Voting Rights Legislative Strategy Group 04/17/1982 OA 9439 Uhlmann, Michael M.: Files

High Court to Review Discrimination Ruling Against Contractors

By Fred Barbash
Washington Post Staff Writer

The Supreme Court agreed yesterday to consider whether virtually the entire construction industry in an area can be penalized for a discriminatory hiring hall operated by a single union.

Fourteen hundred construction contractors from eastern Pennsylvania and Delaware asked the justices to review a lower court decision that made them and the union responsible for the discrimination, even though it was the union hiring hall alone that decided who would work.

The case could have a major impact on both employment discrimination and labor relations in any situation where an employer delegates hiring responsibility, as many industries do.

Yesterday's case stemmed from the hiring practices of Local 524 of the Operating Engineers Union, whose hiring hall exclusively decides who will operate heavy equipment for all of the region's unionized contractors. When blacks sued for discrimination in 1971, the industry argued that since the union did all the hiring, the union should bear all responsibility for whatever discrimination occurred.

The blacks contended that the employers were equally liable because they participated in the discrimination by agreeing in collective bargaining to the exclusive hiring hall powers of the union.

The 3rd U.S. Circuit Court of Appeals, in a tie vote, agreed with the blacks in 1978 when it upheld a district court's finding of discrimination. It also upheld the imposition of an affirmative action program on the entire industry and exposed all the contractors to an award of costs for legal fees and possible future contempt action for violations of the district court order. A potentially huge back pay award is still being debated in the lower courts.

The construction industry told the Supreme Court that the ruling, if allowed to stand, could disrupt the hiring hall system used throughout the country and "substantially harm" the industry financially.

In other action yesterday:

• The court said it would consider whether cable television companies must pay for the right to lay cables across private property. Jean Loretto, a Manhattan apartment house owner, contended that the Teleprompter Corp. should pay her a fee for installing equipment on top of her building in order to provide service to nearby residents.

A New York state law, however, frees cable companies of the need to make anything more than a nominal payment on the grounds that cable television, like telephone service, is a "vital" communications business that benefits the general public.

That, Loretto argues, treats her building as if it were a "public highway." Loretto has asked the court to strike down the New York law because it allows an "invasion" of her property without the compensation required by the Constitution.

A Supreme Court opinion siding with Loretto could make cable installation significantly more expensive for the companies.

• The court agreed to review a death penalty case from Florida raising the question of whether an accomplice to a murder, who didn't actually pull the trigger and never intended that there be a killing, can be sentenced to die.

The case involves the murder of an elderly Hardee County, Fla., couple during a robbery at their rural home. Earl Enmund accompanied his companions to the home to rob the couple. While he was waiting in the getaway car, Eunice Kersey, 74, attempted to resist; she and her husband were shot to death.

Enmund did not witness or participate in the shooting, and prosecutors did not allege that he or the others went to the home with the intent to kill. A jury sentenced him to death anyway under a "felony murder" law.

Enmund's lawyers have asked the court to ban the death penalty in cases where there is no showing of intent to kill on the part of a defendant who did not do the killing.

• The court agreed to consider whether tenants in a Louisville public housing project have to be informed in person of a landlord's court action against them before being evicted or whether it is sufficient to post a notice on their doors.

The case, *Lendsey vs. Joseph Green and Unknown Deputy Sheriffs*, questions the practice of sheriffs of posting a court notice when they cannot find the recipient.

• The court let stand a ruling that Medicare does not have to pay hospitals for televisions and telephones automatically provided to Medicare patients along with other patients. Presbyterian Hospital of Dallas argued that the patients have a "right" to talk to relatives and friends and to receive news and religious programming.

• In an unsigned opinion, the court reemphasized that prison inmates must go to state courts with efforts to gain their freedom before going to federal courts.

Isadore Serrano, convicted of murder in Indiana, tried to have his conviction nullified by the U.S. courts on the grounds that he received ineffective assistance from his lawyer. He had not made that argument in the state courts. The 7th U.S. Circuit Court of Appeals ruled for Serrano, saying that "in the interest of judicial economy," there was no reason to await state court consideration. The justices, with Thurgood Marshall dissenting, reversed the appeals court.

11/13/81

Reagan Backs Modified Plan On Rights Bill

By ERNEST HOLSENDOLPH
Special to The New York Times

WASHINGTON, Nov. 12 — President Reagan told a group of black reporters today that he continued to support an extension of the Voting Rights Act of 1965, but "with a couple of modifications."

The President said his Administration was "doing just what the civil rights groups insisted we do" by endorsing a 10-year extension of the law, which has been credited with increasing the number of voters who are members of minority groups and contributing to the election of hundreds of black and Hispanic officials. Key provisions of the law are scheduled to expire next August.

However, Attorney General William French Smith and Edwin Meese 3d, counselor to the President, said they had some concerns about a bill passed by the House on Oct. 5 that incorporates a standard favored by civil rights lobbyists. Under this provision, people who file civil lawsuits alleging a denial of voting rights are required to prove only that a voting law or regulation produces a discriminatory effect, not that discrimination is intentional.

They also said they preferred a bill that would make it easier for states and other political subdivisions to end their obligation to submit all proposed changes in local election laws to the Federal Government for approval, or "preclearance."

'Bail-Out Provisions' Favored

"The President favors fair and realistic bail-out provisions," Mr. Smith said, but he added that a House requirement that a community demonstrate "constructive efforts" to build minority voter participation seemed vague and likely to stir interminable litigation.

"Nobody knows what 'constructive efforts' mean," he said.

The provision to which he referred would allow states and communities to be released from the preclearance requirement if they can prove that they have fully complied with the Voting Rights Act for 10 years and have made "constructive efforts" to increase voting by members of minority groups.

The points were made in a brief appearance by Mr. Reagan, who read a statement, and in a two-hour luncheon briefing by Administration officials for 11 black reporters.

The point of the meeting, press officers said, was to establish "better relations" with the black press and blacks in general.

SportsMonday
Monday in The New York Times

11/16/81

Diluting Voting Rights

By Vernon E. Jordan Jr.

When is an endorsement not an endorsement? The answer is: when President Reagan backs extension of the Voting Rights Act of 1965.

The President's "endorsement" of extending the act, which expires in 1982, was qualified with backing for amendments that would weaken the act.

In the process, the President missed an opportunity to strengthen his image among blacks.

Minority-group members' anger at the Reagan Administration's disastrous economic program could have been countered, at least to some small degree, by a strong, forthright statement endorsing the version of the Voting Rights Act extension that has already been passed by the House of Representatives.

The President's move was not only a political mistake that will make it even harder for his party to attract minority-group voters, but also it was a disservice to the conservatism he symbolizes. True conservatism seeks to "conserve" the best of the past. It venerates constitutional rights, individual freedom, and protection of civil rights from Government abuse. Therefore, the Voting Rights Act, with strong enforcement provisions that do not permit local governments to escape their responsibilities, is in essence a deeply conservative law. It has the support of many citizens and legislators who proudly label themselves "conservative."

Superficially, the President's endorsement of extending the act for 10 years fits that tradition. He spoke of voting as a "sacred right" and of reaffirming his commitment to voting-rights protection.

However, the President then went on to say that he supports two changes in the bill passed by the House. Far from being minor amendments, those changes would seriously undermine the effectiveness of the Voting Rights Act.

The first change would be to further liberalize the "bailout provisions" through which states and local governments covered by the law could escape Justice Department oversight of their electoral operations. Such governments now need "pre-clearance" by the Justice Department for any proposed changes in their election laws or procedures.

Many people agree with the President that a bailout for jurisdictions that have not violated voting rights for a period of time is "a matter of fairness." But to me, it is an escape hatch that virtually invites local power elites to lie low for long enough to get out from under Federal converage. Even with the law as it stands, abuses occur. Introducing a "reasonable bailout" feature just asks for trouble.

The pre-clearance procedure is simple and reasonable; to date, more than 800 requested changes in local laws have been routinely approved. Hardly burdensome, as its foes argue, it does not warrant a bailout amendment. The Justice Department and the courts are not likely to come down on local officials unless there is blatant violation of voting rights, such as the one that moved a Federal court to suspend City Council elections in New York City because they discriminated against minority-group voters.

Perhaps more serious is the President's support for using intent-to-discriminate as the test of whether the Government should act to protect voting rights. The House bill uses the "effects" standard: Changes in election laws and procedures can be challenged if they have a discriminatory, negative effect on minorities.

Intent to discriminate is impossible to prove. Local officials don't wallpaper their offices with memos about how to restrict minority-group members' access to the polling booth.

Discriminatory effects, however, are clear to all. They can be measured, and judged. A redistricting plan that wipes out black representation in a state legislature could be spotted and dealt with for what it is — a discriminatory change in election laws that deprives minorities of their voting rights.

But if the standard is intent to discriminate, the onus would be on the people whose rights were violated to try to prove that the change was *deliberately* made to deprive black voters of representation. The evidence would be virtually impossible to assemble.

So the President's endorsement of the Voting Rights Act is a sham. It observes the letter but not the spirit of voting-rights protection. And it will make the coming battle over the voting-rights extension in the Senate much harder to win.

Vernon E. Jordan Jr., president of the National Urban League since 1972, is leaving next month to go into private law practice.

Liberal barbs at Reagan stand on Voting Rights ignore reality

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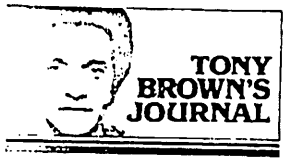

TONY BROWN'S JOURNAL

There is a new and crucial dimension to the Voting Rights Act. It is the Reagan administration's position on the Act, rather than the civil rights legislation itself.

The backers of the liberal House version called the president's position qualified and lukewarm. One White House source says that a meeting with black liberal leaders ended in agreement on the essential elements of this centerpiece of civil rights legislation. Later, however, a public campaign was launched by these very same people, the aide explained, to discredit the administration.

In a meeting with 10 other black journalists and me, President Reagan hinted as much: "There seems to be some confusion about me and my position on this. And I have said that the Voting Rights Act is the most sacred right of free men and women. It's the crown jewel of our American liberties and we will not see its luster diminished. And for that reason, I have approved the idea of a ten-year extension of the present Voting Rights Act which has proven, I think, its effectiveness and it has been a good piece of legislation that did a remarkable job."

In the interest of clarity, it seems that the best thing for those of us at the closed meeting to do is to share with our readers *exactly* what we were told by two Cabinet members: Attorney General William French Smith and Edwin Meese III, counselor to the president.

Clarifying the decision

John Procope, president of the National Newspaper Publisher's Association: Exactly what's the administration's decision on the Voting Rights Act? There seemed to be equivocation last Friday with respect to the intent clause and the bailout provision. Civil rights groups feel that particular position will cripple the Act.

Attorney General Smith: Perhaps I should answer that by relating a little history. You may recall, about three or four months ago, the president asked me to review this whole question of the Civil Rights Act, how it had operated in the past; its history and its successes and failures and so on. And we did that... in three stages. The first stage was to review the whole background, the whole history, and to consider areas where there had been complaints or criticisms and comments or suggestions, and what have you. That was really, I guess you'd say, more of a factual inquiry than anything else.

What the president has done is to accept the uniform and unanimous recommendation of every civil rights group to whom we talked.

The second stage involved discussions with every group that wanted to express an opinion on this subject, and during that period we had meetings with the leaders of all the civil rights groups. And during those meetings the position that was uniformly urged upon us was to have the president support the extension of the Civil Rights Act as it was, without any change...

Don't change it

We talked about Section 5 and the fact of the preclearance applications that have been made to the Justice Department, something like 98.5 percent have been routinely approved.... But uniformly, the response from every single civil rights organization was: Don't tamper with Section 5; there should be no change in it, even if you can make a case that perhaps some administrative aspects of the Act could be improved, because it has worked in the past. If you change it, you're changing a highly successful piece of legislation....

What the president has done is to accept the uniform and unanimous recommendation of every civil rights group to whom we talked, to support the Act as is without change for 10 years. In addition, he has made the bilingual requirement coextensive in terms of time. And that is his position, it is the position that has been stated: There is no confusion about it. It is out front, it is simple, and it is exactly in accordance with the recommendation of every single civil rights organization that we talked to during that entire period. That's his position.

Extend it

Mr. Procope: You're saying he (the president) would not support a version of the bill that called for more liberal bailout provisions?

Attorney General Smith: Well, now, that's his basic position: Extend the Civil Rights Act for 10 years. Now, he has also said, in addition to that, that he would accept a fair and realistic bailout provision....

Mr. Meese: Let me say this. We are not interested in changing the criteria for the bailout. You have to change it somehow from the present law, just because the present law historically doesn't make sense. There has to be some technical changes in it anyway, which I'm sure you understand.

You shouldn't have to require all of the jurisdictions within the state to comply so the state can bail out. We would rather see it that if there is a jurisdiction that is offending within a state, that (it) would not neccessarily preclude the whole state from being included, but just that jurisdiction....

Attorney General Smith (in answer to a question about the administration paying unnecessary attention to the Voting Rights Act as a dead issue): The president's statement was really quite clear on that. He came out, as I said, for extension as is, which was the civil rights groups' position. He made that very clear and then commented about the bailout and I find it difficult to see how that can be construed either as watering down anything.

Identify issue

Tony Brown: Number one, I am as confused now as I was when I came in on Voting Rights. Maybe I have a very simple mind and I don't know all the sections as you and John Procope do but, number one, what *really* is at issue? If you are supporting extension of the previous Voting Rights Act, why are we asking these questions, and why are these stories being circulated in the press that you're not?

Mr. Meese: I think that's a very nice question.

Tony Brown: All right, number two, and after you answer that part of the question, are you prepared to overwhelmingly, explicitly, clarify these ambiguous questions — I guess that would relate to Section 2 and Section 5 — and, three, will the president use his enormous persuasive powers for this voting rights act as he did for AWACS and for his budget cuts?

Mr. Meese: Yes, I think the president is going to do everything possible to get the Voting Rights Act through.

But the following week, Vernon Jordan, a liberal leader used the editorial page of The New York Times to tell us otherwise: "When is an endorsement not an endorsement? The answer is: when President Reagan backs extension of the Voting Rights Act of 1965."

Either Jordan knows something that the rest of us don't, or somebody is just misleading the public

"Tony Brown's Journal" television series is shown every Sunday at 6:30 a.m. and 11:00 a.m. on WNBC-TV, Channel 4.

S-(V.R.A.) Markman #12

INTENT v. RESULT

The Voting Rights Act debate will focus upon a proposed change in the Act that involves one of the most important constitutional issues to come before Congress in many years. Involved in this debate are fundamental issues involving the nature of American representative democracy, federalism, civil rights, and the separation of powers. The following are questions and answers pertaining to this proposed change. It is not a simple issue.

WHAT IS THE MAJOR ISSUE INVOLVED IN THE PRESENT VOTING RIGHTS ACT DEBATE?

The most controversial issue is whether or not to change the standard in section 2 by which violations of voting rights are identified from the present "intent" standard to a "results" standard. There is virtually no opposition to extending the provisions of the Act or maintaining intact the basic protections and guarantees of the Act.

WHO IS PROPOSING TO CHANGE THE SECTION 2 STANDARD?

Although the popular perception of the issue involved in the Voting Rights Act debate is whether or not civil rights advocates are going to be able to preserve the present Voting Rights Act, the section 2 issue involves a major change in the law proposed by some in the civil rights community. No one is urging any retrenchment of existing protections in the Voting Rights Act. The issue rather is whether or not expanded notions of civil rights will be incorporated into the law.

WHAT IS SECTION 2?

Section 2 is the statutory codification of the 15th Amendment to the Constitution. The 15th Amendment provides that the right of citizens to vote shall not be denied or abridged on account of race or color. There has been virtually no debate over section 2 in the past because of its non-controversial objectives.

DOES SECTION 2 APPLY ONLY TO 'COVERED' JURISDICTIONS?

No. Because it is a codification of the 15th Amendment, it applies to all jurisdictions across the country, whether or not they are a 'covered' jurisdiction that is required to "pre-clear" changes in voting laws and procedures with the Justice Department under section 5 of the Act.

WHAT IS THE RELATIONSHIP BETWEEN SECTION 2 AND SECTION 5?

Virtually none. Section 5 requires jurisdictions with a history of discrimination to "pre-clear" all proposed changes in their voting laws and procedures with the Justice Department. Section 2 restates the 15th Amendment and applies to all jurisdictions; it is not limited either, as is section 5, to changes in voting laws or procedures.

WHAT IS THE PRESENT LAW WITH RESPECT TO SECTION 2?

The law with respect to the standard for identifying section 2 (or 15th Amendment) violations has always been an "intent" standard. As the Supreme Court reaffirmed in a decision in 1980, "That Amendment prohibits only purposefully discriminatory denial or abridgement by government of the freedom to vote on account of race or color." Mobile v. Bolden 446 U.S. 55.

DID THE MOBILE CASE ENACT ANY CHANGES IN EXISTING LAW?

No. The language in both the 15th Amendment and section 2 proscribes the denial of voting rights "on account of" race or color. This has always been interpreted to require purposeful discrimination. Indeed, there is no other kind of discrimination as the term has traditionally been understood. Until the Mobile case, it was simply not at issue that the 15th Amendment and section 2 required some demonstration of discriminatory purpose. There is no decision of the Court either prior to or since Mobile that has ever required anything other than an "intent" standard for the 15th Amendment or section 2.

WHAT IS THE STANDARD FOR THE 14TH AMENDMENT'S EQUAL PROTECTION CLAUSE?

The "intent" standard has always applied to the 14th Amendment as well. In Arlington Heights v. Metropolitan Authority, the Supreme Court stated, "Proof of a racially discriminatory intent or purpose is required to show a violation of the equal protection clause of the 14th Amendment." 429 U.S. 253 (1977). This has been reiterated in a number of other decisions, Washington v. Davis 426 U.S. 229 (1976); Massachusetts v. Feeney 442 U.S. 256 (1979). In addition, the Court has always been careful to emphasize the distinction between de facto and de jure discrimination in the area of school busing. Only de jure (or purposeful) discrimination has ever been a basis for school busing orders. Keyes v. Denver 413 U.S. 189 (1973).

WHAT PRECISELY IS THE "INTENT" STANDARD?

The "intent" standard simply requires that a judicial fact-finder evaluate all the evidence available to itself on the basis of whether or not ot demonstrates some intent or purpose or motivation on the part of the defendant individual or community to act in a discriminatory manner. It is the traditional test for identifying discrimination.

DOES IT REQUIRE EXPRESS CONFESSIONS OF INTENT TO DISCRIMINATE?

No more than a criminal trial requires express confessions of guilt. It simply requires that a judge or jury be able to conclude on the basis of all the evidence available to it, including circumstantial evidence of whatever kind, that some discriminatory intent or purpose existed on the part of the defendant.

THEN IT DOES NOT REQUIRE "MIND-READING" AS SOME OPPONENTS OF THE "INTENT" STANDARD HAVE SUGGESTED?

Absolutely not. "Intent" is proven without "mind-reading" thousands of times every day of the week in criminal and civil trials across the country. Indeed, in criminal trials the existence of intent must be proven "beyond a reasonable doubt". In the civil rights area, the normal test is that intent be proven merely "by a preponderance of the evidence".

WHAT KIND OF EVIDENCE CAN BE USED TO DEMONSTRATE "INTENT"?

Again, literally any kind of evidence can be used to satisfy this requirement. As the Supreme Court noted in the Arlington Heights case, "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence as may be available." 429 U.S. 253, 266. Among the specific considerations that it mentions are the historical background of an action, the sequence of events leading to a decision, the existence of departures from normal procedures, legislative history, the impact of a decision upon minority groups, etc.

DO YOU MEAN THAT THE ACTUAL IMPACT OR EFFECTS OF AN ACTION UPON MINORITY GROUPS CAN BE CONSIDERED UNDER THE "INTENT" TEST?

Yes. Unlike a "results" or "effects"-oriented test, however, it is not dispositive of a voting rights violation in and of itself, and it cannot effectively shift burdens of proof in and of itself. It is simply evidence of whatever force it communicates to the fact-finder.

WHY ARE SOME PROPOSING TO SUBSTITUTE A NEW "RESULTS" TEST IN SECTION 2?

Ostensibly, it is argued that voting rights violations are more difficult to prove under an "intent" standard than they would be under a "results" standard.

HOW IMPORTANT SHOULD THAT CONSIDERATION BE?

Completely apart from the fact that the Voting Rights Act has been an effective tool for combatting voting discrimination under the present standard, it is debatable whether or not an appropriate standard should be fashioned on the basis of what facilitates successful prosecutions. Elimination of the "beyond a reasonable doubt" standard in criminal cases, for example, would certainly facilitate convictions. We have chosen not to adopt it because there are competing values, e.g. fairness and due process.

WHAT IS WRONG WITH THE "RESULTS" STANDARD?

First of all, it is totally unclear what the "results" standard is supposed to represent. It is a standard totally unknown to present law. To the extent that its legislative history is relevant, and to the extent that it is designed to be similar to an "effects" test, the main objection is that it would establish as a standard for identifying section 2 violations a "proportional representation by race" standard.

WHAT IS MEANT BY "PROPORTIONAL REPRESENTATION BY RACE"?

The "proportional representation by race" standard is one that evaluates electoral actions on the basis of whether or not they contribute to representation in a State legislature or a City Council or a County Commission or a School Board for racial and ethnic groups in proportion to their existence in the population.

WHAT IS WRONG WITH "PROPORTIONAL REPRESENTATION BY RACE"?

It is a concept totally inconsistent with the traditional notion of American representative government wherein elected officials represent individual citizens not racial or ethnic groups or blocs. In addition, as the Court observed in Mobile, the Constitution "does not require proportional representation as an imperative of political organization.

COMPARE THEN THE "INTENT" AND THE "RESULTS" TESTS?

The "intent" test allows courts to consider the totality of evidence surrounding an alleged discriminatory action and then requires such evidence to be evaluated on the basis of

whether or not it evinces some purpose or motivation to discriminate. The "results" test, however, would focus analysis upon whether or not minority groups were represented proportionately or whether or not some change in voting law or procedure would contribute toward that result.

WHAT DOES THE TERM "DISCRIMINATORY RESULTS" MEAN?

It means nothing more than is meant by the concept of racial balance or racial quotas. Under the "results" standard, actions would be judged, pure and simple, on color-conscious grounds. This is totally at odds with everything that the Constitution has been directed towards since the Reconstruction Amendments, Brown v. Board of Education, and the Civil Rights Act of 1964. The term "discriminatory results" is Orwellian in the sense that it radically transforms the concept of discrimination from a process or a means into an end or a result.

ISN'T THE "PROPORTIONAL REPRESENTATION BY RACE" DESCRIPTION AN EXTREME DESCRIPTION?

Yes, but the "results" test is an extreme test. It is based upon Justice Thurgood Marshall's dissent in the Mobile case which was described by the Court as follows: "The theory of this dissenting opinion... appears to be that every 'political group' or at least every such group that is in the minority has a federal constitutional right to elect candidates in proportion to its numbers." The House Report, in discussing the proposed new "results" test, admits that proof of the absence of proportional representation "would be highly relevant".

BUT DOESN'T THE PROPOSED NEW SECTION 2 LANGUAGE EXPRESSLY STATE THAT PROPORTIONAL REPRESENTATION IS NOT ITS OBJECTIVE?

There is, in fact, a disclaimer provision of sorts. It is clever, but it is a smokescreen. It states, "The fact that members of a minority group have not been elected in numbers equal to the group's proportion of the population shall not, in and of itself, constitute a violation of this section."

WHY IS THIS LANGUAGE A "SMOKESCREEN"?

The key, of course, is the "in and of itself" language. In Mobile, Justice Marshall sought to deflect the "proportional representation by race" description of his "results" theory with a similar disclaimer. Consider the response of the Court, "The dissenting opinion seeks to disclaim this description of its theory by suggesting that a claim of vote dilution may require, in addition to proof of electoral defeat, some evidence of 'historical and social factors' indicating that the group in question is without political influence. Putting to the side the evident fact that these gauzy sociological considerations have no constitutional basis, it remains far from certain that they could, in

any principled manner, exclude the claims of any discrete group that happens for whatever reason, to elect fewer of its candidates than arithmetic indicates that it might. Indeed, the putative limits are bound to prove illusory if the express purpose informing their application would be, as the dissent assumes, to redress the 'inequitable distribution of political influence'."

EXPLAIN FURTHER?

In short, the point is that there will always be an additional iota of evidence to satisfy the "in and of itself" language. This is particular true since there is no standard by which to judge any evidence except for the "results" standard.

WHAT ADDITIONAL EVIDENCE, ALONG WITH EVIDENCE OF THE LACK OF PROPORTIONAL REPRESENTATION, WOULD SUFFICE TO COMPLETE A SECTION 2 VIOLATION UNDER THE "RESULTS" TEST?

Among the additional bits of "objective" evidence to which the House Report refers are a "history of discrimination", "racially polarity voting" (sic), at-large elections, majority vote requirements, prohibitions on single-shot voting, and numbered posts. Among other factors that have been considered relevant by the Justice Department's Civil Rights Division in the past in evaluating submissions by "covered" jurisdictions under section 5 of the Voting Rights Act are disparate racial registration figures, history of English-only ballots, maldistribution of services in racially definable neighborhoods, staggered electoral terms, municipal elections which "dilute" minority voting strength, the existence of dual school systems in the past, impediments to third party voting, residency requirements, redistricting plans which fail to "maximize" minority influence, numbers of minority registration officials, re-registration or registration purging requirements, economic costs associated with registration, etc., etc.

THESE FACTORS HAVE BEEN USED BEFORE?

Yes. In virtually every case, they have been used by the Justice Department (or by the courts) to determine the existence of discrimination in "covered" jurisdictions. It is a matter of one's imagination to come up with additional factors that could be used by creative or innovative courts or bureaucrats to satisfy the "objective" factor requirement of the "results" test (in addition to the absence of proportional representation). Bear in mind again that the purpose or motivation behind such voting devices or arrangements would be irrelevant.

SUMMARIZE AGAIN THE SIGNIFICANCE OF THESE "OBJECTIVE" FACTORS?

The significance is simple-- where there is a State legislature or a City Council or a County Commission or a School Board which does not reflect racial proportions within the relevant population, that jurisdiction will be vulnerable to prosecution under section 2. It is virtually inconceivable that the "in and of itself" language will not be satisfied by one or more "objective" factors existing in nearly any jurisdiction in the country. The existence of these factors, in conjunction with the absence of proportional representation, would represent an automatic trigger in evidencing a section 2 violation. As the Mobile court, the disclaimer is "illusory".

BUT WOULDN'T YOU LOOK TO THE TOTALITY OF THE CIRCUMSTANCES?

Even if you did, there would be no judicial standard other than proportional representation. The notion of looking to the totality of circumstances is meaningful only in the context of some larger state-of-mind standard, such as intent. It is a meaningless notion in the context of a result-oriented standard. After surveying the evidence under the present standard, the courts ask themselves, "Does this evidence raise an inference of intent?" Under the proposed new standard, given the absence of proportional representation and the existence of some "objective" factor, a prima facie case has been established. There is no need for further inquires by the court.

WHERE WOULD THE BURDEN OF PROOF LIE UNDER THE "RESULTS" TEST?

Given the absence of proportional representation and the existence of some "objective" factor, the effective burden of proof would be upon the defendant community. Indeed, it is unclear what kind of evidence, if any, would suffice to overcome such evidence. In Mobile, for example, the absence of discriminatory purpose and the existence of legitimate, non-discriminatory reasons for the at-large system of municipal elections was not considered relevant evidence by either the plaintiffs or the lower Federal courts.

PUTTING ASIDE THE ABSTRACT PRINCIPLE FOR THE MOMENT, WHAT IS THE MAJOR OBJECTIVE OF THOSE ATTEMPTING TO OVER-RULE MOBILE AND SUBSTITUTE A "RESULTS" TEST IN SECTION 2?

The immediate purpose is to allow a direct assault upon the majority of municipalities in the country which have adopted at-large elections for city councils and county commissions. This was the precise issue in Mobile, as a matter of fact. Proponents of the "results" test argue that at-large elections tend to discriminate against minorities who would be more capable of electing "their" representatives to office on a district or ward voting system. In Mobile, the Court refused to order the disestablishment of the at-large municipal form of government adopted by the city.

DO AT-LARGE SYSTEMS OF VOTING DISCRIMINATE AGAINST MINORITIES?

Completely apart from the fact that at-large voting for municipal governments was instituted by many communities in the 1910's and 1920's in response to unusual instances of corruption within ward systems of government, there is absolutely no evidence that at-large voting tends to discriminate against minorities. That is, unless the premise is adopted that only blacks can represent blacks, only whites can represent whites, and only Hispanics can represent Hispanics. Indeed, many political scientists believe that the creation of black wards or Hispanic wards, by tending to create political "ghettoes" minimize the influence of minorities. It is highly debatable that black influence, for example, is enhanced by the creation of a single 90% black ward (that may elect a black person) than by three 30% black wards (that may all elect white persons).

WHAT ELSE IS WRONG WITH THE PROPOSITION THAT AT-LARGE ELECTIONS ARE CONSTITUTIONALLY INVALID?

First, it turns the traditional objective of the Voting Rights Act-- equal access to the electoral process-- on its head. As the Court said in Mobile, "this right to equal participation in the electoral process does not protect any political group, however defined, from electoral defeat." Second, it encourages political isolation among minority groups; rather than having to enter into electoral coalitions in order to elect candidates favorable to their interests, ward-only elections tend to allow minorities the more comfortable, but less ultimately influential, state of affairs of safe, racially identifiable districts. Third, it tends to place a premium upon minorities remaining geographically segregated. To the extent that integration occurs, ward-only voting would tend not to result in proportional representation. To summarize again by referring to Mobile, "political groups do not have an independent constitutional claim to representation."

WHAT WOULD BE THE IMPACT OF A CONSTITUTIONAL OR STATUTORY RULE PROSCRIBING AT-LARGE MUNICIPAL ELECTIONS?

The impact would be profound. In Mobile, the plaintiffs sought to strike down the entire form of municipal government adopted by the city on the basis of the at-large form of city council election. The Court stated, "Despite repeated attacks upon multi-member (at-large) legislative districts, the Court has consistently held that they are not unconstitutional." If Mobile were over-ruled, the at-large electoral structures of the more than 2/3 of the 18,000+ municipalities in the country that have adopted this form of government, would be placed in serious jeopardy.

WHAT WILL BE THE IMPACT OF THE "RESULTS" TEST UPON RE-DISTRICTING AND RE-APPORTIONMENT?

Re-districting and re-apportionment actions will also be judged on the basis of the proportional representation criterion. The New York Times, for example, in describing New York City's re-districting difficulties recently stated, "Lawyers for some of those who brought suit against the Council under the Voting Rights Act pointed out that statistics do not guarantee the election of minority group members. "It's twelve districts on paper, but at best it may be ten, maybe only nine, said Cesar A. Perales, general counsel to the Puerto Rican Legal Defense Fund." Minority groups alone will be largely immune to political or ideological gerrymandering on the grounds of "vote dilution".

WHAT IS "VOTE DILUTION"?

The concept of "vote dilution" is one that has been responsible for transforming other provisions of the Voting Rights Act (esp. section 5) from those designed simply to ensure equal access by minorities to the registration and voting processes into those concerned with electoral outcome and electoral success as well. The right to register and vote has been significantly transformed in recent years into the right to cast an "effective" vote and the right of racial and ethnic groups not to have their collective vote "diluted". The concept of "vote dilution" in the section 5 context is separate from the section 2 issue, except that this concept is likely to be borrowed by the courts in implementing the new "results" test should it be adopted in section 2. See Thernstrom, "The Odd Evolution of the Voting Rights Act", 55 The Public Interest 49.

ARE THERE ANY OTHER CONSTITUTIONAL ISSUES INVOLVED WITH SECTION 2?

Since section 2 is the statutory expression of the 15th Amendment, and since both provisions have been interpreted by the Court in Mobile to require some evidence of intentional discrimination, there is a major constitutional question whether or not Congress can alter this by simple statute. Similar constitutional issues are involved in pending efforts by Congress to overturn the Roe v. Wade by defining "person" for purposes of the 14th Amendment. Beyond the question of conflict with a Supreme Court decision, there is the constitutional question whether or not Congress possesses the authority to establish a standard for section 2 violations in excess of its 15th Amendment authority.

WHO CAN INITIATE ACTIONS UNDER SECTION 2?

In addition to prosecution by the Justice Department, section 2 would permit private causes of action against communities. Individuals or so-called 'public interest' litigators could bring such actions.

WHAT IS THE POSITION OF THE ADMINISTRATION ON THE SECTION 2 ISSUE?

The Administration and the Justice Department are strongly on record as favoring retention of the intent standard in section 2. President Reagan has expressed his concern that the "results" standard may lead to the establishment of racial quotas in the electoral process. Press Conference, December 17, 1981.

SUMMARIZE THE SECTION 2 ISSUE?

The debate over whether or not to overturn the Supreme Court's decision in Mobile v. Bolden, and establish a "results" test for the present "intent" test in the Voting Rights Act, is probably the single most important constitutional issue that will be considered by the 97th Congress. Involved in this controversy are fundamental issues involving the nature of American representative democracy, federalism, civil rights, and the relationship between the branches of the national government.

DOCUMENT NO. 065436 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 6/24/82 ACTION/CONCURRENCE/COMMENT DUE BY: 6/25/82

SUBJECT: H.R. 3112 - VOTING RIGHTS ACT AMENDMENTS

	ACTION	FYI		ACTION	FYI
HARPER	☐	☒	DRUG POLICY	☐	☐
PORTER	☐	☐	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	OTHER		
FAIRBANKS	☐	☐	_____	☐	☐
FERRARA	☐	☐	_____	☐	☐
GUNN	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
MALOLEY	☐	☐	_____	☐	☐
SMITH	☐	☐	_____	☐	☐
UHLMANN	☐	☐	_____	☐	☐
ADMINISTRATION	☒	☐	_____	☐	☐

Remarks:

MIKE UHLMANN FOR ACTION DUE: 200 p.m. 6/25

May I please have your recommendation.

Judy Johnston 6/24

cc: Roger Porter

Please return this tracking sheet with your response.

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

Document No. 065436SS

WHITE HOUSE STAFFING MEMORANDUM

DATE: 6/23/82 ACTION/CONCURRENCE/COMMENT DUE BY: 6/25/82

SUBJECT: H.R. 3112 - VOTING RIGHTS ACT AMENDMENTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	GERGEN	☐	☐
MEESE	☐	☐	HARPER	☑	☐
BAKER	☐	☐	JAMES	☐	☐
DEAVER	☐	☐	JENKINS	☐	☐
STOCKMAN	☐	☐	MURPHY	☐	☐
CLARK	☐	☐	ROLLINS	☐	☐
DARMAN	☐P	☐SS	WILLIAMSON	☐	☐
DOLE	☐	☐	WEIDENBAUM	☐	☐
DUBERSTEIN	☐	☐	BRADY/SPEAKES	☐	☐
FIELDING	☑	☐	ROGERS	☐	☐
FULLER	☐	☐	_____	☐	☐

Remarks:

Any comments/objections?

Richard G. Darman
Assistant to the President
(x2702)

Response:

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 23 1982

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 3112 - The Voting Rights Act Amendments of 1982
Sponsor - Rep. Rodino (D) N.J. and 80 others

Last Day for Action

Purpose

To amend and extend the Voting Rights Act of 1965.

Agency Recommendations

Office of Management and Budget — Approval

Department of Justice — Approval (Informally)

Discussion

The Voting Rights Act's enforcement section expires August 6, 1982. The enrolled bill extends that provision and amends and extends several others.

This enrolled bill amends the Act by (1) extending for 25 years -- until 2007 -- the requirement that the jurisdictions covered receive clearance from the Attorney General for voting law or procedures changes; (2) permitting individual jurisdictions able to meet new standards to bail out of the Act's preclearance coverage; (3) allowing courts to consider election results as a factor in determining if voting discrimination has occurred; (4) extending minority language assistance provisions until 1992; and (5) permitting voting assistance for voters who are blind, disabled or illiterate.

On November 6, 1981, you reaffirmed your commitment to the right to vote by stating your support for a direct extension of the Voting Rights Act for 10 years, or for a modified version of the House passed bill. The enrolled bill, which is the compromise version developed by the Senate Judiciary Committee and for which you stated support on May 3, 1982, modifies the House language to make election results one of a series of factors to be considered by courts in deciding voting discrimination cases.

Background

The Voting Rights Act was enacted to protect the rights of racial minorities in the exercise of their citizen voting privileges in all Federal, State and local elections. Essentially, the 1965 Act ensured black Americans the right to vote in Federal, State and local elections, a right generally denied since the late 19th century, by (1) defining tests or devices that operated to eliminate black voter participation, (2) suspending for five years all discriminatory tests and devices in jurisdictions that had them on November 1, 1964, and in which less than 50% of the voting age population was registered to vote, (3) authorizing the Attorney General to appoint Federal examiners and election observers for jurisdictions automatically covered by the Act, (4) requiring all changes in election laws and practices in covered jurisdictions to be approved by the Attorney General, and (5) providing that pockets of election discrimination outside the South could be brought within the coverage of the Act.

The 1970 extension of the Act extended the automatic coverage provisions of the Act for an additional five years to States with prohibited tests or devices on November 1, 1968, and less than 50% of their voting age population registered to vote. States that had been covered by the 1965 Act were covered for the additional five years.

In 1975, ten years after the original Act had become law and during which period the Attorney General had reversed numerous attempts to institute prohibited laws, practices or procedures, Congress extended Federal coverage provisions for seven years -- until August 6, 1982. The automatic coverage provision was also extended to States or political subdivisions that were found to have discriminated against language minorities on November 1, 1972. The Act was expanded to prohibit providing registration and/or voting materials only in English when the potential voting population included a substantial language minority population (defined to include Asian Americans, American Indians, Alaska natives and those of Spanish heritage). The 1975 amendments also made permanent the ban on literacy tests or other similar devices.

1982 Amendments

The enrolled bill has several provisions that were the center of the debate surrounding the extension of the Voting Rights Act.

As proposed by the House, Section 2 of the Voting Rights Act, the provision allowing private voting rights suits, would have been amended to allow election results to be used as a basis for deciding whether the election procedures resulted in the denial or abridgement of the right to vote. The Senate compromise, which is contained in the enrolled bill, allows election results to be considered as one factor in deciding if election law violations have occurred. In this connection, H.R. 3112 stipulates that there is no right of protected classes (minority groups) to have members elected in numbers equal to their proportion of the population.

The enrolled bill also extends Section 5 of the Voting Rights Act, which requires covered States to preclear changes in election law and procedures with the Justice Department. Currently, nine States and parts of thirteen others must get Justice's approval for changes in order to assure that they will not result in voting discrimination. The enrolled bill extends Section 5 preclearance procedures for 25 years, until 2007.

Other key provisions of the bill:

-- create a new bail-out section to take effect in 1984; current law is extended for two years. Thereafter, the bill allows a jurisdiction that can meet the new bail-out provision requirements for a preceding ten year period to attempt to bail-out (all counties in the nine covered States must be bailed-out before the State can bail-out);

-- set standards for determining when jurisdictions have a "clean record" of voting practices. Congress is required to reconsider the new bail-out criteria at the end of 15 years, in order to ensure that the criteria continue to work in a fair and effective manner;

-- extend until 1992 requirements for providing bilingual election materials for language minorities; and

-- authorize voting assistance for blind, disabled, and illiterate voters.

H.R. 3112 passed the House by vote of 389-24 on October 5, 1981, and passed the Senate 85-8 on June 18, 1982. The House agreed to the Senate amendments on June 23, 1982, by voice vote.

(Signed) James M. Frey

Assistant Director for
Legislative Reference

Enclosures

SECTION-BY-SECTION SUMMARY OF VRA COMPROMISE AMENDMENT Dole 4/26/82

The compromise amendment would amend Section 2 of the Voting Rights Act by dividing it into three new subsections, as follows:

Subsection (a)(1) would retain the existing language of Section 2 which prohibits a state or political subdivision from imposing or applying any voting practice or procedure "to deny or abridge the right of any citizne to vote on account of race, color, etc. As interpreted by the Supreme Court in Mobile, this language prohibits only intentional discrimination.

Subsection (a)(2) would retain the language of the House amendment to Section 2 which prohibits a state or political subdivision from imposing or applying any voting practice or procedure "in a manner which results in a denial or abridgement of the right to vote on account of race, color," etc.

Subsection (b) would define how a violation of the "results" standard in subsection (a)(2) is proved. The language is taken directly out of the White v Regester decision and it makes clear that the issue to be decided is access to the political process, not election results. It also includes a strengthend disclaimer conerning the proportional representation issue. Specifically, it provides that the extent to which members of a protected class have been elected to office is one circumstance to be considered under the results test, but that nothing in the section should be construed to require proportional representation.

The compromise amendment is consistent with the Administration's compromise in the sense that it focuses on the case of White v Regester as articulating an appropriate standard to be used in Section 2 cases. It differs from the Adminstration's proposal in that it makes clear that the White standard is a "results" standard, in the sense that proof of discriminatory purpose is not required.

TEXT OF COMPROMISE

Section 2 is amended to read as follows:

Section 2

(a) No voting qualification or prerequisite to voting or standard, practice or procedure shall be imposed or applied by any State or political subdivision (1) to deny or abridge 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); or (2) in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).

(b) A violation of subsection (a)(2) is established if, based on the totality of circumstances, it is shown that such voting qualification or prerequisite to voting or standard, practice, or procedure has been imposed or applied in such a manner that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a): that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one "circumstance" which may be considered, provided that nothing in this section shall be construed to require that

members of a protected class must be elected in numbers equal to their proportion in the population.

Leadership Conference on Civil Rights

2027 Massachusetts Ave., N.W.
Washington, D.C. 20036
202-667-1780

April 23, 1982

Analysis of Proposed Language for Section 2 of the Voting Rights Act

The proposed bill would retain the current language of Section 2 of the Voting Rights Act as Section 2(a), and add an "explanatory" section 2(b). This clever piece of drafting would probably nullify all the efforts of those who have struggled for a strong Voting Rights bill, because the Supreme Court would likely construe it not as a return to a pre-Mobile non-intent test, but as a confirmation and clarification of the intent test, i.e., a codification of Justice Stewart's plurality opinion in Mobile.

This paradox comes about because of the peculiar use of White v. Regester. Whereas proponents of the "results" test in the House-passed bill have made it crystal clear that test means the test of White v. Regester and Zimmer v. McKeithen as those cases were universally understood for years -- no requirement of intent -- the new proposal co-opts particular language of White v. Regester for the erroneous claim of Brad Reynolds and Senator Hatch that White (and all the other pre-Mobile cases) required purpose always.

If this ambiguity is not eliminated, the whole purpose of returning to the White standard is undermined. This is why the "results" language of the House bill must be retained, and why out-of-context language must be avoided -- even if it is from a good case.

The basic problem is that the language of Section 2 that was interpreted by the Supreme Court in Mobile would remain unchanged (i.e., it would not have the "result" phrase inserted). It is a basic principle of statutory construction that where language that has been construed by a court remains unchanged, the court's interpretation is thereby ratified. In simple terms, if the language doesn't change, the meaning stays the same. This principle can be modified if language is added which clearly commands a different meaning of the language that has been construed, but the language in the proposed Section 2(b) does not do that at all. Rather, it simply amplifies the sentence construed in Mobile, thus suggesting the interpretation that Congress was simply clarifying the confusion of the multiple opinions in Mobile by codifying the Stewart plurality opinion.

The fact that the added language is taken from White v. Regester, doesn't help. White vs. Regester, of course did not require proof of discriminatory intent. (There was no proof of discriminatory intent in the case; courts and commentators universally viewed it as not requiring intent; and perhaps most telling, the Supreme Court Reporter did not see any such requirement, for his headnote read "3. The District Court's order requiring disestablishment of the multimember districts in Dallas and Bexar Counties was warranted in the light of the history of political discrimination against Negroes and Mexican-Americans residing, respectively, in those counties and the residual effects of such discrimination upon those groups. Pp. 9-14.").

Nonetheless, Justice Stewart's plurality opinion in Mobile, under judicial compulsion to reconcile new decisions with past cases, described White as "consistent" with an intent analysis (without quite claiming that proof of intent had been required in that case), and selected two specific sentences from White for support for this position. Those are the very same sentences inserted in the new proposal for a Section 2(b). Therefore, by repeating language which the plurality opinion in Mobile cited to support its "intent" holding (even though out of context), the proposed Section 2(b) would be interpreted as supporting, not changing, the "intent" requirement of Mobile. (If this language were included in the report, though, where it would be put in context by a fuller description of White, the danger could be minimized.)

The danger that the proposed language would be used to support a ratification of the Mobile plurality opinion is accentuated by the fact that Brad Reynolds and Senator Hatch have continually characterized White as an "intent" case; (Reynolds has even characterized Zimmer vs. McKeithen as an intent case, which no one else has ever done.) Senate testimony of Brad Reynolds, pp. 52, 73, 93, 113, 125 (March 1, 1982). Their position makes the proposed amendment even more dangerous, because of another settled doctrine of statutory construction: generally, only the explanations of a bill's supporters count, while the views of opponents are discounted for a variety of sound reasons. If the proposed bill were adopted with the support of Brad Reynolds and Senator Hatch, their explanations of it -- which would quite likely characterize it in purpose terms -- could count as much in setting the meaning of Section 2 as the views of the supporters of the House-passed bill, or even more, since with the crucial language in Section 2(a) unchanged from current law, the language would be theirs and and not ours.

In short, this language could well simply codify the "intent" requiremetn of Justice Stewart's opinion in Mobile.

(Significantly, this language does not include the words "designedly or otherwise," which were in Fortson v. Dorsey, Burns v. Richardson, and Whitcomb v. Chavis, all of which were cited approvingly in White v. Regester).

3. Section 2 of S. 1992 could be amended to clarify that the White v. Regester standard should be applied in lawsuits brought pursuant to Section 2. It is suggested that this change be made in the following manner:

> Sec. 2. Section 2 of the Voting Rights Act of 1965 is amended by striking out "to deny or abridge" and inserting in lieu thereof "in a manner which results in a denial or abridgement of" and is further amended by adding at the end of the section the following sentences: "An election system results in such a denial or abridgement when used invidiously to cancel out or minimize the voting strength of racial or language minority groups. The fact that members of a minority group have not been elected in numbers equal to the group's proportion of the population shall not, in and of itself, constitute a violation of this section." */

Much of the testimony which has been presented to Congress by the proponents has criticized the Mobile standard as being significantly more difficult to satisfy than the White v. Regester standard; and the proponents have testified that the intent of Section 2 of S. 1992 is to legislatively adopt the White standard. Although we have been concerned that the language of Section 2 as proposed by S. 1992 may bring about results which reach far beyond an adoption of the White standard, a specific legislative adoption of the White standard would eliminate those concerns. It would be necessary under this option to reflect clearly in the legislative history that the added sentence explicitly adopts the White standard. Politics aside, we believe that the White standard would be acceptable to civil rights groups (in fact, it is the standard which such groups have advocated). Of course, hearings in the House and Senate have indicated that any amendment to S. 1992 may receive opposition even if such amendment furthers the design of the proponents.

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*/ See White v. Regester, 412 U.S. 755, 765 (1973). The Court further described the legal standard as follows:

> To sustain [challenges to at-large, multi-member district, or other election procedures], it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question - that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice.

412 U.S. at 765-766. The en banc Court of Appeals for the Fifth Circuit applied this legal standard in Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973) and in the numerous vote dilution lawsuits which followed Zimmer.

SECTION-BY-SECTION SUMMARY OF COMPROMISE AMENDMENT 4E

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Section 2 is amended to read as follows:

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(b) A violation of subsection (a)(2) is established if, based on the totality of circumstances, it is shown that such voting qualification or prerequisite to voting or standard, practice, or procedure has been imposed or applied in such a manner that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a): that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one "circumstance" which may be considered, provided that nothing in this section shall be construed to require that

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If this ambiguity is not eliminated, the whole purpose of returning to the White standard is undermined. This is why the "results" language of the House bill must be retained, and why out-of-context language must be avoided -- even if it is from a good case.

The basic problem is that the language of Section 2 that was interpreted by the Supreme Court in Mobile would remain unchanged (i.e., it would not have the "result" phrase inserted). It is a basic principle of statutory construction that where language that has been construed by a court remains unchanged, the court's interpretation is thereby ratified. In simple terms, if the language doesn't change, the meaning stays the same. This principle can be modified if language is added which clearly commands a different meaning of the language that has been construed, but the language in the proposed Section 2(b) does not do that at all. Rather, it simply amplifies the sentence construed in Mobile, thus suggesting the interpretation that Congress was simply clarifying the confusion of the multiple opinions in Mobile by codifying the Stewart plurality opinion.

The fact that the added language is taken from White v. Regester, doesn't help. White vs. Regester, of course did not require proof of discriminatory intent. (There was no proof of discriminatory intent in the case; courts and commentators universally viewed it as not requiring intent; and perhaps most telling, the Supreme Court Reporter did not see any such requirement, for his headnote read "3. The District Court's order requiring disestablishment of the multimember districts in Dallas and Bexar Counties was warranted in the light of the history of political discrimination against Negroes and Mexican-Americans residing, respectively, in those counties and the residual effects of such discrimination upon those groups. Pp. 9-14.").

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The danger that the proposed language would be used to support a ratification of the Mobile plurality opinion is accentuated by the fact that Brad Reynolds and Senator Hatch have continually characterized White as an "intent" case; (Reynolds has even characterized Zimmer vs. McKeithen as an intent case, which no one else has ever done.) Senate testimony of Brad Reynolds, pp. 52, 73, 93, 113, 125 (March 1, 1982). Their position makes the proposed amendment even more dangerous, because of another settled doctrine of statutory construction: generally, only the explanations of a bill's supporters count, while the views of opponents are discounted for a variety of sound reasons. If the proposed bill were adopted with the support of Brad Reynolds and Senator Hatch, their explanations of it -- which would quite likely characterize it in purpose terms -- could count as much in setting the meaning of Section 2 as the views of the supporters of the House-passed bill, or even more, since with the crucial language in Section 2(a) unchanged from current law, the language would be theirs and and not ours.

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Survey of Federal Efforts to
Enforce the Voting Rights Act of 1965
As Amended

Congressman Don Edwards, Chairman of the House Subcommittee on Civil and Constitutional Rights, has requested GAO to review the Department of Justice's enforcement of section 5 of the Voting Rights Act of 1965, as amended, from the period 1970 to the present. Of particular interest to the Chairman are actions by Justice to take steps to correct problems identified in GAO's February 7, 1978, report "Voting Rights Act--Enforcement Needs Strengthening (GGD-78-19) (e.g., developing a mechanism to (1) monitor the nonsubmission of voting changes, (2) determine whether "objected to" changes have been implemented, (3) monitor requests by Justice for additional information from a "submitting jurisdiction" and request for resubmission).

Changes in Practices in Handling Section 5 Cases

The Chairman wants an assessment, by GAO, of whether there have been any changes over the years (1970 to present) in Justice's practices and procedures in evaluating "section 5" changes; particularly in cases where no objection was interposed. There is a concern about the possibility that Justice personnel outside the Civil Rights Division congressional or other executive branch persons may have sought to influence the Civil Rights Division or departmental decisions regarding Voting Rights Act cases.

Standards Governing Review of Annexations
and Redistrictings

Of particular interest are changes in Justice policies, procedures, and/or practices involving "annexations and redistrictings;" and whether such changes are a reflection of changes in standards due to "changing legal standards" or a change in philosophy or interpretation by Civil Rights Division or other department personnel (i.e., given section 5's intent or effect standards have there been instances where failure to find for intent has resulted in a departmental decision not to object).

Case Preparation

Also, has the department applied different practices in working up voting rights cases? Is there any evidence to support this contention (e.g., Voting Rights section personnel prepare different letters, with supporting arguments to justify both an objection or no objection to a voting rights submission and submit both to the AAG Civil Rights for his decision?)

Withdrawal of Objections

Finally, the Chairman wants GAO to do an analysis of Justice policies and procedures concerning "withdrawl of objections."

--Does Justice have regulations and internal procedures governing this process?

--Are there instances where such regulations/procedures have not been complied with?

--Is the "withdrawal objection" process initiated by the requesting jurisdiction or by Justice on its own?

--Is there any pattern or policy one may infer as to how soon after the objection has been interposed the request for withdrawal must be made?

--What are the bases for withdrawal?

--Must the decision to withdraw be based upon a finding of changed circumstances or have there been instances where the department's failure to enforce the objection has been a basis for withdrawal of the objection?

Output

Study results will be needed in March or April 1982 by the Chairman in conducting authorization hearings for the Department of Justice (Civil Rights Division).

--A final report will be issued later in 1982 which will be used by the subcommittee as part of its oversight on legislation to extend the Voting Rights Act or to curtail its use.

VRA Leg. Strategy Gp. 4/17/82

Alternatives for Amendments to S. 1992

This memorandum is written to set out various options for amending S. 1992 (the House-passed extension and amendment of the Voting Rights Act), so as to alter the bill's proposed amendment to Section 2 of the Act. S. 1992 proposes:

> Sec. 2. Section 2 of the Voting Rights Act of 1965 is amended by striking out "to deny or abridge" and inserting in lieu thereof "in a manner which results in a denial or abridgement of" and is further amended by adding at the end of the section the following sentence: "The fact that members of a minority group have not been elected in numbers equal to the group's proportion of the population shall not, in and of itself, constitute a violation of this section."

The primary concern which has been expressed regarding this provision is that it will lead to a requirement of proportional representation. Set out below are six options for amending S. 1992 so as to alleviate the concerns regarding a requirement of proportional representation.

1. As we have previously proposed to the subcommittee, Section 2 of S. 1992 could be dropped, thereby restoring the current language of Section 2. This change would continue the intent test as defined in the Mobile decision and would eliminate concerns regarding a requirement of proportional representation. On the other hand, there presently appear to be a number of Congressmen who believe that the Mobile standard is unclear or that it is unnecessarily difficult and therefore not an appropriate legal standard for resolving claims of invidiously discriminatory vote dilution. Our sense is that this attitude is based in large part on a misunderstanding of Mobile and of the many cases recognizing that "intent" may be proved by both direct and circumstantial evidence.

2. S. 1992 could be amended to eliminate the ambiguity caused by the Mobile decision and at the same time specifically retain a requirement that discriminatory purpose be established to prove a violation. The amendment would return to the existing language of Section 2 and make specific reference to the Arlington Heights criteria for addressing discriminatory intent in the following terms:

> In determining whether a state or political subdivision has violated this provision, the court should consider both direct and indirect evidence of discriminatory intent, including but not limited to evidence of the legislative and administrative history of the challenged action, departures from ordinary practice, the effects or consequences of the action, its historical background, and the sequence of events leading to the action.

An amendment along these lines would meet the concerns which we have expressed but, even though it clarifies that there is no "smoking gun requirement", it is unlikely that such an amendment would be acceptable to the proponents of S. 1992. The concern of the proponents is that vote dilution lawsuits generally challenge election plans adopted long ago (e.g., the at-large system at issue in Mobile was adopted in 1871) and the proponents have opposed any legal standard which would focus the inquiry on the intent of the original legislators. Of course, under the Mobile standard an election plan would violate Section 2 if "maintained" for discriminatory reasons; the argument on the other side is that the "maintenance" issue usually involves proof of the reasons behind "inaction" (e.g., failure to change an at-large election system) and such a burden of proof is comparably difficult to the "adoption" proof. For these reasons, proponents of S. 1992 would argue that any standard which focused on the legislators' intent in adopting or maintaining an election system should be rejected.

3. Section 2 of S. 1992 could be amended to clarify that the White v. Regester standard should be applied in lawsuits brought pursuant to Section 2. It is suggested that this change be made in the following manner:

> Sec. 2. Section 2 of the Voting Rights Act of 1965 is amended by striking out "to deny or abridge" and inserting in lieu thereof "in a

> manner which results in a denial or abridgement of" and is further amended by adding at the end of the section the following sentences: "An election system results in such a denial or abridgement when used invidiously to cancel out or minimize the voting strength of racial or language minority groups. The fact that members of a minority group have not been elected in numbers equal to the group's proportion of the population shall not, in and of itself, constitute a violation of this section." */

Much of the testimony which has been presented to Congress by the proponents has criticized the Mobile standard as being significantly more difficult to satisfy than the White v. Regester standard; and the proponents have testified that the intent of Section 2 of S. 1992 is to legislatively adopt the White standard. Although we have been concerned that the language of Section 2 as proposed by S. 1992 may bring about results which reach far beyond an adoption of the White standard, a specific legislative adoption of the White standard would eliminate

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*/ See White v. Regester, 412 U.S. 755, 765 (1973). The Court further described the legal standard as follows:

> To sustain [challenges to at-large, multi-member district, or other election procedures], it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question - that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice.

412 U.S. at 765-766. The en banc Court of Appeals for the Fifth Circuit applied this legal standard in Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973) and in the numerous vote dilution lawsuits which followed Zimmer.

those concerns. It would be necessary under this option to reflect clearly in the legislative history that the added sentence explicitly adopts the White standard. Politics aside, we believe that the White standard would be acceptable to civil rights groups (in fact, it is the standard which such groups have advocated). Of course, hearings in the House and Senate have indicated that any amendment to S. 1992 may receive opposition even if such amendment furthers the design of the proponents.

4. Another alternative amendment to S. 1992 is the one that is being circulated by members of Senator Dole's staff. That amendment would alter Section 2 to define a violation based not on election results but on equal access to the political process, and would look to "an aggregate of factors" as the standard of proof. This proposal reads as follows:

> (b)(1) A violation of this section is established when, based on an aggregate of factors, it is shown that such voting qualification or prerequisite to voting, or standard, practice or procedure has been imposed or applied in such a manner that the political processes leading to nomination and election in the state or political subdivision are not equally open to participation by a minority group protected by subsection (a). "Factors" to be considered by the court in determining whether a violation has been established shall include, but not be limited to:
>
> (A) Whether there is a history of official discrimination in the State or political subdivision which touched the right of the members of the minority group to register, vote, or otherwise participate in the democratic process;
>
> (B) Whether there is a lack of responsiveness on the part of elected officials in the state or political subdivision to the needs of the members of the minority group;

(C) Whether there is a tenuous policy underlying the state's or political subdivision's use of such voting qualification or prerequisite to voting, or standard, practice, or procedure;

(D) The extent to which the state or political subdivision used or has used at-large election districts, majority vote requirement, anti-single shot provisions, or other voting practices or procedures which may enhance the opportunity for discrimination against the minority group;

(E) Whether the members of the minority group in the state or political subdivision have been denied access to the process of slating candidates;

(F) Whether voting in the elections of the state or political subdivision is racially polarized;

(G) Whether the members of the minority group in the state or political subdivision suffer from the effects of invidious discrimination in such areas as education, employment, economics, health, and politics; and

(H) The extent to which members of the minority group have been elected to office in the state or political subdivision, provided that, nothing in this subsection shall be construed to require that members of the minority group must be elected in numbers equal to their proportion in the population."

The Dole amendment would return the focus of Section 2 to "access" to the electoral process, but, contrary to the Fifteenth Amendment, it would measure access in terms of group rights rather than individual rights. The thrust of the amendment is to incorporate into the legislation most of the Zimmer factors, which is apparently a nod in the direction of those arguing for a departure from Mobile and a return to the pre-Mobile

standard. On the other hand the proponents of S. 1992 will read this proposal as requiring some evidence (albeit circumstantial) of intentional discrimination in order to establish a violation. They will also take exception to factor (B), which was singled out in the Report accompanying the House bill as being an unacceptable criterion. As a compromise, this proposal has the virtue of pleasing nobody, and, even if accepted in the Senate, there is every likelihood that it would undergo drastic revision in Conference.

5. Congressman Butler unsuccessfully suggested a compromise in the House providing that Section 2 would not be a pure "effects" test but that the intent requirement be satisfied by demonstrating that the discriminatory results were "foreseeable" (i.e., a tort-type intent test). This proposal would alter the Mobile standard, since the plurality opinion rejected the idea that the foreseeability of a discriminatory effect is sufficient proof of discriminatory intent. It is unclear, however, how this proposal would differ, in any significant degree, from the currently proposed S. 1992 and how the proposal would work if enacted. If an at-large election system operates to exclude blacks from selecting candidates of their choice to public office, few would question the foreseeability of that result. It may be, however, that Congress would clarify a foreseeability standard through legislative history,and if that approach is followed a legal standard approaching White-Zimmer may result.

6. Another suggestion is to alter the proviso of S. 1992 which currently reads:

> The fact that members of a minority group have not been elected in numbers equal to that group's proportion of the population shall not, in and of itself, constitute a violation of this section.

That proviso is designed to eliminate a requirement of proportional representation; but the proviso has been criticized on the grounds that it does not dispel the the prospect of proportional representation but merely indicates that some element of proof is required in addition to a showing that minorities are not elected to public office. The proviso could be strengthened by dropping the phrase in and of itself, since that phrase seems to place undue reliance on the failure of minority candidates to gain election.

The proviso might also be amended to provide that "the fact that members of the minority group have not elected candidates of their choice to office in numbers equal to the group's proportion of the population shall not . . ." The Voting Rights Act was designed to protect the rights of voters, not candidates; and the suggested amendment would eliminate concerns expressed at the hearings that the present proviso suggests that minority candidates must be elected in order for minority groups to have effective representation. Once again, the intent of any such amendment could be clarified through legislative history.

* * * *

Quite clearly, the preferred alternative is the first one, but the best chance of maintaining the current Section 2 language is through a straight extension of the Act for ten years, rather than through an amendment to S. 1992.

The second alternative is perhaps the most sensible, since it serves to remove the confusion that currently exists due to the use of vague and imprecise language. Even with clarity to recommend it, however, it is doubtful that this alternative can be "sold" to the proponents of S. 1992.

The third alternative would appear to be the one most likely to succeed. It leaves intact most of the language of amended Section 2, which is probably important politically. At the same time, it adds a sentence from the White case that describes the very standard to which the proponents of S. 1992 insist they are "returning." In light of their endorsement of White in both the House and Senate hearings, they will be hard pressed to disavow the suggested change. While the argument can still be made that inclusion of the White standard places too heavy a burden on the plaintiff, that contention can be met, particularly in light of the acknowledged relationship between White and Zimmer. If we cannot get a pure intent test, this change provides needed protection against the prospect of "proportional representation."

The fourth alternative could perhaps gain support from a number of senators as a concept, but many different coalitions will undoubtedly argue for their own sets of criteria once the proposal is made to incorporate an evidentiary rule into the statute. Even if agreement could be reached in the Senate on the appropriate factors to be considered in measuring liability, another round of editorializing would likely result in Conference. The end product would doubtless leave open the question whether the Section 2 test depends on "intent" or "effects", inviting an extended period of confusion and ambiguity while the matter is decided by the courts. All indications from the Hill, where we understand that this alternative has now been widely circulated, are that it stands very little (if any) chance of being accepted as a satisfactory compromise.

As for the fifth and sixth alternatives, they are unlikely to receive Senate endorsement, principally because they will be read by the opposition as too great a "retreat" from S. 1992. Any effort to change the language in the disclaimer clause directly will likely be interpreted as a frontal -- and intolerable -- attack on the legislation.

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March 15, 1982

COMMITTEES:
JUDICIARY
LABOR AND HUMAN RESOURCES
SMALL BUSINESS
BUDGET
OFFICE OF TECHNOLOGY ASSESSMENT

Dear Colleague:

With hearings recently completed on the Voting Rights Act in the Subcommittee on the Constitution which I chair, I would like to take the liberty of summarizing the key issue that has emerged in the debate. That is the issue of whether or not to change the standard for identifying 15th Amendment violations from an "intent" to a "results" standard.

While there have been significant differences of opinion among witnesses on the merits of these standards, I believe that there has been virtually total agreement that the issue is a highly significant one. Personally, I believe that the issue involves one of the most substantial constitutional issues to come before Congress in many years. In effect, the issue is: How is Congress going to define the concepts of "civil rights" and discrimination"?

Section 2 of the Voting Rights Act codifies the 15th Amendment to the Constitution and applies to the entire country-- The 15th Amendment to the Constitution forbids public policies which deny or abridge voting rights "on account" of race or color. Section 2 has always been one of the least controversial provisions of the Voting Rights Act because it codified that principle. Application of the 15th Amendment (and section 2), of course, is not limited to those jurisdictions "covered" by the Voting Rights Act; they apply to the entire country.

Section 2 and the 15th Amendment have always required some showing of intentional or purposeful discrimination in order to establish a violation-- The Supreme Court stated in the 1980 case of Mobile v. Bolden that no decision of the Court had ever "questioned the necessity of showing purposeful discrimination in order to show a 15th Amendment violation." Similarly, they noted that the 14th Amendment's Equal Protection Clause has always required that claims of racial discrimination "must ultimately be traced to a racially discriminatory purpose." There is no Supreme Court decision under either the 15th Amendment or Section 2 that has ever allowed discrimination to be proved by an "effects" or "results" standard.

It is unconstitutional for Congress to overturn a constitutional interpretation of the Supreme Court by simple statute-- The Supreme Court having interpreted the parameters of the 15th Amendment in Mobile, Congress lacks authority to enact legislation (presumably under the authority of the 15th Amendment) that interprets the amendment in a different manner. This is precisely the constitutional controversy involved in efforts by some in Congress to overturn the Roe v. Wade abortion decision by simple statute.

The "intent" standard is the proper standard for identifying civil rights violations-- The 15th Amendment prohibits denial or abridgement of voting rights "on account of" race or color. This has always been interpreted to mean "because of" race or color. As the Supreme Court observed in a 1977 decision, "A law neutral on its face and serving ends otherwise within the power of government to pursue is not invalid simply because it may affect a greater proportion of one race than another." Washington v. Davis. The "intent" standard reflects what has always been the understanding of discrimination-- the wrongful treatment of an individual "because of" or "on account of" his or her race or skin color.

The "results" standard is a radically different standard for identifying discrimination-- The "results" standard would sharply alter the traditional conception of discrimination by focusing primarily upon the results of an allegedly discriminatory action rather than upon the processes leading up to that action. It would radically transform the goal of the Voting Rights Act from equal access to the electoral process into equal outcome in that process.

The "results" test would establish a standard of proportional representation by race as the standard for identifying discrimination-- The only logical impact of the new "results" test will be to establish proportional representation by race as the standard for identifying racial discrimination (see Attachment). There is no other possible meaning to the concept of discriminatory "results". The new standard is premised upon the idea that racial disparities between population and representation are invariably explained by discrimination.

The so-called proportional representation disclaimer in section 2 is a smokescreen-- The disclaimer language states that evidence of the lack of proportional representation shall not "in and of itself" establish a violation. This is extremely misleading. What this means is that lack of proportional representation plus one additional scintilla of evidence will establish a violation. What would constitute an additional scintilla? Among such factors, referred to in the House report and elsewhere, are the existence of an at-large election system, re-registration laws, evidence of racially polarized voting, majority vote requirements, anti-single shot vote re-

quirements, impediments to independent candidacies, disparities in registration rates among racial groups, a history of discrimination, a history of lack of proportional representation, the past existence of dual school systems, a history of English-only ballots, evidence of maldistribution of services in racially-identifiable neighborhoods, staggered election terms, residency requirements, numbers of minority election personnel, etc. etc.

The theory of the "results" test is that each of these so-called "objective factors of discrimination" explains the lack of proportional representation. Virtually any community in the country lacking proportional representation is going to have one or more of these factors which would complete a violation. In addition, any further electoral or voting procedure or law that could be arguably considered a "barrier" to minority voting participation, e.g. purging non-voters off of registration lists periodically, could serve as the basis for the additional scintilla of evidence required by the so-called disclaimer provision.

The major target of proponents of the "results" test is the at-large system of election throughout the country-- More than 12,000 jurisdictions throughout the country have adopted at-large systems of elections. These are opposed by some in the civil rights community because they do not maximize the possibility of proportional representation. If the "results" test is approved in section 2, any community with an at-large system of election (lacking proportional representation for minority groups) will be in severe jeopardy. The at-large system of election, both in the North and the South, is the major target of the civil rights community through the revised section 2 (although by no means the only target).

The "results" test will ensure that Federal courts will become far more deeply involved in dismantling local governmental structures which do not maximize the possibilities of pro-proportional representation by race-- As the Supreme Court observed in Mobile, "The dissenting opinion ("results" test) would discard fixed principles in favor of a judicial inventiveness that would go far toward making this Court a super-legislature." In the Mobile decision itself, the Court reversed an order by the lower court requiring the dismantling of the local structure of government in Mobile (at-large system) despite a failure to prove purposeful discrimination and despite clear evidence that the at-large system in Mobile served important, non-racially related purposes.

The "results" test would substitute the rule of an individual judge for a rule of law-- Perhaps the most serious defect of the "results" test is that it completely undermines a clear rule of law fixed by the "intent" test and substitutes a new rule that cannot possibly offer the slightest bit of guidance to a community as far as how to conduct its affairs, short of assuring proportional representation by race. There is absolutely no guidance beyond this standard as far as what voting and election laws and procedures are permissible and what are not.

The "intent" test is not impossible to prove and it does not require mind-reading or 'smoking guns' of evidence-- It is interesting that the claim should be made that "intent" is impossible to prove when it has always been the standard for constitutional civil rights violations, e.g. equal protection clause, school busing, 13th Amendment, 14th Amendment, 15th Amendment. It is also interesting when it is recognized that "intent" is proven every day of the week in criminal trials, without the need for express confessions or 'smoking guns'. Indeed, it is even more difficult to prove in criminal cases because it must be proven there "beyond a reasonable doubt" rather than simply "by a preponderance of the evidence" as in civil rights cases. Intent has always been proven, not solely through circumstantial evidence, but through circumstantial evidence as well, i.e. through the totality of the circumstances. As the Supreme Court observed in 1978, "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence as may be available." Arlington Heights v. Metropolitan Authority. Major voting rights cases have been won by plaintiffs under the "intent" standard before and after Mobile.

I am aware that there is a great deal of political pressure upon Members of this body to support the House version of the Voting Rights Act without changes. I would respectfully suggest, however, that if this measure becomes law, most of the Members of this body will have communities that will become the target of litigation by so-called "public interest" law firms. I have prepared some information on a few of these communities which will vulnerable under the proposed amendments to the Act and will be glad to share this information with any interested Members or their staff.

It is rare that an issue comes along of the constitutional and practical significance of the proposed changes to the Voting Rights Act. I would ask each of you, whether or not you have already joined as a co-sponsor of this measure, to consider these issues very carefully. They are not simple issues but they are of critical importance.

Please do not hesitate to contact me or Mr. Stephen Markman of my Judiciary Committee staff (x48191) if we can be of further assistance to you in explaining the significance of these (or any other) changes in the Voting Rights Act.

Sincerely,

Orrin

Orrin G. Hatch
United States Senate

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

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

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

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

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

AMENDMENTS TO SECTION 2 OF THE ACT

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

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

[89] The Honorable Barbara Jordan, former Member, U.S. House of Representatives (June 18 Hearing).
[90] Id.
[91] Testimony of the Honorable Roberto Mondragon, Lieutenant Governor of New Mexico (Hearing of May 18).
[92] Testimony of the Honorable Robert Abrams, Attorney General of the State of New York (Hearing of June 18).

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

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

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

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

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

[93] 446 U.S. 55 (1980).
[94] Compare *McMillan* v. *Escambia County, Florida*, 638 F.2d 1239 (5th Cir. 1981), with *Lodge* v. *Buxton*, 639 F.2d 1358 (5th Cir. 1981), *Gross* v. *Buxter*, 630 F.2d 1383 (5th Cir. 1981), and *Thomasville Branch NAACP* v. *Thomas County, Georgia*, 639 F.2d 1384 (5th Cir. 1981).
[95] Hearings, June 24, 1981, C. Vann Woodward, J. Morgan Kousser.
[96] Id., J. Morgan Kousser, James Blacksher; *Lodge* v. *Buxton*, 639 F.2d 1358 (5th Cir. 1981).
[97] The Supreme Court and commentators have noted that legislative motivation is often impossible to ascertain, reliance upon this standard is futile, and its application may lead to undesirable and unwanted results. See *Palmer* v. *Thompson*, 403 U.S. 217, 225 (1971) ("it is difficult or impossible for any court to determine the 'sole' or 'dominant' motivation behind the choices of a group of legislators. Furthermore, there is an element of futility in a judicial attempt to invalidate a law because of the bad motives of its supporters. If the law is struck down for this reason . . . it would presumably be valid as soon as the legislature or relevant governing body repassed it for different reasons."); *United States* v. *O'Brien*, 391 U.S. 367, 383-84 (1968) ("inquiries into congressional motives or purposes are a hazardous matter . . . What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork."); Note, *Discriminatory Purpose and Disproportionate Impact: An Assessment After Feeney*, 79 Col. L. Rev. 1376, n. 24 (1979); D. Brest, *Palmer Thompson: An Approach to the Problem of Unconstitutional Legislative Motive*, 1971 Sup. Ct. Rev. 95; J. H. Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 Yale L.J. 1205, 1212-17 (1970).
[98] See Committee Hearings, 1981, Memorandum From: Hiroshi Motomura, To: Sally Determan.
[99] Hearing on S. 1564 before the Committee on the Judiciary, United States Senate, 89th Cong., 1st Sess., pp. 191-92 (1965).
[100] 639 F.2d, 1358 (5th Cir. 1981).

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

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

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

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

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

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

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

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

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

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

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

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

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

[106] See, e.g., *Hazlitan* v. *Escambia County, Florida*, 638 F.2d 1239, 1246 n.15 (5th Cir. 1981); *Robinson* v. *13 Lofts Realty, Inc.*, 610 F. 2d 1032, 1043 (2d Cir. 1978).

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

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

AMENDMENTS TO SECTION 4(a) OF THE ACT

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

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

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

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

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

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

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

[108] 16 Stat. 140.

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

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

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

ALTERNATIVE PROPOSALS

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

Judicially Ordered Preclearance

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

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

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

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

SUMMARY ON COMPROMISE AMENDMENT

Background

As you are aware, the most controversial provision of the House-passed Voting Rights Act bill concerns a proposed change in Section 2. Section 2 contains a general prohibition against discriminatory voting practices. It is permanent legislation and applies nationwide. In the 1980 case of Mobile v Bolden, the Supreme Court held that Section 2 prohibits only intentional discrimination. The House bill would amend Section 2 to prohibit any voting practice having a discriminatory "result".

Much of the intent/results controversy has evolved around whether the Mobile case changed the law. Prior to Mobile, the courts used an "aggregate of factors" or "totality of circumstances" test in voting rights cases. The leading cases articulating this standard are the Supreme Court case of White v Regester, and the Fifth Circuit opinion of Zimmer v McKeithen. According to Zimmer and White, the standard to be applied was whether, based on an "aggregate of factors" the "political processes ... were not equally open to the members of the minority group in question". And the "factors" looked at by the courts in this line of cases included indicia of intentional discrimination, as well as the "result" of the challenged voting practice.

Proponents of the "result" standard in Section 2 have argued that the White/Zimmer "aggregate of factors" test was a "results" test, which the subsequent Mobile case drastically changed. Thus they have argued that by placing a results standard in Section 2, the courts will return to use of the White/Zimmer test. Intent advocates, on the other hand, have pointed to language in the Mobile decision indicating that White was essentially an "intent" case. Thus they have argued that the White/Zimmer approach was simply an articulation of various objective "factors" which could be relied upon to circumstantially prove discriminatory intent.

Key Provisions of the Compromise Amendment

Because neither side of the intent/results controversy has expressed disagreement with the pre-Mobile case law, we have simply codified that case law in our compromise amendment. Specifically, the compromise would add a new subsection to Section 2 explicitly stating that a violation of that section is established when, based on an "aggregate of factors", it is shown that the "political processes leading to nomination and election are not equally open to participation by a minority group". The subsection then provides a nonexclusive list of factors to be considered by the courts, the same factors articulated in White and Zimmer. These factors are:

1. Whether there is a history of official voting discrimination in the jurisdiction;

2. Whether elected officials are unresponsive to the needs of the minority group;

3. Whether there is a tenuous policy underlying the jurisdictions' use of the challenged voting practice;

4. The extent to which the jurisdiction uses large election districts, majority vote requirements, anti-single shot provisions, or other practices which enhance the opportunity for discrimination;

5. Whether members of the minority group have been denied access to the process of slating candidates;

6. Whether voting in the jurisdiction is racially polarized;

7. Whether the minority group suffers from the effects of invidious discrimination in such areas as education, economics, employments, health, and politics; and

8. The extent to which members of minority groups have been elected to office, but with the caveat that the subsection does not require proportional representation.

The Compromise Amendment is Neither an Intent Test nor a Results Test

In our opinion, the pre-Mobile case law, and thus our compromise amendment codifying this case law, represents neither an "intent" standard nor a "results" approach. Nowhere in the pre-Mobile case law did the courts state that a plaintiff must prove that the challenged voting practice was motivated by an intent to discriminate. But similarly, nowhere did the courts state that they were applying a "results" test.[1] Rather, the touchstone of these cases, and of our compromise amendment, is whether certain key factors have coalesced to deny members of a particular minority group access to the political process. Neither election results, nor proof of discriminatory purpose is determinative. Access is the key.

Politically, we think the compromise will be attractive. The civil rights groups have repeatedly stated that a return to the pre-Mobile case law is all they want, and in drafting the amendment, we have made every effort not to deviate from the case law. Further, the amendment carefully

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[1] Under the traditional "effects" or "results" test applied, for instance, under Title VII of the Civil Rights Act of 1964, the focus of inquiry is whether statistically, the challenged practice has had a disparate impact on a particular minority group. The pre-Mobile courts consistently emphasized that such statistical disparities, i.e., in the voting context, the lack of proporational representation, was not determinative, but rather only one factor, among meny, to be considered.

avoids any possible interpretation that it could require proportional representation, or that it would impose an "effects" test similar to that employed under Title VII. The first sentence makes clear, as did the White and Zimmer opinions, that the issue to be decided is equal access to the political process, and that this determination is to be based on an aggregate of factors, not simply election results. Similarly, the extent to which minorities have been elected to office is listed as only one factor to be considered, and it is accompanied by an express disclaimer that the subsection does not mandate proporational representation.

SB:pab

Section 2 of the Voting Rights Act

(House amendments indicated in italics and brackets)

TITLE I—VOTING RIGHTS

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

* * * * * * *

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

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

AMENDMENT NO. _____ Ex. _____ Calendar No. _____

Purpose: _____

_____

_____

IN THE SENATE OF THE UNITED STATES— _____ Cong., _____ Sess.

S. 1992

H.R. _____ (or Treaty _____)

SHORT TITLE

(title) To amend the Voting Rights Act of 1965 to extend the effect of certain provisions, and for other purposes.

( ) Referred to the Committee on _____ and ordered to be printed

( ) Ordered to lie on the table and to be printed

INTENDED to be proposed by Mr. DOLE

Viz: Strike all after the enacting clause and insert in lieu thereof the following:

SEC. 1. That this Act may be cited as the "Voting Rights Act Amendments of 1981".

SEC. 2. Section 4(a) of the Voting Rights Act of 1965 is amended by:

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

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

SEC. 3. Section 2 of the Voting Rights Act of 1965 is amended by -

(1) inserting "(a)" after "2.", and

(2) by adding at the end thereof a new subsection as follows:

"(b)(1) A violation of this section is established when, based on an aggregate of factors, it is shown that such voting qualification or prerequisite to voting, or standard, practice, or procedure has been imposed or applied in such a manner that the political processes leading to nomination and election in the state or political subdivision are not equally open to participation by a minority group protected by subsection (a). "Factors" to be considered by the court in determining whether a violation has been established shall include, but not be limited to:

(A) Whether there is a history of official discrimination in the State or political subdivision which touched the right of the members of the minority group to register, vote, or otherwise participate in the

democratic process;

(B) Whether there is a lack of responsiveness on the part of elected officials in the state or political subdivision to the needs of the members of the minority group;

(C) Whether there is a tenuous policy underlying the state's or political subdivision's use of such voting qualification or prerequisite to voting, or standard, practice, or procedure;

(D) The extent to which the state or political subdivision uses or has used large election districts, majority vote reuqirements, anti-single shot provisions, or other voting practices or procedures which may enhance the opportunity for discrimination against the minority group;

(E) Whether the members of the minority group in the state or political subdivision have been denied access to the process of slating candidates;

(F) Whether voting in the elections of the state or political subdivision is racially polarized;

(G) Whether the members of the minority group in the state or political subdivision suffer from the effects of invidious discrimination in such areas as education, employment, economics, health, and politics; and

(H) The extent to which members of the minority group have been, elected to office in the state or political subdivision, provided that, nothing in this subsection shall be construed to require that members of the minority group must be elected in numbers equal to their proportion in the population."

SEC. 4. Section 203(b) of the Voting Rights Act of 1965 is amended by striking out "August 6, 1985" and inserting in lieu thereof "August 6, 1992".

KANSAS CITIES WITH AT-LARGE ELECTIONS AND LOW MINORITY REPRESENTATION

City	No. On City Council	Population 1970* Non-White	Population 1980 Non-White	Population 1980 Black	No. Minorities Elected 1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	% Minority Elected: 1970-1980
Garden City	5	2%	28%	1%	0	0	0	0	0	0	0	0	0	0	0	0%
Junction City	5	16%	35%	22%	0	0	0	0	0	0	0	2	1	1	1	10%
Kansas City, Ks.	3	21%	33%	25%	0	0	0	0	0	0	0	0	0	0	0	0%
Liberal	5	5%	25%	5%	1	0	0	0	0	0	0	0	0	0	0	2%
Wichita	5	3%	19%	11%	1	1	0	0	0	0	0	0	0	0	0	4%

* 1970 Census did not include Hispanics as nonwhite. 1980 Census did. Thus, cities with large Hispanic population show large increase in nonwhite population between 1970 and 1980.