Briefing on the Reauthorization of the Voting Rights Act

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IMPORTANT NOTES

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The Emergency is Over

The Case for Not Reauthorizing Section 5 of the Voting Rights Act

Testimony prepared for the United States Commission on Civil Rights on October 7, 2005

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My name is Edward Blum and I am a Visiting Fellow at the American Enterprise Institute. I am also co-director at AEI with Commissioner Abigail Thernstrom of the Project on Fair Representation. Prior to my AEI affiliation, I have held a number of positions at other think tanks including the Center for Equal Opportunity, the American Civil Rights Institute, and the Campaign for a Color-Blind America, Legal Defense and Education Foundation. While at the Campaign, I directed the legal challenge to over a dozen racially gerrymandered voting districts in states from New York to Texas.

My presentation today is divided into three parts: I will review the historical background of the two basic elements of the Voting Rights Act that will be discussed throughout this briefing; second, I'll briefly discuss the state of the law regarding section 5 of the Voting Rights Act; and finally, I will discuss the reasons I believe section 5 of the act—the most important provision up for reauthorization in August, 2007—should be allowed to expire.

Let me begin by giving a brief explanation and history of the two most critical sections of the act— section 5 and section 2.

As everyone knows, blacks in the Deep South were massively disenfranchised until the passage of the Voting Rights Act in 1965. President Johnson ordered his staff to write the "goddamnedest and toughest" voting rights bill they could devise. The president was wise in asking for such a draconian statute at the time since the opportunity of blacks in the Deep South to register to vote and participate in elections had been successfully foiled by Southern jurisdictions since Reconstruction. By every measure, Johnson got what he asked for. Less than three years after the VRA's passage, voter registration among blacks in Georgia, for instance, had jumped from 19 percent to 51 percent; in Mississippi, black registration swelled from less than 7 percent to nearly 60 percent.

This remarkable outcome was largely due to section 4 of the act which provided a five-year suspension of "a test or device," such as a literacy test as a prerequisite to register to vote. It was sustained by section 5 of the act which required that any changes to voting procedures in the jurisdictions covered by the law be "precleared" by the U.S. attorney general or the U.S. District Court for the District of Columbia before being implemented. Section 5 in 1965 applied to Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia and to most counties of North Carolina.

Section 5 was not a major concern during congressional debate in 1965. Its inclusion in the bill was designed to trump any new contrivances jurisdictions might impose to slow the growth of black voting. Given the massive resistance to school desegregation and other civil rights actions by the federal government at the time, it was not an unreasonable addition to the law. It is most noteworthy, however, that Congress recognized that the preclearance provision was a unique infringement on traditional separation of powers prerogatives and, therefore, limited section 5's life to five years. It was extended by Congress in 1970, 1975, and 1982.

Section 2 of the 1965 act was little more than a clone of the Fifteenth Amendment's prohibition to deny or abridge the right to vote on account of race, color, or previous condition of servitude. Originally, this section allowed no qualification or prerequisite to voting to be imposed by any state or jurisdiction on account of race. Unlike section 5, this section applied to the nation as a whole. And most importantly, unlike section 5, this section was and is permanent.

The case law that has developed over the years under section 5 and section 2 is quite muddled; some would say illogical. Since Congress is faced with only the reauthorization of section 5, let's focus today on the legal evolution of that provision.

As a result of the passage of section 5 and subsequent litigation, hundreds of jurisdictions began going hat-in-hand to the Department of Justice, asking permission to annex land, change voting district lines, expand the number of representatives to an elective body, and so forth. Beginning with Allen v. State Board of Elections in 1969, the courts expanded Section 5 from guaranteeing black access to the polls to guaranteeing the "effectiveness" of their vote. Not only blatant and obvious, but also, subtle and even unintentional actions, were held to violate the law. Again, much of this was understandable in the years immediately following the passage of the VRA, since southern chicanery in the past required the Department of Justice to keep a close eye on unusual developments in voting procedures. And, as judges and bureaucrats got in the habit of stretching the meaning of the VRA to reach any and all ends they considered desirable, the groundwork was laid for abuses. What started out as a tool to prevent anyone from being turned away at the ballot box because of skin color turned into a means of second-guessing perfectly legitimate, nonracial policies concerning, for example, ballot security and absentee ballots.

The pinnacle of section 5 abuses occurred after the 1990 census and the cycle of redistricting that followed in the now expanded covered jurisdictions. Due to amendments passed in the 1970s, jurisdictions such as Manhattan and Brooklyn, and the entire states of Texas, Arizona, and Alaska, were now covered by section 5.
The Department of Justice, cheered on by the old-line racial advocacy groups and some in the Republican Party, began distort the VRA to require a "max-black" redistricting outcome. In other words, the preclearance provision of section 5 became a sword, rather than a shield, in the hands of government commissars whose single-minded goal was not ending racial discrimination but guaranteeing racial and ethnic proportionality in every legislative body for which they had control. The result was the creation of dozens of racial gerrymanders—Rorschach-test-like bug splats--that systematically harvested blacks and Hispanics out of multiracial communities to form safe minority districts.

In a series of cases beginning with Shaw v. Reno and culminating in Georgia v. Ashcroft, the Supreme Court has marginally attempted to bring some sanity back to the law. In Shaw, the Court in 1993 found that a "reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who have little in common with another but

the color of their skins, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group - regardless of their age, education, economic status, or the community in which they live - think alike, share the same political interests, and prefer the same candidates at the polls."

Ten years later, the Court issued a murky opinion in Georgia v. Ashcroft, finding that the retrogression standard that had been used by DOJ to force the strict maintenance of minority percentages in newly redrawn voting districts were wrong, noting that "the Voting Rights Act, as properly interpreted, should encourage the transition to a society where race no longer matters." This barely scratches the surface of the current state of the law.

It is important now to examine what section 5 has wrought today. The central question Congress will be forced to consider by August 6, 2007 is whether section 5 should be reauthorized in its current form, a reconstituted form, or finally allowed to expire altogether.

In my opinion, section 5 has degenerated into an unworkable, unfair, and unconstitutional mandate that is bad for our two political parties, bad for race relations, and bad for our body politic. I encourage this Commission to recommend formally to Congress and the Bush administration that section 5 be allowed to expire.

Here are some of the reasons why section 5 should expire:

1. Bull Connor is dead, and so is nearly every Jim Crow-era segregationist intent on keeping blacks from the polls. The emergency has passed. Blacks throughout the covered jurisdictions register to vote and participate at the polls in numbers nearly identical to white voters.
2. The worst abuses of the Jim Crow ear—such as poll taxes, literacy tests, and grandfather clauses—are permanently banned in other sections already. Moreover, any voter can challenge any discriminating election policy or statute using section 2 of the act. It is permanent and applies to every state in the nation.
3. Section 5 has contributed to the ever-growing lack of election competitiveness, resulting in safe-seats-for-life for incumbents of both parties. The inability of a newly-created bipartisan, independent redistricting commission in Arizona to create competitive districts is a direct result of section 5 requirements. This in turn contributes to the creation of ideologically polarized voting districts.
4. Section 5 has evolved into a gerrymandering tool used by Democrats and Republicans to further their party's election prospects. It is nearly impossible today under section 5 to tease out racial electoral issues from partisan electoral issues, as we have recently witnessed in a handful of redistricting lawsuits from Texas to Boston.
5. Section 5 is unfairly directed at the South and Southwest. Its application to these areas is unwarranted today. It may have made sense to cover Virginia in 1965, but it make no sense to cover Virginia today, and not West Virginia; just as it makes no sense today to cover Arizona, but not New Mexico; Texas, but not Arkansas;

Manhattan, the Bronx, and Brooklyn, but not Staten Island and Queens. Election data gathered during litigation during the last ten years or so suggests that whites in states like Texas, Virginia, and Georgia cross over to support black and Hispanic candidates in ever-increasing numbers; in fact, the crossover support in these states is often higher than in non-covered jurisdictions such as New York, Missouri, Tennessee, and Oklahoma. This body of national election data makes reauthorization of section 5 in the currently covered jurisdictions constitutionally problematic.

6. This provision has had the effect of insulating white Republican officeholders from minority voters and issues specific to minority communities; and, in turn, it insulates minority elected officials from white voters and acts as a glass ceiling for higher statewide or at-large office-seekers.
7. Section 5 does not address in any way the long list election issues that have surfaced during the last five years: hanging chads in Florida; long lines of voters in Ohio; too few poling places on college campuses in Wisconsin.

Finally, I want to address a special concern I have about the reauthorization. The nation deserves a debate on the necessity of extending these provisions once again. It is my hope that Congress will allow and encourage testimony and data to be presented from a wide group of voices. Shutting out anyone from this process would be wrong and shouldn't be tolerated. Furthermore, it would be a cynical mistake for Congress to use the reauthorization as an opportunity to turn the Voting Rights Act into the "Leave No Gerrymander Behind Act" by overturning the Supreme Court's last section 5 case, Georgia v. Ashcroft. This would result in blacks and Hispanics being cordoned off in densely-packed legislative enclaves, safe from the need to pull, haul, and compromise with whites in order to achieve election success— all in a shameless attempt to create bleached-out Republican districts surrounding them.

Thank you for allowing me this time.

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His books include *The Economic Realities of Political Reform: Elections and the US Senate* (Cambridge, 1995), *David Duke and the Politics of Race in the South* (Vanderbilt, 1995), three editions of *The Almanac of Oklahoma Politics* (OPSA, 1997, 1999, 2001), *Regulating Wetlands Protection: Environmental Federalism and the States* (SUNY, 2000), *Elections to Open Seats in the US House: Where the Action Is* (Rowman and Littlefield, 2000), and *Born to Run: The Origins of the Political Career* (Rowman and Littlefield, 2004), and his articles have been published in a variety of political science and social science journals.

Prof. Gaddie is currently working on two books: *DeLayed Democracy: The Texas Redistricting War of 2001-2004* (for University of Oklahoma Press), and *Battlelines: Power Plays, Redistricting, and Election Law* (for Rowman and Littlefield), both with Charles S. Bullock III of the University of Georgia. Together with Prof. Bullock, he is developing an assessment of progress in voting rights for the American Enterprise Institute.

He also works as a litigation consultant in voting rights and redistricting cases in Alabama, Georgia, Illinois, New Mexico, Oklahoma, South Dakota, Texas, Virginia, and Wisconsin, and has counted among his clients the Democratic speaker of the Oklahoma legislature, the Republican speaker of the Wisconsin Assembly, the attorneys general of Texas and Virginia, the governor of New Mexico, the Texas Congressional Republicans, and the Georgia Republican Party. Prof. Gaddie also provides analytic and design consulting services to Wilson Research Strategies (Washington, D.C., Oklahoma City, and Austin) and to Phoenix Consulting Services (Oklahoma City).

He is married to Dr. Kimberly Gaddie and they have four children: Collin, 10, Alec, 8, Cassidy, 6, and Kenedy, 2.

The Problem, the Opportunity, and Some Thoughts for Discussion of the Renewal of Section 5 of the Voting Rights Act

Remarks prepared for presentation to the United States Commission on Civil Rights

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The Problem, the Opportunity, and Some Thoughts for Discussion of the Renewal of Section 5

The Voting Rights Act has framed American electoral politics for forty years. The Act stands as the enforcement mechanism for one of two "superior" principles of voting rights, racial fairness (the other principle being the one-person, one-vote guarantee). The most proactive tools of the Voting Rights Act are up for renewal. This periodic review and renewal of legislation gives us the chance to ask, "what have we done and how far have we come?"

To do justice to the impact of the Voting Rights Act, and specifically Section 5, on voting rights and minority political empowerment would take days, not minutes, to recount, and volumes, rather than pages, to record. My brief statement is at best a thumbnail sketch, a superficial social history of the impact of the Act, with an emphasis on those jurisdictions that have been continuously covered since 1965, followed by the framing of some topics for discussion as we move toward the renewal of the Act.

The Problem

The initial concern of the Voting Rights Act was access to the political process. Political scientist V. O. Key, writing over a half-century ago in his classic *Southern Politics: In State and Nation*, observed that "the South may not be the nation's number one political problem . . . but politics is the South's number one problem." (1949: 3) Participation was necessary to a functioning democracy, for Key, who observed that the problem of participation in South, like every other problem, could be traced to the status of blacks.

What was the status of Southern blacks? Well, depending on where you went in the South variations were in evidence, but southern blacks were generally disfranchised, generally discriminated against, and generally held at a distance from white society –specifically the prosperous part of white society -- by public policy. Key observed that "whites govern and win for themselves the benefits of discriminatory public policy" and further noted that "discrimination in favor of whites tends to increase roughly as Negroes are more completely excluded from the suffrage" (1949: 528). Exclusion from the vote did not cause discriminatory treatment, but it most certainly reinforced the status of Southern blacks. Key observed in a clinical fashion what Martin Luther King, Jr. argued passionately in 1965, "give us the vote and we will change the South." It was only by the exercise of political power through ballots that politicians would change policy in the long run.

The Opportunity

We have the opportunity for a frank, informed conversation about the shape of the Voting Rights Act for the future. What does this mean?

First, we should consider the context of the creation of Section 5, and examine the modern circumstances of the renewal debate

In 1964, there was one black state legislator in the seven states originally covered by Section 5. The South lumbered under an archaic and outdated political and social culture that clung to the past at the possible cost of the future. There was no viable competition to the Democratic Party, which was locally a contrary adjunct to the national party, opposed to the Democrats in the rest of the nation on most every dimension of politics.

The contemporary South is vibrant, the largest and fastest-growing region of the nation. Southern children are more likely to attend integrated schools than in the rest of the nation, and a black person is more likely to have black representation in the South than anywhere else in the nation. Education and income differences across the races are matters of degree rather than orders of magnitude. Southern blacks are registered and voting at rates comparable to black voters in the rest of the nation. There is a two-party system in the South which fosters black political empowerment and office-holding.

Race still divides the South, but southern blacks are not helpless in the pursuit of political, social, and economic goals when compared to five decade ago.

Second, we must examine the data on minority participation in the political process, and ascertain how Section 5 advanced that cause

As a starting point, in Table 1 information from Earl and Merle Black's *Politics and Society in the South* is presented, pertaining to the growth of black voters in the South. South Carolina and Mississippi rank at the top of proportion black electorate by the 1980s, and also register the largest proportional gain of size in the black electorate, while Deep South states Georgia and Louisiana rank near the bottom of proportional gain, though this is in part a consequence of having the highest rates of black registration of any state originally covered by Section 5. Generally speaking, the states with the largest *potential* black electorate indeed had the most-heavily African-American voter registration rolls.

The Black brothers' analysis informs us as to the proportionately largest black electorates in the South. Tables 2 and 3 indicate the differences in black voter registration and participation since 1980 for six of seven states originally covered by Section 5 (all but Alabama). Black registration lags white registration for most of the time period in the six covered states analyzed (as it does in nonsouthern states throughout the time series). But, for the last four elections for which there are comparative data, black registration in five of the six states (all but Virginia) exceeds black registration rates in the nonsouthern states. In three of the states (Georgia, South Carolina, Mississippi), black registration rates exceeded white registration rates for at least two of the last four elections.

Black turnout rates are less consistently above the national average. As indicated in Table 3, two of the original Section 5 states – Mississippi and Louisiana – have black turnout consistently above the national average. Every covered state except Virginia reports higher black turnout than white turnout at least once since 1990, and Georgia reports higher black turnout in three of the last four general elections. Differences in racial registration and participation have become differences of degree rather than of magnitude.

These votes translated into seats. Figure 1 presents time-lines, since 1964, of the percentage of state legislative seats held by black incumbents in the state legislatures of the seven original Section 5 states. None of the states have yet achieved proportionality in their legislatures. Alabama, Mississippi, and North Carolina are approaching proportionality (data for this graphic appear in Table 4).

At the congressional level, the 1990s saw significant advancement of descriptive African-American representation. The number of southern, African-American Members of Congress tripled. In the states covered by section 5, the number increased from three in 1991 to a current eleven (one from Virginia, two from North Carolina, one from South Carolina, four from Georgia, one from Alabama, one from Mississippi, and one from Louisiana) -- 18% of all congressmen from these states are African-American, compared to 25% African-American citizen voting age population (see Table 5). If we also add the black congressmen elected from the other two Section 5 southern states – Texas and Florida – we total seventeen black MCs, or 15% of all MCs from nine states that are collectively 18.9% black by citizen voting age population.

The nine Southern states that are Section 5-covered contain one-fourth of the citizen voting age population in the United States. Those states are 18.9% African-American citizen VAP, and contain 43.9% of all citizen VAP blacks in the United States. The original seven section 5 states are 24.9% citizen VAP by population, and contain 30.8% of all citizen VAP black in the United States.

Black representation in the Section 5 states is not proportional to the black citizen voting age population. But, black descriptive representation is as high as it has ever been in southern legislature, and is approaching proportionality to the extent that the geographic placement of black voters and the tendencies of electorates in general elect black candidates who seek legislative office.

There is much more analysis required than this cursory recount of black descriptive advancement. We must examine elections using appropriate methods such as ecological regression, the emergent ecological inference technique of Gary King, homogenous precinct analysis, and polling data to ascertain when the preferences of minority voters do prevail in legislative elections. The nature of Section 5 has become so blurred by recent litigation that the provision is emerging as a vehicle for the pursuit of partisan advantage rather than ensuring access to the political process. I will revisit this point later.

Third, the political nature of Section 5 should be frankly and openly discussed

Republican administrations historically used the Voting Rights Act as a lever to encourage the creation of majority-minority districts, and to limit the opportunities to create cross-racial coalitions in support of Democrats. Democrats in turn preferred districts with sizeable (but not majority) minority populations because of the biracial coalitions that could command more seats.

The aggressive use of the Voting Rights Act to create majority-minority districts in the early 1990s resulted in an electoral map that shifted one-third of all southern congressional districts to the GOP in a three-election period. That these districts were largely bereft of minority voters and next-door to majority-minority districts is more than coincidence. These districts were urged by the Justice Department as part of a "maximization strategy", using preclearance as a policy lever. State legislative or congressional (or both) that were approved by the Justice Department were overturned by courts in Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina, Texas, and Virginia.

Georgia and Texas offer opposite perspectives on the effort to seize electoral advantage while playing politics with the Voting Rights Act. In Georgia, the state Democrats moved to retain control of the state legislature while also expanding their foothold in the state's congressional delegation. This was accomplished through the efficient allocation of black, Democratic voters in a fashion opposed by the Justice Department, and which required litigation to establish. This efficient allocation reduced minority majorities in some state senate districts and was considered retrogression by the Justice Department. Because the elected representatives of the community of interest approved of the strategy, and because minority choices could prevail in the coalition districts, the Supreme Court held that the use of coalition districts as an alternative to majority-minority districts was permissible (though not required) to satisfy Section 5.

This change in policy occurred during the recent Texas redistricting. In Texas, plaintiffs attempted to challenge the mid-decade congressional redistricting on several dimensions. One dimension was that districts lacking a majority of a minority, but electing candidates preferred by minority voters in the general election, were protected from change under Section 5. Plaintiff's expert testified that districts as low as 5% minority population might be protected from change under the Voting Rights Act, unless agreed to by the minority community's leadership. This reasoning was rejected by the Justice Department, which precleared the new Texas map (a controversial decision left to others to explain) and also by the Federal district court in Austin, which explicitly rejected the argument that there is an obligation to create coalition districts under federal law.

Section 5 in redistricting has become a political lever to achieve partisan advantage, either packing or cracking minority populations to serve the political ends of the major parties. From the perspective of the Republican Party, it has been successfully used, given the dramatic realignment of southern congressional delegation in the early 1990s.

The redistricting compelled by the Justice Department under Section 5 is not solely responsible, but when combined with the departure of incumbents and wedge issues, the redistricting facilitated the doubling of Southern Republican congressional strength.

Fourth, we need to revisit the need to continue Section 5 in all covered jurisdictions

Virginia offers evidence that local circumstances can change in order to allow jurisdictions to "bail out" from under Section 5. Efforts should be made to explore how the Justice Department can further work with jurisdictions that have made real strides in improving their racial political climate, in order to remove the footprint of federal oversight where it is no longer required. The existing rules for bailing out from Section 5 set impressive, high evidentiary standards for jurisdictions to attain. Do those standards impede the removal of the preclearance mechanism in states where recent evidence of progress is overwhelming?

A state that presents such a dilemma is Georgia. The fastest-growing of the original Section 5 states offers real evidence of voting rights progress in the last decade. African-American candidates run as well or better than white candidates for statewide office of the same party. African-American legislative candidates are capable of winning non-majority black districts on an even basis. The state has the most-heavily black congressional delegation in the US House (31% of seats). Georgia's African American Attorney General Thurburt Baker asserted that:

> The State (sic) racial and political experience in recent years is radically different than it was 10 or 20 years ago, and that is exemplified on every level of politics from statewide elections on down. The election history for legislative offices in Georgia - - House, Senate and Congress - - reflect a high level of success by African American candidates [Post-trial brief of the state of Georgia, *Georgia v. Ashcroft* C.A. No. 01-2111 (EGS) (D.C., DC 2002), p. 2].

However, the current rules governing bailing out from under Section 5 preclude Georgia's departure, due to recent objections by the Justice Department. And, many local jurisdictions have a history of necessary Section 5 objections. At the highest levels of government, Georgia accomplished more than any other state covered by Section 5.

Finally, it needs to be made abundantly clear that the Voting Rights Act is not expiring, but only certain provisions of the Act

Section 2, the nationally-applicable mechanism for applying proactive remedies where racially polarizing voting is in evidence, exists now and into the future. Any jurisdiction which implements election law that has a discriminatory affect will be subject to judicial remedy as demanding as any alternative possible under section 5. Section 5 preclearance does not preclude a section 2 challenge.

TABLE 1: THE CHANGING SIZE OF THE BLACK SHARE OF THE ELECTORATE FROM 1960 TO 1984

State	%Black Among Registered Voters 1960	1984	Proportion Gain
South Carolina	11	28	2.54
Mississippi	4	26	6.50
Alabama	7	22	3.14
North Carolina	10	19	1.90
Louisiana	14	25	1.79
Virginia	10	17	1.70
Georgia	15	22	1.47

Source: From Table 6.2 of Earl Black and Merle Black, 1987. *Politics and Society in the South.* Cambridge: Harvard (at page 139).

TABLE 2: VOTER REGISTRATION BY RACE, SIX ORIGINAL SECTION 5 STATES VERSUS NON-SOUTHERN STATES

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
Georgia													
Black	59.8	51.9	58	55.3	56.8	57	53.9	57.6	64.6	64.1	66.3	61.6	64.2
White	67	59.7	65.7	60.4	63.9	58.1	67.3	55	67.8	62	59.3	62.7	63.5
Louisiana													
Black	69	68.5	74.8	71.9	77.1	72	82.3	65.7	71.9	69.5	73.5	73.5	71.1
White	74.5	67.5	73.2	71.4	75.1	74.1	76.2	72.7	74.5	75.2	77.5	74.2	75.1
Mississippi													
Black	72.2	75.8	85.6	75.9	74.2	71.4	78.5	69.9	67.4	71.3	73.7	67.9	76.1
White	85.2	76.9	81.4	77.3	80.5	70.8	80.2	74.6	75	75.2	72.2	70.7	72.3
North Carolina													
Black	49.2	43.6	59.5	57.1	58.2	60.1	64	53.1	65.5	57.4	62.9	58.2	70.4
White	63.7	62.5	67	65.8	65.6	63.6	70.8	63.9	70.4	65.6	67.9	63.1	69.4
South Carolina													
Black	61.4	53.3	62.2	58.8	56.7	61.9	62	59	64.3	68	68.6	68.3	71.1
White	57.2	54.5	57.3	56.4	61.8	56.2	69.2	62.6	69.7	67.9	68.2	66.2	74.4
Virginia													
Black	49.7	53.6	62.1	66.5	63.8	58.1	64.5	51.1	64	53.6	58	47.5	57.4
White	65.4	60.8	63.7	63.3	68.5	61.9	67.2	63.6	68.4	63.5	67.6	64.1	68.2
Non-South													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63	58.3	62	58.5	61.7	57	na
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63	na

Source: Various post-election reports by the U.S. Bureau of the Census.

TABLE 3: VOTER TURNOUT BY RACE, SIX ORIGINAL SECTION 5 STATES VERSUS NON-SOUTHERN STATES

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
Georgia													
Black	43.7	32.5	45.9	37.3	42.4	42.3	47.1	30.9	45.6	40.2	51.6	38.5	54.4
White	56	40.7	55.3	40.5	53.2	42.6	58.7	38.3	52.3	36.8	48.3	44.8	53.6
Louisiana													
Black	60.1	32	66.4	55.8	61.5	55.9	71.5	30.9	60.9	46	63.2	46.9	62.1
White	65.6	23.6	64.7	57.5	67.5	50.2	68.3	35.6	62.6	35.7	66.4	51	64
Mississippi													
Black	59.5	50.8	69.6	40.2	60.3	32.5	61.9	41.7	48.8	40.4	58.5	40.2	66.8
White	70.9	52.4	69.2	45.8	64.2	35.8	69.4	46.2	59.3	40.7	61.2	43.6	58.9
North Carolina													
Black	38.8	30.4	47.2	39.1	46.6	48.1	54.1	28.3	48.7	38.2	47.6	42.2	63.1
White	55.9	41.7	59.1	47.1	55.2	49.9	62.4	38.4	56.4	40.5	55.9	43.5	58.1
South Carolina													
Black	51.3	38.9	51.4	42	40.7	44.6	48.8	38.7	49.9	42.8	60.7	48.7	59.5
White	51.7	37	47.9	41.3	52.3	42	61.6	49.4	56.2	48.8	58.7	45.1	63.4
Virginia													
Black	42.9	44.3	55	42.5	47.7	32	59	33.8	53.3	23.8	52.7	27.2	49.6
White	58.3	46.2	57.8	36.8	61.1	39.6	63.4	50.4	58.5	32.4	60.4	37.8	63
NonSouth													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	na
White	62.4	53.1	63	48.7	60.4	48.2	64.9	49.3	57.4	45.4	57.5	44.7	na

Source: Various post-election reports by the U.S. Bureau of the Census.

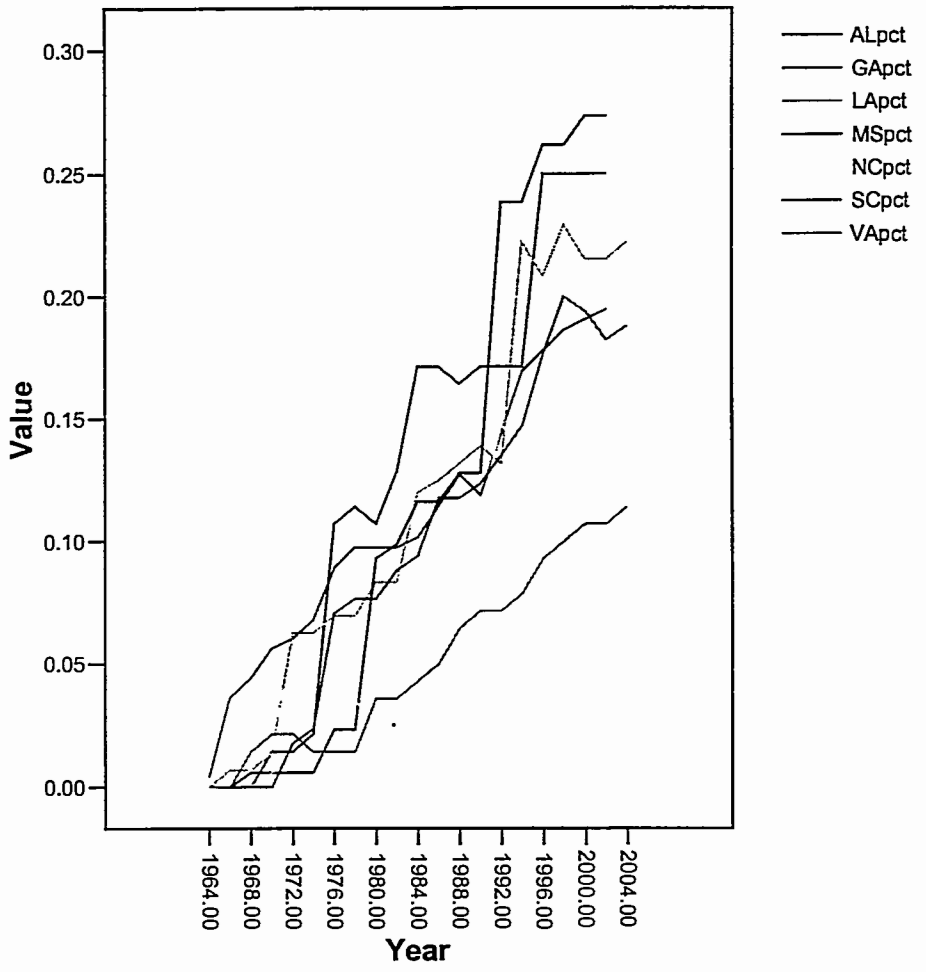


FIGURE 1: PROPORTION OF STATE LEGISLATORS WHO ARE AFRICAN-AMERICAN, SEVEN STATES COVERED BY SECTION 5

TABLE 4: DATA ON BLACK LEGISALTIVE OFFICE HOLDING FROM FIGURE 1

Year	Alabama	Georgia	Louisiana	Mississippi	North Carolina	South Carolina	Virginia
1964	0	1	0	0	0	0	0
1966	0	9	1	0	0	0	0
1968	0	11	1	1	0	0	2
1970	2	14	2	1	1		3
1972	2	15	9	1	2	3	3
1974	3	16	9	1	3	4	2
1976	15	21	10	4	6	12	2
1978	16	23	10	4	6	13	2
1980	15	23	12	16	4	13	5
1982	18	23	12	17	12	15	5
1984	24	24	13	20	16	16	6
1986	24	27	18	20	16	20	7
1988	23	30	19	22	15	20	9
1990	24	28	20	22	19	21	10
1992	24	34	19	41	25	23	10
1994	24	40	32	41	24	25	11
1996	35	42	30	45	24	30	13
1998	35	44	33	45	24	34	14
2000	35	45	31	47	25	33	15
2002	35	46	31	47	24	31	15
2004	.	.	32	.	.	32	16
N	140	236 (GA: N=249 until 1973)	144	172	170	170	140

Source: Charles S. Bullock III and Mark J. Rozell, Forthcoming. *The New Politics of the Old South.* Boulder: Rowman and Littlefield.

Jon M. Greenbaum

Jon M. Greenbaum is the Director of the Voting Rights Project for the Lawyers' Committee for Civil Rights Under Law where he is responsible for directing the Committee's voting rights litigation which challenges all forms of voting rights discrimination practiced against minority and ethnic groups in the United States. This work includes: challenges to electoral practices that violate the Voting Rights Act, including those that deny minorities an equal opportunity to participate in the political process and elect candidates of their choice; voting changes in jurisdictions covered by Section 5 of the Voting Rights Act which worsen the position of minority voters; and challenges to electoral practices that violate the Fourteenth Amendment, including those that improperly infringe on the fundamental right to vote, practices that intentionally discriminate against minority voters, and claims brought pursuant to Bush v. Gore. The Voting Rights Project acts as co-counsel with participating law firms to bring such actions.

Mr. Greenbaum is also responsible for directing the Voting Rights Project's non-litigative activities, which include participating in efforts to maintain and expand the voting rights of minority citizens through legislation, participating in outreach efforts to minority citizens involving voting rights, producing position papers and articles on current issues of concern, coordinating with other organizations on issues affecting voting, and speaking at conferences and to the media regarding voting rights issues.

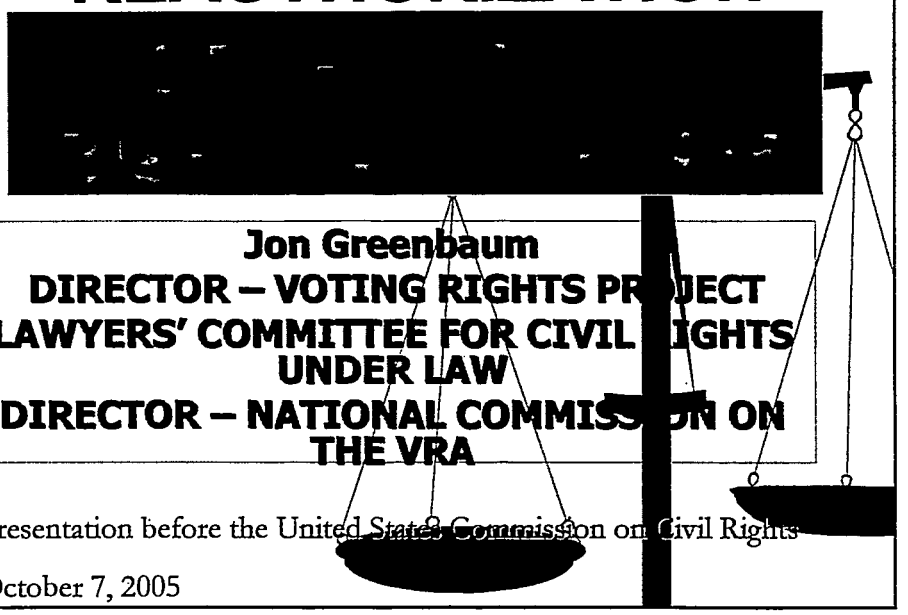
Immediately prior to joining the Lawyers' Committee, Mr. Greenbaum was a trial attorney in the Voting Section of the U.S. Department of Justice for seven years where he enforced voting rights laws for the United States, including Section 2 of the Voting Rights Act, preclearance provisions under Section 5 of the Voting Rights Act, and the bilingual requirements under Section 203 of the Voting Rights Act. In United States v. Charleston County, South Carolina, a case which challenged the at-large method of electing the Charleston County Council on grounds that it diluted the voting strength of African-American citizens, Mr. Greenbaum drafted and argued a successful plaintiff's motion for partial summary judgment on all three preconditions of Thornburg v. Gingles, which is extremely rare, and was a member of the legal team that successfully tried the remainder of the action before the district court.

Prior to working at the Department of Justice, Mr. Greenbaum was a litigation associate in the Los Angeles office of the international law firm, Dewey Ballantine. Mr. Greenbaum worked on numerous litigation matters in the areas of environmental law, employment law, and business litigation.

Mr. Greenbaum graduated in 1989 from the University of California at Berkeley with Bachelor of Arts degrees in Legal Studies (with honors) and History. He received his law degree from the University of California at Los Angeles in 1993.

Mr. Greenbaum is of racially mixed heritage, with a mother of Japanese descent and a father who is white.

REAUTHORIZATION



Jon Greenbaum
DIRECTOR – VOTING RIGHTS PROJECT
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
DIRECTOR – NATIONAL COMMISSION ON THE VRA

Presentation before the United States Commission on Civil Rights

October 7, 2005

BACKGROUND OF LAWYERS' COMMITTEE AND PRESENTER

- LAWYERS' COMMITTEE FORMED IN 1963 AT THE URGING OF PRESIDENT KENNEDY
  - PLAYED KEY ROLE IN 1965 ENACTMENT AND 1970, 1975, 1982, AND 1992 REAUTHORIZATIONS OF VRA
  - VOTING IS ONE OF SEVERAL PROJECT AREAS -- EMPLOYMENT, HOUSING, EDUCATION, ENVIRONMENTAL JUSTICE, MINORITY BUSINESS PROJECT
- JON GREENBAUM
  - SINCE DEC. 2003 – DIRECTOR OF VRP
  - 1997-2003 -- DOJ VOTING SECTION ATTORNEY
  - 1993-1996 – ASSOCIATE AT DEWEY BALLANTINE

NATIONAL COMMISSION ON THE VOTING RIGHTS ACT -- a nonpartisan effort to

- document the record of discrimination in voting
  1. Hearings
  2. Analysis of DOJ records
  3. File review
  4. Report

- educate the public on VRA issues
  1. Hearings
  2. Website (www.votingrightsact.org)
  3. Report
  4. Dialogues

THE VOTING RIGHTS ACT of 1965, as amended

- **PERMANENT PROVISIONS**

1. BAN ON TESTS OR DEVICES
2. SECTION 2 "RESULTS" TEST
3. VOTER ASSISTANT OF CHOICE FOR READING BALLOT – SECTION 208
4. COURT ORDERED EXAMINERS/OBSERVERS OR PRECLEARANCE – SECTION 3
5. CIVIL AND CRIMINAL PENALTIES – SECTIONS 11 AND 12
6. SPECIAL PROVISIONS ON PRESIDENTIAL ELECTIONS

- **TEMPORARY PROVISIONS THAT EXPIRE IN AUGUST 2007**

1. COVERAGE FORMULA FOR PRECLEARANCE AND EXAMINERS AND OBSERVERS
2. PRECLEARANCE §5
3. MINORITY LANGUAGE § §4(f)(4) and 203
4. DOJ CERTIFICATION OF EXAMINERS AND OBSERVERS § 6-9

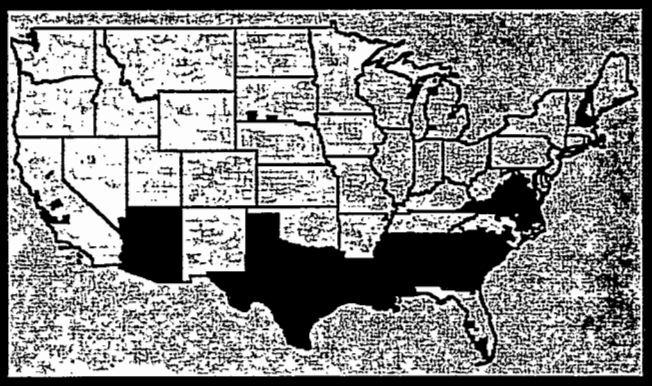
HISTORY OF TEMPORARY PROVISIONS

- SECTIONS RELATING TO COVERAGE FORMULA, PRECLEARANCE, AND EXAMINER/OBSERVER PROVISIONS ENACTED IN 1965 AND REAUTHORIZED IN 1970, 1975, AND 1982
- MINORITY LANGUAGE PROVISIONS ENACTED IN 1975 AND REAUTHORIZED IN 1982 AND 1992

COVERAGE FORMULA

- INCLUDES ALL OR PARTS OF SIXTEEN STATES
- USED TO DETERMINE COVERAGE FOR SECTION 5 PRECLEARANCE AND DOJ CERTIFICATION OF OBSERVERS/EXAMINERS

COVERAGE MAP FOR PRECLEARANCE AND DOJ AUTHORITY TO CERTIFY EXAMINERS/OBSERVERS



Sec. 5 "Preclearance"

- "Shifts the advantage of time and inertia"
- Burden on jurisdiction to show change is nondiscriminatory (i.e. nonretrogressive)
- Changes to DOJ or US Fed. Ct DC
- Follow DOJ regs
- Preclearance over 99% of time
- Bailout provision permits compliant and nondiscriminating jurisdictions to be exempted
- Makes racial fairness a consideration
- Prevents gains from being eroded
- Cost efficient
- Prevents last minute changes
- Deterrence works

Some statistics on the impact that Section 5 has made

- Objections made to 627 submissions and more than 2,000 voting changes from August 1982 to June 2004
- Objections in every state where there are covered jurisdictions except for NH and MI
- 501 changes and 206 submissions withdrawn since 1982 after more info letter sent
- 24 declaratory judgment actions since 1982 where Section 5 made a difference

EXAMINER AND OBSERVER §§6-9

- Authorizes DOJ to certify examiners/observers polls
- Where: Section 5 covered jurisdictions
- Gives states cover and defuses problems
- Addresses problems on site
- Observers deployed every year except for 1973; more than 25,000 observers sent to cover about 1,000 elections

Slides to be added

- Maps showing objections and observer coverages

MINORITY LANGUAGE § § 4(f)(4) & 203

- Several hundred covered jurisdictions
- Primary prerequisite: 5% or 10,000 LEP voting age citizens who speak Spanish or a single Asian, American Indian, Alaska Native language
- Requires effective assistance at all stages of electoral process
- Jurisdictions may target where appropriate
- Voting officials often want to help but need the federal mandate to do so
- Compliance expenses are a small portion of budget
- DOJ active recently, consent decrees

NATIONAL COMMISSION ON THE VOTING RIGHTS ACT -- MEMBERSHIP

- Honorary Chair, Hon. Charles Mathias
- Chair, Bill Lann Lee
- Hon. John Buchanan
- Chandler Davidson
- Dolores Huerta
- Elsie Meeks
- Charles Ogletree
- Hon. Joe Rogers
- Guest Commissioners

National Commission – Schedule of Hearings

- The Commission is holding ten hearings:

1. Southern Regional – Montgomery, March 11
2. Southwest Regional – Phoenix, April 7
3. Northeast Regional – New York, June 14
4. Midwest Regional – Minneapolis, July 22
5. South Georgia – Americus, August 2
6. Florida – Orlando, August 4
7. South Dakota – Rapid City, September 9
8. Western Regional – Los Angeles, September 27
9. Mid-Atlantic Regional – Washington, DC, October 14
10. Mississippi – Jackson, October 29

National Commission hearings

- Testimony of panels comprised of people engaged in voting rights matters – attorneys, academics/experts, elected officials, election officials, community leaders
- Testimony focuses on the successes/limitations of the VRA and enforcement of the VRA
- We anticipate that more than 100 people will have testified by the end of the hearings

National Commission Report

- Lead researcher is Commissioner Chandler Davidson – leading academic on Voting Rights
- Report will incorporate transcripts/testimony from hearings
- Report will document discrimination in voting
- Report will not advocate particular legislative outcome
- Record will be issued in January 2006

Why are these temporary provisions still needed?

- Continued existence of discrimination as reflected by:
  - The extent of the judicial and administration enforcement record
  - Testimony of witnesses
  - Persistence of racially polarized voting and other indicia of discrimination

Restoring Section 5

- Discriminatory purpose: Changes made with unconstitutional but nonretrogressive intent should violate Section 5 (this was a basis for 74% of objections in 1990's and the sole basis of 43%)
- Discriminatory effect: "Influence" districts should not be permitted to supplant "opportunity to elect" districts absent consensus assent by minority community

IMPORTANT NOTES

United States Department of Justice
Civil Rights Division
Voting Section

Introduction To Federal Voting Rights Laws

The Voting Rights Act, adopted initially in 1965 and extended in 1970, 1975, and 1982, is generally considered the most successful piece of civil rights legislation ever adopted by the United States Congress. The Act codifies and effectuates the 15th Amendment's permanent guarantee that, throughout the nation, no person shall be denied the right to vote on account of race or color. In addition, the Act contains several special provisions that impose even more stringent requirements in certain jurisdictions throughout the country.

Adopted at a time when African Americans were substantially disfranchised in many Southern states, the Act employed measures to restore the right to vote that intruded in matters previously reserved to the individual states. Section 4 ended the use of literacy requirements for voting in six Southern states (Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia) and in many counties of North Carolina, where voter registration or turnout in the 1964 presidential election was less than 50 percent of the voting-age population. Under the terms of Section 5 of the Act, no voting changes were legally enforceable in these jurisdictions until approved either by a three-judge court in the District of Columbia or by the Attorney General of the United States. Other sections authorized the Attorney General to appoint federal voting examiners who could be sent into covered jurisdictions to ensure that legally qualified persons were free to register for federal, state, and local elections, or to assign federal observers to oversee the conduct of elections.

Congress determined that such a far-reaching statute only in response to compelling evidence of continuing interference with attempts by African American citizens to exercise their right to vote. As the Supreme Court put it in its 1966 decision upholding the constitutionality of the Act:

> Congress had found that case-by-case litigation was inadequate to combat wide-spread and persistent discrimination in voting, because of the inordinant amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.

South Carolina v. *Katzenbach*, 383 U.S. 301, 327-28 (1966).

At the time the Act was first adopted, only one-third of all African Americans of voting age were on the

registration rolls in the specially covered states, while two-thirds of eligible whites were registered. Now black voter registration rates are approaching parity with that of whites in many areas, and Hispanic voters in jurisdictions added to the list of those specially covered by the Act in 1975 are not far behind. Enforcement of the Act has also increased the opportunity of black and Latino voters to elect representatives of their choice by providing a vehicle for challenging discriminatory election methods such as at-large elections, racially gerrymandered districting plans, or runoff requirements that may dilute minority voting strength. Virtually excluded from all public offices in the South in 1965, black and Hispanic voters are now substantially represented in the state legislatures and local governing bodies throughout the region.

United States Department of Justice
Civil Rights Division
Voting Section

Introduction To Federal Voting Rights Laws

Before the Voting Rights Act

Reconstruction and the Civil War Amendments

Before the Civil War the United States Constitution did not provide specific protections for voting. Qualifications for voting were matters which neither the Constitution nor federal laws governed. At that time, although a few northern states permitted a small number of free black men to register and vote, slavery and restrictive state laws and practices led the franchise to be exercised almost exclusively by white males.

Shortly after the end of the Civil War Congress enacted the Military Reconstruction Act of 1867, which allowed former Confederate States to be readmitted to the Union if they adopted new state constitutions that permitted universal male suffrage. The 14th Amendment, which conferred citizenship to all persons born or naturalized in the United States, was ratified in 1868.

In 1870 the 15th Amendment was ratified, which provided specifically that the right to vote shall not be denied or abridged on the basis of race, color or previous condition of servitude. This superseded state laws that had directly prohibited black voting. Congress then enacted the Enforcement Act of 1870, which contained criminal penalties for interference with the right to vote, and the Force Act of 1871, which provided for federal election oversight.

As a result, in the former Confederate States, where new black citizens in some cases comprised outright or near majorities of the eligible voting population, hundreds of thousands -- perhaps one million -- recently-freed slaves registered to vote. Black candidates began for the first time to be elected to state, local and federal offices and to play a meaningful role in their governments.

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Disfranchisement

The extension of the franchise to black citizens was strongly resisted. Among others, the Ku Klux Klan, the Knights of the White Camellia, and other terrorist organizations attempted to prevent the 15th

Amendment from being enforced by violence and intimidation. Two decisions in 1876 by the Supreme Court narrowed the scope of enforcement under the Enforcement Act and the Force Act, and, together with the end of Reconstruction marked by the removal of federal troops after the Hayes-Tilden Compromise of 1877, resulted in a climate in which violence could be used to depress black voter turnout and fraud could be used to undo the effect of lawfully cast votes.

Once whites regained control of the state legislatures using these tactics, a process known as "Redemption," they used gerrymandering of election districts to further reduce black voting strength and minimize the number of black elected officials. In the 1890s, these states began to amend their constitutions and to enact a series of laws intended to re-establish and entrench white political supremacy.

Such disfranchising laws included poll taxes, literacy tests, vouchers of "good character," and disqualification for "crimes of moral turpitude." These laws were "color-blind" on their face, but were designed to exclude black citizens disproportionately by allowing white election officials to apply the procedures selectively. Other laws and practices, such as the "white primary,", attempted to evade the 15th Amendment by allowing "private" political parties to conduct elections and establish qualifications for their members.

As a result of these efforts, in the former Confederate states nearly all black citizens were disenfranchised and removed from by 1910. The process of restoring the rights taken stolen by these tactics would take many decades.

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Attacks on Disfranchisement Before the Voting Rights Act

In *Guinn* v. *United States*, 238 U.S. 347 (1915), the Supreme Court held that voter registration requirements containing "grandfather clauses,", which made voter registration in part dependent upon whether the applicant was descended from men enfranchised before enactment of the 15th Amendment violated that amendment. The Supreme Court found the Oklahoma law was adopted in order to give whites, who might otherwise have been disfranchised by the state's literacy test, a way of qualifying to vote that was not available to blacks. In 1944, the Supreme Court held that the Texas "white primary" violated the 15th Amendment. *Smith* v. *Allwright*, 321 U.S. 649 (1944). The Southern states experimented with numerous additional restrictions to limit black participation in politics, many of which were struck down by federal courts over the next decade.

Congress passed legislation in 1957, 1960, and 1964 that contained voting-related provisions. The 1957 Act created the Civil Rights Division within the Department of Justice and the Commission on Civil Rights; the Attorney General was given authority to intervene in and institute lawsuits seeking injunctive relief against violations of the 15th Amendment. The 1960 Act permitted federal courts to appoint voting referees to conduct voter registration following a judicial finding of voting discrimination. The 1964 Act also contained several relatively minor voting-related provisions. Although court decisions and these laws made it more difficult, at least in theory, for states to keep all of their black citizens disenfranchised, the strategy of litigation on a case-by-case basis proved to be of very limited success in the jurisdictions were sued and it did not prompt voluntary compliance among jurisdictions that had not been sued. Literacy tests, poll taxes, and other formal and informal practices combined to keep black registration rates minimal in Alabama, Louisiana, and Mississippi, and well below white registration rates in the others.

Faced with the prospect that black voter registration could not be suppressed forever, however, some states began to change political boundaries and election structures so as to minimize the impact of black re-enfranchisement. In 1960, the Supreme Court struck down one such effort, in which the state legislature had gerrymandered the city boundaries of Tuskegee, Alabama, so as to remove all but a handful of the city's black registered voters. The Supreme Court ruled that by doing so Alabama had violated the 15th Amendment. *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960).

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The "Reapportionment Revolution"

In the early 1960s, the Supreme Court also overcame its reluctance to apply the Constitution to unfair redistricting practices. Prior to 1962, the United States Supreme Court had declined to decide constitutional challenges to legislative apportionment schemes, on the grounds that such "political questions" were not within the federal courts' jurisdiction. In *Baker* v. *Carr*, 369 U.S. 186 (1962), however, the Supreme Court recognized that grossly malapportioned state legislative districts could seriously undervalue -- or dilute -- the voting strength of the residents of overpopulated districts while overvaluing the voting strength of residents of underpopulated districts. The Supreme Court found that such malapportionment could be challenged in federal court under the Equal Protection Clause of the 14th Amendment.

In later cases including *Reynolds* v. *Sims*, 377 U.S. 533 (1964), and *Wesberry* v. *Sanders*, 376 U.S. 1 (1964), the Supreme Court established the one-person, one-vote principle. Because in many states malapportioned legislative districts had resulted in sparsely-populated rural counties having a much greater share of their state's political power than their state's population, correcting this imbalance led to dramatic realignments of political power in several states. In *Fortson* v. *Dorsey*, 379 U.S. 433 (1965), the Supreme Court suggested, but did not hold, that certain types of apportionment might unconstitutionally dilute the voting strength of racial minorities.

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United States Department of Justice
Civil Rights Division
Voting Section

Introduction To Federal Voting Rights Laws

The Voting Rights Act of 1965

The 1965 Enactment

By 1965 concerted efforts to break the grip of state disfranchisement had been under way for some time, but had achieved only modest success overall and in some areas had proved almost entirely ineffectual. The murder of voting-rights activists in Philadelphia, Mississippi, gained national attention, along with numerous other acts of violence and terrorism. Finally, the unprovoked attack on March 7, 1965, by state troopers on peaceful marchers crossing the Edmund Pettus Bridge in Selma, Alabama, en route to the state capitol in Montgomery, persuaded the President and Congress to overcome Southern legislators' resistance to effective voting rights legislation. President Johnson issued a call for a strong voting rights law and hearings began soon thereafter on the bill that would become the Voting Rights Act.

Congress determined that the existing federal anti-discrimination laws were not sufficient to overcome the resistance by state officials to enforcement of the 15th Amendment. The legislative hearings showed that the Department of Justice's efforts to eliminate discriminatory election practices by litigation on a case-by-case basis had been unsuccessful in opening up the registration process; as soon as one discriminatory practice or procedure was proven to be unconstitutional and enjoined, a new one would be substituted in its place and litigation would have to commence anew.

President Johnson signed the resulting legislation into law on August 6, 1965. Section 2 of the Act, which closely followed the language of the 15th amendment, applied a nationwide prohibition against the denial or abridgment of the right to vote on the literacy tests on a nationwide basis. Among its other provisions, the Act contained special enforcement provisions targeted at those areas of the country where Congress believed the potential for discrimination to be the greatest. Under Section 5, jurisdictions covered by these special provisions could not implement any change affecting voting until the Attorney General or the United States District Court for the District of Columbia determined that the change did not have a discriminatory purpose and would not have a discriminatory effect. In addition, the Attorney General could designate a county covered by these special provisions for the appointment of a federal examiner to review the qualifications of persons who wanted to register to vote. Further, in those counties where a federal examiner was serving, the Attorney General could request that federal observers monitor activities within the county's polling place.

The Voting Rights Act had not included a provision prohibiting poll taxes, but had directed the Attorney General to challenge its use. In *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966), the Supreme Court held Virginia's poll tax to be unconstitutional under the 14th Amendment. Between 1965 and 1969 the Supreme Court also issued several key decisions upholding the constitutionality of Section 5 and affirming the broad range of voting practices that required Section 5 review. As the Supreme Court put it in its 1966 decision upholding the constitutionality of the Act:

> Congress had found that case-by-case litigation was inadequate to combat wide-spread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.

South Carolina v. *Katzenbach*, 383 U.S. 301, 327-28 (1966).

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The 1970 and 1975 Amendments

Congress extended Section 5 for five years in 1970 and for seven years in 1975. With these extensions Congress validated the Supreme Court's broad interpretation of the scope of Section 5. During the hearings on these extensions Congress heard extensive testimony concerning the ways in which voting electorates were manipulated through gerrymandering, annexations, adoption of at-large elections, and other structural changes to prevent newly-registered black voters from effectively using the ballot. Congress also heard extensive testimony about voting discrimination that had been suffered by Hispanic, Asian and Native American citizens, and the 1975 amendments added protections from voting discrimination for language minority citizens.

In 1973, the Supreme Court held certain legislative multi-member districts unconstitutional under the 14th Amendment on the ground that they systematically diluted the voting strength of minority citizens in Bexar County, Texas. This decision in *White* v. *Regester*, 412 U.S. 755 (1973), strongly shaped litigation through the 1970s against at-large systems and gerrymandered redistricting plans. In *Mobile* v. *Bolden*, 446 U.S. 55 (1980), however, the Supreme Court required that any constitutional claim of minority vote dilution must include proof of a racially discriminatory purpose, a requirement that was widely seen as making such claims far more difficult to prove.

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The 1982 Amendments

Congress renewed in 1982 the special provisions of the Act, triggered by coverage under Section 4 for twenty-five years. Congress also adopted a new standard, which went into effect in 1985, providing how jurisdictions could terminate (or "bail out" from) coverage under the provisions of Section 4. Furthermore, after extensive hearings, Congress amended Section 2 to provide that a plaintiff could establish a violation of the Section without having to prove discriminatory purpose.

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THE PRECLEARANCE AND BAIL OUT PROVISIONS OF THE VOTING RIGHTS ACT

Introduction

Section 5 of the Voting Rights Act ("VRA") requires certain covered states and political subdivisions to obtain federal or judicial preapproval or "preclearance" of any voting law changes or practices before those changes and practices can legally take effect. Section 5 oversight has resulted in the detection and prohibition of many harmful voting laws and practices. However, the deterrence effect of the law cannot be underestimated; legislators or local officials who are aware that they will be expected to show that a new law or practice satisfies the §5 standards are far less likely to propose voting changes that would be prohibited in order to avoid unnecessary additional costs and disruption.

Section 4(a) of the VRA sets forth the coverage formula that establishes which jurisdictions are required to obtain §5 preclearance. In addition, §4(a) also sets forth the means by which covered jurisdictions may make a showing sufficient to demonstrate that they should no longer be covered by the VRA's §5 preclearance provisions. This provision of the VRA is known as the "bail-out" provision.

Coverage Formula

Pursuant to §4(a), a jurisdiction is covered by Section 5 if it meets two requirements:

1) The jurisdiction maintained a voting "test or device" – such as a "good moral character" test or a literacy requirement – as a prerequisite for voting or registration as of November 1, 1964, 1968, **or** 1972

and

2) Less than 50% of the voting-age residents in the jurisdiction were registered to vote, or actually voted, in the presidential elections of 1964, 1968, **or** 1972.

Although not expressly mentioned, voting discrimination against racial or language minorities played a role in crafting the coverage formula. When the coverage formula was first drafted, tests and devices were used for discriminatory purposes, and many of the most aggressively discriminating jurisdictions adopted voting obstacles to effectively suppressed voter registration and turnout of racial or language minorities. The coverage formula sought to utilize readily discoverable proxies to identify many – but not all – of the jurisdictions whose history of voting discrimination against their minority populations could justify the imposition of the VRA's preclearance requirements.

Summary of Covered Jurisdictions

Nine entire states:

1) Alabama	4) Georgia	7) South Carolina
2) Alaska	5) Louisiana	8) Texas
3) Arizona	6) Mississippi	9) Virginia

Parts of seven other states (*See Appendix for a complete listing of covered jurisdictions*):

1) California (4 counties)	5) New York (3 counties)
2) Florida (5 counties)	6) North Carolina (40 counties)
3) Michigan (2 townships)	7) South Dakota (2 counties)
4) New Hampshire (10 towns)	

Preclearance Procedure and Standards

Jurisdictions covered by §5 must receive approval from the Attorney General or a three-judge panel of the United States District Court for the District of Columbia for all proposed voting changes. This approval requires proof sufficient to convince the Attorney General or the court that the proposed changes do "not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color [or membership in a language minority group]."

In 1976, a leading §5 case established that, under the preclearance provisions, a jurisdiction is required only "to insure that no voting practice or procedure changes would be made that would lead to a retrogression in the position of minorities with respect to the effective exercise of the franchise." Under current legal standards, §5 prohibits only those voting changes that are retrogressive – that is those changes that worsen the position of minority voters when measured against the status quo ante.

In recent years the Supreme Court has construed §5 more and more narrowly. Section 5 today no longer operates as a tool for improving electoral opportunities for minority populations; rather, it only serves as a safeguard the reduction of existing levels of minority electoral power. Indeed, §5 allows covered jurisdictions a fair amount of leeway in satisfying their obligations. Collectively, the Supreme Court decisions have reduced the effectiveness of Section 5; however, it remains an important tool for protecting minority voting rights gains obtained through the courts and/or the political process.

The U.S. Department of Justice (DOJ) handles the overwhelming majority of preclearance submissions, which is generally more expeditious and cost-effective for covered jurisdictions. The covered jurisdiction bears the burden of establishing both that the proposed voting change (1) does not have a retrogressive purpose, and (2) will not have a retrogressive effect.

While many of the §5 issues deal with redistricting following a decennial Census, it is very important to recognize that the voting changes subject to §5 preclearance is extensive and ranges from relocation of polling places to annexations of other territory or political subdivisions. Accordingly, §5 is an important safeguard against minority electoral opportunity backsliding in both obvious and subtle ways.

Under the "effect" prong of the test, a jurisdiction must prove that the change is not retrogressive. Under the "purpose" prong of the test, a jurisdiction must prove that the change is not intended to be retrogressive. According to the Supreme Court, a voting change that was adopted with a discriminatory intent but not a retrogressive intent does not violate the preclearance provisions. Satisfaction of the §5 preclearance standard does not insulate a voting change from a constitutional attack or from a challenge under §2 of the VRA or other causes of action.

To meet the administrative approval requirements, a jurisdiction must submit its proposed change to DOJ in writing. The Attorney General has 60 days to object to the change. If DOJ requests additional information from the jurisdiction, then the running of the 60 day period is stopped. If the Attorney General does not object and no additional information is requested, after 60 days the jurisdiction can implement its proposed change. If the Attorney General objects to the proposed change, the jurisdiction may seek preclearance from a three-judge panel of the United States District Court for the District of Columbia, which will make a determination without regard to the DOJ's findings. Significantly, interested individuals and organizations are permitted to offer written or oral comments to DOJ during the administrative preclearance process and often provide useful information regarding the purpose or effect of the change.

Similarly, to meet the judicial approval requirements, a jurisdiction must make the same showing as to both the purpose and effect prongs before the United States District Court for the District of Columbia. Interested parties may intervene and participate in judicial preclearance proceedings if they satisfy the legal standards for intervention. Any appeal from the District Court's decision goes directly to the Supreme Court. If a jurisdiction does not seek or receive preclearance but nonetheless implements the change, a private party or the Attorney General may file suit before a local three-judge district court (i.e., a federal district court outside Washington, D.C.) to stop the implementation. These types of cases are known as §5 enforcement actions.

IV. Bail-out Provisions

As part of the 1982 amendments and reauthorization of the VRA, Congress established a new mechanism to create an incentive for covered jurisdictions to comply with §5 of the VRA. Under this "bail-out" mechanism, a jurisdiction can be removed from coverage if it can show that (1) it has been in full compliance with the preclearance requirements for the past 10 years; (2) no test or device has been used to discriminate on the basis of race color or language minority status; and, (3) no lawsuits against the jurisdiction, alleging voting discrimination, are pending. Although some jurisdictions have utilized the "bail-out" provisions which set forth clear and demonstrable standards, they have not been widely used.

APPENDIX

From the DOJ website:

States Covered by Section 5 in their Entirety

	Applicable Date	Fed. Register	Date
Alabama	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965
Alaska	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975
Arizona	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975
Georgia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965
Louisiana	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965
Mississippi	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965
South Carolina	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965
Texas	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975
Virginia[1]	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965

Covered Counties in States Not Covered in their Entirety

	Applicable Date:	Fed. Register	Date:
California:			
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Merced County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monterey County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Florida:			
Collier County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hardee County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Hendry County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hillsborough County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monroe County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
New York:			
Bronx County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Bronx County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Kings County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
New York County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.

[1] Three political subdivisions in Virginia (Fairfax City, Frederick County and Shenandoah County) have "bailed out" from coverage pursuant to Section 4 of the Voting Rights Act. The United States consented to the declaratory judgment in each of those cases.

	Applicable Date:	Fed. Register	Date:
North Carolina:			
Anson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Beaufort County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Bertie County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Bladen County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Camden County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Caswell County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Chowan County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cleveland County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Craven County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cumberland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Edgecombe County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Franklin County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Gaston County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Gates County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Granville County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Greene County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Guilford County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Halifax County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Harnett County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Hertford County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Hoke County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Jackson County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Lee County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Lenoir County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Martin County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Nash County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Northampton County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Onslow County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pasquotank County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Perquimans County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Person County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pitt County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Robeson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Rockingham County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Scotland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Union County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Vance County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Washington County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Wayne County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Wilson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

	Applicable Date:	Fed. Register	Date:
South Dakota:			
Shannon County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Todd County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.

Covered Townships in States Not Covered in their Entirety

		Applicable Date	Fed. Register	Date
Michigan:				
Allegan County:	Clyde Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976
Saginaw County:	Buena Vista Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976
New Hampshire:				
Cheshire County:	Rindge Town	Nov. 1, 1968	39 FR 16912	May 10, 1974
Coos County:	Millsfield Township	Nov. 1, 1968	39 FR 16912	May 10, 1974
	Pinkhams Grant	Nov. 1, 1968	39 FR 16912	May 10, 1974
	Stewartstown Town	Nov. 1, 1968	39 FR 16912	May 10, 1974
	Strattford Town	Nov. 1, 1968	39 FR 16912	May 10, 1974
Grafton County	Benton Town	Nov. 1, 1968	39 FR 16912	May 10, 1974
Hillsborough County	Antrim Town	Nov. 1, 1968	39 FR 16912	May 10, 1974
Merrimack County	Boscawen Town	Nov. 1, 1968	39 FR 16912	May 10, 1974
Rockingham County	Newington Town	Nov. 1, 1968	39 FR 16912	May 10, 1974
Sullivan County	Unity Town	Nov. 1, 1968	39 FR 16912	May 10, 1974

THE FEDERAL EXAMINER AND OBSERVER PROVISIONS OF THE VOTING RIGHTS ACT

Introduction

Sections 6 through 9 of the Voting Rights Act contain the federal examiner and observer provisions of the Act, which allow federal employees to observe polling place and vote counting activities and serve to document and deter inappropriate conduct. Although these provisions are permanent, the primary way these provisions are utilized is through the Section 5 preclearance coverage formula, which is set to expire in August 2007. Federal observers have been deployed in every year from 1966 to the present, except for 1973. Through December 8, 2003, almost 25,000 observers have been deployed in approximately 1,000 elections. While observer coverage in the early years was almost exclusively designed to protect the rights of black voters in the deep South, in recent years there has been roughly a 50/50 split between "traditional" election coverage, and election coverage designed to protect the rights of minority language voters in various areas of the country.

Coverage Under The Examiner/Observer Provisions

There are two ways jurisdictions can become subject to examiner/observer provisions. First, a court can authorize the temporary or permanent appointment of one or more examiners in a jurisdiction if the court deems it necessary to enforce the voting guarantees contained in the fourteenth and fifteenth amendments. Judicial authority to order the appointment of examiners is nationwide and permanent.

Second, the Attorney General can certify the appointment of an examiner in a jurisdiction when the Attorney General has received twenty or more written complaints from residents that they have been denied the right to vote on account of their race, color, or membership in a minority language group that the Attorney General believes are meritorious. Examiner coverage is also authorized when the Attorney General determines that it is necessary to enforce the voting guarantees contained in the fourteenth and fifteenth amendments. Attorney General authority to appoint examiners is limited to Section 5 preclearance jurisdictions and is set to expire in August 2007. According to the Department of Justice, there are slightly more than 1,000 Section 5 preclearance counties.

Most examiners are appointed through Attorney General certification. According to the website of the Department of Justice's ("DOJ") Voting Section, there are 148 counties and 9 Louisiana parishes that have been certified by the Attorney General, compared to 10 political subdivisions that are eligible for federal examiners as a result of court orders.

Federal Examiners And Observers

Over the past forty years, the nature of the federal examiner has changed. The examiner now usually plays a more administrative role whereas the observer's role has become more central to protecting voting rights.

How they are appointed and who they are

Federal examiners and observers are appointed by the Director of the Office of Personnel Management ("OPM"), who consults DOJ about where and how many examiners and observers are needed. In the past, almost all of the examiners and observers were OPM employees. As the OPM workforce has shrunk and need for observers with minority language proficiency has taken on increased importance, the observers are federal employees from various agencies. The Act authorizes federal employees to be examiners and federal employees and others to be observers.

The role of the federal examiner

As envisioned in the Act, the examiner's primary role was "to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections." These provisions for federally-registered voters were a response to the well-documented refusal of registrars in the South and other parts of the country to register black voters. Over the course of time, the need to have federal examiners register voters has been significantly limited.

Today, the head observer covering an election typically serves as the examiner as well. The main function of the examiner in practice is to receive phone calls from individuals who are reporting problems, although those calls usually are made directly to DOJ attorneys instead.

The role of the federal observer

The Director of OPM assigns observers to monitor elections in any certified jurisdiction for the purpose of observing whether eligible voters are allowed to vote and whether votes case by eligible voters are properly being counted. The observers essentially serve as witnesses for what occurs in the polling place and during the counting of the vote.

The case of *United States v. Burks County* shows the value of observers in documenting problems within the polls. The United States won the case based upon the court-appointed observers' substantial evidence of hostile and unequal treatment of Hispanic and Spanish-speaking voters by poll officials.

The *Burks* case also illustrates why observers have a deterrent effect. Because pollworkers, election officials, and others involved in the election process know their actions are being observed and recorded, some individuals are going to be discouraged from engaging in inappropriate behavior.

Table 1[1]

All 36 VRA Impacted States: §203 and/or §4(f)(4) Language Minority Protections and/or §5 Coverage and the 264 Impacted Congressional Districts

	Relevant Cong. District(s)	Total
1. Alaska	At-large	1
2. Alabama	1st - 7th	7
3. Arizona	1st - 8th	8
4. California	2nd, 3rd, 4th, 5th 7th - 53rd	51
5. Colorado	1st, 3rd, 4th	3
6. Connecticut	1st - 5th	5
7. Florida	3rd, 7th, 8th, 9th, 11th - 25th	19
8. Georgia	1st - 13th	13
9. Hawaii	1st, 2nd	2
10. Idaho	1st, 2nd	2
11. Illinois	1st - 10th, 13th, 14th	12
12. Kansas	1st	1
13. Louisiana	1st - 7th	7
14. Maryland	4th, 6th, 8th	3
15. Massachusetts	1st, 2nd, 5th, 8th, 9th	5
16. Michigan	5th, 6th	2
17. Mississippi	1st, 2nd, 3rd, 4th	4
18. Montana	At-large	1
19. Nebraska	1st, 3rd	2
20. Nevada	1st, 2nd, 3rd	3
21. New Hampshire	1st, 2nd	2
22. New Jersey	2nd, 5th - 13th	10
23. New Mexico	1st, 2nd, 3rd	3
24. New York	1st - 19th	19
25. North Carolina	1st, 2nd, 3rd, 5th - 13th	12
26. North Dakota	At-Large	1
27. Oklahoma	3rd	1
28. Oregon	2nd	1
29. Pennsylvania	1st, 2nd, 8th, 13th	4
30. Rhode Island	1st, 2nd	2
31. South Carolina	1st - 6th	6
32. South Dakota	At-large	1
33. Texas	1st - 32nd	32
34. Utah	2nd	1
35. Virginia	1st - 11th	11
36. Wash. State	1st, 2nd, 4th, 5th, 7th, 8th, 9th	7
Total		**264**

[1] Source: Reauthorizing the Voting Rights Act of 1965. Assessing the Geographic and Political Terrain, Daniel Levitas, Ira Glasser Racial Justice Fellow, ACLU Voting Rights Project, Atlanta, GA (June 10, 2004)

Table 2. [2]

Scope of Coverage of the Language Minority Provisions of the Federal Voting Rights Act: 466 Local Jurisdictions Across 31 States

State	Local Jurisdiction and Language(s) Impacted[3]
Alaska (1)	All 27 census areas, boroughs and municipalities: American Indian (8) [Chickasaw, Unspecified Tribes], Eskimo (8), Aleutian (2), Filipino (1), Athabascan (5), Alaska Native (27). Note: All of Alaska and its 27 political subdivisions are covered under §4(f)(4) for Alaskan Natives and, as such, also are subject to §5 preclearance.
Arizona (8)	15 out of 15 counties: Hispanic (15), American Indian (9) [Apache, Navajo, Pueblo, Tohono O'Odham, Yaqui, Yuman]. Note: all of Arizona and its 15 counties are covered under §4(f)(4) for speakers of Spanish and, as such, also are subject to §5 preclearance.
California (51)	26 out of 58 counties: Hispanic (26), Chinese (6); American Indian (2) [Central or South American, Yuman]; Filipino (3); Japanese (1); Korean (2) Vietnamese (3).Additionally all ballot and voting materials produced by the State of California (but not all local jurisdictions) are covered under §203 for speakers of Spanish.
Colorado (3)	10 out of 64 counties: Hispanic (8), American Indian (2) [Navajo, Ute]
Connecticut (5)	7 towns or townships: Hispanic (7)
Florida (19)	11 out of 68 counties: Hispanic (10), American Indian (3) [Seminole]
Hawaii (2)	2 out of 4 counties: Chinese (1); Filipino (2); Japanese (1)
Idaho (2)	5 out of 44 counties: American Indian (5) [Other tribe specified]
Illinois (12)	2 out of 102 counties: Hispanic (2), Chinese (1)
Kansas (1)	6 out of 105 counties: Hispanic (6)
Louisiana (2)	1 out of 64 parishes: American Indian (1) [Other tribe specified]

[2] Source: *Reauthorizing the Voting Rights Act of 1965. Assessing the Geographic and Political Terrain*, Daniel Levitas, Ira Glasser Racial Justice Fellow, ACLU Voting Rights Project, Atlanta, GA (June 10, 2004)

[3] The number of impacted congressional districts appears in parenthesis after the state name. Figures in parentheses after each language group indicate the number of local jurisdictions (i.e. counties, census areas, townships) where the specific language minority is covered. Because many jurisdictions protect more than one language minority, the latter figures do not add up to the total number of local jurisdictions covered in each state.

Table 2. - Continued

Maryland (3)	1 out of 24 counties: Hispanic (1)
Massachusetts (5)	6 cities and towns: Hispanic (6)
Michigan (2)	2 townships: Hispanic (2)
Mississippi (4)	9 out of 82 counties: American Indian (9) [Choctaw]
Montana (1)	2 out of 56 counties: American Indian (2) [Cheyenne]
Nebraska (2)	2 out of 93 counties: Hispanic (1); American Indian (1) [Sioux]
Nevada (3)	6 out of 16 counties: Hispanic (1); American Indian (5) [Shoshone, Paiute, Other tribe specified]
New Jersey (10)	7 out of 21 counties: Hispanic (7)
New Mexico (3)	26 out of 33 counties: Hispanic (21), American Indian (11) [Navajo, Pueblo, Ute]. Additionally, all ballot and voting materials produced by the State of New Mexico (but not necessarily by all local jurisdictions) are covered under §203 with regard to Spanish.
New York (19)	7 out of 62 counties: Hispanic (7); Chinese (3); Korean (1)
North Carolina (1)	1 out of 100 counties: American Indian (1) [Tribe not specified]
North Dakota(1)	2 out of 53 counties: American Indian (2) [Sioux]
Oklahoma (1)	2 out of 77 counties: Hispanic (2)
Oregon (1)	1 out of 37 counties: American Indian (1) [Other tribe specified]
Pennsylvania (4)	1 out of 67 counties: Hispanic (1)
Rhode Island (2)	2 cities: Hispanic (2)
South Dakota (1)	18 out of 66 counties: American Indian (18) [Sioux, Cheyenne]
Texas (32)	All 254 counties: Hispanic (254), American Indian (2) [Tribe not specified, Pueblo], Vietnamese (1). Note: All 254 Texas counties are covered under 4(f)(4) with regard to Spanish and, as such, also are subject to §5 preclearance.
Utah (1)	1 out of 29 counties: American Indian (1) [Navajo, Ute]
Wash. State (7)	4 out of 40 counties: Hispanic (3); Chinese (1)

END TABLE 2

Table 3[1]

31 States with §203 and/or §4(f)(4) Language Minority Protections and the 209 Impacted Congressional Districts

	Relevant Cong. District(s)	Total
1. Alaska	At-large	1
2. Arizona	1st - 8th	8
3. California	2nd, 3rd, 4th, 5th, 7th - 53rd	51
4. Colorado	1st, 3rd, 4th	3
5. Connecticut	1st - 5th	5
6. Florida	3rd, 7th, 8th, 9th, 11th - 25th	19
7. Hawaii	1st, 2nd	2
8. Idaho	1st, 2nd	2
9. Illinois	1st - 10th, 13th, 14th	12
10. Kansas	1st	1
11. Louisiana	4th, 5th	2
12. Maryland	4th, 6th, 8th	3
13. Massachusetts	1st, 2nd, 5th, 8th, 9th	5
14. Michigan	5th, 6th	2
15. Mississippi	1st, 2nd, 3rd, 4th	4
16. Montana	At-large	1
17. Nebraska	1st, 3rd	2
18. Nevada	1st, 2nd, 3rd	3
19. New Jersey	2nd, 5th - 13th	10
20. New Mexico	1st, 2nd, 3rd	3
21. New York	1st - 19th	19
22. North Carolina	11th	1
23. North Dakota	At-Large	1
24. Oklahoma	3rd	1
25. Oregon	2nd	1
26. Pennsylvania	1st, 2nd, 8th, 13th	4
27. Rhode Island	1st, 2nd	2
28. South Dakota	At-large	1
29. Texas	1st - 32nd	32
30. Utah	2nd	1
31. Wash. State	1st, 2nd, 4th, 5th, 7th, 8th, 9th	7
Totals		**209**

END TABLE 3

[1] Source: *Reauthorizing the Voting Rights Act of 1965. Assessing the Geographic and Political Terrain*, Daniel Levitas, Ira Glasser Racial Justice Fellow, ACLU Voting Rights Project, Atlanta, GA (June 10, 2004)

Table 4

Nine States With Complete §5 Coverage Impacting 89 Congressional Districts

State	Congressional Districts
1. Alabama	7
2. Alaska	1 (At-Large)
3. Arizona	8
4. Georgia	13
5. Louisiana	7
6. Mississippi	4
7. South Carolina	6
8. Texas	32
9. Virginia	11

	89

7 States With Partial §5 Coverage Impacting 39 Congressional Districts

State	**# Jurisdictions**	**#CDs**	**Relevant Congressional District(s)**
1. California	4 out of 58 counties	4	2nd, 17th, 18th, 20th
2. Florida	5 out of 67 counties	8	9th, 11th, 12th, 13th, 14th, 16th, 23rd, 25th
3. Michigan	2 townships	2	5th, 6th
4. New Hampshire	10 towns and townships	2	1st, 2nd
5. New York	3 out of 63 counties	11	7th - 17th
6. North Carolina	40 out of 100 counties	11	1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, 10th, 12th, 13th
7. South Dakota	2 out of 66 counties	1	At-large
		—	
		39	

Table 6

10 States with Overlapping §5 and §203 and/or §4(f)(4) Language Minority Protections

State	**Total Overlapping CDs**	**Relevant Congressional District(s)**
1. Alaska	1	At-large
2. Arizona	8	1st - 8th
3. California	4	2nd, 17th, 18th, 20th
4. Florida	8	9th, 11th, 12th, 13th, 14th, 16th, 23rd, 25th
5. Louisiana	2	4th, 5th
6. Michigan	2	5th, 6th
7. Mississippi	4	1st, 2nd, 3rd, 4th
8. New York	11	7th - 17th
9. South Dakota	1	At-large
10. Texas	32	1st - 32nd
	—	
	73	

LANGUAGE ASSISTANCE PROVISIONS OF THE VOTING RIGHTS ACT

Introduction

Inability to speak English very well results in low voter participation – language barriers effectively prevent eligible voters from voting. The Voting Rights Act through its language assistance provisions, Sections 203 and 4(f)(4), requires bilingual voting assistance for language minority communities in certain jurisdictions.

Languages Covered by Sections 203 and 4(f)(4)

The language assistance provisions of the Voting Rights Act apply to four language minority groups: American Indians, Asian Americans, Alaskan Natives, and persons of Spanish heritage. Congress covered these four language minority groups after hearing evidence of voting or other forms of discrimination that limited the group's access to the political process, evidence of severe language barriers and high rates of illiteracy within the group, and evidence of depressed voter registration and turnout. Other language groups were not included because there was insufficient evidence to establish that they had experienced similar difficulties in voting.

Section 203 Coverage Formula

Bilingual assistance is required for a particular language if:

a. i. More than 5% of the voting-age citizens in a jurisdiction belong to a single language minority community and are Limited English Proficiency ("LEP")[1]

OR

ii. More than 10,000 voting-age citizens in a jurisdiction belong to a single language minority community and are LEP

AND

b. The illiteracy rate of the citizens in the language minority is higher than the national illiteracy rate.[2]

The Director of the Census determines whether a jurisdiction satisfies both requirements of Section 203. The determination made by the Director is final and cannot be challenged in court.

The Census Bureau released its most recent determination of newly covered jurisdictions on July 26, 2002 (*see table at the end of the document*). According to the new determination there are more than 220 jurisdictions that must provide language assistance to Spanish speakers, and

[1] The term "limited-English proficient" means unable to speak or understand English adequately enough to participate in the electoral process.

[2] The term "illiteracy" means the failure to complete the 5th primary grade.

approximately 115 that must provide assistance to Asian Americans, Alaskan Natives, or Native Americans. Spanish language coverage increased by 49, and Asian language coverage by 7 new jurisdictions. There were also seven instances of new Asian languages added in already covered jurisdictions. For example, Orange County, California was previously covered for Vietnamese; after the 2002 Census determination, Chinese and Korean were also added.

Section 4(f)(4) Coverage Formula

In addition to Section 203's requirements, jurisdictions are required to provide bilingual assistance if:

(i) over five percent of the voting-age citizens on November 1, 1972 were members of a single language minority group;

(ii) the United States Attorney General finds that election materials were provided in English only on November 1, 1972;

AND

(iii) the Director of the Census determines that fewer than fifty percent of voting-age citizens were registered to vote on November 1, 1972 or that fewer than fifty percent voted in the November 1972 General Elections.

In contrast to Section 203, no further determinations have been made under Section 4(f)(4) and the existing determinations remain in effect and are unchanged by the new Section 203 amendments. Currently, Section 4(f)(4) covers language minority groups in three States in their entirety (Alaska, Arizona and Texas), and a total of nineteen counties or townships in six other States (*see table at the end of the document*).

Assistance Provided under the Language Assistance Provisions of the Voting Rights Act

The purpose of Section 203 is to provide LEP citizens with the same information and opportunities to participate in the voting process as the general public. Thus, all information that is provided in English must be also provided in the languages designated by the Census Bureau. A covered jurisdiction may be required to provide the following types of assistance:

- **Translation of written materials.** Written materials include both voting forms such as ballots, sample ballots, affidavit ballots and petitions and informational materials such as notifications of registration deadlines opportunities to register, upcoming elections and absentee voting procedures.

- **Oral assistance at polling sites.** Sufficient numbers of trained interpreters should be available, based both on the number of registered voters who need such assistance and the right of a voter to be assisted by a person of his/her own choice. Depending on the language needs of the community, interpreters in more than one dialect of a language may have to be provided.

- **Publicity regarding the availability of bilingual assistance.** Examples of publicity include bilingual notices at voter registration and polling sites, announcements on language minority radio stations and television channels and in newspapers, and direct contact with language minority community organizations.

Enforcement of Language assistance provisions

People in covered jurisdictions who notice Section 203 violations in their communities must report these violations to the Department of Justice as well as their local election official (County Registrar, etc.). Once violations have been reported, the Department of Justice can investigate and monitor the offending jurisdiction's activities and may send monitors to observe elections. If the Department of Justice determines that a jurisdiction is in violation of Section 203, it can negotiate an agreement to ensure future compliance or initiate a civil action in federal court to obtain appropriate relief.

Covered Areas for Voting Rights Bilingual Election Materials—2000

STATE AND POLITICAL SUBDIVISION	GROUP
Alaska:	
Aleutians West Census Area	Aleut.
Bethel Census Area	Eskimo.
Bethel Census Area	American Indian (Tribe not specified).
Bethel Census Area	American Indian (Other Tribe specified).
Denali Borough	Athabascan.
Dillingham Census Area	Eskimo.
Dillingham Census Area	American Indian (Other Tribe specified).
Dillingham Census Area	Native (Other Group specified).
Kenai Peninsula Borough	American Indian (Tribe not specified).
Kenai Peninsula Borough	Aleut.
Kodiak Island Borough	Filipino.
Lake and Peninsula Borough	Athabascan.
Lake and Peninsula Borough	Aleut.
Lake and Peninsula Borough	Eskimo.
Nome Census Area	Eskimo.
North Slope Borough	American Indian (Tribe not specified).
North Slope Borough	Eskimo.
Northwest Arctic Borough	Eskimo.
Northwest Arctic Borough	Alaska Native (Other Group specified).
Southeast Fairbanks Census Area	Athabascan.
Southeast Fairbanks Census Area	Native (Other Group specified).
Valdez-Cordova Census Area	Athabascan.
Wade Hampton Census Area	Eskimo.
Wade Hampton Census Area	American Indian (Chickasaw).
Wade Hampton Census Area	American Indian (Tribe not specified).
Yukon-Koyukuk Census Area	Athabascan.
Yukon-Koyukuk Census Area	Eskimo.
Yukon-Koyukuk Census Area	American Indian (Other Tribe specified).
Arizona:	
Apache County	American Indian (Apache).
Apache County	American Indian (Navajo).
Apache County	American Indian (Pueblo).
Cochise County	Hispanic.
Coconino County	American Indian (Navajo).
Coconino County	American Indian (Pueblo).
Gila County	American Indian (Apache).
Graham County	American Indian (Apache).
Greenlee County	Hispanic.
Maricopa County	Hispanic.
Maricopa County	American Indian (Tohono O'Odham).
Navajo County	American Indian (Apache).
Navajo County	American Indian (Navajo).
Navajo County	American Indian (Pueblo).
Pima County	Hispanic.
Pima County	American Indian (Tohono O'Odham).
Pima County	American Indian (Yaqui).
Pinal County	American Indian (Apache).
Pinal County	American Indian (Tohono O'Odham).
Santa Cruz County	Hispanic.
Yuma County	Hispanic.
Yuma County	American Indian (Yuman).

Covered Areas for Voting Rights Bilingual Election Materials—2000

STATE AND POLITICAL SUBDIVISION	GROUP
California:	
State Coverage	Hispanic.
Alameda County	Hispanic.
Alameda County	Chinese.
Colusa County	Hispanic.
Contra Costa County	Hispanic.
Fresno County	Hispanic.
Imperial County	Hispanic.
Imperial County	American Indian (Central or South American)
Imperial County	American Indian (Yuman).
Kern County	Hispanic.
Kings County	Hispanic.
Los Angeles County	Hispanic.
Los Angeles County	Chinese.
Los Angeles County	Filipino.
Los Angeles County	Japanese.
Los Angeles County	Korean.
Los Angeles County	Vietnamese.
Madera County	Hispanic.
Merced County	Hispanic.
Monterey County	Hispanic.
Orange County	Hispanic.
Orange County	Chinese.
Orange County	Korean.
Orange County	Vietnamese.
Riverside County	Hispanic.
Riverside County	American Indian (Central or South American).
Sacramento County	Hispanic.
San Benito County	Hispanic.
San Bernardino County	Hispanic.
San Diego County	Hispanic.
San Diego County	Filipino.
San Francisco County	Hispanic.
San Francisco County	Chinese.
San Joaquin County	Hispanic.
San Mateo County	Hispanic.
San Mateo County	Chinese.
Santa Barbara County	Hispanic.
Santa Clara County	Hispanic.
Santa Clara County	Chinese.
Santa Clara County	Filipino.
Santa Clara County	Vietnamese.
Stanislaus County	Hispanic.
Tulare County	Hispanic.
Ventura County	Hispanic.
Colorado:	
Alamosa County	Hispanic.
Conejos County	Hispanic.
Costilla County	Hispanic.
Crowley County	Hispanic.
Denver County	Hispanic.
La Plata County	American Indian (Navajo).
La Plata County	American Indian (Ute).

Covered Areas for Voting Rights Bilingual Election Materials—2000

STATE AND POLITICAL SUBDIVISION	GROUP
Montezuma County	American Indian (Navajo).
Montezuma County	American Indian (Ute).
Otero County	Hispanic.
Rio Grande County	Hispanic.
Saguache County	Hispanic.
Connecticut:	
Bridgeport town (Fairfield County)	Hispanic.
Hartford town (Hartford County)	Hispanic.
Meriden town (New Haven County)	Hispanic.
New Britain town (Hartford County)	Hispanic.
New Haven town (New Haven County)	Hispanic.
Waterbury town (New Haven County)	Hispanic.
Windham town (Windham County)	Hispanic.
Florida:	
Broward County	Hispanic.
Broward County	American Indian (Seminole).
Collier County	American Indian (Seminole).
Glades County	American Indian (Seminole).
Hardee County	Hispanic.
Hendry County	Hispanic.
Hillsborough County	Hispanic.
Miami-Dade County	Hispanic.
Orange County	Hispanic.
Osceola County	Hispanic.
Palm Beach County	Hispanic.
Hawaii:	
Honolulu County	Chinese.
Honolulu County	Filipino.
Honolulu County	Japanese.
Maui County	Filipino.
Idaho:	
Bannock County	American Indian (Other Tribe specified).
Bingham County	American Indian (Other Tribe specified).
Caribou County	American Indian (Other Tribe specified).
Owyhee County	American Indian (Other Tribe specified).
Power County	American Indian (Other Tribe specified).
Illinois:	
Cook County	Hispanic.
Cook County	Chinese.
Kane County	Hispanic.
Kansas:	
Finney County	Hispanic.
Ford County	Hispanic.
Grant County	Hispanic.
Haskell County	Hispanic.
Kearny County	Hispanic.
Seward County	Hispanic.

Covered Areas for Voting Rights Bilingual Election Materials—2000

STATE AND POLITICAL SUBDIVISION	GROUP
Louisiana:	
Allen Parish	American Indian (Other Tribe specified).
Maryland:	
Montgomery County	Hispanic.
Massachusetts:	
Boston city (Suffolk County)	Hispanic.
Chelsea city (Suffolk County)	Hispanic.
Holyoke city (Hampden County)	Hispanic.
Lawrence city (Essex County)	Hispanic.
Southbridge town (Worcester County)	Hispanic.
Springfield city (Hampden County)	Hispanic.
Michigan:	
Clyde township (Allegan County)	Hispanic.
Mississippi:	
Attala County	American Indian (Choctaw).
Jackson County	American Indian (Choctaw).
Jones County	American Indian (Choctaw).
Kemper County	American Indian (Choctaw).
Leake County	American Indian (Choctaw).
Neshoba County	American Indian (Choctaw).
Newton County	American Indian (Choctaw).
Scott County	American Indian (Choctaw).
Winston County	American Indian (Choctaw).
Montana:	
Big Horn County	American Indian (Cheyenne).
Rosebud County	American Indian (Cheyenne).
Nebraska:	
Colfax County	Hispanic.
Sheridan County	American Indian (Sioux).
Nevada:	
Clark County	Hispanic.
Elko County	American Indian (Other Tribe specified).
Elko County	American Indian (Shoshone).
Humboldt County	American Indian (Other Tribe specified).
Lyon County	American Indian (Paiute).
Nye County	American Indian (Shoshone).
White Pine County	American Indian (Shoshone).
New Jersey:	
Bergen County	Hispanic.
Cumberland County	Hispanic.
Essex County	Hispanic.
Hudson County	Hispanic.
Middlesex County	Hispanic.
Passaic County	Hispanic.
Union County	Hispanic.

Covered Areas for Voting Rights Bilingual Election Materials—2000

STATE AND POLITICAL SUBDIVISION	GROUP
New Mexico:	
State Coverage	Hispanic.
Bernalillo County	Hispanic.
Bernalillo County	American Indian (Navajo).
Bernalillo County	American Indian (Pueblo).
Catron County	American Indian (Pueblo).
Chaves County	Hispanic.
Cibola County	American Indian (Navajo).
Cibola County	American Indian (Pueblo).
De Baca County	Hispanic.
Dona Ana County	Hispanic.
Eddy County	Hispanic.
Grant County	Hispanic.
Guadalupe County	Hispanic.
Harding County	Hispanic.
Hidalgo County	Hispanic.
Lea County	Hispanic.
Luna County	Hispanic.
McKinley County	American Indian (Navajo).
McKinley County	American Indian (Pueblo).
Mora County	Hispanic.
Rio Arriba County	Hispanic.
Rio Arriba County	American Indian (Navajo).
Roosevelt County	Hispanic.
San Juan County	American Indian (Navajo).
San Juan County	American Indian (Ute).
San Miguel County	Hispanic.
Sandoval County	American Indian (Navajo).
Sandoval County	American Indian (Pueblo).
Santa Fe County	Hispanic.
Santa Fe County	American Indian (Pueblo).
Socorro County	Hispanic.
Socorro County	American Indian (Navajo).
Socorro County	American Indian (Pueblo).
Taos County	Hispanic.
Taos County	American Indian (Pueblo).
Torrance County	Hispanic.
Union County	Hispanic.
Valencia County	Hispanic.
Valencia County	American Indian (Pueblo).
New York:	
Bronx County	Hispanic.
Kings County	Hispanic.
Kings County	Chinese.
Nassau County	Hispanic.
New York County	Hispanic.
New York County	Chinese.
Queens County	Hispanic.
Queens County	Chinese.
Queens County	Korean.
Suffolk County	Hispanic.
Westchester County	Hispanic.

Covered Areas for Voting Rights Bilingual Election Materials—2000

STATE AND POLITICAL SUBDIVISION	GROUP
North Dakota:	
Richland County	American Indian (Sioux).
Sargent County	American Indian (Sioux).
Oklahoma:	
Harmon County	Hispanic.
Texas County	Hispanic.
Oregon:	
Malheur County	American Indian (Other Tribe specified).
Pennsylvania:	
Philadelphia County	Hispanic.
Rhode Island:	
Central Falls city (Providence County)	Hispanic.
Providence city (Providence County	Hispanic.
South Dakota:	
Bennett County	American Indian (Sioux).
Codington County	American Indian (Sioux).
Day County	American Indian (Sioux).
Dewey County	American Indian (Sioux).
Grant County	American Indian (Sioux).
Gregory County	American Indian (Sioux).
Haakon County	American Indian (Sioux).
Jackson County	American Indian (Sioux).
Lyman County	American Indian (Sioux).
Marshall County	American Indian (Sioux).
Meade County	American Indian (Sioux).
Meade County	American Indian (Cheyenne).
Mellette County	American Indian (Sioux).
Roberts County	American Indian (Sioux).
Shannon County	American Indian (Sioux).
Stanley County	American Indian (Sioux).
Todd County	American Indian (Sioux).
Tripp County	American Indian (Sioux).
Ziebach County	American Indian (Sioux).
Texas:	
State Coverage	Hispanic.
Andrews County	Hispanic.
Atascosa County	Hispanic.
Bailey County	Hispanic.
Bee County	Hispanic.
Bexar County	Hispanic.
Borden County	Hispanic.
Brewster County	Hispanic.
Brooks County	Hispanic.
Caldwell County	Hispanic.
Calhoun County	Hispanic.
Cameron County	Hispanic.
Castro County	Hispanic.
Cochran County	Hispanic.

Covered Areas for Voting Rights Bilingual Election Materials—2000

STATE AND POLITICAL SUBDIVISION	GROUP
Concho County	Hispanic.
Crane County	Hispanic.
Crockett County	Hispanic.
Crosby County	Hispanic.
Culberson County	Hispanic.
Dallas County	Hispanic.
Dawson County	Hispanic.
Deaf Smith County	Hispanic.
DeWitt County	Hispanic.
Dimmit County	Hispanic.
Duval County	Hispanic.
Ector County	Hispanic.
Edwards County	Hispanic.
El Paso County	Hispanic.
El Paso County	American Indian (Pueblo).
Fisher County	Hispanic.
Floyd County	Hispanic.
Frio County	Hispanic.
Gaines County	Hispanic.
Garza County	Hispanic.
Glasscock County	Hispanic.
Goliad County	Hispanic.
Gonzales County	Hispanic.
Guadalupe County	Hispanic.
Hale County	Hispanic.
Hall County	Hispanic.
Hansford County	Hispanic.
Harris County	Hispanic.
Harris County	Vietnamese.
Hidalgo County	Hispanic.
Hockley County	Hispanic.
Howard County	Hispanic.
Hudspeth County	Hispanic.
Irion County	Hispanic.
Jeff Davis County	Hispanic.
Jim Hogg County	Hispanic.
Jim Wells County	Hispanic.
Karnes County	Hispanic.
Kennedy County	Hispanic.
Kinney County	Hispanic.
Kleberg County	Hispanic.
Knox County	Hispanic.
Lamb County	Hispanic.
La Salle County	Hispanic.
Live Oak County	Hispanic.
Loving County	Hispanic.
Lubbock County	Hispanic.
Lynn County	Hispanic.
Madison County	Hispanic.
Martin County	Hispanic.
Matagorda County	Hispanic.
Maverick County	Hispanic.
Maverick County	American Indian (Other Tribe specified).
McMullen County	Hispanic.

Covered Areas for Voting Rights Bilingual Election Materials—2000

STATE AND POLITICAL SUBDIVISION	GROUP
Medina County	Hispanic.
Menard County	Hispanic.
Midland County	Hispanic.
Mitchell County	Hispanic.
Moore County	Hispanic.
Nolan County	Hispanic.
Nueces County	Hispanic.
Parmer County	Hispanic.
Pecos County	Hispanic.
Presidio County	Hispanic.
Reagan County	Hispanic.
Reeves County	Hispanic.
Refugio County	Hispanic.
Runnels County	Hispanic.
San Patricio County	Hispanic.
Schleicher County	Hispanic.
Scurry County	Hispanic.
Starr County	Hispanic.
Sterling County	Hispanic.
Sutton County	Hispanic.
Swisher County	Hispanic.
Tarrant County	Hispanic.
Terrell County	Hispanic.
Terry County	Hispanic.
Titus County	Hispanic.
Tom Green County	Hispanic.
Travis County	Hispanic.
Upton County	Hispanic.
Uvalde County	Hispanic.
Val Verde County	Hispanic.
Victoria County	Hispanic.
Ward County	Hispanic.
Webb County	Hispanic.
Wharton County	Hispanic.
Willacy County	Hispanic.
Wilson County	Hispanic.
Winkler County	Hispanic.
Yoakum County	Hispanic.
Zapata County	Hispanic.
Zavala County	Hispanic.
Utah:	
San Juan County	American Indian (Navajo).
San Juan County	American Indian (Ute).
Washington:	
Adams County	Hispanic.
Franklin County	Hispanic.
King County	Chinese.
Yakima County	Hispanic.

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About Section 5 of the Voting Rights Act

Introduction to Section 5

Although the voting protections of the Fifteenth Amendment and Section 2 of the Voting Rights Act are permanent,
Section 5 remains in effect through 2007.

Coverage Under the Special Provisions of the Voting Rights Act

Section 5 freezes election practices or procedures in certain states until the new procedures have been subjected to review, either after an administrative review by the United States Attorney General, or after a lawsuit before the United States District Court for the District of Columbia. This means that voting changes in covered jurisdictions may not be used until that review has been obtained.

The requirement was enacted in 1965 as temporary legislation, to expire in five years, and applicable only to certain states. The specially covered jurisdictions were identified in Section 4 by a formula. The first element in the formula was that the state or political subdivision of the state maintained on November 1, 1964, a "test or device," restricting the opportunity to register and vote. The second element of the formula would be satisfied if the Director of the Census determined that less than 50 percent of persons of voting age were registered to vote on November 1, 1964, or that less than 50 percent of persons of voting age voted in the presidential election of November 1964. Application of this formula resulted in the following states becoming, in their entirety, "covered jurisdictions": Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia, In addition, certain political subdivisions (usually counties) in four other states (Arizona, Hawaii, Idaho, and North Carolina were covered. It also provided a procedure to terminate this coverage.

Under Section 5, any change with respect to voting in a covered jurisdiction -- or any political subunit

within it -- cannot legally be enforced unless and until the jurisdiction first obtains the requisite determination* by the United States District Court for the District of Columbia or makes a submission to the Attorney General. This requires proof that the proposed voting change does not deny or abridge the right to vote on account of race, color, or membership in a language minority group. If the jurisdiction is unable to prove the absence of such discrimination, the District Court denies the requested judgment, or in the case of administrative submissions, the Attorney General objects to the change, and it remains legally unenforceable.

In 1970, Congress recognized the continuing need for the special provisions of the Voting Rights Act, which were due to expire that year, and renewed them for another five years. It also adopted an additional coverage formula, identical to the original formula except that it referenced November 1968 dates to determine maintenance of a test or device, and levels of voter registration and electoral participation. This additional formula resulted in the partial coverage of ten states.

In 1975, the special provisions of the Voting Rights Act were extended for another seven years, and were broadened to address voting discrimination against members of "language minority groups." As before, an additional coverage formula was enacted, based on the presence of tests or devices and levels of voter registration and participation as of November 1972. In addition, the 1965 definition of "test or device" was expanded to include the practice of providing election information, including ballots, only in English in states or political subdivisions where members of a single language minority constituted more than five percent of the citizens of voting age. This third formula had the effect of covering Alaska, Arizona, and Texas in their entirety, and parts of California, Florida, Michigan, New York, North Carolina, and South Dakota.

Congress extended Section 5 was again extended in 1982, this time for 25 years, but no new Section 5 coverage formula was adopted. It did, however, modify the procedure for a jurisdiction to terminate coverage inder the special provision.

The Voting Section is responsible for reviewing voting changes submitted to the Attorney General (15,000 to 24,000 changes each year) and for defending Section 5 declaratory judgments in court. The Voting Section also brings lawsuits to enjoin the enforcement of voting changes that have not received the required Section 5 review.

Almost all voting changes are submitted to the Attorney General, and over the past decade the Attorney General has received submissions of between 14,000 and 22,000 voting changes per year. The Attorney General may interpose an objection by informing the jurisdiction of the decision no later than 60 days after a voting change has been submitted. Most voting changes submitted to the Attorney General are determined to have met the Section 5 standard; since Section 5 was enacted, the Attorney General has objected to about one percent of the voting changes that have been submitted.

The Attorney General has published detailed guidelines that explain how to make Section 5 submissions and the process of how the Attorney General decides whether the jurisdiction has met its burden. Notices of Section 5 submissions are regularly posted to the Internet and can be mailed upon request to interested individuals, organizations and jurisdictions.

Judicial Review of Voting Changes

Section 5 provides two methods for a covered jurisdiction to comply with Section 5. The first method mentioned in the statute is by means of a declaratory judgment action filed by the covered jurisdiction in the United States District Court for the District of Columbia. A three-judge panel is convened in such

cases. The defendant in these cases is the United States or the Attorney General, represented in court by attorneys from the Voting Section of the Civil Rights Division. Appeals from decisions of the three-judge district court go directly to the United States Supreme Court.

The jurisdiction must establish that the proposed voting change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or [membership in a language minority group]." The status of a voting change that is the subject of a declaratory judgment review action is that it is unenforceable until the declaratory judgment action is obtained and the jurisdiction may not implement or use the voting change.

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Administrative Review of Voting Changes

The second method of compliance with Section 5 is known as administrative review. A jurisdiction can avoid the potentially lengthy and expensive litigation route by submitting the voting change to the Civil Rights Division of the Department of Justice, to which the Attorney General of the United States has delegated the authority to administer the Section 5 review process. The jurisdiction can implement the change if the Attorney General affirmatively indicates no objection to the change or if, at the expiration of 60 days, no objection to the submitted change has been interposed by the Attorney General. It is the practice of the Department of Justice to respond in writing to each submission, specifically stating the determination made regarding each submitted voting change.

Well over 99 percent of the changes affecting voting are reviewed administratively, no doubt because of the relative simplicity of the process, the significant cost savings over litigation, and the presence of specific deadlines governing the Attorney General's issuance of a determination letter.

In a typical year, the Voting Section receives between 4,500 and 5,500 Section 5 submissions, and reviews between 14,000 and 20,000 voting changes. Since the release of the 2000 Census, the Attorney General has reviewed under Section 5 approximately 3,000 redistricting plans, districting plans, and limited redistricting plans.

In conducting administrative review, the Attorney General acts as the surrogate for the district court, applying the same standards that would be applied by the court. The burden of establishing that a proposed voting change is nondiscriminatory falls on the jurisdiction, just as it would on the jurisdiction as plaintiff in a Section 5 declaratory judgment action.

There are occasions when a jurisdiction may need to complete the Section 5 review process on an accelerated basis due to anticipated implementation before the end of the 60-day review period. In such cases, the jurisdiction should formally request "Expedited Consideration" in its submission letter, explicitly describing the basis for the request in light of conditions in the jurisdiction and specifying the date by which the determination must be received. Although the Attorney General will attempt to accommodate all reasonable requests, the nature of the review required for particular submissions will necessarily vary and an expedited determination may not be possible in certain cases.

A determination by the Attorney General not to object removes the prohibition on enforcement imposed by Section 5. This decision not to object to a submitted change cannot be challenged in court. *Morris* v. *Gressette*, 432 U.S. 491 (1977). Although the jurisdiction may then implement that change, the change remains subject to a challenge on any other grounds. For example, a redistricting plan may still be challenged in court by the Attorney General as violating Section 2 of the Voting Rights Act, or any other

applicable provision of federal law which the Attorney General is authorized to enforce. Similarly, private individuals with standing may challenge that practice under any applicable provision of state or federal law.

The declaratory judgment route remains available to jurisdictions even after the Attorney General interposes an objection. The proceeding before the three-judge federal court is *de novo* and does not constitute an appeal of the Attorney General's determination, although the Voting Section represents the defendant United States in these cases.

Lawsuits to Prevent the Use of Voting Changes Not Reviewed under Section 5

Voting changes that have not been reviewed under Section 5 are legally unenforceable. Section 12(d) of the Act authorizes the Attorney General to file suit to enjoin violations of Section 5. A private right of action to seek injunctive relief against a Section 5 violation was recognized by the Supreme Court in *Allen* v. *State Board of Elections*, 393 U.S. 544, 554-57 (1969). Any person or organization with standing to sue can challenge a Section 5 violation in the United States District Court in the judicial district where the violation is alleged to have occurred. Whether brought by the Attorney General or by private parties, these cases are commonly known as Section 5 enforcement actions.

Section 5 enforcement cases are heard by three-judge district court panels, whose role is to consider three things only:

1. whether a covered voting change has occurred;
2. if so, whether the requirements of Section 5 have been met preclearance has been obtained;
3. implementation of such a change would violate Section 5; and
4. if not, what relief by the court is appropriate.

Lopez v. *Monterey County*, 519 U.S. 9, 23 (1996). The only court that can make the determination that change is not discriminatory is purpose or effect is the United States District Court for the District of Columbia.

Upon finding non-compliance with Section 5, the local federal court will consider an appropriate equitable remedy. The general objective of such remedies is to restore the situation that existed before the implementation of the change. Thus, the typical remedy includes issuance of an injunction against further use of the change. In certain circumstances, other remedies have included voiding illegally-conducted elections, enjoining upcoming elections unless and until the jurisdiction complies with Section 5, or ordering a special election; in some cases courts have also issued orders directing the jurisdiction to seek Section 5 review of the change from the Attorney General or the United States District Court for the District of Columbia.

* HTML version of the Section 5 declaratory judgment actions.

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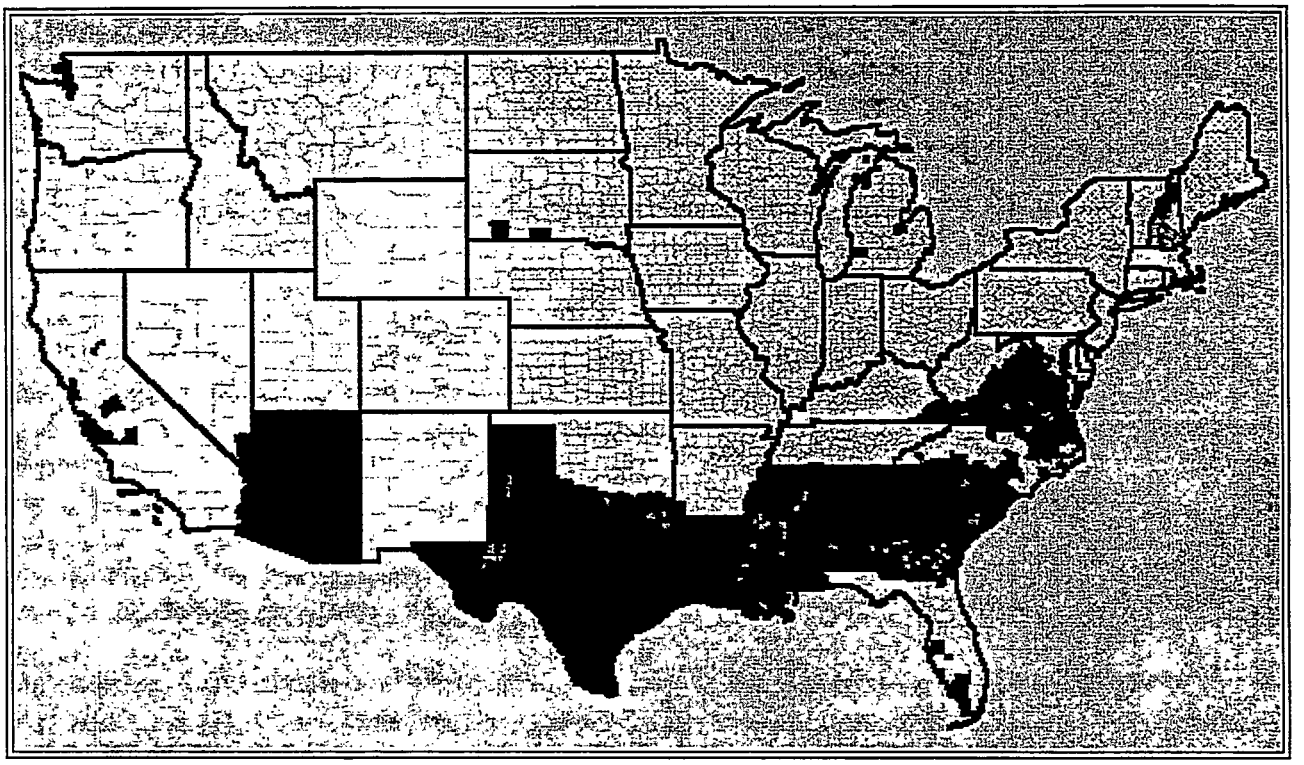
Section 5 Covered Jurisdictions



Key: **Covered Jurisdictions**

_____ *States Covered as a Whole*

_____ *Covered Counties in States Not Covered as a Whole*

_____ *Covered Townships in States Not Covered as a Whole*

States Covered as a Whole	Applicable Date	Fed. Register	Date
Alabama	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Alaska (not shown above)	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Arizona	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Georgia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Louisiana	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

Mississippi	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Carolina	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Texas	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Virginia 1/	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

Covered Counties in States Not Covered as a Whole		Applicable Date	Fed. Register	Date
California:				
	Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23. 1975.
	Merced County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
	Monterey County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
	Yuba County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
	Yuba County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Florida:				
	Collier County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
	Hardee County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
	Hendry County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
	Hillsborough County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
	Monroe County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
New York:				
	Bronx County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
	Bronx County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
	Kings County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
	Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
	New York County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
North Carolina:				
	Anson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Beaufort County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
	Bertie County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Bladen County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
	Camden County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
	Caswell County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Chowan County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Cleveland County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
	Craven County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Cumberland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Edgecombe County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

	Franklin County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Gaston County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
	Gates County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Granville County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Greene County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Guilford County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
	Halifax County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Harnett County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
	Hertford County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Hoke County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Jackson County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
	Lee County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
	Lenoir County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Martin County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
	Nash County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Northampton County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Onslow County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Pasquotank County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Perquimans County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
	Person County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Pitt County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Robeson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Rockingham County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
	Scotland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Union County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
	Vance County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Washington County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
	Wayne County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
	Wilson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Dakota:				
	Shannon County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
	Todd County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.

Covered Townships in States Not Covered as a Whole			Applicable Date	Fed. Register	Date
Michigan:					
	Allegan County:	Clyde Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.

	Saginaw County:	Buena Vista Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
New Hampshire:					
	Cheshire County:	Rindge Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
	Coos County:	Millsfield Township	Nov. 1, 1968	39 FR 16912	May 10, 1974.
		Pinkhams Grant	Nov. 1, 1968	39 FR 16912	May 10, 1974.
		Stewartstown Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
		Stratford Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
	Grafton County:	Benton Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
	Hillsborough County:	Antrim Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
	Merrimack County:	Boscawen Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
	Rockingham County:	Newington Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
	Sullivan County:	Unity Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.

Notes

1/ Nine political subdivisions in Virginia (Frederick, Greene, Roanoke, Rockingham, Shenandoah, and Warren Counties and the Cities of Fairfax, Harrisonburg, and Winchester) have "bailed out" from coverage pursuant to Section 4 of the Voting Rights Act. The United States consented to the declaratory judgment in each of those cases.

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About Section 5 of the Voting Rights Act

What Must Be Submitted Under Section 5

Only Voting Changes Require Review Under Section 5

It is important to understand that Section 5 applies only to *changes* in practices or procedures affecting voting. Continuous use of a voting practice in effect prior to the jurisdiction's coverage date does not implicate Section 5, nor does continued use of a practice already reviewed under Section 5.

In *Allen* v. *State Board of Elections*, 393 U.S. 544, 565 (1969), the Supreme Court stated that the coverage of Section 5 was to be given a broad interpretation. Any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice or procedure, ostensibly expands voting rights, or is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, is subject to the Section 5 review requirement.

While reaffirming *Allen* in *Presley v. Etowah County Com'n*, 502 U.S. 491, 492 (1992), the Supreme Court emphasized that changes covered under Section 5 must have a direct relation to voting. The court provided a nonexclusive list of four categories in which voting changes covered under Section 5 would normally fall:

- changes in the manner of voting;
- changes in candidacy requirements and qualifications;
- changes in the composition of the electorate that may vote for candidates for a given office; and
- changes affecting the creation or abolition of an elective office.

In the cases consolidated before the Court in *Presley*, the changes involved the transfer of authority over

road maintenance and construction between elected officials and from elected officials to an appointed official. The Court found these types of transfers not directly related to voting and, therefore, not subject to Section 5. Some transfers of authority between government officials, however, clearly have a direct relation to voting if they concern authority over voting procedures, such as a change in who has authority to adopt a redistricting plan, conduct voter registration, or select polling place officials.

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Voting Changes Enacted or Administered by Any State Official Require Section 5 Review

There is a broad range of officials who enact or administer voting changes that are subject to Section 5 review, including legislative bodies (*i.e.*, state legislatures, county commissions, city councils), executive officials (*i.e.*, governors and mayors), and other officials (*i.e.*, secretaries of state, county clerks, registrars). *All* voting changes adopted by a state court of a fully covered state require preclearance, as do voting changes adopted by a state court in a partially covered state if the change is to be implemented in a covered political subdivision of that state.

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Some Federal Court Orders Require Section 5 Review

The Supreme Court has held that a voting change developed and imposed on a jurisdiction by a federal court is not subject to Section 5 review. These are generally referred to as "court- drawn" or "court-ordered" voting changes. However, if a voting change ordered by a federal court reflects the policy choices of the jurisdiction--for example, if it was presented to the court as a consent decree agreed to by the jurisdiction-- Section 5 review is required. These are generally referred to as "court adopted" changes.

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About Section 5 of the Voting Rights Act

Making Section 5 Submissions

Electronic mail does not constitute a proper submission under Section 5 of the Voting Rights Act. The proper format for submissions as well as all other correspondence concerning the Attorney General's review of changes affecting voting is set forth at 28 C.F.R. Part 51 and, at this time, may not be done through electronic means.

SENDING MAIL TO THE VOTING SECTION

Please note, the Voting Section's postal address (P.O. Box 66128, Washington DC 20035) is no longer in effect.

The Department has established a single address for the receipt of all **United States Postal Service** mail. All mail to the Voting Section must have the full address listed below:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Deliveries by **overnight express services** such as Airborne, DHL, Federal Express, or UPS should be addressed to:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB

Department of Justice
1800 G St., N.W.
Washington, DC 20006

If you are sending a Section 5 submission, please make sure that the front of the envelope identifies it as a submission under Section 5 and that your return address is clearly indicated.

How the Attorney General Reviews Section 5 Submissions

The Attorney General's authority under Section 5 has been delegated to the Assistant Attorney General for the Civil Rights Division. All decisions to interpose an objection or to withdraw an objection previously interposed, and all substantive decisions on state wide legislative redistricting plans are made by the Assistant Attorney General. For other types of submissions the Assistant Attorney General's authority has been delegated to the Chief of the Voting Section. Approximately half of the Voting Section's resources are devoted to the analysis of Section 5 submissions. Each submission is analyzed by a civil rights analyst or attorney, and that work is reviewed by at least one supervisory attorney.

Upon receipt of a submission, one or more staff members in the Voting Section are assigned to analyze the proposed change. The nature and extent of that analysis will vary, depending upon the change itself and the surrounding circumstances. It often involves telephone interviews with persons representing or associated with the submitting authority, and with private citizens, particularly members of racial or language minority groups. Communications from the public regarding pending submissions are encouraged, and all information or comments received are considered. As part of that analysis, submissions in our files may also be examined, as well as information available from the United States Census Bureau, the Internet, or other sources.

While every effort is made to complete the analysis so that a determination is made before the end of the 60-day review period, the factual and legal issues presented by a particular submission may be such that the information intially provided by the submitting authority considered together with the information obtained during our investigation is still insufficient to enable the Attorney General to make a determination that the proposed change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. While Section 5 authorizes the Attorney General to object to the submitted change on that basis, it is the Voting Section's general practice in such circumstances to request additional information, in writing, from the jurisdiction. Upon receipt of a complete response to the request for additional information, a new 60-day period begins for the Attorney General to make the requisite determination.

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The Attorney General's Administrative Guidelines Explain the Process of Making Section 5 Submissions

The Section 5 administrative review process is designed to be an expeditious, cost-effective alternative to the Section 5 declaratory judgment process. Its success on this point is incontrovertible.

Central to the effective functioning of the administrative review option are the "Section 5 Guidelines" originally adopted by the Department of Justice in 1971 and modified in light of experience and legal developments on several occasions since then. Known formally as "Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as Amended," they are codified as Part 51 of Title 28 of the Code of Federal Regulations. The Supreme Court has noted on several occasions that the Guidelines are

entitled to considerable deference by the courts because the Department of Justice played a central role in the drafting of the Voting Rights Act and is primarily responsible for its enforcement.

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Particular Issues About Making Section 5 Submissions

The Section 5 Guidelines are written in easy to understand language and generally avoid "legalese." It is, therefore, unnecessary to include here a complete discussion of their contents. However, some specific issues discussed in the Guidelines should also be mentioned here.

First, a voting change must be submitted in written form to begin the review process. While no specific format is required, the submission ordinarily should include the required contents set forth in 28 C.F.R. 51.27 and the supplemental contents, as appropriate. Providing such information in the original submission usually will reduce significantly the need for Voting Section staff to contact the submitting official by telephone, and thus increase the likelihood of an early determination on the submission.

Second, a voting change must be procedurally appropriate for review on the merits. The Section 5 Guidelines discuss the types of circumstances that prevent the Attorney General from reviewing a submitted change on the merits.

- The Attorney General will respond in writing rejecting a submission that fails to provide documents or a narrative "adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting." 28 C.F.R. 51.26(d), 51.27(a)-(c) and 51.35.
- The Attorney General will make no determination regarding a voting change which has not been finally adopted. The Attorney General may nevertheless make a substantive determination with regard to a change for which approval by referendum or by a state or federal court or a federal agency is required if the change is not subject to alteration in the final approving action and all other action necessary for approval has been taken. 28 C.F.R. 51.22.
- The Attorney General will make no determination regarding a voting change that is directly related to another known covered voting change which has neither been precleared nor submitted for preclearance. For example, the Attorney General will not review a districting plan if it is prompted by an unsubmitted change in the method of electing the jurisdiction's governing body, change in the number of elected officials, or annexations. Similarly, no determination will be made regarding an annexation if other unprecleared boundary changes in that jurisdiction have occurred.

In addition, new redistricting plans themselves often require that other voting changes be made, such as changes affecting voting precincts, polling places, and absentee voting locations. If these changes have been finalized, the jurisdiction should submit them for Section 5 review with its redistricting submission. The related voting change need not have been adopted by the jurisdiction making the original submission. For example, state legislation authorizing political subdivisions to adopt voting changes ("enabling legislation") requires review under Section 5. A political subdivision's implementation of the enabled change will not be reviewed under Section 5 if the enabling legislation has not been submitted for review or already reviewed.

Clearly, it is in the covered jurisdiction's interest to submit a voting change as soon as possible after it has been finally adopted, even if its implementation may be many months away (for example, in the

next general election). To the extent procedural or substantive issues prevent a determination on the merits occurring within the initial 60-day review period, a prompt submission may allow a sufficient opportunity to resolve such issues in time for the practice (or a revised one) to be implemented as originally anticipated.

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(3) Nominations of candidates for either medal must be submitted no later than 120 days after notification that the Department of Justice is seeking nominations under this program for a specific calendar year. Each nomination must contain the necessary documentation establishing eligibility, must be submitted by the Governor or Chief Executive Officer, together with any comments, and should be submitted to the address published in the notice.

(4) Nominations of candidates for medals will be considered only when received from the Governor or Chief Executive Officer of a State, territory, or possession of the United States.

(5) The Young American Medals Committee will select, from nominations properly submitted, those candidates who are shown by the facts and circumstances to be eligible for the award of the medals. The Committee shall make recommendations to the Attorney General based on its evaluation of the nominees. Upon consideration of these recommendations, the Attorney General may select up to the maximum allowable recipients for each medal for the calendar year.

(g) *Presentation.* (1) The Young American Medal for Bravery and the Young American Medal for Service will be presented personally by the President of the United States to the candidates selected. These medals will be presented in the name of the President and the Congress of the United States. Presentation ceremonies shall be held at such times and places selected by the President in consultation with the Attorney General.

(2) The Young American Medals Committee will officially designate two adults (preferably the parents of the candidate) to accompany each candidate selected to the presentation ceremonies. The candidates and persons designated to accompany them will be furnished transportation and other appropriate allowances.

(3) There shall be presented to each recipient an appropriate Certificate of Commendation stating the circumstances under which the act of bravery was performed or describing the outstanding recognition for character and service, as appropriate for the medal awarded. The Certificate will bear the signature of the President of the United States and the Attorney General of the United States.

(4) There also shall be presented to each recipient of a medal, a miniature replica of the medal awarded in the form of a lapel pin.

(h) *Posthumous awards.* In cases where a medal is awarded posthumously, the Young American Medals Committee will designate the father or mother of the deceased or other suitable person to receive the medal on behalf of the deceased. The decision of the Young American Medals Committee in designating the person to receive the posthumously awarded medal, on behalf of the deceased, shall be final.

(i) *Young American Medals Committee.* The Young American Medals Committee shall be represented by the following:

(1) Director of the FBI, Chairman;

(2) Administrator of the Drug Enforcement Administration, Member;

(3) Director of the U.S. Marshals Service, Member; and

(4) Assistant Attorney General, Office of Justice Programs, Member and Executive Secretary.

(Authority: The United States Department of Justice is authorized under 42 U.S.C. 1921 *et seq.* to promulgate rules and regulations establishing medals, one for bravery and one for service. This authority was enacted by chapter 520 of Pub. L. 81-638 (August 3, 1950).)

[61 FR 49260, Sept. 19, 1996]

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

Subpart A—General Provisions

Sec.

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

SOURCE: 52 FR 490, Jan. 6, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 51.1 Purpose.

(a) Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by section 4(b) of the Act, 42 U.S.C. 1973b(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either:

(1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or

(2) It has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission.

(b) In order to make clear the responsibilities of the Attorney General under section 5 and the interpretation of the Attorney General of the responsibility imposed on others under this section, the procedures in this part have been established to govern the administration of section 5.

§51.2 Definitions.

As used in this part—

Act means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89 Stat. 400, and the Voting Rights Act Amendments of 1982, 96 Stat. 131, 42 U.S.C. 1973 *et seq.* Section numbers, such as "section 14(c)(3)," refer to sections of the Act.

Attorney General means the Attorney General of the United States or the delegate of the Attorney General.

Change affecting voting means any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage under section 4(b) and includes, *inter alia*, the examples given in §51.13.

Covered jurisdiction is used to refer to a State, where the determination referred to in §51.4 has been made on a statewide basis, and to a political subdivision, where the determination has not been made on a statewide basis.

Language minorities or *language minority group* is used, as defined in the Act, to refer to persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. (Sections 14(c)(3) and 203(e)). See 28 CFR part 55, Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.

Political subdivision is used, as defined in the Act, to refer to "any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." (Section 14(c)(2)).

Preclearance is used to refer to the obtaining of the declaratory judgment described in section 5, to the failure of the Attorney General to interpose an objection pursuant to section 5, or to the withdrawal of an objection by the Attorney General pursuant to §51.48(b).

Submission is used to refer to the written presentation to the Attorney General by an appropriate official of any change affecting voting.

Submitting authority means the jurisdiction on whose behalf a submission is made.

Vote and *voting* are used, as defined in the Act, to include "all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election." (Section 14(c)(1)).

§51.3 Delegation of authority.

The responsibility and authority for determinations under section 5 have been delegated by the Attorney General to the Assistant Attorney General, Civil Rights Division. With the exception of objections and decisions following the reconsideration of objections, the Chief of the Voting Section is authorized to act on behalf of the Assistant Attorney General.

§51.4 Date used to determine coverage; list of covered jurisdictions.

(a) The requirement of section 5 takes effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census and the Attorney General under section 4(b). These determinations are not reviewable in any court. (Section 4(b)).

(b) Section 5 requires the preclearance of changes affecting voting made since the date used for the determination of coverage. For each covered jurisdiction that date is one of the following: November 1, 1964; November 1, 1968; or November 1, 1972.

(c) The appendix to this part contains a list of covered jurisdictions, together with the applicable date used to determine coverage and the FEDERAL REGISTER citation for the determination of coverage.

§ 51.5 Termination of coverage (bailout).

A covered jurisdiction or a political subdivision of a covered State may terminate the application of section 5 (or bail out) by obtaining the declaratory judgment described in section 4(a) of the Act.

§ 51.6 Political subunits.

All political subunits within a covered jurisdiction (e.g., counties, cities, school districts) are subject to the requirement of section 5.

§ 51.7 Political parties.

Certain activities of political parties are subject to the preclearance requirement of section 5. A change affecting voting effected by a political party is subject to the preclearance requirement:

(a) If the change relates to a public electoral function of the party and

(b) If the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of section 5.

For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of section 5. Where appropriate the term "jurisdiction" (but not "covered jurisdiction") includes political parties.

§ 51.8 Section 3 coverage.

Under section 3(c) of the Act, a court in voting rights litigation can order as relief that a jurisdiction not subject to the preclearance requirement of section 5 preclear its voting changes by submitting them either to the court or to the Attorney General. Where a jurisdiction is required under section 3(c) to preclear its voting changes, and it elects to submit the proposed changes to the Attorney General for preclearance, the procedures in this part will apply.

§ 51.9 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting.

(b) Except as specified in §§ 51.37, 51.39, and 51.42 the 60-day period shall commence upon receipt by the Department of Justice of a submission.

(c) The 60-day period shall mean 60 calendar days, with the day of receipt of the submission not counted. If the final day of the period should fall on a Saturday, Sunday, any day designated as a holiday by the President or Congress of the United States, or any other day that is not a day of regular business for the Department of Justice, the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

§ 51.10 Requirement of action for declaratory judgment or submission to the Attorney General.

Section 5 requires that, prior to enforcement of any change affecting voting, the jurisdiction that has enacted or seeks to administer the change must either:

(a) Obtain a judicial determination from the U.S. District Court for the District of Columbia that denial or abridgment of the right to vote on account of race, color, or membership in a language minority group is not the purpose and will not be the effect of the change or

(b) Make to the Attorney General a proper submission of the change to which no objection is interposed.

It is unlawful to enforce a change affecting voting without obtaining preclearance under section 5. The obligation to obtain such preclearance is not relieved by unlawful enforcement.

[52 FR 490, Jan. 6, 1987; 52 FR 2648, Jan. 23, 1987]

§51.11 Right to bring suit.

Submission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change affecting voting does not have the prohibited discriminatory purpose or effect.

§51.12 Scope of requirement.

Any change affecting voting, even though it appears to be minor or indirect, returns to a prior practice or procedure, ostensibly expands voting rights, or is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the section 5 preclearance requirement.

§51.13 Examples of changes.

Changes affecting voting include, but are not limited to, the following examples:

(a) Any change in qualifications or eligibility for voting.

(b) Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting.

(c) Any change with respect to the use of a language other than English in any aspect of the electoral process.

(d) Any change in the boundaries of voting precincts or in the location of polling places.

(e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment or staggering the terms of offices).

(j) Any change affecting the necessity of or methods for offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of section 5.

§51.14 Recurrent practices.

Where a jurisdiction implements a practice or procedure periodically or upon certain established contingencies, a change occurs:

(a) The first time such a practice or procedure is implemented by the jurisdiction,

(b) When the manner in which such a practice or procedure is implemented by the jurisdiction is changed, or

(c) When the rules for determining when such a practice or procedure will be implemented are changed.

The failure of the Attorney General to object to a recurrent practice or procedure constitutes preclearance of the future use of the practice or procedure if its recurrent nature is clearly stated or described in the submission or is expressly recognized in the final response of the Attorney General on the merits of the submission.

§51.15 Enabling legislation and contingent or nonuniform requirements.

(a) With respect to legislation (1) that enables or permits the State or its political subunits to institute a voting change or (2) that requires or enables the State or its political sub-units to institute a voting change upon some future event or if they satisfy certain

criteria, the failure of the Attorney General to interpose an objection does not exempt from the preclearance requirement the implementation of the particular voting change that is enabled, permitted, or required, unless that implementation is explicitly included and described in the submission of such parent legislation.

(b) For example, such legislation includes—

(1) Legislation authorizing counties, cities, school districts, or agencies or officials of the State to institute any of the changes described in §51.13,

(2) Legislation requiring a political subunit that chooses a certain form of government to follow specified election procedures,

(3) Legislation requiring or authorizing political subunits of a certain size or a certain location to institute specified changes,

(4) Legislation requiring a political subunit to follow certain practices or procedures unless the subunit's charter or ordinances specify to the contrary.

§51.16 Distinction between changes in procedure and changes in substance.

The failure of the Attorney General to interpose an objection to a procedure for instituting a change affecting voting does not exempt the substantive change from the preclearance requirement. For example, if the procedure for the approval of an annexation is changed from city council approval to approval in a referendum, the preclearance of the new procedure does not exempt an annexation accomplished under the new procedure from the preclearance requirement.

§51.17 Special elections.

(a) The conduct of a special election (e.g., an election to fill a vacancy; an initiative, referendum, or recall election; or a bond issue election) is subject to the preclearance requirement to the extent that the jurisdiction makes changes in the practices or procedures to be followed.

(b) Any discretionary setting of the date for a special election or scheduling of events leading up to or following a special election is subject to the preclearance requirement.

(c) A jurisdiction conducting a referendum election to ratify a change in a practice or procedure that affects voting may submit the change to be voted on at the same time that it submits any changes involved in the conduct of the referendum election. A jurisdiction wishing to receive preclearance for the change to be ratified should state clearly that such preclearance is being requested. See §51.22 of this part.

§51.18 Court-ordered changes.

(a) *In general.* Changes affecting voting that are ordered by a Federal court are subject to the preclearance requirement of section 5 to the extent that they reflect the policy choices of the submitting authority.

(b) *Subsequent changes.* Where a court-ordered change is not itself subject to the preclearance requirement, subsequent changes necessitated by the court order but decided upon by the jurisdiction remain subject to preclearance. For example, voting precinct and polling place changes made necessary by a court-ordered redistricting plan are subject to section 5 review.

(c) *In emergencies.* A Federal court's authorization of the emergency interim use without preclearance of a voting change does not exempt from section 5 review any use of the practice not explicitly authorized by the court.

§51.19 Request for notification concerning voting litigation.

A jurisdiction subject to the preclearance requirement of section 5 that becomes involved in any litigation concerning voting is requested promptly to notify the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035-6128. Such notification will not be considered a submission under section 5.

[52 FR 490, Jan. 6, 1987, as amended by Order 1214-87, 52 FR 33409, Sept. 3, 1987]

Subpart B—Procedures for Submission to the Attorney General

§ 51.20 Form of submissions.

(a) Submissions may be made in letter or any other written form.

(b) The Attorney General will accept certain machine readable data in the following forms of magnetic media: 3½" 1.4 megabyte MS-DOS formatted diskettes; 5¼" 1.2 megabyte MS-DOS formatted floppy disks; nine-track tape (1600/6250 BPI). Unless requested by the Attorney General, data provided on magnetic media need not be provided in hard copy.

(c) All magnetic media shall be clearly labelled with the following information:

(1) Submitting authority.

(2) Name, address, title, and telephone number of contact person.

(3) Date of submission cover letter.

(4) Statement identifying the voting change(s) involved in the submission.

The label shall be affixed to each magnetic medium, and the information included on the label shall also be contained in a documentation file on the magnetic medium. If the information identified above is provided as a disk operating system (DOS) file, it shall be formatted in a standard American Standard Code for Information Interchange (ASCII) character code, with a line feed or carriage return control character starting in position 80. If the information identified above is provided other than as DOS files, it shall be formatted as ASCII text (or Extended Binary Coded Decimal Interchange Code (EBCDIC) if IBM standard labels are used), 80 byte fixed record length, blocked in a multiple of 80 with a blocksize no larger than 32 kilobytes, and with no carriage return or line feed.

(d) Each magnetic medium (floppy disk or tape) provided must be accompanied by a printed description of its contents, including an identification by name and/or location of each data file that is contained on the medium, a detailed record layout for each such file, a record count for each such file, and a full description of the magnetic medium format.

(e) All data files shall be provided in a fixed record-length format using alphanumeric ASCII values. The first 50 records of each such file shall be printed on hard copy and shall be attached to the printed description of the file. Proprietary and/or commercial software system data files (e.g. SAS, SPSS, dBase, Lotus 1-2-3) and data files containing compressed data or binary data fields will not be accepted. Nine-track tapes shall be clearly marked with printed labels to indicate their density, and manner of labelling (ANSI, IBM, or unlabelled). The printed label shall also include the record count, the record length, the blocksize, the dataset name (DSN) if it is a labelled tape, and the file number of each file on the tape.

[52 FR 490, Jan. 6, 1987, as amended by Order No. 1536-91, 56 FR 51836, Oct. 16, 1991]

§ 51.21 Time of submissions.

Changes affecting voting should be submitted as soon as possible after they become final.

§ 51.22 Premature submissions.

The Attorney General will not consider on the merits:

(a) Any proposal for a change affecting voting submitted prior to final enactment or administrative decision or

(b) Any proposed change which has a direct bearing on another change affecting voting which has not received section 5 preclearance.

However, with respect to a change for which approval by referendum, a State or Federal court or a Federal agency is required, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken.

§ 51.23 Party and jurisdiction responsible for making submissions.

(a) Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the submitting authority or by any other authorized person on behalf of the submitting authority. When one or more counties or other political subunits

within a State will be affected, the State may make a submission on their behalf. Where a State is covered as a whole, State legislation (except legislation of local applicability) or other changes undertaken or required by the State shall be submitted by the State.

(b) A change effected by a political party (see § 51.7) may be submitted by an appropriate official of the political party.

§ 51.24 Address for submissions.

(a) *Delivery by U.S. Postal Service.* Submissions sent to the Attorney General via the U.S. Postal Service shall be addressed to the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035–6128.

(b) *Delivery by other means.* Submissions sent to the Attorney General by carriers *other than* the U.S. Postal Service should be addressed or may be delivered to the Chief, Voting Section, Civil Rights Division, Department of Justice, 320 First Street, NW., room 818A, Washington, DC 20001.

(c) *Special marking.* The envelope and first page of the submission shall be clearly marked: Submission under section 5 of the Voting Rights Act.

[Order 1214–87, 52 FR 33409, Sept. 3, 1987, as amended by Order No. 1793–93, 58 FR 51225, Oct. 1, 1993]

§ 51.25 Withdrawal of submissions.

(a) A jurisdiction may withdraw a submission at any time prior to a final decision by the Attorney General. Notice of the withdrawal of a submission must be made in writing, addressed to the Chief, Voting Section, as specified in § 51.24 of this part. The submission shall be deemed withdrawn upon receipt of the notice.

(b) Notice of withdrawals will be given to interested parties registered under § 51.32.

[52 FR 490, Jan. 6, 1987, as amended by Order 1214–87, 52 FR 33409, Sept. 3, 1987]

Subpart C—Contents of Submissions

§ 51.26 General.

(a) The source of any information contained in a submission should be identified.

(b) Where an estimate is provided in lieu of more reliable statistics, the submission should identify the name, position, and qualifications of the person responsible for the estimate and should briefly describe the basis for the estimate.

(c) Submissions should be no longer than is necessary for the presentation of the appropriate information and materials.

(d) The Attorney General will not accept for review any submission that fails to describe the subject change in sufficient particularity to satisfy the minimum requirements of § 51.27(c).

(e) A submitting authority that desires the Attorney General to consider any information supplied as part of an earlier submission may incorporate such information by reference by stating the date and subject matter of the earlier submission and identifying the relevant information.

(f) Where information requested by this subpart is relevant but not known or available, or is not applicable, the submission should so state.

(g) The following Office of Management and Budget control number under the Paperwork Reduction Act applies to the collection of information requirements contained in these Procedures: OMB No. 1190–0001 (expires February 28, 1994). See 5 CFR 1320.13.

[52 FR 490, Jan. 6, 1987, as amended by Order No. 1284–88, 53 FR 25327, July 6, 1988; Order No. 1498–91, 56 FR 26032, June 6, 1991]

§ 51.27 Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to section 5 with respect to the submitted change affecting voting:

(a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting.

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed.

(c) If the change affecting voting either is not readily apparent on the face of the documents provided under paragraphs (a) and (b) of this section or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

(d) The name, title, address, and telephone number of the person making the submission.

(e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

(g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

(h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

(i) The date of adoption of the change affecting voting.

(j) The date on which the change is to take effect.

(k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

(m) A statement of the reasons for the change.

(n) A statement of the anticipated effect of the change on members of racial or language minority groups.

(o) A statement identifying any past or pending litigation concerning the change or related voting practices.

(p) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(q) For redistrictings and annexations: the items listed under §51.28 (a)(1) and (b)(1); for annexations only: the items listed under §51.28(c)(3).

(r) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in §51.28 and is most likely to be needed with respect to redistrictings, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in §51.37.

§51.28 Supplemental contents.

Review by the Attorney General will be facilitated if the following information, where pertinent, is provided in addition to that required by §51.27.

(a) *Demographic information.* (1) Total and voting age population of the affected area before and after the change, by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

(2) The number of registered voters for the affected area by voting precinct before and after the change, by race and language group.

(3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

(4) Demographic data provided on magnetic media shall be based upon the Bureau of the Census Public Law 94-171 file unique block identity code of state, county, tract, and block.

(5) Demographic data on magnetic media that are provided in conjunction with a redistricting shall be contained in a table of equivalencies giving the census block to district assignments in the following format:

(i) Each census block record (including those with zero population) will be followed by one or more additional fields indicating the district assignment for the census block in one or more plans.

(ii) All district assignments in the plan fields shall be right justified and blank filled if the assignment is less than four characters.

(iii) The file structure shall be as follows:

Field	PL 94–171 reference name	Length	Data type
State	STATEFP	2	Numeric.
County	CNTY	3	Numeric.
Tract	TRACT/BNA	6	Alpha/Numeric.
Block	BLCK	4	Alpha/Numeric.
Plan 1 District	User supplied	4	Alpha/Numeric.
Plan 2 District	User supplied	4	Alpha/Numeric.
Plan 3 District, etc.			
Plan n District	User supplied	4	Alpha/Numeric.

(iv) State and county shall be identified using the Federal Information Processing Standards (FIPS–55) code.

(v) Census tracts shall be left justified, and census blocks shall be left justified and blank filled if less than four characters.

(vi) Unused plan fields shall be blank filled.

(vii) In addition to the information identified in §51.20 (c) through (e), the documentation file accompanying the block level equivalency file shall contain the following information:

(A) The file structure.

(B) The total number of plans.

(C) For each plan field, an identification of the plan (e.g., state senate, congressional, county board, city council, school board) and its status or nature (e.g., plan currently in effect, adopted plan, alternative plan and sponsors).

(D) The number of districts in each plan field.

(E) Whether the plan field contains a complete or partial plan.

(F) Any additional information the jurisdiction deems relevant such as bill number, date of adoption, etc., and a listing of any modifications the submitting authority has made that alter the structure of the TIGER/line geographic file.

(b) *Maps.* Where any change is made that revises the constituency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:

(1) The prior and new boundaries of the voting unit or units.

(2) The prior and new boundaries of voting precincts.

(3) The location of racial and language minority groups.

(4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.

(5) The location of prior and new polling places.

(6) The location of prior and new voter registration sites.

(c) *Annexations.* For annexations, in addition to that information specified elsewhere, the following information:

(1) The present and expected future use of the annexed land (e.g., garden apartments, industrial park).

(2) An estimate of the expected population, by race and language group, when anticipated development, if any, is completed.

(3) A statement that all prior annexations subject to the preclearance requirement have been submitted for review, or a statement that identifies all annexations subject to the preclearance requirement that have not been submitted for review. See §51.61(b).

(d) *Election returns.* Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information:

(1) The name of each candidate.

(2) The race or language group of each candidate, if known.

(3) The position sought by each candidate.

(4) The number of votes received by each candidate, by voting precinct.

(5) The outcome of each contest.

(6) The number of registered voters, by race and language group, for each voting precinct for which election returns are furnished. Information with respect to elections held during the last ten years will normally be sufficient.

(7) Election related data containing any of the information described above that are provided on magnetic media shall conform to the requirements of §51.20 (b) through (e). Election related data that cannot be accurately presented in terms of census blocks may be identified by county and by precinct.

(e) *Language usage.* Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 CFR part 55.

(f) *Publicity and participation.* For submissions involving controversial or potentially controversial changes, evidence of public notice, of the opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place. Examples of materials demonstrating public notice or participation include:

(1) Copies of newspaper articles discussing the proposed change.

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).

(3) Minutes or accounts of public hearings concerning the proposed change.

(4) Statements, speeches, and other public communications concerning the proposed change.

(5) Copies of comments from the general public.

(6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(g) *Availability of the submission.* (1) Copies of public notices that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection (e.g., at the county courthouse) and invite comments for the consideration of the Attorney General and statements regarding where such public notices appeared.

(2) Information demonstrating that the submitting authority, where a submission contains magnetic media, made the magnetic media available to be copied or, if so requested, made a hard copy of the data contained on the magnetic media available to be copied.

(h) *Minority group contacts.* For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) of racial or language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.

[52 FR 490, Jan. 6, 1987, as amended by Order No. 1536-91, 56 FR 51836, Oct. 16, 1991]

Subpart D—Communications From Individuals and Groups

§51.29 Communications concerning voting changes.

Any individual or group may send to the Attorney General information concerning a change affecting voting in a jurisdiction to which section 5 applies.

(a) Communications may be in the form of a letter stating the name, address, and telephone number of the individual or group, describing the alleged change affecting voting and setting forth evidence regarding whether

the change has or does not have a discriminatory purpose or effect, or simply bringing to the attention of the Attorney General the fact that a voting change has occurred.

(b) The communications should be mailed to the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035-6128. The envelope and first page should be marked: Comment under section 5 of the Voting Rights Act.

(c) Comments by individuals or groups concerning any change affecting voting may be sent at any time; however, individuals and groups are encouraged to comment as soon as they learn of the change.

(d) Department of Justice officials and employees shall comply with the request of any individual that his or her identity not be disclosed to any person outside the Department, to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552. In addition, whenever it appears to the Attorney General that disclosure of the identity of an individual who provided information regarding a change affecting voting "would constitute a clearly unwarranted invasion of personal privacy" under 5 U.S.C. 552(b)(6), the identity of the individual shall not be disclosed to any person outside the Department.

(e) When an individual or group desires the Attorney General to consider information that was supplied in connection with an earlier submission, it is not necessary to resubmit the information but merely to identify the earlier submission and the relevant information.

[52 FR 490, Jan. 6, 1987, as amended by Order 1214-87, 52 FR 33409, Sept. 3, 1987]

§ 51.30 Action on communications from individuals or groups.

(a) If there has already been a submission received of the change affecting voting brought to the attention of the Attorney General by an individual or group, any evidence from the individual or group shall be considered along with the materials submitted and materials resulting from any investigation.

(b) If such a submission has not been received, the Attorney General shall advise the appropriate jurisdiction of the requirement of section 5 with respect to the change in question.

§ 51.31 Communications concerning voting suits.

Individuals and groups are urged to notify the Chief, Voting Section, Civil Rights Division, of litigation concerning voting in jurisdictions subject to the requirement of section 5.

§ 51.32 Establishment and maintenance of registry of interested individuals and groups.

The Attorney General shall establish and maintain a Registry of Interested Individuals and Groups, which shall contain the name and address of any individual or group that wishes to receive notice of section 5 submissions. Information relating to this registry and to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a *et seq.*, is contained in JUSTICE/CRT-004. 48 FR 5334 (Feb. 4, 1983).

Subpart E—Processing of Submissions

§ 51.33 Notice to registrants concerning submissions.

Weekly notice of submissions that have been received will be given to the individuals and groups who have registered for this purpose under § 51.32. Such notice will also be given when section 5 declaratory judgment actions are filed or decided.

§ 51.34 Expedited consideration.

(a) When a submitting authority is required under State law or local ordinance or otherwise finds it necessary to implement a change within the 60-day period following submission, it may request that the submission be given expedited consideration. The submission should explain why such consideration is needed and provide the date by which a determination is required.

(b) Jurisdictions should endeavor to plan for changes in advance so that expedited consideration will not be required and should not routinely request such consideration. When a submitting authority demonstrates good cause for expedited consideration the Attorney General will attempt to make a decision by the date requested. However, the Attorney General cannot guarantee that such consideration can be given.

(c) Notice of the request for expedited consideration will be given to interested parties registered under § 51.32.

§ 51.35 Disposition of inappropriate submissions.

The Attorney General will make no response on the merits with respect to an inappropriate submission but will notify the submitting authority of the inappropriateness of the submission. Such notification will be made as promptly as possible and no later than the 60th day following receipt and will include an explanation of the inappropriateness of the submission. Inappropriate submissions include the submission of changes that do not affect voting (see, e.g., § 51.13), the submission of standards, practices, or procedures that have not been changed (see, e.g., §§ 51.4, 51.14), the submission of changes that affect voting but are not subject to the requirement of section 5 (see, e.g., § 51.18), premature submissions (see §§ 51.22, 51.61(b)), submissions by jurisdictions not subject to the preclearance requirement (see §§ 51.4, 51.5), and deficient submissions (see § 51.26(d)).

§ 51.36 Release of information concerning submissions.

The Attorney General shall have the discretion to call to the attention of the submitting authority or any interested individual or group information or comments related to a submission.

§ 51.37 Obtaining information from the submitting authority.

(a) If a submission does not satisfy the requirements of § 51.27, the Attorney General may request from the submitting authority any omitted information considered necessary for the evaluation of the submission. The request shall be made by letter and shall be made within the 60-day period and as promptly as possible after receipt of the original submission. See also § 51.26(d).

(b) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(c) The Attorney General shall notify the submitting authority that a new 60-day period in which the Attorney General may interpose an objection shall commence upon the receipt of a response from the submitting authority that provides the information requested or states that the information is unavailable. The Attorney General can request further information within the new 60-day period, but such a further request shall not suspend the running of the 60-day period, nor shall the receipt of a response to such a request operate to begin a new 60-day period.

(d) The receipt of a response from the submitting authority that neither provides the information requested nor states that such information is unavailable shall not commence a new 60-day period. It is the practice of the Attorney General to notify the submitting authority that its response is inadequate and to provide such notification as soon as possible after the receipt of the inadequate response.

(e) If, after a request for further information is made pursuant to this section, the information requested becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority by letter, and the 60-day period will commence upon the date of such notification.

(f) Notice of the request for and receipt of further information will be given to interested parties registered under § 51.32.

§ 51.38 Obtaining information from others.

(a) The Attorney General may at any time request relevant information from governmental jurisdictions and from interested groups and individuals and may conduct any investigation or

other inquiry that is deemed appropriate in making a determination.

(b) If a submission does not contain evidence of adequate notice to the public, and the Attorney General believes that such notice is essential to a determination, steps will be taken by the Attorney General to provide public notice sufficent to invite interested or affected persons to provide evidence as to the presence or absence of a discriminatory purpose or effect. The submitting authority shall be advised when any such steps are taken.

§ 51.39 Supplementary submissions.

(a) When a submitting authority provides documents and written information materially supplementing a submission (or a request for reconsideration of an objection) for evaluation as if part of its original submission, or, before the expiration of the 60-day period, makes a second submission such that the two submissions cannot be independently considered, the 60-day period for the original submission will be calculated from the receipt of the supplementary information or from the second submission.

(b) The Attorney General will notify the submitting authority when the 60-day period for a submission is recalculated from the receipt of supplementary information or from the receipt of a second related submission.

(c) Notice of the receipt of supplementary information will be given to interested parties registered under § 51.32.

§ 51.40 Failure to complete submissions.

If after 60 days the submitting authority has not provided further information in response to a request made pursuant to § 51.37(a), the Attorney General, absent extenuating circumstances and consistent with the burden of proof under section 5 described in § 51.52 (a) and (c), may object to the change, giving notice as specified in § 51.44.

§ 51.41 Notification of decision not to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose no objection to a submitted change affecting voting.

(b) The notification shall state that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.

(c) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.42 Failure of the Attorney General to respond.

It is the practice and intention of the Attorney General to respond to each submission within the 60-day period. However, the failure of the Attorney General to make a written response within the 60-day period constitutes preclearance of the submitted change, provided the submission is addressed as specified in § 51.24 and is appropriate for a response on the merits as described in § 51.35.

§ 51.43 Reexamination of decision not to object.

After notification to the submitting authority of a decision to interpose no objection to a submitted change affecting voting has been given, the Attorney General may reexamine the submission if, prior to the expiration of the 60-day period, information indicating the possibility of the prohibited discriminatory purpose or effect is received. In this event, the Attorney General may interpose an objection provisionally and advise the submitting authority that examination of the change in light of the newly raised issues will continue and that a final decision will be rendered as soon as possible.

§ 51.44 Notification of decision to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose an objection. The reasons for the decision shall be stated.

(b) The submitting authority shall be advised that the Attorney General will reconsider an objection upon a request by the submitting authority.

(c) The submitting authority shall be advised further that notwithstanding the objecton it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited discriminatory purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(e) Notice of the decision to interpose an objection will be given to interested parties registered under §51.32.

§51.45 Request for reconsideration.

(a) The submitting authority may at any time request the Attorney General to reconsider an objection.

(b) Requests may be in letter or any other written form and should contain relevant information or legal argument.

(c) Notice of the request will be given to any party who commented on the submission or requested notice of the Attorney General's action thereon and to interested parties registered under §51.32. In appropriate cases the Attorney General may request the submitting authority to give local public notice of the request.

§51.46 Reconsideration of objection at the instance of the Attorney General.

(a) Where there appears to have been a substantial change in operative fact or relevant law, an objection may be reconsidered, if it is deemed appropriate, at the instance of the Attorney General.

(b) Notice of such a decision to reconsider shall be given to the submitting authority, to any party who commented on the submission or requested notice of the Attorney General's action thereon, and to interested parties registered under §51.32, and the Attorney General shall decide whether to withdraw or to continue the objection only after such persons have had a reasonable opportunity to comment.

§51.47 Conference.

(a) A submitting authority that has requested reconsideration of an objection pursuant to §51.45 may request a conference to produce information or legal argument in support of reconsideration.

(b) Such a conference shall be held at a location determined by the Attorney General and shall be conducted in an informal manner.

(c) When a submitting authority requests such a conference, individuals or groups that commented on the change prior to the Attorney General's objection or that seek to participate in response to any notice of a request for reconsideration shall be notified and given the opportunity to confer.

(d) The Attorney General shall have the discretion to hold separate meetings to confer with the submitting authority and other interested groups or individuals.

(e) Such conferences will be open to the public or to the press only at the discretion of the Attorney General and with the agreement of the participating parties.

§51.48 Decision after reconsideration.

(a) The Attorney General shall within the 60-day period following the receipt of a reconsideration request or following notice given under §51.46(b) notify the submitting authority of the decision to continue or withdraw the objection, provided that the Attorney General shall have at least 15 days following any conference that is held in which to decide. (See also §51.39(a).) The reasons for the decision shall be stated.

(b) The objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group.

(c) If the objection is not withdrawn, the submitting authority shall be advised that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited purpose or effect.

(d) An objection remains in effect until either it is withdrawn by the Attorney General or a declaratory judgment with respect to the change in question is entered by the U.S. District Court for the District of Columbia.

(e) A copy of the notification shall be sent to any party who has commented on the submission or reconsideration or has requested notice of the Attorney General's action thereon.

(f) Notice of the decision after reconsideration will be given to interested parties registered under § 51.32.

§ 51.49 Absence of judicial review.

The decision of the Attorney General not to object to a submitted change or to withdraw an objection is not reviewable. The preclearance by the Attorney General of a voting change does not constitute the certification that the voting change satisfies any other requirement of the law beyond that of section 5, and, as stated in section 5, "(n)either an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure."

§ 51.50 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, data provided on magnetic media, notations concerning conferences with the submitting authority or any interested individual or group, and copies of letters from the Attorney General concerning the submission.

(b) Objection files: Brief summaries regarding each submission and the general findings of the Department of Justice investigation and decision concerning it will be prepared when a decision to interpose, continue, or withdraw an objection is made. Files of these summaries, arranged by jurisdiction and by the date upon which such decision is made, will be maintained.

(c) Computer file: Records of all submissions and of their dispositions by the Attorney General shall be electronically stored and periodically retrieved in the form of computer printouts.

(d) The contents of the files in paper or microfiche form described in paragraphs (a) through (c) of this section shall be available for inspection and copying by the public during normal business hours at the Voting Section, Civil Rights Division, Department of Justice, Washington, DC. Those who desire to inspect information that has been provided on magnetic media will be provided a copy of that information in the same form as it was received. Materials that are exempt from inspection under the Freedom of Information Act, 5 U.S.C. 552(b), may be withheld at the discretion of the Attorney Gereral. Communications from individuals who have requested confidentiality or with respect to whom the Attorney General has determined that confidentiality is appropriate under § 51.29(d) shall be available only as provided by § 51.29(d). Applicable fees, if any, for the copying of the contents of these files are contained in the Department of Justice regulations implementing the Freedom of Information Act, 28 CFR 16.10.

[52 FR 490, Jan. 6, 1987; 52 FR 2648, Jan. 23, 1987, as amended by Order No. 1536–91, 56 FR 51837, Oct. 16, 1991]

Subpart F—Determinations by the Attorney General

§ 51.51 Purpose of the subpart.

The purpose of this subpart is to inform submitting authorities and other interested parties of the factors that the Attorney General considers relevant and of the standards by which the Attorney General will be guided in making substantive determinations under section 5 and in defending section 5 declaratory judgment actions.

§ 51.52 Basic standard.

(a) *Surrogate for the court.* Section 5 provides for submission of a voting change to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia.

Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under section 5: Whether the submitted change has the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. The burden of proof is on a submitting authority when it submits a change to the Attorney General for preclearance, as it would be if the proposed change were the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328, 335 (1966).

(b) *No objection.* If the Attorney General determines that the submitted change does not have the prohibited purpose or effect, no objection shall be interposed to the change.

(c) *Objection.* An objection shall be interposed to a submitted change if the Attorney General is unable to determine that the change is free of discriminatory purpose and effect. This includes those situations where the evidence as to the purpose or effect of the change is conflicting and the Attorney General is unable to determine that the change is free of discriminatory purpose and effect.

§51.53 Information considered.

The Attorney General shall base a determination on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice.

§51.54 Discriminatory effect.

(a) *Retrogression.* A change affecting voting is considered to have a discriminatory effect under section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. See *Beer* v. *United States*, 425 U.S. 130, 140–42 (1976).

(b) *Benchmark.* (1) In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting practice or procedure in effect at the time of the submission. If the existing practice or procedure upon submission was not in effect on the jurisdiction's applicable date for coverage (specified in the appendix) and is not otherwise legally enforceable under section 5, it cannot serve as a benchmark, and, except as provided in paragraph (b)(4) of this section, the comparison shall be with the last legally enforceable practice or procedure used by the jurisdiction.

(2) The Attorney General will make the comparison based on the conditions existing at the time of the submission.

(3) The implementation and use of an unprecleared voting change subject to section 5 review under §51.18(a) does not operate to make that unprecleared change a benchmark for any subsequent change submitted by the jurisdiction. See §51.18(c).

(4) Where at the time of submission of a change for section 5 review there exists no other lawful practice or procedure for use as a benchmark (e.g., where a newly incorporated college district selects a method of election) the Attorney General's preclearance determination will necessarily center on whether the submitted change was designed or adopted for the purpose of discriminating against members of racial or language minority groups.

§51.55 Consistency with constitutional and statutory requirements.

(a) *Consideration in general.* In making a determination the Attorney General will consider whether the change is free of discriminatory purpose and retrogressive effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution, 42 U.S.C. 1971(a) and (b), sections 2, 4(a), 4(f)(2), 4(f)(4), 201, 203(c), and 208 of the Act, and other constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgment on account of race, color, or membership in a language minority group.

(b) *Section 2.* Preclearance under section 5 of a voting change will not preclude any legal action under section 2

by the Attorney General if implementation of the change demonstrates that such action is appropriate.

[52 FR 490, Jan. 6, 1987, as amended at 63 FR 24109, May 1, 1998]

§ 51.56 Guidance from the courts.

In making determinations the Attorney General will be guided by the relevant decisions of the Supreme Court of the United States and of other Federal courts.

§ 51.57 Relevant factors.

Among the factors the Attorney General will consider in making determinations with respect to the submitted changes affecting voting are the following:

(a) The extent to which a reasonable and legitimate justification for the change exists.

(b) The extent to which the jurisdiction followed objective guidelines and fair and conventional procedures in adopting the change.

(c) The extent to which the jurisdiction afforded members of racial and language minority groups an opportunity to participate in the decision to make the change.

(d) The extent to which the jurisdiction took the concerns of members of racial and language minority groups into account in making the change.

§ 51.58 Representation.

(a) *Introduction.* This section and the sections that follow set forth factors—in addition to those set forth above—that the Attorney General considers in reviewing redistrictings (see § 51.59), changes in electoral systems (see § 51.60), and annexations (see § 51.61).

(b) *Background factors.* In making determinations with respect to these changes involving voting practices and procedures, the Attorney General will consider as important background information the following factors:

(1) The extent to which minorities have been denied an equal opportunity to participate meaningfully in the political process in the jurisdiction.

(2) The extent to which minorities have been denied an equal opportunity to influence elections and the decision-making of elected officials in the jurisdiction.

(3) The extent to which voting in the jurisdiction is racially polarized and political activities are racially segregated.

(4) The extent to which the voter registration and election participation of minority voters have been adversely affected by present or past discrimination.

§ 51.59 Redistrictings.

In determining whether a submitted redistricting plan has the prohibited purpose or effect the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(a) The extent to which malapportioned districts deny or abridge the right to vote of minority citizens.

(b) The extent to which minority voting strength is reduced by the proposed redistricting.

(c) The extent to which minority concentrations are fragmented among different districts.

(d) The extent to which minorities are overconcentrated in one or more districts.

(e) The extent to which available alternative plans satisfying the jurisdiction's legitimate governmental interests were considered.

(f) The extent to which the plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries.

(g) The extent to which the plan is inconsistent with the jurisdiction's stated redistricting standards.

§ 51.60 Changes in electoral systems.

In making determinations with respect to changes in electoral systems (e.g., changes to or from the use of at-large elections, changes in the size of elected bodies) the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(a) The extent to which minority voting strength is reduced by the proposed change.

(b) The extent to which minority concentrations are submerged into larger electoral units.

(c) The extent to which available alternative systems satisfying the jurisdiction's legitimate governmental interests were considered.

§ 51.61 Annexations.

(a) *Coverage.* Annexations, even of uninhabited land, are subject to section 5 preclearance to the extent that they alter or are calculated to alter the composition of a jurisdiction's electorate. In analyzing annexations under section 5, the Attorney General only considers the purpose and effect of the annexation as it pertains to voting.

(b) *Section 5 review.* It is the practice of the Attorney General to review all of a jurisdiction's unprecleared annexations together. See *City of Pleasant Grove* v. *United States,* C.A. No. 80-2589 (D.D.C. Oct. 7, 1981).

(c) *Relevant factors.* In making determinations with respect to annexations, the Attorney General, in addition to the factors described above, will consider the following factors (among others):

(1) The extent to which a jurisdiction's annexations reflect the purpose or have the effect of excluding minorities while including other similarly situated persons.

(2) The extent to which the annexations reduce a jurisdiction's minority population percentage, either at the time of the submission or, in view of the intended use, for the reasonably foreseeable future.

(3) Whether the electoral system to be used in the jurisdiction fails fairly to reflect minority voting strength as it exists in the post-annexation jurisdiction. See *City of Richmond* v. *United States,* 422 U.S. 358, 367-72 (1975).

[52 FR 490, Jan. 6, 1987; 52 FR 2648, Jan. 23, 1987]

Subpart G—Sanctions

§ 51.62 Enforcement by the Attorney General.

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including section 5. See section 12(d).

(b) Certain violations of section 5 may be subject to criminal sanctions. See section 12(a) and (c).

§ 51.63 Enforcement by private parties.

Private parties have standing to enforce section 5.

§ 51.64 Bar to termination of coverage (bailout).

(a) Section 4(a) of the Act sets out the requirements for the termination of coverage (bailout) under section 5. See § 51.5. Among the requirements for bailout is compliance with section 5, as described in section 4(a), during the ten years preceding the filing of the bailout action and during its pendency.

(b) In defending bailout actions, the Attorney General will not consider as a bar to bailout under section 4(a)(1)(E) a section 5 objection to a submitted voting standard, practice, or procedure if the objection was subsequently withdrawn on the basis of a determination by the Attorney General that it had originally been interposed as a result of the Attorney General's misinterpretation of fact or mistake in the law, or if the unmodified voting standard, practice, or procedure that was the subject of the objection received section 5 preclearance by means of a declaratory judgment from the U.S. District Court for the District of Columbia.

(c) Notice will be given to interested parties registered under § 51.32 when bailout actions are filed or decided.

Subpart H—Petition To Change Procedures

§ 51.65 Who may petition.

Any jurisdiction or interested individual or group may petition to have these procedural guidelines amended.

§ 51.66 Form of petition.

A petition under this subpart may be made by informal letter and shall state the name, address, and telephone number of the petitioner, the change requested, and the reasons for the change.

§ 51.67 Disposition of petition.

The Attorney General shall promptly consider and dispose of a petition under this subpart and give notice of the disposition, accompanied by a simple statement of the reasons, to the petitioner.

APPENDIX TO PART 51—JURISDICTIONS COVERED UNDER SECTION 4(b) OF THE VOTING RIGHTS ACT, AS AMENDED

The preclearance requirement of section 5 of the Voting Rights Act, as amended, applies in the following jurisdictions. The applicable date is the date that was used to determine coverage and the date after which changes affecting voting are subject to the preclearance requirement.

Some jurisdictions, for example, Yuba County, California, are included more than once because they have been determined on more than one occasion to be covered under section 4(b).

Jurisdiction	Applicable Date	FEDERAL REGISTER citation	
		Volume and page	Date
Alabama	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Alaska	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Arizona	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
California:			
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23. 1975.
Merced County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monterey County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuba County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Florida:			
Collier County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hardee County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Hendry County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Hillsborough County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Monroe County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Georgia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Louisiana	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Michigan:			
Allegan County:			
Clyde Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Saginaw County:			
Buena Vista Township	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976.
Mississippi	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
New Hampshire:			
Cheshire County:			
Rindge Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Coos County:			
Millsfield Township	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Pinkhams Grant	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Stewartstown Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Stratford Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Grafton County:			
Benton Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Hillsborough County:			
Antrim Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Merrimack County:			
Boscawen Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Rockingham County:			
Newington Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
Sullivan County:			
Unity Town	Nov. 1, 1968	39 FR 16912	May 10, 1974.
New York:			
Bronx County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Bronx County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Kings County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
New York County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
North Carolina:			
Anson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Beaufort County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Bertie County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Bladen County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Camden County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.

Jurisdiction	Applicable Date	FEDERAL REGISTER citation	
		Volume and page	Date
Caswell County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Chowan County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cleveland County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Craven County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Cumberland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Edgecombe County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Franklin County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Gaston County	Nov. 1, 1964	31 FR 5081	Mar, 29, 1966.
Gates County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Granville County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Greene County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Guilford County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Halifax County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Harnett County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Hertford County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Hoke County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Jackson County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Lee County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Lenoir County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Martin County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Nash County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Northampton County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Onslow County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pasquotank County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Perquimans County	Nov. 1, 1964	31 FR 3317	Mar. 2, 1966.
Person County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Pitt County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Robeson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Rockingham County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Scotland County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Union County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Vance County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Washington County	Nov. 1, 1964	31 FR 19	Jan. 4, 1966.
Wayne County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Wilson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Carolina	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
South Dakota:			
Shannon County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Todd County	Nov. 1, 1972	41 FR 784	Jan. 5, 1976.
Texas	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Virginia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

The following political subdivisions in States subject to statewide coverage are also covered individually:

Jurisdiction	Applicable date	FEDERAL REGISTER citation	
		Volume and page	Date
Arizona:			
Apache County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Apache County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975
Cochise County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Mohave County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Pima County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Santa Cruz County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuma County	Nov. 1, 1964	31 FR 982	Jan. 25, 1966.

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- Jurisdictions That Must Comply Section 5 (Covered Jurisdictions)
- What Must be Submitted Under Section 5 (Covered Changes)
- Making Section 5 Submissions
- Section 5 Guidelines
- Notices of Section 5 Activity
- Section 5 Objections
- Litigation Concerning Section 5

Litigation Concerning Section 5

Several types of lawsuits involve Section 5 issues. The Attorney General or private plaintiffs may bring a Section 5 enforcement action against a covered jurisdiction to obtain an injunction against the use of a change affecting voting that has not been reviewed Section 5. These cases are brought in the appropriate United States District Court for the state in which the Section 5 violation is alleged to occur. Covered jurisdictions may bring declaratory judgment actions against the United States, before the United States District Court for the District of Columbia, to obtain Section 5 review of for voting changes or to terminate their coverage, under the Act's special provision, (also known as "bailing out") as provided by Section 4(a) of the Voting Rights Act.

The Voting Rights Act requires that Section 5 enforcement actions and declaratory judgment actions under both Section 4 and 5 be heard and decided by three-judge courts. These courts are typically composed of two United States District Court judges and one United States Court of Appeals judge. Appeals from these courts go directly to the United States Supreme Court.

Recent Section 5 Supreme Court Decisions

The United States Supreme Court has issued opinions in the following Section 5 cases since January 1, 1997:

On June 26, 2003, the Supreme Court vacated the decision of the United States District Court for the District of Columbia denying the State of Georgia's request for a declaratory judgment that its 2001 redistricting plan for the state senate complied with Section 5. *State of Georgia v. Ashcroft*, 539 U.S. 461 (2003). The Court remanded the case to the district court for further proceedings. On remand, the United States filed United States' Response to Order to Show Cause* and United States' Reply to Georgia's Response to Order to Show Cause*. On February 20, 2004, the district court dismissed the case.

* If you have difficulty accessing the documents because of a disability, please contact the Voting Section at 1-800-253-3931 to receive a printed copy.

On January 24, 2000, the Supreme Court affirmed the granting of a decision by the District Court for the District of Columbia which granted Section 5 preclerance to a redistricting plan for the Bossier Parish School Board in Bossier Parish, Louisiana. The Supreme Court held that jurisdictions are required to show that their redistricting plans do not have either the purpose or effect of worsening the position of minority voters. A redistricting plan adopted with a discriminatory but nonretrogressive purpose may not be denied Section 5 preclearance for that reason alone, but will be subject to federal court challenges under the Constitution and/or Section 2 of the Voting Rights Act. *Reno* v. *Bossier Parish School Board,* 528 U.S. 320(2000). In 1997, the Supreme Court had vacated and remanded an earlier decision by the District Court for the District of Columbia which had granted Section 5 preclearance to the Bossier Parish School Board's redistricting plan. The Court also held that Section 5 preclearance may not be denied solely because a voting change violates the "results test" of Section 2 of the Voting Rights Act. *Reno* v. *Bossier Parish School Board,* 520 U.S. 471 (1997).

On January 20, 1999, the Supreme Court decided that Monterey County, California, was required to obtain Section 5 preclearance for the consolidation of several elected municipal courts into a countywide municipal court. The fact that the consolidation was required by state law (the State of California is not a Section 5 covered jurisdiction) did not affect the need to obtain preclearance because Monterey County is a covered jurisdiction. The Court also found that Section 5 did not unconstitutionally violate state sovereignty. *Lopez* v. *Monterey County*, 525 U.S. 266 (1999).

On March 31, 1998, the Supreme Court unanimously held that a Section 5 declaratory judgment action filed by the State of Texas in the United States District Court for the District of Columbia was not ripe for litigation. The case concerned whether the appointment of certain officials could replace elected school boards and require Section 5 preclearance. *Texas* v. *United States*, 523 U.S. 296 (1998).

On November 17, 1997, the Supreme Court decided that the City of Monroe, Georgia, was not required to obtain Section 5 preclearance for its use of a majority-vote requirement because it already had been precleared in a previous Section 5 submission. The Supreme Court did not address whether the voting change was racially discriminatory. *City of Monroe* v. *United States*, 522 U.S. 34 (1997).

On June 27, 1997, the Supreme Court decided in a per curiam decision that changes in the manner of selecting election judges in Dallas County, Texas could be covered changes under Section 5. *Foreman* v. *Dallas County, Texas*, 521 U.S. 979 (1997).

On March 31, 1997, the Supreme Court unanimously agreed that voting and registration procedures used following Mississippi's decision to limit NVRA voters to participation only in federal elections are subject to Section 5 review. Of all the states, Mississippi alone excluded NVRA voters from participation in state and local elections. The United States argued as amicus curiae that the procedures were covered by Section 5. *Young* v. *Fordice,* 520 U.S. 273 (1997).

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Redistricting submissions currently pending before the Attorney General

Pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, jurisdictions covered by the Act's special provisions must obtain preclearance of any redistricting plan prior to implementation. As of 19-SEP-2005, the Attorney General has the redistricting plans listed below under review.

The information presented below is organized alphabetically by state and, within the state, by county or parish(if any), and by subjurisdiction. Each submission is identified by a submission number. The date appearing under the heading "First Out" is the initial date by which the Attorney General must make his determination or inform the jurisdiction that the date will be modified. If you wish to provide a comment on any of these plans, you may mail your comment to:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530.

or call toll-free at 800/253-3931. Please indicate in any written comment the submission number on which you desire to comment.

ALABAMA
First out: 10/24/2005
County: BARBOUR
Subjurisdiction:
Submission: 1994-4171

GEORGIA
First out: 09/30/2005
County: TREUTLEN
Subjurisdiction: SOPERTON
Submission: 2005-2649

GEORGIA
First out: 10/03/2005
County: LOWNDES
Subjurisdiction: VALDOSTA
Submission: 2005-1993
Council

County: LOWNDES
Subjurisdiction: VALDOSTA SCHOOL DISTRICT
Submission: 2005-2269

County: CATOOSA
Subjurisdiction:

Submission: 2005-2675

GEORGIA
First out: 10/17/2005
County: CATOOSA
Subjurisdiction: CATOOSA COUNTY SCHOOL DISTRICT
Submission: 2005-2987

GEORGIA
First out: 10/24/2005
Subjurisdiction:
Submission: 2005-2959
Congressional

GEORGIA
First out: 10/25/2005
County: JEFF DAVIS
Subjurisdiction:
Submission: 2005-2298
Commission

County: JEFF DAVIS
Subjurisdiction: JEFF DAVIS COUNTY SCHOOL DISTRICT
Submission: 2005-2299

GEORGIA
First out: 10/28/2005
County: CHEROKEE
Subjurisdiction:
Submission: 2005-3187

LOUISIANA
First out: 10/14/2005
County: EVANGELINE
Subjurisdiction: VILLE PLATTE
Submission: 2005-2805
Council

MISSISSIPPI
First out: 10/24/2005
County: PANOLA
Subjurisdiction: NORTH PANOLA CONSOLIDATED SCHOOL DISTRICT
Submission: 2005-2975

NORTH CAROLINA
First out: 11/01/2005
County: HALIFAX
Subjurisdiction: ROANOKE RAPIDS
Submission: 2005-3295

SOUTH DAKOTA
First out: 11/14/2005

Subjurisdiction:
Submission: 2005-3341
Counties

TEXAS
First out: 09/20/2005
County: JACK
Subjurisdiction:
Submission: 2005-2517

TEXAS
First out: 10/31/2005
County: ANDERSON
Subjurisdiction: PALESTINE
Submission: 2003-0170
Council

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About Language Minority Voting Rights

The Language Minority Provisions of the Voting Rights Act

Congress passed the language minority provisions because it found that:

> [T]hrough the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

Congress adopted the language minority provisions of the Voting Rights Act in 1975 for a period of ten years, then extended them in 1982 for ten year and in 1992 for fifteen years.

Legal Requirements

The language minority provisions are contained in Sections 203 and Section 4(f)(4) of the Voting Rights Act.

Sections 203 and 4(f)(4) require that when a covered state of political subdivision:

> [P]rovides registration or voting notices, forms, instructions, assistance, or other materials of information relating to the electoral process, including ballots, it shall provide them in

the language of the applicable minority group as well as in the English language.

The requirements of the law are straightforward: all election information that is available in English must also be available in the minority language so that all citizens will have an effective opportunity to register, learn the details of the elections, and cast a free and effective ballot.

Praise for local elections officials from a San Diego County voter -

I'm a naturalized citizen now, born in the Philippines and it just put a smile to my face as well as the rest of the people in our household when we get those ballots in Tagalog. We DON'T even have those in the country I came from so the more I appreciate all the efforts of you guys put into making sure every eligible citizen are able to understand and get informed with regards to all the candidates and all the measures by sending them tools in their native languages. America is truly the best country in the world to live in...Proud to be a U.S. Citizen...Thanks to all of you and keep up the good work. (Courtesy of San Diego County)

Covered Jurisdictions

Covered jurisdictions are determined by the Census Bureau after each census based upon a formula set out in the Voting Rights Act. The most recent determinations were made on July 26, 2002.

Covered language minorities are limited to American Indians, Asian Americans, Alaskan Natives, and Spanish-heritage citizens - the groups that Congress found to have faced barriers in the political process.

Section 203 Coverage Formula

A jurisdiction is covered under Section 203 where the number of United States citizens of voting age is a single language group within the jurisdiction:

- Is more than 10,000, or
- Is more than five percent of all voting age citizens, or
- On an Indian reservation, exceeds five percent of all reservation residents; and
- The illiteracy rate of the group is higher than the national illiteracy rate

Guidance for Local Officials

The Civil Rights Division offers extensive guidance to local election officials on how to comply with Section 203. The guidance is not prescriptive: election systems vary widely across the United States, as do the needs and circumstances of language minority communities. Instead, the Division has identified both guiding principles and practicial suggestions for local election officials to pursue with their local language minority communities to serve them effectively and efficiently. The Attorney General has published guidelines entitled "Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups." 28 C.F.R. Part 55. ***Please note that 28 C.F.R. Part 55 has not yet been updated to reflect the July 26, 2002, determinations by the Director of the Bureau of the Census pursuant to Section 203 of the Voting Rights Act.***

Language Minority Guidelines Online: (HTML 57K) (PDF 84K)

Language Minority Brochure

The Division has published a plain language brochure that offers practical steps for achieving compliance. These brochures are also printed in the following languages:

En Español Chinese Japanese Korean Vietnamese Tagalog

Correspondence

On July 26, 2002, when the Director of the Census announced of which jurisdictions were covered under Section 203 based on the 2000 Census, the Civil Rights Division mailed formal notice and detailed information on the compliance to each of the 296 covered jurisdictions across the United States.

On August 31, 2004, Assistant Attorney General R. Alexander Acosta mailed letters to over 400 Section 203 and 4(f)(4) jurisdictions reminding them of their obligations to provide minority language assistance, and offering guidance on how to achieve compliance.

Assistant Attorney General Acosta noted the usefulness to local officials of establishing charts of all election information provided in English, and matching each item with what it does in each covered minority language; and setting up a similar chart matching the current number of language minority voters in each precinct with the number of bilingual poll officials. Both charts indicate possible gaps in compliance at a glance.

The 2004 mailing to the Section 4(f)(4) counties was the first blanket mailing to these counties, which include tens of thousands of voters who require Spanish language materials and information in order to vote effectively, since shortly after the original designations in 1975.

Outreach

In addition to guidelines, brochures, and correspondence, the Division has held meetings with state and local election officials and minority community members in scores of covered jurisdictions to explain the law, answer questions, and work to foster the implementation of effective programs. Division personnel also made presentations and answered questions at numerous conferences of state and local election officials and non-governmental organizations. Such outreach is an important part of the Division's law enforcement effort. Any request for a Division speaker should take the form of a letter to the Assistant Attorney General.

Enforcement Activities

The Voting Section has recently reached agreements with a number of counties across the United States, including the first actions ever taken under the Voting Rights Act on behalf of Filipino and Vietnamese voters.

Each agreement provides comprehensive relief for language minority voters, and includes innovative procedures to involve local language minority voters in shaping programs to serve them. The agreements also provide tools to local election officials to recruit large numbers of new bilingual poll officials and oversee their work.

Enforcement actions undertaken by the Voting Section in 2004 have achieved comprehensive language minority programs for more citizens with limited English proficiency than all prior lawsuits in the history of the Act combined.

Investigation of Language Minority Cases

The Voting Section has been systematically requesting voter registration lists and bilingual poll official assignment data from all covered jurisdictions, beginning with the largest in terms of population. Using lists of Spanish, Vietnamese, and other surnames, the Voting Section is able to identify polling places that appear to have large numbers of language minority voters and ascertain at a glance whether these polling places are served by a sufficient number of bilingual poll officials.

The Section also is systematically looking at the full range of information provided by covered jurisdictions to voters in English - not just the ballot and election pamphlets themselves, but also newspaper notices required by state law, website information, and other election information - and determining whether the same information is being made available to each language minority community and whether the translated materials are actually provided in polling places and made available to voters.

The Voting Section monitors elections as needed to determine whether local programs are being implemented effectively, and whether language minority citizens are being treated with the courtesy due to all voters.

Litigation

Although the United States actively works with covered jurisdictions to obtain compliance, it has, when necessary, filed litigation and sought judicial enforcement. Since May of 2004, the Civil Rights Division has filed and successfully resolved as many Section 203 cases as it had filed in the previous eight years. The cases filed since May 2004 have provided comprehensive election information plans to more language minority voters than all previous Section 203 cases combined.

U.S. Department of Justice
Civil Rights Division
Voting Section

MINORITY LANGUAGE CITIZENS

SECTION 203 OF THE VOTING RIGHTS ACT

The United States is a diverse land with a government selected by the votes of its citizens. Federal law recognizes that many Americans rely heavily on languages other than English, and that they require information in minority languages in order to be informed voters and participate effectively in our representative democracy. Many provisions of federal law protect the voting rights of minority language Americans. Section 203 of the Voting Rights Act is the keystone. Congress has mandated minority language ballots in some jurisdictions since 1975, with the most recent changes in the method of determining which jurisdictions must provide minority language materials and information becoming law in 1992

Section 203 of the Voting Rights Act

When Congress amended the Voting Rights Act in 1975 by adding Section 203, it found that "through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process....The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices."

Section 203 provides: "Whenever any State or political subdivision [covered by the section] provides registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language."

What jurisdictions are covered under Section 203?

The law covers those localities where there are more than 10,000 or over 5 percent of the total voting age citizens in a single political subdivision (usually a county, but a township or municipality in some states) who are members of a single minority language group, have depressed literacy rates, and do not speak English very well. Political subdivisions also may be covered through a separate determination for Indian Reservations.

Determinations are based on data from the most recent Census, and the determinations are made by the Director of the Census. The list of jurisdictions (HTML version) (PDF version) covered under Section 203 can be found at the web site of the Voting Section of the Justice Department's Civil Rights Division.

What languages are covered under Section 203?

Section 203 targets those language minorities that have suffered a history of exclusion from the political process: Spanish, Asian, Native American, and Alaskan Native. The Census Bureau identifies specific language groups for specific jurisdictions. In some jurisdictions, two or more language minority groups are present in numbers sufficient to trigger the Section 203 requirements.

What elections are covered?

Section 203 requirements apply to all elections conducted within the bounds of the jurisdiction identified as covered by Section 203 by the Census Bureau. The law applies to primary and general elections, bond elections and referenda, and to elections of each municipality, school district or special purpose district within the designated jurisdiction.

What information must be provided in the minority language?

All information that is provided in English also must be provided in the minority language as well. This covers not only the ballot, but all election information - voter registration, candidate qualifying, polling place notices, sample ballots, instructional forms, voter information pamphlets, and absentee and regular ballots - from details about voter registration through the actual casting of the ballot, and the questions that regularly come up in the polling place. Written materials must be translated accurately, of course. Assistance also must be provided orally. Most Native American languages historically are unwritten, so that all information must be transmitted orally. Oral communications are especially important in any situation where literacy is depressed. Bilingual poll workers will be essential in at least some precincts on election day, and there should be trained personnel in the courthouse or city hall who can answer questions in the minority language, just as they do for English-speaking voters.

What are the keys to a successful program?

1. Outreach

The cornerstone of every successful program is a vigorous outreach program to identify the needs and communication channels of the minority community. Citizens who do not speak English very well, often rely on communication channels that differ from those used by English-speakers. Each community is different. The best-informed sources of information are people who are in the minority community and those who work with it regularly. Election officials should talk to them. Minority leaders are an important starting point, but election officials should not stop there. By talking to a broad range of people in the minority community - educators, business groups, labor groups, ESL programs, parent-teacher organizations, senior citizen groups, church groups, social and fraternal organizations, veterans groups, and the like - election officials will be able to identify the most effective and most efficient program possible: where to post notices, what media to use, where to have bilingual poll officials. These same persons can help identify and recruit bilingual poll officials and some of them may be able to provide important feedback on proposed translations.

Minority community members and those who work with them can play a significant role in

developing and maintaining an effective bilingual election program and need not wait to be contacted by election officials. Minority language citizens should promptly respond to requests for advice and feedback from local election officials, who often are faced with severe time constraints. They also should reach out to city and county election officials to make suggestions on the program, offer to serve as poll officials, and otherwise participate actively in the minority language program that is adopted. They should report any compliance problems to local election officials and, should those officials fail to adequately address the problems, they should notify the Justice Department. Contact information is included at the end of this brochure.

2. Bilingual election personnel

Voters ask questions at the polls on election day. They have trouble with the voting machines. They are not sure of their precinct. They may not be able to read the ballot. Failure to employ bilingual poll officials at all precincts where they are needed can deprive citizens of their right to vote.

New poll workers - and indeed many veteran poll officials - need effective training in matters beyond the operation of the polls, including the broader election process so that they can answer questions accurately. Experienced poll officials at times need training on the rights of minority language voters.

3. Accurately Translated and Effectively Distributed Materials

Materials for all stages of the election process must be translated. Care should be taken to provide an accurate translation that meets the needs of the minority community. Poor translations can be misleading for voters and embarrassing for local officials. Beyond quality control, there can be significant differences in dialect within a given language group, and it is the responsibility of local officials to provide a translation that local voters actually can use. Local officials should reach out to the local minority community to help produce or check translations.

4. Timing

Time before the next election is limited - extremely limited for some jurisdictions - and there is much to do to adjust something as complex as an election process. Outreach to the minority community should begin immediately to help establish an effective and efficient minority language election program, so that priorities can be set for the many tasks that must be completed.

5. Contingency Planning

hings go wrong. Poll officials get sick and don't show up. Materials wind up at the wrong place, or get lost completely. Minority language voters appear in unexpected polling places. An effective minority language program includes plans for addressing problems, such as training for poll officials in how to deal with surprise situations, back-up communication between the polling places and the central election office, and extra material and bilingual personnel to plug gaps.

Again, close communication with the minority community will help minimize the fallout

from those inevitable problems that will occur.

6. Assess, Analyze and Improve

An effective minority language program is an ongoing exercise. Minority language citizens will move into some new areas and create a need for new communications and new bilingual poll officials. The need in other areas may disappear with time. Such changes are reflected in a number of ways, such as changes in school enrollment. Like a business enterprise, an elections office must meet the needs of a changing clientele. Continuing consultation with minority leaders and groups will remain a part of an effective program.

It also can help to make a record of consultations and other outreach activities. This helps identify both successes and gaps, and builds institutional memory.

THE ROLE OF THE JUSTICE DEPARTMENT

- Inform - The Department of Justice notifies each jurisdiction that it is covered under Section 203, and also reaches out to minority communities to make them aware of the law.

- Assist - We provide information to jurisdictions and answer questions about compliance plans.

- Enforce - We investigate and pursue allegations of violations of federal law, and take appropriate enforcement action.

Where do I go for more information?

Information about Section 203, including its text, a list of covered jurisdictions, and the Attorney General's Minority Language Guidelines, is on the Voting Section web site at http://www.usdoj.gov/crt/voting/index.htm.

You also may contact

Voting Section
Civil Rights Division
Department of Justice
950 Pennsylvania Ave., N.W. - NWB
Washington, DC 20530

PHONE - 202-307-2767; 1-800-253-3931
FAX - 202-307-3961

Go to main page on language minority provisions

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–19002 Filed 7–25–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 25, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 1, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 4944) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the service to the Government.

2. The action will result in authorizing a small entity to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Facilities Maintenance Services, U.S. Courthouse and Federal Office Building, Central Islip, New York.

NPA: The Corporate Source, Inc., New York, New York.

Contract Activity: GSA, Public Buildings Service, Brooklyn, New York.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–19003 Filed 7–25–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 020723173–2173–01]

RIN 0607–ZA05

Voting Rights Act Amendments of 1992, Determinations Under Section 203

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The notice's purpose is to publish the Bureau of the Census (Census Bureau) Director's determination as to which political subdivisions are subject to the minority language assistance provisions of Section 203 of the Voting Rights Act.

EFFECTIVE DATE: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice, please contact Ms. Catherine M. McCully, Chief, Census Redistricting Data Office, Bureau of the Census, U.S. Department of Commerce, Federal Building 3, Room 3631, 301–457–4039.

For information regarding the statutory provisions, enforcement, or compliance, contact Mr. Joseph D. Rich, Chief, Voting Section-NWB, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, 1–800–253–3931 or 202–307–2767, or visit the Voting Section Internet site at <*www.usdoj.gov.crt/voting*>.

SUPPLEMENTARY INFORMATION: In August 1992, Congress amended the Voting Rights Act of 1965, Title 42, United States Code, 1973 *et seq.* (See Public Law 102–344.) Among other changes, the minority language assistance provision set forth in Section 203 of the Act was extended to August 6, 2007. Section 203 mandates that a state or political subdivision must provide language assistance to voters if more than 5 percent of the voting age citizens are members of a single-language minority group who do not "speak or understand English adequately enough to participate in the electoral process" and if the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade. When a state is covered for a particular language minority group, an exception is made for any political subdivision in which less than 5 percent of the voting age citizens are members of the minority group and are limited in English proficiency, unless the political subdivision is covered independently. A political subdivision also is covered if more than 10,000 of the voting age citizens are members of a single-language minority group, do not "speak or understand English adequately enough to participate in the electoral process," and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade.

Finally, if more than 5 percent of the American Indian or Alaska Native voting age citizens residing within an American Indian Reservation (and off-reservation trust lands) are members of a single language minority group, do not "speak or understand English adequately enough to participate in the electoral process," and the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade, any political subdivision, such as a county, which contains all or any part of that Indian reservation, is covered by the minority language assistance provision set forth in Section 203. An American Indian Reservation is defined as any area that is an American Indian or Alaska Native area identified for purposes of the decennial census. For Census 2000, these areas were identified by the federally-recognized tribal governments, Bureau of Indian Affairs, and state governments. The Census Bureau worked with American Indian tribes and Alaska Natives to identify statistical areas, such as Oklahoma Tribal Statistical Areas, State-Designated American Indian Statistical Areas, and Alaska Native Village Statistical Areas.

Pursuant to Section 203, the Census Bureau Director has the responsibility to determine which states and political subdivisions are subject to the minority language assistance provisions of

Section 203. The states and political subdivisions obligated to comply with the requirements are listed in the attachment.

Section 203 also provides that "determinations of the Director of the Census under this subsection shall be effective upon publication in the **Federal Register** and shall not be subject to review in any court." Therefore, as of this date, those jurisdictions that are listed as covered by Section 203 have a legal obligation to provide the minority language assistance prescribed by Section 203 of the Act. In the cases where a state is identified as covered, those counties or county equivalents not displayed in the attachment are exempt from the obligation. Those jurisdictions subject to Section 203 of the Act previously, but not included on the list below, are no longer obligated to comply with Section 203. The previous determinations under Section 4(f)(4) of the Voting Rights Act remain in effect and are unaffected by this determination. (*See* Title 28, Code of Federal Regulations, Part 55, Appendix.)

Dated: July 22, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000

State and political subdivision	Group
Alaska:	
Aleutians West Census Area	Aleut.
Bethel Census Area	Eskimo.
Bethel Census Area	American Indian (Tribe not specified).
Bethel Census Area	American Indian (Other Tribe specified).
Denali Borough	Athabascan.
Dillingham Census Area	Eskimo.
Dillingham Census Area	American Indian (Other Tribe specified).
Dillingham Census Area	Native (Other Group specified).
Kenai Peninsula Borough	American Indian (Tribe not specified).
Kenai Peninsula Borough	Aleut.
Kodiak Island Borough	Filipino.
Lake and Peninsula Borough	Athabascan.
Lake and Peninsula Borough	Aleut.
Lake and Peninsula Borough	Eskimo.
Nome Census Area	Eskimo.
North Slope Borough	American Indian (Tribe not specified).
North Slope Borough	Eskimo.
Northwest Arctic Borough	Eskimo.
Northwest Arctic Borough	Alaska Native (Other Group specified).
Southeast Fairbanks Census Area	Athabascan.
Southeast Fairbanks Census Area	Native (Other Group specified).
Valdez-Cordova Census Area	Athabascan.
Wade Hampton Census Area	Eskimo.
Wade Hampton Census Area	American Indian (Chickasaw).
Wade Hampton Census Area	American Indian (Tribe not specified).
Yukon-Koyukuk Census Area	Athabascan.
Yukon-Koyukuk Census Area	Eskimo.
Yukon-Koyukuk Census Area	American Indian (Other Tribe specified).
Arizona:	
Apache County	American Indian (Apache).
Apache County	American Indian (Navajo).
Apache County	American Indian (Pueblo).
Cochise County	Hispanic.
Coconino County	American Indian (Navajo).
Coconino County	American Indian (Pueblo).
Gila County	American Indian (Apache).
Graham County	American Indian (Apache).
Greenlee County	Hispanic.
Maricopa County	Hispanic.
Maricopa County	American Indian (Tohono O'Odham).
Navajo County	American Indian (Apache).
Navajo County	American Indian (Navajo).
Navajo County	American Indian (Pueblo).
Pima County	Hispanic.
Pima County	American Indian (Tohono O'Odham).
Pima County	American Indian (Yaqui).
Pinal County	American Indian (Apache).
Pinal County	American Indian (Tohono O'Odham).
Santa Cruz County	Hispanic.
Yuma County	Hispanic.
Yuma County	American Indian (Yuman).
California:	
State Coverage	Hispanic.
Alameda County	Hispanic.
Alameda County	Chinese.
Colusa County	Hispanic.
Contra Costa County	Hispanic.
Fresno County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Imperial County	Hispanic.
Imperial County	American Indian (Central or South American).
Imperial County	American Indian (Yuman).
Kern County	Hispanic.
Kings County	Hispanic.
Los Angeles County	Hispanic.
Los Angeles County	Chinese.
Los Angeles County	Filipino.
Los Angeles County	Japanese.
Los Angeles County	Korean.
Los Angeles County	Vietnamese.
Madera County	Hispanic.
Merced County	Hispanic.
Monterey County	Hispanic.
Orange County	Hispanic.
Orange County	Chinese.
Orange County	Korean.
Orange County	Vietnamese.
Riverside County	Hispanic.
Riverside County	American Indian (Central or South American).
Sacramento County	Hispanic.
San Benito County	Hispanic.
San Bernardino County	Hispanic.
San Diego County	Hispanic.
San Diego County	Filipino.
San Francisco County	Hispanic.
San Francisco County	Chinese.
San Joaquin County	Hispanic.
San Mateo County	Hispanic.
San Mateo County	Chinese.
Santa Barbara County	Hispanic.
Santa Clara County	Hispanic.
Santa Clara County	Chinese.
Santa Clara County	Filipino.
Santa Clara County	Vietnamese.
Stanislaus County	Hispanic.
Tulare County	Hispanic.
Ventura County	Hispanic.
Colorado:	
Alamosa County	Hispanic.
Conejos County	Hispanic.
Costilla County	Hispanic.
Crowley County	Hispanic.
Denver County	Hispanic.
La Plata County	American Indian (Navajo).
La Plata County	American Indian (Ute).
Montezuma County	American Indian (Navajo).
Montezuma County	American Indian (Ute).
Otero County	Hispanic.
Rio Grande County	Hispanic.
Saguache County	Hispanic.
Connecticut:	
Bridgeport town (Fairfield County)	Hispanic.
Hartford town (Hartford County)	Hispanic
Meriden town (New Haven County)	Hispanic.
New Britain town (Hartford County)	Hispanic.
New Haven town (New Haven County)	Hispanic.
Waterbury town (New Haven County)	Hispanic.
Windham town (Windham County)	Hispanic.
Florida:	
Broward County	Hispanic.
Broward County	American Indian (Seminole).
Collier County	American Indian (Seminole).
Glades County	American Indian (Seminole).
Hardee County	Hispanic.
Hendry County	Hispanic.
Hillsborough County	Hispanic.
Miami-Dade County	Hispanic.
Orange County	Hispanic.
Osceola County	Hispanic.
Palm Beach County	Hispanic.
Hawaii:	
Honolulu County	Chinese.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Honolulu County	Filipino.
Honolulu County	Japanese.
Maui County	Filipino.
Idaho:	
Bannock County	American Indian (Other Tribe specified).
Bingham County	American Indian (Other Tribe specified).
Caribou County	American Indian (Other Tribe specified).
Owyhee County	American Indian (Other Tribe specified).
Power County	American Indian (Other Tribe specified).
Illinois:	
Cook County	Hispanic.
Cook County	Chinese.
Kane County	Hispanic.
Kansas:	
Finney County	Hispanic.
Ford County	Hispanic.
Grant County	Hispanic.
Haskell County	Hispanic.
Kearny County	Hispanic.
Seward County	Hispanic.
Louisiana: Allen Parish	American Indian (Other Tribe specified).
Maryland: Montgomery County	Hispanic.
Massachusetts:	
Boston city (Suffolk County)	Hispanic.
Chelsea city (Suffolk County)	Hispanic.
Holyoke city (Hampden County)	Hispanic.
Lawrence city (Essex County)	Hispanic.
Southbridge town (Worcester County)	Hispanic.
Springfield city (Hampden County)	Hispanic.
Michigan: Clyde township (Allegan County)	Hispanic.
Mississippi:	
Attala County	American Indian (Choctaw).
Jackson County	American Indian (Choctaw).
Jones County	American Indian (Choctaw).
Kemper County	American Indian (Choctaw).
Leake County	American Indian (Choctaw).
Neshoba County	American Indian (Choctaw).
Newton County	American Indian (Choctaw).
Scott County	American Indian (Choctaw).
Winston County	American Indian (Choctaw).
Montana:	
Big Horn County	American Indian (Cheyenne).
Rosebud County	American Indian (Cheyenne).
Nebraska:	
Colfax County	Hispanic.
Sheridan County	American Indian (Sioux).
Nevada:	
Clark County	Hispanic.
Elko County	American Indian (Other Tribe specified).
Elko County	American Indian (Shoshone).
Humboldt County	American Indian (Other Tribe specified).
Lyon County	American Indian (Paiute).
Nye County	American Indian (Shoshone).
White Pine County	American Indian (Shoshone).
New Jersey:	
Bergen County	Hispanic.
Cumberland County	Hispanic.
Essex County	Hispanic.
Hudson County	Hispanic.
Middlesex County	Hispanic.
Passaic County	Hispanic.
Union County	Hispanic.
New Mexico:	
State Coverage	Hispanic.
Bernalillo County	Hispanic.
Bernalillo County	American Indian (Navajo).
Bernalillo County	American Indian (Pueblo).
Catron County	American Indian (Pueblo).
Chaves County	Hispanic.
Cibola County	American Indian (Navajo).
Cibola County	American Indian (Pueblo).
De Baca County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Dona Ana County	Hispanic.
Eddy County	Hispanic.
Grant County	Hispanic.
Guadalupe County	Hispanic.
Harding County	Hispanic.
Hidalgo County	Hispanic.
Lea County	Hispanic.
Luna County	Hispanic.
McKinley County	American Indian (Navajo).
McKinley County	American Indian (Pueblo).
Mora County	Hispanic.
Rio Arriba County	Hispanic.
Rio Arriba County	American Indian (Navajo).
Roosevelt County	Hispanic.
San Juan County	American Indian (Navajo).
San Juan County	American Indian (Ute).
San Miguel County	Hispanic.
Sandoval County	American Indian (Navajo).
Sandoval County	American Indian (Pueblo).
Santa Fe County	Hispanic.
Santa Fe County	American Indian (Pueblo).
Socorro County	Hispanic.
Socorro County	American Indian (Navajo).
Socorro County	American Indian (Pueblo).
Taos County	Hispanic.
Taos County	American Indian (Pueblo).
Torrance County	Hispanic.
Union County	Hispanic.
Valencia County	Hispanic.
Valencia County	American Indian (Pueblo).
New York:	
Bronx County	Hispanic.
Kings County	Hispanic.
Kings County	Chinese.
Nassau County	Hispanic.
New York County	Hispanic.
New York County	Chinese.
Queens County	Hispanic.
Queens County	Chinese.
Queens County	Korean.
Suffolk County	Hispanic.
Westchester County	Hispanic.
North Dakota:	
Richland County	American Indian (Sioux).
Sargent County	American Indian (Sioux).
Oklahoma:	
Harmon County	Hispanic.
Texas County	Hispanic.
Oregon: Malheur County	American Indian (Other Tribe specified).
Pennsylvania: Philadelphia County	Hispanic.
Rhode Island:	
Central Falls city (Providence County)	Hispanic.
Providence city (Providence County)	Hispanic.
South Dakota:	
Bennett County	American Indian (Sioux).
Codington County	American Indian (Sioux).
Day County	American Indian (Sioux).
Dewey County	American Indian (Sioux).
Grant County	American Indian (Sioux).
Gregory County	American Indian (Sioux).
Haakon County	American Indian (Sioux).
Jackson County	American Indian (Sioux).
Lyman County	American Indian (Sioux).
Marshall County	American Indian (Sioux).
Meade County	American Indian (Sioux).
Meade County	American Indian (Cheyenne).
Mellette County	American Indian (Sioux).
Roberts County	American Indian (Sioux).
Shannon County	American Indian (Sioux).
Stanley County	American Indian (Sioux).
Todd County	American Indian (Sioux).
Tripp County	American Indian (Sioux).

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Ziebach County	American Indian (Sioux).
Texas:	
State Coverage	Hispanic.
Andrews County	Hispanic.
Atascosa County	Hispanic.
Bailey County	Hispanic.
Bee County	Hispanic.
Bexar County	Hispanic.
Borden County	Hispanic.
Brewster County	Hispanic.
Brooks County	Hispanic.
Caldwell County	Hispanic.
Calhoun County	Hispanic.
Cameron County	Hispanic.
Castro County	Hispanic.
Cochran County	Hispanic.
Concho County	Hispanic.
Crane County	Hispanic.
Crockett County	Hispanic.
Crosby County	Hispanic.
Culberson County	Hispanic.
Dallas County	Hispanic.
Dawson County	Hispanic.
Deaf Smith County	Hispanic.
DeWitt County	Hispanic.
Dimmit County	Hispanic.
Duval County	Hispanic.
Ector County	Hispanic.
Edwards County	Hispanic.
El Paso County	Hispanic.
El Paso County	American Indian (Pueblo).
Fisher County	Hispanic.
Floyd County	Hispanic.
Fno County	Hispanic.
Gaines County	Hispanic.
Garza County	Hispanic.
Glasscock County	Hispanic.
Goliad County	Hispanic.
Gonzales County	Hispanic.
Guadalupe County	Hispanic.
Hale County	Hispanic.
Hall County	Hispanic.
Hansford County	Hispanic.
Harris County	Hispanic.
Harris County	Vietnamese.
Hidalgo County	Hispanic.
Hockley County	Hispanic.
Howard County	Hispanic.
Hudspeth County	Hispanic.
Irion County	Hispanic.
Jeff Davis County	Hispanic.
Jim Hogg County	Hispanic.
Jim Wells County	Hispanic.
Karnes County	Hispanic.
Kenedy County	Hispanic.
Kinney County	Hispanic.
Kleberg County	Hispanic.
Knox County	Hispanic
Lamb County	Hispanic.
La Salle County	Hispanic.
Live Oak County	Hispanic.
Loving County	Hispanic.
Lubbock County	Hispanic.
Lynn County	Hispanic.
Madison County	Hispanic.
Martin County	Hispanic.
Matagorda County	Hispanic.
Maverick County	Hispanic.
Maverick County	American Indian (Other Tribe specified).
McMullen County	Hispanic.
Medina County	Hispanic.
Menard County	Hispanic.

COVERED AREAS FOR VOTING RIGHTS BILINGUAL ELECTION MATERIALS—2000—Continued

State and political subdivision	Group
Midland County	Hispanic.
Mitchell County	Hispanic.
Moore County	Hispanic.
Nolan County	Hispanic.
Nueces County	Hispanic.
Parmer County	Hispanic.
Pecos County	Hispanic.
Presidio County	Hispanic.
Reagan County	Hispanic.
Reeves County	Hispanic.
Refugio County	Hispanic.
Runnels County	Hispanic.
San Patricio County	Hispanic.
Schleicher County	Hispanic.
Scurry County	Hispanic.
Starr County	Hispanic.
Sterling County	Hispanic.
Sutton County	Hispanic.
Swisher County	Hispanic.
Tarrant County	Hispanic.
Terrell County	Hispanic.
Terry County	Hispanic.
Titus County	Hispanic.
Tom Green County	Hispanic.
Travis County	Hispanic.
Upton County	Hispanic.
Uvalde County	Hispanic.
Val Verde County	Hispanic.
Victoria County	Hispanic.
Ward County	Hispanic.
Webb County	Hispanic.
Wharton County	Hispanic.
Willacy County	Hispanic.
Wilson County	Hispanic.
Winkler County	Hispanic.
Yoakum County	Hispanic.
Zapata County	Hispanic.
Zavala County	Hispanic.
Utah	
San Juan County	American Indian (Navajo).
San Juan County	American Indian (Ute).
Washington	
Adams County	Hispanic.
Franklin County	Hispanic.
King County	Chinese.
Yakima County	Hispanic.

[FR Doc. 02–19033 Filed 7–24–02; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1232]

Grant of Authority; Establishment of a Foreign-Trade Zone; Washington County, MD

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board of County Commissioners of Washington County, Maryland (the Grantee), has made application to the Board (FTZ Docket 36–2001, filed 8/31/01), requesting the establishment of a foreign-trade zone at sites in Washington County, Maryland, adjacent to the Baltimore Customs port of entry,

Whereas, notice inviting public comment has been given in the **Federal Register** (66 FR 46772, 9/7/01); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 255, at the sites described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 3rd day of July 2002.

(i) The novelty of the case with respect to the facts, the statute being enforced, and the application of the statute to the facts;

(ii) The importance of the case in light of the nature and seriousness of the offense charged;

(iii) The defendant's history of criminal activity, the potential penalty upon conviction, and the purposes to be served by prosecution, including punishment, deterrence, rehabilitation, and incapacitation;

(iv) The factual and legal complexity of the case and the amount and nature of the evidence to be presented;

(v) The desirability of prompt disposition of the case; and

(vi) The experience and qualifications of the magistrate judge, and the possibility of the magistrate judge's actual or apparent bias or conflict of interest.

(2) The attorney for the government shall consult with the Assistant Attorney General having supervisory authority over the subject matter in determining whether to petition for trial before a district judge in a case involving a violation of 2 U.S.C. 192, 441j(a); 18 U.S.C. 210, 211, 242, 245, 594, 597, 599, 600, 601, 1304, 1504, 1508, 1509, 2234, 2235, 2236; or 42 U.S.C. 3631.

(3) In a case in which the government petitions for trial before a district judge, the attorney for the government shall forward a copy of the petition to the Assistant Attorney General having supervisory authority over the subject matter and, if the petition is denied, shall promptly notify the Assistant Attorney General.

(5 U.S.C. 301, 18 U.S.C. 3401(f))

[Order No. 903-80, 45 FR 50564, July 30, 1980, as amended by Order No. 2012-96, 61 FR 8473, Mar. 5, 1996]

PART 55—IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT REGARDING LANGUAGE MINORITY GROUPS

Subpart A—General Provisions

Subpart B—Nature of Coverage

Subpart C—Determining the Exact Language

Subpart D—Minority Language Materials and Assistance

Subpart E—Preclearance

Subpart F—Sanctions

Subpart G—Comment on This Part

AUTHORITY 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 1973b, 1973j(d), 1973aa-la, 1973aa-2.

SOURCE: Order No. 655-76, 41 FR 29998, July 20, 1976, unless otherwise noted.

Subpart A—General Provisions

§55.1 Definitions.

As used in this part—

Act means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89

Stat. 400, the Voting Rights Act Amendments of 1982, 96 Stat. 131, and the Voting Rights Language Assistance Act of 1992, Public Law 102-344, 106 Stat. 921, 42 U.S.C. 1973 *et seq.* Section numbers, such as "section 14(c)(3)," refer to sections of the Act.

Attorney General means the Attorney General of the United States.

Language minorities or *language minority group* is used, as defined in the Act, to refer to persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. (Sections 14(c)(3) and 203(e)).

Political subdivision is used, as defined in the Act, to refer to "any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." (Section 14(c)(2)).

[Order 1246-87, 53 FR 735, Jan. 12, 1988, as amended by Order No. 1752-93, 58 FR 35372, July 1, 1993]

§ 55.2 Purpose; standards for measuring compliance.

(a) The purpose of this part is to set forth the Attorney General's interpretation of the provisions of the Voting Rights Act which require certain States and political subdivisions to conduct elections in the language of certain "language minority groups" in addition to English.

(b) In the Attorney General's view the objective of the Act's provisions is to enable members of applicable language minority groups to participate effectively in the electoral process. This part establishes two basic standards by which the Attorney General will measure compliance:

(1) That materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities; and

(2) That an affected jurisdiction should take all reasonable steps to achieve that goal.

(c) The determination of what is required for compliance with section 4(f)(4) and section 203(c) is the responsibility of the affected jurisdiction. These guidelines should not be used as a substitute for analysis and decision by the affected jurisdiction.

(d) Jurisdictions covered under section 4(f)(4) of the Act are subject to the preclearance requirements of section 5. See part 51 of this chapter. Such jurisdictions have the burden of establishing to the satisfaction of the Attorney General or to the U.S. District Court for the District of Columbia that changes made in their election laws and procedures in order to comply with the requirements of section 4(f)(4) are not discriminatory under the terms of section 5. However, section 5 expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of the changes.

(e) Jurisdictions covered solely under section 203(c) of the Act are not subject to the preclearance requirements of section 5, nor is there a Federal apparatus available for preclearance of section 203(c) compliance activities. The Attorney General will not preclear jurisdictions' proposals for compliance with section 203(c).

(f) Consideration by the Attorney General of a jurisdiction's compliance with the requirements of section 4(f)(4) occurs in the review pursuant to section 5 of the Act of changes with respect to voting, in the consideration of the need for litigation to enforce the requirements of section 4(f)(4), and in the defense of suits for termination of coverage under section 4(f)(4). Consideration by the Attorney General of a jurisdiction's compliance with the requirements of section 203(c) occurs in the consideration of the need for litigation to enforce the requirements of section 203(c).

(g) In enforcing the Act—through the section 5 preclearance review process, through litigation, and through defense of suits for termination of coverage under section 4(f)(4)—the Attorney General will follow the general policies set forth in this part.

(h) This part is not intended to preclude affected jurisdictions from taking additional steps to further the policy of the Act. By virtue of the Supremacy Clause of Art. VI of the Constitution, the provisions of the Act override any inconsistent State law.

[Order 655-76, 41 FR 29998, July 20, 1976, as amended by Order 1246-87, 53 FR 736, Jan. 12, 1988]

§55.3 Statutory requirements.

The Act's requirements concerning the conduct of elections in languages in addition to English are contained in section 4(f)(4) and section 203(c). These sections state that whenever a jurisdiction subject to their terms "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in * * * English. * * *"

Subpart B—Nature of Coverage

§55.4 Effective date; list of covered jurisdictions.

(a) The minority language provisions of the Voting Rights Act were added by the Voting Rights Act Amendments of 1975.

(1) The requirements of section 4(f)(4) take effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census and the Attorney General. Such determinations are not reviewable in any court.

(2) The requirements of section 203(c) take effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census. Such determinations are not reviewable in any court.

(b) Jurisdictions determined to be covered under section 4(f)(4) or section 203(c) are listed, together with the language minority group with respect to which coverage was determined, in the appendix to this part. Any additional determinations of coverage under either section 4(f)(4) or section 203(c) will be published in the FEDERAL REGISTER.

[Order 655-76, 41 FR 29998, July 20, 1976, as amended by Order 1246-87, 53 FR 736, Jan. 12, 1988]

§55.5 Coverage under section 4(f)(4).

(a) *Coverage formula.* Section 4(f)(4) applies to any State or political subdivision in which

(1) Over five percent of the voting-age citizens were, on November 1, 1972, members of a single language minority group,

(2) Registration and election materials were provided only in English on November 1, 1972, and

(3) Fewer than 50 percent of the voting-age citizens were registered to vote or voted in the 1972 Presidential election.

All three conditions must be satisfied before coverage exists under section 4(f)(4).[1]

(b) Coverage may be determined with regard to section 4(f)(4) on a statewide or political subdivision basis.

(1) Whenever the determination is made that the bilingual requirements of section 4(f)(4) are applicable to an entire State, these requirements apply to each of the State's political subdivisions as well as to the State. In other words, each political subdivision within a covered State is subject to the same requirements as the State.

(2) Where an entire State is not covered under section 4(f)(4), individual political subdivisions may be covered.

§55.6 Coverage under section 203(c).

(a) *Coverage formula.* There are four ways in which a political subdivision can become subject to section 203(c).[2]

(1) *Political subdivision approach.* A political subdivision is covered if—

(i) More than 5 percent of its voting age citizens are members of a single language minority group and are limited-English proficient; and

(ii) The illiteracy rate of such language minority citizens in the political subdivision is higher than the national illiteracy rate.

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[1] Coverage is based on sections 4(b) (third sentence), 4(c), and 4(f)(3).

[2] The criteria for coverage are contained in section 203(b).

(2) *State approach.* A political subdivision is covered if—

(i) It is located in a state in which more than 5 percent of the voting age citizens are members of a single language minority and are limited-English proficient;

(ii) The illiteracy rate of such language minority citizens in the state is higher than the national illiteracy rate; and

(iii) Five percent or more of the voting age citizens of the political subdivision are members of such language minority group and are limited-English proficient.

(3) *Numerical approach.* A political subdivision is covered if—

(i) More than 10,000 of its voting age citizens are members of a single language minority group and are limited-English proficient; and

(ii) The illiteracy rate of such language minority citizens in the political subdivision is higher than the national illiteracy rate.

(4) *Indian reservation approach.* A political subdivision is covered if there is located within its borders all or any part of an Indian reservation—

(i) In which more than 5 percent of the voting age American Indian or Alaska Native citizens are members of a single language minority group and are limited-English proficient; and

(ii) The illiteracy rate of such language minority citizens is higher than the national illiteracy rate.

(b) *Definitions.* For the purpose of determinations of coverage under section 203(c), *limited-English proficient* means unable to speak or understand English adequately enough to participate in the electoral process; *Indian reservation* means any area that is an American Indian or Alaska Native area, as defined by the Census Bureau for the purposes of the 1990-decennial census; and *illiteracy* means the failure to complete the fifth primary grade.

(c) *Determinations.* Determinations of coverage under section 203(c) are made with regard to specific language groups of the language minorities listed in section 203(e).

[Order No. 1752-93, 58 FR 35372, July 1, 1993]

§ 55.7 Termination of coverage.

(a) *Section 4(f)(4).* A covered State, a political subdivision of a covered State, or a separately covered political subdivision may terminate the application of section 4(f)(4) by obtaining the declaratory judgment described in section 4(a) of the Act.

(b) *Section 203(c).* The requirements of section 203(c) apply until August 6, 2007. A covered jurisdiction may terminate such coverage earlier if it can prove in a declaratory judgment action in a United States district court, that the illiteracy rate of the applicable language minority group is equal to or less than the national illiteracy rate.

[Order 655-76, 41 FR 29998, July 20, 1976, as amended by Order 1246-87, 53 FR 736, Jan. 12, 1988; Order No. 1752-93, 58 FR 35373, July 1, 1993]

§ 55.8 Relationship between section 4(f)(4) and section 203(c).

(a) The statutory requirements of section 4(f)(4) and section 203(c) regarding minority language material and assistance are essentially identical.

(b) Jurisdictions subject to the requirements of section 4(f)(4)—but not jurisdictions subject only to the requirements of section 203(c)—are also subject to the Act's special provisions, such as section 5 (regarding preclearance of changes in voting laws) and section 6 (regarding Federal examiners).[3] See part 51 of this chapter.

(c) Although the coverage formulas applicable to section 4(f)(4) and section 203(c) are different, a political subdivision may be included within both of the coverage formulas. Under these circumstances, a judgment terminating coverage of the jurisdiction under one provision would not have the effect of terminating coverage under the other provision.

§ 55.9 Coverage of political units within a county.

Where a political subdivision (e.g., a county) is determined to be subject to

[3] In addition, a jurisdiction covered under section 203(c) but not under section 4(f)(4) is subject to the Act's special provisions if it was covered under section 4(b) prior to the 1975 Amendments to the Act.

section 4(f)(4) or section 203(c), all political units that hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision.

§ 55.10 Types of elections covered.

(a) *General.* The language provisions of the Act apply to registration for and voting in any type of election, whether it is a primary, general or special election. Section 14(c)(1). This includes elections of officers as well as elections regarding such matters as bond issues, constitutional amendments and referendums. Federal, State and local elections are covered as are elections of special districts, such as school districts and water districts.

(b) *Elections for statewide office.* If an election conducted by a county relates to Federal or State offices or issues as well as county offices or issues, a county subject to the bilingual requirements must insure compliance with those requirements with respect to all aspects of the election, i.e., the minority language material and assistance must deal with the Federal and State offices or issues as well as county offices or issues.

(c) *Multi-county districts.* Regarding elections for an office representing more than one county, e.g., State legislative districts and special districts that include portions of two or more counties, the bilingual requirements are applicable on a county-by-county basis. Thus, minority language material and assistance need not be provided by the government in counties not subject to the bilingual requirements of the Act.

Subpart C—Determining the Exact Language

§ 55.11 General.

The requirements of section 4(f)(4) or section 203(c) apply with respect to the languages of language minority groups. The applicable groups are indicated in the determinations of the Attorney General or the Director of the Census. This subpart relates to the view of the Attorney General concerning the determination by covered jurisdictions of precisely the language to be employed. In enforcing the Act, the Attorney General will consider whether the languages, forms of languages, or dialects chosen by covered jurisdictions for use in the electoral process enable members of applicable language minority groups to participate effectively in the electoral process. It is the responsibility of covered jurisdictions to determine what languages, forms of languages, or dialects will be effective. For those jurisdictions covered under section 203(c), the coverage determination (indicated in the appendix) specifies the particular language for which the jurisdiction was covered and which thus, under section 203(c), is required to be used.

[Order 655-76, 41 FR 29998, July 20, 1976, as amended by Order 1246-87, 53 FR 736, Jan. 12, 1988]

§ 55.12 Language used for written material.

(a) *Language minority groups having more than one language.* Some language minority groups, for example, Filipino Americans, have more than one language other than English. A jurisdiction required to provide election materials in the language of such a group need not provide materials in more than one language other than English. The Attorney General will consider whether the language that is used for election materials is the one most widely used by the jurisdiction's voting-age citizens who are members of the language minority group.

(b) *Languages with more than one written form.* Some languages, for example, Japanese, have more than one written form. A jurisdiction required to provide election materials in such a language need not provide more than one version. The Attorney General will consider whether the particular version of the language that is used for election materials is the one most widely used by the jurisdiction's voting-age citizens who are members of the language minority group.

(c) *Unwritten languages.* Many of the languages used by language minority groups, for example, by some American

Indians and Alaskan Natives, are unwritten. With respect to any such language, only oral assistance and publicity are required. Even though a written form for a language may exist, a language may be considered unwritten if it is not commonly used in a written form. It is the responsibility of the covered jurisdiction to determine whether a language should be considered written or unwritten.

§ 55.13 Language used for oral assistance and publicity.

(a) *Languages with more than one dialect.* Some languages, for example, Chinese, have several dialects. Where a jurisdiction is obligated to provide oral assistance in such a language, the jurisdiction's obligation is to ascertain the dialects that are commonly used by members of the applicable language minority group in the jurisdiction and to provide oral assistance in such dialects. (See § 55.20.)

(b) *Language minority groups having more than one language.* In some jurisdictions members of an applicable language minority group speak more than one language other than English. Where a jurisdiction is obligated to provide oral assistance in the language of such a group, the jurisdiction's obligation is to ascertain the languages that are commonly used by members of that group in the jurisdiction and to provide oral assistance in such languages. (See § 55.20)

[Order 655–76, 41 FR 29998, July 20, 1976, as amended by Order 1246–87, 53 FR 736, Jan. 12, 1988; Order No. 1752–93, 58 FR 35373, July 1, 1993]

Subpart D—Minority Language Materials and Assistance

§ 55.14 General.

(a) This subpart sets forth the views of the Attorney General with respect to the requirements of section 4(f)(4) and section 203(c) concerning the provision of minority language materials and assistance and some of the factors that the Attorney General will consider in carrying out his responsibilities to enforce section 4(f)(4) and section 203(c). Through the use of his authority under section 5 and his authority to bring suits to enforce section 4(f)(4) and section 203(c), the Attorney General will seek to prevent or remedy discrimination against members of language minority groups based on the failure to use the applicable minority language in the electoral process. The Attorney General also has the responsibility to defend against suits brought for the termination of coverage under section 4(f)(4) and section 203(c).

(b) In discharging these responsibilities the Attorney General will respond to complaints received, conduct on his own initiative inquiries and surveys concerning compliance, and undertake other enforcement activities.

(c) It is the responsibility of the jurisdiction to determine what actions by it are required for compliance with the requirements of section 4(f)(4) and section 203(c) and to carry out these actions.

§ 55.15 Affected activities.

The requirements of sections 4(f)(4) and 203(c) apply with regard to the provision of "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots." The basic purpose of these requirements is to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities. Accordingly, the quoted language should be broadly construed to apply to all stages of the electoral process, from voter registration through activities related to conducting elections, including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process.

§ 55.16 Standards and proof of compliance.

Compliance with the requirements of section 4(f)(4) and section 203(c) is best measured by results. A jurisdiction is more likely to achieve compliance with these requirements if it has worked with the cooperation of and to the satisfaction of organizations representing

members of the applicable language minority group. In planning its compliance with section 4(f)(4) or section 203(c), a jurisdiction may, where alternative methods of compliance are available, use less costly methods if they are equivalent to more costly methods in their effectiveness.

§ 55.17 Targeting.

The term "targeting" is commonly used in discussions of the requirements of section 4(f)(4) and section 203(c). "Targeting" refers to a system in which the minority language materials or assistance required by the Act are provided to fewer than all persons or registered voters. It is the view of the Attorney General that a targeting system will normally fulfill the Act's minority language requirements if it is designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them.

[Order No. 655-76, 41 FR 29998, July 20, 1976, as amended by Order No. 1752-93, 58 FR 35373, July 1, 1993]

§ 55.18 Provision of minority language materials and assistance.

(a) *Materials provided by mail.* If materials provided by mail (or by some comparable form of distribution) generally to residents or registered voters are not all provided in the applicable minority language, the Attorney General will consider whether an effective targeting system has been developed. For example, a separate mailing of materials in the minority language to persons who are likely to need them or to residents of neighborhoods in which such a need is likely to exist, supplemented by a notice of the availability of minority language materials in the general mailing (in English and in the applicable minority language) and by other publicity regarding the availability of such materials may be sufficient.

(b) *Public notices.* The Attorney General will consider whether public notices and announcements of electoral activities are handled in a manner that provides members of the applicable language minority group an effective opportunity to be informed about electoral activities.

(c) *Registration.* The Attorney General will consider whether the registration system is conducted in such a way that members of the applicable language minority group have an effective opportunity to register. One method of accomplishing this is to provide, in the applicable minority language, all notices, forms and other materials provided to potential registrants and to have only bilingual persons as registrars. Effective results may also be obtained, for example, through the use of deputy registrars who are members of the applicable language minority group and the use of decentralized places of registration, with minority language materials available at places where persons who need them are most likely to come to register.

(d) *Polling place activities.* The Attorney General will consider whether polling place activities are conducted in such a way that members of the applicable language minority group have an effective opportunity to vote. One method of accomplishing this is to provide all notices, instructions, ballots, and other pertinent materials and oral assistance in the applicable minority language. If very few of the registered voters scheduled to vote at a particular polling place need minority language materials or assistance, the Attorney General will consider whether an alternative system enabling those few to cast effective ballots is available.

(e) *Publicity.* The Attorney General will consider whether a covered jurisdiction has taken appropriate steps to publicize the availability of materials and assistance in the minority language. Such steps may include the display of appropriate notices, in the minority language, at voter registration offices, polling places, etc., the making of announcements over minority language radio or television stations, the publication of notices in minority language newspapers, and direct contact with language minority group organizations.

[Order No. 655-76, 41 FR 29998, July 20, 1976, as amended by Order No. 733-77, 42 FR 35970, July 13, 1977]

§ 55.19 Written materials.

(a) *Types of materials.* It is the obligation of the jurisdiction to decide what

materials must be provided in a minority language. A jurisdiction required to provide minority language materials is only required to publish in the language of the applicable language minority group materials distributed to or provided for the use of the electorate generally. Such materials include, for example, ballots, sample ballots, informational materials, and petitions.

(b) *Accuracy, completeness.* It is essential that material provided in the language of a language minority group be clear, complete and accurate. In examining whether a jurisdiction has achieved compliance with this requirement, the Attorney General will consider whether the jurisdiction has consulted with members of the applicable language minority group with respect to the translation of materials.

(c) *Ballots.* The Attorney General will consider whether a jurisdiction provides the English and minority language versions on the same document. Lack of such bilingual preparation of ballots may give rise to the possibility, or to the appearance, that the secrecy of the ballot will be lost if a separate minority language ballot or voting machine is used.

(d) *Voting machines.* Where voting machines that cannot mechanically accommodate a ballot in English and in the applicable minority language are used, the Attorney General will consider whether the jurisdiction provides sample ballots for use in the polling booths. Where such sample ballots are used the Attorney General will consider whether they contain a complete and accurate translation of the English ballots, and whether they contain or are accompanied by instructions in the minority language explaining the operation of the voting machine. The Attorney General will also consider whether the sample ballots are displayed so that they are clearly visible and at the same level as the machine ballot on the inside of the polling booth, whether the sample ballots are identical in layout to the machine ballots, and whether their size and typeface are the same as that appearing on the machine ballots. Where space limitations preclude affixing the translated sample ballots to the inside of polling booths, the Attorney General will consider whether language minority group voters are allowed to take the sample ballots into the voting booths.

§ 55.20 Oral assistance and publicity.

(a) *General.* Announcements, publicity, and assistance should be given in oral form to the extent needed to enable members of the applicable language minority group to participate effectively in the electoral process.

(b) *Assistance.* The Attorney General will consider whether a jurisdiction has given sufficient attention to the needs of language minority group members who cannot effectively read either English or the applicable minority language and to the needs of members of language minority groups whose languages are unwritten.

(c) *Helpers.* With respect to the conduct of elections, the jurisdiction will need to determine the number of helpers (i.e., persons to provide oral assistance in the minority language) that must be provided. In evaluating the provision of assistance, the Attorney General will consider such facts as the number of a precinct's registered voters who are members of the applicable language minority group, the number of such persons who are not proficient in English, and the ability of a voter to be assisted by a person of his or her own choice. The basic standard is one of effectiveness.

[Order No. 655–76, 41 FR 29998, July 20, 1976, as amended by Order No. 1752–93, 58 FR 35373, July 1, 1993]

§ 55.21 Record keeping.

The Attorney General's implementation of the Act's provisions concernng language minority groups would be facilitated if each covered jurisdiction would maintain such records and data as will document its actions under those provisions, including, for example, records on such matters as alternatives considered prior to taking such actions, and the reasons for choosing the actions finally taken.

Subpart E—Preclearance

§55.22 Requirements of section 5 of the Act.

For many jurisdictions, changes in voting laws and practices will be necessary in order to comply with section 4(f)(4) or section 203(c). If a jurisdiction is subject to the preclearance requirements of section 5 (see §55.8(b)), such changes must either be submitted to the Attorney General or be made the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. Procedures for the administration of section 5 are set forth in part 51 of this chapter.

Subpart F—Sanctions

§55.23 Enforcement by the Attorney General.

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including section 4 and section 203. See sections 12(d) and 204.

(b) Also, certain violations may be subject to criminal sanctions. See sections 11(a)–(c) and 205.

Subpart G—Comment on This Part

§55.24 Procedure.

These guidelines may be modified from time to time on the basis of experience under the Act and comments received from interested parties. The Attorney General therefore invites public comments and suggestions on these guidelines. Any party who wishes to make such suggestions or comments may do so by sending them to: Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, DC 20530.

APPENDIX TO PART 55—JURISDICTIONS COVERED UNDER SECTIONS 4(f)(4) AND 203(c) OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)[1]	Coverage under sec. 203(c)[2]
Alaska	Alaskan Natives (statewide)	
Aleutians East Borough		Alaskan Natives (Eskimo).
Aleutians West Census Area		Alaskan Natives (Aleut).
Bethel Census Area		American Indian (Athapascan, Tanaina), Alaskan Natives (Eskimo).
Bristol Bay Borough		Alaskan Natives (Eskimo).
Dillingham Census Area		Alaskan Natives (Eskimo).
Kenai Peninsula Borough		Alaskan Natives (Eskimo).
Kodiak Island Borough		Alaskan Natives (Aleut, Eskimo).
Lake and Peninsula Borough		American Indian (Athapascan), Alaskan Natives (Aleut, Eskimo).
Nome Census Area		Alaskan Natives (Eskimo).
North Slope Borough		Alaskan Natives (Eskimo).
Northwest Arctic Borough		Alaskan Natives (Eskimo).
Skagway-Yakutat-Angoon Census Area		American Indian (Tlinglit).
Southeast Fairbanks Census Area		American Indian (Athapascan).
Valdez-Cordova Census Area		American Indian (Athapascan).
Wade Hampton Census Area		Alaskan Natives (Eskimo).
Yukon-Koyukuk Census Area		American Indian (Athapascan, Kuchin), Alaskan Natives (Eskimo).
Arizona	Spanish heritage (statewide)	
Apache County	American Indian	American Indian (Apache, Navajo, Zuni).
Coconino County	American Indian	American Indian (Havasupai, Hopi, Navajo)
Gila County		American Indian (Apache).
Graham County		American Indian (Apache).
Greenlee County		Spanish heritage.
Maricopa County		American Indian (Pima, Yavapai), Spanish heritage.
Navajo County	American Indian	American Indian (Apache, Hopi, Navajo).
Pima County		American Indian (Pima), Spanish heritage.
Pinal County	American Indian	American Indian (Apache, Pima).
Santa Cruz County		Spanish heritage.
Yuma County		American Indian (Delta River Yuma, Yuma), Spanish heritage.

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)[1]	Coverage under sec. 203(c)[2]
California:		
Alameda County		Asian American (Chinese), Spanish heritage.
Colusa County		American Indian (Wintun).
Fresno County		Spanish heritage.
Imperial County		Spanish heritage.
Inyo County		American Indian (Spanish).
Kern County		Spanish heritage.
Kings County	Spanish heritage	Spanish heritage.
Lake County		American Indian (Spanish).
Los Angeles County		Asian American (Chinese, Filipino, Japanese, Vietnamese), Spanish heritage.
Merced County	Spanish heritage	
Monterey County		Spanish heritage.
Orange County		Asian American (Vietnamese), Spanish heritage.
Riverside County		Spanish heritage.
San Benito County		Spanish heritage
San Bernardino County		Spanish heritage.
San Diego County		Spanish heritage.
San Francisco County		Asian American (Chinese).
Santa Clara County		Spanish heritage.
Tulare County		Spanish heritage.
Ventura County		Spanish heritage.
Yuba County	Spanish heritage	
Colorado		
Alamosa County		Spanish heritage.
Archuleta County		Spanish heritage.
Bent County		Spanish heritage.
Conejos County		Spanish heritage.
Costilla County		Spanish heritage.
La Plata County		American Indian (Ute).
Las Animas County		Spanish heritage.
Montezuma County		American Indian (Ute).
Otero County		Spanish heritage.
Rio Grande County		Spanish heritage.
Saguache County		Spanish heritage.
Connecticut:		
Fairfield County: Bridgeport Town		Spanish heritage.
Hartford County:		
Hartford Town		Spanish heritage.
New Britain Town		Spanish heritage.
Windham County: Windham Town		Spanish heritage.
Florida.		
Broward County		American Indian (Mikasuki, Muskogee), Spanish heritage.
Collier County	Spanish heritage	American Indian (Mikasuki).
Dade County		American Indian (Mikasuki), Spanish heritage.
Glades County		American Indian (Muskogee).
Hardee County	Spanish heritage	Spanish heritage.
Hendry County	Spanish heritage	American Indian (Mikasuki, Muskogee).
Hillsborough County	Spanish heritage	Spanish heritage.
Orange County		Spanish heritage.
Monroe County	Spanish heritage	
Hawaii:		
Honolulu County		Asian American (Filipino, Japanese)
Kauai County		Asian American (Filipino).
Maui County		Asian American (Filipino).
Idaho.		
Bannock County		American Indian (Shoshoni).
Bingham County		American Indian (Shoshoni).
Owyhee County		American Indian (Shoshoni).
Power County		American Indian (Shoshoni).
Illinois: Cook County		Spanish heritage.
Iowa: Tama County		American Indian (Fox).
Louisiana: Avoyelles Parish		American Indian (French).
Massachusetts:		
Essex County: Lawrence City		Spanish heritage.
Hampden County:		
Holyoke City		Spanish heritage.
Springfield City		Spanish heritage.

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)[1]	Coverage under sec. 203(c)[2]
Suffolk County:		
Boston City		Spanish heritage.
Chelsea City		Spanish heritage.
Michigan:		
Allegan County: Clyde Township	Spanish heritage	Spanish heritage.
Oceana County: Colfax Township		Spanish heritage.
Saginaw County:		
Buena Vista Township	Spanish heritage	
Zilwaukee Township		Spanish heritage.
Mississippi:		
Jones County		American Indian (Choctaw).
Kemper County		American Indian (Choctaw).
Leake County		American Indian (Choctaw).
Neshoba County		American Indian (Choctaw).
Newton County		American Indian (Choctaw).
Winston County		American Indian (Choctaw).
Nevada:		
Elko County		American Indian (Shoshoni).
Humboldt County		American Indian (Paiute).
New Jersey:		
Essex County		Spanish heritage.
Hudson County		Spanish heritage.
Middlesex County		Spanish heritage.
Passaic County		Spanish heritage.
Union County		Spanish heritage.
New Mexico:		
Bernalillo County		American Indian (Keres, Navajo, Tiwa), Spanish heritage.
Chaves County		Spanish heritage.
Cibola County		American Indian (Keres, Navajo, Zuni), Spanish heritage.
Colfax County		Spanish heritage.
Dona Anna County		Spanish heritage.
Eddy County		Spanish heritage.
Grant County		Spanish heritage.
Guadalupe County		Spanish heritage.
Harding County		Spanish heritage.
Hidalgo County		Spanish heritage.
Lea County		Spanish heritage.
Luna County		Spanish heritage.
McKinley County		American Indian (Navajo, Zuni).
Mora County		Spanish heritage.
Quay County		Spanish heritage.
Rio Arriba County		American Indian (Jicarilla, Navajo), Spanish heritage.
Roosevelt County		Spanish heritage.
San Juan County		American Indian (Navajo).
San Miguel County		Spanish heritage.
Sandoval County		American Indian (Jicarilla, Keres, Navajo, Towa).
Santa Fe County		Spanish heritage.
Socorro County		American Indian (Navajo), Spanish heritage.
Taos County		American Indian (Tiwa), Spanish heritage.
Torrance County		Spanish heritage.
Union County		Spanish heritage.
Valencia County		American Indian (Keres, Tiwa), Spanish heritage.
New York:		
Bronx County	Spanish heritage	Spanish heritage.
Franklin County		American Indian (Mohawk).
Kings County	Spanish heritage	Asian American (Chinese), Spanish heritage.
New York County		Asian American (Chinese), Spanish heritage.
Queens County		Asian American (Chinese), Spanish heritage.
Suffolk County		Spanish heritage.
Westchester County		Spanish heritage.
North Carolina: Jackson County	American Indian	
North Dakota:		
Benson County		American Indian (Dakota).

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)[1]	Coverage under sec. 203(c)[2]
Eddy County		American Indian (Dakota).
Ramsey County		American Indian (Dakota).
Oklahoma: Adair County		American Indian (Cherokee).
Oregon: Malheur County		American Indian (Paiute).
Pennsylvania: Philadelphia County		Spanish heritage.
Rhode Island:		
Providence County: Central Falls City		Spanish heritage.
South Dakota:		
Dewey County		American Indian (Dakota).
Gregory County		American Indian (Dakota).
Lyman County		American Indian (Dakota).
Mellette County		American Indian (Dakota).
Shannon County	American Indian	
Todd County	American Indian	American Indian (Dakota).
Tripp County		American Indian (Dakota).
Ziebach County		American Indian (Dakota).
Texas	Spanish heritage (statewide)	
Andrews County		Spanish heritage.
Atascosa County		Spanish heritage.
Bailey County		Spanish heritage.
Bee County		Spanish heritage.
Bexar County		Spanish heritage.
Brewster County		Spanish heritage.
Brooks County		Spanish heritage.
Caldwell County		Spanish heritage.
Calhoun County		Spanish heritage.
Cameron County		Spanish heritage.
Castro County		Spanish heritage.
Cochran County		Spanish heritage.
Comal County		Spanish heritage.
Concho County		Spanish heritage.
Crockett County		Spanish heritage.
Crosby County		Spanish heritage.
Culberson County		Spanish heritage.
Dallas County		Spanish heritage.
Dawson County		Spanish heritage.
Deaf Smith County		Spanish heritage.
Dewitt County		Spanish heritage.
Dickens County		Spanish heritage.
Dimmit County		Spanish heritage.
Duval County		Spanish heritage.
Ector County		Spanish heritage.
Edwards County		Spanish heritage.
El Paso County		American Indian (Spanish), Spanish heritage.
Floyd County		Spanish heritage.
Fno County		Spanish heritage.
Gaines County		Spanish heritage.
Garza County		Spanish heritage.
Glasscock County		Spanish heritage.
Goliad County		Spanish heritage.
Gonzales County		Spanish heritage.
Guadalupe County		Spanish heritage.
Hale County		Spanish heritage.
Harris County		Spanish heritage.
Hays County		Spanish heritage.
Hidalgo County		Spanish heritage.
Hockley County		Spanish heritage.
Howard County		Spanish heritage.
Hudspeth County		Spanish heritage.
Inon County		Spanish heritage.
Jeff Davis County		Spanish heritage.
Jim Hogg County		Spanish heritage.
Jim Wells County		Spanish heritage.
Karnes County		Spanish heritage.
Kenedy County		Spanish heritage.
Kent County		Spanish heritage.
Kinney County		Spanish heritage.
Kleberg County		Spanish heritage.
La Salle County		Spanish heritage.
Lamb County		Spanish heritage.
Live Oak County		Spanish heritage.

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)[1]	Coverage under sec. 203(c)[2]
Lubbock County		Spanish heritage.
Lynn County		Spanish heritage.
Martin County		Spanish heritage.
Maverick County		Spanish heritage.
McCulloch County		Spanish heritage.
McMullen County		Spanish heritage.
Medina County		Spanish heritage.
Menard County		Spanish heritage.
Midland County		Spanish heritage.
Mitchell County		Spanish heritage.
Moore County		Spanish heritage.
Nolan County		Spanish heritage.
Nueces County		Spanish heritage.
Parmer County		Spanish heritage.
Pecos County		Spanish heritage.
Polk County		American Indian (Alabama).
Presidio County		Spanish heritage.
Reagan County		Spanish heritage.
Reeves County		Spanish heritage.
Refugio County		Spanish heritage.
Runnels County		Spanish heritage.
San Patricio County		Spanish heritage.
Schleicher County		Spanish heritage.
Scurry County		Spanish heritage.
Starr County		Spanish heritage.
Sutton County		Spanish heritage.
Swisher County		Spanish heritage.
Tarrant County		Spanish heritage.
Terrell County		Spanish heritage.
Terry County		Spanish heritage.
Tom Green County		Spanish heritage.
Travis County		Spanish heritage.
Upton County		Spanish heritage.
Uvalde County		Spanish heritage.
Val Verde County		Spanish heritage.
Victoria County		Spanish heritage.
Ward County		Spanish heritage.
Webb County		Spanish heritage.
Wharton County		Spanish heritage.
Willacy County		Spanish heritage.
Wilson County		Spanish heritage.
Winkler County		Spanish heritage.
Yoakum County		Spanish heritage.
Zapata County		Spanish heritage.
Zavala County		Spanish heritage.
Utah: San Juan County		American Indian (Navajo, Ute).
Wisconsin:		
Clark County: Curtiss Village		Spanish heritage.

[1] Coverage determinations were published at 40 FR 43746 (Sept. 23, 1975), 40 FR 49422 (Oct. 22, 1975), 41 FR 784 (Jan. 5, 1976) (corrected at 41 FR 1503 (Jan. 8, 1976)), and 41 FR 34329 (Aug. 13, 1976). Covered counties in Colorado, New Mexico, and Oklahoma have bailed out pursuant to section 4(a). See §55.7(a) of this part.
[2] Coverage determinations were published at 57 FR 43213 (Sept. 18, 1992).

[Order No. 1752-93, 58 FR 35373, July 1, 1993; 58 FR 36516, July 7, 1993]

PART 56—INTERNATIONAL ENERGY PROGRAM

Sec.

AUTHORITY: Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871 (42 U.S.C. 6201).

SOURCE: 49 FR 33998, Aug. 28, 1984, unless otherwise noted.

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CASES RAISING CLAIMS UNDER THE LANGUAGE MINORITY PROVISIONS OF THE VOTING RIGHTS ACT

United States v. Ector County, TX (W.D. Tex. 2005)

On August 23, 2005, the United States filed a complaint alleging that Ector County in Texas violated Section 4(f)(4) of the Voting Rights Act. The complaint claimed that the county failed to provide an adequate number of bilingual workers to serve the county's Spanish-speaking population and failed to effectively publicize information to the Spanish-speaking community. On the same day that the complaint was filed, the United States also filed a proposed consent decree agreement. The consent decree agreement, which was approved by a federal district judge on August 26, requires the county to establish an effective Spanish language program and authorizes the use of federal observers to monitor the county's elections.

United States v. City of Boston, MA (D. Mass. 2005)

On July 29, 2005, the United States filed a complaint against the City of Boston under Sections 2 and 203 of the Voting Rights Act. The complaint alleges that the city's election practices and procedures discriminate against members of language minority groups, specifically persons of Spanish, Chinese, and Vietnamese heritage, so as to deny and abridge their right to vote in violation of Section 2. The suit also alleges that the City has violated Section 203 by failing to make all election information available in Spanish to voters who need it.

United States v. City of Azusa, CA (C.D. Cal. 2005)

On July 14, 2005, the United States filed a complaint alleging that the City of Azusa violated Section 203 of the Voting Rights Act. The complaint claimed that the city failed to translate much of its election-related information into Spanish, as required by the Act. On the same day, that the complaint was filed, the United States also filed a proposed consent decree agreement. The consent decree agreement, was approved on August 26 by a three judge federal court, requires the city to establish an effective Spanish language program and authorizes the use of federal observers to monitor the city's elections.

United States v. City of Paramount, CA (C.D. Cal. 2005)

On July 14, 2005, the United States filed a complaint alleging that the City of Paramount violated Section 203 of the Voting Rights Act. The complaint claimed that the city failed to translate much of its election-related information into Spanish, as required by the Act. On the same day, that the complaint was filed, the United States also filed a proposed consent decree agreement. The consent decree agreement, which was approved on August 23, requires the city to establish an effective Spanish language program and authorizes the use of federal observers to monitor the city's elections.

United States v. City of Rosemead, CA (C.D. Cal. 2005)

On July 14, 2005, the United States filed a complaint alleging that the City of Rosemead violated Section 203 of the Voting Rights Act. The complaint claimed that the city failed to translate most of its election-related information into

Spanish, Chinese, and Vietnamese or to provide bilingual assistance at polling sites in those languages, as required by the Act. On the same day that the complaint was filed, the United States also filed a proposed consent agreement. The consent decree agreement, was approved by a three judge court, and requires the city to establish effective Spanish, Chinese, and Vietnamese language election programs and authorizes the use of federal observers to monitor the city's elections.

United States v. Westchester County (S.D. NY 2005)

In this action, the United States alleged it its complaint that the county had violated both Section 203 of the Voting Rights Act by failing to have an effective Spanish language election program and Section 302 of the Help America Vote Act by failing to post the information required by the section to be posted in polling places. On July 19, 2005, a consent decree resolving both claims was approved by a three-judge court. The decree would require the county to provide a Spanish language election program and assure compliance with the Help America Vote Act. The decree would expire on August 7, 2007, but could be extended through December 31, 2008 on motion by the United States.

United States v. San Benito County (N.D. Cal. 2004)

In this action, the United States alleged in its complaint that the county had violated both Section 203 of the Voting Rights Act by failing to have an effective Spanish language election program and Section 302 of the Help America Vote Act by failing to post the information required by that section to be posted in polling places and by failing to provide the requisite written information regarding the process of casting a provisional ballot. The court entered a consent agreement, requiring the county to provide a Spanish language election program. The decree, which expires on December 31, 2006, provides that if the county is not complying with its requirements, the United States would have an additional 90 days to move for further relief.

United States v. San Diego County (S.D. Cal. 2004)

In this case, the United States' complaint alleged that the county's practices and procedures concerning Spanish heritage and Filipino voters violated Section 203 of the Voting Rights Act. The United States and the county agreed to a memorandum of agreement and a stipulated order, both of which were filed on June 23, 2004. The agreement provides for Spanish and Tagalog (Filipino) language election programs, and also a complete Vietnamese language program to serve a minority language group that narrowly missed the threshold for Section 203 coverage. The court signed the order, including an interlocutory order providing for the appointment of federal examiners and observers pursuant to Section 3 of the Act on July 7, 2004. The agreement expires on March 31, 2007; Section 3 coverage will expire following the 2006 general election, absent a motion for additional relief based on non-compliance by the county.

United States v. Ventura County (C.D. Cal. 2004)

The United States claimed that the county violated Section 203 of the Voting Rights Act. The complaint alleged that the county did not have sufficient bilingual polls officials and did not translate all election-related information into Spanish, as required by the Act. On September 2, 2004, the court entered a consent agreement, which requires the county establish an effective Spanish language election program. The decree, which expires on August 1, 2007, provides that if the county is not complying with the decree's requirements, the United States would have an additional 90 days to move for additional relief.

United States v. Brentwood Union Free School District (E.D. N.Y. 2004)

The United States alleged in its complaint that the Brentwood School District had violated Section 203 because it did not have sufficient bilingual election officials, did not translate all election-related information into Spanish, as required by the Act, and failed to adequately train its election officials to prevent hostile treatment of Hispanic voters who are limited-English proficient. On July 14, 2003, the court entered a consent agreement, which requires the county establish an effective Spanish language election program. The decree, which expires on January 31, 2007, also permits the assignment of federal observers to monitor school district elections.

United States v. Suffolk County (E.D. N.Y. 2004)

The United States alleged in its complaint that the county violated Section 203 by not having sufficient bilingual election officials, not translating all election-related information into Spanish, as required by the Act, and by failing to adequately train its election officials to prevent hostile treatment of Hispanic voters, who are limited-English proficient. On October 4, 2004, the court entered a consent agreement, which requires the county establish an effective Spanish language election program. The decree, which expires on January 31, 2007, also permits the assignment of federal observers to monitor county elections.

United States v. Yakima County (E.D. Wash. 2004)

In its complaint, the United States alleged that the county had violated Section 203 of the Voting Rights Act by not providing effective election-related materials, information, and/or assistance in Spanish to those persons who were limited English proficient. The United States and the county were able to resolve the matter with a consent agreement (decree) that required the county to establish an effective Spanish language election program. The decree, which was entered on September 14, 2004, will expire on December 31, 2006. However, if the county is not complying with the requirements of the decree, the United States would have an additional 90 days to move for additional relief.

United States v. Orange County (M.D. Fla. 2002)

In this action, the United States alleged in its complaint that the county had violated both Sections 203 and 208 of the Voting Rights Act by failing to have an effective Spanish language election program and by failing to allow voters their assistors of choice. The court entered a consent agreement, requiring the county to provide a Spanish language election program and requiring the county to ensure that voters could receive assistance. The decree expires on January 31, 2005.

United States v. Bernalillo County (D.N.M. 1998)

In 1998, the United States filed its complaint alleging that Bernalillo County had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Navajo language, an American Indian language that is historically unwritten. The parties initially resolved this case that year through a consent decree that required the county to establish an effective Native American Election Information Program. On July 1, 2003, a three-judge federal court entered an order approving a Stipulation which extended certain provisions of the consent decree through January 31, 2005.

United States v. Cibola County (D.N.M. 1993)

In its complaint, filed in 1993, the United States alleging that Cibola County had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Keresan and Navajo languages, American Indian languages that are historically unwritten. The parties initially resolved this case in 1994 through a stipulation and order that required the county to establish an effective Native American Election Information Program. On May 3, 2004, a three-judge federal court entered an order approving a joint stipulation, which modified the original one, and extended it through December 31, 2006.

United States v. New Mexico and Sandoval County (D.N.M. 1990)

The United States filed a complaint alleging that the State of New Mexico and Cibola County had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Keresan and Navajo languages, American Indian languages that are historically unwritten. The parties initially resolved this case that same year through a settlement agreement that required the state and county to implement a Native American Election Information Program. Pursuant to the agreement, the case was dismissed against the state defendants on December 31, 1990. On September 9, 1994, a three-judge federal court entered a consent decree proposed by the county and the United States, which modified the original Native American Election Information Program (NAEIP) and extended the modified program through September 9, 2004. On November 8, 2004, a three-judge court entered an order approving a joint stipulation between the county and the United States, which further modified the NAEIP and extended its

provisions through January 15, 2007.

United States v. Socorro County (D.N.M. 1993)

The United States initiated this action in 1993 with its complaint alleging that the county had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Navajo language, an American Indian language that is historically unwritten. The parties initially resolved this case in 1994 through a consent agreement that required the county to establish an effective Navajo language program. On July 13, 2004, a three-judge federal court issued an order extending the federal examiner provision of that consent agreement through December 15, 2004.

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LITIGATION BROUGHT BY THE VOTING SECTION

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- United States v. Osceola County, FL, (M.D. Fla 2005)
- United States v. Ike Brown and Noxubee County, (E.D. Miss 2005)
- United States v. Berks County, (E.D. Pa. 2003)
- United States v. Osceola County, (M.D. Fl. 2002)
- United States v. Alamosa County, (D. Colo. 2001)
- United States v. Crockett County, (W.D. Tenn. 2001)
- United States v. Charleston County, (D.S.C. 2001)
- United States v. City of Hamtramck, (E.D. Mich. 2000)
- United States v. Upper San Gabriel Valley Municipal Water District, (C.D. Cal. 2000)
- United States v. Morgan City, (W.D. La. 2000)
- Grieg v. City of St. Martinville, (W.D. La. 2000)
- United States v. City of Santa Paula, (C.D. Cal. 2000)
- United States v. State of South Dakota, (D.S.C. 2000)
- United States v. Roosevelt County, (D. Mont. 2000)
- United States v. Town of Cicero, (N.D. Ill. 2000)
- United States v. Benson County, (D.N.D. 2000)
- United States v. City of Passaic, (D.N.J. 02/03/00)
- United States v. Blaine County, (D. Mont. 1999)
- United States v. Marion County, (M.D. Ga. 1999)
- United States v. Passaic City and Passaic County, (D.N.J. 1999)
- United States v. Day County and Enemy Swim Sanitary District, (D.S.D. 1999)
- United States v. City of Lawrence, (D. Mass. 1998)

Cases Raising Claims Under the Language Minority Provisions of the Voting Rights Act *

- United States v. Ector County, TX, (W.D. Tex. 2005)
- United States v. City of Boston, MA, (D. Mass. 2005)
- United States v. City of Azusa, CA (C.D. Cal. 2005)
- United States v. City of Paramount, CA (C.D. Cal. 2005)
- United States v. City of Rosemead, CA (C.D. Cal. 2005)
- United States v. Westchester County (S.D.N.Y.)
- United States v. Ventura County (C.D. Cal. 2004)
- United States v. Yakima County (E.D. Wash. 2004)
- United States v. Suffolk County (E.D.N.Y. 2004)
- United States v. San Diego County (S.D. Cal. 2004)

- United States v. San Benito County (N.D. Cal. 2004)
- United States v. Brentwood Union Free School District (E.D.N.Y. 2003)
- United States v. Berks County (E.D. Pa. 2003)
- United States v. Orange County (M.D. Fla. 2002)
- United States v. City of Lawrence (D. Mass. 1998)
- United States v. Passaic City and Passaic County (D. N.J. 1999)
- United States v. Bernalillo County (D. N.M. 1998)
- United States v. Alameda County (N.D. Cal. 1995)
- United States v. Socorro County (D. N.M. 1993)
- United States v. Cibola County (D. N.M. 1993)
- United States v. Metropolitan Dade County (S.D. Fla. 1993)
- United States v. State of Arizona (D. Ariz. 1988)
- United States v. State of New Mexico and Sandoval County (D. N.M. 1988)
- United States v. McKinley County (D. N.M. 1986)
- United States v. San Juan County (D. Utah 1983)
- United States v. San Juan County (D. N.M. 1979)
- United States v. City and County of San Francisco (N.D. Cal. 1978)

Cases Raising Claims Under The National Voter Registration Act *

- United States v. Pulaski County (E.D. Ark. 2004)
- United States v. State of New York (N.D.N.Y. 2004)
- United States v. State of Tennessee, (M.D. Tenn. 2002)
- United States v. City of St. Louis, (E.D. Mo. 2002)
- United States v. State of New York, (E.D.N.Y. 1996)
- United States v. State of Michigan, (W.D. Mich. 1995)
- Commonwealth of Virginia v. United States, (E.D. Va 1995)
- United States v. State of Mississippi, (S.D. Miss. 1995)
- United States v. Commonwealth of Pennsylvania, (E.D. Pa. 1995)
- United States v. State of Illinois, (N.D. Ill. 1995)
- Condon v. Reno, (D.S.C. 1995)
- Wilson v. United States, (N.D. Cal 1994)

Cases Raising Claims Under The Uniformed and Overseas Citizens Absentee Voting Act *

- U.S. v. State of Georgia, (N.D. Ga. 2004)
- U.S. v. Commonwealth of Pennsylvania, (M.D. Pa. 2004)
- U.S. v. Oklahoma, (W.D. Okla. 2002)
- U.S. v. Texas, (W.D. Tex. 2002)
- U.S. v. State of Michigan, (W.D. Mich 2000)
- U.S. v. New York City Board of Elections, (S.D.N.Y. 1998)
- U.S. v. State of Oklahoma, (W.D. Okla. 1998)
- U.S. v. State of Mississippi, (S.D. Miss. 1996)
- U.S. v. Orr, (N.D. Ill. 1995)
- U.S. v. State of New Jersey, (D.N.J. 1994)
- U.S. v. State of Michigan, (W.D. Mich. 1993)
- U.S. v. New York City Board of Elections, (S.D.N.Y. 1992)
- U.S. v. State of Delaware, (D. Del. 1992)
- U.S. v. State of Michigan, (W.D. Mich. 1992)
- U.S. v. State of New Jersey, (D.N.J. 1992)
- U.S. v. State of Wisconsin, (W.D. Wis. 1992)

- U.S. v. State of Texas, (W.D. Tex. 1991)
- U.S. v. State of Tennessee, (M.D. Tenn. 1990)
- U.S. v. State of Colorado, (D. Colo. 1990)
- U.S. v. State of Tennessee, (M.D. Tenn. 1990)
- U.S. v. State of New Jersey, (D.N.J. 1990)
- U.S. v. State of Mississippi, (S.D. Miss. 1989)
- U.S. v. State of Oklahoma, (W.D. Okla. 1988)
- U.S. v. State of Wyoming, (D. Wyo. 1988, 1989)
- U.S. v. State of Michigan, (W.D. Mich. 1988)
- U.S. v. State of Idaho, (D. Idaho 1988)
- U.S. v. Commonwealth of Pennsylvania, (M.D. Pa. 1988)

Cases Raising Claims Under The Help America Vote Act (HAVA) *

- U.S. v. Westchester County, NY (S.D. N.Y. 2005)
- U.S. v. San Benito County, CA (N.D. Cal 2004)

* Please note that some of these files are in pdf format only, if you have difficulty accessing the forms because of a disability, please contact the Voting Section at 1-800-253-3931 to receive a printed copy of the form.

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About Federal Examiners and Federal Observers

The federal courts and the Attorney General may certify counties or other political subdivisions of a State for federal examiners; federal observers may be assigned to those political subdivisions.

The Act permits federal observers to monitor procedures in polling places and at sites where ballots are counted. The certification of a political subdivision for federal examiners is a prerequisite to the assignment of federal observers. The Voting Section conducts investigations to determine whether it is likely that minority voters will not be allowed to cast a ballot without interference in particular polling places on election day, and therefore whether federal observers are needed. If so, the Voting Section notifies the Office of Personnel Management (OPM) that federal observers are needed, and OPM recruits, and then, in cooperation with Voting Section attorneys, supervises the people who serve as federal observers. Federal observers write reports of the activities they witness in polling places and provide those reports to the Voting Section. The Voting Section will assess these reports to determine whether further enforcement of the Voting Rights Act is needed in the political subdivision.

Federal Examiners

The Voting Rights Act provides for the appointment of federal examiners by order of a federal court pursuant to Section 3(a), or, with regard to political subdivisions covered under Section 4 of the Voting Rights Act, upon the certification by the Attorney General, pursuant to Section 6. A total of 148 counties and parishes in 9 states have been certified by the Attorney General pursuant to Section 6: Alabama (22 counties), Arizona (3), Georgia (29), Louisiana (12), Mississippi (50), New York (3), North Carolina (1), South Carolina (11) and Texas (17).

Political subdivisions certified for federal examiners under Section 6 of the Voting Rights Act

State	Subdivision	Date certified
Alabama (22)	Autauga County	10/29/65
	Barbour County	10/06/94
	Bullock County	11/06/78
	Chambers County	07/27/84

	Choctaw County	05/30/66
	Conecuh County	08/28/80
	Crenshaw County	12/29/86
	Dallas County	08/09/65
	Elmore County	10/29/65
	Greene County	10/29/65
	Hale County	08/09/65
	Jefferson County	01/20/66
	Lowndes County	08/09/65
	Marengo County	08/09/65
	Monroe County	08/31/84
	Montgomery County	09/29/65
	Perry County	08/18/65
	Pickens County	09/01/78
	Russell County	09/25/78
	Sumter County	05/02/66
	Talladega County	10/31/74
	Wilcox County	08/18/65
Arizona (3)	Apache County	10/31/86
	Navajo County	10/31/86
	Yuma County	02/26/91
Georgia (29)	Baker County	11/04/68
	Baldwin County	08/07/84
	Brooks County	07/11/90
	Bulloch County	07/30/80
	Burke County	11/07/78
	Butts County	08/25/82
	Calhoun County	07/30/80
	Chattahoochee County	08/07/84
	Early County	07/30/80
	Hancock County	11/07/66
	Jefferson County	08/07/84
	Johnson County	07/30/80
	Lee County	03/23/67
	McIntosh County	07/20/92
	Meriwether County	08/08/76
	Mitchell County	07/30/80
	Peach County	11/04/72
	Pike County	08/07/84
	Randolph County	08/10/92
	Screven County	03/23/67

	Stewart County	08/03/76
	Sumter County	07/30/80
	Talbot County	08/04/88
	Taliaferro County	11/04/68
	Telfair County	07/30/80
	Terrell County	03/23/67
	Tift County	07/30/80
	Twiggs County	09/03/74
	Worth County	08/07/84
Louisiana (12)	Bossier Parish	03/23/67
	Caddo Parish	03/23/67
	De Soto Parish	03/23/67
	East Carroll Parish	08/09/65
	East Feliciana Parish	08/09/65
	Madison Parish	08/12/66
	Ouachita Parish	08/18/65
	Plaquemines Parish	08/09/65
	Sabine Parish	09/27/74
	St. Helena Parish	08/16/72
	Tensas Parish	10/22/99
	West Feliciana Parish	10/29/65
Mississippi (50)	Adams County	09/12/91
	Amite County	03/23/67
	Benton County	09/24/65
	Bolivar County	09/24/65
	Carroll County	12/20/65
	Chickasaw County	08/02/99
	Claiborne County	04/12/66
	Clay County	09/24/65
	Coahoma County	09/24/65
	Copiah County	12/09/83
	Covington County	08/06/79
	De Soto County	10/29/65
	Forrest County	06/01/67
	Franklin County	03/23/67
	Greene County	08/06/79
	Grenada County	07/20/66
	Hinds County	10/29/65
	Holmes County	10/29/65
	Humphreys County	09/24/65
	Issaquena County	06/01/67

	Jasper County	04/12/66
	Jefferson County	10/29/65
	Jefferson Davis County	08/18/65
	Jones County	08/18/65
	Kemper County	10/31/74
	Leake County	07/26/99
	Leflore County	08/09/65
	Lowndes County	08/19/83
	Madison County	08/09/65
	Marshall County	08/05/67
	Monroe County	09/12/91
	Neshoba County	10/29/65
	Newton County	12/20/65
	Noxubee County	04/12/66
	Oktibbeha County	03/23/67
	Pearl River County	04/29/74
	Quitman County	10/29/80
	Rankin County	04/12/66
	Scott County	05/17/93
	Sharkey County	06/01/67
	Simpson County	12/20/65
	Sunflower County	04/29/67
	Tallahatchie County	08/14/71
	Tunica County	10/31/75
	Walthall County	10/29/65
	Warren County	12/20/65
	Washington County	08/08/83
	Wilkinson County	08/05/67
	Winston County	04/12/66
	Yazoo County	10/28/71
New York (3)	Bronx County	11/01/85
	Kings County	11/01/85
	New York County	11/01/85
North Carolina (1)	Edgecombe County	05/03/84
South Carolina (11)	Bamberg County	10/10/84
	Calhoun County	09/28/84
	Chester County	06/08/90
	Clarendon County	10/29/65
	Colleton County	10/10/84
	Darlington County	11/06/78
	Dorchester County	10/29/65

	Hampton County	10/10/84
	Marion County	06/26/78
	Richland County	09/28/84
	Williamsburg County	09/28/84
Texas (17)	Atascosa County	10/29/80
	Bee County	10/29/76
	Crockett County	08/11/78
	Dallas County	04/05/84
	El Paso County	11/06/78
	Fort Bend County	04/28/76
	Frio County	10/29/76
	Galveston County	12/05/96
	Hildalgo County	11/04/88
	Jefferson County	12/05/96
	La Salle County	10/29/76
	Medina County	04/28/76
	Reeves County	05/05/78
	Titus County	11/01/02
	Uvalde County	04/28/76
	Victoria County	03/31/87
	Wilson County	04/28/76

Section 3 provides that a federal court may authorize the appointment of federal examiners by the Director of the Office of Personnel Management in accordance with Section 6 to serve for such period of time as the court deems appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment. A total of 18 political subdivisions in 11 states are currently certified by federal court order: California (6), Illinois (1), Louisiana (1), Michigan (1), New Jersey (1), New Mexico (2), New York (3), Pennsylvania (1), South Dakota (1), Texas (1), and Washington (1).

Counties that are eligible for federal examiners as a result of court orders under Section 3(a) of the Voting Rights Act

State	**Subdivision**	**Terms**
California	City of Rosemead	9/8/05 order, effective until 8/6/07
California	City of Paramount	8/23/05 order, effective until 8/6/07
California	City of Azusa	8/26/05 order, effective until 8/6/07
California	San Benito County	10/1/04 order, effective until 12/31/06
California	San Diego County	7/7/04 order, effective until 3/31/07
California	Ventura County	9/2/04 order, effective until 8/1/07
Illinois	Town of Cicero	10/23/00 order, effective until 12/31/05
Louisiana	St. Landry Parish	12/5/79 order, effective "until further order of this Court"
Michigan	City of Hamtramck	1/28/04 order, effective until 1/31/06 (originally covered by 8/7/00 order)

New Jersey	Passaic County	4/19/04 order, effective until 12/31/05 (originally covered by 6/2/99 and 7/12/99 orders)
New Mexico	Cibola County	5/3/04 order, effective through 12/31/06 (previously covered by 4/21/94 and 12/17/84 orders)
	Sandoval County	11/8/04 order, effective through 1/15/07 (previously covered by 12/17/84, 5/17/90 and 9/9/94 orders)
New York	Brentwood Union Free School District	7/14/03 order, effective through 1/31/07
New York	Suffolk County	9/27/04 order, effective until 1/31/08
	Westchester County	7/18/05 order, effective through 8/7/07
Pennsylvania	Berks County	8/21/03 order effective through 6/30/07 (originally covered by 3/18/03 order)
South Dakota	Buffalo County	2/12/04 order, effective until 1/1/13
Texas	Ector County	8/26/05 order, effective until 8/6/07
Washington	Yakima County	9/7/04 order, effective until 12/31/06

Federal Observers

Section 8 of the Voting Rights Act, provides for the appointment of federal observers within political subdivisions certified by the Attorney General or by order of a federal court pursuant to Section 3 of the Voting Rights Act. The monitoring of elections by federal observers is an important aspect of the Voting Section's enforcement efforts. In some instances there are concerns about racial discrimination in the voting process; other times monitoring is done to ensure compliance with bilingual election procedures. The success of the federal observer program in consistently achieving both of these objections is possible by the long-term commitment of the United States Office of Personnel Management to recruit, train, and supervise the people, mostly federal employees, who serve as neutral and impartial observers of election-day procedures, and by cooperation and coordination with state and local election officials.

Sometimes, the Department learns of election-related problems that may appear to warrant the assignment of federal observers but there is insufficient time to either arrange for the assignment or to develop the factual predicate necessary for the certification of the political subdivision. In addition, such problems may occur in jurisdictions that are not eligible for such certification because they are not covered under Section 4. Under these circumstances, one or more attorneys may be assigned to monitor the election and maintain contact with state and local officials. Thus, from time to time attorneys have monitored elections either by telephone from Washington, D.C. or in person at the site of the election.

How to Request Monitoring of an Election by the Civil Rights Division

- Contact the Voting Section at:

  Phone: 202-307-2767
  Toll-free: 800-253-3931
  Facsimile: 202-307-3961

  John K. Tanner, Section Chief: 202-307-2767
  Gaye Tenoso, Special Counsel: 202-307-6302

- Provide specific and detailed information regarding the need for a federal presence, including:
    - Any incidents of discrimination or interference with the right to vote in connection with upcoming or recent elections;
    - Any complaints to local or state officials about the incidents and what, if anything, was done in response;
    - Names and contact information for victims of discrimination or other violations of federal voting rights law;
    - Names and contact information for any persons who have first-hand knowledge of the incidents;
    - Names and contact information, if possible, for persons alleged to have engaged in discrimination or other violations of federal voting rights law;
    - Locations where incidents have occurred.
    - As much lead time as possible is important in order to permit pre-election investigations and to make logistical and staffing arrangements.

Federally Registered Voters

Under procedures enacted in Sections 7 and 9 of the Voting Rights Act, federal examiners may assist in getting qualified citizens on the voter registration rolls. Although it has not been necessary for federal examiners to participate in voter registration in recent years. There remained 112,078 federally-registered voters in five states: Alabama (50,566), Georgia (2,253), Louisiana (12,289), Mississippi (42,388) and South Carolina (4,582) as of June 30, 2005.

Termination of Federal Examiner Listing Procedures

Section 13 of the Voting Rights Act, 42 U.S.C. §1973k, sets forth the procedures by which a political subdivision where a federal examiner has been appointed due to certification by the Attorney General, may petition the Attorney General for the termination of federally registered voter listing procedures. The political subdivision may petition the Attorney General to request the Director of the Census to take a survey or census as may be appropriate for the making of a determination by the Attorney General of whether the listing should be terminated. The Attorney General may terminate listing procedures for a jurisdiction if:

1. the Director of the Census has determined that more than 50% of the nonwhite persons of voting age are registered to vote,

2. all persons listed by an examiner have been placed on the voting registration roll, and

3. there is no longer reasonable cause to believe that persons will be deprived or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in Section 4(f)(2) of the Voting Rights Act for language minority groups.

A political subdivision may also file an action for a declaratory judgment in the United States District Court for the District of Columbia that its federal examiner listing procedures should be terminated. The district court additionally has jurisdiction to require a survey or census if it deems that the Attorney General's refusal to request such a survey or census is arbitrary or unreasonable.

Any currently certified political subdivision that would like to submit a petition for termination of the federal examiner listing procedures may file such petition with the Voting Section:

Chief, Voting Section
Civil Rights Division, Department of Justice
950 Pennsylvania Ave., N.W.
Room 7254 NWB
Washington, DC 20530

You can call, toll-free, at 800/253-3931.

Last Revised - September 12, 2005

IMPORTANT NOTES

Articles and Editorials on the Voting Rights Act Reauthorization

(in alphabetical order by author)

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Roger Clegg, "Revise Before Reauthorizing," *National Review Online*, Aug. 4, 2005.

Brian DeBose, "Blacks Seek Renewal of 'Sacred' Law; Congress Ponders and Early Reauthorization of the Landmark Voting Rights Act of 1965," *The Washington Times*, Aug. 21, 2005, p. A1.

Brian DeBose, "GOP to Start Voting Act Debate," *The Washington Times*, July 20, 2005.

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Abigail Thernstrom and Edward Blum, "Crossing Over to Freedom," *Houston Chronicle*, Aug. 7, 2005.

Abigail Thernstrom and Edward Blum, "Do the Right Thing," *The Wall Street Journal*, July 15, 2005, p. A10.

Jonathan Tilove, "Voting Rights Act Faces Reauthorization Amid Topsy-Turvy Politics," *Newhouse News Service*, Aug. 3, 2005.

"Polls Should be Made Easily Accessible to All Citizens; Voting Rights," *The Kansas City Star*, Aug. 2, 2005, p. B7.

Reports, Statements, and Press Releases

Stuart Comstock-Gay, executive director, National Voting Rights Institute, "Ballot Box Equality," <http://www.tompaine.com/print/ballot_box_equality.php>.

Alberto Gonzales, Attorney General, Prepared Remarks at the American Bar Association House of Delegates, Aug. 8, 2005.

Lawyers' Committee for Civil Rights Under Law, "Preserving a Fundamental Right: Reauthorization of the Voting Rights Act," June 2003.

National Public Radio, "Stories of the Voting Rights Act," *Talk of the Nation with Neal Conan*, Aug. 2, 2005.

National Commission on the Voting Rights Act and the Lawyers Committee for Civil Rights Under Law, "Goals of the National Commission on the Voting Rights Act."

Bradley J. Schlozman, Acting Assistant Attorney General for Civil Rights, Remarks on the 40th Anniversary of the Voting Rights Act of 1965, July 27, 2005.

"Sensenbrenner Announces Extensive Hearings on Voting Rights Act Extension Later this Year," press release, Sept. 23, 2005.

"Sensenbrenner to Introduce 25-Year Voting Rights Extension Litigation, Calls for Bipartisan Approach to Civil Rights Issues Delivers Remarks Today at the NAACP's 96th Annual Convention," press release, July 10, 1005.

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The Washington Post

July 10, 2005 Sunday
Final Edition

SECTION: A Section; A05

LENGTH: 831 words

HEADLINE: A Push to Extend Voting Rights Act;
Rep. Sensenbrenner Tells NAACP He Will Work to Renew Provisions of Law

BYLINE: Mike Allen, Washington Post Staff Writer

BODY:

House Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-Wis.) plans to announce today at the NAACP's annual convention that he will work to extend portions of the Voting Rights Act that are scheduled to expire in 2007, congressional aides said yesterday.

Civil rights leaders recently reminded President Bush about the expiring passages and have been working to get congressional leaders' attention for the issue. Republican National Committee Chairman Ken Mehlman has made outreach to minorities and support for enforcement of the Voting Rights Act a hallmark of his chairmanship.

Some blacks have continued to express resentment toward Republicans after problems they said they encountered in voting in the 2000 and 2004 elections. Bush improved his performance among black voters from about 9 percent in his first election to at least 11 percent last November, according to exit polls.

Sensenbrenner, speaking to a plenary session at the NAACP's 96th annual convention in Milwaukee, said he will work to make sure the extensions are passed during the current two-year Congress.

"While we have made progress and curtailed injustices thanks to the Voting Rights Act, our work is not yet complete," Sensenbrenner said in a prepared text. "We cannot let discriminatory practices of the past resurface to threaten future gains. The Voting Rights Act must continue to exist -- and exist in its current form."

Hilary O. Shelton, director of the NAACP's Washington office, said that it was "very good" to hear about Sensenbrenner's remarks and that he is anxious to work with him. Shelton said the act should be extended in its current form "at the very least," but perhaps should be expanded.

"There also needs to be a commitment to see to it that as we reauthorize, we actually strengthen it so that all Americans have the right to register, to cast an unfettered vote and to have that vote counted," Shelton said.

Among the provisions scheduled to expire at the end of 2007 is one that requires certain states and precincts -- most of them in the South, including all of Virginia -- to get the Justice Department to give "pre-clearance" to

changes in voting time, place or manner. The act's supporters call that one of its most crucial enforcement components.

Also set to expire is a section, added after the act's passage, requiring localities that have heavy populations of non-English speakers to provide ballots and instructions in other languages.

The Voting Rights Act of 1965 was a crucial tool in reducing racially discriminatory voting practices in southern states that had relied on literacy tests and other methods to deter blacks from registering to vote. President Lyndon B. Johnson introduced the legislation at a time of international outrage over brutality toward civil rights protesters in Selma, Ala., and now it is considered by scholars to be the most successful civil rights act ever passed by Congress.

The expiring provisions inspired an Internet rumor that blacks would lose the right to vote in 2007, and the false information became so widespread that the Justice Department issued a "clarification" saying that the basic prohibition against discrimination in voting is contained in the 15th Amendment to the Constitution and "does not expire at all; it is permanent."

Sensenbrenner noted that in his office, he displays a pen President Ronald Reagan gave him in 1982 when he signed a bill extending the act for 25 years, after Sensenbrenner helped shepherd the legislation through the House. "In the 1960s, all major civil rights legislation was passed with strong bipartisan support," the chairman said. "Lately, this has not been the case as some have tried to use the issue of civil rights to obtain a partisan advantage. This is both wrong and shortsighted."

House Speaker J. Dennis Hastert (R-Ill.) included **reauthorization of the Voting Rights Act** among his immediate priorities when he outlined his upcoming agenda on the House floor before the Fourth of July district work period.

Todd F. Gaziano, director of the Center for Legal and Judicial Studies at the Heritage Foundation, called the act "one of the most successful and effective pieces of legislation passed in the 20th century," but added that "most of its beneficial effects occurred in the first five years."

"It continues to have some continuing benefits but some of the provisions are kind of quaint and anachronistic and possibly have outlived their usefulness," Gaziano said. He said the pre-clearance provision is the one that should receive the most scrutiny and debate. He said it should be updated or eliminated. If it is continued, he said, it should be "universalized" and apply throughout the country.

The Baltimore-based NAACP, which calls itself the nation's oldest and largest civil rights organization, claims a membership of more than 500,000 and said more than 8,000 people are expected at the seven-day convention, which opened yesterday.

LOAD-DATE: July 10, 2005

99 of 185 DOCUMENTS

Newsday (New York)

July 19, 2005 Tuesday
ALL EDITIONS

SECTION: NEWS; Pg. A35

LENGTH: 468 words

HEADLINE: Voting act gets early lift from House

BYLINE: BY INDIA AUTRY. WASHINGTON BUREAU

BODY:

House leaders are giving early support for renewal of potentially controversial voting rights legislation, but civil rights leaders are concerned that not enough will be done to reduce voting irregularities in minority districts.

Rep. James Sensenbrenner (R-Wis.), chairman of the House Judiciary Committee, announced at the NAACP convention earlier this month his support for a 25-year **reauthorization** of parts of the 1965 **Voting Rights Act,** which will expire in 2007.

Civil rights leaders are pleased with Congress' willingness to renew the act, said Hilary Shelton, director the NAACP's Washington bureau. But they also want to see greater enforcement of the "pre-clearance provision," which requires certain states to clear changes of voting practices, such as redistricting, with the Department of Justice.

Shelton said that there also may need to be additional provisions in order to secure the votes of minorities and others. "It's key to us to see that we have a reauthorization that meets all needs and helps guarantee as broadly as possible that every American vote is going to be counted," Shelton said.

Shelton said he hoped the hearings to come in the fall on the legislation would address concerns about minority disenfranchisement in Florida in the 2000 election and Ohio in 2004.

Civil rights activists and some Democrats say there were not enough working voting machines in these states' minority districts at election time, making the ballot less accessible and votes less likely to be counted.

But Sensenbrenner, who led reauthorization in the 1980s, is reluctant to alter the 1965 act because he thinks changes would be too difficult to pass through Congress, said Mike Stokke, deputy chief of staff for House Speaker Dennis Hastert (R-Ill.).

John Samples, director for the Center of Representative Government at the Cato Institute, a think tank, said Republicans could get away with not addressing minorities' complaints in recent elections because many view them as political, not as a matter of basic civil rights. "The other issues have a more partisan feel to them," he said. "You can oppose those without being accused of racism from the average suburban voter."

Civil rights leaders predicted a struggle with Congress to keep the pre-clearance provision. But lawmakers have backed the others more quickly than expected.

The law applies mostly to the South, and some see pre-clearance as outdated and unnecessarily restrictive, Samples said. But Republicans know that a claim to states' rights in regard to civil rights would do more harm than good, he said. Other parts of the legislation up for renewal are the requirement for bilingual election materials in areas with a high population of non-English speakers and the attorney general's ability to send federal observers to monitor elections.

LOAD-DATE: July 19, 2005

Jet

August 22, 2005

SECTION: NATIONAL REPORT; Pg. 10

LENGTH: 905 words

HEADLINE: Thousands March In Atlanta For **Reauthorization** Of The 1965 **Voting Rights Act**

BYLINE: Kevin Chappell

BODY:

In a city steep in civil rights history, along a street named after the father of the Freedom Movement, they came with a purpose.

On the 40th anniversary of the Voting Rights Act, Blacks and Whites, Asians and Hispanics, young and old joined arm-in-arm, forming a human stream down Atlanta's Martin Luther King Drive to not only celebrate arguably the most successful piece of civil rights legislation ever, but also to warn that the fight is far from over.

The "Keep the Vote Alive" march was organized by the Rev. Jesse Jackson, head of the Rainbow/PUSH Coalition, as a way to pressure Congress to keep intact the law's key provisions that are set to expire in 2007.

An estimated 20,000 people came from across the country, joining civil rights leaders in a march from the federal courthouse to a rally at Herndon Stadium on the campus of Morris Brown College.

Joining Jackson on the front line were civil rights icons like Rep. John Lewis (D-GA), Rep. Maxine Waters (D-CA), former ambassador Andrew Young and former SCLC head Joseph Lowery. Legendary activists Dick Gregory and Harry Belafonte also marched, as did music pioneer Willie Nelson.

They carried pro-voting rights signs, sang and chanted.

The Voting Rights Act of 1965 abolished tactics, such as literacy tests, that had been used to keep Blacks from registering and voting. It has since been expanded to include other minorities and also contains special provisions for guaranteeing voting rights in areas of the country that have a history of discrimination, which allowed federal oversight and intervention in those areas. Congress inserted an expiration date on these provisions so they could be reevaluated as social conditions changed, and renewed if necessary.

While the right to vote is the law of the land and not at question, two key provisions of the **Voting Rights Act** are up for **reauthorization.** The one most likely to spark controversy is Section 5. It requires nine states (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Virginia and Texas), and parts of seven other states (California, Florida, Michigan, New Hampshire, New York, North Carolina and South Dakota) -- each with a long history of voter discrimination before 1965 -- to get federal approval before en-

acting any changes in their electoral laws. That includes alterations in the boundaries of congressional districts and moving a polling station.

Reauthorization opponents say that Section 5 was intended to be a temporary measure, and conditions have changed dramatically since 1965, adding that Section 5 is not needed because the 14th Amendment provides the same protection.

The other -- Section 203 -- requires election officials to assist immigrant voters who don't speak English by providing them with voting material in their native language.

Republican and Democratic leaders in Congress have said they would introduce legislation reauthorizing the provisions of the act this fall. But Jackson and other march organizers want to ensure that the act will be reauthorized intact, and even strengthened to lessen the likelihood of a judicial challenge.

At the rally in Herndon Stadium, Jackson led the crowd in "extend-the-vote" chants. "Today is a great historic moment in our struggle," said Jackson, adding that Blacks have faced gerrymandering, annexation, role purging, gentrification, and intimidation. "We plan to keep the pressure on."

As helicopters flew overhead and police blocked traffic, the three-hour rally mixed passionate speakers with performances by two Grammy winners.

John J. Sweeney, president of the AFL-CIO, spoke about the intertwining history of Blacks and organized labor. "There is no more precious right than the right to vote," he said. "We believed that 40 years ago, when we used the combined power of civil rights, labor, religion, women's rights and student activism to pass the Voting Rights Act. We believe it still today and we will use our combined power again and again to defend the freedom of every citizen to participate fully in our democracy."

House Leader Rep. Nancy Pelosi (D-CA) also spoke to the crowd, thanking Jackson for his efforts to organize the march and expressing the importance of protecting the democratic process. "We are here to make sure that in every area of voting there is fairness and every vote is counted," she said to the roar of those gathered. "It's about respect for the process."

Speaking to the crowd, Waters said, "I am so excited to be here today. We didn't come to party. We didn't come to play. We came to speak truth to power. We came to take care of the people's business. We are here 40 years later to carry out the dream of Martin Luther King Jr."

Newly appointed NAACP President Bruce Gordon told the gathering, "This is a nation that has invested billions of dollars and put its fellow citizens' lives at risk so that it could extend democracy to other countries. . . If they should have that freedom, and I think that they should, then why shouldn't we here have the same rights and freedoms."

Between speakers, Stevie Wonder spoke to the gathering and sang *What the Fuss*, while Grammy-winning artist John Legend had the crowd in a frenzy with his hit, *Ordinary People*.

Others in attendance included: television Judge Greg Mathis, radio personality Tom Joyner, and several members of the Congressional Black Caucus.

GRAPHIC: Picture 1, Civil rights icon Rep. John Lewis (D-GA) and Rep. Maxine Waters (D-CA), legendary entertainer Harry Belafonte, the Rev. Jesse Jackson, House Leader Rep. Nancy Pelosi (D-CA) and SCLC President Charles Steele, lead the march in Atlanta for the **reauthorization of the Voting Rights Act.**, AP; Picture 2, Joining the front line of the historic "Keep the Vote Alive" march are

civil rights veterans Evelyn and Joseph Lowery, Rep. John Conyers (D-MI) and AME Bishop Vashti McKenzie., Fred Watkins; Picture 3, Over 20,000 people from various civil rights groups across the nation came together in Atlanta for the 40th anniversary of the Voting Rights Act., Barry Williams/Getty Images; Picture 4, Marchers gathered by the thousands in Atlanta's Herndon Stadium where they chanted "extend the vote" and were addressed by U.S. Reps. Cynthia McKinney, Charles Rangel and other Black leaders. Stevie Wonder energized the crowd with his song, What The Fuss.; Picture 5, Cynthia McKinney; Picture 6, Charles Rangel; Picture 7, no caption, Pictures 4 through 7, Fred Watkins

LOAD-DATE: August 24, 2005

political news

Gonzales: US to work on renewing Voting Rights Act (Reuters)

Tue Aug 2nd 2005 at 6:09 pm ET

By Deborah Charles

AUSTIN, Texas (Reuters) - The Bush administration will work to extend the 1965 Voting Rights Act, passed 40 years ago at the height of the civil rights movement to guarantee the right to vote to blacks, Attorney General Alberto Gonzales said on Tuesday.

In a speech marking the anniversary of the landmark legislation, Gonzales indicated the administration would support renewal of parts of the act that expire in 2007 but give no details.

Speaking at the Lyndon Baines Johnson Library and Museum, which houses the papers of the president who signed the act, Gonzales said President Bush "is committed to the basic ideals embodied in this legislation."

"The Voting Rights Act has been enormously successful, but our work is never complete," he said. "For this reason, this administration looks forward to working with Congress on the reauthorization of this important legislation."

Parts of the act – including a provision that forces a number of mostly Southern states and counties to get pre-approval from Washington before changing voting times, places or methods – are set to expire in 2007 unless reauthorized by the federal government.

Gonzales would not give any details on whether the administration would support all expiring parts of the legislation or if it planned to suggest any changes.

"The basic protections do not expire," he said in an interview with Reuters after the speech.

ACT RENEWED THREE TIMES BEFORE

Johnson signed the Voting Rights Act shortly after black civil rights marchers were savagely beaten in Selma, Alabama. The law was designed mainly to eliminate the discriminatory voting practices that were endemic in then-segregated Southern states.

The act has been renewed three times since then with more protections for other minorities added.

Although the 15th Amendment to the Constitution guarantees the right to vote, the Voting Rights Act helps secure that right by implementing certain requirements, such as one that forbids states with a history of racial discrimination from changing their voting laws without approval of the U.S. Department of Justice.

Until its passage, Alabama, Mississippi and some other states in the South were able to deter blacks from registering to vote through the use of literacy tests and other methods.

Last week, civil rights activists including former Democratic presidential candidate Jesse Jackson urged the Bush administration to renew the expiring provisions, claiming it was necessary to prevent a return to widespread discrimination.

They said voting discrimination continues, 40 years after the violence in Selma.

Gonzales, the son of migrant workers from Mexico, said the Justice Department was committed to enforcing the act's protections to ensure equal opportunity to vote.

"It's important for our community," he said in the interview, referring to Hispanic Americans. One portion of the law that expires in 2007 assures bilingual language assistance in certain communities where citizens speak English as a second language.

Judiciary Committee Chairman James Sensenbrenner of Wisconsin has announced Republicans in the House of Representatives would draft a 25-year reauthorization of the act. Hearings on the issue will likely begin in the fall.

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Roger Clegg
NRO Contributing Editor

August 04, 2005, 8:26 a.m.

Revise Before Reauthorizing

The Voting Rights Act@40.

August 6 marks the 40th anniversary of the Voting Rights Act, and several provisions of the law are up for reauthorization in 2007. In a recent address to the NAACP's annual convention, House Judiciary Committee chairman James Sensenbrenner (R., Wisc.) endorsed an across-the-board reauthorization. He shouldn't have. While much of the act should stay in place, there are five major problems with it as currently written and interpreted.

First of all, it is bad to define "discrimination" in terms of results (i.e., whether racial proportionality is achieved) rather than in terms of intent (i.e., whether an action is taken because of race). The Voting Rights Act used to mean the latter, but in 1982 was amended to include the former as well.

As a result, a state that adopts a neutral rule, without discriminatory animus, and applies it evenhandedly can still be in violation of the Voting Rights Act if the Justice Department or a federal judge finds that the rule "results" in one race being better off than another and there is not a strong enough state interest in the rule.

For instance, suppose that a state decides that it wants to allow voter registration over the Internet, in addition to other ways of registering. There is nothing about race in the new procedure, no evidence that it was adopted with an eye toward helping one race more than another, and no evidence that it is being implemented in a discriminatory way. But suppose that more whites, proportionately, use the procedure than blacks. The state is therefore vulnerable to a claim that its new procedure "results" in racial discrimination in violation of the Voting Rights Act.

So, the act should be changed back to its pre-1982 language, to require a showing of actual racial discrimination — that people are being treated differently *because* of race.

Second, the Voting Rights Act now requires — or, more accurately, has been interpreted to require — the maintenance and even the creation of racially defined districts. This is a bad thing. One would think that our civil-rights laws would be designed to end discrimination, with the happy byproduct of facilitating integration. Instead, the Voting Rights Act encourages racial gerrymandering, which is both discriminatory and leads to segregation.

Ironically, the Supreme Court made clear in a series of decisions in the 1990s that the Constitution itself does not allow racial gerrymandering, meaning the creation of districts to serve racial constituencies. (Where race is used as a means to achieve politically gerrymandered districts, the Court has been more forgiving; in other words, it is one thing when the state figures that blacks are likely to vote Democratic and therefore zigs and zags to take this political fact of life into account — assuming that race is the best proxy for voting behavior available — but something else if the zigging and zagging is to create a black-

controlled district for the very reason that the state wants a black-controlled district.) Yet much of the jurisprudence of the Voting Rights Act now requires exactly that kind of gerrymandering. Under Section 2 of the act, majority-minority districts must be drawn if the three-part test set out by the Supreme Court's 1986 decision in *Thornburg* v. *Gingles* is met, absent unusual circumstances; under Section 5, if a majority-minority district existed once, it — or some similar racial "edge" — must be preserved in perpetuity.

So, the law should be amended to make clear that there is no requirement that districts be drawn with the racial bottom line in mind — and, indeed, that such racial gerrymandering is in fact illegal.

Third, the Voting Rights Act as interpreted by the courts literally denies the equal protection of the law — that is, it provides legal guarantees to some racial groups that it denies to others. A minority group may be entitled to have a racially gerrymandered district, or be protected against racial gerrymandering that favors other groups; at the same time, other groups are not entitled to gerrymander, and indeed may lack protection against gerrymandering that hurts them. No racial group should be guaranteed safe districts or influence districts or some combination thereof unless other groups are given the same guarantee — and it is impossible to do so (and it is, in any event, a bad idea to encourage such racial obsession).

So, the act should be amended to make clear that it guarantees nothing for one racial group that it does not guarantee for all racial groups.

Fourth, in many circumstances the Voting Rights Act currently requires that ballots be made available in languages other than English — an odd provision, since the ability to speak English is generally required for naturalized citizens, and citizenship is generally required for voters. The provision does, however, remove another incentive for being fluent in English, which is the last thing the government should be doing. This provision in the act should be removed.

Finally, the whole mechanism requiring some jurisdictions to ask, "Mother, may I?" of the federal government before making any change in voting practices and procedures needs to be rethought. We should not continue to have such a "pre-clearance" mechanism at all, and in any event surely the current law — which singles out parts of the South and a just few districts elsewhere, notably in New York City and California — is out of date. This mechanism was considered "emergency" legislation when it was passed 40 years ago: Does it really make sense now to have a different law for Texas versus Arkansas, or Maryland versus Virginia, or New Mexico versus Arizona? This provision of the act needs to be removed or, at least, rewritten, so that troublesome districts are more fairly identified.

Celebrate the Voting Rights Act—but not without updating it for the 21st century.

— *Roger Clegg is general counsel of the Center for Equal Opportunity in Sterling, Va.*

The Washington Times

August 21, 2005 Sunday

SECTION: PAGE ONE; Pg. A01

LENGTH: 609 words

HEADLINE: Blacks seek renewal of 'sacred' law;
Congress ponders an early **reauthorization** of the landmark **Voting Rights Act** of 1965.

BYLINE: By Brian DeBose, THE WASHINGTON TIMES

BODY:

Congress ponders an early **reauthorization** of the landmark **Voting Rights Act** of 1965.

Many black Americans, no matter their economic or social status, view the Voting Rights Act of 1965 as "sacred." It is not uncommon to hear blacks refer to the landmark law in biblical terms.

Such reverence is why lawmakers are pushing for a 25-year reauthorization of the act, a full two years before three of its provisions are set to expire.

"I view it in terms ... as I would the Bible for African-American politicians, when you look at the 1992 elections and the redistricting," said Rep. Melvin Watt, North Carolina Democrat and chairman of the Congressional Black Caucus (CBC).

Mr. Watt said the intent and purpose of the law largely was realized in 1992 when the CBC went from 26 members - mostly from cities in the Northeast and West - to 40 members, including several from the Deep South.

"What we know is every letter, every sentence, every paragraph, every page of it was writ in blood," said Barbara Arnwine, director of the Lawyers' Committee for Civil Rights Under the Law.

During a recent speech in Milwaukee before members of the National Association for the Advancement of Colored People (NAACP), Mrs. Arnwine invoked the names of James Cheney, Michael Schwerner and Andrew Goodman, civil rights workers who were killed in 1964 in Philadelphia, Miss., for trying to register blacks to vote.

This is a common theme in discussing the Voting Rights Act: Al Sharpton referred to the three men as "martyrs" in his Democratic National Convention speech last summer.

Rep. John Lewis, Georgia Democrat and a member of the CBC, often is asked to tell the story of the beatings he and countless others suffered during a voting-rights march in 1965 in Selma, Ala.

Many black politicians and civil rights lawyers agree that renewal of the law should not be a partisan tool.

"I am in absolute, full and uninhibited support of Chairman Sensenbrenner in having extensive hearings, on-site hearings and accepting those from other organizations that will conduct their own," Mr. Watt said.

House Judiciary Chairman F. James Sensenbrenner Jr., Wisconsin Republican, said hearings likely will begin this fall and continue into the second session of the current Congress.

Mr. Sensenbrenner told members of the NAACP at their convention in July that politics and partisanship would have nothing to do with his support for reauthorization.

But the partisan rhetoric was thick at a recent forum in Atlanta, where Jesse Jackson said "reauthorizing the Voting Rights Act will prevent Florida 2000" from happening again.

The act alone cannot stop irregularities in voter registration and at the polls, but a measure passed by Congress in 2002 - the Help America Vote Act - is expected to prevent such problems in the future.

However, Mr. Jackson told the Associated Press, "The extreme right wing does not want the Voting Rights Act extended, nor do they want it enforced."

He wasn't the only Democratic activist casting doubt on Republican promises to reauthorize the act.

"We need to turn the heat up on this issue," said Howard Dean, chairman of the Democratic National Committee. "They seem to be talking the talk, now let's see if they will do what they say, which is rare."

The Rev. Jesse Lee Peterson, the black conservative who is chairman of the Los Angeles-based Brotherhood Organization of a New Destiny, called the race-baiting for partisan gain appalling.

"The Voting Rights Act of 1965 was made necessary by the practices of some racist Southern Democrats who opposed equality for blacks - the same Democratic Party that Jesse Jackson now wants blacks to support," Mr. Peterson said.

LOAD-DATE: August 22, 2005

The Washington Times
www.washingtontimes.com

GOP to start voting act debate

By Brian DeBose
THE WASHINGTON TIMES
Published July 20, 2005

House Republicans say they will draft a 25-year reauthorization of the Voting Rights Act of 1965 before 2007, starting debate on the issue this year, two years before three sections of the act are scheduled to expire.

Rep. F. James Sensenbrenner Jr., Wisconsin Republican and chairman of the House Judiciary Committee, said politics and partisanship have nothing to do with his announcement for reauthorization, nor is it a move to have legislation ready in time to commemorate the 40th anniversary of the Voting Rights Act on Aug. 6.

"The fear is that if Congress does not begin now or is too slow in organizing around [the voting rights act], the result would be the expiration of the act in 2007 without a reauthorization in place," Mr. Sensenbrenner said.

The act put legislative muscle behind the 15th Amendment of the Constitution to provide equal protection on voting rights.

Mr. Sensenbrenner said hearings likely will begin in the fall and continue into the second session.

Some have speculated that Congress will reauthorize only Section 5 of the act. Section 5 requires that the specific states and counties covered under the act -- mostly in the South -- must have their voting laws, procedures and redistricting cleared by the U.S. attorney general or the U.S. Court of Appeals for the D.C. Circuit.

Mr. Sensenbrenner said the sections to be reauthorized "is an open question," and will be determined by the outcome of extensive hearings and research.

He noted that the Voting Rights Act has been extended three times, in 1968, 1972 and 1982. States covered by Section 5 challenged the constitutionality of the act each time, but the Supreme Court has maintained that the federal government must protect the franchise for voters against state infringements.

"If Congress extends Section 5 alone, the pre-clearance clause of the Voting Rights Act, it will certainly be challenged by one of the covered jurisdictions on the basis of states' rights," said Laughlin McDonald, director of the American Civil Liberties Union's Voting Rights Project.

"But Section 5 is meaningless without Sections 3 and 4," said Theodore M. Shaw, president of the NAACP Legal Defense Fund.

Section 3 grants federal courts the power to assign examiners from the U.S. Civil Service Commission to oversee the voting practices of a covered jurisdiction for a period of time determined by the attorney general.

Section 4 establishes the criteria in cases where a state or jurisdiction falls under the auspices of the act -- including any states that have required tests or taxes in order to vote,

and any state or county where less than 50 percent of the electorate was registered or voted in the previous presidential election.

Most states and jurisdictions that were covered under the 1964 criteria -- Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina and Virginia, plus specified counties in Arizona, Hawaii, Idaho and North Carolina -- are still covered.

In 1982, Congress amended Section 4 to provide how jurisdictions could escape coverage under the act.

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Copley News Service

August 15, 2005 Monday

SECTION: OPINION & ANALYSIS; JACK KEMP COLUMN

LENGTH: 758 words

HEADLINE: The Voting Rights Act turns 40
By Jack Kemp

BYLINE: Copley News Service

BODY:

This month 40 years ago, Aug. 6 to be exact, the Voting Rights Act of 1965 finally was enacted into law after a century of congressional stonewalling on fully implementing the 15th Amendment and granting full suffrage to African-Americans. Prior to enactment of that law, some states in the South had used poll taxes, literacy tests and outright intimidation to deny blacks their legal right to vote. The Voting Rights Act put an end to those abuses.

It abolished poll taxes and literacy tests and effectively prohibited any voting practice that would abridge the right to vote on the basis of race. The law also provided for criminal and civil sanctions against individual who interfered with the right to vote.

Congress finally enacted the Voting Rights Act largely in response to public outrage at the murder of voting rights activists, both white and black, and the unprovoked police violence visited on peaceful voting-rights advocates marching from Selma to Montgomery, Ala., an event that came to be known as "Bloody Sunday." When marchers, led by the courageous John Lewis, now a congressman from Georgia, attempted to cross the Edmund Pettus Bridge in Selma, Alabama state troopers attacked the peaceful demonstrators with billy clubs, tear gas and bullwhips, resulting in the death of Jimmie Lee Jackson, who was shot while attempting to protect his mother from being beaten by police.

"We were beaten, tear-gassed and trampled by horses," recalled Lewis.

The 1965 law empowered the federal government to oversee voter registration in counties using discriminatory tests and in counties that had low minority turnout rates in the 1964 presidential election. The impact of the law was immediate. It's hard to imagine today, but just 40 years ago discrimination against African-Americans was so pervasive that there were many counties in the Deep South where no black people voted, period. Within four years of the law's enactment, black registration in Mississippi rose from 7 percent to 60 percent. While only 19 percent of eligible black voters were actually registered to vote in Alabama in 1965, today 74 percent are registered.

In order to prevent new forms of voter restrictions, the law has been renewed four times. In 1975, the law was expanded to require bilingual ballots in areas with high concentrations of foreign-speaking citizens. In 1982, the Voting Rights Act was extended to cover the rights of voters with disabilities.

Section 5, the so-called "temporary" or "special" provisions, which gave the federal government extraordinary "emergency" powers to eliminate voter discrimination, even had to be used in some parts of the North. This part of the statute required nine states and 66 counties in seven others with a long history of voter discrimination to pre-clear all voting procedures and laws, including redistricting plans and moving a polling station, with the U.S. Department of Justice. That section originally was intended to last no more than about five years because of its extraordinary nature, in effect pre-empting the Constitution's vesting of voting laws and procedures. I agree with Lewis, however, that problems remain, and Section 5 should be reauthorized in 2007 when it expires.

I hope partisanship does not taint the **reauthorization of the Voting Rights Act** as it seems to be infecting so many other areas these days. Democratic Chairman Howard Dean already has tried to use the upcoming reauthorization of the act to portray Republicans as "hypocrites" on race. Such demagoguery is preposterous on its face, it's unconscionable and it must stop.

I accompanied Sen. Bill Frist last year when he attended the commemoration of the march across the Edmund Pettus Bridge, and I can attest he is sincere in his desire to reauthorize the act and guarantee all American citizens their right to vote. Republican Party Chairman Ken Mehlman spoke to the NAACP recently, giving a mea culpa and rejecting the "Southern Strategy" earlier employed by the party. Moreover, Attorney General Alberto Gonzales has committed the administration to working closely with the Congress to reauthorize the act when it expires in 2007.

It should be obvious to all men and women of goodwill that the Bush administration and the Republican Party are sincere in their desire and intention to see all vestiges of voter discrimination eliminated.

Jack Kemp is founder and chairman of Kemp Partners and honorary co-chairman of the Free Enterprise Fund. Contact him at jack.kemp(at)copleynews.com.

LOAD-DATE: August 16, 2005

Human Events ONLINE™

Time for Congress To End Unconstitutional Sections of the Voting Rights Act

by Emil Kent
Posted Sep 1, 2005

It was Aug. 6, 1965, when the Congress--reacting in no small measure to televised images of mounting black civil rights protests and pressure from President Lyndon Johnson -- passed the Voting Rights Act.

The political landscape of the South changed forever, and thousands of blacks have been elected to city, county and statewide offices in Southern states since then.

Section 2 of the Voting Rights Act–a nationwide ban on discrimination in voting–is permanent law. Section 4 determines who is subject to Section 5 Justice Department pre-clearance of voting matters and whether the attorney general may send observers under Sections 6 and 8. Section 7 governs registration lists and 9 governs removing voters from those lists.

The end of Section 4 in August 2006 triggers the expiration of 5,6,7,8 and 9.

It is time for a majority in Congress–if it has any spine whatsoever--to dump all of those unconstitutional stipulations into the dustbin of history.

Section 5 applies only to part or all of 16 states— most of them the old Confederate States of America. So the upcoming congressional debate should focus on the extent of voting abuses that still require special federal scrutiny and the adequacy of the Justice Department's powers under the act.

Congress must consider if the covered states such as Georgia are still sufficiently different from uncovered states such as Massachusetts to warrant all voting changes to be submitted to the Justice Department for prior approval. The answer? There's no concrete evidence that conditions in covered states 40 years later still require officials to go hat in hand to Justice bureaucrats for approval.

Continuation of this differential treatment insults citizens and their elected legislatures in covered states by codifying that they are "racist" and "bigoted" and can't be trusted to make legislative changes—but the rest of the country can!

Making Section 5 permanent and extending it nationwide, as some Republicans suggest, would not only be costly and bureaucratic, but makes no sense given that current demographic trends in some areas guarantee that white voters will become a minority. (The Democrat-run Justice Department has never protected disenfranchised white voters under this law and it was only this year that a Republican-controlled Civil Rights Division of Justice intervened in a blatant Mississippi case where black county officials were denying whites the right to vote.)

Furthermore, Section 5 objections received by the Justice Department have trickled in recent years to a handful. Almost all changes submitted to the department from covered localities are non-controversial—raising no discrimination concerns. This fact underscores that Section 5 coverage is too broad. (By the way, even simply moving a polling place must be pre-cleared–more waste of time and taxpayers' money.)

There's one last stipulation that Congress should also vote not to extend: Section 203 of the Voting Rights Act. It discourages immigrants from learning English and blocks assimilation into American culture by requiring that if 5% of the population in a jurisdiction is non-English speaking, then ballots and election materials must be printed in foreign

languages. This is an enormous unfunded mandate on local jurisdictions. (For example, Los Angeles must translate ballots and voting material into six languages.)

The U.S. Justice Department can already adequately police voting abuses anywhere in the United States, if it so chooses. It can send federal observers anywhere in the nation to monitor elections, with or without any one of these Voting Right Act sections.

The sections up for renewal are unconstitutional, unnecessary and punitive. Even old-time liberals crow that they were inserted to "punish" the states of the old Confederacy that voted in 1964 not for incumbent Johnson but for states' rights Republican presidential candidate Barry Goldwater (who opposed the 1964 Civil Rights Act purely on constitutional grounds).

Finally, here's a question for radical black activists such as Jesse Jackson and the white "politically correct" liberal lobby: Wouldn't making Section 5 of the Voting Rights Act permanent–which they want—place blacks and Hispanics in a state of perpetual dependence on the federal government based on the concept that they are unable to protect their own rights and are incapable of participating fully in the democratic process? How come that isn't "racist"?

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Sun-Sentinel (Fort Lauderdale, FL)

August 7, 2005 Sunday Broward Metro Edition

SECTION: LOCAL; Pg. 1B

LENGTH: 706 words

HEADLINE: VOTING RIGHTS BATTLE GOES ON;
LEADERS SAY APATHY OFFSETS BLACKS' GAINS IN POLITICS

BYLINE: Gregory Lewis Staff Writer

BODY:

Black and brown people elected to Congress today weigh in on thorny subjects like Social Security, the war on terrorism and health care, because 40 years ago the Voting Rights Act became law.

"It was the most important piece of legislation since Reconstruction," said Marvin Dunn, a Florida International University historian and psychologist. "It was critical to black empowerment, particularly in the South. Until the Voting Rights Act was passed, blacks were disenfranchised. People today lose sight of that."

The act ensures fair voting practices for all U.S. citizens, regardless of race, through federal monitoring, observation and bilingual assistance at polls. Congress passed the act in 1965 and renewed it in 1970, 1975 and 1982.

The act again comes up for renewal in 2007, and while the right to vote would still exist if Congress took a pass, the enforcement provisions could be lost, say activists, including Jesse Jackson, who marched in Atlanta on Saturday to urge its continuance. More than 500 Floridians, including members of the Fort Lauderdale NAACP and its Youth Council, also participated in the march and rally.

Prior to the act's passage, black Americans were subject to poll taxes, literacy tests and other methods of harassment to prevent them from registering to vote and casting ballots in many Southern states.

The law's effect can be measured by the number of blacks elected to school boards, city councils, state legislatures and Congress.

With 43 members in the U.S. House of Representatives and Barack Obama serving in the U.S. Senate, there have never been more blacks in Congress. Today there are more than 9,000 blacks holding political office at all levels, political observers said.

"The Voting Rights Act changed the face of politics," said Rosalind Murray, a Delray Beach Community Redevelopment Agency officer. "We have black mayors in Mississippi and black congressmen and women and a senator and we have political power to get dollars allocated to social programs."

Almost every major city has seen a black mayor in the past 40 years, starting with Carl Stokes in Cleveland and Richard Hatcher in Gary, Ind., in 1967. Black

mayors have led the cities of New York, Los Angeles, Philadelphia, Detroit, San Francisco, Houston, Dallas, Atlanta, Chicago and Baltimore, among others.

"If it wasn't for the Voting Rights Act, Shirley Chisholm and Jesse Jackson wouldn't have run for president," said Clarence Anthony, mayor of South Bay. "If they had not run, I would not have run. But seeing them made me know I had the right to run."

Aside from encouraging minority candidates, Dunn noted, "the act led to economic empowerment and social empowerment."

With new black constituents in their districts, politicians of all races had to bring services to neighborhoods that had been ignored.

The power of the vote also opened up employment, and race relations improved as blacks and whites began to get to know each other on jobs and in other integrated settings.

That led to an influx of black government workers whose children branched off into other professions and integrated newsrooms, schoolrooms and boardrooms.

Anthony said the act remains necessary in 2005 because the fear of disenfranchisement remains in the minds of some voters.

But the irony of the Voting Rights Act today is black apathy at the polls, said Fort Lauderdale lawyer Levi Williams. In presidential election years only 56 percent of voting age blacks vote, records say.

In off-presidential and local elections, the percentages fall well below half of the black population.

"The majority of our population is not voting," he said. "Only through the political process will we have long-term impact on health care, education, civil rights and economics, things that affect our daily lives."

Palm Beach County Commissioner Addie Green, a native of Alabama who demonstrated for voting rights, said she is disgusted with what some blacks have done with the hard-fought right to vote.

"What voting rights?" she asked rhetorically. "We have it on paper, but are we using it? Are we respecting ourselves? We don't even register to vote."

Gregory Lewis can be reached at glewis@sun-sentinel.com or 954-356-4203

GRAPHIC: PHOTO 2 CHART 2; UNITED: Marchers head down Martin Luther King Jr. Boulevard in Atlanta on Saturday during Keep the Vote Alive March and Rally, organized to support congressional **reauthorization** of the historic 1965 **Voting Rights Act.** Getty Images photo, Barry Williams UNITED: Harry Belafonte, Rep. John Lewis, D-Ga., and Rep. Charles Rangel, D-N.Y., attend the Keep the Vote Alive March and Rally on Saturday in Atlanta. Getty Images photo, Barry Williams (ran in Palm Beach Local section) CHART: TOTAL U.S. BLACK POLITICIANS: Shows increase in the thousands of black politicians from 1970 to 2001. CHART: FLORIDA'S BLACK POLITICIANS: Shows percentage of black politicians in different branches of government. Staff graphic, Belinda Long. SOURCE: Joint Center for Political and Economic Studies

LOAD-DATE: August 7, 2005

Gannett News Service

July 29, 2005, Friday, EDITION

SECTION: ; Pg. ARC

LENGTH: 864 words

HEADLINE: Indian leaders want **reauthorization** of 40-year-old **Voting Rights Act**

BYLINE: DIANA MARRERO

DATELINE: WASHINGTON

BODY:
WASHINGTON -- When President Lyndon B. Johnson signed the Voting Rights Act into law 40 years ago, the measure was largely seen as a way to fight discrimination against blacks across the South.

Today, civil rights leaders say the law has evolved to protect the voting rights of growing numbers of minority voters nationwide, including American Indians. As the Voting Rights Act approaches its 40th anniversary on Aug. 6, a much broader coalition is pushing for reauthorization when key provisions of the law expire in 2007.

But while blacks, Hispanics and Asians have been clamoring to gain footing in the American political arena, many Indians remain ambivalent or even distrustful about voting in government elections -- even as record numbers are now becoming part of the mainstream political process, Indian leaders say.

Still, American Indian leaders say that as tribal members become more engaged in mainstream politics, the Voting Rights Act's importance to their communities will only grow.

"The struggle never ends," said Thomas Shortbull, president of the Oglala Lakota College in South Dakota, who spoke at a recent symposium on the act here. "If we weaken and we're not vigilant, we could lose the opportunity our minority people expect us to provide them."

This week, the National Congress of American Indians joined dozens of civil rights leaders in Washington, DC, to launch a national campaign for the reauthorization of provisions in the voting rights law that are set to expire.

One of the provisions requires that certain states and precincts -- mostly in the South although Shannon and Todd counties in South Dakota are also included in the list -- have their voting laws and redistricting plans "pre-cleared" by the Justice Department.

The state of South Dakota is currently involved in litigation over its redistricting process. State officials have said they may not have to adhere to the federal rules.

Other provisions require local elections officials to provide bilingual ballots and elections material to voters who live in heavily non-English speaking

areas and grant the federal government the power to assign elections examiners to districts on Election Day. Congressional hearings on the issue may start as early as this fall.

But as the reauthorization of the bill gains support among members of Congress, American Indian leaders will have to persuade tribal members to join the fight.

"You have to convince people that it's okay to vote for a government they don't believe in, that sent their grandmas to boarding school and took away their lands," said Heather Dawn Thompson, a member of the Cheyenne River Sioux Tribe in South Dakota who is working on voting rights issues for the National Congress of American Indians. "But we are being more realistic in our communities, realizing that whether or not we vote, decisions are still going to be made that affect us. We might as well have our voices heard."

Adopted at the height of the civil rights movement, President Johnson rallied for the speedy passage of the Voting Rights Act in 1965 after police brutalized non-violent civil rights marchers in Selma, Ala.

Rep. John Lewis, D-Ga., who is pushing the renewal of the law, was among the civil rights marchers badly beaten in Selma. He says that while the Voting Rights Act has dramatically changed the country's political landscape in the past 40 years, more needs to be done to ensure fairness for America's increasingly diverse electorate.

Although the law got rid of the literacy tests, poll taxes and overt intimidation that kept many blacks from voting across the South, voter suppression and intimidation of minority voters still played a key role in the 2000 and 2004 elections, Lewis and others say.

In South Dakota, the Voting Rights Act requires 19 counties to provide language assistance for tribal members who speak Sioux and Cheyenne. The law has also been used by the American Civil Liberties Union to challenge redistricting plans across the state.

Efforts in recent years to increase voter turnout among American Indians across the country has paid political dividends both in and out of South Dakota, Thompson said. She said the American Indian voting bloc was influential in the re-elections of Sen. Tim Johnson, D-S.D., and Rep. Grace Napolitano, D-Calif., as well as the election of Sen. Maria Cantwell, D-Wash.

Even so, American Indians continue to vote at much higher rates in tribal elections. About 80 percent vote in tribal elections, while only about 20 percent cast state or national ballots, she said.

Shortbull, who was elected to the state Senate after he lobbied to create a legislative district encompassing the Pine Ridge and Rosebud reservations, wants the district divided in two in order to increase the influence of tribal voters.

As one of only three Indian state Senators during his tenure in the mid-1980s, he says accomplished little -- other than providing a voice for his people.

"I don't see much improving in services from the state of South Dakota," he said, "unless we have more representatives in the state legislative body."

LOAD-DATE: August 01, 2005

July 26, 2005 Tuesday

SECTION: DOMESTIC NEWS

LENGTH: 399 words

HEADLINE: Voting Activists Warn of 'Trojan Horse'

BYLINE: JEFFREY McMURRAY; Associated Press Writer

DATELINE: WASHINGTON

BODY:

Key provisions of the 1965 Voting Rights Act are set to expire soon, but staunch supporters warned Tuesday that a permanent extension could reverse many of the law's gains for minorities.

Some lawmakers may try to make permanent certain provisions that expire in 2007 in an attempt to torpedo the act, said Theodore Shaw, director of the National Association for the Advancement of Colored People's Legal Defense Fund. Although Shaw acknowledged a permanent or nationwide approach may seem wise, he called it a "Trojan horse."

"If they are permanent, it is a trap," Shaw said. "They will be struck down as illegal and unconstitutional."

One part of the act set to expire is the provision that states with a history of racial discrimination - mostly in the South - must get federal government approval before changing their voting laws or district lines. Shaw said judges might decide Congress can't separate jurisdictions based on race issues without an occasional review of whether that separation remains necessary.

Appearing with Shaw at a news conference Tuesday was Rep. John Lewis, who was severely beaten by state troopers during a March 7, 1965, march in Selma, Ala. That incident stirred public support for ending racial discrimination at the polls. The Georgia Democrat says he plans to introduce a resolution as early as this week to get lawmakers on record supporting the **reauthorization of the Voting Rights Act.** However, Lewis doesn't want to make it permanent.

House Judiciary Chairman James Sensenbrenner, R-Wis., says his committee will soon begin considering the bill to ensure it doesn't lapse. And Sen. Edward Kennedy, D-Mass., plans to introduce the measure in the Senate shortly after the August congressional recess.

Despite some rumors circulating in Internet chat rooms, voting rights for minorities won't expire in 2007 - even if Congress does nothing. The 15th Amend-

ment to the Constitution guarantees those, but the Voting Rights Act helped clarify and extend them.

Lewis acknowledged the country has made enormous progress since President Johnson pushed through the Voting Rights Act, but he insisted the problem of racial discrimination is far from cured. He said voting irregularities in the 2000 and 2004 presidential elections underscored that, although it appears lawmakers are planning to deal with those separately from the reauthorization.

LOAD-DATE: July 27, 2005

The Atlanta Journal-Constitution

August 7, 2005 Sunday Home Edition

SECTION: News; Pg. 1A;

LENGTH: 1048 words

HEADLINE: Marchers support voting act

BYLINE: LATEEF MUNGIN

BODY:

John Terrell's left leg still ached from hip replacement surgery. He wobbled on his cane and lagged behind many of those walking in Saturday's "Keep the Vote Alive" march.

Unlike many, the 53-year-old native Atlantan didn't carry a sign supporting reauthorization of the historic legislation that ensured the right to vote for many people, especially African-Americans.

Instead, Terrell had memories of his childhood, when it was dangerous for young black men to demonstrate for an end to segregation and to win a guarantee that blacks could vote without being challenged.

"We have to keep this right. We have to keep this alive," Terrell said. "I was alive when we got this right, and I'm not going to let this die."

He was among the thousands of people who joined the country's leading black civil rights leaders, politicians and entertainers in a march to push for the extension of key provisions in the 1965 Voting Rights Act.

The one-mile march, from the Richard B. Russell Federal Building to Morris Brown College, was led by the Rev. Jesse Jackson, who said he chose Atlanta because of its history as the epicenter of the civil rights movement.

The Rev. Martin Luther King Jr. was born in Atlanta and the city remains the national headquarters of the Southern Christian Leadership Conference, which King and others founded in 1957.

Former SCLC president Joseph Lowery joined Jackson in kicking off the march.

"We come here today, at the end of 40 years, to complete a new journey," said Lowery, who spoke about the irony of American troops fighting in Iraq for the right of Iraqis to vote. "We come here today to ask America: Who are you? America's soul is in peril."

As the crowd walked, they filled the width of Martin Luther King Drive. Some had bullhorns and called out slogans. Others sang, "We Shall Overcome," the anthem of the 1960s marches.

"I have to participate,"said Claudia Nelson of Acworth, wearing a bright red shirt. "We've read about so many marches in history. I had to be a part of this one."

Police did not provide a crowd estimate, but organizers estimated that as many as 20,000 people participated. When the marchers got to Morris Brown's 18,000-capacity Herndon Stadium, they appeared to fill about three-quarters of the seats.

Comedian and activist Dick Gregory participated, as did celebrities including Harry Belafonte. Civil rights veteran John Lewis, now an Atlanta congressman, used the day to make the point twice.

He was at the march, but also gave the weekly Democratic radio address on Saturday, and he used the occasion to talk about preserving the Voting Rights Act.

"Forty years later, we're still marching for the right to vote," Lewis said. "Don't give up, don't give in. Keep the faith, keep your eyes on the prize."

In addition to Lewis, other politicians at the march included Atlanta Mayor Shirley Franklin, U.S. Rep. Maxine Waters (D-Calif.) and U.S. Rep. Nancy Pelosi (D-Calif).

"I was out there in Washington when people were being killed to get the right to vote," Gregory said. "It is important for me to see that they did not die in vain."

Two former Atlanta mayors, Andrew Young and Bill Campbell, arrived at the march at about the same time.

"It looks like a great turnout," said Young, a former United Nations ambassador.

But Young also said, "This is not a celebration. We're talking about extending the Voting Rights Act and also wondering if that is enough."

In the shadows of the federal courthouse building where he now faces corruption charges stemming from his tenure as mayor, Campbell was greeted by well-wishers who told him to "hang in there."

Campbell said the Voting Rights Act was important in breaking the back of segregation. "I also see this march as renewing the spirit of the civil rights movement."

John M. Clark, NAACP president of the Elbert County branch, said the act protects people's choice.

"We lived in the rural area, and in '64 they wouldn't let [my father] vote. They voted for him. He wanted to vote Lyndon Johnson, and they voted for Barry Goldwater for him," Clark said.

Two key provisions of the **Voting Rights Act** are up for **reauthorization.**

The one most likely to spark controversy is Section 5. It requires nine states --- including Georgia --- and parts of seven others, each with a long history of discrimination at the ballot box before 1965, to get federal approval before enacting any changes in their electoral laws. That includes alterations in the boundaries of congressional districts and moving a polling station.

Critics of plans to reauthorize the Voting Rights Act say Section 5 was intended to be a temporary measure, and conditions have changed dramatically since 1965.

Brian Robinson, spokesman for U.S. Rep. Lynn Westmoreland (R-Ga.), said recently, "The congressman feels quite strongly that Section 5 should apply to every state in the nation or it should apply to none of them."

Abigail Thernstrom, vice-chairwoman of the U.S. Civil Rights Commission, said voters claiming discrimination can mount their challenge in courts.

"They've got the 14th Amendment. They don't need Section 5," she told the Washington Post last week.

The other --- Section 203 --- requires election officials to assist immigrant voters who don't speak English by providing them with voting material in their native language.

Jackson did not give a lengthy speech but led the crowd in "Extend the Vote" chants. Jackson said he is planning a prayer vigil at the Justice Department in Washington and a voters rights meeting in Southern states.

"Today is a great historic moment in our struggle," Jackson said. "We plan to keep the pressure on."

He said he also chose Atlanta because the state recently passed a law that would require voters to present a photo ID to cast their ballots. Because of the Voting Right Act, Georgia's new voter ID law must be reviewed by the federal government.

Mary Jones, 69, of Birmingham marched with her 17-year-old granddaughter and said she was pleased to see a large number of teenagers and young children participate in the march.

"It gives me hope for the future," said Jones.

Staff writers Eric Stirgus, Add Seymour, George Chidi and Ernie Suggs contributed to this report.

GRAPHIC: JOEY IVANSCO / Staff A throng of marchers makes its way from the Richard B. Russell Federal Building toward Morris Brown College on Saturday. ; JOEY IVANSCO / Staff The Rev. Jesse Jackson (center) marches alongside U.S. Rep., Nancy Pelosi (D-Calif.) and entertainer Harry Belafonte at the beginning of Saturday's "Keep the Vote Alive" march.

LOAD-DATE: August 7, 2005

115 of 185 DOCUMENTS

Roll Call

July 11, 2005, Monday

LENGTH: 757 words

HEADLINE: House to Move Voting Rights

BYLINE: By Ben Pershing ROLL CALL STAFF

BODY:

Hoping to squelch a potentially damaging political rumor and sow goodwill in the black community, House GOP leaders are pushing to reauthorize the Voting Rights Act two years before the current extension expires.

Republicans hope to renew the measure this year, following suggestions by some prominent Democrats that the GOP might somehow water the bill down or let it expire in 2007.

"We think it's a priority to address this issue immediately to take these rumors off the table because rumors eventually perpetuate themselves into perceptual fact, and that needs to stop as soon as possible," said a House GOP leadership aide.

Speaker Dennis Hastert (R-Ill.) mentioned his desire to take up the issue during a floor speech before the July Fourth recess. After listing other pending measures such as the highway and energy bills, Hastert said, "We also plan to take up the PATRIOT Act, **reauthorization of the Voting Rights Act** and the taking of people's private property by the government."

Judiciary Chairman James Sensenbrenner (R-Wis.) has not yet scheduled any hearings on the topic, and the committee already has its hands full dealing with the renewal of the PATRIOT Act and other issues.

But Sensenbrenner does intend to address the VRA extension soon, a point he was expected to make in a speech to the NAACP on Sunday.

"Chairman Sensenbrenner soon will be introducing legislation extending the Voting Rights Act for 25 years," said Judiciary spokesman Jeff Lungren, pointing out that Sensenbrenner took the lead role for House Republicans in extending the Voting Rights Act in 1982.

Lungren said Friday that Sensenbrenner in his NAACP speech would "urge a bipartisan approach to civil rights issues ranging from the Voting Rights Act extension to legislation addressing the Supreme Court's decision endorsing the taking of citizens' private property by the government for private use."

While Hastert, Sensenbrenner and other House Republicans are determined to pass a VRA extension through their chamber this year, the prospects for getting a measure onto the increasingly-packed Senate schedule are less clear.

And while the VRA is not due to expire for two more years, Democratic National Committee Chairman Howard Dean and some other critics have already begun suggesting that Republicans do not want to extend the measure at all.

"I think it's hypocritical for the Republicans to pretend to reach out to the African-American community unless they say they are going to reauthorize what gave the African-American community political power," Dean told the Chicago Tribune in June. "I'd love to have the president say whether he's going to reauthorize the Voting Rights Act."

Dean went on to challenge Republican National Committee Chairman Ken Mehlman, saying, "The chairman of the Republican Party, as you know, has made a big deal about attracting African-American voters. And this is a litmus test. If you aren't going to support the extension of the Voting Rights Act, I don't know what right you have to go to a black church and show your face."

Republicans are planning to push forward with reauthorization two years early in order to put such criticisms to rest and to make the point that they are taking action while Democrats are simply playing politics.

"The genesis of Howard Dean's concern isn't voter suppression or intimidation," said RNC spokesman Brian Jones. "It's the fact that the Republican Party is making serious inroads into the African-American community."

Informed of the House GOP's plan to move an extension this year, the DNC was happy to take credit for driving its opponents into action.

"I'm gratified to see that in response to what the governor has said that they're considering actually doing something about it," said DNC spokeswoman Karen Finney.

On Capitol Hill, the Congressional Black Caucus has been skeptical of the GOP's commitment to reauthorizing the bill, particularly after the group had a meeting with President Bush at the White House. Following the meeting, Rep. Jesse Jackson Jr. (D-Ill.) said he had asked Bush about extending the VRA and Bush seemed to have no idea what he was talking about.

For now, the CBC and other House Democrats are likely to take a wait-and-see approach to the GOP's accelerated timetable.

"What does reauthorization mean?" asked a CBC aide. "Are we going to delete provisions? Are we going to strengthen it? ... Are they ensuring that every eligible American who wants to vote can vote unimpeded? That's what's important."

LOAD-DATE: July 11, 2005

November 23, 2004 Tuesday

LENGTH: 497 words

HEADLINE: Panelists debate voting acts' link to Latino turnout

BYLINE: By Halie Pratt, Daily Texan; SOURCE: U. Texas-Austin

DATELINE: AUSTIN, Texas

BODY:

Although many sources agree voter turnout of Latinos in the United States is increasing, experts disagree about whether federal and state voting acts should get the credit.

The University of Texas School of Law hosted an all-day symposium Monday on voting rights policies and Latino participation in elections. The main issues discussed were the Voting Rights Act and Help Americans Vote Act. Also discussed was re-enfranchisement of voting rights for felons, though that discussion was cut short since all panels got a late start due to heavy rains.

Panelists were torn over the **reauthorization of the Voting Rights Act** of 1965, which protects voting rights for traditionally disenfranchized groups, mainly minorities. The experts emphasized Section 5 of the act, which requires certain areas of the nation to submit any voting changes to federal district courts and prove the changes will not disadvantage any minority group. Section 5 is up for renewal in 2007.

While they all admit the act has been a "powerful tool" in the empowerment of minority groups, especially Latinos, they disagree on the future effectiveness of the act, said Nina Perales of the Mexican American Legal Defense and Education Fund.

"I think the act would be less effective if it went forward -- it's not the greatest contributing cause to increased minority votes. The Texas Legislature will stay strong even without the act and continue to protect minority votes," said Steve Bickerstaff, a professor of law at the university. Texas is one of the states that must seek approval for voting changes because of Section 5 of the VRA.

Bickerstaff listed increasing minority population and voter registration to be causes of the increase in voter turnout.

Lydia Camarillo of the Southwest Voter Registration Education Project, however, sees the act as a means of self-defense for all voters.

"We have an opportunity to protect ourselves. Without the act, all of the gains Hispanic groups have made would be lost," Camarillo said.

The keynote speaker, Commissioner Ray Martinez of the United States Election Assistance Commission, listed the goals of his newly created office, which has

been in operation for 11 months. He also addressed problems of the recent election and how they will be avoided in the future.

"I'd like to increase turnout and minimize voter fraud. That is what the Help America Vote Act is all about," Martinez said.

HAVA, a federal act, was passed in 2002 and established the EAC to assist in administering the federal election. The act also helps provide funds for replacing punch-card ballots and ensuring the integrity of elections.

"Even today, not all the votes from the election have been counted. If you live in a non-competitive state, such as Texas or California, and you had a provisional or absentee ballot, your vote was not counted," Camarillo said. "The acts we have, Voting Rights and Help America Vote, are about protecting all votes, and we forget that."

LOAD-DATE: November 23, 2004

The Macon Telegraph

May 1, 2005 Sunday HOME EDITION

SECTION: A; Pg. 1

LENGTH: 1563 words

HEADLINE: DEBATE ON RENEWAL OF VOTING ACT HEATS UP

BYLINE: Don Schanche Jr., Telegraph Staff Writer

BODY:

For 40 years, Georgia and most of the South, plus a few other states, have lived under a law that says they may not change their voting procedures without first getting approval called "preclearance" from the federal government.

The requirement is in Section 5 of the Voting Rights Act of 1965, passed after civil rights workers were bloodied in Selma, Ala., as they challenged discriminatory laws that barred black people from the elections process.

But Section 5 and other special provisions of the Voting Rights Act will expire in 2007, unless Congress decides to renew them.

And already a debate is brewing over what Congress should do.

Civil rights activists are gathering testimony to show that racism still infects the election process, and the need for federal oversight remains.

"The persistence of racial bloc voting suggests to us we still need the remedy of the Voting Rights Act and the special provisions," said Debo Adegbile, associate director of litigation for the NAACP Legal Defense and Educational Fund.

Last week, the Rev. Jesse Jackson promised to hold a national march in Atlanta on Aug. 6 to fight for **reauthorization** of those provisions.

But others say that even if the special provisions of the **Voting Rights Act** were needed 40 years ago, the South and the nation have outgrown them.

"There's no evidence the conditions in the covered states still require preclearance. You can expect a wholesale revision of Section 5 to go before Congress," said Phil Kent of Atlanta, former president of the conservative Southeastern Legal Foundation and one-time staffer for the late U.S. Sen. Strom Thurmond.

Congress passed the Voting Rights Act to put teeth in the constitutional guarantee of the right to vote. Parts of that law -- such as Section 2, which prohibits discrimination in voting procedures -- are permanent and apply nationwide.

But Section 5, along with other special provisions governing the use of federal election monitors and special bilingual ballots for language minorities, are temporary.

Congress has renewed and strengthened them several times, most recently with a 25-year renewal in 1982.

Section 5 applies in all or parts of 16 states. Although most of them are in the South, portions of New York, California, Michigan and New Hampshire also fall under the act.

One thing, at least, is indisputable: The Voting Rights Act has revolutionized Georgia and the South.

Before the act was passed, you could count all of Georgia's black elected officials on one hand. Today, the Georgia Association of Black Elected Officials counts more than 700 members. Georgia's legislative black caucus is the largest in the nation.

Dozens of Georgia cities and counties have seen their election systems overhauled under the Voting Rights Act to give minorities a better chance to elect representatives of their choice.

State Sen. Robert Brown, D-Macon, said, "There's no doubt in my mind that we would not have these numbers had it not been for the Voting Rights Act. You take it from there down to mayor, city council, school board -- just a whole range of elected offices -- and compare it to 45 years ago, and immediately see the value of the Voting Rights Act."

But what about Section 5, and its application to a limited number of states?

As freshman U.S. Rep. Lynn Westmoreland, R-Sharpsburg, sees it, the special provisions should be extended to cover the entire nation or done away with altogether.

"I think the Section 5 part of it either needs to affect everybody or nobody," Westmoreland said.

It's a sentiment echoed by others who chafe under the stigma of being singled out.

"I'm old enough to remember being preached at by some very sanctimonious Northeastern folks about how much we needed to be overseen by them and others," said Rogers Wade, president of the nonpartisan, conservative-leaning Georgia Public Policy Foundation. "If those laws are still necessary, then they ought to be shared with the rest of the country. And if they want to renew it, it should be renewed for all 50 states. Because our record in the South is much better in nearly every respect than any other region in the country."

Laughlin McDonald, of the American Civil Liberties Union's southern regional office, said that argument is a smokescreen for killing Section 5.

"The problem with the nationwide (proposal) is that it would be almost impossible to administer Section 5 because there would be hundreds of thousands of these things," he said. "There would be no way the Department of Justice could administer Section 5."

Another problem, McDonald said: It would mean extending a legal remedy to places that never had a problem. And if Congress were do do that, he said, the U.S. Supreme Court very likely would strike down the law.

Former Thurmond staffer Kent pointed out that the act requires preclearance of even minor changes, such as moving a polling place, and that most changes are routinely precleared.

"It shows the Section 5 coverage is too broad, and it's an enormous waste of time and resources," Kent said.

Adegbile of the National Association for the Advancement of Colored People Legal Defense and Education Fund said the value of the preclearance requirement lies partly in what it prevents.

"That procedure deters many jurisdictions from proposing voting changes that are discriminatory in the first place," he said. "When policy-makers know their work is going to be reviewed, he said, they are "less likely to do something that is intentionally discriminatory or has retrogressive effects."

State Rep. Tyrone Brooks, D-Atlanta, said Georgia's recent General Assembly session provided evidence that preclearance is still essential. The state Legislature passed a law requiring voters to bring a photo ID to the polls. Republican supporters said it's aimed at stemming voter fraud. But Democrats and civil rights leaders protested that it will unduly hamper poor, black, elderly and rural voters. Under Section 5, the law won't go into effect until the U.S. Justice Department or a federal court approves it.

"It proves the point that the Voting Rights Act is critical, particularly to Southern states as far as these states moving the clock back," Brooks said.

Rep. John Lewis, D-Atlanta, fought for the Voting Rights Act with his own blood. He was among the marchers who were clubbed in Selma in 1965. He still bears the scars.

"I think there's a need to renew Section 5," he said. "We've made a lot of progress, there have been a lot of changes. But there is still progress to be made. It's been 40 years, but I think we still need preclearance and the sections that will expire in 2007 so we will not be tempted to go back."

Lewis said that although President Bush hasn't indicated which course he favors, the president recently demonstrated a distressing lack of knowledge about the issue. It happened a few months ago when members of the Congressional Black Caucus were meeting with the president. One of the congressmen asked Bush if he favored extending Section 5.

"He said he didn't know enough about it to make a comment on it," Lewis recalled. "I think the members of the Congress couldn't believe it. Because the president had been the governor of Texas, and Texas is one of the states covered by the Voting Rights Act of 1965. We all thought he should know something about the Voting Rights Act. ... It was unreal."

But Lewis said he is optimistic that the extension will find bipartisan support in Congress.

So is U.S. Rep. Jim Marshall, D-Macon.

"I would expect the next Congress will approve renewal of the Voting Rights Act without significant amendments," Marshall said. "Frankly, I'll be surprised if there's a big fight about this."

But Westmoreland said, "I think they'll either make Section 5 apply across the country or it'll be done away with, period."

Macon lawyer and conservative blogger Stephen Dillard said there's no question that Section 5 was needed 40 years ago.

But he asked, "How long do we maintain what the Department of Justice has referred to as 'extraordinary remedies'? ... What I would say is I think it's time for a lot of these provisions to go. You look at a town like Macon, the diversity at the local level, in terms of the types of people. You have men, women, white, black. You have the full spectrum of people from all sorts of racial and socioeconomic backgrounds who are now running the city and the county and the

state and the country for that matter. Especially in the South. I think it's time to allow the new South to take hold. We are not the same South we used to be."

-- To contact Don Schanche Jr., call (478) 256-9136 or e-mail schanche1@alltel.net.

VOTING RIGHTS ACT

- President Johnson signed the Voting Rights Act in 1965.

- Among other things, it prohibited denying or abridging the right to vote based on literacy tests.

- It also contained, under Section 5, special provisions for those areas of the country where Congress believed the potential for discrimination to be the greatest.

- Jurisdictions covered by those provisions could not make any change affecting voting without federal approval.

- Congress extended Section 5 for five years in 1970, seven years in 1975 and 25 years in 1982.

Read a Justice Department history of the Voting Rights Act at www.macontelegraph.com.

LOAD-DATE: September 13, 2005

American Enterprise Institute
for Public Policy Research

Voting Rights Act

After 40 Years, It's Time for Virginia to Move On

By Abigail Thernstrom, Edward Blum

Posted Thursday, August 18, 2005

ARTICLES
Richmond Times-Dispatch
Publication Date August 1, 2005

In a few days the nation will mark the 40th anniversary of the passage of the Voting Rights Act. It will rightly be a day of celebration; the statute accomplished what it was beautifully designed to do: ending black disfranchisement in Virginia and other parts of the Jim Crow South.

In 1965, only 38 percent of blacks were registered to vote in Virginia, while 61 percent of whites were. Today the gap has virtually disappeared; politics in this state and across the nation has been permanently changed. The era of redneck registrars, fraudulent literacy tests, violence, and intimidation at the polls is over. Today, African-American votes count in electing both blacks and whites to public office across the nation. Indeed, no one knows this better than Virginians, who in 1989 elected Douglas Wilder, the first African-American to serve as a Governor of a state.

Most of the provisions of the Voting Rights Act are permanent, but a few were envisioned by Congress to be short-term. These provisions were put in place to address a specific emergency: Southern contempt of the 15th Amendment rights of blacks to register to vote and participate in elections. It is obvious that this emergency has passed, but the emergency provisions are still in place. And in 2005 it's time to revisit whether they're still needed.

The most important of these temporary, emergency provisions is Section 5 of the act, which requires that either the federal Justice Department or the D.C. district court "preclear"--that is, approve--every change involving elections in what are called the "covered" states and counties. Since Virginia is one of the states covered under Section 5, even a change in the location of a polling place anywhere in the Commonwealth must be approved by Washington.

For instance, in 2003 Richmond voters approved a plan to create the direct election of a Mayor, rather than the Mayor being appointed by the City Council. Even though voters passed this referendum by a 4-1 ratio, it could only go into effect when blessed by the U.S. Justice Department. And yet if Charleston, West Virginia, made a similar change no federal approval would be necessary, since that state is not covered by the preclearance provision.

What, in fact, do unelected, behind-closed-doors bureaucrats in Washington know about race and politics in Dinwiddie, Cumberland, and Northhampton Counties--all of which have had redistricting plans turned down by Washington during the past few years?

This extraordinary power over state and local electoral affairs was justified in 1965. Southern officials could not be trusted to ensure the most basic of all rights--that of every eligible citizen to participate in America's great democracy. But today?

In 1965, Congress wisely gave the emergency provisions a life of only five years. Any longer seemed constitutionally unacceptable--and unnecessary. After repeated extensions they are now due to expire in 2007. But already, two years before the deadline, the congressional leadership, including Senator George Allen, is promising to extend them another quarter-century.

If federal intrusion were benign it would be of little concern. It's not. Arguably, it's actually creating more harm than good by now. Under its preclearance powers, the Justice Department has long been demanding jurisdictions create wildly racially gerrymandered districts that protect minority candidates from white political competition. Virginia was sued in 1996 by a multiracial group of voters over the creation of one of these bug-splat districts--Congressman Robert Scott's Third Congressional District. The court ruled that the district was an unconstitutional gerrymander and violated the Equal Protection Clause of the Constitution. In 1998, under court orders, the General Assembly redrew the district to make it more compact and reunite cities that had been split apart by race. It cost the state millions of dollars to defend what the Justice Department was improperly demanding it do.

Such racially gerrymandered districts result in a segregated--and uncompetitive--political map with safe minority and safe white districts, and no incentives to build biracial coalitions and bring Americans together across the lines of race and ethnicity. Everyone knows there is almost no turnover in Congress; incumbents keep winning. American politics is much

less fluid than it should be. Almost no one points to the Voting Rights Act as one important reason this should be so.

Congress should let these emergency provisions expire: They're not needed, they've lost their logic, and they create mischief. It's time to let Virginia and all of America move on.

Abigail Thernstrom is vice chairman of the U.S. Commission on Civil Rights. Edward Blum is a senior fellow at the Center for Equal Opportunity. They are authors of a book on the Voting Rights Act to be published by the AEI Press.

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American Enterprise Institute for Public Policy Research

Crossing Over to Freedom

By Abigail Thernstrom, Edward Blum

Posted Thursday, August 18, 2005

ARTICLES

Houston Chronicle

Publication Date August 7, 2005

This weekend, the nation is marking the 40th anniversary of the passage of the Voting Rights Act. It will is rightly be a day time of celebration; the statute accomplished what it was beautifully designed to do: ending black disfranchisement in the Jim Crow South.

Or rather, it accomplished what it was initially designed to do in 1965. A decade later, the act was amended to cover Texas and other states and counties where no redneck registrars, fraudulent literacy tests or violence and intimidation trying to vote--all rampant in the Deep South prior to 1965--had ever kept eligible voters from the polls.

The original statute was almost perfect legislation--a rare event in Congress. It contained a statistical trigger designed to target precisely the states in egregious violations of basic Fifteenth Amendment rights. Ten years later, however, the clear lines and logic of the act had been destroyed. Texas was not Mississippi and never should have been treated as analogous.

Texas came under coverage of the Voting Rights Act when its the act's temporary, emergency provisions were extended by Congress for the second time. Most parts of the statute are permanent; contrary to urban legend, Fifteenth Amendment rights can never be denied again.

These emergency provisions, their life having now been extended three times, are up for reauthorization once again in August 2007, but already House Majority Leader Tom DeLay, R-Sugar Land, and other congressional leaders are signing on to another 25-year extension. The issue is one for which politicians have little appetite, but it is time to ask whether the temporary sections of the act are still needed--and whether perhaps they do more harm than good.

The most important of the temporary provisions is section 5, which requires that either the federal Justice Department or the D.C. district court preclear--that is, approve--every change involving elections in what are called the covered states and counties. Since Texas is one of the states covered under section 5, the changes that must be approved by Washington range all the way from the location of a polling place anywhere in the state to annexations that change the racial composition of the electorate in a city.

Thus, a few years ago the city of Webster in Harris County wanted to annex a small neighborhood. Such annexations are common ways for cities to grow and add new sources of tax revenue.

The Justice Department approved Webster annexing the commercial parts of the neighborhood, but nixed the addition of the residential ones. Why? Because adding the new residential neighborhood would have reduced the number of African-American residents in the city from 5 percent of the population to 4.2 percent, and the Hispanic voting-age residents from 17 percent to 15 percent. Annex a different neighborhood, federal bureaucrats suggested--substituting their judgment for that of the city government.

Austin, Waller and Brazoria counties have all had voting changes turned down by Washington in the last few years, while whole states such as Arkansas and Oklahoma are free of such draconian federal intrusion into local electoral and election-related matters.

Such extraordinary power over state and local electoral affairs in the Deep South was justified in 1965, when Southern officials could not be trusted to ensure the most basic of all rights. But it is not justified today in an America in which black and Hispanic votes play a crucial role in electing both minorities and whites to public office. And it was never justified in a state like Texas.

Indeed, Congress didn't have an easy time finding a way to cover the Lone Star State. It had to pretend that English-only ballots were the equivalent of a Mississippi literacy test that blacks with Ph.D.s were not allowed to pass--tests that asked questions like how many bubbles a soup bar contained. The Hispanic advocacy organization MALDEF tried hard to find dreadful stories of disfranchisement and could not. In fact, in South Texas, Mexican-Americans had been an important source of Democratic Party power since the late 19th century.

If federal intrusion was benign, it would be of little concern. It's not. Under its preclearance powers, the Justice Department has long been demanding jurisdictions create wildly racially gerrymandered districts that protect minority candidates from white political competition. The state of Texas was sued in 1994 by a multiracial group of voters over the creation of three of these bug-splat districts. The Supreme Court ruled that the districts were unconstitutional gerrymanders. In 1998, the court redrew the congressional map to make it more compact and reunite communities that had been split apart by race. It cost the state millions of dollars to defend what the Justice Department had improperly demanded it do.

Such racially gerrymandered districts result in a segregated--and uncompetitive--political map with safe minority and safe white districts, and no incentives to build multiracial coalitions and bring Americans together across the lines of race and ethnicity.

Everyone knows there is almost no turnover in Congress; incumbents keep winning. American politics is much less fluid than it should be. Almost no one points to the Voting Rights Act as one important reason why this should be so. Congress should let these emergency provisions expire; they're not needed, they've lost their logic even in the Deep South, and they create mischief. It is time to let Texas and all of America move on.

Abigail Thernstrom is the vice chair of the U.S. Commission on Civil Rights. Edward Blum is a senior fellow at the Center for Equal Opportunity. They are authors of a book on the Voting Rights Act to be published by the AEI Press.

Related Links

Voting Rights Act: After 40 Years, It's Time for Virginia to Move On
Books from the AEI Press

AEI Print Index No. 18856

You can find this online at: http://www.aei.org/publication23040

Wall Street Journal, July 15, 2005, A10

Do the Right Thing

By Abigail Thernstrom and Edward Blum

When it comes to issues involving race, apparently the first instinct of congressional Republicans is to grovel. They don't believe in appeasement abroad -- only at home. The immediate issue is the reauthorization of the "emergency" provisions of the 1965 Voting Rights Act -- provisions such as preclearance that constitute such a radical, unprecedented intrusion into state electoral prerogatives that they were originally designed to expire in 1970. Repeatedly extended, they are now due to die on Aug. 6, 2007.

But, terrified by the reauthorization campaign that the NAACP, the Lawyers Committee on Civil Rights, and other advocacy groups have begun to mount, Republicans in the House and Senate are pledging their support for reauthorization. Dennis Hastert, Tom DeLay and House Judiciary Committee Chairman James Sensenbrenner have announced that they will introduce legislation extending the "temporary" provisions another 25 years. This comes on the heels of Bill Frist, who said: "We must continue our nation's work to protect voting rights. And that is why we need to extend the Voting Rights Act."

Sen. Frist's statement is a non sequitur. Protecting voting rights is vital, but extending the temporary provisions of the Voting Rights Act is quite a different matter. Most of the legislation is permanent; basic 15th Amendment rights will never be denied again. And those who point their fingers at Florida should note that arguments over hanging chads had nothing to do with the Voting Rights Act. Florida was not a state covered by the emergency provisions in 1965, and today only five scattered counties (none involved in the battle of 2000) would be affected by another extension.

Section five is the most important of the provisions due to expire in 2007. It forces "covered" states and counties to "preclear" every voting-related change they make with the U.S. attorney general or the D.C. district court. Thus, before a covered jurisdiction moves a polling place two blocks or redraws congressional districting lines, it must obtain federal approval. Most of the states and counties on the federal watch list are in the South. But today, for instance, Manhattan, the Bronx, and Brooklyn are covered, but Queens and Staten Island are not. Arizona is covered, but not New Mexico. In 1965 every part of the Act made perfect sense. No longer.

Times have changed, most strikingly in the Deep South, the region in which blacks were massively disfranchised in 1965. The preclearance provision was designed to make sure that the Act's ban on literacy tests stuck, since the fraudulent use of such tests in the South was the main barrier to black ballots. Framers of the Act feared redneck public officials would find new ways to keep blacks from the polls; hence the extraordinary (and punitive) federal oversight. But Southern resistance to basic enfranchisement quickly collapsed and today the case for Southern distinctiveness is tough -- if not impossible --

to make. The emergency that justified the temporary provisions is long over. The Bloody Sunday police violence against voting-rights activists at the Edmund Pettis Bridge was 40 years ago. And yet the radical penalty for the wrongs of that terrible era remains.

The 1965 Act was amazingly effective, but members of Congress who voted repeatedly to reauthorize the temporary provisions became persuaded that blacks were equally disfranchised when the power of their vote was "diluted." Encouraged by courts, the Justice Department began to insist that all covered jurisdictions create as many "max-black" districts as possible. The point, of course, was to protect black (and after 1975, Hispanic) candidates from white competition, to promote minority officeholding in proportion to the minority population -- which was viewed as racially "fair." The result: racial gerrymandering so egregious as to create bug-splat districts that, in the words of the Supreme Court, reinforced "the perception that members of the same racial group -- regardless of their age, education, economic status, or the community in which they live -- think alike. . . ."

Nice rhetoric, but, in fact, the Supreme Court put a stop only to looks-ridiculous districting that is accompanied by a blatant public record of race-driven line-drawing overriding all other considerations. If the preclearance provision is extended once again, the unelected Justice Department attorneys will retain their extraordinary and, by now, constitutionally questionable power to insist on race-conscious districting in Virginia but not Tennessee, although black ballots are equally important in both states. And those racially homogeneous and uncompetitive districts, which make biracial and bipartisan coalitions unnecessary, will continue to elect mostly far-left minority candidates.

Preclearance is no longer defensible. Another provision, known as section two, takes a more reasonable approach to the same problems preclearance was designed to address. This provision allows plaintiffs to initiate suits in any jurisdiction across the nation if they believe minority voters have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." But the burden of proof is on the plaintiffs and jurisdictions have an opportunity to defend themselves in a local court. DOJ career attorneys partial to plaintiffs will not be resolving disputes behind closed doors.

Will the GOP truly benefit politically from its craven surrender to Jesse Jackson and other activists eager to wave the racism flag? Not a chance. In fact, the opportunities for mischief using the Voting Rights Act are only growing. A 2003 Supreme Court decision encourages the Justice Department to think of both white and minority Democrats as "responsive" to black and Hispanic interests. In coming years, the statute is thus likely to become a handy tool to push partisan as well as racial redistricting.

Opposing the civil-rights lobby requires political courage -- a commodity rarely seen in Washington. Many Republicans in Congress understand the principles involved here, but aren't willing to fight for them. Draconian federal intrusion into local elections was justified when it was the only way to enfranchise Southern blacks -- but 40 years on, it's an unconstitutional travesty.

Ms. Thernstrom is the vice chair of the U.S. Commission on Civil Rights. Mr. Blum is a senior fellow at the Center for Equal Opportunity. They are authors of a book on the Voting Rights Act to be published by the AEI Press

Newhouse News Service

August 3, 2005 Wednesday

SECTION: WASHINGTON

LENGTH: 1441 words

HEADLINE: **Voting Rights Act** Faces **Reauthorization** Amid Topsy-Turvy Politics

BYLINE: By JONATHAN TILOVE; Jonathan Tilove can be contacted at jonathan.tilove(at)newhouse.com

DATELINE: WASHINGTON

BODY:

Forty years ago this Saturday, President Lyndon Johnson signed the Voting Rights Act of 1965 into law, bolstering the right of blacks to vote in states where it had been denied or suppressed.

Today, Southern politics have been transformed in two fundamental ways: Blacks exercise power and hold office in great numbers, and Republicans, with almost no black support, are the dominant party.

The two are not unrelated. Republican gains came partly through creation of black districts, which improved GOP prospects in surrounding districts "bleached" of blacks, who reliably vote Democratic.

The VRA's key provisions expire in 2007. And with Congress facing a vote on reauthorization, the topsy-turvy politics of voting rights are coming to a head.

In 2003, in Georgia v. Ashcroft, the Supreme Court ruled over the objections of the Bush Justice Department that the state's Democrat-controlled Legislature did not violate the VRA in drawing up a state Senate redistricting plan that spread black voters out a bit.

The court's conservatives said black political interests were better served with more Democratic districts, even if this risked electing fewer blacks. In the past, the federal government had used the VRA to reject any plan that reduced the concentration of blacks in districts where they were the majority. There was to be no backsliding.

Writing for the majority in a 5-4 decision, Justice Sandra Day O'Connor remarked that she was particularly moved by Rep. John Lewis' testimony in favor of the redistricting plan. Lewis, hero of the bloody battle for voting rights in Selma, Ala., that precipitated passage of the VRA, was elected to Congress from a black district in Atlanta in 1986.

Now the nation's civil rights leadership as represented by the Leadership Conference on Civil Rights, the NAACP Legal Defense and Educational Fund, and others wants to limit the impact of Georgia v. Ashcroft. They argue that the premium should be placed on whether minority voters can elect candidates of their race, not merely candidates of their party.

This requires the Democrats, the civil rights movement's staunchest allies, to spurn a court decision that seemed a gift.

Section 5 of the VRA requires places with a history of discrimination all of Alabama, Georgia, Louisiana, Mississippi, South Carolina and Texas; parts of Virginia and North Carolina; and all or part of a few other states to get federal approval before altering voting practices or procedures, redistricting included. It was this process that ultimately brought the Georgia plan to the nation's highest court.

The iconic leader of the reauthorization drive in Congress is none other than Rep. Lewis, who wants to rewrite Section 5 to restore the pre-Georgia v. Ashcroft interpretation of the law. "I think we've got to find some balance, some happy medium," he said.

He is in the unusual position of asking colleagues to correct a Supreme Court opinion that lionizes his own longing for "an all-inclusive community, where we would be able to forget about race and color and see people as people, as human beings, just as citizens."

But his logic is that the court provided local officials with leeway that a less-enlightened jurisdiction might misuse. "I believe that there is the strong possibility that in certain states, certain counties and certain political districts, they would return to the dark past," he said.

Meanwhile, Republicans face their own predicament.

Resist the reauthorization, or merely a stronger Section 5, and they risk inflaming minority voters all to gut a law that has proved useful in running up GOP majorities in the South. They hand the Democrats an issue in the 2006 midterm elections, even as they themselves try to get right with black voters. Go along, and they betray segments of their white base who bristle that, after four decades and a world of change, Section 5 still singles out the South for special scrutiny.

"I just don't see the need for it," said U.S. Rep. Lynn Westmoreland, R-Ga.

He pointed out that Georgia's attorney general, labor commissioner and three of its state Supreme Court justices, including the chief justice all of whom are elected are black. Two of its four black members of Congress Sanford Bishop and David Scott are from majority white districts.

"We are supposed to be one nation, and if we are going to have (Section 5), it ought to apply to all 50 states," Westmoreland said.

But Debo Adegbile, associate director of litigation for the NAACP Legal Defense and Educational Fund, said making Section 5 national or permanent, as some Republicans suggest would be an unconstitutional overreach, setting it up for fatal challenge before the Supreme Court.

All this accumulated irony reflects the contending ways in which the South has changed since President Johnson signed the law.

In a chapter for a forthcoming book on the VRA, David Bositis, an expert on black politics with the Joint Center for Political and Economic Studies, notes that while the number of black elected officials grew more than tenfold after 1965, "this advancement ... has been accompanied by an even greater advancement of the views and interests of the class of people who were most opposed to the passage of the Voting Rights Act namely, conservative Southern whites."

How much black districts are at fault for the demise of white Democrats is a matter of bitter debate.

At a recent Washington conference on the act, Laughlin McDonald, director of the Atlanta-based ACLU Voting Rights Project, noted that the VRA was intended to empower minority communities, not the Democratic Party. Many in the civil rights community think white Democrats blithely blame minority districts for their own failures.

But Edward Blum, a fellow with the Washington-based Center for Equal Opportunity, and a longtime crusader against race-conscious public policy, said Democrats and their allies fool themselves if they underestimate how much racial districting has cost them, and what a blunder 1/2it would be for them to override Georgia v. Ashcroft.

"They would truly be digging their own grave for control of legislative bodies really for the next generation," Blum said. "It is highly unlikely Democrats would be able to regain control of the U.S. House or any of the legislative bodies in any of the covered Deep South."

No group has more at stake than black members of Congress. All of them are Democrats. Many have considerable seniority and would wield great power if the Democrats regained control of the House.

"Section 5 ought to be allowed to gracefully expire in 2007," said Vanderbilt University political scientist Carol Swain, whose book "Black Faces, Black Interests" was cited in Georgia v. Ashcroft as evidence that simply electing more minority representatives may not maximize the influence of minority voters.

But, Swain said, "Apparently black members of Congress have grown comfortable with being in the minority. Otherwise, why would they endorse a strategy that works against the long-term interests of their party?"

Some members of the Black Caucus are treading lightly.

A spokesman for U.S. Rep. Robert Scott, D-Va., said that while the congressman was intrigued by the question of reworking Section 5, he was not yet prepared to talk about it.

And U.S. Rep. Artur Davis, D-Ala., a moderate whose district includes Selma and Birmingham, said that while he has not looked closely at Georgia v. Ashcroft, he was open to strengthening Section 5, but thought the bipartisan consensus may be to reauthorize the provision as is.

Ultimately, a reauthorized VRA will be tested in the courts, and both sides are laying the groundwork.

Civil rights groups are combing the covered territories for evidence of abuses that warrant continuing Section 5. Blum is collecting data to prove that white voters in the South are as likely to vote for black candidates as are white voters in the rest of America, rendering Section 5 obsolete and unfair.

But Bositis said it is still easy, for example, to distinguish Mississippi, which has never elected a black candidate statewide, from Illinois, which has on several occasions most recently in sending Barack Obama to the U.S. Senate.

And state Sen. Robert Brown, a black Democrat from Macon instrumental in the redistricting at issue in Georgia v. Ashcroft, like Lewis, supports a stronger Section 5 precisely because he is not sure black candidates could fare as well with white voters elsewhere in the South.

"Georgia is not so much of a backwater state," Brown said.

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The Kansas City Star

August 2, 2005 Tuesday 1 EDITION

SECTION: B; Pg. 7

LENGTH: 758 words

HEADLINE: Polls should be made easily accessible to all citizens; VOTING RIGHTS

BODY:

Voting should not be difficult.

Not now, not in the United States, not as the 40th anniversary of the Voting Rights Act approaches on Saturday.

And yet, listen to what is being heard by a national commission studying voting rights:

An Arizona election official reported questioning the citizenship of about 90 percent of the voters. Who are these questionable voters? They are the first Americans, members of the Apache nation. Their tribal identification cards do not have enough information to meet new state criteria intended to weed out voter fraud. There also were stories of native people born on tribal lands who lack birth certificates to prove they are in fact U.S. citizens and therefore eligible to vote.

Another problem affected poor white rural voters who have post office boxes instead of numbered addresses. That's a concern when poll workers insist on a home address for identification.

Some Latinos in Nevada reportedly were told they may only vote once, so some people voted in the primary election and then did not vote in the general election.

Or people were inaccurately told and unfortunately believed that they needed a driver's license to vote.

And there were reports of Latinos filling out voter registration forms then later finding their forms in a dumpster.

These are just some of the many stories that members of the National Commission on the Voting Rights Act heard during their first four hearings this year.

Another trick heard by the commissioners: Voters were told the polls would stay open until 9 p.m., so they could come after finishing a day at work. When the late workers arrived, the polls had been closed for several hours.

Immigrants, Spanish-speaking people and those speaking Asian dialects do not always get the language assistance required under the Voting Rights Act, speakers have been telling the commissioners.

In Arizona, some black citizens were told there were no more ballots, so they couldn't vote. Others were told they were in the wrong precinct, despite having voted there for more than a decade and the boundaries hadn't changed.

More hearings are scheduled around the country this summer and fall. The sessions are leading up to the congressional **reauthorization** of portions of the **Voting Rights Act** in 2007.

The problems appear to be nationwide, something that surprised the commissioners, said Jon Greenbaum, director of the Voting Rights Project of the Lawyers' Committee for Civil Rights Under Law.

Just to be clear: black people's right to vote does not have to be reapproved by Congress. That is an old Internet-fueled hoax that has spread for years among African-American communities.

But the portions of the Voting Rights Act that are up for re-authorization are definitely needed to address problems. Things like the government's right to send election examiners and observers where they suspect abuses.

Evidence shows election observers have the effect of light on cockroaches -- problems disappear.

Congress also needs to support provisions ordering bilingual language assistance in areas with high concentrations of U.S. citizens with limited English abilities.

For those who question that, recall the last ballot you read on a complicated zoning or bond issue. The legal wording is often confusing to even highly literate English speakers.

Imagine if English were not your first language? If say, you arrived in the United States as an adult immigrant. These U.S. citizens have the same right to vote as their natural-born peers.

As of 2002, jurisdictions in 30 states (including portions of Kansas) fell under the language provisions.

Congress should recall that before the Voting Rights Act, many tricks, even outright violence, kept African Americans from voting.

Remember literacy tests -- insane provisions where black people were asked to recite documents like the Declaration of Independence, and when they couldn't were told they were not eligible to vote?

Such tests were deplorable enough. But recall that some people resorted to murder to control election outcomes, most famously the three civil rights workers killed for registering black voters in Mississippi.

Thankfully, the current problems do not rise to that level.

In fact, some problems are not intentionally designed to keep people from voting.

But intent is not the issue. Result should be the focus.

And far too many people are still having difficulty casting ballots.

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Ballot Box Equality

Stuart Comstock-Gay

August 05, 2005

Stuart Comstock-Gay is Executive Director of the National Voting Rights Institute, which is a proud member of the coalition seeking to reauthorize the Voting Rights Act.

In 1965, only five months after John Lewis was beaten in the famous march on Selma, President Lyndon Johnson spurred Congress to pass the Voting Rights Act. Only five months to pass what is one of the most important civil rights laws in U.S. history. Only five months from outrage to one of the greatest bulwarks of democracy in America.

It is difficult to imagine a law more important to American democracy and civil rights than the Voting Rights Act of 1965. To find another law that more fundamentally altered the way American democracy works, you have to go back to the Civil War era 14th and 15th Amendments. The Voting Rights Act is *that* important.

But like any victory, constant work is necessary to maintain it. In August of 2007, unless action is taken now, certain sections of the VRA will expire. And quite frankly, their continuation is not a sure thing.

A bit of background. The VRA has permanent provisions and temporary provisions. Among the permanent provisions are Section 2, banning racial discrimination in voting nationwide, and Section 2[illegible], which bans literacy tests nationwide. Among the temporary provisions are Section 5, which requires certain state and local governments to "pre-clear" proposed changes in voting procedures that could negatively affect minority voters, Section 203, which requires language assistance in some jurisdictions for voters who are not literate or fluent in English, and Sections 6 through 9, which allow for federal examiners and observers of elections in certain districts, in order to determine whether or not violations of the Act have occurred. It is these temporary provisions that we could lose.

Although voting discrimination in 2005 doesn't involve public beatings on bridges, the full Voting Rights Act—including the about-to-expire temporary provisions—is just as necessary today as it has been in the past.

We need pre-clearance to avoid outrages like the last-minute cancellation in 2001 of a municipal election in Kilmichael, Mississippi, by the all-white town council. In objecting to this change under Section 5, the Justice Department found that the cancellation occurred after after Census data revealed that African Americans had become a majority in the town. And enough black candidates had qualified to run so that—for the first time—the town council could have had an African-American majority.

We need the language provisions to keep the franchise fully open to all Americans. The Asian American Legal Defense and Education Fund reports that voters are given misinformation like, "... learn English at home before you come out to vote." Yet, thanks to Section 203, New York City's

20th District in 2001 elected John Liu, the first Asian American to be elected to citywide office in New York. His election can clearly be attributed in part to the language provisions which allowed first-generation citizens to vote independently and privately.

And the provision allowing for observers? Department of Justice observers paid attention to an election in Boston recently. As a result, the department has begun proceedings against the city for failing to meet the Voting Rights Act needs of language minorities. During the last election, observers were sent to locations in a total of 25 states, and the provision remains important in protecting the right to vote.

Last reauthorized in 1982, the temporary provisions' 25 years are almost up. While civil rights activists and many senators—including Edward M. Kennedy—have vowed to fight for reauthorization of the expiring sections, others have expressed outright opposition, and overall support is less clear. Conservative commentator Abigail Thernstrom has argued simply that the time for the temporary provisions is past, and they ought not be reauthorized at all. On Tuesday the 2nd of August, Attorney General Alberto Gonzalez said the administration was committed to reauthorizing the Voting Rights Act, but wouldn't comment about which parts. Other leaders have offered similar "fuzzy" positions.

Others have expressed their interest in making the temporary provisions permanent. This is a poison pill that needs to be avoided. While permanency may seem wise on the surface, these temporary provisions must be narrowly tailored to address the ills they intend to cure. If not narrowly tailored, there is a real possibility that the Supreme Court could rule them unconstitutional. It is not clear the Supreme Court would consider permanent regulations, rather than time-limited remedies, to be narrowly tailored.

To fight the new forms of discrimination, the full Voting Rights Act remains necessary. And it will take citizens from across the country contacting their legislators, writing letters to newspapers, and putting up a clarion call for renewal of all portions of the Voting Rights Act to ensure that voting rights in this country don't regress.

The effort to reauthorize the Voting Rights Act involves dozens of organizations and individuals already. Check www.civilrights.org to find out more now.

America remains a great model for democracy. But our model is not finished. We need to continue to repair and rebuild it where it is broken. The Voting Rights Act—all of it—is necessary for that work.

Federal News Service

August 8, 2005 Monday

LENGTH: 3204 words

HEADLINE: PREPARED REMARKS OF ATTORNEY GENERAL ALBERTO GONZALES AT THE AMERICAN BAR ASSOCIATION HOUSE OF DELEGATES

LOCATION: CHICAGO, ILLINOIS

BODY:

ATTY GEN. GONZALES: Good morning, Ladies and Gentlemen.

Thank you for allowing me a few minutes in your busy schedule. I appreciate all of the important work the ABA does for the legal profession -- and for our Nation. We may not always agree on issues but this Administration and ABA share a common commitment to the rule of law.

Your contributions to a well qualified judiciary -- and especially as we work to confirm a new Associate Justice of the Supreme Court -- has traditional importance in the process of placing qualified jurists on the federal bench. On behalf of the President, thank you for your continued interest and contributions in this effort. As many of you know, Judge Roberts was unanimously rated well qualified by the ABA to serve on the DC Circuit. The President believes that because of Judge Roberts' strong record of integrity, professional competence, and judicial temperament, he is superbly qualified to serve on the Supreme Court. I look forward to a good and fair examination of Judge Robert's qualifications, and his ultimate confirmation to the Court.

The Supreme Court is a great and enduring symbol of the rule of law in our Nation. It's that defining characteristic of America -- rule of law -- not religion, race, or ethnicity -- that binds people and generations to our founding principles of liberty and justice for all.

As an organization, the ABA has been advocating for the rule of law for more than one hundred twenty-five years. Throughout your history, you have seen firsthand the importance that law and our courts play in shaping our Nation's history and upholding our highest ideals.

The story of America is dotted with crises and challenges that tested the mettle of our Nation: the Civil War, the Great Depression, the Cold War. Each time the United States has been presented with a challenge, we've responded with a fortitude that has become our hallmark for nearly two hundred thirty years.

From the very start, the United States was a Nation built upon a collective response to adversity and oppression. We faced down tyranny, sacrificed the blood of patriots in revolution, and emerged from the struggle with the greatest legal document the world has known -- the U.S. Constitution.

This pattern has repeated itself in our history. Great crises have been met with debate, dialogue, and legal resolution. In the process, the rule of law has

been further strengthened as the backbone of our democratic system and a means to peace, prosperity, and opportunity.

This cycle of public policy and legislative solutions to fundamental challenges continues today. Three fairly obvious examples come to mind from my first six months as Attorney General -- and I would like to share some thoughts about those with you today.

The Voting Rights Act. The Federal Sentencing Reform Act. The PATRIOT Act. Each represents a successful bipartisan effort to address significant problems or challenges in our society. Each has done an admirable job -- standing the test of years and, in some cases, decades. And the fundamental goals of each requires renewed attention today in order to maintain these successes.

At the Justice Department, we are committed to preserving the ideals and values of each of these historic pieces of legislation.

***

On Saturday, our Nation celebrated the passage of the Voting Rights Act. Forty years ago, President Lyndon Johnson signed that important bill into law. Earlier last week, I had the chance to travel home to Texas and mark this watershed event in the civil rights history of our Nation.

But as we celebrate this achievement, it is important to remember that it wasn't always so in our Nation's history. That is why we strive today to ensure that every single American has a voice in our democracy.

As recently as the 1960's, many communities were systematically denied the opportunity to vote. The inalienable rights that were promised to all Americans had slipped the grasp of many of the poor and weak in our society.

Consequently, these citizens wielded no power, shared no influence, and had no voice in their government. It was a government of some people, by some people, and for some people.

They were denied the right to vote -- denied the privilege of participating -- by people who were unafraid of the consequences. There were no tools available to defend these rights against organized racism.

Many of us remember the chilling scene atop the Edmund Pettus Bridge outside Selma, Alabama back in March of 1965.

A group marching toward Montgomery -- to highlight the injustice of the disenfranchised -- only got a few blocks outside of town. On that bridge, a peaceful day turned into Bloody Sunday as marchers were met by police officers and deputized thugs armed with billy clubs and tear gas.

They were stopped. But they could not be silenced.

They spoke loudly for their rights, wielded the authority of their righteous cause, and thereby influenced our government to change. President Johnson signed the Voting Rights Act just five months after six hundred determined Americans faced down a history of systematic disenfranchisement outside of Selma.

The Voting Rights Act gave the federal government tools to defend the promises made in the Fifteenth Amendment. Every citizen would not only have the right to vote...but that vote would be protected with the full power of the federal government.

Today, the power to vote is one of the greatest opportunities we share as Americans. On Election Day, we all have an equal chance -- the same voice -- to

exert a measure of influence over the events and decisions that shape our lives and our Nation.

That's why I was proud to celebrate the passage of the law that so effectively codified these principles. And I am proud to serve in an Administration that is deeply committed to the basic ideals of this legislation.

The Voting Rights Act has been enormously successful, but our work is never complete. President Bush wants to ensure that every qualified person in every community of America has an equal chance to not only vote -- but also have that vote count.

For this reason, this Administration looks forward to working with Congress on the reauthorization of this important legislation.

As we work towards reauthorization, the men and women at the Justice Department have an ongoing responsibility to ensure that every American citizen's voice is heard and their votes counted.

That is the work of the Voting Section of our Civil Rights Division and the Public Integrity Section of our Criminal Division. The President has directed the full power and might of the Justice Department to enforce the Voting Rights Act and to preserve the integrity of our voting process.

In the post-9/11 world, we have an even greater appreciation for our precious American rights and we recognize exactly what makes our Nation so special. Just as we hugged our families a little harder on that terrible day four years ago, we must cling tighter to the valuable freedoms our enemies hate so much. We cannot grow complacent in the safeguarding of those inalienable rights on which our Nation was founded.

Still today, the Voting Rights Act provides the same hope and opportunity this Nation has promised to generations of Americans. As our pursuit of voting rights has evolved, so too has our commitment to the founding values of our country. And it will continue as we work with Congress on the **reauthorization** of this historic law.

***

The **Voting Rights Act** was passed on the heels of specific acts of violence -- such as those on Bloody Sunday -- that awakened the country to the need for further protection of our cherished rights and liberties.

The federal sentencing guidelines on the other hand were the result of alarmingly high crime rates across the entire country in the 1960s and 1970s -- alerting lawmakers to a crisis in America's streets and cities.

During a period of time when serious violent crimes more than tripled, some Americans lost faith in our ability to appropriately sentence offenders and keep them from harming others again. Our system of sentencing was unfair and it was broken.

So in 1984, lawmakers from across the political spectrum passed the Sentencing Reform Act with two broad goals in mind.

The first was to increase the safety of law-abiding Americans by restoring in sentencing an emphasis on punishment, incapacitation, and deterrence.

The second was to ensure fairness in sentencing. The statute's guiding principle was consistency -- defendants who had committed equally serious crimes and had similar criminal backgrounds should receive similar sentences.

In the 17-plus years that they have been in existence, federal sentencing guidelines have achieved the ambitious goals of public safety and fairness set out by Congress.

The United States is today experiencing crime rates that are the lowest in a generation. Compared to the years immediately before the Sentencing Act was passed, we've prevented thirty-four million additional violent crimes over the last ten years.

Of course, no single law or policy is by itself responsible for today's low levels of violent crime. But mandatory federal sentencing guidelines have helped drive down crime.

Multiple, independent studies of our criminal justice system confirm what our common sense tells us: increased incarceration means reduced crime. Federal and state sentencing reform has helped put the most violent, repeat offenders behind bars, and kept them there for sentences appropriate to their crimes.

The guidelines have evolved over time to adapt to changing circumstances and a better understanding of societal problems and the criminal justice system. Judges, legislators, the Sentencing Commission, prosecutors, defense lawyers, and others have worked hard to develop a system of sentencing guidelines that has protected Americans and improved American justice.

As you know, however, this past January, the Supreme Court ruled in Booker that federal sentencing guidelines are advisory only and are no longer binding on federal judges.

As a former judge, I know well the difficulties of certain issues such as sentencing, and I admire the men and women on our federal bench. But I fear it is inevitable over time that, with so many different individual judges involved, exercising their own individual discretion, in so many different jurisdictions, even greater disparities among sentences will occur under a system of advisory guidelines.

I am concerned that under such a wholly voluntary system we will not be able to sustain the progress we've made and victims may be victimized once again by a system that is intended to protect them.

Since the Booker decision, numerous legislative proposals have been suggested in response and they should all be studied and discussed. I continue to listen and keep an open mind, and one proposal that I have already indicated appears to preserve the protections and principles of the Sentencing Reform Act, and thus deserving of serious consideration, is the construction of a minimum guideline system.

The advantages of a minimum guideline system are many. It would preserve the traditional division of responsibility between judges and juries in criminal cases and retain the important function of the U.S. Sentencing Commission in providing guidelines to the courts regarding sentencing. It would also allow judges some flexibility for extraordinary cases. And a minimum guideline system would be fully consistent with the Sixth Amendment, as interpreted by the Supreme Court.

As lawyers we all have a responsibility to maintain the progress we began with the Federal Sentencing Reform Act -- keeping violent crime to its lowest level in three decades -- and I look forward to working with Congress, the Judiciary, the Sentencing Commission, and all Americans to design a sentencing system that protects the American people and provides equal justice to defendants.

***

The Justice Department has been charged with fighting crime for more than one hundred thirty years. And the sentencing guidelines were instrumental in our ability to discharge that duty over the past two decades.

But as you all know, the mission of the Department has evolved to include the fight against terrorism -- and new tools were needed to protect the American people from this new threat.

The PATRIOT Act is another law that effectively addresses the signal challenge of this era -- fighting terrorism. Much like the Voting Rights Act and Federal Sentencing Reform Act, the PATRIOT Act is a measured -- but vitally necessary -- response to the central challenge of our day.

Nearly four years ago, we all experienced an unimaginable horror. If you're anything like me, the memories of September 11th are brought to the fore by images from the London bombings and other terrorist events around the globe.

The roll call of terrorist activities since 9/11 is long: London, Madrid, Baghdad, Riyadh, Jerusalem, Bali, and others. The pictures of bloodied faces and frantic victims still sear and scar the hearts of freedom loving people around the world.

But the new realities of terrorism arrived on our shores in the most spectacular and shocking fashion. Ripped from the quiet following victory in the Cold War, Americans woke up to the threat of violent terrorism in our streets and cities.

Much as we looked on in horror at the brutality of Bloody Sunday and the overt violence in America's inner cities, the images of burning buildings, ashen sidewalks, and tearful family members transfixed a grieving public.

In the time it took two symbols of American opportunity to crash to the ground, a new crisis engulfed a sorrowed -- but steely -- Nation.

As expected, America responded with grace. Stores sold out of American flags. Thousands rushed to Ground Zero and the Pentagon to help emergency workers. Millions grieved together and alone.

And I am sure that you all remember dedicated patriots standing together on the steps of the Capitol Building to sing God Bless America. Those same men and women responded quickly to the new security needs of our country. Congress passed and the President signed the U.S.A. PATRIOT Act just a few weeks after the devastation of 9/11.

I've talked often about the reauthorization of this important law enforcement tool over the past several months. But the litany of misstatements and half-truths from others have complicated this debate and required a concerted effort to educate the American people -- and the bipartisan coalition in Congress who enacted this legislation -- about the singular importance of the PATRIOT Act.

You've probably heard the arguments on both sides. Let me be straightforward:

* We are fighting terrorism with the tools and techniques provided for in the PATRIOT Act -- tools that have long been available to fight crime -- and we are doing so in a manner that protects our cherished rights and liberties.

* We are not interested in the reading habits of ordinary citizens -- as some have suggested.

* We are subject to ongoing and constant oversight by federal judges and the Congress.

* We are not snooping into the medical records of every day Americans.

* We are still at war with a patient and adaptable enemy.

* We are not in a position to relent in this fight.

Several provisions in the PATRIOT Act were set to expire in the event that the terrorist threat ended or changed, or in the event that the Justice Department did not use these tools in a lawful and responsible manner. As we know from the headlines, the threat has not expired; the Department has acted responsibly. And that 's why everything that was right about the PATRIOT Act nearly four years ago is still right today. We still need the investigative tools to track potential terrorist activity and share information more quickly. Some have expressed concerns about encroachments on privacy and civil liberties. Count me as someone who is always concerned about such matters. And for that reason, I have welcomed the debate about the PATRIOT Act. But to unilaterally disarm in the face of an ongoing threat by giving up tools that have been effective in protecting America because of hypothetical, theoretical abuses would not be wise.

I am pleased that both the House and the Senate have voted to reauthorize key provisions of the PATRIOT Act and I look forward to them sending a bill to the President's desk that does not undermine the ability of investigators and prosecutors to disrupt terrorist plots and combat terrorism effectively. I am committed to working with both the House and the Senate as we move toward the ultimate renewal of the Act.

When we do, I believe that we will be able to look back forty years from now and determine that it was another great legislative success that helped America confront the greatest challenge of our era.

***

Whether it was the civil rights crisis in the sixties, escalating crime rates in the seventies, or terrorism in this new century, different chapters in America's history have been written with different challenges.

I am proud that we've always responded reasonably in a manner befitting the world's greatest home for freedom and opportunity. It's the hope incumbent to every American that drives our ability to react to hardship with heart, to confront difficulties with desire.

I am also proud -- as I know you are -- that lawyers have played a pivotal role in so many of these efforts. It is sometimes fashionable to criticize lawyers -- and it is occasionally deserved. But putting aside all humility, and speaking as one lawyer to a group of lawyers, I do not think it can be refuted that lawyers perform a function as important as any in our Nation: giving life to the rule of law in a society founded on that bedrock principle.

Alongside policy makers, opinion leaders, and concerned citizens -- in the three cases I've cited and many others throughout the history of our Nation -- lawyers have helped to bring the measured hand of the law to bear on the challenges we've faced.

To paraphrase Thomas Jefferson: we are not afraid of any crisis, so long as reason can be left free to combat it.

Reason brought an honorable end to decades of disenfranchisement in the South. Today, the Voting Rights Act continues to protect every American's access to the ballot box.

Reason ensured that violent criminals received strict and consistent sentences. Today, we are working to continue to reduce crime and renew our commitment to fair sentencing standards.

Reason is helping us fight the war on terror and protect the American people. Today, the PATRIOT Act continues to provide us with the tools necessary to track down and interrupt terrorist plots, while preserving our civil rights and civil liberties.

Reason is what led to the U.S. Constitution and what guides our application of laws to protect the American dream for everyone who seeks its blessings.

We are lucky, indeed, to live in the greatest country in the world. Thank you for doing your part to ensure that we continue to stand guard over the hope and opportunity -- even in the face of crisis -- that we've come to expect in our great land.

May God bless you and your families, may he guide your deliberations and decisions, and may He continue to bless the United States of America.

LOAD-DATE: August 9, 2005

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW

Preserving a Fundamental Right: Reauthorization of the Voting Rights Act

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EXECUTIVE SUMMARY

The Voting Rights Act of 1965, perhaps the most influential civil rights statute, is up for renewal of its temporary provisions in 2007. This legislation has succeeded in removing direct and indirect barriers to voting by African Americans and other racial and language minorities. It has survived narrow interpretations by the U.S. Supreme Court only to be amended by Congress to restore its original strength. In light of the need for Congressional action in four years, it is time to consider the current status of voting rights in our country, and the function of the Act in a legal landscape which includes an increased public understanding of voting issues after the disputed presidential election of 2000, recent narrowing of the Act by the Supreme Court, and the Court's restrictive view of race-conscious legislation. If Congress takes steps to restore the Act to its intended interpretation, the Act should continue to stand as a necessary tool for implementation of the Fifteenth Amendment and as a protection against a continual pressure to backslide in covered jurisdictions. It now stands as one of several federal voting laws, the more recent of which address access to the franchise by all citizens, without reference to correcting historic burdens placed on minority voters. It may be that further progress in aid of full minority enfranchisement will be best served by enhancements to the Act which are similarly silent on race, and are thus within the framework of the Court's recent Equal Protection jurisprudence.

In summary form, this memorandum surveys: the legal and social landscape that led to passage of the Act, its provisions and later amendments, and its early successes (Section I); the current relevance of the Act, in terms of recent gains in voter registration and minority officeholders, and continuing obstacles to the exercise of the franchise by minority citizens (Section II); the need to clarify the Act to restore Congress' original intention in light of recent Supreme Court decisions which have hampered U.S. Department of Justice enforcement efforts (Section III); and further legislative steps to enhance minority voting rights (Section IV).

I. INTRODUCTION

A. Historical Background of the Voting Rights Act

The Voting Rights Act of 1965 (the "Act")[1] is widely considered the most important and successful piece of civil rights legislation ever enacted.[2] Congress designed the Act to enforce the Fifteenth Amendment[3] and to eliminate racial restrictions of the right to vote.[4] In the century following the adoption of the Fifteenth Amendment, the federal government had attempted to extend the voting franchise to African Americans, but was met at every turn by persistent resistance from states.[5] The exclusion of African Americans from the franchise, together with the doctrine of "separate but equal,"[6] provided the legal foundations for the overt and often brutal regime of racial oppression known as "Jim Crow."[7] The Act was developed in direct response to the failure of previous federal legislation and explicitly addressed both the direct and indirect obstacles to minority voting.

Prior to the Act's passage, during the late 1950s and early 1960s, the United States Department of Justice ("DOJ") brought numerous cases across the South attacking restrictive voting practices under the Civil Rights Acts of 1957, 1960, and 1964,[8] each of which contained some voting-related provisions.[9] However, it soon became clear that these individual suits were not effective.[10] After being enjoined to stop one restrictive practice, the jurisdiction in question often then adopted a new voting policy, different in its particulars but with the same overall goal of reducing or eliminating minority voting rights.[11] Moreover, the suits did not force other jurisdictions to comply with the federal law, and thus more widespread enforcement required additional costly and uncertain litigation.[12] During the Kennedy Administration, the DOJ brought fifty-seven voting rights suits and managed only to change "no registration" of African Americans to "token registration," even with the Voter Education Project's heroic door-to-door voter registration efforts across the South.[13]

Public pressure mounted for a more comprehensive solution.[14] In large part, civil rights organizations and their allies, who had for many years worked to challenge the political exclusion inherent to the Jim Crow system, directed this pressure.[15] Increasingly, these reformers came to see guaranteeing the right to vote as the capstone of the entire civil rights movement.[16] The nationally televised events of March 7, 1965 in Selma, Alabama, which became known as "Bloody Sunday," galvanized broad-based public support for a voting rights bill.[17] Within five months of the attack on unarmed, peaceful civil rights marchers by Alabama state troopers and a mounted sheriff's posse using billyclubs, tear gas, water cannons and dogs, President Lyndon B. Johnson had signed the Act into law.

B. Elements of the Voting Rights Act

The Act, as amended in 1970, 1975, and 1982,[18] is a permanent federal statute that provides for direct federal action to ensure the protection of minority voting rights. More than merely forbidding literacy tests or other registration prerequisites that had historically restricted minority access to the ballot, the Act empowered the DOJ and the courts to monitor problem jurisdictions and ensure prospectively that the right to vote of minority citizens was unrestricted.[19]

1. Section 2

The Act's basic provisions on voting rights are set forth in Section 2.[20] Section 2 is a permanent provision that covers all jurisdictions and allows any aggrieved person to bring a case in federal court against any "prohibition, voting qualification, or procedure that denies the right to vote because of race, color," or, after the 1975 amendments, "inclusion in a minority language group."[21] The Act contains additional permanent sections that (a) criminalize the refusal of a public official to allow a qualified voter to vote,[22] (b) abolish state duration-of-residency requirements to vote for President and Vice President,[23] (c) establish national standards for absentee registration and balloting in presidential elections,[24] (d) prohibit the use of tests or devices in voting,[25] (e) authorize the courts to appoint federal examiners and observers,[26] (f) empower both the U.S. Attorney General and any aggrieved person to bring certain civil and criminal claims to enforce the voting guarantees of the Fourteenth and Fifteenth Amendments,[27] and (g) authorize the payment of attorney's fees to prevailing parties in voting rights cases.[28]

2. Section 5

Though Section 2 sets the baseline for prohibited behavior, certain of the temporary provisions, particularly Section 5, mandate crucial details regarding implementation of these requirements.[29] Section 5 requires that jurisdictions with histories of racial discrimination obtain prior approval, or "preclearance," from either the DOJ or the United States District Court for the District of Columbia ("DC District Court") before adopting any new qualifications, prerequisites, standards, practices or procedures related to voting. The Act mandates that preclearance is only to be granted if the changes do "not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . ."[30] This "purpose and effect" test, and how the U.S. Supreme Court's interpretation of it has changed over time,[31] is discussed in detail in Section III.[32]

Much of the power of Section 5 is due to critical differences between it and other sections of the Act on how the burden of proof is assigned and when challenges to a voting policy can be brought to court. Under Section 2, for example, the aggrieved party bears the burden of proving the challenged policy's illegitimacy, and the policy cannot be challenged until it goes into effect. However, under Section 5, the covered jurisdiction must show that a new voting policy does not have a forbidden purpose or effect, and it must do so *before* the policy can become effective. The Supreme Court specifically considered the advantage of this burden shifting as a strength of the Act, stating in its first opinion interpreting the Act that "Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims."[33]

The jurisdictions subject to preclearance, or "covered," under the original 1965 Act were the states of Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina and Virginia in their entirety, as well as forty counties in North Carolina, four counties in Arizona, and one county in each of Hawaii and Idaho.[34] This initial list was constrained to those jurisdictions identified as having, historically, the most racially restrictive voting policies.[35] The 1970 and 1975 Amendments added new jurisdictions to Section 5 coverage and renewed the temporary provisions. The 1975 Amendments also expanded Sections 2 and 5 of the Act to "language minorities," and added jurisdictions with Spanish-speaking voters, among others.[36]

In order to "bail out" from the preclearance requirement, a covered jurisdiction must obtain a declaratory judgment from a three-judge court in the DC District Court[37] with a right of appeal to the Supreme Court.[38] As plaintiff, the moving jurisdiction bears the burden of proof.[39] Specifically, it must demonstrate what amounts to a "clean" ten-year history in the voting rights arena, including a history of compliance with Section 5, and positive efforts to enhance minority participation in the political process.[40] In addition, the moving jurisdiction is required to publicize the bailout action, and the statute permits an "aggrieved party" to intervene as of right at any stage.[41] Finally, bailout actions may be reopened for a period of ten years, during which time a declaratory judgment will be vacated in the event the jurisdiction is found to have committed certain voting rights violations.[42]

C. Early Gains Secured by the Act

When the Act was passed, several states immediately challenged its constitutionality.[43] The Supreme Court upheld the Act's constitutionality, stating that Congress was acting within its power to enforce the Fifteenth Amendment.[44] For the better part of the next fourteen years, the Court maintained the advantage the Act had given to those seeking civil rights for African Americans, broadly interpreting the Act in case after case.[45]

The years immediately after the passage of the Act are often called the "Second Reconstruction,"[46] in part because of the dramatic gains during that period in both minority registration and voting. These gains led in turn to increased minority representation in elected office.[47] For example, before Bloody Sunday, the DOJ had litigated voting rights for four years in Dallas County, Alabama, where Selma is the county seat.[48] Despite those early enforcement efforts, African American registration had increased from 16 registered voters to only 383 out of 15,000 African Americans of voting age. The Act became effective August 6, 1965. In a single week, the number of registered African Americans doubled and by November, nearly 8,000 African American voters were registered in Dallas County.[49] In Mississippi, African American voter registration jumped from 6.7% before passage of the Act to 59.8% in 1967.[50] By 1975, the DOJ estimated that almost as many African Americans had registered in some southern states in the first five years after the passage of the Act as had registered in the entire century before 1965.[51]

The Act helped to secure many of the gains the civil rights movement had made, and ushered in an era where minorities became a force on the nation's political stage in numbers and in a fashion as never before.[52] By the early 1970s, voters in major cities outside the South, such as Cleveland, Detroit, and Los Angeles, had all elected African American mayors, and African Americans were serving as members of Congress in numbers not seen since Reconstruction.[53]

II. THE CONTINUING RELEVANCE OF THE ACT: GAINS SECURED SINCE THE 1982 AMENDMENTS

A. Introduction

The effectiveness of the Act was threatened in its fifteenth year by the Supreme Court's 1980 *City of Mobile v. Bolden* decision.[54] In *Mobile v. Bolden*, the Court created a major obstacle to Section 2 voting rights actions by requiring plaintiffs to prove intentional

discrimination.[55] When considering the renewal of the temporary provisions of the Act two years later, Congress also responded to the *Mobile* decision by amending Section 2 to prohibit voting practices or procedures that result in a denial of equal electoral opportunity, regardless of intent.[56] At the same time, Congress renewed Section 5 of the Act for a period of twenty-five years.[57]

Over the following two decades, the Act has continued to be a powerful tool for protecting the voting rights of members of racial and language minorities.[58] As discussed in this Section, private and DOJ Section 2 litigation and DOJ preclearance activity under Section 5 — and the threat of such actions — have bolstered both "first generation" enforcement goals, such as the removal of obstacles to minority registration and voting, and "second generation" goals, such as the dismantling of multimember electoral districts and other electoral systems that dilute minority votes.[59] These efforts have contributed to a significant increase in the number of minority elected officials.

On the other hand, certain recent events — most notably, the widespread problems associated with the 2000 presidential election — have emphasized the fact that "first generation" problems related to voter registration and ballot access are still with us. Furthermore, the Supreme Court's voting rights jurisprudence over the past decade has cast doubt over many "second generation" enforcement efforts relying on Sections 2 and 5 of the Act.[60]

B. "First Generation" Voting Rights Enforcement: Registration and Ballot Access

1. Gains in Voter Registration

In the years since 1982, the significant gains in minority voter registration that followed the enactment of the Act in 1965 have been consolidated. By the end of the 1950s, African American voter registration rates averaged just 30% across the South.[61] As discussed above in Section I, the Act had an immediate impact: registration rates rose rapidly in the mid-1960s.[62] Gains continued in the following decades, and by the end of the 1980s, African American registration rates in the South were nearly equal to those of whites.[63] More recently, the U.S. Census Bureau found that as of November 2000, 67.5% of African American citizens were registered to vote, as compared to 70.4% of white citizens.[64] Although registration rates among other minority groups have also increased in recent decades, rates in those groups still remain below the national average.[65] For example, the Census Bureau reports that 57.3% of Hispanic American citizens were registered to vote as of November 2000.[66]

2. Protection of the Rights of Language Minorities

Since the 1975 Amendments, local authorities in areas in which 5% of the voting age population, or at least 10,000 people, have limited English proficiency have been required to provide multilingual election materials.[67] In recent years, population growth among limited English proficient citizens has resulted in an increasing number of jurisdictions across the nation being required to provide such assistance.[68] Most local governments have complied voluntarily, but the DOJ has brought a number of enforcement actions. For example, the DOJ recently brought successful actions against Passaic County, New Jersey,[69] and Berks County,

Pennsylvania,[70] to require those jurisdictions to provide election materials in Spanish as well as English.

3. The 2000 Presidential Election and the Continuing Need for Reform

In 2000, the controversy surrounding the counting of presidential election ballots in Florida[71] focused national attention on "first generation" voting rights issues, such as problems related to registration and ballot access.[72] Subsequent investigations have found that the irregularities in the 2000 election were not confined to Florida, and may have had a disproportionate impact on minority voters.[73] A number of reports have detailed problems that occurred in polling places across the nation, including:

- widespread spoilage of ballots,[74] particularly in low-income districts with high minority populations;[75]
- incidents in a majority of the states of voters being improperly excluded or purged from voting rolls;[76] and
- cases of intimidation at the polls.[77]

In light of the ongoing need to ensure compliance with the Act and the problems highlighted during the 2000 presidential election, Section IV discusses how the Act can be strengthened and enhanced to address the continuing existence of barriers to registration and voting by members of minority communities.

C. "Second Generation" Voting Rights Enforcement

1. Prevention of Vote Dilution Caused by Electoral Systems

As described in Section I, the first generation of Act enforcement during the 1960s primarily addressed barriers to voter registration and the casting of ballots. Experience has shown, however, that the ability to register and vote (though a significant accomplishment in itself) is not enough to ensure fair and effective representation of minorities.[78] Jurisdictions have manipulated electoral systems and districts to dilute the impact of minority votes.[79] A second generation of enforcement, which began in the 1970s and continues today, targets barriers to the fair and effective representation of minority groups.

A central focus of Section 5 preclearance activity and Section 2 litigation in recent decades has been the replacement of dilutive multimember (or "at-large") electoral systems with single-member district systems. In such a multimember system, all the voters in a particular jurisdiction vote for all of the members of a council, commission, board, or other governmental body.[80] This type of system enables a majority group voting as a bloc to elect candidates to fill every office, thereby preventing a minority group from electing even a single representative of its choice.[81]

In the 1970s, the DOJ refused to grant Section 5 preclearance to redistricting plans that diluted black and Hispanic voting strength in violation of Section 2.[82] By the early 1980s, preclearance denials had reduced or eliminated multimember districts in Georgia, Louisiana,

Mississippi, South Carolina, and parts of North Carolina.[83] During the same period, lawsuits brought by private litigants under Section 2 eliminated multimember districts in Texas and areas of North Carolina not covered by Section 5, as well as elsewhere throughtout the South where at-large systems were prevalent.[84]

As discussed above, the watershed 1982 Amendments banned electoral practices that "result in" the denial of equal political opportunity to minority groups.[85] Four years later, the U.S. Supreme Court interpreted the amended Section 2 in *Thornburg v. Gingles*, holding that when a politically cohesive minority community was opposed by a majority community practicing bloc voting, a solution such as "safe" minority-dominated districts had to be adopted if possible.[86] The 1982 Amendments and the *Thornburg* decision led to a significant increase in the number of vote dilution cases brought under Section 2.[87]

This redistricting litigation resulted in significant gains in the representation of African Americans in municipal governments[88] and state legislatures[89] following the abolition of at-large elections. However, the same studies show that the persistence of majority bloc voting continues to contribute to the underrepresentation of African Americans in municipal government in those jurisdictions retaining multimember systems.[90]

Litigation in this area continues. For example, in March 2003, the DOJ prevailed against Charleston County, South Carolina, in a case involving an at-large election system for the Charleston County Council.[91] Because many cities and towns with significant minority populations still have multimember systems, significant potential gains remain for future Act litigation of this type.[92]

2. Increase in Minority Officeholders

In recent decades, there has been significant growth in the number of minority elected officials. Nationwide, fewer than 1,500 African Americans held elected office in 1970; by 2000, that figure had climbed to more than 9,000.[93] Progress in the South has been especially notable. For example, in 2000, Mississippi and Alabama together had more African American elected officials than the entire United States had in 1970.[94] Nor has this progress been confined to African Americans. For example, the number of Hispanic American elected officials has increased from approximately 3,100 to nearly 4,500 over the past two decades.[95]

A comprehensive study of the election of African American officials in eight Southern states directly attributes the increase in their numbers to the effects of Act litigation and enforcement.[96] The study found little evidence that the increase might be a result of a decline in racially polarized voting. For example, in most Southern states, no African American state legislators were elected from majority-white districts during the 1980s.[97] Similarly, examining the presence of African Americans in the U.S. House of Representatives in the 103rd Congress (1993-1994), another scholar found that of thirty-eight African American representatives, no more than three had been elected from majority-white districts.[98] Instead, the growth in the number of African American officeholders can best be explained by the increase in the number of majority-minority African American districts created as a result of, or under the threat of, litigation.[99]

Thus, the few high-profile examples of majority-white jurisdictions electing African Americans in the 1990s (for example, Virginia electing L. Douglas Wilder governor in 1990 and Illinois electing Carol Moseley-Braun to the U.S. Senate in 1992) appear to be exceptions to the general rule, and should not be viewed as evidence that the protections of the Act are no longer needed.[100] It is evident that majority bloc voting persists in many jurisdictions, and that Sections 2 and 5 of the Act continue to be needed to safeguard minority participation in our electoral system.

3. Recent U.S. Supreme Court Jurisprudence

a. The *Shaw v. Reno* Cases: Vote Dilution Remedies Threatened

While in recent decades voting rights advocates have looked to the creation of minority-majority voting districts as a method of achieving greater representation of minority interests, the Supreme Court has created a significant impediment to this tactic in the *Shaw v. Reno* line of cases.[101] In 1993, the Court held in *Shaw v. Reno* that any legislative districting plan that is "so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles"[102] must be able to survive strict scrutiny.[103] To pass such scrutiny, the plan must be narrowly tailored to further a compelling governmental interest.[104] In *Miller v. Johnson*, the Court held that the important consideration is whether race is the predominant factor in drawing the district lines.[105] Later, in *Shaw v. Hunt*, the Court clarified its position, rejecting the creation of a district in one part of a state to remedy vote dilution in another area of the state.[106] The reasoning of the *Shaw v. Reno* line of cases culminated in *Bush v. Vera*, in which the Supreme Court confirmed that race could not be the predominant factor in drawing voting district lines.[107] Thus, by prohibiting the use of race as a predominant factor in districting plans, except where the plan is narrowly tailored to further a compelling governmental interest, the *Shaw v. Reno* line of cases threatens efforts under Sections 2 and 5 of the Act to combat vote dilution, which have often involved the creation of majority-minority voting districts.[108]

b. *Bossier Parish*: Section 5 Weakened

As discussed in more detail in Section III, the Supreme Court's 2000 *Reno v. Bossier Parish School Board* decision seriously weakened Section 5 of the Act by holding that Section 5 does not prohibit DOJ preclearance of a redistricting plan enacted with a discriminatory purpose if the plan does not *worsen* the position of minority voters.[109] Under this interpretation, a jurisdiction that proposes to perpetuate its existing level of minority vote dilution is entitled to preclearance under Section 5, even if alternative redistricting plans that reduce minority vote dilution are readily available.

As discussed above, "second generation" enforcement efforts relying on Sections 2 and 5 have resulted in the dismantling of electoral systems that dilute minority votes and have contributed to a significant increase in the number of minority elected officials. However, the Supreme Court's recent voting rights jurisprudence, notably *Bossier Parish* and the *Shaw v. Reno* line of cases, has threatened the achievements of the Act and placed new burdens on proponents of minority voting rights. Section III of this article focuses on the *Bossier Parish* decision, and how Congress can restore Section 5 of the Act to its intended strength.

III. STRENGTHENING CURRENT PROVISIONS OF THE VOTING RIGHTS ACT

A. Preclearance Under Section 5 and the *Bossier Parish* Decision

As discussed in Section I, Section 5 of the Act applies to jurisdictions with a history of discriminatory voting practices, and requires that those jurisdictions seek preclearance from the DOJ before making any changes in their voting laws.[110] As written, Section 5 seeks to assure that a new voting qualification, prerequisite, standard, practice, or procedure proposed by a covered jurisdiction "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . ."[111]

1. Past Practice Regarding Preclearance

Congress reaffirmed its intention that Section 5 should be interpreted broadly when it amended the Act in 1982. As discussed above, Congress amended Section 2 in response to the Supreme Court's decision in *City of Mobile v. Bolden*,[112] making clear that a voting regulation is impermissible if it results in a discriminatory effect, whether or not a discriminatory purpose is shown. In the supporting Senate Report, Congress quoted with approval the Supreme Court's characterization in *South Carolina v. Katzenbach* of the role of Section 5 in shifting "the burden of time and inertia" back to the perpetrators.[113] Congress also indicated its intention that a violation of Section 2 would also constitute a violation of Section 5 sufficient to deny preclearance.[114] The DOJ, in promulgating its enforcement guidance, followed that direction from Congress. According to the DOJ's 1987 Procedures for the Administration of Section 5, the U.S. Attorney General was to deny preclearance if he or she concluded "that a change, otherwise acceptable under Section 5, [could not] take effect without producing forbidden discriminatory results in violation of amended Section 2."[115]

The Supreme Court's interpretation of the relationship between Section 2 and Section 5, however, has not seriously considered these legislative and administrative background sources in recent years.[116] In 1976, the Supreme Court in *Beer v. United States*,[117] although nominally addressing only the "effect" prong of Section 5,[118] characterized Section 5 generally as directed only at preventing retrogression of minority rights.[119] Therefore, the Court held that a plan with the anticipated effect of increasing the number of minority members on the city council by one, rather than by two or three as alternate plans proposed, could not have a discriminatory effect under Section 5.[120] In other words, as interpreted by the Court, the "discriminatory effect" of a change in voting regulation should be assessed solely by examining past practices, and presently available less discriminatory alternatives are irrelevant. This transformation of the "purpose and effect" test of Section 5 into one focused on retrogression rather than discrimination, begun by the Court in *Beer*, was completed with its 2000 decision in *Reno v. Bossier Parish School Board.*

2. *Bossier Parish*

In *Reno v. Bossier Parish School Board*,[121] the Supreme Court considered for the second time what impact, if any, violations of Section 2 could have on the "purpose" prong of Section 5:[122] The case was initiated by the Bossier Parish (Louisiana) School Board after the DOJ refused preclearance to the Board's proposed redistricting plan in 1993.[123] The redistricting process in the parish had been prompted by the 1990 census, which showed, among other things,

that "blacks made up approximately 20% of the parish's population."[124] A redistricting plan adopted by the parish's other governing body – the Police Jury – was precleared in 1991 although it did not create a single majority black district. When the same plan was put forth by the Board nearly two years later, however, the DOJ denied preclearance.[125] It did so principally on the basis of evidence submitted by the NAACP – and stipulated to by the Board – that two "reasonably compact black majority" districts could have been drawn using traditional districting principles.[126]

Challenging the DOJ denial before the Supreme Court, the Board argued that the proposed plan did not violate Section 5 because it did not worsen the position of minority voters.[127] The DOJ conceded that the Board's plan would not have a retrogressive effect, as the number of majority-black districts was not decreasing but would remain zero.[128] The DOJ contended, however, that the Board's plan nevertheless violated Section 5 because it was enacted for a discriminatory purpose.[129] In making that argument, the DOJ relied both on the parish's long history of racial discrimination, and the specific facts leading up to the submission of the Police Jury plan, many of which suggested that the Board decided to adopt the Police Jury plan only when confronted with the NAACP's activism.[130] For instance, the Board contended it had submitted the Police Jury plan rather than the NAACP alternatives in order to be assured preclearance, although it had not chosen to submit the Police Jury plan a year earlier immediately after it had been cleared the first time.[131] Rather, it had failed to act on a proposal from one of its members to do just that[132] and instead had hired a cartographer who estimated that it would take him between 200 and 250 hours to devise an alternative.[133] In addition, there was evidence that at least one of the incumbent police jurors who voted on the plan made statements to the effect that he wanted to keep blacks off the Police Jury.

Relying most heavily on statutory construction cases arising in other contexts, the Court rejected the argument that Section 5 was intended to prohibit more than retrogression, and held that "the language of § 5 leads to the conclusion that the 'purpose' prong of Section 5 covers only retrogressive dilution."[134] In so holding, the Court largely ignored the legislative history of the Act, as well as its own earlier decisions in *Richmond v. United States*[135] and *Pleasant Grove v. United States*.[136] More troubling was the Court's acknowledgement that, under its interpretation, "[Section] 5 does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose," although the Court did not go so far as to expressly find a discriminatory purpose in the Board's plan.[137]

Dissenting Justices Souter, Stevens, Ginsburg and Breyer, on the other hand, were convinced that a discriminatory purpose was exactly what motivated the Board's choice of the Police Jury plan. According to the dissent, the Board "acted with the intent to dilute the black vote" and, in its view, such intent was sufficient to deny preclearance under Section 5.[138] Indeed, to the dissenting Justices, the Bossier Parish plan was a prime illustration of the evils Section 5 was intended to prevent:

> The record illustrates exactly the sort of relentless bad faith on the part of majority-white voters in covered jurisdictions that led to the enactment of § 5. The evidence all but poses the question why Congress would ever have meant to permit preclearance of such a

> plan, and it all but invites the answer that Congress could hardly have intended any such thing.[139]

If Section 5 is to have continued vitality, therefore, Congress must now demonstrate that it did not intend such a thing.

3. Renewing the Strength of Section 5

Although the *Bossier Parish* Court carefully noted that the provisions of Section 2 are still available whenever racial minorities find their voting rights impaired, Section 2 simply cannot fill the role of Section 5 in checking discriminatory voting practices.[140] Indeed, the Court noted the crucial distinction between the two sections when it described Section 5's "extraordinary" burden-shifting scheme.[141] That burden-shifting scheme was, of course, the heart of Section 5 and was developed precisely in recognition of the fact that jurisdiction by jurisdiction litigation is not sufficient for the task that needs to be accomplished.[142]

Unfortunately, the *Bossier Parish* decision has tipped "the advantage of time and inertia" back in favor of those who seek to thwart the Fifteenth Amendment. With the 2007 reauthorization of the Act, Congress should address the barriers set up by the *Bossier Parish* decision, and amend Section 5 to expressly state that *any* discriminatory purpose or effect, not merely a retrogressive one, is sufficient to allow the U.S. District Attorney or DC District Court to deny preclearance under Section 5. Only by such an amendment can the original purpose of Section 5 be restored.

B. Developments in the Use of the Bailout Provision

Also overlooked by the *Bossier Parish* Court was the interconnection between Section 5 and the so-called "bailout provisions" of Section 4 of the Act,[143] which require a covered jurisdiction to show more than mere nonretrogression in order to terminate coverage under Section 5.[144]

1. Recent Changes and Challenges

Although the 1982 Amendments are widely perceived as expanding the ability of states to escape preclearance requirements through bailout,[145] in fact bailout has been utilized less often since 1982 than in the past. Between the 1965 passage of the Act and the 1970 Amendments, Alaska, one covered county in North Carolina, one covered county in Idaho and three covered counties in Arizona all successfully bailed out of Section 5, although portions of Alaska and all the other counties were recovered by the 1970 Amendments.[146] Between the 1970 and 1982 Amendments, the bailout procedure was used successfully by twenty-three jurisdictions.[147] Subsequent to the 1982 Amendments, however, no state has successfully bailed out of coverage under Section 5, and very few political subdivisions have done so.[148] The first of these was Fairfax, Virginia – in 1997.[149] Two years later, Frederick and Shenandoah Counties in Virginia followed.[150] Since then, two other Virginia localities – Roanoke County and Winchester City – have also apparently bailed out.[151]

This limited use of the bailout provisions would likely prove surprising to the drafters of the Amendments, as well as to some commentators.[152] In the case of Virginia, for example, one writer estimated in 1983 that some 51 counties and about 16 cities in Virginia would be eligible for bailout in 1984, when the 1982 Amendments became effective.[153] Yet some 20 years later, only three counties and two cities in the Commonwealth have actually achieved bailout.[154]

The use (or non-use) of bailout should also be a focus for Congress in 2007 for two reasons. First, if covered jurisdictions are not seeking bailout because they cannot meet the requirements of Section 4(a), that should demonstrate the continued necessity of both Section 5 and a relatively stringent bailout mechanism. As Congress put it in 1982, the revised bailout provisions were "calculated to permit an effective and orderly transition to the time when such exceptional remedies as preclearance are no longer necessary."[155] By that logic, the fact that jurisdictions are not achieving bailout suggests preclearance remains quite necessary.[156] Put another way, if jurisdictions were truly making progress in securing minority voting rights, bailout should not be difficult to achieve.[157] Indeed, Congress expected in 1982 "that most jurisdictions . . . [would] have demonstrated compliance and [would] have utilized the new bailout procedures" before the scheduled expiration of Section 5 in 2007 and that "[t]he [twenty-five year] 'cap' [on Section 5] [would] be relevant only for those recalcitrant jurisdictions which have not bailed out by then."[158]

Second, if Sections 4 and 5 are to be reauthorized in 2007, it will be necessary for Congress to take a careful look at the bailout provisions (as well as the coverage formula) in order to ensure that compliant jurisdictions are not being unreasonably subjected to continued coverage under Section 5. If it is perceived that covered jurisdictions would qualify for bailout and yet are not applying because the process is viewed as too complicated, too expensive, too time consuming or too uncertain, some members may feel that liberalizing the bailout provisions even further would be appropriate.[159] Combating that perception will require a thoughtful analysis of the need for continued coverage in those areas that have not yet achieved bailout.

Even more importantly, perhaps, there is a potential constitutional component to the ability of jurisdictions to bail out. As Congress itself has noted in the past, the Supreme Court in both *South Carolina v. Katzenbach*[160] and *City of Rome v. United States*[161] has expressed concern about the potential overbreadth in the scope and duration of Section 5.[162] If a reauthorized – and reinvigorated – Act is to be insulated from future constitutional challenge, Congress will need to address these concerns in 2007.

IV. VOTING RIGHTS: THE NEXT STEPS

Painful events in the 1960s provided ample proof that federal legislation was needed to implement and enforce the Fifteenth Amendment. The conduct of the 2000 presidential election, particularly in Florida, provided ample proof that, forty years later, federal guidance and funding, as well as a robust Voting Rights Act, are needed to secure the right of every American to exercise the franchise. The Florida experience teaches that over two hundred years of a racially restricted franchise have not been undone in a few decades, and that barriers to the effective exercise of the franchise go beyond the wholesale exclusion of African Americans from registration, to ballot access issues affecting the voting rights of a broader swath of society.[163]

The Act is needed as a tool to prevent racially motivated manipulation of voter rolls, polling places, voter turnout, and vote counting. As such a tool, the Act can be strengthened, by corrections to Supreme Court jurisprudence discussed in Section III, and by additions to Section 2 and Section 5 as discussed below. There is also no doubt that the Act is needed as a continued corrective for centuries of racial injustice and a bulwark against erosion of minority voting rights. Yet Congress has already begun to think beyond the racially animated politics that led to the Act's passage when crafting the prior amendments to the Act,[164] the 1993 National Voter Registration Act (commonly known as the "Motor Voter Law"),[165] and the 2002 Help America Vote Act.[166] Additional legislation passed with the goal of maintaining the franchise for *all* citizens will secure the gains already attained by African American citizens, and advance the goals of the Fifteenth Amendment, while increasing the portion of the citizens who participate in democratic government and avoiding some of the Equal Protection concerns that the Supreme Court has recently raised with respect to explicitly race-based solutions to historic racial discrimination.[167]

A. Voting Rights Enhancements in Progress

Just as Bloody Sunday led to quick Congressional action, the controversies surrounding voting procedures in Florida in November 2000, and subsequent litigation, led to a new voting bill to address some of the problems highlighted by those controversies.[168] As discussed above, the investigations in Florida uncovered various types of "first generation" difficulties with voting, including problems with poll accessibility, identification of registered voters at the polls, and ballot marking and reading technology.[169] Each of these difficulties had the effect of preventing the votes of some citizens from being counted, and fell disproportionately on minority voters, in a way one legal scholar has called "hauntingly reminiscent of devices, like literacy tests and grandfather clauses, imposed systematically throughout the South following Reconstruction to disenfranchise black voters."[170]

The congressional response to date has been the enactment of the Help America Vote Act ("HAVA").[171] Signed into law in 2002, it focuses on the administration of elections. Among other things, it: (i) establishes the Election Assistance Commission ("EAC") to create voluntary guidelines regarding, and act as a information clearing house for, election administration information, (ii) provides funding to states to replace punch card voting systems, and (iii) sets minimum standards states must follow in federal election administration.[172] The minimum standards, which must be met by January 1, 2006, include functional standards for voting systems, and accessibility for persons with disabilities and non-English speakers.[173] HAVA mandates provisional voting for voters who assert they are registered, but whose names do not appear on the list of eligible voters at the polling place where they are attempting to vote.[174] HAVA also requires states to implement a "single, uniform, official, centralized, interactive computerized statewide voter registration list," which is immediately accessible to any local election official, and sets standards for list maintenance, including addition and removal of names.[175]

HAVA's requirements for list maintenance and provisional voting supplement the voter registration provisions of the Motor Voter Law, and address one problem highlighted by the Florida election -- the turning away of citizens desiring to vote at the polls. Acting according to state regulations, poll workers turned people away when they could not find their name on the

list of voters registered to vote at that polling place, and were unable to reach the central office to find out if the people were properly registered. In some instances, voters had been wrongfully removed from the voting list by a private contractor hired by the State of Florida to purge the voter rolls of improper entries.[176]

HAVA marked a new step for the federal government in voting legislation in that it included the authorization of funding to states to improve voting technology. An investigation by the California Institute of Technology and the Massachusetts Institute of Technology estimated that between 1.5 and 2 million votes were lost nationwide in the November 2000 presidential election due to faulty equipment.[177] Other investigations of the voting in Florida have demonstrated the correlation between uncounted votes in less affluent, high minority districts and the use of older voting technology.[178] While technology is race-neutral, its allocation has not been. Data collected by the United States Commission on Civil Rights indicates that black voters in Florida were nearly ten times more likely than nonblack voters to have their ballots rejected, in part because of older voting technology in high minority districts.[179] In addition to providing funding to replace obsolete punch card systems, HAVA established mandatory minimum standards for voting systems, and a Technical Guidelines Development Committee to report to the EAC on technical issues related to the voluntary voting system guidelines.[180] HAVA thus joins the Motor Voter Bill, in addressing "first generation" ballot access problems by mandating the use of procedures and technology that increase ballot access both for historically disenfranchised African Americans and for others unable to "successfully maneuver through the complex machinery, the untrained poll workers, and the inconvenient polling hours to actually cast a vote."[181]

B. Proposed Additional Enhancements

1. Continuing to Eliminate Direct Barriers to Minority Voting

a. Strengthened Penalties for Voter Harassment

Efforts to discourage minority voters have taken different guises over the decades, from personal recriminations and violence against those who dared to register, to "ballot security" measures, which, in the name of protecting elections from fraud, harassment and intimidation of minority voters and disproportionately discouraging them from voting. Today, intimidation at the polls remains a problem.[182] For example, in South Dakota, before the 2002 Congressional election, the state attorney general announced a voter fraud initiative that would entail the questioning of almost 2,000 newly registered Native American voters, while failing to investigate new registrants in counties without significant Native American populations.[183] Congress has most recently addressed this problem in HAVA by authorizing the EAC to conduct public studies on "[i]dentifying, deterring and investigating methods of voter intimidation."[184] The continuing existence of this type of behavior indicates that the Act should be strengthened in this area, both for deterrent effect and punishment of wrongdoers.

When Congress passed the Motor Voter Law to correct a century of "[r]estrictive registration laws and administrative procedures . . . introduced . . . to keep certain groups of citizens from voting,"[185] it included criminal penalties for any person who, in any election for federal office "knowingly and willfully intimidates, threatens, or coerces" any person, or

attempts to do so, with respect to registering to vote or voting.[186] Congress also recognized that the implementation of the Motor Voter Law would be aided by a private right of action for declaratory or injunctive relief, and provided for the award of attorneys' fees to the prevailing party.[187]

For the same reasons that Congress included such provisions in the Motor Voter Law, the Act should be similarly amended. The Act should be strengthened in two ways: (i) those individuals and organizations which engage in harassment and/or intimidation of minority voters should be subject to criminal sanctions,[188] and (ii) those individuals who have suffered from such harassment and intimidation should be able to bring a private action against the perpetrators for injunctive relief and statutory damages, and if they prevail, recover attorneys' fees.

b. Criminal Penalties for Recidivist Jurisdictions

It is an unfortunate reality that just as voter intimidation remains an issue, compliance with the Act remains a problem for certain jurisdictions.[189] Repeated violations of Section 2 and/or Section 5 of the Act indicate an intent to circumvent the Act and require the use of resources by the government or private parties to police such misbehavior. This problem should be addressed by a statutory amendment adding criminal sanctions against recidivist jurisdictions.[190] Such a change would allow the DOJ greater flexibility in its efforts to ensure that minority voters are not denied the right to vote. Criminal sanctions, and their attendant stigma, may also have a deterrent effect on local governments by affecting the reputation of the municipality.[191]

c. Private Right of Action to Appeal Preclearance Decisions under Section 5

As discussed above, Section 5 of the Act and its burden shifting have been remarkably effective in preventing continuing evasion of the Act and achieving its goals. However, the preclearance decisions under Section 5 of the Act are currently appealable only if denied, and only by the government entity whose plans have been rejected.[192] This unilateral right of review acts as an incentive to skew the decision making process toward acceptance, because in that event, there is no challenge to the DOJ's or DC District Court's decision. If a plan is improperly precleared, the affected voters can only seek to bring a challenge under Section 2, shifting the burden back onto the minority voters to prove a violation. This imbalance is in direct opposition to the imposition of the burden of "time and inertia" on the perpetrators that was the intent of the Act.[193] By amending the Act to provide a private right of action to those voters affected by a precleared plan, Congress can both remove the incentive toward approval, allowing decision making to proceed on the merits of the plan alone, and also decrease the chance that voters lose their rights under an improperly cleared plan, rights that can never be regained once an election is past.

2. Enlarging the Franchise and Addressing Indirect Barriers to Minority Voting

a. Enfranchisement of Former Felons

The basic promise of the Fifteenth Amendment to former slaves, newly considered citizens, was the ability to vote. One reaction to this promise in the post-Reconstruction South was the amendment of felon disenfranchisement statutes as part of an effort to prevent African American voting.[194] For example, in 1890, Mississippi replaced its constitutional provision disenfranchising those convicted of any crime, with a narrowly tailored provision disenfranchising only those who had been convicted of certain crimes, believed to be more often committed by African Americans than by European Americans. Thus, burglary and arson convictions supported disenfranchisement, but murder did not.[195]

Today, while in a majority of states only incarcerated felons are disenfranchised, in a minority of states, persons once convicted of a felony are never able to vote.[196] This is an "outright barrier to voting that, like the poll tax and literacy test, was adopted in some states with racially discriminatory intent."[197] Social scientists have shown that those statutes which remain in effect today have a greatly disproportionate effect on minorities, both due to the disproportionate rate at which African Americans are convicted of felonies, and the African American population in the states which maintain this policy.[198] The Sentencing Project found in its 1998 report that there were 1.4 million Americans who were disenfranchised ex-felons.[199] In Alabama and Florida, 31% of all black men are permanently disenfranchised by a felony conviction. In five other states, about one in four black men is permanently disenfranchised.[200] These laws both ban certain citizens from the franchise, and dilute minority voting power by disproportionately reducing the voting strength of the minority population. Based on the discriminatory history of these laws, and their present effect, the United States Civil Rights Commission, the National Commission on Federal Election Reform, the NAACP, and The Election Center have all recommended that ex-felons be uniformly enfranchised.[201]

Legal scholars have argued that this barrier to the franchise is a violation of Section 2 of the Act as currently drafted.[202] To eliminate this historic burden placed on minority voters, the Act should be amended to clarify that such statutes, like poll taxes and literacy tests, are the discriminatory legacy of our Jim Crow past, and all former felons, no matter what state they reside in, should have the right to vote.[203]

b. Use of Multimember Congressional Districts

Jurisprudence under the Act has recognized that vote dilution is an abridgment of the right to vote as significant as outright denial of ballot access.[204] It has become apparent that the right to vote does not automatically lead to representation of interests.[205] This is aptly demonstrated by the difficulties minority groups face in getting their candidates elected, even when there are no direct barriers to voting. As discussed in Section II, one of the indirect barriers has been multimember election districts, which, in many instances, were implemented in order to dilute minority voting power.[206] Some of the more recent "second generation" gains in minority voting rights have come from eliminating such districts. In this context, Congress

enacted legislation prohibiting the use of multimember districts for Congressional elections,[207] and voting rights advocates have focused on creating minority controlled voting districts.[208]

In the aftermath of the *Shaw v. Reno* line of cases, it is clear that other methods of ensuring that minority interests are adequately represented must be considered.[209] While multimember election districts have traditionally been seen as antithetical to the interests of minority voters, many scholars now believe that multimember districts may actually help minority voters gain meaningful representation.[210] In particular, multimember districts used in conjunction with a proportional voting scheme may be better suited to allowing underrepresented constituencies to gain influence in elections than single member districts.[211] The benefits of non-dilutive multimember districts are myriad. The main flaw of single member districts is that the winner-take-all results lead to a situation in which a bare majority of the voters control 100% of the power. This means that votes of those perpetually in the minority, whether because of race or because of political interests, are "wasted." Similarly, those who are in the majority beyond the necessary 51% have their votes "wasted."[212] This "waste" contributes to low voter turn-out among certain populations, who feel that their votes are not meaningful and have no chance of being so.[213] The key, then, is to design multimember districts with a proportional voting scheme in place that would ensure that minority voters could elect representatives of their choice.

There are a number of ways in which proportional voting and multimember districts could be instituted, but any method will surely face court challenge unless proportional voting is used such that the results of the voting can be distinguished from the dilution issues noted in the Court's multimember district jurisprudence. Multimember districts have not been found to be unconstitutional per se.[214] An amendment to the Act allowing such districts, provided that their representatives are chosen by a proportional voting scheme that furthers the goals of the Act, would therefore increase the ability of municipalities and states to prevent vote dilution and increase proportional representation. In covered jurisdictions, any such reintroduction of multimember district would be subject to the test of retrogressive effect (under *Bossier Parish*), or, if *Bossier Parish* is overturned by Congress, a test of discriminatory purpose or effect.

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[1] Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 445 (current version at 42 U.S.C. §§ 1971, 1973 to 1973gg-8 (2003)).

[2] *See, e.g.*, Nancy K. Bannon, *The Voting Rights Act: Over the Hill at Age 30?*, 22 HUM. RTS. 10 (1995), and M.J. Rossant, *Foreword* to ABIGAIL M. THERNSTROM, WHOSE VOTES COUNT? AFFIRMATIVE ACTION AND MINORITY VOTING RIGHTS, at ix (1987), two sources expressing the same opinion from different political view points.

[3] "The right of citizens of the United States to vote shall not be denied or abridged ... on account of race, color, or previous condition of servitude." U.S. CONST. amend. XV, §1.

[4] At the time of the Act's passage, states used a wide variety of devices to restrict minority voter registration. Often these devices consisted of voting "qualifications" that were easily manipulated by those in charge of the voting process. *See* Armand Derfner, *Racial Discrimination and the Right to Vote*, 26 VAND. L. REV. 523 (1973) (giving a detailed analysis of the various mechanisms used to suppress minority voting).

[5] *See* James E. Alt, *The Impact of the Voting Rights Act on Black and White Voter Registration in the South, in* QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965-1990 354 (Chandler Davidson & Bernard Grofman eds., 1994) [hereinafter QUIET REVOLUTION] (analyzing the effects of institutional mechanisms affecting voter registration in electing white candidates and keeping blacks in a subordinate position); *See also* J. MORGAN KOUSSER, COLORBLIND INJUSTICE: MINORITY VOTING RIGHTS AND THE UNDOING OF THE SECOND RECONSTRUCTION (1999) (detailing opposition to the First Reconstruction in several states); NEIL MCMILLEN, THE

CITIZEN'S COUNCIL: ORGANIZED RESISTANCE TO THE SECOND RECONSTRUCTION, 1954-1964, (1971) (providing a historical account of an organization that was created specifically to oppose civil rights gains during this period).

[6] *Plessy v. Fergusson*, 163 U.S. 537 (1896); *see also* PLESSY V. FERGUSON: A BRIEF HISTORY WITH DOCUMENTS (Brook Thomas, ed., 1997) (providing a useful historical overview of the case and a compilation of relevant historical documents).

[7] The term "Jim Crow" originated from a character in a minstrel show song and dance act which parodied blacks in a negative way. *See* C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW (1966); *see also* JUMPIN' JIM CROW: SOUTHERN POLITICS FROM CIVIL WAR TO CIVIL RIGHTS (Jane Dailey, et al. eds., 2000); RICHARD WORMSER, THE RISE AND FALL OF JIM CROW (2003).

[8] Civil Rights Act of 1957, Pub. L. No. 85-315, §131, 71 Stat. 637; Civil Rights Act of 1960, Pub. L. No. 86-449, §601, 74 Stat. 90; Civil Rights Act of 1964, Pub. L. No. 88-352, §101, 78 Stat. 241 (current version at 42 U.S.C. §1971 (2003)).

[9] The Civil Rights Act of 1957 authorized the U.S. Attorney General to sue to correct discrimination, as well as block intimidation, of potential voters in state and federal elections. The Civil Rights Act of 1960 required election officials to retain all records relating to voter registration, allowed the DOJ to inspect these records, and permitted African American rejected by election officials to apply to a federal court or a voting referee. In 1961, the United States Commission on Civil Rights reported that from 1959 to 1961, DOJ brought cases under the 1957 and 1960 Civil Rights Acts in three categories: "1) suits filed under subsection (a) and (c) of 42 U.S.C. section 1971, to enjoin conduct which deprives persons of the right to vote because of race or color. (This category includes procedures for the appointment of Federal voting referee, pursuant to title VI of the 1960 act.) (2) Suits filed under subsection (b) of 42 U.S.C. 1971 to enjoin threats, intimidation, and coercion of persons exercising their right to vote in elections of Federal officers. (3) Suits filed pursuant to section 305 of the 1960 act to enforce demands of the Attorney General for Federal election records." UNITED STATES COMMISSION ON CIVIL RIGHTS REPORT, VOL. 1 VOTING, 79-80 (1961). *See, e.g., United States v. Raines*, 172 F. Supp. 552 (M.D. Ga. 1959), *rev'd* 362 U.S. 17 (1960), 189 F. Supp. 121 (M.D. Ga. 1960); *United States v. State of Alabama*, 171 F. Supp. 720 (M.D. Ala.), *aff'd* 267 F.2d 808 (5th Cir. 1960), *vacated*, 362 U.S. 602 (1960); *United States v. McElveen*, 177 F. Supp. 355, (E.D. La. 1959), 180 F. Supp. 10 (E.D. La. 1960), *aff'd sub nom. United States v. Thomas*, 362 U.S. 58 (1960); *United States v. Barcroft*, 288 F. 2d 653 (6th Cir. 1961), *United States v. Association of Citizens Councils of Louisiana*, 187 F. Supp. 846 (W.D. La. 1960). The Civil Rights Act of 1964 sought to make voting rights suits move more quickly though the courts by facilitating proof of discrimination.

[10] U.S. Attorney General Nicholas Katzenbach testified before the Senate Committee on the Judiciary:

> And I need not describe at length how much time it takes to obtain judicial relief against discrimination, relief which so often proves inadequate. Even after the Department of Justice obtains a judicial decree, a recalcitrant registrar's ability to invent ways to evade the court's command is all too frequently more than equal to the court's capacity to police the State registration process.

Hearings on Voting Rights Before the Senate Comm. on the Judiciary, 89th Cong. 8-9 (1965).

[11] *See* Virginia E. Hench, *The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters*, 48 CASE W. RES. L. REV 727, 733-38 (1998) (discussing the progression, as laws were enacted and struck down, from violence and intimidation, to whites-only primaries, to poll taxes and literacy tests, and eventually to selective disenfranchisement of felons, with crimes selected to disqualify a disproportionate number of black voters).

[12] Chandler Davidson, *The Voting Rights Act: A Brief History*, *in* CONTROVERSIES IN MINORITY VOTING: THE VOTING RIGHTS ACT IN PERSPECTIVE 7, 13 (Chandler Davidson & Bernard Grofman eds., 1992) ("The burden remained on black voters to seek relief in the courts case by case, a time-consuming and extremely inefficient process, especially inasmuch as the southern district courts were mostly presided over by conservative local judges.").

[13] CARL M. BRAUER, JOHN F. KENNEDY AND THE SECOND RECONSTRUCTION 119 (1977) (quoting the U.S. Assistant Attorney General in charge of voting rights litigation under Kennedy); ARTHUR M. SCHLESINGER, JR., ROBERT KENNEDY AND HIS TIMES 301 (1978) (detailing DOJ actions).

[14] *See generally*, TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS 1954-63 (1989); TAYLOR BRANCH, PILLAR OF FIRE: AMERICA IN THE KING YEARS 1963-65 (1998).

[15] Approximately 3% of the eligible African Americans in the South were registered to vote in 1940, and this had been the case since the turn of the century. Chandler Davidson, *The Recent Evolution of Voting Rights Law Affecting Racial and Language Minorities*, *in* QUIET REVOLUTION, *supra* note 5, at 19-30. Through the determined efforts of organizations like the NAACP and the support of the aforementioned civil rights statutes, the percentage

of African Americans registered had increased to 43.3% of their voting age population by 1964. Davidson, *supra* note 12, at 12-13.

[16] As early as 1910, W.E.B. Du Bois had said, "[m]ay the conscience of a great nation rise and rebuke all dishonesty and unrighteous oppression toward the American Negro, and grant him the right of franchise [and] security of person and property." Herbert Aptheker, *Introduction* to W.E.B. DUBOIS, BLACK RECONSTRUCTION 6 (1976). By 1964, Martin Luther King was writing that, "[o]nly with the growth of an enlightened electorate, white and Negro together, can we put an end to this century-old stranglehold of a minority on the nation's legislative processes." MARTIN LUTHER KING, JR., WHY WE CAN'T WAIT, 149-150 (1964).

[17] For an excellent account of the events at Selma and their impact, *see* DAVID J. GARROW, PROTEST AT SELMA: MARTIN LUTHER KING, JR., AND THE VOTING RIGHTS ACT OF 1965 (1978).

[18] The 1970 Amendments extended Section 5 for five years and recaptured certain jurisdictions for preclearance that had previously bailed out. The 1970 Amendments also imposed a five year ban on the use of literacy tests or other devices. The next set of amendments to the Act, adopted in 1975, extended Section 5 for another seven years and made permanent the ban on literacy tests or other devices. The 1975 Amendments also added protections for language minorities to Sections 2 and 5 of the Act and required language assistance be available where a single minority group composed greater than 5% of the voting-age population, or at least 10,000 people in a given jurisdiction. Most recently, the 1982 Amendments extended Section 5 for twenty-five more years and added protections for blind, disabled or illiterate voters. The 1982 Amendments also amended Section 2 to prohibit vote dilution without requiring proof of discriminatory purpose (effectively overruling the 1980 Supreme Court decision *Mobile v. Bolden*, 446 U.S. 55) and broadened the standard for bailout to permit political subdivisions in covered states to bail out while the state remains covered (thus overruling the 1980 Supreme Court decision *City of Rome v. United States*, 446 U.S. 156).

[19] *See* discussion of Section 5 *infra* Part I.B.2.

[20] 42 U.S.C. § 1973 (2003). In its entirety, Section 2 provides:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown 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) in 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 establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

[21] 42 U.S.C. §§ 1973, 1973b(f)(2) (2003).

[22] 42 U.S.C.A. § 1973i (2003).

[23] 42 U.S.C.A. § 1973aa-1(c) (2003).

[24] 42 U.S.C.A. § 1973aa-1(d)-(f); *see also* 42 U.S.C.A. § 1973e (2003).

[25] 42 U.S.C.A. § 1973a(b) (2003).

[26] 42 U.S.C.A. §§ 1973a(a); 1973d; 1973f (2003).

[27] 42 U.S.C.A. § 1973j (2003).

[28] 42 U.S.C.A. § 1973l(e) (2003).

[29] Though Section 5 is a temporary provision, Congress has reauthorized it on three occasions, most recently in 1982.

[30] 42 U.S.C.A. § 1973c (2003).

[31] For a detailed discussion of Supreme Court decisions under the Voting Rights Act prior to the landmark *Reno v. Bossier Parish School Board* decision of 2000, *see* Alaina C. Beverly, Note, *Lowering the Preclearance Hurdle: Reno v. Bossier Parish School Board*, 5 MICH. J. RACE & L. 695, 700-706 (2000); *see also* Charlotte Marx Harper, *A Promise for Litigation: Reno v. Bossier Parish School Board*, 52 BAYLOR L. REV. 647, 658-660 (2000); David Harvey, *Section 5 of the Voting Rights Act Does Not Bar Preclearance of a Redistricting Plan Enacted with a Discriminatory but Nonretrogressive Purpose: Reno v. Bossier Parish Sch. Bd.*, 39 DUQ. L. REV. 477, 496-508 (2001).

[32] *See* discussion *infra* Part III.A.

[33] *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).

[34] U.S. COMM'N ON CIVIL RIGHTS, THE VOTING RIGHTS ACT: TEN YEARS AFTER, at 13 (January 1975) [hereinafter TEN YEARS AFTER].

[35] Alaska, the single covered Idaho county and three of the four covered Arizona counties subsequently bailed out of Section 5, as did Wake County, North Carolina. *See* S. REP. NO. 94-295, at n.4 (1975); However, portions of Alaska (although not the entire state), the Idaho county and the three Arizona counties were resubjected to Section 5 coverage with the 1970 amendments to the Voting Rights Act, along with several new additions: additional counties in Arizona, three counties in New York, one county in Wyoming, and portions of Connecticut, New Hampshire, Maine and Massachusetts. *See id.* at 13 & n.5. For a further discussion on bailout, *see infra* notes 37-42 and accompanying text.

[36] Currently subject to preclearance under Section 5 are Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia, as well as parts of California, Florida, Michigan, New Hampshire, New York, North Carolina and South Dakota. *See* VOTING SECTION, CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, SECTION 5 COVERED JURISDICTIONS, *available at* http://www.usdoj.gov/crt/voting/sec_5/covered.htm (last modified Jan. 28, 2003). The formula pursuant to which jurisdictions are deemed subject to preclearance is set forth at 42 U.S.C.A. § 1973b(b) and takes into consideration (i) a jurisdiction's use, as of a statutorily-mandated date, of any "test or device" as a condition of voting and (ii) the percentage of the jurisdiction's voting age population actually registered to vote. 42 U.S.C.A. § 1973b(b); *see also* S. REP. NO. 94-295, at 35 (1975), *reprinted in* 1975 U.S.C.C.A.N. 774 (describing coverage formula as "based on a rational trigger which describes those areas for which we had reliable evidence of actual voting discrimination in violation of the 14th or 15th Amendment").

[37] *See* 42 U.S.C.A. 1973b(a). Although bailout provisions were included as part of the original 1965 Act (and been successfully utilized in several instances, *see infra* notes 134-148 and accompanying text), they had been interpreted to preclude bailout by a political subdivision of a covered state. *See City of Rome v. United States*, 446 U.S. 156, 167 (1980) ("In the terms of § 4(a), the issue turns on whether the city is, for bailout purposes, either a 'State with respect to which the determinations have been made under the third sentence of subsection (b) of this section' or a 'political subdivision with respect to which such determinations have been made as a separate unit,' the 'determinations' in each instance being the Attorney General's decision whether the jurisdiction falls within the coverage formula of § 4(b). On the face of the statute, the city fails to meet the definition for either term, since the coverage formula of § 4(b) has never been applied to it. Rather, the city comes within the Act because it is part of a covered State. Under the plain language of the statute, then, it appears that any bailout action to exempt the city must be filed by, and seek to exempt all of, the State of Georgia."). The 1982 Amendments were specifically intended to change that. *See* S. REP. No. 97-417, at 2 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177 ("The standard for bailout is also broadened by permitting political subdivisions in covered states, as defined in section 14(c)(2), to bail out although the state itself remains covered.") [Hereinafter 1982 SENATE REPORT]. Another significant modification in the 1982 amendments was the attempt to encourage compliance with revised bailout provisions. *See* 1982 SENATE REPORT at 43 ("Under present law, the bail-out mechanism would as a practical matter, keep the covered jurisdiction subject to section 5 until a fixed calendar date. The revised bailout mechanism is geared to the actual record of conduct in each jurisdiction. Those with a record of compliance with the law in recent years and a commitment to full opportunity for minority participation in the political process could bail out. Other jurisdictions would have to compile such a record in order to become eligible. Only those jurisdictions that insist on retaining discriminatory procedures or otherwise inhibit full minority participation would remain subject to preclearance.").

[38] *See* 42 U.S.C.A. §§ 1973b(a)(1), 1973b(a)(5). Jurisdiction was limited to the DC District Court in order "to provide uniform interpretation of the bailout standards, to develop experience and expertise in their application and to ensure judicial decision making free from local pressure." 1982 SENATE REPORT, *supra* note 37, at 58.

[39] *See* 42 U.S.C.A. § 1973b(a)(2); *see also* 1982 SENATE REPORT, *supra* note 37, at 56 ("Because of the extensive evidence of continuing voting rights violations that has been presented to this Congress in testimony, studies and reports we believe it is important that a jurisdiction seeking bailout be required to present compelling evidence that it has earned the right to remove itself from Section 5 coverage. The applicant jurisdiction would have the burden of proof as to each element of the bailout criteria . . . . This burden must be met by objective factual evidence and cannot be satisfied primarily on the basis of assertions and conclusory declarations.").

[40] *See* 42 U.S.C.A. § 1973b(a)(1). The "bailout" provisions are extensive. To be entitled to a declaratory judgment under Section 4(a), the court must determine that:

> during the ten years preceding the filing of the action, and during the pendency of such action--
> (A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a

State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section;
(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;
(C) no Federal examiners under subchapters I-A to I-C of this chapter have been assigned to such State or political subdivision;
(D) such State or political subdivision and all governmental units within its territory have complied with section 1973c of this title, including compliance with the requirement that no change covered by section 1973c of this title has been enforced without preclearance under section 1973c of this title, and have repealed all changes covered by section 1973c of this title to which the Attorney General has successfully objected or as to which the DC District Court has denied a declaratory judgment;
(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 1973c of this title, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 1973c of this title, and no such submissions or declaratory judgment actions are pending; and
(F) such State or political subdivision and all governmental units within its territory--
(i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;
(ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under subchapters I-A to I-C of this chapter; and
(iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

Id.; *see also* 28 C.F.R. § 51.64(a) ("Among the requirements for bailout is compliance with section 5, as described in section 4(a), during the ten years preceding the filing of the bailout action and during its pendency."); S. REP. No. 97-417, at 46 ("The Committee bailout retains the twofold criteria of the House Bill. First, the jurisdiction must show a ten-year record of full compliance with the Voting Rights Act and the constitutional protection of the right to vote. Second, it must demonstrate that it has taken positive steps to achieve full minority access to the political process.").

[41] 42 U.S.C.A. § 1973b(a)(4); *see also* 28 C.F.R. § 51.64(c) (providing for notice of bailout actions filed or decided to interested parties registered under 28 C.F.R. § 51.32).

[42] *See* 42 U.S.C.A. § 1973b(a)(5) ("The court shall retain jurisdiction of any action pursuant to this subsection for ten years after judgment and shall reopen the action upon motion of the Attorney General or any aggrieved person alleging that conduct has occurred which, had that conduct occurred during the ten-year periods referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection. The court, upon such reopening, shall vacate the declaratory judgment issued under this section if, after the issuance of such declaratory judgment, a final judgment against the State or subdivision with respect to which such declaratory judgment was issued, or against any governmental unit within that State or subdivision, determines that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision which sought a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision, or if, after the issuance of such declaratory judgment, a consent decree, settlement or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds.").

[43] *See South Carolina v. Katzenbach*, 383 U.S. 301, 316-17 (1966).

[44] *Id.* at 328.

[45] *See, e.g., United States v. Sheffield Bd. of Comm'rs*, 425 U.S. 110 (1978); *Georgia v. United States*, 411 U.S. 526 (1973); *Perkins v. Matthews*, 400 U.S. 379 (1971); *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969). *But see Mobile v. Bolden*, 446 U.S. 55 (1980). Note that after the 1982 Amendments, the Court continued to interpret the act broadly. *See, e.g., Clark v. Roemer*, 111 S. Ct. 2096 (1991); *Pleasant Grove v. United States*, 479 U.S. 462 (1987).

[46] *See* C. Vann Woodward, *From the First Reconstruction to the Second*, HARPER'S, April 1965, at 127-33; *see also* MANNING MARABLE, RACE, REFORM AND REBELLION: THE SECOND RECONSTRUCTION IN BLACK AMERICA, 1945-2000 (2000).

[47] U. S. COMM'N ON CIVIL RIGHTS, THE VOTING RIGHTS ACT: UNFULFILLED GOALS 11 (Sept. 1981).

[48] *See* H.R. REP. NO. 439, 89th Cong., 1st Sess., 10-11 (1965) (discussing how Dallas County responded to pre-Act litigation with minor changes in registration requirements, with little effect on African American registration).

[49] THERNSTROM, *supra* note 2, at 17-18.

[50] TEN YEARS AFTER, *supra* note 34, at 49.

[51] Davidson, *supra* note 12, at 21.

[52] *See* Steven Lawson, *Preserving the Second Reconstruction: Enforcement of the Voting Rights Act, 1965-1975*, 22 SOUTHERN STUDIES, 55-75 (1983); *see also* J. Morgan Kousser, *The Voting Rights Act and the Two Reconstructions* in CONTROVERSIES IN MINORITY VOTING 135 (arguing that consistent judicial enforcement of the Voting Rights Act differentiated it from prior voting rights legislation contributing to its success).

[53] Carl Stokes was elected mayor of Cleveland in 1967, and Coleman Young and Tom Bradley were both elected in 1973 to head Detroit and Los Angeles respectively. As of the Congressional Black Caucus' founding in 1969, there were 13 African American members of the U.S. House of Representatives. *See* William L. Clay, *Birth of the Congressional Black Caucus*, CBCF News (2001), *available at* http://www.house.gov/ebjohnson/cbchistory.htm. There were 22 African American members of Congress during the whole of Reconstruction. C. ERIC LINCOLN, THE NEGRO PILGRIMAGE IN AMERICA, 65 (1967).

[54] 446 U.S. 55 (1980).

[55] *Id.* at 62.

[56] Pub. L. No. 97-205, 96 Stat. 131 (1982) (codified at 42 U.S.C. § 1973(a)). *See* 1982 Senate Report, *supra* note 37, at 2 ("S. 1992 amends Section 2 of the Voting Rights Act of 1965 to prohibit any voting practice, or procedure [that] results in discrimination. This amendment is designed to make clear that proof of discriminatory intent is not required to establish a violation of Section 2. It thereby restores the legal standards, based on the controlling Supreme Court precedents, which applied in voting discrimination claims prior to the litigation involved in *Mobile v. Bolden*. The amendment also adds a new subsection to section 2 which delineates the legal standards under the results test by codifying the leading pre-*Bolden* vote dilution case, *White v. Regester*.") (footnote omitted); *see also id.* at 15-43 (discussing the intent of the original Act, the *Bolden* decision and the amending language at length).

[57] *Id.*

[58] *See* Laughlin McDonald, *The Quiet Revolution in Minority Voting Rights*, 42 VAND. L. REV. 1249, 1295 (1989) ("The Voting Rights Act continues to demonstrate its great value in guiding us toward the pluralism and political equality envisioned by the post-Civil War constitutional amendments."); *see also* Richard H. Pildes, *The Politics of Race: Quiet Revolution in the South*, 108 HARV. L. REV. 1359, 1391 (1995) (reviewing QUIET REVOLUTION, *supra* note 5) (discussing the "exceptional effectiveness" of the Voting Rights Act).

[59] *See* Samuel Issacharoff, *Polarized Voting and the Political Process: The Transformation of Voting Rights Jurisprudence*, 90 MICH. L. REV. 1833, 1838-39 (1992) ("The 'first generation' of voting rights challenges forced the removal of open barriers to black registration and the casting of ballots. The successes of this first generation of legal challenge revealed a second set of obstacles that undermined the effectiveness of newly registered black citizens' emerging freedom to exercise the franchise. . . . [T]he courts began to condemn 'minority vote dilution' caused by the structural diminution of electoral opportunities, even where minorities could relatively freely register and vote.").

[60] *See* Section III.

[61] QUIET REVOLUATION, *supra* note 5, at 354.

[62] *Id.* at 369.

[63] *Id.* at 354. Moreover, by that time, the African American registration rate was fairly consistent in all eleven Southern states. No state deviated more than 10% from the regional average. *Id.*

[64] U.S. Census Bureau, *Voting and Registration in the Election of November 2000* (Feb. 2002) at 6 tbl., *available at* <http://www.census.gov/prod/2002pubs/p20-542.pdf>. African Americans were the only group with an increase in

the reported registration rate between the 1996 and 2000 elections (from 66.4% to 67.5%); the registration rates of whites, Hispanics, and Asian and Pacific Islanders all declined slightly over that period. *Id.* at 5 tbl.

[65] *See* McDonald, *supra* note 58, at 1253-54.

[66] U.S. Census Bureau, *supra* note 64, at 6 tbl. The study stated that 60.5% of whites, 56.8% of African Americans, 45.1% of Hispanics, and 43.3% of Asians and Pacific Islanders reported that they had actually voted in the 2000 election. *Id.* at 5 tbl.

[67] Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a; Section 4(f)(4) of the Voting Rights Act, 42 U.S.C. 1973b(f)(4).

[68] Deborah Kong, *Elections To Be Held in Minority Languages in 30 States*, TALLAHASSEE DEMOCRAT, Sept. 26, 2002, at 6. For example, ballots in Los Angeles County are now printed in English, Spanish, Tagalog, Vietnamese, Chinese, Japanese, and Korean. *Id.* A complete listing of the states and counties covered under the Act's language minority provisions is available in the appendices to the U.S. Attorney General's Section 5 guidelines, 28 C.F.R. § 51 (2003) and minority language guidelines, 28 C.F.R. § 55 (2003).

[69] Civil Rights Div., U.S. Dep't of Justice, *Civil Rights Division Activities and Programs* (August 2002), at 37-38, *available at* http://www.usdoj.gov/crt/actandprograms.pdf [hereinafter *Activities and Programs*].

[70] David B. Caruso, *Hispanic Growth Fuels Demand for Bilingual Ballots*, DESERET NEWS, Mar. 28, 2003, at A07.

[71] *See Bush v. Gore*, 531 U.S. 28 (2000).

[72] For an extensive collection of materials on the 2000 election and the resulting litigation, see http://election2000.stanford.edu.

[73] In the aftermath of the 2000 election, Cathy Cox, Georgia's chief election official, testified to the National Commission on Federal Election Reform: "[I]f the presidential margin had been razor thin in Georgia and if our election systems had undergone the same microscopic scrutiny that Florida endured, we would have fared no better. In many respects, we might have fared even worse." NAT'L COMM'N ON FEDERAL ELECTION REFORM, TO ASSURE PRIDE AND CONFIDENCE IN THE ELECTORAL PROCESS 18 (August 2001) [hereinafter NAT'L COMM'N REPORT].

[74] DEMOCRATIC INVESTIGATIVE STAFF, HOUSE COMMITTEE ON THE JUDICIARY, HOW TO MAKE OVER ONE MILLION VOTES DISAPPEAR: ELECTORAL SLEIGHT OF HAND IN THE 2000 PRESIDENTIAL ELECTION, at 4, 121-22 (Aug. 20, 2001) [hereinafter DEMOCRATIC INVESTIGATIVE STAFF REPORT] *available at* http:/www.house.gov/judiciary-democrats/electionreport.pdf. The report finds that more than 1.2 million ballots in 31 states and the District of Columbia were discarded with no vote for president. In at least four states, the number of unrecorded ballots was greater than the winning candidate's margin of victory in that state. In 19 states, no total figure for the number of discarded or unrecorded ballots was available. *Id.*

[75] COMMITTEE ON GOVERNMENT REFORM, U.S. HOUSE OF REPRESENTATIVES, MINORITY STAFF, SPECIAL INVESTIGATION DIV., INCOME AND RACIAL DISPARITIES IN THE UNDERCOUNT IN THE 2000 PRESIDENTIAL ELECTION 4-6 (July 9, 2001). This study found that voters in low-income districts with high minority populations were three times more likely overall to have had their votes discarded than voters in affluent districts with low minority populations. In certain cases, voters in low-income, high-minority districts were twenty times more likely to have had their votes discarded. *Id.*

[76] DEMOCRATIC INVESTIGATIVE STAFF REPORT, *supra* note 74, at 4-6; NAT'L COMM'N REPORT, *supra* note 73, at 47.

[77] DEMOCRATIC INVESTIGATIVE STAFF REPORT, *supra* note 74, at 4-6.

[78] *See* Issacharoff, *supra* note 59, at 1838-39.

[79] *See* KOUSSER, *supra* note 5, at 55-56.

[80] *See* McDonald, *supra* note 58, at 1257.

[81] *Id.*

[82] Lisa Handley & Bernard Grofman, *The Impact of the Voting Rights Act on Minority Representation: Black Officeholding in Southern State Legislatures and Congressional Delegations*, *in* QUIET REVOLUTION, *supra* note 5, at 340.

[83] *Id.*

[84] *Id.*

[85] Pub. L. No. 97-205, 96 Stat. 131 (1982) (codified at 42 U.S.C. § 1973(a)).

[86] 478 U.S. 30, 51 (1986).

[87] *See* McDonald, *supra* note 58, at 1279-82 (noting the increase after 1982 in the average annual number of voting cases brought in federal court from 150 to 225).

[88] Bernard Grofman & Chandler Davidson, *The Effect of Municipal Election Structure on Black Representation in Eight Southern States*, *in* QUIET REVOLUTION, *supra* note 5, at 319.

[89] One commentator writes:

> The DOJ in the 1980s and 1990s construed Sections 2 and 5 of the Act to effectively require that state and local governments reapportion in a manner that would maximize the opportunity for minority voters to elect the candidate of their choice. . . . Confronting the possibility of not having an effective reapportionment plan if the DOJ denied preclearance, many state and local governments covered by Section 5 of the Act, including the Texas Legislature, yielded to the DOJ demands for maximization of minority voting strength. The covered jurisdictions met DOJ preclearance by drawing districts designed to have a "safe" minority voting population for the election of a candidate chosen by the particular protected group.

Steve Bickerstaff, *Effects of the Voting Rights Act on Reapportionment and Hispanic Voting Strength in Texas*, 6 TEX. HISP. J.L. & POL'Y 99, 104 (2001). After the Texas Legislature's 1991 reapportionment, the number of Hispanic members of the Texas House of Representatives increased from 20 to 26. *Id.* at 106 tbl.

[90] Grofman & Davidson, *supra* note 88, at 319.

[91] *Judge Orders End to At-Large Voting System*, THE STATE (Columbia, S.C.), Mar. 8, 2003, at 3; *see also Activities and Programs*, *supra* note 69, at 39.

[92] Grofman & Davidson, *supra* note 88, at 320-21. For a recent example involving the November 2002 at-large elections in Osceola County, Florida, see Mindy Hagen, *Hispanic Calls for Leveling of Field; A Losing Candidate Says At-Large Voting Ensures that Minorities Will Not Win*, ORLANDO SENTINEL, Nov. 10, 2002.

[93] DAVID A. BOSITIS, BLACK ELECTED OFFICIALS: A STATISTICAL SUMMARY, 2000 (2002), at 5, *available at* http://www.jointcenter.org/whatsnew/beo-2002/beo-map-charts/BEO-00.pdf.

[94] *See id.*

[95] Membership Page, National Association of Latino Elected and Appointed Officials Website, *available at* http://www.naleo.org/membership.htm (last visited Apr. 11, 2003).

[96] Handley & Grofman, *supra* note 82, at 339-40.

[97] *Id.* at 338.

[98] *See* Pildes, *supra* note 58, at 1375. In 2001, there were 39 African American members of the U.S. House of Representatives. *See* Bositis, *supra* note 93, at 27 tbl.

[99] Handley & Grofman, *supra* note 82, at 385; *see also* Pildes, *supra* note 58, at 1368-73.

[100] As of April 2003, no African American is serving as a U.S. Senator or the governor of a U.S. state. Furthermore, as Richard Pildes has noted, Governor Wilder and Senator Moseley-Brown both started their political careers in "safe" majority-minority districts. *See* Pildes, *supra* note 58, at 1375-76. "[T]he noteworthy instances of Black electoral success in White jurisdictions, fully understood, often suggest that safe districts have played an important integrative role." *Id.* at 1376. For further discussion of the persistence of majority bloc voting, see generally KEITH REEVES, VOTING HOPES OR FEARS? (1997); *see also* Richard H. Pildes, *Is Voting-Rights Law Now at War with Itself? Social Science and Voting Rights in the 2000s*, 80 N. C. L. REV. 1517, 1529-39 (2002) (reviewing studies of polarized voting in the 1990s). For a contrary view, see THERNSTROM, *supra* note 2, at 180-89, 202-20. For a rebuttal to Thernstrom, see KOUSSER, *supra* note 5, at 58-68.

[101] George Bundy Smith, *The Multimember District: A Study of the Multimember District and the Voting Rights Act of 1965*, 66 ALB. L. REV. 11, 36 (2002).

[102] 509 U.S. 630, 642 (1993).

[103] *Id.* at 653.

[104] *Id.* at 658.

[105] 515 U.S. 900, 920 (1995).

[106] 517 U.S. 899, 916-18 (1996).

[107] 517 U.S. 952, 959 (1996). *Bush v. Vera* and *Shaw v. Hunt* were decided on the same day.

[108] In *Miller v. Johnson* and *Shaw v. Hunt*, the Court expressly left open the question whether under the proper circumstances compliance with the Voting Rights Act, on its own, could be a compelling interest. *Miller*, 515 U.S. at 921; *Shaw v. Hunt*, 517 U.S. at 911. In both *Miller* and *Shaw v. Hunt*, however, the Court rejected arguments that failure to implement the disputed redistricting plan would have violated the Act. *Miller*, 515 U.S. at 921; *Shaw*, 517 U.S. at 912. For discussions of the impact of the *Shaw v. Reno* line of cases on Voting Rights Act enforcement, see Smith, *supra* note 101, at 33-36; Hench, *supra* note 11, at 771-83; Pamela S. Karlan, *Still Hazy After All These Years: Voting Rights in the Post-*Shaw *Era*, 26 CUMB. L. REV. 287, 300-11 (1995); Laughlin McDonald, *The Counterrevolution in Minority Voting Rights*, 65 MISS. L.J. 271, 283-87 (1995); and Barry Yeoman, *Virtual Disenfranchisement*, THE NATION, Sept. 7-14, 1998.

[109] 528 U.S. 320, 341 (2000).
[110] *See* 42 U.S.C.A. § 1973c (2003). Section 5 was originally intended to expire in five years, but the 1970 amendments to the Voting Rights Act extended it for another five. *See* 1982 SENATE REPORT, *supra* note 37, at 8. Later amendments to the Act eventually extended Section 5 through 2007. *See supra* note 18 (discussing amendments to Act).
[111] 42 U.S.C.A. § 1973c. The Supreme Court upheld the constitutionality of Section 5 in *South Carolina v. Katzenbach*, 383 U.S. 301, 337 (1966).
[112] 446 U.S. 55 (1980).
[113] *See* Voting Rights Act Amends. of 1982, Pub. L. No. 97-205, 96 Stat. 131, 134 (1982); *see also* 1982 Senate Report, *supra* note 37, at 2 ("S. 1992 amends Section 2 of the Voting Rights Act of 1965 to prohibit any voting practice, or procedure [that] results in discrimination. This amendment is designed to make clear that proof of discriminatory intent is not required to establish a violation of Section 2. It thereby restores the legal standards, based on the controlling Supreme Court precedents, which applied in voting discrimination claims prior to the litigation involved in *Mobile v. Bolden*."); note 56, *infra*. H.R. REP. NO. 94-196, at 57-58 ("Section 5 was a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down.... Congress therefore decided ... to shift the advantage of time and inertia from the perpetrators of the evil to its victim[.]").
[114] *See* 1982 SENATE REPORT, *supra* note 37, at 12 n.31 ("[I]t is intended that a Section 5 objection also follow if a new voting procedure itself so discriminates as to violate Section 2.").
[115] Revision of Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 52 Fed. Reg. 486, 489 (January 6, 1987).
[116] The *Bossier Parish* decision has been the subject of some criticism on this basis. *See, e.g.*, Ellen D. Katz, *Federalism, Preclearance and the Rehnquist Court*, 46 VILL. L. REV. 1179, 1196 (2001) ("The Attorney General's construction of section 5 and the longstanding practice of DOJ implementing it proved no more persuasive to the Court in *Bossier Parish II*. In this case, the Court again adopts a construction of the statute that seems contrary to congressional intent, holding that section 5's purpose prong reaches retrogressive intent only and not discriminatory intent more broadly."); *The Supreme Court 1999 Term: Leading Cases*, 114 HARV. L. REV. 379, 380 (Nov. 2000) ("By failing to recognize its duty to defer to administrative agencies, the Court imposed its own restrictive view of the statute over a constitutionally permissible interpretation that both Congress and the Justice Department had found to be politically accountable and just. In so doing, the Court eschewed not only the fundamental policy principles that compelled the VRA, but also the rule of law, whereby administrative policymaking ability extends beyond the reach of the Court's institutional competence.").
[117] 425 U.S. 130 (1976).
[118] *See id.* at 141 ("It is thus apparent that a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5.").
[119] "[T]he purpose of §5 has always been to insure than no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Id.*
[120] *See id.* at 141-42.
[121] 528 U.S. 320 (2000).
[122] *See id.* at 328. Bossier Parish had made its first appearance before the Court a few years earlier. *See Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471 (1997). In that instance, the Court considered two questions: "(i) whether preclearance must be denied under § 5 whenever a covered jurisdiction's new voting 'standard, practice, or procedure' violates § 2; and (ii) whether evidence that a new 'standard, practice, or procedure' has a dilutive impact is always irrelevant to the inquiry whether the covered jurisdiction acted with 'the purpose ... of denying or abridging the right to vote on account of race or color' under § 5." *Id.* at 474. As to the first question, the Court concluded that "preclearance under § 5 may not be denied on [the basis of a § 2 violation] alone." *Id.* at 485. As to the second, the Court concluded that such evidence is relevant and foreshadowed its holding in *Bossier Parish II*:

> [T]he impact of an official action is often probative of why the action was taken in the first place since people usually intend the natural consequences of their actions. Thus, a jurisdiction that enacts a plan having a dilutive impact is more likely to have acted with a discriminatory intent to dilute minority voting strength than a jurisdiction whose plan has no such impact. A jurisdiction that acts with an intent to dilute minority voting strength is more likely to act with an intent to worsen the position of minority voters — *i.e.*, an intent to retrogress — than a jurisdiction acting with no intent to dilute. . . . To be sure,

the link between dilutive impact and intent to retrogress is far from direct, but 'the basic standard of relevance...is a liberal one,' and one we think is met here.

Id. at 487 (citation omitted). Because it could not determine whether the District Court had considered the proffered Section 2 evidence in reaching its decision, the Court vacated the District Court's judgment granting preclearance and remanded. *Id.* at 490-91.

[123] *See id.* at 324; *see also* Brief for the Federal Appellant, 1999 WL 133834, at *9 (March 5, 1999).

[124] 528 U.S. at 323.

[125] *See id.* at 323-24.

[126] *Id.* at 324; *see also* Brief for the Federal Appellant, *supra* note 123, at *10 ("On August 30, 1993, the Attorney General interposed an objection to the Board's plan, citing new information that had not been provided when the Police Jury submitted the same plan, such as the demonstrated feasibility of majority-black districts and the Board's refusal to engage in efforts to accommodate the concerns of the black community.").

[127] *See* 528 U.S. at 325.

[128] *See id.* George Price, president of the local NAACP office, had intervened and was also a party to the appeal, *see id.*; for ease of reference, however, appellants will be referred to herein simply as the Attorney General.

[129] *See id.*

[130] *See* Brief for the Federal Appellant, *supra* note 123, at *34-38.

[131] *See* 528 U.S. at 355 (Souter, J., concurring in part, dissenting in part). The dissenting Justices wasted little time in disposing of this supposed rationale for the submission of the police jury plan: "If the Police Jury plan was a safe harbor, it had been safe from the day the Attorney General precleared it for the Policy Jury, whereas the Board ignored it for more than a year after that preclearance. Interest in the Police Jury plan developed only after pressure from Price and the NAACP had intensified to the point that the redistricting process would have to be concluded promptly if the minority proposals were not to be considered." *Id.*

[132] *See id.* at 346 (Souter, J., concurring in part, dissenting in part).

[133] *See* 528 U.S. at 347 (Souter, J., concurring in part, dissenting in part). The Police Jury plan ultimately submitted also violated several of the districting concerns traditionally considered by the School Board, such as incumbency and school attendance zones. *See id.* at 346. The dissent further noted that, in at least one instance, the districting plan being developed by the school board before it chose to go with the Policy Jury plan suffered from the same "defects" that allegedly led the board to reject the NAACP plan. *See id.* at 353 ("It becomes all the clearer that the prospect of splitting precincts was no genuine reason to reject the NAACP plan . . . when one realizes that from early on in the Board's redistricting process it gave serious thought to adopting a plan that would have required just such precinct splits.").

[134] *Id.* at 341.

[135] 422 U.S. 358 (1975). The *Bossier Parish* Court acknowledged that, in *Richmond*, it had "give[n] the purpose prong of § 5 a broader meaning than the effect prong" but concluded that the case "shed[] little light upon the issue before [it]." 528 U.S. at 332. The dissenting Justices disagreed with that assessment. *See id.* at 370-71 ("It follows from *Richmond* that a plan lacking any underlying purpose to cause disqualifying retrogression may be barred by a discriminatory intent.").

[136] 479 U.S. 462 (1987). The dissenting Justices again disagreed with the Court's determination that *Pleasant Grove* was not dispositive and, in fact, viewed the majority opinion in *Bossier Parish* as "overruling *Pleasant Grove*." 528 U.S. at 371.

[137] *See* 528 US at 328.

[138] *See id.* at 341-42 (Souter, J., concurring in part, dissenting in part).

[139] *Id.* at 342 (Souter, J., concurring in part, dissenting in part).

[140] *See id.* at 335 ("[Section 5 preclearance] is nothing more than a determination that the voting change is no more dilutive than what it replaces, and therefore cannot be stopped in advance under the extraordinary burden-shifting procedures of § 5, but must be attacked through the normal means of a § 2 action."). As noted in the text, the DOJ had previously taken a contrary position as to the scope of preclearance under Section 5, but its post-*Bossier Parish* guidance notes the effect of the Court's decision. *Compare* Revision of Procedures for the Administration of Section 5 of the Voting Rights Act, 52 Fed. Reg. 486 (Jan. 6, 1987) ("we set forth the position that a Section 5 objection would be made by the Attorney General to a change that amounted to a clear violation of Section 2"), *with* 66 Fed. Reg. 5412, 5412 (Jan. 18, 2001) ("The Department of Justice may not deny Section 5 preclearance on the grounds that a redistricting plan violates the one-person one-vote principle, on the grounds that it violates *Shaw v. Reno*, or on the grounds that it violates Section 2 of the Voting Rights Act.").

[141] 528 U.S. at 335.

[142] "[C]ase-by-case litigation proved wholly inadequate. Justice Department attorneys were spread thinly among numerous lawsuits in many different jurisdictions. The government had the burden of proof, and massive resources were required to document discrimination in each case. By the time a court enjoined one scheme, the election had often taken place, local officials had devised a new scheme, or both had occurred. The enforcement of the law could not keep up with the violations of the law." 1982 SENATE REPORT, *supra* note 37, at 5; *see also id.* at 7 ("We also take note of the recent decision of the Supreme Court in *Allen v. Board of Elections* in which the Court discussed the history of the enforcement of Section 5 and clarified its scope. The decision underscores the advantage of Section 5 procedures in placing the burden of proof on a covered jurisdiction to show that a new voting law or procedure does not have the purpose and will not have the effect of discriminating on the basis of race or color.").

[143] According to Congress, the bailout provisions were "carefully crafted to preserve the essential protections of Section 5. The provisions work as an integrated complementary whole; removing any element would seriously undermine the entire structure." 1982 SENATE REPORT, *supra* note 37, at 44. For a further discussion on the mechanics of bailout, see III.B. *infra*.

[144] *See* 42 U.S.C.A. 1973b(a)(1)(F); *see also* 1982 SENATE REPORT, *supra* note 37, at 72 ("The general purpose of this entire section is to require covered jurisdictions, as a prerequisite to bailing out, to eliminate voting practices and methods of elections which discriminate against minority voters and to open up the electoral process to greater minority participation. Since the bailout provisions allow jurisdictions to exempt themselves completely from the coverage of the special provisions of the Act, including the preclearance requirement, the jurisdiction seeking bailout must do more than simply maintain the status quo, if the status quo discriminates against minority voters, or if the status quo continues the effects of past discrimination against minority voters."); Mark E. Haddad, *Getting Results Under Section 5 of the Voting Rights Act*, 94 YALE L.J. 139, 153-54 (1984) ("Given that Congress adopted the results test in section 4, the test should also be employed in section 5. First, if courts were to continue to use a retrogression test in section 5 suits, then courts deciding future section 4 suits would have to evaluate under the results test not only all of the ongoing practices never reviewed under section 5, but also all of the changes that had been precleared under the section 5 retrogression test. Such review would be confusing as well as inefficient. When attempting to prepare acceptable changes, jurisdictions would have to keep two standards in mind, one of which would not even be applicable until the jurisdiction was eligible to bring a bailout suit. Second, by permitting jurisdictions to perpetuate vote dilution, the retrogression test allows them to remain indefinitely in a status that will not qualify them for bailout. Section 5 thus operates more as a bureaucratic hoop through which jurisdictions must jump than as an extraordinary remedy driving those jurisdictions most in need of positive voting changes to eliminate vote dilution. Using a results test in section 5 would be more consonant with the congressional objective of ensuring that jurisdictions not be covered indefinitely by the preclearance provisions of the Act.") (Footnotes omitted).

[145] *See, e.g.*, Robert Barnes, Comment, *Vote Dilution, Discriminatory Results, And Proportional Representation: What Is The Appropriate Remedy For A Violation Of Section 2 Of The Voting Rights Act?*, 32 U.C.L.A. L. REV. 1203, 1265 n. 2 (1985) ("The bill also liberalized the 'bailout' provisions in § 4 of the Act."); Roy A. McKenzie and Ronald A. Krauss, *Section 2 Of The Voting Rights Act: An Analysis Of The 1982 Amendment*, 19 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 155, 161 n.20 (1984) ("The 1982 Amendments extended § 5 for 25 years and provided more liberal requirements for 'bailing out.'"); Frank R. Parker, *The 'Results' Test Of Section 2 Of The Voting Rights Act: Abandoning The Intent Standard*, 69 VA. L. REV. 715, 715 ("The bill also liberalizes the 'bailout' provisions in section 4 of the Act."); *see also* 1982 SENATE REPORT, *supra* note 37, at 44 ("The new bailout already constitutes a very substantial liberalization of the avenues available to covered jurisdictions to end their preclearance obligation."). There is one regard in which this is certainly true: in contrast to earlier bailout provisions, the 1982 Amendments permit bailout by political subdivisions of states that are covered as a whole. *See supra* note 37.

[146] *See* 1982 SENATE REPORT, *supra* note 37, at 45, 205 (discussing jurisdictions subject to Section 5 under original Act and as amended).

[147] *See id.* at 45. None of these jurisdictions were recovered before the 1982 Amendments.

[148] *See* NAT'L COMM'N ON ELECTION REFORM, THE FEDERAL REGULATION OF ELECTIONS: BACKGROUND REPORT OF THE TASK FORCE ON LEGAL AND CONSTITUTIONAL ISSUES, at 25 (2001).

[149] *See* VOTING SECTION, CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, ABOUT SECTION 5 OF THE VOTING RIGHTS ACT, at n. 8, *available at* http://www.usdoj.gov/crt/voting/sec_5/types.htm; *see also* VOTING SECTION, CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, SECTION 5 COVERED JURISDICTIONS, *available at* http://www.usdoj.gov/crt/voting/sec_5/covered.htm; *More Areas Want Voting Exemptions*, RICHMOND TIMES-DISPATCH, June 25, 1999, *available in* 1999 WL 43528927 ("Fairfax is the only local government in the nation that has been exempted from having to receive federal approval before changing its elections rules and procedures, Justice Department David Slade said

yesterday."). According to one commentator, only five suits seeking bailout had been filed in the first four years following the effective date of the 1982 bailout provisions. *See* McDonald, *supra* note 58, at 1255 n. 24 (citing *Alaska v. United States*, (D.D.C. 1984); *Waihee (Hawaii) v. United States*, (D.D.C. 1984); *Connecticut v. United States*, (D.D.C. 1983); *Massachusetts v. United States*, (D.D.C. 1983); *Board of Comm'rs v. United States*, (D.D.C. 1982)).

[150] *See* note 151, *infra*; *see also* U.S. Dep't of Justice, Notice of Preclearance Activity under the Voting Rights Act of 1965, As Amended (Oct. 15, 1999), *available at* http://www.usdoj.gov/crt/voting/notices/vnote101599.html; U.S. Dep't of Justice, Notice of Preclearance Activity under the Voting Rights Act of 1965, As Amended (Oct. 22, 1999), *available at* http://www.usdoj.gov/crt/voting/notices/vnote102299.html. It took only about five months for the actions to be granted. *See* U.S. Dep't of Justice, Notice of Preclearance Activity under the Voting Rights Act of 1965, As Amended (May 14, 1999), *available at* http://www.usdoj.gov/crt/voting/notices/ vnote51499.html.

[151] The Department of Justice's website does not contain any information regarding the bailouts of Roanoke and Winchester; however, sources elsewhere have reported that their bailout actions were successful. *See* H.J. Res. 95ER, Va. Gen. Ass. 2002 Session (March 15, 2002), *available* at http://leg1.state.va.us/cgi-bin/legp504.exe?021+ful+HJ95ER (noting that "five Virginia localities (Fairfax City, Frederick County, Roanoke County, Shenandoah County and Winchester City) have successfully bailed out of coverage" under Section 5); *see also Downsizing City Council Will Take Time To Complete*, WINCHESTER STAR, January 21, 2002, *available at* http://www.winchesterstar.com/TheWinchesterStar/020131/area_downsizing.asp (reporting on city's effort to restructure city council following successful bailout in 2001); *Winchester Seeks Exemption from Voting Rights Act*, WINCHESTER STAR, April 26, 2001, *available at* http://www.winchesterstar.com/TheWinchesterStar/010426/area_voting.asp (noting that city filed declaratory judgment action in December 2000). Interestingly, Congress noted in 1982 that, of the jurisdictions subject to Section 5 preclearance, Virginia had made significant compliance efforts. *See* 1982 SENATE REPORT, *supra* note 37, at 57 ("Where state attorneys general have been active in advising and educating local officials about their obligation, *e.g.*, Virginia, there has been much less non-compliance with the law than in other covered states.").

[152] At the time, Congress anticipated "suits brought by jurisdictions throughout the country" and noted that "up to several hundred [jurisdictions] would be eligible to apply [for bailout] in 1984." 1982 SENATE REPORT, *supra* note 37, at 58. The expected volume of cases, and the need for consistency, was one of the reasons Congress felt all bailout cases should be handled by the District of Columbia Court. *See id.* In further anticipation of an influx of bailout litigation, Congress also delayed the implementation of the new bailout provisions for two years. *See id.* at 59 ("The new bailout criteria will replace those in existing law two years after the date of enactment of this legislation. The deferred effective date will permit an orderly transition to the new procedures. Several previous assistant attorneys general for civil rights advised the House committee that the two year startup time is essential for the Department to prepare for such a heavy load of litigation under the new standards. This two year deferral will permit the Department, the covered jurisdictions, and local civil rights groups to review the law and to prepare for proceedings."); *see also id.* at 60 ("A substantial number of counties may be eligible to bail out when the new procedure goes into effect. . . . Mr. Armand Derfner presented a chart compiled by the Joint Center for Political Studies. It showed a reasonable projection of 25 percent of the counties in the major covered states being eligible to file for bailout on the basis of their compliance with the objective criteria in the compromise bill.").

[153] *See* Timothy G. O'Rourke, *Voting Rights Act Amendments of 1982: The New Bailout Provision and Virginia*, 69 VA. L. REV. 765, 795-97 (1983).

[154] It appears that Virginia has been emboldened by its initial success. In March 2002, specifically noting the success of Fairfax, Frederick, Roanoke, Shenandoah and Winchester, the Virginia General Assembly passed a joint resolution requesting the Virginia Attorney General "to collect and disseminate certain information pertaining to the bailout of Virginia localities from requirements of Section 5 of the Voting Rights Act. Specifically, the Attorney General is requested to (i) collect information, including historical data on preclearance submissions, that would be needed to obtain a bailout, (ii) notify localities on what assistance the Attorney General can provide to them in petitioning the court, (iii) advise localities on what corrective actions and improvements are needed to promote electoral integrity to qualify for bailout, and (iv) develop a model strategy for localities to utilize in applying for bailout status." H.J. Res. 95ER, *supra* n. 151; *see also More Areas Want Voting Exemptions*, RICHMOND TIMES DISPATCH, June 25, 1999 (reporting on Fairfax's successful bailout, the pending actions of Shenandoah and Frederick and several "[o]ther localities considering whether to seek bailouts").

[155] 1982 SENATE REPORT, *supra* note 37, at 44.

[156] Of course, given the combined effect of the Court's decision in *Beer* and *Bossier Parish II*, even a jurisdiction that consistently achieves preclearance under Section 5 may not be eligible for bailout under Section 4. *See supra* note 144.

[157] *See* 1982 SENATE REPORT, *supra* note 37, at 44 ("[The bailout provisions] offer a firm but fair and achievable set of standards for determining when a jurisdiction's preclearance obligations should end."); *id.* at 59-60 ("Each and every requirement of the bailout is minimally necessary to measure a jurisdiction's record of non-discrimination in voting. The Committee believes that these criteria work together as a consistent package to provide a reasonable avenue for jurisdictions to bail out of preclearance at a time appropriate for them."); *id.* at 60 (describing bailout as "clearly achievable").

[158] *Id.* at 60.

[159] *See, e.g.*, *Election Oversight Questioned*, GREENSBORO NEWS & RECORD, Feb. 3, 2002 (describing bailout as "even more onerous a process than preclearance itself"); *Redistricting Proposal Gets Praise From County Leaders*, RICHMOND TIMES-DISPATCH, Sept. 12, 2001 (discussing one Virginia locality that gave up on bailout process due to cost). There was concern at the time of the 1982 Amendments that bailout would be too difficult to achieve. *See* 1982 SENATE REPORT, *supra* note 37, at 46 (noting that some members "argued that the standards would be impossible to meet"); *id.* at 60 ("The Subcommittee Report asserts, without any factual analysis, that the bailout is illusory because it is impossible to satisfy the criteria."). Although others took the position that the bailout provisions were too "lenient," 1982 SENATE REPORT, *supra* note 37, at 59, the relatively limited use of bailout since then seem more likely to reinforce the former perception than the latter when Congress reconsiders the Voting Rights Act in 2007. Moreover, if bailout is perceived as too difficult to achieve, some of the "incentive" effect intended by Congress may be lost. *See* 1982 SENATE REPORT, *supra* note 37, at 14 ("The committee expects that this extension of Section 5 will result in greater compliance with the Act, including a reduction in the number of objections, non-submissions, and changes implemented following an objection because of the added incentive to comply provided by the revised bailout procedures.").

[160] 383 U.S. 301 (1966).

[161] 446 U.S. 156 (1980).

[162] *See* 1982 SENATE REPORT, *supra* note 37, at 61-62 ("It is true that the decisions in *South Carolina* and *Rome* expressed the concern that Congress not permanently subject jurisdictions to the unusually stringent remedy of preclearance. The revised bailout set forth in S. 1992, was drafted with this concern in mind. The proposed procedures maintains [sic] preclearance only until a jurisdiction satisfies the achievable bailout criteria set forth in S. 1992. Since the bailout provision in S. 1992 clearly is an achievable standard, the suggestion in the Subcommittee Report that it would permanently impose section 5 on the covered jurisdiction is without foundation, as are the constitutional arguments premised on that assertion."); *see also Katzenbach*, 383 U.S. at 331 ("Acknowledging the possibility of overbreadth, the Act provides for termination of special statutory coverage at the behest of States and political subdivisions in which the danger of substantial voting discrimination has not materialized during the preceding five years."); *City of Rome*, 446 U.S. at 182 ("When viewed in this light, Congress' considered determination that at least another 7 years of statutory remedies were necessary to counter the perpetuation of 95 years of pervasive voting discrimination is both unsurprising and unassailable. The extension of the Act, then, was plainly a constitutional method of enforcing the Fifteenth Amendment."); *id.* at 200 (Powell, J., dissenting) ("The Court's interpretation of § 4(a) renders the Voting Rights Act unconstitutional as applied to the city of Rome. The preclearance requirement both intrudes on the prerogatives of state and local governments and abridges the voting rights of all citizens in States covered under the Act. Under § 2 of the Fifteenth Amendment, Congress may impose such constitutional deprivations only if it is acting to remedy violations of voting rights. In view of the District Court finding that Rome has not denied or abridged the voting rights of blacks, the Fifteenth Amendment provides no authority for continuing those deprivations until the entire State of Georgia satisfies the bailout standards of § 4(a).") (citations omitted). *See also* Remarks of Sen. Hatch (Utah), 1982 SENATE REPORT, *supra* note 37, at 102 ("The constitutionality of Sections 4 and 5 rest upon these sections establishing a temporary and exceptional remedy for problems of an exceptional character. While an in-perpetuity extension would clearly violate this understanding on its face, it is disingenuous to suggest that any extension for a time-certain, however long that period be, somehow void this difficulty. The reality is that a twenty-five year extension of preclearance represents a period five times longer than that established in 1965 — a time at which minority registration and voting rates in most covered states were a miniscule fraction of what they are today. It represents an extension far exceeding in magnitude any earlier extension (by three and half times) at precisely that period in time when it is becoming difficult to distinguish electoral conditions in the covered jurisdictions from those in non-covered jurisdictions. If the proposed bail-out is not ascertained to be a 'reasonable' one, affording some realistic opportunities for escape from preclearance for

more than an isolated number of jurisdiction [*sic*], I do not see how the reduction of the extension from in-perpetuity to twenty-five years 'saves' the amended Sections 4 or 5. The twenty-five year period is totally disproportionate to any reasonable findings of voting discrimination still existing within the covered jurisdictions, as a result of either the Senate or House hearings.") (Footnotes omitted).

[163] *See* Lani Guinier, *Supreme Democracy: Bush v. Gore Redux*, 34 LOY. U. CHI. L. J. 23, 25 (2002) ("In Florida, we witnessed the disenfranchisement of people of color, elderly Jews, and those who had difficulty following written instructions."). *See also id.* at 39 ("The real significance of the aftermath of the 2000 presidential election is the way that the disenfranchisement of blacks in Florida highlights the country's history of tolerating disenfranchisement across the board.")

[164] *See supra* note 18 (amendments addressing voting rights of language minorities and disabled voters).

[165] 39 U.S.C. §§ 2401, 3627, 3629; 42 U.S.C. §§ 1973gg, 1973gg note, 1973gg 1-10. As discussed *infra* note 185, the Motor Voter Law was passed to address voter registration procedures and reduce barriers to registration.

[166] 42 U.S.C. §§ 15301-15545 (discussed *infra* notes 171-175).

[167] *See* Hench, *supra* note 11, at 755-764 (discussing the rise of "color-blind" Supreme Court jurisprudence disfavoring race-conscious solutions). *See also supra* notes 102-108 (discussing *Shaw v. Reno* and related cases).

[168] In addition to *Bush v. Gore*, *supra* note 71, issues surrounding the presidential election in Florida were litigated in *NAACP v. Harris*, Case No. 01-CIV-120 GOLD (S.D. Fla. Jan. 2001) (a class action lawsuit settled in September, 2002 of which the Lawyers' Committee for Civil Rights Under Law was one of the counsels of record for the plaintiffs).

[169] *See* reports cited *supra* note 74-75; allegations in Complaint filed in *NAACP v. Harris*, *supra* note 168, *available at* http://www.naacp.org/news/releases/florida_lawsuit.shtml; and United States Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election* (June 2001).

[170] Guinier, *supra* note 163, at 49.

[171] Pub. L. No. 107-252, 42 U.S.C. §§ 15301-15545.

[172] HAVA at §§ 211, 212, 251, 301-304.

[173] *Id.* at §301.

[174] *Id.* at §302(a).

[175] *Id.* at §303(a).

[176] *See Voting Irregularities in Florida, supra* note 169, c. 2, pp. 1-2, c. 5, pp. 19-20, *available at* http://www.usccr.gov/pubs/voting2000/report/ch2.html and ch5.htm (giving first hand accounts of refusal to allow registered voters to vote because their names could not be found on the rolls by a poll worker and the supervisor of elections office could not be reached and of voters wrongfully removed from rolls due to erroneous identification as convicted felons).

[177] CALIFORNIA INSTITUTE OF TECHNOLOGY AND THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY, VOTING TECHNOLOGY PROJECT, "VOTING: WHAT IS . . . WHAT COULD BE," 8-9 (July 2001) *available at* http://www.vote.caltech.edu/Reports/index.html.

[178] *See Income and Racial Disparities in the Undercount In the 2000 Presidential Election, supra* note 75.

[179] *Voting Irregularities in Florida During the 2000 Presidential Election, supra* note 169, Executive Summary at 2, *available at* http://www.usccr.gov/pubs/vote2000/report/exesum.htm.

[180] HAVA at §§221, 301(a).

[181] Guinier, *supra* note 163, at 26.

[182] *See supra* note 77.

[183] Laughlin McDonald, *The New Poll Tax*, 13 AMERICAN PROSPECT 23, 26 (Dec. 30, 2002) (detailing numerous instances of "ballot security" measures being used to intimidate minority voters).

[184] HAVA at §241(b)(7).

[185] H.R. REP. NO. 103-9 (1993); *reprinted in* 1993 U.S.C.C.A.N. 105, 106.

[186] 42 U.S.C. §1973gg-10(1).

[187] 42 U.S.C. §1973gg-9(b)-(c).

[188] Currently, the Act prohibits voter intimidation with respect to federal elections. 42 U.S.C. §1973i(b) ("No person . . . shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, . . . or . . . for urging or aiding any person to vote or attempt to vote, or . . . . for exercising any powers or duties under [various sections of the Act])." However, unlike the other prohibited acts, voter intimidation was not criminalized. Violations of §1973i(c)-(e) (giving false information or voting more than once) are criminalized by their terms, and violation of §1973i(a) (failure to permit anyone to vote, or to record such vote) is criminalized by §1973j(a), as are violations of §§ 1973, 1973a, 1973b, 1973c, 1973e and 1973h.

[189] *See, e.g.*, the case study of Los Angeles County in KOUSSER, *supra* note 5, at 69-137, detailing repeated anti-Latino redistricting, and the case study of the State of Texas, *id.* at 277-316, detailing racially motivated redistricting between 1971 and 1991.

[190] Suits against states or municipalities by the United States government are constitutionally permissible, particularly for the purpose of enforcing federal constitutional rights. *See, e.g., United States v. Mississippi*, 380 U.S. 128, 140 (1965) ("[N]one of these cases decided or even suggested that Congress could not authorize the United States to institute legal proceedings against States to protect constitutional rights of citizens."); *Fitzpatrick v. Bitzer*, 427 U.S. 445, 455 (1976) (holding that the 14th Amendment is an abrogation of state rights: "There can be no doubt that this line of cases has sanctioned intrusions by Congress, acting under the Civil War Amendments, into the judicial, executive, and legislative spheres of autonomy previously reserved to the States."). Any such remedy, however, needs to be carefully drafted in light of the case law in this area, and in particular, should specify that it is intended to provide criminal penalties against state and local governments. Federal courts have been reluctant to construe statutes to include states and municipalities as within the class of penalized criminal actors. For example, in *United States v. City of Rancho Palos Verdes*, 841 F.2d 329, 229 (9th Cir. 1988), the U.S. Ninth Circuit Court of Appeals ruled that although the Endangered Species Act, 16 U.S.C. §1531 *et seq.*, defines person as "an individual, corporation....or any officer, employee, agent, department, or instrumentality of the Federal Government, or any State or political subdivision thereof," there was no indication that Congress had intended to include municipal corporations under the definition of person. *See also U.S. ex rel. Dunleavy v. County of Delaware*, 279 F.3d 219 (3rd Cir. 2002). B*ut see, City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978) (plurality opinion holds that the term "person" in the Sherman Act does apply to municipalities, despite the absence of specific reference in the statute).

[191] Stuart P. Green, *The Criminal Prosecution of Local Governments*, 72 N.C.L. REV. 1197, 1235-39 (1994) (arguing that stigma is the factor that differentiates criminal sanctions from civil sanctions, and that municipalities would be particularly susceptible to this kind of stigma because local leaders devote so much energy to creating a positive image for their communities).

[192] *See* 42 U.S.C. § 1973c, *Allen v. State Board of Elections*, 393 U.S. 544, 549-550 (1969) (state may seek approval from court if DOJ objects but if state gets approval, a private party has no remedy under §5), and *Morris v. Gressette*, 432 U.S. 491, 502-503 (1977) (no review of failure of DOJ to object).

[193] *See supra* note 113.

[194] *See* Hench, *supra* note 11, at 738-743, and Andrew L. Shapiro, Note, *Challenging Criminal Disenfranchisement under the Voting Rights Act: A New Strategy*, 103 YALE L.J. 537, 537-542 (1993) (discussing the history of felon disenfranchisement laws).

[195] *See* Shapiro, *supra* note 194, at 540-541 & n. 20-21.

[196] As of 2000, according to The Sentencing Project, forty-six states disenfranchise inmates, thirty-two states disenfranchise unincarcerated felons (on probation or parole) and fourteen states permanently disenfranchised ex-felons. PATRICIA ALLARD AND MARC MAUER, REGAINING THE VOTE: AN ASSESSMENT OF ACTIVITY RELATING TO FELON DISENFRANCHISEMENT LAWS 2 (January 2000), *available at* http://www.sentencingproject.org/pubs/regainvote.pdf. The states in which ex-felons are permanently disenfranchised are: Alabama, Delaware, Florida, Iowa, Kentucky, Maryland, Mississippi, Nevada, New Mexico, Tennessee, Texas, Virginia, Washington and Wyoming. The Sentencing Project and Human Rights Watch, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, c. I at 3-4 (October 1998) *available at* http://www.sentencingproject.org/pubs. Note that there are some distinctions among the states as to the categories of felons who are disenfranchised. *See id.* at 4-5.

[197] Shapiro, *supra* note 195, at 543.

[198] Alice E. Harvey, *Ex-Felon Disenfranchisement and Its Influence on the Black Vote: The Need for a Second Look*, 142 U. PA. L. REV. 1145, 1150-51 (1994) (showing that African Americans are disproportionately imprisoned). Also, *id.* at 1156 (discussing disproportionate effect on African Americans of drug laws).

[199] *Losing the Vote, supra* note 196, c. I at 2.

[200] *Id.* at c. III at 2.

[201] U.S. COMM'N ON CIVIL RIGHTS, ELECTION REFORM: AN ANALYSIS OF PROPOSALS AND THE COMMISSION'S RECOMMENDATIONS FOR IMPROVING AMERICA'S ELECTION SYSTEMS, Summary at 4 (Nov. 2001) *available at* http://www.usccr.gov/pubs/vote2000/elecref/summ.htm; NAT'L COMM'N ON FEDERAL ELECTION REFORM, TO ASSURE PRIDE AND CONFIDENCE IN THE ELECTORAL PROCESS at 45 (August 2001), *available at* http://www.reformelections.org/data/reports/99_full_report.php; Kweisi Mfume, president and CEO, NAACP, statement before the Maryland State Senate's Economic and Environmental Affairs Committee, April 4, 2001,

available at http://www.naacp.org/news/releases/votingrightsforexfelony041001.shtml; THE ELECTION CENTER, ELECTION 2000: REVIEW AND RECOMMENDATIONS BY THE NATION'S ELECTION ADMINISTRATORS (July, 2001), *available at* http://electioncenter.net.

[202] *See* Shapiro, *supra* note 194, at 553-563.

[203] Congress can so amend the Act, based on appropriate findings as set forth above and in the references at notes 194-198, under its power to implement the Fifteenth Amendment. Of course, as to elections for Congress, it also is empowered to act pursuant to the Elections Clause (U.S. CONST., art. I, § 4, c. 1), and to the extend that amendments to the Act include an exercise of the Spending Power, the provision of funding could be tied to allowing former felons to have coextensive rights in state and local elections.

[204] *See supra* at notes 85-86.

[205] *See* Lani Guinier, *The Representation of Minority Interests: The Question of Single-Member Districts*, 14 CARDOZO L. REV. 1135, 1149 (1993) ("One cannot define political fairness as merely electoral fairness guaranteeing impartial conditions of voting eligibility and equally counted votes...the critical issue is whether black voters can exercise a fair choice in selecting and retaining representatives."); s*ee also* Smith, *supra* note 101, at 45.

[206] *See* Handley & Grofman, *supra* note 82 (discussing correlation between DOJ-forced change to single member districts and increased black office holding); Smith, *supra* note 101.

[207] 2 U.S.C. § 2c11 ("in each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a(a) of this title, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety- first Congress)."). Representative Cynthia McKinney and Representative Mel Watt have both introduced legislation to repeal the 1967 ban on multi-seat elections without success. *See* HR 1173, 107th Cong. (1999).

[208] Yeoman, *supra* note 108.

[209] *See supra* note 108.

[210] *See* Michael A. McCann, *A Vote Caste; A Vote Counted: Quantifying Voting Rights Through Proportional Representation in Congressional Elections*, 12 KAN. J.L. & PUB. POL'Y 191 (2002); Richard H. Pildes & Kristen A. Donoghue, *Cumulative Voting in the United States*, 1995 U. CHI. LEGAL F. 241 (1995); s*ee also* Guinier, *supra* note 205; Yoeman, *supra* note 108.

[211] *See. e.g.*, McCann, *supra* note, 210, at 193. There are a number of methods of proportional voting, but the three most promising of these are limited voting, cumulative voting and preference voting (single-transferable voting). Limited voting gives voters fewer votes than there are available positions in a district, preventing the majority voting block from winning every seat in the district. Cumulative voting gives voters the same number of votes as there are available seats, but allows them to allocate the votes in any way they prefer, including casting multiple votes for a single candidate, allowing organized minorities to vote heavily for a particular candidate. The choice voting/single transferable vote system allows voters to rank candidates in order of preference, regardless of party, and reallocates votes for unsuccessful candidates to the voters second or third choice. Pildes & Donaghue, *supra* note 210, at 242-245.

[212] McCann, *supra* note 210, at 192-93.

[213] Guinier, *supra* note 205, at 1156.

[214] McCann, *supra* note 205 at 210.

SHOW: Talk of the Nation 3:00 AM EST NPR

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NEAL CONAN, host:

This is TALK OF THE NATION. I'm Neal Conan in Washington.

In early 1965, African-Americans who wanted to vote faced any number of barriers: poll taxes, grandfather clauses, literacy tests to name just a few. Civil rights workers who tried to help register black voters risked threats, beatings and sometimes murder. The situation in the Deep South was particularly bleak with only 1 percent of eligible blacks registered to vote in places like Dallas County, Alabama, the county seat of which, the riverside town of Selma, became a turning point in the civil rights movement.

In 1965, in March, unarmed demonstrators in Selma tried to march to the Capitol in Montgomery, only to be beaten and teargassed by police on the edge of town. Network television coverage of this Bloody Sunday incident outraged the nation and help lead to the passage of the Voting Rights Act four months later.

This week marks 40 years since President Lyndon Johnson signed the measure. Today, we want to hear your stories of that time and look at the act's evolution and its future.

Later in the program, tourists pay a lot to swim with dolphins. What do the dolphins get out of it?

First, four decades of the Voting Rights Act. If you were involved in the campaign for voting rights, give us a call. Our number is (800) 989-8255; that's (800) 989-TALK. The e-mail address is totn@npr.org. Later in the program, we'll talk about the upcoming battle over **reauthorization** of many of the **Voting Rights Act's** provisions.

Joining us now is Clayton Carson. He's a professor of history at Stanford University, director of the Martin Luther King Jr. Papers Project. He's with us from the studios of Stanford University in California.

Nice of you to be with us today on TALK OF THE NATION.

Professor CLAYBORNE CARSON (Stanford University): Good to talk to you, Neal.

CONAN: As a UCLA undergrad, you were--is it fair to describe you as a foot soldier at the Student Nonviolent Coordinating Committee?

Prof. CARSON: Well, I wasn't officially part of the staff. I was one of their supporters. They had lots of friends-of-SNCC groups around the country and I think at various points I went to the South, but I wasn't in Selma. I had been active since about 1963, and the Selma campaign was the culmination of that period.

CONAN: Well, tell us, what led up to that confrontation on the Edmund Pettus Bridge?

Prof. CARSON: Well, SNCC had been working in Selma since 1963 and had really not made very much headway, primarily because there wasn't a lot of national attention on the right to vote. It was more attention on issues of desegregation. But I think for many people, the right to vote was the central campaign because in many parts of the South, black people were the majority, and in other parts could decide elections. And beyond that, I think, the right to vote was something really fundamental in American history. You know, when you think about at the beginning of American history, only white males with property could vote. And you had successive campaigns to broaden the vote, and the one final piece of that long campaign was to get the right to vote in the Deep South for black people.

CONAN: Obviously, nothing easily won. Let me apologize before I go any further. I misspoke your name. Clayborne Carson; I apologize for that. But let me ask you a little bit about what it was like back then, '63, '64, '65, when you were working on this campaign.

Prof. CARSON: Well, I think that one of the things that you--it's very difficult to understand now is just how difficult it was to get the right to vote and particularly this area in the Black Belt. Lowndes County, for example, was a predominantly black county between Selma and Montgomery and until 1965, there was not one black registered voter in that county and there hadn't been since the 19th century. So we're talking about a political system that was a throwback to the 19th century.

It was maintained by terrorism, that any black person who tried to vote could be attacked, lose their job or even worse killed for that affront to the Southern system of white supremacy. So I think that everyone knew what was at stake, particularly in the Black Belt, and that's where SNCC concentrated its forces. Other groups took on voting rights campaigns where the resistance was less strong, for example, in Southern cities. But SNCC went to the rural areas of the South. And they knew that they were going to face strong opposition, and that was what happened.

I think what happened in '65, of course, was that Martin Luther King entered the picture. SCLC, his organization, decided to launch its own campaign in Selma. And with King's arrival, then you begin to get national publicity and it became a nationally significant campaign. And in that context, it brought together, you know, a coalition that really hadn't existed very much before but certainly didn't exist after that, and that is white liberals ultimately came after the Bloody Sunday attack, Malcolm X was even there at one point in Selma supporting the campaign. So it brought together all the various aspects of the political spectrum in a coalition that would never exist again.

CONAN: Let's bring another voice into the conversation. With us here in Studio 3A in Washington is Ronald Walters, a professor of government and politics at the University of Maryland and author of "Freedom is Not Enough: Black Voters, Black Candidates and American Presidential Politics."

Welcome to the program. Nice to have you on TALK OF THE NATION.

Dr. RONALD WALTERS (PhD; The African-American Leadership Institute; University of Maryland): Good to be with you, Neal.

CONAN: And we were just hearing Clayborne Carson talk about some of the famous people who were involved, obviously Fannie Lou Hamer; you dedicate your book to Joseph Lowry. But you also emphasize in your book that the organization and the marches and the protests were the product of local people, people who we do not necessarily remember so well. And I was wondering if you could tell us the story of a man named Hartman Turnbow, this from an incident on April 9th, 1963.

Dr. WALTERS: Yes. Well, I tried to go back to recapture some of the danger, some of the sense of sacrifice, some of the drama of ordinary people as a struggle to affect this right to vote. And Hartman Turnbow, of course, was one of those that--I learned, actually, from some of the SNCC people, had been one of the first people to actually step forward and to offer himself to vote in Mississippi. And he was attacked for it. He did step forward at a courthouse there and he--it wasn't successful, but the next day his house was firebombed. And the interesting thing about it was that he came out of his house with both guns blazing and protected his house, actually, from being burned to the ground.

CONAN: You have a transcript of something that he said afterwards. I'm not going to attempt the dialect here. `But it got to working just like the citizenship class teacher told us, that if we would register to vote and stick with it, he says there's going to be some difficulties. He said that when we started we were looking for it. He said, "We're going to have difficulties, going to have troubles, folks are going to lose their homes, folks are going to lose their lives, people are going to lose all their money," and just like he said, all of that happened. He didn't miss it. He hit it, kadap(ph), on the head and it's working now. It won't ever go back to where it was.'

Dr. WALTERS: That's right. I mean, this was an interview with Hartman Turnbow sometime long after this event had happened.

CONAN: Yeah. Let's get some listeners involved in the conversation. Our number is (800) 989-8255; (800) 989-TALK. Our e-mail address is totn@npr.org.

Right now we're talking about memories of 40 years ago and more, the campaign for the Voting Rights Act of 1965. Later on in the program we'll talk about its relevance today. But let's get Kathy on the line. Kathy calling us from St. Louis, in Missouri.

KATHY (Caller): Yes. Hello.

CONAN: Hi, you're on.

KATHY: Hi. Thank you for taking my call.

CONAN: Sure.

KATHY: I worked for the Southern Christian Leadership Conference in 1965. There was a summer program where volunteers, mainly college volunteers, went down and registered people to vote. So when I was there, and by there I mean Southampton County, which as many people know is Nat Turner country, the Voting Rights Act was passed and it was so--from our perspective, things changed drastically in the period of a couple of weeks. I remember 40 years ago so vividly because I think the experience was so profound for those of us who were privileged to have been a part of history, I remember so many things.

One particular thing I remember is we organized pickup vans to pick voters up and take them into the courthouse to vote where we naturally met a lot of resentment, but it was now the law of the land and people knew what they had to

do. We stopped by one morning to get a woman who I think was about 90 years old, African-American woman who was sitting in a folding chair on her lawn. We picked her up, helped her in the car and she said, `I've been waiting all my life to do this.' And we said, `Well, today's the day,' and it was. And I still get very emotional thinking about those times.

And one more memory--I don't want to take too much time because I have a lot of them--but we stayed with African-American families, there were four of us, and one of us had a car that was a turquoise Volkswagen, and in 1965 a turquoise Volkswagen stood out.

CONAN: Yeah.

KATHY: So we were followed quite a bit. But we stayed exclusively with black families because that was the thing to do and nobody else really would have us. And the black families were so courageous and so brave. People threatened to cut off their livelihoods if they housed us. And to a person, everyone stood up for us. In fact, in one particular situation, which I won't take the time to go into detail about, when I look back, I realize my life was really in danger. It was saved by a black gentleman. There's no doubt in my mind. And they risked a tremendous amount.

CONAN: Clayborne Carson, let me ask you about that. When President Johnson spoke to Congress about this, he said it was the courage of black people, like Kathy's talking about, that made this possible.

Prof. CARSON: Well, I think that's particularly important to realize that Lyndon Johnson didn't want to introduce voting rights legislation in 1965. He had other parts of his program that he thought were more important, the Great Society programs. He needed to votes of Southern politicians. And I think that it was one of these situations where the momentum from the Southern struggle was just too strong for him to resist, that ultimately he wanted to pass voting rights legislation, he knew the importance of that, but it was really the thrust of these Southern demonstrations that forced his hand and brought about voting rights in 1965.

CONAN: Kathy, thanks very much for being with us today.

KATHY: Thank you.

CONAN: Appreciate the phone call. And, Clayborne Carson, we appreciate your time as well.

Prof. CARSON: Thank you for having me.

CONAN: Clayborne Carson, a professor of history at Stanford University, director of the Martin Luther King Jr. Papers Project, and he joined us from the Stanford studios in California.

We're telling your stories of the Voting Rights Act, which turns 40 this week. After the break, we'll also turn to the act's future. What was your experience? We're taking your calls at (800) 989-8255.

It's TALK OF THE NATION from NPR News.

(Soundbite of music)

CONAN: This is TALK OF THE NATION. I'm Neal Conan in Washington.

We're remembering the Voting Rights Act signed into law by President Johnson 40 years ago this week in the wake of months of civil rights protests and bloody crackdowns. Were you involved? Did the Voting Rights Act affect your life? Give us a call: (800) 989-8255; (800) 989-TALK. The e-mail address is totn@npr.org.

Our guest here in the studio is Ronald Walters, author of "Freedom is Not Enough: Black Voters, Black Candidates and American Presidential Politics," also a professor of government and politics at the University of Maryland.

Let's get another caller on the line. This is Matt. Matt calling from San Rafael, California.

MATT (Caller): Hi.

CONAN: Hi.

MATT: I was a photographer during the '60s in Mississippi and Alabama and other places, and I just mounted a 16--a 17-print banner print show at the Department of Justice last week. They had a celebration of the Voting Rights Act, and they hung these banners around the Great Hall. But I lived with Hartman Turnbow part of the summer of 1964 and I remember--I wasn't present when they tried to firebomb his house, but I remember the incident well. And Hartman apparently appeared on the front porch in the moonlight in his white nightshirt, blasting away into the bean field with his shotgun. And there were cries of pain were heard from the bean field and the would-be firebombers drove away in their pickups. And the next day, they found a license plate in the bean field which turned out to be the license plate of a Holmes County deputy sheriff.

At any rate, Hartman went down to report this and he was arrested for arson; that is, for trying to set fire to his own home.

CONAN: Yeah, Ron Walters, did you know about that license plate?

Dr. WALTERS: No. This is just so rich in terms of an on-the-spot recollection. But I did know that they tried to arrest him for trying to set fire to his own house.

MATT: Hartman had the most wonderful command of the English language, which he used as freely as an Elizabethan poet. And in describing it, he said, `Well,' he said, `I went down to the circus--clerk's office to report the fire and they arrested me for arsenic.'

(Soundbite of laughter)

MATT: He was a wonderful man and absolutely fearless.

CONAN: Matt, thanks very much. We appreciate that.

MATT: OK.

CONAN: Bye-bye.

MATT: Bye.

CONAN: One of the earlier callers, Ron Walters, talked about the effect of the Voting Rights Act after it took effect. What was it like throughout the South?

Dr. WALTERS: Well, you have to think about 1964, and at that time there were only--something like 18 percent of blacks voting in the entire South. Four years later--just four years later, you had a registration rate of over 50 percent in the South. So you go from 18 percent to over 50 percent in four years. That's just extraordinary. You had less than a hundred black elected officials. You had something like 78 in the South at that time. And four years later, you're beginning to get close to 130; 50 black elected officials in four years in the South. So it had an immediate electric effect on political participation in places like Selma and other places where blacks were not registered, all of a sudden people wanted to make the Voting Rights Act come alive.

CONAN: Let's listen to a recorded telephone conversation. I'm sure you're aware of the LBJ tapes. This was recorded in a conversation between the president of the United States and Martin Luther King Jr., and they discussed their strategy for voting rights. This is in January of 1965.

(Soundbite of recorded telephone conversation)

Dr. MARTIN LUTHER KING Jr.: It's so important to get Negroes registered to vote in large numbers in the South and it will be this coalition of the Negro vote and the moderate white vote that will really make the new South.

President LYNDON JOHNSON: That's exactly right. I think it's very important that we not to say...

CONAN: Hard to hear, but Martin Luther King there saying that it'd be--it's so important to get Negroes registered to vote and it would be this coalition of Negro voters and--in large numbers and this coalition that would then change the South. Well, the South has certainly changed.

Dr. WALTERS: Well, you're right about that. It's very interesting because by 1976 when Jimmy Carter was elected president with precisely that coalition, members of the Congressional Black Caucus, like Reverend Walter Fauntroy, for example, were calling this the new arthritic of power in the South, this coalition of blacks and moderate whites.

So this coalition, of course, was to predominate--it still predominates and yet, of course, it's been overrun by the change in political ideology on the part of so many whites in the South.

CONAN: And this obviously did not happen at the benefit of the--President Johnson's party. This has become at the time that he was elected, it was the solid Democratic South. It is now the solid Republican South.

Dr. WALTERS: That's right. And, you know, he was a very courageous president because he knew that when he signed the Voting Rights Act and his words was that he's probably going to lose the South for a generation. And so--as a Southerner, him facing this prospect, that took tremendous courage for him to face down his own friends and do this, to do the right thing.

CONAN: Let's get another caller on the line. This is Taylor. Taylor calling us from Tallahassee, in Florida.

TAYLOR (Caller): Hi. How are you? I actually just kind of had a question. I was wondering, I go to Florida State University, a very active college. It's wonderful to be here. But I'm also from a place where we didn't learn much about the history that really went into voting rights, even from women, then to the African-American acts that were passed, the struggle that went through it. And I was wondering if anyone was trying to make it more known to children what a struggle it was and what a privilege and right it is to--at this point to be able to go and vote.

CONAN: Ronald Walters?

Dr. WALTERS: I don't think that there is as much in the curriculum of government in K-through-12 that really needs to be--I think we really are still in the dark about this. We still haven't come up to date about it. And this is part of the general neglect, I think, that we have in our curriculum about what happens in terms of civil society and civil affairs. We need to go back to this, and we used to do it a long time ago when certainly African-American politics was not included. We used to have civics. We need to go back to a notion of civics that is far more comprehensive than it is today.

CONAN: And since he was not going to say it, let me say it; you can go buy a copy of "Freedom is Not Enough," which is his new book on the subject.

TAYLOR: OK. Great. Thank you so much.

CONAN: Thanks very much for the call, Taylor. Good luck at school.

TAYLOR: Thank you.

CONAN: `Do we know'--this an e-mail question from Ruth Foley(ph) in Palo Alto, California. `Do we know the percentage of blacks who vote these days? Is it different from Caucasians and other groups?'

Dr. WALTERS: Well, you know, one of the interesting myths is that blacks don't vote. But it is dead wrong. When you look at one of the fulfillments of the Voting Rights Act, it is that blacks now are very close to whites in terms of the turnout. In the 19--well, the 2000 election cycle, the difference between blacks and whites in terms of voting registration was less than 3 percent. In terms of voting, it was around 2 percent or more. So this is very close. It increased somewhat in the 2004 election cycle, but still you're talking about a situation where today black voting is really roughly about the same as white voting, given the election.

CONAN: Your book focuses on presidential politics in particular. Back in 1984, you were involved in Jesse Jackson's campaign. How did that change things, do you think?

Dr. WALTERS: Well, I think that one of the arguments I make in my book is that most of the scholarship and the concern about the Voting Rights Act has been with respect to how it has managed to create districts from which blacks could run and be elected to office. And today we have over 9,500 African-American elected officials as a result of that. But I argue that it's also facilitated African-American turnout in presidential elections and blacks have often made the difference in presidential elections.

In 1984 and 1988, blacks were very excited to participate in presidential politics because of Reverend Jackson. It was a way that they used to fight back against what they opposed about the policies of Ronald Reagan in the 1980s. So they took that. And I argue that it's still a relevant political strategy for African-Americans to use presidential politics in the 2000 year and beyond, but to perfect it. And so as the 2004, we had the presidential candidates of Carol Moseley Braun, Reverend Al Sharpton and so I compare them against that to Reverend Jackson and I find that not only were the things they did different, but the context was different. This context, the Democratic Party and these candidates wanted to have someone who was competitive and that really trumped everything else. So I say that, `Well, the two things you have to have going for you if you're really going to do a black presidential candidacy, you've got to have the people, you've got to do some other things right, and you have to have the right context.'

CONAN: The fight for minority access to the polls is hardly solely history. Last week, Justice Department officials filed a lawsuit against the city of Boston alleging that city's election divisions discriminate against non-English-speaking voters. Donovan Slack, a Boston Globe reporter who covers city elections, joins us now from that paper's offices in Boston.

Nice to have you on TALK OF THE NATION.

Ms. DONOVAN SLACK (Boston Globe): Thanks for having me.

CONAN: What are the charges against the city?

Ms. SLACK: There are several. The federal government is charging that the city has not translated enough of its election materials into other languages, namely Spanish; that they have not provided enough bilingual poll workers. But perhaps more disturbing is their contention that the city has actually allowed the coercion, influencing and, in fact, ignoring of certain ballot choices of limited English speakers in this city.

CONAN: Now how did this come to the attention of the federal government?

Ms. SLACK: Well, I think it started a few years ago when the city tried to transition to the electronic voting machines and we had several community groups out at almost every single poll, really observing very closely for one of the first times, exactly what was happening out in the field. And they came back with a number of reports, they brought them to the city; I guess they weren't happy with the city's response. They took them to the state, and finally to the federal government which brought its suit just on Friday.

CONAN: And a suit under the Voting Rights Act.

Ms. SLACK: Absolutely.

CONAN: Boston Mayor Thomas Menino says he can't wait to fight this in court.

Ms. SLACK: Yes. He's insisting that there's absolutely nothing wrong going on at polls in Boston. And, you know, it would appear that we have certainly had reports over the last couple of years of things going horribly wrong.

CONAN: And what's the likely outcome, do you think?

Ms. SLACK: Oh, the likely outcome? It's hard to say, but I do know that the Justice Department did tell us yesterday that they have never lost a similar case to the one that is against Boston in the past 20 years.

CONAN: So--well, I guess there's a first time for everything, but on the other hand, you might want to bet on the other side.

Ms. SLACK: (Laughs) Our mayor has an uphill battle ahead of him.

CONAN: Donovan Slack, thank you very much.

Ms. SLACK: No problem. Thanks for having me.

CONAN: Donavan Slack covers local elections for The Boston Globe and joined us from their offices.

And, Ron Walters, is this an illustration of why you think the Voting Rights Act is still relevant today?

Dr. WALTERS: It is, and when you look, Neal, at what happened in the 2000 election cycle and 2004, we've had an opportunity to sort of look up underneath the skirts of the democratic process and to see a lot of things happening that we thought actually were taken care of by the Voting Rights Act, and they range all the way from things like voter intimidation to missing ballot boxes to corruption of voter lists to all sorts of things that we thought were not happening. And so this is clear that when you look at the Voting Rights Act--that it bears the heavy weight of correcting many of these things, but I must say that we also have today HAVA, the Help America Vote Act, which was passed to take care of some of these things, and we also have the National Voter Registration Act. So we're much stronger in terms of law today, than we were 40 years ago. What we still lack is vigorous enforcement.

CONAN: We're talking about the 40 years of the Voting Rights Act and about its future. You're listening to TALK OF THE NATION from NPR News.

Some parts of the Voting Rights Act are set to expire in 2007 unless they are reauthorized by Congress. And joining us now to talk about the future of the Voting Rights Act is Abigail Thernstrom, vice chair of the US Commission on Civil Rights. She's with us from her home in Lexington, Massachusetts.

Nice to have you on the program.

Ms. ABIGAIL THERNSTROM (Vice Chair, US Commission on Civil Rights): Thank you very much for having me.

CONAN: You wrote in an article you co-wrote in The Wall Street Journal--it says, `In 1965, every part of the act made perfect sense. No longer,' you say.

Ms. THERNSTROM: That's correct. And, by the way, I do want to compliment the previous speakers. I thought both Clay Carson, whom I know well, and Ron Walters did a superb job retelling that very moving history. And nobody should for a minute think that that, in 1965, wasn't a very necessary and beautifully designed act, which had the immediate impact that your caller Kathy said. We're a long ways from 1965 now; 40 years later, the South has changed. America has changed. And most of the act is permanent, but there are provisions that were passed on a temporary emergency basis. They were supposed to expire in 1970. Forty years later, the emergency is over. We don't have a permanent emergency when it comes to the questions, to the issues, that those provisions were supposed to cover, or the central one of those provisions was supposed to cover, and it's time to let it expire. We have many other ways of combating electoral discrimination.

And Professor Walters referred to Florida a minute ago, but, of course, all the hanging chads and so forth had nothing to do with the Voting Rights Act. None of the counties involved were covered by what is called the pre-clearance provision of the Voting Rights Act. That's the provision that requires jurisdictions originally covered in '65 and some that were added later to go to Washington to get approval of every voting change. Florida was not covered in '65. A few counties were subsequently covered. But the Florida debacle had absolutely nothing to do with the Voting Rights Act.

CONAN: Ronald Walters, do you agree?

Dr. WALTERS: No, I don't agree. I think--and out of great respect for Abigail, whom I know, and her opinion about it, I think that when you look at pre-clearance and the need to continue pre-clearance--that is to say that if a state wants to change its election law, it has to have it approved by the Department of Justice. You look at a state like Georgia, for example. Right now, Georgia's changing its voter identification requirement from 17 pieces of identification down to five. It wants to do that. There are many people in the state who argue that this will make it much more difficult. That has to be discussed, and the way to do that is to have a discussion in the Justice Department, and, therefore, the continued need for pre-clearance.

Again, one of the sections likely to expire is the language provision. Hispanics are just now beginning to become citizens in large numbers, and they need language assistance because, as a matter of fact, studies have shown that's one of the key things to initiate the vote for them.

And then, finally, there is this question of observers. In 2000, the NAACP started to receive irregular reports on the afternoon of the vote. I called the Justice Department; they said that they didn't have any observers in the state of Florida. And I said, `Why?' `Well, because election officials there have to request them.' So it seems to me that there's still a need--if you had had elec-

tion observers in the state of Florida, or any other state, covered by the law, there far less likely to have many of these egregious provisions take place.

CONAN: When we come back--hold on, Abigail.

Ms. THERNSTROM: Yeah.

CONAN: We have to take a short break, but we'll let you have a chance when we come back from a short break, as we continue our conversation on the Voting Rights Act of 1965 and its continued relevance. If you'd like to join the conversation, (800) 989-8255. We'll also look at the future of dolphin attractions.

I'm Neal Conan. You're listening to TALK OF THE NATION from NPR News.

(Announcements)

CONAN: This is TALK OF THE NATION. I'm Neal Conan in Washington.

Here are the headlines from some of the stories we're following here today at NPR News. The National Archives today released more documents written by Supreme Court nominee John Roberts. The papers date back to Roberts' time at the Department of Justice during the Reagan administration and pertain to such issues as civil rights. And researchers who challenged the rediscovery of the ivory-billed woodpecker have made an about face. The skeptics were finally convinced of the bird's existence after hearing sound recordings. You can hear details of those stories and, of course, much more later today on "All Things Considered" from NPR News.

Coming up on Thursday, the TALK OF THE NATION movie awards continue. This time it's your selections for best teen movie ever. Bring it on. We can hardly wait for your brief e-mails saying anything about why your nominee deserves the fame. Send it to totn@npr.org, and if you'll include your phone number, possibly you'll pump up the volume and join us on the air. Don't be clueless about it. Join us for the best teen flick of all time Thursday on TALK OF THE NATION.

Tomorrow, different strategies for building children's self-esteem--trying to balance praise and high standards. That's tomorrow on TALK OF THE NATION.

Today we're continuing our conversation on the future of the Voting Rights Act, which turns 40 this week. Our guests are: Ronald Walters, director of the African-American Leadership Institute, professor of government and politics at the University of Maryland; also with us, Abigail Thernstrom, vice chair of the US Commission on Civil Rights. Before the break, we were talking about parts of the law that need to be reauthorized by Congress if they're going to be extended.

And, Ms. Thernstrom, you wrote in your article in The Wall Street Journal, `Racially homogeneous and uncompetitive districts, which make biracial and bipartisans' coalitions unnecessary and will continue to elect mostly far-left minority candidates'--how does the Voting Rights Act contribute to that?

Ms. THERNSTROM: Let me answer that in a second. Let me just very quickly answer Ron Walters. Voter ID in Georgia--there is another provision that a permanent provision of the Voting Rights Act, Section 2, allows any plaintiff to go into court and charge electoral discrimination, and nothing's happening to that. The language-assistance program provisions--nobody's arguing they should go away. And again, with respect to Florida, most of Florida is not covered by the emergency provisions. Only five counties are. And they were not the counties that were involved in the 2000 debacle. The--Florida was not initially covered at all.

But look, what's happened is, with the--I mean, there's been an odd evolution of the Voting Rights Act, and it became an instrument, over time, for the Justice Department particularly, to some extent the DC District Court and all other courts in the land who were closed when the question was pre-clearance of federal approval of voting changes--it became an instrument to force jurisdictions to draw as many what the ACLU called max-black districts as possible; in other words, to force egregious racial gerrymandering, resulting in what have often been called bug-splat districts. And when you draw--when you have race-driven lines that go down a highway and scoop up a little enclave of black homes and then go wandering off in another direction and scoop up another little enclave, and so you've got, you know, these wild-looking districts that are completely race-driven, what happens is you drain black voters from all surrounding districts. They become overwhelmingly white, and they become, in the South particularly, very solidly Republican.

And, you know, the Republicans have been laughing all the way to the political bank with these bug-splat districts, these race-driven districts. And, indeed, after the 1990 census, when the software became very sophisticated, they were working very closely with the Republicans--that is, with the civil rights groups--to create the maximum number of majority minority districts because it was in the interest of Republicans. I don't think those districts are in the interests--in the public interest, in the interest of black and Hispanic voters, in the interest of any other voters.

CONAN: Ronald Walters?

Dr. WALTERS: Well, I think that--Abigail calls this an odd evolution; of course, it is really not. The courts, I think, considered whether or not political participation was something that should be promoted as a real event, and what they said was that a Section 2 really means that not only do you have the opportunity to vote, but that vote ought to count. So they went back to, really, a 1916 standard, a case there--had nothing to do with blacks, but here we're talking about having the vote count. So they said, `Well, in order to do that, let's create single-member districts'--nothing odd about that--`in order for blacks to have a right to vote and to elect black officials.'

If you didn't have these minority majority districts, what it means is that we would have parliaments in this country, political institutions, that would have very few blacks. And I'm not sure that's something that anyone would like to see. This is not racial gerrymandering. It is racial representation. It just so happens that Republicans have understood this, I think, somewhat better than Democrats. What I think blacks and others have tried to do is to keep even Republicans from stacking the districts so high that you had a lot of excess votes in them. But I think the proposition that blacks ought to be able to vote for their own representatives is a Democratic outcome, and I think that we all should applaud that.

CONAN: Let's get...

Ms. THERNSTROM: Well, Section 2 is permanent legislation. That is not up for reauthorization, so that's not even a question. Now look, when you talk about racial representation, you're really talking about office holding by minorities, because otherwise, you have to admit that whites can represent blacks and blacks can represent whites, and I'm not sure, as an empirical fact, that you can claim you know how many black elected or Hispanic elected officials there would be if you had more districts in which there were biracial, multiethnic coalitions, because black candidates tend not to run in districts in which they don't feel, you know, that the outcome is guaranteed. Well, if you don't try to run in inte-

grated districts, there is no way you're going to win. You have to run in order to win.

I think there are white voters today and for quite a while--have been more than willing to vote for black candidates. That's how Doug Wilder got elected in Virginia, I understand by only a small margin. That's how Andrew Young first got elected to Congress in a majority white district, how, you know, David Dinkins got elected in New York, and we're probably going to have a statewide race with Harold Ford running for the Senate in Tennessee, and I put my money on Harold Ford.

1965 is 40 years ago. America has moved on, I'm telling you.

Dr. WALTERS: I'm sorry, Abigail, but, you know, the data simply doesn't hold up. Keith Reeves has just published a book on white voting for black candidates, and his findings are that the normal situation is that whites in America still are not voting for black candidates. So it's not just a question of blacks not running in these districts; they don't run because they don't think they can win, and there's pretty good empirical evidence on their side that they can't.

This situation is not too difficult. The presumption that whites can represent blacks is certainly one I think I would accept. The question is whether or not they can represent blacks better than black representatives, and whether or not we would like to have political institutions that look like America. And I think that, given this situation, what we know is that, from the record, blacks have represented blacks better, and our institutions are beginning to look like this country's founders intended it to be.

CONAN: Abigail Thernstrom, I'm sure you have a response. This is an argument that's going to go on for the next year, at least. We appreciate your being with us today.

Ms. THERNSTROM: Thank you so much.

CONAN: Abigail Thernstrom, vice chair of the US Commission on Civil Rights.

And, Ronald Walters, we thank you for your time today as well.

Dr. WALTERS: Good to have been with you.

CONAN: Ronald Walters' new book is called "Freedom Is Not Enough: Black Voters, Black Candidates and American Presidential Politics."

LOAD-DATE: August 2, 2005

GOALS OF THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT

The civil rights community recognizes the critical need for a substantive record to support the reauthorization of key provisions of the Voting Rights Act which are scheduled to expire in August 2007. As a result, the Lawyers Committee for Civil Rights Under Law, in conjunction with other leading civil rights organizations, has created a National Commission on the Voting Rights Act to conduct regional hearings across the country. The National Commission is composed of an 8-member panel of prominent academics, governmental and policy officials and civil rights practitioners. The goal of the National Commission is to write a comprehensive report detailing discrimination in voting since 1982, the last time the Voting Rights Act was reauthorized. This report will be used to educate the public, advocates, and policymakers on this record of discrimination and its relationship to the upcoming reauthorization.

Expiring Provisions of the Voting Rights Act

The Voting Rights Act of 1965 is generally recognized as one of the seminal pieces of legislation enacted by Congress. Indeed, during the reauthorization hearings in 1982, Congress hailed the Voting Rights Act as "one of the most important civil rights bills passed by Congress" and recognized it as the "most effective tool to protect the right to vote." The expiring provisions of the Act are some of its most important. These provisions are: (1) the Section 5 "preclearance" provisions which require jurisdictions in all or part of sixteen states to submit voting changes to the United States Department of Justice ("DOJ") or the United States District Court for the District of Columbia for preclearance approval before they can be implemented; (2) the Section 203 minority language provisions which require more than 450 counties and townships to provide language assistance to voters with limited-English proficiency; and (3) the examiner and observer provisions which authorize DOJ to appoint an examiner or send observers to any jurisdiction covered by Section 5. The temporary provisions relating to preclearance and examiners and observers were part of the original 1965 enactment and were scheduled to last for 5 years. However, Congress underestimated the tenacious grip of discrimination on voting and has continued to reauthorize and add to the Voting Rights Act. Section 5 and the examiner provisions were reauthorized in 1970, 1975, and 1982. The minority language provisions were enacted in 1975 and reauthorized in 1982 and 1992.

The Need for a Record

From its initial passage of the Voting Rights Act, Congress has relied on an extensive record of discrimination in voting to justify the need for the remedies imposed

by the expiring provisions. In the original enactment of the Voting Rights Act and in subsequent reauthorizations, Congress has made sure that Voting Rights Act remedies were proportionate to the problems Congress sought to cure. In the Senate Report written during the 1982 Reauthorization, Congress acknowledged that two Supreme Court decisions "expressed the concern that Congress not permanently subject jurisdictions to the unusually stringent remedy of preclearance."

The Supreme Court has cited the Voting Rights Act's congressional record as the model in recent cases where it struck down civil rights laws after finding that Congress had not established a record of discrimination to support its remedial legislation. These Supreme Court decisions have made clear that reauthorization of the expiring provisions of the Voting Rights Act must be supported by a record showing discrimination in voting since its last reauthorization in order to survive a constitutional challenge.

The National Commission and the Commission Hearings

The non-partisan, blue-ribbon National Commission will conduct nine regional one-day hearings across the country to gather data and information from citizens and governmental officials about their experiences relating to voting rights issues. The Honorary Chair of the National Commission is former United States Senator Charles Mathias. Bill Lann Lee, former Assistant Attorney General for Civil Rights, is the Chair. Other Commissioners include former Congressman John Buchanan; leading voting rights scholar Dr. Chandler Davidson; Dolores Huerta, co-creator of the United Farm Workers of America; Elsie Meeks of the U.S. Commission on Civil Rights; Charles Ogletree, Harvard Law School Professor; and Joe Rogers, former Lieutenant Governor of Colorado. Members of the National Commission are joined by regional guest commissioners at each hearing.

Co-sponsors of the Commission are from leading civil rights organizations including: the Asian American Legal Defense and Education Fund, Association of Community Organizations for Reform Now, Black Leadership Forum; Congressional Black Caucus Foundation, Demos, Leadership Conference on Civil Rights, NAACP National Voter Fund, National Asian Pacific American Legal Consortium, National Congress of American Indians, National Voting Rights Institute; People for the American Way Foundation, Project Vote, Rainbow/PUSH Coalition and Southern Christian Leadership Conference.

The National Commission held regional hearings in Alabama on March 11, 2005 during the 40th Anniversary commemoration of the Selma to Montgomery march for voting rights; on April 7 in Phoenix, Arizona; and on June 14 in New York, New York. Future regional hearings will be held in Minneapolis, Minnesota on July 22 and Orlando, Florida on August 4. Additional hearings are planned for California, South Dakota, Washington, DC and Mississippi during the fall. Each hearing consists of multiple panels looking at every aspect of discrimination in voting. Invited witnesses are asked to testify about the effects of the expiring provisions on voting within their particular region and the extent to which these provisions have had an impact on allowing minority voters

to exercise the franchise free from discrimination and to elect the candidate of their choice. In addition to invited panelists who testify on the challenges minority voters face in the region covered by the hearing, the public is invited to testify about individual instances of discrimination experienced when voting. The National Commission hearings will also serve to educate local residents about the issues relating to reauthorization.

The National Commission Report

The purpose of the National Commission report is to set forth the history of racial discrimination in voting since the 1982 Reauthorization. The analysis will be both quantitative and qualitative; utilizing maps to show graphically where there has been voting discrimination in the last twenty-three years. The report will not take any positions concerning whether the expiring provisions of the Voting Rights Act should be reauthorized or what the reauthorized Act should include. Instead, the purpose of the report is to detail the facts so they can be utilized by the public, policymakers, and advocates during the debate concerning reauthorization.

The report will review the various provisions of the Voting Rights Act and racial discrimination in voting and will include sections on Section 5, the minority language provisions, the examiner and observer provisions, Section 2, and voter suppression issues.

The information contained in the report will come from several sources: facts compiled from the oral and written record of the National Commission hearings; court opinions in Voting Rights Act cases; the enforcement record of the Department of Justice, including but not limited to the Section 5 objections interposed since 1982, the lawsuits brought and the consent decrees entered into by the Department in voting cases, and the instances in which the Department has sent observers or attorneys to monitor election. Also, the report will detail racial discrimination in voting uncovered by private parties.

Dr. Chandler Davidson, professor emeritus of Sociology at Rice University, a preeminent voting rights scholar, and a National Commission member will be the primary drafter of the report, with input from the National Commission, the Lawyers' Committee, and the national cosponsors of the National Commission.

More information about the National Commission and testimony from past hearings can be found at www.votingrightsact.org.

PREPARED REMARKS OF
ACTING ASSISTANT ATTORNEY GENERAL
BRADLEY J. SCHLOZMAN

FORTIETH ANNIVERSARY OF THE VOTING RIGHTS ACT OF 1965

GREAT HALL – RFK JUSTICE DEPARTMENT BUILDING – WASHINGTON, DC
JULY 27, 2005

Thank you all for coming today to the Department of Justice's celebration of the 40th Anniversary of the Voting Rights Act. It is a genuine pleasure for me to be here today, and I am honored that so many are here to share in this festivity.

We gather here in the Great Hall of the Department of Justice to commemorate the anniversary of what is arguably the most important civil rights enactment since the Reconstruction Amendments to the Constitution. Indeed, the passage of the Voting Rights Act represented one of the highest water marks of a struggle undertaken by millions of courageous Americans who endured, with great dignity, the abhorrent forces of racism and intolerance, and literally put their very lives on the line for that most basic American right: the simple right to vote, a right, incidentally, which had been guaranteed for a century and systematically denied for just as long.

It may be hard to believe for many of the young people in today's audience – a category in which I include myself by the way – that, just 40 years ago, disenfranchisement of black voters was commonplace throughout much of the American South. Today, we would promptly repudiate such overt discrimination. Yet institutionalized racism caused nary the bat of an eye in many quarters at that time. Meanwhile, a great many Americans, both black and white, actually lost their ***lives*** – *heroically*, I might add – seeking to protect the voting rights that today we often take for granted.

Five months before signing the Voting Rights Act of 1965 into law, President Lyndon Johnson had addressed a joint house of Congress, pledging to overcome the nation's crippling legacy of bigotry and injustice. When he later signed the bill into law, he underscored the significance of the achievement by noting eloquently that the vote is the most powerful instrument ever devised for breaking down injustice and destroying the terrible walls that imprison men because they are different from other men.

The history of the Voting Rights Act, of course, is long and storied. The arc began in the aftermath of the Civil War with the adoption of the 15th Amendment in 1870, which prohibited states from denying citizens the right to vote on account of race, color, or previous condition of servitude. But incredibly, it took nearly 100 years for the arc to approach its downward turn.

The literature that you received when arriving today outlines – quite briefly, it is just a *pamphlet* after all – the deeply troubling efforts by southern states and municipalities to deny blacks the right to vote. As many of you know, explicit racially exclusive statutes soon gave way to equally pernicious devices, including poll taxes, literacy tests, and vouchers of "good character." These laws, although neutral on their face, were constantly used to exclude black citizens by allowing election officials to apply registration and voting procedures selectively.

Needless to say, southern officials used these mechanisms with disturbing efficiency and success. To give you an example, just **6.7%** of African Americans in Mississippi were registered to vote in 1965. They were kept from the polls not by their own indifference or alienation – as is the case with many individuals of all races today – but by intimidation and silly tests that not even the testers themselves could pass. Only after Congress passed a federal voting rights law – and only then after fervent opposition from Southern Democrats was overcome – was this sad legacy put to rest.

But enough of the negative. Today is, after all, a celebration. And there is clearly much to celebrate. Congress over the last 40 years, for example, has consistently demonstrated its willingness to adopt laws critical to safeguarding the voting rights of all Americans. Not only was the Voting Rights Act renewed on three separate occasions, but other important statutes have been enacted with great fanfare, including the Uniformed and Overseas Citizen Absentee Voting Act of 1986, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002.

Few can deny that the cumulative impact of these laws has been substantial. The voter registration rate of minorities has dramatically improved, and there are record numbers of elected officials who are members of minority groups throughout the United States.

Some statistics that I discovered last night on the Internet are rather illuminating. At the time the Voting Rights Act was first adopted, only one-third of all black citizens of voting age were on the registration rolls in the Act's specially covered states, while two-thirds of eligible whites were registered in those regions. Today, black voter registration rates are not only ***approaching*** parity with that of whites, but they have actually ***exceeded*** that of whites in some areas. And, I should add, Hispanic voter registration is today rapidly increasing as well.

Forty years ago, the gap in vote registration rates between blacks and whites in states such as Mississippi and Alabama ranged from 63.2 to 49.9 percentage points. As I noted earlier, in Mississippi for example, only 6.7% of the voting age black population, was registered to vote in 1965 compared to 69.9% of whites.

Forty years later, we see a very different picture. The Census Bureau reported that in 2004, 76.2% of blacks in Mississippi were registered to vote, compared to 73.6% of whites. In Alabama last year,

blacks reported registering at a rate only 1.7 points below that of whites, 73.2% versus 74.9%.

Now all of us recognize that registering to vote is only the first step in being an active citizen in our democratic process. Actual participation by voters in elections is the real key to a healthy democracy. And I am happy to report that the Census Bureau showed an increase in turnout for blacks in the South from 44% in 1964 to 53.9% in 2000, an extraordinary achievement. Last year meanwhile, the voting turnout rate *nationally* for black citizens was 60%, compared to a national turnout rate of 64% for all citizens.

President Clinton observed five years ago that those who walked by faith across the Edmund Pettis Bridge in Selma, Alabama back in 1965 led us all to a better tomorrow. He couldn't be more right. Forty years ago, minority elected officials were virtually excluded from all public office. At that time, there were only 300 black elected officials nationwide, and just 3 blacks in the Congress. Today, the number has grown exponentially to more than 9100 black elected officials and 43 African American members of Congress. The fact that so many of these minority officials have been elected from the South is a particularly impressive tribute to the impact of the Voting Rights Act.

I'd also add that the voting enforcement efforts of the Civil Rights Division during this Administration have been as strong, if not stronger than ever. During calendar year 2004, for example, we deployed a total of 1,996 federal personnel to observe 163 elections in 29 states, the Division's most extensive monitoring effort *ever*. I suspect that enough frequent flier miles were logged to send everyone in the Division to China and back. Not that I'm authorizing that.

In addition, in 2004, the Division filed and successfully resolved as many Section 203 cases as it had filed in the previous 8 years combined. And we filed three more lawsuits just two weeks ago. And we have

another suit that we will be commencing imminently. To understand what a remarkable accomplishment this is, consider that, in just the last 8 months, we have affected more minority language voters than all previous Section 203 cases combined since the passage of this provision in the 1982 Voting Rights Act reauthorization 25 years ago. I would be remiss, by the way, if I didn't point out that much of the credit for this work goes to Voting Section Chief John Tanner, who has been absolutely tireless in his coordination of our Section 203 enforcement efforts.

Finally, just last week, the Civil Rights Division filed suit under Section 2 of the Voting Rights Act, alleging that a Florida county's at-large method of election dilutes the voting strength of Hispanic citizens in violation of the Voting Rights Act. This followed on the heels of another recent Section 2 suit in Mississippi in which we discovered some of the most egregious racial discrimination seen in 35 years.

In short, we have a tremendous record – one that is a testament to the Division's outstanding attorneys and staff who labor here every day, for far less money than they could make in the private sector, but who do so out of a deep and abiding commitment to the enforcement of our fundamental voting rights.

I often wonder whether, in the days of Alabama's Bull Connor and the dogs of Selma, the oppressed and disenfranchised ever genuinely believed that their dreams of full participation and equal application of the law would become a reality. Some surely did. Many certainly did not. But what is clear is that, while there are no doubt struggles to come, the progress we have made to date is remarkable and one of which we can all be extremely proud. It is also a real tribute to the valiant pioneers who took those most difficult, initial steps in the voting rights crusade decades ago.

I want to thank all of you for joining us today for this important program. We have a terrific program scheduled, which Loretta King and her committee have put together. I hope you all enjoy it. Thank you very much.

U.S. House of Representatives
Committee on the Judiciary
F. James Sensenbrenner, Jr., Chairman

http://judiciary.house.gov

News Advisory

For immediate release
September 23, 2005

Contact: Jeff Lungren/Terry Shawn
202-225-2492

Sensenbrenner Announces Extensive Hearings on Voting Rights Act Extension Later This Year

WASHINGTON, D.C. – House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.) today announced an extensive and detailed Committee examination of the Voting Rights Act will begin later this year, including plans for more than a half-dozen Committee hearings.

Chairman Sensenbrenner stated, "The Voting Rights Act has brought voting rights to millions of Americans previously denied their right to vote. While some sections of the law will not expire until 2007, I strongly believe now is the time for the Judiciary Committee to begin a thorough examination to reauthorize this critical legislation. Therefore, after extensive consultations with Ranking Member Conyers, Congressional Black Caucus Chairman Watt, Constitution Subcommittee Chairman Chabot, Constitution Subcommittee Ranking Member Nadler, and many others, the Judiciary Committee will commence oversight hearings later this fall. This bipartisan effort should educate Members about the complex nuances of the Voting Rights Act and build a solid legislative record towards our goal of a long-term Voting Rights Act extension."

The following topics will be among the issues discussed during these hearings:

- The history of the Voting Rights Act, including the 1970, 1975, 1982, and 1992 amendments.
- Section 5's preclearance procedures and retrogression standard as interpreted by the U.S. Supreme Court.
- Bilingual election assistance for language minorities under the Voting Rights Act.
- The structure and operation of Section 4: trigger and bailout.
- Litigation, compliance and enforcement of the Voting Rights Act.

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U.S. House of Representatives
Committee on the Judiciary

FOR IMMEDIATE RELEASE
Contact: Jeff Lungren/Terry Shawn
Phone: 202-225-2492

7/10/2005

Sensenbrenner To Introduce 25-Year Voting Rights Extension Legislation, Calls for Bipartisan Approach to Civil Rights Issues
Delivers Remarks Today at the NAACP's 96th Annual Convention

WASHINGTON, D.C. – House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.) today is announcing he will introduce legislation to extend the Voting Rights Act for 25 years and is calling for a bipartisan approach to civil rights issues.

Chairman Sensenbrenner will be addressing these issues during a speech later today in Milwaukee at the National Association for the Advancement of Colored People's (NAACP) 96th Annual Convention. (Chairman Sensenbrenner also spoke at the organization's 2001 Annual Convention in New Orleans.)

Chairman Sensenbrenner's prepared remarks are below.

Good evening. Thank you for this opportunity to talk briefly about two important issues facing us right now: an extension of the Voting Rights Act and the Supreme Court's recent 5-4 decision in the Kelo case, which held that the government can use "economic development" as a reason for taking private property.

Among my proudest moments was accompanying members of the NAACP and Dr. Marsha Coleman-Adebayo for the signing of the No FEAR Act, legislation that aims to stamp out discrimination in federal agencies. The bipartisan passage of No FEAR, the first civil rights legislation of the 21st century, should serve as a model for future civil rights bills.

On August 5, 2005, the United States will celebrate the 40th anniversary of one of the most significant pieces of legislation enacted during the 20th Century – the Voting Rights Act. This profound legislation pushed back against those unwilling to treat all citizens as equals and restored the dignity and equality that our Constitution is intended to preserve for all citizens.

Our democratic system of government has as its most fundamental right the right of its citizens to participate in the political process. Adopted 135 years ago, the Fifteenth Amendment ensures that no American citizen's right to vote can be denied or abridged by the United States or a State on account of race, color, or previous condition of servitude. As far too many here know and have experienced, some government entities have not only been unfaithful to the rights and protections afforded by the Constitution, but have aggressively – and sometimes violently – tried to disenfranchise African-American and other minority voters.

In his momentous speech delivered to Congress on March 15, 1965, President Lyndon B. Johnson stated, "[e]xperience has clearly shown that the existing process of law cannot overcome systematic and ingenious discrimination. No law that we now have on the books – and I have helped to put three of them there – can ensure the right to vote when local officials are determined to deny it. In such a case our duty must be clear to all of us. The Constitution says that no person shall be kept from voting because of his race or color. We have all sworn an oath before God to support and to defend that Constitution. We must now act in obedience to that oath."

Seeing the Voting Rights Act's impact compelled me in 1982 to lead the House Republican effort to extend it for 25 years. This effort wasn't easy – but then again, very important things never are. While I proudly display in my Washington office one of the pens President Ronald Reagan used to sign this extension, the fruits of this effort can best be seen on the faces of those not only participating in the political process but actively leading it.

In the 1960s, all major civil rights legislation was passed with strong bipartisan support. Lately, this has not been the case as some have tried to use the issue of civil rights to obtain a partisan advantage. This is both wrong and shortsighted. The stakes have not been higher in the past 20 years.

In 2007, several key protections contained in the Voting Rights Act will expire, including the federal oversight protections provided by Section 5. I am here to tell you publicly what I have told others privately, including the head of the Congressional Black Caucus, Representative Mel Watt – during this Congress we are going to extend the Voting Rights Act. I am not alone in the Congress in supporting an extension; indeed, House Speaker Dennis Hastert last week stated that reauthorization of the Voting Rights Act is high on his list of issues the House will address this Congress.

Soon I will be introducing legislation to extend the Voting Rights Act. Just like its enactment and its 1982 extension, this bipartisan effort will succeed. Ladies and gentlemen, while we have made progress and curtailed injustices thanks to the Voting Rights Act, our work is not yet complete. We cannot let discriminatory practices of the past resurface to threaten future gains. The Voting Rights Act must continue to exist – and exist in its current form.

I also want to mention my strong opposition to the Supreme Court's recent 5-4 decision in the Kelo case, which held that the government can use "economic development" as a reason for taking private property from one small homeowner and giving it to a large corporation simply because the corporation's greater wealth will bring the government more tax revenue.

As the NAACP so correctly noted in its brief filed with the Supreme Court in the Kelo case, "The takings that result [from the Court's decision] will disproportionately affect and harm the economically disadvantaged and, in particular, racial and ethnic minorities and the elderly."

The noxious practice endorsed by the Court's Kelo decision has generated bipartisan opposition. Last week, I introduced H.R. 3135, the "Private Property Rights Protection Act of 2005," with the Ranking Member of the Judiciary Committee, Mr. Conyers, as the lead Democratic cosponsor, and Representatives Maxine Waters, Sheila Jackson-Lee, and 87 additional Members as original cosponsors.

This legislation would prevent the Federal government from using economic development as a justification for taking privately-owned property. It would also prohibit any State or municipality from doing so whenever Federal funds are involved with the project for which the government's takings power is exercised.

American taxpayers should not be forced to contribute in any way to the abuse of government power. One man's home must not become a hotel or strip mall solely because the government seeks more tax revenue. I am looking forward to working with you and all organizations opposed to the Supreme Court's Kelo decision. We must ensure that churches, homes, farms, and other private property cannot be bulldozed in abusive land grabs that benefit other private individuals, who claim that their use of the land will increase tax revenues.

Last week, America celebrated the 229th anniversary of her independence. Let us all work towards the day – envisioned by our Founders and affirmed by Frederick Douglass – in which the rich inheritance of justice, liberty, prosperity, and independence bequeathed by our Founders is shared by all Americans.

Ladies and gentlemen, I look forward to continuing to work together and thank you for this opportunity to address you.

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U.S. Newswire

March 7, 2005 Monday 1:46 PM EST

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HEADLINE: Voting Rights Commission Holds First Hearing to Examine Discrimination in Voting

DATELINE: WASHINGTON, March 7

BODY:

The National Commission on the Voting Rights Act will convene its first hearing as part of a nationwide series to examine the impending **reauthorization of the Voting Rights Act** ("VRA"). The Commission's inaugural hearing will occur on Friday, March 11, 2005 from 9 a.m. to 4:15 p.m. in Montgomery, Alabama at the Freewill Baptist Church located on 1724 Hill Street. Congressman John Lewis, who was a leader in the voting rights movement that led to the law's enactment, is scheduled to testify before the Commission along with other distinguished panelists.

The privately organized Commission will hold a series of regional hearings across the country to gather testimony and evidence that will be used to create a comprehensive record on the degree of racial discrimination in voting and the impact of the VRA since 1982. The Commission will issue a report at the end of the yearlong series that will be used by policymakers, voting rights advocates, and the public.

Comprised of distinguished academics, governmental officials, policymakers, and civil rights practitioners, the National Commission is chaired by former Assistant Attorney General for Civil Rights, Bill Lann Lee. Former United States Senator Charles Mathias is the Honorary Chairperson of the Commission. Other Commission members include former Congressman John Buchanan, Harvard Law School Professor Charles Ogletree, Elsie Meeks of the U.S. Commission on Civil Rights, Dolores Huerta, Co-founder of United Farm Workers of America, and leading voting rights scholar Dr. Chandler Davidson.

The Lawyers' Committee for Civil Rights Under Law established the Commission on behalf of the civil rights community in order to document the history of racial discrimination in voting since the last VRA reauthorization in 1982. "The Commission's goal is to educate the public, advocates, and policymakers on discrimination in the area of voting and its relationship to the upcoming **reauthorization,**" said Jon Greenbaum, Executive Director of the National Commission on the **Voting Rights Act.**

Widely recognized as one of the most influential pieces of legislation enacted by Congress, the Voting Rights Act of 1965 has been central to protecting

the right to vote for millions of Americans. The Commission will examine important provisions of the VRA, which are set to expire in 2007.

These provisions include: (1) the Section 5 preclearance provisions which require jurisdictions in all or part of sixteen states to submit voting changes to the Justice Department or a federal court for approval before they can be implemented; (2) the Section 203 minority language provisions which require more than 450 counties and townships to provide language assistance to voters with limited-English proficiency; and (3) the examiner and observer provisions which authorize DOJ to appoint an examiner or send observers to any jurisdiction covered by Section 5. All of these expiring provisions have played a significant role in ensuring and protecting the voting rights of people of color.

The Commission's March 11th Montgomery hearing will feature prominent voting rights litigators, scholars, public officials, and advocates who will testify about instances of voter discrimination over the past two decades. Members of the general public will also have an opportunity to testify before the Commission during an afternoon open session. The Commission's next hearing will be held on April 7th in Phoenix, Arizona.

The Lawyers' Committee is an over forty year old nonpartisan, nonprofit civil rights legal organization, formed in 1963 at the request of President John F. Kennedy to provide legal services to address racial discrimination.

http://www.usnewswire.com/

Contact: Kim Alton of the Lawyers' Committee for Civil Rights Under Law, 202-662-8317

LOAD-DATE: March 8, 2005

IMPORTANT NOTES

Additional Reading on the Voting Rights Act

(Summaries and highlights provided by LexisNexis)

William D. Araiza, "The Section 5 Power and the Rational Basis Standard of Equal Protection," *Tulane Law Review*, vol. 79 (February 2005), p. 519.

HIGHLIGHT:

This Article addresses the current controversy over the scope of Congress's power to enforce the Equal Protection Clause. Recent Section 5 cases have engendered much criticism, some of it focused at the Supreme Court's seeming disrespect for Congress's fact-finding capabilities, some of it on the "congruence and proportionality" standard the Court has enunciated, and the most aggressive of it arguing that Congress should have a greater role in determining constitutional meaning.

This Article takes a different tack. It focuses not on what power Congress should have vis-a-vis the Court, but rather, on what the Court has actually said about equal protection. It argues that many equal protection decisions do not represent abstract statements of equal protection law; instead, they reflect the outcome of decisional methods that speak to underlying constitutional concerns but which don't themselves yield statements about what the Equal Protection Clause means. Thus, less equal protection "law" exists than is commonly assumed. In turn, more room exists for Section 5 legislation.

The Article focuses on the rational basis standard. It argues that the rarity of judicial strike downs under that standard does not mean that almost all classifications so reviewed satisfy the Equal Protection Clause. Instead, it suggests that that standard is better understood as a statement by the court that it often doesn't have the capability confidently to identify violations of the Clause's underlying rule against unreasonable classifications. The implication under the latter view is that the decision upholding the law does not itself amount to a declaration of constitutional law, which Congress is therefore obliged to respect when the latter seeks to enforce the Clause.
The Article argues that the Court's own explanations and applications of the rational basis standard support this judicial-restraint characterization. It then argues that the reasons for that restraint apply with much less force to Congress, given the latter's institutional characteristics. The Article then applies these insights to the Court's explanation, in City of Cleburne v. Cleburne Living Center, of why it would not grant suspect class status to the mentally retarded. Cleburne's explanation allows a comparison of Congress's and the Court's abilities to determine whether a classification runs a high risk of being constitutionally unreasonable.

The Article then confronts a final theoretical problem: If most rational basis cases don't reflect true declarations of equal protection law, and if rational basis cases comprise the vast majority of equal protection claims, then where is the law in the Equal Protection Clause? The Article suggests that lurking in the rational basis cases is a fundamental principle of equal protection law - the rule against animus. The last major part of the Article considers if, and how, this antianimus rule could cabin would otherwise seem to be a very broad Section 5 power.

The Article concludes by speculating about what this analysis means for Section 5 enactments addressing gender and race. In particular, the Court's gender jurisprudence implies a significant role for congressional input via the Section 5 power. The Article also speculates whether this analysis illuminates the scope of Congress's power to address substantive rights under the Due Process Clause or other clauses of the Fourteenth Amendment.

Karyn L. Bass, "Are We Really Over the Hill Yet? The Voting Rights Act at Forty Years: Actual and Constructive Disenfranchisement in the Wake of Election 2000 and Bush v. Gore," *DePaul Law Review*, vol. 54 (Fall 2004), p. 111.

SUMMARY:

... Meanwhile, buried on page two of papers nationwide were stories of civil rights leader Jesse Jackson holding rallies and relating the experiences of hundreds, possibly thousands, of African-American voters who were physically intimidated away from polling places, required to show picture identification, and denied the right to vote, while white voters were free to vote without identification. ... From the conflicting signs of voter intent and the apparent voter and systemic error, it is "hard to avoid the conclusion that the confusing butterfly ballot caused at least a few thousand Palm Beach voters who wanted to vote for Gore to vote instead for Buchanan by mistake. ... Has Bush v. Gore infused new life into the Voting Rights Act and voting rights litigation, whose legacy was becoming mired and arguably ineffective with meandering paths to franchise vindication? Additionally, will race matter less in the voting rights arena now that the fundamental right to franchise has once again focused a strict scrutiny lens on the same language of individual rights bestowed upon it in Harper and Reynolds? ... By employing so-called "color-blind" justice, the Court today views the use of the Voting Rights Act and the Equal Protection Clause more as a protection for any individual whose vote may be diluted rather than the express purpose of the Voting Rights Act - to redress the disenfranchisement of minority voters. ...

Jocelyn Benson, "Turning Lemons into Lemonade: Making Georgia v. Ashcroft the Mobile v. Bolden of 2007," *Harvard Civil Rights-Civil Liberties Law Review*, vol. 39 (Summer 2004), p. 485.

SUMMARY:

... The Voting Rights Act of 1965 forever changed the face of electoral equality in the United States. ... Following *Beer,* courts typically use the number of majority-minority districts (districts where a single minority constituency comprises over 50% of the voting age population (VAP)) as evidence of minority voting strength. ... While Pildes and others now believe that a decrease in racially polarized voting makes it possible for communities of color to elect their candidates of choice by building coalitions with white voters, Karlan argues it is still nearly impossible for minority candidates to elect the candidate of their choice outside of districts where more than 50% of the voting age population is a combination of minority groups. ... And again, this effect is compounded even further when one recognizes the fact that minority voter turnout *decreases* when the concentration of minority voters in a district falls below a certain point. ... Professor Guinier, who also played an important role as an advocate during the reauthorization process, recalls, "The civil rights groups met in 1981 and . . . decided that we were going to go for broke . . . . We were going

to overturn the Supreme Court decision in *City of Mobile v. Bolden* . . . . We were going to re-establish a results test in the Voting Rights Act." ...

Monet Clarke, "Race, Partisanship, and the Voting Rights Act (VRA): African-Americans in Texas from Reconstruction to the Republican Redistricting of 2004," *Texas Journal on Civil Liberties & Civil Rights*, vol. 10 (Spring 2005), p. 223.

SUMMARY:

... Understanding the failures of partisan battles during Reconstruction sets a framework to understand the necessity of the Voting Rights Act of 1965 (VRA), and the impact of partisanship upon African-Americans in modern Texas politics after the VRA. ... Nine states are covered under Section 5 because of their long history of voter suppression: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. ... Ignoring the legislative history of the VRA, the Court analyzed voting dilution claims and racial districting schemes solely on the basis of strict scrutiny and struck down any use of race in the absence of a compelling reason. ... Benefit or Backpedaling: Race and Redistricting in Current Texas Politics ... Although Texas Democrats turned their backs on Republican Party sympathizers like Wilson, questions remain as to whether party unity was maintained to the detriment of minority interests. ... Democrats must also prove that minorities vote reliably Democratic in Texas but not to the extent that a minority vote for a candidate can only be explained on the basis of race. Perhaps showing returns from Democratic primaries, such as Chris Bell's former Twenty-Fifth District, where minority registered Democrats voted on the basis of politics rather than race, will help the claim survive strict scrutiny under the Fourteenth Amendment. ...

Meghann E. Donahue, "'The Reports of My Death Are Greatly Exaggerated': Administering Section 5 of the Voting Rights Act After Georgia v. Ashcroft," *Columbia Law Review*, vol. 104 (October 2004), p. 1651.

SUMMARY:

... The Voting Rights Act (VRA) is commonly perceived as one of the most successful pieces of social legislation ever enacted by Congress. ... " Application of section 5 to these so-called "covered jurisdictions" is widely credited as the central force behind the increases in minority voter registration, voter turnout, and officeholding that occurred subsequent to the Act's implementation. ... In evaluating the Georgia Senate's redistricting plan under section 5, the Court fundamentally redefined the "effective exercise of the electoral franchise" such that preclearance can no longer be based solely on minorities' ability to elect candidates of their choice. ... And if there truly are "no natural thresholds" to measure influence, a retrogression in minority voting strength, disguised by a jurisdiction's claim to have increased minority influence, may succeed in passing Justice Department scrutiny in a newly amorphous section 5 review. ... Because polarization levels are determined by running statistical regressions of election returns and minority voting populations at the precinct level, racially polarized voting results give an accurate picture of minority and nonminority voting patterns without requiring the DOJ to use information that could be considered controversial by any section 5 stakeholder. ...

HIGHLIGHT:
In Georgia v. Ashcroft, the Supreme Court redefined the standard of review applied to section 5 of the Voting Rights Act, holding that when making preclearance determinations, administrators must consider minority influence in the political process even where it is too small to enable minorities to elect a candidate of their choice. Dissenting, Justice Souter declared the new standard unadministrable and section 5 "substantially diminished." This Note argues that while Ashcroft fundamentally changed section 5's evaluative framework, it did not render the section unadministrable. Although Ashcroft raised significant problems regarding how to define and quantify minority influence, section 5 administrators can rely on methods of analysis traditionally utilized in voting rights jurisprudence - focusing on racially polarized voting analyses; prioritizing the ability to elect over other forms of influence; and using the Senate factors to identify influence short of electability - to help them wade through the morass in a principled way.

Richard L. Hasen, "Congressional Power to Renew the Preclearance Provisions of the Voting Rights Act After Tennessee v. Lane," *Ohio State Law Journal*, vol. 66 (2005), p. 177.

SUMMARY:
... In 1965, Congress enacted the Voting Rights Act. ... Part III then turns to the Bull Connor is Dead problem: What evidence of intentional racial discrimination can Congress point to supporting a renewed preclearance provision under the test set forth in Boerne and the evidentiary standard set forth in Garrett? Part IV then considers how Hibbs, Lane, and Georgia v. Ashcroft make the case for Court approval of a renewed preclearance provision more likely, but far from certain. ... The Court pointed to discrimination against the disabled in voting, marrying, and serving as jurors, and cited to court cases identifying "unconstitutional treatment of disabled persons by state agencies in a variety of settings, including unjustified commitment, the abuse and neglect of persons committed to state mental health hospitals, and irrational discrimination in zoning decisions. ... Supporters of a renewed preclearance would be well-advised to begin preparing those reports now, and fill the record with as much anecdotal (and more systematic, if available) evidence of intentional state racial discrimination in voting to support a renewed preclearance provision. ... Such a conclusion can only bode well for a renewed preclearance provision challenged as an improper exercise of congressional power....

HIGHLIGHT:
This Article considers a single question: Does Congress have the power to renew the Voting Rights Act's preclearance provisions, set to expire in 2007? Beginning with South Carolina v. Katzenbach, the United States Supreme Court has upheld preclearance as a permissible exercise of congressional enforcement power. These cases, however, mostly predate the Supreme Court's New Federalism revolution. As part of that revolution, the Court has greatly restricted the ability of Congress to pass laws regulating the conduct of the states under its enforcement powers granted in Section Five of the Fourteenth Amendment, which the Court has read as coextensive with its enforcement powers under the Fifteenth Amendment. Moreover, in Board of Trustees v. Garrett, the Court made clear that it will search for an adequate evidentiary record to support a congressional determination that states are engaging in unconstitutional conduct to justify congressional regulation of the states. Some of that clarity on the evidentiary question disappeared in the Court's 2003 decision, Nevada v.

Hibbs, and even greater uncertainty has been created by the Court's 2004 decision, Tennessee v. Lane.

Part II of this Article surveys the legal landscape through the developments in Garrett facing those who wish to defend renewed preclearance as an appropriate exercise of congressional power under the Fourteenth or Fifteenth Amendments. Part III then turns to the "Bull Connor is Dead" problem: Most of the original racist elected officials are out of power, and those who remain in power (along with any new elected officials who either intend to discriminate on the basis of race or who otherwise would care less about a discriminatory effect in a change in voting practices or procedures on a protected minority group) have for the most part been deterred by preclearance. Thus, there is not much of a record of recent state-driven discrimination that Congress could point to supporting renewal. The question of how much racial discrimination in voting practices there would be today if we suddenly eliminated preclearance is almost too speculative to answer. It is difficult to see how Congress may prove that preclearance remains necessary under the Garrett-evidentiary standard. Part IV then explains how in two recent cases on congressional power, Nevada v. Hibbs and Tennessee v. Lane, the Supreme Court appears to have backed away from the strict evidentiary standard imposed in Garrett. These cases increase the chances that the Court would hold that Congress has the power to reenact Section Five's preclearance provisions, particularly given Justice Scalia's separate opinion in Lane in which he indicated his new position that Congress has broad latitude to pass legislation aimed at combating racial discrimination. In addition, the Supreme Court's recent opinion in Georgia v. Ashcroft, construing the statutory standard for granting preclearance, takes more pressure off constitutional challenges to a renewed preclearance provision. Part V concludes in a more speculative vein with a look at an alternative basis for congressional power to reenact preclearance: the Guarantee Clause.

Grant M. Hayden, "Resolving the Dilemma of Minority," *California Law Review*, vol. 92 (December 2004), p. 1589.

SUMMARY:

Over the last forty years, racial and ethnic minority groups have made tremendous strides in American politics. The advances were, in large part, brought about by a series of significant changes in voting-rights law. The Voting Rights Act of 1965 finally made good on the century-old promise of the Fifteenth Amendment to ensure minorities access to the polls... Having secured the right to cast an equally weighted vote, voting rights advocates - with the support of the Department of Justice (DOJ), the federal agency charged with enforcement of the Voting Rights Act - turned their attention to fighting more subtle practices designed to dilute minority voting strength. They attacked practices such as at-large election schemes and racial gerrymanders using a combination of constitutional and statutory tools.

The remedy of choice, however, was the creation of majority-minority districts, districts where members of a minority group constituted an effective majority and were therefore able to elect representatives of their choice....These districts resulted in a significant increase in the number of African American and Hispanic representatives in Congress and in state legislatures....But all was not well. There were some curious aspects to this push for additional majority-minority districts....Ironically enough, this predicament is caused, in part, by some of the very Supreme

Court rulings that once worked in favor of minority voters: the malapportionment cases of the 1960s and 1970s that imposed the one person, one vote requirement on certain state and federal legislative districts.

The thesis of this Article is that strict adherence to the one person, one vote standard, especially in the context of minority-vote-dilution claims, is nonsensical. The standard itself, even outside the realm of minority voting rights, has never been adequately theorized. Its greatest advantage, according to supporters, is that it is neutral or objective, a point that is, as I and other commentators have pointed out, patently false. In sum, it is time for the Supreme Court to back away from strict adherence to the one person, one vote principle in minority-vote-dilution cases, eliminating the dilemma of minority representation and removing the ceiling on minority political participation...In short, I propose relaxing application of the one person, one vote rule in order to shore up minority voting power. I conclude this third Part by answering some of the most obvious objections to such a proposal.

Grant M. Hayden, "The Supreme Court and Voting Rights: A More Complete Exit Strategy," *North Carolina Law Review*, vol. 83 (May 2005), p. 949.

SUMMARY:

... Over forty years ago, the Supreme Court ignored Justice Harlan's warning about entering the political thicket and, in Baker v. Carr, found that population disparities between state legislative districts presented a justiciable claim under the Equal Protection Clause. ... In fact, it is the current strict application of the one person, one vote standard that may actually prompt greater judicial intervention in redistricting decisions. ... After a majority of the state legislature passes a new districting plan, a disgruntled minority may (and often does) decide to challenge the new plan in court. ... The tradeoff occurs, in part, because the one person, one vote standard makes districting a zero-sum game - increasing the percentage of minority voters in one district inevitably reduces the percentage in another. ... But even without Georgia v. Ashcroft, strict application of the one person, one vote requirements forced minority voting advocates into pursuing a greater number of minority-preferred candidates or a greater number of Democrats. ... In no case do we need to do away with the one person, one vote standard itself, and preserving the justiciability of the issue of district size (preserving Baker, that is) would allow the Supreme Court to step back into the situation and retinker with the application of the standard should any unanticipated problems arise. ...

HIGHLIGHT:

To the great relief of many observers, the Supreme Court has recently become more deferential to state legislatures with respect to their political redistricting plans. The only problem is that the Court appears to be in no mood to revisit some of the cases that got it entangled in the political thicket to begin with - the ones rigorously applying the one person, one vote standard. Indeed, it recently issued a summary affirmance of a lower court decision that tightened up its already exacting standards regarding population equality. As a result, the Court's partial retreat from politics is doing more harm than good, as it is abdicating its responsibility to protect minority voters but leaving certain constitutional rules intact that limit the ability of Congress or the states to do so. For that and other reasons, the Court should make its exit from politics more complete by relaxing its application of the one person, one vote requirement in many situations.

Samuel Issacharoff, "Is Section 5 of the Voting Rights Act A Victim of Its Own Success?" *Columbia Law Review*, vol. 104 (October 2004), p. 1710.

SUMMARY:

... The approaching renewal date for section 5 of the Voting Rights Act (VRA) raises the question whether the preconditions for the successes of this extraordinary statute continue to exist. ... Under Beer, preclearance was limited to a mandate "that the minority's opportunity to elect representatives of its choice not be diminished, directly or indirectly, by the State's actions. ... The claim in Bartels was that the proposed redistricting of New Jersey would impermissibly dilute minority voting strength in violation of section 2 of the Voting Rights Act. ... Bartels, however was litigated under section 2 of the Voting Rights Act and thus required an assessment of the totality of factors affecting minority voting prospects in New Jersey, not simply a determination of whether the plan was retrogressive in diminishing minority voting concentrations. ... " Rather than applying a mechanical assessment of the percentage of minority voters in districts before and after redistricting, the New Jersey court assessed the electoral prospects of minority-preferred candidates under an intensely local examination of political conditions. ... These claims were buttressed by ample voting rights case law suggesting that districts with minority concentrations between forty percent and fifty-five percent were almost the per se embodiment of minority vote dilution. ...

HIGHLIGHT:

With the 2007 renewal date for section 5 of the Voting Rights Act now approaching, the question must be addressed whether the legal and practical preconditions for this extraordinary statute still exist. This Essay suggests that there were four preconditions necessary for the striking successes that section 5 had in transforming politics in its covered jurisdictions: the urgency of swift intervention to counteract the complete exclusion of black citizens from political life in the South; the ease of the administrative remedy; the absence of political competition in the one-party covered jurisdictions; and the lack of any incentive toward partisan manipulation of the preclearance powers exercised by the Department of Justice. Each of these factors has been changed by the creation of a robust political environment in the jurisdictions covered by section 5, particularly by the establishment of an important core of influential black elected officials. This leads to the question whether the success of section 5 has compromised its mission, as reflected in the major decisions under section 5 following the post-2000 reapportionment. The Essay concludes by questioning whether section 5 has served its purpose and may now be impeding the type of political developments that would have been a distant aspiration when the Voting Rights Act was first passed.

Michael J. Pitts, "Georgia v. Ashcroft: It's the End of Section 5 As We Know It (And I Feel Fine)," *Pepperdine Law Review*, vol. 32 (2005), p. 265.

SUMMARY:

... For several decades, Section 5 of the Voting Rights Act has prevented certain state and local governments from implementing any voting change, such as a redistricting plan, until the federal government determines that the change does not discriminate on the basis of race, color, or

membership in a language minority group. ... But all the other additional circumstances to consider - minority legislators' views of the proposed plan, an analysis of influence districts, and maintenance of minority legislators' power - appear to be an attempt to determine whether the voting change does something more than just result in a statistically provable discriminatory effect. ... Of course, all these factors arguably are measurable in the same way the old retrogression test measured whether minority voters could elect candidates of choice from "safe" and "coalition" districts by focusing on the prevalence of racial bloc voting and the existence of a viable remedy. ... And advocates for minority voters who fear the insertion of any constitutional purpose-type evidentiary standard into the Section 5 effects test would surely counter that the Court cannot be adding, through Georgia, an element of discriminatory purpose when just a few years ago the Court explicitly removed discriminatory purpose as a basis for denying federal approval to a voting change. ...

Michael J. Pitts, "Section 5 of the Voting Rights Act: A Once and Future Remedy?" *Denver University Law Review*, vol. 81 (2003), p. 225.

SUMMARY:

... For almost four decades, Section 5 of the Voting Rights Act has required certain states and localities to garner federal pre-approval prior to implementing any changes in laws that affect voting. ... An Unamended Extension of Section 5 Will Likely Fail the Congruence and Proportionality Test ... B. Applying Step Two of the Congruence and Proportionality Test to Section 5: Assessing the Scope of the Problem of Unconstitutional Voting Discrimination ... C. Applying Step Three of the Congruence and Proportionality Test to Section 5: Is Section 5 Proportional to the Modern-Day Problem of Unconstitutional Voting Discrimination? ... In its discussion of the scope of congressional enforcement power in City of Boerne v. Flores, the Court expended a considerable amount of language on the appropriateness of the Voting Rights Act, specifically Section 5, as a remedy, approvingly commenting upon its previous endorsement of "new, unprecedented remedies" and "strong remedial and preventive measures to respond to the widespread and persisting deprivation of constitutional voting rights . . . ." In addition, when subjecting the Religious Freedom Restoration Act (RFRA) to the congruence and proportionality test, the Court's comparison between RFRA and the Voting Rights Act implied the Court's continued approval of the remedies encompassed in the latter statute. ...

Daniel L. Stants, "The Voting Rights Act Does Not Prevent Preclearance When the Retrogressive Impact of a Redistricting Plan Does Not Impair the Ability of Minority Voters to Elect Candidates of Their Choosing in Their District: Georgia v. Ashcroft," *Duquesne University Law Review*, vol. 42 (Summer 2004), p. 945.

SUMMARY:

... Federal Statutes - Voting Rights Act - Voter Redistricting Plans - Section 5 Preclearance - The United States Supreme Court ruled that a vote dilution violation under Section 2 of the Voting Rights Act is not an independent reason to deny Section 5 preclearance when redrawing voting districts based on changes stemming from the United States Census. ... Writing for the dissent, Justice Souter agreed that reducing the number of majority-minority districts within a state would

not necessarily amount to retrogression under Section 5 of the Voting Rights Act of 1965. ... The dissent noted that the district court had observed if racial elements consistently vote in separate blocs, then a decrease in the black voter age population will impact the ability of minorities to elect the candidate of their choice. ... In Reno v. Bossier Parish School Board (Bossier Parish I), the Supreme Court dealt with the issue of whether preclearance must by denied under Section 5 when a covered jurisdiction's redistricting plan violates Section 2 of the Voting Rights Act of 1965. ...

Sean J. Vanek, "Ruling on the Unruly: The Supreme Court Sends Mixed Messages Trying To Rein in Partisan State Legislatures," *Widener Law Journal*, vol. 14 (2004), p. 285.

SUMMARY:

... More often than not, these fights have erupted in the state legislatures when they have been tasked with redrawing the voting districts, a process known as reapportionment. ... In October 2001, Beatrice Branch sued the State of Mississippi and asked the state's chancery court to create a redistricting plan in time for the 2002 congressional elections. ... Then, the district court warned again that failing preclearance by February 25, 2002, "the congressional redistricting plan attached to [the district court's] order of February 4, 2002, [would] operate as the plan for congressional districts for the State of Mississippi." ... Supreme Court, stated: "In the reapportionment context, the Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself." ... In a plurality decision, the Court held that the state court's plan was properly enjoined and the plan adopted by the district court appropriately completed Mississippi's redistricting plan by drawing single-member congressional districts. ... Because of this, coupled with the fact that the necessary preclearance from the DOJ had not been obtained, the State of Mississippi, at least according to Justice O'Connor, had not yet been redistricted. ...

Paul Winke, "Why the Preclearance and Bailout Provisions of the Voting Rights Act are Still a Constitutionally Proportional Remedy," *New York University Review of Law and Social Change*, vol. 28 (2003), p. 69.

SUMMARY:

... Of the extensive civil rights laws promulgated by Congress since the mid-1960s, the Voting Rights Act ("VRA" or "the Act") would appear to be among the most constitutionally secure. ... Justice Thomas reads the City of Boerne congruence requirement extremely rigidly, demanding that subjection to the preclearance requirements is constitutionally permissible only upon a showing of purposeful discrimination in each and every covered jurisdiction. ... Instead, the plaintiffs (or the DOJ, in the case of preclearance proceedings) need only show a discriminatory effect to be entitled to a remedy - discriminatory effect acts as a proxy for intentional discrimination. ... If the courts can consider racial bloc voting as evidence of a constitutional violation - even if such voting patterns alone are not unconstitutional - then the range of evidence that can be used by Congress or by any party defending the constitutionality of the VRA to establish a pattern of unconstitutional behavior may widen considerably over the kind of "smoking gun" evidence compiled by Congress in 1965 and 1982. ... As is clear from the language of the bailout provision, each requirement in the compliance formula relates directly either to a court's finding of discrimination, or to a jurisdiction's

willingness to abandon a challenged voting practice before a judicial determination of whether the practice is discriminatory. ...

Daniel A. Zibel, "Turning the Page on Section 5: The Implications of Multiracial Coalition Districts on Section 5 of the Voting Rights Act," Michigan Law Review, vol. 103 (October 2004), p. 189.

SUMMARY:

... In 2001, responding to population shifts evidenced by the decennial census, the New Jersey legislature enacted a reapportionment plan that significantly altered the racial makeup of its state legislative and congressional districts. ... The changing nature of race relations and demographics has forced a new debate on the formation and prevalence of cross-racial voting coalitions in American politics. ... This harm is separate and distinct from the pure stigmatic harm discussed above; it stems from the "social perception" of the state-endorsed use of race in redistricting, rather than the harm felt by any particular voter placed into a district solely because of her race. ... While the intentional creation of coalition districts does not eliminate the expressive harm felt via the intentional creation of majority-minority districts, the conscious use of race to create coalitions sends a better message. ... Accordingly, race-based redistricting may lead to a representational harm felt by filler people because it may lead representatives to "believe that their primary obligation is to represent only the members of [the minority] group, rather than their constituency as a whole. ... The creation of coalition districts does not necessarily alleviate the representational harm felt by members of a district who are not part of the majority-minority group. Drawing a coalition district instead of a majority-minority district will not eliminate the problem of the effectively disenfranchised group. ...

"Election Law -- Voting Rights Act -- District Court Holds That Section 2 Vote Dilution Claim Does Not Extend to the Protection of Influence Districts," *Harvard Law Review*, vol. 117 (May 2004), p. 2433.

SUMMARY:

... Because vote dilution claims under section 2 of the Voting Rights Act of 1965 are so conceptually complex, analyzing them has been analogized to wading through a "Serbonian bog. ... Since Gingles, however, the Court has added to the confusion by not explicitly deciding whether a minority group could ever prevail on a vote dilution claim without meeting the majority requirement. ... Under the Plan adopted by the Texas state legislature, the minority population in District 24 was "splintered" into five parts, each of which was encompassed by a majority-white, Republican-voting district. ... Deciding that Ashcroft's effective endorsement of influence districts did not carry over into the section 2 context, the Session court further reasoned that the plaintiffs could not succeed on their influence district vote dilution claim because the fifty-percent rule was "well settled" law. ... It is arguably easier for a court to defer to a state's choice concerning which types of representation are preferable, as the Court did in Ashcroft, than it is for a court to decide independently whether minority groups in non-majority-minority districts across the state, which may not be able actually to win elections, have enough "influence" in the electoral process to bring a viable vote dilution claim. ...

"The Ties that Bind: Coalitions and Governance Under Section 2 of the Voting Rights Act," ***Harvard Law Review*****, vol. 117 (June 2004), p. 2621.**

SUMMARY:

... Between him and such change stood James Hahn, Villaraigosa's opponent in the mayoral runoff and a consummate reminder of the coalition politics of the past. ... Without changing the actual threshold of exclusion - in both majority-minority and coalitional districts the standard remains one vote less than fifty percent - the coalitional claim shifts the unit of representation required to meet that threshold from the single minority group to the cross-racial coalition. ... For both plaintiffs and defendants in the section 2 courtroom, changes in demographics and politics, as well as the need to accommodate existing law, have created a potential theoretical controversy over the cross-racial coalitional claim as a strategic electoral response to vote dilution. ... For all the success of coalitions as electoral strategies, once a paradigm of governance participation extends beyond election day, judicial protection of a coalitional minority group is potentially undermined and "the maintenance of the coalition is fragile indeed. ... As electoral strategies, successful coalitions avoid these issues by avoiding the implication that the candidate of choice is a "minority" candidate or predominantly concerned with one community's interests. ... Therefore, the foundational element of a reconceptualized coalitional claim that fits within the governance paradigm is finding an accessible way for courts to determine if a coalition has legislative coherence. ...