are sued and represented by counsel, rarely admit to racism. *Mobile* means that blacks in jurisdictions which use at-large voting – including most Southern cities, counties and school boards – will be denied any remedy for exclusion from office.

Following the Supreme Court's decision, the district judge in the Edgefield case withdrew his earlier opinion and reopened the case to give the plaintiffs a chance to prove that local elections were adopted, or are being maintained, intentionally to exclude blacks. Tom McCain then amended his complaint asking the court to order Edgefield officials to comply with Section Five's preclearance requirements, both in adopting at-large voting in 1966 and in implementing statewide home rule in 1976. Given the normal practice of the courts to avoid deciding constitutional questions whenever possible, McCain's complaint may be judged solely on Edgefield's violation of the procedural requirements of Section Five rather than on the constitutional question of its purposeful intent to dilute black voting strength.

There is one major catch. Beginning August 6, 1982, South Carolina and most the South will be in a position to escape being covered by Section Five. The Voting Rights Act's requirement that jurisdictions clear proposed changes with the federal government is limited to 17 years from the time they used a "test or device" to restrict voters' rights – namely from 1965, when such practices became illegal. If the Act's provisions are not extended by 1982, South Carolina can apply to be released from federal monitoring and can then ratify retroactively, or re-enact in new form, such uncleared changes in voting procedures as those adopted in Edgefield in 1966 and 1976.

The only handle for challenging discriminatory changes would then be lawsuits based on constitutional issues – the handle that existed prior to 1965. Except now the Supreme Court's *Mobile* decision, with its artificial standard of proof of purpose, may make it impossible for minorities to win constitutional lawsuits where local officials successfully cover their racial tracks. It is not an exaggeration to say that minorities stand perilously close today to where they were in 1877, when the nation, grown weary of the race issue, agreed to let local officials deal with voting rights as they saw fit.

Organizing inside the South and by national groups is now underway to get Congress to extend the length of time states like South Carolina must follow Section Five. Saying "It is the duty of this generation of black people to take not one step backward," a coalition of groups in South Carolina recently announced plans to push for the act's extension.

National civil-rights groups, including dozens coordinated by the Leadership Conference on Civil Rights, also hope to amend the act to provide the legal foundation to overcome the Supreme Court's *Mobile* decision. For example, Section Two, which some of the Supreme Court justices now interpret as only prohibiting purposeful discrimination, might be amended to read: "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any state or political subdivision which has the result of denying or abridging the right of any citizen of the United States on account of race or color. . . ."

These organizing and lobbying efforts are expected to meet with stiff resistance, particularly from Senator Strom Thurmond, now chairman of the powerful Senate Judiciary Committee. Thurmond claims that the act "singles out the South" for special treatment, and he wants to abolish it or make its extension apply "nationwide." Of course, the Voting Rights Act already *is* nationwide: it was amended in 1970 and 1975 to make the ban on literacy tests permanent and nationwide, and to expand the number of jurisdictions covered by Section Five to include those with significant language minorities; it now applies in 24 states or parts of states, from Maine to Florida, from the East Coast to the West. But Thurmond apparently hopes that by threatening to expand the act to require all states and all jurisdictions to pre-clear all changes in voting procedures, he will destroy the act's efficacy, or he will capture enough support to kill it altogether. If the Thurmond strategy prevails, it will push the movement for voting rights back more than a century.

Thurmond even insists that voting rights don't need protecting. "There's no discrimination of any kind that exists throughout South Carolina," he said recently. That should come as a surprise to Tom McCain and other blacks in Thurmond's hometown of Edgefield.□

Laughlin McDonald was born and grew up in Winnsboro, South Carolina, not far from Edgefield. Director of the Southern Regional Office of the ACLU, he has represented blacks in Edgefield County in numerous civil-rights lawsuits.

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A MISSISSIPPI CASE FOR THE CONTINUATION of the VOTING RIGHTS ACT OF 1965

by

ROBERT M. WALKER

MISSISSIPPI FIELD DIRECTOR, NAACP

The history of discrimination against Black people in Mississippi who wanted to vote is well-documented. Likewise, there is an abundance of evidence showing that once Blacks in Mississippi acquired the right to vote and the protection of that right numerous, untiring efforts were made to prevent Blacks from voting on one hand and diluting the Black vote on the other.

Many have concluded that discrimination against Blacks who want to register to vote and those who do vote has ended. And they point to the existence of the Voting Rights Act and the fact that Mississippi has 439 Black elected officials, an increase of more than 400 since the Voting Rights Act went into effect in 1965, which is the highest number of any state in the nation, as cases in point. But the fact of the matter is that there are still barriers to registration and voting in Mississippi that confront Blacks, and there are still efforts being made to dilute the Black vote.

Many rather comprehensive studies treating this subject have already been done. Thus, the purpose here is simply to cite several instances in Mississippi that suggest a need for a continuation of the Voting Rights Act of 1965 and federal guarantees.

As recent as September 29, 1981, there were apparent abuses in a special election for alderman in Glouster, Mississippi, that had racially discrimatory overtones. There were seven candidates seeking the position, six whites and one Black. The Black candidate, Mr. Anderson, received considerably more votes than any other candidate. There was a tie between

two of the whites for the remaining run-off position at the time the polls closed and the count made. Those individuals were a Mr. Poole and a Mr. Willingham. The general feeling in the community was that Mr. Anderson could defeat Mr. Poole. However, reports indicated that Mr. Poole was later said to have had one vote less than Mr. Willingham, who went on to defeat Mr. Anderson by approximately forty votes in the run-off.

The feeling regarding the election is that improper actions were taken to make sure that the strongest white candidate, whose vote total was questionable, ran against a Black who had an excellent chance of winning. It is felt that Mr. Anderson would have won if the election had been supervised by federal officials. A report of this was made to the Justice Department.

The Tchula Branch of the NAACP has reported that Black voters in Holmes county, Mississippi, are harassed and intimidated to such a degree that many of them stay at home on election day. Moreover, in calling for a continuation of the Voting Rights Act of 1965, Jessie D. Banks, Vice President of the Tchula NAACP, indicates that the following things have happened in that town since 1975:

1. the names of Black registered voters who still reside in the voting precinct have been improperly removed;

2. whites who live in the county are allowed to vote in the city;

3. illiterate persons are denied the right to select someone of their choice to assist them in voting;

4. persons assisting illiterate voters, who are not chosen by the voters, have voted for the

candidate of their choice rather than for the choice of the voter;

5. the process by which party candidates qualified was changed when Blacks attempted to qualify as party candidates;

6. white youth were permitted to register and vote before reaching age of eighteen.

There are complaints from throughout the state that Blacks had been denied the right of participation in the elections because of the fact that when they went to register they were not advised of the dual registration procedure. That procedure requires that one living in an incorporated area within a county must register at two different places, the Circuit Clerk's office and the City Clerk's office in order to be eligible to vote in the city elections. The big problem is that almost all circuit clerks, with whom registration is done first, are non-Blacks, and many of them do not inform Blacks that they must register with the City Clerk after completing registration with them. This has been used very effectively to dilute Black votes in many places.

For instance, this has happened in Hattiesburg, Mississippi, as was pointed out in testimony given before the House Judiciary Sub-Committee Hearings at Montgomery, Alabama. This practice was widely used during registration leading up to municipal elections during the spring of 1981. In Marks, Mississippi, where Blacks had excellent chances of winning the positions of mayor and city council members, scores of Blacks were unable to vote in the 1981 city elections because they had not been advised that they should register with the City Clerk. The same thing happened in Greenwood and in Woodville, Mississippi, where, in the latter case, the

Black candidate lost by just a few votes.

The need for continued federal guarantees of the rights of Blacks to vote as well as the need to allow the Black vote to be meaningful is clearly indicated by a study of irregulaties that occurred in Vicksburg, Mississippi during the June, 1981, municipal elections in which a Black sought the position of mayor. The following are some of the findings:

1. It was found that a total of one hundred sixteen (116) persons were not allowed to vote because they presented themselves at allegedly incorrect polling places.

2. It was also noted that ninetv-seven (97) persons were not granted permission to vote due to their names not appearing on the official voting books.

3. Twenty-four (24) instances of relatives living at the same address, yet having to vote at separate voting precincts.

4. Forty-seven (47) persons had to transfer to other polling places to vote, although they had been able to vote at a particular voting precinct during the democratic primary that preceded the general election.

5. Twenty-three (23) absentee ballots were personally solicited by the City Clerk from a specific nursing home with all votes going to the incumbent mayor.

6. Twelve (12) persons who reportedly had voted in the presidential election were not allowed to vote in the general election due to their names not being found on the official voting list.

7. Twenty-eight (28) City residents were not allowed to vote because they had not registered in the County and had failed, or not been advised to register in the City.

8. Three (3) occurrences of voting machine failures were reported. These machines were not fixed during the course of the election, yet they were

continously used thoughout the elections.

9. Two (2) persons (whites) were caught attempting to vote twice.

10. Seventeen (17) persons were sent to other polling places without any allowance for travel time - example: at 5:47 p.m. Blacks were still being told that they had to go to another polling place to vote-with all polls scheduled to close at 6:00 p.m.

11. Ten (10) whites were allowed to vote "convenience"- Blacks were not.

12. Thirty-two (32) discrepancies were found in the voting list held by City poll workers and the voting list held by Black poll watchers, although the latter list, by precincts, had been secured from the City Clerk the afternoon before the election.

13. Twenty-seven (27) affidavit ballots were made available to white voters and five (5) were made available to Black voters.

14. Eighteen (18) examples of hostile attitudes were displayed by white poll workers toward Black voters also Black poll watchers.

The above references regarding how Blacks are denied the right to how the Black vote is diluted are but a few examples of some of the practices that are currently in effect in Mississippi. An interesting thing about these incidents is that they come at a time when many public officials are claiming that there is no longer a need for the Voting Rights Act or similar legislation because there are no infringements upon the rights of Blacks to vote and vote with meaning.

There are some other developments in the State of Mississippi that substantiate the need for a continuation of the Voting Rights Act of 1965.

Blacks make up approximatelv 40% of the population of the State of Mississippi. However, neither of the State's five congressional districts has a Black majority in general population or voting population, and thus

there is no chance for Black representation in Washington. This will go unchanged unless the provisions of Section 5 and the power of the federal government are used to discontinue this dilution of Black voting strength. Racial bloc voting is rigidly entrenched in Mississippi as is shown by the 1980 Fourth Congressional District race when there was at least a 95% bloc voting count when Henry Kirksey, a Black, and Britt Singletary, a white, sought the Democratic Party nomination in June. In the November 4th general election, an analysis of some precinct voting patterns in Jackson, showed that Dr. Leslie B. McLemore, a Black independent, received more than 95% of the Black vote, while white candidates got at least 95% of the white vote.

Bloc voting is also shown in the Mississippi state legislature on some important matters. For example, on March 3, 1981, there was a 90-28 vote in the House of Representatives on a bill authorizing continued funding of state litigation in matters relating to the Voting Rights Act of 1965. Only fourteen (14) of those voting against the bill were non-Blacks.

In spite of the knowledge of racial bloc voting as well as pleas and opportunities to come up with a majority Black congressional district, proposals to create a majority Black district was flatly refused during a special session of the Mississippi Legislature in August, 1981. The plan, as encompassed in S.B. 2001 is presently at the Justice Department.

If approved, alaw passed in the State legislature in 1981 that revises the electoral laws regarding the election of Justice Court judges would discontinue the practice of electing a Justice Count judge from each of the five (5) districts in each county. Most counties would have one or two Justice Court judges and only several would have more than three. This

revision comes on the heels of a measure defeated last year that would have required that the Justices become magistrates, who would have to hold law degrees.

The interesting and abusive thing about this is that Blacks have made significant gains in becoming Justice Court judges. There are now twenty-seven (27) Black judges out of a total of four hundred-twenty (420). But as we approach the 1983 elections, we find that there are one hundred-sixteen (116) majority Black Justice Court districts. If accepted, this obvious attempt to dilute the Black vote would set this State back 100 years.

There are still many submissions to require re-registration in many areas in the State, with the intended hope that fewer Blacks will re-register. There is already the problem of access to registration. Mississippi is an economically disadvantaged state that has the highest percentage of poverty dwellers and illiterate people of any state in the nation. Yet, many are denied access to registration because of their inability to travel 20-25 miles to the Circuit Clerk's office at the county seat. Many people work great distances from home and cannot register between 8 o'clock and 5 o'clock, and there are no deputies or extended hours to accommodate them.

At the present time, both the City of Jackson and Hinds County are considering re-registrations and they know the negative impact re-registration would have on the poor and Blacks. Poor and Black people live farther from the registrars' offices and have greater difficulties registering, especially in view of the fact that Mississippi law does not authorize deputy registrars who can register eligible people at places other than city hall or the county courthouse.

In Warren county, Mississippi, of which Vicksburg is the seat of

government, county elections were held under a 1971 plan which had not been submitted to the Justice Department in accordance with Section 5. The result was the election of an all-white county government in this unit of government in which Blacks comprised about 42% of the population. The 1975 elections were enjoined because of the manner in which the incumbent supervisors, who were responsible for drawing the lines, had gerrymandered lines to dilute the voting strength of Blacks who lived in very compacted areas.

After numerous legal maneuvers by both sides, and continued resistance by the incumbent supervisors to draw equitable county district lines, the Federal Court for the Southern District of Mississippi ordered into effect a temporary plan, issued under the direction of Section 5, and called for a special election for Warren County in December, 1979. The result was that a Black supervisor, a Justice Court judge and two constables were elected, giving Black Warren countians representation for the first time since the 19th century.

In Indianola, Mississippi, the Sunflower County Branch of the NAACP successfully challenged four annexations by the city since November 1, 1964, that had not been submitted to the Justice Department for preclearance under Section 5 of the Voting Rights Act of 1965. The annexations brought in more that 2,000 whites and approximately 1,000 Blacks, thus diluting the Black vote. The City, in April of this year, announced that it wanted to annex eight (8) Black sub-divisions, which had been built outside the city limits, in an effort to get plaintiffs to withdraw the objection. However, this offer was refused. The objection prevailed and the Court ruled that municipal elections must be held in November, 1981, with pre-November, 1964 boundaries.

The need for a continuation of the Voting Rights Act in Mississippi is illustrated further by a 1976 annexation of about forty (40) square miles by the City of Jackson, which came approximately one year before the 1977 municipal elections. This brought in an estimated 80% white and 20% Black population and further diluted the voting strength of the estimated 44% Black population in this city of at-large elections. Despite protests and formal complaints and acknowledgement by the Justice Department that there were questions with the annexation, it remained in effect. However, in 1981, a few months ago, the Justice Department finally announced that the annexation was a violation of Section 5. If the provisions of Section 5 had been adhered to in 1976, Jackson, which had a 47.7% Black population at the time the 1980 censsu was taken , could be a majority Black city now and Blacks could have realistic expectations of having Black elected officials in municipal government.

The above clearly indicate needs for both a continuation of the Voting Rights Act as well as effective administration and enforcement of it. The same is true of the following:

* *Leading up to the U.S. Senatorial race in 1978, in which Charles Evers was a candidate, several precincts in Hinds county were moved any prior notice and in clear violation of Section 5. Mr. Evers objected to this and the objection was upheld by the Fifth U.S. Circuit Court of Appeals.

* In 1979 during the general election in Grenada county, officials ran out of ballots at the heavily Black populated Gore Springs precinct. During that same election, Blacks were referred to the wrong voting precincts; husbands and wives were sent to different precincts; and, city officials in Grenada are reported to have moved 100 people from the ward they were in to create a condition that would and did enable a non-Black to win.

* In Clay county, Mississippi, in 1979 illiterate persons were told that they had to use poll

workers instead of persons of their choice to assist them in voting. In 1977, as a result a complaint filed under Section 5 of the Voting Rights Act, Black residents of Clay county successfully got two majority Black wards within the City. Also, as a result of a complaint filed with the Justice Department by Blacks who lived great distances from the closest county several additional precincts were located in closer proximity to them.

* In the cities of Belzoni, Canton, Cleveland, Indianola, and Port Gibson, to name a few, limiting the potential of the Black vote was accomplied by locating public housing units which everyone knew Blacks would live in outside the city limits.

* In Winston county, Mississippi, where Blacks make up 39% of the county's population, none of the supervisory districts are majority Black. In 1978, beat or supervisory district lines should have been re-drawn, but the Black population in two districts was shifted around to make Blacks more evenly distributed. At present, there is a pending lawsuit challenging the method of election in view of the fact that the Black vote is diluted and Blacks since there is only one school system in Winston county, will almost certainly be denied representation in the school system of that county.

In this rapidly changing world, there is an increasing need for all segments of the American population to be represented at the seats of government so as to have a say in those matters that pertain to them. This is one of the promises of America. It is apparent, however, that the trend here in Mississippi, as is shown by the above instances of restrictions placed on the Black vote as well as obvious and continuing efforts to dilute it, is to render Blacks politically powerless. If that happens, it will undermine the concept and foundation of our government. We can not let that happen, for government must be <u>of</u>, <u>for</u>, and <u>by</u> the people. And the continuation of the Voting Rights Act with Section 5 intact will assure that Mississippi and America will have a government <u>of</u>, <u>for</u>, and <u>by</u> the people.

APPENDIX 4—CORRESPONDENCE

Babbitt, Hon. Bruce, Governor of the State of Arizona, letter dated July 16, 1981, to Hon. Peter W. Rodino, Jr.

Barragan, Hon. Polly Baca, Vice-Chair, Democratic National Committee, letter with resolution, dated June 11, 1981, to Hon. Don Edwards.

Bliley, Hon. Thomas J., letter dated July 14, 1981, to Hon. Don Edwards.

Bradley, Hon. Tom, Mayor of the City of Los Angeles, letter dated June 19, 1981, to Hon. Peter W. Rodino, Jr.

Callejo, Ricardo A., Counsel, on behalf of IMAGE of San Francisco and IMAGE of California, letter dated June 9, 1981 to the Subcommittee on Civil and Constitutional Rights.

Corrada, Hon. Baltasar, Resident Commissioner, Puerto Rico, letter dated May 27, 1981, to Hon. Peter W. Rodino, Jr.

Cox, Archibald, Chairman, Common Cause, letter dated September 8, 1981, to Hon. Don Edwards, Chairman, Subcommittee on Civil and Constitutional Rights.

Cunningham, Joan, President of the League of Women Voters of Mississippi, letter dated June 10, 1981, to Hon. Don Edwards.

Dalton, Hon. John N., Governor of the State of Virginia, letter dated June 19, 1981, to Hon. Don Edwards.

Days, Drew S., III, Professor of Law, Yale University School of Law, New Haven, Connecticut.

Feinstein, Hon. Dianne, Mayor, San Francisco, California, letter with resolution, dated July 17, 1981, to Hon. Don Edwards.

Hart, Hon. Gary, U.S. Senator, letter dated June 25, 1981, with prepared statement, to Hon. Peter W. Rodino, Jr.

King, Hon. Jean, Lt. Governor of the State of Hawaii, letter dated September 23, 1981, to Hon. Don Edwards.

Koch, Hon. Edward I., Mayor of the City of New York, letter dated June 24, 1981, to Hon. Peter W. Rodino, Jr.

Lewis, Jan, Executive Director of the American Civil Liberties Union of Mississippi, letter dated June 11, 1981, to Hon. Don Edwards.

Miller, Hon. Terry, Lt. Governor, State of Alaska, letter with Resolution, dated July 7, 1981, to Hon. Peter W. Rodino, Jr.

Newman, C. B., Speaker of the Mississippi House of Representatives, letter dated June 10, 1981, to Hon. Don Edwards.

Rodriguez, Norma S., City Clerk of the City of San Antonio, Texas, copy of City Council Resolution, letter dated June 18, 1981, to

Roybal, Hon. Edward, Member of Congress, letter with prepared statement, dated June 16, 1981 to Hon. Don Edwards.

Sanchez, Rodolfo Balli, National Executive Director, the National Coalition of Hispanic Mental Health and Human Services Organizations, letter dated July 8, 1981, to Hon. Don Edwards.

BRUCE BABBITT
GOVERNOR

OFFICE OF THE GOVERNOR
STATE HOUSE
PHOENIX, ARIZONA 85007

IN REPLY
REFER TO:

July 16, 1981

Honorable Peter W. Rodino
2462 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Rodino:

I am the Governor of one of the States completely covered by the "preclearance" requirements of the Voting Rights Act. It is fashionable for Governors to plead with the Congress to remove federal oversight of State activities; on many occasions I have made precisely such requests. Today, however, I urge a very different proposal -- the unequivocal extension of the provisions of the Voting Rights Act.

The Voting Rights Act has been the single most effective tool for implementing the promise of the Fifteenth Amendment that the right to vote shall not be denied on the basis of race or color. When the Act was signed, only 16 years ago, millions of American citizens were disenfranchised, sometimes through such mechanisms as the poll tax and literacy tests, but often simply through flat denial by racist authorities of the right to vote. Today, even in those portions of the country where blatant discrimination was once the rule, the Constitution's promise of universal voting is being fulfilled.

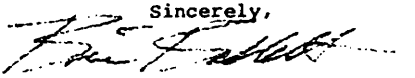
Opponents of the Act in 1965 openly proclaimed white supremacy as their rationale. Today, the opposition is more subtle. We are told that the time has come to let the South out of "the penalty box." Citing the undeniable progress that has been made since 1965, opponents of extension claim that the States should now be freed of overbearing federal supervision. Others, in a ploy, Representative Hyde aptly characterized as designed to "strengthen the Act to death," argue that it should be extended to all 50 States.

Whatever the motivation of those who oppose the Act's extension, the inevitable result of such Congressional abdication will be the denial of rights of the black, the

brown, and the poor. While the past 16 years have seen the demise of the poll tax and the literacy test, those who would deny proper representation to Hispanics or blacks have not been without new tactics. The police dog and the billy club have been replaced by artful reapportionment and manipulation of registration laws. In instance after instance, the Justice Department has stepped in to prevent States from diluting minority votes by gerrymandering the redrawing of voting lines. These tactics, to be sure, are less dramatic than the violence of the early 1960's. They are, however, no less effective, and it is the duty of those who take an oath to uphold the Constitution to make certain that they cease.

There remains much to be done to achieve racial justice both in Arizona and throughout the Nation, and the Voting Rights Act is a critical tool in that battle. I urge the Congress to extend its provisions.

Sincerely,



Bruce Babbitt
Governor

BB:keh

DEMOCRATIC
NATIONAL COMMITTEE 1625 Massachusetts Ave., N.W. Washington, D.C. 20036 (202) 797-5900

Charles T. Manatt
Chairman

June 11, 1981

The Honorable Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
Room 407, House Annex 1
Washington, D.C. 20515

Dear Congressman Edwards:

Thank you for your kind note on my testimony before your Committee. I am pleased to inform you that at the full meeting of the Democratic National Committee in Denver last week the enclosed resolution on the Voting Rights Act was passed unanimously by the full committee.

Enclosed for your information is the Resolution as passed, and a copy of a joint letter from Chairman Charles T. Manatt and me to the participants in the NALEO (National Association of Latino Elected and Appointed Officials) Conference to be held in Reston, Virginia at the end of this week.

With warm regards,

Polly

Senator Polly Baca Barragan
Vice Chair
Democratic National Committee

PBB/lam
Enclosures

CC: Richard Alatorre
Chair,
DNC Resolutions Committee

DEMOCRATIC
NATIONAL COMMITTEE 1625 Massachusetts Ave., N.W. Washington, D.C. 20036 (202) 797-5900

Charles T. Manatt
Chairman

The following Resolution was passed unanimously by the Democratic National Committee at its June 5, 1981 meeting.

WHEREAS, reauthorization of the Voting Rights Act of 1965 as amended is presently pending before Congress; and

WHEREAS, the Voting Rights Act is among the most effective civil rights legislation ever enacted in the United States, bringing a dramatic increase in the participation of Blacks and Hispanics in state, local and federal elections; and

WHEREAS, the Voting Rights Act has afforded minorities protection from manipulation of local voting laws that unfairly dilute their voting strength; and

WHEREAS, bilingual elections (i.e. bilingual printed matter and oral assistance) mandated by the Voting Rights Act have in effect extended the franchise to many non-English speaking U.S. Citizens who would otherwise be denied their constitutionally guaranteed right to vote; and

WHEREAS, invalidation or dilution of the Voting Rights Act would eliminate the important yet fragile progress that has been made by minorities in exercising their rights and would deter much needed continued progress; and

WHEREAS, the Democratic Party is committed to the belief that the foundation of a representative democracy is broad participation by all its citizens - including minorities - at each and every level of government;

THEREFORE, BE IT RESOLVED THAT We, the members of the Democratic National Committee, do hereby urge the United States Congress to reauthorize the special provisions of the Voting Rights Act for ten years, the minority language provisions for seven years, and to amend Section 2 to clarify standards of evidence in voting discrimination challenges by incorporating an effects test.

Submitted by

State Senator Polly Baca Barragan, Colorado
Vice Chair, Democratic National Committee

State Senator Henry Braden, IV, Louisiana
Executive Committee Member
Democratic National Committee

DEMOCRATIC
NATIONAL COMMITTEE 1625 Massachusetts Ave., N.W. Washington, D.C. 20036 (202) 797-5900

Charles T. Manatt
Chairman

Dear Conference Participants: June 10, 1981

The Democratic Party is pleased that NALEO has convened this meeting on civic participation. Your concerns are our concerns. The Democratic Party wants to join with you in focusing on voter registration, voter education, reapportionment, and naturalization issues.

We look forward to the recommendations on long-range strategies and implementation plans designed to increase Hispanic participation and visibility in the American political process.

We are sorry that we cannot both be with you during these two days of leadership meetings; however Senator Polly Baca Barragan will be in attendance for the duration of the conference.

We have also asked that key DNC staff members be in attendance. We would like to introduce the following individuals:

Kathleen Doria	-	Special Assistant to Vice Chair Baca Barragan, formerly Director of DNC Hispanic Affairs.
Joel Bradshaw	-	Director, DNC Reapportionment Task Force.
Radamese Cabrera	-	DNC Reapportionment Staff Assistant.

Many of us were active in the fight to pass the Voting Rights Act that has had such a positive impact on minority registration and participation. We are all aware that the current Administration has failed to commit itself on the issue of extension. We are pleased to inform you that at the full meeting of the Democratic National Committee in Denver last week, the enclosed resolution, co-sponsored by Senators Polly Baca Barragan (Co) and Henry Braden (La), was passed unanimously by the full committee.

It is our concern that reauthorization of the Voting Rights Act for a time period less than that called for in the DNC Resolution would only allow state political parties to use the Voting Rights Act to file suits against reapportionment plans passed by state legislatures. We need the special provisions extended for a full ten years and we need the minority language provisions for another seven years.

As we continue our struggle to bring full civil rights and meaningful economic justice to the American people, we must guard against artful compromises on the issue of extension of the Voting Rights Act that are actually designed to mask partisan gains.

The Democratic Party has a long standing committment to civil rights and economic jsutice. We are proud of our record of achievement. We embrace this opportunity to chart our mutual goals.

With best wishes for a successful conference,

Very truly yours,

Charles T. Manatt
Chairman
Democratic National Committee

Polly Baca Barragan
Senator Polly Baca Barragan
Vice Chair
Democratic National Committee

THOMAS J. BLILEY, JR.
3d District, Virginia

Member of:
Committee on Energy and Commerce

Committee on District of Columbia

Congress of the United States
House of Representatives
Washington, D.C. 20515

Washington Office
514 Cannon Office Building
(202) 225-2815

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510 East Main Street
Richmond, Virginia 23219
(804) 771-2809

July 14, 1981

The Honorable Don Edwards, Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I would like to introduce into the hearing record on extension of the 1965 Voting Rights Act the following information:

In testimony before the Subcommittee on July 13, 1981, Professor Drew S. Days, III, made the following statement:

> First, while a number of representatives of covered jurisdictions complained about coverage and asked for an easier bail-out provision, such as the city attorney of Rome, the former mayor of Richmond, and a party official from Yazoo County, these witnesses seem to have come from jurisdictions that have records of significant violations and would not be eligible for bail-out even under an amended bail-out formula.

This statement, as it applies to the City of Richmond, is fallacious. As mentioned in my testimony before your Subcommittee on May 20, 1981, there has not been a single complaint of anyone in the City of Richmond having their right to register or to vote impeded in sixteen years under the Voting Rights Act. I offer the attached letter from the Department of Justice to substantiate my statements, and would like to see that letter included in the hearing record. Should Professor Days be willing to substantiate his contention, I would be most eager to see his documentation. Otherwise, I suggest that his statement be revised.

I appreciate your cooperation in this matter, and sincerely hope that such misinformation will not be disseminated in the future.

Sincerely,

THOMAS J. BLILEY, JR.

TJBjr/cbj
Attachment

cc: The Honorable Henry J. Hyde
Ranking Republican
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
U. S. House of Representatives
Washington, D. C. 20515

Thomas M. Boyd, Esquire
Minority Counsel
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
U. S. House of Representatives
Washington, D. C. 20515

U.S. Department of Justice

Washington, D.C. 20530

GWJ:CWG:gml
DJ 166-012-3

MAY 26 1981

Mr. Chris Brady
Office of Congressman Thomas J. Bliley
214 Cannon Office Building
Washington, D. C. 20515

Dear Mr. Brady:

This is in reference to our telephone conversation of May 20, 1981.

According to our files, there were no changes submitted under Section 5 of the Voting Rights Act of 1965, as amended, by the City of Richmond, Virginia between 1965 and August 1970, 20 such changes were submitted between August 1970 and August 1975 and 117 changes have been submitted since August 1975. An objection was interposed between August 1970 and August 1975.

If we may be of any additional assistance, please do not hesitate to contact us.

Sincerely,

GERALD W. JONES
Chief, Voting Section
Civil Rights Division

By: Carl W. Gabel
CARL W. GABEL
Director, Section 5 Unit

DON EDWARDS
15TH DISTRICT, CALIFORNIA

COMMITTEE ON
JUDICIARY

CHAIRMAN
SUBCOMMITTEE ON
CIVIL AND
CONSTITUTIONAL RIGHTS

COMMITTEE ON
VETERANS' AFFAIRS

Congress of the United States
House of Representatives
Washington, D.C. 20515

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(415) 581-0242

July 16, 1981

The Honorable Thomas J. Bliley, Jr.
214 Cannon House Office Building
Washington, DC 20515

Dear Tom:

This will acknowledge your letter of July 14, 1981 regarding a statement made by Drew Days in his testimony on July 13, 1981.

Please be assured that we are getting in touch with Professor Days and will keep you advised as to our progress.

Cordially,

Don

Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
House Committee on the Judiciary

DE:dl

CITY HALL
LOS ANGELES, CALIFORNIA 90012
(213) 485-3311

OFFICE OF THE MAYOR

TOM BRADLEY
MAYOR

June 19, 1981

The Honorable Peter Rodino
Member of Congress
House Office Building
Washington, D.C. 20515

Dear Congressman Rodino:

I am writing in support of your legislation to extend the Voting Rights Act of 1965.

I cannot think of a more important issue to our nation than the basic right of all citizens to freely participate in our political process. The Voting Rights Act is the key to this opportunity, the symbol of the civil rights movement, and the foundation of our commitment to equality in America.

As Mayor of the third largest city in the country, and as a member of the Board of the National League of Cities, I want to express my full support for the proposed ten-year extension of the Act, leaving unchanged the provisions for pre-clearance and bilingual voting. These provisions have been the most effective in encouraging increased minority participation in elections, and they should be continued. And although critics may contend that these provisions are costly and difficult to administer, what price can be placed on the right to fully participate in our nation's elections?

I appreciate your efforts to pass this important legislation, and I hope that your colleagues will join you in extending the Voting Rights Act.

Sincerely,

Tom Bradley

TOM BRADLEY
M A Y O R

TB:jlb

cc: The Honorable Don Edwards

CALLEJO AND CALLEJO
ATTORNEYS AT LAW
ABOGADOS CONSULTORES

TELEPHONE 986-4653 AREA CODE 415
SIX TWENTY-FIVE MARKET STREET · SUITE 816
SAN FRANCISCO, CALIFORNIA 94105

RICARDO A. CALLEJO
B. FRANCHESCA CALLEJO

June 9, 1981

OF COUNSEL:
ADELFA B CALLEJO (MRS.)
WILLIAM P CALLEJO
DALLAS, TEXAS

To the Honorable Chairman and Members
Subcommittee on Constitutional Rights
House of Representatives
Washington, D.C. 20515

Re: Support for a 10 year extension of the Voting Rights Act of 1965 as amended August 6, 1975, particularly extending the VRA provisions for Bilingual Ballots and voting assistance at the polls.

Mr. Chairman and Members of the Committee;

On behalf of IMAGE of San Francisco and IMAGE of California, and other Spanish Speaking/Surnamed organizations and other citizens similarly situated, I am privileged to request that my following statements concerning the above be made part of the record and considered by you at this Hearing. Our good friend, Mr. Henry Der, of Chinese for Affirmative Action, has agreed to present my statement to you.

My name is Ricardo A. Callejo. As an attorney I have fought long and hard for equal justice under law in our country. In October 1966, I filed the first Voting Rights suit in the Federal District Court in San Francisco, California, to obtain the right to vote in Spanish and other languages.

The right to vote was obtained as early as 139 B.C., and probably before, as the only means for Greeks, Romans and others to prevent the abuse of power. In fact the right to vote is the most important difference between a democracy and slavery. The American Revolution was based upon the abuse of power when colonists were taxed without representation. That was, and is, tyranny. Unfortunately, our democracy has been characterized by the tyranny of the majority over minorities and women. The Civil War was fought to overcome the abuse of power that was used to enslave blacks and others. The 15th Amendment was circumvented, thus requiring the VRA. The abuses of power continue in our own country. These Hearings should not be necessary.

We extoll our Democracy to the world. To deny the vote to our own citizens is to give the Totalarians another example of our own tyranny. No less a brilliant mind that that of John Stuart Mill, when he wrote "On Liberty", spelled out the issues that limit any government that attempts to deny its' people Justice. We are all threatened by the abuse of power, that is an inescapable reality. The allegiance of people can only be earned by Government that respects the consent of

To The Honorable Chairman and Members
Subcommittee on Constitutional Rights
House of Representatives

Re: Support for 10 year extension of the Voting Rights Act of 1965, et al.

page two - June 9, 1981

the governed. Government should not impose preconceived ideas upon citizens concerning their language, sex, color, religion, national origin, or other extraneous factors. A Citizen-Taxpayer must be respected as he or she is to effectively participate in the decision process by their vote.

At a time when our health, lives and future are in grave danger from within as well as from without, we need the affection, support and determination of every citizen, no matter how poor, ignorant, humble or different. To do less is to reject the lessons of history, our own and the world's. The philosopher George Santayana wrote that "those who fail to apply the lessons of history are condemned to repeat them". Surely the survivors of over 3,000 years of human struggle for the right to vote in every language deserve a better fate. Our diversity is our strength. Vote YES for a 10 year extension of the VRA. Our survival depends on it.

Respectfully submitted,

Ricardo A. Callejo

RAC/gls

Ricardo A. Callejo, Counsel

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BALTASAR CORRADA
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KENNETH MARTY-LÓPEZ
Administrative Assistant

COMMITTEES:
EDUCATION AND LABOR
INTERIOR AND INSULAR AFFAIRS

5/28 4

Congress of the United States
House of Representatives
Washington, D.C. 20515

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P.O. Box 128
Ponce, Puerto Rico 00731
Area Code: 809-843-2640

May 27, 1981

Hon. Peter Rodino
Chairman
House Judiciary Committee
Washington, D. C.

Dear Mr. Chairman:

I wish to express my support for H.R. 3895, a bill reauthorizing the Voting Rights Act of 1965.

This bill provides for a ten-year extension of the Act's temporary provisions, amends the Act to clarify that both existing and new instances of voting discrimination could be proved by showing direct and indirect evidence of discriminatory effect, and continues the bilingual provisions of the Act for another seven years.

The right to vote is of utmost importance. It is the basis of all our constitutional rights. Hence, it is common sense to remove every barrier that might endanger the exercise of this right. Language and race discrimination are two barriers that have persisted and we must not let up in our efforts to eradicate them.

I urge prompt passage of this legislation.

Cordially,

Baltasar Corrada, M. C.
Resident Commissioner
Puerto Rico

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036 (202) 833-1200

Archibald Cox
Chairman

Fred Wertheimer
President

John W. Gardner
Founding Chairman

July 8, 1981

Representative Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
House of Representatives
Washington, DC 20515

Dear Representative Edwards:

This will acknowledge your letter of June 16, calling my attention to a question raised by counsel representing Republican members of the Subcommittee conducting hearings on H.R. 3112 to amend and renew the Voting Rights Act. I regret the delay but I am glad to give you an answer.

I believe that it would not be reasonable for a federal court, under any circumstances that I can imagine, to apply the language of the Rodino bill in such a way as to require that the percentage of racial and language minority representation on applicable city councils, school boards and/or legislatures approximate the racial mix of the citizens it represents. I say this for two reasons.

First, I find it wholly unreasonable to suppose that any court would dictate or limit the racial character of representatives to be chosen at an election.

Second, I believe that the Rodino proposal would not make proportional representation a per se test of the legality of an electoral arrangement. Under controlling Supreme Court decisions the denials or abridgments of the right to vote on account of race or color that violate the Fifteenth Amendment involve purposeful racial discrimination. Section 2, if altered as proposed in the Rodino amendment, is apparently intended to authorize courts to find illegality by inference from the effects under circumstances in which that inference is warranted. Bare proof that the number of minority representatives elected is not proportionate to the number of minority voters would not be sufficient per se to establish a violation regardless of the circumstances.

If there is the slightest uncertainty about the answer to the question posed, the risk could be eliminated by including an appropriate explanation in the committee report.

I hope that this will be helpful.

With best wishes,

Sincerely,

Archibald Cox

Archibald Cox
Chairman

cc: Rep. Henry J. Hyde

DON EDWARDS
10TH DISTRICT, CALIFORNIA

COMMITTEE ON
JUDICIARY

CHAIRMAN
SUBCOMMITTEE ON
CIVIL AND
CONSTITUTIONAL RIGHTS

COMMITTEE ON
VETERANS' AFFAIRS

Congress of the United States
House of Representatives
Washington, D.C. 20515

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HAYWARD, CALIFORNIA 94541
(415) 886-0242

June 19, 1981

The Honorable John N. Dalton
Governor
Commonwealth of Virginia
Richmond, Virginia 23219

Dear Governor Dalton:

This will acknowledge with thanks your letter of June 17, 1981 and your statement on the proposed Voting Rights Act extension.

Please be assured that your statement will be made a part of the official hearings.

Warm personal regards.

Sincerely,

Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
House Committee on the Judiciary

DE:dl

Jab

JUN 19 1981

COMMONWEALTH of VIRGINIA

John N. Dalton
Governor

Office of the Governor
Richmond 23219

June 17, 1981

The Honorable Don Edwards, Chairman
Subcommittee on Civil and Constitutional Rights
House Committee on the Judiciary
United States House of Representatives
2137 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Edwards:

Thank you for the opportunity to comment on the proposed legislation to extend the Voting Rights act of 1965.

Attached is a statement which I would appreciate being made part of the official committee deliberations on this issue.

With all good wishes, I am

Very truly yours,

John N. Dalton

JND/jhw

cc: The Honorable Henry J. Hyde
Virginia Congressional Delegation

STATEMENT OF THE HONORABLE JOHN N. DALTON, GOVERNOR OF VIRGINIA
TO
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
HOUSE COMMITTEE ON THE JUDICIARY

As Governor of Virginia, I wish to express my opposition to the extension of the Voting Rights Act of 1965, particularly the provisions of Sections 4 and 5.

In the sixteen years that Virginia has been subject to the pre-clearance provisions of the Act, 2,930 changes to election procedures have been submitted by the Commonwealth and its political subdivisions.

From 1965 through 1980, the United States Justice Department has objected to only thirteen of these submissions and of these thirteen objections, only two were submitted by the State. The two objections raised concerned the House of Delegates and State Senate redistricting plans of 1971 and both objections were withdrawn by the Justice Department in mid-1971.

Additionally, the United States Justice Department has never dispatched examiners or observers to Virginia to oversee either voter registration or the conduct of elections.

Virginia's voter registration and election procedures are not being applied in a discriminatory manner. Voting rights are not being denied to any citizen of the Commonwealth on the basis of race. In fact, great strides have been taken in improving every phase of the election process. We are continuing every year to review our laws and procedures so that every citizen of Virginia is given every opportunity to exercise his right to vote. We in Virginia, the lawmakers and officials of this Commonwealth, are proud of our accomplishments in the matter of this precious freedom.

To suppose that such advancements would not continue in Virginia, or would be reversed if Virginia were not subject to the Voting Rights Act, is unreasonable. Our record should speak for itself.

Drawer 401-A Yale Station
New Haven, Conn.

Hon. Don Edwards
Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Following my testimony on the subject of extending the Voting Rights Act of 1965, Rep. Thomas Bliley of Virginia wrote to you challenging my testimony with regard to the City of Richmond, Virginia. I would appreciate your inserting this reply into the hearing record together with Rep. Bliley's letter.

Rep. Bliley objects to my statement that described Richmond as one of the jurisdictions "that have records of significant violations," because, he says, "there has not been a single complaint of anyone in the City of Richmond having their right to register or to vote impeded in sixteen years under the Voting Rights Act." Rep. Bliley's statement is correct as far as it goes, but it does not challenge mine, and in fact it serves only to emphasize the important role that the Voting Rights Act plays in protecting minority voters against sophisticated methods of vote dilution that have replaced the old-fashioned methods of restricting the right to vote.

It is true that black voters in Richmond have not had any problem in registering and voting since the Voting Rights Act was passed. Indeed, Richmond has a good record in that regard, and its registrar, Alice Clark Lynch, is widely known as an extremely fair and capable public official.

But my statement was focused on violations of the Voting Rights Act, including section 5, and in that regard Richmond's record is different. In 1970, as black citizens were just becoming a majority of the population in Richmond, the City moved to annex a large, white-populated area of Chesterfield County, with the bounds of the area being those that included "at least 44,000 leadership-type white people," as Richmond officials said at the time. Appendix pp. 319-251, in City of Richmond v. United States, 422 U.S. 358 (1975). Fortunately, because of section 5 of the Voting Rights Act,

this annexation did not have the desired result of submerging the votes of Richmond's black voters: the change was submitted (belatedly) to the Attorney General, who interposed an objection under section 5, and the Supreme Court upheld the position of the Attorney General. As a result, Richmond adopted a district system which has made it possible to conduct elections under a system that gives all its citizens a real opportunity for fair representation.

I believe that this history is an object lesson in the value of section 5 in situations where the right to vote is theoretically unrestricted but is threatened with dilution that would -- in the absence of the Voting Rights Act -- be just as effective in depriving minority voters of the opportunity of fair participation in the electoral process.

Sincerely,

Drew S. Days III

Drew S. Days, III
Professor of Law

cc: Hon. Thomas J. Bliley, Jr.
United States House of Representatives
Washington, D.C. 20515

Hon. Henry J. Hyde
United States House of Representatives
Washington, D.C. 20515

Thomas M. Boyd, Esquire
Minority Counsel
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

THOMAS J. BLILEY, JR.
2d District, Virginia

Committee on Energy and Commerce

Committee on District of Columbia

Congress of the United States
House of Representatives
Washington, D.C. 20515

Washington Office
214 Cannon Office Building
(202) 225-2815

District Office
210 East Main Street
Richmond, Virginia 23219
(804) 771-2809

July 14, 1981

The Honorable Don Edwards, Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I would like to introduce into the hearing record on extension of the 1965 Voting Rights Act the following information:

In testimony before the Subcommittee on July 13, 1981, Professor Drew S. Days, III, made the following statement:

> First, while a number of representatives of covered jurisdictions complained about coverage and asked for an easier bail-out provision, such as the city attorney of Rome, the former mayor of Richmond, and a party official from Yazoo County, these witnesses seem to have come from jurisdictions that have records of significant violations and would not be eligible for bail-out even under an amended bail-out formula.

This statement, as it applies to the City of Richmond, is fallacious. As mentioned in my testimony before your Subcommittee on May 20, 1981, there has not been a single complaint of anyone in the City of Richmond having their right to register or to vote impeded in sixteen years under the Voting Rights Act. I offer the attached letter from the Department of Justice to substantiate my statements, and would like to see that letter included in the hearing record. Should Professor Days be willing to substantiate his contention, I would be most eager to see his documentation. Otherwise, I suggest that his statement be revised.

I appreciate your cooperation in this matter, and sincerely hope that such misinformation will not be disseminated in the future.

Sincerely,

Tom Bliley

THOMAS J. BLILEY, JR.

TJBjr/cbj
Attachment

cc: The Honorable Henry J. Hyde
Ranking Republican
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
U. S. House of Representatives
Washington, D. C. 20515

Thomas M. Boyd, Esquire
Minority Counsel
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
U. S. House of Representatives
Washington, D. C. 20515

OFFICE OF THE MAYOR
SAN FRANCISCO

DIANNE FEINSTEIN

July 17, 1981

The Honorable
Congressman Don Edwards
2307 Rayburn Office Building
Washington, D.C. 20515

Dear Congressman Edwards:

It is my understanding that your committee will soon consider legislation extending the Voting Rights Act.

Enclosed please find a copy of a resolution stating the policy of the City and County of San Francisco that said act should not be allowed to expire.

I trust that you and the other members of your committee will consider our policy.

Thank you for your consideration.

Sincerely,

Dianne Feinstein
Mayor

DF/PN

AMENDMENT OF THE WHOLE 1/19/81
PRESENTED IN BOARD

...ly Copy Do Not Remove

FILE NO. 13-81-16 RESOLUTION NO. 36-81

OPPOSING REPEAL OF THE BILINGUAL BALLOT REQUIREMENTS OF THE FEDERAL VOTING RIGHTS ACTS.

WHEREAS, the population of the City and County of San Francisco is composed of a unique blend of representative of various cultures, ethnic backgrounds and languages; and

WHEREAS, it is one of the founding principles of the United States of America that no disadvantage shall accrue to a person because of that person's race, religion or ethnic background; and

WHEREAS, the City and County of San Francisco has entered into a Consent Decree with the United States of America in the action entitled "United States of America v. City and County of San Francisco", U. S. District Court for the Northern District of California No. 878-2521 CFP in which the City and County of San Francisco AGREES to comply with the Voting Rights Act and its policies; and

WHEREAS, it is the policy of the Board of Supervisors of the City and County of San Francisco to provide equal opportunities to persons of all ethnic, religious and language backgrounds to exercise that most fundamental of rights: to cast an informed vote at General and Special Elections held in the City and County of San Francisco; and

WHEREAS, the various educational programs designed to provide English language facilities to the non-English speaking population have been but partially effective in solving the problems encountered in voting by the non-English speaking persons; and

WHEREAS, it has come to the attention of the Board that there are some who would repeal the Bilingual Voting Ballot requirements of the Federal Voting Rights Act and thus deprives non-English speaking citizens of San Francisco, among others, of the benefits of its protection;

NOW THEREFORE BE IT RESOLVED THAT, the Board of Supervisors of the City and County of San Francisco REAFFIRMS its support of the Bilingual Ballot requirements of the Federal Voting Rights Act and opposes its repeal.

BE IT FURTHER RESOLVED THAT, the Mayor of the City and County of San Francisco forward a copy of this Resolution to San Francisco's Congressional Representatives and Lobbyists in Washington, D. C., that the City and County of San Francisco's affirmation of the Voting Rights Act may be communicated to the United States Senate and House of Representatives.

Adopted—Board of Supervisors, San Francisco ... JAN 19 1981

Ayes: Supervisors Britt, Feinstein, Hongisto, Kopp, Molinari, Nelder, Renne, Silver, Walker, Ward.

Noes: Supervisors DOLSON KOPP NELDER

Absent: Supervisors

I hereby certify that the foregoing resolution was adopted by the Board of Supervisors of the City and County of San Francisco

Clerk

13-81-16 File No. JAN 2 7 1981 Approved Mayor

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0243P EST 14143 EST

western union **Telegram**

CONGRESSMAN DON EDWARDS CHAIRMAN OF JUDICIARY SUBCOMMITTEE
CAPITOL ONE DC

SAN FRANCISCO BOARD OF SUPERVISORS PASSED RESOLUTION IN FAVOR OF
VOTER RIGHTS ACT, BILINGUAL BALLOTS ARE BASIC NEED, NOT LUXURY
SUPERVISOR CAROL RUTH SILVER
MEMBER CITY-COUNTY BF BOARD OF SUPERVISORS
CITY HALL ROOM 235
SAN FRANCISCO CA 94102
CITY HALL ROOM 235
SAN FRANCISCO CA 94102

14143 EST

IPMPDMX MSM

GARY HART
COLORADO

COMMITTEES
ARMED SERVICES
ENVIRONMENT AND PUBLIC WORKS
BUDGET

United States Senate
WASHINGTON, D.C. 20510

June 25, 1981.

The Honorable Peter Rodino
Chairman, House Judiciary Committee
2137 Rayburn House ffice Building
Washington, D.C. 20510

Dear Chairman Rodino:

I have been following with great interest and encouragement the hearings presently underway in the House Judiciary Subcommittee on Civil and Constitutional Rights on your legislation to extend the Voting Rights Act of 1965.

As a cosponsor of similar legislation in the Senate, I am committed to ensuring the full force of this historic act is extended for another 10 years. I am confident the hearing record being established by your committee will be the first step in this direction. I would appreciate your including my enclosed testimony in the permanent record of these hearings.

I look forward to working with you on this critical issue in the months ahead.

Sincerely,

Gary Hart

Gary Hart.

enclosure

The Honorable Gary Hart
Testimony on the Voting Rights Act Amendments of 1981.
Judiciary Committee of the House of Representatives
June 25, 1981.

Mr. Chairman, I appreciate the opportunity to submit testimony before this Subcommittee on the third extension of the Voting Rights Act. I am confident your prompt and thorough hearings will be the first step toward the Act's extension. I look forward to working with you and with my colleagues in the Senate to ensure this historic law is extended and enforced until its promise is permanently realized.

The Voting Rights Act seeks to protect the most fundamental American right. Yet its noble purpose should not insulate it from our careful scrutiny or alone justify its 10 year extension. Periodic Congressional review of laws provides us the opportunity to reasses the need for old laws and to consider possible improvements. It is an opportunity that I welcome.

As Congress considers the fate of the Voting Rights Act, three important questions are apparent. First, has the Voting Rights Act been effective? Second, is it efficient and properly targeted? Finally, and most important, is it necessary now, and will it be necessary in the future?

No one disputes the historic importance of the Voting Rights Act. Largely because of the real and symbolic protections afforded by this law, two million blacks and more than one million Hispanics have been added to the voter roles. Over the past 16 years, we have seen dramatic increases in the ranks of minority office holders. And the Act has effectively blocked discriminatory voting changes -- more than 800 in the last 15 years -- in jurisdictions from Texas to Alaska, Manhatten to Birmingham, Alabama. Each time a discriminatory voting practice was halted, the effective right to vote was restored to hundreds, perhaps thousands, of Americans. Who knows how many others benefited indirectly -- because their states or local jurisdictions were deterred from even attempting to dilute the franchise of some of their citizens?

Even the harshest critics of the Voting Rights Act generally concede that it has made the right to vote a reality, not a dream, for many Americans. Today's critics focus on two other issues: first, that the Voting Rights Act is burdensome and inefficient; and second, that it has outlived its usefulness and is no longer necessary.

The most frequent complaints about inefficiency and burden are directed at preclearance provisions of Section 5. Section 5, the heart of the Voting Rights Act for the past 10 years and due to expire next August, now covers nine states and portions of 13 others. Before these jurisdictions can change their voting laws, practices or procedures, the Attorney General or the U.S. District Court for the District of Columbia must first rule that the changes do not discriminate against racial or language minorities.

Available information indicates Section 5's requirements are simple, speedy and efficient. The program is administered by just 12 Department of Justice officials. These experts analyze proposed changes in election and voting laws, and quickly identify those which are discriminatory. By law, they have only 60 days to do so. If more information is needed, only one extension can be granted. If the Justice Department does not make a decision within this time period, the proposed change may go into effect automatically. Or, if the Justice Department rejects a proposed change, the jurisdiction may simply ignore its decision and seek clearance from the U.S. District Court for the District of Columbia -- or vice versa.

Section 5 has no periodic reporting requirements. Covered jurisdictions submit materials to the Justice Department only when they choose to change their voting laws, not otherwise. And the submission generally requires only documents which were already prepared in the process of enacting the proposed change.

In short, Mr. Chairman, it is difficult to imagine a less onerous or more efficiently administered procedure.

The special provisions of the Voting Rights Act are efficiently and properly targeted as well. The four triggering mechanisms, resulting in covered jurisdiction having to comply with certain protective requirements, apply only to states and jurisdictions with histories of voter discrimination. But the permanent provisions -- including a ban of all literacy tests and devices -- apply nationwide.

Moreover, jurisdictions covered by the special provisions of the Act have the opportunity to remove themselves from special coverage. And they have done so. For states covered as a result of having used a literacy test, proof must be made to the U.S. District Court of the District of Columbia that the test was not used with a discriminatory purpose or effect for a previous period of years.

To date, 9 successful bailout suits have resulted in the release of portions of Alaska, North Carolina, Arizona, Idaho, Maine, Oklahoma and New Mexico from the special provisions of the Act. Admittedly, the burden of proof in such cases is extremely high, and some modification may be appropriate, particularly for states with proven records of positive preclearance from the Justice Department. But any changes must be made with the utmost caution if at all. We must not delude ourselves into thinking that only particular types of electoral changes can be discriminatory, or that some jurisdictions would not revert to discriminatory election practices to dilute minority voting power in the absence of careful and thorough scrutiny of both major and subtle changes in election law.

For jurisdictions covered only by the language minority provisions of the Act -- including 33 counties in Colorado -- a simple statistical determination that the illiteracy rate for the applicable language minority group is equal to or less than the national rate is sufficient evidence for bailout. As literacy rates rise throughout the country, there is every reason to expect many of these covered jurisdictions will be exempted from the language minority provisions.

Administrative efficiency and fair coverage are important, but certainly not reasons in themselves to extend the Voting Rights Act. Only need can justify that decision.

For Section 5, the steady rate of Justice Department objections over the past few years -- 44 last year alone -- indicate that there is a continuing potential for future electoral abuse. In fact, the ability of Section 5 to curb subtle but powerful forms of voter discrimination, such as at-large elections, discriminatory redistricting and other forms of gerrymandering make its continuance more important than ever. Redistricting following the 1980 decennial census is just beginning -- and without the protections of Section 5, will provide great opportunity for dilution of minority voting strength.

The bilingual election provisions of the Voting Rights Act do not have Section 5's proven record of success because they have only been in effect for a few years. Yet, they, too, should be extended now, along with the other temporary provisions, so the full force of the Act will be in place to cover the 1990 census and ensuing redistricting.

It's too early to guage accurately the effectiveness of the 1975 amendments prohibiting English-only elections in certain areas with significant language minority populations. The language minorities for which these provisions were enacted have been outsiders in the electoral process for hundreds of years. It would be unrealistic to expect sudden, dramatic increases in registration and voter participation after only six years of bilingual protections. Certain observations can be made, however, which in themselves constitute sufficient justification for extension.

First, where local election officials have worked with community organizations to develop registration programs, provided capable bilingual poll workers, and accurate bilingual materials, minority voter turnout has risen quite dramatically. In Colorado, for example, Hispanic voter registration increased by 41 percent between the 1976 and 1980 Presidential elections, with actual turnout up by 23,000. Hispanics are participating in the political process not just as voters but as successful candidates for office as well.

Second, specific efforts are being made by the Federal Election Commission to eliminate the confusion and misunderstanding found to exist among local election administrators and language minority communities throughout the country. The three-volume handbook issued by the Commission last year provides the first real assistance and guidance to local officials to design and implement community out-reach programs. By providing officials with a broad range of options, including low-cost options, and by developing an English-Spanish glossary of common election terminology to improve the quality of English-Spanish materials, we can expect bilingual election efforts will be carried through with greater efficiency and cost-effectiveness in the years to come.

Ultimately, the language minority provisions, like the rest of the Act, must be extended because they are still needed, and will be needed for the foreseeable future. The simple fact is that many Americans do not speak English, even though they have lived in this country their entire lives. As citizens of the Nation, they have the right to vote. We, as their representatives have the duty to ensure that right is not denied for lack of English fluency.

Mr. Chairman, the extension of the general and special provisions of the Voting Rights Act is the appropriate opportunity to restate Congress' original intention concerning the burden of proof in voter discrimination suits, as permitted by Section 2 of the Act. The Supreme Court has implied in recent decisions that a discriminatory effect, in the absence of discriminatory purpose, is not enough to establish a constitutional violation. It was not Congress' intent to effectively prevent challenges to electoral laws in this way. It is, therefore, necessary to restate the earlier understanding of Congress and the Courts that Section 2 violations can be established by evidence of discriminatory intent or effect.

Mr. Chairman, this Nation is unique in its protection of voting rights. It is proud of that fact. The Voting Rights Act, more than any other single law, represents the hope and promise on which this Nation is based. The full force of its protections must be extended for 10 more years.

OFFICE OF THE LIEUTENANT GOVERNOR
STATE CAPITOL
HONOLULU, HAWAII 96813

JEAN KING
LIEUTENANT GOVERNOR

(808) 548-2544

September 23, 1981

The Honorable Don Edwards
Chairman, Subcommittee on Civil and Constitutional Rights
House Committee on the Judiciary
806 House Annex 1
Washington D.C. 20515

Dear Mr. Edwards:

I was asked by Ms. Ivy Davis of the House Judiciary Committee staff to send you the enclosed copy of our report on Hawaii's compliance with the Voting Rights Act in the 1980 elections.

As our report indicates, we have conducted an extensive multi-lingual voter education program in Hawaii. We have, in the past, questioned the need for translating and printing in Hawaii as much material as the law requires, though we know of the positive impact on voter registration and turnout the law has had in some jurisdictions. Though we have been informed by the Justice Department that under the law "The determination of what is required for compliance...is the responsibility of the affected jurisdiction," it has been our position that we should take a conservative approach. We have tried to follow the letter of the law rather than risk a challenge.

I hope the enclosed material will be of help to you as you consider the Voting Rights Act. Please feel free to call Muriel Roberts of my staff (808 548-3118) if we can be of further assistance.

With all good wishes,

Jean King

JEAN KING
Lieutenant Governor

Encl.

OFFICE OF THE LIEUTENANT GOVERNOR

VOTER EDUCATION SECTION

MULTI-LINGUAL VOTER EDUCATION IN HAWAII

1980

PURPOSE

In compliance with the Federal Voting Rights Act, as amended in 1975, a Multi-Lingual Voter Education program was designed and implemented to help meet the needs of the language minority groups in Hawaii. The Filipino Ilocano-speaking population was covered state-wide. In the City/County of Honolulu, services are provided for the Chinese; and on Kauai and Hawaii, for the Japanese.

OBJECTIVES

* To provide Multi-Lingual Voter Education and information to language minority groups as mandated by the VRA amendments of 1975.
* To maximize voter registration, participation and interest.
* To provide a better understanding of individual voting rights and responsibilities.
* To familiarize the target groups with the electoral process.
* To coordinate the translation of informational materials in the mandated languages, covering subject matter pertaining to voter registration and elections, and to make this material easily understood and readily accessible.
* To utilize the mass media as a means of reaching the people.
* To provide outreach workers and poll workers fluent in mandated languages.
* To provide services to the County Clerks, including coordinating of the translation of their materials, and supplying them with language materials for voter registration and the elections.
* To accomplish these objectives with minimum budget and staff.

PROGRAM

MULTI-LINGUAL ADVISORY GROUPS

Ilocano, Chinese and Japanese Advisory Groups were formed, composed of respected individuals who were recommended to us by their peers. Acting in an advisory capacity, these groups served as a link with

the language minority communities in helping us to determine the need for our services. We prepared a glossary of common election terms in English which the committees translated into standard terms in their respective languages. In addition to helping us set up standards for the future translation of informational material, the committees answered a questionnaire that we prepared which provided us with valuable insights and suggestions.

Advisory Group Members

Filipino

Amy Agbayani, Director, Operation MANONG, University of Hawaii
Jake Manegdeg, Election Advisory Committee
Amado Yoro, writer and columnist for Hawaii Filipino News and HSPA
Pacita Saludes, President, GUMIL, an organization of Ilocano writers in Hawaii

Chinese

Sister Ernest Chung, Catholic Social Services
Welton Won, Chinese Chamber of Commerce
Dr. Daniel Kwock, Department of History, University of Hawaii
Mr. Yip-Wang Law, Chinese scholar and teacher
Wah Chan Thom, retired businessman and community leader

Japanese

Harumi Oshita, Radio Station KZOO
Roy K. Soga, President, Hawaii Times, Ltd.
Paul S. Yempuku, President, Hawaii Hochi
Joanne Ninomiya and Elizabeth Keith, translators and broadcasters KIKU-TV

TRANSLATIONS

Our office contracted with the Hawaii Association of Language Teachers (HALT) to do the necessary translations. The coordination of many election materials to be translated for our office and the Counties was done by Multi-Lingual Voter Education. We assisted in the final preparation, printing and shipping of election materials to the Counties with the cooperation of the Logistics Section.

The translating, typesetting, printing and/or reproducing of election materials in three languages covered an extensive range and included:

- Brochures
- Flyers
- Fact Sheets
- Election proclamation
- Statewide district and polling places
- Script for Single Party Primary Slide Show
- Public Service Announcements for Radio & Television
- Absentee voting instructions and applications
- Newspaper advertisements
- County election information
- News releases

PERSONNEL

Two outreach persons, Andrea Baptista and Florentina (Tina) Ritarita, were hired to develop a program for the Ilocano-speaking people. Lily Lu was chosen to do our Chinese outreach. As we were aware that there was a need for voter education assistance within the Samoan Community, Veronica Barber was enlisted to help there. Although we did not have a person specifically hired to do Japanese outreach (and were not mandated to do so here in Honolulu), our outreach workers were always supplied with materials that had been translated into Japanese, and these were distributed when necessary. Andrea had a full-time position and the others worked 20 hours per week. Fumi Nitta, who worked as a translator and Voter Education outreach person in the past, was available for certain occasions.

TRAINING AND SUPERVISION OF PERSONNEL

Orientation/briefing-type meetings were held for all Multi-Lingual workers. Background and current information was shared, teaching tools and materials and presentation techniques were discussed. Target groups and areas were researched, and individual action plans created. Because we were limited in personpower and time, we agreed to try to put a special emphasis on utilizing the language media as the best method for reaching the largest number of people.

The Supervisor Dolores Tsukano regularly met separately with each language representative. Although there were many times when they would join forces to give presentations in a situation where speakers of all three or four languages were represented, their most important challenge was to concentrate on their individual areas, and to reach people who were not part of organized groups.

MULTI-LINGUAL VOTER EDUCATION MATERIALS

Our Voter Education informational materials were translated from English into the various languages either through our connection with HALT or by the outreach workers themselves. They were eager to have as many teaching tools as possible, and in some instances created their own. The Single Party Primary slide show with narration in English and Ilocano was appreciated and utilized. Large quantities of printed materials were distributed on Oahu, and also sent to the counties. In Honolulu an estimated 6300 pieces of Ilocano literature were distributed, 700 Chinese and 500 Samoan.

BILINGUAL VOTER ASSISTANCE ON ELECTION DAY

Dolores worked with Baron Gushiken, Precinct Official Recruitment and Training Coordinator, to determine the precincts which needed bilingual assistance, based on past and present statistics. She aided in the recruiting and placing of bilinguals, and in some instances gave additional instruction to those who felt timid about trying the job for the first time. A Bilingual Voter Assistance report is included as Attachment A.

IMPLEMENTATION PROCEDURES

ILOCANO OUTREACH

Andrea and Tina worked as a team, with Andrea taking the lead as the coordinator for Ilocano activities. Her extensive contacts, and knowledge of the Filipino community provided numerous opportunities for them to plan and present Voter Education programs. They clearly enjoyed their work, and were good representatives to send out among the people we were trying to reach. They were received with great appreciation, and even affection in many places that they visited, and created much good will for the office. Fun and humor were injected into their presentations, most specifically by Andrea, with Tina playing "straight-person" and also providing a genteel grace. They went to churches, clubs and organizations, parties and family gatherings, public parks, and the congregate dining sites (often with the help of Lily when the area was known to have Chinese). Literature in Japanese was also taken along and distributed when needed.

Prior to the Primary Election, good use was made of our Single Party Primary slide show in Ilocano outreach presentations. Community leaders were very cooperative in providing good leads for resource people, organizations and facilities which were valuable in the setting up of our presentations. Many programs were given during evenings, weekends or holidays, which were good times for the Ilocano target groups to be reached.

Because of Andrea's connections with the Filipino media, she arranged to appear on various radio programs as a guest speaker, and had a good response on the call-in type shows.

Following the Primary Election, Andrea and Tina reviewed the areas which needed the most bilingual assistance, and made a concerted effort to give presentations in those areas before the General.

Andrea and Tina are of the opinion that bilingual voter education is a must, due to the increasing number of Filipinos who are being naturalized, either as a result of the 5 year residency law, or because of the easing of requirements for those with low literacy rates who have been here most of their lives. In their outreach, they found great enthusiasm and interest in government participation among the Filipinos they met. They say that suffrage has been the dream of Filipinos aspiring to become citizens. Filipinos do not really need to be told to go out and vote, but rather need to be instructed in how to vote by being given a better understanding of government and the electoral process through voter education.

CHINESE OUTREACH

Lily Lu was an ideal choice as a representative to the Chinese community from this office, and there is no doubt that she made a good impression wherever she went. Her task was not easy in that she worked alone, had fewer hours per week to invest (although she put in many more than she claimed), and did not always find the actively receptive audiences that were the norm for the Ilocano outreach.

Lily visited churches, nursing homes, Chinese societies, and also distributed literature through the Chinese language schools so that the children would take the information home. She found many people who were not citizens, were not interested or were discouraged about "politics."

In order to reach the Chinese people who were unfamiliar with English, and in order to reach them on a broader base, Lily devoted much of her effort to the Chinese media. She arranged to have our public service announcements about registration, voting, elections and deadlines on the Chinese radio programs. The United Chinese Press cooperated by running feature articles on voter education information on the front page of their daily newspaper. These articles were written by Lily, or prepared by a reporter, based on interviews with her. Because Lily often found attitudes of fear among the elderly voters about trying to vote knowledgeably, she emphasized the voter assistance and spoiled ballot aspects of the voting procedures. She also found that when an older person was residing with married children, which is often the case in the traditional Chinese home, the elder person might have an interest in voting, but would not want to be a "bother," so would not ask to be helped to register and vote.

SAMOAN OUTREACH

Veronica Barber, our Samoan outreach person began her work by translating our materials into Samoan, and also creating other teaching tools for use in her presentations. We learned that the approach to the Samoan community was based on certain protocol that must be observed in order to show proper respect to chiefs and elders. Veronica, as a young Samoan woman, regardless of her Chieftainess status, could not properly teach chiefs or elders without an appropriate person from the chief or elder class to accompany her.

Veronica found that there was a great interest in learning about voting among the Samoans, especially since the concept of voting is new to them. The first election in American Samoa was held less than 3 years ago. Many people she spoke to didn't realize that they had to be naturalized citizens before they would be permitted to vote. This often brought about inquiries concerning citizenship. Veronica felt that a great need also exists for outreach to be done that encompasses both citizenship and voter education.

Unfortunately, midway through Veronica's stay with us, her mother became terminally ill and died. Her responsibilities to her mother, family and the estate took her to Samoa, so she was not able to return to work as soon as she originally thought. Before she left for Samoa, however, she came in and took all of our General Election information to be translated into Samoan by a friend. She also arranged for this translated information to be given to Repeka Alaimoana-Nuusa, who has the Samoan program on Channel 11, so that it could be used several times before the General Election.

MULTI-LINGUAL VOTER EDUCATION AND THE MEDIA

In addition to the newspaper, radio and television coverage already mentioned, we ran paid ads for the Primary and the General Election, translated from the one-page English instructional ads which ran in the Honolulu Star Bulletin and Advertiser, and on the Neighbor Islands. The ads were carried in the following papers:

Primary Election - Hawaii Filipino News, United Chinese Press, Hawaii Times, Hawaii Hochi;

General Election - Hawaii Filipino News, United Chinese Press. Information was sent to the Times and Hochi which they printed as a service in their special election editions.

Mr. Sun Young Byun, publisher of the Korean language weekly Oriental Life in Hawaii was cooperative in using our materials in his magazine.

In addition to the personal contact our outreach personnel had with the radio and television language media, public service announcements about voter registration and the elections, accompanied by a letter, were sent to radio stations KOHA, KZOO, KIKU, KISA and KJYE.

RECOMMENDATIONS

We were fortunate in having people to do our Multi-Lingual outreach who were genuinely concerned with voter education and interested in their assignments. Their experience, and ours, has helped us in formulating some ideas and suggestions to improve our method of operation in the 1982 elections.

TRANSLATIONS

In the past, we have contracted with the Hawaii Association of Language Teachers (HALT) to have our election materials translated. Our unsatisfactory experience with HALT makes it impossible for us to recommend using them in the future. In the interests of cost, time invested, convenience and the need for regular communication with the translators who are doing our work, we need to hire our own translators. Hiring and dealing directly with translators would also be beneficial for the translators for the reasons mentioned above.

PERSONNEL

In the future we should consider choosing our outreach workers before the Multi-Lingual Advisory Group meetings. In this way, the bilingual workers could aid in choosing and contacting candidates for the Advisory Groups, and when the meetings were held, would be part of our working relationship with the Groups. This approach would mean hiring and training the outreach people in late May, and soliciting and appointing people for the Advisory Group in early June. The Advisory Groups could meet in mid-June, and surveys, action plans and initial appointments completed by the end of June. Actual outreach would then begin from July first.

Decisions on the number of bilingual workers to hire in 1982 will need to be based on whether we can find workers who are also capable translators, or if we will have our translations done by people outside the office. In either case, we are agreed that we must keep the quality of our translated materials high by having them proofed and approved by a second translator.

In 1982, we would recommend that bilingual personnel be hired as follows:

Ilocano - two positions - full-time if they are to do translations
one full-time and one part-time if not translating
Chinese - one position - full-time if translating
part-time if not translating
Japanese - one part-time position
Samoan - one part-time position

OTHER

In our Samoan outreach, we should research the subject of naturalization for Samoans, as there is a need for this information in making presentations.

In setting up Advisory Groups, we should also consider including the Samoan community.

CONCLUSION

There is definite evidence that Multi-Lingual Voter Education is needed in various sectors of our bilingual communities. Our experience in the 1980 elections should make it possible for us to design and implement an effective Multi-Lingual program in 1982.

ATTACHMENT A

BILINGUAL VOTER ASSISTANCE AT THE POLLS

1980

BILINGUAL VOTER ASSISTANCE OFFICIALS

During the 1980 Primary and General Elections in the State of Hawaii, bilingual voter assistance was provided at the polls in accordance with the Voting Rights Act Amendments of 1975. In the City and County of Honolulu, the Office of the Lieutenant Governor recruited and trained 68 bilingually proficient workers to serve in targeted precincts throughout Oahu. In most instances, these people held the position of Voter Assistance Official, and in others, they were Precinct Officials who could be called upon to give language assistance when it was needed.

Initial preparation for the recruitment of bilingual officials began with the review of bilingual data from the 1976 and 1978 elections, and making projections based on the most recent registration, population and naturalization statistics.

Compared with the 36 bilingual officials who were used in the 1978 elections, our coverage at the polls in 1980 has doubled. Of the 68 people, 50 were Ilocano speaking, and were assigned to precincts in districts 16 through 22, and in the 26th district. Chinese assistance was provided in Districts 14 and 17 by nine Cantonese speaking workers. A need was anticipated and filled for Japanese assistance in Districts 10, 12 and 22. Samoan bilingual assistance was provided to Districts 22 and 23. In addition to our officially selected bilingual workers at the polls, we had many precinct workers who could speak a language other than English either conversationally or in pidgin, which also helped with the explanation of procedures at the polls.

STATE OF HAWAII

BILINGUAL VOTER ASSISTANCE

STATEWIDE SUMMARY*

PRIMARY ELECTION

1980

ORAL ASSISTANCE

	TARGETED GROUPS			TOTAL
COUNTY	Cantonese	Ilocano	Japanese	Oral Assistance
Honolulu	204	920	529	1653
Hawaii	-	-	-	-
Kauai	-	-	-	-
Maui	1	184	82	267
TOTAL	205	1104	611	1920

WRITTEN ASSISTANCE - FACSIMILE BALLOT

Honolulu	-	4	-	4
Hawaii	-	5	4	9
Kauai	-	-	-	-
Maui	-	-	-	-
TOTAL		9	4	13

TOTAL ORAL AND WRITTEN BILINGUAL ASSISTANCE 1933

*This data is not complete. It was taken from the Voter Assistance Official Worksheets on which all Voter Assistance Officials were instructed to record instances of assistance given. In many cases recording was incomplete or nonexistent.

STATE OF HAWAII

BILINGUAL VOTER ASSISTANCE

STATEWIDE SUMMARY*

GENERAL ELECTION

1980

ORAL ASSISTANCE

	TARGETED GROUPS			TOTAL
COUNTY	Cantonese	Ilocano	Japanese	Oral Assistance
Honolulu	141	965	144	1250
Hawaii	6	83	116	205
Kauai	0	25	2	27
Maui	-	-	-	-
TOTAL	143	1012	262	1482

WRITTEN ASSISTANCE - FACSIMILE BALLOT

Honolulu	4	61	-	65
Hawaii	-	5	4	9
Kauai	-	-	-	-
Maui	-	-	-	-
TOTAL	4	66	4	74

TOTAL ORAL AND WRITTEN BILINGUAL ASSISTANCE 1556

*This data is not complete. It was taken from the Voter Assistance Official Worksheets on which all Voter Assistance Officials were instructed to record instances of assistance given. In many cases recording was incomplete or nonexistent.

ATTACHMENT B

ELECTION EXPENDITURES
IN COMPLYING WITH THE
VOTING RIGHTS ACT AMENDMENTS OF 1975

1980

NOTE: Under the Voting Rights Act, Hawaii is required to provide registration and voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process including ballots, in the language of the "applicable language minority group(s)" as well as in the English language. The "applicable language minority group(s)" in Hawaii are: Ilocano in all Counties; Japanese in Hawaii and Kauai Counties; and Chinese in the City and County of Honolulu.

1980 PRIMARY AND GENERAL ELECTIONS

Facsimile Ballots		$29,184.90
Instructions Posters, flyers, slide show, brochures		4,134.69
Newspaper Ads		6,343.96
Personnel Bi-lingual Outreach Workers in the Office of the Lieutenant Governor and bi-lingual Voter Assistance Officials at the Polls		15,750.04
Translations		3,500.00
County Expenses Costs connected with Charter Amendments, Registration, etc.		
Hawaii County	$ 855.00	
Kauai County	1,133.80	
Maui County	1,912.03	
City and County of Honolulu	124.00	
Total County expenses		4,024.83
TOTAL STATEWIDE COSTS		$62,938.42

Office of the Lieutenant Governor
Voter Education Section
February 1981

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

June 24, 1981

The Honorable Peter W. Rodino
Chairman, House Committee on the Judiciary
2462 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Rodino:

I wish to let you know of my strong support for your legislation extending the provisions of the Voting Rights Act.

The Act's nationwide prohibition against discrimination has widened the access of minorities to the political process. The Act must be extended in order to sustain this momentum towards equal participation and active involvement in all levels of government.

Despite some allegations to the contrary, the preclearance and bilingual requirements in the Act have not proven to be a great burden to the three counties of New York which fall under their jurisdiction.

Indeed, they have enhanced significantly minority voter turnout and participation among the more than 4.8 million people in Kings, New York, and Bronx counties.

Extension of the Voting Rights Act is a vital step in preserving democratic safeguards in New York City and our nation as a whole.

Sincerely,

Edward I. Koch
MAYOR

AMERICAN CIVIL LIBERTIES UNION OF MISSISSIPPI
528 NORTH STATE STREET
POST OFFICE BOX 2242
JACKSON, MISSISSIPPI 39205

DAVID SIDDERSTEIN
PRESIDENT
JAN LEWIS
EXECUTIVE DIRECTOR
ROBERT RUBIN
STAFF COUNSEL

TELEPHONE
(601) 355-6464

June 11, 1981

The Honorable Don Edwards, M.C.
United States House of Representatives
Washington, DC 20515

Re: Extension of the Voting Rights Act of 1965

Dear Congressman Edwards:

The Voting Rights Act of 1965 has been crucial to the enforcement of the Fourteenth and Fifteenth Amendments to the United States Constitution in Mississippi and other Southern states. By providing an effective means of securing the right to vote and preventing the dilution of voting strength, the Voting Rights Act is essential for the protection of the constitutional rights of black Mississippians. For that reason, the ACLU of Mississippi believes that the renewal of the Voting Rights Act is the single most important civil rights issue currently under consideration by Congress.

Blacks have made significant political gains in Mississippi under the protection of the Voting Rights Act. In fact, Mississippi now has more, 387, black elected officials than any other state. However, discrimination persists through more subtle schemes of election law alterations, gerrymandering, and at-large elections. The Mississippi establishment may have matured to the point that the right to register and vote will no longer be denied minority citizens, but complaints received in the ACLU of Mississippi office demonstrate that those in power are now relying on more inventive and sophisticated means to dilute the voting strength of minorities. For instance, our office recently received a report of a plan to systematically relocate the majority black population of a small delta town outside the city limits through a rather complicated real estate scheme to locate all federal housing projects outside the city limits. The anticipated relocation of black voters would give white voters a substantial majority within the city limits. Black Mississippians need the protection of the Voting Rights Act against covert, as well as overt, infringements on their civil liberties.

Personally, I have been involved in Mississippi politics since 1968, as a Democratic party activist and poll watcher. I have observed a begrudging and oft-times arbitrary adherence to the law. Attitudes are slow to change,as graphically illustrated in the comments last year of a prominent state legislator, "I look at what's right and wrong. What's constitutional doesn't bother me." Without the Voting Rights Act to enforce the constitutional rights of our black citizens, I fear that Mississippi will revert to whites-only politics.

Sincerely,

Jan Lewis

Jan Lewis
Executive Director

JL:jbb

TERRY MILLER
LIEUTENANT GOVERNOR

STATE OF ALASKA
POUCH AA
JUNEAU 99811
(907) 465 3520

July 7, 1981

The Honorable Peter W. Rodino, Jr.
Chairman of the House Judiciary Committee
2137 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

For your information, I have enclosed a copy of the following Joint Resolution recently adopted by the first session of the Twelfth Alaska State Legislature:

SENATE JOINT RESOLUTION 47 am
Relating to the extension of the Voting Rights Act.

Sincerely yours,

Terry Miller
Lieutenant Governor

Enclosure

STATE OF ALASKA

THE LEGISLATURE

1981

Source	Legislative Resolve No.
SJR 47 am	29

Relating to the extension of the Voting Rights Act.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the key provisions of the 1965 Voting Rights Act will expire August 6, 1982, unless renewed by Congress; and

WHEREAS the Voting Rights Act is rightly considered the most effective civil rights legislation ever enacted in the United States; and

WHEREAS the Voting Rights Act has substantially increased the number of individuals voting in state, municipal and national elections; and

WHEREAS the extension of the Voting Rights Act as the law of the land constitutes the single best assurance to all citizens of the United States that their right to participate in the American political process will be guaranteed; and

WHEREAS the extension of the Voting Rights Act will allay the fears of many groups that a regression of voting rights may occur if the Act is not extended;

BE IT RESOLVED by the Alaska State Legislature that Congress is urged to extend the Voting Rights Act in its present form.

COPIES of this resolution shall be sent to the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; the Honorable Thomas P. O'Neill, Speaker of the U.S. House of Representatives; the Honorable Strom Thurmond, Chairman of the Senate Judiciary Committee; the Honorable Peter W. Rodino, Jr., Chairman of the House Judiciary Committee; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

83-679 O - 82 - pt.3 - 57

Authentication

The following officers of the Legislature certify that the attached enrolled resolution, SENATE JOINT RESOLUTION NO. 47 am _____, was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.

Passed by the Senate May 29, 1981

Jalmar M. Kerttula
President of the Senate

ATTEST:

Peggy Mulligan
Secretary of the Senate

Passed by the House June 18, 1981

Joe L. Hayes
Speaker of the House

ATTEST:

Irene Cashen
Chief Clerk of the House

Jay Hammond
Governor of Alaska

STATE OF MISSISSIPPI

HOUSE OF REPRESENTATIVES

OFFICE OF THE SPEAKER

C. B. (BUDDIE) NEWMAN, SPEAKER
308 NEW CAPITOL BUILDING
JACKSON, MISSISSIPPI 39205
TELEPHONE (601) 354-6152

June 10, 1981

HOME ADDRESS
POST OFFICE BOX 300
VALLEY PARK, MISSISSIPPI 38677
TELEPHONE (601) 836-0348

Honorable Don Edwards
Chairman of the Subcommittee on Civil
and Constitutional Rights
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Edwards:

It has come to my attention that your Subcommittee on Civil and Constitutional Rights is presently holding hearings on proposed legislation for the extension of the Voting Rights Act of 1965. The purpose of this letter is to go on record as the Speaker of the Mississippi House of Representatives in opposition to the proposed amendments introduced by the Honorable Peter Rodino of New Jersey, Chairman of the Judiciary Committee.

First, let me say that it concerns me that public officials in the State of Mississippi and others were not given some official notice of the proposed hearings which I understand are being held in Montgomery, Alabama, on Friday, June 12. It would appear to me that legislation of this importance would require that the elected public officials of this state would have been given some direct notice of these hearings so that they could appear should they desire to do so.

I am an elected Represe' tive of the Mississippi House of Representatives from District 55 which is c[illegible]posed of all of Issaquena County, the major portion of Sharkey County, and a portion of Warren County. This legislative district is majority black in population. My home county of Issaquena, the smallest county in the State of Mississippi, is 56% black. There are presently four black elected county officials in that county. The municipality of Mayersville, which is the county seat of Issaquena County, is composed of a municipal administrative council of five members, all of whom are black, plus the Mayor who is also black.

The blacks have registered. They continue to register. They vote and are being elected to public office. Mississippi now has more black officials than any other state in the Union.

There are 122 members of the Mississippi House of Representatives, fifteen of whom are black. The Chairman of the Education Committee is black. The Chairman of the Ethics Committee is black. The Chairman of the State Library Committee is black. Blacks are heavily involved in the legislative process. Following are the standing committees of the House showing the number of blacks serving on each:

	Total Members	Black Members
Rules	14	1
Agriculture	33	4
Apportionment and Elections	17	2
Appropriations	33	2
Banks and Banking	11	2
Conservation and Water Resources	29	3
Constitution	15	1
County Affairs	19	3
Education	31	4
Ethics	8	1
Fees and Salaries of Public Officers	15	1
Game and Fish	15	1
Highways and Highway Financing	29	2
Insurance	17	1
Judiciary En Banc	50	8
Labor	11	1
Local and Private Legislation	7	1
Military Affairs	11	1
Municipalities	17	3
Oil, Gas and Other Minerals	17	1
Penitentiary	17	3
Pensions, Social Welfare and Public Health	28	4
Public Buildings, Grounds and Lands	19	3
Public Utilities	17	2
Universities and Colleges	11	2
Ways and Means	33	2

Five members of the House serve with five members of the Senate on the ten-member Joint Legislative Committee on Performance Evaluation and Expenditure Review. One member of the House contingent is black.

<u>These facts fully illustrate that the black people of Mississippi have full participation in the electoral process of our state.</u>

As Speaker of the Mississippi House of Representatives, I can only describe the effects of Section 5 of the Voting Rights Act as having resulted in utter chaos in this state with regard to preclearance of legislative acts. We have reached the point where it is almost necessary to file with the Attorney General of the United States any and all legislation that may possibly affect some supposed voting right.

There is absolutely no need to further burden the State of Mississippi and the other southern states with any further extension of the Voting Rights Act of 1965. To my knowledge, there is not a single resident of the State of Mississippi eighteen years of age and older, black or white, who cannot register to vote and participate fully and freely in the electoral process. It would be impossible to enact legislation in the State of Mississippi denying the right to vote to any one.

Race relations in Mississippi are better now than in the entire history of our state. We are proud that the black citizens of our state have total franchise and in my opinion will always have this right.

I respectfully request that you file this letter with your subcommittee and make it a part of the record relating to the proposed amendments to the Voting Rights Act of 1965.

Sincerely yours,

C. B. (Buddie) Newman

CBN:b
cc: Senator John C. Stennis
Senator Thad Cochran
Congressman Jamie Whitten
Congressman G. V. Montgomery
Congressman David Bowen
Congressman Trent Lott
Congressman Peter Rodino

In Our Opinion

Time To End This

Gulfport - Biloxi Sun

Anyone who believes that the enfranchisement of blacks in Mississippi and the Deep South would have been possible without the 1965 Voting Rights Act is, to put it kindly, unrealistic.

The purpose of the act was to remove barriers to black voting in six states where there was a preponderance of evidence that voting discrimination was, both de facto and de jure, the norm. The act was an overwhelming success.

Mississippi, for example, had registered less than 7 per cent of its voting-age, black population the year before the act was signed into law by President Johnson. Within six years that figure was 67 percent. And Mississippi, which had virtually no black elected officials in 1964, now has 387 — more than any other state.

Without the act, the civil rights movement may well have been channeled into the democratic mainstream but, instead, been expressed in open, racial warfare There were, to be sure, enough racists on both sides to take us down the road of no return.

The act was, as Johnson exclaimed then: "A triumph for freedom as huge as any victory on any battlefield."

The war for freedom is not over, nor will it ever be anywhere on earth as long as nations and individuals, harbor irrational suspicions of one another. But this one battle, this successful battle to remove the barriers to black enfranchisement in the Old Confederacy, is over. It has been won.

The evidence of that victory is not to be found on a bloody battlefield strewn with the lost dreams, the lost fortunes, the lost lives of the vanquished. There are no vanquished; there are only victors — both black and white — because all are free when none are enslaved.

Anyone who believes that blacks will be disenfranchised in Mississippi or the Deep South without extension of the Voting Rights Act is, again, to put it kindly, unrealistic.

Extension of the act is being debated in Congress. Those who want it extended have testified that without the act there will be a return to the "hostile, difficult conditions" of the past.

We don't buy that reasoning, and we resent its implications.

As to the reasoning, it is unthinkable that we would even want to return to those conditions. White politicians, as well as black ones, are now geared to representing black constituencies and many would not enjoy their present offices without them. And the bottom line is that blacks wouldn't stand for a return, with or without the Voting Rights Act.

There's another aspect of the act that is more vague, and that vagueness allows for bureaucratic interpretation based on a rationale that we can't fathom. That aspect deals with the requirement that the Justice Department approve any changes in voting laws in the six states. We won't elaborate, except to question why Louisiana can have open primaries and Mississippi can't and then wonder what this has to do with voting rights.

As to the implication that we can't be trusted, we can only reply that trust begets trust, that there is as much trust between blacks and whites in Mississippi today as there is anywhere in the United States.

We resent the implication that Mississippi is something less than a full citizen of these United States today, that we haven't joined the rest of the country, that we're still discriminating.

We have joined the rest of the country, now it's time the rest of the country joined us and stop discriminating against us.

CITY OF SAN ANTONIO
P O BOX 9066
SAN ANTONIO TEXAS 78285

Helen

Sub

June 18, 1981

JUN 22 1981

The Honorable Don Edwards
U. S. House of Representatives
2307 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Edwards:

The City Council at its meeting on June 18, 1981, passed Resolution #81-32-60, urging President Reagan and members of Congress to reauthorize the Voting Rights Act.

The City Council asked that a copy of the Resolution be sent to you for your consideration.

Sincerely,

Norma S. Rodriguez

NORMA S. RODRIGUEZ
City Clerk

NSR:yl

Enclosure

A RESOLUTION

81-32-60

URGING PRESIDENT REAGAN AND MEMBERS OF CONGRESS TO REAUTHORIZE THE VOTING RIGHTS ACT.

* * * * * * *

WHEREAS, the Voting Rights Act of 1975 as amended is presently before Congress for reauthorization, and

WHEREAS, the Voting Rights Act has had a major impact on the Black and Hispanic community by increasing its political participation, and

WHEREAS, the Voting Rights Act has afforded minorities at the local level protection from manipulation of local voting laws that dilute their voting strength, and

WHEREAS, the Voting Rights Act has afforded minorities an opportunity, for the first time ever, to be represented at local school boards, city council, county commissioners courts and state legislatures, and

WHEREAS, bilingual elections, including printed matter and oral assistance, have encouraged many non-English speaking U. S. citizens to vote and afforded them their constitutional guaranteed right to vote, and

WHEREAS, invalidation or dilution of the pre-clearance section of the Voting Rights Act would eliminate the limited progress that has been made by minorities and deter much needed future progress, and

WHEREAS, the Voting Rights Act would be ineffective if it were to apply nationwide, and

WHEREAS, our democracy must include all minorities at all levels of government in order to remain valid; NOW THEREFORE:

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

The City Council urges President Reagan and members of Congress to reauthorize the Voting Rights Act, including the language minority provisions adopted by Congress in 1975.

PASSED AND APPROVED this 18th day of June, 1981.

/Henry Cisneros

M A Y O R

ATTEST: Norma S. Rodriguez

CITY CLERK

APPROVED AS TO FORM: Jim Gentry

CITY ATTORNEY

EDWARD R. ROYBAL
30th District, California

2211 Rayburn Office Building
Washington, D.C. 20515

Los Angeles Office:
Room 7100, New Federal P.O. Bldg.
300 N. Los Angeles Street
Los Angeles, California 90012
Telephone: 688-5670

Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON APPROPRIATIONS
Subcommittees:
Labor-Health Education and Welfare
Treasury-Postal Service-General Government
SELECT COMMITTEE ON AGING
Chairman-Subcommittee on Housing and Consumer Interests

June 16, 1981

Hon. Don Edwards
Chairman
Judiciary Subcommittee on Civil
and Constitutional Rights
A407 House Annex 1
Washington, DC 20515

Dear Mr. Chairman:

I will appreciate your assistance in having the enclosed statement included in the record of hearings on reauthorization of the Voting Rights Act.

Thank you for your cooperation.

Sincerely yours,

EDWARD R. ROYBAL
Member of Congress

ERR:ems
Enclosure

June 16, 1981
STATEMENT OF EDWARD R. ROYBAL
FOR THE RECORD OF HEARINGS
BY THE JUDICIARY SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
ON VOTING RIGHTS ACT AMENDMENTS

Mr. Chairman, I am pleased to submit testimony to this Subcommittee as it considers what has been called the most effective civil rights legislation ever passed, the Voting Rights Act. In 1975, I was committed to extending the Voting Rights Act's protections to language minority citizens, the majority of whom are Hispanics. I worked vigorously to convince my colleagues that Hispanic Americans had indeed been victims of pervasive discrimination in voting and that a large part of our disenfranchisement was the direct result of the lack of election materials and voter assistance in Spanish.

I present this testimony to reaffirm to you my support for bilingual elections as proposed in H.R. 3112. I support the extension of the language minority provisions for seven years; the extension of the special provisions, including Section 5 pre-clearance, for 10 years; and the amendment to Section 2 which enables the victims of voting discrimination to challenge discriminatory practices without the need to demonstrate discriminatory purpose.

Mr. Chairman, 16 years ago, when this Act was originally passed, President Johnson stated that "unless the right to vote be secured and undenied, all other rights are insecure and subject to denial for all our citizens." The right to cast an informed, intelligent vote is the cornerstone of any democracy. Without it, democracy ceases to exist. History has proven that the Voting Rights Act, particularly the 1975 provision calling for bilingual elections, has secured this right for millions of Hispanics throughout the country. The figures, Mr. Chairman, speak for themselves: The number of Hispanic people who registered to vote in California increased by 38 percent from 1976 to 1980. In Colorado, the figure was 41 percent and in Texas, an astounding 64 percent. The increases in the number of Hispanics who actually voted is equally impressive. Overall, Hispanic turnout increased by 19 percent in the United States from 1976 to 1980. However, in the

five southwestern states containing the largest number of Hispanics, the increase in Hispanic voter turnout was 31 percent for the four-year period.

This Subcommittee has no doubt heard or will hear testimony challenging the cost, the usefulness and the wisdom of requiring bilingual elections. As a representative from Los Angeles, a county which contains one of the largest populations of Hispanic people in the world, I feel qualified to rebut these arguments. Arguments against the bilingual provision of the Voting Rights Act based on cost are not only misleading but also dangerous. Who can put a price tag on the right to vote?

All of use are devoted to providing public services in a cost-effective manner. But it would set a dangerous precedent for the protection of the fundamental right to vote to depend solely on dollars and cents. In California, we provide numerous voter services prior to election day, including extensive pamphlets filled with statements from the local candidates, names and addresses of their supporters and detailed arguments for and against each local and state proposition. Our election services therefore cost more than in other states. But would it not be unthinkable to each of us to cancel an election in order to save money? How then, can opponents of bilingual elections justify the disenfranchisement of Spanish-speaking U.S. citizens on the same basis?

In my home county of Los Angeles, costs of bilingual elections have dropped dramatically since the 1976 primary election when bilingual materials were sent to every registered voter and cost $854,000. In the November election of that year, we provided the same services at a 60-percent cost reduction. Costs have diminished to the point that in the 1980 general election, our county spent $135,000 on the bilingual provision out of a total election cost of $7 million. This figure represents less than one-sixth of the initial cost and only 1.9 percent of the total election costs for the county.

In San Francisco, bilingual costs were roughly $50,000 in 1980, just five

percent of the total spent on elections. San Diego County has a list of 75,000 voters who have requested bilingual materials and to whom bilingual materials are mailed. The cost of furnishing these materials has decreased by 50 percent in four years and was just $54,000 in the 1980 election.

Related to the cost argument is the argument that in some areas, bilingual materials are underutilized. In support of this argument, studies are often cited that show a low number of requests to the Secretary of State for bilingual elections material. These data are grossly misleading, March Fong Eu, Secretary of State for California, has stated.

> "The low rate of requests is not necessarily an indication of the actual need in the state or in these respective counties. There are several factors which may be operating to deter language minorities from choosing minority language materials over English ones. There is widespread hostility towards the Voting Rights Act. When given the choice of receiving election materials in a minority language, the individual may tend to choose the English version because he or she may not wish to be associated with the Voting Rights Act and its attendant hostility."

One survey by a California state legislator purported to examine the compliance costs of 35 counties in my state for the 1978 primary and general elections. In the chart he presented to the legislature, one column was to show total costs for bilingual compliance, one column for number of requests and one column called "costs per request." "Costs per request" was determined by dividing the number of requests into the total cost. In some counties, the cost per request was outrageously high. Part of the reason for that is because he mistakenly assumed that the number of requests referred to was for bilingual ballots. In fact, in some counties everyone receives a sample bilingual ballot. Therefore, there are no requests made. In still other counties, the number that the legislator cites in the "number of requests" column refers to the requests for state-produced pamphlets. The state pamphlets have nothing to do with local compliance costs. Hence, any attempt to measure local costs with requests for state materials is clearly erroneous. The legislator has confused two very separate and distinct voter services.

The State Voter Information Pamphlet analyzes every state ballot proposition and automatically is sent to every voter in English. For the non-English speaking voter to get a bilingual pamphlet, he must find a card in the English pamphlet and return it to the Secretary of State. Obviously, the number of requests will be smaller since this requirement places an additional burden on the voter. Equally true, more people use the local pamphlets than request the state pamphlet.

The figures such as those cited for San Bernardino County in this survey are clearly meaningless. There, we read that it costs $100,000 for only 113 ballot requests. This figure of "113" is actually the unreliable state pamphlet request figure. In fact, the County sends bilingual materials to all voters instead of targetting them as is done elsewhere. There can therefore be no individual request for bilingual materials, since everyone gets them automatically. The fact that 113 requests are made for state pamphlets is in no way relevant to local expenditures. What is significant is that the turnout in Spanish precincts was over 71,000 in San Bernardino in the 1980 general election.

Similarly, in Kern County, California, all county pamphlets are bilingual and all polling places use English official ballots and post Spanish facsimile ballots inside the voting booth. Opponents of bilingual elections are mistaken when they report that in one election, 174 ballots were used. The fact is that Spanish language ballots simply do not exist. All voters use the same ballots. The same is true in Fresno County.

Finally, it is instructive to turn to San Mateo and Santa Clara Counties. The cost of bilingual compliance in San Mateo fell from $24,137 in the June 1978 primary (the first election for which records were kept) to $17,295 in November of that year. In the last election, just $14,043 was spent, only seven percent of the half-million dollars spent there in the 1980 general election. Interestingly, the 18,145 Hispanics who voted represented seven percent of the vo ers in the county.

Santa Clara County's bilingual compliance costs in 1978 were even less, just 1.5 percent of the total spent on election. In November 1980, turnout in Spanish language

precincts was well over 10 percent of total voters.

The unreliable and at best shaky cost estimates provided by bilingual election opponents can in no way justify their calls for the repeal of the bilingual provisions of the Voting Rights Act. The alternative of returning to an English-only election system is on the other hand a guaranteed waste of public funds. Voting Rights Act opponents, instead of providing non-English speaking voters with bilingual pamphlets which are useful, would offer these voters English-only materials which clearly do not serve their language needs. By definition, English-only materials will go unused by non-English speaking voters.

If there do exist instances in which implementation has not been fully cost-effective, it is not because of anything inherently wrong with the concept of bilingual elections but because of vague and often ineffective implementation guidelines issued by the Department of Justice to local officials. Uncertain as to whether they would be in compliance with the then new Voting Rights Act requirements and anxious to avoid the penalties for possible non-compliance, some counties spent large sums of money sending bilingual materials to every household. Outreach and registration required by state and federal law have gone by the wayside in place of easy but expensive blanket compliance. By not targetting their resources, these counties have ignored the still unregistered language minority citizens--the intended beneficiaries of the bilingual provisions. Part of the blame must be placed on the Justice Department's early decision to provide only "limited technical assistance to jurisdictions" in order to prevent a possible conflict which might arise if DOJ were later to litigate to enforce compliance. (See GAO Report, "Voting Rights Act--Enforcement Needs Strengthening," February 1978)

The final argument often heard against the bilingual provision of the Voting Rights Act is the most irresponsible and illogical. This is the argument that by providing bilingual election materials, we somehow foster separatism and encourage an "American Quebec." The problems of the French people in Quebec are complex and it would be presumptuous of me to pretend to analyze them here and now. Suffice it

to say that bilingualism did not cause the problems in Quebec; official and social discrimination against the French language did.

Participation in the democratic process, no matter in what language, does not foster separatism. Exclusion from the voting process does. No less an authority than Professor Archibald Cox has been quoted as saying that "The best way to avoid a separatist movement in this country is to encourage participation in the exercise of the right to vote."

I have spoken in glowing terms of the accomplishments of the Voting Rights Act, particularly its bilingual provision. Great though the advances have been, much remains to be done.

A study conducted by the Federal Election Commission two years ago asserted that the nation had been "quite reluctant" as a whole to face up to the problems of non-English speaking voters. The Commission found minimal compliance with the bilingual provision of the Voting Rights Act. The number of elected Hispanic officials at any level of government is still dismal.

Let me conclude my remarks by quoting from an editorial in the April 13, 1981 edition of the Los Angeles Times: "In 1965, this nation sent a signal to minorities. It said simply that the right to vote was fundamental and would be protected. Any wholesale revamping of the Voting Rights Act would send the opposite signal--one that would be an intolerable affront to democracy."

The addition of the bilingual provision in 1975 was a similar signal. Its deletion at this time would be an equally intolerable affront. I urge you and the members of this Subcommittee to keep the bilingual provision in the Voting Rights Act.

The National
Coalition of Hispanic Mental
Health and Human Services
Organizations

COSSMHO

1015 - 15th Street, N.W., Suite 402
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(202) 638-0506

RODOLFO BALLI SANCHEZ
National Executive Director

July 8, 1981

The Honorable Don Edwards
Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Edwards:

On behalf of our nationwide network of member agencies and professionals serving Mexican American, Puerto Rican, Cuban and Latino communities, COSSMHO strongly urges your favorable consideration of legislation reauthorizing the Voting Rights Act, including provisions that would extend current preclearance requirements and maintain existing bilingual mandates to assure full access of language minorities to the electoral process.

As you are aware, this act, and in particular the preclearance and bilingual provisions, are of critical importance to Hispanic and other minority communities. They are not only clear symbols of our national commitment to each citizen's right to vote, but also practical tools to implement that commitment. Clearly, any alleged burdens they impose pale in comparison to the necessary protections they provide and the solid gains they have helped us achieve. For example, the Mexican American Legal Defense and Education Fund notes that since 1965 the Justice Department has blocked more than 800 election changes having discriminatory impact and, specifically, has prevented the implementation of over 130 election changes that would have diluted Hispanic voting strength in Texas alone.

The legislation you will be considering touches a fundamental right held inviolate by all Americans; accordingly, we urge you to ensure that the opportunity to exercise this right is truly open to all and that adequate protections are mandated to achieve this vital objective.

Sincerely,

Rodolfo Balli Sanchez

APPENDIX 5—STATEMENTS FOR THE RECORD

83-679 O - 82 - pt.3 - 58

J. PHILIP ANDEREGG
50 EXETER STREET
FOREST HILLS, N. Y. 11375

212-268-0206

July 3, 1981

Congressman Don Edwards, Chairman
Subcommittee on Constitutional
and Civil Rights
Committee on the Judiciary
House of Representatives
407 Annex 1
Washington, DC 20515

Attention: Ms. Ivy Davis

Re: H.R. 3112, 97th Congress, 1st Session

Dear Congressman:

I herewith submit a written statement on H.R. 3112, and request that it be included in the record of the current hearings on the bill.

I am an attorney-at-law, a member of the New York and D.C. bars, and a former lecturer and adjunct professor of law in Columbia University.

Early in June I spoke with Ms. Ivy Davis of the subcommittee staff on the subject. She indicated that a statement from me on the bill might be included in the record, and I hope that that still may be possible in spite of the time that has elapsed since.

Sincerely yours,

J. Philip Anderegg

Enclosure

Copy, with enclosure: Congressman Henry J. Hyde

July 3, 1981

PREPARED STATEMENT OF

J. PHILIP ANDEREGG
50 EXETER STREET
FOREST HILLS, NY 11375
212-268-0206

ON H.R. 3112, 97TH CONGRESS, 1ST SESSION, BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE HOUSE COMMITTEE ON THE JUDICIARY

I am J. Philip Anderegg, an attorney-at-law and former lecturer and adjunct professor of law in Columbia University.

SUMMARY OF STATEMENT

Although I do not endorse it, I do not dispute the contention of supporters of the Bill that the temporary ban on tests and devices of Section 4(a) of the Voting Rights Act of 1965 as amended, hereinafter "the Act" (but only on tests and devices as defined in Section 4(c) of the Act!), and the similar temporary requirement of preclearance of voting rule changes of Section 5, and the temporary provisions for Federal voting examiners and observers of Sections 6 and 8 (all of the foregoing being subject to discontinuance by bailout!), as called into being in particular jurisdictions by the 1965, 1970 and 1975 triggers of Section 4(b), should be extended in time as proposed by Title I, Section 101 of the Bill.

On the other hand however, I earnestly urge that the provisions of Sections 4(f) and 203 of the Act, prohibiting English-only elections and mandating bilingual elections, ought not to be extended, as Title I, Section 101 and Title III, Section 301 of the Bill would do, but ought on the contrary to be repealed. I also earnestly urge that the general, permanent nation-wide ban on literacy tests of Section 201 of the Act ought to be repealed, at least to the extent that the term "test or device" of that section is defined therein to mean any requirement that a person as a prerequisite for voting or registration for voting:

"(1) demonstrate the ability to read, write, understand, or interpret any matter," or "(2) demonstrate any educational achievement or his knowledge of any particular subject".

SPECIFIC RECOMMENDATIONS

I urge changes in the Bill as follows:

1. I urge that Title III be deleted from the Bill, because I oppose extension until 1992 of the bilingual election provisions of Section 203 of the Act.

2. I urge addition to the Bill of a provision effecting outright repeal of Section 203 of the Act, and of all references thereto elsewhere in the Act, e.g. in Section 204 and 205.

3. I urge addition to the Bill of a provision effecting outright repeal of Section 4(f) of the Act ("English-only elections"), and of all references thereto elsewhere in the Act, e.g. in Sections/3(a), 3(b), 3(c), 4(a), 4(d), 5, 6, and 13. 2,

4. I urge addition to the Bill of a provision repealing Section 14(c)(3) of the Act (definition of "language minorities" and of "language minority groups").

5. I urge addition to the Bill of a provision amending Section 4(e) of the Act to declare that the conduct of English-only elections does not constitute the imposition of a test or device within the meaning of Section 4(c) of the Act, and that Section 4(e) does not require any jurisdiction to supply ballots or other election materials in, or election officials capable of speaking, or interpreters at elections to or from, any language other than English.

6. I urge addition to the Bill of a provision effecting outright repeal of the permanent, nationwide ban on tests and devices of Section 201(a) of the Act, as and to the extent that "tests and devices" are defined in Section 201(b) to mean and include any requirement that a person as a prerequisite to voting:

> "(1) demonstrate the ability to read, write, understand or interpret any matter" or
>
> "(2) demonstrate any educational achievement or his knowledge of any particular subject".

7. I urge that consideration be given to a revision of Section 101 of the Bill so that extension of the life of the temporary provisions of the Act might be effected without extension of the time period over which a plaintiff jurisdiction in a bailout action will be obliged to prove that no test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account or race or color, etc. It seems to me that the Bill, as introduced, has the effect of wrongly lengthening this time period, perhaps especially in the provisos of Section 4(a) of the act which limit bailouts in favor of jurisdictions which have at some time been held to have used tests or devices to deny or abridge the right to vote. Equity does not demand that her suitors shall have led blameless lives, and she permits moreover her suitors to purge themselves of their past sins. I think it is wrong to legislate, as the Bill presently proposes to do, that a jurisdiction on the point of being able to bail out seventeen or ten years after suffering a decree is to have the date when it can sue for a declaratory judgment of bailout pushed another ten years out into the future.

ARGUMENT

I. English-only and Bilingual Elections, the Law as it Stands and as the Bill Would Change It: Section 101 of the Bill and Extension of Section 4(f) of the Act, and Section 301 of the Bill and Extension of Section 203 of the Act.

Section 4(f) of the Act was added by the 1975 amendment, P.L. 94-73. It subjects to "special coverage" pursuant to Sections 4(a), 5, 6 and 8, and it forbids English-only and mandates bilingual elections in, jurisdictions "covered" by the 1975 trigger of Section 4(b), that trigger being expanded by that Section 4(f) as to the meaning of "tests and devices" to include the conduct of English-only elections by jurisdictions in which over five per cent of the voting-age population are members of a single language minority. (It should be observed, by the way, that to be a member of a language minority group does not mean to be incapable of reading, writing or understanding English. It only means that the language spoken at home in childhood was one of the four languages, or language groups, listed in Section 14(c)(3) of the Act. See Bureau of the Census, 1970 Census of t . Population, Characteristics of the Population, United States Summary, pt. 1, section 2, at app. 17, and David H. Hunter, "The 1975 Voting Rights Act and Language Minorities", Catholic U. Law. Rev., vol 25, p. 250, fn. 83 (1976). "Bilingual elections" mean in substance that ballots and other written election materials supplied in English must also be supplied in the applicable minority language or languages, and that assistance at elections orally supplied in English must likewise be supplied in the minority language or languages.

Section 4(f) is tied to the 1975 trigger of Section 4(b) and hence to the ten year bailout criterion of the second sentence of the first paragraph of Section 4(a). Hence it appears that in 1985, jurisdictions covered by the Act under Section 4(f) will be in a position to obtain "automatic exemption", as that phrase is used at page 9 of Senate Report No. 94-295 on the bill which became P.L. 94-73.

Section 101 of the Bill, by substituting "seventeen" for "ten" in Section 4(a) of the Act, would postpone that 1985 date to 1992.

Section 203 of the Act was also added by the 1975 amendment. Without imposing "special coverage" thereon, it forbids until 1985 the conduct of English-only elections, and it mandates until the same date bilingual elections, in jurisdictions wherein at least five per cent of the voting age population belongs to a single one of the same four language minority groups and wherein the illiteracy rate among those five per cent or more is higher than the national illiteracy rate, illiteracy being defined as failure to complete the fifth primary school grade. Section 301 of the Bill would substitute August 6, 1992 for August 6, 1985 as the cutoff date for Section 203 of the Act.

II. The Present Permanent Nationwide Ban on Literacy Tests.

Section 201 of the Act, as added by the 1970 amendments (P.L. 91-285) and as amended in 1975 by P.L. 94-73, erects a permanent nationwide ban against literacy tests and tests of educational achievement as a condition on the right to vote in federal, state and local elections. As I shall presently set forth, I submit that this Section 201 was and is profoundly unwise, degrading to the processes of government in the United States and therefore degrading to the American people and to the United States. What folly, that in an age when we spend more and more of our national wealth and being on education, on instruction for all classes of our people, we demand of ourselves less and less, and now not even the ability to read and write as a condition of the right to take part in government by voting!

III. The Impropriety of Sections 4(f) and 203 of the Act, Prohibiting English-only elections and Mandating Bilingual Elections, and of Section 201 Imposing a Permanent, Nationwide Ban on Literacy and Educational Achievement Tests as a Condition of the Right to Vote.

With great respect, I dispute utterly both the need for and the rightness of:

a) the prohibitions on English-only elections and the requirements for bilingual elections in Sections 4(f) and 203 of the Act, and

b) the general, permanent, nationwide ban on literacy and educational achievement tests of Section 201 of the Act.

I submit that under the scheme of the Consitution established by Article I, Section 2(as to the election of Representatives), Article I, Section 3 and the 17th Amendment (as to the election of Senators), and Article II, Section 1 (as to the selection of Presidential Electors), the States of the Union should be left by Congress at liberty to impose the requirement of literacy in English as a condition on the right of their respective citizens to vote in federal, state and local elections. Their right to impose such a requirement was just sustained to them by the Supreme Court in Lassiter v. Northampton, 360 U.S. 45 (1969), a case which has never been overruled. To be sure, the temporary, five-year nationwide ban against literacy tests of Section 201 as originally enacted was sustained in Oregon v. Mitchell (or, more exactly, in the accompanying case of United States v. Arizona), 400 U.S. 112 (1970). The permanent ban of Section 201 as amended in 1975 may or may not be within Congress' power. But even if it is, that does not make it necessarily wise for Congress to exercise that power. I submit that it is profoundly unwise: that the ban on literacy tests cheapens and degrades the electoral process and indeed the entire level of public discourse in the United States, and that the mandated bilingual elections serve to preserve and to reinforce block voting by language minority groups and their tendency to isolation and disaffection from the remainder of the population and from the country in which they have chosen to live. As to the latter, I cite an article at page A15 of the New York Times for May 22, 1981 entitled "Hispanic Vote Gains as Debate on Rights Act Swirls." The article tells of Dominga Saucedo, a 48-year old Mexican-American woman

who speaks no English, and
born in Texas,/who recently voted for the first time. She was encouraged to register by the Voting Rights Act, and she was encouraged to vote by the presence of bilingual election officials and of voting machines with instructions in Spanish as well as in English at the polling place. In a mayoral election in McAllen, Texas where she lives, she voted for one Ramiro Casso, a physician challenging the incumbent mayor Othal Brand. When asked why she had voted for Dr. Casso, her only answer was that he was "Mexican."

Dominga Sausedo thus voted, we are told, for a candidate of Mexican origin over one of German origin on the basis of the former's national origin and without regard for the personal qualities or campaign platforms or promises of the two candidates. She may be a highly intelligent woman, although her action here does not in my opinion speak well for her sense of values in government. Since however she has not, in half a century, taken the trouble to learn English, she has not equipped herself to participate, even as a voter, in the government of the United States, or of the State of Texas, or of the city of McAllen, Texas, and the State of Texas should be permitted to require that she do so equip herself before allowing her to vote. If she does so it is possible that, next time, she will consider the issues and the positions of the candidates for office on those issues, as well as the national origins of those candidates, before making up her mind for which candidate to vote.

It is said by supporters of bilingual elections that the United States is not, or is no longer, a one-language society. I believe that this assertion is tendentiously untrue, and that we are injuring and damaging our country by ignoring and denigrating the principle that all those who seek to take part in government by voting must show themselves capable of receiving and imparting information from and to each other by communication in a common tongue.

The subcommittee ought to recognize that some of the spokesmen for minority language groups now openly repudiate the notion, heretofore generally accepted, that all citizens should learn English. For example, at pages 388-89 and 403-04 of the Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy of March 1, 1981, Commissioners Rose Matsui Ochi and Cruz Reynoso, dissenting from the conclusion of the Select Commission majority, have both expressed opposition to retention of the requirement of Section 312 of the Immigration and Nationality Act (8 U.S.C. Section 1423) that aliens entering the United States and seeking naturalization must demonstrate an understanding of the English language, including an ability to read, write and speak words in ordinary usage, and must also demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.

I consider these dissenting views to be profoundly wrong, divisive and injurious to the United States. Moreover the justification for these requirements of Section 312 should not be seen, as even the majority of the Commissioners do in part, in assistance to the immigrant to succeed materially, to "make money", but rather as a means of inciting and assisting him to become, in fact as well as in law, a member of American society.

through Section 201 of the Act
Why has Congress thus wanted/to degrade the electoral process? We have, and for many years have had, an immense school system, whose first purpose and obligation is to teach our people how to read and write. We have for our people at least an ostensible literacy rate of some 95% or 97%. See e.g. Franco Garcia, Jr., "Language Barriers to Voting: Literacy Tests and the Bilingual Ballot" at Columbia Human Rights Law Rev., vol. 6, pp. 83, 85 (1974). In light of this fact, why let the tail wag the dog? Why permit the level of the least competent, least educated, least aware and least ambitious fraction of our society set the standard for all the rest?

The United States Postal Service is selling a one cent stamp with the legend:

"The ability to write. A root of democracy."

And indeed it is -- a root of democracy and a shield against demagogy.

If we tell people that they do not need to make the effort to learn to read and write (which is what Congress has done in Section 201), some of them, those with the least ambition, drive and self-respect, will take the hint, and our level of literacy, certainly our level of functional literacy, which counts much more than the number of years one has sat in a classroom, will begin to slip and regress.

Of course, not all of the electorate ever has been or ever will be well informed, even if a requirement of English literacy as a condition of the right to vote becomes universal. But the abrogation of the States' right to impose such a requirement deprives them of the right to require that their voters possess the indispensable tool, with which to become well informed. I believe that enactment of Section 201 of the Act constitutes an act of despair, abdication and surrender by the Congress, which thereby as much as said:

> Yes, we have a titanic, cumbersome and expensive school system, but it is a failure. It does not even teach our people how to read and write. We cannot stick with the original plan of the Voting Rights Act --

imposing a
one of/temporary suspension of tests and devices when we have reason to believe, from the low registration or voter turnout figures, that tests and devices have been used in a willfully discriminatory manner. Instead we must recognize our national failure and incompetence. In a world undergoing an information explosion, wherein access to the written word becomes daily more essential, we cannot
they
ask of our people that / know how to read and write simple English words, or have any concept of the American system of government, as a condition of their right to attempt to decide the fate of that government by voting. We cannot trust any of the States to impose literacy tests fairly and impartially. It is better to accept an ignorant, unqualified electorate than to accept the risk, any risk, of unfair, unequal imposition of literacy tests, even though ample remedies to prevent and redress such unfair, unequal imposition are elsewhere provided, in Sections 4 and 5 of the Act and in other laws such as 42 U.S.C. Sections 1971 and 1983.

This, which I think to be a fair statement of the philosophy underlying Section 201 of the Act, is I submit an example of the unreal, never-never land into which Congress is drifting in the name of equality. Tenuous, marginal, worst-case hypotheses, such as that of blacks denied equal educational opportunities in one state moving to another state which has never had segregated schools and which has never applied literacy tests in a discriminatory manner (cf. Oregon v. Mitchell, 400 U.S. 112, 233-34 (1970)) are used to justify a direct assault by Congress on a fundamental premise as to the form of government in the United States, namely that the States determine the qualifications of their voters so long as they do not, respectively, deny to their citizens the equal protection of the laws (the Fourteenth Amendment), or deny or abridge the right to vote on account of race or color (the Fifteenth Amendment), or on account of sex (the Nineteenth Amendment), or, as to

citizens eighteen years of age or older, on account of age (the Twenty-sixth Amendment).

Literacy tests need not be and in general have not been demanding. Consider, I ask, the one formerly administered by the State of New York, and held in Katzenbach v. Morgan, 384 U.S. 641 (1966) to have been abrogated by Section 4(e) of the Act as to citizens from Puerto Rico having completed the sixth primary grade in the island's Spanish-speaking schools. The test is set out in a footnote at pages 663 and 664 of 384 U.S., and is of the simplest, fairest and most inoffensive nature imaginable. Consider also the simple, fair and reasonable tests for English literacy and for educational achievement (as to a most elementary knowledge of American history and the principles of American government!) administered by the Immigration and Naturalization Service pursuant to Section 312 of the Immigration and Nationality Act. These tests are described at pages 287-88 of the Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy, March 1, 1981.

Certainly the right to vote is precious. It ought not to be exercised lightly, unadvisedly, or in ignorance. Our people should be willing to prepare themselves to exercise it responsibly by learning the language of the country and by learning the essentials of the country's history and of its form of government.

As to any need for bilingual election obligations to be imposed by Congress on the States, I submit that no such need can possibly exist since, as I shall attempt to show in the next section of this argument, both the conduct of English-only elections and (even more fundamentally) the application of an English literacy requirement by the States serve and indeed are essential to the realization of compelling state interests. Apart that legal issue however, it seems to me too obvious for argument that any citizen resident in a county who does not take the trouble to learn the language of that country does not have enough interest in it to be entitled to take part in its government by voting.

IV. The Compelling State Interests Served by English-Language Literacy as a Condition of the Right to Vote.

I submit that the capital point on the question of continuing, extending or repealing Sections 4(f), 203 and 201 of the Act, a point seemingly ignored by the supporters of such continuation and extension, is the fact that English-language literacy serves and indeed is essential to the service of compelling state interests, namely:

a) the formation of an electorate having, through the shared bond of language, access to and thereby attachment to the laws, literature and history of the nation, and

b) the formation of an electorate instructed in current events by the country's English-language print media, inevitably far more complete and diverse than the minority language media, however good some of those minority language media may be.

Surely there can be no more compelling interest for the United States, and therefore for its fifty constituent States, than the informed love and loyalty of the citizens of the United States who reside in those constituent States and who thereby are, under the Fourteenth Amendment, citizens of those States as well as citizens of the United States.

We are fools, mistaking fatuous ignorance of life and of the world for sophistication if we think that the time for love of country is past. On the contrary, the United States has never needed it worse than now, when materialism, self-seeking, dishonesty, brutal crime, and a profoundly corrupt popular culture plague our national life and when nationalism and misguided envy and hatred for the United States are rampant in much of the world.

And how better to insure that love and loyalty than by requiring voter literacy in English, thereby assuring that the electorate will possess the indispensable tool for acquiring at least some familiarity with the country's past history, principles and ideals, on which those of the present (if we are to have any) must necessarily be built? Thus I submit that it is a compelling state interest, for the United States and for each of the fifty States of the Union, that each have an electorate capable of reading and understanding (without resort to translations into foreign tongues!) the documents which constitute the foundation stones of our national life such as the Declaration of Independence, the Constitution of the United States, and Lincoln's Second Inaugural Address, not to mention the constitutions and laws of the individual States.

As to the compelling state interest which resides in the formation of an electorate instructed in current events by the country's English-language

print media, I submit that the paucity in number and variety, and the poverty in coverage of national and world events, of the minority language press by comparison with the country's English language press is beyond argument. Some of those minority language newspapers are good, and some of them reflect European standards of intellectual journalism higher than that of some American newspapers. For the most part however the foreign language press in the United States focuses on particular ethnic fractions of the American population and on relations between those fractions and their foreign countries of origin to such an extent that the position of the United States in the world, and the broad range of domestic and foreign policy issues facing it, can only be learned from the country's English-language press.

V. The Importance of an English-language Literacy Requirement as a Means of Implementing Those Compelling State Interests.

Not only does a requirement of English-language literacy on the part of voters serve the compelling state interests just described; it is essential to the realization and fulfillment of those interests. Men do not learn the laws, literature and history of a country by reading those laws, that literature, or that history in translation. The very idea of their doing so is an absurdity. Especially is this true of men, of different mother tongue, who live in that country, which is the case of interest here. We are considering people who have a mother tongue other than English but who reside in the United States, and we are considering the question whether it is plausible to expect them to learn about the laws, political principles and ideals of the United States from the foreign language press. I submit that the answer to the question is obviously No.

If a man goes to live in China, or in Spain, to make his life there, and if he desires to adhere to that country and to become a citizen and to take part in the life and government of that country by voting, surely he will learn the language of that country, in order to read its documents and its newspapers,

in order to know what is going on! If he does not, I submit that he does not deserve to be allowed to vote.

Indeed I submit that upon a little reflection, the demand of minority language groups in the United States that they be supplied with election materials in languages other than English/will be seen to be an arrogant call for support in insularity and ignorance. To be sure, the American Indians, and some of the people of Spanish or Mexican descent in the Southwest, those whose ancestors have been on what is now American soil since prior to the Mexican war, are in a position different from those who have immigrated from Mexico since that war or even from Puerto Ricans who have left their Spanish-speaking island for the mainland United States. But the Mexican war, and the Indian wars, have been over for more than a century now, and a hurt to the members of one generation of an ethnic group does not give to their descendants in perpetuity a claim to be coseted as a seperate group, standing apart from the larger society into which, willy nilly, they have been taken.

literacy or even that, as in Section 4(e), they be excused from showing English lit-

Thus I submit that if, as I think it should, the country wants an electorate having access and attachment to its laws, literature and history, and if, as again I think it should, the country wants an electorate instructed in current events by the print media of the country's dominant language, which is English, then the country not only may but must impose a requirement that its citizens be literate in English as a condition of the right to vote. Under the Constitution, it is for the States to decide whether they will or will not impose such a condition. Certainly the Congress ought not to try to prevent them from doing so.

VI. The Inadequacy of Radio and Television as Substitutes for the Print Media in Fostering Intelligent Use of the Frenchise.

It has been asserted, e.g. at pages 23 and 24 of Senate Report No. 94-295 on the bill which was enacted as P.L. 94-73, that a requirement of voter literacy cannot be justified in an age when, it is asserted, "so much

information is communicated through the electronic media", and "radio and television are primary sources of information." How much information and of what kind? Precious little, I submit, and for the most part information of a very superficial kind. With rare exceptions, news programs on radio and television devote only a few seconds to any individual event. A column entitled "Press" at page 45 of Time Magazine for July 6, 1981 indicates that a typical complete television newscast lasts 47 seconds. As to content, an article in Newsweek for May 25, 1981 entitled "Washington Press Corps" says of TV journalism: "A clip of a convalescent Reagan waving from his window at some circus elephants is going to push an analytical piece about tax cuts off the air every time."

The simple and indisputable fact is that most radio and television news consists of brief, usually superficial, and, by the nature of the medium, fugitive accounts. These are immersed in an ocean of trivial, escapist entertainment. To the extent that Congress justifies a ban on literacy tests as a condition of the right to vote on the ground that one need not be able to read in the age of radio and television in order to vote intelligently, I charge that Congress is abetting a debasement of American government and of the American people.

VII. The Constitutionality of an English-language Literacy Requirement as a Condition of the Right to Vote.

Because a requirement of English-language literacy serves, and is an essential means of implementing, one or more compelling state interests, the "discrimination" or classification which it effects is not an invidious discrimination and is therefore not prohibited by the Equal Protection Clause of the Fourteenth Amendment. There is, in the application of such a requirement, no denial of anything to non-English speaking citizens precluded from voting by reason of the requirement, because the State has no duty to permit citizens to vote without satisfying it. A does not deny a benefit to B by failing to supply the benefit to B unless A is under a duty to supply him that benefit. There is, in English-language literacy tests and in the conduct of English-only elections, no denial of anything to non-English speaking citizens any more than, under Harris v. McRae, U.S. (1980) there is denial of Medicaid funds for medically necessary abortion services, alongside of the grant of Medicaid funds for medically necessary obstetrical services, in view of the legitimate state interest in fostering live births over abortions.

The bilingual election provisions of Sections 4(f) and 203 added to the Act by the 1975 amendments (P.L. 94-73) were inspired by cases such as Torres v. Sachs, 381 F.Supp. 309 (SDNY 1974), purporting to interpret and apply Section 4(e) of the Act and requiring bilingual elections to be provided. See Senate Report No. 94-295, pp. 30-33. These cases proceed on the theory that the right to vote includes more than the right to enter the voting booth unable, because of ignorance of English, to read the names of the candidates or their parties and therefore able only to pull the voting lever in ignorance of the electoral choice being thereby made.

I submit however that these cases ignore the question whether the State

or its political subdivision conducting the election can have any duty to provide election materials in the languages of minority language group voters if (as I contend to be true) the holding of elections in English only serves a legitimate and indeed a compelling state interest.

Specifically, the theory of Torres v. Sachs, adopted in Senate Report No. 94-295 at pp. 31 and 32 in support of the bilingual election mandates of Sections 4(f) and 203 of the Act, was that the conduct of English-only elections constituted the imposition of a condition on the right of citizens of Puerto Rican origin and education to vote, based on their ability to read, write, understand or interpret matter in the English language, in violation of Section 4(e) of the Act. The Department of Justice twisted this into a contention that English-only elections in New York City constituted a "test or device" vis-à-vis the city's Spanish-speaking voters for the purposes of the special coverage triggers of Section 4(b), and Congress then adopted this contention into the 1975 amendments effected by P.L. 94-73, although only for the 1975 trigger. In this connection however, Senate Report No. 94-295 ignores the question of a state interest in English-language literacy except to say, at page 34 of that report, that the bill there under consideration, the language of which became P.L. 94-73, "rejects the notion that the 'denial of a right deemed so precious and fundamental in our society [is] a necessary or appropriate means of encouraging persons to learn English.'" The words in single quotation marks represent a tendentious and incomplete quotation from page 654 of the opinion in Katzenbach v. Morgan, 384 U.S. 641 (1966). The balance of the sentence so incompletely quoted in the Senate report is:

> "or of furthering the goal of an intelligent exercise of the franchise".

Senate Report No. 94-295 thus sidesteps the question, recognized by the Supreme Court, whether English-only elections can serve the interest of an intelligent exercise of the franchise.

Section 4(f)(1) of the Act contains purported legislative findings that voting discrimination (whatever, exactly, that means) against citizens of language minorities is pervasive and national in scope, and that in addition such citizens have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. Essentially the same legislative findings appear in Section 203(e). I submit that these findings boil down essentially to the fact that public schools in the United States have been traditionally conducted in the English language, as I think they ought to be. See Senate Report No. 94-295 at pp. 28 to 30. But that does not constitute the denial of any constitutional right, because there is no constitutional duty on the States to offer instruction in the languages of language minority groups. In Lau v. Nichols, 414 U.S. 563 (1974), the Supreme Court expressly declined to find any such duty, resting its decision exclusively on the 1964 Civil Rights Act. The Court said, at 414 U.S. page 566:

> "We do not reach the Equal Protection Clause argument which has been advanced but rely solely on Section 601 of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, to reverse the Court of Appeals."

I believe moreover that these legislative findings overlook, or ignore, the simple fact that, whatever the language spoken by their parents or by them at home, children learn quickly and easily the language surrounding them in school, on the playground or in the streets. That certainly was my own personal experience as a child of American parents in Europe, and it is my invariable observation when I have occasion to speak to a child of Puerto Rican, Portuguese or other foreign-born parents in New York City. As to the adult members of foreign language minority groups, there is no constitutional or general statutory state obligation to give them instruction in any language. Hence there can be no question of a denial to them of the equal protection of the laws through failure to teach them English. The ambitious among them

will learn the language of their adopted country of their own intistive. Nor are they left to their own devices to do so. I quote the following from page 6 of the Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy of March 1, 1981:

> "New immigrants benefit the United States and reaffirm its deepest values. One can see them in New Orleans, where Indochinese refugees, hard at work during the day, crowd classrooms at night to learn English; ... in Chicago, where young Jewish immigrants from the Soviet Union work two jobs in addition to attending high school; in San Antonio, where new Mexican immigrants are taking advantage of English-literacy classes ..."

Certainly we want people to take part in government by voting, but we want them to do so knowingly, not ignorantly. We want them to vote intelligently, informedly, critically and skeptically, upon the basis of the facts as well as the promises of the candidates. This is what books and papers are for. Our entire civilization is based and is dependent on a written record. How can it be that at one and the same time we have the present explosion of information -- and of law and regulation -- and at the same time an abandonment, indeed a willful rejection by Congress, in Section 201 of the Act, of any requirement that the voters must possess the ability to read and write, the most elementary tool for responding and dealing responsibly with this growth in law and regulation?

CONCLUSION

English-language literacy tests as a condition of the right to vote, by their very nature inconsistent with any prohibition of English-only elections and with any mandate of bilingual elections, were upheld in Lassiter v. Northampton, 360 U.S. 45 (1959). It may be, as suggested in Hill v. Stone, 421 U.S. 289 (1975) at page 297, that a standard of judicial scrutiny stricter than that

of Lassiter would now be applied:

> The basic principle [of Kramer v. Union Free School Dist. No. 15, 395 U.S. 621 (1969), Cipriano v. City of Houma, 395 U.S. 701 (1969), and City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970)] is that as long as the election in question is not one of special interest, any classification restricting the franchise on grounds other than residence, age, and citizenship cannot stand unless the district or State can demonstrate that the classification serves a compelling state interest.

But as hereinabove set forth, the English-language literacy requirement sustained in Lassiter does serve a compelling state interest. Indeed it serves at least two such:

a) the formation of an electorate having, through the shared bond of language, access to and thereby attachment to the laws, literature and history of the nation, and

b) the formation of an electorate instructed in current events by the country's English-language print media, inevitably far more complete and diverse than the minority language media, however good some of those minority language media may be.

As to the second of these, I submit to be simply wrong the conclusion of the Supreme Court of California, in Castro v. State, 2 Cal. 3d 223 (1970) that the compelling interest of the State of California extends only to insuring "a minimal degree of competence and capacity to become informed (2 Cal. 3d at 240), and hence that the difference between the copious English-language press and the limited Spanish-language press was not sufficiently compelling to justify a requirement of literacy in English, as distinguished from a requirement of literacy in Spanish, for voters of Spanish extraction. With deference, I submit that the opinion in Castro is unrealistic in referring to the gracious culture of the early Spanish-language settlers, as if the Hispanic population of California today were made up exclusively or primarily of descendants of Spanish hidalgos, cultivated and widely read.

Oregon v. Mitchell, 400 U.S. 112 (1970) sustained the original temporary nationwide ban on literacy tests of Section 201 of the Act on the theory that Congress could conclude that even states which had never

operated officially segregated educational facilities might be impermissibly discriminating against local blacks through the use of literacy tests because those might have
blacks ^ been educated in other states which had operated segregated schools
and might ^ therefore have ^ received inferior schooling, making them incapable of passing literacy tests, even fairly administered, in their states of new residence. But Congress need not, and in my opinion should not, embrace this theory. Why presume the worst and outlaw literacy tests nationwide to meet situations which may not be met with nationwide? Why not leave it to the trigger tests of Section 4(b) of the Act to identify those jurisdictions where, to judge from low registration or voting figures, it appears plausible to suspect that minority groups have been excluded, in some improper fashion, by the operation of literacy tests? Such jurisdictions would then be able, on presenting proper proof, to bail out pursuant to Section 4(a).

As to what should constitute proper and sufficient proof in bailout actions, I question the wisdom of Title II, Section 201 of the Bill. The original basis of the Voting Rights Act was the belief that literacy tests had been used directly as discriminatory devices and that this discriminatory use of literacy tests indicated the existence of discrimination in voting generally.* I urge that Congress should adhere to this point of view and reject the extension thereof articulated in Oregon v. Mitchell, cited above, and in Gaston County v. United States, 395 U.S. 285 (1969). I think it absurd to make it the law that there shall be no limitation of the franchise to people who have at least learned to read and write until, in some dim and distant future day, it shall be clinically determined that there does not remain, in any of the fifty States of the Union, a single eighty-five or ninety-year old citizen whose capacity to take a literacy test was impaired sixty or seventy years earlier in some unequal and inferior school.

* See David H. Hunter, "The 1975 Voting Rights Act and Language Minorities", Cathold Ul. Law Rev., vol 25 (1976), fn. 47 at p. 260.

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STATEMENT FOR THE RECORD

ON

H. R. 3112 and S. 895

EXTENSION OF THE VOTING RIGHTS ACT OF 1965

Submitted to:

Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
United States House of Representatives
Washington, D. C.
July 31, 1981

Congress enacted the Voting Rights Act of 1965 (the Act)[1] to "erase the blight of discrimination"[2] in election procedures and provide effective remedies for those citizens illegally denied their constitutional right to vote." Section 4 of the Act prohibits the use of literacy tests and other devices used to prevent or dilute the minority vote. Section 5 of the Act requires certain jurisdictions with a history of voter discrimination to preclear any changes in election procedure with the Department of Justice (DOJ) or the U.S. District Court in Washington, D.C. (D.C. District Court). A 1975 amendment extends the Act's protection to language minorities.

Although the language minority provisions of the Act remain in effect until 1985, the remainder expires on August 6,1982. Two bills currently pending in Congress, H.R. 3112 (Rodino: D- N.J.) and S.895 (Mathias: R- MD), seek to extend the entire Act until 1992. The Equal Justice Foundation (EJF) strongly supports passage of these bills. EJF is a national organization of lawyers who tithe one percent of their employment incomes for one or more years in support of EJF's work for equal access to decision-making forums.

1. THE ACT IS STILL NEEDED

Prior to passage of the Act, minority persons denied the right to vote took their grievances to state courts and each case was tried individually. Discriminatory patterns emerged as cases were tried indicating widespread race discrimination in voter registration. Southern blacks, for example, were often disenfranchised by discriminatorily applied literacy tests, character requirements, and other devices. Because of the pervasiveness of voter discrimination, especially in the South, the case-by-case method of redressing voter grievances proved to be inadequate.[3]

In the summer of 1965, following racial violence directed at Martin Luther King Jr.s' voting rights campaign in Selma, Alabama, Congress passed the Voting Rights Act. The Acts' prohibition of literacy tests generated a large increase in voter registration among southern blacks.[4] Since 1965, 1.5 million southern blacks have registered to vote.[5] In Mississippi, black voter registration has climbed from 6.7 percent of those eligible in 1964 to nearly 70 percent in 1981.[6] The number of blacks holding elected office in covered jurisdictions has also increased. One estimate suggests that only 72 blacks served as elected officials in the 11 southern states in 1965.[7] By April, 1974, the total number of black elected officials in those states had grown to 963.[8] In 1981, Mississippi, alone, has 387 black elected officials, more than in any other state.[9]

Pointing to these statistics as evidence of great proress made by black voters, opponents of the Act assert that it is no longer necessary and should be allowed to expire. However, the number of blacks in elected office in states covered by the Act still falls far short of being representative of the number of blacks residing in those states. Today in Mississippi, blacks hold 10 percent of the seats in the state legislature although they comprise 37 percent of the population. Blacks still hold no positions elected statewide. Of the 25 counties which have a black majority, 12 still have no black representation on their county boards of supervisors. Of the approximately 1440 city council members, only 143 are black.[10]

Discriminatory practices have not abated in the jurisdictions covered by the Act. From 1965-1975, DOJ objected to 411 election law chages. Since 1975, DOJ has objected to 404 election law changes. Since 1975, DOJ has also ini-

tiated or intervened in 53 Voting Rights Act lawsuits and has been a defendant in another 39.[11] DOJ records reveal a shift from literacy tests and other similar devices to more sophisticated techniques to perpetuate white control at all levels of government.[12]

One of these techniques, redistricting or racial gerrymandering, may be accomplished in at least three ways:

1) "Cracking"- fragmenting an area of heavy minority concentration and dispersing it among several districts to minimize minority voting strength.[13]

2) "Stacking"- combining heavy concentrations of minority population with greater white population concentrations to create districtwide white majorities.[14]

3) "Packing"- concentrating minority voters into large districts controlled by minorities, thus minimizing the number of minority controlled districts.[15]

Since Congress passed the Act 1965, DOJ has objected to 103 redistricting proposals became of discriminatory purpose or effect, 48 of which have occurred since 1975. Of these 48 objections, 9 were filed in 1980 alone.[16]

Another technique used to dilute the black vote is annexation of predominantly white areas when it appears that the minority voters of a municipality are powerful enough to elect their own candidate. The increase in white voters assures continued white control at the polls. Since 1965, DOJ has filed objections to 244 annexations, 149 of which occured after 1975.[17] DOJ objected to one such proposal as recently as January 12,1981.[18]

Since 1975, DOJ has filed 15 objections to proposals which would re-locate polls to locations inconvenient for minorities,[19] and 157 objections to changes in the method of electing officials.[20] The latter changes

include switching to at-large elections when minorities gain control of a particular district and changing elected offices to appointed ones. DOJ has also blocked other proposals since 1975, including voter purges or re-registration requirements; attempts to change the local form of government; and changes in candidate qualifications, voter registration procedures, and voting methods.[21]

When DOJ files an objection to an election law change under Section 5, the jurisdiction proposing the change may not implement it. The jurisdiction may challenge a DOJ objection in the U.S. District Court for the District of Columbia but the vast majority of proposed changes are rewritten and resubmitted to DOJ for review.[22]

While the Voting Rights Act has resulted in significant progress, it has not yet accomplished the goal of equal access to the electoral system for minorities. The continued use of sophisticated discriminatory techniques demands the continuation of the Act.

II. THE ACT IS COST EFFECTIVE

Since Congress enacted the Act in 1965, DOJ has had cause to object to only about 2 percent(815) of the 35,000 election procedure changes submitted to it for review. Absent the pre-clearance requirement, DOJ or private plaintiffs would have had to file over 800 lawsuits against state and local governments seeking injunctive relief from discriminatory practices. Litigating such a case takes enormous resources. Often as many as 6,000 work hours are required to study voting records. Additional expenses include time spent on trial preparation and the almost inevitable appeal.[23] The high cost of litigation dwarfs the cost of Section 5 enforcement.

Congress designed the Act to supersede case-by-case lit-

igation because it found such litigation inadequate to combat widespread and persistant voter discrimination.[24] Section 5 of the Act shifts the burden of proof from the victims of the alleged discrimination to the perpetrators, by requiring a covered jurisdiction to pre-clear any proposed change in election procedure before implementing it. By renewing the Voting Rights Act, Congress will preserve the present cost-effective remedy to voter discrimination.

III. SECTION 5 DOES NOT DISCRIMINATE AGAINST CERTAIN GEOGRAPHIC AREAS

Section 5 of the Act is aimed at a specific type of problem, not at a region of the country. The Supreme Court has upheld confinement of Section 5 coverage to selected jurisdictions because "the coverage formula is rational in both practice and theory."[25] In 1980 the Supreme Court again sustained the constitutionality of Section 5 and determined that the pre-clearance requirement had not outlived its usefulness.[26]

Jurisdictions fall under the purview of the Act when the geographic area meets the conditions of any one of four "triggers" in Section 5 of the Act:

1. The jurisdiction maintained on November 1, 1964, a test or a device as a condition for registering or voting, and less than 50 percent of its total voting-age population voted in the 1964 presidential election.
2. The jurisdiction maintained on November 1, 1968, a test or a device as a condition for registering or voting, and less than 50 percent of the total voting-age population voted in the 1968 presidential election.
3. The jurisdiction maintained on November 1, 1972, a test or a device as a condition for registering or voting, and less than 50 percent of the total voting-age population voted in the 1972 presidential election.
4. More than 5 percent of the citizens of voting age in the jurisdiction were members of a single language minority group on November 1, 1972, and the jurisdiction provided registration and election materials only

> in English on November 1, 1972, and less than 50 percent of the citizens of voting age voted in the 1972 presidential election.[28]

The expiration date for triggers (1), (2), and (3) is August 6, 1982. The expiration date for trigger (4) is August 6, 1985.[29] Large areas of the South, including all of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia, have triggered the Act and remain subject to it. These jurisdictions must submit any proposed changes in election procedure to DOJ or the D.C. District Court for pre-clearance before the changes can be implemented.

Because they view current coverage as regional discrimination, oppenents of the Act advocate expanding its coverage to all parts of the country. The Act currently has nationwide coverage, but some wish to dispense with the "triggers." Dropping the "triggers" could create serious enforcement problems. First, national coverage would require the expansion of the current Section 5 reviewing staff at DOJ by a factor of at least five to handle the tremendous increase in voting change submi-sions. Such a deluge of new submissions would divert resources and attention away from the areas where problems have traditionally been most severe, thus reducing the cost-effectiveness of the Act. In the absence of sufficient funding to effectively enforce the Act in every state, the present form of Section 5 represents the most cost-effective method of dealing with persistant voter discrimination.

IV. SECTION 2 OF THE ACT REQUIRES AMENDING

Section 2 of the Act paraphrases the Fifteenth Amendment which prohibits abridgement of the right to vote because of race or color and gives voters the right to sue in federal court when alleging such an abridgement or denial. Voters discriminated against before and after 1965 are covered by Section 2.

Under Section 2, a voter-plaintiff could prevail in court

by using direct and indirect evidence, including the discriminatory effect of an election procedure. A showing of specific intent was not required. A unanimous Supreme Court upheld this rule in White v. Regester, 412 U.S. 755 (1973). In 1980, however, a plurality of the Court required direct evidence of specific intent to discriminate, a much more difficult standard of proof since few election officials admit to discriminatory intent in written or oral statements. City of Mobile v. Bolden, 446 U.S. 55(1980).

H.R. 3112 and S. 895 both return Section 2 to its pre-Mobile standard thereby bringing the Section back into conformity with other sections of the Act which prohibit any voting law or practice which is racially discriminatory in purpose or effect.[30] This less stringent standard has been applied in other voting rights cases also. The Supreme Court has held that because the right to vote is so fundamental to the democratic process, any statute infringing that right is unconstitutional, regardless of intent, unless necessary to effect a compelling governmental interest.[31]

V. CONGRESS SHOULD EXTEND THE LANGUAGE MINORITY PROVISIONS OF THE ACT.

Since 1975 the Voting Rights Act has required bilingual elections in approximately 200 counties with significant language minority populations as well as in the entire states of Texas, Arizona, and Alaska.[32] The Act defines language minorities as persons "who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage."[33] Covered jurisdictions must supply language minorities with bilingual voting and registration materials as well as oral assistance in registration and voting. The bilingual provisions of the Act are founded on the premise that non-English speaking citizens are entitled to assistance in the language they can best read or understand.[34]

Critics of the bilingual provisions of the Act argue that since all U.S. citizens must know English, either because

they are natural born or because as part of their naturalization they had to pass an English proficiency test, the provisions merely allow illegal aliens to vote. However, the failure of American schools, particularly in the Southwest, to educate non-English speaking students is well documented in legal decision[35] and government reports.[36] Consequently, many U.S. citizens, most of whom are Hispanics and American Indians, have had little or no formal education and, therefore, insufficient comprehension of the English language. Moreover, a registrant must prove his citizenship by birth documents or naturalization papers, an impossible task for illegal aliens.

Those who oppose bilingual elections also assert that the provisions encourage separatism and discourage citizens from learning English. Congress passed the bilingual provisions of the Act because it found that pervasive discrimination against language minorities had already excluded them from participation in mainstream American society and politics.[37] Rather than promoting separatism, bilingual elections integrate language minorities into a political system from shich they had previously been excluded. Bilingual eelctions foster involvement in the political process which is the key to an effective democracy.

The Voting Rights Act, widely hailed as the most effective civil rights legislation of the century, has helped increase access to the electoral system for those previously excluded. The Equal Justice Foundation supports the extension of the Act and the passage of H.R. 3112 and S. 895. A vote against either of these bills will deprive American citizens of effective remedies when their right to vote is violated, and thereby, effectively deny them that most fundamental of all rights; the right to vote.

Written Testimony of Dr. Peyton McCrary, Prepared for the Hearing on Renewal of the Voting Rights Act Before the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, June 24, 1981

Mr. Chairman, members of the Subcommittee, I am Peyton McCrary, an Associate Professor of History at the University of South Alabama in Mobile. My testimony focuses on my experience as an expert witness for the plaintiffs in two landmark voting rights cases, Wiley L. Bolden, et. al., v. City of Mobile, and its companion suit Leila G. Brown, et. al., v. Board of School Commissioners of Mobile County. The two cases were retried this spring before U. S. District Judge Virgil Pittman, on remand from the U. S. Supreme Court. The principal issue to be resolved in these new trials is whether Mobile's at-large election systems -- which the Supreme Court agreed had the effect of minimizing the possibility of black representation in public office -- were created or maintained for this specific purpose.

In enforcing the provisions of the 1965 Voting Rights Act, the Department of Justice has long been concerned about Southern use of at-large procedures to lessen the impact of black enfranchisement. For this reason the U. S. Government joined the plaintiffs in challenging the at-large election of city commissioners and school board members in Mobile. As this Subcommittee considers the renewal and strengthening of the Voting Rights Act, a brief summary of my research in these cases may prove informative, for the complex patterns of electoral manipulation in Mobile illustrate in microcosm the life history of at-large elections as a bulwark for white supremacy in the South.

In the first trial of the Bolden case the court believed that at-large elections for municipal government were initiated in Mobile with the creation of the city commission system in 1911 -- as part of the Progressive "reform" movement. My research for the second trial revealed a quite different origin. At-large election of all municipal officeholders actually replaced the traditional ward system during the reconstruction period, when racial polarization dominated politics to an overwhelming degree. I learned, moreover, that Democratic party primaries played a critical, and previously unsuspected, role in white domination of municipal elections in the decades preceding 1911. The concept of "reform" in the early 20th century included approval of black disfranchisement and segregation, in contrast to the meaning of reform today, and I discovered that the shift to at-large commission elections was perceived by white Mobile political leaders as a means of eliminating the threat of black political influence. When Mobile's blacks were re-enfranchised on a large scale by the 1965 Voting Rights Act, the existence of this governmental system provided an ideal barrier to black officeholding.[1]

In order to explore fully the purposes behind Mobile's at-large election procedures, I had to examine the entire electoral history of municipal government from the time the city became part of the United States in 1819. Before the Civil War no blacks could vote in Mobile and it was safe for whites to employ ward elections. In a referendum held in 1826 the city's white voters indicated a preference for a ward system; as a result the mayor and aldermen divided Mobile into three wards, each of which was to elect two aldermen.[2] This system of district voting, first put

into effect in 1828, continued with various modifications for 40 years.[3] The most important change was the creation of a bicameral municipal government in 1840; a new board of common councilmen was to be elected on an at-large basis, but each ward was still to elect its own aldermen. This pattern prevailed even under the Confederacy.[4]

At the end of the Civil War the Union occupation authorized the Confederate city government to continue in office until new elections could be held. President Andrew Johnson appointed Lewis Parsons, a native white Unionist, as provisional governor of Alabama. In accordance with Johnson's conservative reconstruction policy, Governor Parsons held elections for delegates to a state constitutional convention in the summer of 1865. Only white males were allowed to vote, as before the war. The conservative whites elected to this convention had supported the Confederacy in varying degree. The 1865 constitution retained the traditional prohibition of black voting. Thus when new elections took place that fall for governor, state officers, a legislature, and the congressional delegation, conservative whites -- who were shortly to form the Alabama Democratic Party on a white supremacy platform -- won most of the offices. The first post-war legislature enacted a series of proscriptive "black codes," such as the vagrancy statute that authorized the sheriff to arrest anyone who could not prove he was employed; in order to defray the expense of incarceration, the sheriff could then hire out the person's services to local employers. Whites perceived this law as a useful weapon to compel blacks to sign sharecrop contracts with local landowners.[5] The same legislature continued in effect, with slight modification, the antebellum system of electing municipal

officeholders in Mobile under which a new city government was chosen in December, 1865.[6]

In March, 1867, the Congress passed the first of several reconstruction acts which brought an end to the conservative policies of President Johnson. The Congress required each former Confederate state to hold new elections for constitutional conventions; Southern blacks were to cast ballots for the first time. The constitutions drafted by these conventions were to be ratified by a majority of the registered voters. Alabama whites hoped to sabotage the congressional program by registering and then refusing to go to the polls, but the boycott strategy failed when the Congress altered its requirement to a majority of the votes cast. By refusing to participate, the conservatives allowed Republicans to win most of the convention seats; in Mobile all of the delegates were Republicans, several of them black. The 1867 constitution provided for universal suffrage, civil equality for blacks, and free public education for both races. Under its authority, a new legislature was elected in 1868.[7]

The new legislature was the only one in the reconstruction period in which the Mobile delegation included black representatives; three of the four House members were black Republicans during the first session.[8] That legislature immediately passed a Mobile municipal government act, providing gubernatorial appointment of city councilmen, aldermen, and mayor. A subsequent statute, designed to alter the personnel of city government, required the Governor to make new appointments. The only blacks ever to serve as aldermen or councilmen in the history of Mobile were those chosen under the authority of these two acts.[9]

The Republicans thought that an appointive system was necessary in Mobile because Democrats -- who had switched from the hapless boycott strategy to the use of violence and intimidation -- could win control of a majority of seats if elections were held. The first local election took place on August 3, 1869, to replace a black House member who resigned his seat. The white Democratic candidate, a former Confederate major named Adolph Proskauer, defeated the black Republican candidate, Allen Alexander, by a margin of 5,167 to 3,721, but Alexander contested the results on the grounds that Democratic intimidation and fraud had turned the tide in the balloting. The most sensational example occurred when the Democrats wheeled a piece of field artillery from a firehouse and trained it on a crowd of perhaps 1,000 blacks waiting to cast their votes. "As may be expected, especially from the timid," observed a conservative Republican newspaper, "hundreds left the place as fast as possible."[10] Alabama's Republican Party was more conservative on the race question than any other in the South, according to most historians. Thus it should be no surprise to learn that the House accepted the validity of Alexander's charges but seated the white Democrat anyway. The mayor, a conservative white Republican named Caleb Price, responded to the violence by appointing a "Committee of Public Safety" made up of white Democrats to assist in maintaining order.[11]

Understandably, blacks in Mobile were upset at the course of events in the fall of 1869. At their request a senator from Dallas County, a white Iowan named Datus Coon, introduced a new Mobile municipal government bill calling for a third slate of appointments (removing the Price regime).

The senator from Mobile, Frederick Bromberg, was a conservative Republican ally of Mayor Price and refused to introduce the bill.[12] Like the Democrats, Bromberg favored the immediate election of city officeholders (as a concession to "public opinion"), and he fought the "Coon bill" at virtually every step. The legislature amended the bill to provide an election for city government, as Bromberg demanded, but the date was set for December, 1870 -- a year away, after the gubernatorial and legislative elections to be held in the fall.[13] The Democrats charged, apparently with some accuracy, that the Republicans planned to repeal this election provision if their party retained control of both houses for another two years.[14] When the votes were counted in November, 1870, however, the Democrats won the governorship and control of the House; the elections provided by the statute were held on schedule.

The election of mayor, councilmen, and aldermen in December, 1870 -- the first occasion on which the city's voters were able to cast their ballots for municipal officeholders since the enfranchisement of blacks -- was held on an at-large basis. Unfortunately, the surviving historical evidence is quite vague about the reasons why this Republican legislature eliminated the ward system by which aldermen had been elected for decades. Despite extensive debate over the bill, legislative journals and newspaper accounts record absolutely no mention of this particular feature of the statute. Indeed, it is not clear that the wording of the election provision required the change. The law merely stated that "the qualified electors of said city" should cast their ballots for all city officeholders. Legislators may have assumed that the electoral procedures set down in the 1866 act would be in effect.[15]

Before the election could be held, of course, someone had to decide how the wording of the statute should be interpreted. Under the law the decision was in the hands of Sheriff Almon Granger, a conservative Republican ally of Price and Bromberg.[16] His reasons for interpreting the law as requiring at-large election of aldermen as well as councilmen have not come to light, but may be inferred from the context of events. We know that lawyers for the Democratic Party studied the election laws shortly before the December balloting and concluded that the statute established at-large voting for all offices.[17] Based on the trends in recent elections, the Democrats had every right to expect an across-the-board victory for their white supremacy ticket in at-large elections. Sheriff Granger may have followed the reasoning of the Democratic lawyers as part of an "understanding" that conceded local control in Mobile to Democrats in exchange for Democratic support of conservative Republicans like Bromberg for higher office. Bromberg did not have Democratic opposition when he ran for Congress as an independent in 1872 and 1874, and as a result he won two terms in the U. S. House of Representatives by beating black Republicans.

Another possible explanation is that Mobile's Republican leadership gambled on the possibility of winning at-large elections. The existence of a gerrymandered ward system which concentrated the overwhelming majority of Republican voters in the seventh ward (almost 80% black) could not have escaped their attention. Ward elections would undeniably have guaranteed black representation in public office, but it probably would have given the Democrats a majority of the seats, and thus partisan control of municipal government. Mobile's population was approximately 40% black; solid black

support coupled with a significant white vote might conceivably have given the Republicans a city-wide majority in an at-large system.[18]

Either of these two explanations indicates that conservative white Republicans in Mobile sacrificed the principle of black representation in office in order to advance their own political self-interest. No other hypothesis fits the surviving evidence concerning the decision to eliminate ward elections for aldermen in Mobile in 1870. A continuation of the traditional system that had prevailed for forty years before the enfranchisement of blacks would have meant the election of at least some black aldermen as long as blacks exercised the right to vote. Under the all at-large system no blacks were ever elected to municipal office in Mobile.[19]

In November, 1874, the Democrats won complete control of Alabama state government as a result of a white supremacy campaign in which violence played a key role. In the streets of Mobile white horsemen shot down black voters on their way to the polls, killing one, wounding four, and frightening countless others from the polls. "White supremacy sustained," declared the Mobile Register jubilantly: "the white men as a unit."[20] Immediately after this "redemption" of the state from Republican rule, the Democratic legislature convened and before the month was out passed a new Mobile city government act. The effectiveness of at-large elections in assuring complete victory for Democrats was so evident that they retained the system, adding a new procedure for re-registering voters. Election officials used the new law to purge approximately 40% of the previous voters in the three weeks before municipal officeholders were chosen.[21] Clearly the 1874 statute was motivated by invidious racial discrimination.

Although a number of laws were passed during the ensuing decades that modified Mobile's form of government in one way or another, this at-large mode of elections was not altered -- at least not for the general election -- until 1907.[22] The city's whites were able to vote for municipal candidates by wards, however, because the Democratic Party conducted primary elections in that fashion.

Mobile Democrats held what was apparently the state's first primary election on November 25, 1872. The purpose of this "municipal reform," as the Register characterized the new procedure, was white supremacy: "the election of Mayor and city officers will be virtually decided, so far as the white people are considered, at the primary polls." Not only aldermen but council members were chosen by ward in the primary. Only whites who had voted against the regular Republican ticket -- a test explicitly allowing Bromberg's conservative Republican supporters to qualify -- were able to cast ballots in the primary.[23]

In subsequent years the Democrats alternated between primary elections and the traditional caucus or convention system, until the passage of a Mobile primary election statute in 1885. This was the first primary law passed in Alabama, and applied only to Mobile.[24] The need for a formal process of state supervision arose because of a split in the local Democratic organization in 1884. Dissenters angered by fraudulent activities in the party convention formed a separate "Citizen's Party" ticket and won the municipal elections with Republican support. A Republican described in the Register as a "carpetbagger" won a seat on the school board as a member of the citizen ticket. Subsequently the dissenting Democrats supported the

Republican presidential candidate James G. Blaine, who only lost Mobile County by a handful of votes, together with the Republican congressional nominee, a black man named Frank Threat who lost the county by less than 100 votes.[25] With the Democrats in such disarray, the primary law provided a useful means of re-creating party unity.

Thereafter Mobile elected approximately half its municipal officeholders by ward in the Democratic primaries, where only a few Negroes considered trustworthy by party officials were allowed to cast ballots. In the general election, where most blacks voted as Republicans, the at-large requirement for all offices prevented the victory of blacks or unsuitable whites. This pattern closely parallels the arrangement in 20th century Pensacola, Florida, which the Fifth Circuit Court of Appeals has recently viewed as clear evidence of discriminatory purpose.[26]

The 1901 Constitutional Convention disfranchised most blacks in Alabama through such devices as a cumulative poll tax and a literacy test administered by local registrars. Yet in Mobile close to 200 Negroes retained the right to vote.[27] Apparently many of this select group were persons called "Creoles," a term used in Mobile (unlike other areas of the Gulf coast) to designate light-skinned Negroes whose ancestors had been free at the time the city became part of the United States. Election returns suggest that most of the remaining voters were concentrated in the traditional black stronghold, the seventh ward, and that their ballots may have accounted for half the votes cast for alderman in the Democratic primaries.[28]

By 1907 the disfranchisement process in the state as a whole had been so effective, however, that the legislature felt confident in returning to a system of ward elections. Thus it adopted a comprehensive municipal reorganization act that applied to all larger cities, including Mobile. Under the act aldermen were to be chosen by single-member districts in the general election; each ward had one alderman, with additional aldermen elected at large, as was the mayor. The backers of the bill were mostly from Birmingham and Montgomery, and Mobile's political leadership merely acquiesced in its passage.[29]

The first elections under this statute were conducted in 1908, and in Mobile this unsolicited change in the electoral structure triggered a dramatic return to racial politics. The incumbent mayor was a businessman named Pat Lyons, whose start in politics had come ten years earlier with his election as alderman from a downtown ward with a large black minority. Lyons enjoyed Negro support as alderman and despite the general increase in racial antagonism in Alabama after 1900 he did not indulge in race-baiting campaign tactics. The opponents of his "machine" in 1908 accused the Mayor of trying to manipulate the black vote in order to determine the outcome of the Democratic primary, and demanded a ruling from the Democratic State Executive Committee outlawing all Negro participation.[30]

The state party instructed the Mobile County Executive Committee that under the 1903 primary law "only WHITE Democrats will be allowed to participate," explained the Mobile Daily Item, which supported Mayor Lyons. In an editorial it expressed regret that "this primary, contrary to a long established custom in the party, will only be participated in by white

Democrats," and complained that "this draving tightly of the color-line" would eliminate "a considerable vote of Creoles and negroes who have from days of long ago voted with the Democratic Party."[31]

At the next meeting of the county executive committee a prominent Lyons supporter moved that "Creoles" be alloved to vote in the primary despite the state party's ruling, because unlike some whites who voted for Republican presidential candidates these men of color were loyal to the Democrats. The motion was ruled out of order, but opponents continued to charge that "the Lyons campaign committee is making an effort to make a black and tan party out of the Democratic Party in this city." In the May primary the Lyons ticket won, as usual; interestingly, there was no significant decline in the number of votes cast in the predominantly black seventh ward.[32]

The racially charged municipal elections of 1908 were followed in the next legislative session by the first attempt to enact a city commission bill, to replace the existing system with non-partisan, at-large elections in which black political influence would be minimized. The 1909 bill was sponsored by political leaders in Mobile, Birmingham, and Montgomery; it would authorize all three cities to adopt commission government. The bill failed to win passage because of opposition from the lieutenant-governor, who was from Birmingham, but the Register declared that the adoption of the commission form was inevitable for Mobile.[33] In the next session, indeed, the legislature passed separate bills for each city, authorizing the shift to commission government. Under the authority of this 1911 act Mobile held a referendum in which supporters of a city commission won a

majority, and as a result single member districts were eliminated from municipal elections.[34] Not surprisingly, there was a strong correlation between opposition to the commission and the percentage of a ward's population that was black.[35]

Curiously there is little evidence concerning racial attitudes in the public debate concerning commission government in Mobile. As was true of cities throughout the country, the leaders of the chamber of commerce orchestrated a public relations campaign on behalf of the idea: the city commission would place municipal government in the hands of the right sort of men -- businessmen or lawyers who could operate the city on the same efficient, cost-conscious basis as they conducted their own firms. The new form of government would also eliminate the corruption and "ward-heeling" produced by partisan "machines," according to the rhetoric of its supporters. As in the rest of the nation, however, the result of placing government in the hands of a small elite of businessmen or lawyers was to eliminate the election of working class people, particularly in the case of ethnic or racial minorities. This aspect was clearly recognized at the time, and historians now emphasize that this was a central purpose behind the adoption of the commission form of government.[36]

The leaders of the business community do not always express their full intentions publicly, of course, but in Southern cities of this day racial concerns were as a rule discussed openly. The advocates of commission government in Mobile, however, had a specific reason for ignoring the race issue. The city had gained great notoriety in preceding years as a result of a double lynching in 1906, which the New York Times covered, another

lynching in 1907, and yet a third in 1909. The last episode, also reported in the New York Times, was particularly embarrassing because a mob took the prisoner from the county jail and lynched him two blocks away in the middle of the city. One advocate of the commission form observed in the Register that public identification of Mobile with racial hostilities was driving bright young men from the city.[37] Concern over Mobile's reputation, in short, lay behind the movement's reliance on the "good government" rationale to sell the city commission concept.

Black votes could under some circumstances still determine which whites in Mobile were elected to office, as the municipal elections of 1908 revealed. Obviously there was little immediate threat of blacks themselves being elected to office, but political leaders were aware that the disfranchising mechanisms of 1901 might be open to legal challenge in the federal courts at any time.

The most explicit expression of this concern among white Mobilians was an "open letter" to the Alabama legislature published by the Register and other newspapers in the state in 1909. The author was Frederick Bromberg, the same conservative Republican leader who represented Mobile in the state senate during the reconstruction period, and won two terms in the Congress through an "understanding" with white supremacy Democrats; most recently Bromberg had served as president of the state bar association. Bromberg urged the Mobile legislative delegation to support a proposed constitutional amendment banning Negroes from holding office. The disfranchising devices established in 1901 were not constitutionally sound, he warned, because they were dishonest. "We have always, as you know, falsely

pretended that our main purpose was to exclude the ignorant vote, when, in fact, we were trying to exclude, not the ignorant vote, but the negro vote." Bromberg predicted pessimistically that "sooner or later, probably sooner, a case will be made up having back of it competent counsel, which will go to the supreme court of the United States." Citing the precedent of Yick Wo v. Hopkins, he argued that in such a case the Supreme Court "will overturn the present methods of applying the registration laws."[38]

Why did Bromberg believe an amendment outlawing black officeholding would be constitutional if the existing barriers to Negro voting were not? The shrewd old lawyer anticipated judicial views in 1980 when he declared that the 15th Amendment to the U. S. Constitution merely protects the right to cast one's ballot without racial discrimination, but offers no constitutional security for the right to hold office. Thus the procedure he suggested would bear legal scrutiny, not just in the short run but permanently. Bromberg was also among the most ardent backers of the commission form of government with its at-large election feature.[39] This barrier to black officeholding was also designed to stand the test of time.

Indeed, the form of government established in Mobile in 1911 has enabled whites to control all elective municipal offices until the present, despite the enfranchisement of most blacks under the provisions of the Voting Rights Act. In 1964, it is true, Mayor Joseph Langan appointed a blue-ribbon committee of respected private citizens, including some older black leaders, to investigate the possibility of altering the existing commission system or changing to another form of government. This "charter

commission" reported in February, 1965, in favor of a modified mayor-council form with single-member districts for the election of most councilmen. This recommendation was ignored by the Mobile legislative delegation, which offered its own bill instead.[40]

The statute that passed the legislature in 1965 did allow voters to petition for a referendum on the change of government, but unlike the plan of the charter commission it included only two options. The citizens were to choose between the existing commission system and the mayor-council form with exclusive use of at-large elections. The single member district alternative was never given serious consideration, according to the testimony of the two legislators who drafted the final version of the bill. The reason was simple: any legislator who seemed to advocate single-member districts would have been labeled a friend of black political rights and that, in Mobile, Alabama, in 1965 -- in the midst of the Selma demonstrations and the passage of the Voting Rights Act -- would have been tantamount to political suicide.[41]

The men who made this decision to exclude any mode of elections that would make black officeholding probable understood clearly the consequences of their action, and they made their choice because of, not in spite of, its discriminatory effects on blacks. This was the last act regarding Mobile's form of government to pass the legislature before the Bolden trial began, and it preserved the system of at-large elections that had served the cause of white supremacy so well since 1870.

Compared with the complicated electoral history of municipal government in Mobile, my research for the case of Brown v. Mobile County Board of School Commissioners proved relatively straightforward, dealing almost entirely with the reconstruction period. Until the ratification of the 1868 Alabama Constitution, the school board members were elected at large in Mobile, under the terms of an 1852 statute.[42] The new Republican constitution established an elective state board of education and gave it full legislative authority over educational matters. The board was headed by an elected state superintendent of public instruction; the first person to fill this office was a native Alabamian named Noah B. Cloud. In August, 1868, Cloud appointed a member of the state board, George L. Putnam, to serve as county school superintendent for Mobile. Putnam was a Northern Republican who had come to the city after the war to administer the freedmen's schools set up by the American Missionary Association.[43]

At that point the existing school board initiated a two-year war against Putnam and the Republican state board of education, whose authority to end the "special status" of the Mobile school system they challenged. Probate Judge Gustavus Horton, a conservative Republican ally of Frederick Bromberg, was like Bromberg a member of the "old board" and he refused to accept Putnam's bond as county superintendent, thus preventing him from assuming control of the city's schools. The old board continued to run the schools, collecting tuition in violation of state law and refusing to incorporate the American Missionary Association schools into the public system.[44]

In an effort to work out a compromise with the old board, Cloud came to Mobile in January, 1869. His primary goal was to establish schools for both races on a sound footing, and he agreed to replace Putnam with conservative spokesman Allen H. Rylands, if the board members would agree to accept Putnam as superintendent of "colored schools" and to incorporate the AMA schools and teachers into the public school system. Despite apparent agreement, the old board refused to carry out its side of the bargain. In the summer of 1869 Cloud removed Rylands, re-appointed Putnam as county superintendent, and helped him post bond so that he could assume office. Putnam then appointed a new board of school commissioners, three of whom were black.[45]

Because the old board refused even now to give up its authority over the school funds, Putnam brought suit in state court and won. The recalcitrant commissioners refused to obey the court order, so the judge jailed them for contempt. The old board included several conservative Republicans, who had, said the Democratic Mobile Register, "been tried and found faithful," and after all "on the new board are to be found three Negroes. Tried white men are safer than untried Negroes." Following this reasoning, the public lionized the jailed board members, both Republican and Democratic, for their principled defense of white supremacy. They even held an official board meeting in the county jail, finally agreeing to stop the collection of tuition for attendance at public schools. Released after two days by order of a state supreme court justice, the old board continued to operate the Mobile school system for the remainder of the academic year. In the June term of 1870, however, the state supreme court upheld Putnam's authority and the old board finally relinquished its control.[46]

The fall elections of 1870 altered the political situation in Alabama, however, by giving the Democrats control of the governorship, the state superintendent of public instruction, and the lower house of the legislature. This increase in power gave the Democrats enough leverage to extract from the state board of education -- which still had a two-thirds Republican majority -- a compromise statute for the election of Mobile school commissioners. Board members were to be elected at large, which would give the Democrats the advantage, but voters could cast ballots for a maximum of nine out of twelve seats. The purpose of this limited-vote provision, said the Register, was "to secure to the minority a representation in affairs wherein they are interested." (The term "minority" clearly referred in this context to blacks, not merely to a political minority.) The elections in March, 1871, gave the Democrats the county superintendent and nine of twelve commissioners, as might be expected, but the limited-vote procedure also allowed three Republicans, one of whom may have been black, to win seats.[47]

The Democrats replaced this system at the first opportunity by a return to an all at-large mode of electing school commissioners. The crucial phase in this process was, of course, the total victory of white supremacy Democrats in the state elections of 1874. "Race was the issue of the 1874 campaign," according to a prominent Alabama historian.[48] Their triumph allowed the Democrats to call a new constitutional convention in 1875, and among their most important actions at the convention was the elimination of the state board of education. Educational matters were once again entirely in the hands of the legislature, which immediately eliminated without debate the limited-vote provisions of school board elections. As a direct

outgrowth of the "redeemer" campaign, the 1876 statute was indisputably a product of an invidious intent to eliminate black representation on the Mobile County Board of School Commissioners. Apart from a few insignificant modifications in 1919, this at-large system remained intact at the time plaintiffs brought suit in 1976.[49]

Throughout Mobile's history, in short, at-large elections have functioned as part of a conscious pattern of excluding blacks both from municipal office and from the school board. In the years since 1965 blacks have obtained the right to vote, due to the massive intervention of the federal government through the Voting Rights Act, but because of the at-large system the effects of enfranchisement have been minimal. Only in legislative elections, conducted on a single-member district basis under court order, have blacks been able to win public office. Racial polarization has been the overwhelming characteristic of Mobile voting behavior since 1965, according to the most advanced statistical analysis. Nor have recent elections shown any diminution of this polarization. In Mobile single-member district elections -- or, if one wishes to borrow from history, at-large elections with a limited-vote provision -- provide the only reasonable avenue by which black votes can secure effective representation in public office.

FOOTNOTES

[1]The following account summarizes a nine-hour presentation in court and the "Proposed Findings of Fact and Conclusions of Law of Plaintiffs Wiley L. Bolden, et. al., Civil Action No. 75-297-P, United States District Court for the Southern District of Alabama, pp. 19-59.

[2]Alabama Acts, 1825-26, (Jan. 9, 1826), 33-34. In investigating every change of election laws, I have examined not merely the wording of the statute in question but also the manner in which the election returns were reported in the newspapers. This is the only way to determine whether elections were actually conducted on an at-large or district basis. The returns are gathered in Plaintiffs' Exhibit No. 68 in the Bolden case.

[3]An 1833 statute required the election of a special commission to divide the city into four wards: Alabama Acts, 1833, No. 68 (Jan. 9, 1833), 106.

[4]Alabama Acts, 1840, No. 70 (Feb. 5, 1840), 53-58; ibid., 1844, No. 221 (Jan. 15, 1844), 175-92; ibid., 1852, No. 199 (Feb. 19, 1852), 324-27.

[5]Alabama Acts, 1865-66, pp. 119-21; Sarah W. Wiggins, The Scalawag in Alabama Politics, 1865-1881 (University, Alabama, 1977), 1-32; Jonathan M. Wiener, Social Origins of the New South: Alabama, 1860-1885 (Baton Rouge, Louisiana, 1978), 3-108.

[6]Alabama Acts, 1865-66, No. 165 (Feb. 2, 1866), 202-36. The election in December, 1865, was held under the authority of the 1852 statute. In a close race between two conservative white candidates, with the ballot restricted to whites, there were charges of extensive corruption.

[7]Malcolm C. McMillan, Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism (Chapel Hill, North Carolina, 1955), 110-74. An illustration of the sentiments behind the boycott strategy is the pamphlet listing the "collaborators" who cast ballots in this "illegal" election: Roll of the Black Dupes and White Renegades Who Voted in Mobile City and County for the Menagerie Constitution for the State of Alabama (Mobile, 1868).

[8]Wiggins, Scalawag in Alabama Politics, 148-49; "Officers and Members of General Assembly of Alabama (1868-1870)," Plaintiffs' Exhibit No. 47.

[9]Alabama Acts, 1868, No. 8 (July 18, 1868), 4-5; ibid., No. 71 (Dec. 21, 1868), 421. I have compiled a complete list of municipal officeholders (by race) from 1865 to the present, drawing on newspapers, city directories, and the minutes of the city's governing bodies.

[10]Alabama State Journal, Dec. 4, 1869. This quotation comes from a lengthy account of the Proskauer-Alexander election challenge (Plaintiffs' Exhibit No. 69).

[11]Alabama State Journal, Dec. 4, 1869; Allen Alexander to House of Representatives, Nov. 17, 1869, Legislative Correspondence, Drawer 17, Civil Archives Division, Alabama State Library and Archives (ASLA), and Congressman A. E. Buck to Gov. William H. Smith, Aug. 13, 1869, Smith Papers, Civil Archives, ASLA (Plaintiffs' Exhibit Nos. 77, 74).

[12]The views of Mobile blacks are presented in a letter from James Bragg to Frederick G. Bromberg, Nov. 20, 1869, Bromberg Papers, Southern Historical Collection, University of North Carolina (Plaintiffs' Exhibit No. 80), and in a Memorial read to the state senate by Datus Coon on Nov. 19, 1869, Senate Journal, 1869-70, pp. 57-58.

[13]Alabama Acts, 1869-70, No. 97 (Feb. 8, 1870), 451-54. The statute, together with the entire legislative history of the bill from the house and senate journals, constitutes Plaintiffs' Exhibit No. 14.

[14]Mobile Register, Jan. 20, Nov. 6, 1870.

[15]Alabama Acts, 1869-70, No. 97, section 11. The ward-election provision of the 1866 statute (section 6) was repealed along with nine other sections by section 2 of the July 18, 1868 act.

[16]See Allen Alexander, et. al., to Gov. William H. Smith, June 29, 1868, Smith Papers, ASLA. Granger was, with Bromberg, a conservative member of the "old school board" that challenged the authority of the Republican state board of education: see the discussion of the school board case below, and the sources cited in footnote 44.

[17]Mobile Register, Dec. 6, 1870.

[18]A careful reconstruction of 1870 census data and election returns from the period 1869 to 1873 indicates that the black population, and thus the Republican vote, approached 50% in only three wards; only in the seventh ward did the Republicans ever obtain an actual majority of the votes cast.

[19]The Republican ticket did carry the day on December 3, 1872, despite the at-large system, but only because of massive electoral fraud. Approximately 15,000 votes were cast each office, in a city with no more than 10,000 voting-age residents. According to the Register, Dec. 4, 1872, the Republicans voted "on the 'early and often' plan." No blacks were on the victorious ticket, however.

[20]Mobile Register, Nov. 4, 1874; Wiggins, Scalawag in Alabama Politics, 97.

[21]Alabama Acts, 1874-75, No. 365 (Nov. 28, 1874), 532-38; Mobile Register, Dec. 13, 16, 1874.

[22]Alabama Acts, 1878-79, No. 308 (Feb. 11, 1879); ibid., 1886, (Dec. 10, 1886); ibid., 1896-97, No. 214.

[23]Mobile Register, Nov. 21, 1872; see also Nov. 9, 15, 1872.

[24]Alabama Acts, 1884-85, pp. 480-83; McMillan, Constitutional Development, 244.

[25]Mobile Register, June 10, 11, 12, 18, 24, July 6, 15, 20, Aug. 3, 6, 12, Nov. 12, 1884; W. Dean Burnham, Presidential Ballots, 1836-1892 (Baltimore, 1955), 270.

[26]McMillan v. Escambia County, 638 F.2d 1239 (5th Cir. 1981).

[27]Alabama Official and Statistical Register (Montgomery, 1911). The precise number, 193, remained unchanged from 1903 through 1911, although in other counties the number of registered blacks increased; thus more than 193 blacks may have been registered voters in Mobile.

[28]In every municipal election between 1897 and 1910 with two or more candidates for alderman in the seventh ward, between 340 and 400 ballots were cast. According to the 1910 census, the ward's voting age population was still 79% black.

[29]Alabama Acts, 1907, No. 797 (Aug. 15, 1907).

[30]Mobile Register, April 24, May 12, 1908; Mobile Daily Item, April 24, 1908. My understanding of the Lyons regime owes much to Mr. David Alsobrook, a Ph. D. candidate at Auburn University who generously allowed me to read his nearly completed Ph. D. dissertation on Mobile during the "progressive era."

[31]Mobile Daily Item, April 24, 1908.

[32]Mobile Daily Item, May 3, 1908; Mobile Register, May 12-17, 24, 1908. Lyons' ally Thomas S. Kaver defeated his opponent in the seventh ward by 229 to 115, while the Mayor won re-election against the candidate of the Better Businessmen's Club. According to the Register, May 18, 1908, the rules governing the primary were to be the same as in the general election; were that true, then blacks would, after all, have been able to vote.

[33]Mobile Register, Aug. 20, 1909. Articles promoting the city commission plan had been a regular feature in the Register since 1907.

[34]Alabama Acts, 1911, No. 281 (April 8, 1911); Official Returns, Referendum Election, June 5, 1911, in Mobile City Council Minutes, June 1911, p. 15, Mobile Public Library.

[35]The product-moment correlation coefficient for the relationship between

the percentage of the voting-age population that was black (as measured by the 1910 census) and the percentage of referendum votes cast against the commission form of government was .78 (significant at the .01 level).

[36]Charles A. Beard, American City Government (New York, 1912), 95-97, commented that the commission form of government "concentrates too great a power in the hands of a few men." Beard disliked the fact that "its members do not represent single districts, but are elected at large by the voters of the entire city -- a practice which, of course, substantially excludes minority representation, and is so highly undesirable as to constitute a serious objection to the adoption of the scheme in large cities." Virtually all historical research confirms Beard's contemporary view: see Samuel P. Hays, "The Politics of Reform in Municipal Government in the Progressive Era," Pacific Northwest Quarterly, 55 (1964), reprinted in his book American Political History as Social Analysis (Knoxville, Tennessee, 1980), 204-32; Martin J. Schiesl, The Politics of Efficiency: Municipal Administration and Reform, 1880-1920 (Berkeley, California, 1977); Bradley R. Rice, Progressive Cities: The Commission Government Movement in America, 1901-1920 (Austin, Texas, 1977).

[37]Mobile Register, Jan. 24, 31, 1909.

[38]Mobile Register, July 25, 1909. Bromberg's "open letter" was published in various newspapers around the state. Senator Sam Will John of Birmingham proposed a constitutional amendment banning blacks from public office: Register, Aug. 4, 1909.

[39]Mobile Register, July 25, 1909. Bromberg proposed the same strategy in his presidential address to the state bar association two years earlier: Register, June 30, 1907. The old white supremacist's interpretation of the 15th amendment bears a striking resemblance to the view expressed by Justice Potter Stewart's plurality decision in City of Mobile v. Bolden, 446 U. S. 55, 100 S. Ct. 1490 (1980).

[40]The final report of the charter commission, together with its minutes, were obtained from the personal files of its secretary, Dr. Howard Mahan, who testified for the plaintiffs: see Plaintiffs' Exhibit No. 119.

[41]Alabama Acts, 1965, No. 823 (Sept. 2, 1965), 1539-1546. Of the two legislators in question, Robert Edington testified to this effect in the first Bolden trial and William McDermott admitted the essential truth of the assessment in the second trial. Other members of the 1965 delegation denied any discussion of racial issues in connection with the bill. Cross-examination of delegation chairman Mylan Engel revealed, however, that he raised the possibility of firing faculty members at the University of South Alabama, where he was a trustee, because they signed a newspaper advertisement advocating racial equality: see Plaintiffs' Exhibit No. 121.

[42]Alabama Acts, 1851-52, No. 378 (Feb. 9, 1852), 463-64. The following account summarizes my testimony in court and the "Proposed Findings of Fact and Conclusions of Law of Plaintiffs Leila G. Brown, et. al., Civil Action No. 75-298-P, pp. 19-25.

[43]Alabama Constitution of 1868, Article VI, Section 5; Alabama Acts, 1868, (Aug. 11, 1868), 148-49; Noah B. Cloud, Report of the State Superintendent of Public Instruction to Governor William H. Smith (Montgomery, 1869), 3-7, 11,

[44]Minutes, Mobile County Board of School Commissioners, Aug. 24, 27, Sept. 9, 1868 (Barton Academy, Mobile); Cloud, Report, 35-36; Willis G. Clark, History of Education in Alabama (Washington, D. C., 1889), 230-32. Clark was himself a member of the "old board" and thus his account has the character of a participant's memoir.

[45]Cloud, Report; 36-48; Journal of the Board of Education of the State of Alabama. . . . (Montgomery, 1869), 7-9; Mobile Register, Sept. 8, 1869.

[46]Mobile School Commissioners v. Putnam, et. al., 44 Ala. 506 (1870); Mobile Register, Sept. 8, 23, 25, Oct. 1-3, 1869. I have also examined the school board minutes for the entire period of controversy.

[47]The act, passed by the State Board of Education on Dec. 14, 1870, does not appear in Alabama Acts but in Joseph Hodgson, comp., Laws Relating to the Public Schools of Alabama. . . . (Montgomery, 1871), 43-44; Mobile Register, Dec. 15, 1870, March 3, 4, 10, 1871.

[48]Wiggins, Scalawag in Alabama Politics, 97.

[49]McMillan, Constitutional Development, 175-210; Alabama Acts, 1875-76, No. 242 (Feb. 15, 1876), 363-67; see also ibid., 1919, No. 229, p. 273.

THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS

1012 14TH ST., N.W. SUITE 708, WASHINGTON, D.C., 20005
(202) • 347-8020

July 24, 1981

Honorable Don Edwards
Chairman, Subcommittee on Civil Rights
and Constitutional Rights
Committee on Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Edwards:

Please give serious consideration to my enclosed statement on H.R. 3112, a bill to extend and amend certain crucial provisions of the Voting Rights Act of 1965 as amended, in your deliberations on this legislation.

If I can be of any assistance to you on this pending matter, please do not hesitate to call on me.

Sincerely yours,

THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS

Clarence M. Mitchell, III
President

moc

Enclosure

STATEMENT OF

SENATOR CLARENCE M. MITCHELL, III
PRESIDENT
THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS

TO

THE UNITED STATES' HOUSE OF REPRESENTATIVES

ON

CIVIL AND CONSTITUTIONAL RIGHTS
ON
H.R, 3112-EXTENSION AND AMENDMENT
OF THE
VOTING RIGHTS ACT OF 1965

SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SENATOR CLARENCE M. MITCHELL, III
MAJORITY WHIP
SOTH LEGISLATIVE DISTRICT
BALTIMORE CITY
COMMITTEE:
JUDICIAL PROCEEDINGS

DISTRICT OFFICE ADDRESS:
1230 DRUID HILL AVENUE
BALTIMORE, MARYLAND 21217
OFFICE: (301) 523-4222

NOW AWAITING CONGRESSIONAL CONSIDERATION IS H.R. 3112 WHICH WILL BOTH EXTEND AND AMEND CERTAIN PROVISIONS OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED, WITHOUT REPEALING, DILUTING, OR CRIPPLING ITS ENFORCEMENT PROVISIONS PRESENTLY IN EFFECT. IT IS DEPLORABLE THAT MORE THAN 100 YEARS SINCE THE RATIFICATION OF THE 15TH AMENDMENT, THAT AMENDMENT WHICH VESTS EACH AND EVERYONE OF US WITH THE CONSTITUTIONAL RIGHT TO VOTE, THAT I MUST BESEECH YOU TO JOIN ME IN SUPPORT OF THE CONTINUATION OF THIS MOST CRUCIAL PIECE OF CIVIL RIGHTS LEGISLATION. I VEHEMENTLY TAKE EXCEPTION TO THE SUPREME COURT'S RELIANCE IN CITY OF MOBILE VS. BOLDEN, 446 U.S. 55 (1980), ON EARLIER DECISIONS WHICH HELD AND I QUOTE:

> "THE FIFTEENTH AMENDMENT DOES NOT CONFER THE RIGHT OF SUFFRAGE UPON ANY ONE, BUT HAS INVESTED THE CITIZENS OF THE UNITED STATES WITH A NEW CONSTITUTIONAL RIGHT WHICH IS WITHIN THE PROTECTING POWER OF CONGRESS. THAT RIGHT IS EXEMPTION FROM DISCRIMINATION IN THE EXERCISE OF THE ELECTIVE FRANCHISE ON ACCOUNT OF RACE, COLOR, OR PREVIOUS CONDITION OF SERVITUDE."

PRIOR TO 1965, THERE WERE SEVERAL OTHER CONGRESSIONAL ATTEMPTS TO ASSURE THAT NO U.S. CITIZEN WOULD BE DIVESTED OF THIS MOST IMPORTANT RIGHT. THESE WERE THE ENFORCEMENT ACT OF 1870, 1871 AND THE CIVIL RIGHTS ACT OF 1957, 1960 AND 1964. HOWEVER, THESE ACTS WHICH PREDATED THE VOTING RIGHTS ACT WERE VIRTUALLY INEFFECTIVE SINCE ALL REQUIRED COSTLY AND TIME-CONSUMING JUDICIAL ACTIONS. IN MANY INSTANCES, BY THE TIME A COURT FOUND IN FAVOR OF

THE PETITIONER THE VIOLATORS HAD BEEN REPLACED BY NEWLY ELECTED OR APPOINTED PERPETRATORS OF SIMILAR AS WELL AS DIFFERENT DISCRIMINATORY PRACTICES; THEREBY, MAKING THE RELIEF ORDERED IN THE DECREE MOOT AS TO THE ORIGINALLY SUED PARTIES.

A PERUSAL THROUGH THE CONGRESSIONAL ANNALS WILL REVEAL NUMEROUS ATTESTATIONS FROM THOSE WHO CAN PERSONALLY SPEAK OF THE SIGNIFICANT STRIDES WHICH HAVE BEEN MADE SINCE THIS LAW'S ENACTMENT TO OVERCOME THE RESTRICTIVE BARRIERS WHICH OFTEN TIMES MAKE THE EXERCISE OF THIS RIGHT VIRTUALLY IMPOSSIBLE. IN SPITE OF THE ACT'S SUCCESSES, INSTANCES OF PERVASIVE DISCRIMINATORY VOTING PRACTICES CONTINUE TO BE USED TO DETER MINORITIES FROM VOTING. WHAT THE VOTING RIGHTS ACT DOES, IS SUBJECT ANY "COVERED JURISDICTION"[1] WHICH PROPOSES TO CHANGE ITS VOTING OR ELECTION PROCEDURES TO SCRUTINY BY THE DEPARTMENT OF JUSTICE OR THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. THIS "PRECLEARANCE" PROVISION, IN AND OF ITSELF, SERVES TO DISSUADE MANY ILL-INTENTIONED JURISDICTIONS FROM ATTEMPTING TO IMPLEMENT PROCEDURES WHICH WILL DILUTE THE VOTING STRENGTH OF BLACKS AND LANGUAGE MINORITIES. THE DEPARTMENT OF JUSTICE'S PRECLEARANCE STAFF IS EXPERTLY TRAINED TO DISCERN THE MORE SOPHISTICATED, SUBTLE AND UNSCRUPULOUS VOTING AND ELECTION PRACTICES (I.E., ANNEXATION, ILL-CONTRIVED RUN-OFF REQUIREMENTS, REDISTRICTING, AT-LARGE ELECTIONS, LAST MINUTE SHIFTS IN POLLING PLACES) WHICH EXIST, WITH MANY SERVING AS A SUBTERFUGE FOR THE PREVIOUSLY MORE BLATANT AND DIRECT PRACTICES OF THE PAST. THERE IS DOCUMENTATION THAT THE ATTORNEY GENERAL HAS LODGED OVER 800 SECTION 5 OBJECTIONS TO SUCH PROPOSED CHANGES SINCE THE ACT BECAME LAW.

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[1]The Section 4 (b) trigger formula provides the following: (1) that any state or political subdivision of a state which on November 1, 1964, 1968, or 1972 had in effect a test or device; and (2) a determination is made by the U.S. Census Bureau that less than 50% of the eligible voting age population of such governmental entity registered to vote in the 1964, 1968, or 1972 Presidential election is a "covered jurisdiction." This formula expires on August 6, 1982.

AS A BLACK STATE LEGISLATOR AND AS PRESIDENT OF THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS (NBCSL), AN ORGANIZATION, THE MAJORITY OF WHOSE MEMBERS HAVE BEEN ELECTED SINCE THE ACT'S EFFECTIVE DATE OF IMPLEMENTATION, I HAVE A DEEP, PERSONAL AND VESTED INTEREST IN THE PASSAGE OF PENDING LEGISLATION WHICH WILL EXTEND UNTIL AUGUST 6, 1992, WITHOUT DILUTION, CERTAIN CRUCIAL PROVISIONS OF THE ACT WHICH WILL OTHERWISE AUTOMATICALLY EXPIRE ON AUGUST 6, 1982. IT IS ALSO TRUE THAT FAILURE TO EXTEND SUCH PROVISIONS WILL HAVE A PROFOUND AND ADVERSE EFFECT ON THE ELECTION PROCESS IN THE ENTIRE UNITED STATES.

ONE OF THE PROVISIONS TO EXPIRE ON ABOVE SAID DATE IS SECTION 5, BETTER KNOWN AS THE "PRECLEARANCE" PROVISION, REFERRED TO ABOVE, WHICH IS THE MOST VALUABLE PROVISION OF THE ACT. THIS PROVISION REQUIRES A "COVERED JURISDICTION" TO PRECLEAR WITHIN 60 DAYS ANY PROPOSED ELECTION OR VOTING PROCEDURE WITH EITHER THE U.S. DEPARTMENT OF JUSTICE OR SEEK DECLARATORY RELIEF IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. THE DEPARTMENT'S FAILURE TO OBJECT WITHIN THE PRESCRIBED 60 DAY PERIOD (OR WITHIN 120 DAYS IF AN EXTENSION IS NEEDED) AUTOMATICALLY ALLOWS THE "COVERED JURISDICTION" TO IMPLEMENT ITS PROPOSED CHANGES. OF COURSE, ANY JURISDICTION WHICH DISAGREES WITH THE DEPARTMENT OF JUSTICE HAS A RIGHT OF APPEAL.

CONTRARY TO THE POPULAR BELIEF THAT SECTION 5 IS LIMITED IN SCOPE TO THE SOUTHERN AND WESTERN REGIONS, IT HAS NATIONAL APPLICATION. IF A STATE SATISFIES THE TRIGGER FORMULA IN SECTION 4 SUCH GOVERNMENTAL ENTITY BECOMES COVERED IN THE CONTEXT OF THE APPLICABILITY OF THE PRECLEARANCE REQUIREMENTS. AT PRESENT, THERE ARE 22 JURISDICTIONS OF WHICH PARTS OF NON-SOURTHERN STATES SUCH AS NEW YORK, ALASKA, TEXAS, CALIFORNIA, ARIZONA, MASSACHUSETTS, AND HAWAII ARE AFFECTED.

IN THE ABSENCE OF SECTION 5, THE ONLY REMEDY FOR A VICTIM OF VOTING DISCRIMINATION WILL BE COSTLY AND TIME-CONSUMING JUDICIAL ACTION WHERE THE BURDEN OF PROOF WILL BE ON THE VICTIM RATHER THAN ON THE JURISDICTION ALLEDGEDLY UTILIZING THE DISCRIMINATORY PRACTICE.

IN ADDITION TO PRESERVING THE ACT AS IT IS, I SEEK AN AMENDMENT TO ANOTHER PERTINENT PROVISION WHICH UNLIKE SECTION 5 IS A PERMANENT PROVISION. SECTION 2[2] OF THE VOTING RIGHTS ACT IS A PARAPHRASE OF THE FIFTEENTH AMENDMENT. IT READS:

> "NO VOTING QUALIFICATION OR PREREQUISITE TO VOTING, OR STANDARD, PRACTICE, OR PROCEDURE SHALL BE IMPOSED OR APPLIED BY ANY STATE OR POLITICAL SUBDIVISION TO DENY OR ABRIDGE THE RIGHT OF ANY CITIZEN OF THE UNITED STATES ON ACCOUNT OF RACE, OR COLOR."

THIS SECTION GIVES ANY VOTER THE RIGHT TO SUE IN ANY FEDERAL COURT IF HIS/HER RIGHT TO VOTE IS ABRIDGED OR DENIED ON ACCOUNT OF RACE. ADDITIONALLY, IT APPLIES TO ALL VOTER DISCRIMINATION CASES AND VOTING PRACTICES THAT PREDATED THE ACT AS WELL AS TO SUBSEQUENT CHANGES.

THE PROPOSED LANGUAGE TO SECTION 2 OF THE ACT CONTAINED IN H.R. 3112, WILL VITIATE THE IMPACT OF MOBILE, WHICH ERRONEOUSLY READ INTO THIS SECTION A SPECIFIC DISCRIMINATORY INTENT REQUIREMENT, CONTRARY TO THE INTENT OF CONGRESS, IN ORDER TO ESTABLISH THAT A VOTING LAW OR PRACTICE NOT COVERED BY THE ACT (I.E., NOT A CHANGE) IS RACIALLY DISCRIMINATORY AND IN VIOLATION OF SECTION 2.

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[2]It is important to know the differences between Section 2 as opposed to Sections 4 and 5 of the Act. Section 2 provides aggrieved private persons with the right of suit in any Federal court to enforce rights covered in the Fourteenth (equal protection) and Fifteenth (voting guarantees) Amendments. Sections 4 and 5 provide an expeditious administrative procedure, unless judicial intervention is requested by the "covered jurisdiction," whereby such jurisdiction must preclear any change in voting or election practices with the Department of Justice. Under Section 5 covered jurisdictions have the burden of proving these changes will not discriminate against minority voters, unlike Section 2 which requires the aggrieved voter to prove the procedure has a discriminatory intent to deprive him of his right to vote.

I KNOW, JUST AS YOU DO, THAT IT IS THE END-RESULT OF REGISTRATION WHICH IS THE MORE ACCURATE TEST AS TO WHETHER A PRACTICE IS DISCRIMINATORY. PLACING THE BURDEN OF PROOF OF INTENT ON THE VICTIM IS A MOST ONEROUS AND IMPOSSIBLE ONE TO SATISFY. WHERE THE VICTIM IS NOT IN PRIVITY WITH THE DESIGNERS OF THE DISCRIMINATORY PRACTICE HE/SHE, AT BEST, CAN ONLY COME FORTH WITH MERE CONJECTURES FOR HIS/HER EXCLUSION IN THE JURISDICTION'S ELECTION PROCESS. THE PROPOSED LANGUAGE, IF ENACTED, CLARIFIES THE BURDEN OF PROOF IN VOTING DISCRIMINATION CASES BY REQUIRING PROOF OF A DISCRIMINATORY RESULT OF AN ACTION, WITHOUT THE NEED TO PROVE SUCH INTENT.

IF WE ARE TO CONTINUE AS A NATION OF JUST LAWS, LAWS ENACTED TO SAFEGUARD THE RIGHTS OF ALL OF OUR CITIZENS, SUPPORT FOR AND PASSAGE OF THE LEGISLATION EXTENDING THE VIABILITY OF THE ENFORCEMENT PROVISIONS OF THE 1965 VOTING RIGHTS ACT IS MOST CRUCIAL.

STATEMENT OF DONALD
R. MORRISON, SR.

I am Mayor of the City of Pleasant Grove, which is located in Jefferson County, Alabama. I am opposed to H.R.1731, H.R.3112, H.R.3198, and H.R.3948 in their present forms because none of them prevent the Department of Justice from abusing its power as it has in its dealings, set out below, with the City of Pleasant Grove.

The City has a population of 7,102, all of whom are white, with the exception of one (1) Oriental and thirty-two (32) blacks. All of the blacks are elderly or otherwise infirm and live in the City's two (2) nursing homes. None of them vote, but the City has never been accused of doing anything to discourage them from voting.

In late 1978, owners of certain property on the western edge of the City petitioned for annexation of their land into the City limits, and on February 5, 1979, the City Council voted to annex the petitioning property plus an additional fifty (50) acres which the City already owned. The land was and is completely uninhabited. We asked our State Senator, Mac Parsons, to introduce legislation in the Alabama State Legislature

which would accomplish the annexation, which he did, and on July 17, 1979, the Governor of Alabama, Fob James, signed that legislation into law.

Thereafter we petitioned the Justice Department for preclearance of the annexation in accordance with Section 5 of the Voting Rights Act of 1965. By letter dated February 1, 1980, our request was denied based on the following rationale:

> We have given careful consideration to the materials you have submitted, as well as information and comments of other interested parties. We note that the City of Pleasant Grove today contains some 6,500 persons, all of whom are white; that areas adjacent to the annexed area have been developed for exclusively white residential use; that similar development is planned for the annexed area; and that several identifiably black areas have petitioned for annexation to the City of Pleasant Grove, but that the city has taken no steps to annex those areas, despite the passage of a considerable length of time. We have also noted reports of activities indicating the presence of considerable antagonism toward black persons in the vicinity of Pleasant Grove.
>
> 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. See also Gomillion v. Lightfoot, 364 U.S. 339 (1960). 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 annexation to the City of Pleasant Grove embodied in Act No. 79-419 (1979) of the Alabama Legislature.

Thereafter, we hired Washington counsel and petitioned for reconsideration. After further discussion with the Justice Department we determined that the "activities indicating the presence of considerable antagonism toward black persons in the vicinity of Pleasant Grove" consisted of the burning of the sign at the entrance to Pleasant Grove Highlands, a predominantly black community, and that the price that the Justice Department sought to exact for the preclearance of the annexation of the uninhabited four hundred fifty (450) acres was the annexation of Pleasant Grove Highlands to the City of Pleasant Grove. I have no idea who burned down the entrance sign to Pleasant Grove Highlands. The Justice Department has never proferred any evidence linking that burning to a resident of the City of Pleasant Grove and to my knowledge there is not a scrap of such evidence.

With respect to the annexation of Pleasant Grove Highlands, known until recently as West Smithfield Manor, the matter evolved as follows. Shortly after the City Council voted to annex the uninhabited four hundred fifty

(450) acres, it voted to withdraw fire protection from neighboring areas, including West Smithfield Manor, because we lacked spare capacity. Shortly after that we received a petition for annexation from residents of West Smithfield Manor and the Five-Acre Road area. It appears that the petition was prompted by the imminent cut-off of fire protection.

We have consistently denied petitions for annexation in this general area, including both black and white areas, because the areas are already developed. We receive no development fees, a large proportion of our budget in good years, from areas which are already developed, and we have no prior control over the development. With respect to the West Smithfield Manor area in particular, we think that we will lose money if we annex the area. The most recent analysis, made by our City Clerk and Treasurer, Sarah A. Mays, indicates that the petitioning area would return in taxes only fourteen percent (14%) of its cost in additional services. However in order to keep good relations with West Smithfield Manor we told them we would provide free fire and paramedic protection. Although we have made no final decision on the annexation petition, it certainly does not seem to

be in the City's economic interest.

Nothing we said convinced the Justice Department, however, and on October 9, 1980, we filed suit. Our motion for summary judgment, which gives our argument in greater detail and is appended to this statement, is now pending before a three-judge Court.

It seems to us that the Justice Department abused its power in our case. Section 5 prohibits the City from enforcing a change in any voting qualification unless it can show that such change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race of color. How can the annexation of four hundred fifty (450) acres of undeveloped land, even if, as the Justice Department contends, the land will be developed for "white residential use", abridge the right to vote of blacks in Pleasant Grove when there are no black voters in Pleasant Grove? If Pleasant Grove Highlands were annexed by the City of Pleasant Grove, black voters would have no power as an ethnic bloc at all, because they would constitute only about four percent (4%) of the total population of the City of Pleasant Grove, a city in which all members of the City Council are elected at large. They have more

voting power where they are now, in Jefferson County. In the County's eight-person State Senate delegation, there are two (2) blacks.

We have concluded that the Justice Department's objection was not motivated by a concern for voting rights, but by a desire to help the blacks in Pleasant Grove Highlands by conferring on them the economic advantages of being annexed by the City of Pleasant Grove. This may appear a laudable goal in some circles, but according to my attorneys, it was not the purpose of the Voting Rights Act of 1965.

We are not mollified by the thought that the City will eventually win this case. We have already incurred $16,000 in legal fees and expenses, a considerable sum for a town of 7,000 people, and the end is not in sight.

To remedy the abuses highlighted by our case, we recommend that, in your consideration of H.R.1731, H.R.3112, H.R.3198, and H.R.3948, Section 5 be redrafted in the following ways:

(1) It should be made clear that the Attorney General is required to interpose no objection under Section 5 where there is evidence establishing that a proposed change will not abridge voting rights in the

petitioning jurisdiction whatever other interests blacks may have in the proposed change. Note that in its letter of February 1, 1980, the Justice Department said the City's burden was to show no discriminatory purpose and effect, not no discriminatory purpose and effect on voting rights.

(2) There should be a de minimis clause. Until a jurisdiction has submitted changes which lower black voting strength by, let us say, two percent (2%) or more over, let us say, a five (5) year period, no preclearance should be required. We have spent $16,000 so far to preclear an annexation involving no (0) people.

(3) If the Attorney General interposes an objection and the petitioning jurisdiction prevails in court, the Justice Department should pay attorneys' fees.

More generally, may we suggest that the "purpose" clause be deleted wherever it appears. If a voting change has no effect of abridging the right to vote, what difference does it make what the intent of the change was. The principle effect of the "purpose" clause is to increase the legal fees of jurisdictions trying to comply with the Act.

Respectfully submitted,

Donald R. Morrison Sr.

Donald R. Morrison, Sr., Mayor

by Trumpet Common p. ad his express direction

A PROGRAM OF PROGRESS FOR ALL MISSISSIPPIANS

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June 12, 1981

STATEMENT BY: CLAUDE RAMSAY, PRESIDENT

TO THE: Special Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary, of the House of Representatives,
on extending the Voting Rights Act of 1965

Mr. Chairman:

I regret your hearing was moved from Jackson, Miss. to Montgomery, Ala. and due to this change, I will not be able to make a personal appearance as I had originally planned. Therefore, I have requested Mr. Robert Walker to read this statement in my behalf.

Attached to my statement is a copy of Lane Kirkland's statement that he delivered before this Committee in Washington, D. C. on May 6, 1981. I am in complete agreement with Mr. Kirkland and my brief statement should be considered as a supplement to his.

We have over 100,000 AFL-CIO members residing in the state of Mississippi and I should add that several thousand of them are black. I have been president of the Mississippi AFL-CIO for over 22 years and have had much experience with the Mississippi political system. I can advise you that black citizens were systematically denied the right to vote in many areas of the state prior to 1965. I am sure the committee is well aware of the long, hard struggle that brought about the passage of the Voting Rights Act in 1965. I would remind you that a lot of violence occurred in Mississippi, as well as elsewhere in the South, and that several people lost their lives in this effort to participate in the political process.

While it is true that much progress has been made by black people in Mississippi since the Act was passed, there is still much room for improvement. I realize that certain political leaders in the state will advise you that we no longer need the Voting Rights Act and

that black people are having no problems in participating in the political process. I disagree with that position and am suggesting that Mississippi has a long way to go before the Voting Rights Act is allowed to die or Mississippi is removed from its protection.

The Mississippi Legislature has consistently failed to pass legislation making it easy for citizens to register. Under existing law a citizen must drive to the county court house to register with the county clerk. Most of these offices are closed on Saturday and the office hours are such that many working people, black or white, can not get to the court house before the office closes. We have attempted to secure passage of legislation that would require deputy registrars to go into various communities and register voters at an hour that is more convenient for working people. Needless to say, we have not been successful and I am suggesting this is one good reason for keeping Mississippi under the Voting Rights Act. In other words when the Mississippi Legislature passes legislation making it easy for all citizens to vote, they will have a valid argument that efforts have been made to eliminate discrimination.

In addition to the voting process, there is another area of concern to us. This is the matter of Legislative and Congressional Districts. We strongly believe in the principle of one man-one vote. In other words, we believe that legislative and congressional districts should represent the same number of people and that district lines should be drawn whereby black people could be elected to various and sundry offices. I would remind this committee that it took 14 years of litigation before the Mississippi Legislature was reapportioned by court order. In 1979, as a result of this court action, 17 black persons were elected to the Mississippi Legislature (2 in the Senate and 15 in the House). This came about because a number of these districts had a black majority.

If the Act is allowed to die, it will simply be a matter of time before district lines are re-drawn and the black vote diluted. It is of great importance that the Act be extended and that Section Five be maintained in order to prevent this from happening. While I strongly support a continuation of the Voting Rights Act, a method should be devised whereby the Justice Department and/or the District Court will act expeditiously when a matter is submitted to them for approval or disapproval. The Mississippi Legislature passed a so-called Open Primary Law in 1979 and that matter has not been resolved as of this date. I would suggest that a matter of this importance should be resolved in a short period of time.

STATEMENT OF BARBARA E. ROSE

EXECUTIVE DIRECTOR OF THE RURAL COALITION

IN SUPPORT OF THE VOTING RIGHTS ACT

* * * * *

HOUSE JUDICIARY COMMITTEE

COMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

1035-30TH STREET, N.W., WASHINGTON, D.C. 20007 / (202) 338-7200

In behalf of the Rural Coalition, I would like to express our strong support for HR 3112, the Rodino bill, without amendment, to extend the Voting Rights Act of 1965, as amended in 1975. This bill is the most substantive and effective means of insuring that all Americans, regardless of race or membership in a language minority, have access to an effective vote.

The Rural Coalition is a national, non-profit organization concerned with public policy issues affecting low-income and minority rural communities and residents. The Coalition is comprised of over sixty national, regional, and local organizations representing the full spectrum of rural issues, including housing, health care, economic development, citizen involvement in community development, local development capacity, family farming, children's and women's issues, among others. The members of the Coalition bring their combined expertise to bear on the analysis of Federal policy actions and initiatives with respect to their impact on disadvantaged rural communities. The Coalition and its members are committed to working in support of public policies which enhance and support the ability of low-income and minority rural people to guide development of their communities, providing them with control over the direction of their lives, and the opportunity for economic and social self-fulfillment.

On August 6, 1965, Congress passed the Voting Rights Act, the single most important piece of civil rights legislation in the history of our country. The Supreme Court noted that the act was "designed to banish the blight of racial discrimination in voting, which has infected the electoral process of our country for nearly a century."[1] Less than one month before passage of the bill, President Lyndon B. Johnson declared the need to eliminate the vicious racism that has hurt the political advancement of all Americans, black and white. It was not just Negroes, Johnson observed, but "really all of us who must overcome the crippling legacy of bigotry and injustice. And we shall

1035-30TH STREET, N.W., WASHINGTON, D.C. 20007 / (202) 338-7200

overcome." With those words, President Johnson committed America symbolically to fight a war against racial discrimination. Just a short time later, on August 7, 1965, President Johnson committed all Americans by law to uphold the sacred right to vote for every citizen in the country. In signing the bill into law, President Johnson underscored the signal importance of that act:"Today is a triumph for freedom as huge as any victory that's ever been won on any battlefield...Today is a towering and certain mark that in this generation that promise will be kept...The wrong is one which no American in his heart can justify. The right is one which no American true to his principles can deny."[2]

For over one hundred years, the rights of black citizens were denied by practices that were both actively and tacitly endorsed by many Americans. The Voting Rights Act was passed initially to insure that no American was denied an effective vote because of race. It was renewed in 1970, and in 1975 it was extended to include coverage of language minorities. The Act was necessary to correct a century of racial discrimination, since the Fifteenth Amendment to the Constitution, guaranteeing the right to vote for all Americans, regardless of race, was not enforced.

The Fifteenth Amendment was ratified in 1870, and permitted blacks to vote for two decades after Reconstruction, even though they were oftentimes brutalized and intimidated at the polls. Although the system of discrimination that was called the "Jim Crow" laws did not emerge until the last years of the nineteenth century and the beginning of the twentieth century,[3] there was evidence that racial ostracism and disfranchisement were on the way. A series of Supreme Court cases culminating with Williams v. Mississippi (1898) began in 1873 to pave the way of the legal road for proscription, disfranchisement, and segregation.[4] In 1890, Mississippi pioneered the way for black disfranchisement by including literacy tests as voting qualifications within its state constitution. Soon, other Southern states were to join ranks, including South Carolina (1895), Louisiana (1898), North Carolina (1900), Alabama (1901), Virginia (1902) and Georgia (1908). Always included in such Constitutions were clauses that enabled whites to vote: the grandfather, good moral character, and understanding clauses. Simultaneously, these same states, in addition to the rest of the "Old Confederacy," included poll taxes as voting requirements. In addition, these states began to use the all-white primary to ensure exclusion of blacks.[6] Such activities effectively negated the Fifteenth Amendment until the passage of the Voting

Rights Act on August 6, 1965. The act suspended all tests and devices, at first temporarily, and then permanently.

The Voting Rights Act has been the most successful civil rights legislation ever passed. Because of this bill, over one million new black voters were registered between 1964 and 1972 in the seven Southern states orginally covered by the Act. [7] Black registration increased from about 29% to about 56%. Although there are few statistics on black elected officials in these states, the number was probably fewer than 100 before 1965.[8] As a result of the Voting Rights Act, there were 156 black elected officials in these states by 1968, 432 by 1971, and 1,813 by July, 1980.

Although the legislation seems to have been remarkably successful, these initial figures are misleading. Despite these tremendous increases, blacks and language minorities are still grossly under-represented in legislative chambers, and a more serious and subtle form of electoral discrimination now takes place. In 1968, black elected officials represented only .47% of all elected officials in the seven Southern states, and in 1980 only 5.6%.[10] Yet the black population in each of these states, according to preliminary reports of the 1980 census, ranges anywhere from 18.8% (Virginia) to 30.4% (South Carolina).[11] Moreover, blacks are not represented well at the highest level of state office. While blacks do hold important local offices, this tends to be in districts where blacks comprise an overwhelming majority of the voting age population.[12] They still have not reached a comparable number of offices in state Houses and Senate, nor in Federal offices. In addition, blacks and language minority groups are still under-registered in comparison to whites.

If these results are the case when the legislation is in effect, then, what will happen if the Voting Rights Act is allowed to expire? Vicious forms of racial discrimination still present major obstacles to effective voting. At this very time, right in the midst of Congressional hearings and debate on the Voting Rights Act, there are startling instances of racial discrimination in voting practices. For example, on May 14, 1981 the Attorney General objected to annexations in the city of Indianola, Mississippi. [13] Within the last month there was a Federal suit filed to stop a voter re-identification program in Sumter County, Alabama.[14] And as

recently as July 17, 1981, the Department of Justice objected to the redistricting plan of the Virginia State Senate because it would dilute black voting strength in Norfolk. Briefs have already been filed by Civil Rights groups protesting the legislative reapportionment plan of the Virginia House of Delegates. Statistics provided by the Voting Rights Section of the Department of Justice indicate that 66.5% of all discriminatory election law changes blocked by Section 5 "pre-clearance" remedy have taken place since 1975. Of equal importance is that in 1980, 48 out of 51 changes objected to under Section 5 were from the following states: Alabama, Georgia, Lousiana, Mississippi, North Carolina, Texas, and Virginia. The yearly number of objections to election law changes has not been reduced. In fact, that number has remained steady.[15]

At first, the Voting Rights Act was needed to insure that people were not prevented from physically casting a ballot. Now, because new and very dangerous methods of racial voting discrimination have been created, it is absolutely crucial to see that the Voting Rights Act continues. New types of violations of voting rights include the annexation of majority white districts to dilute black voting strength, fragmentation of majority black districts, racial gerrymandering, switching of polling places, and at-large and multi-member elections. These methods are just as efficient at reducing the effectiveness of black and minority language voting power as not permitting individuals to vote. As Chief Justice Earl Warren declared in Allen et al. v. State Board of Elections in 1968, "The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot...Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the country as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting scores of them from voting." [16]

The most important temporary provisions which are due to expire are Sections 4,5, and 203. There have been several different bills offered to renew and/or change the Voting Rights Act. The most substantive and effective Voting Rights legislation is HR 3112, offered by Representative Rodino. This bill extends some sections of the present Voting Rights Act for ten years, and other for seven years. It is the only legislation which will result in the continued protection of the voting rights of all Americans. In addition, HR 3112 amends

Section 2 of the current Voting Rights Act. Originally, the Voting Rights Act was interpreted to apply whenever the Attorney General found election law submissions had either purpose or result of causing discrimination in voting practices. A recent Supreme Court case, Mobile v. Bolden, has confused the interpretation of the act. [17] A plurality of Justices decided that specific intent of discrimination must be proven. In addition to being an almost impossible legal task, it shifts the burden of proof from the initiator of a discriminatory change to the victim of the change. A clear and precise statement, explaining that either purpose or result is enough to prove discrimination, is necessary. The Rodino and Mathias bills would include this insertion in Section 2.

Representative Henry Hyde (R-Ill) has proposed another voting rights bill, HR 3948. This bill is much weaker than the Rodino bill and will substantially reduce the effectiveness of the Voting Rights Act. For example, the Hyde bill has loose bail-out standards, and will make it easier for jurisdictions to be removed from coverage of the Section 5 remedy. Under the Hyde bill, it may be possible for a large jurisdiction to bail-out even if it has cities within it that are violating the law. Moreover, the current Voting Rights Act has provisions for bail-out. HR 3948 does not renew the language minority sections, removes the jurisdiction of the District Court of the District of Columbia to local Federal courts, and makes it difficult to reapply pre-clearance under Section 3 (C) for jurisdictions that have bailed-out but have started to violate voting rights once again.

Three alternatives that would substantially weaken effective voting rights are HR 1731, offered by Representative McClory, HR 1407, offered by Representative McClosky, and HR 2942, offered by Representative Thomas. These bills would eliminate Section 203, the language minority section, and delete coverage of jurisdictions under the language minority trigger of Section 4, and coverage under the remedy of Section 5. Section 203 is due to expire in 1985, but it is vitally important that it be extended for seven years so that it expires concurrently with the other temporary provisions in 1992. In recent testimony, one Representative of Congress called bilingual ballots a "luxury" which we can no longer afford. [18] The right to vote is just that, a right, without which there would be no democracy. Voting is not a luxury, and it is against this attitude that the Voting Rights Act protects people. Bilingual ballots do not create

cultural separatism. Rather, they encourage a large segment of Americans to participate in the direction of their lives and of their country.

We are fearful that the legislation may be diluted in other ways. One plan is to extend the Voting Rights Act to cover the entire country. The Act, through Section 3 (C), already does that. To make jurisdictions that have no record of racial voting discrimination liable for preclearance is not logical, and would make it impossible for the Department of Justice to locate and monitor real offenses. As a result of this plan, the Voting Rights Act would be weakened and become virtually ineffective.

The need to renew this legislation now is essential. As a result of the 1980 census, there may well be redistricting and reapportionment. Certain states, like Texas, will gain new Congressional representatives. Unless we can ensure the security of this legislation, blacks and language minorities will not have real access to political representation. The extension of the Act until 1992 will allow it to have maximum effectiveness after the next decennial cenusus in 1990.

As a national group that deals with rural issues, the Rural Coalition is very much concerned about the impact of the Voting Rights legislation on America's rural areas. A preliminary report by the U.S. Department of Agriculture suggests that "for the first time in 160 years, the population growth rate in the United States was higher in rural and small town communities than in metropolitan areas."[19] Significantly, this above-average growth occurred in the South and the West. In the rural communities included in these growth areas, blacks will continue to be underrepresented if their voting rights are not legislatively protected. Without doubt, the Voting Rights Act can be viewed as major legislation in the area of rural development. There is an all-important linkage between political empowerment and economic development. As one resident of Mississippi, Rims Barber, concluded in his testimony, when blacks have been elected to office in Mississippi, social services (jobs, housing, education reform) have been increased. [20] Political participation and effective representation will provide an avenue to an economic stake in the life of the community for blacks and language minorities. As President Johnson declared when he signed the Voting Rights Act into law: "This right to vote is the basic right without which all others are meaningless. It gives people -- people as individuals -- control over their lives."[21]

The Voting Rights Act is a vital link between individuals, their communities, and the nation. It is the legislation that provides the assurance necessary to encourage all Americans to participate in the decisions that affect their daily lives. Now, more than at any other time before, everybody must have access to effective political participation. Decisions are currently being made in the area of social and economic policy that will affect our lives for years to come.[22] Everybody must be able to participate in these political decisions. Money and the power to allocate it are being shifted back to the very states and localities where blacks and minorities have experienced the greatest political disenfranchisement. At the same time that our most needed social services are being cut or eliminated, we cannot allow Congress to eliminate our voices of protest and concern as well. Historically, as the present Administration seems to be showing, the single most powerful means citizens have of conveying their reaction to American government is the ballot. If we are serious about our national committment to a participatory democracy, than we can never allow even the slightest effort to reduce the effectiveness of the ballot box.

NOTES

1

South Carolina v. Katzenbach, 383 US 301, p. 308

2

New York Times, August 7, 1965

3

See C. Vann Woodward, The Strange Career of Jim Crow (New York: Oxford University Press, 1966)

4

Ibid, pp. 53 - 54. See also Woodward, Origins of the New South (Baton Rouge: Louisiana State University Press, 1971), Chapter XII, "The Mississippi Plan and the American Way."

5

Ibid, pp. 66 - 68

6

Ibid

7

The Voting Rights Act: Ten Years After, U.S. Commision on Civil Rights, January 1975, pp. 40 - 41

8

Ibid

9

See National Roster of Black Elected Officials, Volume 10, 1980. (Washington, D.C.: Joint Center for Political Studies, 1980) See issue for March, 1971.

10

Ibid

11

The Voting Rights Act, op. cit. p. 40

12

See 1980 Advance Reports, 1980 Census of Population and Housing

State	Total Population, est. 1980	Black population, est. 1980	%black
Alabama	3,890,061	995,623	25.6
Georgia	5,404,265	1,465,457	26.8
Lousiana	4,203,972	1,237,263	29.4
Mississippi	2,520,638	337,206	35.2
North Carolina	5,874,429	1,316,050	22.4
South Carolina	3,119,208	948,146	30.4
Virginia	5,346,279	1,008,311	18.9

13

Testimony, Frank Parker, Lawyers Committe for Civil Rights Under the Law, May 28 1981, p.2

14

Washington Post, July 15, 1981

15

See Complete List of Objections Pursuant to Section 5 of the Voting Rights Act of 1965, Department of Justice, Civil Rights Division, February 1981

Number of Changes to which Objections have been Interposed by State and Year, 1965 - February, 1981. Department of Justice, Civil Rights Division

16

Allen et al. v. State Board of Elections et al., 393 U.S. 544, p. 569

17

City of Mobile, Alabama v. Wiley L. Bolden, 100 Sup, Ct. Reporter, 1491

18

Testimony, Representative Paul McCloskey, Jr. Subcommittee on Civil and Constitutional Rights, House Judiciary Committee

19

Calvin Beale, "Rural and Small Town Population Changes, 1970 - 1980"
U.S. Department of Agriculture, Economics and Statistics Service, February 1981

20

Testimony of Rims Barber, Subcommitte on Civil and Constitutional Rights, May 29, 1981

21

New York Times, August 7, 1981

22

See, for example, the 1981 report by the U.S. Civil Rights Commission, on the impact of the new budget on civil rights. Civil Rights: A National - Not a Special - Interest.

STATEMENT OF JIMMIE L. WILLIAMS, CIVIL RIGHTS COORDINATOR,
DISTRICT 36, UNITED STEELWORKERS OF AMERICA
WHICH INCLUDES THE STATES OF ALABAMA, FLORIDA, LOUISIANA
MISSISSIPPI, THE COMMONWEALTH OF PUERTO RICO
AND THE VIRGIN ISLANDS TERRITORIES
BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL
RIGHTS COMMITTEE ON THE JUDICIARY, OF THE HOUSE OF REPRESENTATIVES ON
EXTENDING THE VOTING RIGHTS ACT OF 1965

June 12, 1981

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

The Voting Rights Act of 1965 is the most effective civil rights legislation ever devised by the Congress and has allowed minorities to cast an effective ballot. As Stephen Chapman puts it, "the 1965 Act was a drastic remedy to a disgraceful and intractable problem"—disgraceful because the voter-registration machinery was being widely used in much of the South to defraud blacks of access to the ballot; intractable, because ordinary litigation, however zealous, could not keep up with the devices, legal and illegal and sometimes even violent. Our national history, and the inevitable lingering consequences of that history, made this Act necessary and make

its continuation essential. We cannot forget our failure for nearly a century to end the discriminatory denial of citizenship rights or pretend that we have in fifteen years returned the situation to what it would have been had there been no discrimination or had there not been a long-term failure to correct that wrong. Eventhough our Constitution was amended to provide that, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude" and actions which obstruct the exercise of the right to vote, whether by private persons or public officials, were made a crime, and eventhough Congress provided for detailed federal supervision of the electoral process, the denial of the franchise became a way of life in parts of the country. The 14th and 15th Amendments to the Constitution have not guaranteed effective voting participation for minorities. The framers of the 1965 Act took pains to devise an enforcement system that is simple and speedy. Under Section 5, the heart of the Act, a covered jurisdiction sends to the Attorney General a copy of the voting law that jurisdiction wishes to follow and material on the law's purpose and effect. The Attorney General must reply within 120 days; if his response is that the law meets the Act's requirements, that is the end of the matter, if not, the jurisdiction may seek a declaratory judgement from the federal courts. That is an example of administrative efficiency that meets the standards of the

sternest critics of government. Congress provided in the act an automatic "trigger" that brought it into force wherever fewer than half the eligible voters had voted in the 1964 presidential election. The act not only provided for federally-supervised registration; it automatically suspended literacy tests--in some places a favorite device of registration fraud; and it provided for federal supervision through federal courts in Washington, of any changes in local election laws or procedures suspected of blocking or diluting the exercise of voting power by blacks.

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

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

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

The objectors of this Act contend that the Voting Rights Act has ceased to be needed, that everyone has seen the light. But Congress should treat that notion with more than a grain of salt. For Congress must approach the question of continuing or abandoning the Act. However, we believe the Act itself provides the answer, for Section 5 places the burden on the submitting jurisdiction to show that its proposed change "does

not have the purpose and will not have the effect" of denying or abridging the right to vote on account of race or color or membership in a language minority. Under this provision, those whose laws and practices have discriminated in the past must demonstrate that they do so no longer.

The 1965 Voting Rights Act has done more for democracy, variety and fairness in Southern politics than all the other civil rights measures since Reconstruction. To not renew this Act, is in essence saying, the hard-won political gains of the last 15 years have been in vain.

We suggest that Section 5 provides a fair and reasonable principle to apply in the present debate. We submit the burden should be placed on those who would limit or repeal the Act to prove thier case. Let them prove that the legacy of nearly a century of rights ignored has been wholly overcome and that the Act ceases to be needed.

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STATEMENT BY WILLIAM H. WYNN

INTERNATIONAL PRESIDENT

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (AFL-CIO)

TO THE CIVIL AND CONSTITUTIONAL RIGHTS SUBCOMMITTEE

OF THE JUDICIARY COMMITTEE OF THE U.S. HOUSE OF REPRESENTATIVES

My name is William H. Wynn. I am the International President of the United Food and Commercial Workers International Union (AFL-CIO).

The UFCW is a labor union with 1.3 million members organized in some 700 local unions throughout the United States and Canada. The UFCW and its local unions have collective bargaining agreements with tens of thousands of employers throughout the food processing, retail sales, leather, health, commercial, shoe, fur and other industries.

STRONG SUPPORT

At the outset, let me say that the UFCW strongly supports the extension of the Voting Rights Act.

Our union believes in the old frontier folk saying, "If it ain't broke, don't fix it." We also believe that the Voting Rights Act "ain't broke." Indeed, there is almost universal agreement among foes and friends of the law alike that it is the most effective civil rights law that emerged from the legislative and social activism of the 1960's.

There is no question that the Voting Rights Act works. The figures tell the story.

William H. Wynn
International
President

Anthony J. Luzzy
International
Secretary-Treasurer

In 1964, the year before the act was passed, 2.8 million blacks in 11 Southern states were registered to vote. Today, 4.2 million blacks are registered in those same states. Hispanic registration has increased by 30 percent nationwide and 44 percent in the Southwest. Millions of disadvantaged whites have been enfranchised by the striking down of literacy tests.

The success of the Voting Rights Act is a proud chapter in this country's long struggle toward political equality -- a struggle which has gone on for our entire 205-year history. The right to vote -- to choose our elected leaders and so to have some say in the policies by which we are governed -- is central to that struggle.

Progress has not always been rapid or even steady. But the direction has been forward. More than a century ago, we took the first step when the right to vote was no longer contingent on owning property. More than 100 years later, after an 80-year struggle, suffrage was extended to women. Still later, we began to beat down the barriers which historically had blocked blacks and other minorities from the voting booth.

That effort culminated in passage of the Voting Rights Act in 1965. The nation's commitment to political equality was reaffirmed when the act was extended in 1970 and again in 1975.

Yet today, like backward lemmings to the dark sea of yesterday, some are urging the Congress of the United States to take a giant step backwards. The President of the United States seems to be uncertain as to what direction to take. That is a tragedy.

Only government can confer the full rights of citizenship, of which the right to vote is assuredly one. Only government can enforce those rights. They cannot be relegated to the private sector. Nor can we blame those who do not wish to rely on the courts to redress their vote grievances. After all, for 95 years -- between the ratification of the 15th Amendment of the Constitution and the passage of the Voting Rights Act -- the courts were virtually impotent on the subject of minority voting rights.

MOBILE VS. BOLDEN

If the Voting Rights Act is allowed to expire in August of 1982, those with voting rights complaints would once again be dependent on the courts instead of administrative relief. The precedent of the recent Mobile vs. Bolden case is hardly one to bolster confidence in the judicial route.

That case has created such confusion about the standards of evidence in voting discrimination cases that we must look to strengthening the Voting Rights Act instead of abandoning it.

It is true, as opponents of extension contend, that the country has closed the door on such overt discriminatory practices as poll taxes and literacy tests. But those who would withhold the franchise from their fellow citizens have not emptied their bag of tricks.

Without the pre-clearance section, localities would be free to dilute minority, voting strength by racial gerrymandering, annexations, and changes from district to at-large voting. And who will say to them nay?

Mobile vs. Bolden already makes clear that the courts may very well not reverse a persistent pattern which guarantees under-representation. The twist in the Mobile case is that the city's at-large system of electing city commissioners dates back to 1911. So the Supreme Court held that the purpose of the electoral system was not discriminatory.

But the effects clearly have been. In a city that is 35 percent black, no black person has ever been elected. The plaintiffs charged that the lack of representation rendered useless their complaints about city services and related issues. The court held that the plaintiffs could not show that discrimination was the intent of the at-large system. The Voting Rights Act did not apply because it requires only that any change in election procedure must be non-discriminatory.

PRE-CLEARANCE NEEDED

The pre-clearance requirement is clearly still needed. Not only does the testimony before this Subcommittee bear eloquent and more than adequate witness to its necessity, but the Administration's Justice Department just this month rejected Virginia's plan for redistricting its state Senate. The grounds were that the proposed plan discriminated against the black voters in Norfolk, the state's largest city. "The city of Norfolk was divided into two districts in such a way that it ... fragmented the black population and ... diluted the black vote," the Department said.

Clearly, the right of all Americans to vote is not a partisan issue. Southern Republican state chairmen called weeks ago for renewing the Voting Rights Act. Representative Henry Hyde, ranking Republican member of this Subcommittee, came into these hearings believing that "17 years in the political penalty box is enough." He comes out of them "appalled by much of what I heard" and publicly committed to a change of mind.

"What good," he asks, "is all the political rhetoric if you can't express your ideas and values at the polls? As long as the majestic pledge our nation made in 1870 by ratifying the 15th Amendment remains unredeemed, then its redemption must come first."

We welcome his views -- especially his recognition that "Court proceedings, desirable as they are, are too slow and costly to protect the great number of people -- most without adequate resources -- who still need protection."

Thomas Jefferson said, "I know of no safe depository of the ultimate powers of the society but the people themselves." Extension of the existing Voting Rights Act is absolutely essential to maintain the American people -- all of the American people -- as the "depository of the ultimate powers of society." We strongly urge that the Subcommittee, its parent Committee and the entire Congress take this action.

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