VOTING RIGHTS ACT: EVIDENCE OF CONTINUED NEED

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

MARCH 8, 2006

Serial No. 109–103
Volume II

Printed for the use of the Committee on the Judiciary

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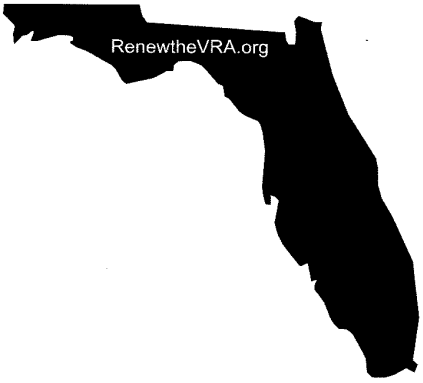
VOTING RIGHTS IN FLORIDA 1982-2006

A REPORT OF RENEWTHEVRA.ORG
PREPARED BY JONEL NEWMAN

MARCH 2006



VOTING RIGHTS IN FLORIDA 1982-2006

JONEL NEWMAN[1]

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EXECUTIVE SUMMARY

The essential role of the Voting Rights Act in protecting the voting rights of Florida's racial and language minorities cannot be overemphasized. Since 1982 the protections of the Act have been exceedingly important in guaranteeing Florida's minority voters access to the ballot box. Review of Florida's history under the Voting Rights Act since 1982 reveals that the special protections afforded race and language minorities under Sections 5, 4(f)(4) and 203 of the Act are needed now more than ever.

Portions of Florida were brought under the Section 5 preclearance provisions of the Voting Rights Act as a result of the Act's expansion in 1975. In that enactment, Congress was particularly concerned about addressing discrimination against members of language minority groups and literacy requirements. As a result of the 1975 expansion, five Florida counties were designated as Section 5 covered jurisdictions – Collier, Hardee, Hendry, Hillsborough and Monroe Counties.

Although the Department of Justice's review under Section 5 is limited to voting changes affecting only five counties, as a practical matter this includes all statewide changes such as voter registration requirements and list maintenance, state reapportionment, and other significant state legislation affecting voting. The Section 5 review process in Florida has proven invaluable in protecting minority voting rights on a statewide basis, as demonstrated by the objections filed by DOJ and the resolutions thereto, as well as the dialogue occasioned by the Section 5 review process even where no objection was interposed.

As a result of the Section 5 objection to Florida's 1992 state reapportionment plan, the state created a majority-minority state senate district in the Tampa Bay/Hillsborough County area where previously none had existed even though black and Hispanic persons constituted more than 40.1 percent of the voting-age population in the area and the legislative record showed that the redistricting had been undertaken with the purpose of protecting white incumbents. Similarly, the Department of Justice's objection to Florida's 2002 state reapportionment plan resulted in the preservation of a Hispanic majority state house of representatives district in Collier County which the state had planned to eliminate.

The Department of Justice has also interposed objections to two statewide changes to the administration of elections, in both instances protecting the rights of race and language minority voters throughout the state. The first objection was interposed in 1985 to legislation that would have prevented absentee voters from receiving assistance in marking their ballots from persons of their choice in violation of Section 208 of the Voting Rights Act. In this regard, the objection both protected minority voting rights and eliminated the need for litigation under Section 208. The second objection, in 1998, also preserved minority voting rights, this time in the face of documented experience in the preclearance counties that absentee ballot changes adversely impacted the ability of minority voters to cast a ballot.

Perhaps even more significant in the discussion of Section 5's salutary impact in Florida is the history of the dialogue among interested constituencies, Department of Justice officials and state officials that is the result of the Section 5 review process. On several occasions, this dialogue

has been shown to shape results that protect the rights of minority voters without the need for an objection or litigation.

The language minority protections of Sections 4(f)(4) and 203 are exceptionally important in Florida, where the defining feature of the latter part of the twentieth century was the enormous increase in the state's limited English proficient population. According to the 2000 Census, almost 400,000 Floridians live in linguistically isolated households with no English proficient member. Florida is home to an increasing number of citizens arriving from Puerto Rico, and it also has a protected Native American population with limited English proficiency.

A recent and ongoing history of discrimination against language minority groups with respect to the exercise of the right to vote is well-documented in Florida. The discrimination has been particularly prevalent in areas that have experienced substantial growth in the language minority population, including Miami-Dade County and much of central Florida. Section 203 remains necessary to protect this population.

In addition to the state's history and experiences with the special coverage provisions of the Voting Rights Act, a review of the history of Florida's voting rights problems in other areas is instructive in evaluating the need for continuing the special coverage provisions in Florida. This history reveals a predilection by many Florida counties to use at-large election schemes to dilute minority voting strength, the widespread use of many franchise restrictions to purposely restrict the access of minority voters to the ballot, and well-documented racially polarized voting. The state has also repeatedly sought to remove valid voters from the voter rolls in a manner that disproportionately impacts black voters.

Maintaining a framework of federal scrutiny for Florida's voting changes through Section 5 is important in regaining and retaining public confidence in the system – particularly among minority voters. Sections 203 and 4(f)(4) continue to be essential to guarantee an opportunity for meaningful participation in the electoral process by Florida's language minorities.

INTRODUCTION TO THE VOTING RIGHTS ACT

The Voting Rights Act of 1965[2] has been described as "the most effective civil rights statute enacted by Congress."[3] The portions of the Act that have had the most impact in Florida are Section 2, Section 5 and Sections 203 and 4(f)(4). Two of these provisions are scheduled to expire in 2007 unless reenacted by Congress.[4]

Section 2 of the Voting Rights Act is a permanent provision applying to all jurisdictions.[5] As presently enacted, it prohibits all voting practices and procedures that can be shown to result in a denial or abridgement of the right to vote on the basis of race, color, or membership in a language minority group.[6] To prevail under Section 2, a plaintiff must show that the challenged practice results in race or language minorities having "an inequality in the opportunities… to elect their preferred representatives."[7] This Section may be enforced either by the United States Attorney General or by affected groups or individuals by filing lawsuits in the United States District Court where the claim arises.

Section 5 of the Voting Rights Act[8] is presently scheduled to expire in 2007.[9] Section 5 is often referred to as the "preclearance" section of the Voting Rights Act. Section 5 applies to a limited number of jurisdictions, referred to as "covered" jurisdictions.[10] Covered jurisdictions are prohibited from changing any election-related procedures until those changes have been precleared, i.e., determined to have neither the intent nor the effect of diminution in minority voting strength. Covered jurisdictions have the option to seek preclearance by making a submission to the Department of Justice or by filing a declaratory judgment action in the United States District Court for the District of Columbia. In either forum, the burden of proof is on the covered jurisdiction seeking preclearance to establish that the proposed changes do not have a discriminatory purpose or effect. As a practical matter, covered jurisdictions almost always seek preclearance through the Justice Department as opposed to filing a declaratory judgment action.[11] The Attorney General is required to review the submissions and take action within

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[2] Voting Rights Act of 1965, 42 U.S.C. §§ 1973-1973bb1 (2000).

[3] U.S. Dep't of Justice, Civil Rights Div., Voting Sec. Overview, The Statutes We Enforce, http://www.usdoj.gov/crt/voting/overview.htm (last visited Feb. 27, 2006). *See also*, QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 1965-1990, (CHANDLER DAVIDSON & BERNARD GROFMAN, eds., 1994).

[4] Another expiring provision of the Voting Rights Act, Section 6 (42 U.S.C. §1973d (2000)) provides for the appointment of federal examiners for Section 5 covered jurisdictions upon certification by the Attorney General. These federal observers monitor procedures in polling places and at sites where ballots are counted and report to the Department of Justice. Because the provision has not been invoked by the Attorney General in Florida, Section 6 will not be discussed in this report.

[5] 42 U.S.C. § 1973 (2000).

[6] Section 2 was amended by Congress in 1982 to provide for an "effects" test to establish a violation of the Act, rather than requiring that a plaintiff establish that the voting practice was enacted for a discriminatory purpose. Voting Rights Act of 1982, Pub. L. No. 97-205 § 3, 96 Stat. 134 (1982); S. REP. NO. 97-417 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177; *Thornburg v. Gingles*, 478 U.S. 30 (1986).

[7] *Thornburg*, 478 U.S. at 47.

[8] 42 U.S.C. § 1973c (2002).

[9] 42 U.S.C. § 1973b(a)(8) (2000).

[10] *See* discussion *infra*.

[11] MARK A. POSNER, AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY, POLITICIZATION OF JUSTICE DEPARTMENT DECISIONMAKING UNDER SECTION 5 OF THE VOTING RIGHTS ACT: IS IT A PROBLEM AND WHAT

sixty days. The Attorney General preclears the vast majority of proposed changes.[12] In those instances in which the Department of Justice concludes that the submitting jurisdiction has not satisfied its burden to show that the proposed change is free of discrimination, the Attorney General interposes an objection to the proposed change.[13] The covered jurisdiction then has three options – it can forgo or amend the proposed change, request that the Department of Justice reconsider its objection, or file a declaratory judgment action in the United States District Court for the District of Columbia.[14] There is no judicial review of a decision by the Department of Justice *not* to object to a proposed change, though the decision is not a safe harbor for potential Section 2 claims or any subsequent action regarding the procedure.[15]

Section 203[16] of the Voting Rights Act protects language minorities. Like the Section 5 provisions, the language minority protections apply only to those jurisdictions which have been designated as "covered" for the purpose of Section 203. Designations of covered jurisdictions for the purposes of Section 203 are made following each decennial census based on a formula that determines that more than 5 percent of the voting-age citizen population in a jurisdiction belong to a single language minority community and have limited English proficiency (LEP) OR more than 10,000 voting-age citizens in a jurisdiction belong to a single language minority community and are limited English proficient AND the illiteracy rate of the citizens in the language minority group is higher than the national illiteracy rate. Section 203 requires that covered jurisdictions provide all election materials and information that are available in English in the minority language. Section 203 is also scheduled to expire in 2007 unless renewed by Congress.[17]

Language minorities in some areas are also protected by Section 4(f)(4) of the Voting Rights Act.[18] These jurisdictions were designated under a formula resulting from the 1975 amendments to Sections 4 and 5 of the Act. Jurisdictions are covered for the purposes of Section 4(f)(4) if (1) over 5 percent of the voting age citizens on November 1, 1972, were members of a single language minority group; (2) the United States Attorney General finds that election materials were provided in English only on November 1, 1972; AND (3) the Director of the Census determines that fewer than 50 percent of voting-age citizens were registered to vote on November 1, 1972 or that fewer than 50 percent voted in the November 1972 Presidential election. Although the language minority provisions appear in different sections of the Act and in some instances cover different geographic areas, their requirements are identical.[19]

SHOULD CONGRESS DO? 6 (Jan. 2006), *available at* http://www.acslaw.org/files/Section percent205 percent20decisionmaking percent201-30-06.pdf. (noting "Since 1965, the Department has reviewed over 435,000 voting changes while only sixty-eight declaratory judgment actions have been filed.")

[12] Only about one percent of submissions are determined by the Attorney General to fail the preclearance standard. U.S. Dep't of Justice, Civil Rights Div., About Section 5 of the Voting Rights Act, http://www.usdoj/crt/voting/sec_5/about.htm (last visited Feb. 27, 2006).

[13] 28 C.F.R. § 51.51 (2005).

[14] *Id.*

[15] 28 C.F.R. § 51.49 (2005).

[16] 42 U.S.C. § 1973aa-1a (2002).

[17] 42 U.S.C. § 1973aa-1a(b)(1) (2000).

[18] 42 U.S.C. § 1973b(f)(4) (2000).

[19] 28 C.F.R. § 55.8 (2005).

The essential role of the Voting Rights Act in protecting the voting rights of Florida's racial and language minorities cannot be overemphasized. Since 1982 the protections of the Act have been exceedingly important in guaranteeing Florida's minority voters access to the ballot box. Review of Florida's history under the Voting Rights Act since 1982 reveals that the special protections afforded race and language minorities under Sections 5 and 203 of the Act are needed now more than ever. This report begins with an overview of Florida's unique history as a partially-covered Section 5 jurisdiction, its experiences under the coverage, and the indispensable role that Section 5 plays in ensuring electoral fairness throughout the state. The report then reviews the protections afforded language minorities under Section 203 and their critical importance for Florida's increasingly diverse population. The report concludes with a discussion of Florida's voting rights landscape outside of the protections of Sections 5 and 203.

I. Florida and Section 5 of the Voting Rights Act

Florida's experiences under the special provisions of Section 5 of the Voting Rights Act differ from many of its neighboring southern states. In many ways, as will be explained below, it is these differences that make continuing Section 5 coverage in Florida particularly important.

A. History of Florida's Designation Under Section 5

Section 5 was enacted as part of the original Voting Rights Act of 1965, but it applied only to jurisdictions identified by a formula set forth in Section 4 of the Act. 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 was 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 in 1965 resulted in seven entire states being designated "covered jurisdictions": Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. In addition, some political subdivisions in four other states (Arizona, Hawaii, Idaho, and North Carolina) were covered. Neither Florida nor any of its political subdivisions were covered under the formula prescribed by the 1965 Act.[20]

In 1975, when Section 5 of the Voting Rights Act was scheduled to expire, Congress extended its provisions and expanded its scope. The expansion was intended to address voting discrimination against members of "language minority groups."[21] The formulaic definition of "test or device" for the purpose of determining Section 5 coverage 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

[20] Section 5 was originally enacted in 1965 as a temporary measure for only five years. In 1970, Congress renewed the provisions for another five years. It also added an updated 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. Application of this formula resulted in the partial coverage of ten states. Florida was not among them.

[21] The expansion of the Voting Rights Act in 1975 also expanded protections for language minority groups outside of areas covered by Section 5. *See* discussion *infra*.

the citizens of voting age.[22] Application of this formula resulted in the states of Alaska, Arizona, and Texas being covered by Section 5 in their entirety, and parts of California, Florida, Michigan, New York, North Carolina, and South Dakota being covered.

The Senate Report accompanying this expansion of Section 5 described it as follows:

> The focus of the proposed legislation, in this regard, is to insure that the Act's special temporary remedies are applicable to states and political subdivisions where (i) there has been evidenced a generally low voting turnout or registration rate and (ii) significant concentrations of minorities with native languages other than English reside. The provisions of S. 1279 accomplish this goal by expanding the definition of 'test or device' to include the conduct of English only elections where large numbers of language minority persons live. *In these newly covered areas, where severe voting discrimination was documented, S. 1279 would, for ten years, mandate bilingual elections, make applicable the Section 5 preclearance provisions*, and authorize the appointment of Federal examiners and observers by the Attorney General.[23]

The Attorney General designated five of Florida's 67 counties as covered jurisdictions for the purposes of Section 5 – Collier, Hardee, Hendry, Hillsborough and Monroe.[24] All changes affecting voting in those counties, as well as statewide changes that apply to those counties, must be submitted to the Department of Justice for preclearance prior to their going into effect. The designation of these five counties was based on documentation that fewer than 50 percent of the voting age population was registered to vote or voted in the 1972 presidential election and that the counties had utilized some form of literacy test only in English in areas where more than 5 percent of the population was a language minority.[25] These preclearance requirements were also implemented against a well-documented backdrop of discrimination, voter intimidation, and low rates of minority voter registration in Florida.[26]

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[22] As before, the formula was updated to reference the presence of tests or devices and levels of voter registration and participation as of November 1972. Act of Aug. 6, 1975, Pub. L. No. 94-73, 89 Stat. 400 (1975).

[23] S. REP. NO. 94-295, at 9 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 774, 775 (emphasis added).

[24] Voting Rights Act Amendments of 1975, 40 Fed Reg. 43,746 (Sept. 23. 1975) (designating Hardee, Hillsborough and Monroe); Voting Rights Act Amendments of 1975, 41 Fed. Reg. 34,329 (Aug. 13, 1976) (designating Collier and Hendry).

[25] Voting Rights Act Amendments of 1975, 41 Fed. Reg. 34,329.

[26] In 1961, the United States Commission on Civil Rights documented extreme differentials in voter registration between Florida's white and black populations. Significantly, the rate of black registration was lowest in those Florida counties with the highest percentage of black population:

> In Florida whites comprise 84.8 percent of the population 21 years or over; nonwhites 15.2 percent. Whites account, however, for 90.9 percent of the total number registered to vote and nonwhites 9.1 percent. In two Florida counties no Negroes are registered to vote although they represent 15.2 percent and 11.9 percent respectively of the population. In four counties less than 10 percent of the voting age Negroes are registered. The Negro voting age population ranges between 24 percent and 51.1 percent of the total voting age population in these counties.... In seven counties from 10 to 24 percent of the voting age Negroes were registered.... [T]he median figure [of black voting age population in those counties] is 17.4 percent. In 27 counties between 25 and 49 percent of the voting age Negroes are registered.... [T]he median figure [of black voting age population in those counties] is 16.5 percent. In 27 counties 50 percent or more of the voting age Negroes are registered.... [T]he median figure [of black voting age population in those

Congress extended Section 5 again in 1982 for a period of 25 years but did not alter or update the formula for coverage set forth in Section 4.[27] Congress did, however, modify the procedure for a jurisdiction to seek declaratory relief to terminate its coverage under Section 5. As the Senate Report which accompanies that legislation reflects, Congress believed that numerous (perhaps all) jurisdictions subject to Section 5 would, within the 25-year period, be eligible for and receive termination of coverage. The Report optimistically states, "If there are any jurisdictions left under the preclearance requirement at the end of this period this preclearance obligation would terminate unless the Congress amended the act."[28] A review of the history under Section 5 since 1982 reveals that optimism was misplaced, for Florida as well as most of the other preclearance jurisdictions.[29]

B. Florida's History Under Section 5

Florida's experiences under Section 5 demonstrate its continuing importance in ensuring equal access to the ballot box for Florida's growing minority population. While Department of Justice review is limited in Florida to voting changes affecting only five counties, as a practical matter, this includes all statewide changes such as voter registration requirements and list maintenance, state reapportionment and other significant state legislation affecting voting, as well as voting changes emanating from the five preclearance counties.

Since 1982 the Department of Justice has objected to five voting changes in Florida. The Department directed only one of its five objections at a change enacted by one of the five counties, and it later withdrew that objection.[30] The Department of Justice directed the remaining four objections at statewide reapportionment plans and legislation affecting the

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counties] is 16 percent.

U.S. COMM'N ON CIVIL RIGHTS, VOTING: 1961 U.S. COMM'N ON CIVIL RIGHTS REPORT, 106 (1961), *available at* http://www.law.umaryland.edu/marshall/usccr/documents/cr11961bk1.pdf (last visited Feb. 24, 2006). The Report also documents voter intimidation in Florida in the form of cross burning and fire bombing, along with threats, urging registered black voters to remove their names from the voter registration lists. *Id.* at 28-29. *See also*, ALEJANDRO PORTES & ALEX STEPICK, CITY ON THE EDGE 78 (1993) (citing BRUCE PORTER & MARVIN DUNN, MIAMI RIOT OF 1980: CROSSING THE BOUNDS 10 (1984)) (recounting Klan march incident with cross burning and a dummy hanging by a noose bearing a red lettered sign "this nigger voted," designed to stop black participation in a primary election).

[27] Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131 (1982).

[28] S. REP. NO. 97-417, at 75 (1982) *as reprinted in* 1982 U.S.C.C.A.N 177, 254.

[29] Only a handful of Section 5 designated jurisdictions have successfully "bailed-out" of its coverage since 1982. Those jurisdictions consist solely of eleven political subdivisions in Virginia. U.S. Department of Justice, Civil Rights Division, Voting Sec. Overview, Sec. 5 Covered Jurisdictions, http://www.usdoj.gov/crt/voting/sec_5/covered.htm (see n.1) (last visited Feb. 27, 2006).

[30] In 1984 the Department of Justice (DOJ) objected to certain provisions in a home rule charter enacted by Hillsborough County. DOJ's objection was based on its understanding that substantial local governmental powers had been transferred from the Hillsborough legislative delegation which contained minority representation to the county commission which did not contain minority representation, resulting in retrogression in minority voting strength. Letter from Wm. Bradford Reynolds, Assistant Att'y Gen., Civil Rights Div., to Sara M. Potopulos, Assistant Hillsborough County Att'y (Aug. 20, 1984) (on file with author). Hillsborough County requested that DOJ reconsider the objection, and following its review of additional information, DOJ concluded that in fact "the charter does not in any way enhance the powers of the commission or diminish the powers of the legislative delegation." DOJ then withdrew its objection to the charter. Letter from Wm. Bradford Reynolds, Assistant Att'y Gen., Civil Rights Div., to Joe Horn Mount, Hillsborough County Att'y 1 (Jan. 4, 1985) (on file with author).

administration of elections.[31] Significantly, the Department of Justice has been compelled to object to both of the statewide reapportionment plans submitted by Florida after the last two decennial censuses, even though its review is limited to how the redistricting affects minorities in only 5 of 67 counties.

1. The Reapportionment Objections

Florida's 1992 and 2002 reapportionment processes were procedurally complex, fraught with allegations of discrimination, partisan gerrymandering, intense disagreement and several lawsuits. A more detailed description of that history is contained in Appendix I. A brief discussion of Section 5's impact on minority voting rights through Florida statewide reapportionment processes appears below.

In 1992 the Department of Justice objected to Florida's redistricting plan for the state senate. The Department observed:

> With regard to the Hillsborough County area, the state has chosen to draw its senatorial districts such that there are no districts in which minority persons constitute a majority of the voting age population. To accomplish this result, the state chose to divide the politically cohesive minority populations in the Tampa and St. Petersburg areas.[32]

The Department of Justice noted in its letter that there were other possible Voting Rights Act violations in the Florida redistricting plan beyond the scope of its Section 5 preclearance jurisdiction:

> [S]ome of the comments we received alluded to various concerns involving the adequacy of the plans in non-covered counties. Because our review of these plans is limited by law to the direct impact on geographic areas covered by Section 5, we did not undertake to assess the lawfulness of the legislative choices outside of Collier, Hardee, Hendry, Hillsborough and Monroe counties. We do note, however, that allegations have been raised regarding dilution of minority voting strength in an effort to protect Anglo incumbents in non-covered jurisdictions, for example, in the Pensacola-Escambia County area and the Dade County area. Because these and other legislative choices did not directly impact upon the five covered counties, they cannot be the basis of withholding preclearance of either plan.[33]

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[31] "Changes affecting voting" subject to Section 5 review generally fall into four categories: (1) changes in the manner of voting; (2) changes in candidacy requirements and qualifications; (3) changes in the composition of the electorate that may vote for candidates for a given office; and (4) changes affecting the creation or abolition of an elective office. *Presley v. Etowah*, 502 U.S. 491, 492 (1992).

[32] Letter from John R. Dunne, Assistant Att'y Gen., Civil Rights Div., to Robert A. Butterworth, Att'y Gen., State of Fla. 2 (June 16, 1992) (on file with author).

[33] *Id.* at 4.

The end result of the Section 5 review of Florida's 1992 redistricting process was the creation of a majority-minority state senate district in the Tampa Bay/Hillsborough County area.[34] But for the Section 5 review process, although a "substantial number of minority persons live in the Hillsborough County area," there would have been no state senate district in the "area in which the total of black and Hispanic persons constituted more than 40.1 percent of the voting-age population."[35] Moreover, as DOJ had noted, the legislative record showed that the redistricting had been undertaken with the purpose of protecting white incumbents.[36]

In 1992, Section 5 served as a crucial check on a Florida redistricting process that favored partisan and incumbent interests irrespective of the impact on minority voting strength.[37] In addition, the 1992 Section 5 review of Florida's redistricting process has had the salutary effect of ensuring that both the courts and the legislators consider whether districting changes promote racial fairness, attention that is unlikely to be allocated to such considerations absent the requisite Section 5 review by the Department of Justice.[38]

Like the reapportionment process that preceded it, the 2002 reapportionment process in Florida was characterized by controversy, allegations of partisan gerrymandering and minority vote dilution, litigation and an objection by the Department of Justice under Section 5 of the Voting Rights Act.[39] This time, the Department of Justice interposed an objection to the 2002 redistricting plan for the Florida House of Representatives, stating that the plan reduced "the ability of Collier County Hispanic voters to elect their candidate of choice [and] the drop in Hispanic population in the proposed district will make it impossible for these Hispanic voters to continue to do so."[40]

As a result of the DOJ's Section 5 objection to the 2002 reapportionment plan, the Hispanic minority-majority district was preserved in Collier County and its existence is attributable solely to the Department of Justice's Section 5 review. Once again, the Section 5 process was essential to put the brakes on a controversial reapportionment process that was met with extreme suspicion in Florida's minority communities.[41]

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[34] *DeGrandy v. Wetherell*, 815 F. Supp. 1550 (N.D. Fla. 1992) (three judge court). The minority population of the district was later reduced by settlement agreement as a result of a subsequent challenge based on *Shaw v. Reno*, 509 U.S. 630 (1993). See *Lawyer v. Dep't of Justice*, 521 U.S. 567, 572-73 (1997).

[35] *In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992*, 601 So.2d 543, 545 (Fla. 1992).

[36] Letter from John R. Dunne, Assistant Att'y Gen, Civil Rights Div., to Robert A. Butterworth, Att'y Gen., State of Fla. 3 (June 16, 1992) (on file with author). *See also* Bryant, Giddings & Kaplan, *Partisan Gerrymandering: A New Concern for Florida's 1992 Reapportionment*, 19 Fla. St. U.L. Rev. 265 (1991).

[37] *Conference, The Supreme Court, Racial Politics, and the Right to Vote: Shaw v. Reno and the Future of the Voting Rights Act*, 44 Am. L. Rev. 1, 16 (1994) (statement of Donald B. Verrilli, Jr.).

[38] RICHARD K. SCHER, JON L. MILLS & JOHN J. HOTALING, VOTING RIGHTS AND DEMOCRACY: THE LAW AND POLITICS OF REDISTRICTING 51-56 (1996).

[39] *See infra* Appendix I, for a more detailed description of the process.

[40] Letter from Ralph F. Boyd, Jr., Assistant Att'y Gen., to John M. McKay, President of the Fla. Senate and Tom Feeney, Speaker of the Fla. House of Reps. 1 (July 1, 2002) (on file with author).

[41] *See, e.g., Brown v. State of Florida,* 208 F. Supp. 2d 1344 (S.D. Fla. 2002); *Martinez v. Bush*, 234 F. Supp. 2d 1275 (S.D. Fla. 2002) (three judge court).

2. Section 5 Objections to Florida's Administration of Elections

In addition to objecting to both of Florida's reapportionment plans since 1982, the Department of Justice has also twice interposed objections to election legislation that adversely affects minority voters. In the first instance, DOJ objected to a prospective change in Florida legislation that would prevent absentee voters from receiving assistance in marking their ballots from persons of their choice in violation of Section 208 of the Voting Rights Act.[42] The crucial importance of securing assistance for minority voters, particularly illiterate or language minority voters, and the reluctance of some local Florida jurisdictions to provide or permit such assistance, is discussed in Section II, below. Without DOJ's Section 5 review of this statewide change to Florida election law, it is likely that access to the franchise for many vulnerable minority voters would have been jeopardized.

The second objection interposed by the Department of Justice to Florida election procedures was directed at three of thirty-seven changes proposed by Florida to the administration of absentee ballots in 1998.[43] The changes were a part of a large Voter Fraud Act that made sweeping changes to Florida electoral systems in response to widespread voter fraud in the city of Miami.[44] The three provisions to which DOJ objected placed heavy emphasis on literacy skills, ability to provide a Social Security number and a witness's signature. In reviewing these changes, DOJ had actual data showing that they disproportionately impacted minority voters:

> Our analysis has revealed that during the limited time the State chose to implement the unprecleared absentee voting requirements[45]... the votes of minority electors would have been more likely than white voters to be considered "illegal" and thus not counted. Minority voters were more likely to fail to meet one of the State's new requirements than were white voters. For example, in Hillsborough County twice as many black absentee voters as white absentee voters failed to meet one of the State's new requirements.[46]

As the Department of Justice noted, there are many reasons for the disparity in minority voters' ability to comply with the requirements:

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[42] Letter from Wm. Bradford Reynolds, Assistant Att'y Gen., Civil Rights Div., to Jim Smith, Att'y Gen., State of Fla. 3 (Jan. 15, 1985) (on file with author).

[43] Letter from Bill Lann Lee, Acting Assistant Att'y Gen., to Robert A. Butterworth, Att'y Gen., State of Fla. (Aug. 14, 1998) (on file with author).

[44] Letter from Mike Cochran, Assistant Gen. Counsel, Fla. Dep't of State, to Elizabeth Johnson, Chief, Voting Sec., U.S. Dep't of Justice 1 (Aug. 6, 1998) (on file with author).

[45] The records from this period reflect some confusion on the part of Florida elections officials concerning whether it was appropriate to implement certain changes prior to preclearance. As a result, Florida implemented the unprecleared changes throughout the state for a brief period in advance of the September 1998 primary. On August 10, 1998, the Department of Justice advised Florida that the Voting Rights Act prohibits unprecleared changes from being implemented in the 5 preclearance counties. Letter from Elizabeth Johnson, Chief, Voting Sec., to Robert A. Butterworth, Att'y Gen., State of Fla. 4 (Aug. 10, 1998) (on file with author). Thereafter, the Division of Elections instructed Florida elections officials that unprecleared changes should not be implemented in *any* Florida counties. Absentee Voting, Op. Fla. Div. of Elections DE 98-13 (1998), *available at* http://election.dos.state.fl.us/opinions/new/1998/de9813.pdf.

[46] Letter from Elizabeth Johnson, Chief, Voting Sec., to Robert A. Butterworth, Att'y Gen., State of Fla. 4 (Aug. 10, 1998) (on file with author).

> The literacy rate in the five covered counties is significantly higher for the white population than for the minority population.... Election supervisors indicated that the absentee ballots were rejected primarily because they were not in compliance with the new witness requirements (e.g., witness is not a registered voter, witness did not include county of registration or voter identification number) or did not bear the last four digits of the voter's social security number.
>
> Our analysis suggests that it may be more difficult for minority voters to locate registered voters to be witnesses because the pool of available witnesses is made smaller by the fact that minority voters have lower registration rates and tend to live in areas with high minority concentrations. Moreover, the ability to meet the proposed requirements appears to be made more difficult for Hispanic voters by virtue of the fact that in two covered counties the Spanish language translation of the voter certificate is inserted in the absentee voting packet rather than appearing on the envelope as part of the absentee voter certificate itself and *in two covered counties there is no Spanish language translation of the certificate at all.*[47]

Thus, even in the face of a documented discriminatory impact on minority voters, without Section 5 review, these additional requirements that raised the burden on voters seeking to cast a ballot would have been implemented in Florida. Because of the objection and Florida's decision not to implement the changes outside the preclearance counties, these discriminatory changes were averted throughout the state.

Importantly for this discussion, while Section 5 applies to only five Florida counties, the state's decision not to implement statewide electoral administration changes in the face of a Department of Justice objection ensures that Section 5 protects minorities throughout Florida from discriminatory changes to the administration of elections. Florida's decision was based on its determination that implementing objectionable changes in the remaining 62 counties would be inappropriate, both because of the potential discriminatory effects of the changes and because implementing the changes in some Florida counties and not others would violate the equal protection guarantees of Florida's constitution.[48]

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[47] *Id.* (emphasis supplied).
[48] Absentee Voting. Op. Fla. Div. of Elections DE 98-13 (1998), *available at* http://election.dos.state.fl.us/opinions/new/1998/de9813.pdf

3. Section 5's Importance in Ensuring Electoral Fairness Where No Objection Was Interposed

Perhaps even more salient to the protection of minority voting rights in Florida than objections actually interposed by DOJ is the dialogue between and among the Civil Rights Division, state officials, and interested persons and groups that is necessitated by Section 5. The Section 5 implementing regulations require the Department of Justice's decision making process to be guided by "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."[49] A review of some examples of this dialogue reveals instances in which Florida state officials rethought or clarified their practices as a result of Section 5.

In 1998, among the same package of revisions that produced the objection to the absentee voter forms, were revisions requiring voters to show photo identification and changes to the list maintenance procedures. Review of the correspondence between the Department of Justice and the Florida Attorney General's office shows, for example, that the Section 5 review resulted in Florida clarifying its position with respect to what would constitute acceptable photo identification and procedures in the covered counties.[50] The Section 5 process also provided an opportunity for DOJ to share the concerns of other interested parties and have Florida officials respond to those concerns:

> We have received information from members of the public and elected officials tending to show that some of the sections relating to absentee ballot procedures may have the discriminatory effect prohibited by Section 5.... A summary of the objections and public comments that we have received has been provided to [counsel for the Secretary of State].[51]

This submission was later withdrawn by Florida.[52]

The Section 5 review process that was undertaken around the Florida Election Reform Act of 2001 also provides insight into the importance of Section 5 review, even when no objection is interposed. Part of that Act was directed at improving the state's voter list maintenance procedures, which were widely criticized following the 2000 Presidential Election.[53] After discussion, fact-finding and correspondence with Florida officials and interested parties, DOJ precleared the voter list maintenance changes with the following caveat:

> This determination is expressly based on the State's entire Section 5 submission, including the representations and clarifications in your January 29, 2002, letter ...

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[49] 28 C.F.R. § 51.53 (2005).

[50] Letter from Elizabeth Johnson, Chief, Voting Sec. to Robert A. Butterworth, Att'y Gen., State of Fla. (July 27, 1998) (on file with author); Letter from Bill Lann Lee, Chief, Voting Sec., to George L. Waas, Assistant Att'y Gen. State of Fla. (June 1, 1999) (on file with author).

[51] Letter from Elizabeth Johnson, Chief, Voting Sec., to Robert A. Butterworth, Att'y Gen., State of Fla. 3 (Aug. 10, 1998) (on file with author).

[52] U.S. Dep't of Justice, Notice of Preclearance Activity Under the Voting Rights Act of 1965, as amended, Aug. 14, 1998, http://www.usdoj.gov/crt/voting/notices/vnote814.html.

[53] *See* discussion *infra*.

> regarding the State's implementation of the [voter list maintenance] sections. The state represented, for example:
>
> - that there is no longer a presumption favoring the accuracy of any computer database and that the presumption now favors the voter; Jan. 29 letter at 3;
> - that the appearance of a voter's name on the State's list of potentially ineligible voters does not, by itself, confirm that voter's ineligibility; Jan. 29 letter at 4;....
> - that through implementation of Fla. Stat. § 98.0977, the burden of proof is shifted from the voter to the supervisor of elections to establish ineligibility by the highest degree of proof consistent with the fact that the fundamental right to vote is at stake; Jan 29 letter at 5;....
>
> Modification of the implementing procedures set forth in your Jan. 29 letter would likely constitute voting changes requiring preclearance under Section 5.[54]

In the next legislative session, Florida again altered its voter list maintenance procedures and submitted those proposed changes to the Department of Justice for preclearance. Community and civil rights groups raised concerns with DOJ through the preclearance process that some of the changes made by the new legislation would in fact alter the burden of proof regarding voter ineligibility from resting on the supervisor of elections to the voter.[55] The Department of Justice then requested that the state:

> Provide a detailed explanation of how the requirements and procedures established by [the new law] compare with those established by Fla. Stat. § 98.0977 as it was precleared on March 28, 2002. In particular, please address whether and how the new requirements and procedures are consistent with the State's prior representations in its letter dated January 29, 2002, and upon which preclearance was based....
>
> Concerns have been raised that the new procedures enacted... rely on a presumption that the database is correct, permit voters to be removed from the voter rolls without actual notice and an opportunity to respond, and value process over substantive rights. Any information addressing these concerns would assist us in our review of your submission.[56]

The Florida Attorney General responded, "the burden always remains on the supervisor to establish ineligibility.... By way of reiteration, there is no longer a presumption favoring the accuracy of the computer database; the presumption now favors the voter."[57]

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[54] Letter from Joseph D. Rich, Chief, Voting Sec., to Robert A. Butterworth, Att'y Gen., State of Fla. 1-2 (Mar. 28, 2002) (on file with author).

[55] *See, e.g.*, Letter from Dennis C. Hayes, Gen. Counsel, NAACP, et al., to Joseph D. Rich, Chief, Voting Rights Sec. (Mar. 28, 2002) (on file with author); Letter from Fla. Equal Voting Rights Project to Chief, Voting Sec. (June 11, 2002) (on file with author).

[56] Letter from Joseph D. Rich, Chief, Voting Sec., to Robert A. Butterworth, Att'y Gen. State of Fla. 3-4 (June 24, 2002) (on file with author).

[57] Letter from Robert A. Butterworth, Att'y Gen., State of Fla., to Joseph D. Rich, Voting Sec., Civil Rights Div. 5 (July 10, 2002) (on file with author).

This Section 5 dialogue with the Department of Justice had demonstrable importance on two subsequent occasions. First, in 2003, the State of Florida prepared and designed a manual to assist all county supervisors of elections in using Florida's newly-created Central Voter Database.[58] As a result of advocacy by civil rights groups, the manual was revised and the Division of Elections sent all Florida supervisors of elections a copy of Attorney General Butterworth's representations regarding the burden of proof resting on the supervisor along with the manual.[59] A year later, the availability of the Section 5 review and dialogue process avoided litigation on this same issue. Civil rights organizations determined that a communication from the Director of the Florida Division of Elections to supervisors of elections regarding voter list maintenance procedures abrogated the state's commitment to maintain the burden of proof on the state in voter purge decisions, and requested that the Division of Elections account for this discrepancy with the state's Section 5 representations.[60] The Division of Elections immediately retreated from this position, "[a]s stated in our exchanges with the US DOJ, an affirmative determination as to whether a voter is eligible to vote or not must be made by the supervisors of elections prior to removal of any voter from the voter registration rolls."[61]

As these examples illustrate, the Section 5 review process serves the important function of permitting all interested parties – state legislative and administrative officials, Justice Department officials, and interested groups and individuals in the state -- with a vital opportunity to take a "second look" at electoral changes and how they will be implemented, which focuses exclusively on how those changes may affect minority voters.[62] This process often provides the public with its only opportunity to review and comment on the new law's fairness to minorities. On some occasions, this "second look" occasioned by the Section 5 review process has resulted in substantive changes that protect minority voting rights without the necessity of a Department of Justice objection.

II. Protection of Language Minorities in Florida

Florida has a sizeable native-born population that may require language assistance, primarily voters of Puerto Rican and Native American ancestry.[63] In addition, Florida has a large

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[58] FLA. DIV. OF ELECTIONS, FLA.'S CENTRAL VOTER DATABASE TRAINING WORKBOOK AND USER'S GUIDE, Version 2.0 (Sept. 2003).

[59] Letter from Sharon D. Larson, Assistant Gen. Counsel, Fla. Dep't of State to Anita S. Hodgkiss, Lawyer's Comm. for Civil Rights (Sept. 19, 2003) (on file with author); Letter from Edward C. Kast, Dir., Div. of Elections, to Fla. Supervisors of Elections (Sept. 30, 2003) (enclosing preclearance correspondence) (on file with author).

[60] Letter from the Lawyers' Comm. for Civil Rights Under Law, et al., to Edward C. Kast, Dir., Div. of Elections (June 3, 2004) (on file with author).

[61] Letter from Dawn K. Roberts, Dir., Div. of Elections, to Lawyers' Comm. for Civil Rights Under Law, et al. 2 (June 17, 2004) (on file with author). Florida eventually instructed supervisors not to use the state-created list of potentially ineligible voters at all in 2004 because of serious flaws in the data. *See* discussion *infra* Part II.B, pp. 39-40.

[62] In this regard, Section 5 also encourages fairness to minorities in a more subtle way—by encouraging covered jurisdictions to maintain statistical information regarding race and ethnicity in order to measure the impact on minorities of particular voting changes.

[63] Voting Rights Act Amendments of 1992, Determinations Under Sec. 203, 67 Fed. Reg. 48,871, 48,873 (July 26, 2002).

immigrant population, the majority of which comes from the Caribbean.[64] Rates of educational attainment among these immigrants is significantly lower than Florida's native-born population.[65] They are far less likely to be proficient in English than native born citizens.[66] Almost 400,000 Floridians live in linguistically isolated households in which no member of the household over the age of 14 speaks English well.[67]

Despite low rates of education and English competency, Caribbean immigrants have a relatively high rate of U.S. citizenship when compared with other immigrant groups from Latin America. Roughly half of the foreign born Caribbean population has U.S. citizenship, compared with 28 percent for other Latin American immigrants.[68] Florida's foreign-born population has a higher than average rate of naturalization,[69] and is more likely to be eligible to vote than other immigrant populations. Indeed, Florida's Hispanic population has a higher rate of voter registration and of voting than the national average.[70] It is essential that our legal framework continue to protect the rights of new Americans, as well as native-born Americans who lack English proficiency due to heritage or environment, to cast a ballot.

As mentioned previously, when Congress reauthorized the Voting Rights Act in 1975, it added protections for language minorities. The expansion was based on evidence presented at Congressional hearings that Congress considered "overwhelming evidence of voting discrimination against language minorities."[71] Congress found that this overwhelming discrimination "most severely affected [p]ersons of Spanish heritage."[72] As a result, Congress expanded Section 5 protections to areas where significant numbers of language minorities resided in some jurisdictions,[73] and made the temporary ban on the use of literacy tests or similar devices permanent.[74] Congress also created Sections 203 and 4(f)(4) of the Act, which required covered jurisdictions to provide bilingual election assistance to language minorities.[75] The 1975

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[64] Florida's Caribbean immigrants include Spanish speakers from, among other places, Cuba and the Dominican Republic, Creole speakers from Haiti, and immigrants from English speaking countries such as Jamaica and Trinidad. U.S. CENSUS BUREAU, COMING FROM THE AMERICAS: A PROFILE OF THE NATION'S FOREIGN-BORN POPULATION FROM LATIN AMERICA (2000 Update) n.1 (2002), http://www.census.gov/prod/2002pubs/cenbr01-2.pdf. This report is concerned with the Spanish and Creole speakers.
[65] *Id.* at 2.
[66] A survey of Haitian entrants in 1983, for example, revealed that "[o]n average, none had advanced beyond the fifth or sixth grade, and about four-fifths spoke little or no English." PORTES & STEPICK, *supra* note 26, at 56.
[67] U.S. Census Bureau, American FactFinder, QT-P17. Ability to Speak English: 2000, http://factfinder.census.gov/servlet/QTTable?_bm=y&-state=qt&-context=qt&-qr_name=DEC_2000_SF3_U_QTP17&-ds_name=DEC_2000_SF3_U&-tree_id=403&-all_geo_types=N&-redoLog=true&-_caller=geoselect&-geo_id=04000US12&-search_results=01000US&-format=&-_lang=en.
[68] U.S. CENSUS BUREAU, *supra* note 64, at 3.
[69] U.S. CENSUS BUREAU, THE FOREIGN-BORN POPULATION: 2000 3 (2003), *available at* http://purl.access.gpo.gov/GPO/LPS47197.
[70] U.S. Census Bureau, Tbl. 4a. Reported Voting and Registration of the Total Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2004, http://www.census.gov/population/socdemo/voting/cps2004/tab04a.xls (last visited Feb. 21, 2006).
[71] S. REP. NO. 94-295, at 30 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 774, 797.
[72] *Id.*
[73] *See supra* Part I.A.
[74] Act of Aug. 6, 1975, Pub. L. No. 94-73, 89 Stat 400 (amending Sec. 4 of the Voting Rights Act of 1965, 42 USC §1973b).
[75] *See supra* Introduction to the Voting Rights Act.

coverage formula for Section 203 required that jurisdictions provide bilingual assistance "if the Director of the Census determines (i) that more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate."[76]

In 1992, Congress strengthened the language minority protections contained in Section 203 through the Voting Rights Language Assistance Act of 1992. The coverage formula for Section 203's bilingual assistance provisions was expanded to require that:

> (1)(a) if a jurisdiction has 10,000 or more limited-English proficient voting age citizens of a single language minority or (1)(b) a reservation has 5 percent or more American Indian or Alaska Native limited-English proficient voting age citizens and (2) the single language minorities meet the remaining § 203 requirements, then the jurisdiction must provide language assistance.[77]

Application of the 4(f)(4) and 203 coverage formulas has resulted in the five preclearance counties (Collier, Hardee, Hendry, Hillsborough and Monroe) being covered for Spanish under Section 4(f)(4)[78] and in ten Florida counties being covered under Section 203.[79]

The language minority protections are extremely important for Florida. The defining feature of the latter part of the twentieth century for Florida was the enormous increase in the state's immigrant population. In a 1994 report, the governor's office suggested that Florida's population growth was largely attributable to the increasing arrival of immigrants to the state.[80] As the name of the governor's report –*The Unfair Burden: Immigration's Impact on Florida* – implies, these recent immigrants have not been completely welcome. The governor's report chronicles the arrival of almost one million Cuban refugees from 1959 to 1979, but attributes the more recent waves of immigration from the Caribbean as by far the most dramatic:

> From April to September of 1980, approximately 125,000 Cubans departed from the Port of Mariel, and arrived in south Florida in what is now referred to as the Mariel Boatlift. In May, 1980 alone, over 85,000 Cubans arrived on Florida's shores. This, along with approximately 25,000 Haitian refugees, overwhelmed all local, state and federal programs in place at that time in south Florida.

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[76] Act of Aug. 6, 1975, Pub. L. No. 94-73, 89 Stat 400 (inserting Title III, Bilingual Election Requirements, Sec. 203, 42 USC §1973aa-la).

[77] Voting Rights Language Assistance Act of 1992, H.R. REP. NO. 102-655, at 4 (1992), *as reprinted in* 1978 U.S.C.C.A.N. 766, 767-68.

[78] Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 53 Fed. Reg. 735, 736 (Jan. 12, 1988) (to be codified at 28 C.F.R. app. § 55).

[79] Broward (Spanish and Seminole), Collier (Seminole), Glades (Seminole), Hardee (Spanish), Hendry (Spanish), Hillsborough (Spanish), Miami-Dade (Spanish), Orange (Spanish), Osceola (Spanish) and Palm Beach (Spanish). Voting Rights Act Amendments of 1992, Determinations Under Sec. 203, 67 Fed. Reg. 48,871, 48,873 (July 26, 2002).

[80] EXECUTIVE OFFICE OF THE GOVERNOR & FLORIDA ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS, THE UNFAIR BURDEN: IMMIGRATION'S IMPACT ON FLORIDA 7 (1994). The report claimed that "[d]uring the last fourteen years, Florida has been the destination of a disproportionate number of immigrants, and each wave has further strained the state's resources as well as its ability to assist these individuals and assimilate them into their communities." *Id.* at i.

> The sheer magnitude of the number of immigrants arriving in south Florida forced President Carter to declare a state of emergency. The Federal Emergency Management Agency (FEMA) was called into action and a Cuban/Haitian Task Force was appointed to assist in resettlement efforts.[81]

In 1988, when considering a voting rights case in Dade County, a local federal judge remarked:

> Dade County presents a dynamic, evolving community. Over the last fifteen years Dade County has experienced a tremendous influx of people from other countries and other states, and the frequency of immigration among the former group has become exceptional in the 1980s. Thus, although the plaintiffs have referred to Dade County as a tri-ethnic community, it is clear that Dade County is multi-ethnic. While the primary groups are Blacks, Hispanics and Non Latin Whites, the Hispanic population, for example, includes not only Cubans, but people from various parts of Central and South America, and both the Hispanic and Black communities have members from Caribbean countries. Dade County has truly become a microcosm of the Western Hemisphere, and is a uniquely situated venue for allegations that a violation of the Voting Rights Act has occurred.[82]

The huge influx of immigrants into Florida, particularly immigrants who did not speak English, led to a significant backlash against immigrants and efforts to require "English only" in government, schools and elections.

> Miami thus became the birthplace of the contemporary English Only movement in the United States. It happened in November 1980, when voters in Dade County… approved a landmark ordinance that reversed the policy of official bilingualism and biculturalism established by the Board of County Commissioners in 1973. The measure, passed overwhelmingly, prohibited "the expenditure of any county funds for the purpose of utilizing any language other than English or any culture other than that of the United States" (Section 1) and provided that "all county governmental meetings, hearings, and publications shall be in the English language only" (Section 2).[83]

Florida's nascent "English only" movement was "a vehicle for the expression of mass native white resistance to Latinization."[84] The majority of the non-Hispanic white voters who supported the initiative hoped to "make Miami a less attractive place to live for Cubans and other Spanish-speaking people."[85]

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[81] *Id.* at 7. In 1980 alone, "nearly 200,000 Cubans and Haitians landed in Florida." Anthony P. Maingot, *Immigration from the Caribbean Basin*, *in* MIAMI NOW 18, 34 (Guillermo J. Grenier & Alex Stepick III eds., 1993).
[82] *Meek v. Metropolitan Dade County*, No. 86-1820-CIV-Ryskamp (S.D. Fla. Oct. 5, 1988), Slip op. at 14.
[83] Max J. Castro, *The Politics of Language in Miami*, *in* MIAMI NOW 109, 119 (Guillermo J. Grenier & Alex Stepick III, eds., 1993).
[84] *Id.* at 122.
[85] *Id.*

Haitian immigrants were met with even greater hostility. Federal immigration officials devised a special "Haitian Program" designed to repatriate as quickly as possible all Haitian asylum seekers due to what they termed the "HAITIAN THREAT ... individuals that are threatening the community's well-being-socially & economically."[86] While the majority of arriving Haitians eventually won a series of legal battles permitting them to stay, become permanent residents and later naturalized citizens, the effects of this discrimination linger among Haitian immigrants. "The policy of persecution, legal confusion, and social isolation have all contributed to Haitians' dismal socioeconomic conditions in the United States. Their employment situation compares unfavorably to any other immigrant population in the country."[87]

Efforts to make immigrants less welcome in Florida have not reduced immigration rates. The 2000 census reported that the Miami metropolitan area was one of the 5 leading destinations for the foreign born population in the United States.[88] Florida has the fourth largest foreign-born population in the United States, behind California, New York and Texas.[89]

A. Florida's Spanish-Speaking Population

In the period since Congress incorporated protection of language minorities into the Voting Rights Act, the Spanish-speaking population of Florida has veritably exploded.[90] From 1980 to 1990, the Hispanic population of the state increased by more than 80 percent, from 8.8 percent of the total population to 12.2 percent.[91] From 1990 to 2000, the Hispanic population increased dramatically again, from 12.2 percent to 16.8 percent of the state's total population. There are twelve Florida counties in which the Hispanic population exceeds 15 percent[92], many of them among the most populous and fastest-growing counties in the state.[93] Almost one third of the Hispanic population of Florida reported during the 2000 Census either that they could not speak English "at all" (269,785), or that they did not speak English well (432,977).[94]

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[86] *Haitian Refugee Cntr. v. Civiletti,* 503 F. Supp. 442, 517 (S.D. Fla. 1980).
[87] Alex Stepick, *The Refugees Nobody Wants: Haitians in Miami*, in MIAMI NOW 57, 67 (Guillermo J. Grenier & Alex Stepick III, eds., 1993).
[88] U.S. CENSUS BUREAU, *supra* note 64, at 2.
[89] U.S. CENSUS BUREAU, *supra* note 69 at 3.
[90] The Department of Justice noted, in its objection to Florida's 2002 reapportionment plan, that "[o]ne of the most significant changes to the state's demography has been the increase in the Hispanic population." Letter from Ralph F. Boyd, Jr., Assistant Att'y Gen., to John M. McKay, President of the Fla. Senate and Tom Feeney, Speaker of the Fla. House of Representatives (July 1, 2002) (on file with author).
[91] NATIONAL DATA CONSULTANTS, FLORIDA COUNTY PERSPECTIVES 91 (1992-1993).
[92] Broward (16.7 percent), Collier (19.6 percent), DeSoto (24.9 percent), Glades (15.1 percent), Hardee (35.7 percent), Hendry (39.6 percent), Hillsborough (18 percent), Miami-Dade (57.3 percent), Monroe (15.8 percent), Okeechobee (18.6 percent), Orange (18.8 percent), and Osceola (29.4 percent). U.S. Census Bureau, American FactFinder, QT-P3. Race and Hispanic or Latino: 2000, http://factfinder.census.gov/servlet/QTTable?_bm=y&-state=qt&-context=qt&-qr_name=DEC_2000_SF1_U_QTP3&-ds_name=DEC_2000_SF1_U&-tree_id=4001&-all_geo_types=N&-_caller=geoselect&-geo_id=04000US12&-geo_id=05000US12011&-geo_id=05000US12021&-geo_id=05000US12027&-geo_id=05000US12043&-geo_id=05000US12049&-geo_id=05000US12051&-geo_id=05000US12057&-geo_id=05000US12086&-geo_id=05000US12087&-geo_id=05000US12093&-geo_id=05000US12095&-geo_id=05000US12097&-search_results=04000US12&-format=&-_lang=en.
[93] More than 36 percent of Florida's population lives in Miami-Dade, Broward, Orange and Hillsborough counties alone. *Id.* Osceola County, which had one of the highest growth rates in the state between the last two censuses, also had the highest Hispanic growth rate. FLA. COUNTY PERSPECTIVES, *supra* note 91.
[94] U.S. CENSUS BUREAU, *supra* note 67.

Because of documentation that a significant number of Spanish-speaking voters are unable to speak or understand English well enough to participate in the electoral process, the U.S. Census bureau has designated eight Florida counties as Section 203 covered jurisdictions for the Spanish language.[95] Under this designation, Broward, Hardee, Hendry, Hillsborough, Miami-Dade, Orange, Osceola and Palm Beach counties are required to provide Spanish language assistance to voters.[96] The bilingual assistance provision requires that all "voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" be provided in the appropriate language of the minority group as well as English.[97]

Despite the requirements for bilingual ballots and other election materials in much of Florida, many Florida jurisdictions have repeatedly ignored the language assistance needs of their constituents and disenfranchised language minorities. In its exhaustive report on the 2000 Presidential Election in Florida, the U.S. Commission on Civil Rights found:

> Despite the requirements that non-English-proficient voters be provided with some form of language assistance, large numbers of limited English-speaking voters were denied this assistance at polling places all around Florida. This occurred in counties and precincts where bilingual ballots and language assistance are mandated. Because of this failure to provide proper language assistance, voters faced problems understanding the ballots or the fundamental procedure for voting. The groups disproportionately affected were Haitian Americans and Spanish-speaking Latinos.
>
> Many poll workers were not properly trained to handle language assistance issues. Some voters found that even when volunteers were available to provide assistance, the volunteers or precinct workers were prevented from providing language assistance. In some instances, bilingual poll workers were directed to not provide language assistance to voters who were in need of that assistance. Thus, these non-English minority voters found their polling places to have ballots that were, essentially, inaccessible to them.[98]

An especially dramatic example of Florida officials' intransigence with respect to providing necessary language assistance to Spanish speakers occurred in central Florida in 2000. The U.S. Commission on Civil Rights found that during the 2000 election:

> In some central Florida counties, Spanish-speaking voters did not receive bilingual assistance and some of these counties were subject to section 203 of the Voting Rights Act. This failure to provide proper language support led to

[95] Voting Rights Act Amendments of 1992, Determinations Under Sec. 203, 67 Fed. Reg. 48,871, 48,873 (July 26, 2002).
[96] Two other counties, Collier and Glades (along with Broward), are Sec. 203 designated jurisdictions for Native American (Seminole) language assistance. *Id.*
[97] 42 U.S.C. § 1973aa-1a(c) (2000).
[98] U.S. COMM'N ON CIVIL RIGHTS, VOTING IRREGULARITIES IN FLA. DURING THE 2000 PRESIDENTIAL ELECTION: CH. 6 ACCESSIBILITY ISSUES (2001), http://purl.access.gpo.gov/GPO/LPS17743 (follow "Report on Voting Irregularities in Florida During the 2000 Presidential Election" hyperlink; then follow "Chapter 6: Accessibility Issues").

> widespread voter disenfranchisement of possibly several thousand Spanish-speaking voters in central Florida.[99]

Osceola County in central Florida experienced the highest growth rate in Hispanic population in the state. From 1980 to 1990, Osceola County's Hispanic population increased 1219.6 percent.[100] From 1990 to 2000 it increased dramatically again, from roughly 12,000 to over 50,000 persons. In the twenty-year period from 1980 to 2000, Osceola County changed from having a Hispanic population of merely 2 percent (fewer than 1,000 persons)[101] to being nearly one-third Latino (29.4 percent of the total population).[102]

Osceola County's voting discrimination against Hispanic voters was so pronounced that the Department of Justice filed suit against county officials in 2002, alleging widespread violations of minority voting rights, including: poll workers making hostile remarks to Spanish-speaking voters to discourage them from voting; the failure of poll officials to communicate effectively with Spanish-speaking voters, which prevented them from voting; failure to staff polling places with bilingual poll officials; and failure to translate ballots and other election materials into Spanish.[103] The parties resolved the case by a Consent Decree, requiring Osceola County to undertake a number of remedial actions. The Decree called for the creation of a Spanish Language Coordinator position, the hiring of bilingual poll workers, the availability of all election materials and ballots in Spanish, and future monitoring by the Department of Justice to ensure compliance.[104]

Ironically, at the time the lawsuit was filed in 2002, Osceola was not a Section 203 covered county because the Hispanic population had grown so rapidly since the designations had been made in 1992 based on the 1990 census, that the regulations had not yet caught up with the population demographics.[105] Osceola came under Section 203 coverage as a result of the 2002 designations based on the 2000 census within months of the Consent Decree in the Justice Department's case.[106]

The Justice Department brought a similar action against neighboring Orange County alleging that County officials failed to furnish "in the Spanish language, the information and assistance

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[99] U.S. COMM'N ON CIVIL RIGHTS, VOTING IRREGULARITIES IN FLA. DURING THE 2000 PRESIDENTIAL ELECTION: CH. 9 FINDINGS AND RECOMMENDATIONS (2001), http://purlaccess.gpo.gov/GPO/LPS17743 (follow "Report on Voting Irregularities in Florida During the 2000 Presidential Election" hyperlink; then follow "Chapter 9: Accessibility Issues").
[100] FLA. COUNTY PERSPECTIVES, *supra* note 91.
[101] *Id.*
[102] U.S. Census Bureau, Osceola County, Florida-QT-P9. Hispanic or Latino by Type: 2000, http://factfinder.census.gov/servlet/QTTable?_bm=y&-state=qt&-context=qt&-qr_name=DEC_2000_SF1_U_QTP9&-ds_name=DEC_2000_SF1_U&-tree_id=4001&-all_geo_types=N&-redoLog=true&-_caller=geoselect&-geo_id=05000US12097&-search_results=01000US&-format=&-_lang=en.
[103] Complaint, *United States v. Osceola County*, Civil Action No. 6:02-CV-738-ORL-22JGG (M.D. Fla. 2002), ¶7.
[104] Consent Decree, *United States v. Osceola County*, No. 6:02-CV-738-ORL-22JGG (M.D. Fla. July 22, 2002).
[105] Voting Rights Act Amendments of 1992, Determinations Under 203, 57 Fed. Reg. 43,213, 43,215 (Sept. 18, 1992)
[106] Voting Rights Act Amendments of 1992, Determinations Under 203, 67 Fed. Reg. 48,871, 48,873 (July 26, 2002).

necessary to comply with Section 203 of the Voting Rights Act."[107] In particular, Orange County failed to "recruit, appoint, train and maintain an adequate pool of bilingual poll officials capable of providing Hispanic citizens with limited English proficiency with effective language assistance," and failed to translate into Spanish election-related information both at polling places and in communications disseminated from the registrar's office.[108] In addition, the Department of Justice alleged that "Orange County did not permit poll watchers to provide assistance to [Hispanic voters in need of language assistance] at the November 2000 election, and they did not receive assistance from other persons," in violation of Section 208 of the Voting Rights Act.[109]

The parties settled this action, too, with a Consent Decree requiring, *inter alia*, that all information disseminated in English by Orange County concerning elections will also be provided in Spanish, the creation of Spanish Language Assistance Coordinators, the provision of bilingual poll workers, consultation with Orange County's Hispanic community, and federal monitoring.[110] Perhaps most tellingly, the Consent Decree also required that Orange County election officials:

> shall investigate any allegations of poll worker hostility toward Spanish-speaking and/or Hispanic voters in any election....Where it reasonably has been found that poll workers have engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters, the Supervisor shall remove these poll workers, and these poll workers shall not be eligible to be poll workers in future elections.[111]

Even in Miami-Dade County, where a majority (57.3 percent) of the population is of Hispanic origin,[112] election officials have violated Section 203 by producing and distributing a pamphlet in English only, which explained "changes in the election format," and also "inform[ed] voters when to register, when to vote, and where to vote in the election."[113] The Department of Justice sued Dade County, alleging a violation of Section 203, and the district court found that the county's failure to publish the pamphlet in Spanish violated the statute. The court entered a temporary restraining order requiring the County to undertake remedial action to accommodate Spanish-speaking voters before the election.[114]

As these cases illustrate, continuation of protections for Florida's language minorities is critically important to ensuring equal access to the franchise for the state's burgeoning Spanish-speaking population. The protections currently afforded to Spanish and Native American language speakers by Section 203 also highlight an important gap in the statute's reach.

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[107] Complaint at ¶ 7, *United States v. Orange County*, No. 6:02-CV-00737-ORL-22JGG (M.D. Fla. 2002).
[108] *Id.*
[109] *Id.* at ¶¶ 8, 14.
[110] Consent Decree ¶¶ 1, 2, 4, 6, 15, *United States v. Orange County*, No. 6:02-CV-00737-ORL-22JGG (M.D. Fla. Oct. 9, 2002).
[111] *Id.* at ¶ 10.
[112] U.S. CENSUS BUREAU, *supra* note 92.
[113] *United States v. Metropolitan Dade County*, 815 F. Supp. 1475, 1478 (S.D. Fla. 1993).
[114] *Id.*

B. Discrimination Against Florida's Haitian-American Voters

When Congress passed the Voting Rights Act amendments that created Section 203 protections for language minorities in 1975, it specified that the only protected "language minorities" were "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage."[115] Over 233,000 Haitian-Americans now live in Florida,[116] the majority of them in the three most populous southern counties. Almost half (over 95,000) of the state's Haitian-American population lives in Miami-Dade County.[117] Most of the remaining Haitian-Americans in Florida live in Palm Beach (over 30,000) and Broward Counties (over 62,000).[118] Haitian-Americans are a growing segment of the population in Florida. The primary language spoken by Haitian immigrants is Haitian Creole,[119] and their literacy rate and ability to speak English is significantly below that of native-born Americans and even other immigrant groups.

The U.S. Commission on Civil Rights found that Florida's widespread failure to provide proper language assistance in the 2000 Presidential Election disproportionately affected "Haitian Americans and Spanish-speaking Latinos."[120] The Commission's findings regarding the Haitian Creole speaking population were based in part on testimony by the Florida Attorney General conceding that "there might not have been enough handouts in Creole or enough interpreters there to assist."[121] The Commission also heard and credited testimony that even where polling places were required by local law to provide voting assistance in Creole, they failed to do so and "[m]any Haitian American voters were, in effect, turned away from their polling places without the opportunity to vote."[122]

The U.S. Department of Justice drew similar conclusions, and sued Miami-Dade County for Voting Rights Act violations against Haitian-American voters, alleging:

> During the November 2000 Presidential election, Defendants, acting through their employees and agents, engaged in practices which prevented Creole-speaking Haitian-American voters in Miami-Dade County with limited ability to

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[115] 42 U.S.C. § 1973aa-1a(e) (2000).

[116] U.S. Census Bureau, Florida-QT-P13. Ancestry: 2000, http://factfinder.census.gov/servlet/QTTable?_bm=y&-state=qt&-context=qt&-qr_name=DEC_2000_SF3_U_QTP13&-ds_name=DEC_2000_SF3_U&-tree_id=403&-all_geo_types=N&-_caller=geoselect&-geo_id=04000US12&-search_results=01000US&-format=&-_lang=en.

[117] U.S. Census Bureau, Miami Dade County, Florida-QT-P13. Ancestry: 2000, http://factfinder.census.gov/servlet/QTTable?_bm=y&-state=qt&-context=qt&-qr_name=DEC_2000_SF3_U_QTP13&-ds_name=DEC_2000_SF3_U&-CONTEXT=qt&-tree_id=403&-all_geo_types=N&-redoLog=true&-_caller=geoselect&-geo_id=05000US12086&-search_results=04000US12&-format=&-_lang=en. In 2000, Haitian-Americans constituted 4.2 percent of Miami Dade County's total population.

[118] U.S. Census Bureau, Broward and Palm Beach Counties, Florida-QT-P13. Ancestry: 2000, http://factfinder.census.gov/servlet/QTTable?_bm=y&-state=qt&-context=qt&-qr_name=DEC_2000_SF3_U_QTP13&-ds_name=DEC_2000_SF3_U&-CONTEXT=qt&-tree_id=403&-all_geo_types=N&-redoLog=false&-_caller=geoselect&-geo_id=05000US12011&-geo_id=05000US12099&-search_results=04000US12&-format=&-_lang=en.

[119] U.S. Dep't of State: Bureau of Public Affairs, *Background Note: Haiti* (Feb. 2005), http://www.state.gov/r/pa/ei/bgn/1982.htm.

[120] U.S. COMM'N ON CIVIL RIGHTS, *supra* note 98.

[121] *Id.*

[122] *Id.* "[M]any Haitian American voters were denied the opportunity to vote." U.S. COMM'N ON CIVIL RIGHTS, *supra* note 99.

> understand English from securing assistance at the polls, in violation of Section 208 of the Voting Rights Act.[123]

Unfortunately, Creole speakers are not recognized as "language minorities" by Section 203. This is undoubtedly attributable to the fact that when the language minority protections were originally considered and enacted, Creole speakers were -- at best -- a negligible portion of the voting eligible population.[124]

Since Section 203 does not cover Haitian Creole speakers, the Department of Justice was forced to rely on Section 208 of the Voting Rights Act to protect Haitian-Americans' voting rights. It is not an ideal fit for addressing discrimination that is so clearly language-based. Section 208 does not offer protections on the basis of language *per se*, nor does it require bilingual ballots or other election materials. Instead, Congress created Section 208 to protect voters who were disabled, blind or illiterate. It provides:

> Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.[125]

In suing under Section 208 to protect the voting rights of Haitian-Americans who were not proficient in English, the Department of Justice claimed that Miami-Dade County:

> denied certain voters assistance from persons of the voters' choice. At several precincts, only pollworkers were permitted to assist voters. Oftentimes, the only pollworkers available to provide assistance did not speak Creole.... In those circumstances where Miami-Dade County permitted voters assistance from persons of the voters' choice, the County limited the scope of the assistance assistors of choice could provide. Many of these precincts limited such assistance to reviewing sample ballots with the voters and standing next to them during pollworker demonstrations. This limited assistance was of little value to voters once they entered the voting booth.[126]

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[123] Complaint at ¶ 6, *United States v. Miami-Dade County*, No. 02-21698 (S.D. Fla. 2002).

[124] The Senate Report accompanying the 1975 expansion of the Voting Rights Act to protect language minorities states:

> The definition of those groups included in 'language minorities' was determined on the basis of the evidence of voting discrimination. Persons of Spanish heritage was the group most severely affected by discriminatory practices, while the documentation concerning Asian Americans, American Indians and Alaskan Natives was substantial.
> No evidence was received concerning the voting difficulties of other language groups. Indeed, the voter registration statistics for the 1972 Presidential election showed a high degree of participation by other language groups: German, 79 percent; Italian, 77.5 percent; French, 72.7 percent; Polish 79.8 percent; and Russian, 85.7 percent.

S. REP. NO. 94-295, at 797 (1975). *See also, id.* at 803-805.

[125] 42 U.S.C. 1973aa-6. (2000).

[126] Complaint at 6, *United States v. Miami-Dade County*, No. 02-21698 (S.D. Fla. 2002).

The case was eventually settled by a Consent Order that required Miami-Dade County to take a number of steps to "redress" the harm caused to its "sizeable Haitian-American population in the 2000 Presidential election."[127] Because of the limitations inherent in Section 208, the relief required by the Consent Order is not as comprehensive or as helpful to the Creole speaking community as relief under Section 203 would be. For example, the county defendants were enjoined from "denying Haitian-American voters with limited English-speaking proficiency assistance from persons of the voters' choice ... including interpreting the ballot."[128] There was, however, no requirement that the county provide interpretation services to voters. At best, Creole speakers could hope to be able to bring their own interpreters to the polls.

What is evident from these vignettes concerning Florida's recent discrimination against non-English speaking voters is the vital importance of legal safeguards to protect the fundamental right to cast a ballot irrespective of fluency in English. The relatively recent influx of Creole speaking Haitians and their experiences here also argue strongly for an expansion of the definition of language minority in Section 203 to cover this group.

The Dissenting Views expressed in the House Report accompanying the 1992 amendments to Section 203 suggested that it is appropriate to require English competency in order to cast a ballot since prospective citizens must demonstrate English competency in order to naturalize.[129] This is both factually inaccurate and ignores the reality of Florida's population.

First, a large number of Florida's Caribbean citizens who need language assistance are native-born U.S. citizens. For example, sixty percent of Osceola's Hispanic population is of Puerto Rican origin.[130] Those voters are native-born U.S. citizens with a constitutional right to vote that is not predicated on any naturalization process or English language skills. In addition, a sizeable Native American population exists in portions of Florida which are covered by Section 203.[131] As the U.S. Commission on Civil Rights observed, "[t]he majority of non-English-speaking Americans are native-born citizens constitutionally entitled to vote."[132]

Moreover, our naturalization laws are far more nuanced than a simple "one size fits all" approach to English proficiency. Aged immigrants who have lived in the United States for many years are not required to demonstrate any English proficiency in order to naturalize,[133] nor are people with disabilities if their disability prevents them from learning English.[134] Florida's population, including its immigrant population, is older on average than the population of the United States as a whole,[135] increasing the probability that many of Florida's naturalized citizens will not be

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[127] Consent Order, *United States v. Miami-Dade County*, No. 02-21698 (S.D. Fla. June 17, 2002).
[128] *Id.* at 2.
[129] H.R. REP. NO. 102-655 at 21 (1992) *as reprinted in* 1992 U.S.C.C.A.N. 766, 783.
[130] U.S. CENSUS BUREAU, *supra* note 102.
[131] Voting Rights Act Amendments of 1992, 67 Fed. Reg. 48,871, 48,873 (July 26, 2002) (designating Broward, Collier and Glades Counties as Sec. 203 covered jurisdictions with respect to the Seminole population).
[132] U.S. COMM'N ON CIVIL RIGHTS, *supra* note 98.
[133] 8 U.S.C. § 1423(b)(2). (2000)
[134] 8 U.S.C. § 1423(b)(1). (2000)
[135] U.S. Census Bureau, United States and Florida-QT-P1. Age Groups and Sex: 2000, http://factfinder.census.gov/servlet/QTTable?_bm=y&-state=qt&-context=qt&-qr_name=DEC_2000_SF1_U_QTP1&-ds_name=DEC_2000_SF1_U&-tree_id=4001&-all_geo_types=N&-

fluent in English. It is no accident that Florida was the jurisdiction in which a class action was filed and successfully litigated on behalf of literally thousands of aged and disabled naturalization applicants who sought waiver of the English language requirement from immigration officials.[136] Finally, even though individuals may have some basic English proficiency, presumably we want voters to be able to read and understand complex ballot questions such as constitutional amendments when they vote — these matters can often best be understood in the voter's primary language if English language skills are limited. The rights of citizenship, including the franchise, of Florida's language minority populations should not be diminished simply because their English is limited.

III. Florida's Voting Rights Landscape

Infringement of minority voting rights in violation of Section 2 of the Voting Rights Act or the United States Constitution and other documented discriminatory voting practices occurring in Florida after the 1982 amendments to the Act are discussed below. Although Section 2 is a permanent provision of the Act, a discussion of the breadth of Florida's voting rights problems is instructive to consideration of the continuance of the non-permanent provisions of Section 5 and Section 203.

A. Section 2 Litigation Establishing Voting Rights Violations

1. At-Large Election Systems

In the eleven years following the 1982 amendments to the Voting Rights Act, minority voters across the state of Florida successfully established that the at-large election systems employed by various jurisdictions discriminated against them on the basis of race eleven times.[137] Pure at-large election systems continue to exist in well over half of Florida's 67 counties.[138]

Significantly, this litigation is geographically widespread, but closely correlated with concentrations of African-American population as measured by the 1990 census,[139] revealing a

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[136] *Campos v. I.N.S.*, 188 F.R.D. 656, 658-9 n.1 (S.D.Fla. 1999).

[137] *NAACP v. Gadsen County School Board*, 691 F.2d 978 (11th Cir. 1982); *Aziz v. City of Ft. Myers*, No. 79-57 Civ-FtM-H (M.D. Fla. Feb. 22, 1983); *McMillan v. Escambia County*, 748 F.2d 1037 (5th Cir. 1984); *Williams v. City of Leesburg*, No. 83-66-CIV-OC-14, 1985 U.S. Dist. LEXIS 14890 (M.D. Fla. Oct. 15, 1985); *James v. City of Sarasota*, 611 F. Supp. 25 (M.D. Fla. 1985); *NAACP v. Madison County*, No. TCA-84-7234-WS, 1986 U.S. Dist. LEXIS 24786 (N.D. Fla. May 30, 1986); *Potter v. Washington County*, 653 F. Supp. 121 (N.D. Fla. 1986); *NAACP v. Leon County*, 827 F.2d 1436 (11th Cir. 1987); *NAACP v. City of Starke*, 712 F. Supp. 1523 (M.D. Fla. 1989); *Solomon v. Liberty County*, 899 F.2d 1012 (11th Cir. 1990) (en banc); *Meek v. Metropolitan Dade County*, 985 F.2d 1471 (11th Cir. 1993).

[138] Thirty-eight of Florida's 67 counties, or 57 percent, continue to elect their county commissions through at-large systems. Florida Ass'n of Counties, County Info. by County, http://www.fl-counties.com/flmap.htm. (last visited Feb. 21 , 2006).

[139] *See infra* Appendix II (1990 CENSUS: Concentration of Black Persons By County, *Showing where Cases of Electoral Race Discrimination Occurred*).

systemic and state-wide dilution of African-American votes. The litany of discrimination chronicled by these cases is a powerful testament to the ongoing need for voting rights protections in Florida. In fact, as the Eleventh Circuit Court of Appeals recognized in 1982, the at-large election systems found throughout Florida were the result of a state-wide scheme to disenfranchise black voters.

> In 1945...the Florida Supreme Court outlawed the white primary. *Davis v. State ex rel. Cromwell*, 156 Fla. 181, 23 So. 2d 85 (1945) (en banc). In the very next legislative session, the Florida legislature enacted statutes requiring both primary and general elections to be conducted at-large. 1947 Fla. Laws, ch. 23726, §§ 7, 9.... [T]he change had been made to dilute the growing strength of the black vote.[140]

The Eleventh Circuit concluded that in Gadsden County "the at-large election plan was adopted with the motivation of diluting the votes of the minority," and that "black candidates *have* lost solely because of their race....Blacks comprised 48.5 percent of the registered voters in the county...yet they have been consistently unable to elect candidates of their own race due to the extremely high degree of racial polarization in the voting patterns."[141]

Two years later, the U.S. Court of Appeals[142] again recognized that at-large election systems for a county commission and school board in Florida "had their genesis in the midst of a concerted state effort to institutionalize white supremacy,"[143] this time in Escambia County in the northwest corner of Florida.

> State-enforced segregation has created two separate societies in Escambia County in which churches, clubs, neighborhoods and, until recently, schools in the county have remained segregated by race. The lower court found that this "continued separation [of blacks] from the dominant white society" not only has "left blacks in an inferior social and economic position, with generally inferior education," but has "helped reduce black voting strength and participation in government."[144]

And again, in 1983, along the southwestern coast of Florida in Lee County, a federal district court found that:

> [P]urposeful discrimination in the adoption and maintenance of the at-large election for the City Council in Ft. Myers has been established.... [A]ctual

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[140] *NAACP v. Gadsen County School Board*, 691 F.2d 978, 982 (11th Cir. 1982).
[141] *Id.*
[142] Although the case, *McMillan v. Escambia County*, 748 F.2d 1037 (5th Cir. 1984), was decided by a United States Court of Appeals in 1984, and would ordinarily have been determined by the Eleventh Circuit, because the case had a long and protracted history and was a former Fifth Circuit case, it remained docketed as a Fifth Circuit case pursuant to Sec. 9(1) of Public Law 96-452, Oct. 14, 1980. Fifth Circuit Court of Appeals Reorganization Act of 1980, Publ. L. No. 96-452, § 9(1), 94 Stat. 1994 (1980).
[143] *McMillan*, 748 F.2d at 1044.
[144] *Id.* (citing *McMillan v. Escambia County, Fla.*, PCA No. 77-0432, slip op. at 17).

> differential impact and dilution of the minority's voting power … has also been established.[145]

In 1985, in the west central portion of Florida, the Sarasota City Commission admitted that its at-large election system violated the Voting Rights Act after years of litigation, and the federal district court agreed, finding that "Sarasota elections have been marked by racially polarized voting."[146] In a significant coda to the Sarasota case, the court made the following observation: "In accordance with this Court's Order of January 25, the city held municipal elections [using single member districts] on April 9, 1985. For the first time in the city's history, a black was elected to the city commission."[147] In a similar 1985 case from Lake County in the center of Florida city officials agreed to convert their at-large city commission elections to a system of three single member districts with two at-large representatives in order to address allegations that black citizens were denied equal opportunity in city elections.[148]

The next year two counties in north Florida, Madison and Washington, admitted liability and agreed to eliminate their at-large county election systems when faced with Voting Rights Act challenges.[149] In Madison County, the federal district court found:

> That because of the lingering effects of historical racial discrimination within Madison County and the State of Florida and racially polarized voting in elections within Madison County, the at-large election system used to elect the Madison County Commission… has had the effect of denying black citizens of Madison County an equal opportunity to elect candidates of their own choice in violation of Plaintiffs' rights under the Voting Rights Act.[150]

The court enjoined the defendants from providing county-wide at-large elections and required that all "elections henceforth will proceed on a single member district basis."[151] Leon County, also in north Florida, conceded liability in a similar suit, and abandoned at-large elections in favor of five commission districts and two at large members.[152]

The U.S. District Court for the Middle District of Florida, when considering voting rights claims originating in central Florida's Bradford County, observed that the "State of Florida has a long and well documented history of discrimination against black individuals."[153] The discrimination against blacks was perpetrated not only by the state but also by the local jurisdictions in Bradford County.[154]

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[145] *Aziz v. City of Ft. Myers*, No. 79-57 Civ-FtM-H (M.D. Fla. Feb. 22, 1983), slip op. at 11.
[146] *James v. City of Sarasota*, 611 F. Supp. 25, 28 (D.C. Fla. 1985).
[147] *Id.* at 32. (Supplemental Decision, May 25, 1985).
[148] *Williams v. City of Leesburg*, No. 83-66-CIV-OC-14, 1985 U.S. Dist. LEXIS 14890 (M.D. Fla. Oct. 15, 1985).
[149] *NAACP v. Madison County*, No. TCA-84-7234-WS, 1986 U.S. Dist. LEXIS 24786 (N.D. Fla. May 30, 1986); *Potter v. Washington County*, 653 F. Supp. 121 (N.D. Fla. 1986) (elections for county commission and county school board).
[150] *NAACP v. Madison County,* 1986 U.S. Dist. LEXIS 24786 at *2-3.
[151] *Id.* at *3.
[152] *NAACP v. Leon County*, 827 F.2d 1436, 1437 (11th Cir. 1987).
[153] *NAACP v. City of Starke*, 712 F. Supp. 1523, 1537 (M.D. Fla. 1989).
[154] At the same time that plaintiffs filed their lawsuit against the City of Starke, they also sued the Bradford County Commission and School Board claiming that the at-large election schemes employed by those bodies discriminated

> [T]he evidence is clear that black residents of Starke have suffered from pervasive racial discrimination. Perhaps the clearest example of city-sponsored discrimination can be found in the City Charter of 1927. The Charter explicitly empowered the City Council to establish and set aside separate and distinct districts within the city where blacks and whites could reside.[155]

Starke's *de jure* housing segregation resulted in a concentration of black residents in Starke in the City's northeastern "Reno" area.[156] Even though the black population was geographically compact and almost one third of the City's total population,[157]

> [n]o black person has ever been elected to serve on the Starke City Commission. Similarly, no black has ever been elected to serve in any other elected city office which includes the positions of City Clerk and Chief of Police.
>
> Additionally, prior to the implementation of a single member district election system for the Board of County Commissioners of Bradford County and the Bradford County School Board in 1986, no black had ever been elected to serve in any elective office in Bradford County.[158]

Continuing the theme of a complete absence of minority representation in local governments elected at large in Florida, the Eleventh Circuit observed that:

> Not a single black has ever been elected in Liberty County. The most cross-over support any black candidate has ever received is 40.5 percent of the white vote. That candidate would have been defeated even if he had received 100 percent of the black vote. Thus, black voters have never had an opportunity to elect a black representative, despite their manifest preference for those black candidates that have presented themselves.[159]

The Eleventh Circuit held, "as a matter of law" that "the at-large method of electing county commissioners and school board members in Liberty County, Florida denies black voters a fair opportunity to participate in the political process and to elect candidates of their choice."[160]

Winding up the eleven-year run on eliminating discriminatory at-large elections schemes is a case from Dade County in southern Florida. The district court found, and the Eleventh Circuit

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against black voters. Those cases were settled by consent final judgments providing for single member districts for both bodies. *Id.* at 1528 n.5.

[155] *Id.* at 1537.

[156] *Id.* at 1529.

[157] *Id.*

[158] *Id.* at 1528 (footnote omitted). A visit to the website of Bradford County today reveals that minority representation continues on the County Commission with Ross Chandler as Commissioner for District 1. Bradford County, http://www.bradford-co-fla.org (follow "County Commissioners" hyperlink; then follow "District 1").

[159] *Solomon v. Liberty County*, 899 F.2d 1012, 1021 (11th Cir. 1990) (en banc) (Kravitch, J., specially concurring) (footnotes omitted).

[160] *Id.* at 1013 (en banc opinion).

affirmed the finding, that "the at-large voting system used by Dade County, Florida ("Dade County"), to elect the members of its County Commission dilutes black and Hispanic voting power in violation of section 2 of the Voting Rights Act of 1965."[161] The court noted that "Dade County's history of official discrimination, along with the presence of other Senate Report factors, supported a finding of racial bias motivating voting in Dade County."[162]

At present, an especially interesting challenge to an at-large electoral system brought by the Department of Justice on behalf of Hispanic voters is pending in Osceola County.[163] As previously discussed, Osceola County has experienced substantial growth in its Hispanic population in the last two decades. The county's population is currently estimated to be 35 percent Hispanic.[164] Osceola was one of many Florida counties that maintained an at-large election system for its board of county commissioners. In 1992, "the Board voted to place a referendum question on the ballot regarding whether the county should amend its home rule charter to provide for election of the Board from single member districts."[165] Osceola voters elected to enact this change, and single member district elections were held for the board of county commissioners in 1994 and 1996. "The first Hispanic commissioner in the history of the county was elected under this single-member district system in 1996."[166] At about the same time, at the urging of some of the commissioners, the county considered returning to the at-large method of electing commissioners, and enacted a referendum returning to the at-large method effective in 1998.[167] "Although numerous candidates have run, no Hispanic candidate has ever been elected to the Board of Commissioners under the at-large method of election, or to any other Osceola County office elected on a countywide basis."[168] According to the Justice Department, among the reasons for the board of commissioners favoring the return to at-large elections was the fact that:

> [T]he members of the Board of Commissioners recognized that there was substantial growth in the Hispanic population between 1992 and 1996 [and] a majority of Board members in 1994-1996 recognized that the growth of the Hispanic population would result in Hispanic voters achieving the ability to elect a candidate of their choice in one or more districts under the single-member district method of election.[169]

This is the kind of retrogressive change that would likely have been avoided if Section 5 review were available in Osceola County to ensure a forum that holds local jurisdictions accountable for their minority citizens' electoral rights. Moreover, scrutiny of at-large election schemes in Florida and their potentially discriminatory effects is far from over. More than half of Florida's counties maintain at-large systems even after the state legislature abolished the requirement that

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[161] *Meek v. Metropolitan Dade County*, 985 F.2d 1471, 1474-75 (11th Cir. 1993).
[162] *Id.* at 1487.
[163] Complaint, *United States v. Osceola County*, No. 6:05-CV-1053-ORL-31DAB (M.D. Fla. July 18, 2005).
[164] *Id.* at ¶ 8.
[165] *Id.* at ¶ 19.
[166] *Id.* at ¶ 20.
[167] *Id.* at ¶¶ 21-23.
[168] *Id.* at ¶ 13.
[169] *Id.* at ¶¶ 23-24.

they do so in 1984.[170] Many of these remaining 38 counties have a high minority population.[171] Whether voters and civil rights advocates will ever embark upon the Herculean task to systemically analyze and address these potentially discriminatory systems is an open question,[172] and it is worth considering that Congress originally enacted Section 5 of the Voting Rights Act precisely because "Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits."[173]

2. Litigation Documenting Other Discriminatory Voting Practices

Two Eleventh Circuit cases from Florida challenging judicial election schemes provide additional documentation of discrimination against minority voters, even though the Court ultimately concluded that plaintiffs were not entitled to relief. In *Nipper v. Smith,*[174] the court recounted the following history:

> Florida employed various franchise restrictions--from the poll tax to the white primary--for decades in an attempt to restrict the access of black voters to the ballot....

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[170] The Eleventh Circuit summarized this history as follows:

> Until 1984 the at-large election system was the only method of election available to non-charter counties.... Fla. Const. Art. VIII, § 1(e). In that year the constitution was amended to permit commissioners to be elected "as provided by law." In 1985, § 124.011(1), Fla.Stat.1985 was enacted, the effect of which was to give non-charter counties the option of adopting an alternate method for electing county commissioners: a five-person board with all elected from single-member districts or a seven-person board with five elected from single-member districts and two elected at-large.

NAACP v. Leon County, 827 F.2d at 1444. (Godbold, J., dissenting).

[171] For example, Glades County's population is 10.5 percent black and 15.1 percent Hispanic, Marion County's population is 11.5 percent black and 6 percent Hispanic, Okeechobee County's population is 7.9 percent black and 18.6 percent Hispanic, Osceola County's population is 7.4 percent black and 29.4 percent Hispanic. U.S. Census Bureau, Glades, Marion, Okeechobee and Osceola Counties-QT-P3. Race and Hispanic or Latino: 2000, http://factfinder.census.gov/servlet/QTTable?_bm=y&-state=qt&-context=qt&-qr_name=DEC_2000_SF1_U_QTP3&-ds_name=DEC_2000_SF1_U&-tree_id=4001&-all_geo_types=N&-redoLog=true&-_caller=geoselect&-geo_id=05000US12043&-geo_id=05000US12083&-geo_id=05000US12093&-geo_id=05000US12097&-search_results=04000US12&-format=&-_lang=en.
Each of these counties elects its county commission by at large vote. Florida Ass'n of Counties, County Info. by County, http://www.fl-counties.com/flmap.htm (last visited Feb. 26, 2006). None of these county commissions contain minority representation. Glades County Cmty. Dev., http://www.myglades.com/ (follow "Commissioners" hyperlink); Marion County Fla. Bd. of Commissioners, http://www.marioncountyfl.org/CO211/CO_home.htm (follow "District 1-5" hyperlinks); Bd. of County Comm'rs, Okechobee, http://www.co.okeechobee.fl.us/; Osceola County, Bd. of County Comm'rs, Comm'r Bios, http://www.osceola.org/index.cfm?lsFuses=department/BCC/BCCBios (last visited Feb. 27, 2006).

[172] The only pending challenge to an at-large system is the *Osceola County* case discussed above. *See* Complaint, *United States v. Osceola County*, *supra* note 163.

[173] *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966) (citing H.R. REP. NO.89- 439, at 9-11 (1965); S. REP. NO. 89- 162, pt. 3, at 6-9 (1965). *See also*, ELLEN KATZ ET AL., DOCUMENTING DISCRIMINATION IN VOTING: JUDICIAL FINDINGS UNDER SECTION 2 OF THE VOTING RIGHTS ACT SINCE 1982 5 (DEC. 2005), http://sitemaker.umich.edu/votingrights/files/finalreport.pdf.

[174] *Nipper v. Smith*, 39 F.3d 1494 (11th Cir. 1994) (en banc).

> Transportation facilities in Florida were segregated until the 1950s, and many area school systems still have not achieved unitary status. Moreover, until 1958, Florida refused to permit black students to attend the University of Florida College of Law. Florida A & M Law School was created in 1951 for black students but was not accredited until several years later. When the state opened another law school in Tallahassee in 1967 at Florida State University, it closed the law school at Florida A & M....
>
> Despite the removal of overt badges of segregation, the district court nonetheless found that "black citizens in Florida still suffer in some ways from the effects of Florida's history of purposeful discrimination," particularly in terms of socio-economic disparities, such as family income and high school graduation rates. *Id.* at 1536. Black citizens in the region covered by the Fourth Circuit have lower median incomes than whites and are more likely to be unemployed and to fall below the poverty line. In addition, the limited evidence presented at trial (reflected in a consensus among the experts) suggested that, although little disparity exists in voter registration, black voter turnout appears to be slightly lower than white turnout. And the "rolloff" effect--which measures the number of voters who sign in at the polls but fail to cast a vote for a particular election on the ballot--is greater among black voters than white voters.[175]

The court also found that "the record reveals that sufficient racial bloc voting exists in Fourth Circuit and Duval County Court elections, such that the white majority usually defeats the minority's candidate of choice."[176]

Similarly, in *Davis v. Chiles*,[177] the Eleventh Circuit held that minority plaintiffs had established that the two judicial districts challenged in that case:

> share a history of racially polarized voting. In the few elections in which black candidates have competed against white candidates (prior to Davis's initiation of this litigation), no black lawyer has ever won election to either the Second Circuit or Leon County Courts. In each of these black-versus-white elections, the overwhelming majority of black voters supported the black candidates. Notwithstanding this political cohesion among black voters, however, white voters did not supply enough crossover votes for the black candidates to prevail, but instead provided overwhelming support to the white candidates. In 1992, for example, black voters in Leon County gave approximately 98 percent of their support to a black candidate, but a white candidate who received 68 percent of the white vote still won the election. As a result of this dynamic, racial block voting has become "a well-known political reality" in elections between black and white candidates for the Second Circuit and Leon County Courts.[178]

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[175] *Id.* at 1507-08, 1507 n.26.
[176] *Id.* at 1541.
[177] *Davis v. Chiles,* 139 F.3d 1414, 1416 (11th Cir. 1998).
[178] *Id.* at 1417 (footnotes omitted).

While the plaintiffs were unsuccessful in these two cases in securing a remedy, the bases for the court's decisions on remedy were governed by circumstances unique to the judicial election systems being challenged. The judicial findings of discrimination, vote dilution and racially polarized voting were not overruled by the Court and they cannot be discounted in reviewing Florida's history. Those findings echo the findings of the three judge district court in *DeGrandy v. Wetherell:*[179]

> A longstanding general history of official discrimination against minorities has influenced Florida's electoral process. In 1885, Article VI, Section 8 of the Florida Constitution imposed a poll tax which disenfranchised poor minority voters. Additionally, Article XII, Section 12 of the 1885 Florida Constitution segregated African-American and white school children. Article XXVI, Section 24 of that same Florida Constitution also outlawed the intermarriage of white with African-Americans. As recently as 1967, § 350.20, Fla. Stat. provided in part: "The Florida Public Service Commissioners may prescribe reasonable rules and regulations relating to the separation of white and colored passengers in passenger cars being operated in this state by any railroad company or other common carrier." Additionally, § 1.01(6), Fla. Stat. (1967) provided that "the words 'Negro,' 'colored,' 'colored persons,' 'mulatto,' or 'persons of color,' when applied to persons, include every person having one-eighth or more of African or Negro blood." Federal precedent has also addressed numerous recent discriminatory election practices in Florida, including at-large election schemes, white primaries, majority vote requirements, and candidate filing fees. Such official state discrimination has adversely affected the ability of minorities to participate in the political process.
>
> The parties agree that racially polarized voting exists throughout Florida to varying degrees. The results of Florida's legislative elections over the past ten years established the presence of racially polarized voting. See In re Constitutionality of Senate Joint Resolution 2G Special Apportionment Session 1992, No. 79-674, slip op. at 34-37 (Fla. May 13, 1992) (Chief Justice Shaw dissenting). In areas such as education, employment and health care, Florida's minorities have borne the effects of discrimination. The 1990 census figures demonstrate that among persons sixteen years or older, African-Americans are more than twice as likely to be unemployed as whites. In Florida, the poverty rate for African-Americans is more than three times higher than the rate for whites. Additionally, we note that voting studies have consistently indicated the strong relationship between socio-economic status and political participation. Thus, the legal barriers and the economic barriers which the legacy of racism has created in the state of Florida, have prevented African-Americans from fully participating in the political process.[180]

The existence of racially polarized voting adversely affecting Hispanic voters has also been documented by the Justice Department in central Florida: "Racially polarized voting patterns

[179] *DeGrandy v. Wetherell,* 794 F. Supp.1076, 1079 (N.D. Fla. 1992) (three judge court).
[180] *Id.* at 1079.

prevail in elections for the Board of Commissioners, and white voters have voted sufficiently as a bloc to enable them usually to defeat the Hispanic voters' preferred candidates."[181]

This strong evidence of racially-polarized voting, persistent use of at-large election schemes that adversely affect minority voters and the discriminatory practices discussed below all illustrate why the piecemeal approach to ensuring electoral fairness contemplated by Section 2 alone, without the additional protections offered by Sections 5 and 203, is simply inadequate in a state as large, diverse, and problematic as Florida.

B. Other Evidence of Discrimination

Other evidence of ongoing discrimination against minority voters in Florida is found in a review of the U.S. Commission on Civil Rights report on the 2000 Presidential Election and in litigation that was filed related to that election. The administration of the 2000 Presidential Election and the debacle that followed have become synonymous in the political history of the United States with a governmental electoral system that utterly failed the electorate at every level.[182] Among the most disturbing aspects of that failed electoral process were persistent and well-documented racial and ethnic disparities at each of those levels. In its comprehensive investigation of the 2000 Presidential Election in Florida, the Commission on Civil Rights found the disparate and unlawful treatment of language minorities discussed above. The Commission also found widespread and disproportionate disenfranchisement of Florida minority voters with respect to spoiled ballots, and that:

> [t]his disenfranchisement of Florida voters fell most harshly on the shoulders of African Americans. Statewide, based on county-level statistical estimates, African American voters were nearly 10 times more likely than white voters to have their ballots rejected in the November 2000 election.[183]

In reaching this conclusion, the Civil Rights Commission relied on the expert testimony and report of Dr. Allan Lichtman, who conducted a comprehensive statistical analysis of Florida's spoiled ballots in the 2000 election. Dr. Lichtman found that "blacks were far more likely than non-blacks to experience the rejection of ballots cast in Florida's 2000 election."[184]

There were also problems at the polls due to Florida's flawed voter list maintenance procedures, and those problems had a disproportionate impact on minority voters. Florida permanently disenfranchises former felons, "which produces a stark disparity in disenfranchisement rates of

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[181] Complaint, *United States v. Osceola County*, supra, note 163 at ¶ 11.

[182] *See, e.g.*, SAMUEL ISSACHAROFF ET AL., WHEN ELECTIONS GO BAD: THE LAW OF DEMOCRACY AND THE PRESIDENTIAL ELECTION OF 2000 (Revised ed. 2001).

[183] U.S. COMM'N ON CIVIL RIGHTS, *supra* note 98. Florida Highway Patrol troopers also conducted an unauthorized vehicle checkpoint within a few miles of a polling place in a predominately African American neighborhood. *Id.*

[184] U.S. COMM'N ON CIVIL RIGHTS, VOTING IRREGULARITIES IN FLA DURING THE 2000 PRESIDENTIAL ELECTION, APPENDIX VII: REPORT ON THE RACIAL IMPACT OF THE REJECTION OF BALLOTS CAST IN THE 2000 PRESIDENTIAL ELECTION IN THE STATE OF FLA, Allan J. Lichtman (June 2001), http://purl.access.gpo.gov/GPO/LPS17743, (follow "Report on Voting Irregularities in Florida During the 2000 Presidential Election" hyperlink; then follow "Appendices" hyperlink; then follow "Appendix VII: Report by Dr. Allan J. Lichtman on the Racial Impact of the Rejection of Ballots Cast in the 2000 Presidential Election in the State of Florida").

African American men compared with their white counterparts."[185] While there can be debate about the advisability of such a state policy and its discriminatory effects,[186] there is no debate that in the list maintenance, or "voter purge" process leading up to the 2000 election, something went terribly wrong and thousands of voters who should not have been disenfranchised ended up on the state's "purge list."[187] Creation of the now-infamous list was contracted to a private data corporation. The corporation, acting on instructions from Florida elections officials, purposely utilized extremely broad matching criteria guaranteed to produce "false positives" or partial matches of the data.[188]

The purge lists were then given to supervisors of election in Florida's 67 counties with few instructions and little oversight by state officials, though Florida election law at that time put the onus on the voter to establish his or her eligibility to vote.[189]

Supervisors of elections in the various counties treated the list differently, but there is widespread agreement that the errors in the list disproportionately affected African-American voters. In Hillsborough County, it was reported that the "supervisor of elections estimated that 15 percent of those purged were purged in error and they were disproportionately African American.... [A]nother source estimated that 7,000 voters [in Hillsborough County], mostly African Americans and registered Democrats, were removed from the list."[190] In Miami-Dade County, "over half of the African Americans who appealed from the Florida felon exclusion list were successfully reinstated to the voter rolls."[191]

Florida's flawed voter list maintenance procedures, its spoiled ballots, and other shortcomings that disproportionately affected minority voters formed the basis for a Voting Rights Act challenge filed by the NAACP and African-American voters against Florida agencies, the supervisors of elections in seven counties, and the corporation that produced the purge list.[192] The litigation resulted in a series of settlement agreements with the various defendants, which provided, among other things, that the private corporation re-run the purge data with more exacting match criteria, and that Florida state officials undertake remedial action to restore those voters who may have been erroneously purged from the voter lists as a result of the prior

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[185] U.S. COMM'N ON CIVIL RIGHTS, *supra* note 99. The Report also notes that "[t]hirty-one percent of the Florida disenfranchised population consists of African American men." *Id.*
[186] *See Johnson v. Bush*, 405 F.3d 1214 (11th Cir. 2005).
[187] The voter exclusion list was designed to include not only persons convicted of a felony in Florida but also persons who had been determined mentally incompetent, persons who had duplicate registrations in more than one Florida county, and persons who were convicted of felonies in other states. U.S. COMM'N ON CIVIL RIGHTS, VOTING IRREGULARITIES IN FLA. DURING THE 2000 PRESIDENTIAL ELECTION: CH.5, THE REALITY OF LIST MAINT. (2001), http://purl.access.gpo.gov/GPO/LPS17743 (follow "Report on Voting Irregularities in Florida During the 2000 Presidential Election" hyperlink; then follow "Chapter 5, The reality of List Maintenance" hyperlink).
[188] *Id.*
[189] *Id.*
[190] *Id.*
[191] *Id.*
[192] Amended Complaint, *NAACP et. al. v. Harris,* No. 01-0120-CIV-GOLD (S.D. Fla. July 6, 2001) (naming the Florida Secretary of State, the Director of the Florida Division of Elections, the Director of the Florida Department of Highway Safety and Motor Vehicles and the Secretary of the Florida Department of Children and Families as defendants as well as the supervisors of elections in Miami-Dade, Broward, Duval, Hillsborough, Leon, Orange and Volusia Counties)

overbroad match criteria. The settlement agreement with state officials also required that future voter list maintenance procedures be conducted with more exacting match criteria.[193] Settlement agreements between plaintiffs and supervisors of elections in the various counties also provided for remedial actions in future elections.[194]

Despite these agreements and electoral reform legislation that followed the 2000 election,[195] there is ample evidence that Florida's difficulties with voter list maintenance and the mechanics of election administration are far from over, and that problems in those areas continue to disenfranchise minority voters at a disproportionately high rate. Florida's list maintenance procedures in anticipation of the 2004 presidential election present an especially concerning case in point. In supposed accord with both legislative changes and the settlement agreement with the *NAACP v. Harris* plaintiffs, the Division of Elections undertook the creation of a new purge list. When civil rights groups screened the list, they discovered that as many as 25,585 former felons who had received clemency remained on the purge list.[196] After news organizations obtained copies of the purge list from state officials, they discovered – and reported – that "[i]t did not include the names of Hispanic voters, while it included many black voters who had actually had their voting rights restored."[197] When these gross disparities were revealed, state elections officials instructed county supervisors of elections not to use the list[198] and requested an audit by the Department of State's Inspector General.[199] The audit concluded that, although there was no evidence of a purposeful effort to disenfranchise African-American voters, the list had been created in such a way that African Americans were over represented and Hispanics were virtually non-existent. Furthermore:

> * The department relied on flawed data from the Office of Executive Clemency when drawing up the felons list. For example, the office did not initially turn over the names of more than 5,000 felons whose civil rights were restored before 1977 because the office did not have birth dates for those people. In June, when asked about this possible flaw, state officials denied that it was a problem.

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[193] Settlement Agreement, *NAACP et. al. v. Harris,* No. 01-0120-CIV-GOLD (S.D. Fla. 2002) (on file with author) (between Plaintiffs and Defendant ChoicePoint Inc., d/b/a Database Technologies, Inc.); Settlement Agreement, *NAACP et. al. v. Smith,* No. 01-0120-CIV-GOLD (S.D. Fla. 2002) (on file with author) (between Plaintiffs and Defendants Jim Smith, Secretary of State of Florida and Edward G. Kast, Director of the Division of Elections); Letter from Richard E. Doran, Fla. Att'y Gen., to Joseph D. Rich, Chief, Voting Sec., Civil Rights Div., Dep't of Justice (Dec. 9, 2002) (on file with author) (letter and accompanying attachments refer to Submission of Settlement Agreements in *NAACP v. Harris*, Section 5 Submission Nos. 2002-2520 and 2002-5023).

[194] Order Granting Plaintiffs' and Defendant David C. Leahy's Motion for Approval of Settlement Agreement, *NAACP et. al. v. Katherine Harris,* No.01-120-CIV-GOLD (S.D. Fla. 2002) (on file with author) (attached is the settlement agreement dated Aug. 6, 2002) (providing, *inter alia*, for adequate staffing and equipping of precincts).

[195] 2001 Fla. Laws. 117.

[196] Jim Ash & George Bennett, *Study Raises Issue About Purge of Felons*, PALM BEACH POST, June 9, 2004, at 1A. *See also*, Abby Goodnough, *In Florida, Wrestling Again Over Felons and Voting*, N.Y. TIMES, June 9, 2004, at A16; Erika Bolstad, Jason Grotto & David Kidwell, *Thousands of Eligible Voters are on the Felon List*, MIAMI HERALD, July 2, 2004, at 1A.

[197] Gary Fineout & Marc Caputo, *State Ceases Felon Voting Purge*, MIAMI HERALD, Aug. 14, 2004, at 6B; *see also*, Ford Fessenden, *Florida List for Purge of Voters Proves Flawed*, N. Y. TIMES, July 10, 2004, at A13. ("Of nearly 48,000 Florida residents on the felon list, only 61 are Hispanic. By contrast, more than 22,000 are African-American.").

[198] Fineout & Caputo, *supra* note 197.

[199] S.V. Date, *Second Probe Ordered of Felon List Barring Vote*, PALM BEACH POST, July 24, 2004, at 3A.

* The department did not ensure that some changes to the central voter database were approved by the U.S. Department of Justice, which must sign off on any new procedures that affect voting rights of minorities.

* The department did not always comply with a legal agreement it reached in 2002 with the NAACP over how to use the central voter database and the felons list.[200]

In the September 2002 primary election, a more local but no less significant systems failure occurred in Miami-Dade County. The county Inspector General described this election as "nothing less than a debacle."[201] This systems problem also disproportionately affected black voters, who were far more likely to have their votes "lost" than other voters.[202]

CONCLUSION

The lingering effects of Florida's recent – and nationally prominent – voting failures have eroded confidence in Florida's electoral system, particularly among its minority voters.[203] While Section 5 is not a panacea, maintaining a framework of federal scrutiny for Florida's voting changes is important in regaining and retaining public confidence in the system. It is also vital in ensuring that voting changes are scrutinized for their fairness to minority voters. Sections 203 and 4(f)(4) continue to be essential to guarantee an opportunity for meaningful participation in the electoral process by Florida's language minorities.

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[200] Gary Fineout, *Felons List Audit Faults State*, MIAMI HERALD, Nov. 23, 2004 at 1B.

[201] Memorandum and Office of the Inspector Gen. Report from Christopher Mazzella, Inspector Gen., to Alex Penelas, Mayor Miami-Dade County et al., 1 (Sept. 20, 2002), *available at* http://www.miamidadeig.org/archives/Sept102002election.pdf.

[202] HUGH GLADWIN, ANALYSIS OF DATA ON PRECINCTS REPORTING PROBLEMS WITH IVOTRONICS VOTING MACHINES IN MIAMI-DADE COUNTY (2002), http://www.aclufl.org/pdfs/RacialImpactReportFINAL.pdf.

[203] Indeed, a recent survey commissioned by Florida indicates that Black and Hispanic voters in Florida are far less confident that their votes will be counted than their white counterparts. COLLINS CENTER FOR PUBLIC POLICY, 2004 Voter Satisfaction Survey, Voter Survey Tables, Confidence That Your Vote Will Count (Cross Tabulation by Race) 3 (2004), *available at* http://www.collinscenter.org/usr_doc/2004_voter_survey_tables.pdf. (Black and Hispanic voters reported "excellent" confidence levels at 40 percent and 42 percent respectively, while white voters reported excellent confidence that their votes would count at 66 percent).

Appendix I

Detailed Discussion of Reapportionment History in Florida, 1992 and 2002

1992

When the Florida legislature convened in 1992, one of the members of the Florida House of Representatives, Miguel DeGrandy, along with other registered voters, filed a complaint in a Florida U.S. District Court against the Speaker of the Florida House of Representatives, the President of the Florida Senate, the Governor of Florida, and other state officials challenging Florida's failure to reapportion its congressional and state legislative districts and claiming that Florida's current congressional and state legislative districts violated both the Equal Protection Clause of the United States Constitution and the Voting Rights Act of 1965. The plaintiffs asked the court to assert jurisdiction in order to lawfully redistrict and reapportion the state.[1]

Despite DeGrandy's lawsuit, the Florida Legislature ended its 1992 regular session in March without adopting either a congressional or a state reapportionment plan. Thereafter, the three-judge *DeGrandy* court convened, denied all motions to dismiss and established an expedited scheduling order to adopt congressional and state legislative plans by May 29, 1992. While the court expressly did not intend to prevent the state from attempting to enact its own plans, the court expressed great concern that "the state legislature would be unable to pass a congressional redistricting plan and have the Justice Department preclear that plan in time for the scheduled candidate qualification date [and as a result] minority voters would not be able to participate meaningfully in the political process and adequately decide on a candidate of their choice."[2]

The Governor of Florida called a special session of the Florida Legislature in April for the purposes of redistricting. The legislature was unable to reach agreement on a congressional redistricting plan. It did adopt Senate Joint Resolution 2-G reapportioning state legislative districts.[3] The Florida Attorney General submitted this reapportionment

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[1] *DeGrandy v. Wetherell*, 794 F. Supp. 1076, 1080 (N.D. Fla. 1992) (three judge court). Miguel DeGrandy's suit was not the only challenge to Florida's discriminatory failure to redistrict filed in 1992. The Florida State Conference of NAACP Branches and numerous African-American voters filed a similar suit which was eventually consolidated with the DeGrandy matter. *Id.*

[2] *Id.*

[3] These proceedings were undertaken pursuant to Article 3, Section 16(a) of the Florida Constitution, providing, in pertinent part:

> If the legislature should fail at its regular session to apportion themselves into the legislative districts as required by Article 3, Section 16, the governor is required to reconvene the legislature within thirty days in a special apportionment session.... If the legislature adopts a reapportionment plan, the constitution requires the attorney general to petition the Florida Supreme Court for a declaratory judgment determining

plan to the Department of Justice for preclearance on April 17, 1992 and the District Court bifurcated the Congressional and state reapportionment plans and later stayed its consideration of the state redistricting process.[4] From this point forward litigation concerning the congressional districts and litigation concerning the state legislative districts proceeded on two separate tracks. The three judge district court determined in fairly short order that Florida's congressional redistricting plan diluted minority voting strength and violated Section 2 of the Voting Rights Act.[5] The legal path of Florida's state legislative redistricting was much more convoluted.

After the Department of Justice interposed its objection to the state Senate reapportionment plan for Hillsborough County the Florida Supreme Court, acting pursuant to the state constitution, ordered an expedited schedule to address DOJ's objection. The Court encouraged the legislature to adopt a proper reapportionment plan, taking the Section 5 objection into consideration. The Florida Supreme Court also stated that in the event the Legislature "fails to adopt a plan by June 24, 1992, this Court will conclude that a legislative impasse has occurred, and this Court will promptly undertake to make such reapportionment."[6] Rather than attempt to address the objection raised by the Department of Justice, the Florida Legislature refused to convene for reapportionment and the Governor refused to call a special session.[7] The Florida Supreme Court then declared, "we believe that it is our obligation to redraw the plan to satisfy the objection of the Justice Department now that the Legislature has declared that it is not going to do so."[8] The Court proceeded to consider proposals submitted by interested parties and on June 25, 1992 it adopted a Senate redistricting plan which it believed cured the DOJ's Section 5 objection.

Although he concurred in the result, Chief Justice Shaw wrote separately to indicate that he believed the plan discriminated against minority voters in violation of Section 2 of the Voting Rights Act:

> Because this Court's review in the present proceeding is limited in scope to DOJ's section 5 preclearance inquiry, I concur in the majority opinion. I believe the present revision in the plan meets the objection evinced in

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> the validity of the apportionment.... If the Supreme Court determines that the legislative apportionment is valid, the plan must be precleared by the Department of Justice before it may be considered validly enacted.

DeGrandy v. Wetherell, 815 F. Supp. 1550, 1554 n.1 (N.D. Fla. 1992) (three judge court).

[4] The district court stayed its proceedings with respect to the state legislative districts following the initial determination by the Florida Supreme Court that the apportionment was valid pursuant to Art.3, § 16(a) of the Constitution. *Degrandy,* 794 F. Supp. at 1081.

[5] *Id.* at 1076.

[6] *DeGrandy*, 815 F. Supp. at 1556.

[7] *Id.*

[8] *In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992*, 601 So.2d 543, 545 (Fla. 1992).

> DOJ's admittedly restricted review. I write to note, however, that I still conclude that the overall plan, including the present revision, fails under Section 2 of the Act because it does not provide an equal opportunity for minorities to elect representatives of their choice to the Florida legislature, as noted in my earlier dissent.[9]

The parties then returned to the three judge district court to resolve the remaining state legislative reapportionment issues, and the Department of Justice filed its own lawsuit against Florida alleging that its state legislative reapportionment plans diluted minority voting strength in violation of Section 2 of the Voting Rights Act.[10] The district court consolidated the DOJ lawsuit with the pending action and "imposed the Florida Supreme Court plan as its own plan for section 5 purposes."[11] The court proceeded to consider the claims of Section 2 violations in the redistricting of both houses of the state legislature and determined that they diluted minority voting strength in violation of Section 2. Eventually, the United States Supreme Court determined that plaintiffs were not entitled to relief under Section 2 but retained the Section 5 adjustment made by the Florida Supreme Court.[12]

2002

In January 2002 three minority members of the U.S. House of Representatives and a minority voter challenged Florida's congressional redistricting plan in state court in Broward County. The action was removed by defendants to federal court, dismissed by plaintiffs, refiled in state court, removed again to federal court and eventually remanded to state court where it was dismissed for lack of subject matter jurisdiction.[13]

In March another group of plaintiffs filed a separate action for declaratory and

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[9] *Id.* at 548 (Shaw, C.J. specially concurring).

[10] *DeGrandy*, 815 F. Supp. at 1557 n.6 (citing *United States v. State of Florida et al.*, TCA 92-40220-WS).

[11] *DeGrandy*, 815 F. Supp. at 1558.

[12] *Johnson v. DeGrandy*, 512 U.S. 997, 1022 (1994). Remarkably, this litigation was not the final word on the Florida Senate districting plan. After the Supreme Court's decision in *Shaw v. Reno*, 509 U.S. 630 (1993), cast doubt on whether "racially gerrymandered" districts were consistent with the equal protection clause, a group of plaintiffs challenged the state senate district drawn by the Florida Supreme Court in the Tampa Bay area. This claim was ultimately settled without any determination as to whether the district, as drawn, violated the equal protection clause. The settlement provided for some reduction in the minority population in the district and for making the district somewhat more compact. *Lawyer v. Dep't of Justice*, 521 U.S. 567, 572-3 (1997).

[13] *Brown v. State of Florida,* 208 F. Supp. 2d 1344, 1346 (S.D. Fla. 2002); *Brown v. State of Florida,* No. 02-60267-Civ-Jordan (S.D. Fla. 2002), *dismissed* and *refiled to* No. 02-60459-Civ-Jordan (S.D. Fla. 2002), *remanded* and *removed to* No. 02-60689-Civ-Jordan (S.D. Fla. 2002), *remanded to* 9 Fla. L. Weekly Supp. 546a. (Fla. Cir. Ct. 2002) (dismissed for lack of subject matter jurisdiction).

injunctive relief against the Speaker of the Florida House of Representatives, the President of the Florida Senate, the Governor of Florida, the Florida Secretary of State and the Florida Attorney General in the Southern District of Florida. The plaintiffs alleged that the process used to adopt and the reapportionment plans adopted by the legislature violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, and that the reapportionment plans led to the dilution of black voting power in violation of Section 2 of the Voting Rights Act.[14] The Governor, the Speaker of the Florida House of Representatives and the President of the Florida Senate (but not the Florida Attorney General) submitted the plans to the Department of Justice for preclearance on April 29, 2002.[15]

In the meantime, the Florida Attorney General sought preclearance of the plans by filing suit in the United States District Court for the District of Columbia on May 14.[16] He later amended his complaint to request a declaration of validity.[17] On June 7, 2002, the United States Department of Justice pre-cleared Florida's congressional redistricting plan, and, at the request of the Governor, Speaker and President, Florida's action in the District of Columbia was dismissed.[18] On June 20, 2002, the Department of Justice pre-cleared Florida's State Senate redistricting plan.[19]

The DOJ interposed an objection to Florida's House of Representatives plan on July 1, 2002 stating that the plan reduced "the ability of Collier County Hispanic voters to elect their candidate of choice [and] the drop in Hispanic population in the proposed district will make it impossible for these Hispanic voters to continue to do so."[20] To address this objection, the *Martinez v. Bush* court "held an emergency evidentiary hearing and issued an order adopting an interim State House plan that had been proposed by Speaker Feeney."[21] While the *Martinez* court ultimately ruled against plaintiffs on their equal protection and Section 2 claims, the Hispanic minority-majority district preserved in Collier County by the DOJ's objection remained in place and is attributable solely to the Department of Justice's Section 5 review.

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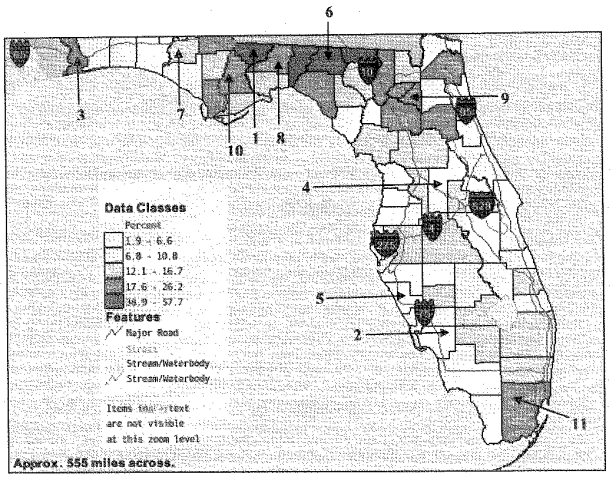
[14] *Martinez v. Bush*, 234 F. Supp. 2d 1275 (S.D. Fla. 2002) (three judge court).
[15] *Id.* at 1286.
[16] *Id.*
[17] *Martinez*, 234 F. Supp. 2d at 1287 (citing *Florida v. United States,* No. 1:02 CV 00941 (D.D.C.2002)).
[18] *Id.*
[19] *Id.* at 1288.
[20] Letter from Ralph F. Boyd, Jr., Assistant Attorney General, to John M. McKay, President of the Florida Senate and Tom Feeney, Speaker of the Florida House of Representatives, July 1, 2002.
[21] *Martinez,* 234 F. Supp. 2d at 1288.

Appendix II

1990 CENSUS: Concentration of Black Persons by County

Showing Where Cases of Vote Dilution in At-Large Elections Was Established



In the eleven years following the 1982 amendments to the Voting Rights Act, minority voters across the state of Florida successfully established that the at-large election systems employed by various jurisdictions discriminated against them on the basis of race eleven times. The following is a chronological list of the cases and the counties where they arose:

1. *NAACP v. Gadsen County School Board*, 691 F.2d 978 (11th Cir. 1982):	Gadsen County
2. *Aziz v. City of Ft. Myers*, No. 79-57 Civ-FtM-H (M.D. Fla. Feb. 22, 1983):	Lee County
3. *McMillan v. Escambia County*, 748 F.2d 1037 (5th Cir. 1984):	Escambia County
4. *Williams v. City of Leesburg*, 1985 U.S. Dist. LEXIS 14890 (M.D. Fla. Oct 15, 1985):	Lake County
5. *James v. City of Sarasota*, 611 F. Supp. 25 (M.D. Fla. 1985):	Sarasota County
6. *NAACP v. Madison County*, 1986 U.S. Dist. LEXIS 24786 (N.D. Fla. May 30, 1986):	Madison County
7. *Potter v. Washington County*, 653 F. Supp. 121 (N.D. Fla. 1986):	Washington County
8. *NAACP v. Leon County*, 827 F.2d 1436 (11th Cir. 1987):	Leon County
9. *NAACP v. City of Starke*, 712 F. Supp. 1523 (M.D. Fla. 1989):	Bradford County
10. *Solomon v. Liberty County*, 899 F.2d 1012 (11th Cir. 1990):	Liberty County
11. *Meek v. Metropolitan Dade County*, 985 F.2d 1471 (11th Cir. 1993):	Dade County

APPENDIX TO THE STATEMENT OF WADE HENDERSON, "VOTING RIGHTS IN GEORGIA, 1982–2006," A REPORT OF RENEWTHEVRA.ORG

VOTING RIGHTS IN GEORGIA 1982-2006

ROBERT KENGLE

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INTRODUCTION

In 1965, African-American citizens of Georgia were profoundly disadvantaged in their ability to exercise the franchise that Congress had meant to extend nearly a century earlier:

> On the eve of passage of the [Voting Rights Act], fewer than a third of eligible blacks in Georgia were registered to vote. The disparities were even greater in the state's 23 counties with black voting-age majorities, where an average of 89 percent of whites, but only 16 percent of blacks, were registered, despite the fact that blacks were 34 percent of the voting-age population, there were only three black elected officials in the entire state, and they had been elected only in the preceding three years. This exclusion from the normal political processes was not fortuitous; it was the result of two centuries of deliberate and systematic discrimination by the state against its minority population.1

As much as any state, Georgia had contributed to the series of cases in which the Supreme Court found it necessary to overcome its previous hesitation to apply the Constitution to legislative apportionment. These landmark cases included *Gray v. Sanders*, 372 U.S. 368 (1963) (county unit system of electing statewide officials unconstitutional); *Wesberry v. Sanders*, 376 U.S. 1 (1964) (Georgia's malapportioned Congressional districts unconstitutional); and *Fortson v. Dorsey,* 379 U.S. 433 (1965) (first recognizing the potential of unconstitutional minority vote dilution in Georgia's state Senate redistricting). But these cases were not enough.

Congress addressed the ongoing racial discrimination occurring in Georgia and other states by adopting the Voting Rights Act of 1965. In addition to its permanent provisions, temporary provisions in Sections 4 through 8 of the Act targeted those states and political subdivisions that

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1 Laughlin McDonald, Michael Binford and Ken Johnson, Chapter 3, "Georgia", *Quiet Revolution in the South, the Impact of the Voting Rights Act 1965-1990.* The fact that even this many black citizens were registered to vote in the early 1960s spoke to their courage and determination to overcome the best efforts of Georgia state officials to stop them. Table 3.9 in *Quiet Revolution in the South* lists the major disfranchising devices that were used in Georgia between Reconstruction and 1965. These included a poll tax (established in 1868; repealed in 1870; reenacted in 1871; made cumulative in 1877; and abolished in 1945); payment of taxes (established in 1868; abolished in 1931); durational residency requirements (established in 1868; lengthened in 1873; and abolished in 1972); grand jury appointment of school boards (established in 1872; abolished gradually by local referenda in individual counties, and statewide in 1992); white primary elections established by party rules in the late 19th century, and abolished in 1945 following the Supreme Court decision); disfranchising criminal offenses (established in 1877 and still in use); voter registration by race (established in 1894 and still required); literacy, good character and understanding tests (established in 1908 and abolished in 1965 by the Voting Rights Act); a grandfather clause (established in 1908 and abolished in 1915); a property ownership alternative (established in 1908 and abolished in 1945); the county unit system (established by party rules in the late 19th century and by statute in 1917, and abolished in 1963 by *Gray v. Sanders*, 372 US 368 (1963); a "thirty-questions test" (established in 1949 and revised in 1958, and abolished in 1965 by the Voting Rights Act); and majority vote and numbered post requirements (established in the late 19th Century as a local option; replaced by statute by county, and statewide in 1964; operative for municipalities in 1968: and still in use).

used suspect voter registration practices and showed depressed voter participation.2 The temporary provisions in Sections 6, 7 and 8 of the Act enabled federal examiners to register voters who met their respective states' eligibility requirements,3 and allowed for federal observers to enter polling places and observe the voting process. The temporary provisions in Section 5 required preclearance of new voting procedures by the U.S. District Court for the District of Columbia or by the attorney general. Section 5 placed the burden upon covered jurisdictions to show that their new procedures would have neither the purpose, nor the effect, of denying or abridging the right to vote on account of race.4

Although Section 5 initially received less attention than the federal registration procedures, it soon became a central tool of voting rights enforcement, blocking attempts by states and subdivisions to change their election systems and political boundaries so as to minimize the impact of newly-registered black voters.5 In addition to a stream of Section 5 objections between 1965 and 1981, Georgia gave rise to a series of leading cases defining the scope and substance of Section 5. These included *Georgia v. United States*, 411 526 (1973); *Wilkes County v. United States*, 450 F. Supp. 1171 (D.D.C. 1978), *aff'd mem.*, 439 U.S. 999 (1978); and *City of Rome v. United States*, 446 U.S. 156 (1980).6

By the time that Congress considered the extension of the Act's temporary provisions in 1981 and 1982, the Department of Justice ("DOJ") had interposed Section 5 objections to a total of 104 voting changes in Georgia, of which 63 (60.6 percent) represented attempts to change the jurisdictions' methods of election to include such discriminatory features as at-large elections,

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2 Section 4 established the coverage criteria for the Act's temporary provisions. Under Section 4 a state or political subdivision was covered if -- as of November 1, 1964 -- 1) it maintained any "test or device", and 2) less than 50 percent of its voting age population was registered to vote, or less than 50 percent of such persons voted in the presidential election of November 1964. Tests and devices were defined as "any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class." 42 U.S.C. 1973b(b), as amended. When the temporary provisions were extended for five years in 1970, and then for seven years in 1975, Section 4 was amended to provide for additional determinations using a formula similar to that used in 1965. The 1975 extension expanded the scope of tests or devices to include the use of English-only elections. No additional Section 4 determinations were made in 1982, when the existing temporary provisions were extended until 2007.

3 This prevented local election officials from conducting the registration process in a discriminatory fashion.

4 Under Section 5, new voting procedures are legally unenforceable until preclearance has been obtained; federal courts are required to issue injunctions against the use of unprecleared voting changes by jurisdictions that have failed to comply with Section 5.

5 These structural changes usually centered upon the adoption of at-large elections and the incorporation of numbered post, majority vote or staggered term requirements into at-large systems. In addition, cities began to expand their boundaries by annexing majority-white areas, thereby reducing the impact of new black voter registration.

6 In addition to *Quiet Revolution in the South,* detailed discussions of the effect of the Voting Rights Act from 1965 to 1982 in Georgia are found in Chandler Davidson, *Minority Vote Dilution*, 1984, Washington, D.C.: Howard University Press; and Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia*, 2003, Cambridge: Cambridge University Press.

numbered posts, staggered terms and majority vote requirements.7 Congress also received other evidence of serious and extensive voting rights problems in Georgia, including the need for litigation both to obtain Section 5 compliance and to eliminate existing discriminatory practices, with particularly detailed testimony submitted by ACLU attorney Laughlin McDonald and state Senator Julian Bond.8 Although there were increases in black voter registration between 1968 and 1980, and the number of black elected officials in Georgia had increased from 31 to 249,9 the Section 5 objections and related litigation led Congress in 1982 to extend the Act's temporary provisions for twenty-five years.

Georgia's history since 1982 shows that the state has not moved beyond the need for Section 5 preclearance and the other temporary provisions of the Voting Rights Act. Unquestionably, sustained efforts to increase black voter registration in the state have led to great progress. As of February 1, 2006, data reported by the Georgia Secretary of State showed that African Americans made up 27 percent of the state's total of 4,236,855 active registered voters.10 In most counties, the rate of black registration is comparable to that of whites. The 1982 Amendments to Section 2 of the Voting Rights Act prompted a wave of litigation that eliminated at-large election systems in cities, counties and school district across the state. Furthermore, the dominance of the Democratic Party in the state as of 1982 has given way with the increasing success of the Republican Party, and this realignment appears to have created new opportunities for black candidates to capture Democratic Party nominations and enjoy occasional success in statewide elections. Thus, it is not a coincidence that there has been a dramatic increase in the number of black elected officials in Georgia since passage of the Voting Rights Act.11 Georgia has four black Congressional Representatives and the number of black legislators has increased to thirty-eight in the state House and eleven in the state Senate.12 Yet the fundamental question as Congress deliberates the extension of Section 5 and the Act's other temporary provisions is not whether there has been progress but, rather, whether that progress is at risk of being undone if there is no extension.

Since 1982, the Department of Justice has interposed ninety-one Section 5 objections in Georgia

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7 See Appendix 3.

8 Report No. 97-227, Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee of the Judiciary, House of Representatives, Ninety-Seventh Congress, First Session, On Extension of the Voting Rights Act. Testimony of Julian Bond at 224 *et seq.*; Testimony of Laughlin McDonald at 590 *et seq.*

9 Report No. 97-227 at 9.

10 See Appendix 4.

11 A nationwide survey of black elected officials reported that Georgia had a total of 611 black elected officials as of 2001, including three federal representatives (out of eleven), three state administrators, eleven state senators (out of fifty-six), 36 state house representatives (out of one-hundred eighty), one county executive, 95 members of county governing bodies, six other county officials, thirty mayors, 261 members of municipal governing bodies, two members of municipal boards, two state Supreme Court justices, one other judge of a statewide court, thirty judges of other courts. five other judicial offices, five police chief sheriff's or marshals, two members of university and college boards, and 118 members of local school boards. See, Joint Center for Political and Economic Studies , *Black Elected Officials: A Statistical Summary, 2001,* Table 2: Number of Black Elected Officials in the United states, by state and Office, January 2001 (2003).

12 The number of black representatives and senators is still substantially short of the black share of the state's voter registration (27 percent), which would equal 48.6 representatives and 15.1 senators.

with the most numerous category of objections involving method of election changes including at-large elections and numbered post, staggered term and majority vote requirements. However, there has been repeated noncompliance with Section 5. Federal courts have continued to find racially polarized voting and voting rights violations in the state under Section 2 of the Voting Rights Act and other federal laws, and numerous cases continue to change voting practices via pre-trial settlements.

In the city of Augusta alone, there were two 1987 Section 2 lawsuits (settled in 1988), a 1987 Section 5 objection to eight annexations enacted with a "racial quota" policy, a 1988 objection to referendum election schedule and a 1989 objection to the city's consolidation with Richmond County.13 The series of racially-charged political battles as the city of Augusta developed a black population majority exemplify the tensions that can arise when jurisdictions approach majority-black status and how the Voting Rights Act checks the unfortunate impulse to frustrate black political empowerment that regularly has arisen in Georgia (as it has elsewhere).14

As detailed below, Section 5 has not merely blocked a series of inadvertently retrogressive changes -- as important as that would be -- but rather has been a bulwark against repeated attempts to impose racially discriminatory election changes in a variety of forms. Moreover, the Department of Justice has sent federal observers to monitor nearly twice the number of elections in Georgia from 1982 onward as it did between 1965 and 1981. The experience of Spanish-surnamed registered voters in Long and Atkinson Counties, who were mass-challenged in 2004 for no apparent reason other than their surnames -- leading to a Justice Department lawsuit and consent decree against Long County -- also suggests that growing numbers of other racial and ethnic minority groups will be subject to discrimination in voting. As recently as 2005, a federal court issued a preliminary injunction against a new state voter identification law, adopted over the strong objection of the state's black legislators, finding that it both imposed a poll tax and that it unconstitutionally infringed on the fundamental right to vote. With the continued presence of racially polarized voting and other racial tensions, the record since 1982 makes clear that Georgia and its political subdivisions have not progressed beyond the need for the temporary provisions of the Voting Rights Act.

I. Section 5 of the Voting Rights Act

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13 These were preceded by a March 1981 objection to a majority vote requirement for the city. A detailed account of the repeated attempts to change the method of election and boundaries and indeed the very existence of the city of Augusta after it became majority-black, and the central role played by the Richmond County legislative delegation in that process, is provided in Binny Miller, *Who Shall Rule and Govern? Local Legislative Delegations, Racial Politics, and the Voting Rights Act*, 102 Yale L.J. 105, 131-37.

14 Georgia has had a very dynamic population pattern since 1980. Even as the state's total population grew dramatically, the black share of the state's population kept slightly ahead of the overall growth rate, so that the black share of the state's total population increased from 26.5 percent in 1980, to 27 percent in 1990, and to 29.2 percent in 2000. The county-by-county data in Appendix 4 show a substantial shift between 1980 and 2000 in the distribution of the state's black population: in 1980 36.6 percent of the state's black population resided in counties that were forty percent black or more; by 2000 that figure had increased to 63.6 percent. This type of population shift often leads to efforts to enact discriminatory voting changes, as was seen in Augusta.

A. Section 5 Objections

Under Section 5 of the Voting Rights Act, 42 U.S.C. Sec. 1973c, voting changes in specific covered jurisdictions (including all levels of government in Georgia) may not legally be enforced until they are "precleared."[15] The overwhelming number of covered jurisdictions seek Section 5 preclearance via administrative submissions to the attorney general.[16] The attorney general (or more precisely, the designee of the attorney general, who is the assistant attorney general of the Civil Rights Division), may interpose an objection within sixty days of the administrative submission of a voting change from a Section 5 covered jurisdiction. In the absence of an objection, such a submission is deemed "precleared".[17] Section 5 objections are entered in the form of letters mailed to the official who made the submission and are signed by the assistant attorney general for civil rights.

Between 1982 and the present, there were 91 Section 5 objections in Georgia.[18] It is most useful to discuss these objections according to the type of voting change, as is done below.[19] But it is important to note first that the great majority of Section 5 objections have affected local governments. While twenty-three of these objections involved federal and state offices and procedures,[20] another twenty-six involved county-level offices and procedures[21] and forty-two

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15 The procedures for Section 5 submission and review are summarized in Mark Posner, *Post-1990 Redistrictings and the Preclearance Requirement of Section 5 of the Voting Rights Act*, in Grofman (ed.), *Race and Redistricting in the 1990's*. Additional information about Section 5 is provided by the Department of Justice at http://www.usdoj.gov/crt/voting/sec_5/about.htm.

16 The substantive standards for Section 5 administrative determinations follow the holdings of the District Court for the District of Columbia and the Supreme 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)." Attorney General's Guidelines for the Administration of Section 5. 28 C.F.R. 51.52(a).

17 Thus, a Section 5 objection does not render a change unenforceable; rather, it formalizes that status and provides the federal courts with a basis to enter permanent injunctive relief against unprecleared voting changes. Although it is not strictly necessary, it is the practice of the Department of Justice to also issue letters advising jurisdictions when no objection will be interposed to submitted changes.

18 Between 1965 and 1981, there were 104 Section 5 objections to voting changes from Georgia. See "Georgia", www.usdoj.gov/crt/voting/sec_5/ga_obj2.htm; see also Appendix 3.

19 Section 5 letters from the Attorney General correspond to the voting changes contained in particular submissions. Such submissions frequently contain multiple voting changes, which can prompt multiple objections in a single letter. Thus, the number of objections is somewhat greater than the number of objection letters. During the post-1982 period, five objections were withdrawn and twelve requests for reconsideration were denied. A letter continuing a previously interposed objection is not counted as an objection itself and is counted separately; letters withdrawing objections are also counted separately but do not reduce the number of objections that were interposed.

20 These included three objections to Congressional redistricting plans, four objections to state senate redistricting plans, five objections to state house redistricting plans, six objections to the addition of state judicial positions, one objection to changing the method of selecting the board of the Georgia Military College from elective to appointive, two objections to state voter registration procedures, one objection to an election schedule and one objection to a

involved changes at the municipal level.22 When discussing Section 5, there is a natural tendency to focus upon statewide changes, in particular Congressional and state legislative redistricting plans, but Section 5 is just as crucial -- if not more so -- at the local level as it is at the statewide level.23

The Supreme Court has broadly construed the scope of Section 5 coverage. Therefore, Section 5 review involves changes to many types of practices and procedures. The following counts do not include all possible categories, but only cover the range of objections in Georgia from 1982 onward:

Table 1: Section 5 Objections by Type: 1982-2006

	Objections	Withdrawn	Continued
Method of Election	32	1	6
Redistricting	26	2	1
state Judicial	6	2	1
Annexation	5	2	1
Districting	4	0	1
Election Schedule	4	0	0
Candidate Qualification	3	0	1
Voter Registration	3	0	0
Consolidation	2	0	0
Polling Place	2	0	0
Referendum Procedures	2	0	0
Elected to Appointive	1	0	1
Deannexation	1	0	0
Total	91	7	12

Below we discuss the Section 5 objections by the following categories of voting changes: a) method of election changes (including at-large elections and numbered post, staggered term and majority vote requirements); b) redistricting and districting plans; c) annexations, deannexations

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state plurality vote requirement. *See* Appendix 1.

21 These included twelve objections to changes involving county boards of education, nine objections to changes involving county commissions, two objections to polling place changes, one objection to the creation of a county chief magistrate, one objection to an election schedule and one objection to voter registration procedures. *See* Appendix 1.

22 These included twenty-four objections to method of election changes, five objections to annexations, four objections to redistricting plans, two objections to municipal/county consolidations, two objections to districting plans, two objections to election schedules, two objections to referendum procedures and one objection to a deannexation. *See* Appendix 1.

23 To understand why this is so, one need only consider the range of issues directly affecting day-to-day life for which local government is the primary agency: education, land use and planning, property taxation, business inspection and licensing, road maintenance, recreation, and election administration are primarily, if not exclusively administered at the local level, either directly by local elected officials or by those whom they appoint or hire.

and consolidations; d) judicial seats; and e) other (including voter registration procedures, candidate qualifications, election schedules, referendum procedures, polling place changes and changes from elective to appointive offices).

1. Section 5 Objections to Method of Election Changes

Thirty-two method of election objections blocked a variety of discriminatory election features. Overall, twenty objections involved majority vote requirements24 (that is, alone or in combination), thirteen involved numbered post requirements, three involved staggered term requirements and fourteen involved at-large election requirements. The method of election objections are summarized in Appendix 1.

Seventeen method of election objections involved the adoption of a single discriminatory feature: seven cited the adoption of a majority-vote requirement as the reason for the objection,25 six cited the adoption of at-large elections,26 two cited the adoption of numbered posts,27 one concerned the adoption of staggered terms28 and one concerned a plurality-vote runoff requirement. In eleven cases, Section 5 objections blocked combinations of *two* discriminatory features: five objections were based upon the adoption of a majority vote requirement in combination with numbered posts,29 four cited the adoption of a majority vote requirement in

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24 In addition, there was an objection (subsequently withdrawn) to a forty-five percent statewide plurality-vote requirement. Isabelle Katz Pinzler, Objection Letter, August 29, 1994 (withdrawn by Loretta King, September 11, 1995).

25 Six of these seven objections to the adoption of a majority-vote requirements involved municipalities; the seventh was incident to the creation of a county chief magistrate. These included objections for the city of Butler (June1993) (majority requirement for mayor), the city of Hinesville (July 1991) (majority vote requirement for mayor), the city of Waynesboro (May 1994) (majority vote requirement for mayor), the town of McIntyre (November 1993) (majority vote requirement in special elections for city council vacancies), the city of Waycross (February 1988) (creation of a single-position mayor to be elected by majority vote), the city of Monroe (July 1991) (majority vote requirement for all citywide offices, including mayor, later narrowed to the mayor only), and Baldwin County (August 1993) (creation of chief magistrate elected using majority vote requirement).

26 Five of these six objections to the adoption of at-large elections involved municipalities, including the city of Griffin (September 1985) (use of one at-large seat in a "mixed" plan with four single-member districts), the city of LaGrange (October 1993 and December 1994) (the 1993 objection involved the use of two at-large seats in a mixed city council plan with four single-member districts; the 1994 objection involved the use of one at-large seat in a mixed city council plan with two "super-districts" and four single-member districts), the city of Lyons (November 1985) (use of an at-large seat in a mixed plan with four single-member districts), and the city of Newnan (August 1984) (use of two at-large seats in a mixed plan with four single-member districts). The sixth was a March 1986 objection for Lamar County (use of an at-large seat in a mixed plan with four single-member districts).

27 These included objections for the city of Sparta (February 1992) (adding a numbered post requirement to the at-large city council election system) and the city of Kingsland (January 1983) (1976 legislation adopting numbered posts for the at-large election city council system).

28 An August 1987 objection for the city of Rome school board identified the city's proposed adoption of staggered terms, in conjunction with an increase in the number of school board members from six to seven, as the reason for the objection, which cited the factors discussed in *City of Rome v. United* states, 446 U.S. 156 (1980).

29 These included objections for the city of Ashburn (October 2001) (numbered posts for city council elections and majority vote requirement for all city offices), the city of Lumber city (July 1988) (majority vote requirement for mayor and city council and numbered posts for city council), the city of Wrens (October 1986) (majority vote and numbered post requirement for mayor and city council), and the city of Forsyth (December 1985) (numbered post

combination with at-large elections30 and two were based upon the adoption of at-large elections in combination with residency districts (the functional equivalent of numbered posts).31 In four other cases, Section 5 objections blocked combinations of three discriminatory features: two objections cited the adoption of a majority vote requirement in combination with both numbered posts and staggered terms32 and two other objections blocked combinations of numbered posts, at-large seats, and majority vote requirements. 33

It is critical to recognize circumstantial evidence of intentional discrimination by state and local officials, inasmuch as the days of overt public statements of racial antipathy (largely) have passed.34 For example, several method of election objections involved efforts to add at-large seats to single-member district plans under circumstances that strongly suggested a discriminatory purpose. The July 1992 objection for the Effingham County Commission blocked an attempt to change the county's then-existing five-member single-member district plan (which had been adopted in response to a vote dilution lawsuit) to a mixed plan with five single-member districts and an at-large chair to be elected with a majority vote requirement. The objection letter noted that:

> Under the proposed election system, the chairperson would be elected as a designated position by countywide election with a majority vote requirement. In the context of the racial bloc voting which pertains in Effingham County, the opportunity that currently exists for black voters to elect the commissioner who

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and majority vote requirement for city council elections). In addition, in April 1991 DOJ precleared a change in the method of election for the city of East Dublin (from five at-large seats) to a mixed plan with three single-member districts and two at-large seats; however, an objection was interposed to a majority vote requirement that was to be used in combination with numbered posts for the two at-large seats.

30 These included objections for Decatur County (November 1994) (changing its six-member single-member district plan to a mixed plan with six single-member districts and one at-large seat with a majority vote requirement), Effingham County (July 1992) (changing its five-member single-member district plan to a mixed plan with five single-member districts and one at-large seat with a majority vote requirement), the city of Monroe (October 1993) (changing six at-large seats to four single-member districts and two single-member "super-districts"), and the city of Quitman (April 1986) (changing its five-member council elected at-large by plurality vote to a mixed system with two dual-member districts and an at-large chair elected by majority vote).

31 These included objections for the Bacon County Commission (June 1984) (changing eight-member plan with seven single-member districts and one at-large seat to an at-large system with residency districts), and the Taylor County Board of Education (August 1984) (changing nine-member single-member district system to an at-large system with five members from residency districts).

32 These included objections for the city of Tignall (March 2000 objection) (changing system of at-large, plurality-vote elections with concurrent terms), and the city of Lumber city (November 1989) (changing system from six members, elected at large by plurality vote to two-year staggered terms, to a mixed plan with four single-member districts and two at-large seats, elected by majority vote to four-year staggered terms).

33 These included objections for the city of Jesup (March 1986) (changing system of six commissioners elected at large by plurality vote to staggered terms), and the Baldwin County Board of Education (September 1983) (1972 adoption of at-large elections in combination with both numbered posts and a majority vote requirement for new elective system). The Baldwin County Board of Education submission was made only after a federal suit including Section 5 enforcement claims had been filed against it. *Boddy v. Hall*, Civ. No. 82-406-1-MAC (M.D. Ga).

34 See, *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 265-66 (1977). See also, *Washington v. Davis*, 426 U.S. 229, 242 (1976) ("Invidious discriminatory purpose may often be inferred from the totality of relevant facts.").

> will serve as chairperson would be negated. Moreover, it appears that these results were anticipated by those responsible for enactment of the proposed legislation. The proposed change to an at-large chairperson followed the elimination of the position of vice-chairperson, which had been held by a black commissioner since 1987. Although we have been advised that the proposed system was adopted in order to avoid the possibility of tie votes in the selection of the chairperson and for other proposals before the board, this rationale appears tenuous since the change to an even number of commissioners would invite tie votes to a greater extent than the existing system.35

Similarly, the November 1994 objection for the Decatur County Commission involved a proposal to change the then-existing six-member single-member district system for electing the county commission to a mixed plan with six single-member districts and one at-large seat to be elected with a majority vote requirement. The objection letter noted that:

> Under these circumstances, it appears that black voters will not have an equal opportunity to elect candidates of their choice to the at-large position, and will therefore enjoy a smaller share of representation under the expanded commission than is available to them under the current system. Hence, it appears that the proposed increase in the number of county commissioners to seven, the establishment of an elected chairperson, and the change in method of election will "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." [] Alternatives were available that would have addressed the county's apparent concern regarding tie votes on the commission, but would not similarly diminish minority voting strength. Those include an increased to seven or a decrease to five single-member districts. The county appears to have rejected such alternatives in favor of the proposed expansion and election method without a satisfactory race-neutral justification, and no effort appears to have been made to obtain the views of the minority community regarding the effect of the proposed changes prior to their adoption.36

Moreover, each of these types of changes (that is, majority vote and numbered post requirements, staggered terms and at-large elections) was recognized before 1982 -- by practicing politicians and in leading voting rights cases involving Georgia -- as having the potential for diluting minority voting strength in racially polarized elections.37 The Supreme

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35 John R. Dunne, Objection Letter, July 20, 1992 (case citations omitted).

36 Deval L. Patrick, Objection Letter, November 29, 1994 (case citations omitted).

37 Objection letters for method of election changes, as well as those for redistricting plans, annexations and others involving dilution of minority voting strength, routinely cite the existence of racially polarized voting. This is not because polarized voting is assumed to exist; to the contrary, it is evaluated on a case by case basis. Because a pattern of racially polarized voting is a predicate for objections involving minority vote dilution, I have not included it in summarizing individual objections. But any review of the record must bear in mind that the Supreme Court has identified the presence of racially polarized voting as important circumstantial evidence of intentional discrimination in the electoral process. In *Rogers v. Lodge*, the Supreme Court stated that: "There was also overwhelming evidence of bloc voting along racial lines. Hence, although there had been black candidates, no black had ever been elected to

Court had recognized in 1969 the discriminatory potential of at-large elections,38 and the adoption of at-large elections was widely used in Georgia in response to black enfranchisement immediately preceding and after passage of the Voting Rights Act.39 In 1973, the Supreme Court explicitly recognized that multimember districts had the potential for diluting black voting strength in Georgia.40 In 1980, the Supreme Court explained -- in yet another case arising from Georgia -- how "enhancing devices" that prevent single-shot voting serve to exacerbate the discriminatory potential of at-large elections.41 The Court strongly credited Congress' findings

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the Burke County Commission. These facts bear heavily on the issue of purposeful discrimination. Voting along racial lines allows those elected to ignore black interests without fear of political consequences, and without bloc voting the minority candidates would not lose elections solely because of their race. Because it is sensible to expect that at least some blacks would have been elected in Burke County, the fact that none have ever been elected is important evidence of purposeful exclusion." 458 U.S. at 623 (citation omitted).

38 *Allen v. State Board of Elections*, 393 U.S. 544 (1969). "No. 25 involves a change from district to at-large voting for county supervisors. The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot. See *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting." Id. at 569.

39 "A favorite voting change was from district to at-large elections. The vast majority of the state's counties elected their county governments at large, but some used single-member districts. In a scenario reminiscent of the attempt by the Legislature in 1962 to prevent the election to the Senate of a black from the single-member district in Fulton County, a substantial number of the single-member district counties switched to at-large voting. And most of them did so without complying with Section 5. . . . . Two of the single-member district counties, Bacon and Crisp, adopted at-large elections shortly before the Voting Rights Act was passed, but with implementation of the changes to take place after November 1, 1964, which became the effective date for compliance with Section 5. Other single-member district counties that had significant black populations, and that almost certainly would have had one or more majority-black districts under a fair apportionment plan, followed suit and switched to at-large voting: Calhoun, Clay, Dooly, and Miller in 1967; Early, Henry, and Tattnall in 1968; and Meriwether and Walton in 1970. The only county that complied with Section 5 was Meriwether. Fourteen counties also adopted at-large elections for their boards of education immediately before or shortly after passage of the Voting Rights Act: Greene and Screven in 1964; Terrell and Marion in 1965; Henry in 1966; Cook and Dooly in 1967; Miller, Coffee, Wayne, and Jenkins in 1968; Walton in 1969; and Bulloch and Mitchell in 1970. As with county commissions, at-large elections for school boards were a proven way to minimize black influence in the political process. All of the school boards implemented the changes without seeking Section 5 review." McDonald, *A Voting Rights Odyssey*, Chapter 9, "Increased Black Registration", pp. 131-32 (footnotes omitted).

40 *Georgia v. United States,* 411 U.S. 526 (1973). "In the present posture of this case, the question is not whether the redistricting of the Georgia House, including extensive shifts from single-member to multimember districts, in fact had a racially discriminatory purpose or effect. The question, rather, is whether such changes have the potential for diluting the value of the Negro vote and are within the definitional terms of '5. It is beyond doubt that such a potential exists, cf. *Whitcomb v. Chavis*, 403 U.S. 124, 141-144. In view of the teaching of Allen, reaffirmed in *Perkins v. Matthews*, 400 U.S. 379, Page 411 U.S. 526, 535, we hold that the District Court was correct in deciding that the changes enacted in the 1972 reapportionment plan for the Georgia House of Representatives were within the ambit of '5 of the Voting Rights Act." Id. at 534-35 (footnotes omitted).

41 *City of Rome v. United* states, 446 U.S. 156 (1980). In *City of Rome,* the Supreme Court affirmed the District Court's finding that ". . . the electoral changes from plurality-win to majority-win elections, numbered posts, and staggered terms, when combined with the presence of racial bloc voting and Rome's majority white population and at-large electoral system, would dilute Negro voting strength. The District Court recognized that, under the pre-existing plurality-win system, a Negro candidate would have a fair opportunity to be elected by a plurality of the vote
if white citizens split their votes among several white candidates and Negroes engage in 'single-shot voting' in his

that preventing such changes was an important reason to extend Section 5 in 1970 and 1975.[42] Of course, this historical context does not prove per se that the objected-to changes were adopted because they would adversely affect black voting strength, but it does make it more likely that racial considerations played a role.[43]

The adoption of multiple discriminatory features is further circumstantial evidence that these changes were not merely coincidental, but rather were intended to move toward -- or preserve -- white hegemony over the election process, in the face of growing black electoral participation. As detailed previously, eleven methods of election objections involved combinations of two discriminatory features and four others involved combinations of three discriminatory features. Short of outright denying the right to cast a ballot, a system of at-large elections with numbered posts and a majority-vote requirement is generally the most effective way of frustrating minority voters' effective exercise of the franchise[44] and many of the objections here were moves toward imposing such systems, either in incremental steps or by one piece of legislation.[45]

A number of the objected-to changes had also been illegally implemented for years, or even decades, without Section 5 preclearance. For example, four of the five objections to majority

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favor." Id. at 183-84.

42 "Congress gave careful consideration to the propriety of readopting Section 5's preclearance requirement. It first noted that '[i]n recent years the importance of this provision has become widely recognized as a means of promoting and preserving minority political gains in covered jurisdictions.' H. R. Rep., at 8; S. Rep., at 15. After examining information on the number and types of submissions made by covered jurisdictions and the number and nature of objections interposed by the Attorney General, Congress not only determined that Section 5 should be extended for another seven years, it gave that provision this ringing endorsement: 'The recent objections entered by the Attorney General . . . to Section 5 submissions clearly bespeak the continuing need for this preclearance mechanism. As registration and voting of minority citizens increases [sic], other measures may be resorted to which would dilute increasing minority voting strength. . . . . The Committee is convinced that it is largely Section 5 which has contributed to the gains thus far achieved in minority political participation, and it is likewise Sect[i]on 5 which serves to insure that that progress not be destroyed through new procedures and techniques. Now is not the time to remove those preclearance protections from such limited and fragile success.' H. R. Rep., at 10-11." *City of Rome v. United* states, 446 U.S. at 181.

43 "Evidence of historical discrimination is relevant to drawing an inference of purposeful discrimination, particularly in cases such as this one where the evidence shows that discriminatory practices were commonly utilized, that they were abandoned when enjoined by the courts or made illegal by civil rights legislation, and that they were replaced by practices which, though neutral on their face serve to maintain the status quo." *Rogers v. Lodge*, 458 U.S. 613, 625 (1982).

44 For example, in a city with racially polarized voting and a black population of 35 percent, the use of a "pure" at-large election system with concurrent terms would not necessarily guarantee the defeat of black voters' candidates of choice. By adding a numbered post or staggered term provision, the field of candidates for each open seat would typically be reduced, concomitantly reducing black voters' ability to effectively use single-shot voting within large fields of candidates. If a majority-vote requirement is added to the numbered post requirement, the city's majority would then be able to control the outcome of any resulting one-on-one runoffs in which a black-preferred candidate would be pitted against one of several candidates among whom white voters divided their initial support. In some situations, however, racial gerrymandering of single-member district boundaries might be equally effective, but this tends to be more obvious.

45 Of the 104 objections between 1965 and 1981, 63 concerned method of election changes (60.6 percent). These included many of the initial round of election system changes adopted in response to the large numbers of black voters who were newly enfranchised as a result of the Voting Rights Act.

vote requirements in combination with numbered posts came after the objected-to changes had been enforced illegally - that is, without Section 5 preclearance - before they were submitted.46 Some changes finally were submitted only as the result of litigation; in other cases, it appears that the unprecleared changes were detected by DOJ during the Section 5 review of other changes (such as annexations) that were later submitted by the jurisdiction.47 This noncompliance is further evidence of a pattern of deliberate racially discriminatory conduct by local officials.48

Congress also will consider whether it intends a different interpretation of Section 5 than the "intent to retrogress" standard adopted by the Supreme Court in 2000 in the *Bossier II* case.49 The *Bossier II* decision would have a mixed effect on the outcomes of these post-1982 method of election objections if it were applied to them today.50 Some of these objections were not retrogressive in nature and, under *Bossier II*, would have to be precleared today no matter how egregious the evidence of racially discriminatory purpose in their adoption. However, every case in which a numbered post, staggered term or majority vote requirement was added to an at-large system was a retrogression objection. Similarly, those cases in which jurisdictions sought to replace district elections with at-large elections also would be unaffected by *Bossier II* because they were retrogressive. Thus, there were significant Section 5 violations among the method of election objections regardless of the *Bossier II* reinterpretation of Section 5.

2. Section 5 Objections to Redistricting and Districting Plans

Redistricting plans and districting plans (the first boundaries for a new single- or multi-member district system) comprised the second-largest category of Section 5 objections from 1982 forward. There were twenty-six objections to redistricting plans and four objections to districting plans during this period.51

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46 City of Ashburn (October 2001; changes used since 1966 and 1973); city of Lumber City (July 1988; majority vote requirement used since 1973); city of Wrens (October 1986; changes used since 1970); and city of Forsyth (December 1985; changes used in at least two previous election cycles).

47 Some jurisdictions also repeatedly sought to implement objectionable changes through requests for reconsideration; of course, that was their right under the Attorney General's guidelines for the administration of Section 5, See, 28 C.F.R. 51.45, but it also could reflect a determination to push forward with discriminatory voting changes.

48 Even when the submission had been made, some jurisdictions remained uncooperative. For example, the August 1983 objection for the Taylor County Board of Education noted that "[i]ndeed, the board has been most uncooperative throughout the review process." William Bradford Reynolds, Objection Letter, August 19, 1983. The October 2001 objection for the city of Ashburn blocked numbered posts for city council elections and a majority vote requirement for all city offices, that had been adopted in 1973 and 1966, respectively, but never were submitted for preclearance until decades later. Even then, the city delayed its response to a December 1995 request for additional information until August 2001. Ralph F. Boyd, Objection Letter, October 1, 2001.

49 *Reno v. Bossier Parish School Board*, 528 U.S. 320 (2000). In the *Bossier II* decision, the Supreme Court abandoned the longstanding construction of Section 5 as prohibiting voting changes that did not worsen (or "retrogress") the position of minority voters but had a racially discriminatory purpose. See the discussion of *Busbee v. Smith infra.*

50 It is assumed for purposes of this discussion that the *Bossier II* decision applies equally to method of election changes as to the school board redistricting plan at issue in that case.

51 Between 1965 and 1981 there had been eight redistricting objections. However, a far smaller share of local

There were twelve objections to statewide redistricting plans, including three Congressional plans, four state Senate plans and five state House plans.52 Three of these objections occurred during the 1980s and the remainder were during the 1990s.

In the post-1980 redistricting cycle, a February 1982 objection to Georgia's 1981 Congressional redistricting plan53 ultimately led to a Section 5 declaratory judgment action, *Busbee v. Smith*, 549 F.Supp. 494 (D.D.C. 1982), aff'd mem., 459 U.S. 1116 (1983), which denied Section 5 preclearance to the state's (non-retrogressive) plan on the grounds that the plan had a racially discriminatory purpose. The *Busbee* case and the associated objections are discussed elsewhere in this report. DOJ also objected to Georgia's 1981 House and Senate redistricting plans in February 1982.54

In the post-1990 redistricting cycle, two objections to Congressional redistricting plans in 1992 were followed by constitutional litigation (under the newly-announced claim of *Shaw v. Reno*) against the precleared plan, finally resulting in the decision in *Abrams v. Johnson*, 521 U.S. 74 (1997).55 Georgia's post-1990 House and Senate redistrictings went through several stages. There were Section 5 objections to Georgia's 1991 House and Senate redistricting plans in January 1992, to revised House and Senate plans in March 1992 and to a further revised House plan on March 29, 1992.56 After new House and Senate plans were precleared, both were challenged in another *Shaw* case captioned *Miller v. Johnson* (in which the state admitted to constitutional violations, some of which were contested by the United states and private intervenors). The state adopted new plans, which it claimed to be remedies in response to the admitted constitutional violations that reduced the black populations of numerous districts, prompting objections to both plans in March 1996.57 The *Abrams* and *Miller* cases and the associated objections are discussed *infra*.

There have been fourteen objections to local redistricting plans since 1982, including objections for four counties,58 five county boards of education59,and four municipalities.60 In addition,

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jurisdictions with sizable minority populations used single-member districts at the time of the 1970 and 1980 redistricting cycles. It was the passage of the 1982 Amendments to Section 2 of the Voting Rights Act, 42 U.S.C. 1973, which prompted many jurisdictions to adopt districting plans during the 1980s and 1990s, often as the result of Section 2 litigation.

52 In addition, DOJ opposed the preclearance of Georgia's 2001 state Senate redistricting plan in a declaratory judgment action, *Georgia v. Ashcroft*. The district court ruled against the state in the *Ashcroft* case, but the Supreme Court vacated and remanded the case, which ultimately was dismissed (due to the decision in *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004), with no final resolution of the state's claim. The *Ashcroft* case is discussed in Section II.2.a *infra*.

53 William Bradford Reynolds, Objection Letter, February 11, 1982.

54 William Bradford Reynolds, Objection Letter, February 11, 1982.

55 John R. Dunne, Objection Letter, January 21, 1992; John R. Dunne, Objection Letter, March 20, 1992.

56 John R. Dunne, Objection Letter, January 21, 1992; John R. Dunne, Objection Letter, March 20, 1992; John R. Dunne, Objection Letter, March 29, 1992

57 Isabelle Katz Pinzler, Objection Letter, March 15, 1996; withdrawn October 15, 1996. The objections were withdrawn following a settlement of the case.

58 These included objections to redistricting plans for the Putnam County Commission (August 2002), the

there have been four objections to initial districting plans for one county, one county board of education and one city (with two objections).61 Broken out by decade, there have been six local redistricting objections during the 1980s - three during the 1990s and five from 2000 onward.

Some redistricting objections involved compelling evidence of a racially discriminatory purpose. The best-documented case involved Georgia's 1981 Congressional redistricting legislation. The U.S. District Court for the District of Columbia specifically found that the committee chairman responsible for the state's plan -- Rep. Joe Mack Wilson -- was a "racist,"62 and tied that racism to gerrymandered district boundaries in the Atlanta area, finding that the unnecessary division of black neighborhoods was a means of effectuating the determination to limit black voting strength in the Atlanta area to the extent possible.63 Rep. Wilson, of course, was not alone in his views.64 McDonald quotes a white Republican legislator's deposition testimony during *Busbee*:

> 'To call someone a racist in Georgia is not necessarily flaming that person,' said Felton. 'You might call someone a racist, but that isn't the height of an insult, I'm sorry to say, but that's true.'

Randolph County Commission (June 1993), the Dougherty County Commission (July 1982) and the Glynn County Commission (July 1982).

59 These included objections to redistricting plans for the Marion County Board of Education (October 2002), the Putnam County Board of Education (August 2002), the Webster County Board of Education (January 2000), the Sumter County School District (December 1982 and September 1983) and the Bibb County Board of Education (November 1982).

60 These included objections to redistricting plans for the city of Albany (Dougherty County) (September 2002), the city of Macon (Bibb and Jones Counties) (December 1994), the city of Griffin (Spalding County) (November 1992) and the city of College Park (Clayton and Fulton Counties) (December 1983).

61 These included objections to districting plans for the Thomas County Commission (July 1984), the Randolph County Board of Education (June 1993) and the city of McDonough (Henry County) (November 1982 and December 1984). The Department of Justice distinguishes redistricting plans (the revision of existing district boundaries) from districting plans (the first use of electoral district boundaries following a method of election change, as occurs when a jurisdiction changes from at-large elections to single-member districts).

62 The bill for the 1981 plan was developed in the House Permanent Standing Committee on Legislative and Congressional Reapportionment; Rep. Wilson was its chair. The D.C. District Court's fact findings included: "17. Representative Joe Mack Wilson is a racist. Wilson uses the term 'nigger' to refer to black persons. (Wall Deposition, Vol. II, 57.) He stated to one Republican member of the Reapportionment Committee that 'there are some things worse than niggers and that's Republicans.' (Wilson Trial Testimony, 436.) Wilson opposes legislation of benefit to blacks, which he refers to as 'nigger legislation.' (Wall Deposition, Vol. II, 59; Coverdell Trial Testimony, 598; Wall Deposition, Vol. I, 30; Randall Deposition, 65-66; Wilson Deposition, 122, 148; Phillips Deposition, 36; Holmes Deposition, 52-55.) His views on blacks are well known to members of the General Assembly. From the House reapportionment committee to the Conference committee, Wilson played the instrumental role in 1981 Congressional reapportionment and he was guided by the same racial attitudes throughout the reapportionment process that guided his other legislative work." *Busbee v. Smith*, 549 F. Supp. at 500.

63 "Act No. 5 is being denied Section 5 preclearance because state officials successfully implemented a scheme designed to minimize black voting strength to the extent possible; the plan drawing process was not free of racially discriminatory purpose." *Busbee v. Smith*, 549 F. Supp. at 518.

64 Rep. Wilson had been appointed as chair of the redistricting committee by Speaker of the Georgia House Thomas Murphy; who had served as floor leader for former Governor Lester Maddox. *Busbee v. Smith*, 549 F. Supp. at 500. Rep. Murphy does not appear to have suffered politically for the *Busbee* debacle; he remained speaker through the 1990 and 2000 redistricting cycles.

McDonald, *A Voting Rights Odyssey*, Chapter 12, "Redistricting in the 1980s", p. 171.

District boundaries in some local plans were drawn to meet explicit racial quotas to limit the number of majority-black districts. For example, the July 1984 objection for the Thomas County Commission noted that the proposed eight-district plan had been drawn with an instruction to the Georgia state Reapportionment Office "that the number of districts in which black voters could elect candidates of their choice be limited to two" (in a county with a black population percentage of 38 percent).65 The September 2002 objection for the city of Albany found that the redistricting plan reduced the black population in one ward from 51 percent to 31 percent specifically to forestall the creation of an additional majority-black district.66

Other objections involved gerrymandered district boundaries that plainly were intended to constrain the black population of districts. The December 1983 objection for the city of College Park stated that the proposed redistricting packed black population into one district (at a level of 90 percent), while dividing the remainder of the city's black population concentrations into four other districts (the city had a black population of 48.3 percent in 1980), to the point that one heavily-black census block was (unnecessarily) split among several districts.67 Similarly, objections in November 1982 and December 1984 for the city of McDonough were based upon a "three-way fragmentation of the black community [that] appeared calculated to carve up the city's black voting strength among three districts in an unnatural and wholly unnecessary way."68

The January 2000 objection for the Webster County School Board is especially noteworthy for the pretextual justifications offered for its retrogressive changes. The objection letter states that shortly after the 1996 elections, in which a third black member was elected to the board for the first time, the school board members were advised that their five-district plan had to be redrawn because it was malapportioned; however, the five percent deviation in the benchmark plan was well within constitutional limits, while the plan that ostensibly was enacted to cure its malapportionment instead had a thirteen percent deviation.69

As with the method of election objections, the effect of the Supreme Court's *Bossier II* decision would be mixed. Nine objections involved retrogressive redistricting plans70 and so to the extent that they were based upon discriminatory purpose, they would remain objectionable. It is

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65 William Bradford Reynolds, Objection Letter, July 23, 1984.
66 J. Michael Wiggins, Objection Letter, September 23, 2002.
67 William Bradford Reynolds, Objection Letter, December 12, 1983. The objection letter cited the summary affirmance of *Busbee v. Smith* in noting that the district boundary manipulation and aversion to input from the minority community were indicative of a racially discriminatory purpose.
68 William Bradford Reynolds, Objection Letter, December 3, 1984.
69 Bill Lann Lee, Objection Letter, January 11, 2000.
70 Putnam County and the Putnam School Board (2002); Dougherty County (1982); Glynn County (1982); Marion County School Board (2002); Webster County School Board (2000); the city of Albany (2002); the city of Macon (1994); and the Bibb County School Board (1982).

fairly clear that the November 1992 objection for the city of Griffin and the December 1983 objection for the city of College Park involved non-retrogressive redistricting plans, and the June 1993 objection for Randolph County probably should be counted as non-retrogressive as well. In addition, two redistricting objections for the Sumter County School Board in 1982 and 1983 applied the special rule of *Wilkes County v. United States* (for redistricting plans in which there is no legally enforceable benchmark).71 At a minimum, then, nine of the fourteen local redistricting objections would be unaffected by *Bossier II*. The four objections to initial districting plans probably would be precluded by *Bossier II*, although this is not entirely clear.72

3. Section 5 Objections to Annexations, Deannexations and Consolidations

There were five objections to municipal annexations since 1982, one objection to a municipal deannexation and two objections to consolidations of cities and counties.73 Several of these objections involved clear evidence of a racially discriminatory purpose.

The April 1987 objection for the city of Macon involved an area that admittedly had been denannexed in order to remove a particular legislator from the city's legislative delegation. Although the numeric decrease in the city's black population was small, the objection was based primarily upon the conclusion that race was a factor -- if not the predominant factor -- in the decision to remove the legislator together with the voters in the surrounding neighborhood.74 This is reminiscent of the landmark Fifteenth Amendment case, *Gomillion v. Lightfoot*.75

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71 It is uncertain whether *Wilkes County* remains good law following *Bossier II*, and so judgment should be withheld as to whether these plans should be classified as non-retrogressive.

72 The June 1993 objection for the Randolph County School Board's districting plan appears to have been based upon a discriminatory but non-retrogressive purpose; however, the objection letter does not specifically discuss this point. The objections in July 1984 for Thomas County and November 1982 and December 1984 for the city of McDonough each involved the transition from an at-large election system to a single-member district plan, which can be retrogressive (especially if the benchmark at-large system does not include anti-single-shot devices), since district boundaries can readily be gerrymandered. In Thomas County the proposed plan was adopted in response to a Section 2 lawsuit, which suggests that the change, which provided for two districts in which black voters were likely to elect candidates of their choice, was non-retrogressive. The mixed plans for the city of McDonough both provided for one district (among a total of six seats) in which black voters were likely to be able to elect candidates of their choice; the November 1982 and December 1984 objection letters do not include retrogression discussions, and so these plans probably also represented some improvement over the then-existing system.

73 These included objections to annexations for the city of Union city (Fulton County) (October 1992), the city of Augusta (Richmond County) (July 1987), the city of Elberton (Elbert County) (July 1991), the city of Forsyth (Monroe County) (December 1985) and the city of Adel (Cook County) (June 1982). There were also objections to a deannexation from the city of Macon (Bibb and Jones Counties) (April 1987); and to the proposed consolidations of the city of Brunswick with Glynn County (August 1982), and the city of Augusta with Richmond County (May 1989). Two annexation objections were later withdrawn, one after the presentation of new information (Union city), the other after a change in the city's method of election (Augusta). The consolidation of Augusta and Richmond Counties under a different election system was later precleared.

74 William Bradford Reynolds, Objection Letter, April 24, 1987

75 364 U.S. 339 (1960). In *Gomillion,* the Supreme Court invalidated the infamous 1957 racial gerrymander of Tuskegee, Alabama, by which the city had attempted to remove nearly all of its black voters by changing its boundaries "from a square to an uncouth twenty-eight-sided figure." Id. at 340.

The city of Augusta prompted repeated Section 5 objections and lawsuits.[76] The May 1989 objection to the consolidation of Augusta with Richmond County summarized the evidence of racial purpose in that effort:

> [T]here remains the question of purpose. In that regard, much of our information suggests that the prospect that the city, which has a black population majority, finally would have an election system that fairly reflected black voting strength was the primary, if not the sole, motivation for the proposed consolidation.[77]

A July 1987 objection to eight annexations to the city of Augusta had previously described the city as following a "racial quota policy":

> While the city's efforts to increase its size do not, per se, violate the Voting Rights Act, we are concerned regarding the annexation standards applied to black and white residential areas. In this regard, it appears that the city's present annexation policy centers on a racial quota system requiring that each time a black residential area is annexed into the city, a corresponding number of white residents must be annexed in order to avoid increasing the city's black population percentage.[78]

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76 The racial tension in Augusta was not always concealed. In *Who Shall Rule and Govern? Local Legislative Delegations, Racial Politics, and the Voting Rights Act*, Miller cites a public meeting in 1985 held by the Augusta legislative delegation to gauge the reaction to an annexation plan, at which a white county resident bluntly assessed the city's expansion: "The niggers are going to take over Augusta and they have done it." 102 Yale L.J. at 136, quoting Chris Peacock, "*Flared Tempers Mark Annexation Discussion*," Augusta Chronicle, October 18, 1985, at 1B.

77 James P. Turner, Objection Letter, May 30, 1989. The letter continues: "Just prior to the 1988 legislative session a biracial committee appointed to study the feasibility of consolidation recommended against uniting the city and county governments at that time. In spite of that recommendation and strong black opposition, a bill to effect consolidation nevertheless was vigorously pursued and eventually adopted. Further, analysis of the results of the November 8, 1988, referenda on the consolidation question serves to corroborate other information we have received which indicates that consolidation is a racial issue, with opinions sharply divided along racial lines reflecting that most white voters favored consolidation and most black voters oppose the merger of the two governments. . . . . Indeed, our information is that there have been considerations given in the past to what might be legitimate expansion of the city's boundaries through annexation but, as earlier explained to us in another context, that contemplated action does not support consolidation of the entire county-city nor has there been any other showing of the need for such a change. This is especially the case since the last study commission was negative, the present one has just started and the plan excludes predominantly white municipalities in the county. While it may be possible in the future to make a showing of present need as was done in Richmond, the fact that the proposal is not just to match city boundaries to urban growth (as in Richmond and Port Arthur), but to consolidate urban and rural areas in an historical context that suggests race has been a constant consideration will not make that an easy task."

78 William Bradford Reynolds, Objection Letter, July 27, 1987. The letter continues: "Our information indicates that several black communities adjacent to the city actively had sought annexation but that such annexation requests have been delayed or denied until a white residential area containing approximately the same number of people can be identified for annexation. We are aware of efforts by the city's Annexation Office to conduct door-to-door surveys in identifying areas for annexation and it appears that these efforts have been concentrated in white residential areas to balance the black residential areas that actively had sought annexation. The annexations now submitted for Section 5 review appear to have been effectuated pursuant to this racial quota policy." The objection was withdrawn in July 1988 after the city settled Section 2 litigation and adopted a new method of election.

4. Section 5 Objections to Changes in State Judicial Positions

Between 1989 and 1995, there were six objections to the creation of new state judicial positions and the realignment of certain judicial circuits.[79] Some of these objections were precleared in 1995 by the U.S. District Court for the District of Columbia and the remainder were withdrawn by DOJ. See *infra* for a discussion of these objections in the context of their associated litigation.

5. Other Section 5 Objections

Among the remaining Section 5 objections were four objections to proposed election schedules,[80] three objections to candidate educational requirements[81] and three objections to voter registration procedures.[82] There were two objections to consolidation referendum procedures,[83] two objections to polling place changes[84] and one objection to changing an elective office to an appointed office.[85] Once again, a number of these objections point directly or indirectly to evidence that state and local election officials acted for racially discriminatory reasons.

Two of the four objections to election schedules involved setting racially-charged referendum votes on dates that would likely produce low black voter turnout. One was the July 1988 objection to a proposal to conduct a mid-summer referendum on the highly controversial Augusta/Richmond County consolidation. The letter stated:

> Considering all the information presented to us, we have been made aware of no compelling justification for holding this election on the date chosen. On the other hand, the circumstances of which we are aware lend some merit to the concern, expressed by some, that the setting of the July 19 date was calculated to disadvantage the black constituency by timing the election so as to take advantage of conditions that would suppress the black voter turnout.[86]

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79 These included objections in June 1989, April 1990, June 1991, October 1991, September 16, 1994 and January 1995. Analytically, these objections could have been included with the previous section concerning method of election objections, because it was the at-large, numbered post and majority-vote features of those judgeships that prompted the objections. However, the history and judicial treatment of these changes is so distinct that they should be treated as a separate category.

80 These included objections for the state of Georgia (August 1982), Twiggs County (March 1993), the city of Millen (Jenkins County) (August 1993) and the city of Augusta (Richmond County) (July 1988).

81 These included objections for the Randolph County Board of Education (June 1993), the Early County Board of Education (October These included two objections for the state of Georgia (October 1994 and February 1992), and one for DeKalb County (March 1982).1993) and the Clay County Board of Education (October 1993).

82 These included two objections for the state of Georgia (October 1994 and February 1992), and one for DeKalb County (March 1982).

83 Both were for the city of Brunswick (Glynn County) (February 1984 and August 1982)

84 These included objections for Jenkins County (March 1995) and Johnson County (October 1992).

85 State of Georgia (March 1991).

86 William Bradford Reynolds, Objection Letter, July 15, 1988. DOJ later objected to the consolidation itself, as

The March 1993 objection for Twiggs County, which concerned a tax and bond referendum election, similarly stated that:

> We understand that the purpose for which the special tax would be usedB renovation of the County CourthouseBhas been an issue that has divided the county along racial lines, with white voters generally supporting the referendum and black voters generally opposing the referendum. . . . All of these circumstances suggest that the timing of the referendum and the procedures employed may have been chosen in order to diminish black voting potential, and the county has not provided persuasive evidence to the contrary.87

The August 1982 objection to the state's proposed special Congressional primary election schedule followed the decision in *Busbee v. Smith*; the state's failure (or refusal) to propose a nondiscriminatory schedule finally required an extraordinary order by the D.C. District Court.88

Voter registration continued to be a problem in DeKalb County where by 1980 black voter registration was rising significantly but still depressed relative to the white population. The county's attempt to discontinue neighborhood voter registration without obtaining Section 5 preclearance had prompted a successful Section 5 enforcement action in 1980, followed by a September 1980 Section 5 objection.89 A March 1982 objection blocked another DeKalb County proposal to restrict neighborhood voter registration to even-numbered years.90 A similar objection in February 1992 blocked state Election Board Rules that restricted satellite voter registration to only six months out of every two-year election cycle and reduced the number of

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discussed previously.

87 James P. Turner, Objection Letter, March 12, 1993.

88 See *Busbee v. Smith*, 549 F. Supp. at 519 *et seq*. "Although the state's failure to respond to repeated assertions by the Government and the Intervenors that its schedule would discriminate against black voters arguably is itself persuasive evidence that the schedule would have that effect, we need not rely on the state's silence alone. The reapportionment plan significantly altered the configuration and racial composition of the Fourth and Fifth Congressional Districts, and neither voters nor potential candidates knew where the lines would fall until the state secured section 5 approval on August 24. Under the state's schedule, the primary -- arguably the most important election in at least the Fifth District -- was to be held only three weeks later. This schedule not only would have prevented potential candidates from mounting effective campaigns, but more important, would have frustrated voters' attempts to prepare themselves to make a reasoned choice among the candidates. We concluded, therefore, that Georgia's defense of its proposed schedule fell far short of meeting the state's statutory burden of proof." (citations omitted). Id. at 521.

89 *DeKalb County League of Women Voters, Inc. v. DeKalb County, Georgia, Board of Registrations and Elections*, 494 F. Supp. 668 (N.D. Ga. 1980) (three-judge court); Drew S. Days, III, Objection Letter, September 11, 1980.

90 William Bradford Reynolds, Objection Letter, March 5, 1982. The letter noted that although black residents of the county remained under-registered in comparison to the white population, a substantial portion of significant new voter registration activity in the county had occurred in 1981 via neighborhood registration. These circumstances strongly suggest that the attempts to eliminate neighborhood registration were intended to slow the growth of black voter registration in the county. The March 1982 objection also blocked a new policy that would have required a written advance Section 5 preclearance determination before starting a neighborhood voter registration drive.

satellite registration locations that some counties would have to provide.91

In addition, a 1991 objection for the board of the Georgia Military College in Milledgeville blocked the state from changing the locally-elected board to a state-appointed body.92 In denying a request for reconsideration, DOJ identified circumstances that strongly implicated a racially discriminatory purpose:

> Our objection [] was based, in major part, upon concerns that this proposed change would deprive minority voters in the city of Milledgeville of an opportunity to elect candidates of their choice to a board which also governs the essentially local GMC preparatory school. These concerns were heightened by the controversy over low black enrollment at the preparatory school, its tuition charges, and the fact that the submitted change proposed immediately after the election of the first black members of the GMC Board of Trustees in its history.93

B. Section 5 Litigation

1. Section 5 Declaratory Judgment Actions

Section 5 provides that, as an alternative to making an administrative submission to the Attorney General, covered jurisdictions may institute a declaratory judgment action before the U.S. District Court for the District of Columbia ("D.C. District Court") in order to obtain judicial preclearance from a three-judge court. The D.C. District Court hears these cases de novo - without regard to any previous administrative determinations - and a right of direct appeal lies to the Supreme Court. There were eight declaratory judgment actions arising from Georgia from 1982 onward, three of which resulted in reported decisions.

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91 John R. Dunne, Objection Letter, February 11, 1992. An October 1994 objection to a portion of the state's legislation implementing the National Voter Registration Act, 42 U.S.C. 1973gg, on the grounds that it would violate Section 8(b)(2) of that Act, currently would be precluded on the basis of the Supreme Court decision in *Reno v. Bossier Parish School Board*, 520 U.S. 471 (1997).

92 William Bradford Reynolds, Objection Letter, March 11, 1991 (continued by John R. Dunne, October 15, 1991. A 1989 consent decree in the Section 2 case *Barnes v. Baugh*, No. 88-262-1-MAC (M.D. Ga. May 12, 1989), changed the system used to elect the board from at-large elections to a single-member district plan. The Supreme Court identified this type of change as potentially discriminatory as early as 1969. "In No. 26 an important county officer in certain counties was made appointive instead of elective. The power of a citizen's vote is affected by this amendment; after the change, he is prohibited from electing an officer formerly subject to the approval of the voters. Such a change could be made either with or without a discriminatory purpose or effect; however, the purpose of Section 5 was to submit such changes to scrutiny." *Allen v. State Board of Elections*, 393 U.S. 569-70.

93 John R. Dunne, Letter Continuing Objection, October 15, 1991. The letter went on to conclude that the state still had not met its burden of showing the absence of either discriminatory purpose or effect.

After DOJ objected to Georgia's 1981 Congressional redistricting plan, the state filed a declaratory judgment action, *Busbee v. Smith*, in the D.C. District Court. The United states conceded that the proposed plan was not retrogressive within the meaning of *Beer v. United* states, 425 U.S. 130 (1976), but opposed preclearance on the ground that the plan had a racially discriminatory purpose.94 The three-judge court agreed and denied preclearance, finding that the plan was intended to limit black voting strength in the Atlanta area to the greatest extent possible. *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982) (three-judge court); aff'd mem. 459 U.S. 1116 (1982).95

Busbee v. Smith was extremely important to the subsequent application of Section 5 by DOJ because its summary affirmance was controlling precedent for the D.C. District Court -- and therefore for the Department of Justice's administrative decisions -- on the critical question of whether a non-retrogressive redistricting plan may be denied Section 5 preclearance on the grounds that it had a racially discriminatory purpose.96 This holding was overruled in 2000 by the Supreme Court in the *Bossier II* case, which held that only a retrogressive purpose could support a Section 5 purpose objection.97

Following the 2000 Census, the state of Georgia instituted a declaratory judgment action, *Georgia v. Ashcroft*, seeking Section 5 judicial preclearance for its 2001 Congressional, state Senate and state House redistricting plans, none of which had been submitted for administrative preclearance.98 The Department of Justice did not contest preclearance of the Congressional and state House plans (although private intervenors were permitted to do so), but it argued that the Senate plan was retrogressive due to reductions in the black percentages of three Senate districts (in Savannah, Albany and Macon) that were not offset elsewhere in the plan. The three-judge court denied preclearance to the Senate plan and precleared the Congressional and state House plans.99 A 2002 interim plan for use during the pendency of the state's appeal was precleared by the three-judge court without objection by DOJ.

On appeal, the Supreme Court vacated the district court's judgment and remanded the case for further consideration, primarily based upon the Supreme Court's belief that Georgia had created a number of new "influence districts" that should be weighed against the retrogression in majority-black districts. *Georgia v. Ashcroft*, 539 U.S. 461 (2003). Ultimately the *Ashcroft* case

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94 This was the same position DOJ had taken in its February 1982 objection letter.

95 The district court's findings about the intent of the plan were discussed in Section II.1.b *supra*.

96 The question presented in Georgia's Jurisdictional statement in *Busbee* was "Whether a Congressional reapportionment plan that does not have the purpose of diminishing the existing level of black voting strength can be deemed to have the purpose of denying or abridging the right to vote on account of race within the meaning of Section 5 of the Voting Rights Act." J.S. at i, *Busbee v. Smith*, 459 U.S. 1166 (1983).

97 *Reno v. Bossier Parish School Board*, 528 U.S. 320 (2000). Somewhat surprisingly, the Supreme Court did not discuss the fact that it was overruling *Busbee*.

98 This was unprecedented, and meant that unlike most declaratory judgments actions --- which are filed only after there already has been a Section 5 objection -- DOJ had no background information on the three plans when the case was filed.

99 *Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (2002). (Judge Oberdorfer dissented with respect to the Senate plan).

was dismissed on remand following the decision of a three-judge federal court in Georgia, which found the population deviations in the 2002 interim plan (which were nearly identical to those in the 2001 plan) to be unconstitutional in a one-person, one-vote case.[100]

Due to the extensive attention that the *Ashcroft* case has received in its own right, this report will not go into its broader implications here. It should be emphasized, however, that the Supreme Court did not reverse any of the district court's findings of racially polarized voting (in particular, the finding that voting was more polarized in local elections than in the statewide elections on which the state relied) or retrogression; indeed, the gist of the Supreme Court decision was that the state would have to produce evidence that it had compensated for the retrogression.[101]

A 1995 Section 5 declaratory judgment decision, which concerned numerous changes to Georgia's elective judicial system, ended a sequence of private litigation in Georgia and Section 5 objections by the attorney general. *Georgia v. Reno*, 881 F. Supp. 7 (D.D.C. 1995). In July 1988, private plaintiffs filed a Section 5 enforcement action (also raising Section 2 claims) with respect to legislation involving seventy-seven new judgeships and five judicial circuits enacted after November 1, 1964 but never submitted for Section 5 review.[102] This action prompted the state to make Section 5 submissions for most of the unprecleared changes. In August 1988, DOJ precleared twenty-nine new judgeships and three new circuits but requested more information regarding the remaining changes, to which the state did not fully respond. In June 1989, DOJ objected to forty-eight new judgeships and the redistricting of two judicial circuits.[103] In December 1989, the three-judge court held that the unprecleared changes were covered under Section 5 and considered what relief was required, settling on an order that allowed sitting judges to hold over in unprecleared seats but blocked elections for seats that had not been precleared.[104] *Georgia v. Reno* was filed in August 1990, seeking judicial preclearance for the

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100 *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004). The *Larios* court ultimately imposed a court-drawn remedy for both the state House and state Senate plans. *Larios v. Cox*, 314 F. Supp. 2d 1357 (N.D. Ga. 2004)

101 "Like the dissent, we accept the District Court's findings that the reductions in black voting age population in proposed Districts 2, 12, and 26 to just over 50% make it marginally less likely that minority voters can elect a candidate of their choice in those districts, although we note that Georgia introduced evidence showing that approximately one-third of white voters would support a black candidate in those districts, and that the United states' own expert admitted that the results of statewide elections in Georgia show that 'there would be a 'very good chance' that ... African American candidates would win election in the reconstituted districts.'" *Georgia v. Ashcroft*, 539 U.S. at 486 (internal citation omitted); "The dissent's analysis presumes that we are deciding that Georgia's Senate plan is not retrogressive. To the contrary, we hold only that the District Court did not engage in the correct retrogression analysis because it focused too heavily on the ability of the minority group to elect a candidate of its choice in the majority-minority districts. While the District Court engaged in a thorough analysis of the issue, we must remand the case for the District Court to examine the facts using the standard that we announce today. We leave it for the District Court to determine whether Georgia has indeed met its burden of proof." *id* at 490 (internal citations omitted).

102 *Brooks v. State Board of Elections*, No. CV288-146 (S.D. Ga.).

103 James P. Turner, Objection Letter, June 16, 1989 (withdrawn in part and continued in part by John R. Dunne, April 25, 1990).

104 *Brooks v. State Board of Elections*, 775 F. Supp. 1470 (S.D. Ga. 1989). In the course of its decision, the three-judge court found that the addition of new seats within Georgia's judicial system had the potential to discriminate against black voters in violation of Section 5 due to the use of numbered post, at-large elections by majority vote:

creation of sixty-two superior court judgeships; the case appeared at one point to be mooted but ultimately proceeded to trial in 1994.105 In 1995, the D.C. District Court held that the changes before it were entitled to Section 5 preclearance.106 Following the D.C. District Court's decision, Georgia filed two additional declaratory judgment actions in June and July of 1995, both of which were dismissed after administrative preclearance of the changes at issue in September and December 1995, respectively.107 The objections to those judicial changes that were not precleared by the Court were withdrawn by DOJ.108

The three other Section 5 declaratory judgment actions filed by Georgia jurisdictions from 1982 onward were dismissed. A case filed in January 1990 by the city of Augusta was dismissed as moot in August 1992.109 A suit filed in October 1983 by the Baldwin County School District was dismissed in September 1984, after a Section 5 administrative submission was precleared to replace the challenged change.110 A February 1986 suit by the Brunswick-Glynn County Charter Commission was dismissed in July 1986 for lack of standing.111

> We think that, given Georgia's majority-vote, designated-post, and circuit-wide election rules, the creation of new judgeships does have the potential for discrimination. Where more than one judicial post exists in a given circuit, these election rules require a candidate to run for a specific seat. Georgia law thus precludes the alternative system where all candidates compete against each other and where judgeships are awarded to the highest vote-getters out of the field of candidates.

775 F. Supp. at 1478. District Judge Dudley Bowen dissented from this aspect of the majority opinion. *Id.* at 1486 *et seq.*

105 On August 30, 1993, Acting Assistant Attorney General James P. Turner had withdrawn the judicial objections interposed to date, subject to the approval of a consent decree in *Brooks v. Georgia State Board of Elections*, No. CV-288146 (S.D. Ga.); the consent decree provided, among other changes, for the appointment of a number of minority judges. The consent decree was rejected by the court, however, and so the objections remained in effect for the time being.

106 Judge Norma Johnson dissented from the majority decision in *Georgia v. Reno*, which was not appealed. The D.C. District Court adopted a narrow scope of review of the new judicial seats, summarily dismissing DOJ's argument that there was a racially discriminatory purpose in the state's choice to reincorporate the numbered post, at-large and majority vote features in the new positions; this echoed the dissent of Judge Bowen and rejected the majority's reasoning in the *Brooks* case. The D.C. District Court appears to have fashioned an exception for judicial changes to city *of Lockhart v. United States*, 460 U.S. 125, 131-32 (1983) (holding that when new seats are added to an electoral system the entire system must be examined). The D.C. District Court also held that Congress did not intend a violation of Section 2 of the Voting Rights Act to justify the denial of Section 5 preclearance; this interpretation later was adopted by the Supreme Court in *Reno v. Bossier Parish School Board,* 520 U.S. 471 (1997) ("*Bossier I*").

107 *Georgia v. Reno*, No. 95-1046 (D.D.C.) (ten additional judgeships); *Georgia v. Reno*, No. 95-1379 (D.D.C.) (twenty-nine additional judgeships).

108 In *Haith v. Martin*, 618 F. Supp. 410 (D.N.C. 1985), aff'd mem., 477 U.S. 901 (1986), which held that judicial changes require Section 5 preclearance, the district court noted that DOJ at one time had taken the position that they did not. The application of vote dilution principles to judicial elections at one point appeared to be relatively straightforward, see *Houston Lawyers' Association v. Texas Attorney General*, 501 U.S. 419 (1991), but the Supreme Court later denied *cert.* in several court of appeals decisions that all but overruled *Houston Lawyers*.

109 *City Council of Augusta v. United* states, No. 90-0171 (D.D.C.).

110 *Baldwin County School District v. United States*, No. 83-3240 (D.D.C.).

111 *Brunswick-Glynn County Charter Commission v. United States*, No. 86-0309 (D.D.C.).

2. Section 5 Enforcement Actions

Section 5 enforcement actions have continued to play an important role in ensuring that Georgia and its subjurisdictions comply with the preclearance requirements of Section 5.112 For its February 2006 report, the staff of the National Commission on the Voting Rights Act identified eighteen successful Section 5 enforcement actions in Georgia after 1982.113 These included three cases against the state of Georgia: *Hill v. Miller* (1992); *Brooks v. Georgia Board of Elections* (1991); and *Project Vote! v. Ledbetter* (1986).114 There were successful Section 5 enforcement actions against one county (*Presley v. Coffee County* (1994),115 three cities116 and eleven county boards of education.117 In addition, there was a successful private Section 5 enforcement action against the Bibb County School Board.118 While some of these actions resulted in the defendant simply abandoning the unprecleared changes, the Brooks, Woodward and Chatman cases led to Section 5 objections once the changes had been submitted.

II. Litigation Under Section 2 of the Voting Rights Act

The preceding discussion described how Section 5 of the Voting Rights Act prevented the use of new discriminatory voting practices and procedures at all levels of Georgia government, and in varied aspects of the election system, with perhaps the greatest impact at the local level. Section

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112 Either the attorney general or residents of the covered jurisdictions may bring these actions against covered jurisdictions that have implemented voting changes without having first obtained Section 5 preclearance. These cases are heard by three-judge courts in the covered states; however, the jurisdiction of such courts is limited to whether the challenged practice is a covered change within the meaning of Section 5, whether Section 5 preclearance has been obtained, and if not, what remedy is appropriate. The presumptive remedy is to issue an injunction against future use of the unprecleared practice and to make an equitable determination as to further relief. Many courts delay a final remedy while allowing the defendant jurisdiction an opportunity to obtain Section 5 preclearance, either from the D.C. District Court or the attorney general.

113 *See*, Table 4, *Protecting Minority Voters, The Voting Rights Act at Work 1982-2005*, National Commission on the Voting Rights Act, Lawyers' Committee for Civil Rights Under Law, 2006. I have relied upon the list of those cases provided by the staff of the Commission unless otherwise noted. A Section 5 enforcement action is counted as successful if unprecleared changes are submitted for preclearance or abandoned. Additional details about many of these cases are provided in McDonald and Levitas, *The Case for Extending and Amending the Voting Rights Act. Voting Rights Litigation, 1982-2006: A Report of the Voting Rights Project of the American Civil Liberties Union*, http://www.votingrights.org (March 2006).

114 The *Brooks* case, which involved the implementation of new, unprecleared judicial seats, is discussed *infra*.

115 The *Presley* case also included successful Section 2 claims discussed in Section III *infra*.

116 These included the city of Butler (Taylor County), *Chatman v. Spillers* (1996); the city of Keysville (Burke County), *Gresham v. Harris* (1990); and the city of Lumber City (Telfair County), *Woodward v. Mayor, Lumber* city (1990). One Section 5 objection followed from the *Chatman* case, and two Section 5 objections followed from the *Woodward* case.

117 These included the boards of education for Glynn County (*Lyde v. Glynn County Board of Elections* ; 2005); Coffee County (*Presley v. Coffee County;* 1994); Toombs County (*NAACP v. Culpepper;* 1987); Screven County (*Culver v. Krulic;* 1984); Baldwin County (*Boddy v. Hall;* 1983); Pike County (*Hughley v. Adams;* 1983); Wayne County (*Keebler v. Burch*); Marion County (*Marion County VEP v. Hicks*); Meriwether County (*Meriwether County VEP v. Hicks*); Taylor County (*Carter v. Taylor County Board of Education*); and Treutlen County, *Smith v.* Gillis).

118 *Lucas v. Townsend*, 486 U.S. 1301 (1988) (not included in National Commission on the Voting Rights Act Report).

5 operates in parallel, however, with Section 2 of the Voting Rights Act, as amended in 1982. When a jurisdiction changes its election system in response to a Section 2 court order or to avoid Section 2 liability, Section 5 helps ensure that succeeding redistricting plans will not water down the remedy. Just as most Section 5 objections in Georgia have been at the local level, most Section 2 cases have been brought at the local level.

Prior to the 1982 Amendments to Section 2 of the Voting Rights Act, challenges to election systems that diluted black voting strength were brought under the Constitution and the original, coextensive provision of Section 2 enacted in 1965. In *Rogers v. Lodge*, 458 U.S. 613 (1982), the Supreme Court found that the egregious pattern of discrimination against black citizens in Burke County was sufficient to infer that the at-large system was being maintained for an unconstitutional, racially discriminatory purpose.

The Section 2 vote dilution cases brought following the 1982 Amendments against Georgia counties, school boards, and cities using at-large election systems are remarkable for their number and their geographic scope. Private litigants by far played the greatest role in bringing these challenges, which had a tremendous effect upon counties and cities in changing their method of election.

The February 2006 report by the National Commission on the Voting Rights Act identified numerous successful Section 2 enforcement actions in Georgia after 1982.119 These cases involve reported and unreported Section 2 cases resolved favorably to minority voters. The majority of these cases were resolved by settlements, which either could involve include a formal consent decree, or an informal agreement to dismiss the case following the adoption of remedial legislation (and Section 5 preclearance).

Eleven counties gave rise to multiple Section 2 cases (for a total of twenty-four cases). In Coffee County and Jenkins County, Section 2 cases resulted in changes to the county commissions, the county school boards and one city each.120 In nine other counties (Baldwin, Butts, Charlton, Greene, Mitchell, Taylor, Telfair, Wilcox and Wilkes), Section 2 cases resulted in changes to two different jurisdictions' methods of election within each county.121 Section 2 suits have

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119 *See*, Table 5, *Protecting Minority Voters, The Voting Rights Act at Work 1982-2005*, National Commission on the Voting Rights Act, Lawyers' Committee for Civil Rights Under Law, 2006. I have relied upon the list of those cases provided by the staff of the Commission unless otherwise noted. The year of the adoption of the new election system, as opposed to year of filing, is provided in the footnotes, unless otherwise noted. Additional details about many of these cases are provided in McDonald and Levitas, *The Case for Extending and Amending the Voting Rights Act. Voting Rights Litigation, 1982-2006: A Report of the Voting Rights Project of the American Civil Liberties Union*, http://www.votingrights.org (March 2006).

120 A Section 2 suit in Coffee County (*Presley v. Coffee County*) resulted in the adoption of single-member districts in 1994 for the city of Douglas, the Coffee County Commission and the Coffee County Board of Education. In Jenkins County a suit (*Green v. Bragg*) resulted in the 1993 adoption of mixed multi-member and single-member district plans for the city of Millen and the Jenkins County Commission and a single-member district plan for the Jenkins County School District.

121 In Baldwin County cases against the Baldwin County Commission (*Boddy v. Hall*) and the city of Milledgeville (*NAACP v. City of Milledgeville*) resulted in a change to single-member districts in 1983. In Butts County cases against the county commission (*Brown v. Bailey*) and the city of Jackson (*Brown v. Bailey*) resulted in a change to

resulted in the adoption of single-member plans for jurisdictions in twenty-three other counties, including twelve county commissions,[122] ten cities[123] and one county board of education.[124] Section 2 suits have also resulted in the adoption of mixed plans (including some single-member districts) for jurisdictions in sixteen additional counties, including five county commissions,[125] two county school boards[126] and nine cities.[127] In addition, Section 2 suits have resulted in the

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single-member districts in 1986. In Charlton County a suit against the county commission (*Smith v. Carter*) resulted in a change to single-member districts in 1986, and a suit against the city of Folkston (*Stafford v. Mayor and Council of Folkston*) resulted in a change to multi-member districts in 1997. In Greene County a Section 2 suit (*Bacon v. Higdon*) resulted in the adoption in 1986 of mixed plans (with single-member districts and at-large chairs) for the county commission and the county board of education. In Mitchell County a suit against the city of Camilla (*Brown v. City of Camilla)* led to the adoption of a single-member district system in 1985, and a suit against the city of Pelham (*McCoy v. Adams)* led to the adoption of a multi-member district system in 1986. In Taylor County a 1986 suit against the city of Butler (*Chatman v. Spillers*) was resolved in 1996 with the adoption of a plan using two multi-member districts and a mayor, and a suit against the Taylor County Commission (*Carter v. Jarrell*) resulted in the adoption of a single-member district system in 1985. In Telfair County a 1987 suit (*Woodard v. Mayor and Council of Lumber City*) resulted in the 1990 adoption of a mixed plan with two multi-member districts and one at-large seat for the city of Lumber city, and another 1987 suit (*Clark v. Telfair County)* resulted in the 1988 adoption of a county commission plan with five single-member districts. In Wilcox County Section 2 suits resulted in the adoption of single-member district systems in 1986 for the city of Rochelle (*Dantley v. Sutton*) and in 1987 for the Wilcox County Commission (*Teague v. Wilcox County Georgia).* In Wilkes County Section 2 suits led to the 1992 adoption of a mixed plan with two multi-member districts for the city of Washington (*Avery v. Mayor and Council of* city *of Washington)*, and the 1986 adoption of a mixed plan using four single-member districts for the Wilkes County Board of Education (*United State v. Wilkes County Board of Education).*

122 These included the county commissions for Camden County (*Baker v. Gray*; 1985); Cook County (*Cook County VEP v. Walker*; 1985); Crawford County (*Raines v. Hutto;* 1985); Effingham County (*LOVE v. Conaway*; 1984); Evans County (*Concerned Citizens for Better Gov't v. DeLoach;* 1984); Hart County (*Mayfield v. Crittendon;* 1989): Long County (*Glover v. Long County*; 1987); Macon County (*Macon County VEP v. Bentley;* 1985); Marion County (*United States v. Marion County;* 2000); Screven County *(Culver v. Krulic; 1985*); Tallnall County (*Carter v. Tootle;* 1984); and Wheeler County (*Howard v. Wheeler County;* 1993).

123 These included the governing bodies for the city of Cochran (Bleckley County) (*Hall v. Holder*; 1986); the city of Eastman (Dodge County) (*Brown v. McGriff;* 1988); the city of Wrightsville (Johnson County) (*Willson v. Powell;* 1983); the city of Valdosta (Lowndes County) (*United* states *v. Lowndes County;* 1984); the city of Colquitt (Miller County) (*Merritt v.* city *of Colquitt*; 2000); the city of Madison (Morgan County) (*Edwards v. Morgan County Board of Commissioners;* 1992); the city of Griffin (Spaulding County) (*Reid v. Martin*); 1986); the city of Lyons (Toombs County) (*Maxwell v. Moore;* 1986); the city of Soperton (Treutlen County) (*Smith v. Gillis;* 1986); and the city of Jesup (Wayne County) (*Freeze v. Jesup;* 1986).

124 Ben Hill County School District (*Vereen v. Ben Hill County*; 1993) (year of adoption shown in parentheses).

125 These included mixed plans with single-member districts and at least one at-large seat for five county commissions: Jefferson County (*Tomlin v. Jefferson County Board of Commissioners;* 1983), Lamar County (*Strickland v. Lamar County;* 1987), Tift County (*Mims v. Tift County*; 1984), Monroe County (*Simmons v. Monroe County Commission*; 1987), and Webster County (*Nealy v. Webster County;* 1990).

126 These included mixed plans with single-member districts and at least one at-large seat for the governing bodies of seven cities: the city of Carrolton (Carroll County) (*Carrollton Branch NAACP v. Stallings;* 1985); the city of Newnan (Coweta County) (*Rush v. Norman;* 1984); the city of Cordele (Crisp County) (*Dent v. Culpepper*; 1988); the city of Decatur (DeKalb County) (*Thrower v. City of Decatur*; 1984), the city of Warner Robins (Houston County) (*Green v.* city *of Warner Robins*; 1993), the city of Warrenton (Warren County) (*NAACP v. Haywood;* 1989), and the city of Waycross (Ware County) (*Ware County VEP v. Parks;* 1985). Mixed plans with single-member districts and multi-member districts were also adopted for the governing bodies of two other cities: the city of Douglasville (Douglas County) (*Simpson v. Douglasville;* 1999); and the city of Monroe (Walton County) (*United* states *v. City of Monroe;* 1995).

adoption of multi-member district plans for cities in five additional counties.128

However, two reported cases arising from Georgia in the 1990s took a limited view of Section 2. In *Holder v. Hall,* 512 U.S. 874 (1994), the Supreme Court held that Section 2 could not be used to challenge the single-commissioner form of government used in Bleckley County (although the plaintiffs had been successful in persuading the lower courts of a Section 2 violation). In *Brooks v. Miller*, 158 F.3d 1230 (11th Cir. 1998), the 11th Circuit affirmed a district court's finding that the state's 1964 majority vote requirement did not violate Section 2 or the Constitution. The court took a very narrow view of the legislature's intent (discounting evidence of racially discriminatory purpose in similar legislation proposed at about the same time), and focused on the present-day effect of the state majority vote requirement (giving the same weight to elections in majority-black districts that had been drawn to remedy or avoid Section 2 violations as elections in majority-white at-large jurisdictions).

The Department of Justice has also brought five cases charging that the defendant counties engaged in a practice of hiring poll workers that violated Section 2, each of which was settled.129

Section 2 cases since 1982 have played a major role in changing the political landscape -- especially at the local level -- across Georgia. They also bear out the need for Section 5. A Section 2 claim against an at-large system (or redistricting plan) must meet the three preconditions set out in *Thornburg v. Gingles*: geographic compactness, cohesive minority voting and racially polarized voting that usually results in the defeat of minority voters' candidate(s) of choice.130 While a jurisdiction may have many reasons to settle a lawsuit, it is likely that many, if not most, of the jurisdictions that settled these lawsuits did so because they concluded that they were vulnerable to a Section 2 claim, including a finding of racially polarized voting. The presence of racially polarized voting, in turn, is important both as a predicate to many Section 5 objections and as an indicator of potential racial discrimination in the political process.

III. Other Significant Litigation

In addition to the litigation and Section 5 objections discussed above, there have been several

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127 These included mixed plans with single-member districts and at least one at-large seat for the McIntosh County School District (*Williams v. McIntosh County;* 1997); and the Sumter County School District (*Edge v. Sumter County School District*; 1986).

128 These included the city of statesboro (Bulloch County) (*Love v. Dea;* 1983); the city of Moultrie (Colquit County) (*Cross v. Baxter;* 1985); the city of Augusta (Richmond County) (*U.S. v.* city *of Augusta*; 1988) (mixed multi-member districts); the city of Donaldsonville (Seminole County) (*Moore v. Shingler;* 1985); and the city of LaGrange (Troup County) (*Cofield v. City of LaGrange*; 1997).

129 *United States v. Johnson County* (1993); *United* states *v. Randolph County (*1993); *United States v. Talbot County (*1993); *United States v. Screven County* (1992); and *United State v. Brooks County* (1990) (year of filing shown in parentheses).

130 *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

voting rights lawsuits since 1982 brought under the Constitution that must be mentioned.

A. Photo I.D. Litigation

One of the most contentious and extraordinary pieces of legislation affecting the right to vote in Georgia in recent times did not result in a Section 5 objection. Act No. 53 (2005) amended the state's election code to impose a photographic identification ("Photo I.D.") requirement for all persons voting in person in the state of Georgia. The state previously had required some form of identification for voting in person but the new legislation significantly narrowed the types of identification that could be used. The deliberations regarding this legislation were extraordinarily contentious; the black legislative caucus was nearly unanimous in opposing the legislation. The legislation was precleared by DOJ on August 26, 2005.131

Private plaintiffs, including the Georgia Legislative Black Caucus, filed suit in the Northern District of Georgia alleging several constitutional and statutory claims.132 On October 18, 2005, the district court issued an order and preliminary injunction against the use of Act No. 53, finding that the plaintiffs were likely to prevail both on their claim that the photo I.D. requirement lacked a rational basis, as well as their claim that the photo I.D. requirement constituted an unconstitutional poll tax. *Common Cause of Georgia v. Billups*, No. 4:05-CV-0201-HLM (N.D. Ga. Oct. 18, 2005). The state's tenuous justification for this bill weighed heavily in the court's decision.133 The state immediately appealed the district court's injunction

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131 The Department of Justice's administrative review of the Georgia photo I.D. requirement was unusual in several regards. An internal recommendation memorandum prepared by the Voting Section staff was published in *The Washington Post* after the submission had been precleared, providing an unprecedented look at the Department's Section 5 review of a major and controversial submission. The submission was precleared by the chief of the Voting Section on the same day as new factual information had been received by the Department of Justice, making it doubtful that the Section staff had a reasonable opportunity to review that information. From newspaper accounts. it appears that the decision to preclear the submission had overridden the recommendation of the Section's deputy chief and a senior trial attorney who had prepared the recommendation, and that this recommendation was not forwarded to the Civil Rights Division's political appointees, which typically would occur under these circumstances, even if the Section chief believed that preclearance was the appropriate outcome.

132 These claims did not involve the substantive standards of Section 5. Under current law, there is no private right of action available to private plaintiffs to challenge Section 5 administrative determinations, either in the District Court for the District of Columbia, where covered jurisdictions can go to obtain judicial preclearance of voting changes, or in the district courts of the respective states. See *Morris v. Gressette*, 432 U.S. 491 (1977). The circumstances present in this submission suggest a need for Congress to consider making such a private right of action available.

133 The district court concluded as follows: "Finally, the Court must examine the extent to which the state's interest in preventing voter fraud makes it necessary to burden the right to vote. As discussed above, the photo ID requirement is not narrowly tailored to the state's proffered interest of preventing voter fraud, and likely is not rationally based on that interest. Secretary of state Cox testified that her office has not received even one complaint of in-person voter fraud over the past eight years and that the possibility of someone voting under the name of a deceased person has been addressed by her office's monthly removal of recently deceased persons from the voter rolls. Further, the photo ID requirement does absolutely nothing to preclude or reduce the possibility for the particular types of voting fraud that are indicated by the evidence: voter fraud in absentee voting, and fraudulent voter registrations. The state imposes no photo ID requirement or absolute identification requirement for registering to vote, and has removed the conditions for obtaining an absentee ballot imposed by the previous law. In short, HB 244 opened the door wide to fraudulent voting via absentee ballots. Under those circumstances the state defendants'

to the 11th Circuit, which denied a stay, meaning that the injunction was in effect for the state's 2005 municipal elections. The state has adopted new legislation to replace Act 53 which, as of March 21, 2006, had been submitted for Section 5 preclearance; the Common Cause plaintiffs have moved to amend their pleadings to challenge the new legislation while awaiting the preclearance decision.

B. Shaw Litigation

Beginning with the Supreme Court's decision in *Shaw v. Reno*, 509 U.S. 630 (1993), the federal courts shifted toward a more limited and skeptical view of what steps could be taken to improve minority voters' electoral prospects. One of the signal examples of this trend arose in Georgia, as a constitutional challenge to the majority-black Eleventh Congressional District. The three-judge district court held that the Eleventh District was an unconstitutional racial gerrymander; on appeal, the Supreme Court affirmed, holding that the district subordinated traditional districting principles to racial considerations that were not required by the Voting Right Act. *Miller v. Johnson*, 515 U.S. 900 (1995). In arriving at this conclusion, the majority of the sharply-divided Court criticized DOJ for its Section 5 objections that had influenced the adoption of the plan.134 The *Miller* plaintiffs then challenged the majority-black Second Congressional district, which also was found unconstitutional, and the district court imposed a remedial redistricting plan after the legislature failed to enact a new plan; this was affirmed by the Supreme Court in *Abrams v. Johnson*, 521 U.S. 74 (1997). The *Miller* plaintiffs also challenged the state Senate and state House redistricting plans as racial gerrymanders; after the legislature redrew the two plans, DOJ objected to both plans in March 1996 but withdrew the objections in October 1996 after a settlement of the case.135 In May 1996, the district court had imposed interim remedial

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proffered interest simply does not justify the severe burden that the photo ID requirement places on the right to vote for those reasons the Court concludes that the photo ID requirement fails even the Burdick test.
* * *
In reaching this conclusion, the Court observes that it has great respect for the Georgia Legislature. The court, however, simply has more respect for the Constitution."

134 DOJ did not appeal the *Miller* district court's factual findings about its so-called maximization policy. It is beyond the scope of this report to address that issue with respect to the *Miller* litigation, but the preceding review of all redistricting objections in Georgia during the 1990s demonstrates that there is little empirical basis -- apart from the findings in the *Miller* cases -- to support the conclusion that a "maximization policy" was enforced there. There were only three local Georgia redistricting objections during all of the 1990s; had there been a "maximization policy" in effect one would expect to have seen many more objections given the number of redistrictings. Of those three objections, one was clearly retrogressive in nature, and the other two involved gerrymandered district boundaries intended to limit black voting strength B which the Supreme Court had summarily affirmed as violating Section 5 in *Busbee v. Smith;* the *Busbee* district court specifically had cautioned that "[t]he Court's decision does not require the state of Georgia to maximize minority voting strength in the Atlanta area. The state is free to draw the districts pursuant to whatever criteria it deems appropriate so long as the effect is not racially discriminatory and so long as racially discriminatory purpose is absent from the process." 549 F. Supp. at 70 (citations omitted). Only if one stretches the term to include any objection to a non-retrogressive redistricting plan could these objections be considered evidence of maximization; and even so two cases hardly comprise a policy.

135 Isabelle Katz Pinzler, Objection Letter, March 15, 1996; withdrawn October 15, 1996. While recognizing that changes would be required in order to comply with the standards set out by the Supreme Court, the letter concluded that the state had reduced minority voting strength beyond what was necessary to remedy the constitutional violations.

redistricting plans largely based upon the state's 1995 plans; again, the district court was critical of DOJ's 1992 Section 5 objections.[136]

Although *Shaw* and *Miller* occasioned substantial scholarly comment and concern as to how they would affect the post-2000 redistricting cycle, in retrospect, it appears that their effect was far less than expected, at least in terms of litigation raising Shaw challenges to new redistricting plans.[137]

IV. Federal Observer Coverage

Under Sections 6 and 8 of the Voting Rights Act, the Department of Justice can dispatch federal observers to monitor voting in the polls in Section 5 covered jurisdictions. Data from the Department of Justice show a significantly increased level of federal observer activity in Georgia after 1982, both in the number of elections at which observers were present as well as the counties to which observers were sent.[138]

Federal observers were present for a total of 87 elections in twenty-eight different Georgia counties since 1965, among which 65.5 percent occurred from 1982 onward. Eleven of the twenty-eight counties that had elections covered by federal observers post-1982 had not previously been covered, nine had elections covered both before and after 1982 and eight had elections covered only before 1982.

Table 2: Elections With Federal Observers by County

County	Pre-1982	1982-Forward	County	Pre-1982	1982-Forward
Baker	2	2	Mitchell	1	0
Baldwin	0	2	Peach	1	1
Brooks	0	3	Pike	0	2
Bulloch	1	0	Randolph	0	4
Burke	0	5	Screven	1	0
Calhoun	1	2	Stewart	2	2
Chattahoochee	0	1	Sumter	1	1
Early	1	0	Talbot	0	4

136 *Miller v. Johnson*, 929 F.Supp. 1529 (1996).

137 The 2002 objection to the Putnam County redistricting plan followed a *Shaw* suit in which the county's 1992 redistricting plan was found unconstitutional, requiring the county's 1982 plan to be used as the Section 5 benchmark. See *Clark v. Putnam County*, 293 F.3d 1261 (11th Cir. 2002); *Abrams v. Johnson*, 521 U.S. 74, 96-98 (1997).

138 Each county/election combination for which federal observers were present is counted as a separate election. For example, observers in four counties in a single November general election would be counted as four elections. The source for this information is the Geographic Public Listing of federal observer coverage maintained by the Voting Section of the Department of Justice.

Hancock	6	0	Taliferro	4	4
Jefferson	0	2	Telfair	1	1
Johnson	1	7	Terrell	4	0
Lee	1	0	Tift	1	0
McIntosh	0	3	Twiggs	0	6
Meriwether	1	3	Worth	0	2
			Total	30	57

V. Language Minority Issues

Because the 2000 Census showed that the total Latino population in Georgia had increased substantially since 1990, there was some expectation that one or more Georgia counties would be covered for Spanish-language under the 2002 determinations for Section 203 of the Voting Rights Act. As shown in Appendix 5, which provides breakdowns of the reported statewide Section 203 determination data and selected county-level data, neither the state nor any of its counties met the triggers for Section 203 coverage.139

At the statewide level, the Census Bureau reported data for Latinos, total Asian Americans and twelve single-language Asian groups, and total American Indians and eleven single-language Indian groups.140 See Appendix 5-1. No single language-minority LEP group made up more than 0.5 percent of the state's voting age citizens, well short of triggering any statewide coverage.

Appendix 5-2 provides data for those counties in which more than one percent of the voting age population were members of a single language minority group (one-fifth of the 5 percent trigger), and/or contained more than 2,000 LEP voting age citizens of a single language minority group (one-fifth of the 10,000 trigger). It was only the Latino population that met these criteria in any of the state's counties. While some of the counties had appreciable numbers or concentrations of Latino LEP voting age citizens, none could be said to have "just missed" being covered. The recent dynamic population growth patterns in Georgia do suggest, however, that counties such as Gwinnett and Fulton are likely to be covered in the next set of Section 203 determinations, if the current criteria are extended.

Of course, there is more than just the issue of Section 203 coverage. There presently are two

139 Section 203, as amended in 1982, 42 U.S.C. Sec. 1973aa-1a, contains three "triggers" for coverage. First, a state (or a political subdivision) will be covered if more than five percent of its voting age citizens of a single language minority group do not speak English well enough to participate effectively in the electoral process (and are thus limited English-proficient, or "LEP"), and have an illiteracy rate greater than the national average. For purposes of the Section 203 determinations, persons who speak English less than very well are considered LEP, and illiteracy is defined as the failure to complete the fifth grade. Second, a political subdivision will be covered if it contains more than 10,000 LEP voting age citizens of a single language minority group who have an illiteracy rate greater than the national average. Third, a political subdivision will be covered if it contains all or part of an Indian reservation with five percent or greater LEP voting age citizens of a single language minority group who have an illiteracy rate greater than the national average.

140 Other single-language groups had insufficient numbers, even statewide, to meet the Bureau's criteria for disclosure avoidance, leading to those data being suppressed in the public data.

Hispanic members of the Georgia House and one Hispanic Senator.141 They were elected from districts in which the Latino share of the voter registration is below five percent, which means they were elected with very substantial support from non-Hispanic voters.

Nonetheless, Congress has reason to find that discrimination against Latinos in the voting process is a tangible threat. At an August 2, 2005 hearing in Americus, Georgia, the National Commission heard testimony from Tisha R. Tallman, the Southeast Regional Counsel for the Mexican American Legal Defense and Educational Fund. Ms. Tallman testified that the eligibility of Spanish-surnamed registered voters had been mass-challenged in Long County prior to the 2004 primary election and in Atkinson County prior to the 2004 general election.142

While the fact that such challenges occurred is grounds for concern in its own right, it is the reaction of election officials to the challenge that implicates the need for federal intervention. It was Ms. Tallman's testimony that, despite her meetings with county registrars and state officials, nothing had been done to provide guidance to counties about how to handle this type of mass challenge or to prevent this challenge procedure from being used to harass and intimidate other eligible voters in the future.

On February 8, 2006, the Department of Justice filed suit under Section 2 of the Voting Rights against Long County with regard to the mass challenges in the 2004 primary election.143 A consent decree was entered on February 10, 2006.144 This appears to be the first case brought under Section 2 with regard to Latinos in Georgia and is further evidence that Georgia has not outgrown the need for heightened federal scrutiny of its electoral process.

CONCLUSION

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141 They are Rep. Pedro Marin (House District 96); Rep. David Casas (House District 103) and Sen. Sam Zamarripa (Senate District 36). Their districts have 4.3 percent, 2.6 percent, and 0.6 percent Hispanic voter registration, respectively, according to the February 2006 report of the Georgia Secretary of state.

142 In both cases, the challenges appear to have been based simply on the voters' Spanish surnames and/or the fact that they were Hispanic, as opposed to personal knowledge of the voters' qualifications. In Atkinson County, the challenged voters were summoned to appear at a hearing before the county election officials, at which they were to present proof of their citizenship; the challenges were dismissed before individual inquiries took place. The Section 203 determination data for Atkinson County show the County with 175 Latino voting age citizens (of whom 95 reported being LEP). This is wholly consistent with the state's current report of the number of registered Hispanic voters in Atkinson County (85). A similar comparison cannot be made for Long County because its data were suppressed.

143 *United States v. Long County, Georgia*, No. CV206-040 (S.D. Ga.).

144 The consent decree provides that: "Defendants shall provide to each person who wishes to challenge the right to vote of any elector and to each person who wishes to challenge the qualifications of any elector on the list of registered voters a notice that states: 'A challenger must have a legitimate non-discriminatory basis to challenge a voter. Challenges filed on the basis of race, color, or membership in a language-minority group are not legitimate bases for attacking a voter's eligibility.'"

It is the nature of voting rights cases that each objection and lawsuit mentioned above involved a unique story and set of circumstances that on its own could occupy a report of this length. It would be unrealistic to attempt to predict what would happen in every community, or in any particular community, if the constraint of Section 5 were to be removed. But while it is true that there have been fewer Section 5 objections in recent years, I would submit that this can better be understood as a recognition that Section 5 prevents attacks on black voting rights, than as a loss of the desire to do so. One would hope that many communities have outgrown their pasts but the patterns over time leave little doubt that the impetus to reduce and negate black voting strength and participation in Georgia is real and has not vanished. The great gains achieved since 1965 in black citizens' political participation as voters and candidates probably would not be subject to a massive, obvious effort at disfranchisement if Section 5 is allowed to expire; it is more likely that a series of marginal steps, each one difficult to challenge individually under Section 2 or the Constitution, would gradually erode those gains. One could expect more consolidations like that originally proposed for the city of Augusta; more retrogressive redistrictings like those for Putnam County and the Webster County school board; the gradual readoption of at-large elections as attempted by Effingham and Decatur Counties; and more arbitrary registration procedures as in DeKalb County. Local jurisdictions and legislative delegations would have the advantage of being able to implement new discriminatory procedures and await a challenge for which the plaintiffs would bear the initial cost and the ultimate burden of proof. This is what Congress consistently has sought to prevent in the past through Section 5, and this is why Section 5 should be extended in Georgia.

APPENDICES

Appendix 1. Section 5 Objection Notes

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Appendix 2. Listing of Section 5 Objections:

Appendix 2A: Georgia Section 5 Objections 1982-2006: Local

Appendix 2B: Georgia Section 5 Objections 1982-2006: State

Appendix 3. DOJ Listing of Section 5 Objections: 1965 to 2006

Appendix 4. Georgia County Characteristics

Appendix 4A: 2000 Census, 2006 Registration and 2003 Form of Government Data for Georgia Counties

Appendix 4B: Historical Census Data for Georgia Counties

Appendix 4C: Distribution of Black Population in Georgia by Black Share of County Total Population: 1980 and 2000

Appendix 5. 2002 Language Minority Determination Data

Appendix 1 – Section 5 Objection Notes

Method of Election: Majority Vote Requirement

	Jurisdiction	DOJ Action	Notes
	City of Butler (Taylor County)	James P. Turner, Objection Letter, June 25, 1993 (continued by James P. Turner, September 24, 1993)	This objection involved the use of a majority requirement for mayor. The objection letter noted that the 1972 majority vote requirement for Butler's mayor (Act No. 1477 (1972)) was not submitted for preclearance until 1988 as the result of a consent decree in the federal lawsuit, *Chatman* v. *Spillers*, No. CV 86-91-COL (M.D. Ga.). Butler had a black voting age population of 39 percent in 1980.
	City of Hinesville (Liberty County)	John R. Dunne, Objection Letter, July 15, 1991	This objection concerned Act No. 825 (1990), which restructured most of the City's election system without objection, but proposed to apply a majority vote requirement for mayor. The objection letter noted that DOJ had objected to the use of a majority vote requirement for Hinesville city offices (including mayor) on October 1, 1971, and subsequently had denied requests for reconsideration of that objection *three times*.
	City of Waynesboro (Burke County)	Deval L. Patrick, Objection Letter, May 23, 1994	This objection applied to the use of a majority vote requirement for mayor. The objection letter also noted that DOJ had interposed a January 7, 1972, objection to a majority vote requirement for all Waynesboro city offices, with which the city had failed to fully comply; that is, the City had used the majority requirement in violation of Section 5 after the objection. Waynesboro and Burke County were the subject of extensive voting rights litigation prior to 1982; *Rogers* v. *Lodge*, 458 U.S. 613 (1982), concerned the at-large election system for the Burke County Commission. Waynesboro had a 1990 black voting age population of 52 percent and black registration of 51 percent; the objection letter noted participation disparities between black and white voters, which would tend to reduce the black share of voter turnout to below 50 percent.
	Town of McIntyre (Wilkes County)	James P. Turner, Objection Letter, November 9, 1993	This objection applied to the use of a majority vote requirement in special elections for city council vacancies. McIntyre had a 1990 black voting age population of 45.5 percent and a black voter registration at the time of 39 percent.

Appendix 1 – Section 5 Objection Notes

	City of Waycross (Ware and Pierce Counties)	William Bradford Reynolds, Objection Letter, February 16, 1988	This objection involved the creation of a single-position mayor to be elected by majority vote; under the existing system the mayor was selected by and among the council members elected from single-member districts. The objection letter noted that the state legislation at issue (Act No. 414 (1987)) had not been requested by the City and that the City had little input into its drafting. Waycross had a black voting age population of 35.4 percent in 1980.
	City of Monroe (Walton County)	John R. Dunne, Objection Letter, July 3, 1991 (continued by John R. Dunne, October 21, 1991; continued by James P. Turner, October 22, 1993)	This objection involved the use of a majority vote requirement for all citywide offices, including mayor, but later was narrowed to the mayor only. DOJ denied reconsideration of the July 1991 objection in October 1991 (with respect to all citywide offices), and then again in October 1993 with regard to the mayor only. When the city chose to implement the majority vote requirement for mayor notwithstanding the objection, DOJ filed a Section 5 enforcement action in Georgia to enjoin the City, in which the three-judge court unanimously ruled in the United States' favor. *United States* v. *City of Monroe*, 962 F.Supp. 1501 (1997). On direct appeal the Supreme Court reversed. *City of Monroe* v. *United States*, 522 U.S. 34 (1997). The Supreme Court did not reach the merits of whether the change was retrogressive, but rather held that the change had already received Section 5 preclearance in a previous submission of state procedures. Monroe had a black voting age population of 40.9 percent in 1990.
	Baldwin County	Brian K. Landsberg, Objection Letter, August 13, 1993 (continued by James P. Turner, October 22, 1993)	This objection focused upon the proposed use of a majority vote requirement for a chief magistrate for Baldwin County.

Appendix 1 – Section 5 Objection Notes

Method of Election: At-Large Elections

Jurisdiction	DOJ Action	Notes
City of Griffin (Spalding County)	William Bradford Reynolds, Objection Letter, September 25, 1985 (continued by William Bradford Reynolds, February 10, 1986)	This objection blocked the use of one at-large seat which was to be used in a "mixed" plan with four single-member districts. Griffin had a black voting age population of 42 percent in 1980.
City of LaGrange (Troup County)	Deval L. Patrick, Objection Letter, October 11, 1994; City of LaGrange, (Troup County)	In 1993 and 1994 DOJ objected twice to different method of election changes for the City of LaGrange; the 1993 objection involved the use of two at-large seats in a mixed city council plan with four single-member districts, while the 1994 objection involved the use of one at-large seat in a mixed city council plan with two "super-districts" and four single-member districts. The city's then-existing method of election for the city council was six members elected at large with numbered posts and a majority vote requirement, which later was found by a federal court to violate Section 2 of the Voting Rights Act. Before submitting any plans to DOJ the city had been enjoined from attempting to implement an earlier plan without Section 5 preclearance. See *Cofield* v. City of LaGrange (N.D. Ga., unpublished order Feb. 21, 1997). LaGrange had a black voting age population of 37 percent in 1990.
	James P. Turner, Objection Letter, December 13, 1993 (continued April 1, 1994)	
City of Lyons (Toombs County)	William Bradford Reynolds, Objection Letter, November 29, 1985	This objection blocked the use of an at-large seat in a mixed plan with four single-member districts. The then-existing method of election for the city council was four members elected at large from residency districts. Lyons had a black voting age population of 26.3 percent in 1980.
City of Newnan (Coweta County)	James P. Turner, Objection Letter, August 31, 1984	This objection blocked the use of two at-large seats which were to be used in a mixed plan with four single-member districts. The then-existing method of election for the city council was four members elected at large. Newnan had a black population of 45 percent in 1980.

Appendix 1 – Section 5 Objection Notes

	Lamar County Commission	William Bradford Reynolds, Objection Letter, March 18, 1986	This objection was based upon the use of one at-large seat in a mixed plan with four single-member districts.

Appendix 1 – Section 5 Objection Notes

Method of Election: Majority Vote Requirement and Numbered Posts			
	Jurisdiction	**DOJ Action**	**Notes**
	City of Ashburn (Turner County)	Ralph F. Boyd, Objection Letter, October 1, 2001	This objection blocked the use of numbered posts for city council elections and a majority vote requirement for all city offices; these changes originally had been adopted in 1973 and 1966, respectively, but never were submitted for preclearance until decades later. The city's benchmark election system (that in effect in 1966) was at-large to concurrent terms with plurality vote and no designated posts. It appears that the outstanding method of election changes finally were submitted in connection with a series of annexations to which there was no objection. Even then, the City delayed its response to a December 1995 request for additional information until August 2001. Ashburn had a black voting age population of 58.7 percent in 2000, but the black share of voter registration in the City was 50.9 percent.
	City of Lumber City (Telfair County)	William Bradford Reynolds, Objection Letter, July 8, 1988 (continued by William Bradford Reynolds, October 7, 1988)	This objection involved the 1973 adoption of a majority vote requirement for the mayor and city council of the City of Lumber City, and a 1988 ordinance adopting numbered posts for the city council; the City had implemented the majority vote requirement illegally (another objection was interposed in 1989). The Section 5 objection followed the lawsuit *Woodard* v. *Mayor and City Council of Lumber City*, No. CV 387-027 (S.D. Ga.), in which the parties agreed that the existing at-large election system violated Section 2 of the Voting Rights Act. After the 1988 and 1989 Section 5 objections, the district court ordered the use of a mixed six-member plan (without a majority vote requirement) an interim remedy. *Id.*, August 3, 1990 Order. Lumber City had a black voting age population of 44.4 percent in 1980.
	City of Wrens (Jefferson County)	William Bradford Reynolds, Objection Letter, October 20, 1986	This objection involved the addition of a majority vote and numbered post requirement to the at-large election system for the mayor and city council; the objection letter noted that the objected-to changes had been implemented illegally in city elections since 1970. Wrens had a black voting age population of 50.2 percent in 1980.

Appendix 1 – Section 5 Objection Notes

	City of Forsyth (Monroe County)	William Bradford Reynolds, Objection Letter, December 17, 1985	This objection blocked the addition of a numbered post and majority vote requirement for city council elections. The objection letter made clear that the objected-to changes had been implemented in at least two elections in violation of Section 5. The objection letter also interposed an objection to ten annexations. Forsyth had a black voting age population of 46.9 percent in 1980.
	City of East Dublin (Laurens County)	John R. Dunne, Objection Letter, April 26, 1991	DOJ precleared a change in the City's method of election from five at-large seats to a mixed plan with three single-member districts and two at-large seats; however, an objection was interposed to a majority vote requirement that was to be used in combination with numbered posts for the two at-large seats. The objection letter noted that black candidates had enjoyed success under the then-existing system of five at-large seats with plurality vote elections and no designated seats.

Appendix 1 – Section 5 Objection Notes

Method of Election: Majority Vote Requirement and At-Large Elections

	Jurisdiction	DOJ Action	Notes
	Decatur County Commission	Deval L. Patrick, Objection Letter, November 29, 1994	This objection involved a proposal to change the method of electing the county commission from the then-existing six-member single-member district plan to a mixed plan with six single-member districts and one at-large seat to be elected with a majority vote requirement. Decatur County had a black population of 38.9 percent in 1990.
	Effingham County Commission	John R. Dunne, Objection Letter, July 20, 1992	This objection blocked the proposal to change the method of electing the county commission from the then-existing five-member single-member district plan to a mixed plan with five single-member districts and one at-large seat to be elected with a majority vote requirement. The objection letter noted that the single-member district system had earlier been adopted in response to a vote dilution lawsuit.
	City of Monroe (Walton County)	James P. Turner, Objection Letter, October 22, 1993	This objection involved a proposal to change the method of electing the city council from six at-large seats to four single-member districts and two single-member "super-districts." The same letter also continued the July 3, 1991 objection to the use of a majority vote requirement for city elections. Monroe had a black voting age population of 37 percent in 1990.
	City of Quitman (Brooks County)	William Bradford Reynolds, Objection Letter, April 28, 1986	This objection involved a proposal to change its then-existing five-member council, each of whom was elected at-large by plurality vote, to a mixed system with two dual-member districts and an at-large chair elected by majority vote. The objection letter noted that the proposal might have satisfied Section 5 if it had maintained the plurality-win feature of the then-existing system rather than imposing a majority vote requirement for the at-large seat. Quitman had a black population of about 55 percent and a black voting age population of 50.9 percent in 1980; the objection letter noted that an annexation of about 19 acres of land was being precleared that might somewhat reduce the black share of the city's population.

Appendix 1 – Section 5 Objection Notes

Method of Election: Numbered Posts			
	Jurisdiction	**DOJ Action**	**Notes**
	City of Sparta (Hancock County)	John R. Dunne, Objection Letter, February 4, 1992	This objection blocked legislation that would have added a numbered post requirement to the then-existing at-large city council election system.
	City of Kingsland (Camden County)	William Bradford Reynolds, Objection Letter, January 3, 1983	This objection to 1976 legislation (which appears to have been implemented without Section 5 preclearance) adopted numbered posts for the at-large election system for the city council. The objection letter noted that the City was abandoning an unprecleared 1977 adoption of a majority vote requirement, as well as an unprecleared 1977 polling place change to an all-white woman's club. Kingsland had a black voting age population of 35.7 percent in 1980.

Appendix 1 – Section 5 Objection Notes

Method of Election: At-Large Elections and Numbered Posts			
	Jurisdiction	**DOJ Action**	**Notes**
	Bacon County	William Bradford Reynolds, Objection Letter, June 11, 1984	This objection blocked the change from an eight-member plan with seven single-member districts and one at-large seat to an at-large system with residency districts (which had been implemented without Section 5 preclearance using three, and later five members, since 1965). At the same time, legislation was precleared to adopt a six-member single-member district plan for the county commission.
	Taylor County Board of Education	William Bradford Reynolds, Objection Letter, August 19, 1983	This objection involved 1975 legislation which would have changed the benchmark, a nine-member single-member district system for the Taylor County Board of Education, to an at-large system for five members with residency districts; it appears that these and other changes also had been implemented without Section 5 preclearance. The letter noted that the specific facts of the changes were unclear because the school board had refused to submit the original change from single-member districts to an at-large system with residency districts; the letter stated that "[i]ndeed, the board has been most uncooperative throughout the review process."

Appendix 1 – Section 5 Objection Notes

	Jurisdiction	DOJ Action	Notes
Method of Election: Numbered Posts, Staggered Terms and Majority Vote Requirement			
	City of Tignall (Wilkes County)	Bill Lann Lee, Objection Letter, March 17, 2000	This objection blocked 1999 legislation incorporating these features, which modified the city's then-existing system of at-large, plurality-vote elections to concurrent terms for the city council; the objection letter noted the changes had been implemented without preclearance in the city's 1999 election. Tignall had a black population of 43 percent in 1990.
	City of Lumber City (Telfair County)	James P. Turner, Objection Letter, November 13, 1989	This objection, which followed a July 8, 1988 objection to a previous proposal, involved a proposal to change the method of electing the city council for the City of Lumber City from six members, elected at large by plurality vote to two-year staggered terms, to a mixed plan with four single-member districts and two at-large seats, elected by majority vote to four-year staggered terms.
Method of Election: Numbered Posts, At-Large Elections and Majority Vote Requirement			
	City of Jesup (Wayne County)	William Bradford Reynolds, Objection, Letter March 28, 1986	This objection was interposed to a number of changes in the method of election for the City of Jesup, for which six commissioners were elected at large by plurality vote to staggered terms under the benchmark system. The objection blocked further implementation of 1968 legislation (apparently enforced without preclearance) which required the use of numbered posts and a majority vote in city commission elections. The objection also blocked 1985 legislation that created a new, highly unusual mixed plan for the city commission, which provided for one single-member district (drawn initially to be over ninety percent black), one three-member district (less than ten percent black and containing seventy-five percent of the city's population) with numbered posts, and one at-large seat. Jesup had a black population of 30.6 percent in 1980.

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	Baldwin County Board of Education	William Bradford Reynolds, Objection Letter, September 19, 1983	This objection was interposed to the adoption of at-large elections in combination with both numbered posts and a majority vote requirement as the Baldwin County Board of Education changed from an appointed to an elected body.
Method of Election: Staggered Terms			
	Jurisdiction	**DOJ Action**	**Notes**
	City of Rome (Floyd County)	William Bradford Reynolds, Objection Letter, August 11, 1987	This objection identified the city's proposed adoption of staggered terms, in conjunction with an increase in the number of school board members from six to seven, as the reason for the objection, which cited the factors discussed in *City of Rome* v. *United States*, 446 U.S. 156 (1980). Rome had a black voting age population of 23.6 percent in 1980.
Method of Election: Plurality-Vote Requirement			
	Jurisdiction	**DOJ Action**	**Notes**
	Statewide	Isabelle Katz Pinzler, Objection Letter, August 29, 1994 (withdrawn by Loretta King, September 11, 1995)	This objection concerned a proposal to replace the State's majority vote requirement with a forty-five percent plurality vote requirement for certain general elections. The letter noted that black legislators had unsuccessfully proposed that the majority vote requirement be repealed entirely or be changed to a plurality vote requirement for all elections, as opposed to the more limited change proposed by the State. The letter noted that the reasons given by the State in support of its proposed change would have applied equally to the remainder of the elections subject to the majority vote requirement, and noted a suit brought by the United States challenging the State's majority vote requirement.

Appendix 1 – Section 5 Objection Notes

Redistricting Plans: Statewide			
	Jurisdiction	**DOJ Action**	**Notes**
	Congressional	William Bradford Reynolds, Objection Letter, February 11, 1982	The objection letter identified manipulation of the boundaries of the Fifth District in the Atlanta area as the basis of the objection. The letter acknowledged that the plan was non-retrogressive but denied preclearance on the ground that the plan had a racially discriminatory purpose.
	State House	William Bradford Reynolds, Objection Letter, February 11, 1982	The objection letter identified problems with retrogressive changes affecting Senate districts in DeKalb and Richmond Counties; in DeKalb County the plan would have replaced an existing senate district having a 57 percent black share of voter registration with an adjacent district having only a 42 percent black share of voter registration, and in Richmond County the black population percentage of a district was unnecessarily decreased from 50 to 48 percent.
	State Senate		Retrogressive changes to House districts in Dougherty County prompted the objection to the 1981 House plan; under the benchmark plan there was one district in Dougherty County with a substantial black majority (80.4 percent) and one district with a nominal black majority (50.8 percent), while the 1981 plan redrew the Dougherty County districts to have one district with a black majority of 73.5 percent while the next most heavily-black district was reduced to 45.9 percent.

Appendix 1 – Section 5 Objection Notes

	Congressional	John R. Dunne, Objection Letter, January 21, 1992	The Congressional plan included one district more than the benchmark plan as the result of Congressional reapportionment. The letter stated that the State had departed from its stated criteria and did make a good faith effort to recognize the black populations in southwest Georgia, as had been proposed in alternative plans. The letter also identified concerns about the exclusion of black population in Baldwin County from the Eleventh District and the inclusion of certain white areas in the Fifth District.
	State Senate		With respect to the Senate plan, the letter stated that incumbent protection appeared to have motivated the fragmentation of minority populations in three areas: DeKalb and Clayton Counties, Twiggs and Wilkinson Counties, and Fulton and Cobb Counties. The letter identified the division of majority black counties in the southwest and east-central portions of the State as preventing additional majority-black districts from having been drawn in those areas. The letter also noted a last-minute boundary change to include certain heavily-white precincts in a Savannah senate district.
	State House		The State House plan involved a change from 130 single-member districts, 25 multi-member districts and two floterial districts to 180 single-member districts. The letter identified six areas of concern. The letter said that in Chatham County and Glynn, McIntosh and Liberty Counties, alternative boundaries that could have avoided unnecessary retrogression by drawing additional viable districts, appeared to have been rejected for reasons of incumbent protection. The letter stated that a finger-shaped area of Dougherty County had been placed into a majority-white district based in neighboring counties, apparently as a means of keeping an equal number of white and black members in county's legislative delegation. The letter states that the State did not seriously consider the potential to draw a third majority-black district in Muscogee and Chattahoochee Counties and instead followed arbitrary and discriminatory work group lines. Burke County was fragmented among three districts. The letter stated that boundaries in Clayton County appeared to have been manipulated to limit the black percentages and to protect incumbents, and that the State had not provided a nondiscriminatory explanation for rejecting alternative boundaries that provided for effective majority-black districts. The letter stated that in southwest Georgia black population concentrations in Peach and Houston Counties were dispersed among several districts; the State claimed that this enhanced black political influence, but the letter said that it appeared to have been done to protect white incumbents.

Appendix 1 – Section 5 Objection Notes

	Congressional	John R. Dunne, Objection Letter, March 20, 1992	The letter stated that 1992 redistricting plans remedied the February 1992 objections in many areas of the State, but that some areas in each of the three plans continued to be a problem. The letter noted that the second-largest concentration of black voters in the State, in the area of Chatham, Effingham and Screven Counties, continued to be excluded from any majority-black district. The letter noted the 1992 plan increased the black population percentage in the Second District but continued to exclude majority-black areas in southwest Georgia from that district.
	State House		The letter identified continued problems with senate districts in DeKalb and Clayton Counties, in which majority black areas of Clayton County were placed into majority-white districts when they could have been included in an additional majority black senate district based in DeKalb County. The letter also stated that the plan continued to fragment black population concentrations in the southwest part of the State.
	State Senate		The letter stated that the 1992 plan continued to fragment black populations in Houston County and rejected alternative plans that would have created two majority black districts in the area of Houston and Peach Counties. The letter stated that the problems previously identified in the rural southwest part of the State and in Muscogee County had not been remedied. In addition, the letter said that the revised plan included a land bridge through Richmond County that appeared to be an effort to manipulate the racial composition of the Richmond County legislative delegation.

Appendix 1 – Section 5 Objection Notes

	State House	John R. Dunne, Objection Letter, March 29, 1992	The letter stated that the boundaries in the Muscogee and Chattahoochee County areas remained a concern with respect to the revised 1992 House plan. The letter stated that the black population in the area remained packed into two districts and that there were district boundary manipulations to protect a white incumbent.
	State Senate	Isabelle Katz Pinzler, Objection Letter, March 15, 1996; Withdrawn October 15, 1996	The letter began by noting that the then-existing 1992 House and Senate redistricting plans were being used as the Section 5 benchmark. The 1996 plan changed 46 of the 56 senate districts. The letter stated that the reductions in the black percentages of senate districts in DeKalb and Clayton Counties, and in southwest Georgia, were not necessary to remedy the constitutional violations that the State claimed to have required the new district boundaries.
	State House		The 1996 plan changed 67 of the 180 house senate districts and reduced the number of majority-black house districts from 42 to 37. The letter stated that reductions in the black percentage of a district including Milledgeville were retrogressive, and that the new boundaries were not constitutionally required. The letter stated that the reduction of the black percentage in a district including Troup and Coweta Counties was retrogressive, and that contrary to the State's claims the district had not been drawn in response to demands by DOJ. The letter said that changes to a district in Chatham County were retrogressive, that the State had not claimed that particular district to be unconstitutional, and that the State's explanations for the retrogressive changes were not convincing. The letter stated that reductions of the black percentage in a district including parts of Glynn, Liberty and McIntosh Counties were not justified due to communities of interest that existed between those areas. The letter found that changes to three House districts in the southwest part of the State would be retrogressive and that the reduction of the black percentages in these districts went beyond what was constitutionally required, and noted that these districts closely resembled the districts drawn in 1991 prior to any Section 5 objection.

Appendix 1 – Section 5 Objection Notes

Redistricting Plans: County

	Jurisdiction	DOJ Action	Notes
	Putnam County Commission	J. Michael Wiggins, Objection Letter, August 9, 2002	The five-district plan would have reduced the number of majority-black districts from two to one. Putnam County had a 26.3 percent black voting age population in 2000 and employed a mixed plan of four single-member districts and one at-large seat. The objection letter also applied to the use of the same boundaries for redistricting the Putnam County School Board.
	Randolph County Commission	Isabelle Katz Pinzler, Objection Letter, June 28, 1993; continued by Brian Landsberg, September 13, 1993	Randolph County had a black voting age population of 52 percent in 1990, and under the benchmark plan there were three majority-black districts. The objection letter noted that the proposed plan unnecessarily removed black population concentrations from an overpopulated majority-black district, when majority-white areas along the border of the district were equally available. The result was to keep the black percentage approximately the same in that district, in which black voters' candidates of choice had been defeated. Thus, the minority population at issue already was present in the district, but the minority percentage remained about the same due to gerrymandering of the district boundaries. (The same objection letter also objected to the use of the objected-to redistricting plan as the initial districting plan for the Randolph County Board of Education, which was changing from appointive to elective, and to the imposition of an educational requirement for school board candidates).
	Dougherty County Commission	William Bradford Reynolds, Objection Letter, July 12, 1982	The objection letter noted that although the countywide black population percentage had increased significantly between 1970 and 1980, the black population share was reduced in all but one of the six districts, and the county's black population was unnecessarily concentrated (i.e., gerrymandered) into two districts.
	Glynn County Commission	William Bradford Reynolds, Objection Letter, July 12, 1982	The objected-to plan reduced the black share of the total population -- from approximately 75 percent to approximately 60 percent -- in the only majority-black district, despite a significant increase in the black share of the countywide population between 1970 and 1980.

Appendix 1 – Section 5 Objection Notes

Redistricting Plans: County School Board

	Jurisdiction	DOJ Action	Notes
	Marion County Board of Education	Ralph F. Boyd, Objection Letter, October 15, 2002	Marion County as a whole had a 31.6 percent black voting age population in 2000. The objection noted that population shifts had made it impossible to maintain the three (underpopulated) majority-black districts present in the five-district benchmark plan, but that the proposed plan would leave only one district in which black voters could elect candidates of their choice when it was possible to maintain two such districts.
	Putnam County Board of Education	J. Michael Wiggins, Objection Letter, August 9, 2002	This objection was based upon the same retrogressive factors as the objection to the same redistricting plan for the Putnam County Commission.
	Webster County Board of Education	Bill Lann Lee, Objection Letter, January 11, 2000	The objection letter states that shortly after the 1996 elections, in which a third black member was elected to the board for the first time, the school board members were advised that their five-district plan had to be redrawn because it was malapportioned; however, the five percent deviation in the benchmark plan was well within constitutional limits, while the plan that ostensibly was enacted to cure its malapportionment instead had a *thirteen* percent deviation, which clearly was at least constitutionally suspect. Webster County as a whole had a 48 percent black voting age population in 1990. The letter noted that districts with black populations of 65.6, 55.7 and 70.1 percent had been reduced to 57.3, 52.3 and 69.8 percent, respectively. In two of those districts the black share of voter registration had been reduced to 45.6 percent and 42.1 percent.

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	Sumter County School District	William Bradford Reynolds, Objection Letter, December 17, 1982	The objected-to redistricting plans were submitted following the decision in *Edge* v. *Sumter County School District*, No. 80-20-AMER (M.D. Ga. Nov. 25, 1981). The *Edge* case held in part that there was no legally enforceable plan for electing the Sumter County Board of Education. DOJ found that neither the 1982 nor 1983 plan fairly reflected black voting strength in the school district as a whole, applying the special rule for such cases stated in *Wilkes County, Georgia* v. *United States*, 450 F. Supp. 1171, 1178 (D.D.C. 1978), *aff'd* 439 U.S. 999 (1978). The Sumter County school district had a total black population of 43.4 percent in 1980. It used a mixed plan with six single-member districts and one at-large seat. The plan at issue in the 1982 objection provided for two majority-black districts but divided black populations that otherwise could have comprised a third district under a single-member district plan. This objection noted that a revised redistricting plan had created third, nominally majority-black district, but identified annexations that appeared to have reduced that figure but had not been documented by the school board in its submission. DOJ found again that this plan did not meet the standard of *Wilkes County*.
		William Bradford Reynolds, Objection Letter, September 6, 1983	
	Bibb County Board of Education	William Bradford Reynolds, Objection Letter, November 26, 1982	The letter noted that although the black share of the population in the school district had increased since 1970, the proposed six-district redistricting plan reduced the number of districts in which black residents could form a majority of potential voters from three to two.

Appendix 1 – Section 5 Objection Notes

Redistricting Plans: Municipal

	Jurisdiction	DOJ Action	Notes
	City of Albany (Dougherty County)	J. Michael Wiggins, Objection Letter, September 23, 2002	This redistricting plan reduced the black population in one ward from 51 percent to 31 percent specifically to forestall the creation of an additional majority-black district. 60.2 percent of the voting age population in Albany was black in 2000 and 57.3 percent of the registered voters in the city were black at the time of the submission.
	City of Macon (Bibb and Jones Counties)	Loretta King, Objection Letter, December 20, 1994	Macon had a black population of 52 percent in 1990. The city's mixed plan employed five two-member districts and five at-large seats using the two-member districts as residency districts, for a total of fifteen seats. Each of the three majority-black districts in the benchmark had elected two black candidates, while only one black candidate had been elected to any of the five citywide seats. The plan unnecessarily reduced the black population in one of the three majority-black benchmark districts to the point that it became a majority-white district in voting age population.
	City of Griffin (Spalding County)	John R. Dunne, Objection Letter, November 30, 1992	Griffin had a black population of 47.8 percent in 1990. It used a mixed plan with six single-member districts and one at-large seat; the objection noted that the proposed plan maintained existing electoral opportunities for black voters in two districts, but that the boundaries for a third district divided a black residential area which, if kept intact, likely would have provided a realistic opportunity for black voters to elect candidates of their choice in that district as well. The objection letter noted also that the City had declined to respond to allegations that its boundary choices had been motivated by the intent to limit minority voting strength.
	City of College Park (Clayton and Fulton Counties)	William Bradford Reynolds, Objection Letter, December 12, 1983	College Park had a black population of 48.3 percent in 1980. The objection noted that despite substantial growth in the city's black population since 1970, its proposed redistricting packed black population into one district (at a level of 90 percent) while dividing the remainder of the city's black population concentrations into four other districts, including district boundaries that unnecessarily split one heavily-black Census block among several districts. The letter cited the summary affirmance of *Busbee* v. *Smith* in noting that the district boundary manipulation and aversion to input from the minority community were indicative of a racially discriminatory purpose.

Appendix 1 – Section 5 Objection Notes

Districting Plans

Jurisdiction	DOJ Action	Notes
Thomas County Commission	William Bradford Reynolds, Objection Letter, July 23, 1984	Thomas County had a black population of 38.4 percent in 1980. The adoption of a system with eight single-member districts for the commission resulted from a federal court finding that the at-large system violated Section 2 of the Voting Rights Act. *Thomasville Branch of NAACP* v. *Thomas County*, Civ. No. 75-34 (M.D. Ga., Jan. 26, 1983). The objection letter noted that the Georgia State Reapportionment Office, which drew the plan, had been explicitly instructed to limit the number of majority-black districts to two out of eight.
Randolph County Board of Education	Isabelle Katz Pinzler, Objection Letter, June 28, 1993; continued by Brian Landsberg, September 13, 1993	The June 28 letter interposed an objection to the use of the same district boundaries as a redistricting plan for the Randolph County Commission, and to an education requirement for school board candidates that was included with the school board legislation. The objection focused upon the effort to limit the black percentage in one of the districts for both the commission redistricting plan and the school board's initial districting plan.
City of McDonough (Henry County)	William Bradford Reynolds, Objection Letter, November 22, 1982	McDonough had a black population of 37.7 percent in 1980. In both cases the objection letters noted that the black population of the city was fragmented by the proposed plans among three of the four districts used in the mixed plan (along with two at-large seats), with the result that black voters would likely have the opportunity to elect candidates of their choice to only one of six council seats. The December 1984 letter noted that the reasons for the November 1982 objection apparently had not been provided to the chairperson of the committee that drafted the second plan.
	William Bradford Reynolds, Objection Letter, December 3, 1984	

Appendix 1 – Section 5 Objection Notes

Annexations

	Jurisdiction	DOJ Action	Notes
	City of Union City (Fulton County)	John R. Dunne, Objection Letter, October 23, 1992 (withdrawn by James P. Turner, August 9, 1993)	The 1992 data showed that the black share of the City's voter registration was 52 percent before the annexation, and that the annexation would have reduced the black share of the City's voter registration by 4.5 percentage points. Only one black candidate had been elected under the city's at-large election system. On reconsideration additional information was provided, which showed that the City's black share of the City's voter registration had increased to 61 percent, and the objection was withdrawn.
	City of Augusta (Richmond County)	William Bradford Reynolds, Objection Letter, July 27, 1987, withdrawn by William Bradford Reynolds, July 15, 1988	Augusta had a 53.5 percent black population in 1980. This objection blocked eight annexations for what the objection letter described as a "racial quota policy" that the City followed in making its annexations. This objection was withdrawn in July 1988 after Augusta changed its method of election from eight members elected at large, to a mixed plan with ten members elected from single-member districts and three members elected at-large by limited voting (for two positions). The adoption of the mixed plan served to settle the Section 2 lawsuit *United States* v. *City of Augusta*, No. CV187-004 (S.D. Ga.) (consent judgment filed July 22, 1988).
	City of Elberton (Elbert County)	John R. Dunne, Objection Letter, July 2, 1991	Elberton used single-member districts, but the manner in which the annexed area was apportioned to the existing districts unnecessarily reduced the black percentage in one district to the extent that it jeopardized the ability for black voters to continue to elect candidates of their choice.
	City of Forsyth (Monroe County)	William Bradford Reynolds, Objection Letter, December 17, 1985 (continued by William Bradford Reynolds, March 3, 1987)	This objection blocked the implementation of ten annexations that -- taken together -- would have reduced the citywide black population by two percentage points and changed the city from a slight black majority to a white majority. The letter also objected to the adoption of majority vote and numbered post requirements for the at-large city council elections.

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	City of Adel (Cook County)	William Bradford Reynolds, Objection Letter, June 22, 1982	Adel had a 38.6 percent black population in 1980. The objection blocked 23 annexations and city boundary changes, which would have caused a 2.5 to 3 percent reduction in the black population percentage citywide.
Deannexation			
	Jurisdiction	**DOJ Action**	**Notes**
	City of Macon (Bibb and Jones Counties)	William Bradford Reynolds, Objection Letter, April 24, 1987	This deannexation involved an area that admittedly was removed from Macon in order to oust a particular legislator from the City's legislative delegation. The numeric decrease in the City's black population was small, but DOJ's objection was based primarily upon the conclusion that race was a factor -- if not the predominant factor -- in the decision to remove the legislator together with the voters in the surrounding neighborhood.

Appendix 1 – Section 5 Objection Notes

Consolidations

	Jurisdiction	DOJ Action	Notes
	City of Brunswick and Glynn County	William Bradford Reynolds, Objection Letter, August 16, 1982	Brunswick at that time was majority black and there was a prospect that black voters would elect a majority of the council members. The objection letter found that under the proposed consolidation black voters would likely be able to elect candidates of their choice to only one of the seven seats of the consolidated jurisdiction, despite the fact that the black population of Glynn County was 26.4 percent. The system would not have fairly reflected black voting strength in the consolidated jurisdiction and so preclearance was denied, under the standard for assessing the retrogressive effect of annexations under the special rule of *City of Richmond* v. *United States*, 422 U.S. 358 (1975). DOJ found that the standards for annexations would be equally applicable to consolidations. The same letter also objected to the form of a referendum election (countywide vote only) that was to be held with respect to the consolidation; that objection will be discussed separately.
	City of Augusta and Richmond County	James P. Turner, Objection Letter, May 30, 1989	At that time Augusta had a black population of 53.5 percent, and as the result of litigation under Section 2 of the Voting Rights Act the City had adopted an election system in which black voters had a realistic opportunity to elect candidates of their choice to at least six of the thirteen seats on the city council. The objection letter noted that it was questionable whether the consolidated election system, to be composed of 15 members elected under a complex scheme from six two-member districts and three single-member "super-districts", would in fact fairly represent black voting strength in the consolidated jurisdiction. The letter went on, however, to discuss in detail the tenuous nature of the justifications put forward for the consolidation, and the circumstances which strongly suggested that the prospect of the City finally having a system that fairly reflected black voting strength was the primary, if not sole, motivation for the consolidation. A racially discriminatory purpose therefore appears to have been the primary reason for the objection.

Appendix 1 – Section 5 Objection Notes

State Judicial Changes

	Jurisdiction	DOJ Action	Notes
	State	James P. Turner, Objection Letter, June 16, 1989 (withdrawn in part and continued in part by John R. Dunne, April 25, 1990)	This objection involved a series of acts of the Georgia Legislature dating back to 1967 that established 48 additional superior court judgeships and established two superior court circuits and district attorney positions to serve those circuits. The letter noted that the State had failed to respond to DOJ's request for additional information about the submission. In this and the five subsequent objections to new judgeships the basis of the objection was the use of an at-large, designated post and majority vote election system for each judgeship.
	State	John R. Dunne, Objection Letter, April 25, 1990	This objection involved ten superior court judgeships created in 1989 and 1990. The same letter denied reconsideration of the June 1989 objection, except for the creation of two new judicial circuits, for which the objection was withdrawn.
	State	John R. Dunne, Objection Letter, June 7, 1991	This objection involved two superior court judgeships created in 1991.
	State	John R. Dunne, Objection Letter, October 1, 1991 (withdrawn October 23, 1995)	This objection involved one superior court judgeship and a clerk position created in 1990. The letter noted that subdividing judicial circuits was not necessarily required, if the State would consider removing the designated post and majority vote requirements, or consider the use of cumulative voting or special limited voting.
	State	Loretta King, Objection Letter, September 16, 1994 (withdrawn October 23, 1995)	This objection involved one state court judgeship and a solicitor position created in 1994.

Appendix 1 – Section 5 Objection Notes

	State	Deval L. Patrick, Objection Letter, January 24, 1995 (withdrawn October 23, 1995)	This objection involved one state court judgeship created in 1994.
Election Schedules			
	Jurisdiction	**DOJ Action**	**Notes**
	State of Georgia	William Bradford Reynolds, Objection Letter, August 12, 1982	DOJ objected to a special primary election schedule for Georgia's 1982 Congressional election. A special primary election was required because the District Court for the District of Columbia had denied Section 5 preclearance to the State's 1981 Congressional redistricting plan in *Busbee* v. *Smith*, and the State was unable to enact a remedial plan in sufficient time to conduct the Congressional primary elections according to the normal schedule. The proposed schedule was hand-delivered for Section 5 preclearance on August 9, would have ended candidate qualifying on August 13, and allowed only seventeen days to campaign before the election.
	Twiggs County	James P. Turner, Objection Letter, March 12, 1993	This objection concerned the schedule for a tax and bond referendum election, which the evidence suggested to have been chosen so as to minimize minority voter turnout in the election. The objection letter stated that the subject of the referendum – renovation of the county courthouse – had become a racially-divided issue within the county.
	City of Millen (Jenkins County)	James P. Turner, Objection Letter, August 2, 1993	This objection concerned the initial implementation schedule for a change in the City's method of election; the schedule was structured so as to leave a majority-black district without representation for two years.
	City of Augusta (Richmond County)	William Bradford Reynolds, Objection Letter, July 15, 1988	This objection concerned a proposed consolidation referendum schedule. The objection letter stated that there was no compelling justification for the schedule, and that there was some merit to the concern that the date had been selected so as to disadvantage black voters, on an issue that had clear racial overtones.

Appendix 1 – Section 5 Objection Notes

Candidate Qualifications			
	Jurisdiction	**DOJ Action**	**Notes**
	Randolph County Board of Education	James P. Turner, Objection Letter, June 28, 1993 (continued by Brian K. Landsberg, September 13, 1993)	The Randolph County Board of Education letter cited a well-known and pronounced disparate impact that the requirement would have within the county, the lack of any general state law establishing such a requirement, and the failure to apply such a requirement for appointed members of the school board in the past.
	Early County Board of Education	James P. Turner, Objection Letter, October 15, 1993	The Early County Board of Education letter cited the disparate impact that the educational requirement would have within the county.
	Clay County Board of Education	James P. Turner, Objection Letter, October 12, 1993	The Clay County Board of Education letter cited the widely disparate impact that the educational requirement would have within the county, both in terms of the general population and as it would apply to all three appointed black incumbents who would be unable to stand for election.

Appendix 1 – Section 5 Objection Notes

Voter Registration Procedures			
	Jurisdiction	**DOJ Action**	**Notes**
	State of Georgia	Deval L. Patrick, Objection Letter, October 24, 1994	This objection concerned legislation adopted by Georgia in response to the National Voter Registration Act ("NVRA"), 42 U.S.C. 1973gg. While DOJ precleared almost all procedures proposed by the State, it objected to the procedures for sending registration confirmation notices to persons who failed to vote or otherwise contact election officials for three years. The objection letter noted that Section 8(b)(2) of the NVRA, 42 U.S.C. 1973gg-6(b)(2), specifically provides that registered voters may not be removed from the lists of eligible voters due to their failure to vote.
	State of Georgia	John R. Dunne, Objection Letter, February 11, 1992	The objected-to procedures changed the State Election Board Rules to reduce the availability of satellite voter registration to six months out of every two-year election cycle, and lowered the number of satellite registration locations that some counties would have to provide. The objection noted that a lower share of the black population was registered to vote as compared to the white population, and that black citizens actively sought to use satellite registration locations.
	DeKalb County	William Bradford Reynolds, Objection Letter, March 5, 1982	The objected-to procedures would have restricted neighborhood voter registration to even-numbered years and required a written advance Section 5 preclearance determination before starting a neighborhood voter registration drive. The March 1982 objection letter noted that a significantly lower share of the black population in DeKalb County remained unregistered than the white population, but that nevertheless there had been a significant increase in black registration in the County in 1981 during neighborhood registration drives. The proposed rule requiring written Section 5 preclearance before beginning a neighborhood registration drive presented an interesting issue, because it appeared on its face to be fostering compliance with Section 5; the letter, however, objected to the rule as overly formalistic and placing an unnecessary limitation on the ability to register, due to the ability to obtain preclearance quickly for routine changes such as registration drives.

Appendix 1 – Section 5 Objection Notes

Referendum Procedures

Jurisdiction	DOJ Action	Notes
City of Brunswick (Glynn County)	William Bradford Reynolds, Objection Letter, February 21, 1984	The criteria for eligibility to vote in the consolidation referendum depended upon whether Brunswick voters were registered with the city or the county. The black share of registration was 53 percent among those registered with the city, but only 41.9 percent among those registered with the county; the proposed procedures would have limited eligibility to voters registered with the county. An attempt by the Brunswick-Glynn County Charter Commission to seek a declaratory judgment from the District Court for the District of Columbia was dismissed for lack of standing.
City of Brunswick (Glynn County)	William Bradford Reynolds, Objection Letter, August 16, 1982	This objection involved a proposal to conduct only one consolidation referendum countywide, rather that separate referenda in the county and the city, as had been traditional.

Polling Place Changes

Jurisdiction	DOJ Action	Notes
Jenkins County	Deval L. Patrick, Objection Letter, March 20, 1995	The objection letter noted the dangerous, out-of-the-way location selected for the new polling place despite the availability of other more suitable locations, and stated that the justifications for the proposed site appeared to be pretexts for an effort to thwart recent black political participation.
Johnson County	John R. Dunne, Objection Letter, October 28, 1992	The objection letter noted that the polling place for the Wrightsville precinct would be moved from the county courthouse to an American Legion Hall, which had a well-known reputation in the county for racial hostility and exclusion.

Appendix 1 – Section 5 Objection Notes

Elective to Appointive			
	Jurisdiction	**DOJ Action**	**Notes**
	State of Georgia	William Bradford Reynolds, Objection Letter, March 11, 1991 (continued by John R. Dunne, October 15, 1991)	This objection involved 1990 legislation to change the locally-elected board of the Georgia Military College in Milledgeville to a State-appointed body. The objection letter found that this change from an elected to an appointed board would lead to a retrogression in the ability of black voters to select the College's board. See Presley – elimination of an elected office. The letter indicated that the College also operated a prep school that had a predominantly white, local student body. A 1989 consent decree in the case of *Barnes* v. *Baugh*, No. 88-262-1-MAC (M.D. Ga. May 12, 1989), had changed the system used to elect the board from at-large elections to a single-member district plan – which resulted in black representation on the Board for the first time in its 110-year history. The October 1991 letter continuing the objection made clear that it was concerned primarily with the operation of the locally-focused prep school.

Appendix 2A

Georgia Section 5 Objections 1982 - 2006
Local Level

County	Jurisdiction	Type of Change	Date	DOJ Official
Bacon	County Commission	Method of Election	June 11, 1984	William Bradford Reynolds
Baldwin	County Board of Education	Method of Election	September 19, 1983	William Bradford Reynolds
Baldwin	County Chief Magistrate	Method of Election	August 13, 1993	Brian K. Landsberg
Bibb	County Board of Education	Redistricting	November 26, 1982	William Bradford Reynolds
Bibb / Jones	City of Macon	Redistricting	December 20, 1994	Loretta King
Bibb / Jones	City of Macon	Deannexation	April 24, 1987	William Bradford Reynolds
Brooks	City of Quitman	Method of Election	April 28, 1986	William Bradford Reynolds
Burke	City of Waynesboro	Method of Election	May 23, 1994	Deval L. Patrick
Camden	City of Kingsland	Method of Election	January 3, 1983	William Bradford Reynolds
Clay	County Board of Education	Candidate Qualification	October 12, 1993	James P. Turner
Clayton / Fulton	City of College Park	Redistricting	December 12, 1983	William Bradford Reynolds
Cook	City of Adell	Annexation	June 22, 1982	William Bradford Reynolds
Coweta	City of Newnan	Method of Election	August 31, 1984	James P. Turner
Decatur	County Commission	Method of Election	November 29, 1994	Deval L. Patrick
DeKalb	Countywide	Voter registration	March 5, 1982	William Bradford Reynolds
Dougherty	City of Albany	Redistricting	September 23, 2002	J. Michael Wiggins
Dougherty	County Commission	Redistricting	July 12, 1982	William Bradford Reynolds
Early	County Board of Education	Candidate Qualification	October 15, 1993	James P. Turner
Effingham	County Commission	Method of Election	July 20, 1992	John R. Dunne
Elbert	City of Elberton	Annexation	July 2, 1991	John R. Dunne
Floyd	City of Rome	Method of Election	August 11, 1987	William Bradford Reynolds
Fulton	City of Union City	Annexation	October 23, 1992	John R. Dunne
Glynn	City of Brunswick	Referendum procedures	February 21, 1984	William Bradford Reynolds
Glynn	City of Brunswick	Referendum procedures	August 16, 1982	William Bradford Reynolds
Glynn	City of Brunswick	Consolidation	August 16, 1982	William Bradford Reynolds
Glynn	County Commission	Redistricting	July 12, 1982	William Bradford Reynolds
Hancock	City of Sparta	Method of Election	February 4, 1992	John R. Dunne
Henry	City of McDonough	Districting	November 22, 1982	William Bradford Reynolds
Henry	City of McDonough	Districting	December 3, 1984	William Bradford Reynolds
Jefferson	City of Wrens	Method of Election	October 20, 1986	William Bradford Reynolds
Jenkins	City of Millen	Election schedule	August 2, 1993	James P. Turner
Jenkins	Countywide	Polling Place	March 20, 1995	Deval L. Patrick
Johnson	Countywide	Polling Place	October 28, 1992	John R. Dunne

Appendix 2A

Georgia Section 5 Objections 1982 - 2006
Local Level

Lamar	County Commission	Method of Election	March 18, 1986	William Bradford Reynolds
Laurens	City of East Dublin	Method of Election	April 26, 1991	John R. Dunne
Liberty	City of Hinesville	Method of Election	July 15, 1991	John R. Dunne
Lumber	City of Telfair City	Method of Election	November 13, 1989	James P. Turner
Marion	County Board of Education	Redistricting	October 15, 2002	Ralph F. Boyd
Monroe	City of Forsyth	Annexation	December 17, 1985	William Bradford Reynolds
Monroe	City of Forsyth	Method of Election	December 17, 1985	William Bradford Reynolds
Putnam	County Board of Education	Redistricting	August 9, 2002	J. Michael Wiggins
Putnam	County Commission	Redistricting	August 9, 2002	J. Michael Wiggins
Randolph	County Board of Education	Districting	June 28, 1993	James P. Turner
Randolph	County Board of Education	Candidate Qualification	June 28, 1993	James P. Turner
Randolph	County Commission	Redistricting	June 28, 1993	James P. Turner
Richmond	City of Augusta	Consolidation	May 30, 1989	James P. Turner
Richmond	City of Augusta	Election schedule	July 15, 1988	William Bradford Reynolds
Richmond	City of Augusta	Annexation	July 27, 1987	William Bradford Reynolds
Spalding	City of Griffin	Redistricting	November 30, 1992	John R. Dunne
Spalding	City of Griffin	Method of Election	September 25, 1985	William Bradford Reynolds
Sumter	County Board of Education	Redistricting	September 6, 1983	William Bradford Reynolds
Sumter	County Board of Education	Redistricting	December 17, 1982	William Bradford Reynolds
Taylor	City of Butler	Method of Election	June 25, 1993	James P. Turner
Taylor	County Board of Education	Method of Election	August 19, 1983	William Bradford Reynolds
Telfair	City of Lumber City	Method of Election	July 8, 1988	William Bradford Reynolds
Thomas	County Commission	Districting	July 23, 1984	William Bradford Reynolds
Toombs	City of Lyons	Method of Election	November 29, 1985	William Bradford Reynolds
Troup	City of LaGrange	Method of Election	October 11, 1994	Deval L. Patrick
Troup	City of LaGrange	Method of Election	December 13, 1993	James P. Turner
Turner	City of Ashburn	Method of Election	October 1, 2001	Ralph F. Boyd
Twiggs	Countywide	Election schedule	March 12, 1993	James P. Turner
Walton	City of Monroe	Method of Election	July 3, 1991	John R. Dunne
Walton	City of Monroe	Method of Election	October 22, 1993	James P. Turner
Ware / Pierce	City of Waycross	Method of Election	February 16, 1988	William Bradford Reynolds
Wayne	City of Jesup	Method of Election	March 28, 1986	William Bradford Reynolds
Webster	County Board of Education	Redistricting	January 11, 2000	Bill Lann Lee
Wilkes	City of Tignall	Method of Election	March 17, 2000	Bill Lann Lee
Wilkinson	Town of McIntyre	Method of Election	November 9, 1993	James P. Turner

Appendix 2B

Georgia Section 5 Objections 1982 -2006
State Level

Type of Change	Date	DOJ Official
Congressional Redistricting	February 11, 1982	William Bradford Reynolds
Georgia House Redistricting	February 11, 1982	William Bradford Reynolds
Georgia Senate	February 11, 1982	William Bradford Reynolds
Election schedule	August 12, 1982	William Bradford Reynolds
State Judgeship	June 16, 1989	James P. Turner
State Judgeship	April 25, 1990	John R. Dunne
Georgia Military College Board	March 11, 1991	William Bradford Reynolds
State Judgeship	June 7, 1991	John R. Dunne
State Judgeship	October 1, 1991	John R. Dunne
Congressional Redistricting	January 21, 1992	John R. Dunne
Georgia House Redistricting	January 21, 1992	John R. Dunne
Georgia House Redistricting	January 21, 1992	John R. Dunne
Voter registration	February 11, 1992	John R. Dunne
Congressional Redistricting	March 20, 1992	John R. Dunne
Georgia House Redistricting	March 20, 1992	John R. Dunne
Georgia Senate Redistricting	March 20, 1992	John R. Dunne
Georgia House Redistricting	March 29, 1992	John R. Dunne
Method of Election	August 29, 1994	Isabelle Katz Pinzler
State Judgeship	September 16, 1994	Loretta King
Voter registration	October 24, 1994	Deval L. Patrick
State Judgeship	January 24, 1995	Deval L. Patrick
Georgia House Redistricting	March 15, 1996	Isabelle Katz Pinzler
Georgia Senate Redistricting	March 15, 1996	Isabelle Katz Pinzler

Appendix 3 – DOJ Listing of Section 5 Objections 1965-2006

State (S1444)	Act No. 997--assistance to illiterates	6-19-68
State (S1445)	Act No. 993--assistance to illiterates; literacy tests; poll officials' qualifications	7-11-68
State (S1492)	Literacy test for registration	8-30-68
Webster County (T2055)	Polling place consolidation for special election	12-12-68
Summerville (Chattooga Cty.)	Paragraph 7--change in election procedures	12-13-69
Clarke County School District (V3157)	Act No. 257--reduction in size of board; redistricting	8-6-71
Bibb County School District (71-1306)	Act No. 747 (1971)--at-large elections	8-24-71
Hinesville (Liberty Cty.) (V3437-3438A)	Numbered posts and majority vote requirement	10-1-71
Newnan (Coweta Cty.) (V3622)	Numbered posts	10-13-71
Albany (Dougherty Cty.) (V3300)	Polling place	11-16-71
Conyers (Rockdale Cty.) (V3660-3662)	H.B. No. 1590--terms of office; numbered posts; majority vote requirement	12-2-71
Waynesboro (Burke Cty.) (V3915)	Act No. 572--majority vote requirement	1-7-72
Albany (Dougherty Cty.) (V3734)	Act No. 627--dates of elections	1-7-72 Withdrawn 12-7-73
Jonesboro (Clayton Cty.) (V3604-3605; V3859)	Act No. 323--numbered posts; majority vote requirement; election date	2-4-72
State (V3679)	Congressional reapportionment	2-11-72
State (V3677-3678)	State Senate and House redistricting	3-3-72
State (V4066)	State house redistricting	3-24-72
Newnan (Coweta Cty.) (V4482-4483)	Act No. 912--numbered posts; majority vote requirement	7-31-72

Twiggs County (V4594-4595)	Act No. 649--at-large elections; residency requirement	8-7-72
Thomasville School District (Thomas Cty.) (V4139-4140)	Act No. 765--numbered posts; majority vote requirement	8-24-72
Atlanta (Fulton Cty.) (V4785; V4645	Polling places; precinct lines	11-27-72
Harris County (V4767)	Act No. 1359--numbered posts	12-5-72 Withdrawn 3-30-73
Cochran (Bleckley Cty.) (V4817)	Majority vote requirement	1-29-73
Cuthbert (Randolph Cty.) (V4781)	Numbered posts	4-9-73
Ocilla (Irwin Cty.) (V4850-4851)	Act No. 1205--majority vote requirement; filing fee increased	6-22-73
Sumter Cty. School Board (V5576)	At-large elections	7-13-73
Hogansville Board of Education (Troup Cty.) (V5046-5047)	Act No. 1052 (1973)--numbered posts; majority vote requirement	8-2-73
Hogansville (Troup Cty.) (V5045)	Act No. 1053 (1973)--majority vote requirement	8-2-73
Perry (Houston Cty.) (V4971)	Majority vote requirement	8-14-73
Thomasville School District (Thomas Cty.) (V5035-5036)	Act No. 418 (1973)--majority vote requirement; residency requirement	8-27-73
Albany (Dougherty Cty.) (V5761; V6028A-6029A)	Filing fees	12-7-73
East Dublin (Laurens Cty.) (V6005-6306)	Act R667 (1973)--numbered posts; staggered terms	3-4-74
Ft. Valley (Peach Cty.) (V6250-6251)	Numbered posts; majority vote requirement (city council and utility board)	5-13-74
Fulton County (V6291B-6292B; V6293)	Act No. 130 (1973)--numbered posts; majority vote requirement	5-22-74 Withdrawn 7-2-76
Clarke Cty. School District (V6311-6312; V6589-6590)	Act No. 602--at-large elections; numbered posts; majority vote requirement	5-30-74

Louisville (Jefferson Cty.) (V5732-5733)	Act No. 1071--numbered posts; majority vote requirement; staggered terms	6-4-74
East Dublin (Laurens Cty.) (V6412)	Postponement of election	6-19-74
Meriwether County (V3440)	Act No. 1046 (1970)--at-large elections; numbered posts	7-31-74 Withdrawn 10-25-74
Jones County (V6851)	Polling place	8-12-74
Thomson (McDuffie Cty.) (V6717-6718)	Numbered posts; staggered terms; expansion of council; extended terms; majority vote requirement (mayor only)	9-3-74
Wadley (Jefferson Cty.) (V6642)	Act No. 1304--numbered posts; majority vote requirement	10-30-74
Stockbridge (Henry Cty.) (V6572-6574)	Registration procedures	5-9-75
Newnan (Coweta Cty.) (V8149)	Act No. 675 (1973)--staggered terms	6-10-75
Macon (Bibb Cty.) (V8796)	Redistricting	6-13-75
Madison (Morgan Cty.) (V8494; V8738)	Act Nos. 58 (1975) and 826 (1974)--numbered posts; majority vote requirement and staggered terms for board of education and city commission	7-29-75
Rome (Floyd Cty.) (V6612)	Sixty annexations	8-1-75 Partial withdrawal 10-20-75 and 8-12-76; declaratory judgment denied in City of Rome v. United States, 472 F. Supp. 221 (D.D.C. 1979), aff'd, 446 U.S. 156 (1980); remainder of objection withdrawn 8-5-80 upon change in method of election
Harris County School District (V9103)	Act No. 179 (1975)--at-large elections; residency requirement	8-18-75

Covington (Newton Cty.) (V8698)	Act No. 514--city charter provisions for majority vote requirement; numbered posts; staggered terms	8-26-75
Ocilla (Irwin Cty.) (V9325)	Increase in candidate's filing fees	10-7-75
Rome (Floyd Cty.) (V9465-9473)	Residency wards for board of education; majority vote and numbered post requirements with staggered terms for board of education and city commissioners	10-20-75 Declaratory judgment denied in City of Rome v. United States, 472 F. Supp. 221 (D.D.C. 1979), aff'd, 446 U.S. 156 (1980)
Crawfordville (Taliaferro Cty.) (V9148)	S.B. No. 310 (1975)--city charter; majority vote requirement; numbered posts	10-20-75
Athens (Clarke Cty.) (V9018)	Majority vote requirement (mayor, aldermen and recorder)	10-23-75
Newton County School District (V8862-8863)	Act No. 163 and Act No. 332--staggered terms; majority vote requirement; at-large elections; multimember districts; residency requirement	11-3-75
Glynn County (V9073B; V9896)	Act No. 398 and Act No. 292--majority vote requirement; staggered terms	11-17-75
Newton County (V8348-8349); V8350	Act No. 293 (1967)--multimember districts; staggered terms; and Act No. 436 (1971)--at-large elections; staggered terms; residency requirement	1-29-76
Sharon (Taliaferro Cty.) V9074	Act No. 409 (1975)--numbered post requirement	2-10-76
Wilkes County School District and Commissioners (X5809)	At-large elections; residency requirement; staggered terms; numbered posts	6-4-76 Declaratory judgement denied in Wilkes County v. United States, 450 F. Supp. 1171 (D.D.C. 1978), aff'd mem. 439 U.S. 999 (1978)
Social Circle (Walton Cty.) (X6376)	Act No. 307--staggered terms; increase term	6-18-76

Long County School District (X6692)	Act No. 1200 (1976)--residency requirement	7-16-76
Monroe (Walton Cty.) (X7826)	Two annexations	10-13-76 Withdrawn 11-25-77
Rockmart (Polk Cty.) (V7995A)	At-large elections; residency requirement	11-26-76
Palmetto (Fulton Cty.) (X9172)	Numbered posts	4-27-77
Bainbridge (Decatur Cty.) (X7847)	Reduction in size of board of aldermen; majority vote requirement; numbered posts	6-3-77
Charlton County (A9353)	Act No. 1222 (1974), Section 2--numbered posts; Section 3--staggered terms	6-21-77
Charlton Cty. School District (A1196)	Act No. 360 (1975), Sections 2, 3 and 9--at-large elections; residency requirement; numbered posts; staggered terms; majority vote	6-21-77 Declaratory judgment granted in Charlton County Board of Education v. United States, No. 78-0564 (D.D.C. Nov. 1, 1978)
Moultrie (Colquitt Cty.) (X9984)	Act No. 277 (1965) and Act No. 1448 (1972)--majority vote requirement	6-26-77
Rockdale County (A0930)	Act No. 119 (1977)--at-large elections; majority vote requirement; numbered posts; staggered terms	7-1-77 Withdrawn 9-9-77
Palmetto (Fulton Cty.) (X9172)	Act No. 489 (1977)--majority vote requirement	7-7-77
College Park (Fulton Cty.) (V8970, A2049-2081)	Redistricting; seventeen annexations	12-9-77 Objection to annexations withdrawn 5-22-78
Terrell County School District (A1901)	At-large elections; staggered terms; residency requirement	12-16-77
Quitman (Brooks Cty.) (A5916)	Act No. 1011 (1970)--majority vote requirement	6-16-78
Savannah (Chatham Cty.) (A6074-6077)	Annexation; at-large elections; numbered posts	6-27-78 Withdrawn 10-2-78

Kingsland (Camden Cty.) (A6780-6781)	Polling place	8-4-78
Mitchell County School District (A3849)	Act No. 832 (1970), Section 4--at-large elections; numbered posts; majority vote requirement	9-15-78 Withdrawn 5-3-79
>Lakeland (Lanier Cty.) (X9979)	Act No. 1053, H.B. 1278 (1974)--numbered posts	10-17-78 Withdrawn 2-9-79
Pike County School District (A8374-8375)	H.B. No. 1947 (1972)--at-large elections; residency requirement	3-15-79
Henry County (C2620-2627)	Act No. 186 (1969) - At Large method of election from residency districts for the Board of Commissioners of Henry County Georgia; and Act No. 1240 (1976) - Staggered terms under an at large method of election	7-23-79
Henry County School District (X9999, C3246-3247)	Amendment to State Constitution (H.R. No. 223-967 (1966))--at-large elections; residency requirement; staggered terms	7-23-79
Statesboro (Bulloch Cty.) (C4120)	Annexation	12-10-79
Alapaha (Berrien Cty.) (80-1423)	Act No. 227, H.B. No. 551 (1979))--numbered posts; majority vote requirement; filing fees; dual registration (county and city) as a prerequisite to voting in municipal elections	3-24-80
Henry County (80-1579)	Act No. 679--redistricting; 5:1 method of election	5-27-80
Dooly County (7X-0084)	Act No. 237 (1967)--at-large elections; residency requirement; staggered terms	7-31-80
Statesboro (Bulloch Cty.) (80-1432)	Annexation	8-15-80
DeKalb County (80-1489)	Disallowance of neighborhood voter registration drives	9-11-80
Statesboro (Bulloch Cty.) (80-1433)	Act No. 109 (H.B. No. 675 (1966))--increase in terms of office from two to four years	2-2-81 Withdrawn 5-13-81
Augusta (Richmond Cty.) (80-1648)	Act No. 1167 (H.B. No. 1531 (1980))--majority vote	3-2-81

Griffin-Spalding County School District (Spalding Cty.) (81-1535)>	Act No. 933 (H.B. No. 1127 (1972))--abolishment of the two multi-member election districts and their attendant residency districts; the establishment of a numbered posts system	7-6-81
State (81-1402-1403)	Act No. 793 (H.B. No. 405) and Act No. 794 (H.B. No. 406), Sections 2, 6 & 8--registration procedures; assistance to illiterates	9-18-81 Objection to Section 2 withdrawn 7-26-82
State (81-1438)	Act Nos. 4, 3, and 5 (1981)--Senate, House and Congressional redistricting	2-11-82 Declaratory judgment denied as to Act No. 5 in Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), aff'd mem. 459 U.S. 1166 (1983)
DeKalb County (81-1425)	Restriction of neighborhood voter registration drives to even-numbered years and requirement that written preclearance be received	3-5-82
Adel (Cook Cty.) (81-1387)	Act No. 855 (H.B. No. 1553 (1976))--charter amendments; Ordinance No. 81-5--annexation; 21 annexations	6-29-82 Withdrawn 8-11-83 following change in method of election
Dougherty County (82-1785)	Redistricting (commissioner districts)	7-12-82
Glynn County (82-1842)	Redistricting (commissioner districts)	7-12-82
State (82-1835)	H.B. 1 EX., 1982 Extra Session Part II--proposed schedule for the conduct of 1982 Congressional elections	8-12-82
Brunswick (81-1458, 82-1837) and Glynn Cty. (81-1460 & 82-1838)	Charter for the consolidation of Glynn County and the City of Brunswick; 6:1 method of election and districting plan; procedures for referendum election (single referendum)	8-16-82
McDonough (Henry Cty.) (82-1875)	Redistricting	11-22-82
Bibb County School District (82-1690)	Act No. 1185 (H.B. No. 1918 (1982))--redistricting (board of education)	11-26-82

Sumter County School District (82-1952)	Redistricting	12-17-82
Kingsland (Camden Cty.) (7X-0076)	Numbered positions	1-3-83
Taylor County School District (82-1954)	Act No. 283 (H.B. No. 566 (1975))--method of election (board of education); redistricting decrease from 9 to 5 board members	8-19-83
Sumter County School District (83-1972)	Redistricting	9-6-83
Baldwin County School District (83-1554)	Act No. 1275, S.B. No. 614 (1972)--at-large elections	9-19-83
College Park (Clayton and Fulton Ctys.) (83-1656)	Redistricting (councilmanic districts)	12-12-83
Brunswick (Glynn Cty.) (83-1774)	Procedures for referendum election on consolidation (use of only county registration list)	2-21-84
Bacon County (83-1547; 83-1549)	Act No. 204 (H.B. No. 243 (1963))--method of election--single-member districts to at-large with residency districts	6-11-84
Bacon County (83-1544; 83-1546)	Act No. 470 (H.B. No. 786 (1983))--at-large elections; Act No. 1177 (H.B. No. 1901 (1982))--at-large elections	6-11-84
Thomas County (83-1986)	Act No. 27 (H.B. No. 762 (1983))--method of election--at-large to single-member districts; districting plan (commissioners)	7-23-84
Newnan (Coweta Cty.) (84-2106)	Act No. 640 (S.B. No. 505 (1984))--method of electing the city council from at-large to single-member districts with two at-large seats; increases the number of councilmembers from four to six; districting plan	8-31-84
McDonough (Henry Cty.)(84-2348)	Districting (councilmanic districts)	12-3-84
Griffin (Spalding Cty.) (85-2440)	Method of election--from at large to 4:1; districting plan (board of commissioners)	9-25-85
Lyons (Toombs Cty.) (85-2475)	Act No. 76 (H.B. No. 327 (1985))--method of election; districting plan	11-29-85

Forsyth (Monroe Cty.) (85-2383; 85-2388; 85-2380-2381)	Majority vote requirement; numbered positions; 10 annexations	12-17-85 Objection to annexations withdrawn 7-8-88
Lamar County (85-2316)	Act No. 513 (H.B. No. 1048 (1985))--method of election--four single-member districts and one at-large; majority vote requirement; increase in the number of county commissioners--from three to five; decrease in the terms of office--from six to four-year, staggered terms; implementation schedule; districting plan	3-18-86
Jesup (Wayne Cty.) (85-2526)	1968--numbered positions; majority vote; 1985--method of election; districting plan	3-28-86
Quitman (Brooks Cty.) (85-2047)	Method of election--from at-large to two multimember districts and one at-large position; majority vote requirement; districting plan	4-28-86
Wrens (Jefferson Cty.) (86-2974)	Majority vote requirement and the numbered posts for the election of mayor and city commission	10-20-86
Forsyth (Monroe Cty.) (87-2543)	Thirteen annexations	3-3-87 Withdrawn 7-8-88
Macon (Bibb and Jones Ctys.) (84-1966)	Deannexation (Act No. 590, S.B. No. 298 (1984))	4-24-87
Augusta (Richmond Cty.) (87-2594, 87-2595, 87-2596)	Eight annexations	7-27-87 Withdrawn 7-15-88 upon change in method of election
Rome (Floyd Cty.) (87-2336)	Act No. 240 (1987)--staggered terms and schedule for implementing staggered terms	8-11-87
Waycross (Pierce & Ware Ctys.) (87-2691)	Act No. 414 (1987)--increase in number of city commissioners from five to six, direct election of mayor by majority vote for four-year term, change in powers, duties, and authority of mayor, implementation schedule, March 8, 1988, special mayoral election	2-16-88

Lumber City (Telfair Cty.) (88-3383-3384)	Act No. 650 (1973)--majority vote requirement for the election of the mayor and council and a runoff election procedure and date, and to the provisions of the January 8, 1988, ordinance, insofar as they codify the majority vote requirement and designated posts	7-8-88
Augusta (Richmond Cty.) (88-3312) and Richmond County (88-3326)	Date selected for conducting consolidation referenda elections	7-15-88
Augusta (Richmond Cty.) (88-3313) and Richmond County (88-3329)	Consolidation of the City of Augusta and Richmond County, Georgia (Act No. 934 (1988)) and the attendant repeal of the city charter for the City of Augusta (Act No. 938 (1988))	5-30-89
State (88-2560-2561)	Establishment 48 additional superior court judgeships, the specification of the date on which the first full term of office commenced for each new judgeship, and the establishment of two superior court circuits and district attorney positions to serve those circuits	6-16-89 Withdrawn 4-25-90 as to the two additional superior court circuits and the district attorney positions to serve those circuits.
Lumber City (Telfair Cty.) (89-2200-2201)	Majority vote for mayor; majority vote, numbered posts and staggered terms for at-large council positions	11-13-89
State (90-2185, 90-3077)	Establishment of ten additional superior court judgeships and the specification of the date on which the first full term of office commenced for each new judgeship	4-25-90 Declaratory judgment granted in Georgia v. Reno, 881 F. Supp. 7 (D.D.C. 1995)
Georgia Military College District (Baldwin Cty.) (90-2210)	Act No. 1155, S.B. No. 623 (1990)--which provides for a change from an elected board (six members elected from single-member districts in the City of Milledgeville and the mayor of Milledgeville, who is elected at large) to a statewide board of twelve members appointed by the governor	3-11-91
East Dublin (Laurens Cty.) (90-2776)	Numbered posts and a majority vote requirement for the at-large council positions	4-26-91

State (91-1051)	Act Nos. 25 and 27 (1991), which provide respectively for the establishment of an additional superior judgeship in the Atlanta and Eastern Judicial Circuits, and specify the date on which the first full term of office for each new judgeship commences	6-7-91
Elberton (Elbert Cty.) (90-2527)	Annexation embodied in Ordinance No. 951 (1989) and the apportioning of the annexed area to single-member election districts	7-2-91
Monroe (Walton Cty.) (90-4602)	Majority vote requirement for city offices	7-3-91 Deemed precleared upon failure to object to controlling provision in 1968 Georgia State Election Code City of Monroe v. United States (11/17/97)
Hinesville (Liberty Cty.) (90-2784)	Adoption of a majority vote reqirement for the election of the mayor	7-15-91
Athens-Clarke County (91-1258)	Act No. 28 (1990), which provides for an additional State Court judgeship, the creation of the State Court clerk's position, and the specification of the dates on which the relevant terms of the offices begin in the context of an at-large method of election with a majority vote requirement, and with anti-single-shot provisions in the judgeship elections	10-1-91 Withdrawn 10-23-95
State (91-3556; 91-3557 and 91-3558)	1991 redistricting plans for Georgia State House, Senate and Congressional districts	1-21-92
Sparta (Hancock Cty.) (91-2166)	Adoption of numbered positions for city council elections	2-4-92
State (89-2268)	Reduce the minimum number of permanent satellite voter registration locations to be established by certain counties, and eliminate the requirement for Saturday registration hours for satellite voter registration locations in the period outside the six months preceding the close of registration for November general elections in even-numbered years	2-11-92

State (92-1035; 92-0712 and 92-0713)	1992 redistricting plans for Georgia State House, Senate and Congressional districts	3-20-92
State (92-1440)	Second 1992 redistricting plan for the Georgia State House	3-29-92
Effingham County (92-1162)	Act No. 608 (1992), which provides for a change in the method of selecting the chairperson from appointment among the commissioners to election from the county at large; expansion of the number of officials on the board of county commissioners from five to six; an increase in the term of the chairperson from a one-year to a four-year term; and the increase in the compensation for the chairperson	7-20-92
Union City (Fulton Cty.) (92-2037)	Annexation embodied in Ordinance No. 92-5	10-23-92 Withdrawn 8-9-93
Johnson County (92-3863)	Relocation of the polling place for the Wrightsville precinct from the county courthouse to the American Legion	10-28-92
Griffin (Spalding Cty.) (92-3226)	1992 redistricting plan	11-30-92
Conyers (Rockdale Cty.) (92-4776)	32 residential annexations	2-16-93 Withdrawn 9-23-93 upon change in method of election
Twiggs County (93-0701)	Procedures for conducting the March 16, 1993, special tax referendum	3-12-93
Butler (Taylor Cty.) (88-3378; 92-3058)	Majority vote requirement and runoff provision for mayor	6-25-93
Randolph County (93-0299-0300)	1993 redistricting plan for the board of commissioners; 1993 districting plan and qualifications to serve in office for the board of education	6-28-93
Millen (Jenkins Cty.) (93-2161)	Implementation schedule	8-2-93
Baldwin County (93-2097)	Method of selecting magistrate: nonpartisan elections with majority vote requirement	8-13-93

Clay County School District (93-2816)	Qualifications to serve in office for the board of education (minimum education requirement)	10-12-93
Early County School District (93-1830)	Qualifications to serve in office for the board of education (minimum education requirement)	10-15-93
Monroe (Walton Cty.) (93-1647)	Method of election and districting plan	10-22-93
McIntyre (Wilkinson Cty.) (93-1432)	Majority vote requirement in elections to fill a town council vacancy	11-9-93
LaGrange (Troup Cty.) (93-1248; 93-1372 and 93-3303)	Method of election: 4 single-member districts and two at large	12-13-93
Waynesboro (Burke Cty.) (88-2659)	Majority vote requirement for mayor	5-23-94
State (94-1595)	Act No. 774 (1994), which provides for a 45 percent plurality requirement in partisan and nonpartisan general elections	8-29-94 Withdrawn 9-11-95
Fayette County (94-2005 and 94-3614)	Act No. 1129 (1994), which provides for the creation of a state court, establishes four-year terms for an elected judge and solicitor (non-partisan judicial election), candidate qualifications including residency requirements, compensation for elected positions, an implementation schedule, and designates the clerk of the Superior Court the clerk for the State Court	9-16-94 Withdrawn 10-23-95
LaGrange (Troup Cty.) (94-2267)	Act No. 652 (1994), which provides for an increase in the number of city councilmembers from six to seven, a change in the method of electing the city council from at large to four single-member districts, two "super" districts, and one at-large position	10-11-94
State (94-2672)	Voter purge procedures proposed by Act No. 1207 (1994), which provided for mailing a registration confirmation notice to any voter that does not vote or otherwise have "contact" with the state's election administration system for a three-year period	10-24-94
Decatur County (94-2499)	Establishment of an elected chairperson, the increase in the number of county commissioners and the change in the method of election	11-29-94

Macon (Bibb and Jones Ctys.) (94-4188)	Redistricting plan	12-20-94
Fulton County (94-4447)	Act No. 731 (1994)--addition of a ninth state court judgeship, four-year term of office, and implementation schedule	1-24-95 Withdrawn 10-23-95
Jenkins County (94-2260)	Polling place (District 1)	3-20-95
State (95-3656)	1995 Georgia State House and Senate redistricting plans	3-15-96 Withdrawn 10-15-96
Webster County School District (98-1663) (pdf)	Redistricting plan	1-11-00
Tignall (Wilkes Cty.) (99-2122) (pdf)	Proposed addition of numbered posts, staggered terms and a majority vote requirement to the method of electing councilmembers	3-17-00
Ashburn (Turner Cty.) (94-4606) (pdf)	Adoption of numbered posts and majority-vote requirement	10-1-01
Putnam County (2002-2987) (pdf)	2001 redistricting plan	8-9-02
Putnam County School District (2002-2988) (2002-2987) (pdf)	2001 redistricting plan	8-9-02
Albany (Dougherty Cty.) (2001-1955) (pdf)	2001 redistricting plan	9-23-02
Marion County School District (2002-2643) (pdf)	2002 redistricting plan	10-15-02

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2000 Census Total and Voting Age Population, 2006 Voter Registration, and 2003 Form of Government Data for Georgia Counties

County	2000 Total POP	2000 Black POP	2000 Total VAP	2000 Black VAP	2000 VAP VAP %	2006 Total REG	2006 Black REG	2006 Black REG %	Form of Government	# of Comm.	# of Dist.	Terms	Term	Election Type	Chair Selection	Chair Part or Full Time
Appling	17,419	3,450	12,690	2,259	17.8%	8,690	1,595	18.4%	Commission-Manager	6	5	Concurrent	4	Combination	Electorate	Full-time
Atkinson	7,609	1,506	5,301	1,025	19.3%	3,417	717	21.0%	Traditional Commission	6	5	Concurrent	4	Combination	Electorate	Full-time
Bacon	10,103	1,627	7,455	996	13.4%	5,000	607	12.1%	Traditional Commission	6	6	Staggered	4	Combination	Electorate	Full-time
Baker	4,074	2,062	2,961	1,407	47.5%	2,172	1,019	46.9%	Commission-Administrator	5	5	Concurrent	4	District	Board	Full-time
Baldwin	44,700	19,573	34,979	14,341	41.0%	18,056	6,488	35.9%	Commission-Manager	5	5	Concurrent	4	District	Board	Part-time
Banks	14,422	477	10,646	340	3.2%	7,037	130	1.8%	Commission-Administrator	3	3	Staggered	4	At-large	Electorate	Full-time
Barrow	46,144	4,675	33,019	3,115	9.4%	25,292	2,256	8.9%	Commission-Administrator	7	6	Staggered	4	Combination	Electorate	Full-time
Bartow	76,019	6,829	54,820	4,541	8.3%	42,593	3,603	8.5%	Sole Commissioner	1	1	Concurrent	4	At-large		Full-time
Ben Hill	17,484	5,754	12,675	3,742	29.5%	7,612	2,279	29.9%	Commission-Manager	5	3	Staggered	4	Combination	Electorate	Part-time
Berrien	16,235	1,882	11,811	1,198	10.1%	7,639	839	11.0%	Commission-Manager	3	3	Concurrent	4	At-large	Board	Part-time
Bibb	153,887	73,402	113,007	48,994	43.4%	71,882	30,690	42.7%	Traditional Commission	5	4	Concurrent	4	Combination	Electorate	Full-time
Bleckley	11,666	2,891	8,565	1,878	21.9%	5,766	986	17.1%	Sole Commissioner	1	1	Concurrent	4	At-large		Full-time
Brantley	14,629	612	10,484	396	3.8%	7,553	227	3.0%	Traditional Commission	5	5	Staggered	4	At-large	Electorate	Full-time
Brooks	16,450	6,529	12,025	4,267	35.5%	7,234	2,415	33.4%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Bryan	23,417	3,431	16,128	2,201	13.6%	13,262	1,628	12.3%	Commission-Administrator	6	5	Staggered	4	Combination	Electorate	Part-time
Bulloch	55,983	16,271	43,503	11,800	27.1%	24,991	5,801	23.2%	Commission-Manager	7	2	Concurrent	4	Combination	Electorate	Part-time
Burke	22,243	11,421	15,289	7,227	47.3%	11,237	5,205	46.3%	Commission-Administrator	5	5	Concurrent	4	District	Board	Part-time
Butts	19,522	5,705	14,823	4,194	28.3%	10,299	2,289	22.2%	Commission-Manager	5	5	Staggered	4	District	Board	Part-time
Calhoun	6,320	3,845	4,925	2,908	59.0%	2,696	1,536	57.0%	Traditional Commission	5	5	Staggered	4	District	Board	Part-time
Camden	43,664	9,077	29,832	5,655	19.0%	19,230	3,491	18.2%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Candler	9,577	2,623	7,009	1,796	25.6%	4,291	989	23.0%	Commission-Administrator	5	4	Concurrent	4	Combination	Electorate	Full-time
Carroll	87,268	14,647	64,638	9,952	15.4%	46,739	6,895	14.8%	Traditional Commission	7	6	Staggered	4	Combination	Electorate	Full-time
Catoosa	53,282	767	39,526	455	1.2%	30,863	364	1.2%	Commission-Manager	5	4	Staggered	4	Combination	Electorate	Part-time
Charlton	10,282	3,057	7,456	2,157	28.9%	4,533	1,023	22.6%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Chatham	232,048	95,242	173,965	64,328	37.0%	116,078	42,178	36.3%	Commission-Manager	9	8	Concurrent	4	Combination	Electorate	Part-time
Chattahoochee	14,882	4,701	10,656	3,068	28.8%	2,667	926	34.7%	Commission-Manager	3	3	Concurrent	4	At-large	Board	Part-time
Chattooga	25,470	2,960	19,636	2,339	11.9%	11,104	880	7.9%	Sole Commissioner	1	1	Concurrent	4	At-large		Full-time
Cherokee	141,903	3,851	101,793	2,482	2.4%	94,385	3,354	3.6%	Commission-Manager	5	4	Staggered	4	Combination	Electorate	Full-time
Clarke	101,489	28,165	83,381	19,433	23.3%	44,390	11,048	24.9%	Commission-Manager	11	10	Staggered	4	Combination	Electorate	Full-time
Clay	3,357	2,044	2,493	1,377	55.2%	1,745	962	55.1%	Commission-Administrator	5	5	Staggered	4	District	Board	Full-time
Clayton	236,517	124,550	165,596	79,831	48.2%	104,163	69,061	66.3%	Traditional Commission	5	4	Staggered	4	Combination	Electorate	Full-time
Clinch	6,878	2,057	4,962	1,355	27.3%	3,262	906	27.8%	Traditional Commission	5	5	Concurrent	4	Combination	Electorate	Full-time
Cobb	607,751	118,229	449,345	79,717	17.7%	333,359	66,064	19.8%	Commission-Manager	5	4	Staggered	4	Combination	Electorate	Part-time
Coffee	37,413	9,806	26,831	6,499	24.2%	16,530	4,169	25.2%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Colquitt	42,053	9,989	30,510	6,377	20.9%	16,022	3,097	19.3%	Commission-Administrator	7	7	Staggered	4	Combination	Electorate	Part-time
Columbia	89,288	10,375	62,858	6,886	11.0%	59,338	6,614	11.1%	Commission-Administrator	5	4	Staggered	4	Combination	Electorate	Part-time
Cook	15,771	4,645	11,318	2,925	25.8%	6,635	1,735	26.1%	Commission-Administrator	5	5	Concurrent	4	District	Board	Part-time
Coweta	89,215	16,286	63,573	10,644	16.7%	55,391	7,662	13.8%	Commission-Administrator	4	4	Staggered	4	District	Rotates	Part-time
Crawford	12,495	3,019	9,047	2,143	23.7%	5,823	1,364	23.4%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Crisp	21,996	9,624	15,618	5,990	38.4%	8,572	2,952	34.4%	Commission-Administrator	5	2	Staggered	6	Combination	Board	Part-time
Dade	15,154	103	11,541	86	0.7%	8,700	30	0.3%	Commission-Manager	5	5	Staggered	4	District	Board	Part-time
Dawson	15,999	73	11,991	39	0.3%	10,561	22	0.2%	Commission-Manager	5	4	Staggered	4	Combination	Electorate	Part-time
Decatur	28,240	11,353	20,178	7,372	36.5%	12,405	4,226	34.1%	Commission-Administrator	6	6	Staggered	4	District	Board	Part-time
DeKalb	665,865	368,516	501,887	253,585	50.5%	336,382	181,076	53.8%	Elected Executive	8	7	Staggered	4	Combination	Electorate	Full-time

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Dodge	19,171	5,670	14,192	3,822	26.9%	9,688	2,242	23.1%	Commission-Manager	5	4	Concurrent	4	Combination	Electorate	Full-time
Dooly	11,525	5,743	8,577	4,032	47.0%	5,042	2,355	46.7%	Traditional Commission	5	5	Staggered	6	District	Board	Part-time
Dougherty	96,065	58,154	69,489	38,854	55.9%	44,005	25,000	56.8%	Commission-Administrator	7	6	Staggered	4	Combination	Electorate	Part-time
Douglas	92,174	17,653	66,739	11,530	17.3%	54,260	15,290	28.2%	Commission-Manager	5	4	Staggered	4	Combination	Electorate	Full-time
Early	12,354	5,996	8,813	3,805	43.2%	6,030	2,532	42.0%	Commission-Administrator	5	4	Staggered	4	Combination	Electorate	Part-time
Echols	3,754	261	2,654	169	6.4%	1,512	105	6.9%	Traditional Commission	3	3	Concurrent	4	At-large	Board	Part-time
Effingham	37,535	4,985	26,301	3,197	12.2%	22,647	2,493	11.0%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Elbert	20,511	6,360	15,209	4,324	28.4%	9,978	2,659	26.6%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Emanuel	21,837	7,318	15,762	4,662	29.6%	11,724	3,592	30.6%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Evans	10,495	3,477	7,611	2,294	30.1%	5,182	1,494	28.8%	Commission-Administrator	6	6	Staggered	4	District	Board	Part-time
Fannin	19,798	32	15,654	20	0.1%	12,814	6	0.0%	Traditional Commission	3	2	Concurrent	4	At-large	Electorate	Full-time
Fayette	91,263	10,832	64,709	7,086	11.0%	62,458	9,053	14.5%	Commission-Administrator	5	5	Staggered	4	Combination	Board	Part-time
Floyd	90,565	12,345	68,329	8,333	12.2%	41,869	4,667	11.1%	Commission-Manager	5	5	Staggered	4	At-large	Board	Part-time
Forsyth	98,407	770	70,941	533	0.8%	71,228	738	1.0%	Commission-Administrator	5	5	Staggered	4	At-large	Board	Part-time
Franklin	20,285	1,837	15,431	1,273	8.2%	9,846	565	5.7%	Commission-Manager	5	4	Concurrent	4	Combination	Electorate	Part-time
Fulton	816,006	369,014	616,716	261,196	42.4%	427,925	175,168	40.9%	Commission-Manager	7	7	Concurrent	4	Combination	Electorate	Part-time
Gilmer	23,456	76	17,753	43	0.2%	13,453	23	0.2%	Traditional Commission	3	2	Staggered	4	At-large	Electorate	Full-time
Glascock	2,556	218	1,947	163	8.4%	1,535	96	6.3%	Traditional Commission	3	3	Concurrent	4	At-large	Electorate	Part-time
Glynn	67,568	18,147	50,460	11,922	23.6%	38,348	7,832	20.4%	Commission-Administrator	7	5	Staggered	4	Combination	Board	Part-time
Gordon	44,104	1,633	32,606	1,104	3.4%	21,743	671	3.1%	Commission-Administrator	5	5	Staggered	4	At-large	Board	Part-time
Grady	23,659	7,207	17,206	4,708	27.4%	10,985	2,910	26.5%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Greene	14,406	6,434	10,792	4,284	39.7%	8,577	2,924	34.1%	Commission-Manager	5	4	Staggered	4	Combination	Electorate	Part-time
Gwinnett	588,448	81,804	422,455	54,593	12.9%	306,410	53,895	17.6%	Commission-Administrator	5	4	Staggered	4	Combination	Electorate	Full-time
Habersham	35,902	1,708	27,471	1,378	5.0%	16,677	281	1.7%	Commission-Manager	5	5	Staggered	4	At-large	Board	Part-time
Hall	139,277	10,486	101,760	7,092	7.0%	63,351	3,925	6.2%	Commission-Administrator	5	4	Concurrent	4	Combination	Electorate	Part-time
Hancock	10,076	7,855	7,651	5,697	74.5%	5,090	3,938	77.4%	Traditional Commission	5	4	Concurrent	4	Combination	Electorate	Full-time
Haralson	25,690	1,443	18,992	966	5.1%	13,330	548	4.1%	Sole Commissioner	1	1	Concurrent	4	At-large		Full-time
Harris	23,695	4,662	17,630	3,344	19.0%	16,085	2,431	15.1%	Commission-Manager	5	5	Staggered	4	District	Board	Part-time
Hart	22,997	4,517	17,595	3,121	17.7%	11,308	1,547	13.7%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Heard	11,012	1,221	7,848	856	10.9%	5,726	694	12.1%	Traditional Commission	6	5	Concurrent	4	Combination	Electorate	Full-time
Henry	119,341	17,976	84,480	11,865	14.0%	84,679	20,595	24.3%	Commission-Manager	6	5	Staggered	4	Combination	Electorate	Part-time
Houston	110,765	28,046	79,549	18,390	23.1%	58,212	13,151	22.6%	Commission-Administrator	5	5	Staggered	4	At-large	Electorate	Full-time
Irwin	9,931	2,585	7,071	1,610	22.8%	4,288	921	21.5%	Traditional Commission	5	4	Staggered	4	Combination	Electorate	Full-time
Jackson	41,589	3,356	30,518	2,423	7.9%	22,539	1,205	5.3%	Commission-Manager	5	4	Staggered	4	Combination	Electorate	Full-time
Jasper	11,426	3,145	8,317	2,153	25.9%	6,243	1,329	21.3%	Commission-Administrator	5	5	Concurrent	4	District	Board	Part-time
Jeff Davis	12,684	1,932	9,230	1,302	14.1%	6,639	939	14.1%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Jefferson	17,266	9,756	12,363	6,553	53.0%	9,042	4,733	52.3%	Commission-Administrator	5	4	Staggered	4	Combination	Electorate	Part-time
Jenkins	8,575	3,496	6,132	2,280	37.2%	4,468	1,721	38.5%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Johnson	8,560	3,168	5,981	1,891	31.6%	4,642	1,346	29.0%	Commission-Administrator	5	5	Concurrent	4	District	Board	Part-time
Jones	23,639	5,569	17,228	4,052	23.5%	13,289	3,065	23.1%	Commission-Administrator	5	4	Concurrent	4	Combination	Electorate	Part-time
Lamar	15,912	4,895	12,013	3,496	29.1%	8,854	2,309	26.1%	Commission-Administrator	5	4	Staggered	4	Combination	Electorate	Part-time
Lanier	7,241	1,878	5,258	1,288	24.5%	3,530	798	22.6%	Traditional Commission	5	4	Staggered	4	Combination	Electorate	Part-time
Laurens	44,874	15,619	32,829	10,443	31.8%	23,103	6,866	29.7%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Lee	24,757	3,889	17,168	2,722	15.9%	13,416	1,752	13.1%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time

Appendix 4A

2000 Census Total and Voting Age Population, 2006 Voter Registration, and 2003 Form of Government Data for Georgia Counties

County	2000 Total POP	2000 Black POP	2000 Total VAP	2000 Black VAP	2000 VAP VAP %	2006 Total REG	2006 Black REG	2006 Black REG %	Form of Government	# of Comm.	# of Dist.	Terms	Term	Election Type	Chair Selection	Chair Part or Full Time
Liberty	61,610	27,467	41,916	17,267	41.2%	17,482	8,194	46.9%	Commission-Administrator	7	6	Concurrent	4	Combination	Electorate	Part-time
Lincoln	8,348	2,883	6,311	2,061	32.7%	3,915	1,068	27.3%	Traditional Commission	5	4	Concurrent	4	Combination	Electorate	Full-time
Long	10,304	2,576	6,893	1,560	22.6%	4,336	937	21.6%	Commission-Administrator	5	5	Concurrent	4	District	Board	Part-time
Lowndes	92,115	31,767	67,981	21,440	31.5%	37,805	10,643	28.2%	Commission-Manager	4	3	Concurrent	4	Combination	Electorate	Part-time
Lumpkin	21,016	343	15,914	244	1.5%	11,858	119	1.0%	Sole Commissioner	1	1	Concurrent	4	At-large		Full-time
Macon	14,074	8,419	10,187	5,857	57.5%	6,245	3,661	58.6%	Traditional Commission	5	5	Concurrent	4	District	Board	Part-time
Madison	25,730	2,216	18,966	1,513	8.0%	12,583	856	6.8%	Traditional Commission	5	4	Concurrent	4	Combination	Electorate	Full-time
Marion	7,144	2,465	5,119	1,636	32.0%	3,912	1,269	32.4%	Traditional Commission	3	3	Concurrent	4	At-large	Board	Part-time
McDuffie	21,231	8,045	15,315	5,314	34.7%	10,407	3,265	31.4%	Commission-Manager	5	2	Staggered	4	Combination	Electorate	Part-time
McIntosh	10,847	4,042	7,805	2,664	34.1%	6,616	2,336	35.3%	Traditional Commission	5	5	Concurrent	2	Combination	Board	Part-time
Meriwether	22,534	9,560	16,536	6,503	39.3%	11,345	4,194	37.0%	Commission-Manager	5	5	Concurrent	4	District	Board	Part-time
Miller	6,383	1,848	4,705	1,188	25.2%	3,493	826	23.6%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Mitchell	23,932	11,524	17,392	7,827	45.0%	9,520	3,881	40.8%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Monroe	21,757	6,127	16,044	4,423	27.6%	12,845	2,747	21.4%	Traditional Commission	5	4	Staggered	4	Combination	Electorate	Part-time
Montgomery	8,270	2,262	6,199	1,669	26.9%	4,008	897	22.4%	Commission-Administrator	5	5	Concurrent	4	District	Board	Part-time
Morgan	15,457	4,481	11,351	3,114	27.4%	8,956	1,822	20.3%	Commission-Manager	5	5	Staggered	4	District	Board	Part-time
Murray	36,506	304	26,302	169	0.6%	15,219	58	0.4%	Sole Commissioner	1	1	Concurrent	4	At-large		Full-time
Muscogee	186,291	83,157	136,289	55,832	41.0%	85,021	36,663	43.1%	Commission-Manager	11	10	Staggered	4	Combination	Electorate	Full-time
Newton	62,001	14,008	44,844	9,228	20.6%	40,766	12,434	30.5%	Traditional Commission	6	5	Staggered	4	Combination	Electorate	Full-time
Oconee	26,225	1,731	18,294	1,164	6.4%	16,804	611	3.6%	Commission-Administrator	5	4	Concurrent	4	At-large	Electorate	Full-time
Oglethorpe	12,635	2,548	9,377	1,790	19.1%	6,900	1,055	15.3%	Traditional Commission	6	5	Staggered	4	Combination	Electorate	Full-time
Paulding	81,678	5,952	56,599	3,739	6.6%	53,762	6,156	11.5%	Commission-Administrator	5	4	Staggered	4	Combination	Electorate	Full-time
Peach	23,668	10,816	17,505	7,886	45.0%	10,918	4,187	38.3%	Commission-Administrator	5	5	Staggered	4	Combination	Board	Part-time
Pickens	22,983	308	17,570	211	1.2%	14,018	100	0.7%	Sole Commissioner	1	1	Concurrent	4	At-large		Full-time
Pierce	15,636	1,746	11,467	1,165	10.2%	7,625	741	9.7%	Traditional Commission	5	4	Staggered	4	Combination	Electorate	Full-time
Pike	13,688	2,056	9,909	1,510	15.2%	8,511	982	11.5%	Commission-Manager	5	4	Staggered	4	Combination	Electorate	Part-time
Polk	38,127	5,209	28,190	3,523	12.5%	17,332	2,071	11.9%	Commission-Manager	5	5	Staggered	4	At-large	Board	Part-time
Pulaski	9,588	3,313	7,372	2,433	33.0%	4,584	1,162	25.3%	Sole Commissioner	1	1	Concurrent	4	At-large		Full-time
Putnam	18,812	5,703	14,444	3,855	26.7%	10,480	2,514	24.0%	Commission-Manager	5	4	Concurrent	4	Combination	Electorate	Part-time
Quitman	2,598	1,227	1,975	815	41.3%	1,426	635	44.5%	Traditional Commission	4	3	Staggered	4	At-large	Board	Part-time
Rabun	15,050	146	11,764	78	0.7%	8,207	21	0.3%	Commission-Administrator	3	3	Staggered	4	At-large	Rotates	Part-time
Randolph	7,791	4,648	5,662	3,147	55.6%	3,955	2,141	54.1%	Traditional Commission	5	5	Staggered	4	District	Board	Part-time
Richmond	199,775	101,328	146,167	67,731	46.3%	88,772	44,651	50.3%	Commission-Administrator	11	10	Staggered	4	Combination	Electorate	Full-time
Rockdale	70,111	13,092	50,823	8,381	16.5%	40,337	12,811	31.8%	Traditional Commission	3	3	Staggered	4	At-large	Electorate	Full-time
Schley	3,766	1,194	2,663	777	29.2%	2,075	509	24.5%	Traditional Commission	5	4	Staggered	4	Combination	Electorate	Part-time
Screven	15,374	6,995	11,083	4,680	42.2%	7,335	2,795	38.1%	Commission-Manager	7	7	Staggered	4	District	Board	Part-time
Seminole	9,369	3,263	6,919	2,062	29.8%	4,821	1,417	29.4%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Spalding	58,417	18,341	42,485	11,967	28.2%	27,862	7,454	26.8%	Commission-Manager	5	5	Staggered	4	District	Board	Part-time
Stephens	25,435	3,148	19,468	2,165	11.1%	12,169	993	8.2%	Commission-Administrator	3	3	Staggered	4	At-large	Board	Part-time
Stewart	5,252	3,261	3,945	2,336	59.2%	2,921	1,733	59.3%	Traditional Commission	5	5	Staggered	4	District	Board	Part-time
Sumter	33,200	16,359	23,968	10,756	44.9%	15,190	6,692	44.1%	Commission-Administrator	5	5	Staggered	4	District	Board	Part-time
Talbot	6,498	4,037	4,928	2,942	59.7%	3,919	2,232	57.0%	Traditional Commission	5	5	Staggered	4	District	Board	Part-time
Taliaferro	2,077	1,261	1,577	913	57.9%	1,276	732	57.4%	Traditional Commission	3	2	Concurrent	4	At-large	Electorate	Part-time
Tattnall	22,305	7,084	17,197	5,510	32.0%	8,782	1,766	20.1%	Commission-Manager	6	5	Concurrent	4	Combination	Electorate	Full-time

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2000 Census Total and Voting Age Population, 2006 Voter Registration, and 2003 Form of Government Data for Georgia Counties

County	2000 Total POP	2000 Black POP	2000 Total VAP	2000 Black VAP	2000 VAP VAP %	2006 Total REG	2006 Black REG	2006 Black REG %	Form of Government	# of Comm.	# of Dist.	Terms	Term	Election Type	Chair Selection	Chair Part or Full Time
Taylor	8,815	3,778	6,446	2,549	39.5%	4,348	1,609	37.0%	Commission-Manager	5	5	Concurrent	4	District	Board	Part-time
Telfair	11,794	4,568	9,141	3,411	37.3%	5,167	1,597	30.9%	Traditional Commission	5	5	Staggered	4	District	Board	Part-time
Terrell	10,970	6,693	7,856	4,394	55.9%	5,203	2,765	53.1%	Traditional Commission	5	4	Staggered	4	Combination	Electorate	Part-time
Thomas	42,737	16,745	31,136	11,242	36.1%	20,825	6,340	30.4%	Commission-Manager	8	8	Staggered	4	District	Board	Part-time
Tift	38,407	10,880	27,948	7,014	25.1%	16,025	3,560	22.2%	Commission-Administrator	7	7	Staggered	4	Combination	Electorate	Full-time
Toombs	26,067	6,358	18,624	4,019	21.6%	11,644	2,475	21.3%	Traditional Commission	5	4	Staggered	4	Combination	Electorate	Full-time
Towns	9,319	17	7,802	16	0.2%	6,862	2	0.0%	Sole Commissioner	1	1	Concurrent	4	At-large		Full-time
Treutlen	6,854	2,283	5,073	1,561	30.8%	3,712	1,119	30.1%	Traditional Commission	5	5	Staggered	4	District	Board	Part-time
Troup	58,779	18,919	42,406	12,489	29.5%	29,884	8,020	26.8%	Commission-Administrator	5	5	Staggered	4	Combination	Electorate	Part-time
Turner	9,504	3,905	6,707	2,456	36.6%	3,965	1,292	32.6%	Traditional Commission	5	5	Staggered	4	District	Board	Part-time
Twiggs	10,590	4,648	7,731	3,204	41.4%	5,530	2,338	42.3%	Commission-Administrator	5	4	Concurrent	4	Combination	Electorate	Part-time
Union	17,289	111	13,830	91	0.7%	11,778	16	0.1%	Sole Commissioner	1	1	Concurrent	4	At-large		Full-time
Upson	27,597	7,757	20,565	5,383	26.2%	13,802	3,475	25.2%	Traditional Commission	5	4	Staggered	4	Combination	Electorate	Part-time
Walker	61,053	2,458	45,937	1,692	3.7%	31,810	968	3.0%	Sole Commissioner	1	1	Concurrent	4	At-large		Full-time
Walton	60,687	8,897	43,464	5,759	13.3%	36,939	3,824	10.4%	Traditional Commission	7	6	Staggered	4	Combination	Electorate	Full-time
Ware	35,483	10,032	26,679	6,922	25.9%	14,213	3,292	23.2%	Commission-Manager	5	5	Staggered	4	Combination	Electorate	Part-time
Warren	6,336	3,783	4,666	2,570	55.1%	3,222	1,780	55.2%	Traditional Commission	3	2	Concurrent	4	Combination	Electorate	Full-time
Washington	21,176	11,325	15,472	7,803	50.4%	10,391	4,700	45.2%	Commission-Administrator	5	4	Concurrent	4	Combination	Electorate	Part-time
Wayne	26,565	5,481	19,674	3,864	19.6%	12,095	1,709	14.1%	Commission-Administrator	5	5	Concurrent	4	District	Board	Part-time
Webster	2,390	1,125	1,787	816	45.7%	1,334	598	44.8%	Traditional Commission	5	4	Staggered	4	Combination	Electorate	Full-time
Wheeler	6,179	2,069	4,796	1,580	32.9%	2,706	731	27.0%	Traditional Commission	3	3	Concurrent	4	District	Board	Part-time
White	19,944	467	15,322	344	2.2%	11,965	141	1.2%	Commission-Administrator	3	2	Staggered	4	At-large	Electorate	Part-time
Whitfield	83,525	3,504	60,691	2,345	3.9%	35,044	1,415	4.0%	Commission-Administrator	5	4	Staggered	4	Combination	Electorate	Part-time
Wilcox	8,577	3,122	6,624	2,336	35.3%	3,505	953	27.2%	Traditional Commission	5	5	Staggered	4	District	Board	Part-time
Wilkes	10,687	4,642	8,126	3,416	42.0%	5,847	2,273	38.9%	Traditional Commission	5	4	Staggered	4	Combination	Electorate	Full-time
Wilkinson	10,220	4,197	7,437	2,839	38.2%	5,531	2,271	41.1%	Commission-Manager	5	4	Concurrent	4	Combination	Electorate	Part-time
Worth	21,967	6,532	15,683	4,129	26.3%	9,829	2,437	24.8%	Commission-Administrator	5	4	Staggered	4	Combination	Electorate	Part-time

Sources:

Census Data: 2000 Census of Population and Housing
Registration Data: Georgia Secretary of State. Feb. 2006 Report of Voter Registration
Form of Government: ACCG (Association County Commissioners of Georgia) 2003. Prepared by the Carl Vinson Institute of Government, Governmental Services Division, January 2004.

Appendix 4B

Historical Census Data for Georgia Counties

Sorted by 2000 Black Percentage

	Total POP 2000	Black POP 2000	Black Share of Total Pop. 2000	Total POP 1990	Black POP 1990	Black Share of Total Pop. 1990	Total POP 1980	Black POP 1980	Black Share of Total Pop. 1980
Hancock	10,076	7,855	78.0%	8,908	7,077	79.4%	9,466	7,238	76.5%
Talbot	6,498	4,037	62.1%	6,524	4,067	62.3%	6,536	4,160	63.6%
Stewart	5,252	3,261	62.1%	5,654	3,578	63.3%	5,896	3,734	63.3%
Terrell	10,970	6,693	61.0%	10,653	6,377	59.9%	12,017	7,151	59.5%
Clay	3,357	2,044	60.9%	3,364	2,044	60.8%	3,553	2,193	61.7%
Calhoun	6,320	3,845	60.8%	5,013	2,953	58.9%	5,717	3,239	56.7%
Taliaferro	2,077	1,261	60.7%	1,915	1,167	60.9%	2,032	1,299	63.9%
Dougherty	96,065	58,154	60.5%	96,311	48,387	50.2%	100,718	42,531	42.2%
Macon	14,074	8,419	59.8%	13,114	7,694	58.7%	18,546	6,544	35.3%
Warren	6,336	3,783	59.7%	6,078	3,656	60.2%	6,583	3,829	58.2%
Randolph	7,791	4,648	59.7%	8,023	4,645	57.9%	9,599	5,222	54.4%
Jefferson	17,266	9,756	56.5%	17,408	9,700	55.7%	18,403	9,852	53.5%
DeKalb	665,865	368,516	55.3%	545,837	230,425	42.2%	483,024	129,933	26.9%
Washington	21,176	11,325	53.5%	19,112	9,874	51.7%	18,842	9,546	50.7%
Clayton	236,517	124,550	52.7%	182,052	43,403	23.8%	150,357	10,405	6.9%
Burke	22,243	11,421	51.3%	20,579	10,756	52.3%	19,349	10,171	52.6%
Richmond	199,775	101,328	50.7%	189,719	79,639	42.0%	181,629	67,253	37.0%
Baker	4,074	2,062	50.6%	3,615	1,861	51.5%	3,808	1,859	48.8%
Dooly	11,525	5,743	49.8%	9,901	4,852	49.0%	10,826	5,182	47.9%
Sumter	33,200	16,359	49.3%	30,228	14,045	46.5%	29,360	12,771	43.5%
Early	12,354	5,996	48.5%	11,854	5,226	44.1%	13,158	5,538	42.1%
Mitchell	23,932	11,524	48.2%	20,275	9,647	47.6%	21,114	10,029	47.5%
Bibb	153,887	73,402	47.7%	149,967	62,526	41.7%	150,256	57,627	38.4%
Quitman	2,598	1,227	47.2%	2,209	1,107	50.1%	2,357	1,318	55.9%
Webster	2,390	1,125	47.1%	2,263	1,132	50.0%	2,341	1,159	49.5%
Peach	23,668	10,816	45.7%	21,189	10,075	47.5%	19,151	9,588	50.1%
Screven	15,374	6,995	45.5%	13,842	6,209	44.9%	14,043	6,257	44.6%
Fulton	816,006	369,014	45.2%	648,951	324,008	49.9%	589,904	300,952	51.0%
Greene	14,406	6,434	44.7%	11,793	5,887	49.9%	11,391	5,875	51.6%
Muscogee	186,291	83,157	44.6%	179,278	68,161	38.0%	170,108	57,362	33.7%
Liberty	61,610	27,467	44.6%	52,745	20,655	39.2%	37,583	13,605	36.2%
Twiggs	10,590	4,648	43.9%	9,806	4,501	45.9%	9,354	4,639	49.6%
Baldwin	44,700	19,573	43.8%	39,530	16,706	42.3%	34,686	12,816	36.9%
Crisp	21,996	9,624	43.8%	20,011	8,153	40.7%	19,489	7,520	38.6%
Wilkes	10,687	4,642	43.4%	10,597	4,909	46.3%	10,951	4,925	45.0%
Taylor	8,815	3,778	42.9%	7,642	3,300	43.2%	7,902	3,098	39.2%
Meriwether	22,534	9,560	42.4%	22,411	9,989	44.6%	21,229	9,413	44.3%
Turner	9,504	3,905	41.1%	8,703	3,534	40.6%	9,510	3,446	36.2%
Wilkinson	10,220	4,197	41.1%	10,228	4,302	42.1%	10,368	4,584	44.2%
Chatham	232,048	95,242	41.0%	216,935	82,608	38.1%	202,226	76,648	37.9%
Jenkins	8,575	3,496	40.8%	8,247	3,412	41.4%	8,841	3,543	40.1%
Decatur	28,240	11,353	40.2%	25,511	10,070	39.5%	25,495	9,818	38.5%

Appendix 4B

Historical Census Data for Georgia Counties

Sorted by 2000 Black Percentage

	Total POP 2000	Black POP 2000	Black Share of Total Pop. 2000	Total POP 1990	Black POP 1990	Black Share of Total Pop. 1990	Total POP 1980	Black POP 1980	Black Share of Total Pop. 1980
Brooks	16,450	6,529	39.7%	15,398	6,390	41.5%	15,255	6,678	43.8%
Thomas	42,737	16,745	39.2%	38,986	14,759	37.9%	38,098	14,358	37.7%
Telfair	11,794	4,568	38.7%	11,000	3,773	34.3%	11,445	3,517	30.7%
McDuffie	21,231	8,045	37.9%	20,119	7,320	36.4%	17,747	1,900	10.7%
McIntosh	10,847	4,042	37.3%	8,634	3,719	43.1%	5,297	2,415	45.6%
Johnson	8,560	3,168	37.0%	8,329	2,839	34.1%	8,660	2,725	31.5%
Wilcox	8,577	3,122	36.4%	7,008	2,225	31.7%	7,682	2,418	31.5%
Seminole	9,369	3,263	34.8%	9,010	2,943	32.7%	9,057	2,907	32.1%
Laurens	44,874	15,619	34.8%	39,988	13,304	33.3%	36,990	12,009	32.5%
Pulaski	9,588	3,313	34.6%	8,108	2,632	32.5%	8,950	3,043	34.0%
Lincoln	8,348	2,883	34.5%	7,442	2,826	38.0%	6,716	2,795	41.6%
Marion	7,144	2,465	34.5%	5,590	2,306	41.3%	14,003	7,752	55.4%
Lowndes	92,115	31,767	34.5%	75,981	24,241	31.9%	67,972	20,312	29.9%
Emanuel	21,837	7,318	33.5%	20,546	6,681	32.5%	20,795	6,491	31.2%
Wheeler	6,179	2,069	33.5%	4,903	1,474	30.1%	5,155	1,504	29.2%
Treutlen	6,854	2,283	33.3%	5,994	1,984	33.1%	6,087	1,989	32.7%
Evans	10,495	3,477	33.1%	8,724	2,963	34.0%	8,428	2,886	34.2%
Ben Hill	17,484	5,754	32.9%	16,245	5,088	31.3%	16,000	4,793	30.0%
Troup	58,779	18,919	32.2%	55,536	16,694	30.1%	50,003	15,449	30.9%
Tattnall	22,305	7,084	31.8%	17,722	5,177	29.2%	18,134	5,208	28.7%
Schley	3,766	1,194	31.7%	3,588	1,222	34.1%	3,433	1,208	35.2%
Chattahoochee	14,882	4,701	31.6%	16,934	5,235	30.9%	21,732	6,948	32.0%
Spalding	58,417	18,341	31.4%	54,457	15,785	29.0%	47,899	12,760	26.6%
Elbert	20,511	6,360	31.0%	18,949	5,718	30.2%	18,758	5,681	30.3%
Lamar	15,912	4,895	30.8%	13,038	4,442	34.1%	12,215	4,122	33.7%
Grady	23,659	7,207	30.5%	20,279	6,395	31.5%	19,845	6,214	31.3%
Putnam	18,812	5,703	30.3%	14,137	4,748	33.6%	10,295	4,236	41.1%
Clinch	6,878	2,057	29.9%	6,160	1,682	27.3%	6,660	1,937	29.1%
Worth	21,967	6,532	29.7%	19,745	6,051	30.6%	18,064	6,086	33.7%
Charlton	10,282	3,057	29.7%	8,496	2,355	27.7%	7,343	2,147	29.2%
Dodge	19,171	5,670	29.6%	17,607	4,864	27.6%	16,955	4,426	26.1%
Cook	15,771	4,645	29.5%	13,456	4,031	30.0%	13,490	4,053	30.0%
Butts	19,522	5,705	29.2%	15,326	5,438	35.5%	13,665	5,226	38.2%
Bulloch	55,983	16,271	29.1%	43,125	11,226	26.0%	35,785	9,423	26.3%
Morgan	15,457	4,481	29.0%	12,883	4,459	34.6%	11,572	4,689	40.5%
Miller	6,383	1,848	29.0%	6,280	1,726	27.5%	7,038	1,956	27.8%
Tift	38,407	10,880	28.3%	34,998	9,371	26.8%	32,862	8,393	25.5%
Ware	35,483	10,032	28.3%	35,471	9,238	26.0%	37,180	8,284	22.3%
Monroe	21,757	6,127	28.2%	17,113	5,406	31.6%	14,610	5,386	36.9%
Upson	27,597	7,757	28.1%	26,300	7,272	27.7%	25,998	7,083	27.2%
Clarke	101,489	28,165	27.8%	87,594	22,935	26.2%	74,498	17,356	23.3%
Jasper	11,426	3,145	27.5%	8,453	2,940	34.8%	7,553	2,999	39.7%

Appendix 4B

Historical Census Data for Georgia Counties

Sorted by 2000 Black Percentage

	Total POP 2000	Black POP 2000	Black Share of Total Pop. 2000	Total POP 1990	Black POP 1990	Black Share of Total Pop. 1990	Total POP 1980	Black POP 1980	Black Share of Total Pop. 1980
Candler	9,577	2,623	27.4%	7,744	2,405	31.1%	7,518	2,359	31.4%
Montgomery	8,270	2,262	27.4%	7,163	2,026	28.3%	7,011	2,122	30.3%
Glynn	67,568	18,147	26.9%	62,496	15,941	25.5%	54,981	14,371	26.1%
Coffee	37,413	9,806	26.2%	29,592	7,504	25.4%	26,894	6,730	25.0%
Irwin	9,931	2,585	26.0%	8,649	2,630	30.4%	8,988	2,738	30.5%
Lanier	7,241	1,878	25.9%	5,531	1,470	26.6%	5,654	1,378	24.4%
Houston	110,765	28,046	25.3%	89,208	19,376	21.7%	77,605	15,687	20.2%
Long	10,304	2,576	25.0%	6,202	1,342	21.6%	4,524	1,130	25.0%
Bleckley	11,666	2,891	24.8%	10,430	2,332	22.4%	10,767	2,342	21.8%
Toombs	26,067	6,358	24.4%	24,072	5,637	23.4%	22,592	5,668	25.1%
Crawford	12,495	3,019	24.2%	8,991	2,757	30.7%	7,684	2,998	39.0%
Colquitt	42,053	9,989	23.8%	36,645	8,861	24.2%	35,376	8,083	22.8%
Jones	23,639	5,569	23.6%	20,739	5,317	25.6%	16,579	4,993	30.1%
Newton	62,001	14,008	22.6%	41,808	9,357	22.4%	34,489	8,706	25.2%
Camden	43,664	9,077	20.8%	30,167	6,079	20.2%	13,371	4,277	32.0%
Wayne	26,565	5,481	20.6%	22,356	4,358	19.5%	20,750	3,903	18.8%
Oglethorpe	12,635	2,548	20.2%	9,763	2,419	24.8%	8,929	2,749	30.8%
Appling	17,419	3,450	19.8%	15,744	3,268	20.8%	15,565	3,103	19.9%
Atkinson	7,609	1,506	19.8%	6,213	1,658	26.7%	6,141	1,662	27.1%
Harris	23,695	4,662	19.7%	17,788	4,571	25.7%	15,464	5,215	33.7%
Hart	22,997	4,517	19.6%	19,712	4,002	20.3%	18,585	4,042	21.7%
Cobb	607,751	118,229	19.5%	447,745	44,154	9.9%	297,718	12,947	4.3%
Douglas	92,174	17,653	19.2%	71,120	5,597	7.9%	54,573	2,792	5.1%
Rockdale	70,111	13,092	18.7%	54,091	4,355	8.1%	36,747	3,145	8.6%
Coweta	89,215	16,286	18.3%	53,853	12,194	22.6%	39,268	10,564	26.9%
Carroll	87,268	14,647	16.8%	71,422	11,231	15.7%	56,346	9,600	17.0%
Bacon	10,103	1,627	16.1%	9,566	1,480	15.5%	9,379	1,391	14.8%
Lee	24,757	3,889	15.7%	16,250	3,135	19.3%	11,684	2,749	23.5%
Jeff Davis	12,684	1,932	15.2%	12,032	1,834	15.2%	11,473	1,805	15.7%
Henry	119,341	17,976	15.1%	58,741	6,068	10.3%	36,309	6,213	17.1%
Pike	13,688	2,056	15.0%	10,224	2,053	20.1%	8,937	2,257	25.3%
Walton	60,687	8,897	14.7%	38,586	7,105	18.4%	31,211	6,459	20.7%
Bryan	23,417	3,431	14.7%	15,438	2,293	14.9%	10,175	2,159	21.2%
Gwinnett	588,448	81,804	13.9%	352,910	18,175	5.2%	166,903	4,070	2.4%
Polk	38,127	5,209	13.7%	33,815	4,791	14.2%	32,386	4,786	14.8%
Floyd	90,565	12,345	13.6%	81,251	11,106	13.7%	79,800	10,141	12.7%
Effingham	37,535	4,985	13.3%	25,687	3,620	14.1%	18,327	3,365	18.4%
Stephens	25,435	3,148	12.4%	23,257	2,787	12.0%	21,763	2,611	12.0%
Fayette	91,263	10,832	11.9%	62,415	3,380	5.4%	29,043	1,261	4.3%
Chattooga	25,470	2,960	11.6%	22,242	1,941	8.7%	21,856	1,867	8.5%
Columbia	89,288	10,375	11.6%	66,031	7,282	11.0%	40,118	5,841	14.6%
Berrien	16,235	1,882	11.6%	14,153	1,648	11.6%	13,525	1,649	12.2%

Appendix 4B

Historical Census Data for Georgia Counties

Sorted by 2000 Black Percentage

	Total POP 2000	Black POP 2000	Black Share of Total Pop. 2000	Total POP 1990	Black POP 1990	Black Share of Total Pop. 1990	Total POP 1980	Black POP 1980	Black Share of Total Pop. 1980
Pierce	15,636	1,746	11.2%	13,328	1,569	11.8%	11,897	1,618	13.6%
Heard	11,012	1,221	11.1%	8,628	1,163	13.5%	6,520	1,084	16.6%
Barrow	46,144	4,675	10.1%	29,721	3,354	11.3%	21,354	3,115	14.6%
Franklin	20,285	1,837	9.1%	16,650	1,681	10.1%	15,185	1,519	10.0%
Bartow	76,019	6,829	9.0%	55,911	5,026	9.0%	40,760	4,686	11.5%
Madison	25,730	2,216	8.6%	21,050	1,849	8.8%	8,046	3,607	44.8%
Glascock	2,556	218	8.5%	2,357	298	12.6%	2,382	368	15.4%
Jackson	41,589	3,356	8.1%	30,005	2,904	9.7%	25,343	2,722	10.7%
Hall	139,277	10,486	7.5%	95,428	8,195	8.6%	75,649	6,766	8.9%
Paulding	81,678	5,952	7.3%	41,611	1,648	4.0%	26,110	1,198	4.6%
Echols	3,754	261	7.0%	2,334	264	11.3%	2,297	374	16.3%
Oconee	26,225	1,731	6.6%	17,618	1,315	7.5%	12,427	1,255	10.1%
Haralson	25,690	1,443	5.6%	21,966	1,427	6.5%	18,422	1,330	7.2%
Habersham	35,902	1,708	4.8%	27,621	1,554	5.6%	25,020	1,316	5.3%
Whitfield	83,525	3,504	4.2%	72,462	2,901	4.0%	65,789	2,503	3.8%
Brantley	14,629	612	4.2%	11,077	596	5.4%	8,701	555	6.4%
Walker	61,053	2,458	4.0%	58,340	2,246	3.8%	56,470	2,307	4.1%
Gordon	44,104	1,633	3.7%	35,072	1,321	3.8%	30,070	1,310	4.4%
Banks	14,422	477	3.3%	10,308	364	3.5%	8,702	429	4.9%
Cherokee	141,903	3,851	2.7%	90,204	1,693	1.9%	51,699	1,101	2.1%
White	19,944	467	2.3%	13,006	360	2.8%	10,120	390	3.9%
Lumpkin	21,016	343	1.6%	14,573	238	1.6%	10,762	232	2.2%
Catoosa	53,282	767	1.4%	42,464	357	0.8%	36,991	289	0.8%
Pickens	22,983	308	1.3%	14,432	247	1.7%	11,652	264	2.3%
Rabun	15,050	146	1.0%	11,648	41	0.4%	10,466	62	0.6%
Murray	36,506	304	0.8%	26,147	41	0.2%	19,685	32	0.2%
Forsyth	98,407	770	0.8%	44,083	14	0.0%	27,958	1	0.0%
Dade	15,154	103	0.7%	13,147	101	0.8%	12,318	109	0.9%
Union	17,289	111	0.6%	11,993	19	0.2%	9,390	3	0.0%
Dawson	15,999	73	0.5%	9,429	4	0.0%	4,774	0	0.0%
Gilmer	23,456	76	0.3%	13,368	37	0.3%	11,110	22	0.2%
Towns	9,319	17	0.2%	6,754	-	0.0%	5,638	1	0.0%
Fannin	19,798	32	0.2%	15,992	5	0.0%	14,748	7	0.0%
Statewide	8,186,453	2,393,425	29.2%	6,478,216	1,746,565	27.0%	5,463,105	1,448,137	26.5%

Appendix 4C

Distribution of Black Population in Georgia by Black Share of County Total Population

1980 and 2000

Black Share of Total Population in County	1980		2000	
0-9.9%	56,714	3.9%	52,089	2.2%
10-19.9%	73,049	5.0%	375,032	15.7%
20-29.9%	324,709	22.4%	243,235	10.2%
30-39.9%	463,696	32.0%	200,834	8.4%
Subtotal: 0 to 39.9% Counties	***918,168***	***63.4%***	***871,190***	***36.4%***
40-49.9%	136,850	9.5%	789,277	33.0%
50-59.9%	374,495	25.9%	645,808	27.0%
60-69.9%	11,386	0.8%	79,295	3.3%
70-79.9%	7,238	0.5%	7,855	0.3%
Subtotal: 40 to 79.9% Counties	***529,969***	***36.6%***	***1,522,235***	***63.6%***
Statewide	**1,448,137**		**2,393,425**	

Appendix 5: State of Georgia -- 2000 Census Language Minority Determination Data

Table 5-A: Statewide Totals for Total and Language-Minority Populations

Group	Total Pop.	Voting Age Pop.	Citizen Voting Age Pop.	Citizen Voting Age LEP Pop.	LEP Share of Total Citizen Voting Age Pop.	Illiteracy Rate
All Persons	**8,186,455**	**6,020,680**	**5,675,210**	**97,850**	**1.72**	**5.56**
Spanish/Hispanic/Latino	**429,975**	**296,520**	**110,755**	**28,595**	**0.50**	**10.70**
Asian (All Groups)	**199,610**	**145,230**	**75,505**	**23,530**	**0.41**	**6.63**
Vietnamese	31,630	22,895	9,430	5,670	0.1	6.79
Korean	31,770	22,980	12,410	4,865	0.09	2.67
Chinese (Including Taiwanese)	31,985	23,970	13,495	4,760	0.08	7.77
Asian Indian	49,450	36,390	17,445	3,535	0.06	3.25
Laotian	5,265	3,630	1,975	1,015	0.02	20.2
Filipino	15,785	10,950	8,155	955	0.02	4.71
Cambodian	4,030	2,710	1,395	880	0.02	21.02
Other Asian	9,915	6,690	4,195	720	0.01	13.19
Japanese	10,865	8,245	4,280	445	0.01	0.9
Pakistani	5,195	3,615	1,685	345	0.01	2.9
Thai	3,100	2,455	1,320	295	0.01	10.17
Hmong	1,280	750	385	165	0	21.21

Source: Bureau of the Census Voting Rights Determination Data
http://www.census.gov/rdo/www/voting%20rights.htm

Statewide data were suppressed by the Bureau of the Census for the following single-language Asian groups: Bangladeshi, Indonesian, Malaysian and Sri Lankan.

Table 5-A: Statewide Totals for Total and Language-Minority Populations (cont.)

Group	Total Pop.	Voting Age Pop.	Citizen Voting Age Pop.	Citizen Voting Age LEP Pop.	LEP Share of Total Citizen Voting Age Pop.	Illiteracy Rate
American Indian (All Groups)	**59,720**	**44,775**	**41,360**	**1,460**	**0.03**	**10.96**
Aian Check Box	18,530	13,480	12,455	540	0.01	14.81
Cherokee	22,140	17,215	17,190	305	0.01	0
Latin American Indian	3,625	2,840	690	250	0	12
Other American Indian Tribes	4,525	3,380	3,225	120	0	0
Apache	900	630	625	55	0	45.45
Blackfeet	1,400	1,045	1,035	30	0	0
Sioux	1,210	820	820	25	0	0
Creek	2,455	1,740	1,730	20	0	0
Seminole	735	525	525	20	0	0
Choctaw	1,285	890	885	10	0	0
Iroquois	1,015	685	655	10	0	0
Chippewa	520	440	435	4	0	0
Yuman	-	-	-	-	0	0

Statewide data were suppressed by the Bureau of the Census for the following single-language Indian groups: Cheyenne, Chickasaw, Colville, Comanche, Cree, Crow, Delaware, Houma, Kiowa, Lumbee, Menominee, Navajo, Osage, Ottawa, Paiute, Pima, Potawatomi, Pueblo, Puget Sound Salish, Shoshone, Tohono O'odham, Ute, Yakama, Yaqui, Alaskan Athabascan, Aleut, Eskimo, Tlingit-haida and Other Alaska Native Group.

Table 5-B: Jurisdictions in Which the LEP of a Single Language-Minority Group Exceeds One Percent of the Total CVAP and / or 2,000 Persons

County (Group)	Total Pop.	Voting Age Pop.	Citizen Voting Age Pop.	Citizen Voting Age LEP Pop.	LEP Share of Total Citizen Voting Age Pop.	Illiteracy Rate
Gwinnett County (Spanish)	63,575	43,955	14,200	4,300	1.18	9.42
Fulton County (Spanish)	47,735	35,405	12,535	3,235	0.57	9.89
Cobb County (Spanish)	46,945	32,690	12,055	3,090	0.76	9.87
DeKalb County (Spanish)	51,585	38,860	9,935	2,980	0.68	11.58
Hall County (Spanish)	27,320	17,490	3,515	1,475	1.71	13.90
Whitfield County (Spanish)	18,340	11,380	2,480	1,285	2.50	8.95
Atkinson County (Spanish)	1,325	780	175	95	2.02	4.21
Chattahoochee County (Spanish)	1,575	1,045	890	130	1.27	7.69
Coffee County (Spanish)	2,565	1,710	630	295	1.15	15.25
Liberty County (Spanish)	5,010	3,170	2,460	455	1.14	4.40
Tattnall County (Spanish)	1,905	1,200	415	185	1.13	8.11

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VOTING RIGHTS IN LOUISIANA 1982-2006

A REPORT OF RENEWTHEVRA.ORG
PREPARED BY DEBO P. ADEGBILE

MARCH 2006

VOTING RIGHTS IN LOUISIANA 1982-2006

DEBO P. ADEGBILE, ASSOCIATE DIRECTOR OF LITIGATION OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. [1]

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INTRODUCTION and EXECUTIVE SUMMARY

President Lyndon Johnson framed the challenge posed by our nation's tradition of racially motivated violence and discriminatory voting practices in his speech proposing the bill that became the Voting Rights Act of 1965 ("VRA" or "Act").

> Many of the issues of civil rights are very complex and most difficult. But about this there can and should be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty we have to ensure that right.[2]

For nearly one hundred years following passage of the Fifteenth and Fourteenth Amendments, entrenched discrimination in voting eroded the promise of equality. Citizen protests brought urgency to the need to reconcile our nation's high constitutional principles with its low anti-democratic practices. Congress took up president Johnson's charge to ensure political equality by overwhelmingly passing the VRA, which was "designed to banish the blight of racial discrimination in voting."[3] On four subsequent occasions, after determining that the goal of purging discrimination from voting had yet to be achieved, Congress and the sitting President have renewed the national commitment to the VRA's expiring enforcement provisions.[4] Section 5 of the Voting Rights Act of 1965, and the other expiring voting enforcement provisions,[5] are set to expire in 2007 unless they are renewed. These provisions have been at the core of voting rights enforcement in the four decades since the passage of the VRA.

In order to determine whether reauthorization of the expiring provisions is warranted, Congress must carefully consider the effects of the provisions in the covered jurisdictions[6] since the time of the last renewal in 1982.[7] In the process, Congress must consider the reach of history, measure of progress, and again determine the best method of ensuring meaningful equality in voting.

This report analyzes voting rights enforcement in Louisiana since 1982. The view from Louisiana provides important evidence about the effectiveness and ongoing necessity of VRA protections. Forty years after the passage of the VRA, Louisiana has made demonstrable progress toward the goal of equality in voting but fallen short of accomplishing it. Any careful study of the experience of minority voters in Louisiana reveals that much of the progress that has been achieved in the state is a direct result of the protections of the VRA generally, and the

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[2] President Lyndon Baines Johnson's Speech before a Joint Session of Congress, March 15, 1965.
[3] See *South Carolina v. Katzenbach,* 383 U.S. 301, 308 (1966)(upholding the constitutionality of Section 5 preclearance).
[4] Expiring provisions of the VRA were renewed in 1970, 1975, 1982, and 1992.
[5] The related provisions include Sections 203 (42 U.S.C. § 1973aa-1a), 4(f)4 (42 U.S.C. § 1973b(f)), and the federal examiner provisions (42 U.S.C. §§ 1973d, 1973f).
[6] See U.S. Dept. of Justice, *Section 5 Covered Jurisdictions, available at* http://www.usdoj.gov/crt/voting/sec_5/covered.htm.
[7] Section 203, the language assistance provision of the VRA, was last renewed in 1992.

Section 5 preclearance provision in particular. As this report illustrates, the role of the VRA both as a remedy for, and as a deterrent to, voting discrimination is unmistakable. The record of enhanced African-American voter registration, participation and minority office-holding, of Section 5 objections to retrogressive voting changes, deterrence of others, and of Section 2 litigation resulting in judgments or settlements, collectively paints a picture of a civil rights act that has been effective and whose protections remain vital.

The experience in Louisiana since 1982 shows that voting discrimination in the state persists, attempts to dilute African-American votes are commonplace, and many white officials remain intransigent — refusing to provide basic information required under Section 5 to the U.S. Department of Justice ("DOJ"). African Americans have been excluded from local decision-making processes, and African-American officials who advocate for non-discriminatory voting changes have confronted retaliation. The record includes examples of discriminatory effects and intentionally discriminatory acts. Some unexpected and unforgettable contemporary events provide a window into the continuing importance of the VRA in Louisiana. The recent national attention on the city of New Orleans following Hurricane Katrina presents a new opportunity to weigh the necessity of minority voter protections at the same time that it brings renewed focus to a city that has consistently been the center of efforts to weaken minority voting rights. In the years since the last renewal of the VRA in 1982, but long before Hurricanes Katrina and Rita devastated New Orleans and the surrounding areas, African-American voters in that part of the state have relied upon the protections of the Act to turn back repeated efforts to dilute their voting strength.[8] Sections 5 and 2 of the VRA are again playing crucial, if limited, roles in shaping the legislative responses to Hurricane Katrina's voting related problems, as well as those of courts and the DOJ. In post-Hurricane Katrina Louisiana, VRA protections have been important not only for displaced citizens, and minority voting rights advocates, but also for those State officials who attempt to protect minority voters in the face of countervailing political pressures.

The immediate and potential long-term implications of Hurricane Katrina on Louisiana's African-American electorate provide a useful reminder of why the VRA[9] is essential if Louisiana is to continue its slow climb toward full political equality for its African-American citizens. As this report explains, the VRA experience since 1982 in New Orleans is a microcosm of the broader story of the Act's significance.

Following this Introduction and Executive Summary, Part I provides a brief overview of the history of racial discrimination in Louisiana prior to and following the enactment of the VRA. Part II describes Louisiana's demographics and record of minority office holding in recent decades. Part III analyzes administrative and judicial findings[10] made since 1982 regarding

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[8] *See* Section IV. A *infra.*

[9] *Id.; see also* Kristen Clarke-Avery & M. David Gelfand, *Voting Rights Challenges in a Post-Katrina World,* FINDLAW, Oct. 11, 2005, at http://writ.news.findlaw.com/commentary/20051011_gelfand.html

[10] Given the administrative regime established by Section 5, most covered jurisdictions prefer to seek preclearance of voting changes with the DOJ prior to seeking a declaratory judgment from the District Court for the District of Columbia ("D.D.C."). Therefore, DOJ makes the vast majority of substantive determinations of whether any particular voting change will be retrogressive with respect to minority voting rights. As a result, the vast majority of judicial determinations related to Section 5 assess whether a covered jurisdiction has complied with its obligation to seek preclearance for voting changes, rather than whether proposed changes meet the substantive requirements of

minority voting rights in Louisiana, in elections for federal, state, and local offices. This part is further sub-divided into analyses of the roles of Sections 5, 2 and the Constitution respectively. We conclude that, in light of the State's history and continuing practices, Section 5 remains critical to any effort to ensure that African Americans in Louisiana avoid unnecessary backsliding in their ability to participate equally in the political process, and to their opportunities to elect candidates of their choice on terms comparable to Louisiana's white citizens.

I. Overview of the History of Racial Discrimination in Louisiana

The history of racial discrimination in Louisiana that helped to illustrate the need for the VRA protections has been well documented. Nevertheless, because that history helps to explain ongoing discrimination in voting and the electoral process that Louisiana continues to struggle to overcome, it is worth recounting briefly.

Until 1868, the state constitution simply limited the vote to white males. Following the Civil War, from 1868 to 1896, there were fewer substantial legal impediments to African-American voting, and African-American citizens made up nearly 45 percent of the state's registered voters[11] (as compared to approximately 29 percent at the time of the 2000 census). In 1898, Louisiana pioneered the use of the infamous Grandfather Clause, which imposed complicated education and property requirements only on registrants whose fathers or grandfathers had not been registered to vote before January 1, 1867. As a result, African-American voter registration was reduced to 4 percent of total registration by the end of 1898.[12] The president of the state constitutional convention that enacted the Grandfather Clause explained the purpose of that convention as follows: "What care I whether the test that we have put be a new one or an old one? What care I whether it be more or less ridiculous or not? Doesn't it meet the case? Doesn't it let the white man vote, and doesn't it stop the negro from voting, and isn't that what we came here for?"[13] This type of bald expression of racial animus has happily become less familiar, but the modern corollaries of the purpose that was expressed are still in evidence in Louisiana.

The U.S. Supreme Court struck down the Grandfather Clause in 1915.[14] In the next few decades, Louisiana was, as the Court said of another jurisdiction, "unremitting and ingenious"[15] in its methods of ensuring that its African-American citizens would have no effect on the political process. Notwithstanding judicial invalidation of the Grandfather Clause, Louisiana developed an "understanding" clause requiring citizens to "give an reasonable interpretation of any section

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Section 5. Judicial findings in Section 2 and constitutional cases, however, do deal more directly with the jurisdictions' substantive obligations.

[11] Richard L. Engstrom, Stanley A. Halpin, Jr., Jean A. Hill, and Victoria M. Caridas-Butterworth, *Lousiana,* in QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 1965-1990 105 (Chandler Davidson & Bernard Grofman eds., 1994).

[12] *Id.*

[13] Ernest B. Kruttschnitt, president, 1898 Louisiana Constitutional Convention, as quoted in Degrees of Freedom, Rebecca Scott, (2005).

[14] *Guinn v. United States*, 238 U.S. 347 (1915).

[15] *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966).

of the federal or state constitution in order to vote."[16] The Supreme Court invalidated this provision in 1965.[17] Another law "prohibited elected officials from helping illiterates."[18] Louisiana also levied poll taxes and purged registration rolls of the few African Americans who were able to surmount these discriminatory hurdles.[19] To complement these devices, Louisiana "authorized an all-white Democratic primary which functioned to deny blacks access to the determinative elections, inasmuch as Republican opposition to the Democratic Party in the general elections was nonexistent."[20] The all-white primary completely excluded African Americans in Louisiana from the political process between its creation in 1923 and the Supreme Court's condemnation of the practice in 1944.[21]

Adding to this notorious collection of "understanding" requirements, poll taxes, and registration purges, in the 1950s, Louisiana developed citizenship tests, as well as bans on single-shot voting that allows the minority community to aggregate their votes behind one candidate in a multi-member election. For elections to party committees, the state employed a majority-vote requirement.[22] Meanwhile, "[f]or a quarter of a century, from 1940 to 1964, the States Rights Party spearheaded a strong movement against black enfranchisement and judicially-directed desegregation."[23] Every discriminatory, disfranchising technique developed by Louisiana remained in practice, except for the few specifically condemned by the Supreme Court, until Congress banned them expressly or made them subject to meaningful legal review through the passage of the VRA in 1965.[24]

These devices were very effective in achieving their discriminatory objectives. From 1910 until 1948, less than one percent of Louisiana's voting age African-American population was able to register to vote.[25] In 1948, that proportion rose to five percent, and from 1952 until 1964, even with concerted federal attention, the proportion rose only from 20 percent to 32 percent, reaching 32 percent only in October 1964.[26] The consistency of Louisiana, and other states' abilities to develop techniques and devices to maintain white supremacy in the political process, even as the Supreme Court condemned one disfranchising practice after another, led Congress to find that "case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits," such that "[a]fter enduring nearly a century of systematic resistance to the Fifteenth Amendment, [it should] shift the advantage of time and inertia from the perpetrators of the evil to its victims."[27] Thus, the long history of Louisiana's and other states' disregard of their constitutional obligations to include citizens of all

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[16] *Bossier Parish School Board v. Reno*, 907 F.Supp. 434, 455 (D.D.C. 1995) (Kessler, J., dissenting).
[17] *Louisiana v. United States*, 380 U.S. 145 (1965).
[18] *Id.*
[19] *Major v. Treen*, 574 F.Supp. 340.
[20] *Id.*
[21] *Smith v. Allwright*, 321 U.S. 649 (1944).
[22] *Major*, 574 F.Supp. at 340.
[23] *Id.*
[24] *Id.*
[25] *Id.* at 340 n.19.
[26] *Id.*
[27] *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).

races in the political process led Congress to impose the remedies and protections embodied in the VRA.

Louisiana's coverage under Section 5 began immediately upon enactment of the Voting Rights Act in 1965, triggered by the state's maintenance of a literacy test for voting and its voter registration levels of less than 50 percent in 1964. There was no question that Louisiana merited coverage under the formula set forth in Section 4 of the VRA.[28] The state's voting test — in place from 1921 until the U.S. Supreme Court voided it in 1965 — was a model of racially discriminatory vote denial. Under the test, registrars had complete discretion to decide whether a registrant's interpretation was satisfactory, which they used to reject 64 percent of African-American registrants and only 2 percent of white registrants between 1956 and 1962.[29] As a result, in the 21 parishes involved in the lawsuit that led to the test's demise, only 8.6 percent of voting-age African Americans were registered in 1962.[30]

The pre-VRA tests and devices, however, were not the last variations on the disfranchisement theme. In 1968, after the enactment of the VRA, Louisiana began a new phase of its campaign to minimize the African-American vote by passing state laws that enabled parish councils and school boards to switch to at-large elections that submerged newly-registered African-American voters in white majorities. If the laws had not been immediately nullified by two DOJ objections under Section 5, in Louisiana, the VRA might have represented little more than an occasion for another change in the strategy by which white officials perpetuated barriers to political equality. Since that time, too many in Louisiana have remained steadfast in their efforts to minimize African-American voting power. From that first Section 5 objection until the most recent renewal of Section 5 in 1982, the DOJ objected to 50[31] attempts by state and local authorities to implement voting changes that would have diluted African-American voting strength. Since 1982, DOJ has objected to 96 proposed changes. The gains in political access that are described in the following section have come only with steadfast enforcement of the VRA.

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[28] 42 U.S.C. § 1973b.

[29] Richard L. Engstrom, Stanley A. Halpin, Jr., Jean A. Hill, and Victoria M. Caridas-Butterworth, *Louisiana*, *in* QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 1965-1990 103, 108 (Chandler Davidson & Bernard Grofman eds., 1994).

[30] *Id.* at 107.

[31] *See* Appendix A. The DOJ listing of objections interposed provided in Appendix A contains summary information about administrative objections. In certain circumstances, as the listing indicates, objections are subsequently withdrawn based upon the receipt of new information or changes in the proposed voting law or practice that cure Section 5 infirmities. The numbers of objections referenced in this report are based upon objections made as indicated on the DOJ listing. This listing of objections is an important but incomplete source of data regarding the effect of Section 5 because it does not capture: requests for more information, which can result in the withdrawal of a proposed change by the submitting authority, the deterrence effects of Section 5, or any judicial denials of preclearance or Section 5 enforcement proceedings. Moreover, a single objection letter can touch a number of voting changes and similarly a number of retrogressive aspects of a single statewide redistricting plan, for example. *See* footnote 56 *infra*. It bears mention that Louisiana has also failed to submit covered voting changes which can have the effect of retrogressive voting laws being implemented without detection.

II. Overview of Louisiana's Demographics and Politics

A. Demographics

The following brief overview of Louisiana's demographic profile is based on the results of the 2000 Census.[32]

The population of Louisiana is 4,468,976, making it the 21st largest state in the country. Only nine cities in Louisiana have populations of more than 50,000.[33] Yet Louisiana has the fifth largest total African-American population in the United States. It is second only to Mississippi in largest African-American population as a percentage of the state's total population.[34] Almost a third of Louisiana's population is African-American (32.5 percent), compared to a national African-American population of 12.3 percent. Whites account for 63.9 percent of Louisiana's population, but 75.1 percent of the national population. Persons of Hispanic or Latin origin represent only 2.4 percent of Louisiana's population, while representing 12.5 percent of the country's overall population.[35]

There are also stark socioeconomic disparities along racial lines in Louisiana. About three quarters (74.8 percent) of Louisiana citizens 25 years of age and older have at least a high school diploma and 18.7 percent of the state's total population aged 25 and older has earned a bachelor's degree or higher. However, among African Americans, the rates of educational attainment are 63.1 percent and 10.9 percent, respectively, whereas for whites, the rates are 80 percent and 21.8 percent, respectively.[36] In 2000, Louisiana's unemployment rate was 7.3 percent, compared to a 5.8 percent national unemployment rate. The African-American unemployment rate in Louisiana was 13.6 percent, compared to 4.7 percent for whites. The per capita income for whites in Louisiana is $20,488, while African-American per capita income is less than half that amount, $10,166.[37] Significant disparities exist in housing as well. According to the census, the percentage of whites in owner-occupied housing is 78.87 percent, and the white population in renter-occupied housing is 21.13 percent.[38] In contrast, the percentage of

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[32] *See* United States Census Bureau, *State & County Quick Facts*, *available at* http://quickfacts.census.gov/qfd/states/22000.html. This section does not consider population adjustments due to Hurricane Katrina/Rita population displacements.

[33] The cities are New Orleans (469,032), Baton Rouge (225,090), Shreveport (198,364), Metairie (146,36?), Lafayette (111,667), Lake Charles (70,735), Kenner (70,202), Bossier City (58,111), and Monroe (52,163).

[34] U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File, Table PL1; 1990 Census of Population, General Population Characteristics (1990 CP-1); Jesse McKinnon, *The Black Population 2000*, (August 2001) *available at* http://www.census.gov/prod/2001pubs/c2kbr01-5.pdf. Louisiana's African-American population is 32.5 percent of its total population, and Mississippi's is 36.3 percent of its total.

[35] American Indian and Alaska Native persons account for 0.6 percent and 0.9 percent of Louisiana and United States populations, respectively, while Asians represent 1.2 percent of Louisiana's population and 3.6 percent of the national population.

[36] *See* http://www.doa.state.la.us/censussf3/CFReports/Primary4.cfm?logrecno=0000001&geo=040&name=Louisiana.

[37] *See* ePodunk report, *available at* http://www.epodunk.com/cgi-bin/incomeOverview.php?locIndex=19.

[38] U.S. Census Bureau, 2000 Census of Population and Housing (Decennial Census / Get Data / 2000 Census / 2000 Summary Tape File 3 / Detailed Tables / State / Louisiana / P159A Poverty Status in 1999 by Age (White Alone)), *available at* http://factfinder.census.gov/.

African Americans in owner-occupied housing is only 53.47 percent, and the percentage of African Americans in renter-occupied housing is 46.53 percent.[39]

B. Minority Office Holding

In 2001 (the most recent year for which comprehensive data is available), Louisiana elected a total of 705 black officials: one U.S. representative (of seven total seats, 14.3 percent); nine state senators (of 39 total seats, 23.1 percent); 22 state representatives, each elected from a district with a majority of black voters[40] (of 105 total seats, 20.2 percent); one member of a regional body; 131 members of county governing bodies; 33 mayors; 219 members of municipal governing bodies; four other municipal officials; one justice on the State Supreme Court (of seven total seats, 14.3 percent); 48 magistrates or justices of the peace; four other judicial officials; 24 police chiefs, sheriffs, and marshals; two members of the State Board of Elementary and Secondary Education (of 11 members, 18.2 percent); and 161 local school board members.[41] African Americans made up 29.7 percent of the voting age population in 2000.[42] Therefore, while the number of black elected officials certainly represents gains over the prior decades, it continues to lag behind the voting strength of Louisiana's black voting-age population at every level of government.

Not surprisingly, in the face of persistent racially polarized voting, these electoral gains have come about largely through the existence and protection of majority-minority districts. Indeed, every black representative currently holding office in Congress from Louisiana, or in the Louisiana State Legislature, has been elected from a majority black district.[43] U.S. Representative William Jefferson, for example, won his seat through elections from the 2nd Congressional District, which covers metropolitan New Orleans and has a voting age population that is 62 percent black.[44] This district is the only majority-minority congressional district in Louisiana. Jefferson's election in 1990 represented the first time that the state sent an African American to Congress in the 113 years since Representative Charles E. Nash (1875-1877) left Congress, the last African American to serve since the Civil War.

The racial disparities in voting that exist in Louisiana are also evident in the election patterns for virtually every office in the state. As the sections that follow show, numerous courts and the DOJ in several of its Section 5 objections have documented the phenomenon of Louisiana's racial bloc voting. For example, in the 2000 presidential election, the State voted 53 percent - 45

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[39] U.S. Census Bureau, 2000 Census of Population and Housing (Decennial Census / Get Data / 2000 Census / 2000 Summary Tape File 3 / Detailed Tables / State / Louisiana / P159B Poverty Status in 1999 by Age (Black or African American Alone)), *available at* http://factfinder.census.gov/.

[40] Charles S. Bullock III & Ronald Keith Gaddie, *An Assessment of Voting Rights Progress in Louisiana*, 17 AMERICAN ENTERPRISE INSTITUTE PROJECT ON FAIR REPRESENTATION, *available at* http://www.aei.org/research/nri/subjectAreas/pageID.1140,projectID.22/default.asp ("VRA Louisiana Executive Summary and Study").

[41] David A. Bositis, Black Elected Officials: A Statistical Summary 2001, 14-15 (Joint Center for Political and Economic Studies), *available at* http://www.jointcenter.org/publications1/publication-PDFs/BEO-pdfs/2001-BEO.pdf.

[42] *Id.* at 16.

[43] David Lublin, *Percent of African-American Legislators Elected in Black-Majority, Black + Latino Majority, and Other Districts*, *available at* http://www.american.edu/dlublin/redistricting/tab3.html.

[44] *Id.* at 22.

percent for George W. Bush over Al Gore, with whites voting 72 percent - 26 percent for Bush and blacks voting 92 percent - 6 percent for Al Gore — evidencing racially polarized voting of the highest order.[45] Intense racial polarization places special importance on majority-minority opportunity districts. For example, Justice Bernette Joshua Johnson — the only African-American member of the Louisiana Supreme Court — won her seat through elections from the 7th Supreme Court District, which covers metropolitan New Orleans.[46] This district is the only majority-minority Supreme Court district in Louisiana. Of the 33 black mayors in Louisiana, only two presently hold office in cities with populations over 50,000, and each won his seat from cities with black majorities. New Orleans, which was 67.3 percent black in 2000, elected Ray Nagin as mayor, and the city of Monroe, which was 61.1 percent black in 2000, elected James Mayo as mayor.[47]

Louisiana has never elected a black governor, although Cleo Fields and William Jefferson ran for that office in 1995 and 1999, respectively.[48] In the Fields/Foster race, exit polls indicated that Fields received 96 percent of the African-American vote while Foster received 84 percent of the white vote. Moreover, the political climate in Louisiana, not only in 1965 but just last decade, was such that the nation's most infamous modern day Klansman, David Duke, ran for the state's highest elected offices. In the 1991 governor's race, Duke — a former grand wizard of the Ku Klux Klan, who celebrated Hitler's birthday and led the National Association for the Advancement of White People — garnered 39 percent of the state's vote, winning 55 percent, a majority, of the white vote, though he eventually lost to Edwin Edwards.[49] Nor was Duke's strong gubernatorial showing a fluke. In the Senate race of 1990, Duke won 44 percent of the vote against a long-time incumbent, and again won the support of the majority of whites.[50]

Significantly, continuing racial bloc voting in Louisiana cannot be explained away as merely a reflection of modern partisan alignments. Not only are the historical underpinnings of these voting patterns readily traceable to the State's history of *de jure* discrimination, but Louisiana also is one of a very small number of states that has an open primary law that permits all candidates, regardless of party affiliation, to run in a single primary with the top vote-getters competing in a run-off if neither exceeds 50 percent of the votes cast.[51] This system permits multiple candidates from a single party to compete at both the primary and run-off stages. Thus, under Louisiana's open primary system, there are consistent examples of electoral contests where novel partisan explanations of intense racial bloc voting patterns are unpersuasive.

Racially polarized voting patterns continue to characterize political life in Louisiana and like Henry Ford's theory of consumer freedom, which allowed customers to choose any color car they preferred so long as it was black, in the absence of VRA protected opportunity to elect

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[45] *See* Voices for Working Families, *Louisiana Voting Facts and General Information*, available at http://www.voicesforworkingfamilies.org/states/louisiana/lastatestats.cfm.
[46] Louisiana Supreme Court, Maps of Judicial Districts, available at http://www.lasc.org/about_the_court/map03.asp.
[47] *Id.* at 21.
[48] Bullock & Gaddie, *supra* note 39, at 21.
[49] James Hodge, *Duke Lost, but America Hasn't Seen the Last of Him*, NATIONAL CATHOLIC REPORTER, Dec. 6, 1991, at 2.
[50] Bullock & Gaddie, *supra* note 39, at 21.
[51] *See* La. Rev. Stat. Ann. Sec. 18:402(B)(1)

districts, "[c]andidates favored by blacks can win [in Louisiana], but only if the candidates are white."[52]

The tables below summarize minority office holding in Louisiana from the 1960s to the present.

[52] *Smith v. Clinton*, 687 F.Supp. 1310, 1318 (E.D. Ark. 1988).

Table 1: Number of African-American Elected Officials in Louisiana 1969-2001[53]

Year	Total	Parish	Municipal	School Board
1969	65	11	23	9
1970	64	5	29	9
1971	74	10	27	13
1972	119	31	28	23
1973	130	29	28	29
1974	149	32	42	41
1975	237	45	69	76
1976	250	51	65	75
1977	276	60	85	78
1978	333	75	113	93
1980	363	86	131	93
1981	367	81	134	94
1984	438	106	149	112
1985	475	116	159	123
1987	505	120	181	121
1989	521	117	190	127
1991	551	116	189	142
1993	636	139	206	151
1997	646	136	226	134
1999	714	138	259	159
2001	705	131	256	161

Table 2: Racial Makeup of the Louisiana Legislature, 1965-2005[54]

Year	LA Senate	LA House	percent Black (Senate)	percent Black (House)
1965	0	0	0	0
1967	0	1	0	1.0
1969	0	1	0	1.0
1971	1	1	2.6	1.0
1973	1	8	2.6	7.6
1975	1	8	2.6	7.6
1977	1	9	2.6	8.6
1979	1	9	2.6	8.6
1981	2	10	5.1	9.5
1983	2	11	5.1	10.5
1985	4	14	10.3	13.3
1987	5	14	12.8	13.3
1989	5	15	12.8	14.3
1991	4	15	10.3	14.3
1993	8	24	20.5	22.9
1995	8	22	20.5	21.0
1997	9	24	23.1	22.9
1999	9	22	23.1	22.9
2001	9	22	23.1	21.0
2003	9	23	23.1	21.9
2005	9	23	23.1	21.9

[53] Bullock & Gaddie, *supra* note 40, at 35 ("Table 6"), *citing* various volumes of the NATIONAL ROSTER OF BLACK ELECTED OFFICIALS (Washington DC: Joint Center for Political Studies).
[54] *Id.* at 37 ("Table 7").

Together, these two tables tell a story. First, African Americans have made measurable progress toward political equality since the enactment of VRA, yet, forty years after the enactment of the VRA, the contemporary political reality is that African Americans in Louisiana have an opportunity to elect their preferred candidates only when those candidates are white or if an African-American candidate runs in a district with a majority of African-American voters. In this context, the gains that African Americans in Louisiana have made in the ability to elect candidates of their choice are largely attributable to the protections afforded by the VRA.

III. Racial Discrimination in Voting In Louisiana Since 1982

Although it is essential to take account of the extent of progress in Louisiana in the area of minority voting rights, it is equally important to consider what has contributed to that progress and to examine the tenuousness of the gains. As a general matter, federal courts and DOJ have required greater compliance with the state's constitutional and statutory obligations than Louisiana's political leadership has been willing to embrace of its own accord — even after decades of VRA litigation and administrative oversight. This pattern of gradual progress, stimulated primarily by federal courts and DOJ, remains constant for all aspects of political life in Louisiana. In light of the emphasis on New Orleans after Hurricane Katrina, the story of the persistent attempts to dilute African-American voting strength in Orleans Parish represents a useful starting place for the assessment of the VRA's effectiveness.

A. Voting Discrimination in Orleans Parish

The televised images from Hurricane Katrina may have caused the nation to reevaluate the extent of our progress in overcoming our history of entrenched racial discrimination, just as those of the "Bloody Sunday" march that led to the passage of the VRA did more than forty years ago. President Bush conveyed the ongoing nexus between the history of discrimination and the circumstances of African Americans from Orleans in his speech from Jackson Square following Hurricane Katrina:

> Our third commitment is this: When communities are rebuilt, they must be even better and stronger than before the storm. Within the Gulf region are some of the most beautiful and historic places in America. As all of us saw on television, there's also some deep, persistent poverty in this region, as well. That poverty has roots in a history of racial discrimination, which cut off generations from the opportunity of America. We have a duty to confront this poverty with bold actions. So let us restore all that we have cherished from yesterday, and let us rise above the legacy of inequality. When the streets are rebuilt, there should be many new businesses, including minority-owned businesses, along those streets. When the houses are rebuilt, more families should own, not rent, those houses. When the regional economy revives, local people should be prepared for the jobs being created.[55]

[55] *President Discusses Hurricane Relief in Address to the Nation* (September 15, 2005) available at http://www.whitehouse.gov/news/releases/2005/09/20050915-8.html.

The short and long-term impact of the unprecedented mass displacement of Orleans's African-American citizens on their access to the political process is not yet known. However, it is appropriate to highlight, prior to assessing some of the new minority voting challenges that Hurricane Katrina and the response to it may cause, the substantial obstacles that African-American voters faced in Orleans Parish long before Hurricane Katrina struck.

The modern record of VRA enforcement in Orleans illustrates that Sections 5 and 2 have been essential minority voter protections. The post-1982 examples that follow illustrate this point.

1. Dilution of African American Votes in Orleans Parish Pre-Katrina

a. Section 5 in Orleans Parish

Since 1982, no fewer than a half dozen DOJ Section 5 objections were based, at least in part, on efforts by Louisiana officials to minimize African-American voting strength in Orleans Parish. The objections prevented dilution for various legislative and judicial seats. The persistence of the attempts to dilute minority voting strength in Orleans Parish, the most concentrated area of African-American population in the state, can be illustrated through the decennial line drawing for the Louisiana House of Representatives. In 1982, DOJ explained Louisiana's failure to meet its obligations under Section 5 as follows:

> Overall the plan has the net effect of reducing the number of House districts with Black majorities. In Orleans Parish, for instance, the number of such districts is reduced from eleven to seven. While this reduction may be justified to some extent by the general loss of parish population in comparison to overall statewide population gain, the loss of so many black majority districts in that parish has not been satisfactorily explained, especially since the black percentage of the population in Orleans Parish has increased from 45 to 55 percent over the past ten years.
>
> Of particular concern in this regard is the Uptown New Orleans area of the parish, where the configuration of the proposed Districts 90 and 91 appears to result in needless dilution of minority voting strength. While we understand that incumbency considerations may explain in part why District 90 spans three parish wards, including noncontiguous portions of ward 12, our analysis shows that there are other means of addressing that concern without adversely impacting minority voting strength in the area.
>
> Another problem in New Orleans involves the Ninth Ward. Under the proposed plan, a black majority district in this ward is eliminated for no apparent justifiable reason, leaving only one majority black House district out of the five emanating from that 61 percent black ward.[56]

[56] Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Charles Emile Bruneau, Jr., Louisiana House of Representatives (June 1, 1982). In the very same objection letter, Reynolds also objected to dilution in East Baton Rouge, East Feliciana, West Feliciana, and St. Helena Parishes, and noted that the legislature had adopted the dilutive plan despite the existence of non-dilutive alternative plans that would have adhered more closely to the State's other redistricting criteria, such as compactness and least change.

The post-1990 round of redistricting was tainted by similar Section 5 violations. In the Section 5 objection letter that was provided to the state, DOJ "examined the 1991 House redistricting choices in light of a pattern of racially polarized voting that appears to characterize elections at all levels in the state."[57] DOJ found that while most of the statewide plan comported with Section 5 requirements, "In seven areas, however, the proposed configuration of district boundary lines appears to minimize black voting strength, given the particular demography in those areas…."[58] Once again Orleans Parish was specifically identified. DOJ observed that:

> In general, it appears that in each of these areas the state does not propose to give effect to overall black voting strength, even though it seems that boundary lines logically could be drawn to recognize black population concentrations in each area in a manner that would more effectively provide to black voters the opportunity to participate in the political process and to elect candidates of their choice….
>
> In addition, our analysis indicates that the state has not applied its own [redistricting] criteria, but it does appear that the decision to deviate from the criteria in each instance tended to result in the plan's not providing black voters with a district in which they can elect a candidate of their choice.[59]

The pattern of consistent attempts to minimize African-American voting strength in Orleans Parish has been unremitting, as the post-2000 Census, Section 5 redistricting litigation makes plain. The post-2000 Census House of Representatives redistricting plan followed the familiar pattern, except that in this decade, Louisiana opted to file a declaratory judgment action seeking preclearance rather than seek administrative preclearance from the DOJ. In *Louisiana House of Representatives et. al. v. Ashcroft,*[60] DOJ, under John Ashcroft, opposed Louisiana's effort to obtain preclearance. NAACPLDF, on behalf of a bi-racial coalition of voters, and private counsel on behalf of the Louisiana Legislative Black Caucus, intervened and litigated together with the DOJ and against the State.

Louisiana's theory for justifying its effort to eliminate an African-American opportunity district was unsupported by Section 5 precedent. The state sought preclearance of a plan, even though:

- The state's theory was contingent upon persuading the court that white voters were entitled to proportional representation in Orleans Parish though proportionality does not exist for African Americans elsewhere in the state, and is not required under the VRA;

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[57] Letter from John Dunne to Jimmy N. Dimos, Speaker of the House of Representatives (July 15, 1991). The Louisiana State Senate also sought to reduce African-American voting strength in its 1991 redistricting plan, cracking apart African-American majorities in the northeastern part of the state and around Lafayette, while preserving majority-white districts for every white incumbent. Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Samuel B. Nunez, President of the Senate of the State of Louisiana (June 28, 1991). Assistant Attorney General John R. Dunne found that the Lafayette-area plan was "intended, at least in part, to suppress the African-American proportion to a level considered acceptable to a white incumbent." *Id.* at 2.

[58] *Id.*

[59] *Id.; See also* IV. (B) (2) (e) *infra.*

[60] D.D.C. 2002. The NAACP Legal Defense and Educational Fund, Inc. served as counsel to the citizen intervenors in this Section 5 action.

- The African-American population of Orleans had increased in real numbers and as a percentage of the Orleans Parish population;
- Strong evidence of retrogressive effect and purpose was uncovered by the DOJ and intervenors, and Louisiana's own admissions provided the most compelling evidence;
- Very high levels of racially polarized voting persisted;[61]
- The court criticized plaintiffs' litigation tactics in unusually strong terms and compelled the production by the state of improperly withheld documents;[62]

Louisiana settled the case on the eve of trial, withdrew the offending plan, and restored the African-American opportunity district in Orleans Parish.[63]

b. Section 2 in Orleans Parish

Section 2 of the VRA has played an important role in protecting African-American voters in Orleans as well. After the 1982 renewal, there was a major Section 2 case filed in federal court in Louisiana, *Major v. Treen,*[64] challenging the 1981 reapportionment of congressional districts. The plaintiffs, on behalf of a class certified as all African-American registered voters in the state, alleged that the reapportionment plan ("Act 20") was designed and had the effect of diluting minority voting strength by dispersing an African-American population majority in a parish into two congressional districts. They filed claims under the Thirteenth, Fourteenth and Fifteenth Amendments to the federal Constitution, as well as Section 2 of VRA.

According to the testimony in that case, based on the results of the 1980 Census, Orleans Parish had a slight decline in overall population, but a marked increase in African-American population from the 1970s to 1980, such that African Americans were 55 percent of the total population, 48.9 percent of voting age population and 44.9 percent of registered voters.[65] Moreover, the African-American population was highly concentrated.

Governor Treen submitted three districting proposals — none of which contemplated a majority African-American district. In fact, Treen publicly expressed his opposition to the concept of a

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[61] *See* Testimony of Richard Engstrom before the Subcommittee on the Constitution of the House Committee on the Judiciary, (October 25, 2005), and related appendices.

[62] After two rounds of summary judgment briefing, once it became clear that the state's theory could not meet the Section 5 standard, the state engaged in what the court characterized as "a radical mid-course revision in their theory of the case[,] . . . blatantly violating important procedural rules" in an attempt to justify its plan. A copy of the court's February 13, 2003 Order is annexed as Appendix E.

[63] Because *Louisiana House of Representatives, et. al. v. Ashcroft* was a Section 5 VRA litigation filed before a three-judge panel and settled without any published opinion by the court, it is an example of some of the important results under the VRA that are not captured in a rote count of DOJ Section 5 objections. *See* n. 31 *supra.* Several important VRA settlements are achieved without published opinions, and the terms and significance of those settlements, known only to the litigators and parties, are difficult to identify and marshal.

[64] *Major v. Treen*, 574 F. Supp. 325 (E.D. La. 1983)

[65] *Id.* at 330.

majority black district, stating that "districting schemes motivated by racial considerations, however benign, smacked of racism, and in any case were not constitutionally required."[66] However, the state Senate staff prepared more than 50 plans and was directed to formulate a plan containing an Orleans Parish-dominated district, which would necessarily have a black majority population.[67] The State Legislature passed one of the two plans with one African-American majority district in Orleans Parish and seven white majority districts. Governor Treen threatened to veto the plan and a number of legislators changed their position in response to the threatened veto.

The court found that Treen's opposition to the plan initially approved by the legislature was predicated in significant part on its delineation of a majority African-American district centered in Orleans Parish.[68] The governor then proposed another plan, again with all eight white majority districts, which the Senate rejected. African-American legislators were then excluded from subsequent legislative sessions to develop a plan, which ultimately concluded with the participants determining that the African-American minority interest in obtaining a predominantly African-American district would have to be sacrificed in order to satisfy both the governor and the Jefferson Parish legislators. The resulting Act 20, accepted by Governor Treen and signed into law, left African-American population concentrations within Orleans Parish wards disrupted, whereas white concentrations remained intact.

The court accepted the plaintiffs' expert's testimony showing of racially polarized voting and that such voting played a significant role in the electoral process. It also found that "Louisiana's history of racial discrimination, both *de jure* and *de facto*, continue[ed] to have an adverse effect on the ability of its black residents to participate fully in the electoral process."[69]

The court granted the plaintiffs' requested declaratory judgment that Act 20 violated Section 2 of VRA by diluting black voting strength; enjoined the state of Louisiana from conducting elections with Act 20 districts; and gave the legislature the opportunity to redraw the districts. It was the resulting district that led to the election of Louisiana's first African-American congressman since reconstruction.[70]

2. African-American Voting Issues in Orleans Parish Post-Katrina

Accordingly, the concerns about the future of Orleans Parish as a center of African-American political power following Hurricane Katrina are very well placed in light of the record of the state's vote denial and dilution. Hurricane Katrina displaced more than one million people from

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[66] *Id.* at 331.

[67] Only two plans out of the 50 made it out of the committee — both with one majority African-American and seven majority white districts. One plan had one majority African-American district with 54 percent African-Americans and 43 percent African-American registered voters. The Louisiana Black Caucus supported this plan. The other plan had one majority African-American district with 50.2 percent African-Americans and 44 percent African-American registered voters.

[68] *Id.* at 334.

[69] *Id.* at 339-40 (emphasis added).

[70] For an additional example of a successful Section 2 litigation regarding the drawing of lines for judicial seats, *see infra*.

southern Louisiana alone.[71] Three hundred thousand of these citizens, the majority of whom are African-American, fled New Orleans,[72] where they formed a mobilized voting bloc in the only majority-minority congressional district in the state at the center of African-American political power.[73] The destruction of polling places, displacement of voters and candidates, and general loss of electoral infrastructure initially forced Louisiana officials to postpone the fall 2005 municipal elections in Orleans and Jefferson Parishes.[74] These circumstances present substantial questions about whether, how, and by whom African-American communities will be rebuilt, when displaced residents may return, and perhaps as importantly, who gets to decide. For example, will displaced voters be able to register, receive absentee ballots, and vote?[75] While there is considerable uncertainty about the future of Louisiana's African-American communities post-Hurricane Katrina, the existence of VRA protections have provided some assurance to displaced African Americans that their interests cannot be ignored with impunity; and that Section 5 preclearance requires that proposed voting changes be scrutinized.

In some respects, the VRA has already had a substantial impact on the state's plans to address electoral challenges caused by the hurricanes in 2005. A recent Section 2 lawsuit *Wallace v. Blanco,*[76] did not result in a finding of vote denial in advance of the election. However, it seems clear that it was the possibility of judicial intervention in the forthcoming Orleans Parish municipal elections that moved the legislature, during a 2006 special legislative session, to relax some of the state's election laws that would have adversely affected displaced voters who are disproportionately African-American. After the Louisiana legislature essentially refused to act to ameliorate the burdens on displaced voters in 2005, Secretary of State Al Ater and Attorney General Charles Foti both testified during committee hearings in the 2006 special session about the pending litigation and risks associated with a second legislative failure to act. The pendency of the litigation resulted in a different and more favorable outcome during the legislative session — a point that the trial judge recognized even as he denied any further relief.

Because the DOJ or the U.S. District Court for the District of Columbia review Louisiana's voting changes under Section 5 to ensure that they do not have the "the purpose and will not have the effect of denying or abridging the right to vote on account of race or color,"[77] voters throughout Louisiana — and citizens throughout the country — also recognize that the host of difficult decisions Louisiana and its political subdivisions face as they reconstruct their democratic institutions will be scrutinized. African-American leaders have met with DOJ officials to discuss these issues in the context of DOJ's Section 5 responsibilities.

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[71] Jeremy Alford, *Population Loss Alters Louisiana Politics*, N.Y. TIMES, Oct. 4, 2005, available at http://www.nytimes.com/2005/10/04/national/nationalspecial/04census.html?ex=1138683600&en=f097af0aa2b4a630&ei=5070.

[72] Center for American Progress and American Constitution Society for Law and Policy: "Voting Rights After Katrina: Ensuring Meaningful Participation," Remarks of Secretary of State Al Ater, (Nov. 1, 2005), at unnumbered p. 20.

[73] Alford, *supra* note 71, Kristen Clarke-Avery & M. David Gelfand, *Voting Rights Challenges in a Post-Katrina World*, FINDLAW, Oct. 11, 2005, at http://writ.news.findlaw.com/commentary/20051011_gelfand.html.

[74] Mark Waller, *Fall Elections in Jefferson, N.O. Postponed*, NOLA.COM, Sept. 14, 2005, at http://www.nola.com/newslogs/tporleans/index.ssf?/mtlogs/nola_tporleans/archives/2005_09_14.html#079542.

[75] LA. REV. STAT. ANN. § 18:562 (West 2005). *See also* Clarke-Avery & Gelfand, *supra* note.

[76] The NAACP Legal Defense and Educational Fund, Inc. served as trial counsel.

[77] 42 U.S.C. § 1973c (2000).

Although Section 5 gives the DOJ a role to play as the Louisiana electoral system in Orleans and elsewhere in the state is reestablished, the DOJ response also illustrates that Section 5 review of voting changes is a flexible tool, which can be adapted to unique circumstances. On September 7, 2005, for example, Acting Assistant Attorney General Bradley J. Schlozman assured Louisiana's Secretary of State Ater that the DOJ "stands ready to expedite the review of any and all submissions of voting changes (especially scheduling and polling place changes) resulting from Hurricane Katrina."[78] Secretary of State Ater has expressed the view that the DOJ has been sensitive to the difficulties the state faces and the need for prompt preclearance where appropriate.[79] The VRA has provided an important framework as the Louisiana State legislature, secretary of state, attorney general and governor, DOJ, and minority voting advocates seek to work through the complex voting challenges following Hurricanes Katrina and Rita. Although the future is unclear, it seems certain that minority voters would be considerably less well off in the absence of Section 5 providing leverage and serving as an important reminder of the State's duty to embrace minority inclusion in its political processes.

B. Voting Discrimination Throughout Louisiana

1. Section 5 Violations Overview

Even apart from the experience within Orleans Parish, a thorough review of Louisiana's experience strongly suggests that a further extension of the expiring provisions is warranted. The scope and persistence of the state's discriminatory practices since 1982 stands as powerful evidence of the pressing need for continued Section 5 protection. A fair reading of the minority voting experience in Louisiana makes it plain that voting discrimination persists, and that if Section 5 is not renewed, the state will experience a sudden and unnecessary reduction of African-American access to the political process at every level of government.

The Civil Rights Division of the DOJ has objected to discriminatory voting changes by Louisiana officials 146 times since Section 5 coverage of the state began, and significantly, 96 times since Section 5 was last renewed in 1982.[80] In other words, 65 percent of the objections interposed against Louisiana have occurred since Congress last acted to extend VRA protections to minority voters. In the aggregate, these blocked voting changes would have impacted an exceedingly large, but difficult to quantify, number of African Americans. Every redistricting plan, for example, affects large numbers of citizens throughout the area it covers — sometimes hundreds can be affected; at other times, thousands of citizens are impacted. Viewed from another perspective, voting changes blocked by DOJ would have affected nearly every aspect of voting, including: redistricting, polling place relocations, changes in voting and voter registration

[78] Letter from Bradley J. Schlozman, Acting Assistant Attorney General for Civil Rights, U.S. Department of Justice, to Al Alter, Secretary of State, Louisiana, (Sept. 7, 2005) available at http://www.usdoj.gov/crt/voting/la_katrina.htm.

[79] Center for American Progress and American Constitution Society for Law and Policy: "Voting Rights After Katrina: Ensuring Meaningful Participation," Remarks of Secretary of State Al Ater, (Nov. 1, 2005), at unnumbered p. 6.
available at: http://www.americanprogress.org/atf/cf/ percent7BE9245FE4-9A2B-43C7-A521-5D6FF2E06E03 percent7D/VAK.PDF

[80] *See* Appendix A for DOJ listing of administrative Louisiana Section 5 Objections.

procedures, annexations and other alterations of elected bodies, and even the attempted suspension of a presidential primary election. Discriminatory changes were proposed at every level of government, including: the state Legislature, the state court system, the state Board of Education, parish councils, school boards, police juries, city councils, and boards of aldermen. And, objections have been interposed by the DOJ under both Democratic and Republican presidential administrations.

By any measure, attempts to dilute African-American voting strength in Louisiana have been widespread. Thirty-three — more than half — of Louisiana's 64 parishes and 13 of its cities and towns have proposed discriminatory voting changes since 1982, many more than once. Between 1982 and 2003, the DOJ was compelled to object to 33 parish school board redistricting and expansion plans proposed by 23 parishes and one city,[81] 31 parish police jury redistricting and reduction plans proposed by 20 parishes,[82] 7 parish council redistricting and reduction plans proposed by 6 parishes,[83] 11 city and town council redistricting plans proposed by 10 cities and towns,[84] 2 board of alderman redistricting plans proposed by two cities,[85] and 6 annexations proposed by the city of Shreveport alone. The DOJ was also compelled to object 17 times to attempts by the state itself to make changes that would have diminished minority voting rights in congressional, state legislative, state board of education, and state court elections. And, in a stark illustration of the persistence of the hostility to equal African-American participation in Louisiana's political process with statewide consequences, in *every* decade since the VRA was passed in 1965, the proposed Louisiana State House of Representatives redistricting plan was met with a DOJ objection — including three since 1982.[86]

Significantly, beyond the familiar Section 5 objections involving the failure of the State or its sub-jurisdictions to demonstrate the absence of discriminatory effects, assistant attorneys general in each of the past three decades have noted evidence of Louisiana officials' continuing intent to discriminate, including: rejection of readily available non-discriminatory alternatives, inconsistent application of standards, drastic voting changes immediately following attempts by African-American candidates to win public office, and even candid admissions of racism by state and local officials as recently as 2001.[87] As Assistant Attorney General John R. Dunne said of

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[81] These included: Madison, West Baton Rouge, Assumption, LaSalle, Winn, St. Helena, St. Martin, Franklin, St. Landry, East Carroll, Webster, Terrebonne, Lafayette, Vermilion, West Carroll, Evangeline, Washington, Iberville, St. Mary, Bossier, DeSoto, Pointe Coupee, Richland, and City of Monroe.

[82] These included: Madison, Assumption, LaSalle, St. Helena, Pointe Coupee, Morehouse, Bienville, Jackson, DeSoto, Catahoula, St. Martin, West Feliciana, Franklin, St. Landry, East Carroll, Concordia, Webster, Richland, Caddo, and Iberville.

[83] These included: East Baton Rouge, Jefferson, Terrebonne, Lafayette, Washington, and Tangipahoa.

[84] These included: East Baton Rouge, City of New Iberia, City of St. Martinsville, City of Jennings, City of Tallulah, City of Lafayette, City of Minden, City of Plaquemine, City of Ville Platte, and Town of Delhi.

[85] These included: City of Ville Platte and City of Winnsboro.

[86] Two of the proposals that received objections were administratively submitted to the DOJ for preclearance. The most recent proposal was submitted for preclearance before a three-judge panel in the D.C. District Court in 2002, *Louisiana House of Representatives, et al. v. Ashcroft.* That litigation, in which the NAACP LDF intervened to protect the interests of African-American voters, resulted in a settlement between the State, the DOJ, and the minority intervenors that, amongst other things, restored a New Orleans African-American opportunity district that the legislature had intentionally sought to eliminate.

[87] Appendix B sets out a table that briefly describes Louisiana's post-1982 renewal objections. Those objections that were based, at least in part, on the state's failure to demonstrate the absence of a discriminatory purpose, or purpose to retrogress, are indicated with asterisks.

the 1991 redistricting plan for the Louisiana House of Representatives, "The departures are explainable, at least in part, by a *purpose* to minimize the voting strength of a minority group." [88] Although Louisiana is not alone in this regard, it is in part the evidence of *purposeful* discrimination in the State that requires the continuing vigilance of Section 5. Although the civil rights movement, judicial enforcement of federal protections, and time have changed the minds and practices of many, some remain unapologetic. Many others in the state who remain committed to perpetrating voting discrimination have only become more sophisticated at concealing their objectives. But whether voting discrimination is ferreted out through recognition of invidious intentions or by its harmful effects, the consistent efforts to diminish African-American voting power in Louisiana are not inconsequential remnants of the distant past that can be ignored.

The magnitude and breadth of Section 5 objections are great, but the need for Section 5's ongoing protection is even further enhanced when one considers that awareness of the Section 5 preclearance requirements has likely deterred what would have been even greater levels of voting discrimination. It stands to reason that the rational public official is less likely to discriminate if he knows that his jurisdiction will be called upon to explain publicly and justify what it has done and why. In a sense, Section 5 has served to clear away many of the weeds in Louisiana, but there is a strong likelihood that any lapse in its protection would allow those weeds to grow back from the roots and once again choke off meaningful political opportunity for African Americans.

Attempts at discrimination have not disappeared since 1982. Indeed, it was a case involving a Louisiana parish school board that prompted Justice Souter to note in 2000, *35 years after the enactment of the VRA,* that Section 5 must continue to be interpreted to prevent jurisdictions from "pour[ing] old poison into new bottles."[89]

Notwithstanding the history, a sense of optimism, skepticism, or recent Supreme Court decisions[90] cause some to ask whether the Section 4 preclearance coverage formula has grown stale and whether Section 5 protections are still necessary. The original coverage formula, though never a perfect barometer of voting discrimination, was created as a legislative proxy designed to reach jurisdictions with some of the worst traditions of voting discrimination. Section 5, in turn, provided a powerful remedy in recognition of the fact that these traditions were deeply rooted. Although forty years of minority voter protection is a long time when measured against election cycles, it seems like a far more modest interval when measured against a period many times that length of entrenched racial exclusion from virtually every aspect of society, including the political process. In the case of Louisiana, the history has proven to be a strong predictor of the present. A period of forty years of VRA protection has been insufficient to erase the effects and continued practice of voting discrimination. Consequently, the Louisiana experience strongly suggests that what the Section 4 coverage formula reached in 1965, 1970,

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[88] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Jimmy N. Dimos, Speaker, Louisiana State House of Representatives (July 15, 1991) (emphasis added).
[89] *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 366 (2000).
[90] *See generally Id.; City of Boerne v. Flores*, 521 U.S. 507 (1997), *Cedar Rapids Cmty. Sch. Dist.* v. *Garrett F.* 526 U.S. 66 (1999); *Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721 (2003); *Tennessee v. Lane*, 541 U.S. 509 (2004).

1975, and 1982, the contemporary record continues to justify. The post-1982 renewal experience with Section 5 in Louisiana supplies important proof.

2. The Impact of Section 5 Since 1982

Since 1982, Section 5 objections have helped prevent discriminatory changes in every aspect of Louisiana voting, including: redistricting, voter registration, election schedules, voting procedures, polling places, and the structure of elected bodies. Section 5 has not only allowed the DOJ to nullify specific discriminatory changes, but has also inhibited the practices that some officials use to promote such changes, including: secrecy, exclusion of minorities from decision-making processes, manipulation of standards, invention of new strategies ("pouring old poison into new bottles"), and frequent attempts to revive old dilutive strategies.

a. Redistricting

Most of Louisiana's 96 Section 5 objections since 1982 have involved redistricting. Officials have consistently attempted to limit African-American voters' political influence by over-concentrating them into a few districts ("packing"). In the alternative, other officials have favored "cracking" — dispersing African Americans among several majority-white districts to prevent them from achieving a majority that provides the opportunity for communities to elect candidates of their choice — even in the face of extreme racial bloc voting.[91] This form of "second generation" discrimination, known as vote dilution, is designed to cabin minority voting power, and picked up where the more outright forms of vote denial left off. For example, in 1993, the Bossier Parish School Board had cracked African-American population concentrations so effectively that the parish still had no African-American opportunity districts at all, despite an African-American population of 20 percent, a 12-member school board, and the availability of an alternative plan that would have drawn two compact majority African-American districts.[92]

Significantly, in the course of interposing objections, multiple assistant attorneys general have noted the persistence of racially polarized voting in the state, most recently in April, 2005.[93] In its extreme forms, racially polarized voting can block minority electoral success and operate to close off the political process. The state itself acknowledged the persistence of "racial bloc voting" in 1996, the same year that the U.S. District Court for the Western District of Louisiana agreed that "racial bloc voting is a fact of contemporary Louisiana politics."[94]

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[91] Since 1982, the DOJ has repeatedly noted the persistence of racially polarized voting in Louisiana.

[92] Letter from James P. Turner, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to W.T. Lewis, Superintendent of Bossier Parish Schools (Aug. 30, 1993). Of course, the DOJ's Section 5 objection in this case was the subject of Supreme Court litigation culminating in a decision that drastically, and in the view of LDF inappropriately, narrowed the Section 5 inquiry and vitiated the objection. However, the underlying record makes clear that intentional discrimination drove the creation of the school board redistricting plan at issue, and the Supreme Court's decision in *Bossier Parish*, 528 U.S. 366 (2000), is itself a proper focus of the present renewal. (A critique of the holding is annexed as Appendix D).

[93] Letter from R. Alexander Acosta, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to David A. Creed, Executive Director, North Delta Regional Planning and Development District (Apr. 25, 2005).

[94] *Hays v. Louisiana*, 936 F. Supp. 360, 365 (W.D. La. 1996); see also, Letter from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to E. Kay Kirkpatrick, Director, Civil Division, Louisiana Department of Justice (Aug. 12, 1996).

The use of the redistricting process continues to be a preferred means of diminishing the effectiveness of minority votes. Because redistricting has historically corresponded with the decennial census, it occurs at a time when the ramifications of demographic shifts are squarely presented. Typically, changes made during redistricting usually have an impact for a decade or even beyond. Based upon contemporary political realities, in certain situations decision-makers of either major political party may be motivated to diminish minority voting power. While one party may see advantage in "packing" or over-concentrating minority voters, the other party may wish to "crack" cohesive populations in ways that eliminate existing opportunities to elect minority preferred candidates. Although Louisiana employs an open primary system, intense partisan competition, when it exists in Louisiana and elsewhere, provides no shelter for minority voters. Section 5's role in ensuring that minority political opportunities do not get trampled during redistricting has protected the rights of untold numbers of minority voters.

b. Old Poison into New Bottles: Mergers, Annexations, Reductions, and Other Ways to Reduce the Impact of New Majority-Minority Districts

Just as vote dilution through redistricting arose as a strategy for maintaining white power after more direct tactics of vote denial and suppression were outlawed, so, too, have jurisdictions in Louisiana continued to pursue new ways to prevent African-American voters from achieving electoral power. One strategy has been the annexation of predominantly white areas to a city or parish that has recently seen inroads made by African-American candidates, thereby increasing the prospects for white candidates to win seats on an elected body and curtailing African-American political power. Another strategy has been to drastically change the size of an elected body, cutting African-American seats or adding seats that white voters are likely to control. The continued development of new vote dilution strategies bears special emphasis in the context of this VRA renewal because it exposes one of the central dangers faced by African Americans and other minority voters: the imposition of new and substantial barriers in direct response to actual, perceived, or anticipated increases in minority political power. Though this danger is traceable to the pre-VRA period, it has consistently manifested itself since the passage of the VRA. As the following examples from the 1990s show, Section 5's anti-backsliding principle is well designed to combat this regrettable but continuing reality.

$ In 1990, the city of Monroe attempted to annex white suburban wards to its city court jurisdiction. The DOJ noted in its objection that the wards in question had been eligible for annexation since 1970, but that there had been no interest in annexing them until just after the first-ever African-American candidate ran for Monroe city court.[95]

$ Annexation of white suburban wards to the Shreveport city court jurisdiction would have changed that at-large jurisdiction from 54 percent African-American to 45 percent African-American. After the DOJ objected to the first attempt at annexation in 1994, the city tried a total of five more times, twice in 1995, in 1996 and twice in 1997. Each time

[95] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Cynthia Young Rougeou, Assistant Attorney General, State of Louisiana (Oct. 23, 1990). At present, LDF is litigating a Section 2 case in Jefferson Parish involving the election of circuit court judges from a multi-member district. That election structure, like at-large plans, has operated together with racial bloc voting to bar African Americans from serving on, and to deter them from even seeking to run for seats on, that court.

the DOJ informed the city that it would have no objection to the annexation if the city changed its method of electing judges from at-large to single-member districts, and each time the city refused to make that change.[96]

$ After the Washington Parish School Board finally added a second majority-African-American district in 1993 (bringing the total to two out of eight, representing an African-American population of 32 percent), it immediately created a new at-large seat to ensure that no white incumbent would lose his seat and to reduce the impact of the two African-American members (to 2 out of 9). The DOJ objected.[97]

$ In 1992, the year after Franklin Parish added a second majority-African-American district to its police jury, it attempted to cut the size of the jury in half, eliminating the new African-American seat over protests by the African-American community, and inviting a DOJ objection.[98]

$ In 1991 the Concordia Parish Police Jury announced that it would reduce its size from nine seats to seven, with the intended consequence of eliminating one African-American district. The parish made the pretextual claim that the reduction was a cost-saving measure, but the DOJ noted in its objection that the parish had seen no need to save money until an influx of African-American residents transformed the district in question — originally drawn as a majority-white district — into a majority African-American district.[99]

In each of these cases, local officials sought to eliminate or minimize the influence of majority African-American districts and, at times, remove African-American elected officials from office, without resort to the familiar "packing" or "cracking" associated with discriminatory redistricting techniques.

In another especially noteworthy example of the operation of Section 5 in a non-redistricting context, in 1994, the DOJ objected to Louisiana's attempt to impose a photo identification requirement as a prerequisite for first-time voters who register by mail.[100] The DOJ noted in its objection that a picture identification requirement would have an adverse effect on the state's African-American population, after its review of relevant socio-economic data. DOJ concluded

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[96] Letters from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Sherri Marcus Morris, Assistant Attorney General, State of Louisiana, and Jerald N. Jones, City Attorney, City of Shreveport (Sept. 6, 1994; Dec. 11, 1995; Oct. 24, 1996); Letter from Loretta King, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Jerald N. Jones, City Attorney, City of Shreveport (Sept. 11, 1995); Letters from Isabelle Katz Pinzler, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Jerald N. Jones, City Attorney, City of Shreveport (April 11, 1997; June 9, 1997).

[97] Letter from James P. Turner, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to G. Wayne Kuhn, Washington Parish School Board (June 21, 1993).

[98] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Kay Cupp, Secretary, Franklin Parish Police Jury (Aug. 10, 1992).

[99] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Robbie Shirley, Secretary-Treasurer, Concordia Parish Police Jury (Dec. 23, 1991).

[100] Appendix F. Letter from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Sheri Marcus Morris, Esq., Assistant Attorney General, State of Louisiana (Nov. 21, 1994).

that Louisiana had not satisfied its burden of showing that the submitted change had neither a discriminatory purpose nor a discriminatory effect.[101]

It is exactly this pattern of adaptive discriminatory voting changes that Congress identified and aimed to address when it designed Section 5 to "shift the advantage of time and inertia from the perpetrators of the evil to its victims."[102] As the above-described examples dramatically illustrate, the experience in Louisiana in the last decade shows that voting discrimination continues to take many forms, of which redistricting manipulation is but one.

c. Old Poison Into the Same Old Bottles: The Persistence/Reemergence of At-Large Voting Arrangements

Attempts to submerge minority voters in at-large elections did not disappear with the DOJ's first Section 5 objection on June 26, 1969. In fact, the state has continued to attempt to expand and reinforce at-large voting for boards of aldermen, judges, and school boards throughout the 1980s, 1990s, and even as recently as this decade. In 1988, Louisiana adopted anti-single-shot devices in circuit court elections (drawing a Section 5 objection) and added more at-large judges to the circuit courts (drawing another Section 5 objection).[103] Despite DOJ objections (and requests for more information, which the state ignored), the state attempted to add at-large or multi-member judicial seats again in 1989, twice in 1990, 1991, 1992, and 1994, and again adopted anti-single-shot devices in 1990.[104] In its 1991 objection letter, the DOJ noted blatant noncompliance with Section 5. As the objection letter notes, the state had gone ahead and held at-large elections for unprecleared judgeships from its last two submissions, and that white judges were now sitting in these seats.[105] These facts manifest a willful disregard for the VRA mandates.

Though this hearing is not primarily focused on Section 2 of the VRA, some Section 2 lawsuits in Louisiana serve to further illustrate the determination of state officials to continue employing at-large voting systems, despite the recognition that such systems result in the dilution of minority votes. For example:

$ In 1986, the city of Gretna's at-large election scheme for the selection of its Board of Alderman was found to be in violation of Section 2 because it prevented African Americans from participating in the political process in a meaningful way.[106] Gretna was the largest city by population in Louisiana to utilize an at-large election system and the

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[101] *Id.*
[102] *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).
[103] Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Kenneth C. Demean, Chief Counsel, State of Louisiana (Sept. 23, 1988)
[104] Letter from James P. Turner, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Kenneth C. Demean, Chief Counsel, State of Louisiana (May 12, 1989); Letters from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Cynthia Rougeou, Assistant Attorney General, State of Louisiana (Sept. 17, 1990; Oct. 23, 1990; Nov. 20, 1990); Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Angie R. LaPlace, Assistant Attorney General, State of Louisiana (Sept. 20, 1991); Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Richard P. Ieyoub, Attorney General, State of Louisiana (Mar. 17, 1992); Letter from Kerry Scanlon, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Sheri Marcus Morris, Assistant Attorney General, State of Louisiana (Oct. 5, 1994)
[105] Letter from Dunne to LaPlace of Sept. 20, 1991.
[106] *Citizens for a Better Gretna v. City of Gretna*, 636 F. Supp. 1113, 1115 (E.D. La. 1986).

court found that it constituted an "unusually large election district for purposes of electing the members of the Board of Aldermen."[107] Despite the fact that African Americans comprised nearly 25 percent of registered voters,[108] because of racially polarized voting no African-American person had ever been elected to municipal office in the city of Gretna under the at-large election system.[109]

$ In 2001, the Louisiana State Legislature adopted a plan, which, among other things, made it possible for the electors of St. Bernard Parish to reduce the size of the parish school board from eleven single-member districts to five single-member districts and two at-large seats.[110] Under the eleven single-member district plan, one district constituted a majority African-American voting district,[111] whereas under the proposed new plan there would be no African-American majority district.[112] Not only was the new plan found to dilute the voting strength of the African-American community, but the attitude of the highest ranking public official in St. Bernard Parish, State Senator Lynn Dean, provides a vivid example of the type of racial discrimination that at times is still overtly expressed and continues to hamper the political opportunities of African Americans in Louisiana. While testifying in a Section 2 hearing for the defendant School Board, Senator Dean was asked whether he had heard the word "nigger" used in the parish.[113] *The Senator responded that "he uses the term himself, ha[d] done so recently, that he does not necessarily consider it a 'racial' term and that it is usable in jest, as well."* [114] The composition of the St. Bernard Parish School Board was an important matter to Senator Dean, who had served on that body for 10 years prior to his election to the state Senate. Dean's term in the state Senate concluded in 2004.

At-large election structures have played a substantial role in diminishing the effectiveness of minority votes. Section 5 has operated to check further expansion of the harms that can flow from election structures that structurally submerge minority votes.

d. Repeat Offenders

The degree of intransigence of some state and local officials is illustrated by the large number of jurisdictions that proposed objectionable voting changes multiple times since 1982, sometimes across two or more decades. In a typical scenario, Pointe Coupee Parish's school board and

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[107] *Id.* at 1124.
[108] *Id.* at 1119.
[109] *Id.* at 1120.
[110] *St. Bernard Citizens for Better Government v. St. Bernard Parish Sch. Bd.*, No. 02-2209, 2002 U.S. Dist. LEXIS 16540, at *1-2 (E.D. La. Aug. 28, 2002). An excerpt of the decision is annexed as Appendix G. *See also* H.B. 180, 2001 La. Reg. Sess. (adopted by both the Louisiana House of Representatives and the Louisiana State Senate and signed by the Governor, this bill provided that where a parish (1) is governed by a home rule charter, (2) consists of a seven member governing authority where five members are elected in single-member districts and two members are elected at-large, and (3) has an eleven-member school board elected by single-member districts, the school board shall reapportion itself when required to do so by the electors of the parish and, if so required, shall adopt the same number and the same election districts as the parish governing authority).
[111] *Id.* at *12.
[112] *Id.* at *13.
[113] *Id.* at *33.
[114] *Id.*

police jury redistricting plans were found to be retrogressive by the DOJ three decades in a row, in 1983, 1992, and 2002.[115] In 1983, the parish attempted to pack as much of the African-American population as it could into a single district, while submerging the remaining African-American voters in ten majority-white districts; the result was that African Americans made up a majority in only one of the eleven police jury districts, despite making up 42 percent of the parish population.[116] In the 1992 redistricting cycle, the parish again attempted to pack African-American voters into a single urban district in the city of New Roads, while fragmenting rural African-American voters to prevent them from amassing a majority in the northern part of the parish.[117] Each of these attempts to minimize African-American voting strength was blocked by a Section 5 objection. Ten years later, in 2002, the DOJ was compelled to object yet again when the parish, without explanation, eliminated one majority African-American district from its school board redistricting plan, despite an increase in the African-American population of the parish.[118] In each of these redistricting cycles, the DOJ noted that local African-American leaders had protested the discriminatory redistricting plans and had proposed alternative plans that were ignored or rejected.[119]

Unfortunately, Pointe Coupee is not an exceptional case. Between 1982 and 2003, 10 other parishes were "repeat offenders," and 13 times the DOJ noted that local authorities were merely resubmitting objected-to proposals with cosmetic or no changes. The tenacity of local resistance to compliance is reflected in these examples:

$ White officials in DeSoto Parish attempted to reduce the number of majority African-American police jury districts in 1991, and the number of majority African-American school board districts in 1994 and 2002, each time despite increases in the African-American percentage of the parish population and the availability of alternative plans that preserved African-American districts, were less expensive to implement and were more consistent with prior district lines.[120]

$ After a 1991 Section 5 objection to its attempt to pack African-American voters in the city of Bastrop, the Morehouse Parish Police Jury made cosmetic changes and resubmitted the same plan.[121] The DOJ objected again, and the police jury again

[115] Letter from Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to E. Kenneth Selle, President, Tri-S Associates, Inc. (Aug. 22, 1983); Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Clement Guidroz, President, Pointe Coupee Parish Police Jury (Feb. 7, 1992); Letter from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Gregory B. Grimes, Superintendent, Pointe Coupee Parish School District (Oct. 4, 2002).
[116] Letter from Reynolds to Selle of Aug. 22, 1983.
[117] Letter from Dunne to Guidroz of Feb. 7, 1992.
[118] Letter from Boyd to Grimes of Oct. 4, 2002.
[119] *Id.:* Letter from Reynolds to Selle of Aug. 22, 1983; Letter from Dunne to Guidroz of Feb. 7, 1992.
[120] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to R. U. Johnson, President, DeSoto Parish Police Jury (Oct. 15, 1991); Letter from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Walter Lee, Superintendent of DeSoto Schools (April 25, 1994); Letter from Andrew E. Lelling, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Walter Lee, Superintendent of DeSoto Schools (Dec. 31, 2002).
[121] Letters from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Ray Yarbrough, President, Morehouse Parish Police Jury (Sept. 27, 1991; May 26, 1992).

resubmitted the same plan with only cosmetic changes.[122] Only after the DOJ objected a third time in 1992 did the police jury address the substance of the first objection and draw district lines that did not over-concentrate African-American voters.

$ After the DOJ objected to East Carroll Parish's packing of African-American voters into 4 out of 9 school board districts (despite an overall African-American population of 65 percent) in 1991, the Parish resubmitted the same redistricting plan with "minimal changes" in 1992 and 1993.[123] After the white majority on the board watched an African-American candidate run for police jury and fail in 1994, they quickly adopted the same districting plan as the police jury.[124]

Other repeat offenders include the parishes of Madison, East Baton Rouge, West Feliciana, St. Landry, Webster, Richland, Lafayette, and Washington; and the municipalities of Shreveport, Monroe, St. Martinsville, Ville Platte, and Minden.

As these examples underscore, although the media and many academics train their focus on Section 5's impact on congressional elections because data about those races are easy to access, much of Section 5's important work involves the protection that it extends to local communities outside the glare of media, national or otherwise. The political climate in these communities is often unknown outside of the locality, and their limited access to the expertise and resources of the handful of organizations and attorneys with VRA litigation expertise, coupled with the often prohibitive cost of Section 2 litigation, strongly suggest that most of these discriminatory voting changes would have succeeded but for the prophylactic review that Section 5 affords.

e. Inconsistent Standards

To justify diluting the African-American vote, local officials have often claimed to be fulfilling neutral redistricting or other criteria such as compactness or "least change." But such policies have been applied selectively to serve discriminatory purposes. Local officials have used the policy of "least change" to justify rejecting plans proposed by African-American leaders, only to adopt retrogressive plans that changed district lines more radically than the African-American leaders' proposals would have. For example, in 1989, Jefferson Parish Council officials rejected a proposal by African-American voters to draw the parish's first ever majority African-American district, claiming that the majority-white district they adopted was more compact and followed natural geographic boundaries.[125] The DOJ pointed out in its objection that this majority-white district was the *only* compact district and the *only* district to follow natural geographic

[122] Letter from James P. Turner, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to David E. Verlander, McLeod, Verlander, Eade & Verlander (Sept. 14, 1992).
[123] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Kenneth R. Selle, President, Tri-S Associates, Inc. (Dec. 20, 1991); Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Mary Edna Wilson, Secretary-Treasurer, East Carroll Parish Police Jury (Aug. 21, 1992); Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to James David Caldwell, District Attorney, State of Louisiana (Jan 4, 1993).
[124] Letter from Isabelle Katz Pinzler, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Gerald Stanley, Superintendent of Schools, East Carroll Parish (Aug. 19, 1994).
[125] Letter from James P. Turner, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Harry A. Rosenberg, Phelps, Dunbar, Marks, Claveria & Sims (Nov. 17, 1989).

boundaries in the entire Parish.[126] (In a related Section 2 lawsuit, the U.S. District Court for the Eastern District of Louisiana found that voting in the Parish was so racially polarized that no African-American candidate had ever advanced beyond a primary election.[127])

f. Manipulation of Standards on a Statewide Basis: the Section 5 Violations of the Louisiana House of Representatives

Once again demonstrating that discriminatory voting practices have statewide manifestations, as has been described above, the Louisiana House of Representatives has been consistent in its dilutive objectives, but has been among the most inconsistent electoral bodies when it comes to uniform application of the districting standards in the State. In 1991, the DOJ objected that the House redistricting plan prioritized compactness when that meant fragmenting an African-American population concentration among three districts in the north-central part of the State, but had no problem abandoning compactness to fragment African-American population southward in the Delta Parishes.[128] Assistant Attorney General John R. Dunne wrote in his objection letter that "the decision to apply or deviate from the criteria in each instance tended to result in the plan's not providing African-American voters with a district in which they can elect a candidate of their choice."[129]

The conduct of the Louisiana House of Representatives during its 2002 Section 5 redistricting litigation, also discussed above, further illustrates its pattern of cloaking discrimination with pretextual justification. In that litigation, the State sought judicial preclearance of its House of Representatives redistricting plan. Although there are many aspects of this very recent litigation that bear on the question of the need for renewal of Section 5,[130] the state's attempt to justify its intended elimination of an African-American opportunity district in New Orleans based upon the theory that white voters in Orleans Parish were entitled to proportional representation, though African Americans elsewhere in the state were not, epitomizes the lengths to which some will continue to go to dilute minority votes.

During the course of the litigation, the House, and plaintiff and Speaker Pro Tempore, Charles Emile "Peppi" Bruneau, Jr.,[131] sought to cover the tracks of the legislative intentions by improperly withholding documents that evidenced the House's purpose to retrogress in its redistricting plan through frivolous assertions of attorney-client or work product privilege. LDF secured a court order to require Bruneau and the other plaintiffs to produce versions of the redistricting guidelines that were distributed at the outset of the line drawing process to facilitate their work.[132] These documents revealed that Bruneau had overseen the process that culminated

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[126] *Id.*

[127] *East Jefferson Coalition for Leadership and Development v. The Parish of Jefferson*, 691 F. Supp. 991, 1002 (E.D. La. 1988).

[128] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Jimmy N. Dimos, Speaker, Louisiana House of Representatives (July 15, 1991).

[129] *Id.* at 3.

[130] *See* IV.A. *supra*.

[131] Bruneau had overseen decades of House redistricting in Louisiana.

[132] Excerpts from the transcript reflecting the court's command to the plaintiffs to produce the requested documents are annexed as Appendix H. It is worth mentioning that even after this order, plaintiffs again were prepared to flout the court's ruling. Plaintiffs initially refused to make the witnesses with knowledge of the revisions to the

in the removal of the provision in the guidelines that reminded legislators specifically of their obligation to comply with the VRA. Bruneau and the other witnesses for the Louisiana House explained that they removed the provision — which had been included in the guidelines for decades before the process began — in order to make the guidelines plain and understandable.[133] Accordingly, even before Congress had the opportunity to reevaluate the renewal of Section 5, legislators in Louisiana took it upon themselves to attempt to rewrite the law governing their redistricting activities.

Of course, Bruneau himself understood that the plan that he had ushered through the House eliminated an African-American opportunity district from Orleans Parish, despite growth in the African-American voting-age population percentage there. Faced with a strong Section 5 defense by the DOJ, a coalition of concerned voters (represented by LDF), and the Louisiana Legislative Black Caucus, the court issued an order unusually critical of the State's litigation tactics. The Louisiana plaintiffs settled the case on the eve of trial by agreeing to restore the eliminated Orleans opportunity district, among other concessions favorable to Louisiana's minority voters. The court's order that brought Louisiana to the settlement table in this statewide redistricting case read in part: the Louisiana House of Representatives has "subverted what had been an orderly process of narrowing the issues in this case by making a radical mid-course revision in their theory of the case and by blatantly violating important procedural rules."[134] It is far more efficient to expose this type of discriminatory manipulation of standards when jurisdictions have the burden of explaining their conduct under Section 5 than it would be to uncover the very same discriminatory motives in more costly and complicated Section 2 litigation.

g. Secrecy and Exclusion of African-American Citizens From Decision-Making Processes

On March 15, 1965, as President Lyndon Johnson sent the Voting Rights Bill to Congress, he warned the nation that, "[E]ven if we pass this bill, the battle will not be over . . . I know how difficult it is to reshape the attitudes and the structure of our society." The record in Louisiana demonstrates just how deeply rooted the "attitudes and structures" of voting discrimination are today. Not only have officials often excluded local African-American citizens from the decision-making process, they also have often made important decisions in secrecy.

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compelled documents available to be deposed up until the time that all of the litigants had joined a conference call and were awaiting the judge's participation in the call. The judge had earlier warned that the losing party would be sanctioned, and it was only in face of this further threat that the State relented and allowed the depositions to go forward.

[133] Appendix I. Excerpt of deposition transcript of Charles Emile Bruneau, Jr., Speaker Pro Tempore of the Louisiana House of Representatives at pp. 33-34 (explaining that the purpose of the guideline revisions was to make them understandable to members of the House of Representatives), 54-56 (conceding that the guideline revisions substituted the direct reference to the VRA and other relevant federal constitutional and statutory provisions by requiring that proposed redistricting plans abide by "all" laws), 62-63 (asserting that the guideline revisions effectuated "minimal" changes). January 7, 2003.

[134] Appendix E. Order Denying Defendants' Motion for Summary Judgment, No. 02-0062, at *1 (D.D.C. Feb. 23, 2003).

In 1994, the St. Landry Parish Police Jury was advised by a white alderman in the town of Sunset that whites were uncomfortable walking into an African-American neighborhood to vote at the Sunset Community Center.[135] Without holding a public hearing, seeking any further public input, or advertising the change in any way, the police jury moved the polling place to the Sunset Town Hall.[136] African-American leaders in Sunset did not hear of the change until informed of it by DOJ officials performing a Section 5 preclearance review, at which time they "expressed vehement opposition" to the change, because the proposed new Town Hall had been the site of historical racial discrimination and many African-American citizens did not feel welcome there.[137] As the DOJ pointed out in its objection letter, "the decision-making process considered the presumed desires of white voters, but made no effort to consider the desires of African-American voters."[138] If not for the light shone by the Section 5 preclearance process, African-American voters might not have known of the change until after they arrived at the wrong polling place on election day in 1994, at which point the retrogressive impact would have already been felt.

Significantly, in the absence of a vigorous Section 5 enforcement, under cover of darkness, jurisdictions such as St. Landry would be free to make small changes that would have the pronounced impact of narrowing the opportunities for African Americans to participate in the political process. For example, even if under the circumstances described African-American citizens could have filed Section 2 litigation, the suit certainly would not have stopped St. Landry from using secrecy to exclude African-American voters from providing input, and could have provided a remedy only after voters had suffered the harm. In situations such as this, Section 2 litigation, which is very expensive, complex, and time consuming, is no substitute for Section 5 preclearance. Absent Section 5 protection, officials would know that as a practical matter, African-American citizens and their counsel simply could not stop most changes by utilizing Section 2 litigation. Based on the situation that we have described in Louisiana since the time of the 1982 renewal, without a strong Section 5 preclearance process secret polling place and other harmful changes would likely proliferate.

As the following examples make clear, the St. Landry polling place relocation was only one of many instances in which African-American citizens learned of discriminatory voting changes or practices only because of Section 5 review.

$ In 1991, the East Carroll Parish School Board hastily adopted a redistricting plan "without the knowledge of African-American leaders and unsuccessful African-American . . . candidates, who would have spoken in opposition."[139]

$ In 1992, the Morehouse Parish Police Jury listened to redistricting proposals by African-American citizens; then, at the end of the process, quickly adopted a different proposal that had not been debated, but drew a Section 5 objection for diluting the African-

[135] Letter from Kerry Scanlon, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Kathy Moreau, Secretary, St. Landry Parish Police Jury (Sept. 12, 1994).
[136] *Id.* at 1.
[137] *Id.* at 2.
[138] *Id.*
[139] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to E. Kenneth Selle, President, Tri-S Associates, Inc. (Dec. 20, 1991).

American vote in the rural part of the Parish.[140] (At another point in the redistricting process, the police jury adopted a plan that gerrymandered an African-American incumbent into a majority-white district in retaliation for his championing of an alternative plan; the DOJ again objected.)[141]

$ In 1994, the DOJ found that the DeSoto Parish School Board held sham public debates before adopting, without discussion, a redistricting plan that the board members had privately agreed upon a month earlier.[142]

One of the often-overlooked aspects of the preclearance process is that Section 5 coverage is not simply limited by external factors, such as the congressionally established effective dates. Eligibility for bailout under Section 4 is also determined by factors that jurisdictions can control, like compliance with Section 5 submission rules.[143] Many Louisiana officials still stubbornly resist DOJ requests for even the most basic information about voting changes. For example, in 1993, when Morehouse Parish attempted to reduce the number of its elected justices of the peace, the DOJ noted that the parish's initial submission "contained virtually none of the information required;" that the parish ignored a request for more information for over a year; and that the response, when finally received, still contained no population data by race, and included maps of such poor quality that "we cannot determine the dividing lines between existing and proposed districts."[144] The DOJ noted similar efforts by Louisiana officials to withhold information in the city of Cottonport in 1987,[145] Jackson Parish in 1991,[146] Evangeline Parish in 1993,[147] and Richland Parish in 2003.[148] Objections followed in each instance.

h. The Relationship Between State and Local Governments

Voting discrimination in Louisiana has operated on many levels, with state government actions enabling or reinforcing local government actions. In 1998 the Louisiana State Legislature provided local governments with an excuse for not drawing additional majority-minority districts when it passed a law absolutely freezing local voting precinct lines through 2003 (including the three crucial redistricting years following the 2000 census).[149] In its objection letter, the DOJ

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[140] Letter from James P. Turner, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to David E. Verlander, McLeod, Verlander, Eade & Verlander (Sept. 14, 1992).
[141] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Ray Yarbrough, President, Morehouse Parish Police Jury (May 26, 1992).
[142] Letter from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Walter Lee, Superintendent of DeSoto Schools (Apr. 25, 1994).
[143] 42 U.S.C. § 1973b(a)(1)(D); *See also* IV.B.2.j. *infra*.
[144] Letter from James P. Turner, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Angie Rogers LaPlace, Louisiana Assistant Attorney General (Mar. 26, 1993).
[145] Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to M. E. Kenneth Selle, President, Tri-S Associates, Inc. (Apr. 10, 1987).
[146] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Troy L. Smith, President, Jackson Parish Police Jury (Oct. 8, 1991).
[147] Letter from James P. Turner, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Dale Reed, Secretary-Treasurer, Evangeline Parish Police Jury (Sept. 17, 1993).
[148] Letter from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, U.S. DOJ, to John R. Sartin, Superintendent, Richland Parish School Board (May 13, 2003).
[149] Letter from Bill Lann Lee, Assistant Attorney General, Civil Rights Division, U.S. DOJ, to Angie Rogers LaPlace, Louisiana Assistant Attorney General (May 13, 2003).

noted that during the 1990s, many local governments claimed to be unable to redraw districts to accommodate minority voting interests because state law forbade the drawing of district lines that crossed precinct lines (districts are areas that correspond with a particular seat at issue in an election; precincts are smaller areas served by a particular polling place).[150] But for another DOJ objection that nullified the 1998 law,[151] local officials would have been able to rely on state law, thrown up their hands, and claimed that they simply did not have the ability to draw districts that provided electoral opportunities for African Americans. It is precisely this kind of nexus between state and local governments united in discriminatory purpose and practice that requires the outside intervention provided for by Section 5.

i. More Information Letters

Under Section 5, the burden of showing that a proposed change is not retrogressive is on the jurisdiction proposing the change; if officials refuse to provide enough information to evaluate the change, review is delayed because of the jurisdiction's own acts, and the change cannot be precleared. By sending "more information" letters to submitting jurisdictions, which point out deficiencies in a submission and require jurisdictions to provide supplementary information, the DOJ has deterred and/or effectively blocked additional discriminatory voting changes in Louisiana. No fewer than 17 Louisiana parishes chose to withdraw 22 submissions, most of them redistricting proposals, since the 1982 renewal after additional information was requested. It stands to reason that the DOJ's request for more information put the jurisdictions on notice of the deficiencies of their submissions. Accordingly, in these situations, the jurisdictions withdrew the submissions rather than face a likely objection.

The pattern makes it clear that but for the prophylactic scrutiny of the Section 5 preclearance process, white officials would have successfully shut African-American citizens out of decisions with substantial impact on voters. If Section 5 is allowed to expire, the burden of proof will once again be on the victims of discrimination, and secrecy will be on the side of the officials who practice it.

j. Failures to Submit Voting Changes for Preclearance and Judicial Preclearance Determinations

With an effective Section 5 administrative process in place, federal courts are only rarely called upon to decide Section 5 issues — primarily when the government completely avoids its obligations to seek preclearance of voting changes, or when it seeks judicial review of administrative determinations. Despite the limited need for judicial involvement in Section 5 determinations, the federal courts have taken Louisiana and its subdivisions to task on multiple occasions since 1982 for Section 5 violations.

At the statewide level, courts have enforced Section 5 by preventing Louisiana from diluting the voting strength of African Americans in elections for state judges through discriminatory annexations. Under Louisiana's Constitution of 1973, citizens elect judges to the various state courts, including the Louisiana Supreme Court, its courts of appeal, district courts, family courts,

[150] *Id.* at 3.
[151] *Id.*

and other courts.[152] The delegates to the 1973 Constitutional Convention voted overwhelmingly to maintain the method of electing state judges that had been in place prior to VRA, which provided for at-large election of district judges, by district, as well as both division and at-large election of circuit judges.[153] Since the enactment of the VRA, the Louisiana legislature has often sought preclearance when adding new judgeships for the various district courts, family courts, and courts of appeal.[154] However, "the state failed to obtain the requisite preclearance" for eleven districts for State district court (sometimes with multiple divisions each) and two districts for circuit court.[155] At the time of the litigation, there were a total of forty district courts and five circuit courts of appeals.[156] Therefore, for 27.5 percent of the districts created for district court judges and 40 percent of the districts for circuit court judges the State ignored its preclearance obligations. Given Louisiana's African-American population of about 1,299,281 following the 1990 Census,[157] the failure to obtain preclearance as required for district court election districts potentially affected the voting rights of hundreds of thousands of African Americans, while the failure to obtain preclearance for circuit court election districts potentially adversely affected several hundred thousand African-American citizens of the state.

Rejecting any contention that these failures were merely *de minimus* violations, the district court strongly rebuked the state:

> The State of Louisiana has absolutely no excuse for its failure, whether negligent or intentional, to obtain preclearance of legislation when such preclearance is required by the Voting Rights Act of 1965. If this were the first time a three-judge court in the Middle District of Louisiana was confronted with the problem of hearing suit seeking to enjoin an election because of the state's failure to obtain preclearance, the Court might avoid commenting on the matter. It appears to this Court that those in charge of the election process in Louisiana should undertake a very careful and detailed inventory of all legislation which relates to the election of officials in Louisiana and determine once and for all whether preclearance has been obtained from the Attorney General if such is required under the Voting Rights Act of 1965. The people of the State of Louisiana, the candidates and incumbents, and the federal courts deserve nothing less.[158]

In order to balance the Section 5 rights of plaintiffs, the interests of state and local authorities, and public confidence in criminal convictions and civil judgments issued by judges from unprecleared election districts, the district court allowed the elections to proceed and the elected judges to take office on a provisional basis while the State sought preclearance from the attorney general or the District Court of the District of Columbia; should the state have failed to obtain preclearance, the court would have set aside the elections.[159] On appeal, underscoring the

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[152] *Clark v. Roemer*, 751 F.Supp. 586, 588 (M.D. La. 1990).
[153] *Id.*
[154] *Id.* at 589.
[155] *Id.* at 600.
[156] Brief for Appellees at 1, *Clark v. Roemer*, 1991 WL 11007874 (1991), *opinion*, 500 U.S. 646 (1991).
[157] U.S. Census Bureau, 1990 Census of Population and Housing (Decennial Census / Get Data / 1990 Census / 1990 Summary Tape File 1 / Detailed Tables / State / Louisiana / P006 Race), *available at* http://factfinder.census.gov/.
[158] *Id.* at 589 n. 10.
[159] *Id.* at 594-596.

seriousness of the Section 5 violation, the U.S. Supreme Court unanimously found this remedy inadequate, instead requiring the district court to enjoin all such elections immediately until the State received the requisite judicial or administrative preclearance.[160] Had the Supreme Court not intervened to enforce vigorous remedies for Section 5 violations, a substantial proportion of Louisiana's African Americans would have continued to face discriminatory elections for district court judgeships and approximately 520,000 African-American Louisianans would have continued to face discriminatory elections for circuit court judgeships.

Louisiana's record of complying with Section 5 for local elections is even worse than its record for state elections, which is precisely why Section 5 arguably plays its most important role in Louisiana in preventing voting discrimination for local office. The Western District Court of Louisiana has enjoined multiple elections in jurisdictions that failed to preclear voting changes. In 1991, it enjoined the city of Monroe from holding elections in Wards 1, 2, and 4 until obtaining preclearance for elections to the City Court,[161] in a jurisdiction of approximately 18,000 African Americans.[162] In 1994, the same district court enjoined elections under the Vernon Parish School Board's post-1990 reapportionment, since the school board failed to submit its 1994 modified reapportionment resolution.[163] The school board's reapportionment also violated the one-person, one-vote standard.[164] At that time, Vernon Parish's African-American population was approximately 13,000.[165]

Redistricting in Bossier Parish[166] and annexations in Shreveport,[167] though, proved more controversial than the Monroe and Vernon Parish violations. Following the 1990 Census, Bossier Parish drew the districts for its school board elections with the discriminatory, though allegedly nonretrogressive, purpose of diluting black voting strength.[168] The 1990 Census required the Bossier Parish School District to redraw districts for electing its members. Like the police jury, which governs the parish generally, the school board is composed of twelve

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[160] *Clark v. Roemer*, 500 U.S. 646 (1991).
[161] *Hunter v. City of Monroe*, 1991 WL 12799 (W.D. La. 1991).
[162] The city of Monroe has five districts. See http://www.monroela.us/citycouncil.php. After the 1990 Census, it had a black population of 30,504. U.S. Bureau of the Census, 1990 Census of Population and Housing (Decennial Census / Get Data / 1990 Census / 1990 Summary Tape File 1 / Detailed Tables / Place / Louisiana / Monroe City / P006 Race), *available at* http://factfinder.census.gov.
[163] *Dye v. McKeithen*, 856 F.Supp. 303, 308-09 (W.D. La. 1994).
[164] *Id.* at 312.
[165] U.S. Bureau of the Census, 1990 Census of Population and Housing (Decennial Census / Get Data / 1990 Census / 1990 Summary Tape File 1 / Detailed Tables / County / Louisiana / Vernon Parish / P006 Race), *available at* http://factfinder.census.gov.
[166] *Bossier Parish School Board. v. Reno* ("*Bossier Parish I*"), 907 F.Supp. 434 (D.D.C. 1995); *Reno v. Bossier Parish School Board* ("*Bossier Parish II*"), 520 U.S. 471 (1997); *Bossier Parish School Board v. Reno* ("*Bossier Parish III*"), 7 F. Supp. 2d 29 (D.D.C. 1998); *Reno v. Bossier Parish School Board* ("*Bossier Parish IV*"), 528 U.S. 320 (2000).
[167] *United States v. Louisiana*, 952 F. Supp. 1151, 1154 (W.D. La. 1997).
[168] *Bossier Parish III*, 7 F. Supp. 2d. at 39 (Kessler, J., dissenting); *see also Bossier Parish IV*, 528 U.S. at 356-357 (Souter, J., dissenting) ("There is no reasonable doubt on this record that the Board chose the Policy Jury plan for no other reason than to squelch requests to adopt the NAACP plan or any other plan reflecting minority voting strength, and it would be incredible to suggest that the resulting submergence of the minority voters was unintended by the Board whose own expert testified that it understood the illegality of dilution. If, as I conclude below . . . dilutive but nonretrogressive intent behind a redistricting plan disqualifies it from § 5 preclearance, then preclearance is impossible on this record.").

members elected from single-member districts. As of 1995, no black candidate had been elected to membership on the board,[169] although by 2000 three blacks won office on the board.[170] Candidates for the board face "majority voting requirements: a candidate must receive a majority of the votes cast, not merely a plurality, to win an election."[171] Initially, the school board sought to redraw its districts together with the police jury; because the incumbents of those two bodies had divergent interests, however, such cooperation proved impossible.[172] Facing the prospect of redistricting on its own, the school board hired a consultant to prepare a plan.[173] Shortly after the process had begun, the president of the local chapter of the NAACP wrote to the school board asking to be involved in the process, and indicating that the NAACP would oppose plans that lacked majority-black districts.[174] In 1992, the NAACP prepared a redistricting plan that included two majority-black districts, and presented them to the school board which in turn dismissed the plan because it "required splitting a number of voting precincts."[175]

When the board members met with the consultant preparing the redistricting plan, many of them made statements evidencing a discriminatory intent in their redistricting plans.[176] On October 1, 1992, the board adopted the police jury redistricting plan, rather than the NAACP plan.[177] The police jury plan pitted incumbent school board members against each other, and did not distribute school districts evenly.[178] On August 30, 1993, the attorney general interposed an objection to the plan, based on information acquired since preclearing the same plan for the police jury itself, on the grounds that it "unnecessarily limit[ed] the opportunity for minority voters to elect their candidates of choice."[179] The school board then sought judicial preclearance from the U.S. District Court for the District of Columbia.

In analyzing whether judicial preclearance was proper, the D.C. District Court and the Supreme Court both considered the case twice.[180] In so doing, they accepted many stipulations of the parties, such as: (1) the plan had no retrogressive *effect*;[181] (2) voting is racially polarized in Bossier Parish;[182] (3) one or two majority-black districts could have been drawn while respecting

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[169] *Bossier Parish I*, 907 F. Supp. at 437-438.
[170] *Bossier Parish IV*, at 341 (Thomas, J., concurring).
[171] *Bossier Parish I*, at 437.
[172] *Bossier Parish I*, at 438.
[173] *Id.*
[174] *Id.*
[175] *Id.* Louisiana law requires school board districts to contain whole precincts, but also allows School Boards to request precinct changes from the Police Jury in order to accommodate new plans. The Board never approached the Policy Jury to make such requests. *Id.*
[176] *Id.* at 438 n. 4. Such statements included testimony that while some favor "having black representation on the board, other school board members oppose the idea," that "the Board was 'hostile' toward the idea of a black majority district," and that one of the white members had "worked too hard to get his seat and that he would not stand by and 'let us take his seat away from him.'" *Id.*
[177] *Id.* at 439.
[178] *Id.*
[179] *Id.*
[180] *Bossier Parish School Board v. Reno* ("*Bossier Parish I*"), 907 F. Supp. 434 (D.D.C. 1995); *Reno v. Bossier Parish School Board* ("*Bossier Parish II*"), 520 U.S. 471 (1997); *Bossier Parish School Board v. Reno* ("*Bossier Parish III*"), 7 F. Supp. 2d 29 (D.D.C. 1998); *Reno v. Bossier Parish School Board* ("*Bossier Parish IV*"), 528 U.S. 320 (2000).
[181] *Id.* at 440.
[182] *Id.* at 454 (Kessler, J., dissenting).

traditional districting principles;[183] (4) when the police jury plan was opened for public comment it was widely criticized for diluting minority voting strength, and garnered no public support;[184] and (5) the police jury plan had a discriminatory impact "in falling 'more heavily on blacks than on whites . . . and in diluting 'black voting strength.'"[185]

Indeed, the judges on the D.C. District Court and the justices on the Supreme Court nearly agreed that Bossier Parish adopted the police jury plan with a discriminatory purpose. In granting judicial preclearance, the district court note[d] that "[e]vidence in the record tending to establish that the board departed from its normal practices . . . establishe[d] rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise, but [wa]s not evidence of retrogressive intent."[186] Rather, the evidence prove[d] a "tenacious" intent "to maintain the status quo,"[187] in this case the exclusion of African Americans from opportunities to elect candidates of choice resulting in an all-white school board. The dissent characterized Bossier Parish's adoption of the police jury plan as motivated by a "nonretrogressive but nevertheless discriminatory intent" to "maintain th[e] discriminatory status quo by unconstitutionally diluting black voting strength."[188] In affirming the district court, the Supreme Court did not disturb the lower court's factual findings since it reasoned that Section 5 does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose.[189]

In short, the Bossier ParishSchool Board adopted an admittedly dilutive redistricting plan, which the courts judicially precleared on the grounds that while the school board may have acted with intent to discriminate it did not act with intent to retrogress or worsen the position of the Parish's African-American citizens. The Supreme Court and the D.C. District Court allowed this plan, adopted with discriminatory purpose, in a parish without any minority-preferred representation on the elected body that was responsible for the policy decisions about the education of all of the children in the Parish.[190] This result seems particularly troubling in a state with such a well-documented and protracted history of discrimination in education and voting. Indeed, the practical impact of the Supreme Court's holding in *Bossier II* is that the Court has effectively created a "discrimination dividend" standard whereby jurisdictions that have effectively

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[183] *Id.* at 454 (Kessler, J., dissenting).
[184] *Id.* at 457 (Kessler, J., dissenting).
[185] *Bossier Parish IV*, 528 U.S. at 349 (Souter, J., dissenting).
[186] *Bossier Parish III*, 7 F. Supp. 2d. at 32. The court did, however, conclude that though it could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminator, purpose, . . . those imagined facts are no present here." *Id.* at 31.
[187] *Id.*
[188] *Id.* at 39 (Kessler, J., dissenting). *Cf. Bossier Parish IV*, 528 U.S. at 356-357 (Souter, J., dissenting) ("There is no reasonable doubt on this record that the Board chose the Policy Jury plan for no other reason than to squelch requests to adopt the NAACP plan or any other plan reflecting minority voting strength, and it would be incredible to suggest that the resulting submergence of the minority voters was unintended by the Board whose own expert testified that it understood the illegality of dilution. If, as I conclude below . . . dilutive but nonretrogressive intent behind a redistricting plan disqualifies it from Section 5 preclearance, then preclearance is impossible on this record.").
[189] *Bossier Parish IV*, 528 U.S. 320.
[190] *Bossier Parish I*, 907 F. Supp. at 437 (17.6 percent of Bossier Parish's 86,088 residents, after the 1990 Census, are black and of sufficient age to vote).

maintained adherence to exclusion of African Americans remain free to *intentionally* do so in the future, consistent with Section 5 of the VRA.

While Bossier Parish purposefully drew dilutive districts, Louisiana, acting on behalf of Shreveport, resisted its Section 5 obligations for hundreds of annexations, which diluted the African-American vote in Shreveport for nearly two decades. In 1976 and 1978, the city of Shreveport submitted its city charter and various annexations, as they affected the city council, to the attorney general for preclearance.[191] Shreveport failed to identify any effect these annexations would have on the city court, a political body distinct from the city council.[192] In 1978, the Attorney General precleared "(1) the annexations as they affected the City Council elections and (2) the City Charter."[193] In 1989, the city submitted additional annexations for preclearance, which the Attorney General denied.[194] In 1992, Louisiana, acting on behalf of the city, submitted for preclearance legislation that created a fourth city court judicial position and changed the method of electing its court judges from at-large to a combination of multimember and single-member districts; again, the Attorney General denied preclearance.[195] In 1993, the city submitted for preclearance "*321 annexations to the boundaries and jurisdiction of the City Court that had been implemented between 1967 and 1992*," and in 1994 it submitted six more annexations.[196] Yet again, the attorney general interposed an objection, explaining that "the proposed changes effectuated an eleven percentage-point decrease in black voting strength."[197]

Following this objection and in direct response to it, Louisiana "did an about-face." In a September 16, 1994 letter from the assistant attorney general of Louisiana, the state, *for the first time*, argued that Section 5 preclearance of the annexations to the city court was unnecessary because the attorney general had previously precleared annexations for the city council elections."[198] The state remained intransigent in this position,[199] which the court viewed as patently unreasonable.[200] Remarkably, despite "the City's and State's failure to obtain administrative or judicial preclearance for the annexations affecting the Shreveport City Court elections, the City" moved ahead with these elections.[201] Finding separate preclearance necessary for the Shreveport City Court,[202] but concluding that the annexations never received preclearance as they affected the city court elections,[203] the court crafted an appropriate

[191] *United States v. Louisiana*, 952 F. Supp. 1151, 1154 (W.D. La. 1997).
[192] *Id.*
[193] *Id.* at 1154-1155.
[194] *Id.*
[195] *Id.* at 1155.
[196] *Id.* (emphasis added).
[197] *Id.*
[198] *Id.* at 1155 (emphasis in the original).
[199] *Id.* at 1156.
[200] *Id.* at 1173.
[201] *Id.* at 1156. As it turned out, the judges seeking office ran unopposed and were, thus, statutorily deemed elected without having actually to contest the election and win votes. After the United States modified its complaint to reflect the relief that would be proper absent a contested election, the district court heard the case on the merits. *Id.*
[202] *Id.* at 1167. The court identified three primary grounds for the reasonableness of this position. First, the City Court and City Council were established under different legislation. Second, they enjoy separate electorates. Third, they employ differing methods of election—the City Court holds elections at-large while the City Council has used single-member districts since the 1970s. *Id.* The court also sought to give Section 5 a broad interpretation and to maintain the specificity requirement for administrative preclearance. *Id.* at 1168.
[203] *Id.* at 1169-72.

injunction that balanced the gravity of complying with Section 5's obligations with the need not to upset the city's judiciary which elected judges for decades through districts not properly precleared.[204] The court ordered the city and state "to seek judicial preclearance" and enjoined Louisiana's "Secretary of State from issuing the 'elected' City Court judges their commissions for a new six-year term," but it also permitted the incumbent city court judges "to holdover in their offices until the merits of the [judicial preclearance action] have been conclusively determined."[205] In the relevant time period, the actions of Shreveport and the state affected the voting rights of approximately 89,000 African Americans.[206]

Local governments in Louisiana since the 1982 reauthorization have conducted elections without first attempting to preclear voting changes, have designed districts with discriminatory (though nonretrogressive) purposes, and have flatly and unreasonably insisted that preclearance obligations do not bind hundreds of voting changes though the law makes plain that they do. The state of Louisiana has often adopted the patently unreasonable positions asserted by its local governments, and has itself resisted full compliance with its obligations to obtain preclearance for voting changes affecting elections for state judges. By vigorously enforcing Section 5 obligations for state and local elections since 1982, the federal courts have protected hundreds of thousands of African Americans in Louisiana against discrimination in voting. This very recent history of failures to comply with the VRA provides some indication of the extent of the backsliding in African-American opportunities to participate in the political process and elect candidates of choice that would ensue in the absence of Section 5 preclearance.

President Johnson's 1965 challenge — to change the attitudes and structures from which voting discrimination arises — has not been met. Intransigent officials throughout the State, and at its highest levels of power, are commonplace and have persisted in discriminatory behavior through decades in order to dilute the African-American vote. The post-1982 renewal experience in Louisiana reveals that too many officials cling to old strategies of dilution even while they develop new ones, resist transparency, conceal public information, and attempt to shut African-American citizens out of decision-making processes. With the roots of discrimination still so firmly in place in Louisiana, Section 5 appears, in many respects, to be as necessary now as it was in 1965, 1970, 1975, and in 1982 in order to avoid dramatic, unnecessary and, unfortunately, inevitable retrogression in African-American political opportunity in Louisiana.

k. Federal Observers

The federal observer provisions are another useful aspect of the VRA's minority protection statutory goal. Upon a threshold showing of credible complaints of election related irregularities, DOJ can dispatch observers to monitor elections and record their observations. The observer provisions serve two useful purposes. First, the presence of federal election monitors has a deterrent effect on would-be violators. Second, where deterrence does not work, the observer reports provide a firsthand factual predicate for additional DOJ enforcement efforts.

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[204] *Id.* at 1173.
[205] *Id.* at 1174.
[206] U.S. Bureau of the Census, 1990 Census of Population and Housing (Decennial Census / Get Data / 1990 Census / 1990 Summary Tape File 1 / Detailed Tables / Place / Louisiana / Shreveport City / P006 Race), *available at* http://factfinder.census.gov.

DOJ has dispatched observers to parish's in Louisiana more than a dozen times since 1982.[207] DOJ maintains records relating to the federal observer reports.

3. Section 2 Violations

The protections of one of the permanent enforcement provision of the VRA, Section 2, have worked in combination with Section 5 preclearance to enhance political opportunities for African Americans in Louisiana. At the heart of a Section 2 vote dilution claim lies the issue of whether racial or language minorities' right to have an equal opportunity to elect their candidates of choice has been undermined by a voting practices or procedures.[208] The cases reviewed in this section demonstrate why courts have consistently determined since 1986, and as recently as 2002, that African Americans in Louisiana have been denied this most fundamental opportunity. The violations which affect various public offices, including judicial, aldermanic, councilmanic and school boards, have unjustly burdened many thousands of African-American citizens in Louisiana.

a. Judicial Offices Section 2 Violations

Beginning in 1986, Louisiana's system for the election of judges was alleged to violate VRA. In the *Clark v. Roemer*[209] line of cases, African-American voters and African-American attorneys qualified to be elected judges to various courts throughout the state's court system finally decided that enough vote dilution was enough. In a case alleging that the use of multimember districts to elect judges operated to dilute African-American voting strength in violation of Section 2 of VRA, the parties stipulated to facts that provided the most compelling evidence of African Americans' inability to effectively participate in the political process in Louisiana. For example, of 156 district court judgeships in Louisiana outside of Orleans Parish, only two African Americans had *ever* been elected in the State's history.[210] During the whole twentieth century, in Orleans Parish — where there has been a consistently high concentration of African Americans as high as two-thirds of the population — only one African-American attorney had ever served on the criminal district court and only three had been elected to serve on the civil district court.[211] Of the 48 Court of Appeal judgeships in the State, only one judge was African-American.[212] No African-American citizen had ever been elected to any statewide office, to the U.S. Congress, or to the Louisiana Supreme Court.[213]

The vote dilution claims involved all of the Louisiana courts of appeal and most of the state's 41 judicial district courts. The federal district court initially found that the state's entire at-large

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[207] DOJ response to the FOIA request of Jon Greenbaum, Director of the Lawyers' Committee for Civil Rights Under Law's Voting Rights Project (February 4, 2005).
[208] *Citizens for a Better Gretna v. City of Gretna*, 834 F.2d 496,497 (5th Cir. 1987).
[209] *Clark v. Roemer* ("*Clark-2 III*"), 750 F. Supp. 200 (M.D. La. 1990); *Clark v. Roemer* ("*Clark-2 II*"), 777 F. Supp. 445 (M.D. La. 1990); *Clark v. Edwards* ("*Clark-2 I*"), 725 F. Supp. 285 (M.D. La. 1988).
[210] *Clark v. Roemer*, 725 F. Supp. 285, 288 (MD La. 1988).
[211] *Id.*
[212] *Id.*
[213] *Id.* at 290. Jesse Stone, an African-American attorney, was appointed to a vacancy on the Louisiana Supreme Court for 17 days, from November 2, 1979 through November 19, 1979.

scheme for judicial elections violated Section 2.[214] Initially, although minority vote dilution had not been proven in every district, the court enjoined elections for all family, district, and appellate courts until the state system could be revised. The Louisiana legislature proposed a package of constitutional and statutory changes to address the court's ruling, but the voters rejected them.

The district court subsequently vacated the statewide injunction because it determined that *Thornburg v. Gingles*[215] requires district-by-district findings; thus it issued revised findings that eleven districts, excluding the 23rd Judicial District Court ("JDC"), violated Section 2 of the VRA. For those eleven districts, the court concluded that sub-districts must be created to enhance minority judicial candidates' chances.[216] Both parties appealed, placing at issue the findings of Section 2 violations in some districts and the refusal to enter such findings in others, including the 23rd JDC. The imperative to end the struggle eventually yielded a settlement calling for revisions of 15 judicial districts, including the 11 that had been covered by the district court's remedial order for sub-districting and the 23rd JDC. The plaintiffs dropped their challenges to the other districts. Preclearance of the plan was granted and Act 780 was the end result of the settlement agreement.

Act 780 of the 1993 Regular Session of the Louisiana Legislature increased the number of district judges for the 23rd JDC from four to five. In the process, the Act created two electoral sub-districts within the district. In the whole district, the population ratio is about 70 percent white to 30 percent African-American. Sub-district one, however, is 75 percent African-American, contains roughly 20 percent of the total population, and elects one of the five district judges for the 23rd JDC; sub-district two is 80 percent white, contains roughly 80 percent of the total population, and elects four of the district judges.[217]

But before the decade could end, in *Prejean v. Foster,*[218] plaintiffs — residents and voters in the district of the 23rd JDC — alleged the *Clark v. Roemer* settlement itself intentionally discriminated among voters and thus violated the 14th and 15th Amendments and Section 2 of VRA because it effected an impermissible racial gerrymander.[219] Following a grant of summary judgment in the district court (itself "no doubt frustrated by the recent vicissitudes of voting rights law")[220] for the defendants (the parties to the original *Clark* settlement), the matter proceeded to the U.S. Court of Appeals for the Fifth Circuit.

As described above, the challenged settlement plan divided the 23rd judicial district into two sub-districts, with one majority African-American sub-district containing 20 percent of the population and electing only one of five judges. The other majority white sub-district contained 80 percent of the population and elected the other four judges. Because of sub-districting, voters in the majority African-American sub-district could only elect one of the five judges and had no right to vote on the other four. Conversely, voters in the white sub-district could vote for four of

[214] *Clark v. Edwards*, 725 F. Supp. 285, 302 (M.D. La. 1988).
[215] *Thornburg v. Gingles*, 478 U.S. 30 (1986).
[216] *Clark v. Roemer*, 777 F. Supp. 445, 450 (M.D. La. 1990).
[217] Alvin Turner became the first African-American judge in the 23rd JDC when he was elected in subdistrict one.
[218] 227 F.3d 504, (5th Cir. 2000).
[219] *Prejan v. Foster*, 227 F.3d 504, 508 (5th Cir. 2000).
[220] *Id.* at 507.

the trial judges but not for the fifth one. But since jurisdiction of the judges elected under Act 780 covered all three parishes in the 23rd JDC, any citizen could be a party in the court of a judge, or judges, in whose selection he or she had no role.

After a couple more rounds of remands and appeals, the Fifth Circuit ultimately held that Section 2 of VRA was satisfied and that the trial court had not clearly erred in finding that race was not the predominant factor in the creation of the sub-district. The court found substantial evidence that the districts were drawn according to traditional districting factors and while race played a role, it was not the predominant factor.

In one other line of cases dealing with the election of state judges, captioned *Chisom v. Roemer,*[221] five African-American registered voters in Orleans Parish, along with the Louisiana Voter Registration Education Crusade, filed a class action suit on behalf of all African-American registered voters in the Parish. These plaintiffs, like those in *Clark v. Edwards*[222], alleged that the system of electing two at-large Supreme Court justices from the Parishes of Orleans, St. Bernard, Plaquemines and Jefferson violated the VRA, the Fourteenth and Fifteenth Amendments to the United States Federal Constitution and, 42 U.S.C. § 1983 by impermissibly diluting, minimizing and canceling the voting strength of African-American registered voters in Orleans Parish.

Louisiana's Supreme Court consisted of seven judges, five of whom were elected by five respective districts, and two of whom were both elected by one district, the First District. This district was composed of four parishes, three of which were majority white, and one, Orleans Parish, which was majority African-American.

The plaintiffs produced data showing that the First Supreme Court District of Louisiana contained approximately 1,102,253 residents of whom 63.4 percent were white, and 34.4 percent were African-American. The First Supreme Court District had 515,103 registered voters, 68 percent of whom were white, and 31.6 percent of whom were black. Plaintiffs contended that the First Supreme Court District of Louisiana should have been divided into two single districts. Plaintiffs suggested that because Orleans Parish's population was 555,515 persons, roughly half the present First Supreme Court District, the most logical division was to have Orleans Parish elect one Supreme Court justice and the Parishes of Jefferson, St. Bernard and Plaquemine together elect the other Supreme Court justice. Under the plaintiffs' proposed plan, the First Supreme Court District encompassing only Orleans Parish would then have an African-American population and voter registration comprising a majority of the district's population. The other district comprised of Jefferson, Plaquemines and St. Bernard Parishes would be majority white.

Plaintiffs sought: (1) a preliminary and permanent injunction against the defendants restraining the further election of justices for the First Supreme Court District until the Court made a

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[221] *Chisom v. Roemer* ("*Chisom V*"), 501 U.S. 380 (1991); *Chisom v. Roemer* ("*Chisom IV*"), 1989 WL 106485 (E.D. La. 1989); *Chisom v. Edwards* ("*Chisom III*"), 839 F.2d 1056 (5th Cir. 1988); *Chisom v. Edwards* ("*Chisom II*"), 690 F. Supp. 1524 (E.D. La. 1988); *Chisom v. Edwards* ("*Chisom I*"), 659 F. Supp. 183 (E.D. La. 1987).
[222] *Clark v. Roemer* ("*Clark-2 III*"), 750 F. Supp. 200 (M.D. La. 1990); *Clark v. Roemer* ("*Clark-2 II*"), 777 F. Supp. 445 (M.D. La. 1990); *Clark v. Edwards* ("*Clark-2 I*"), 725 F. Supp. 285 (M.D. La. 1988).

determination on the merits of their challenge; (2) an order requiring defendants to reapportion the First Louisiana Supreme Court in a manner which "fairly recognize[d] the voting strengths of minorities in the New Orleans area and completely remedie[d] the present dilution of minority voting strength;"[223](3) an order requiring compliance with the VRA; and (4) a declaration from the Court that the Louisiana Supreme Court election system violated the VRA and the Fourteenth and Fifteenth Amendments to the Federal Constitution.

The district court held, erroneously, that Section 2 of the VRA was not applicable to state judicial elections and that plaintiffs had failed to state a claim of intentional discrimination for which relief could be granted under the Fourteenth and Fifteenth Amendments. The Fifth Circuit reversed and remanded, holding held that Section 2 applied to every election in which registered voters were permitted to vote. In so holding, the court rejected the argument that the VRA did not apply to the election of judges because judges were not representatives within the meaning of Section 2 of the VRA.[224] But the Fifth Circuit's decision was short-lived, as it was overruled by its subsequent decision in *LULAC v. Clements*,[225] where the court held that the results test in the VRA only applied to elections for representative, political offices but not to vote dilution claims to judicial elections. The Supreme Court ultimately resolved the matter, determining that vote dilution claims for state judicial elections were included within the ambit of the VRA. The case was later settled.

b. Aldermanic Section 2 Violations

Resistance to opportunities for African Americans to elect candidates of choice in Louisiana is by no means limited to judgeships or candidates for other state or national offices; it is also evident at the municipal level. If "all politics is local," VRA protections remain vital to ensuring a level playing field where key decisions about people's lives are being made everyday. No African American had ever been elected to municipal office in the city of Gretna since its incorporation in 1913, despite equivalent African-American and white voter registration rates.[226] This was in large part due to an informal slating process, known as the "Miller-White Ticket," which generally ensured a white candidate for every office. The politic environment in Gretna "was characterized by a constant reference to the 'Miller-White Ticket,'" comprised of a father and son combination (the Millers) that were serving as Chief of Police for 60 consecutive years and a mayor (White) who was serving for 34 years at the time of the litigation.[227]

In *Citizens for a Better Gretna v. Gretna*, African-American voters of Gretna brought action under Section 2 of the VRA challenging the city's at-large aldermanic elections. Plaintiffs presented evidence, which the court found "cogent and convincing," that African Americans were excluded from the Miller-White Ticket, and by extension meaningful participation in the political process in Gretna.[228]

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[223] *Chisom v. Edwards*, 659 F. Supp. 183, 184 (E.D. La. 1987).
[224] *Chisom v. Edwards*, 839 F.2d 1056, 1064 (5th Cir. 1988).
[225] *League of United Latin Am. Citizens Council*, v. *Clements*, 914 F.2d 620 (5th Cir. 1990).
[226] *Citizens for a Better Gretna v. City of Gretna*, 636 F. Supp. 1113, 1117-1120 (E.D. La. 1986).
[227] *Id* at. 1122.
[228] *Id.* at 1123.

The district court found that African-American citizens of Gretna "historically suffered disadvantages relative to white citizens in public and private employment. . . ."[229] In detailing what it considered the relevant facts of the case, the court noted that "Blacks generally suffer higher incidences of unemployment and hold lower paying jobs than do whites."[230] The median income "[f]or blacks . . . [is] only 52 percent of [that] . . . for whites."[231] Less than ten percent of "whites in Gretna lived below the poverty line" compared to "34.1 percent of blacks."[232] Moreover, while defendants urged that any official discrimination in Gretna prior to the adoption of the VRA did not impede contemporary African-American political participation, the court held that "[t]he record fails to support this conclusion."[233]

The city had an at-large voting system for its Board of Aldermen, as well as a majority vote requirement. As noted above, no African American had ever been elected to the Board, despite a population of 28 percent. The district court found the election system violated the VRA and the city appealed. The Fifth Circuit upheld the lower court decision, finding that at-large aldermanic elections violated Section 2 of VRA.[234] The court also observed that

> [t]he history of black citizens' attempts, in Louisiana since Reconstruction, to participate effectively in the political process and the white majority's resistance to those efforts is one characterized by both *de jure* and *de facto* discrimination. Indeed, it would take a multi-volumed treatise to properly describe the persistent, and often violent, intimidation visited by white citizens upon black efforts to participate in Louisiana's political process.

Similarly, in *Westwego Citizens for Better Government v. Westwego,*[235] another case involving aldermanic elections, African-American citizens sued to challenge the city's method of at-large elections, claiming it diluted African-American voting strength. The city is governed by a mayor and board of five alderman, who exercise considerable authority in the city, ranging from issuing permits, approval of zoning changes and land use requests, to grants of licenses to operate a business or sell alcoholic beverages.[236] Once again in this small town, no African-American candidate had ever been elected to the board of alderman or any other municipal office in Westwego.[237] Following a series of district court findings for the city and Fifth Circuit remands, the Court of Appeals finally held that the at-large system effectively barred black citizens from any meaningful role in the city's government in contravention of Section 2. The city was given 120 days to come up with an appropriate remedy that could be precleared.

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[229] *Citizens for a Better Gretna v. Gretna*, 636 F. Supp. 1113, 1118 (E.D. La. 1986).
[230] *Id.*
[231] *Id.*
[232] *Id.*
[233] *Citizens for a Better Gretna v. Gretna*, 636 F. Supp. 1113, 1119 (E.D. La. 1986).
[234] 834 F.2d 496 (5th Cir. 1987).
[235] 946 F.2d 1109 (5th Cir. 1991).
[236] *Westwego Citizens for Better Government v. City of Westwego*, 946 F.2d 1109, 1113 (5th Cir. 1991).
[237] *Id.*

c. School Board Section 2 Violations

In *St. Bernard Citizens for Better Government v. St. Bernard Parish School Board,*[238] the 2000 census revealed that eleven districts, which had been in existence since the school board's inception, were impermissibly unequal in population, with a deviation of 33.7 percent.[239] A demographer determined that the districts could be redrawn with one majority African-American district in compliance with the Equal Protection Clause and VRA.[240] Such a plan was developed and presented to ten of the eleven board members, all of whom were "acceptive" of the plan.[241] However, the board never voted on the plan. As was the case in Jefferson Parish (detailed below), no African-American candidate had ever been elected to the St. Bernard Parish School Board. Further, to ensure that African Americans would not have any representatives in the future, the parish voters approved a plan to reduce the size of the parish school board from eleven members elected from single-member districts to seven members, including five elected from single-member districts and two elected at large.

The plaintiffs contended that the five-two plan injured African-American voters. The court found the five-two plan to be dilutive and to violate Section 2 of the VRA, based on the *Gingles* and totality of the circumstances tests, given a history of discrimination, continuing socioeconomic effects, and racially polarized and bloc voting — including the fact that a majority in the precinct voted for David Duke in the primary and run-off gubernatorial election. The court held that the eleven-member proposed plan was objective, workable, and reasonable. Therefore, plaintiffs prevailed under Section 2.

In *Fifth Ward Precinct v. Jefferson Parish School Board,*[242] several coalitions of registered voters and residents of Jefferson Parish sought declaratory and injunctive relief against the district boundaries for election of members to the Jefferson Parish School Board. The parties entered into a consent judgment providing for the creation of an African-American majority district.

d. Councilmanic Section 2 Violations

In *East Jefferson Coalition v. Parish of Jefferson,*[243] the parish's seven council members were elected through a combination of single-member, floaterial, and at-large districts, utilizing a majority vote requirement.[244] The parish was apportioned into four districts. Each district elected one councilman: one was elected at-large from Districts 1 and 2; another was elected at-

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[238] 2002 U.S. Dist. LEXIS 16540 (E.D. La. Aug. 28, 2002).
[239] *Id.* at *11.
[240] *Id.*
[241] *Id.*
[242] 1989 U.S. Dist. LEXIS 467 (E.D. La Jan. 18, 1989).
[243] 926 F.2d 487 (5th Cir. 1991).
[244] It is worth noting that Jefferson Parish was the only parish in Louisiana that used a combination of three types of districts to elect its council.

large from Districts 3 and 4; and the last was elected from the parish at-large.[245] Under these electoral arrangements, no African-American candidate had ever been elected to Jefferson Parish council.

Plaintiffs, associations and a number of African-American registered voters in Jefferson Parish, brought suit against the parish alleging that the plan for apportioning the seats on the Jefferson Parish council violated Section 2 of the VRA. The district court, after finding a Section 2 violation, accepted a new restricting plan submitted by the parish. However, the DOJ refused to preclear it, suggesting that the plan "may well have been motivated by an invidious purpose to minimize black voting strength . . . ."[246] After the parish submitted yet another plan, this time with a majority-minority district, the DOJ cleared the plan and filed a memorandum with the district court requesting that the court amend its prior finding that African Americans were widely dispersed throughout the parish. After the court amended its prior finding as the DOJ recommended, the parish appealed yet again. The Fifth Circuit, again affirming a lower court opinion in favor of plaintiffs under Section 2, held that the district court's finding that the *Gingles* factors were satisfied was not clearly erroneous. The court upheld the finding that African Americans were geographically compact and politically cohesive, there was racial polarization in council elections, and a white bloc vote consistently defeated the minority's preferred candidate. This case is one example of the important nexus between Section 2 and Section 5.

Although there have been very significant Section 2 rulings for plaintiffs in every decade since the time of the last renewal in 1982, Section 2 by itself would not provide adequate protection absent Section 5, because the proof of such claims is very complicated under the totality of the circumstances analysis, and very expensive to marshal — often requiring the retention of a handful of experts whose fees are unreimbursible even for a successful party. Moreover, while Section 5 stops discrimination before it occurs, Section 2 is a remedy that seeks to undo distortions to the political process. The cost, time, and expertise factors suggest that while Section 2 is a necessary complement to Section 5 preclearance, it cannot fairly be said to be an adequate substitute. Whether the Section 2 violations occur in the context of judicial elections, aldermanic elections, or school board and parish council elections, the record is clear — Louisiana and its political subdivisions have yet to fully embrace the notion of political equality for African Americans.

4. Constitutional Voting Rights Cases

An important redistricting case following the 1990 census simultaneously illustrates political realities in Louisiana that justify renewal of Section 5 at the same time that it points to constitutional limits on VRA enforcement that have been established by the Supreme Court. During the post-1990 Census round of redistricting, DOJ conveyed to Louisiana its view that a second majority-minority congressional district would be necessary to obtain preclearance. The

[245] *East Jefferson Coalition for Leadership and Development v. Parish of Jefferson*, 926 F.2d 487, 489 (5th Cir. 1991).
[246] *Id.* at 490.

federal courts limited DOJ's ability to leverage Section 5 as a tool for requiring the drawing of additional districts in a series of cases captioned *Hays v. Louisiana*.[247]

Following the 1990 census, Louisiana's apportionment of representatives in the U.S. House of Representatives fell from eight to seven members.[248] The state, therefore, had to redraw its districts for electing representatives to federal congressional office.[249] Prior to 1990, African Americans comprised a majority of voters in only one of Louisiana's eight congressional districts.[250] This district, covering metropolitan New Orleans, had been itself created in response to a 1983 court order finding a violation of Section 2 of VRA,[251] and "in 1990 that district elected Louisiana's first black representative since Reconstruction."[252]

In drawing the new congressional districts, the Louisiana legislature had to comply with the constitutional command to reapportion its congressional delegation, one-person, one-vote, and the preclearance requirements of Section 5 of VRA.[253] Because the legislature failed to adopt a redistricting plan in 1991, it was under severe pressure to develop a lawful plan in 1992 in time for the congressional elections.[254] This pressure required the legislature to be reasonably certain that any redistricting plan it adopted would "receive immediate preclearance."[255] In its communications with the DOJ, the "legislators received unmistakable advisories from the Attorney General's office that only redistricting legislation containing two majority-minority districts would be approved ('precleared'), so the Legislature directed its energies toward crafting such a plan."[256] The DOJ demanded a second majority-minority district in order to mitigate the dilution that black voters would otherwise suffer due to the continued presence of racially polarized voting.[257] Indeed, DOJ recognized that, at the time of the *Hays* litigation, Louisiana's population was

> 30 percent black, [but] no black candidate ha[d] been elected to any statewide office in this century, and no black candidate in this century ha[d] won election either to Congress or to the Louisiana Legislature from a district where whites comprise a majority of the registered voters. . . . Statistical analyses of voting patterns demonstrate[d] indisputably that voting in Louisiana elections, including congressional elections, is severely polarized

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[247] *Hays v. Louisiana* ("*Hays I*"), 839 F. Supp. 1188 (W.D. La. 1993); *Hays v. Louisiana* ("*Hays II*"), 862 F. Supp. 119 (W.D. La. 1994); *United States v. Hays* ("*Hays III*"), 515 U.S. 737 (1995); *Hays v. Louisiana* ("*Hays IV*"), 936 F. Supp. 360 (W.D. La. 1996); the NAACP LDF, the Lawyers' Committee for Civil Rights Under Law and A. Leon Higginbotham, Jr. intervened in *Hays IV* on behalf of African-American citizens, the Louisiana Legislative Black Caucus, and then-Congressman Cleo Fields.
[248] *Hays II*, 862 F. Supp. at 122.
[249] U.S. Const. art. I, § 2 cl. 3.
[250] *Hays I*, 839 F. Supp. at 1190.
[251] *Major v. Treen*, 574 F. Supp. 325 (E.D. La. 1983).
[252] *Hays III*, 515 U.S. 737, 740 n. *.
[253] *Hays I*, 839 F. Supp. at 1195-1196.
[254] *Hays I*, 839 F. Supp. at 1196.
[255] *Id.*
[256] *Hays IV*, 936 F. Supp. At 363. *See also*, *Hays I*, 839 F. Supp. at 1196 n. 21 ("the Attorney General's Office (AGO) had let it be known that preclearance would not be forthcoming for any plan that did not include at least *two* 'safe' black districts").
[257] The district court later identified this racial polarization, finding "an average, *net* white cross-over vote in non-judicial elections of between 10 percent and 25 percent." *Hays I*, 839 F. Supp. at 1208.

> along racial lines; black voters cohesively support black candidates, but are consistently unable to elect them to office in white-majority districts because of white bloc voting for white candidates. . . . It is difficult to imagine a stronger record supporting the conclusion that a majority-black district is necessary 'to ensure equal political and electoral opportunity' for black voters. . . .[258]

In reaching this conclusion, DOJ analyzed congressional elections leading up to the 1990 round of redistricting:

> For example, from 1986 through 1990, black candidates ran on five occasions in old District 8, the white-majority congressional district having the greatest concentration of black voters (35 percent black). Black voters in these elections strongly supported black candidates, but each time the black candidate was defeated by the white bloc vote for white candidates. On average, the black candidates in these elections received 87.5 percent of the black vote but only 9.3 percent of the white vote. . . . The racial breakdown in these election results is as follows:[259]

	percent of Black Voters Voting for Black Candidates	**percent of White Voters Voting for Black Candidates**
1990 Primary	84.7	3.2
1990 Primary	91.0	3.3
1998 Runoff	96.7	14.9
1986 Primary	68.3	3.3
1986 Runoff	97.0	21.6

Therefore, in order to comply with DOJ's suggestion that a second majority-minority district would be necessary to avoid diluting minority voting strength, the Louisiana legislature made sure to include African-American majorities in two of the seven congressional districts. The attorney general precleared this plan.[260] The district court held this plan, Act 42, and its later revision in Act 1, to be unconstitutional racial gerrymanders, violating Equal Protection under *Shaw v. Reno*[261] and its progeny. The court found that the legislators relied primarily on race, rather than traditional districting concerns, such as uniting communities of interest, in drawing

[258] Brief for United States, et al., at 30-32, *United States v. Hays*, 1995 WL 58555, *opinion reported at* 515 U.S. 737 (1995) (internal citations omitted).
[259] *Id.* at 31 n. 37.
[260] *Hays IV*, 936 F. Supp. at 363.
[261] 509 U.S. 630 (1993).

the districts and did not narrowly tailor the districts to address any compelling governmental interest.[262,263]

The four *Hays* opinions explain in detail how the Louisiana legislature's adoption of its redistricting plans with a second majority-minority congressional district came exclusively in response to DOJ's demand, rather than from any desire in Louisiana to enhance the political voice of African Americans.[264] The fact that DOJ's analysis compelled a second majority-minority district to avoid racial vote dilution, while the district court's analysis found that DOJ lacked the power to impose such a requirement, should not overshadow the role that Section 5 had on Louisiana's actions. By all accounts, the state of Louisiana would not have acted on its own to mitigate the dilutive effects of continued racially polarized voting at all had DOJ not pressured them to do so. Indeed, the pattern before and after *Hays v. Louisiana,* and most recently in the post-2000 Census redistricting case of *Louisiana House of Representatives et. al. v Ashcroft,* makes clear that efforts to minimize African-American voter strength persists. So even in this case where the federal courts essentially held that DOJ had overreached in its zealous enforcement of the VRA as to the remedy for vote dilution, the underlying facts and record evidence presented are relevant to the assessment of contemporary barriers for minority voters and candidates. Additionally, it bears emphasis that David Duke described the court-ordered redistricting plan that followed, once the plan with a second majority-minority congressional district was invalidated, as "tailor made" for his candidacy.[265]

The constitutional limits that the Supreme Court established on VRA enforcement, and redistricting decisions more specifically, in the *Shaw-Miller* line of cases appear to have been largely internalized by legislators because the expected crop of post-2000 Census constitutional challenges have not materialized.

CONCLUSION

Prior to the enactment of the VRA, Louisiana stood out among the Southern states by having one of the most severe, adaptive, and violent histories of discrimination in voting. While African-American voters and candidates have made demonstrable progress since 1965 in Louisiana and elsewhere, the progress is not simply attributable to a change of heart or practice on the part of white elected officials and decision-makers. Rather, it is, in large part, the result of the determination and hard work of African-American communities, their advocates, and the involvement of and oversight by the federal government under the VRA in general, and Section

[262] *Hays I*, 839 F.Supp. 1188; *Hays II*, 862 F. Supp. 119; *Hays IV*, 936 F. Supp. 360. The Supreme Court, in the meantime, dismissed the challenge to Act 1, as originally complained of, for lack of standing. *Hays III*, 515 U.S. 737. Plaintiffs cured this infirmity to the district court's satisfaction in their amended complaint in *Hays IV*.

[263] The district court found the plan insufficiently tailored to satisfy the prerequisites of Section 2 because the second majority-minority district was not compact. *Hays I*, 839 F. Supp at 1196 n. 21; *Hays II*, 862 F. Supp. at 124; *Hays IV*, 936 F. Supp. at 370. It similarly found that the plan was not justified by Section 5 concerns because a plan with one majority-minority district out of seven would have been a non-retrogressive change as compared with the prior apportionment of one majority-minority district out of eight. *Hays IV*, 936 F. Supp. at 370.

[264] *Hays I*, 839 F. Supp. at 1196 n. 21 (documenting how Louisiana's desire to maintain its traditional districts with their "historical, cultural, political, economic, and religious significance" was eventually overcome by DOJ's "insistence" on a second majority-minority district even at the expense of those concerns).

[265] *See* Cleo Fields and A. Leon Higginbotham, Jr., *Why the Anxiety When Blacks Seek Political Power?,* The Times-Picayune, July 23, 1996, at B5.

5 in particular. If Section 5 had not been renewed in 1982, nearly 100 attempts to dilute African-American voting strength would have had the force of law in Louisiana, leading to deprivations of our most fundamental right to tens of thousands of African Americans. The record shows that the need for Section 5 coverage of Louisiana has not declined since the last reauthorization in 1982. In fact, the average number of objections per year actually increased after 1982.

Examination of Louisiana's conduct in connection with line-drawing in Orleans Parish in general, and with respect to its state House of Representative redistricting plans from 1965 through the present, permits one to trace an unbroken pattern of voting discrimination. The record shows that President Johnson's 1965 challenge — to change the attitudes and structures from which voting discrimination arises — has not been fully met. Intransigent officials throughout the state, and at its highest levels of power, are commonplace and have persisted in discriminatory behavior through the decades in order to dilute the African-American vote. The post-1982 renewal experience in Louisiana reveals that some officials cling tenaciously to old strategies of dilution even while they develop new ones, resist transparency, conceal public information, and attempt to shut African-American citizens out of decision-making processes. With the roots of discrimination still so firmly in place in Louisiana, Section 5 is as necessary now as it was in 1965, 1970, 1975, and in 1982 to avoid dramatic, unnecessary and, unfortunately, inevitable retrogression in African-American political opportunity in Louisiana.

Appendix A

State (T3505)	Act No. 445 (1968)--parish police jury at-large elections	6-26-69 Withdrawn 11-20-95
State (T3506)	Act No. 561 (1968)--parish school board at-large elections	6-26-69 Withdrawn 4-14-72
St. Helena Parish (T8043)	At-large elections (police jury)	5-14-71
Jefferson Davis Parish (T7204)	Multi-member districts (police jury)	6-4-71
Tangipahoa Parish (T8102)	Implementation of Acts 445 and 561	6-18-71
Assumption Parish (Y6499)	Redistricting (school board)	7-8-71
Franklin Parish (T8042)	At-large elections (police jury)	7-8-71
St. Charles Parish (V3060)	At-large elections (police jury)	7-22-71
Jefferson Davis Parish (V3023)	Redistricting (school board)	7-23-71
Ascension Parish (T8046)	Redistricting; multi-member districts (police jury)	7-23-71
Bossier Parish (V3095)	Redistricting (school board)	7-30-71
DeSoto Parish (V3116)	At-large elections (police jury)	8-6-71
East Baton Rouge Parish (V3100)	Parish council expansion	8-6-71 Withdrawn 10-1-71
Webster Parish (V3013-14)	Redistricting (police jury)	8-6-71 Withdrawn 9-14-71
Pointe Coupee Parish (T8050)	Redistricting (police jury)	8-9-71 Section 5 objection ruled untimely in United States v. Pointe Coupee Parish Police Jury, No. 71-336 (E.D. La. Oct. 19, 1971)
State (V3205-3206)	Redistricting (House and Senate); multi-member districts; numbered posts	8-20-71
Natchitoches Parish (V3448)	Redistricting (school board)	9-20-71
East Feliciana Parish (V3727)	At-large elections (police jury)	9-20-71
St. Helena Parish (V3399)	At-large elections (police jury)	10-8-71
Caddo Parish (V3467)	Redistricting (school board)	10-8-71
St. James Parish (V3062)	Redistricting (police jury)	11-2-71
East Feliciana Parish (V3654)	Redistricting (police jury)	12-28-71
St. Mary Parish (V3729)	Redistricting (school board)	1-12-72
St. Helena Parish (V4073)	Staggered terms (school board)	3-17-72
Ascension Parish (V3664)	Redistricting; multi-member districts (school board)	4-20-72
East Feliciana Parish (V4001)	Multi-member districts (school board)	4-22-72
Pointe Coupee Parish	Redistricting (school board)	6-7-72

(V4170)		
Lafayette Parish (4161)	Redistricting; multi-member districts (school board)	6-16-72
Lake Providence (East Carroll Parish) (V4062)	Annexation	12-1-72 Withdrawn 5-21-82
St. Landry Parish (V4811)	Polling place	12-6-72
New Orleans (Orleans Parish) (V4172)	Redistricting	1-15-73
State (V5029)	Act No. 106 (1972)--numbered posts for all at-large and multi-member districts	4-20-73
Newellton (Tensas Parish) (V5512-13)	Two annexations	6-12-73
New Orleans (Orleans Parish) (V5555)	Redistricting	7-9-73 Declaratory judgment granted in Beer v. United States, No. 1495-73 (D.D.C. July 29, 1976)
New Orleans (Orleans Parish) (V5595)	Polling place	7-17-73
Bogalusa (Washington Parish) (V5813)	Residency requirement	10-29-73
Evangeline Parish (V6456-57)	Redistricting; multi-member districts (school board and police jury)	6-25-74
Evangeline Parish (V6747)	Redistricting; multi-member districts (school board and police jury)	7-26-74
State (V4495)	Act No. 107 (1971)	8-15-75
Orleans Parish (V8185)	Act No. 494 (1974)--redistricting (Executive Committee); numbered posts; majority vote requirement	8-15-75
State (X0262)	Act No. 432 (1975)--full slate requirement for school board	12-15-75
Rapides Parish (X0475-0476)	Redistricting (police jury and school board)	12-24-75
Shreveport (Bossier and Caddo Parishes) (X2680-2769)	Fifty-one annexations	3-31-76 Withdrawn 5-12-78 upon annexation of minority area and change in electoral system
Many (Sabine Parish) (X0737)	Reapportionment Plan "C"	4-13-76
Ouachita Parish (83-2303)	Louisiana Constitution of 1974, Article VIII, Section 10(b)--excludes residents of City of Monroe from participating in school board	3-7-77 Withdrawn 6-6-83

	elections	
New Orleans (Orleans Parish) (A5564)	Polling place	5-12-78
Pointe Coupee Parish (A6702)	Polling place	8-11-78
Pointe Coupee Parish	Polling place	10-20-78 Withdrawn 4-17-79
Baton Rouge City Court (East Baton Rouge Parish) (7X-0100)	Ordinance No. 3103 (1973)--the creation of Division "C" judgeship, to be elected at-large by majority-vote to a designated post	2-7-80 Withdrawn 10-10-80
Baton Rouge City Court (East Baton Rouge Parish) (7X-0099)	Act No. 522 (1979)--the creation of Division "D" judgeship, to be elected at large by majority-vote to a designated post	2-7-80 Withdrawn 10-10-80
Monroe School District (Ouachita Parish) (82-2137)	Redistricting, increase in the number of board members from six to seven	5-18-82
State (81-1624)	Act No. 1 (1968)--reapportionment of House of Representatives	6-1-82
Madison Parish (82-2127)	Reapportionment (school board and police jury)	8-16-82
West Baton Rouge Parish School District (82-2216)	Redistricting (school board)	11-8-82
Assumption Parish (82-2002-82-2003)	Reapportionment; realignment of voting precincts (school board and police jury)	11-30-82
LaSalle Parish (82-2112-2113)	1978 and 1982 Reapportionment Plans (school board and police jury)	12-20-82
Winn Parish (82-2221)	Reapportionment (school board)	1-14-83
East Baton Rouge Parish (82-2041)	Resolution No. 19075 (1982)--consolidations of the parish and city councils; Resolution No. 19448 (1982)--increase in the number of single-member districts from eleven to twelve; redistricting; realignment of voting precincts; Parish Ordinance No. 5995 (1982)--creation of Voting Precinct No. 24 and polling place	2-22-83 Objection to consolidations of parish and city councils and increase in number of single-member districts from eleven to twelve withdrawn 10-28-83 upon reapportionment of consolidated government
St. Helena Parish (82-2161) (82-2932)	Reapportionment, precinct realignment (school board and police jury)	4-11-83
Assumption Parish (83-2070, 83-2071)	Reapportionment; realignment of voting precincts (school board and police jury)	5-2-83
Caddo Parish (82-2017)	Redistricting--proposed twelve member districts	7-11-83
Pointe Coupee Parish (82-2143)	Redistricting	8-22-83

New Iberia (Iberia Parish) (83-2164)	Redistricting (councilmanic districts)	12-6-83
State (84-2758)	Senate Concurrent Resolution No. 4 (1983)--suspends 1984 statewide presidential preference primary	3-16-84
Monroe City School District (Ouachita Parish) (84-2811)	Redistricting	7-16-84
Cottonport (Avoyelles Parish) (86-3344)	Method of election, from at large to four districts and one at large; districting plan	4-10-87
State (87-2959)	Act 117 (1973), which creates an additional judgeship and a special election therefor in the 1st Judicial District; Act 480 (1970), which creates an additional judgeship in the 4th Judicial District; Act 515 (1974), which creates an additional judgeship and a special election therefor in the 6th Judicial District; Act 158 (1971), which creates an additional judgeship in the 9th Judicial District; Act 19 (1974), which creates an additional judgeship and a special election therefor in the 9th Judicial District; Act 515 (1974), which creates an additional judgeship and a special election therefor in the 9th Judicial District; Act 635 (1979), which redistricts the boundaries of the 10th Judicial District; Act 40 (1967), which creates an additional judgeship and a special election therefor in the 14th Judicial District; Act 332 (1975), which creates an additional judgeship and a special election therefor in the 14th Judicial District; Act 322 (1980), which creates an additional judgeship in the 14th Judicial District; Act 360 (1970), which creates an additional judgeship and a special election therefor in the 15th Judicial District; Act 43 (1976), which creates an additional judgeship in the 15th Judicial District; Act 322 (1980), which creates an additional judgeship in the 15th Judicial District; Act 104 (1968), which creates an additional judgeship and a special election therefor in the 16th Judicial District; Act 86 (1968), which creates an additional judgeship and a special election therefor in the 18th Judicial District; Act 34 (1981), which creates an additional judgeship in the 20th Judicial District; Act 9 (1974), which creates an additional judgeship and a special election therefor in the 21st Judicial District; Act 464 (1968), which creates an additional	9-23-88 Withdrawn 9-17-90 as to Act 236 (1972), which creates an additional judgeship and a magistrate, and Act 143 (1975), which creates five additional judges and decreases terms from twelve years to six years for the Orleans Parish Criminal District Court; and Act 129 (1975), which creates five additional judgeships and decreases terms from twelve years to six years for the Orleans Parish Civil District Court Withdrawn 8-12-92, Act No. 114 (1975) Withdrawn 8-12-92, Act No. 801 (1987) and Act No. 200 (1988)

	judgeship and a special election therefor in the 23rd Judicial District; Act 78 (1968), which creates an additional judgeship and a special election therefor in the 24th Judicial District; Act 674 (1968), which creates an additional judgeship in the 24th Judicial District; Act 503 (1974), which creates two additional judgeships and the special elections therefor in the 24th Judicial District; Act 158 (1971), which creates an additional judgeship and a special election therefor in the 27th Judicial District; Act 94 (1970), which creates an additional judgeship in the 29th Judicial District; Act 236 (1972), which creates an additional judgeship and a magistrate in the Orleans Parish Criminal District Court; Act 143 (1975), which creates five additional judges and decreases terms from 12 to 6 years in the Orleans Parish Criminal District Court; Act 129 (1975), which creates five additional judgeships and decreases terms from 12 to 6 years in the Orleans Parish Civil District Court; Act 305 (1975), which adopts designated posts (divisions) for all judgeships in Districts 1, 2, and 3 of the First Circuit Court of Appeals; Act 114 (1975), which creates an additional judgeship and special election therefor in District 2 and District 3 of the First Circuit Court of Appeals and provides an implementation schedule, and creates an additional circuit-wide judgeship in the Second Circuit Court of Appeals and the Third Circuit Court of Appeals; Act 801 (1987), which creates an additional judgeship in District 1, District 2, and District 3 of the Third Circuit Court of Appeals and an additional circuit-wide judgeship in the Second Circuit Court of Appeals and special elections therefor; and Act 200 (1988), which changes the special election date under Act 801 (1987)	
State (89-2476)	Act No. 235, H.B. No. 739 (1970), which creates an additional judgeship (Division J) for the Orleans Parish Civil District Court; Act No. 56, H.B. No. 477 (1984), which creates two additional judgeships (Division F and G) for the 4th Judicial District and one additional judgeship for the 16th Judicial District (Division G) and the 21st Judicial	5-12-89 Withdrawn 9-17-90 as to Act No. 235 (1970), which creates an additional judgeship position (Division J) for the Orleans Parish Civil District Court.

	District (Division F); and which recodifies the creation of the 40th Judicial District from the 29th Judicial District and the transfer of 2 judgeship positions from the 29th Judicial District to the 40th Judicial District; designates the 2 judgeship positions in the 40th Judicial District as Division A and B and the 3 judgeship positions in the 29th Judicial District as Divisions C, D, and E; and provides for the implementation of the new 29th and 40th Judicial Districts and the election of the 5 judgeship positions from the respective districts in the November 1984 general election	Withdrawn 6-11-93 as to Act No. 56 (1984), which creates an additional judgeship for the 16th District.
Jefferson Parish (89-2438)	Method of election: six single-member districts and one at large; districting plan	11-17-89
State (87-2951)	Act 8 (1990), which creates an additional (sixteenth) judgeship, 24th Judicial District; Act 174 (1989), which creates an additional judgeship, 26th Judicial District; Sections 3 (A) and 3(B) of Act 611 (1989) and Act 608 (1989), which create an additional judgeship position, 40th Judicial District (Division C); Act 8 (1990), which creates a ninth judgeship position to be elected by designated Division C in District 3 of the 2nd Circuit Court of Appeal; provides for a change in method of election for 2nd Circuit Court of Appeal judges from two elected at-large circuit-wide and two elected from each district by designated divisions to three elected from each district by designated divisions, except as specified for the incumbent in the at-large position to be converted to the Division C position of 2nd Circuit District 2; provides that the judgeship position created by Act 801 (1987) will be elected as the designated Division C position from 2nd Circuit District 1; and provides an implementation schedule therefor	9-17-90
Monroe City Court (Ouachita Parish) (89-2482; 90-3286-3287, and 90-3289)	Act No. 393, H.B. No. 945 (1977), which provides for a second judgeship and the adoption of numbered positions (Divisions A and B); Act No. 8, S.B. No. 345 (1990), insofar as it provides for a third judgeship, elected from a numbered position (Division C); Act No. 728, H.B. No. 2047 (1990), which also provides for a third judgeship; and three annexations	10-23-90 Objection to additional judgeships withdrawn 8-31-93

State (90-3087)	Act No. 8, S.B. No. 345 (1990), which creates a seventh at-large judgeship position (Division G) for the 22nd Judicial District	11-20-90
State (91-1379)	Act No. 2 (2d E.S. 1991), which provides for the 1991 Senate redistricting plan	6-28-91
State (91-1442)	Act No. 1 (2d E.S. 1991), which provides for the 1991 redistricting plan for the House of Representatives	7-15-91
State (91-2720)	Act No. 8 (1991), insofar as it authorizes an additional judgeship in the Fourth District to be elected to a designated position in the context of an at-large method of election with a majority-vote requirement	9-20-91
Morehouse Parish (91-1365)	Redistricting plan (police jury districts)	9-27-91
Bienville Parish (91-1584)	Redistricting plan (police jury districts)	9-27-91
State (91-2901)	Act No. 651 (1991), which provides for a redistricting plan for the Board of Elementary and Secondary Education	10-1-91
Jackson Parish (91-1640)	Redistricting plan (police jury districts)	10-8-91
DeSoto Parish (91-1715)	Redistricting plan (police jury districts)	10-15-91
Catahoula Parish (91-1694)	Redistricting plan (police jury districts)	10-25-91
St. Martin Parish (91-1498; 91-1590)	Redistricting plans (police jury and school board districts)	10-25-91
West Feliciana Parish (91-1833)	Redistricting plan (police jury districts)	10-25-91
Franklin Parish (91-1903; 91-4278)	Two redistricting plans (police jury districts)	11-25-91
St. Landry Parish (91-2122; 91-2123)	Redistricting plans (police jury and school board districts)	12-16-91
East Carroll Parish (91-2136; 91-2137)	Redistricting plan (police jury and school board districts)	12-20-91
Concordia Parish (91-2160)	Redistricting plan (police jury districts)	12-23-91
Webster Parish (91-2139-40)	Redistricting plans (police jury and school board)	12-24-91
Richland Parish (91-2211)	Redistricting plan (police jury)	1-2-92
Terrebonne Parish (91-2233)	Redistricting plan for council districts	1-3-92
Pointe Coupee Parish (91-2244)	1991 redistricting plan (police jury)	2-7-92
State (92-0983)	Act 10 (1968), which authorizes the creation of an additional judicial position to be elected at large in the third circuit court of appeal	3-17-92 Withdrawn 8-12-92
Madison Parish (91-2116-17)	1991 redistricting plan (police jury and school board	4-10-92

Morehouse Parish (92-1420)	1992 redistricting plan (police jury)	5-26-92
Franklin Parish (90-3200)	Reduction in number of police jurors	8-10-92
East Carroll Parish (92-2968)	1992 redistricting plan (police jury)	8-21-92
Concordia Parish (92-3075)	Reduction in number of police jurors and districting plan	8-28-92
Pointe Coupee Parish (92-2722)	1992 redistricting plan (police jury)	9-10-92
Morehouse Parish (92-3304)	Redistricting plan	9-14-92
Lafayette Parish School District (Lafayette Parish) (92-1409)	1992 redistricting plan	9-21-92
St. Martinville (St. Martin Parish) (92-0543)	1991 redistricting plan (councilmanic)	11-9-92
Vermilion Parish School District (Vermilion Parish) (92-4856)	1992 redistricting plan	12-30-92
East Carroll Parish School District (East Carroll Parish) (92-5259)	1992 redistricting plan	1-4-93
East Carroll Parish (92-4862)	1992 redistricting plan	1-4-93
Jennings (Jefferson Davis Parish) (92-3547)	1992 redistricting plan	3-8-93
Monroe City Court (Ouachita Parish) (92-3363)	Act No. 682 (1992), which provides for the creation of two at-large judicial positions with numbered posts (same changes objected to on 10-23-90)	3-22-93 Objection to additional judgeships withdrawn on 8-31-93
Morehouse Parish (91-4384)	Act No. 975 (1991), which reduces the number of justices of the peace and constables from eight to two and provides a districting plan for justice of the peace and constable districts	3-26-93
West Carroll Parish School District (West Carroll Parish) (92-4814)	1992 redistricting plan	3-30-93
St. Francisville (West Feliciana Parish) (92-2296)	Method of election and districting plan	5-18-93
Evangeline Parish School District (92-4987)	1992 redistricting plan	5-24-93
Washington Parish School District (Washington Parish) (92-5344)	Increase in the number of school board trustees and districting plan	6-21-93 Objection to increase in number of trustees withdrawn 10-26-93 upon preclearance of new redistricting plan

Iberville Parish School District (Iberville Parish) (93-0006)	1992 redistricting plan	6-21-93
St. Mary Parish School District (St. Mary Parish) (93-0501)	1992 districting plan	8-30-93
Tallulah (Madison Parish) (93-0743)	1993 redistricting plan	8-30-93
Bossier Parish School District (Bossier Parish) (93-0004)	1992 school board redistricting plan	8-30-93
Evangeline Parish (93-1129)	Realignment and elimination of voting precincts	9-17-93
Lafayette Parish (93-2875)	Districting plan for the Lafayette City-Parish Consolidated Government	10-18-93
Iberville Parish School District (Iberville Parish) (93-3671)	1993 redistricting	11-24-93
Ville Platte (Evangeline Parish) (93-2229)	1993 redistricting plan	12-13-93
DeSoto Parish School District (93-1034)	1992 redistricting plan	4-25-94
East Carroll Parish School District (94-1359)	1994 redistricting plan (school board)	8-19-94
Shreveport City Court (Bossier and Caddo Parishes) (89-2309, 89-2310, 89-2311, 92-3390 and 94-3365)	Act No. 6 (1968), provides that annexations to the City of Shreveport extend the boundaries of the Shreveport City Court; Act No. 15 (1970)--creation of the third judgeship and its implementation schedule, including August and November 1970 special elections; Act No. 501 (1992)--creation of a fourth judgeship and the method of election consisting of one single-member district and one triple-member district elected by designated position; annexations	9-6-94 Withdrawn 8-19-97, as to Act no. 6 (1968) and creation of 3rd and 4th judgeships, withdrawn 8-25-97, as to annexations upon change in method of election
St. Landry Parish (94-1932) (pdf)	Polling place change	9-12-94
State (94-2988)	Act No. 145 (1994), provides for the establishment of an additional judgeship (Division C) for the Eleventh Judicial District	10-5-94 Withdrawn 9-29-95
Minden (Webster Parish) (94-2653)	Redistricting	10-17-94
State (94-2922)	Driver's license/picture identification requirement for first-time voters who register by mail proposed by Act No. 10 (1994)	11-21-94
Winnsboro (Franklin Parish)	1993 redistricting plan	11-22-94

(93-2726)		
Ville Platte (Evangeline Parish) (95-0295)	1994 redistricting plan	4-3-95
Webster Parish (94-3165)	Reduction in the size of the police jury members from 12 to 7	7-18-95
Shreveport City Court (Bossier and Caddo Parishes) (95-2037 and 95-2716)	11 annexations	9-11-95 Withdrawn 8-25-97, upon change in method of election
Shreveport City Court (Bossier and Caddo Parishes) (95-3357)	Annexation (Ordinance No. 115 (1995))	12-11-95 Withdrawn 8-25-97, upon change in method of election
State (96-2589)	1996 Louisiana Congressional redistricting plan (Act No. 96 (1st Ex. Sess. (1996))	8-12-96
Shreveport City Court (Bossier and Caddo Parishes) (96-3506) (pdf)	Two annexations (Ordinance Nos. 205 and 206 (1995))	10-24-96 Withdrawn 8-25-97, upon change in method of election
Shreveport City Court (Bossier and Caddo Parishes) (96-4344)	Annexation (Ordinance No. 207 (1995)	4-11-97 Withdrawn 8-25-97, upon change in method of election
Shreveport City court (Bossier and Caddo Parishes) (97-1091) (pdf)	Three annexations (Ordinance Nos. 188, 189 and 192 (1996))	6-9-97 Withdrawn 8-25-97, upon change in method of election
St. Martinville (St. Martin Parish) (97-0879) (pdf)	1997 redistricting plan (councilmanic)	10-6-97
State (97-2264) (pdf)	Act No. 1420 (1997), designation of time period during which voting precinct boundaries cannot be changed	1-13-98
Washington Parish (98-1475) (pdf)	Redistricting plan	4-27-99
Minden (Webster Parish) (2002-1011) (pdf)	2001 council redistricting plan	7-2-02
Pointe Coupee Parish School District (Pointe Coupee Parish) (2002-2717) (pdf)	2002 redistricting plan	10-4-02
DeSoto Parish School District (DeSoto Parish) (2002-2926) (pdf)	2002 redistricting plan	12-31-02
Richland Parish School District (2002-3400) (pdf)	2002 redistricting plan	5-13-02
Tangipahoa Parish (2002-	2003 redistricting plan	10-6-03

3135) (pdf)		
Plaquemine (Iberville Parish) (2003-1711) (pdf)	2003 redistricting plan	12-12-03
Ville Platte (Evangeline Parish) (2003-4549) (pdf)	2003 redistricting plan	6-4-04
Delhi (Richland Parish) (2003-3795) (pdf)	2003 redistricting plan	4-25-05

Appendix B

Louisiana Section 5 Objections Since 1982

Date	Submitting Authority	Type of Submission	Basis for Objection	Assistant Attorney General
6/1/82	Charles Emile Bruneau, Jr. La. House of Representatives	La. House redistricting plan	• Reduced number of majority-black districts in Orleans Parish from 11 to 7, despite increase in black population from 45% to 55% • Noncontiguous districts in uptown New Orleans diluted black voting strength to protect white incumbent • Majority-black district in New Orleans 9th Ward eliminated entirely without justification, leaving only 1 black district out of 5 in 61% black 9th Ward • Fragmented black vote in East Baton Rouge, East Feliciana, West Feliciana, and St. Helena, costing at least one majority-black district, despite alternative plan that would not dilute black vote and would adhere closer to state's redistricting criteria • Diluted black vote in Alexandria by merging black neighborhoods with white suburban neighborhoods • Non-dilutive alternatives available for all these areas	Wm. Bradford Reynolds
8/16/82	Madison Parish	Police jury and school board redistricting	• Moved black voters out of formerly majority-black ward, so that ward would be only 54% black even though neighborhood was 61% black.	Wm. Bradford Reynolds
*11/8/82	West Baton Rouge Parish School Board	School board redistricting	• To avoid creating a majority-black district in Port Allen, the school board instead merged two districts into one two-member district in which blacks would not be able to elect the candidate of their choice. • Board ignored 7 alternative plans that would have created a majority-black district • DOJ found intent to discriminate	Wm. Bradford Reynolds
*3/14/83	West Baton Rouge Parish School Board	Revised school board redistricting	• DOJ rejected school board request to reconsider 11/8/82 objection because board still had not met its burden of showing that it had no discriminatory intent	Wm. Bradford Reynolds
*11/30/82	Assumption Parish	Police jury and school board redistricting	• Reduced majority-black districts from 4 to 2 • 1/3 of black population was carved out of one district and fragmented among other districts, "with an invidious racial intent."	Wm. Bradford Reynolds

*12/20/82	LaSalle Parish	Police jury and school board redistricting	• Black population fragmented • "Such fragmentation suggests that the plans may have been drawn with an invidious racial purpose." • NOTE: Previous districting plan had been declared unconstitutional in Federal court in 1978 (Pritchard v. LaSalle Parish School Board, 770878 (W.D. La. 1978).)	Wm. Bradford Reynolds
1/14/83	Winn Parish	School board redistricting	• Black voters packed into one 89%-minority district in the City of Winnfield • NOTE: This redistricting plan was identical to the previous decade's plan, which had been challenged in Federal court for violating the 15th Amendment. (Ferguson v. Winn Parish Police Jury, 589 F. 2d 173 (5th Cir. 1979).)	Wm. Bradford Reynolds
2/22/83	East Baton Rouge Parish	Merger of parish and city councils	• Added 5 all-white parish council districts to the city council, which previously had 4 majority-black districts out of 7, so that blacks would go from a majority to only a third of the council.	Wm. Bradford Reynolds
2/22/83	East Baton Rouge Parish	Parish and city council redistricting	• Packed black voters into two districts of 96% and 88% minority population, leaving neighboring districts with only 28% and 41% minority populations. The black population in the 4 districts was high enough that all 4 could have been majority-black.	Wm. Bradford Reynolds
4/11/83	St. Helena Parish	Police jury and school board redistricting	• Unnecessarily reduced majority-black districts from 3 to 2 • Ignored alternative plan suggested by the black community that would have maintained 3 majority-black districts, but adopted plan suggested by the white community, even though DOJ noted that black plan was more efficient and would have achieved equal-sized districts with fewer drastic changes overall.	Wm. Bradford Reynolds
5/2/83	Assumption Parish	Revised police jury and school board redistricting	• Revised plan after DOJ objection of 11/30/82 added back only one of two eliminated black districts, and reduced the margin of majority in another black district	Wm. Bradford Reynolds
7/11/83	Caddo Parish	Conversion from 20-member police jury to 12-member police commission	• Reduced black districts from 6/20 (30%) to 3/12 (25%). • DOJ noted that the 6 majority-black districts under the old plan had already been over-concentrated, and should have yielded more than 3 black districts under the new plan.	Wm. Bradford Reynolds
*8/22/83	Pointe Coupee Parish	Police jury redistricting	• Only 1 majority-black district out of 11 due to unnecessary and "unexplained" fragmentation, even though parish was 42% black. • DOJ noted that black community's suggestions were ignored during the redistricting process	Wm. Bradford Reynolds

*12/6/83	City of New Iberia	City Council redistricting	• Despite significant increase in black population, city "made a conscious effort" not to increase the number of majority-black districts above the 1 existing under the previous plan. • City ignored repeated request by minority community to consider alternate plans • DOJ noted that previous districting was never precleared	Wm. Bradford Reynolds
3/16/84	State of Louisiana	Suspension of presidential primary elections	• Suspension of primaries would make it more difficult for minority voters to have a say in selecting delegates to the national presidential nominating conventions • Though the state claimed the suspension of primaries was a money-saving strategy, the DOJ noted that Louisiana was not facing any new financial crisis but that the timing of the suspension did coincide with Jesse Jackson's announcement of his presidential candidacy	Wm. Bradford Reynolds
7/16/84	City of Monroe	Revised school board redistricting and expansion from 6 to 7 seats	• Revised plan in response to DOJ objection of 5/18/82 • "our analysis shows that the instant plan is virtually the same as, and suffers from the same deficiencies as, the plan which was the subject of our prior objection" • DOJ noted prevalence of racially polarized voting	Wm. Bradford Reynolds
*4/10/87	City of Cottonport	city redistricting	• City ignored minority suggestions of alternative plans that would have better reflected minority population levels in the city • DOJ requested more information, but city did not provide it • DOJ concluded that City did not show it did not have discriminatory intent	Wm. Bradford Reynolds
9/23/88	State of Louisiana	Creation of additional elected judgeships	• At-large system of electing judges sought to be expanded here had been found in district court to violate Sctn. 2 of the VRA (Clark v. Roemer, No. 86-435-A (M.D. La. 1988)). • Court had found racially polarized voting • DOJ had requested more information about certain judicial election district lines, but state had not responded	Wm. Bradford Reynolds
9/23/88	State of Louisiana	Change in method of electing judges	• System implemented numbered posts - an anti-single-shot device that made it harder for blacks to elect candidates of their choice	Wm. Bradford Reynolds
5/12/89	State of Louisiana	Creation of additional elected judgeships	• As with 9/23/88 objection, state was seeking to expand a system found in violation of Sctn. 2 of the VRA. • This submission included two new judgeships already objected to on 9/23/88.	James P. Turner

*11/17/89	Jefferson Parish	Parish council redistricting	• Previous districting had been found in violation of Sctn. 2 of VRA by district court (East Jefferson Coalition for Leadership and Development v. Parish of Jefferson, 691 F. Supp. 991 (E.D. La. 1988)). • DOJ analysis confirmed court's finding of racially polarized voting. • New plan included no majority-black districts, but was technically an improvement over the old plan, so not retrogressive. • But DOJ found evidence of discriminatory intent: Parish ignored plan proposed by minority community to create majority-minority district. Parish insisted it did so only to respect compactness and natural geographic boundaries. DOJ noted that this was the only district in the parish that was compact and followed natural boundaries.	James P. Turner
*9/17/90	State of Louisiana	Creation of additional elected judgeships	• State still had not revised plans objected to on 9/23/88 and 5/12/89. • State would only make judicial elections racially fair if it could protect white incumbents by moving them to newly created senior judgeships. When state referendum rejected creation of senior judgeships, state "adhered to the racially discriminatory multi-member scheme" despite available alternatives.	John R. Dunne
10/23/90	State of Louisiana	Annexation of suburban wards to the Monroe City Court system and addition of 2 new elected judgeships	• Annexation would expand an at-large election system, reducing black voters' ability to elect candidates of their choice. • DOJ noted that the suburban wards had been eligible for annexation since 1970 without any interest shown by the city, but Monroe had suddenly become interested in annexation when the first ever black candidate ran for Monroe City Court in 1984. • DOJ noted persistence of racially polarized voting	John R. Dunne
10/23/90	State of Louisiana	Change in method of electing judges	• Creation of designated positions within at-large system would make it harder for black voters to elect candidates of their choice. • DOJ noted persistence of racially polarized voting	John R. Dunne
*11/20/90	State of Louisiana	Creation of additional elected judgeships	• Once again state sought to expand at-large system under which blacks could not elect candidates of their choice • Black citizens had voiced objections • State showed no nondiscriminatory purpose for adding at-large judges	John R. Dunne

*6/28/91	Louisiana State Senate	State Senate redistricting	• Black populations in Northeast and around Lafayette were cracked, costing 1 majority-black district in each area, while white incumbents were ensured majority-white districts. • Alternative plans presented by black citizens, which would have created majority-black districts, were rejected • DOJ noted that Lafayette-area plan was "intended, at least in part, to suppress the black population to a level considered acceptable to a white incumbent."	John R. Dunne
*7/15/91	Louisiana House of Representatives	State House redistricting	• Boundary lines minimized black voting strength in Caddo, Bossier, Bienville, Claiborne, Jackson, Lincoln, Union, Winn, East Carroll, Madison, Tensas, Concordia, Pointe Coupee, the Felicianas, St. Helena, East Baton Rouge, Orleans, and Jefferson Parishes. For example: o Black population overconcentrated in Northwest and East Baton Rouge Parish, costing at least one majority-black district o Part of black neighborhood in Orleans Parish was cracked off and submerged in a majority-white district, so that a putative majority-black district wouldn't actually allow black voters to elect candidates of their choice o Fragmentation of black communities also likely cost 1 majority-black district each in Jefferson Parish and the Delta Parishes. • House ignored alternative plans proposed by Legislative Black Caucus • House was inconsistent with own criteria: insisted on compactness when it meant dividing a black community in North-central among 3 districts, but abandoned compactness in order to fragment black populations in the Delta. "The result in each case is the submergence of black population concentrations into white majority districts . . . The departures are explainable, at least in part, by a purpose to minimize the voting strength of a minority group."	John R. Dunne
9/20/91	State of Louisiana	Creation of additional elected judgeship	• Yet another attempt to expand discriminatory judicial election system, including at-large voting and numbered posts. • State's own task force had compiled evidence on retrogressive effect of numbered posts on minority voters. • State had gone ahead and held election for judgeships objected to on 9/23/88 and 5/12/89, and judges were now sitting in these still-unprecleared seats. • DOJ noted that state had provided only "limited" information with its submission.	John R. Dunne

9/27/91	Morehouse Parish	Police jury redistricting	• Though blacks made up 41.5% of population of parish, only 3 of 11 (27%) of districts were majority-black. • To protect incumbents, parish had refused to group black neighborhoods in city of Bastrop with neighboring black areas outside the city. • Black population within city of Bastrop overconcentrated, costing at least one majority-black district • ". . .the development of the proposed plan occurred in a closed environment, with no opportunity for meaningful input by minority voters, and that minority voters and incumbents were misled and discouraged from pursuing reasonable alternative plans."	John R. Dunne
*9/27/91	Bienville Parish	Police Jury redistricting	• Parish rejected plan proposed by black citizens that would create 3 majority-black districts, and instead adopted plan with only 2. • To support its decision, Parish vaguely cited "citizen" opposition to the alternative plan • DOJ noted persistence of racially polarized voting	John R. Dunne
*10/1/91	Board of Elementary and Secondary Education	State school board redistricting plan	• Though blacks made up 31% of state population, only 1 of 8 (12.5%) districts was majority-black. • Black populations were fragmented in the Northeast and along the Mississippi border • State adopted a "least-change" strategy in redistricting, but applied it inconsistently in order to protect incumbents at the expense of black voters, so that DOJ found intent to discriminate • State rejected alternative plans proposed by black citizens • DOJ noted that state's initial submission "contained virtually none of the information required," and that in response to further DOJ requests the state provided only "the bare minimum of information in a piecemeal fashion."	John R. Dunne
*10/8/91	Jackson Parish	Police jury redistricting	• Plan cracked off the politically active black community of Saint Rest from a majority-black district, despite protests from members of the community. • Black population packed into a single district near Jonesboro, at expense of neighboring district. • DOJ request for more information went unanswered. • DOJ noted persistence of racially polarized voting.	John R. Dunne
10/15/91	DeSoto Parish	Policy jury redistricting	• Despite growth in the black population, reduced majority black districts from 5 to 3. • DOJ noted persistence of racially polarized voting	John R. Dunne

*10/25/91	Catahoula Parish	Police jury redistricting	• Black voting strength minimized by fragmentation in Sicily Island area and packing in Jonesville area • Parish ignored requests by black community for fuller representation	John R. Dunne
10/25/91	St. Martin Parish	Police jury and school board redistricting	• Blacks made up 30% of parish population, but only 2 of 9 (22%) of districts were majority-black • Parish ignored recommendation by redistricting committee that a third majority-black district be created to accurately reflect the black population • Plan overpacked existing majority-black districts, ignoring input from black leaders saying that they did not need such large majorities in those districts.	John R. Dunne
*10/25/91	West Feliciana Parish	Police jury redistricting	• The only two majority-black districts were overpopulated by 20-30%, while the majority-white districts were underpopulated by 48% • Fragmented black populations	John R. Dunne
*11/26/91	Franklin Parish	Police jury and school board redistricting	• Fragmentation of black voters around towns of Wisner and Gilbert cost at least one majority-black district • DOJ noted pattern of racially polarized voting	John R. Dunne
*12/16/91	St. Landry Parish	Police jury and school board redistricting	• Plan was "calculated to minimize black voting strength," including packing one district to 74% black, despite protest from the incumbent in that district • Despite black population of 40% in parish, only 3 of 14 (21%) districts were majority-black	John R. Dunne
*12/20/91	East Carroll Parish	Police jury and school board redistricting	• Though black population was 65% of parish, only 4 of 9 (44%) of districts were majority-black • Black communities had objected strongly to proposed plan	John R. Dunne
*12/23/91	Concordia Parish	Police jury redistricting	• Unnecessarily removed a chunk of the black population of a district that had grown from majority-white to majority-black since 1982, returning the district to majority-white. • Black community had requested district be kept majority-black	John R. Dunne
12/24/91	Webster Parish (42)	Police jury and school board redistricting	• Packed black voters into a 99%-black district while weakening black population in neighboring district in order to protect incumbent • Plan proposed over objection by black elected officials and NAACP	John R. Dunne

1/2/92	Richland Parish	Police jury redistricting	• Black voters overconcentrated in one district in Rayville, costing one majority-black district, despite black leaders bringing alternative plans to the attention of the parish	John R. Dunne
1/3/92	Terrebonne Parish	Council and school board redistricting	• Fragmented black population in northern part of parish, costing one majority-black district, despite alternative plans presented by both the redistricting consulting firm and the NAACP	John R. Dunne
*2/7/92	Pointe Coupee Parish	Police jury redistricting	• Unnecessarily fragmented black population in northern part of parish, costing 1 majority-black district • Overconcentrated black population in city of New Roads, costing 1 majority-black district • Plan was adopted despite protest by black community	John R. Dunne
*3/17/92	State of Louisiana	Creation of additional elected judgeship	• Continuing effort by state to expand discriminatory system of electing judges • DOJ also reasserted earlier objections of 9/23/88 and 5/12/89 • DOJ noted pattern of racially polarized voting	John R. Dunne
*4/10/92	Madison Parish	Police jury and school board redistricting	• Black population was 60% of parish, but only 4 of 8 (50%) of districts were majority black, due to severe overpacking (3 districts were 85-100% black). • White police jury and school board members justified plan "based upon the need to placate alleged concerns among whites about a black majority on either body." • DOJ noted pattern of racially polarized voting	John R. Dunne
*5/26/92	Morehouse Parish	Revised police jury redistricting	• Parish revised plan after DOJ objection of 9/27/91, but continued to overconcentrate black voters • Revised plan also retaliated against black incumbent who had actively argued for alternative plans, by placing him into majority-white district	John R. Dunne
8/10/92	Franklin Parish	Revised police jury redistricting	• After 11/25/91 DOJ objection to redistricting for 11-member police jury, parish decided to reduce jury from 11 to 5 members, limiting black representation to 1 district • Plan adopted despite protest from black community	John R. Dunne
*8/21/92	East Carroll Parish	Revised police jury redistricting	• Revision of plan after 12/20/91 DOJ objection "involve[d] minimal changes" • Continued to overconcentrate black population in 4 districts • Plan "appear[ed] calculated to prevent black voters from having any realistic opportunity to elect more than four members of the police jury."	John R. Dunne

*8/28/92	Concordia Parish	Revised police jury redistricting	• After 12/23/91 DOJ objection, parish decided to reduce jury from 9 to 7 members rather than allow an additional majority-black district • Parish insisted this was cost-saving measure, but had never considered reducing the number of seats until passage of alternative plan increasing number of majority-black districts seemed imminent • Parish knew of black community's opposition to reducing jury	James P. Turner
*9/10/92	Pointe Coupee Parish	Revised policy jury redistricting	• Revised plan continued overpacking in one City of New Roads district that provoked objection on 2/7/92, and reduced one majority-black district to majority-white	John R. Dunne
*9/14/92	Morehouse Parish	Revised police jury redistricting	• Black vote dilution in rural areas • Plan was introduced quickly at end of process and adopted with little debate, despite alternative plans that would not dilute the black vote	James P. Turner
9/21/92	Lafayette Parish	School board redistricting	• Reduced black population share in the only 2 previously majority-black districts • DOJ noted prevalence of racially polarized voting	James P. Turner
11/9/92	City of St. Martinsville	City council redistricting	• Overconcentrated black population in two districts of 99% and 84% • DOJ noted prevalence of racially polarized voting	John R. Dunne
12/30/92	Vermilion Parish	School board redistricting	• Black vote unnecessarily fragmented • DOJ noted pattern of racially polarized voting	James P. Turner
*1/4/93	East Carroll Parish	Revised police jury and school board redistricting	• Continued to overconcentrate black voters in Lake Providence districts of 90% and 99%, despite availability of alternative plans • DOJ noted pattern of racially polarized voting	John R. Dunne
*3/8/93	City of Jennings	City council redistricting	• Unnecessarily fragmented black vote on south side of city, even though parish districts in the same area provided lines to follow that would maximize black voting potential • "Our analysis reveals that the City Council chose the submitted plan over the alternative plan largely because it would limit the opportunity for black citizens to elect candidates of their choice to no more than one seat on the council."	James P. Turner

3/26/93	Morehouse Parish	Reduction in number of justices of the peace and constables	• "Your initial submission contained virtually none of the information required . . ." • "Your response to our request for additional information, which we received after a delay of one year, fails to provide much of the information requested, including population data by race . . . From the maps provided, which are of poor quality, we cannot determine the dividing lines between existing and proposed districts . . . Although your response . . . contains a portion of minutes for a Morehouse Parish police jury meeting, page 59 of those minutes is missing and none of the pages provided contains the requested information . . . Nor have you provided an explanation for your failure to supply the documents and information necessary to complete your submission."	James P. Turner
*3/30/93	West Carroll Parish	School board redistricting	• Plan split up black population in eastern part of parish • Members of the black community appeared before the school board to recommend an alternative plan that included a majority-minority district, but were rejected	James P. Turner
*5/18/93	West Feliciana Parish	Redistricting	• Unusual combination of one single-member district with one multi-member district in St. Francisville limited black voters to one district in which they could elect candidates of their choice • Unusual system was created to protect white incumbents • Adopted over protest from black community	James P. Turner
5/24/93	Evangeline Parish	School board redistricting	• Parish submitted only "limited information" and had not yet responded to a request for more information made 4 months earlier	James P. Turner
*6/21/93	Washington Parish	School board redistricting and expansion from 8 to 9 members	• Black population was 32% of parish, but only 2 of 9 (22%) districts were majority-black, due to overconcentration • Board had previously only had 1 majority-black district; now that 1 more was being added, board was expanded by 1 seat, to protect all 7 white incumbents (and also dilute power of the 2 black members)	James P. Turner
*6/21/93	Iberville Parish	School board redistricting	• Black community in town of White Castle cracked in half and submerged in 2 majority-white districts • Black community in town of Plaquemine fragmented into majority-white districts • Parish admitted fragmentation was done to protect (white) incumbents • DOJ noted racially polarized voting	James P. Turner

*8/30/93	St. Mary Parish	School board redistricting	• Supposedly majority-black districts were only bare majorities • Parish claimed these were coalition minority districts but offered no evidence of cohesive voting • Black leaders proposed 2 alternative plans that were rejected	James P. Turner
*8/30/93	City of Tallulah	City Council redistricting	• Plan did away with one majority-black district, so only 3 of 5 districts were majority-black, despite blacks making up 73% of city population • All 3 majority-black districts were overconcentrated to nearly 100% black • Black population in the 2 majority-white districts was unnecessarily fragmented • City rejected alternative plan that would have preserved majority-black district and would have better met city's stated goal of sticking close to existing district lines	James P. Turner
8/30/93	Bossier Parish	School board redistricting	• 20% black parish had NO majority-black districts, though alternative plan was available that would create 2	James P. Turner
9/17/93	Evangeline Parish	School board redistricting	• Police jury refused to make district changes necessary to allow school board districts to comply with VRA (La. state law required agreement between police jury and school board districts)	James P. Turner
*10/18/93	Lafayette Parish and City of Lafayette	Consolidated city and parish council redistricting	• Followed same district lines as school board, which DOJ objected to on 9/21/92 for having supposedly majority-black districts in which the black population was so reduced that blacks could not elect candidates of their choice	James P. Turner
*11/24/93	Iberville Parish	Revised school board redistricting	• No change in the fragmenting of black voters in Plaquemine	James P. Turner
*12/13/93	City of Ville Platte	Board of Aldermembers redistricting	• Packing of 99% black district • Alternative plan rejected that would have unpacked that district and created another majority-black district • Plan was designed to protect white incumbents and ensure continuing white majority on board	James P. Turner
*4/25/94	DeSoto Parish	School board redistricting	• Of 4 supposedly majority-black districts, blacks only comprised a majority of voting-age population in 3 • Alternative plan (adopted by police jury) was available with 4 truly majority-black districts • Alternative plan would have been cheaper to implement and would have split fewer precincts • Plan was de facto adopted a month before the only public hearing, at which majority of board allowed no discussion of the plan • DOJ noted prevalence of racially polarized voting	Deval L. Patrick

8/19/94	East Carroll Parish	Revised school board redistricting	• School board quickly adopted the same plan as the police jury immediately after black candidates lost elections under that plan • No notice was given for public hearing, and existing alternative plans were not discussed at that hearing • "Indeed, the school board's adoption of the police jury plan was accomplished without the knowledge of black leaders and unsuccessful black police jury candidates, who would have spoken in opposition . . ."	Isabelle Katz Pinzler
9/6/94	City of Shreveport	Annexation of districts to Shreveport City Court jurisdiction	• Annexation of 80% white districts changed jurisdiction from majority (54%) black to minority (45%) black. • At-large voting system and persistence of white bloc voting had led to defeat of 2 black candidates	Deval L. Patrick
9/12/94	St. Landry Parish	Polling place change	• Polling place relocated from community center in black neighborhood to town hall • DOJ found no black citizens had been notified of change, but when told expressed "vehement opposition" based on history of racial discrimination at town hall and discomfort going there • Alderman who proposed change said he did so because white voters felt uncomfortable going into black neighborhood. "Thus it appears that the decision-making process considered the presumed desires of white voters, but made no effort to consider the desires of black voters."	Kerry Scanlon
*10/17/94	City of Minden	City council redistricting	• "Oddly shaped" districts overconcentrated black vote "to limit the prospect that the rising black voting strength in the city would be reflected in its council elections"	Deval L. Patrick
10/5/94	State of Louisiana	Creation of additional elected judgeship	• 11th district still elected judges at-large, making it impossible for blacks - at 31% of population - to elect candidates of their choice • rest of state had gone to single-member districts, but that alternative was rejected here • DOJ noted pattern of racially polarized voting	Kerry Scanlon
11/21/94	State of Louisiana	Change in first-time registration procedure	• Required first-time registrants-by-mail to provide picture ID, despite data showing that blacks were 4-5 time less likely than whites to have picture ID	Deval L. Patrick
11/22/94	City of Winnsboro	Board of aldermembers redistricting	• Overconcentration of black voters into 2 82%-minority districts • 8 of 10 plans presented to the board would have created 3 majority-black districts, but board chose one of the two that minimized black districts, over black protest	Deval L. Patrick

4/3/95	City of Ville Platte* (without a satisfactory nonracial explanation)	Revised board of aldermembers redistricting	• "Virtually identical" to objected-to 12/13/93 plan • Black leaders presented several alternative plans after DOJ objection, all of which were rejected in a racially-divided vote • DOJ noted determination of board not to allow third black district • DOJ also noted that despite a black voting population of 47%, voting was so racially polarized that no black candidate had ever been elected mayor or to the one at-large aldermember seat	Deval L. Patrick
*7/18/95	Webster Parish	Police jury reduction from 12 to 7 members	• Reduced proportion of black districts from 4/12 to 2/7	Deval L. Patrick
9/11/95	City of Shreveport	Annexation of territory to Shreveport City Court jurisdiction	• City continued to annex territory, further diluting the black vote, while maintaining at-large voting • Reiteration of 9/6/94 objection	Loretta King
12/11/95	City of Shreveport	Annexation of territory to Shreveport City Court jurisdiction	• City continued to annex territory, further diluting the black vote, while maintaining at-large voting • Reiteration of 9/6/94 and 9/11/95 objections	Deval L. Patrick
8/12/96	State of Louisiana	U.S. House of Representatives redistricting	• Despite blacks making up 30% of La. population, only 1 of 9 districts was majority-black, in violation of Sctn 2 of the VRA • State itself had admitted persistence of racially polarized voting and that having only 1 majority-black district left it open to Sctn 2 charges • Alternative plan available that would have created 2 majority-black districts, but governor called special session to approve plan and didn't allow for discussion of alternatives • Concurrent Sctn 2 litigation, Hays v. Louisiana, slip op. (W.D. La. Jan. 5, 1996)	Deval L. Patrick
10/24/96	City of Shreveport	Annexation of territory to Shreveport City Court jurisdiction	• City continued to annex territory, further diluting the black vote, while maintaining at-large voting • Reiteration of 9/6/94, 9/11/95, and 12/11/95 objections	Deval L. Patrick
4/11/97	City of Shreveport	Annexation of territory to Shreveport City Court jurisdiction	• City continued to annex territory, further diluting the black vote, while maintaining at-large voting • Reiteration of 9/6/94, 9/11/95, 12/11/95, and 10/24/96 objections	Isabelle Katz Pinzler
6/9/97	City of Shreveport	Annexation of territory to Shreveport City Court jurisdiction	• City continued to annex territory, further diluting the black vote, while maintaining at-large voting • Reiteration of 9/6/94, 9/11/95, 12/11/95, 10/24/96, and 4/11/97 objections	Isabelle Katz Pinzler
10/6/97	City of St. Martinsville	Revised city council redistricting	• Continued to reduce black population in one district while overconcentrating it in 2 others	Isabelle Katz Pinzler

1/13/98	State of Louisiana	5-year freeze on changing precinct boundaries, through 2003	• La. state law prohibited voting districts from crossing precinct lines, so freezing precinct lines during redistricting effectively straitjacketed redistricting and gave parishes an excuse for not being flexible in maximizing minority voting strength	Bill Lann Lee
4/27/99	Washington Parish	Parish council redistricting and reduction from 14 to 7 members	• Reduced proportion of districts in which blacks made up a majority of voting-age population from 3/14 (21%) to 1/7 (14%) • DOJ noted racially polarized voting	Bill Lann Lee
*7/2/02	City of Minden	City Council redistricting	• Majority-black districts would be reduced from 3 to 2 out of 5, even though 52% of the population was black • Alternative non-retrogressive plans were available - in fact, existing plan did not need to be changed • DOJ noted persistence of racially polarized voting	Ralph F. Boyd, Jr.
10/4/02	Pointe Coupee Parish	School board redistricting	• Eliminated 1 majority-black district • DOJ analysis showed "severe racial bloc voting"	Ralph F. Boyd, Jr.
*12/31/02	DeSoto Parish*	School board redistricting	• Eliminated 1 majority-black district (from 5/11 to 4/11) • Ignored available alternative plan • DOJ noted racially polarized voting	Andrew E. Lelling
5/13/03	Richland Parish	School board redistricting	• Reduced black population in one majority-black district • Parish had ignored 4 requests for information over 9 months	Ralph F. Boyd, Jr.
10/6/03	Tangipahoa Parish	Parish redistricting	• Reduced black voting-age population in one district from majority to 49.9%	R. Alexander Acosta
12/12/03	City of Plaquemine	City redistricting	• Eliminated one majority-black district, while overconcentrating two other majority-black districts at 80% and 87% • DOJ noted persistence of racially polarized voting	R. Alexander Acosta
*6/4/04	City of Ville Platte	City redistricting	• One district had become majority-black since last redistricting due to growth in black population; new plan reduced black population to 38% for no explained reason • DOJ noted that city's last two redistricting plans in 1993 and 1995 showed intent to discriminate against black voters • Alternative plan was available - city reviewed, but gave no serious consideration	R. Alexander Acosta
*4/25/05	Town of Delhi	Town redistricting	• Eliminated a majority-black district, despite availability of non-retrogressive alternative plan that met other redistricting criteria better and was recommended by the demographer who drew up the plans • DOJ noted persistence of racially polarized voting	R. Alexander Acosta

*Objections based in part on the submitting jurisdiction's failure to demonstrate the absence of a discriminatory purpose, or purpose to retrogress.

Appendix C

Intentional Blank

Appendix D

Intentional Racial Discrimination under Section 5 of the VRA

Jurisdictions covered by Section 5 of the Voting Rights Act must receive administrative approval from the Attorney General ("AG") or judicial approval from a three-judge panel of the D.C. District Court for all proposed voting changes. This approval requires proof sufficient to convince the AG 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]." 42 U.S.C. 1973, et. seq.

While this language was long understood to prohibit jurisdictions from implementing both purposefully discriminatory voting changes and those with a discriminatory or "retrogressive" effect, the Supreme Court issued a decision in 2000 that effectively eliminated the "purpose" prong of the Section 5 test. The decision in that case, *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320 (2000), has dramatically reduced the power of Section 5.

Bossier Parish is located in the northwest corner of Louisiana, near the border of Texas and Arkansas. In 1990, African Americans constituted approximately 20 percent of the parish's 86,000 residents, yet no African Americans had ever been elected to the 12-member school board. After the 1990 Census, the school board refused to include any majority black districts in the new plan, even though the school board later admitted in court that it was "obvious that a reasonably compact black-majority district could be drawn within Bossier City." According to undisputed testimony, two school board members specifically acknowledged that the school board's plan reflected opposition to "black representation" or a "black-majority district."

However, despite the plain language of Section 5 ("*does not have the purpose* and will not have the effect..."), and the strong evidence that the school board was acting with an unconstitutional intent to discriminate against black voters, the Supreme Court found no basis for an objection under Section 5. Instead, the Court articulated a new interpretation of the statute: that the Justice Department was powerless to block intentionally discriminatory voting changes unless it found that the jurisdiction acted with the "retrogressive purpose" of making things worse than they already were for minority voters. Thus, because the school board in *Bossier* had no majority black districts before 1990, its enactment of a plan preserving the all-white school board could not violate Section 5, no matter how blatant the evidence that the plan was motivated by racial discrimination.

Appendix E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE LOUISIANA HOUSE OF REPRESENTATIVES, *et al.*,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 02-0062 (JR)
JOHN ASHCROFT, Attorney General,	:	
Defendant.	:	

MEMORANDUM ORDER

The joint motion for summary judgment of defendant Ashcroft and defendant-intervenors Louisiana Community Coalition on Fair and Equal Representation and Louisiana Legislative Black Caucus will have to be denied, despite the fact that plaintiffs have subverted what had been an orderly process of narrowing the issues in this case by making a radical mid-course revision in their theory of the case and by blatantly violating important procedural rules.[1] In a suit between private parties, we would

[1] First, much of plaintiffs' effort to create a genuine issue of material fact for trial is based upon a "Rebuttal Declaration" of their expert, filed contemporaneously with plaintiffs' memoranda in opposition to summary judgment and more than two months after the deadline for such filings set by Fed. R. Civ. P. 26(a)(2)(C). This late filing subjected the Attorney General and the intervenors to unfair surprise, and left them without an opportunity to cross-examine the expert. Second, plaintiffs violated LCvR 7.1(h) by failing to file a statement of material facts as to which they contend there are genuine issues necessary to be tried, and by failing to provide citations to the parts of the record upon which they rely. This marks plaintiffs' second violation of LCvR 7.1(h) within the past four months. Third, plaintiffs' memoranda in opposition to summary judgment

not hesitate on a record like this one to grant the defendants' motion, either as conceded or as a sanction for plaintiffs' violation of the rules. See, e.g., SEC v. Banner Fund Int'l, 211 F.3d 602, 616 (D.C. Cir. 2000); Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner, 101 F.3d 145, 153 (D.C. Cir. 1996). We are not inclined to do so, however, in a suit between representatives of a state legislature and of the federal government. Instead, we will afford plaintiffs the opportunity to sustain their burden of proof -- under their new theory of the case -- in a trial that will commence as soon as it can be scheduled. We understand that the next legislative session of the Louisiana House of Representatives is scheduled to begin March 31, 2003; the trial of plaintiffs' new legal theory will be conducted as soon as possible, consistent with the schedules of the parties and the judges of this Court. We must point out, however, that any delay in reaching a resolution of the dispute presented by this case is the direct result of plaintiffs' own

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represent to the Court two documents as being the "depositions" of Patricia Lowrey-Dufour and Rep. Charles Bruneau. In fact, those documents appear to be transcripts of examinations taken by plaintiffs without notice to and an opportunity for cross-examination by the defendants, in violation of Fed. R. Civ. P. 30(b)(1), (c). Finally, Plaintiffs' Memorandum in Opposition to Defendant Ashcroft's Motion for Summary Judgment was filed, along with a motion to extend page limits, after the filing deadline set by this Court. The memorandum exceeded the page limits of LCvR 7.1(e) by more than 50%.

litigation tactics.[2] Further violations of the Local and Federal Rules will not be tolerated.

"[I]n order to obtain preclearance under § 5, a covered jurisdiction . . . must make two distinct showings: first, that the proposed change 'does not have the purpose . . . of denying or abridging the right to vote on account of race or color,' and second, that the proposed change 'will not have the effect of denying or abridging the right to vote on account of race or color.' The covered jurisdiction bears the burden of persuasion on both points." Reno v. Bossier Parish Sch. Bd., 528 U.S. 320, 328 (2000)(internal citations omitted). We will initially set only the second required showing for trial. The first required showing, that the Louisiana House of Representatives had no retrogressive intent in enacting Act 3, need not be reached and will not be tried unless and until plaintiffs sustain their burden of proving that Act 3 does not have a retrogressive effect.

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[2] See supra note 1. Another belated argument raised by plaintiffs is the objection to the participation of the Louisiana Community Coalition on Fair and Equal Representation and the Louisiana Legislative Black Caucus as intervenors, on the ground that their intervention subjects plaintiffs "to additional burdens and delays not contemplated by section 5." Pls.' Mem. Opp. Def. Intervenors' Mot. Summ. J. at 28. That objection was waived by plaintiffs' failure to make it when the motions to intervene were under consideration by this Court in April and May of last year. In any event, plaintiffs' objection is without merit. See Georgia v. Ashcroft, 195 F. Supp. 2d 25, 33, 72-73 (D.D.C. 2002); Bossier Parish School Bd. v. Reno, 157 F.R.D. 133, 135 (D.D.C. 1994).

Plaintiffs do not begin with a clean slate on the retrogressive effect element, having made a number of admissions that we will necessarily evaluate along with the proof offered at trial, but we will consider the testimony of their expert, Kimball William Brace, and such other evidence on the point as may properly be offered and received.[3] It is accordingly,

ORDERED that defendants' motion for summary judgment is **denied**. And it is

FURTHER ORDERED that the Clerk set a pretrial conference as soon as practicable. A trial date will be set at the pretrial conference. The pretrial statements required by LCvR 16.5(a)(2) shall be filed no later than three days prior to the pretrial conference. The parties are directed to set forth succinctly in their pretrial statements the claims they wish to make and the arguments they will advance in support of those claims. Arguments may not be incorporated by reference to previous filings, and previous arguments not restated in the pretrial statements will be deemed waived.

JAMES ROBERTSON
United States District Judge
For the three-judge Court

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[3] Plaintiffs must make their expert available in advance of trial for deposition on the previously unexamined portion of his expected testimony. The Court will consider an appropriate motion for costs associated with such a deposition.

Appendix F

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

November 21, 1994

Sheri Marcus Morris, Esq.
Assistant Attorney General
P. O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms. Morris:

This refers to the submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, of Act No. 10 (1994) of the State of Louisiana, which adopts changes (listed in Attachment A) to voter registration and related procedures to, inter alia, implement the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg et seq. We received your response to our September 6, 1994, request for additional information on September 22, 1994; supplemental information was received on November 16 and 17, 1994.

We have given careful consideration to the information you provided, as well as Census data and information and comments from other interested persons. Except as set forth below, the Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). In this regard, the granting of Section 5 preclearance does not preclude the Attorney General or private individuals from filing a civil action pursuant to Section 11 of the NVRA, 42 U.S.C. 1973gg-9.

We cannot reach the same conclusion with respect to the requirement that first-time voters who register by mail in order to identify themselves at the polls present a current driver's license or other picture identification card. The state indicates that persons who do not present such identification will not be permitted to vote. Currently, voters are not required to present picture identification in order to vote. Presentation, for example, of a voter's current voter registration card or other non-picture identification card will suffice.

According to the 1990 Census, the State of Louisiana has a total population of 4,219,973 of whom 30.6 percent are black. Our review of relevant socio-economic data and information on the number of currently licensed drivers in the state indicates that black persons are four to five times less likely than white persons in the state to possess a driver's license or other picture identification card, such as the picture identification cards we understand are issued by some employers or institutions of higher education. Consequently, the imposition of the driver's license/picture identification requirement is likely to have a disproportionately adverse impact on black voters in the state, and will lessen their political participation opportunities. Thus, under the proposed change, minority voters -- the very group of voters whose political participation in federal elections the NVRA seeks to encourage through increased access to voter registration opportunities -- will be less likely to vote than white voters. It appears, therefore, that the proposed driver's license/picture identification requirement will eliminate certain of the gains to minority voters mandated by Congress in enacting the NVRA and "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained with regard to the specified picture identification requirement. Therefore, on behalf of the Attorney General, I must object to the driver's license/picture identification requirement for first-time voters who register by mail proposed by Act No. 10.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to change continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Finally, we note that the preclearance of those provisions of Act No. 10 that enable or permit the state or its political subdivisions to adopt future voting changes does not constitute preclearance of those future changes and, accordingly, Section 5 review will separately be required when those changes are adopted or finalized. See 28 C.F.R. 51.15. The matters for which Section 5 review will be required include, but are not limited to, the following: the designation of additional locations where registration may occur or changes in existing locations; the statewide voter registration application (including mail registration application) and any other forms or notices developed to implement the NVRA; and any rules or regulations promulgated to implement the NVRA.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Louisiana plans to take concerning this matter. If you have any questions, you should call Ms. Zita Johnson-Betts, an attorney in the Voting Section, at (202) 514-8690.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Attachment A -- Changes Enacted by Act No. 10 (1994)

1. Assignment of responsibility to the Louisiana Commissioner of Elections to coordinate the state's implementation of the NVRA;

2. Adoption of the registration form prescribed by the Federal Election Commission (R.S. 18:103(A));

3. Amended voter registration procedures for the state Department of Public Safety and Corrections so as to make voter registration services available at all driver's license facilities in the state (including the adoption of procedures by the Louisiana Commissioner of Elections and a voter registration application form pursuant to R.S. 18:114(E) and (I));

4. Voter registration by mail (including the promulgation of a state mail voter registration form by the Louisiana Commissioner of Elections pursuant to R.S. 18:115(A)(1));

5. Voter registration at "voter registration agencies," including every office that provides public assistance, every office that provides state funded programs primarily engaged in providing services to persons with disabilities, every armed forces recruitment office, and other offices to be designated by the Louisiana Commissioner of Elections (including promulgation of a voter registration inquiry/declination form pursuant to R.S. 18:116(C)(1)(b));

6. Standards governing the receipt of voter registration applications and the acceptance of voter registration applications, and the preparation of voter registration lists;

7. Procedures for determining voter eligibility where the applicant registers by mail, including the use of verification mailing procedures and requiring first-time voters who register by mail to vote in-person and present photo identification;

8. Amended procedures when insufficient information is provided on a voter registration application;

9. Amended procedures governing changes of address, name changes, and party affiliation changes;

10. Amended procedures concerning registrants who move or whose registration record reflects that they have moved;

11. Amended complaint procedures for persons denied registration to include claims concerning NVRA violations;

12. Administrative procedures for the Louisiana Commissioner of Elections and registrars of voting, including the

development of all voter registration training programs concerning acceptance of voter registration applications and the provision of training to personnel in the state Department of Public Safety and Corrections, and voter registration agencies;

13. Standards governing the inspection of voter registration applications;

14. Procedures for notifying the Louisiana Commissioner of Elections of persons convicted of a felony in federal court (for purposes of determining voter qualifications);

15. Amended procedures for voter registration list maintenance, including the placement of registrants on and the use of an inactive registration list, and the removal of names from the list of eligible registered voters;

16. Amended procedures governing challenges to the eligibility of persons to register and vote;

17. Amended procedures for federal postcard registration applications;

18. Abolition of the prior system of volunteer deputy registrars; and

19. Penalties for unlawful voter registration conduct.

Appendix G

LEXSEE 2002 U.S. DIST. LEXIS 16540

ST. BERNARD CITIZENS FOR BETTER GOVERNMENT, ET AL v. ST. BERNARD PARISH SCH. BD., ET AL

CIVIL ACTION NO. 02-2209 SECTION "C" (4)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

2002 U.S. Dist. LEXIS 16540

August 26, 2002, Decided
August 26, 2002, Filed; August 28, 2002, Entered

SUBSEQUENT HISTORY: [*1] As Amended September 4, 2002.

DISPOSITION: Plaintiffs' claim for injunctive relief granted.

LexisNexis(R) Headnotes

COUNSEL:

For ST. BERNARD CITIZENS FOR BETTER GOVERNMENT, HENRY BALLARD, JR, SANDRA H SMITH, KATHLEEN H PRIDE, LIONEL I SMITH, SR, JAMES TUCKER, JR, plaintiffs: Ronald Lawrence Wilson, Ronald L. Wilson, Attorney at Law, New Orleans, LA.

For ST. BERNARD PARISH SCHOOL BOARD, FRANK AUDERER, JR, HERMAN J BONNETTE, SR, WILLIAM H EGAN, LYNETTE R DIFATTA, SHARON A HANZO, JOSEPH V LONG, SR, HUGH C CRAFT, Dr., DIANA B DYSART, MAX L SHANEYFELT, CLIFFORD M ENGLANDE, RONALD J NICOSIA, DONALD D CAMPBELL, defendants: Alvin Joseph Bordelon, Jr., Bordelon, Hamlin & Theriot, New Orleans, LA.

JUDGES:

HELEN G. BERRIGAN, UNITES STATES DISTRICT JUDGE.

OPINIONBY:

HELEN G. BERRIGAN

OPINION:

REASONS

On January 19, 2002, St. Bernard Parish, Louisiana ("Parish"), voters approved a plan in accordance with Act 173 of the 2001 Louisiana legislature. The vote reduced the size of the Parish School Board ("Board") from eleven members elected from single-member districts to seven members, including five elected from single-member districts and two elected at large ("the 5-2 plan"). The apportionment mirrors that of the Parish Council, [*2] where the 5-2 plan has been in effect for a decade. Qualifying for the Board was set for August 21-23, 2002, with the election scheduled for October 5, 2002.

According to Defendants' uncontradicted allegations, the redistricting arises from a bill designed by State Representative Kenneth Odinet. Upon the collection of a sufficient number of petitions, the bill required the Parish to hold a referendum to adopt a plan consisting of five Board seats representing single-member districts and two at-large seats. On May 31, 2001, the bill was enacted as Act. No. 173 of 2001 ("Act. No. 173").

On January 19, 2002, Parish voters then approved the current plan. Qualifying for Board membership was set for August 21-23, 2002, with the election set for October 5, 2002.

On July 19, 2002, however, Plaintiffs filed their class-action Complaint for Declaratory and Injunctive Relief. It is alleged that Plaintiff St. Bernard Citizens for Better Government is an unincorporated association of Parish residents concerned with black citizens' civil rights and whose individual members are injured by the 5-2 plan. Individual class Plaintiffs are, as stipulated at trial, black Louisiana citizens, Parish residents, [*3] and registered Parish voters. Plaintiffs claim that the 5-2 plan violates the Fourteenth Amendment's Equal Protection Clause and the Fifteenth Amendment. Accordingly, Plaintiffs sought relief pursuant to § 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, and 42 U.S.C. § 1983, as well as court costs, expenses, and attorney's fees pursuant to § § 19731(e) and 1988. n1

n1 The Court does not address here Plaintiffs' claims other than those pursuant to § 2.

On August 16, 2002, Plaintiffs moved for a preliminary injunction on their § 2 claim. An evidentiary hearing were held August 19 and 21, 2002. At the hearing, the Court suggested a consolidation of the hearing with a trial on the merits as to the § 2 claim pursuant to Federal Rule of Civil Procedure 65(a)(2). The parties agreed to the conversion. Relief was granted on August 21, 2002, without written reasons. The Court sets out those reasons, including findings of fact and conclusions of [*4] law, here.

I. Class certification

One or more members of a class may sue as representative parties on behalf of all if those class members meet the requirements of Rules 23(a) and fit within one of the categories of Rule 23(b). *See Bolin v. Sears Roebuck & Co.*, 231 F.3d 970, 975 (5th Cir. 2000). The requirements of Rule 23(a) are as follows:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims of the representative parties are typical of the claims, and (4) the representative parties will fairly and adequately protect the interests of the class.

The defendant has not contested the appropriateness of this matter proceeding as a class action. With respect to the first Rule 23(a) requirement, the identified class is all present and future voting-age African Americans who reside, or who will reside, in the Parish. According to the 2000 census, the black population [*5] of the Parish is 5,122 and the black voting age population is 3,243. Joinder of all those persons is impractical and so the numerosity element is met. As to the second prong, the stated common questions of law and fact are basically whether the election districts being challenged would result in dilution of black voting strength in violation of law and whether another plan can be devised which would not have that effect. Thus, the common issue element is met. As to the third requirement, the named plaintiffs are identified as black registered voters in St. Bernard Parish. Their claim of vote dilution is typical of the claim being brought on behalf of the class, the remaining current black registered voters as well as future black registered voters in the parish. Thus, the typicality element is met. Finally, the named plaintiffs, being black registered voters of the parish, claim the same injury that affects the rest of the class and ask for the same relief that would be of benefit to the class. Their representation of the class is adequate.

A further element necessary to proceed as a class [*6] action here is whether "adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests." Fed. R. Civ. P. 23(b)(1)(B). As the relief sought is the voiding of the election system for the Board, an adjudication on behalf of any individual member of the class would be dispositive of all others.

Consequently, the Court certified the action as a class action pursuant to Rule 23.

II. The Voting Rights Act of 1965, as Amended, 42 U.S.C. § 1973: In General

The Voting Rights Act seeks to prevent political bodies from implementing election systems or practices that operate, whether intentionally or not, to minimize, cancel, or dilute the voting strength or political effectiveness of minority groups. *See E. Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson*, 691 F. Supp. 991, 995-96 (E.D. La. 1988), *aff'd*, 926 F.2d 487 (5th Cir. 1991). [*7] The two primary components of the act are § § 2 and 5. Section 2 applies to all state and governing authorities, whereas § 5 is applicable to only certain jurisdictions, see *Holder v. Hall*, 512 U.S. 874, 883, 114 S. Ct. 2581, 2587, 129 L. Ed. 2d 687 (1994), of which Louisiana is one, see 28 C.F.R. pt. 51, App. Relief under § 5 is available only

through the U. S. Attorney General or the U.S. District Court for the District of Columbia. See *Perkins v. Matthews,* 400 U.S. 379, 385, 91 S. Ct. 431, 435, 27 L. Ed. 2d 476 (1971). n2

n2 The Court notes that on August 20, 2002, the U.S. Department of Justice advised that the Attorney General did not oppose the specified changes in the law. Defs' Ex. 37. Approval by the Justice Department under § 5 does not foreclose a voting rights challenge under § 2. *See E. Jefferson Coalition,* 691 F. Supp. at 994 n.1. The two sections "differ in structure, purpose and application." *Holder,* 512 U.S. at 883, 114 S. Ct. at 2587, 129 L. Ed. 2d 687. The Justice Department letter itself acknowledges that "failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes." Defs' Ex. 37.

[*8]

This matter is brought pursuant to § 2 of the Act. That section reads as follows:

> (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 the 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 [*9] 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."

42 U.S.C. § 1973. "The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Thornburg v. Gingles,* 478 U.S. 30, 47, 106 S. Ct. 2752, 2764, 92 L. Ed. 2d 25 (1986).

III. Application of § 2 to the 5-2 and 11-member Plans: Findings of Fact and Conclusions of Law

As the above would indicate, an analysis of a § 2 claim is necessarily fact-specific. *See Westwego Citizens for Better Gov't v. City of Westwego,* 872 F.2d 1201, 1203 (5th Cir. 1989) (citing *Velasquez v. City of Abilene,* 725 F.2d 1017, 1020 (5th Cir. 1984)). The Court makes [*10] the following factual findings with respect to the instant claim, based on the stipulations, exhibits and testimony presented at the hearings and draws the following conclusions of law:

Louisiana law requires redistricting by school boards every ten years, based on the federal decennial census. *See* La. R.S. § 17:71.1, 17:71.3. The purpose of the reapportionment is to equalize the population between districts. This complies with the Equal Protection Clause requirement that each person's vote be given equal weight in the election of their representatives. *See Connor v. Finch,* 431 U.S. 407, 416, 97 S. Ct. 1828, 1834, 52 L. Ed. 2d 465 (1977).

Cedric Floyd ("Floyd") is the President and Chief Executive Officer of Data Center, a redistricting company with 20 years of experience in Louisiana. *See* Pls.' Ex. 1. Among Floyd's specialties is devising redistricting plans that take into consideration the requirements of the Voting Rights Act. *See* Defs'. Ex. 14, Ex. 6 at 017. He was stipulated to be an expert demographer for purposes of this trial. As a result of [*11] the 2000 census, in spring 2001, Floyd determined that the then-current eleven-member districts for the Board were impermissibly unequal in population, with a deviation of 33.7 percent. *See id.* at 018.

Floyd contacted Defendant Frank Auderer, Jr. ("Auderer"), the Board's superintendent, advised him of his findings and offered his services to draw new district lines. *See* Testimony of Floyd. Floyd was hired by the Board in June 2001, to draft such plans. *See id.* From June 2001 through January 2002, Floyd was in periodic

contact with Auderer regarding the progress of his plans. See *id.*

From the inception of his employment, Floyd advised Auderer of the capability of creating a majority black population district, a proposed District 9, that would be in compliance with both the Equal Protection Clause and the Voting Rights Act. *See* Testimony of Floyd; Testimony of Auderer. Auderer advised him to prepare such a plan to be presented to the Board. *See* Testimony of Floyd. Floyd did so. *See id.* In January 2002, Floyd met on different occasions with ten of the eleven Board members to present his proposal. *See id.* All of these Board members were "acceptive" of [*12] the plan. *See* Testimony of Auderer. *See also* Testimony of Floyd. The Board never formally voted on the plan as the referendum to change the configuration from the 11-member plan to the 5-2 plan passed that same month. *See id.*

The plan that the Board had found "acceptive" provided for a majority black population but not a majority black *voting age* population. See Testimony of Floyd. However, through a relatively minor adjustment, Floyd revised the proposed District 9 so as to include a 54 percent black population and a 50.3 percent black voting age population. Under the proposed plan, District 9 would be the smallest of the eleven districts in population, with 5,458 people, and District 10 would be the largest, with 6,320 people. *See* Testimony of Floyd. This creates a deviation of 14 percent for the districts. The districts do not have to be exactly the same in population. *See Mahan v. Howell,* 410 U.S. 315, 329, 93 S. Ct. 979, 987, 35 L. Ed. 2d 320 (1973); *Magnolia Bar Ass'n, Inc. v. Noble,* 793 F. Supp. 1386, 1403 (S.D. Miss. 1992), *aff'd,* 994 F.2d 1143 (5th Cir.), *cert. denied sub. nom.,* [*13] *Magnolia Bar Ass'n v. Hawkins,* 510 U.S. 994, 114 S. Ct. 555, 126 L. Ed. 2d 456 (1993). Deviations to this degree and higher have been found acceptable. *See id.*

From its inception until the referendum in January 2002, the Board has consisted of eleven members elected from single-member districts. *See* defendants' memo at 7, 28. This case involves a challenge to the new 5-2 redistricting plan in the Parish, claiming it is dilutive as compared to the 11-member district previously in place. Under the 5-2 plan, five members of the Board would be elected from single-member districts, each with an approximate population of 13,446. *See* Defs.' Ex. 14, Ex. 4 at 003.

The total black population of the Parish is 5,112. *See id.* Even if the entire black population resided in one district, which it does not, it would constitute only 38 percent of the population and less of the voting age population. *See id.* at 004-006. In Parish schools, 13-14 percent of the student population is black, twice the black population of the parish. *See* Testimony of Auderer. In the proposed District 9 is located an elementary school that is 85 percent black and a middle school that [*14] is 30 percent black. *See id.*

IV. § 2 of the Voting Rights Act

"At the heart of a § 2 vote dilution claim lies the issue of whether minorities have an equal opportunity to elect their candidates of choice." *Citizens for a Better Gretna v. City of Gretna,* 834 F.2d 496, 497 (5th Cir. 1987), *cert. denied,* 492 U.S. 905, 109 S. Ct. 3213, 106 L. Ed. 2d 564 (1989). The analysis of a § 2 claim requires two primary steps, with substeps in each. First, the minority plaintiffs must meet three conditions as set forth by the U.S. Supreme Court in *Thornburg v. Gingles,* 478 U.S. 30, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986). Secondly, the plaintiffs must show "the circumstances of the local political landscape" which, taken together with the first set of factors, establish an abridgement or denial of their voting rights. *See NAACP v. Fordice,* 252 F.3d 361, 365-66 (5th Cir. 2001). The latter "totality of the circumstances" test is guided by a series of nine separate considerations. *See id. See also Zimmer v. McKeithen,* 485 F.2d 1297 (5th Cir. 1973) [*15] (en banc).

Under *Gingles,* the plaintiff must first establish that the minority group is "sufficiently large and geographically compact enough to constitute a majority in a single-member district"; second, whether the minority is "politically cohesive"; and third, whether the majority "votes sufficiently as a bloc. . . usually to defeat the minority preferred candidate." See *Gingles,* 478 U.S. at 49-51, 106 S. Ct. at 2766-67, 92 L. Ed. 2d 25 (internal citations omitted).

With respect to the first factor, the black population in the proposed district is sufficiently large to constitute a majority both in general population and voting age population. The defendants stipulated at the trial on August 19, 2002, that Floyd's proposed District 9 satisfies this aspect of the first *Gingles* precondition. As for geographical compactness, a proposed district is sufficiently compact if it retains a natural sense of community. *E. Jefferson Coalition,* 691 F. Supp. at 1007. [*16] The Court has viewed the map of the proposed District 9 and finds it to be compact and reasonable in shape and size. *See* Ex. 39.

The defendants assert, however, that the proposed redistricting plan fails under the first *Gingles* precondition overall because it is an impermissible attack based on the size of the governing body. As the defendants note, in *Holder v. Hall,* 512 U.S. 874, 114 S. Ct. 2581, 129 L. Ed. 2d 687 (1994), the U.S. Supreme

Court held that the size of a governing authority is ordinarily not an appropriate target for a § 2 vote dilution challenge. The reason for this is that generally speaking, "there is no principled reason why one size should be picked over another as the benchmark for comparison." *Id.* at 881, 114 S. Ct. at 2586, 129 L. Ed. 2d 687.

On the other hand, if there is "an objective and workable standard for choosing a reasonable benchmark by which to evaluate a challenged voting practice," then it may be challenged under § 2. *See id.; Concerned Citizens for Equality v. McDonald,* 63 F.3d 413, 416 (5th Cir. 1995); [*17] *Vecinos de Barrio Uno v. City of Holyoke,* 72 F.3d 973, 986 (1st Cir. 1995). The Court concludes that the 11-member proposed black voting majority district satisfies *Holder's* benchmark requirement. The 11-member proposed plan is objective, workable, and reasonable. It has been in existence since the Board's inception and is currently functioning as an 11-member body. Thus, maintaining the size of the currently operational 11-member board will be minimally intrusive. Parish voters are likely to be familiar with the boundaries of most of the districts. Finally, as a practical matter, given that the Board currently is comprised of 11 members, each representing a single district, the "switch back" from the 5-2 plan, under which members have not yet been elected, to the benchmark is logistically unobtrusive.

With respect to the second and third *Gingles* factors, racial bloc voting is the standard for proving a § 2 violation. *See Citizens for a Better Gretna,* 834 F.2d at 499; *Westwego Citizens,* 872 F.2d at 1207. The purpose [*18] of examining voting patterns is to determine whether the minority group acts in a politically cohesive way and "whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates." *Gingles,* 478 U.S. at 56, 106 S. Ct. at 2769, 92 L. Ed. 2d 25. Political cohesiveness may be shown by establishing that "a significant number of minority group members usually vote for the same candidates." *Id.,* 106 S. Ct. at 2769, 92 L. Ed. 2d 25. "And, in general, a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." *Id.,* 106 S. CT. at 2769, 92 L. Ed. 2d 25.

In assessing whether racial bloc voting occurs, the appropriate focus is on elections in which a minority group member is a candidate. *See League of United Latin Am. Citizens v. Clements,* 999 F.2d 831, 864 (5th Cir. 1993); *Westwego Citizens,* 872 F.2d at 1208 n.7; *Campos v. City of Baytown,* 840 F.2d 1240, 1245 (5th Cir. 1988), [*19] *cert. denied,* 492 U.S. 905, 109 S. Ct. 3213, 106 L. Ed. 2d 564 (1989); *Citizens for a Better Gretna,* 834 F.2d at 503-04; *Magnolia Bar Ass'n,* 793 F. Supp. at 1399; *Williams v. City of Dallas,* 734 F. Supp. 1317, 1387-88 (N.D. Tex. 1990). "Where a minority group has begun to sponsor candidates just recently the fact that statistics from only one or a few elections are available for examination does not foreclose a vote dilution claim." *Gingles,* 478 U.S. at 57 n.25, 106 S. Ct. at 2770 n.25, 92 L. Ed. 2d 25. "Plaintiffs may rely on evidence from 'exogenous' elections, or elections involving other offices, to establish racially polarized voting where there is sparse data from 'indigenous' elections involving the office in issue." *Magnolia Bar Ass'n,* 793 F. Supp.at 1399 (citing *Citizens for a Better Gretna,* 834 F.2d at 502).

Defendants stipulated that no black person has ever been elected to Parish public office, nor has any black person ever run for a Board seat.

In 1991, Thomas Johnson ("Johnson'), a black man, ran for Parish Council President. *See* Pls. [*20] ' Ex. 2. Four white men also ran in that race. *See* Pls.' Ex. 2. n3 To assess the voting patterns, the Court separated the precincts into two groups, based on the 1990 census. *See* Ex. 40. In the first group are those precincts with a black population of fewer than 100 persons. This amounted to 31 precincts, n4 with a white:black percentage ratio ("white:black ratio") of 99.7:.3) n5 *See* Ex. 40. The remaining eight precincts n6 had an 85:15 white:black ratio. *See id.* In the precincts that were virtually exclusively white, Johnson came in fifth of the five candidates with less than one-half of one percent of the vote. See Pls.' Ex. 2. In the precincts with the greater black minority, Johnson still came in fifth, but with 8 percent of the vote. *See id.* As Johnson received apparently negligible cross-over votes in the nearly all white precincts, his significantly better showing in the precincts with a 15 percent minority population cannot realistically be attributed to white cross-over votes, but rather to blacks voting for him.

n3 The parties stipulated at trial to the race of the candidates. [*21]

n4 Precincts 10-18, 20-28, 30-36, 40, 43, 51, 53, 57-58. *See id.*

n5 The Parish has a very small percentage of nonblack minorities, *i.e.,* Asian or other, but for purposes of this assessment, the Court combined the black and white populations and determined percentages based on that figure. The Court did the same with the 2000 census.

n6 Precincts 41-42, 44, 50, 52, 54-56. *See id.*

In the same election, gubernatorial candidates were also on the ballot. Among the twelve candidates were incumbent Republican Governor Buddy Roemer; the eventual winner, Democrat Edwin W. Edwards ("Edwards"); and Republican David Duke ("Duke"), *see* Ex. 36, well known for his ties to the Ku Klux Klan and white supremacist views. *See, e.g., Headliners: Party Animus,* N.Y. Times, Mar. 17, 1991, at § 4 (Week in Review Desk), at 7. In the primary, Duke won 51 percent of the Parish vote. *See* Ex. 36. In the run-off election between Duke and Edwards, Duke won 56 percent of the Parish vote. *See* Ex. 33. Louisiana State Senator Lynn Dean ("Senator Dean") testified at the trial on [*22] August 19, 2002, and attempted to justify the vote for Duke in the run-off as the "lesser of two evils." This justification, however, does not explain how Duke won 51 percent of the primary vote when the voters had ten other candidates, besides Edwards, to choose from, including the incumbent governor. It is also worth noting that the Parish is, according to the defendants' memorandum in opposition to the motion for a preliminary injunction ("defendants' memo"), nearly 65 percent registered Democrat and just 19.5 percent registered Republican. *See* defendants' memo at 6.

Other relevant elections took place later in the 1990's. The Court utilized the 2000 census results, *see* Defs.' Ex. 14, Ex. 2 at 014-021, as a more accurate gauge of the white/black population in those elections. Again, the Court separated the precincts into two groups--those with fewer than 100 black residents and those with more than 100. The first group of precincts had a 99.5:.5 white:black ratio. See *id.* n7 The second group of precincts had an 84:16 white:black ratio. *See id.* n8 The 1995 gubernatorial election pitted a white man, Republican Mike Foster ("Foster"), against a black man, Democrat [*23] Cleo Fields ("Fields"), in the run-off. See Ex. 35. In the Parish's overwhelmingly white precincts, Fields received approximately 12 percent of the vote as compared to Foster's 88 percent. *See id.* In the combined precincts with an 84:16 white:black ratio, Fields received over twice as many votes-23 percent to Foster's 77 percent. *See id.* In Precinct 44, the Parish's only predominantly black precinct, *see* Defs.' Ex. 14, Ex. 2 at 020, n9 Fields received 61 percent of the vote to Foster's 39 percent. *See* Ex. 35.

n7 Precincts 10-18, 20-22, 24-28, 30, 32-36, 40, 53, 57, 58. *See id.*

n8 Precincts 23, 31, 41-44, 50-52, 54, 55-56. *See id.* at 016-021.

n9 The precinct has a 26:74 white:black ratio. *See id.*

In 1999, two black men were candidates for separate Parish offices. Stacy Riley, Sr. ("Riley"), ran for Parish Councilman in District D against five white candidates. *See* Pls.' Ex. 4. n10 The only predominantly black precinct in the parish, Precinct 44, is in District [*24] D. *See* Defs.' Ex. 14 at Ex. 4. The remaining precincts in District D have a 94:6 white:black ratio) n11 *See id.* Riley finished last. *See* Pls.' Ex. 4. However, Riley "won" in the predominantly black precinct, receiving 53 percent of the vote as compared to 47 percent garnered by the five other candidates combined. *See id.* In the remaining, overwhelming white precincts, Riley received just 5 percent of the vote. *See id.*

n10 The parties stipulated at trial to the race of the candidates.

n11 Precincts 40-43A. *See id.*

A black man, Kevin Williams ("Williams"), also ran for District E Councilman against two white opponents. *See* Pls.' Ex. 3 n12 Of the precincts that make up District E, two have a 25 percent black population. n13 *See* Defs.' Ex. 14 at Ex. 4. The remaining seven precincts are 94 percent white. n14 *See id.* In the precincts with a 25 percent black population, Williams received thirty percent of the vote. *See id.* In the overwhelmingly white precincts, he received [*25] 14 percent of the vote. *See id.*

n12 The parties stipulated at trial to the race of the candidates.

n13 Precincts 50 and 52. *See id.*

n14 Precincts 51, 53-58. *See id.*

Finally, also in 1999, incumbent Republican Governor Foster ran for re-election. *See* Ex. 41. His only significant opponent was Congressman William Jefferson, a black Democrat. *See id.* In the overwhelmingly white Parish precincts, n15 Jefferson received 8 percent of the vote compared to Foster's 92 percent. See Ex. 41. In the precincts that were 84 percent white, n16 Jefferson received 19 percent of the vote as compared to Foster's 81 percent. *See* Ex. 41. And finally, in the predominantly black Precinct 44, n17 Jefferson received 67 percent of the vote as compared to Foster's 33 percent. *See* Ex. 41.

n15 *See* Defs.' Ex. 14 at Ex. 4.

n16 *See* Defs.' Ex. 14 at Ex. 4.

n17 *See* Defs.' Ex. 14 at Ex. 4.

[*26]

These comparisons clearly establish both the second and third *Gingles* factors--that blacks act as a politically cohesive unit and whites vote as a bloc to defeat a minority candidate.

Once the three-part *Gingles* factors are established, the Court is then instructed to look to additional factors initially set forth in the Senate Judiciary Committee Report accompanying the 1982 amendment of the Voting Rights Act and adopted by the Fifth Circuit. *See Zimmer,* 485 F.2d 1297. They are as follows:

> (1) The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
>
> (2) The extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> (3) The extent to which the state or political subdivision has used unusually large election districts, majority vote [*27] requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the majority group;
>
> (4) If there is a candidate slating process, whether the members of a minority group have been denied access to that process;
>
> (5) The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
>
> (6) Whether political campaigns have been characterized by overt or subtle racial appeals;
>
> (7) The extent to which members of the minority group have been elected to public office in the jurisdiction.

See *Citizens for a Better Gretna,* 834 F.2d at 498-99. Two additional considerations are (8) "whether there is a sufficient lack of responsiveness on the part of elected officials to the particularized needs of the minority group" and (9) "whether the policy underlying the state or political subdivision's use [*28] of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous." *Fordice,* 252 F.3d at 367. The plaintiffs are not required to prove any particular number of factors or that a majority of them point in their direction. *See Gingles,* 478 U.S. at 45, 106 S. Ct. at 2763, 92 L. Ed. 2d 25. The most important of the Senate factors are (1) "the 'extent to which minority group members have been elected to public office in the jurisdiction'" and (2) "the 'extent to which voting in the . . . political subdivision is racially polarized.'" See *id.* at 48 n.15, 106 S. Ct. at 2765 n.15, 92 L. Ed. 2d 25; n18 *Clark,* 88 F.3d at 1397. If those factors are present, then the remaining ones "are supportive of, but *not essential to"* the success of the minority's claim. *See Gingles,* 478 U.S. at 48 n.15, 106 S. Ct. at 2765 n.15 (emphasis in original).

n18 *Gingles* dealt with a challenge to a multi-member district, unlike here where the creation of single-member districts also is being challenged. The *Gingles* principles have, however, been extended to challenges to single-member districts. *See Growe v. Emison,* 507 U.S. 25, 113 S. Ct. 1075, 122 L. Ed. 2d 388 (1993); *Clark v. Calhoun County,* 88 F.3d 1393, 1394 (5th Cir. 1996).

[*29]

With respect to the first factor, as was aptly stated in the lower court decision in *Citizens for a Better Gretna:*

> The history of black citizens' attempts, in Louisiana since Reconstruction, to participate effectively in the political process and the white majority's resistance to those efforts is one characterized by both *de jure* and *de facto* discrimination. Indeed, it would take a multi-volumed treatise to properly describe the persistent, and often violent,

> intimidation visited by white citizens upon black efforts to participate in Louisiana's political process.

636 F. Supp. 1113, 1116 (E.D. La. 1986). Noting this factor in particular, the court in that case found that the plaintiffs had prevailed under the totality test. *See id.* at 1135. The defendants concede that the Parish shares the same segregationist history as the State of Louisiana and much of the South. *See* defendants' memo at 6. The defendants note, however, that Parish public schools have been desegregated since July 1968, a claim uncontested by the plaintiffs. *See id.* n19 Nevertheless, the defendants do not explain how the timing of Parish public [*30] school desegregation distinguishes the Parish's history of racial discrimination from that found in *Citizens for a Better Gretna.* Thus, this factor favors the plaintiffs' position.

> n19 Under Defendants' uncontested version of Parish history, Parish schools were desegregated fourteen years after *Brown v. Board of Educ.,* 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, 53 Ohio Op. 326 (1954), and approximately three years ahead of nearby Jefferson Parish, Louisiana, schools. *See Dandridge v. Jefferson Parish Sch. Bd.,* 332 F. Supp. 590 (E.D. La. 1971), *aff'd,* 456 F.2d 552 (5th Cir.), *cert. denied,* 409 U.S. 978, 93 S. Ct. 306, 34 L. Ed. 2d 240 (1972).

With respect to the second factor, again, one of the two most important, racial polarization in voting has been shown under the *Gingles* criteria. Thus, this factor also favors the plaintiffs' position.

As for the third factor, the plaintiffs conceded at the hearing that no particular voting [*31] practices or procedures have been shown that "may enhance the opportunity for discrimination against the minority group." Likewise, with regard to the fourth factor, the plaintiffs presented no evidence nor claimed that a "candidate slating process" impedes their access.

The fifth factor--whether the minority group is hindered in its ability to effectively participate in politics because of "the effects of discrimination in such areas as education, employment and health"--favors the plaintiffs' position. Census information establishes that the Parish's black residents earn significantly less income than their white neighbors. See Ex. 32. For example, according to the 1990 census information, more than 50 percent of black households earned less than $ 15,000 per year, as compared to only 27 percent of white households earning less than that amount. Similarly, more than 45 percent of black Parish residents have less than a high school education as compared to 32 percent for white residents.

> Both Congress and the Courts have recognized the effect lower socio-economic status has on minority participation in the political process. The Senate Report states:
>
> > "The courts have [*32] recognized that disproportionate educational[,] employment, income level[,] and living conditions arising from past discrimination tend to depress minority political participation. . . . Where these conditions are shown, and where the level of black participation is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation."
>
> 1982 Senate Report at 29 n. 114. *See also, Major v. Treen,* 574 F. Supp. 325, 351 (E.D. La.1983).
>
> In sum, the depressed levels of income, education and employment are a consequence of severe historical disadvantage. Depressed levels of participation in voting and candidacy are inextricably involved in the perception of futility and impotence such a history engenders.

Citizens for a Better Gretna, 636 F. Supp. at 1120 (changes in original).

With respect to the sixth factor, the plaintiffs did not claim or present evidence at trial that campaigns in the Parish have been characterized by overt or subtle racial appeals. At this juncture, however, a comment on the testimony of Senator Dean is appropriate. [*33] Senator Dean testified that he has been involved in Parish politics since the 1960's. He also testified that he was elected to

the Board in 1981 and served in that capacity until he was elected as Parish Council President in 1992. Near the end of that four-year term, he testified, he ran for and was elected to the State Senate. Senator Dean testified--and this Court does not dispute--that he has received black support in his prior candidacies. When asked whether he had heard the word "nigger" used in the Parish, he indicated that he uses the term himself, has done so recently, that he does not necessarily consider it a "racial" term and that it is usable in jest, as well. Senator Dean's casual and startlingly insensitive attitude towards the use of the word was deeply disturbing. Senator Dean, as a former Board member, former Parish President and now State Senator, is one of the highest ranking, if not the highest ranking, public official in the Parish.

With respect to the seventh factor, whether members of the minority group have been elected to public office in the parish, the answer is "no." Only three blacks have run, and none has come even close to being elected. As noted above, [*34] this factor, along with racial polarization in voting, is considered the most significant in support of a voting rights violation.

As for the eighth factor, no specific evidence was presented that elected officials have ignored the needs of their black constituents.

With respect to the ninth factor, the plaintiffs conceded that the challenged 5-2 plan was not enacted with racial animus as a motivation.

Of the nine factors then, four and arguably five favor the plaintiffs' position. Significantly, the two considered to be the most important--racial polarization in voting and the lack of any minority elected officials--are clearly present. Accordingly, the plaintiffs have prevailed under amended § 2's totality of the circumstances test.

V. Conclusion

For all of the above stated reasons, the Court has granted the plaintiffs' claim for injunctive relief and declared the 5-2 plan invalid as a violation of § 2 of the Voting Rights Act.

New Orleans, Louisiana, this 30 day of August 2002.

HELEN G. BERRIGAN,

UNITED STATES DISTRICT JUDGE

Appendix H

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

LOUISIANA HOUSE OF REPRESENTATIVES, et al.,	:	
Plaintiffs,	:	Civil Action 02-0062
v.	:	
JOHN ASHCROFT, et al.,	:	
Defendant.	:	

Washington, D.C.
December 11, 2002
10:20 a.m.

Transcript of Oral Argument
Before the Honorable Merrick B. Garland
United States Circuit Judge
The Honorable James Robertson and Reggie B. Walton
United States District Judges

For Plaintiff: Deanne E. B. Ross, Esq.
Alfred Speer, Esq.

For Defendant: Brian Heffernan, Esq.
John Hardin Young, Esq.
Jeffrey M. Wice, Esq.
Debo P. Adegbile, Esq.
Damon T. Hewitt, Esq.
Todd A. Cox, Esq.

Court Reporter: Susan Harris
Miller Reporting Company
735 8th Street, S.E.
Washington, D.C. 20003
(202) 546-6666

who didn't actually experience the retrogression. That is what all the racial set-asides have been saying.

JUDGE GARLAND: Okay. We have your argument. Thank you.

I think what we'll do is take a brief recess, as we did the last time, and see whether we can come back and give you some idea of where we're going from here.

[Recess.]

JUDGE GARLAND: Okay, we want to thank all the counsel. We thought you did a very good job and it was very helpful in our own deliberations; the same with respect to your briefing.

We've decided that we'll deny the Plaintiff's motion for summary judgment. As the Plaintiff's counsel conceded, given their burden, they have not shown an absence of genuine issue of material fact with respect either to purpose or with respect to retrogression in Districts 11, 21, and 72.

We decline the invitation to make a decision about partial summary judgment at this stage. It would not resolve the case and we don't see any benefit at this stage in making that conclusion.

Secondly, we have reviewed the papers with respect to the motion to compel and we've decided to grant the motion to compel. We conclude that the individual at issue here was playing the role of an actor in the case and not of

a lawyer, that even if he were playing the role of a lawyer that it would not qualify for attorney work product, and that even if it were to qualify, the requirements of necessity under the rule have been satisfied and therefore the movers of the motion are entitled to receipt of the material that they've requested. With respect to the timing of that, that should be addressed at a meet-and-confer, which I'll mention in one moment.

Third, we have heard the suggestions from the Defendants about acting sua sponte with respect to summary judgment in their favor. We decline to act sua sponte. However, we will, of course, entertain a motion for summary judgment by the Defendants. We appreciate the suggestion that it could be a coordinated one and if you could do that perhaps in one large motion, that would be very helpful for our consideration.

JUDGE ROBERTSON: Or a small motion.

JUDGE GARLAND: Or a small, yes, of course. That would be even more helpful. But unified would be good. A cohesive motion would be good.

We also think this needs to be done quickly. So we would ask you to contact Judge Robertson by the end of this week with hopefully an agreed-upon schedule between the parties. If not, be prepared to discuss it and he'll schedule a meet-and-confer at which further scheduling will be accomplished. That would include the deadlines for

production of the material on the motion to compel, although that can go forward immediately and any information from that we would expect would be included if relevant to the summary judgment motion.

Does anybody have any other questions?

May I take from the statements of the Defendants that they do expect to file this motion?

MR. HEFFERNAN: On behalf of Defendant Ashcroft, we would expect to join in a motion, assuming anybody will join with us.

MR. YOUNG: There will be one motion and we will file it expeditiously and it will be a brief, concise, crisp motion for summary judgment.

JUDGE GARLAND: And, of course, it will follow the requirements of local rule 7.

MR. YOUNG: Absolutely, Your Honor.

JUDGE GARLAND: Okay, thank you very much. The Court's adjourned.

[Proceedings adjourned at 12:25 p.m.]

Appendix I

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

THE LOUISIANA HOUSE OF REPRESENTATIVES; by and through CHARLES W. DEWITT, in his official capacity as Speaker of the Louisiana House of Representatives; and CHARLES EMILE BRUNEAU, JR., in his official capacity as Speaker Pro Tempore of the Louisiana House of Representatives, Plaintiffs, VERSUS JOHN ASHCROFT, in his official capacity as Attorney General of the United States of America, Defendant, LOUISIANA COMMUNITY COALITION ON FAIR AND EQUAL REPRESENTATION, EDWARD JONES, C.C. CAMPBELL-ROCK, AND BEULAH LABOSTRIE, Defendant-Intervenors	CIVIL ACTION NO. 1:02-CV-00000062 (JR, MBG, RBW)

The video deposition of CHARLES EMILE BRUNEAU, JR., 145 Robert E. Lee Boulevard, Suite 206, New Orleans, Louisiana, 70124, taken in Conference Room B of the U.S. Attorney's Office, Middle District of Louisiana, Russell B. Long Federal Building, 777 Florida Street, Suite 208, on the 7th day of January, 2003, commencing at 2:58 p.m.

REPORTED BY: Ellen Jolly Tanner, CCR #82014
Registered Professional Reporter

1 guidelines. I would think that that probably is in
2 there, but I'm not sure. It was -- As I said, it was
3 -- all of my comments were suggestions to them, and I
4 let them make the final cut as to what they felt should
5 be in the rules, and then they were presented to the
6 committee, and to the best of my recollection, and the
7 committee minutes would reflect whether I am correct or
8 not, the entire committee approved the rules, I think
9 without dissent.
10 Q. So the final cut with respect to the 2001 rules
11 was made by Ms. Ross and/or Mr. Speer?
12 A. Yes. I would -- I would -- Well, the final cut
13 was made by the committee.
14 Q. Okay.
15 A. Because the committee adopted it. But from a
16 standpoint as to what was presented to the committee,
17 yes, Butch and Deanne probably did more of the -- of
18 the drafting than I did. I mean, you know, I may have
19 looked at it. Did I look at it? Sure, I looked at it.
20 Was it, you know, in accordance with the law, and was
21 it plain and understandable to a laymen? I think it
22 was -- I think they were.
23 Q. Was that one of the objectives of the revisions
24 to the rules to make them understandable to a laymen?
25 A. Well, I wanted to try to make them understandable

1 to people in the House of Representatives, first and
2 foremost, but, yes, I mean, I don't think that, you
3 know, that necessarily the citing of statutes and all
4 of that, although you will see my handwriting on there,
5 and I said, well, we are talking about the Civil Rights
6 Act. You know, if we are going to start citing things,
7 then I want to specifically cite that. Now, I don't
8 think they ended up with that. I think they ended up
9 saying everything. And that's probably the right way
10 to do it from a rule making standpoint because I don't
11 think that with all of the legal talent in this room
12 and in the United States of America, anybody could
13 predict where this United States Supreme Court is going
14 on reapportionment from one day to the next. If we
15 could, it would be a lot easier for everybody.
16 Q. I am directing your attention now to a document
17 which was previously marked as "D-3" in your first
18 deposition in this case.
19 A. Okay.
20 Q. And I would like you to take a look at it, and
21 you tell me if you recognize it.
22 A. It has got ranges in there. Okay. Well, yes, I
23 recognize it.
24 Q. Can you identify the document for me?
25 A. It says Louisiana House of Representatives

1 BY MR. ADEGBILE:
2 Q. Okay. When we went off the record, I was asking
3 you to look at the -- to compare the markings that you
4 put on the bottom of "Exhibit #9" near paragraphs G and
5 H to the markings that you have testified Ms.
6 Lowrey-Dufour placed on "Exhibit #10" to indicate to me
7 which of your suggestions are coming through, and which
8 are not reflected in "Exhibit #10."
9 MS. ROSS:
10 Is there a question? What is the
11 question?
12 THE WITNESS:
13 What is the question?
14 BY MR. ADEGBILE:
15 Q. I am asking you to take a look at the two
16 documents.
17 A. Okay.
18 Q. And tell me which of your suggestions from
19 "Exhibit #9" are reflected in "Exhibit #10," and which
20 are not.
21 A. Well, it doesn't have the reference to Section 2
22 and 5, and it quotes -- I guess that's part of Section
23 2 that that refers to in H, but it does have my
24 comments with respect to all federal and state
25 constitutional and statutory provisions and

1 jurisprudence, and I think when you have that, when you
2 have all, all means all. It includes everything. It
3 includes the Civil Rights laws. It includes the United
4 States Supreme Court interpretations. It includes the
5 provisions in the State Constitution that says that you
6 cannot have multi member districts. All means all. So
7 I was happy once they had the "all" in it because I
8 think that's inclusive of everything.
9 Q. Is it as specific as the suggestion that you made
10 in "#9"?
11 MS. ROSS:
12 Which specific suggestion?
13 BY MR. ADEGBILE:
14 Q. Is the "all" -- Is the "all" language in "#10" as
15 specific as the suggestions that you made in "#9"?
16 A. Well, I don't know how to answer that. I -- I
17 don't know whether you can answer that in a yes or a
18 no. You know, all is all. You know, like Clinton
19 said, is is what is means or something like that. All
20 is all. All includes everything. You know, "#9" has
21 some things scratched out, and it says, particularly
22 Section 2 and 5. H has words in it from that section.
23 To me, if you were to just end up putting all, and you
24 didn't -- you didn't have to put any of it, any of
25 that. None of it.

1 Q. So --
2 A. You wouldn't have to refer to Davis versus
3 Bandemer or anything else. All means all.
4 Q. So you then were -- are comfortable with the
5 "all" language?
6 A. With the "all" language? Yes. I mean, I think
7 that's what we are bound by. I mean, you know, we
8 don't have -- we don't have the bomb. We can't say we
9 are going to abide by this law, and we are not going to
10 abide by that law. We are going to abide by this
11 provision of the constitution, and we are not going to
12 abide by this one. We are going to apply this
13 provision of the Civil Rights Act, but we are not going
14 to apply that one. That is not the case. You can't do
15 that. You have to abide by all of it, if you want to
16 try to get something that will pass muster, in my
17 opinion. All of this is prefaced by, in my opinion.
18 Q. And can you explain to me your reference to the
19 bomb?
20 A. The reference to the bomb? I wasn't aware that
21 the Louisiana National Guard had a bomb. I think the
22 feds have the bomb.
23 Q. And --
24 A. You know, that's why we are sitting in the
25 federal building today, I guess.

1 Legislature. If you want an amendment
2 prepared, you go to the staff. You tell the
3 staff what you want in the amendment. If the
4 staff -- if the amendment has some
5 constitutional problems, such as a numbers
6 problem, such as it being noncontiguous, such
7 as something -- Yes, I said numbers. I said
8 numbers. I was about to say population.
9 Population and numbers are the same thing.
10 -- such as doing a plan that will make your
11 district whole, but with respect to districts
12 that are on the side of you, their numbers
13 become skewed by what you do, it is the duty
14 of the staff member to advise that particular
15 member of the House that that concept has
16 some problems. If that member says, I didn't
17 ask you to tell me what the problems were, I
18 asked you to draft the amendment, then that
19 staff member is duty bound to draft the
20 amendment for that person. That's how our
21 system works.
22 BY MR. ADEGBILE:
23 Q. As a practical matter, what is the difference in
24 paragraph G of "Exhibit D-3," which reads, all
25 redistricting plans shall comply with applicable state

1 and federal statutory and constitutional law and
2 jurisprudence, and a provision that would read all
3 redistricting plans must comply with the law?
4 A. Minimal, if any. You know, I could truthfully
5 tell you, I can't recall a member of the House asking
6 for a copy of these rules. Now, they all pretty much
7 knew what, you know, what the parameters -- what the
8 parameters were. Nobody was kept in the dark with
9 respect to this process. We tried to be as all
10 inclusive as -- as possible. I mean, now, you know, I
11 don't take any joy in being here today, and I really
12 question some people's motives as to why we are here,
13 but, you know, that's neither here nor there. This is
14 a free country and everybody has got a right to do what
15 they want to do, but, you know, these rules were made
16 available. I'm pretty sure they were sent out to every
17 member of the House, although I don't have proof of
18 that, but I'm pretty sure that they were. And it was
19 certainly made available to every member of the
20 Governmental Affairs Committee before the meeting.
21 They were presented at the meeting. They were adopted,
22 I think, by a unanimous vote. But as I said before,
23 whatever the record shows is whatever -- is whatever
24 happened. That's just my recollection.
25 Q. Is it your understanding that we are here today

Protect Voting Rights: RenewtheVRA.org

VOTING RIGHTS IN MISSISSIPPI 1982-2006

A REPORT OF RENEWTHEVRA.ORG
PREPARED BY ROBERT MCDUFF

APRIL 2006

1710

VOTING RIGHTS IN MISSISSIPPI, 1982-2006

ROBERT MCDUFF [1]

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[1] Civil rights lawyer and voting rights expert based in Mississippi.

INTRODUCTION & EXECUTIVE SUMMARY

Mississippi is the poorest state in the union. Its population is 36 percent black, the highest of any of the 50 states. Resistance to the civil rights movement was as bitter and violent there as anywhere. State and local officials frequently erected obstacles to prevent black people from voting, and those obstacles were a centerpiece of the evidence presented to Congress to support passage of the Voting Rights Act of 1965. After the Act was passed, Mississippi's government worked hard to undermine it. In its 1966 session, the state legislature changed a number of the voting laws to limit the influence of the newly enfranchised black voters, and Mississippi officials refused to submit those changes for preclearance as required by Section 5 of the Act. Black citizens filed a court challenge to several of those provisions, leading to the U.S. Supreme Court's watershed 1969 decision in *Allen v. State Board of Elections*, holding that the state could not implement the provisions unless they were approved under Section 5.[2]

Dramatic changes have occurred since then. Mississippi has the highest number of black elected officials in the country. One of its four members in the U.S. House of Representatives is black. Twenty-seven percent of the members of the state legislature are black. Many of the local governmental bodies are integrated, and 31 percent of the members of the county governing boards (known as boards of supervisors) are black.

These changes would not have come to pass without the Voting Rights Act. Even after the Act was signed, many of them were a long time in the making, and most came about through Section 5 objections imposed by the U.S. Department of Justice (DOJ) and court orders obtained after extensive litigation. Since its first objection in 1969, DOJ has objected to Mississippi voting changes 169 times - 112 since Section 5 was reauthorized in 1982. These changes involved election districts for Congress, the state legislature, most of the county governing boards in the state, and many of the cities and school boards. In addition, federal observers have been sent to particular locations in Mississippi to observe elections pursuant to provisions of the Act on 548 separate occasions since 1966, far more than any other state. Two hundred and fifty of those have been since the 1982 reauthorization.

While the progress since 1965 has made an important difference in the state, there is still a long way to go. Enormous gaps exist between whites and blacks in terms of both economic and political power. On average, a black citizen of Mississippi is likely to have half the income of a white person. Black citizens are under-represented at all levels of government. Despite the highest black population percentage of any of the 50 states, none of Mississippi's statewide elected officials is black. Elections are still driven by racially polarized voting, and most white voters do not vote for black candidates in black-white elections no matter their qualifications. In the most recent statewide elections, held in 2003, the state's 46- year-old director of the Department of Finance and Administration, a black man named Gary Anderson, was defeated in the state treasurer's race by a 29-year-old white bank employee who had no experience in governmental finance. Racial campaign appeals still surface in elections in the state. In the race

[2] 393 U.S. 544 (1969).

for a state Supreme Court seat in 2004, the white candidate in a black-white election adopted the campaign slogan, "one of us," which had been characterized as a racist appeal by a federal court when it was used by a white candidate in a black-white congressional race over twenty years earlier. In recent times, discriminatory measures such as dual registration have been resurrected years after they were abolished, and officials have failed to submit voting changes for preclearance, requiring courts to step in and force them to comply with Section 5 decades after it was passed.

All of this means that in Mississippi, as in several states, the full protections of the 1965 Voting Rights Act must remain in place. As long as people are willing to ignore the law, and as long as race plays an excessive role in political life, there is potential for backsliding that must be avoided at all costs. The problem of race stemming from slavery and its legacy has been Mississippi's greatest burden. Important changes have occurred since the passage of the Act. But if those changes are to live on, and if Mississippi is to move forward in the coming years, the bulwark of legal protections from which they grew must not be dismantled or diminished.

I. The Voting Rights Act of 1965

Although Congress, through the Civil Rights Act of 1964, outlawed racial discrimination in employment, public accommodations and a number of other areas, that Act did not address the persistent problems of discrimination in voting that existed in a number of parts of the country, particularly the South. In 1965, President Lyndon Johnson asked Congress to pass a voting rights bill against a backdrop of dramatic protests throughout the South, particularly those in Selma, Alabama in March of 1965. In August of that year, Congress passed the Voting Rights Act of 1965 with bipartisan majorities of both houses.

The Act is designed not only to ensure the right of minority citizens to register and cast a vote, but to prohibit discriminatory measures passed by state and local governments that minimize the power of that vote. Both permanent and nonpermanent provisions are in the Act. One of the more important permanent provisions is Section 2. It applies throughout the nation and outlaws any voting practice that results in the denial or abridgement of voting rights on the basis of a person's race, color, or membership in a language-minority group.

The nonpermanent provisions that are relevant to Mississippi at the present time are Section 5, which is the preclearance section, and Section 8, which permits DOJ to send federal observers to polling places in certain jurisdictions. These nonpermanent provisions apply only to certain jurisdictions in the country. The formula that resulted in the coverage of these particular areas is set out in Section 4 of the Act. Mississippi is a covered state for purposes of these provisions.

Section 5 is the most important of the nonpermanent sections. It requires covered jurisdictions to submit all proposed changes relating to voting to the attorney general or the U.S. District Court for the District of Columbia. Unless a change is approved by the Attorney General, acting through the United States Department of Justice, or the District of Columbia federal court, it may not be implemented. This approval is known as preclearance. Under the Act, the covered

jurisdiction must demonstrate that the voting change does not have the purpose or effect of discriminating on the basis of race or language minority. If DOJ or the federal court determines the jurisdiction did not carry that burden, then an objection should be issued to the change. If an objection is issued, the change cannot be put into operation. This provision has been of vital importance because it has ensured review of new voting measures to determine in advance whether they discriminate on the basis of race, and has not required minority citizens to undertake the enormous expense and time-consuming burden of pursuing litigation every time a state or local government institutes a new measure to dilute their voting strength.

II. Implementation of Section 5 in Mississippi

Although the Act was passed in 1965, delays by Mississippi officials in complying with their obligations under Section 5 postponed for several years any meaningful review of voting changes. After the Supreme Court's 1969 decision in *Allen*, the state finally submitted the three 1966 laws that were the subject of that case, leading to the first Section 5 objection in the state. It came on May 21, 1969, when DOJ objected to all three of those laws - one changing the method of selecting county superintendents of education in eleven counties from election to appointment; one giving counties the right to elect their boards of supervisors at-large rather than by districts; and one adding burdensome new qualification requirements for independent candidates in general elections.[3] This was the first of 169 objections to voting changes in Mississippi. Nearly two-thirds of those (112) came after Section 5 was reauthorized in 1982.[4]

This lengthy list of objections covers a wide range of voting practices - most involving redistricting plans. Of the 169 objections since enforcement of the Act began, 104 relate to redistricting. Of the 112 objections since the Act was reauthorized in 1982, 86 relate to redistricting. Other objections were imposed because of changes involving at-large elections, annexations of territory, numbered post requirements, majority vote requirements, candidate qualification requirements, changes from election to appointment of certain public officials, drawing of precinct lines, polling place relocations, open primary laws, repeal of assistance to illiterate and disabled voters, and a variety of other measures.

Most of these are classic weapons in the arsenal of racial discrimination. The ones most frequently used are those that affect the racial composition of the electorate for particular offices — redistricting, at-large elections and annexations of territory. In the context of racial bloc voting, which is the pernicious legacy of segregation in many parts of this country, these tools can be used to dilute the natural voting strength of minority citizens by creating a disproportionately high number of offices chosen from majority white electorates. If white and black voters generally vote for different candidates, this means white voters will have more power to choose candidates, and black voters less, than their numbers normally would allow.

---

[3] Section 5 objection letter, May 21, 1969.

[4] The list of objections can be found at http://www.usdoj.gov/crt.voting/sec_5/ms_obj2.htm.

And, given the unfortunate fact that white voters in these areas generally vote only for white candidates and not black candidates, the result is that whites occupy a disproportionately high number of elected positions. This means, of course, that black citizens are limited to a lesser role in government than would be the case in the absence of these discriminatory electoral mechanisms.

Changes other than those affecting the makeup for the electorate also carry the potential for discrimination. For example, polling places can be moved and precinct lines redrawn to require minority voters, who are disproportionately poorer and less likely to have automobiles than whites, to travel greater distances to vote. This can discourage people from voting and make a difference in the outcome, particularly in close elections. Similarly, elected positions can be changed to appointed ones at the very time the voting population in an area becomes majority-black as a means of keeping black citizens from electing a candidate to the particular office. Indeed, each of the changes that led to an objection involved some type of tool that could be used to discriminate against minority citizens who were secured the right to cast a ballot through the Voting Rights Act but were subject to a variety of tricks designed to minimize the effectiveness of that ballot.

Some of the 169 objections in Mississippi involved voting changes --- such as the open primary law, qualifications for independent candidates and restrictions on the ability of illiterate and disabled voters to seek assistance --- that governed all elections in the state. Others were targeted at specific types of elections, including those for Congress, the state legislature, state court judges, county boards of supervisors, county superintendents of education, city council members, city clerks, and county and city school board members.

Acts passed by the state legislature that had a statewide impact drew 21 objections - 10 of them since the Act was reauthorized in 1982. In addition, the legislature passed five laws, each of which affected a specific group of localities, which also drew objections, all of them prior to the reauthorization.

Ninety-nine objections were interposed to voting changes involving Mississippi's counties - 79 of them since the Act was reauthorized in 1982. These objections covered 48 of Mississippi's 82 counties. Twenty-five of the 48 counties were repeat offenders, drawing two or more objections. Sunflower and Tate Counties had six each, Bolivar County had five, and Grenada, Leflore, Monroe, and Yazoo Counties had four each.[5] Objections were imposed 36 times to actions affecting Mississippi municipalities - 18 of those since reauthorization of the Act. The 36 objections involved 28 different municipalities.

Most of the remaining objections involve local school districts throughout the state.

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[5] These figures only deal with objections involving the counties themselves. They do not include objections to changes involving elections for officials of county school boards, which are separate entities from the counties themselves, or municipalities located within counties.

As the above figures show, Section 5 is important both at the state and local levels. Some of the discriminatory measures instituted in the context of statewide redistricting plans are discussed later in this paper, but it is important to note that efforts to perpetuate the discrimination of the past are also manifest in local elections. The Mississippi legislature's 1966 backlash against the Voting Rights Act included a law giving counties the option of electing their governing boards (known as boards of supervisors) at-large rather than by single-member districts as required under pre-existing state law. This would have allowed white majority counties to ensure that all five members of the county board of supervisors would be chosen by the majority-white electorate, thus preventing integration in county government. That was one of the laws that the Supreme Court in *Allen* said could not be enforced absent preclearance, and one in the first group to draw an objection from DOJ under Section 5. But the efforts did not stop there. The 1971 legislature passed an act authorizing counties to convert to at-large elections with residency districts, a slight variation on the nullified 1966 law. Once again, DOJ objected.[6]

Two counties, Grenada and Attala, adopted at-large elections anyway, each drawing an objection in 1971.[7] After those efforts failed, both Grenada and Attala Counties designed redistricting plans that caused DOJ to again object (in 1973 and 1974 respectively).[8] Grenada County then concocted another plan that led to still another objection in 1976.[9] Eleven years later, DOJ was once more compelled to object to yet another Grenada County redistricting plan.[10]

Many other counties also designed discriminatory redistricting plans. Since enforcement of the Act began, Section 5 objections were interposed against 87 different county redistricting plans in Mississippi - 75 of those occurring after the 1982 reauthorization. Many counties incurred multiple objections. Those objections, along with litigation brought under Section 2 of the Act and the Fourteenth Amendment, forced counties to return to the drawing board and create more equitable redistricting plans.

One example where this occurred is Chickasaw County. Even though it was 36 percent black in total population, according to the 1980 Census, the county drew its supervisors' districts so that all were majority-white. A federal district court in 1989 held that this configuration violated Section 2 and ordered the county to adopt a new plan.[11] The county then passed three different plans over the next six years, all of which led to Section 5 objections.[12] In the wake of this abject

[6] Section 5 objection letter, September 10, 1971.

[7] Section 5 objection letters, both June 30, 1971.

[8] Section 5 objection letters, August 9, 1973 and September 3, 1974.

[9] Section 5 objection letter, March 30, 1976.

[10] Section 5 objection letter, June 2, 1987.

[11] *Gunn v. Chickasaw County*, 705 F. Supp. 315 (N.D. Miss. 1989).

[12] Section 5 objection letters, February 27, 1990, March 26, 1993, and April 11, 1995.

failure to comply with the Act, the federal court drew its own plan for the 1995 elections containing two of five majority black districts to reflect the county's 38.6 percent black population, which had increased under the 1990 Census.[13] Only after that, did the county adopt a lawful plan that was precleared by the DOJ.

These are just some of the many examples of the widespread violations of the Act that led DOJ to object to so many voting changes since the initial passage of the Act in 1965, and again since its reauthorization in 1982.

III. The Reluctant Compliance with Section 5

As mentioned earlier, Mississippi officials refused to comply with their obligations under Section 5 in the wake of the passage of the Voting Rights Act, leading to the Supreme Court's 1969 decision in *Allen*. Two years later, in its next major Section 5 enforcement decision, *Perkins v. Matthews*, the Supreme Court held that the city of Canton, Mississippi violated Section 5 when it attempted to enforce a change from ward to at-large elections for the city council, a change in polling place locations and an alteration of the city's voting population through annexation.[14]

Unfortunately, these decisions did not end the problem of noncompliance. At various times, black voters had to return to the courts to force state and local officials to fulfill the basic requirement of submitting voting changes for Section 5 review. For example, the state failed to submit a number of laws passed over a period of several years adding new state trial court judgeships elected under a numbered post system. In 1986, the federal district court in *Kirksey v. Allain* was required to step in and enjoin further elections for those seats until preclearance was obtained.[15] State officials then submitted the changes to DOJ, which later that year entered an objection to the numbered post requirement for many of the judgeships.[16]

The U.S. Supreme Court revisited the issue of Section 5 non-compliance in 1997 when state officials refused to submit for Section 5 review a number of changes in state law made to conform to the National Voter Registration Act. The Court unanimously held, in *Young v. Fordice*, that the officials had violated Section 5 and could not go forward with the changes until

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[13] *Gunn v. Chickasaw County*, No. 1:87cv165-D-D, 1995 U.S. Dist. LEXIS 21583 (N.D. Miss. April 21, 1995).

[14] 400 U.S. 379 (1971). *Allen, Perkins*, and the other cases discussed in this particular section of this paper are known as Section 5 enforcement actions. These are cases that can be brought by any voter in a Section 5 jurisdiction to prevent implementation of any unprecleared voting change in that jurisdiction. If the new procedure affects voting and is therefore subject to Section 5, and has not been precleared, the court hearing the case must issue an order preventing the use of the procedure.

[15] 635 F. Supp. 347 (S.D. Miss. 1986) (three-judge court).

[16] Section 5 objection letter, July 1, 1986.

preclearance was obtained.[17]

As recently as November 2005, forty years after the Act was passed, a three-judge federal court enjoined the city of McComb from enforcing a state court order it had obtained that removed a black member of that city's Board of Selectmen from his seat by changing the requirements for holding that office. As the three-judge court pointed out, the order clearly altered the pre-existing practice, yet the city had done nothing to preclear it. The court ordered the black selectman restored to his office and enjoined the city from enforcing the change unless preclearance was obtained.[18]

IV. Black Elected Officials and the Impact of the Voting Rights Act

Thirty-six percent of Mississippi's population is black, the highest percentage of the fifty states. Thirty-three percent of the voting age population is black. Despite that, no black person has been elected to a statewide office in Mississippi since Reconstruction. In 2001, the last year covered by its study of black elected officials, the Joint Center for Political and Economic Studies reported that Mississippi had 892 black elected officials. The vast majority of the black officials were elected from black-majority districts, and most of those districts were created as a result of the Voting Rights Act.

A. Congress

Mississippi has never elected a black U.S. senator. Two served during Reconstruction as the result of appointment by the legislature prior to passage of the Seventeenth Amendment, which provides for the direct election of senators.

No black person served in the U.S. House of Representatives from Mississippi between 1883 and 1986.[19] During much of this time, the majority-black area of the Mississippi Delta was contained within a single congressional district in the northwest part of the state. That district was almost 60 percent black as of 1962. But, in 1966, less than a year after passage of the Voting Rights Act, the Mississippi legislature carved the Delta up among three of the state's five congressional districts, resulting in no districts with a black majority. This basic configuration was adopted again in 1971 and 1981.[20] When the 1981 plan was submitted under Section 5, DOJ imposed an objection.[21] Black citizens filed a lawsuit seeking to hold the 1982 elections from a

[17] 520 U.S. 273 (1997).

[18] *Myers v. City of McComb*, No. 3:05-cv-00481 (S.D. Miss. Nov. 23, 2005) (three-judge court) (unpublished order)

[19] Congressional Research Service, Black Members of the United States Congress: 1870-2004, pp. 38-41.

[20] Frank R. Parker, *Black Votes Count: Political Empowerment In Mississippi After 1965 (Univ. of North Carolina Press*, 1990), pp. 41-51; *Jordan v. Winter,* 541 F. Supp. 1135, 1137-1139 (N.D. Miss. 1982) (three-judge court), *vacated, Brooks v. Winter*, 461 U.S. 921 (1983).

[21] Section 5 objection letter, March 30, 1982.

court-ordered plan, and the federal district court responded by drawing a district centered in the Delta that was 53 percent black in total population and 48 percent black in VAP.[22] This was insufficient to elect a black candidate in that polarized and poverty-stricken region of the state and the Mississippi delegation remained all white following the 1982 election. However, the black plaintiffs appealed to the U.S. Supreme Court, which remanded the case for reconsideration in light of the 1982 amendment to Section 2 of the Act.[23] In 1984, the federal court held that its prior plan did not comply with Section 2 and drew a new plan, this one with a black VAP majority of 52.83 percent.[24] Although a white candidate won again in 1984, things changed two years later when Mike Espy was elected, becoming the first black member of Congress from Mississippi in more than 100 years. Since that time, Mississippi's House delegation (which fell from five representatives to four after the state lost a seat in the 2000 Census) has included one black member.

B. The State Legislature

Significant integration came to Mississippi's legislature even later than in other states. No black citizen was elected to the state's legislature in the twentieth century until 1967. In that year, Robert Clark of Holmes County won election to the state House of Representatives. He remained the only black member of the 122-seat House until 1975, when DOJ objected to the legislature's redistricting plan of that year and a court-ordered plan creating single-member districts in some of the urban areas in the state led to the election of three more black House members. In 1979, after the state adopted plans dividing the entire legislature into single-member districts, 15 black members were elected to the House and two to the previously all-white Senate. A new plan was adopted and precleared in 1982. Three additional black members were elected to the House in the 1983 elections and two more in 1987. As the 1990s approached, black citizens remained woefully underrepresented, with black candidates elected to only 20 of 152 House seats (13 percent) and only two of 52 Senate seats (4 percent) in a state that was 32 percent black VAP at the time.[25]

New House and Senate plans were adopted by the legislature in 1991 but DOJ denied preclearance. According to the objection letter, even though the plans did not decrease the number of black-majority districts from the 1982 plan and, therefore, had no retrogressive effect, DOJ concluded that there were significant indications that a racially discriminatory purpose was at play. These indications included the fact that the legislature had turned away alternatives under which, according to DOJ, "reasonably compact and contiguous districts could be drawn in a number of additional areas of the State in which black voters usually would be able to elect

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[22] *Jordan v. Winter*, 541 F. Supp. 1135 (N.D. Miss. 1982) (three-judge court).

[23] *Brooks v. Winter*, 461 U.S. 921 (1983).

[24] *Jordan v. Winter*, 604 F. Supp. 807 (N.D. Miss. 1984) (three-judge court), *aff'd, Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002 (1984).

[25] Parker, at 72, 115, 119-127, 133.

representatives of their choice," as well as the fact that "support for the [legislature's plan] and opposition to alternative suggestions were sometimes characterized by overt racial appeals."[26] For example, the alternative plan was often called the "Black Caucus Plan" and even the "black plan" on the House floor even though it was supported by 38 white and 20 black members, and privately, some white legislators referred to it as "the nigger plan."[27]

In 1992, the legislature drew new plans in order to cure the Section 5 defects. The House plan was precleared, but DOJ objected once again to the Senate plan, specifically the districts drawn for southwest Mississippi.[28] The legislature then amended the Senate plan for that area and the new version was precleared.[29]

Special elections were held in 1992 under the new plans, resulting in the election of 33 black citizens in the 122-member House (27 percent) and 10 in the 52- member Senate (19 percent). A slight increase has occurred since that time and presently there are 36 black members in the 122-member House (29.5 percent) and 11 black senators in the 52-member Senate (21 percent).

C. Local Officials

As of 1965, the only black local elected officials in the state were the mayor and city council of the all-black town of Mound Bayou in the Mississippi Delta.[30] That has changed. The fruits of enforcement of the Voting Rights Act are reflected in the fact that Mississippi now has 127 black county supervisors, which is 31 percent of the total number of 410 supervisors.[31] (Each of Mississippi's 82 counties has five supervisors). Those 127 supervisors come from 67 different counties. Of those 67 counties, Section 5 objections were lodged one or more times against redistricting plans for supervisors in 43 of them. Two others were the subject of successful Section 2 lawsuits. (Some of the counties with Section 5 objections were also the subject of successful Section 2 litigation). Thus, most of the current plans under which black supervisors were elected in Mississippi are the legacy of direct enforcement of the Act, particularly the preclearance provision of Section 5. Even for those counties that never encountered a Section 5 objection or a Section 2 lawsuit, it is safe to say that most designed their plans lawfully because of a recognition that discrimination likely would be met by a Section 5 objection.

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[26] Section 5 objection letter, July 2, 1991, *quoted in, Watkins v. Mabus*, 771 F. Supp. 789, 792 (S.D. Miss.) (three-judge court), *aff'd in part and vacated in part,* 502 U.S. 954 (1991).

[27] Jay Eubank, "Racial Slurs Mar Work on Voting Lines, *The Clarion Ledger*, July 14, 1991, p. 1A.

[28] Section 5 objection letter, March 30, 1992.

[29] Section 5 preclearance letter, May 8, 1992. *See also, Watkins v. Fordice*, 791 F. Supp. 646 (S.D. Miss. 1992) (three-judge court)

[30] United States Commission on Civil Rights, *Political Participation*, app. VI, p. 218.

[31] This number was obtained from the Mississippi Association of Supervisors Minority Caucus, which maintains a current list of the black supervisors in the state.

Section 5 objections also were interposed over the years to the imposition of at-large elections and discriminatory redistricting plans for city councils. Efforts of municipalities to convert to at-large elections led to three objections, all of them before the 1982 reauthorization. New municipal redistricting plans led to 13 more objections, 10 of them since the reauthorization. And municipal annexations of property that changed the voting populations were met with another 13 objections, seven since reauthorization. There are no current statistics kept of the number of black city council members in Mississippi.

D. State Court Judges

In 1965, there were only a handful of black lawyers in Mississippi and no black judges. Over twenty years later, in 1986, the number of black lawyers had increased, but only one of nine state supreme court justices was black, only one of 79 circuit and chancery court judges was black, and only one of 23 county court judgeships had ever been held by a black person.[32] The nearly all-white trial bench was the result of the use of at-large elections to choose judges in every multi-judge district in the state. Further integration of the trial courts came about only after litigation under Section 2 and Section 5 led to the creation of a number of majority-black judicial election subdistricts and the abolition of numbered posts in some of the state's remaining at-large election districts.[33] Special elections held in 1989 resulted in a significant increase in the number of black trial court judges. At the present time, eight of 45 chancery court judges, eight of 49 circuit court judges and five of 26 county court judges are black.[34]

The Mississippi Supreme Court has nine justices. The state is divided into three districts generally running east-west, each of which elects three justices. None of the districts are majority-black. Prior to 1985, no black person served as a justice of the Mississippi Supreme Court in the twentieth century. Since 1985, one of the nine justices has been black. The other eight have been white. The first black justice was appointed to a mid-term vacancy. When he retired mid-term, another black jurist was appointed in his place, and when that justice retired mid-term, still another black judge was appointed to the seat. Each of these justices won when the seat came up for election, but they all had the advantage of incumbency. The district from which they were elected is 46 percent black VAP, according to the 2000 Census.

The Mississippi Court of Appeals is an intermediate appellate court that was created in the early part of 1990s and began operation in 1995. Ten judges serve on it, two each elected from one of five districts in the state. One of the five districts is majority-black and two of the ten judges are

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[32] *Martin v. Allain*, 658 F. Supp. 1183, 1193 (S.D. Miss. 1987).

[33] *Kirksey v. Allain*, 635 F. Supp. 347 (S.D. Miss. 1986) (three-judge court); *Martin v. Allain*, 658 F. Supp. 1183 (S.D. Miss. 1987); *Martin v. Mabus,* 700 F. Supp. 327 (S.D. Miss. 1988); *Martin v. Mabus*, 734 F. Supp. 1216 (S.D. Miss. 1990).

[34] Mississippi State Conference of NAACP listing of African American Judges, November 12, 2005. Not every county in Mississippi has a county court. Most counties that do so have only one county judge, although some more populous counties have more than one.

black, both elected from that district.

E. Public Service and Highway Commissions

The three-member public service commission and the three-member highway commission are elected from nearly identical districts as those used for the Supreme Court — three districts generally running east-west, all majority-white. No black candidate has ever been elected to these commissions.

V. Racially Polarized Voting

The unfortunate existence of racially polarized voting is, of course, the reason the Voting Rights Act is necessary, and its continuing presence confirms the need to keep in place all of the protections of the Act. In areas where racial bloc voting exists, with whites generally voting only for whites and blacks for blacks in black-white elections, minority voting strength will be reduced if election districts are drawn so that white voters are a majority in a disproportionately high number of election districts. That would mean the white majorities in those districts would control the outcome of an unfair number of elections, and since they would generally not vote for black candidates, black voters would have less power than their numbers would indicate and black citizens would be elected to fewer positions than they would be in a fair system.

Racial bloc voting has long been a fixture of Mississippi elections, and unfortunately, remains so to this day. The sad facts have been documented by a long litany of court decisions. In Jordan v. Winter, the congressional redistricting case, the three-judge district court said: "From all the evidence, we conclude that blacks consistently lose elections in Mississippi because the majority of voters choose their preferred candidates on the basis of race."[35] In Martin v. Allain, which involved a statewide challenge to the election of state trial court judges from multi-member districts, the federal district court noted that a number of court decisions has confirmed the pervasive existence of bloc voting in Mississippi. After examining statistical evidence from elections throughout the state, the Court concluded that "racial polarization exists throughout the State of Mississippi . . . and that blacks overwhelmingly tend to vote for blacks and whites almost unanimously vote for whites in most black versus white elections."[36] This same pattern has been confirmed in a number of decisions throughout the state dealing with local redistricting.[37]

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[35] 604 F. Supp. 807, 812-813 (N.D. Miss. 1984) (three-judge court), aff'd 469 U.S. 1002 (1984).

[36] 658 F. Supp. 1183, 1193-1194 (S.D. Miss. 1987).

[37] *See, e.g., Houston v. Lafayette County*, 20 F. Supp. 2d 996 (N.D. Miss. 1998); *Teague v. Attala County*, 92 F. 3d 283 (5th Cir. 1996), *cert. denied*, 522 U.S. 807 (1997); *Clark v. Calhoun County*, 88 F. 3d 1393 (5th Cir. 1996); *Ewing v. Monroe County*, 740 F. Supp. 417 (N.D. Miss. 1990); *Gunn v. Chickasaw County*, 705 F. Supp. 315 (N.D. Miss. 1989); *Jordan v. City of Greenwood*, 599 F. Supp. 397 (N.D. Miss. 1984).

[38] *Jordan v. Winter*, 604 F. Supp. at 812.

There have been instances of crossover voting that is sufficient to elect black candidates, but those are few and far between. When Mississippi's first black legislator in modern times, Robert Clark, attempted in 1982 to become Mississippi's first black congressman in the 20th century, he was defeated in the newly-drawn court-ordered 48 percent black VAP Second Congressional District when he received only 15 percent of the white vote.[38] After the district was redrawn by the Court in 1984 with a 53 percent black VAP district, Clark again lost, receiving 95 percent of the black vote but only 7 percent of the white vote. Finally, in 1986, Mike Espy narrowly won with 97 percent of the black vote and 12 percent of the white vote.[39]

No black candidate has won election to Congress or the state legislature from a majority-white district in Mississippi, and no black candidate has won a statewide office in the 20th century. The only state-level body where a majority-white district has elected a black candidate is the Mississippi Supreme Court, where, since 1985, there has been one black justice out of nine. This success occurred in the Central Supreme Court District, which elects three of the nine justices. All three of the Supreme Court districts are majority-white. The Central District has the highest black VAP of the three districts at 46 percent, according to the 2000 Census. Reuben Anderson, a black Hinds Country Circuit Judge, was appointed to a mid-term vacancy in 1985 and then won election over a far-right racist candidate, Richard Barrett. Running as an incumbent, Anderson received the overwhelming majority of the black vote and an estimated 58 percent of the white vote.[40] While it was comforting that a black incumbent could gain a majority of the white vote against an overt extremist, Justice Anderson's success with white voters was unique. The federal district judge in the Martin v. Allain case made that point in his discussion of the Anderson election, noting that in every other black-white judicial election in the state as of that time, black candidates had received, on average, two percent of the white vote.[41]

Indeed, each subsequent black candidate for that state Supreme Court seat was opposed by most white voters. When Justice Anderson's retirement from the Court led to a midterm vacancy in 1991, Hinds County Circuit Judge Fred Banks, who is black, was appointed to the position. He ran twice as an incumbent, defeating white candidates each time, winning first with 51 percent of the total vote and then 54 percent, but never receiving a majority of the white vote. When Justice Banks retired from the Court mid-term in 2002, Hinds County Circuit Judge James Graves, who is black, was named to the seat. Justice Graves ran as an incumbent in 2004, defeating a white candidate in a runoff with 57 percent of the vote. But, most whites voted against him. Justice Graves won all fourteen of the majority-black counties in his district but only two of the eight majority-white counties.

While the successive victories of black candidates for one of the nine Supreme Court seats,

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[39] *Martin v. Allain*, 658 F. Supp. at 1194.

[40] *Martin v. Allain*, 658 F. Supp. at 1194.

[41] *Id.*

coming in a 46 percent black VAP district, is a positive thing, Mississippi still has a long way to go to reach the day when voters routinely make their decisions in black-white elections based on qualifications and other non-racial factors. This point was emphasized dramatically in the most recent elections for statewide offices in Mississippi, held in 2003. The Director of the Mississippi Department of Finance and Administration, 46-year-old Gary Anderson, who is black, ran for the office of State Treasurer against a 29-year-old white candidate with no experience beyond the fact that he worked in a bank. Despite his superior qualifications, Gary Anderson received only 47 percent of the vote and lost the election. Of Mississippi's 25 majority-black counties, Anderson won 24. Of the 57 majority-white counties, Anderson won only 18 and lost 39. While he received some of the white vote, most whites voted against him.

Anderson is a Democrat and his opponent a Republican, but that does not explain his defeat. Another Democratic candidate for a down-ticket statewide office, Jim Hood, won 62.7 percent of the vote in his race for attorney general against an opponent who not only, like Hood, had experience as a state prosecutor, but also had experience as an FBI agent. Yet Hood won overwhelmingly. Obviously, a number of factors come into play in any election contest but a major reason for the different electoral fates of Jim Hood, a Democrat running for attorney general, and Gary Anderson, a Democrat running for Treasurer, is that Hood is white and Anderson is black.

The racial gulf in Mississippi was also driven home by the results of the racially charged 2001 referendum on the state flag, the upper left hand corner of which prominently displays the Confederate battle flag. A study of the election results showed that 93 percent of black voters supported a new flag. However, only 11 percent of the white voters supported a new flag, despite the widespread recognition that the old one, containing the symbol of the Confederate civil war struggle to retain slavery in the South, is offensive to most black Mississippians. The overwhelming majority of white voters were unwilling to reach across racial lines and abandon this relic of the slaveholding South.[42]

During Robert Clark's unsuccessful 1982 campaign for Congress, one black Mississippi Delta preacher summarized the unfortunate situation this way: "Most whites won't vote for a black, even if he was Jesus come down from the heavens. Even then, they'd be the first to say, 'That can't be Jesus. Everybody knows Jesus is white.'"[43] There has been some progress since 1982, but racial polarization and division remain to this day, and there is still a long way to go.

VI. Racial Campaign Appeals

In the 1982 congressional election held from the court-drawn 48 percent black VAP Second Congressional District, the victorious white candidate, Republican Webb Franklin, ran on the

[42] The numbers come from an unpublished May 29, 2001 study by Professor Allan Lichtman, who was the Chair of the History Department at American University. The numbers are based on a regression analysis that compares election outcomes in every precinct in the State with the racial demographics of the precincts.

[43] Melany Neilson, *Even Mississippi*, (Univ. of Alabama Press, 1989) at 86.

slogan, "He's one of us." The three-judge federal district court, in its subsequent 1984 decision, pointed out that this was an obvious racial appeal to the white majority:

> Evidence of racial campaign tactics used during the 1982 election in the Second District supports the conclusion that Mississippi voters are urged to cast their ballots according to race. This inducement to racially polarized voting operated to further diminish the already unrealistic chance for blacks to be elected in majority white voting population districts.[44]

The phrase "one of us" implies there is a "them." If a candidate, like Webb Franklin in 1982, says he is "one of us," he clearly means that his opponent is not, but instead is one of "them." The use of this in black-white campaigns — suggesting that "us" is one race and "them" is the other — is particularly unfortunate since it exploits racial divisions. Regrettably, this is not a thing of the past. The black incumbent Supreme Court Justice who reached office by appointment to a midterm vacancy, Justice James Graves, was opposed in his 2004 election by a white Rankin County Circuit Judge named Samac Richardson. Judge Richardson's campaign slogan, which adorned the front of his flyers, was "One of Us," the same words that the federal district court in Jordan v. Winter said were a racial appeal when used in 1982.

Other politicians have used similar tactics. Despite the fact that the governor and lieutenant governor in Mississippi do not run as a ticket, the successful gubernatorial candidate in the most recent election in 2003, current Governor Haley Barbour, used campaign literature to tie his opponent, Democratic incumbent Ronnie Musgrove, with the Democratic candidate for lieutenant governor, Barbara Blackmon. Ms. Blackmon is black. One of the direct mail pieces featured the headline, "If you think four years of Ronnie Musgrove have been bad, imagine what four years with Ronnie Musgrove and Barbara Blackmon would be like." This was accompanied by photographs of Musgrove and Blackmon, with the Blackmon photo in the more prominent position.

This trick of demonizing a black political figure and attacking an opponent by linking him to that figure was repeated in a special election held a few months later, in early 2004, for a state Senate seat. Incumbent Richard White pointed out in a flyer that his opponent "had a major fundraiser that was hosted by Barbara Blackmon." Others had hosted a number of fundraisers for his opponent but the only one chosen by White for the campaign literature was that of Ms. Blackmon, the black politician.

VII. The Deployment of Federal Observers

Section 8 of the Voting Rights Act authorizes the use of federal observers to monitor polling places on Election Day in jurisdictions certified by the federal courts or the attorney general. The repeated placement of federal observers in a particular area is some indication of the potential for discrimination in that area and the need for oversight and monitoring to ensure fairness at the polling place. In Mississippi, federal observers have been sent to various locations

[44] Jordan v. Winter, 604 F. Supp. at 813.

in the state to monitor elections on 540 separate occasions since 1966 - 250 times since the 1982 reauthorization.[45] Both figures are more than in any other state. In fact, Mississippi accounts for 40 percent of the overall elections to which federal observers have been sent since the 1982 reauthorization.[46]

Since 1982, observers were sent to 48 of the state's 82 counties. Many of these counties were the subject of repeat visits during that time period. For example, observers monitored 19 elections in Sunflower County, 17 in Noxubee County and 16 in Bolivar County since 1982.

VIII. The Battles over Dual Registration

Section 5 and Section 2 complement each other in a number of ways. For example, Section 5 is an important mechanism for protecting and maintaining progress achieved through Section 2. This is illustrated by the experience in Mississippi with dual registration.

The 1890 Mississippi Constitution was designed to minimize and ultimately eliminate the black vote. One of the statutory provisions passed in its wake two years later was a dual registration provision requiring voters to register separately for state and municipal elections. Over the better part of the next century, the Mississippi legislature maintained this dual provision, passing a revised version of it in 1984. Black voters filed a lawsuit and, in 1987, a federal district court struck down the requirement. The court held that the 1892 law was adopted for a racially discriminatory purpose and the 1984 revision had a discriminatory result, thus violating Section 2 of the Act.[47]

As a result of the federal court ruling, Mississippi moved to a unitary system where registration would allow a new voter to vote in all elections. However, that changed in 1995 when the state began implementing new procedures that it adopted to conform to the National Voter Registration Act (NVRA). Under those procedures, voters who registered under the terms of the NVRA would be eligible to vote only in federal elections and would have to register a second time under pre-existing state procedures in order to vote in other elections. Statistics indicated that blacks made up a majority of those registering pursuant to the NVRA. In addition, the state's Department of Human Services provided its mostly black public assistance clientele with only the NVRA registration forms, which registered a person only for federal elections, while the

[45] Each instance of monitoring in a particular location is counted separately. For example, if observers were sent to monitor eight different counties during a statewide election, this would be counted as eight separate observances. If observers were sent to two different municipalities to observe separate municipal elections in a single county on the same election day, it would be counted as two observances. Each particular election day is counted separately. If observers go to a particular county for both a primary election and again for the general election, these are two separate observances.

[46] National Commission on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act, 1982-2005,* pp. 59-61.

[47] *Operation PUSH v. Allain*, 674 F. Supp. 1245, 1249-1252 (N.D. Miss. 1987), aff'd 932 F. 2d 400 (5th Cir. 1991).

state's Department of Public Safety allowed driver's license applicants, most of whom are white, to use the state voter registration form, which enabled them to vote in all elections.[48]

Mississippi refused to submit its procedures for preclearance. It finally did so only under order from the U.S. Supreme Court in the Young v. Fordice case in 1997.[49] Once the procedures were finally submitted, DOJ objected, noting that the state had resurrected a form of the dual registration policy struck down by the federal court in Operation PUSH v. Allain. According to the DOJ objection letter, the new procedures had a retrogressive effect on black voting strength and were implemented and maintained under circumstances indicating improper racial considerations.[50] Only after DOJ objected did Mississippi return to the unitary registration system it had adopted after the Operation PUSH decision.

IX. The Efficacy of Litigation

As is clear from the cases cited here, litigation under Section 2 of the Act has played a role in the changes that occurred in Mississippi. But, it has only been a small part of the story. Objections issued under Section 5 have made a far bigger difference.

The experience with county boards of supervisors is a prime example. As mentioned earlier, the 127 black supervisors holding office today come from 67 different counties - 43 of which incurred one or more Section 5 objections of redistricting plans for supervisors. There were only two counties whose redistricting plans were changed solely as a result of reported Section 2 lawsuits without any Section 5 objections. There were some counties with a combination of Section 5 objections and Section 2 litigation but the objections were the dominant feature in changing the landscape of Mississippi politics in the counties. And, as mentioned earlier, the counties that voluntarily adopted non-discriminatory plans without any objection or litigation did so with an awareness that failure to do so would not only be illegal, but likely futile in light of the Section 5 preclearance procedure.

If Section 5 is abolished, litigation under Section 2 will not be sufficient to prevent the discriminatory voting changes that will occur in the absence of a preclearance requirement. The legal resources did not exist in Mississippi in the past 40 years to bring a lawsuit in lieu of every one of the 169 objections that have been issued, and they will not exist in the future. Voting rights litigation is expensive and time-consuming and there are not enough lawyers who practice in that area to carry the load. Certainly, a few lawsuits would be filed here and there, but without the mechanism of Section 5 in place, the field will be open for a resurgence of discriminatory voting changes that the legal process will be unable to control.

X. Conclusion

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[48] Section 5 objection letter, September 22, 1997.

[49] 520 U.S. 273 (1997).

[50] Section 5 objection letter, September 22, 1997.

The phrase is often repeated: "Those who cannot remember the past are condemned to repeat it."[51] No place more than Mississippi has been torn by slavery, by the lost promise of emancipation after the Reconstruction period, by the resurgence of racist power in the latter part of the 19th century and most of the 20th, and by the legacy of poverty and racial separation that still exists. While people's behavior and people's hearts can change over time, vigilance is required to ensure that laws and structures remain in place to prevent us as a society from turning back to the worst impulses of the past. Occasional flashes of those impulses illustrate the need for that vigilance. Important changes have come to pass in Mississippi in the last 40 years - changes due in large part to the mechanisms of the Voting Rights Act, particularly the preclearance provision of Section 5. But like the gains that were washed away after the nation abandoned the goals of Reconstruction in 1876, the progress of the last 40 years is not assured for the future.

The state of Mississippi has come a long way, but still has a long way to go. This is not the time to abandon the law that has been more important than any other in the march of progress since 1965.

[51] George Santayana, Life of Reason, ch. 12 (1905-6).

APPENDIX TO THE STATEMENT OF WADE HENDERSON, "VOTING RIGHTS IN NORTH CAROLINA, 1982–2006," A REPORT OF RENEWTHEVRA.ORG

VOTING RIGHTS IN NORTH CAROLINA 1982-2006

ANITA S. EARLS, EMILY WYNES, LEEANNE QUATRUCCI[1]

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INTRODUCTION TO THE VOTING RIGHTS ACT

North Carolina's experience since the reauthorization of the Voting Rights Act in 1982 has been a mixed one of slow progress, setbacks and new challenges. Only 40 of the state's 100 counties are covered by Section 5 of the Act,[2] resulting in greater protections for some areas of the state. While many of the gains in minority representation at all levels have come about as the result of litigation under Section 2 of the Act, Section 5 has arguably had the greatest impact in the state because numerous objections have prevented the implementation of election changes that would have made it harder for black voters to participate in elections. Indeed, the ability of Section 5 preclearance to protect and thereby reinforce Section 2 gains has been an important part of the minority voting rights story in North Carolina.

Of the counties that are covered, most are rural counties in the eastern part of the state. Indeed, North Carolina's two largest cities, Charlotte and Raleigh, are not in covered counties. Durham and Winston-Salem are also not covered. Thus, it is remarkable that even though so few of the state's citizens are covered by Section 5, there have been forty-five objection letters issued since 1982 relating to an even greater number of changes in voting practices and procedures.[3] Of those 45 objection letters, ten involved multi-county or statewide changes, including state redistricting plans, changes relating to the election of judges, and proposed delays in implementing mail-in registration procedures.

There are ten instances of North Carolina Section 5 submissions being withdrawn from consideration since 1982 - five of them since 2000.[4] This is a strong indication of the beneficial effect of Section 5 review short of the Department of Justice issuing a formal objection. In at least one instance, the submission related to subsequent attempts by a local jurisdiction to modify an election method that had been put in place following litigation under Section 2 of the Voting Rights Act. The Department of Justice, by raising questions about the proposed change, was able to prevent the dismantling of a system that gave minority voters an opportunity to elect candidates of their choice and, thereby, preserved the gains obtained through earlier litigation, without the need for the original plaintiffs to return to court.[5]

It is also clear from recent testimony by local activists that election officials in covered jurisdictions do consult with representatives of the local NAACP or other African-American leaders in the community before changing polling places or making other election-related changes.[6] Motivated by the fact that any change will be reviewed in Washington, local officials are more conscious of the impact that such changes may have on the ability of black voters to participate in elections. Although prior to 1982 there was significant non-compliance with

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[2] 28 C.F.R. pt. 51, appendix. For convenience, the North Carolina counties covered by Section 5 and their dates of coverage are listed in Appendix 1 to this report.

[3] A list of objections since 1982 is contained in Appendix 2; Appendix 3 contains a detailed summary of each objection. One objection letter may relate to several changes that were contained in a single submission.

[4] See Appendix 4 for a list of submissions from North Carolina that have been withdrawn and the date they were withdrawn.

[5] *See* Moore v. Beaufort County, 936 F.2d 159 (4th Cir. 1991) and Appendix 4, submission No. 2001-4063.

[6] Testimony of Bobbi Taylor of Yanceyville, North Carolina, at a Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, North Carolina A&T University, Greensboro, North Carolina, November 14, 2005; transcript on file with the UNC School of Law Center for Civil Rights, at pages 41-42.

Section 5's preclearance requirement,[7] local election officials in the covered counties are now generally in favor of keeping the process in place.[8]

There has been extensive voting rights litigation since 1982.[9] In recent years significant state court litigation has examined the interaction between state constitutional provisions, Sections 2 and 5 of the Voting Rights Act, and their implications for minority voting rights.[10] North Carolina has the dubious distinction of being the state that produced both the *Thornburg v. Gingles*[11] decision in 1986, which held that the state legislature unlawfully diluted the voting strength of minority voters in its legislative redistricting plan following the 1980 Census, and the *Shaw v. Reno*[12] litigation in the mid-1990s, which held that the state legislature violated the equal protection rights of white voters by creating non-compact majority-minority Congressional districts. There continues to be considerable controversy over redistricting, voter registration, provisional balloting and minority voter intimidation - all in a state where racially polarized voting has not significantly decreased since the *Gingles* decision.

Before examining the details of Section 5 objections since 1982, Section 2 litigation and the barriers that African-American and Latino voters in North Carolina continue to face, it is important to review the history of discrimination in voting in this state and to understand the current socio-economic factors that create the context for current minority political participation.

I. Discrimination in Voting in North Carolina [13]

A. Prior to 1982

Even after enactment of the Fifteenth Amendment to the Constitution in 1870, which gave all men, regardless of race, color or previous condition of servitude the right to vote, many states continued to use various methods to prevent people of color from voting, including literacy tests, poll taxes, the disenfranchisement of former inmates, intimidation, threats and even physical violence.[14] In North Carolina, African-American political activity was suppressed at every level.[15] Only 15 percent of North Carolina's African Americans were registered to vote in 1948, and only 36 percent in 1963.[16] It was virtually unheard of for an African American to attempt to

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[7] *See* William Keech and Michael Sistrom, *North Carolina, in* Quiet Revolution in the South 162 (Chandler Davidson and Bernard Grofman eds. 1994) [hereinafter "Keech & Sistrom"].

[8] *See The Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 109th Cong. (2005) (Supplemental Statement of Anita Earls), attached hereto as Appendix 5.

[9] See Appendix 6 for a list of all federal court voting rights litigation in North Carolina since 1982 and Appendix 7 for detailed summaries of each case.

[10] *See, e.g., Stephenson v. Bartlett,* 582 S.E. 2d 247 (N.C. 2003); *Pender County v. Bartlett,* No. 04-696 (Wake Co. Sup. Ct. Dec. 2, 2005).

[11] 478 U.S. 30 (1986).

[12] 509 U.S. 630 (1993).

[13] Appendix 5 contains a more extensive review of pre- and post-1982 problems and incidents of discrimination in North Carolina.

[14] J. Morgan Kousser, "A Century of Electoral Discrimination in North Carolina" in *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* (1999).

[15] Id.

[16] Id. at 245.

run for political office.[17] In fact, no African-American person was elected to the North Carolina General Assembly from 1900 until 1968.[18]

In 1965, Congress passed the Voting Rights Act (hereinafter VRA).[19] The VRA primarily protected the right to vote as guaranteed by the Fifteenth Amendment, but it was also designed to enforce the Fourteenth Amendment and Article 1, Section 4 of the Constitution.[20] The VRA succeeded in removing some of the direct and indirect barriers to voting for African Americans. In fact, after enactment of the VRA, African-American voter registration in North Carolina reached 50 percent.[21]

Prior to 1982, the VRA was amended three times. The 1970 amendments instituted a nationwide, five-year ban on the use of tests and devices as prerequisites to voting.[22] In 1974, the first two black state senators, John W. Winters and Fred Alexander, were elected.[23] In 1975, the ban on literacy tests was made permanent and the coverage of the act was broadened to include members of language minority groups.[24] In 1980, African-American voter registration in North Carolina was 52 percent and, by 1990, the statewide proportion of eligible blacks registered was 63 percent.[25]

B. 1982 to the Present

In 1982, VRA amendments made it clear that proof of intent to discriminate was not required for a claim under the Act.[26] These amendments were necessary to strengthen and improve the VRA, but they did not immediately result in greater rates of African-American voter registration in this state.[27] In 1985, only 56.5 percent of eligible African-American voters were registered to vote.[28]

In 1986, in *Thornburg v. Gingles,*[29] the Supreme Court upheld the constitutionality of the new Section 2 language of the Voting Rights Act. In this landmark decision, the Court concluded that "North Carolina had officially discriminated against its black citizens with respect to their exercise of the voting franchise from approximately 1900 to 1970 by employing at different times a poll tax, a literacy test, a prohibition against bullet (single-shot) voting, and designated

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[17] Id.
[18] Keech and Sistrom, supra note 6.
[19] Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971,1973 to 1973bb-1 (1996).
[20] Williamson, "The 1982 Amendments to the Voting Rights Act: A Statutory Analysis of the Revised Bailout Provisions," 62 Wash. U.L.Q. 1 (1984).
[21] Id. at 246.
[22] Act of June 22, 1970, Pub. L. No. 91-285, §§ 2-5, 84 Stat. 314, 315 (codified as amended at 42 U.S.C. § 1973b (1996)).
[23] North Carolina Legislative Black Caucus, "North-Carolina African American Legislators 1969 – 2005."
[24] Act of Aug. 6, 1975, Pub. L. 94-73, Title II, §§ 203, 206, 207 89 Stat. 400, 401-02(codified as amended at 42 U.S.C. §§ 1973(a), 1973b(f), 1973d, 1973k, 1973l(c)(3)).
[25] Keech and Sistrom, supra note 6 at 161.
[26] Act of June 29, 1982, Pub. L. 97-205, § 3; 96 Stat. 131, 134 (codified as amended at 42 U.S.C. § 1973 (a) (1996)).
[27] J.E. Hill, "Racial Diversity, Voter Turnout, and Mobilizing Institutions in the United Sates," *American Politics Quarterly* (Fall 1999).
[28] Id.
[29] 478 U.S. 30 (1986).

seat plans for multimember districts."[30] The court observed that even after the removal of direct barriers to black voter registration, such as the poll tax and literacy test, black voter registration remained relatively depressed; in 1982 only 52.7 percent of age-qualified blacks statewide were registered to vote, whereas 66.7 percent of whites were registered.

In 1989, the number of African Americans in the state legislature increased to nineteen – at that time, the highest number of black legislators in the state's history.[31] Subsequently, the number of African-American elected officials continued to grow.[32] Currently, there are twenty-six black legislators, six senators and twenty representatives, representing 14 percent of 170 members of the General Assembly.[33] The average (mean) representation over all sessions is fifteen black members or 8 percent.

C. Current Socio-Economic Factors Affecting the Ability of African Americans to Vote

The VRA, when taken in tandem with the broader social and economic experiences of African-American voters, has been insufficient to remedy all the effects of voting discrimination.[34] Despite the VRA, African Americans are still experiencing the socio-economic consequences of past discrimination that critically impedes their political participation.[35]

Today, African Americans comprise more than 21.6 percent of North Carolina's total population.[36] The 2000 Census counted 1,738,000 residents of North Carolina who reported their race as African American alone and another nearly 19,000 who reported African American in combination with another race.[37] The African-American population of North Carolina has increased by approximately18 percent since 1990.[38]

Although the population of African Americans is growing, the percentage of African-American families living below the federal poverty level ($17,603 annual income for a family of four) in 1999 was 22.9 percent, compared to 8.4 for whites.[39] Approximately 42 percent of African-American families were headed by females, compared to 8 percent for white families.[40] Thirty-five percent of the families headed by African-American females lived in poverty.[41]

Even more disturbing is the fact that more than 60 percent of African-American adults

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[30] Id.
[31] North Carolina Legislative Black Caucus, supra note 22.
[32] Joint Center for Political and Economic Studies, "Black Elected Officials: A Statistical Summary," (2001).
[33] Id.
[34] Kousser, *supra* note 13.
[35] See Appendix 8, "Selected Socio-Economic Data: North Carolina", compiled May 5, 2003.
[36] Office of Minority Health and Health Disparities and State Center for Health Statistics. *Racial and Ethnic Disparities in North Carolina: Report Card 2003*. North Carolina Department of Health and Human Services, January 2003.http://www.schs.state.nc.us/SCHS/pdf/FinalReportCard.pdf.
[37] Id.
[38] Kousser, *supra* note 13.
[39] *See* Appendix 8.
[40] Id.
[41] Id.

(ages 25 and older) had a high school education or less, compared to 43 percent for whites.[42] Furthermore, the unemployment rate for African Americans was 2.6 times that for whites (10.3 percent vs. 3.9 percent in 2000),[43] leaving 19.0 percent of African Americans with no current health insurance and five times more likely than whites to use Medicaid.[44]

In sum, low income, low educational level and high unemployment are all factors associated with African Americans.[45] Moreover, low income, low educational level and high unemployment are all associated with a higher rate of health problems, ranging from mental disorders to physical aliments.[46] In fact, African-American children have a death rate 23 percent higher than the rate for white children.[47] All of these factors hinder the ability of African Americans to participate in political activities.

II. Section 5 Objections 1982 - Present

Four decades after its enactment, Section 5 of the Voting Rights Act remains one of the primary mechanisms for ensuring minority voters access to the political process. In North Carolina, Section 5 has prevented the implementation of numerous voting systems that would have diminished minority voters' ability to elect candidates of their choice. Section 5 has also guaranteed that, after minority voters have successfully brought Section 2 suits, cities and counties design systems that actually improve opportunities for minority residents to participate in the political process. Department of Justice Section 5 objection letters show that during the past two decades, voters in North Carolina's forty covered counties have relied on the preclearance provision to protect their right to vote in local, county and statewide elections.

Enforcement of Section 5 has continued to prevent the implementation of numerous election systems that would have cut minority voters out of the political process. Examples of dilutive practices Section 5 has protected against include: staggered terms, residency requirements, annexation of predominately white areas, majority vote and runoff requirements, unfair drawing of districts and maintenance of at-large voting. Residency requirements - systems under which the entire county or city votes for each seat but the candidate is required to reside in a particular area - have been especially common proposals used in this state to weaken black voting strength. Such requirements limit minority voters' ability to use single-shot voting to elect candidates of their choice. In the six-year period from 1982 through 1987, Section 5 enabled the Attorney General to interpose objections to residency districts in Beaufort, Bertie, Camden, Edgecombe, Guilford, Martin, Onslow, and Pitt Counties.

Section 5 has also forced county and local officials to implement fair voting systems in response to Section 2 suits. In Pasquotank County, for example, after black voters and the NAACP filed suit opposing Elizabeth City's at-large method of election, the city agreed in a consent decree to

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[42] Id.
[43] Id.
[44] Id.
[45] Gizlice Z, Ngui E. Relationships between health and perceived unequal treatment based on race: results from the 2002 North Carolina BRFSS Survey. *SCHS Studies*, No. 144. State Center for Health Statistics, North Carolina Department of Health and Human Services, September 2004. http://www.schs.state.nc.us/SCHS/pdf/SCHS144.pdf.
[46] Id.
[47] Id.

implement single-member districts.[48] Ultimately, however, the city adopted a plan with four single-member districts and four at-large residency districts. The plaintiffs to the suit opposed continued use of such extensive at-large voting because it unnecessarily diluted black voting strength. When the city applied for preclearance, the attorney general interposed an objection, explaining that the city had chosen a plan that would elect half the governing body "in a manner identical to that which the decree was designed to eliminate." Though the use limited at-large voting might be acceptable, the plan chosen contained "the very features that characterized the plan abandoned by the consent decree" and was adopted over readily available alternatives that would allow some at-large representation without "unnecessarily limiting the potential for blacks to elect representatives of their choice to office." The plan was, in fact, enacted "with knowledge of the disparate impact" it would have.[49] Elizabeth City has since adopted an election scheme with four wards that each elect two council members. There are currently four black members on the council.[50] In the case of Elizabeth City, and elsewhere, Section 5 has provided a long-term guarantee that the promises made in Section 2 suits are actually implemented.

In 1987, the Department of Justice acted under Section 5 to stop the Pitt County Board of Commissioners from implementing a plan "calculated to minimize minority voting strength."[51] That same year, Section 5 enabled the attorney general to halt the execution of changes to the method of electing the Bladen County Board of Commissioners, upon finding the Board had taken "extraordinary measures to adopt an election plan which minimizes minority voting strength."[52] As the following summaries of letters of objection from the Attorney General demonstrate, Section 5 has been repeatedly used in North Carolina to combat such invidious discrimination. Absent this protection, minority voters would have been repeatedly denied the opportunity to participate in elections and the promises of the Voting Rights Act would not have been fulfilled.

III. Voting Rights Act Cases 1982 - Present

North Carolina has been a major testing ground for the Voting Rights Act. With a history of racial segregation and violence, the state suffered well into the twentieth century from low rates of minority voter registration and it continues to endure voter intimidation and election schemes that effectively disenfranchise black voters. Since its inception in 1965, and especially since it was amended in 1982, the Voting Rights Act has been an effective tool for black voters to overturn election systems that dilute minority voter strength and prevent election of representatives of their choice.

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[48] *See NAACP v. Elizabeth City*, No. 83-39-CIV-2 (E.D.N.C. 1984).

[49] Letter from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, to M.H. Hood Ellis (March 10, 1986) (Section 5 objection letter regarding the Elizabeth City Council, Pasquotank County, North Carolina).

[50] Information on the current Elizabeth City City Council and method of election available at http://www.cityofec.com/.

[51] Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, to Michael Crowell (December 29, 1987) (Section 5 objection letter regarding the Pitt County Board of Commissioners, Pitt County, North Carolina)

[52] Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, to W. Leslie Johnson (November 2, 1987) (Section 5 objection letter regarding the Bladen County Board of Commissioners, Bladen County, North Carolina).

Both Section 5 and Section 2 have been used by individual black voters, minority advocacy groups including the NAACP and the attorney general to halt or reverse the implementation of undemocratic voting systems. Section 5 has been important in shaping both statewide election systems and local elections in the forty covered counties. Section 2 has enabled black voters to win suits by proving the existence of dilutive voting systems and, even more important, it has formed the basis for dozens of consent decrees, whereby election officials and black voters agreed to change the voting system to provide minority voters a meaningful opportunity to elect their preferred candidates.

Individual voters have used Section 5 to ensure that they have a voice in statewide and local elections. The preclearance requirement has also enabled the attorney general to interpose objections to changes in voting processes that would weaken minority voting strength. For example, plaintiffs have filed several suits related to the whole county provision of the state constitution, which provides that no county can be divided in the formation of a Senate or Representative district. If implemented strictly, this provision could have serious consequences for black voters in areas where voting countywide would dilute their voting strength. The Department of Justice, therefore, upon review, disallowed use of the whole county criterion where following it would result in failure to comply with the Voting Rights Act, and courts have affirmed that result.[53] Section 5 has also been used by black voters to obtain an injunction to prevent state election officials from changing the procedure for electing Superior Court Judges without obtaining preclearance for covered counties.[54]

At the local level, Section 5 has prevented counties and cities from changing their voting systems to dilute black voter strength. In *United States v. Onslow County*, the court stopped elections under a voting system that had been changed in 1969 but never precleared.[55] The court agreed with the Attorney General that the use of staggered terms would deny black voters an equal opportunity to elect candidates of their choice and it ordered the county to hold elections for all five seats on the Board of Commissioners. The county wanted to hold elections for only two of the seats whose members' terms would normally expire by the next election but the court found that because the staggered terms "deprived black voters of their best opportunity to elect a commissioner of their choice," it could not allow those elected under the unfair system to stay in office or "that evil would not be corrected." The suit ended with the removal of the unlawful voting system.

While Section 5 has helped prevent the enactment of dilutive voting systems, Section 2 has enabled black voters to remedy problematic voting systems already in place. North Carolina provided the first major test case for the Supreme Court of the 1982 amendments to Section 2, which made clear that a showing of purpose to dilute black voting strength was not required. In *Thornburg v. Gingles*, the Court articulated a test by which Section 2 claims would be

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[53] Cases brought under Section 5 related to the whole county provision include: *Bartlett v. Stephenson*, 535 U.S. 1301 (2002) (where the Supreme Court refused to issue a stay to applicant state election officials seeking to invalidate the holding by the Supreme Court of North Carolina in *Stephenson v. Bartlett*, 355 N.C. 354 (2002)); *Cavanagh v. Brock*, 577 F. Supp. 176 (E.D.N.C. 1983); *Sample v. Jenkins*, 5:02-cv-383 (E.D.N.C. 2002); *Thornburg v. Gingles*, 478 U.S. 30 (1986).

[54] *See Haith v. Martin*, 618 F. Supp. 410 (E.D.N.C. 1985).

[55] *United States v. Onslow County*, 638 F.Supp. 1021 (E.D.N.C. 1988).

evaluated.[56] This test has since been used to evaluate voter dilution claims in North Carolina and nationwide and has provided black voters with a means of effecting change.

In North Carolina, the significance of Section 2 is clear. In Halifax County, a change in the voting system allowed voters to elect the first black county commissioners of the twentieth century.[57] In Vance County, a Section 2 suit resulted in the first ever election of a black woman to the County Board of Commissioners.[58] In the Town of Benson, with a population that was over 32 percent black, a consent decree entered in a Section 2 suit enabled black voters to elect the first black town commissioner.[59] These cases are not aberrations but, rather, are generally representative of the outcomes of Section 2 cases.

Since the 1982 amendments to the Voting Rights Act, black voters have had regular success in bringing Section 2 suits. The majority of those suits have been voluntarily terminated when the parties reached an agreement to change the voting system. The most common solutions adopted in consent decrees are the removal of staggered terms and the creation of voting districts, both of which limit the effects of white bloc voting and increase black voters' opportunity to elect preferred candidates. Other changes have included the elimination of run-off elections and establishing longer terms to reduce the resource strain of frequent elections.

As the attached case summaries demonstrate,[60] the Voting Rights Act has unquestionably benefited black voters in North Carolina. Even in counties where black citizens comprise nearly half the population, black voters have relied on Section 2 and Section 5 to remedy the systemic denial of voting rights. And yet, the work of the Voting Rights Act remains incomplete. In Onslow County, for example, where staggered elections were halted, the at-large method of voting still prevents black voters from electing preferred candidates. No black individual currently sits on the Board of Commissioners.[61] In Cumberland County, black voters were successful in bringing a Section 2 suit to change the method of election from at-large to a mixed district/at-large system but could not obtain a pure district system as they hoped. As the plaintiffs anticipated, black candidates have been successful in black majority districts but the at-large seats are occupied only by white members.[62]

In North Carolina, the Voting Rights Act continues to be necessary as a means for black voters to achieve equal opportunity in voting and, in those areas where greater equality has been obtained, to prevent a rollback of such advances.

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[56] *Thornburg v. Gingles*, 478 U.S. 30 (1986).
[57] *See Johnson v. Halifax County*, 594 F. Supp. 161 (1984 E.D.N.C.); information on the current Halifax County Board of Commissioners available at http://www.halifaxnc.com/board.html.
[58] *See Ellis v. Vance County*, 87-28-CIV-5 (E.D.N.C. 1987), information on the current Vance County Board of Commissioners available at http://www.vancecounty.org/.
[59] *See Johnson v. Town of Benson*, 88-240-CIV-5 (E.D.N.C. 1988); information on the current Town of Benson Commissioners available at http://www.townofbenson.com/government/commissioners.cfm.
[60] Appendix 7.
[61] *See United States v. Onslow County*, 638 F.Supp. 1021 (E.D.N.C. 1988); information on the current composition of the Onslow County Board of Commissioners available at http://www.co.onslow.nc.us/boc/index.htm.
[62] *See Fayetteville, Cumberland County Black Democratic Caucus v. Cumberland County*, 927 F.2d 595 (4th Cir. 1991); information on the current Cumberland County Board of Commissioners available at http://www.co.cumberland.nc.us/commissioners.html.

IV. Current Barriers to Effective Political Participation by Minority Voters

Current problems facing minority voters in this state range from allegations of voter intimidation to a lack of assistance for disabled voters.[63] Research surrounding the 2000 elections documented a multitude of problems, many of which disproportionately affect minority voters such as poor voting equipment, confusing ballots, elimination of voters' names from voter registration lists, intimidation of voters at the polls and overall lack of funding for boards of elections.[64] These problems continue to plague North Carolina's elections. In 2002, North Carolina did not count 3.3 percent of its votes as a result of several problems, including the refusal of some polling officials to provide challenged voters with provisional ballots and the purging from registration rolls of names of voters who had not voted since 1998.[65] Other documented problems have included ex-felons receiving incorrect information about their right to vote and polling sites being moved with insufficient notice.[66]

Such voting irregularities generally affect African-American voters in greater percentages than white voters.[67] Today, despite the VRA, it is still difficult for African-American citizens to register, vote and elect candidates of their choice.[68] In North Carolina, African-American voters also report voter intimidation at an alarming rate.[69] Voter intimidation is not a relic of the past but, rather, a strategy used with disturbing frequency in recent years. One stark illustration occurred in the context of the hotly contested Jesse Helms-Harvey Gantt U.S. Senate race, which involved the first African-American senatorial candidate with a realistic chance of success. In 1990, on the eve of the general election, 125,000 African-American voters were mailed postcards headed "Voter Registration Bulletin" that incorrectly stated that they could not vote if they had moved within 30 days of the election. As a result, many black voters were confused about whether or not they could vote. The Justice Department obtained a consent judgment banning the practice in *United States v. North Carolina Republican Party.*[70]

African-American voters are not the only minority group to be targeted for intimidation campaigns. In the weeks leading up to the November 2004 general election, the sheriff of Alamance County publicly announced that he would be sending deputies to the homes of every new registrant with an Hispanic surname in the county, to inquire whether they are citizens. He promised that illegal immigrants would be reported to the Department of Homeland Security

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[63] UNC Center for Civil Rights, "Final Report: 2004 Election Protection in North Carolina," March 31, 2005.
[64] Democracy South, "Voting Rights in the South," at www.democracy south.org/improving rights-disenfranchisment.html. *See also* Jo Becker and Dan Keating, "Problems Abound in the Election System," *Washington Post* (Fall 2004).
[65] Memorandum from Voter Task Force- Mecklenberg Voter Coalition, "Recommendations to correct irregularities and confusion in the voting process in the November 2000 General Election," March 28, 2001.
[66] Institute for Southern Studies – Voting Rights Project, "Protecting the Integrity of North Carolina's Elections: Top Ten Breakdowns and the Need for Election Protection."
[67] American Civil Liberties Union, "Reaffirmation or Requiem for the Voting Rights Act?" Public Policy Alert, May 1995, available at: http://archive.aclu.org/issues/racial/racevote.html
[68] Id. See also U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After, January 1975*; Cameron, Charles, David Epstein, and Sharyn O'Halleran. "Do Majority-Minority Districts Maximize Substantive Black Representation in Congress." *The American Political Science Review*, Vol. 90, No. 4 (December 1996), 794-812.
[69] Citizens' Commission on Civil Rights, "Voting Intimidation Continues," available at http://www.cccr.org/justice/issue.cfm?id=17
[70] 5:92-cv-00161 (E.D.N.C. 1992).

Immigration and Customs Enforcement (ICE). Sheriff Terry Johnson, after being contacted by officials from the Civil Rights Division of the Justice Department, told the local newspaper that he decided not to have his deputies seek out illegal aliens because he didn't have sufficient resources for such an operation. Johnson had sent a list of 125 Hispanics registered to vote in the county to ICE and said that the agency could only confirm that 38 were in the country legally. He assumed the remaining voters were either using false names or in the country illegally. Latino advocates were outraged because Sheriff Johnson's actions were making Latino citizens fearful of being harassed if they tried to vote.

There were also numerous problems documented during the 2004 general election, including the exclusion of voters' names from the rolls of precincts where they had properly registered and voters' inability to find proper polling places due to insufficient notice and signage.[71] Significant problems also arose with provisional ballots and absentee ballots. Alarmingly, reports from across the state recounted voter intimidation and lack of assistance to handicapped voters.[72]

One example of the type of barrier encountered by black voters in this state involves an incident in 2004. Student leaders at North Carolina Central University (hereinafter NCCU) in Durham decided that a march to an early voting polling place would be a good way to honor and inspire their community. "Marching is unique in the African American tradition," said D'Weston Haywood, an NCCU senior and president of the university's Student Government Association. "We thought it would be special and symbolic if we marched to the polls to cast our votes."[73]

The NCCU student leaders worked diligently to plan and prepare for this march. The students contacted the board of elections on several occasions to give them notice of the march. The students also requested that the board utilize extra staff to assist with the expected crowd of eager young voters.

The October 14th march drew approximately 1,400 students, faculty and citizens who walked two miles from NCCU's campus to an early voting site at Hillside High School.[74] When the students arrived at the site, they waited for hours in long lines of over a hundred voters. Despite NCCU's notice, the board of elections clearly made no attempt to prepare for this crowd. As a result, hundreds of voters were deterred from voting.

The action, or more appropriately inaction, of the board of elections is unexplainable. Indeed, there was plenty of time for preparation and planning. Furthermore, even if adding more staff and other reasonable preparation was not feasible, the board of elections could have easily warned or informed the student leaders. As it turned out, hundreds of students spent hours trying to cast their vote and many never cast a vote at all. This was discouraging, and even

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[71] Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, North Carolina A&T University, Greensboro, North Carolina, November 14, 2005; transcript on file with the UNC School of Law Center for Civil Rights.
[72] Id.
[73] Testimony of Deondre Ramsey, Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, Shaw University, Raleigh North Carolina, January 26, 2006, transcript on file with the UNC School of Law Center for Civil Rights, at pp. 51-55.
[74] News accounts of the incident gave estimates that varied from 1,000 to 1,800 students, faculty and citizens.

demoralizing, for the students and the leaders. As one student said, "My faith in the electoral process is completely diminished."

Another example of barriers to voting being encountered by African-American voters occurred in 2002 and resulted in the Duplin County Board of Elections staff being removed following a number of allegations of fraudulent and criminal behavior. The allegations included altered signatures, unauthorized voter address changes and voter intimidation at the polls.[75] For example, Mr. Jim Grant of Pender County reported the constant patrolling of a deputy sheriff's car during the early voting day in a primarily black neighborhood. The car reportedly "patrolled up and down the block for the entire day."[76]

Ms. Bobbie Taylor, president of the Caswell Count Branch NAACP, reported incidents "where on election day, the candidates – workers for the whites have been permitted to put up their tables, their tents, and whatever closer to the entrance of a polling place than we were allowed to."[77] In fact, as Ms. Taylor recounted, blacks were asked to move further away from the polling place. Black voters were also spoken to rudely and their questions were routinely dismissed.

Reverend Savalas Squires testified, at the pubic hearing held in Greensboro, that Davie County had experienced problems with voter intimidation. He recounted how black youth at Davie High School were given false information regarding when they could cast their vote. In Scotland County, black voters were not being allowed to choose who could assist them at the polls on Election Day. Instead, they were told that they did not have the right to assistance. In Forsyth County, black voters were turned away and told that polling places were out of provisional ballots.

CONCLUSION

Section 5 has been an extremely effective measure to prevent the implementation of changes in voting practices and procedures that would unfairly disadvantage minority voters. It has served as a safety net to make sure that when plaintiffs are successful in Section 2 litigation and they obtain court orders changing the method of election, new redistricting plans are not adopted following the next census or, in the case of cities, following a substantial annexation, that essentially negate the hard-won gains from litigation. Effective implementation of the preclearance requirement has made local jurisdictions more sensitive to the impact of proposed changes on minority voters. The North Carolina experience demonstrates the powerful deterrent effect of Section 5. At this time, the failure to reauthorize the expiring provisions of the Voting Rights Act would have devastating consequences for this state's minority voters.

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[75] Democracy South, "Voting Rights in the South," available at: http://www.democracysouth.org/improving/rights-disenfranchisement.html
[76] Raleigh Hearing, *supra* note 72.
[77] Greensboro Hearing, *supra* note 70.

Appendix 1 - Section 5 Covered Jurisdictions in North Carolina

Covered Counties in States Not Covered as a Whole			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.

Source: 28 CFR pt. 51, appendix, also available at: www.usdoj.gov/crt/voting/28cfr/51/apdx_txt.htm.

Appendix 2 - Section 5 Objections in North Carolina, 1982 – Present

A. Objection Letters

State (81-1784)	Chapter 1130 (1981)--house reapportionment	1-20-82
Guilford County (81-1793)	At-large to residency district elections	3-1-82
State (82-2368)	S.B. No. 1 and H.B. No. 1--Senate and House redistricting	4-19-82
Greensboro (Guilford Cty.) (81-1797)	Three annexations	6-21-82 Withdrawn 4-8-83 upon change in method of election
New Bern (Craven Cty.) (82-2359)	Annexation	12-21-82 Withdrawn 9-22-83 after change in method of election
Windsor (Bertie Cty.) (82-2345)	Establishment of residency districts for the election of commissioners and to the districting plan	3-28-83
Edgecombe County School District (83-2606)	Establishment of residency districts and the election of six members from residency districts	1-16-84
Rocky Mount (Edgecombe and Nash Ctys.) (83-2608)	Eleven annexations	2-21-84 Withdrawn 5-9-85 upon change in method of election
Halifax County (83-2633)	1971 N.C. Sess. Laws 681, which readopted the existing at-large election system with an increase in the number of county commissioners from five to six	5-16-84
Robeson County (84-3124)	Consolidation of voting precincts and the elimination of the South Smiths polling place	9-21-84 Withdrawn 1-28-85
State (84-3093)	House Bill 2, Chapter 1 (1984)--reapportionment of House Districts 8 and 70	10-1-84
Cumberland County School District (84-3052)	Implementation schedule for the consolidated school district	4-8-85
Fayetteville (Cumberland Cty.) (84-3047)	Twenty-nine annexations	4-29-85 Withdrawn 3-3-86 upon change in form of government

Elizabeth City (Pasquotank Cty.) (85-3069)	Method of election--four single-member districts and four at large with residency districts; districting plan and implementation schedule	3-10-86
Wilson County (85-3137)	Method of election and districting plan	3-10-86
State (85-3050)	Chapter 262, H.B. No. 367 (1965)--numbered posts for superior court judges; Chapter 997, S.B. No. 557 (1967), and Chapter 1119, S.B. No. 125 (1977)--staggered terms for superior court judgeships in Districts 3, 4, 8, 12, 18, and 20	4-11-86
Pitt County School District (85-3077)(85-3078)	Chapter 2, H.B. No. 29 (1985)--which provides for the consolidation of the Pitt County School District and the Greenville City School District, the appointment of a twelve-member interim board, the election of a twelve-member permanent board, and the method of election (eight residency districts and one multi-member residency district electing four members by a plurality vote to staggered, six-year terms of office); Chapter 495, H.B. No. 1397 (1985)--which provides for the increase from twelve to fifteen appointed members to the interim consolidated board; Chapter 360, H.B. No. 769 (1971)--which changed the appointed Pitt County board to a nine-member board elected at large on a nonpartisan basis from residency districts with a plurality vote requirement to six-year, staggered terms, and specified the election schedule	5-5-86
Onslow County School District (85-3066)	Chapter 525, H.B. No. 1284 (1977)--residency districts	5-12-86
State (86-3915)	Schedule for holding special primary elections for a superior court position in District 18	5-23-86
Martin County School District (86-3896)	Chapter 380 (1971)--residency district requirement	10-27-86
Wayne County (87-3606)	Chapter 476, S.B. No. 303 (1965)--staggered terms (board of commissioners)	11-4-86
Onslow County (87-3528)	Chapter 151, H.B. No. 311 (1969) and Chapter 167, S.B. No. 209 (1969) --staggered terms (board of commissioners)	7-6-87

Beaufort County School District (86-3789)	Chapter 210 (1971)--residency districts	10-26-87
Bladen County (87-3340)	August 20, 1987, resolution which provides for a change in the method of electing the board of commissioners from at large to three double-member districts and one at-large, the districting plan, implementation schedule, and the increase in the size of the board from five to seven members	11-2-87
Camden County School District (87-3343)	Chapter 173, H.B. No. 490 (1977)--residency districts	11-9-87
Anson County (87-3322)	Chapter 216 (1977)--majority vote requirement	12-7-87
Pitt County (87-3544)	Chapter 432 (1987)--method of election	12-29-87
Granville County School Dist. (87-3443)	Change from at-large to single-member districts and the districting plan	8-1-88 Withdrawn 12-29-88
Lee County (89-3028)	Chapter 195, H.B. No. 595 (1989)--permits changes in method of election for county board of commissioners; June 26, 1989, Resolution -- increases number of commissioners from five to seven; changes method of election from at large by majority vote and staggered terms to four commissioners elected from single-member districts and three commissioners elected at large, all by plurality vote for staggered terms 4-3, with three at-large seats elected concurrently without numbered posts; a districting plan; an implementation schedule; and procedures for selecting party nominees in the event of a tie in the primary	12-4-89 Withdrawn 1-8-90
Ahoskie (Hertford Cty.) (89-3021)	Three annexations (Ordinance Nos. 1989-02, 1989-03, 1989-04)	12-18-89
Perquimans County (89-3064)	Act No. 104 (1989)--method of election (elimination of residency requirement and adoption of plurality vote requirement for primary elections, and method of staggering terms)	4-9-90
Perquimans County School District (89-4026)	Act No. 105 (1989)--method of election (elimination of residency requirement and method of staggering terms)	4-9-90

Anson County School District (89-2898)	Chapter 288 (1989)--at-large election with numbered positions and runoff requirement for two members	5-29-90
Franklin County (89-2966)	Chapter 306, H.B. No. 555 (1967)--majority-vote requirement in primary elections for county commission	6-28-90
Anson County School District (91-1241)	Chapter 33 (1991)--method of election (two at-large positions and the 40-percent plurality requirement for nomination for those positions)	9-23-91
State (91-2724; 91-3267)	1991 redistricting for the North Carolina State House, Senate and Congressional plans	12-18-91
State (91-3885)	Change in the length of the term of the judge elected in 1990 to fill a vacancy in multimember superior court District 3A thus creating staggered terms for the judgeships in that district	4-21-92
State (93-1943)	Delaying implementation of mail-in registration	11-16-93
State (93-2818-2820)	Six additional district court judges (in Districts 1, 3A, 8, 12, 18, and 20)	2-14-94 Withdrawn 5-30-95, as to District 1 judgeship; withdrawn 1-11-96, as to remaining judgeships
Laurinburg (Scotland Cty.) (94-0771)	Annexation (Ordinance No. 0-1994-01)	4-25-94 Withdrawn 6-23-94
Mt. Olive (Wayne Cty.) (94-1403)	Four districts, two at-large method of election, including an increase from five to six commissioners	9-13-94
State (95-2922)	Chapter 355 (1995)--prohibits state legislative and Congressional district boundaries from crossing voting precinct lines unless the districts are found in violation of Section 5 of the Voting Rights Act	2-13-96
Camp Butner Reservation (Granville Cty.) (96-3224)	At-large method of election and staggered terms	2-3-97
Harnett County School District (2001-3769)	2001 redistricting plan (board of education)	7-23-02
Harnett County (2001-3768)	2001 redistricting plan (board of commissioners)	7-23-02

Objections by County and Type of Change, 1982 to Present

Year	Action	County	Town	Election body/change objected	Reason for objection
1987	partial objection	Anson	N/A	Board of Education	runoff requirement
1988	objection	Anson	N/A	Board of Education	runoff requirement
1990	objection	Anson	N/A	Board of Education	at-large elections
1991	objection	Anson	N/A	Board of Education	at-large elections
1992	objection	Anson	N/A	Board of Education	at-large elections
1987	partial objection	Beaufort	N/A	Board of Education	residency requirement
1983	objection	Bertie	Windsor	Town Commission	residency requirement
1987	objection	Bladen	N/A	County Commissioners	entire plan problematic
1987	objection	Camdem	N/A	Board of Education	residency requirement
1982	objection	Craven	New Bern	Annexation	dilution of minority voting strength
1985	objection	Cumberland	Fayetteville	Consolidation of Cumberland County and Fayetteville City	delayed implementation
1985	objection	Cumberland	Fayetteville	Annexation	dilution of minority voting strength
1986	no objection, prior objection withdrawn	Cumberland	Fayetteville	City Council	N/A
1984	partial objection	Edgecombe	N/A	Board of Education	residency requirement
1984	objection	Edgecombe, Nash	Rocky Mount	Annexation	dilution of minority voting strength
1985	no objection, prior objection withdrawn	Edgecombe, Nash	Rocky Mount	City Council	N/A
1990	objection	Franklin	N/A	Board of Commissioners	majority vote requirement

Year	Action	County	Town	Election body/change objected	Reason for objection
1988	objection	Granville	N/A	Board of Education	entire plan problematic
1988	prior objection withdrawn	Granville	N/A	Board of Education	N/A
1997	partial objection	Granville	Camp Butner Reservation	Reservation Advisory Council	at-large elections, staggered terms
1982	objection	Guilford	N/A	Board of Commissioners	residency requirement
1982	objection	Guilford	Greensboro	Annexation	dilution of minority voting strength
1983	no objection, prior objection withdrawn	Guilford	Greensboro	City Council	N/A
1984	partial objection	Halifax	N/A	Board of Commissioners	expansion of Commission
2002	objection	Harnett	N/A	Board of Commissioners, Board of Education	discrimination in drawing districts
1989	objection	Hertford	Ashokie	Annexation	dilution of minority voting strength
1989	provisional objection	Lee	N/A	Board of Commissioners	request for more materials
1990	prior objection withdrawn	Lee	N/A	Board of Commissioners	N/A
1986	partial objection	Martin	N/A	Board of Education	residency requirement
1986	partial objection	Onslow	N/A	Board of Education	residency requirement
1987	partial objection	Onslow	N/A	County Commissioners	staggered terms
1986	partial objection	Pasquotank	Elizabeth City	City Council	at-large elections
1990	objection	Perquimans	N/A	Board of Commissioners, Board of Education	entire plan problematic
1986	objection	Pitt	Greenville	Board of Education	entire plan problematic
1987	objection	Pitt	N/A	Board of Commissioners	at-large elections

Year	Action	County	Town	Election body/change objected	Reason for objection
1984	objection	Robeson	Smiths Township	Consolidation of precincts	elimination of minority polling place
1985	prior objection withdrawn	Robeson	Smiths Township	Consolidation of precincts	N/A
1994	objection	Scotland	Laurinburg	Annexation	dilution of minority voting strength
1994	no objection, prior objection withdrawn	Scotland	Laurinburg	City Council	N/A
1986	partial objection	Wayne	N/A	Board of Commissioners	staggered terms
1994	objection	Wayne	Mount Olive	Town Commission	entire plan problematic
1986	objection	Wilson	N/A	Board of Commissioners	discrimination in drawing districts
1982	objection	Statewide	N/A	State House of Representatives reapportionment	entire plan problematic
1982	objection	Statewide	N/A	Statewide redistricting plan	discrimination in drawing districts
1984	objection	Statewide	N/A	State House of Representatives reapportionment	discrimination in drawing districts
1986	partial objection	Statewide	N/A	Election of Superior Court Judges	numbered posts, staggered terms
1986	partial objection	Statewide	N/A	Election of Superior Court Judges	staggered terms
1991	objection	Statewide	N/A	Statewide redistricting plan	dilution of minority voting strength
1992	partial objection	Statewide	N/A	Terms of Superior Court Judges	staggered terms
1993	objection	Statewide	N/A	Mail-in voter registration	delayed implementation
1994	partial objection	Statewide	N/A	Redistricting for Superior and District Court Judge elections	numbered posts, other dilutive mechanisms
1995	prior objection withdrawn	Statewide	N/A	Creation of District 1 Judgeship	N/A
1996	prior objection withdrawn	Statewide	N/A	Creation of Judgeships for Districts 3A, 8, 12, 18 and 20,	N/A

Year	Action	County	Town	Election body/change objected	Reason for objection
1996	objection	Statewide	N/A	State districting guidelines	entire plan problematic

Appendix 4 - North Carolina Submissions Withdrawn
1982 to 2005

Submission #	County	Type of Change	Date of Withdrawal
2001-4063	Beaufort	Redistricting	16-Apr-02
1985-2944	Cleveland	Election Admin.	21-Mar-95
2001-3957	Craven	Redistricting	30-Jul-02
2001-1474	Edgecombe	Redistricting	19-Dec-01
1991-2011	Halifax	Redistricting	8-Aug-91
1990-3761	Martin	MOE, Districting	26-Jun-91
1994-3735	Northampton	Poll Place (changed)	3-Sep-96
1996-2641	Pitt	Annexations (5)	8-Oct-96
1999-3975	Rockingham	Stag Terms, Term Office, Impl. Sched.	20-Jun-00
2000-0815	Rowan	Majority Vote Requirement	9-May-01

Source: U.S. DOJ, Civil Rights Division, FOIA request

Appendix 5

Supplement to Testimony prepared for U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution
November 3, 2005

By
Anita S. Earls
Director of Advocacy, UNC Center for Civil Rights

On the Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose
Hearing Date: Tuesday, October 25, 2005

I. More Information Letters

During the course of my testimony I referred to a study of cases in which the Department of Justice has requested that jurisdictions provide more information about a particular submission. Here are the details: The National Commission on the Voting Rights Act obtained information concerning all "more information" letters written by the Department of Justice from 1982 through the end of 2004 under the Freedom of Information Act. Those records revealed that during that period, 501 proposed changes affecting voting were withdrawn by jurisdictions after receipt of a "more information" letter. In these instances Section 5 review by the Department of Justice resulted in the abandonment of potential voting changes with discriminatory impact or purpose before an objection was issued.

II. Discrimination in Voting in North Carolina, 1995 – Present.

A. Section 5 Objections. Only 40 of North Carolina's 100 counties are covered by Section 5 of the Voting Rights Act. Since 1997 the Department of Justice has issued two objections to proposed changes affecting voting but this vastly underestimates the impact of the Section 5 review process on the ability of black voters to have an opportunity to participate in elections. These two objections are relevant to illustrate that polarized voting is still prevalent in the state and that left to their own devices, local jurisdictions are likely to dilute minority voting strength.

The most recent objection was issued in July of 2002 when Harnett County submitted a redistricting plan for the county school board and board of county commissioners with no majority-black districts. The county's population is 22.6% black and the voting age population is 20.7% black. In 1989 the county was required to implement single-member districts with one majority-black district as a result of a consent decree entered in *Porter v. Steward,* No. 89-950 (E.D. N.C.). The Justice Department's investigation determined that the county's proposed plan was retrogressive because the previously majority-black district was reduced by six percentage points from 52.7% black to 46.6% black in total population and that the plaintiffs in *Porter* provided the County during the redistricting process with two illustrative plans demonstrating

that a more compact plan than the enacted plan could be drawn that would include a majority-black district. In addition, review of election returns demonstrated that voting patterns in the county continued to be racially polarized. *See* Letter to Dwight W. Snow, Esq. from J. Michael Wiggins, Acting Assistant Attorney General dated July 23, 2002 (Copy attached, available at: http://www.usdoj.gov/crt/voting/sec_5/pdfs/l_072302.pdf.)

The earlier objection was issued in February 1997 finding that an at-large method of election with staggered terms for an Advisory Council for the Camp Butner Reservation, a newly created local governing entity. Thirty-three percent of the Reservation's 2,063 registered voters in 1996 were black, and the Department looked to other elections in the same county to determine that no black candidate had ever been elected to the at-large Granville County Commission or School Board, even though blacks were 43 percent of the county's total population and numerous black candidates had run for those offices. Both the county commission and the school board had been sued previously under Section 2 of the Voting Rights Act. The Department had evidence that voting in the county was racially polarized. Thus, they concluded that the proposed at-large election system for the Camp Butner Reservation violated Section 2 and Section 5 of the Voting Rights Act and that the jurisdiction failed to meet its burden to demonstrate that the proposed change had neither a discriminatory purpose nor a discriminatory effect. *See* Letter to Susan K. Nichols, Esq. from Isabelle Katz Pinzler, Acting Assistant Attorney General dated February 3, 1997 (Copy attached, available at: http://www.usdoj.gov/crt/voting/sec_5/ltr/l_020397.pdf.)

While these objections are instructive, as noted above, Section 5 review has a significant deterrent effect that is less obvious but very important.

B. Efforts to Dismantle Majority-Black Districts. There is a disturbing and mostly quiet counter-revolution underway among local jurisdictions in North Carolina to dismantle majority-black districts and return to at-large election methods, or alternative districting schemes that do not include majority-black districts. Recently a number of counties and one city who were previously sued under Section 2 of the Voting Rights Act to require them to abandon at-large systems have filed motions seeking to dissolve the consent decrees or court orders that currently bind them. In the case of *Montgomery County Branch of the NAACP v. Montgomery County,* No. C-90-27-R, (E.D.N.C.), the plaintiffs were able to oppose the motion sufficiently that the County backed down and negotiated a settlement with them. The Court's Supplemental Order, issued July 2, 2003, provides a new method of election that moves from an 4-1 system, with one commissioner elected at-large, to a 3-2 system that retains one majority black district, but has two at-large seats. The Order also provides that the case will be dismissed after five years, thereby dissolving any court order that there must be a majority black district for the board of county commissioners. Montgomery County is not covered by Section 5 of the Voting Rights Act.

A similar motion has now been filed to terminate the Consent Order in *NAACP v. City of Thomasville,* No. 4:86CV291 (M.D. N.C.). In two other counties, Beaufort County and Columbus County, efforts are underway to dismantle court orders requiring majority-black districts but no motions have been filed in court.

This is a disturbing development. Under Section 5, the Department of Justice has the power to prevent retrogression even where Federal Judges are ready to throw out voting rights remedies. Without Section 5, there would be no other limit on jurisdictions that seek to eliminate majority black districts.

C. Out of Precinct Provisional Ballots in the 2004 Election. In February the State Supreme Court ruled that around 12,000 ballots cast on Election Day by voters outside their home precincts would not be counted. *James v. Bartlett,* No. 602P04-2, (N.C. February 4, 2005). The ballots under question were cast disproportionately by black voters. Statewide, the estimates are that 36% of the ballots cast out of precinct on election day were cast by black voters although they were just 18% of the electorate. In some counties the disparity was even greater. For example, 41% of Wake County's provisional ballots were cast by black voters. Many of these voters were never notified where to vote by the state, due to a backlog of new registrants. In addition, many voters were advised by local election officials that provisional ballots votes cast outside their home precincts would count. As Bob Hall from Democracy North Carolina notes, out-of-precinct voting "especially helps working class, young and minority voters. Our research shows that black voters cast more than one third of the state's out-of-precinct ballots, while less than one fifth of all votes in November's elections came from African-Americans." Black voters disproportionately live in low income neighborhoods without access to transportation or flexible work schedules that might allow them to get to their home precincts.[1] While this case was ultimately resolved by legislative action, Section 5 of the Voting Rights Act should be a bar to any change in voting rules that rejects a disproportionate number of ballots cast by black voters.

D. Election Protection Efforts in 2004. Election administration in this state continues to need improvement, particularly because polling place officials turn voters away without justification. Volunteer election protection workers in November, 2004 were able to intervene in numerous cases to rectify the situation, but many other incidents were not satisfactorily resolved on election day. Miscellaneous "dirty tricks", such as altering polling place registers to make it appear that black voters had already voted when they had not, and posting signs saying that voting would take place on Wednesday, November 5th, occurred in predominantly black precincts in various parts of the state.

In the Leadership Conference of Civil Right's February 2004 memo to the Department of Justice, Wake County and Scotland County in North Carolina were both mentioned as potential violators of voting rights standards. LCCR reported possible voter intimidation at Latino polling places and a concern that the Wake County Board of Elections would not inform Latino voters in the area of incomplete registration applications before the November elections. The Scotland County Board of Elections was in disputes with black activists because black voters were not being allowed to choose who could assist them at the polls on Election Day – another issue of potential voter intimidation.[2]

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[1] Bob Hall. "Voters Disenfranchised by N.C. Supreme Court." 11 Feb 2005 <http://minorjive.typepad.com/hungryblues/2005/02/voters_disenfra.html>

[2] Letter from Wade Henderson and Nancy Zirkin of LCCR to the Assistant Attorney General of the Civil Rights Division of the Department of Justice, 19 Oct 2004. <http://www.civilrights.org/tools/printer_friendly.html?id+25718&print+true>

E. Representation of Minority Interests in the North Carolina State Legislature. Attached to this statement is an expert witness report prepared by Kerry L. Haynie, PhD earlier this year for submission in a redistricting challenge currently pending in state court in North Carolina. He reports on the findings of his research on the North Carolina state legislature with two significant findings. First, a majority of African-American legislators introduced legislation concerning black interests in the three years he studied, and that at least twice as many African-American legislators did so than non-black legislators. This has important implications demonstrating that descriptive representation does translate into substantive representation for black voters. Second, he found that controlling for all other possible explanations, the perceptions by other legislators and by lobbyists of black legislators effectiveness was determined by race. In other words, black legislators were consistently rated as less effective than their white counterparts by their colleagues and by lobbyists.

III. Discrimination in Voting in North Carolina, 1982 – 1994.

A. Discrimination Affecting Ability of Blacks to Participate in Voting and Electoral Politics. The pervasive and persistent refusal of white voters in North Carolina to vote for black candidates has consistently operated to deny black voters an equal opportunity to elect candidates of their choice. Richard Engstrom's 1995 study of 50 recent elections in North Carolina in which voters have been presented with a choice between African-American and white candidates, including elections for the U.S. House of Representatives, statewide elections to high profile and low profile offices, and state legislative elections in both single-member and multi-member districts, found that 49 of them were characterized by racially polarized voting.

Black candidates ran for Congress in North Carolina in four elections during the 1980's. None was able to obtain enough white votes to win a primary. In 1982, Mickey Michaux ran in the Second Congressional District and received 88.55% of the black vote in the primary and 91.48% of the black vote in the run-off. In contrast, his support among white voters actually dropped slightly in the runoff, from 13.88% in the primary to 13.12% in the runoff. Ken Spaulding and Howard Lee, who ran in the Second and Fourth Congressional Districts in 1984 also were the clear choice of black voters. They received slightly higher percentages of the white vote than Michaux had, but not enough to win the Democratic Party nomination.

Every statewide election since 1988 where voters were presented with a biracial field of candidates has been marked by racially polarized voting. In all except two low-profile contests, racially polarized voting was sufficient to defeat the candidate chosen by black voters. Of every biracial state legislative district election since 1988, only one was not marked by racially polarized voting. The one exception was a 1992 multi-seat election in which Mickey Michaux received more white votes than two white challengers from the Libertarian Party. The polarized voting found in *Thornburg v. Gingles* is not a phenomenon of the past; it remains prevalent in the state today. Racial bloc voting still persists throughout the state with sufficient force normally to prevent the candidate of choice of black voters from being elected in both local and statewide elections. The choices of black voters and the hopes of black candidates continue to be frustrated by persistent racially polarized voting.

Elections since *Gingles* have involved campaign tactics deliberately and demonstrably designed to keep African-Americans from voting. Most significantly, in 1990, just days before the general election in which Harvey Gantt, an African-American, was running against Jessie Helms for U.S. Senate, post cards headed "Voter Registration Bulletin" were mailed to 125,000 African-American voters throughout the state. The bulletin suggested, incorrectly, that they could not vote if they had moved within 30 days of the election, and threatened criminal prosecution. Consent Order in *U.S. v. North Carolina Republican Party*, No. 91-161-CIV-5F (E.D.N.C.) (February 27, 1992), Tt. 1011. The postcards were sent to black people who had lived at the same address for years. As a result of the postcard campaign, black voters were confused about whether or not they could vote and some went to their local board of election office to try to vote there. Considerable resources were devoted to trying to clear up the confusion.

The most notorious examples of racial appeals in campaigns also come from the Gantt-Helms contest in 1990. Television ads which distorted Harvey Gantt's picture and voice, and others which were specifically designed to encourage racial stereotypes and fears had a dramatic impact on the 5% to 6% of the electorate which the polls indicated had been 'undecided'. After the ads ran, polls showed that virtually all of the undecided voters voted for Jessie Helms.

The impact of racial appeals in North Carolina must be assessed in light of the local context. Specific polls conducted in the 1990 election report substantial white North Carolinians who said they would simply not vote for a black candidate. The state has a large population of limited education which is more likely to utilize cues in their voting choices. There is a substantial mistrust across racial lines in North Carolina. A focus group study of the ads in the Gantt-Helms campaign showed how this series of ads effectively primed voters to react with negative racial characterizations. Moreover, the impact of these ads was explicitly given as a reason for supporting the decision to draw two majority black congressional districts in the State Senate debate prior to passage of the plan.

There are other examples of explicit racial appeals in political messages of the early 1990's at the state and local levels. An anonymous leaflet warned Columbus County voters in 1990 that blacks in the county have too much political power and "more Negroes will vote in this election than ever before". The overall effect of such racial appeals has been to diminish seriously the opportunities of black citizens for an equal exercise of their political rights. Racially polarized voting, campaign tactics designed to keep black voters from going to the polls, and racial appeals designed to encourage voting on the basis of racial stereotypes are all current features of political life in North Carolina.

B. Present Effects of Past Discrimination Affecting the Ability of Black Voters to Participate Effectively in the Political Process. Current forms of racial discrimination in matters affecting voting are all the more effective because of the long history of official and purposeful discrimination which ended in some cases less than twenty years ago. The "White Supremacy Campaign" of 1898 which swept North Carolina Congressman George W. White from office, the last southern black congressman before the passage of the Voting Rights Act, also resulted in the passage of a state constitutional amendment imposing a literacy test and poll tax requirement for the right to vote, with a "grandfather clause" allowing illiterate white men to

vote. The explicit purpose of the amendment was to disenfranchise black citizens in defiance of the Fourteenth and Fifteenth Amendments to the United States Constitution.[3] These measures, along with violence and threats of violence, effectively decimated the ranks of black voters in the state. Only 15% of the state's blacks were registered to vote in 1948, and only 36% in 1962.

After passage of the Voting Rights Act, the percentage of eligible blacks registered to vote passed 50% for the first time since 1900. However, use of the literacy test continued until the early 1970's[4]. In 1970 only 52.2% of the black voting age population was registered to vote. In 1980, only 51.3% of age-qualified blacks were registered, whereas that same year 70.1% of the age-qualified whites were registered. By 1993, the gap between white and black registration rates statewide had closed to slightly over ten percent, with 61.3% of the black voting age population registered, and 72.5% of the white voting age population registered.

As black voter registration increased, other official forms of discrimination were enacted, including numbered seat requirements, anti-single shot provisions, and at-large and multi-member districts. *See Gingles v. Edmisten*, 590 F. Supp. 345, 359-64 (E.D.N.C. 1984); Keech & Sistrom, *North Carolina,* in Quiet Revolution in the South 162 (C. Davidson & B. Grofman eds., 1994). The purpose and effect of these provisions was to prevent black voters from being able to elect their candidates to state and local offices. While Tennessee elected its first black of the century to the General Assembly in 1964 and abolished multi-member districts in urban counties in 1965 because they discriminated against black voters, North Carolina did not elect a black state legislator until 1968, and it refused at that time to abolish multimember districts for the state legislature. In 1967 the North Carolina General Assembly passed a numbered seat system, subsequently declared unconstitutional because it denied equal protection to black voters.[5] *See, Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972). Multimember state legislative seats in areas where they diluted the votes of black voters were not eliminated until this Court's decision in *Thornburg v. Gingles,* 478 U.S. 30 (1986).

The direct effect of these racially discriminatory provisions was that at the time the North Carolina General Assembly was considering the plan at issue here, African-Americans were still not being elected to political office in the state in numbers even remotely approaching their representation in the general population, despite the fact that capable and experienced African-American candidates were running for election. As of January 1989, African-Americans were 21% of the state's voting age population but only 8.1% of the elected officials.

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[3]Proponents of the amendment promised that of the 120,000 negro voters in the state, it would disenfranchise 110,000 of them.

[4]Although literacy tests were finally discontinued in the early 1970's, the purpose for, and experience of, being required to write a sentence from the Constitution is remembered by many older black voters. Special voter registrars from Charlotte to Gatesville continue to encounter African-Americans who are reluctant to register for a variety of reasons. Over the past seven years, a special registrar in Charlotte has met potential voters who still express the belief that they could not register if they were unable to read or write.

[5]The same legislature that adopted the multimember districts and numbered seat system also refused to add Durham County to the Second Congressional District because it would allow too great a black voter influence in that district.

In the state House of Representatives, which has 120 members, the number of African-American legislators grew from three in 1981 to fourteen at the time of redistricting in 1991. After the 1992 redistricting, eighteen blacks served in the House, seventeen of whom were elected from single-member majority black districts. One was elected from a multi-member majority white district which allows for single-shot voting. On the Senate side, with fifty members, one African-American was serving at the time of the 1981 redistricting, and five were serving in 1991. After the 1992 redistricting plans were enacted, seven blacks were elected to the Senate, five of whom won in majority-black single-member districts, and two of whom won in multi-member majority-white districts. Three majority-black single-member districts elected white representatives, two in the Senate and one in the House. **No single-member majority-white district elected a black candidate to the state legislature.**

At the local level, in 1989, of 529 county commissioners throughout the state, 36 were black. Most of the African-Americans holding local offices were elected as a result of lawsuits or negotiated settlements changing the method of election from an at-large system to single member districts. Keech & Sistrom, *supra*, at 171-72 & 178-79. At the time the challenged plan was passed by the General Assembly, no candidate who was the choice of the black community had ever won election to a statewide non-judicial office since 1900. No African-American had been elected to Congress from North Carolina during the same period. Although candidates of choice of the state's African-American voters were elected to public office from single-member districts where black voters were in the majority, the relative percentages of black elected officials in North Carolina in the early 1990's had actually not increased over those present in 1984 when the district court in *Gingles* considered this factor as relevant to the totality of circumstances inquiry in a vote dilution claim. *Compare Gingles v. Edmisten*, 590 F. Supp. at 365 (Blacks hold 9% of city council seats, 7.3% of county commission seats; 4% of sheriff's offices, 9.2% of the state House; 4% of the state Senate) *with* D. I. Stips. 76-80 (in 1989 Blacks held 8.1% of all elected offices; 8.8% of the state legislative seats; 6.9% of county commission seats; 4% of sheriff's offices). *See also*, 42 U.S.C. ' 1973(b) ("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.")

The political participation of African-American voters in North Carolina is further impeded by the fact that they continue to suffer from a disproportionately low position on virtually every measure of socio-economic status. There is a significant history of official discrimination in education, housing, employment and health services in North Carolina which has resulted in blacks as a group having less access to transportation and health care and being less well-educated, less-well housed, lower-paid, and more likely to be in poverty than their white counterparts.[6]

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[6]For example, in 1989, 27.1% of African-Americans in North Carolina had incomes below the poverty level, while 8.6% of whites did. The average per capita income for whites was nearly twice that of blacks. Roughly three-quarters of the state's whites were high school graduates, while slightly over half the state's blacks had a high school education. Nearly a quarter of black households had no car available, while only six percent of white households were careless. Fifteen percent of black households had no phone, while only four percent of white households were without a telephone. Lacking financial resources, transportation and easy communication makes supporting an effective political campaign much more difficult.

These disparities make it more difficult for black citizens to register, vote, and elect candidates of their choice. For example, black citizens who are illiterate or semi-literate have been intimidated by the voting process because of their limited abilities. Many low-wage and hourly workers have limited access to transportation and cannot afford, or are not given, the time off to vote. Black citizens are hindered in their ability to field candidates and to participate effectively in the political process by their lower financial status, lower educational attainment, lack of employment security and lack of physical resources.

As noted by the *Gingles* court, lower socio-economic status both hinders blacks' ability to participate effectively in the political process and gives rise to special group interests. *Thornburg v. Gingles*, 478 U.S. 30, 39 (1986). Evidence at the trial of this case established that black residents of North Carolina have distinctive group interests and face unique problems that are addressed at the federal policy level and require effective representation in Congress. These include housing, access to credit, education of economically disadvantaged youth, unemployment, community economic development, neighborhood redevelopment, the unique concerns of historically black colleges and universities, discrimination in housing and employment, and civil rights.

Prior to the election of an African-American to Congress from North Carolina in 1992, North Carolina's congressmen demonstrated a lack of responsiveness to the particularized needs of their black constituents. In Guilford County, African American organizations regularly contacted their previous, white Congressman concerning civil rights measures and famine aid to Africa, with little success. Robert Albright, a past President of Johnson C. Smith University, an historically black institution in Charlotte, found little support for educational and community development efforts from his previous white congressman, even though the congressman served on the University's Board of Visitors. Black residents in many parts of the state found their pre-Chapter 7 Congressmen unresponsive to the particularized needs of their black constituents.

This anecdotal evidence is supported by the findings of Dr. Kousser's study of congressional roll call behavior which shows that today there is a difference in the effectiveness of representation of African-American interests by those elected by African-American voters as compared with those elected from districts in which African American voters are not in the majority.

The data reported by Dr. Kousser indicate that before 1993, even in the most heavily African-American plurality districts, voting patterns of North Carolina congressmembers on conservative roll call voting indices demonstrate diminished responsiveness to African- American concerns. The numbers show, for example, that throughout the 1970's and 80's, congressmembers elected from heavily African-American districts 1 and 2 consistently scored between 60% and 80% on conservative voting indices. In contrast, Representatives Watt and Clayton score 11% on these indices.

A review of national and North Carolina public opinion surveys indicates that there is marked divergence in the beliefs and opinions of blacks and whites, particularly in their beliefs about the degree of discrimination in American society and their beliefs about the causes of inequality, perceptions that influence the political programs that people favor. In the absence of majority

black districts, congressmembers lack the leeway to represent consistently and effectively the particular interests of their African-American constituents.

C. Racial Discrimination in Prior Congressional Redistricting. The history of discrimination against African-Americans in congressional redistricting in North Carolina goes back to 1872, when the state legislature intentionally packed black voters into the "Black Second". The Black Second effectively confined black voters' control, in a state that was approximately one-third African-American, to a maximum of one district in nine. The shape of the Black Second was described by Republican Governor Todd Caldwell as "extraordinary, inconvenient and most grotesque." Anderson, Eric, Race and Politics in North Carolina, 1872-1901: The Black Second, 3 (1981).

More recently, legislators took special pains in 1965-66 and 1981-82 to dilute black voting strength in order to diminish the political leverage of black voters and the political prospects of potential black candidates. In both instances, the issue was where to place the large and politically active black population in Durham County so that black voters would not have too much influence in the district. In 1965 the solution to the "problem" was to place Durham County in the Fifth District rather than create a district in the triangle (Raleigh-Durham-Chapel Hill) that might have elected a congressman responsive to black political interests. In 1981, the solution passed by the legislature was "Fountain's Fishhook", a strangely shaped district that curved around Durham to exclude it from L. H. Fountain's second district. The Justice Department denied that plan preclearance on the grounds that the plan had the purpose and effect of diluting minority voting strength.

Following the Justice Department's rejection, and in the face of a legal challenge on vote dilution grounds, the legislature redrew the plan to include Durham in the Second District, and simultaneously shift other black populations, notably Northampton County, one of the state's majority-black counties, out of the Second. The Justice Department precleared the second plan because it was approximately 40% black in total population.

As a result of this new Second district, great hope was generated that African-Americans finally had an opportunity to elect an candidate of their choice. There had been two earlier campaigns by African-American candidates for congress. In 1968, Eva Clayton was the first African-American to run for Congress since 1898. When she began her campaign, blacks constituted only 11% of the registered voters, though they comprised 40% of the Second District's population. The political climate was hostile and discouraging for black voters and candidates. Prior to 1968 several lawsuits had been brought in, in the Second district to protest overt barriers to black voter registration. Mrs. Clayton's candidacy was not taken seriously by the media or by political observers. Very few white voters were willing to be openly associated with her campaign. Although she was defeated, Eva Clayton's campaign resulted in increased levels of black voter registration in the district.

In 1972, after Orange County was added to the Second District, Howard Lee announced his bid for the Democratic party's nomination. Elected Mayor of the majority-white town of Chapel Hill in 1969, and re-elected in 1971, he was the first black mayor in the state during the twentieth century. He had been named vice-chairman of the state Democratic party in 1970. Lee worked

to establish relationships with the white community, and also expected to increase the registration of black voters in the district. His defeat in the primary was generally believed to be a result of voting along racial lines.

Following the 1981 redistricting, serious campaigns were mounted by Mickey Michaux and Kenneth Spaulding in the Second Congressional District, in 1982 and 1984 respectively. Both the Michaux and Spaulding campaigns were serious, strong, well-financed efforts of experienced, well-known candidates with broad support across the district. Despite employing careful and well considered strategies to appeal to voters of both races, neither candidate was able to obtain the Democratic party nomination because of racially polarized voting and the use of racial appeals in the campaigns. Subsequently, potential African-American candidates logically concluded that the expenditure of effort, time and money to run a congressional campaign was not feasible in the light of continued racially polarized voting and the strong perception that they could not win.

D. 1991 Congressional Redistricting Process. With the 1990 reapportionment and the increase of North Carolina's congressional delegation from eleven to twelve members came the opportunity to redress past wrongs and correct the effects of current discrimination. Members of the 1991 North Carolina General Assembly had lived through, and been active participants in, the history of electoral politics discussed above. Well over half had been in the General Assembly in 1986 when they were required by the *Gingles* litigation to create eight majority-minority districts; and fifty-eight had been members of the 1981 General Assembly which elected to redraw the congressional redistricting plan following the Justice Departments' refusal to preclear the first plan. In legislative floor debates, and in subsequent testimony, legislators explained their familiarity with the history of discrimination.

Representative David Flaherty said: "When my father served in the legislature 20 years ago, there was only, I think, one black, maybe two and only a couple of Republicans."

Senator Ralph Hunt stated that he was a product of, and participant in, a separate-but-equal school system:

> We are talking about books handed down after the black schools placed their orders for new books. Those from the white schools were sent to the black schools, the used ones, and the new order were sent to the white schools. The desks were the same way. ... And of course, our educational system was administered as it was then simply because there were not black people in the process to have input and be aware and take care of the interests of black people at that time.

Senator Kincaid stated:

> I don't think I've mentioned this on the floor of this Senate before, but back in 1967, when I was a high school teacher, I had the opportunity to teach the first integrated class in Caldwell County. And I saw firsthand how inferior the black schools were at that time.

Senator Walker, after explaining the experience with racial appeals in the Gantt/Helms campaign, stated:

> So, I just want to say I support this bill because I think so far as the blacks are concerned that yes, they deserve two black districts. After going through a 1990 race, they can see we still need to make some improvements in how our relationships are between our people.

IV. Implications of Redistricting Law Today in North Carolina.

Following enactment of the state legislative redistricting plan in 2001, a lawsuit was filed in state court seeking to enforce a provision of the State Constitution that previously had been found to be in conflict with the Voting Rights Act, namely the "whole county provision" which requires legislative districts to be made up, to the extent possibly, by whole counties. *Stephenson v. Bartlett,* 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*) and *Stephenson v. Bartlett,* 358 N.C. 219, 595 S.E.2d 112 (2004), (*Stephenson II*). As a result, the only counties that can be divided in drawing legislative districts are those covered by the non-retrogression requirement of Section 5 of the Voting Rights Act, or where there is potentially a Section 2 violation. Dividing counties is generally necessary to draw majority-black districts.

Last year the Fourth Circuit, in *Hall v. Virginia,* 385 F.3d 421 (4th Cir. 2004), held that in order to show a potential violation of Section 2 of the Voting Rights Act, plaintiffs must demonstrate that they constitute 50% or more in a single-member district, foreclosing the possibility of influence or coalition district claims. If Section 5 is not reauthorized, application of the whole county provision may result in the loss of eleven of the state's twenty-one districts that elect an African-American to the North Carolina General Assembly.

Appendix 6: Voting Rights Cases in Federal Court, 1982 - Present

Year	Parties	Citation	Published Opinion?	Court	Claim
2002	Bartlett v. Stephenson	535 U.S. 1301	yes	U.S.	Section 2, Section 5
1994	Campbell v. Cleveland Co. Board, et al	4:94-cv-00011	no	W.D.N.C.	Section 2
1997	Cannon v. NC State Board of Ed, et al	5:96-cv-00115, 959 F. Supp. 289	yes	E.D.N.C.	Section 2
1983	Cavanagh v. Brock	577 F.Supp. 176	yes	E.D.N.C.	Section 5
1996	Cleveland County Ass'n, et al v. Cleveland Co. Board, et al	4:95-cv-00006	no	W.D.N.C.	Section 2
1997	Cleveland County Ass'n for Gov't by the People v. Cleveland County Bd. of Commissioners	142 F.3d 468	yes	D.C. Cir.	Section 2
1998	Cleveland County Ass'n for Gov't by the People v. Cleveland County Bd. of Commissioners	965 F. Supp. 72	yes	D.D.C.	Section 2
1992	Daniels v. Martin Co. Bd. Comm.	4:89-cv-00137	no	E.D.N.C.	Section 2
1987	Ellis v. Vance County	87-28-CIV-5	no	E.D.N.C.	Section 2
1990	Fayetteville, Cumberland County Black Democratic Caucus v. Cumberland County	3:88-cv-00022, 927 F.2d 595	no	E.D.N.C., 4	Section 2
1995	Fussell v. Town of Mount Olive	5:93-cv-00303-DU	no	E.D.N.C.	Section 2
1995	Gause v. Brunswick County	7:93-cv-00080-DU, 1996 U.S. App.	yes	E.D.N.C., 4	Section 2
1985	Haith v. Martin	618 F. Supp. 410	yes	E.D.N.C., L	Section 5
1989	Hall v. Kennedy	3:88-cv-00117	no	E.D.N.C.	Section 2
1989	Harry v. N C. Bladen County	7:87-cv-00072-DU, 1989 WL 25342	no	E.D.N.C.	Section 2
1985	Haskins v. County of Wilson	82-19-CIV-9	no	E.D.N.C.	Section 2

Year	Parties	Citation	Published Opinion?	Court	Claim
1993	Hines v. Ahoskie	998 F.2d 1266	yes	4th Cir.	Section 2
1994	Hines, et al v. Callis	2:89-cv-00062-BO	no	E.D.N.C.	Section 2
1988	Holmes v. Lenoir County Board of Education	86-120-CIV-4	no	E.D.N.C.	Section 2
1984	Johnson v. Halifax County	594 F. Supp. 161	yes	E.D.N.C.	Section 2, Section 5
1988	Johnson v. Town of Benson	88-240-CIV-5	no	E.D.N.C.	Section 2
2005	Kindley v. Bartlett, et al	5:05-cv-00177-BO	no	E.D.N.C.	Section 5
1992	Lake v. North Carolina State Board of Elections	2:91-cv-00254-FWB-RAE, 798 F. Supp. 1199	yes	M.D.N.C.	Section 5
1995	Lewis v. Alamance County	2:92-cv-00614-WLO, 99 F.3d 600, 520 U.S. 1229	yes	M.D.N.C.,	Section 2
1992	Lewis v. Wayne County Board, et al	5:91-cv-00165	no	E.D.N.C.	Section 2
1988	McGhee v. Granville County	860 F.2d 110	yes	4th Cir.	Section 2
1990	Montgomery County Branch of the N.A.A.C.P. v. Montgomery County Board of Elections	3:90-cv-00027-FWB-RAE	no	M.D.N.C.	Section 2
1991	Moore v. Beaufort County	4:88-cv-00030, 936 F.2d 159	yes	E.D.N.C.	Section 2
1988	N.A.A.C.P. of Stanley County v. City of Albemarle	4:87-cv-00468-RCE	no	M.D.N.C.	Section 2
1990	N.A.A.C.P. v. Anson County Bd of Educ	1990 WL 123822	no	W.D.N.C.	Section 2
1989	N.A.A.C.P. v. Caswell County Board	2:86-cv-00708-RCE-RAE,	no	M.D.N.C.	Section 2
1985	N.A.A.C.P. v. City of Statesville	606 F.Supp. 569	yes	W.D.N.C.	Section 2
1988	N.A.A.C.P. v. Duplin County	88-5-CIV-7	no	E.D.N.C.	Section 2

Year	Parties	Citation	Published Opinion?	Court	Claim
1984	N.A.A.C.P. v. Elizabeth City	83-39-CIV-2	no	E.D.N.C.	Section 2
1988	N.A.A.C.P. v. Forsyth County	6:86-cv-00803-EAG-RAE	no	M.D.N.C.	Section 2
1992	N.A.A.C.P. v. Reidsville	2:91-cv-00281-WLO-PTS	no	M.D.N.C.	Section 2
1988	N.A.A.C.P. v. Richmond County	3:87-cv-00484-RCE-RAE, 3:87-cv-00484-RCE-RAE	no	M.D.N.C.	Section 2
1992	N.A.A.C.P. v. Roanoke Rapids	2:91-cv-00036-BO	no	E.D.N.C.	Section 2
1994	N.A.A.C.P. v. Rowan Board of Education	4:91-cv-00293-FWB-RAE	no	M.D.N.C.	Section 2
1987	N.A.A.C.P. v. City of Thomasville	4:86-cv-00291-FWB-RAE	no	M.D.N.C.	Section 2
1992	N.A.A.C.P. v. Winston-Salem/Forsyth County Bd. Of Educ.	1992 U.S. App. LEXIS 6221	yes	4th Cir.	Section 2
1988	Pitt County Concerned Citizens for Justice v. Pitt County	87-129-CIV-4	no	E.D.N.C.	Section 2
2003	Porter v. Stewart	5:88-cv-00950-BO	no	E.D.N.C.	Section 2
1997	(Republican Party v. Hunt and Ragan v. Vosburgh, 1997 U.S. App. LEXIS 6626)	5:88-cv-00263-FO	yes	E.D.N.C.	Section 2
1994	Rowsom v. Tyrrell Co. Commissioners	2:93-cv-00033-DU	no	E.D.N.C.	Section 2
2002	Sample v. Jenkins	5:02-cv-00383-FB	no	E.D.N.C.	Section 5
1992	Sellars v. Lee County Board	1:89-cv-00294-FWB-RAE	no	M.D.N.C.	Section 2
1990	Sewell v. Town of Smithfield	5:89-cv-00360-DU	no	E.D.N.C.	Section 2
1994	Speller v. Laurinburg	3:93-cv-00365-WLO	no	M.D.N.C.	Section 2
1986	Thornburg v. Gingles	478 U.S. 30	yes	U.S.	Section 2, Section 5

Year	Parties	Citation	Published Opinion?	Court	Claim
1994	United States v. Anson Board of Ed.	3:93-cv-00210	no	W.D.N.C.	Section 2, Section 5
1990	United States v. Bladen County Board (see Harry v. N C. Bladen County)	7:87-cv-00101-DU	yes	E.D.N.C.	Section 2
1989	United States v. Granville County Board	5:87-cv-00353-BO	no	E.D.N.C.	Section 2
1987	United States v. Lenoir County	87-105-CIV-84	no	E.D.N.C.	Section 2
1992	United States v. NC Republican Party	5:92-cv-00161-FO	no	E.D.N.C.	
1988	United States v. Onslow County	683 F. Supp. 1021	yes	E.D.N.C.	Section 2, Section 5
1992	Ward v. Columbus County	7:90-cv-00020, 782 F.Supp. 1097	yes	E.D.N.C.	Section 2
1991	Webster v. Board of Education of Person County	1:91cv554	no	M.D.N.C.	Section 2
2004	White v. Franklin County	5:03-cv-00481	no	E.D.N.C.	Section 2
1996	Wilkins v. Washington County Commisioners	2:93-cv-00012-BO	no	E.D.N.C.	Section 2
1991	Willingham v. City of Jacksonville	4:89-cv-00046-BO	no	E.D.N.C.	Section 2

APPENDIX 7 – SUMMARIES OF VOTING RIGHTS ACT CASES

Research Methods

The data represented in these case summaries was gathered from a variety of published and unpublished sources. For published cases, we relied on the court opinion for the summary. For unpublished cases, we relied on documents filed with the court, including complaints, judgments, and consent decrees. Both plaintiff and defendant attorneys also provided details of cases where no documents were available.

Statistical data on racial composition of communities and voting populations were taken from court documents when available. Otherwise, that information was gathered from the 1980, 1990, and 2000 Census. Information on the current voting systems and numbers of minority members represented on government boards was obtained from government websites for the relevant area and from attorneys familiar with the case.

At the conclusion of our research, there were several cases that were listed on the district court docket as having been filed, but no information was available about the cases. These cases are noted at the end of the summaries.

Voting Rights Act Case Summaries 1982–2005

Bartlett v. Stephenson, 535 U.S. 1301 (2002)

> North Carolina state election officials appealed a ruling by the North Carolina Supreme Court that invalidated the state redistricting plan as a violation of the state constitution. The appellants alleged that the state court order violated the Voting Rights Act.
>
> The state Supreme Court held that the 2001 redistricting plan violated the "whole county provision" of the state constitution. The whole county provision provided that no county could be divided in the formation of a Senate or Representative district. Because the redistricting plan would have violated this provision, the state Supreme Court ordered a new plan that would preserve county lines to the maximum extent possible, except where those lines could not be preserved to comply with Section 2 of the Voting Rights Act. The court ordered that a new plan be drawn and that officials seek Section 5 preclearance of the plan in counties covered by the Voting Rights Act.
>
> Election officials appealed to the U.S. Supreme Court, contending that a 1981 letter from the Department of Justice (DOJ) disallowed consideration of the whole county provision in redistricting. The Supreme Court found, however, that the DOJ letter did not disallow the whole county criterion, but only rejected use of this criterion where following it strictly would result in failure to comply with the Voting Rights Act. Appellants sought a stay of the North Carolina Supreme Court decision, but the Supreme Court rejected this request, finding that the North Carolina Supreme Court properly ruled that the new plan should be developed and precleared before implementation.

Cannon v. Durham County Board of Elections, 959 F. Supp. 289 (E.D.N.C. 1997)

Plaintiffs brought suit alleging that a newly created method of electing members to the Durham County school board violated constitutional provisions and Section 2 of the Voting Rights Act. The method of election in question originated when the board of commissioners for the county of Durham submitted a plan to the North Carolina state Board of Education for the merger of Durham County public schools and the city of Durham public schools. The state board approved the plan, under which the school board would be composed of seven members. Durham County would be divided into four individual single-member districts, which would each elect one representative. The four districts would then be combined to form two larger districts, which would each elect one representative. The final member would be elected at-large. The new plan would create three majority-minority districts.

Some of the plaintiffs, white voters, challenged the merger plan in state court and received a favorable decision. While appeal was pending, the state General Assembly passed a "curative" statute. The North Carolina Supreme Court then remanded the case, without ruling on the merits, to the trial court for consideration of the effect of the new statute on the case. The defendants then filed a motion to dismiss for mootness. In response to the defendants' motion to dismiss for mootness, plaintiffs raised the argument that the school board election plan discriminated against white voters. The trial court granted defendants' motion to dismiss. The appellate court reversed that decision, but the North Carolina Supreme Court ultimately affirmed the dismissal because plaintiffs had failed to allege racial discrimination in their initial pleadings.

Plaintiffs then brought the immediate suit alleging that the method of electing school board members violated constitutional provisions and Section 2 of the Voting Rights Act. The court granted summary judgment to the defendant, finding that the plaintiffs failed to show that white voters were entitled to protection in this case. The white voters had failed to show that black voters in this case would act as a bloc to preclude election of preferred candidates of white voters. Defendants provided evidence permitting an inference that white voters were not a cohesive group. Generally, the court found that plaintiffs had failed to allege or prove the *Gingles* test standards for Section 2 cases. Plaintiffs further failed on their constitutional claims for a variety of reasons, including an inability to show purposeful discrimination. The Fourth Circuit affirmed the holding in an unpublished opinion.

Cavanagh v. Brock, 577 F. Supp. 176 (E.D.N.C. 1983)

Plaintiffs filed action in state court and it was removed to federal court, where several actions were consolidated. The action challenged the General Assembly's failure to adhere to provisions of the North Carolina Constitution in adopting a new state legislative apportionment plan. The plaintiffs contended that the state constitution prohibited the General Assembly from splitting counties in apportioning Senate and House districts and sought declaration that the 1982 plan, which split several counties, violated state law.

The court found, however, that the legal provisions relied upon by plaintiffs had been refused Section 5 preclearance by the attorney general and were, therefore, not binding. In 1981, the North Carolina Board of Elections applied for preclearance of the 1968 whole county amendments to the state constitution. The attorney general objected insofar as the provisions affected the forty counties in North Carolina covered by Section 5 of the Voting Rights Act. Accordingly, the General Assembly revised the reapportionment plans during a special session in 1982 and, after modifications, they were given preclearance. The 1968 whole county provision was still not precleared.

In the present suit, the question before the court was whether the effect of the attorney general's objection was to suspend the force of the 1968 amendments for the entire state or only for counties encompassed by the Section 5 preclearance requirement. The court found that under North Carolina law, when one portion of a statute is declared unconstitutional or otherwise stricken, the surviving portion will be given effect only if it is severable. Applying this rule, the court found that once the attorney general refused to preclear the amendments, they had no force or effect statewide. The plaintiffs also advanced an argument that the 1968 amendments did not present a change in voting as understood in the Voting Rights Act so the attorney general's objection had no effect, but the court did not have jurisdiction on that claim which must be heard by the U.S. District Court for the District of Columbia.

Cleveland County Ass'n for Gov't by the People v. Cleveland County Bd. of Commissioners, 142 F.3d 468 (D.C. Cir. 1998)

The lawsuit that gave rise to this dispute was initially filed in the Western District of North Carolina as *Campbell v. Cleveland Co.* Board of Commissioners, 4:49-cv-00011 (W.D.N.C. 1994), by black voters and the NAACP, contending that the method of electing county commissioners violated Section 2 of the Voting Rights Act.

In *Campbell*, black voters and the NAACP objected to the method of electing county commissioners. Under the old system, the board consisted of five members selected at-large every two years for staggered, four-year terms. Between 1988 and 1994, no African American was elected to the board, although African Americans constituted 20.9 percent of the county's population. From 1988 to 1994, five African Americans, all Democrats, attempted to win seats, but none survived the primary elections. The NAACP approached the board with its concern that at-large voting prevented representation of African Americans. A board committee studied the problem and recommended a new system of electing five commissioners from single-member districts and two commissioners from the county at-large. The committee also recommended consideration of redistricting. The board voted to accept the recommendations and asked the Cleveland County members of the General Assembly to introduce legislation authorizing the changes, which was done in 1993. The authorization expired in 1994, however, when the board could not agree to a redistricting plan, and no change was implemented. The NAACP and individual plaintiffs filed suit.

The *Campbell* case was transferred to the U.S. District Court for the District of Columbia in 1994. After mediation, the parties adopted a consent decree with the court's approval, which expanded the board from five to seven members and adopted limited voting. For the 1994 and 1996 elections, the old method of voting would remain in place with two exceptions: (1) the members of the Board of Commissioners elected in 1996 would serve only two years and (2) after the 1994 election, two additional Commissioners who were "representatives of the black community of Cleveland County" would be appointed to the board for four-year terms. Starting with the 1998 election, all seven seats would be elected at the same time, with the newly-elected commissioners to serve at-large. In both the primary and general election, each voter could cast up to four votes for different candidates, with the top seven candidates winning seats. The agreement also stated that after the 1998 election the district court could, on NAACP's petition, reduce from four to three the number of votes that could be cast by each voter if the new system had not provided equal opportunity for black citizens to elect candidates of their choice. The attorney general precleared the plan in 1994 and thereafter, the Board of Commissioners appointed the two new commissioners.

In 1996, the plaintiffs in the immediate suit, the Cleveland County Association for Government by the People, filed in the Western District of North Carolina. The plaintiffs were an unincorporated association of voters in the county, and six individual plaintiffs, all of whom were white. They brought suit against the board and the NAACP, challenging the adoption of the consent decree plan. They objected to the election plan because the two new members were to be appointed on the basis of race and subsequent elections could be conducted in a race-based manner.

The suit was again transferred to the D.C. District Court. The district court granted summary judgment for the board and the NAACP. On appeal, however, the D.C. Circuit vacated that holding and found for the plaintiffs. The court did not find that plaintiffs could prevail on constitutional grounds, but rather that they were entitled to summary judgment on state law claims. The board did not follow the statutorily mandated scheme when it altered the electoral system and state law did not permit the board to alter its structure and manner of election unilaterally. The court found that it was allowable for plaintiffs to bring the second suit because they were not properly represented in the *Campbell* suit, as they had diverging interests to the plaintiffs and board.

Daniels v. Martin County Board of Commissioners, 4:89-cv-00137 (E.D.N.C. 1992)

Plaintiffs filed suit under Section 2 of the Voting Rights Act challenging the method of electing the Martin County Board of Commissioners and the town boards of Jamesville, Robersonville, and Williamston, alleging the methods of election diluting the voting strength of black citizens. The parties entered consent decrees once it was determined that the plaintiffs were able to present a prima facie case that the methods violated Section 2. At the time of the suit, nearly 45 percent of the population of Martin County was black. In 1990, 279 of the 612 residents of Jamesville were black. Nearly 55 percent of the population of Robersonville and approximately 51 percent of the population of Williamston was black.

Under the new method of election, the county Board of Commissioners consists of five members, elected at-large under a system of limited voting. The county is divided into two districts. Two of the five members reside in the western district and three reside in the eastern district. Voters in the western district can cast one vote in the primary and one vote in the general election for the two seats, while voters in the eastern district cast two votes in the primary and two votes in the general election for the three seats. Candidates with the most votes are elected with no run-off elections. Members serve four-year terms.

The method of voting for the town of Jamesville was also changed. In the previous system, five members of the town board and a mayor were elected at-large for two-year terms. Under the new system, the town board consists of five members elected with at-large limited voting. All candidates are listed on a single ballot, but each voter can only vote for two candidates. The mayor is elected separately.

The town of Robersonville also agreed to abandon its system by which five members of the town Board of Commissioners were elected at-large for two-year terms. Robersonville adopted a method that elects give members, two from each of two districts and one at-large. Only candidates residing in a district are eligible to run for one of the two seats from that district. The districts were drawn to provide for one minority-majority district. The mayor is elected separately.

Ellis v. Vance County, 87-28-CIV-5 (E.D.N.C. 1987)

Black citizens from Vance County brought suit under Section 2 of the Voting Rights Act opposing the method of electing the county Board of Commissioners. Five board members were elected to four-year staggered terms in at-large partisan elections. Candidates were required to live in residency districts.

The parties entered a consent decree changing the method of election. Under the changed system, seven Commissioners are elected, one from each of seven districts. Elections are staggered. The change in voting has resulted in greater minority candidate success. There are currently three black Commissioners. The current representative of District One is the first female - and the first African-American female - ever to serve on the Vance County Board of Commissioners.

Fayetteville, Cumberland County Black Democratic Caucus v. Cumberland County, 1991 WL 23590 (4th Cir. 1991)

The Cumberland County Black Democratic Caucus and individual black voters filed suit alleging that the five member, at-large election of county commissioners for Cumberland County violated Section 2 of the Voting Rights Act. The plaintiffs favored a seven member, single-member district system. While the action was pending, the county voluntarily adopted a remedial mixed single member/at-large districting plan that was precleared by the Department of Justice (DOJ). Under this plan, the board would consist of seven members: two elected from District One, three elected from District Two, and

two elected at-large. District One would be predominantly black. Each member would serve a four-year term and terms would be staggered.

The plaintiffs, still seeking development of a single-member district plan, attempted to get a preliminary injunction to stop implementation of this plan, but the court denied this request and elections were held under the new plan. Once the DOJ cleared the county's plan, the district court granted the plaintiffs leave to amend their original complaint to address the lawfulness of the new precleared plan. The plaintiffs failed to amend their complaint and made other filing errors, resulting in the district court granting judgment in favor of the defendants. When the suit was terminated, the mixed single-member/at-large system remained in place. The Fourth Circuit affirmed this holding.

Under the new system, black voters have had a greater opportunity to elect candidates of their choice. However, racially polarized voting persists. Currently, both commissioners elected from District One are black but, as the plaintiffs anticipated, the three District Two and two at-large seats continue to be occupied only by white members.

Fussell v. Town of Mount Olive, 5:93-cv-00303 (E.D.N.C. 1995)

Nine individual plaintiffs and the Mount Olive Area of the Wayne County Minority Political Action Committee brought suit alleging discriminatory practices in the method of electing the Board of Commissioners for the town of Mount Olive and sought relief addressing this issue, including the institution of a new election format for the town. According to the 1990 Census, almost 52.5 percent of the population of Mount Olive was black. Despite numerous black candidacies, there had never been more than one black candidate elected to the Board of Commissioners at any one time. The at-large method of prevented black residents from electing representatives of their choice.

During the course of the suit, the proceedings were stayed to give the parties the opportunity to reach a compromise on a voting system for the town. The town and plaintiffs agreed to a plan with four single-member districts and one at-large seat. Following public hearings on the change in voting, the town learned of white opposition to the plan and selected a new plan, which it submitted for preclearance. Under the new plan, the commission would be expanded from five members to six, four elected from single-member districts, and two elected at-large.

The plaintiffs opposed the new plan which would retain a greater number of at-large seats and packed 97 percent of black voters into one district. In November 1993, black voters rallied in the at-large election to elect one black candidate, who was a plaintiff in the Section 2 suit, to the Town Commission. The board petitioned the Section 2 court to prohibit her from participating in board discussions or voting on the method of elections. The court denied the request.

When the Department of Justice reviewed the 4-2 plan, it concluded that the board had failed to provide adequate justification for shifting from the method agreed upon during the lawsuit. There was no convincing nonracial explanation. There were no substantive

changes between the July 1993 agreement with the plaintiffs and the September 1993 to explain the shift. The attorney general accordingly refused Section 5 preclearance. The town has since adopted a districting plan with four districts and one at-large seat. There is currently one black member of the Commission.

Gause v. Brunswick County, 1996 U.S. App. LEXIS 20237 (4th Cir. 1996)

Plaintiffs brought a claim under Section 2 of the Voting Rights Act challenging the modified at-large election system of Brunswick County. The Eastern District of North Carolina granted summary judgment to the defendant and the Court of Appeals affirmed because the plaintiffs could not show adequate injury.

The population of Brunswick County changed dramatically between 1960 and 1990. Due in part to a large influx of white retirees, the percentage of African Americans living in the county fell from 35 percent to 18 percent. By 1990, 83 percent of the county's voting-age population was white. In the county's 22 election precincts, African Americans constituted a majority in only one.

The county used a modified at-large system to elect members to the Board of Commissioners. There were five residency districts within the county and the candidate that won the most votes in each residency district compared to other candidates in the same residency district was elected. Voters were permitted, however, to vote for any candidate, regardless of where they lived. African Americans ran for board seats in nine elections since 1972 and were elected three times but, since 1982, no African American had been elected to the board. African Americans brought suit alleging the method of election diluted minority voting in violation of the Voting Rights Act.

The district court granted summary judgment to the county, holding that voters failed to show a dilution claim because they could not show the minority population was sufficiently large and geographically compact to constitute a majority in a single-member district. Because minority voters were unable to show the potential to elect representatives in the absence of the existing voting structure, they could not show injury resulting from the election system. The court could not approve the plaintiffs' alternative proposals for voting districts because they would create districts that deviated in size by greater than 10 percent, which would be unacceptable absent a showing of dilution.

There are currently no African Americans on the county's five-member Board of Commissioners.

Haith v. Martin, 618 F. Supp. 410 (E.D.N.C. 1985)

In this action, a black registered voter of Guilford County successfully demonstrated the need for an injunction to stop state officials of North Carolina from implementing changes to the procedure of electing Superior Court judges because the changes, including staggered voting which might dilute black voter strength, had not been precleared pursuant to Section 5 of the Voting Rights Act.

In 1964, North Carolina had 30 judicial districts, 28 of which were served by one judge each, with the remaining two served by two judges. All judges were elected simultaneously for eight-year terms. Candidates for the office of Superior Court judge in judicial districts with more than one judge were not required to announce for which vacancy they were filing and neither district had staggered terms for the judges.

In 1965, the North Carolina Assembly passed an act that established a system of numbered seat elections for the position of Superior Court judge in districts with two or more vacancies. In 1967, the General Assembly then enacted legislation which provided for an additional resident judge in the 12th, 18th, 19th, and 28th districts to serve eight-year staggered terms from the positions already in existence in those districts. In 1977, the General Assembly passed legislation providing for an additional resident judge in the 3rd, 10th, 12th, 14th, 19th, and 20th judicial districts to serve eight-year terms staggered from the positions already in existence in those districts. In 1977, the General Assembly also created judicial districts 15A and 15B out of former district 15, judicial districts 19A and 19B out of former district 19, and judicial districts 27A and 27B out of former district 27. In 1983, the General Assembly enacted passed a law that provided for additional judges in judicial districts 1, 9, 18 and 30.

Plaintiffs objected that in North Carolina, forty of the one hundred counties were subject to Section 5 of the Voting Rights Act, meaning changes to voting procedures in those counties, should have required preclearance by the attorney general. Defendants admitted that the 1977 laws and 1983 laws were not precleared, but contended that the 1965 and 1967 laws were precleared because they were included in later enactments of the General Assembly that were submitted to the attorney general. Defendants also argued that Section 5 was not intended to apply to judicial elections.

The court granted the plaintiffs injunctive relief. The court found that the Voting Rights Act governed changes to election of judges because its plain language stated that it applied to all voting, without limitation to the object of the vote. The court then found that the sections of law that the defendants claimed to have submitted were not precleared. The changed sections could not be put into effect without approval of the attorney general.

The decision was affirmed by the U.S. Supreme Court in *Martin v. Haith,* 477 U.S. 901, (1986).

Hall v. Kennedy, 3:88-cv-00117 (E.D.N.C. 1989)

Black voters brought action under Section 2 of the Voting Rights Act opposing the at-large method of electing the Clinton City Council and Clinton City Board of Education, arguing the system denied them the opportunity to elect candidates of their choice.

Under the existing system, the city council consisted of a mayor and four council members. The mayor was elected at-large for a two-year term. City Council members

were also elected at-large, but for four-year terms and the elections were staggered. At the time of the suit, 38 percent of the population of Clinton was black. Since 1973, black candidates had run at least eight times for city council, but had been elected only two times. The same individual had been elected both of those times and he had since been defeated for reelection. The court found that if the case were tried, it would find from the evidence that the method of election had the effect of denying black voters an equal opportunity to elect candidates of their choice. However, to avoid the costs of litigation, plaintiffs and the Clinton City Council agreed to a consent decree. Under the new system, the council is composed of a mayor and five council members. The mayor is elected at-large every two years. The council members are elected from five districts and only voters residing in the district may vote for a council member from that district. The council members serve staggered four-year terms. Two members of the current Clinton City Council are black.

A consent decree was also entered to resolve the suit against the Board of Education. At the time of the suit, the Board of Education consisted of five members, three elected at-large for four-year staggered terms and the other two appointed by the three elected members for four-year terms. Black citizens constituted 36 percent of the school administrative unit. Since the system of election was instituted in 1976, black candidates had run for election at least five times in the seven elections, but were elected only twice. The court again found that if the case were tried, it would find from the evidence that the at-large method of election had the effect of denying black voters an equal opportunity to elect candidates of their choice. The parties entered a consent decree imposing a new system of elections. Under the new system, the school board consists of six members elected for four-year terms. The elections are staggered so that three members are elected every two years. In each election, all three members are listed on a single ballot and each voter can only vote for one candidate. Two members of the current Board of Education are black.

Harry v. Bladen County, 1989 WL 253428 (E.D.N.C. 1989)

Black citizens of Bladen County filed action pursuant to Section 2 of the Voting Rights Act, challenging the method of electing members to the county Board of Commissioners.

The plaintiffs initially urged members of the county government to change the at-large system of election commissioners because it diluted minority voting strength. When they were unsuccessful in garnering change, they contacted legal services attorneys who agreed to represent them. In 1986, the Bladen County Board of Commissioners voted to appoint a committee to study the plaintiffs' concerns and determine if a change was needed and if so, recommend specific changes. A black citizens group determined that a five-district plan with two black majority districts could be drawn. They presented the plan to the committee and the committee reached a compromise agreement in 1987. It recommended a plan with five single-member districts (two minority) and one at-large seat to the board. The board then retained counsel to review alternative plans, interviewed other citizens, collected further data and held hearings. In April, 1987, the board decided

against the committee recommendation and adopted a plan composed of three two-member districts (one minority) and one at-large seat.

Black citizens opposed this plan because two white incumbents lived in the black district and only one of the seats in that district would be available in the 1988 election. The board decided to proceed with the plan. The county could not unilaterally change the election method without a referendum so the commissioners attempted to have the state General Assembly enact the proposal. When this failed, the county succeeded in obtaining authorization from the General Assembly to make the change by itself. The commissioners adopted the plan and applied for Section 5 preclearance. The defendants also sought to dismiss this pending Section 2 action. The court stayed action on this motion pending the Section 5 preclearance determination.

The attorney general did not approve the board plan because it appeared "the board had taken extraordinary measures to minimize minority voting strength." County officials then brought suit in the District of Columbia seeking Section 5 approval and moved to stay discovery in the Section 2 action. The plaintiffs did not want to dismiss the Section 2 suit objecting to the still-existing at-large system because if they did so, the 1988 election could proceed under that system. The D.C. District Court set a hearing date for plaintiffs' motion for interim relief. On the morning of the set hearing, the parties reached a settlement changing the election system. The new system would elect two members from each of three districts and three at-large members. The at-large seats would be elected by a plurality win method, in which voter could vote for only one candidate. The majority black district was modified so that one white incumbent would not run and the other agreed to run for an at-large seat, making both seats available. Under the new plan, black citizens would have a realistic opportunity to elect three of nine seats.

Once the consent order was entered, the court was still charged with determining whether to award attorneys' fees, costs, and expenses. Defendants argued that because the old system was never officially declared unlawful, plaintiffs were not a prevailing party. The court found, however, that plaintiffs succeeded in achieving a system that would give black citizens fair representation in the 1988 elections and without filing this action, that result could not have been achieved. Plaintiffs were, therefore, the prevailing party and entitled to reasonable attorneys' fees and costs.

Haskins v. County of Wilson, 82-19-CIV-9 (E.D.N.C. 1985)

The federal court held under Section 2 that the at-large method of electing the Wilson County Board of Commissioners denied black citizens an opportunity to participate in the political process and elect candidates of their choice. In response, Wilson applied for preclearance of an election system with two multi-member districts. The Department of Justice agreed that the proposed plan was better than the at-large system, but could not agree that it was adopted without a discriminatory purpose. Of the two districts created, one would elect five representatives and was 76 percent white. The other would elect two representatives and was 67 percent black. Nearly half of the county's black population

was placed in the larger white-majority district. The attorney general refused preclearance.

The county has since adopted a system with seven districts that each elect one commissioner. There are currently three black members of the board.

Hines v. Ahoskie, 998 F.2d 1266 (4th Cir. 1993)

Plaintiffs Edna Hines and several other black citizens, challenged the town's at-large election system. Ahoskie is a small town in Hertford County. At the time of suit, the town was 50.5 percent black and town's voting age population was 45.6 percent black. plaintiffs challenged the existing election system in which the town elected its mayor and five town council members through at-large elections. Ahoskie had a history of racially polarized voting – an average of 93 percent of blacks voted for black candidates and 93.4 percent of whites voted for white candidates. Throughout the history of Ahoskie, seven black candidates had run for Town Council, but only two were elected.

Hines originally filed suit in November, 1989 challenging the at-large system for impermissibly diluting black voting strength. Hines was successful in her claim in that in response, the town stipulated that the existing system impermissibly diluted black voting strength in violation of Section 2. Accordingly, the town devised a new election plan that would divide the town into two districts, one majority black and one majority white. Two Town Council members would be elected from each district by plurality vote within the district. The plan also provided for a fifth member to be elected at-large. The district court in 1991 determined the plan required preclearance and submitted it to the attorney general, who gave preclearance. The town then requested the district court approve its plan by granting summary judgment.

Plaintiffs opposed the town's motion for summary judgment, arguing the town plan still diluted minority voting due to the at-large seat. Plaintiffs presented two alternative elections plans, one that involved division of Ahoskie into three districts and a second that proposed five single-member districts. The district court held hearings and, after reviewing the evidence, found the at-large election of the fifth Town Council member, which Ahoskie originally proposed, to be "problematic" and not a complete remedy as required by the Voting Rights Act. The district court decided it would be best to retain the two districts created under the town plan, but eliminate the fifth council position.

On appeal, the Fourth Circuit overturned the lower court decision not to implement the 2-2-1 plan proposed by the town. The court found that the district court should have deferred to Ahoskie's chosen size for the Town Council because there was not evidence that the solution was chosen in order to diffuse black voting strength and that the plan was adequate to provide black voters with the maximum opportunity to elect representatives of their choice. Though evidence from hearings indicated the best solution might be to have a fifth district composed of a "swing vote," the small population of Ahoskie made the creation of such a district impossible. Since that solution was not possible, the court was required to accept Ahoskie's proposal, which was the next best

alternative to guarantee both racial groups could elect representatives of their choice. The court recognized that the new system could still prevent blacks from sometimes electing the candidate of their choice, but found that it a complete remedy under the Act. The court found that the alternative plans provided by Hines would provide minority voters with overproportional representation and the since the only justification for such a plan would be racial concerns, it would potentially violate the equal protection rights of white voters. Though plaintiffs did not win implementation of their preferred plan, they were successful in proving dilution and changing the at-large system.

Holmes v. Lenoir County Board of Education, 86-120-CIV-4 (E.D.N.C. 1988)

Plaintiffs filed action under Section 2 of the Voting Rights Act alleging that the method of electing the Lenoir County Board of Education denied minority citizens an equal opportunity to elect candidates of their choice. Under the existing system, the board consisted of five members elected at-large in partisan elections for staggered, four-year terms. At the time of the suit, over 39 percent of the population of Lenoir County was black.

The parties entered a consent decree that changed the method of election. Under the new system, the board is composed of seven members elected in partisan, at-large elections. The increased size of the board aimed to give minority voters a greater opportunity to elect candidates of their choice. Immediately following the suit, the consent decree ordered that the two new seats should be filled by representatives of the minority community until new elections could be held.

Johnson v. Halifax County, 594 F. Supp. 161 (1984 E.D.N.C.)

The United States and nineteen registered black voters successfully filed suit seeking preliminary injunction regarding elections for Halifax County Board of Commissioners. Both the United States and individual plaintiffs alleged the at-large method of election violated Section 2 of the Voting Rights Act and the Constitution, and the United States alleged that Halifax County failed to obtain preclearance of two components of its election method in violation of Section 5 of the Voting Rights Act.

Halifax is a predominantly rural county in northeastern North Carolina, with a 48.3 percent black population. In 1980, 44.1 percent of the voting age population of the county was black, and 34.6 percent of registered voters were black. The black voter registration rate was 50.8 percent, while the white voter registration rate was 77.3 percent. The county contained 12 townships, the largest of which was Roanoke Rapids. Roanoke Rapids was also the only township with a white population majority (79.4 percent). In 1980, 60 percent of whites in Halifax County lived in Roanoke Rapids, while 85 percent of the county's blacks lived in the other eleven townships.

The voters of Halifax County had not elected a black candidate to the Board of Commissioners during the 20th century. Factual findings in previous suits had determined that Halifax County election officials had a history of engaging in "a course

of conduct which discriminatorily deprives Negroes of Halifax County, North Carolina, of an opportunity to register to vote." *Alston v. Butts*, C.A. No. 875 (E.D.N.C. Temporary Restraining Order, May 8, 1964). As late as 1980, there were only 10 blacks (8.9 percent) of the 112 election officials in Halifax County. This court, and previous courts, found evidence of racial segregation and a general lack of opportunity for black residents of Halifax County in areas such as education and employment.

Members of the Board of Commissioners were nominated and elected on an at-large basis for two-year, concurrent terms from 1898 through 1944. In 1944, the county was divided into five districts based upon township lines. Each district nominated a commissioner, and general elections were still held on an at-large basis. At this time in history, nomination by the Democratic Party virtually assured election. After 1960, the county reverted to at-large nomination and election (in 1960, voters chose this system and they were not given the option of retaining the district nomination system that had been in effect since 1944, they could only choose between an at-large system with or without residence districts). Since 1960, the county had nominated and elected commissioners on an at-large basis, with at least one commissioner from each of the 5 residency districts. In 1968, terms of county commissioners were staggered and increased from two to four years. Preclearance for this change was not obtained until May 16, 1984, but it was implemented in 1968.

In 1971, the state legislature readopted and expanded the at-large election system by adding a sixth commissioner who would reside in Roanoke Rapids Township but be nominated and elected on an at-large basis. This change was implemented in 1972 but did not receive preclearance before this suit was filed. On May 16, 1984, the attorney general interposed a timely objection to the 1971 law stating that even though the law was intended to remedy malaportionment, it was not clear why this alternative was selected over other options which would have enhance black voting strength. Also, the law was not submitted for a referendum as was done in the past.

The court granted plaintiffs a preliminary injunction to stop elections under the existing system, finding they would suffer irreparable harm if the injunction was not granted and that they would likely succeed on the merits. The court found that the totality of the circumstances "demonstrate that defendants' at-large county commissioner election system with residence districts deprives Halifax County's black citizens of an equal opportunity to participate in the political process and elect county commissioners of their choice." The court further noted, that "[t]here is evidence which supports the view that racial bloc voting in the eight contests between black and white candidates between 1968 and 1982 is persistent and severe." Halifax County's at-large election system with residence districts was also found to have several "enhancing" features that made it more difficult for blacks to elect county commissioners of their choice. The county was geographically large, the use of residency districts, which operated like numbered-post requirements, precluded single-shot voting, and a majority-vote requirement applied in primary elections. The overall circumstances showed the election system diluted voting strength, hindering effective minority participation.

Johnson v. Town of Benson, 88-240-CIV-5 (E.D.N.C. 1988)

An individual black voter brought suit on behalf of himself and similarly situated voters contending that the method of electing the Benson Board of Commissioners denied black voters equal opportunity to elect representatives of their choice. Prior to the suit, the board consisted of four members elected at-large for staggered four-year terms. Despite the fact that black citizens constituted 32.1 percent of the town's population according to the 1980 census, no black person had ever been elected to the Benson Board of Commissioners.

The parties entered a consent decree changing the method of election. In the new method, the board consists of six members. Three members are chosen at-large and one member is chosen from each of three districts. The elections are staggered so that the three at-large members are all elected in the same year and the three district members are elected two years later. Terms are four years. Since the change in voting, black candidates have had regular success in being elected to the board.

Kindley v. Bartlett, 5:05-cv-00177 (E.D.N.C. 2005)

The chairman of the Guilford County Republican Party filed suit requesting that the district court issue an injunction to stop the state Board of Elections from implementing a law enacted by the General Assembly that would permit the counting of out-of-precinct provisional ballots prior to receiving Section 5 preclearance. The plaintiff also brought other due process claims related to the 2004 elections.

A national law provided that voters whose wanted to vote but whose name did not appear on precinct lists could cast provisional ballots that would later be counted for federal candidates if it turns out that the voter is in fact registered in that jurisdiction. The remaining question was whether such ballots would count in state elections. North Carolina decided to adopt such a provision, but did not apply for preclearance. A procedure for counting such ballots was implemented in the 2004 election.

The court determined that all disputed legislation was, at the time of suit, before the Department of Justice and pending preclearance. The court further found that it was unlikely the plaintiff could succeed in his voting rights claim because there was no evidence the law would have the effect of denying the right to vote based on race or color. The court declined to enter an injunction.

Lake v. North Carolina State Board of Elections, 798 F. Supp. 1199 (M.D.N.C. 1992)

Plaintiffs, an election candidate for the Republican Party and two voters, brought suit pursuant to Section 5 of the Voting Rights Act and also alleged violations of due process, equal protection, and state laws. During the November 6, 1990 election, voting machines in certain precincts in Durham and Guilford counties were not working, causing representatives of the Democratic Party to move to superior court judges to extend the voting hours. The plaintiffs complained that the granting of those motions and other

errors should cause the court to declare the election results void. Specifically, the plaintiffs argued that the superior court judge orders were changes under Section 5 and were not properly precleared. Plaintiffs sought to enjoin defendants from certifying election results for associate justice of the North Carolina Supreme Court.

The court granted summary judgment for the defendants. Durham County was not covered by the Voting Rights Act. In Guilford County, extension of the hours did not require preclearance because it mirrored a previously precleared state statute that provided for extended hours. The court also accepted the defendants' argument that this change fit into an exception to Section 5 review for exigent circumstances. Further, because extending the hours was a neutral decision, it did not have potential for discrimination on the basis of race or color.

Lewis v. Alamance, 99 F.3d 600 (4th Cir. 1996) (*cert. denied*, 520 U.S. 1229, May 19, 1997)

Black voters challenged the at-large method of electing Alamance County Commissioners. The five members of the Board of Commissioners were elected at-large in partisan elections for four-year staggered terms. Voters could cast votes for as many candidates as there were vacant seats, but could not vote more than once for a single candidate. Since 1965, black candidates had run for seats in 8 of the 14 elections, but only one black candidate was elected, although he was elected three times. White candidates supported by a majority of black voters had also repeatedly won seats. After the plaintiffs presented evidence to the district court, the court found that they had failed to show that black-preferred candidates were usually defeated. Plaintiffs appealed.

On appeal plaintiffs made several arguments, including: 1) white candidates who received support from black voters in general elections should not have been considered black-preferred candidates because they only won support because they were Democrats; 2) the court erred in not discounting the repeated success of one minority-preferred candidate because of the effects of incumbency; 3) the court improperly aggregated primary and general election results; 4) the court improperly viewed success in the primary election as electoral success; and 5) the court erred in failing to conduct an individualized determination into whether some candidates should be treated as black-preferred candidates.

The Fourth Circuit affirmed the district court's grant of summary judgment to the county because plaintiffs were unable to prove that black-preferred candidates were usually defeated. However, the court agreed that the district court erred in aggregating the primary and general election results; in failing to conduct individualized determinations into whether some candidates should be treated as black-preferred candidates; and by basing its decision exclusively on data from elections in which a black candidate was on the ballot. With regard to the last error, the court found that the district court failed to analyze a sufficient number of elections to determine whether white bloc voting usually operated to defeat minority-preferred candidates. This was the only election data proffered by the plaintiffs, so the court did not have before it sufficient evidence to determine if black-preferred candidates were usually defeated. The court stated that by

"failing to consider evidence of elections in which no minority candidate appeared on the ballot, the district court, insofar as can be discerned, could have understated (or overstated) the extent to which minority-preferred candidates were usually defeated in Alamance County." The court did not reverse, in spite of these errors, because plaintiffs, who carried the burden of proof, did not show sufficient evidence of violations under the Voting Rights Act.

Circuit Judge Michael dissented, finding that since the passage of the Voting Rights Act, only one minority candidate had ever been elected to the board and that candidate was initially appointed, not elected. Judge Michael could not conclude with the majority that black voters had the same opportunity as white voters to elect their preferred candidate. Judge Michael found that plaintiffs presented adequate statistical evidence of general and primary election results since 1972 to withstand a motion for summary judgment and give rise to dispute over whether minority voting had been diluted.

Lewis v. Wayne County Board, 5:91-cv-00165 (E.D.N.C. 1992)

Plaintiffs brought suit against the county Board of Elections and school board alleging that the method of voting for school board members impermissibly diluted black voting strength. In 1990, Wayne County had 33,793 black residents, comprising 32.2 percent of the population, but minority voters had been unable to elect representatives of their choice under the at-large method of election.

Black voters brought suit to change the method of election and took a dismissal when they were successful in winning a change. Under the new system, the board consists of seven members, elected from districts to serve four-year terms. The superintendent is selected by the board and serves as the chief executive officer of the school system. With the new district system in place, there are currently two black representatives on the board.

McGhee v. Granville County, 860 F.2d 110 (4th Cir. 1988)

The action was brought in 1987 by black registered voters of Granville County against the county, the county Board of Commissioners, the county Board of Elections, and the County Supervisor of Elections. Plaintiffs complained the at-large method of electing the Granville County Board of Commissioners resulted in diluting minority voting strength and denied black community members the opportunity to elect board members of their choice.

At the time of the suit, the board consisted of five members that were elected at-large, but required to reside in particular residence districts. Each member was elected for a four-year term and the terms were staggered. Black citizens constituted 43.9 percent of the county's total population and 40.8 percent of the voting population, and 39.5 percent of the registered voters. No black individual had ever been elected to the board, despite having run for election.

The district court ordered minority voters and county officials to agree on a remedial plan but, when they failed to agree on a remedy, the county submitted a proposed remedial plan. The proposed plan was a single-member district plan containing seven districts with members serving staggered terms. Plaintiffs opposed the plan because it would not provide black citizens a chance to elect a number of commissioners commensurate with their portion of the population and their voting strength. Plaintiffs favored a limited voting plan, which would provide for concurrent county-wide elections, with voters allowed to select up to three candidates. The district court rejected the county plan because it did not remedy the dilution of black voting strength and, instead, ordered a modified plan based upon "limited voting" in at-large elections. After the district court's plan was implemented, a primary election was held and black candidates won nomination for three seats. This appeal followed.

On appeal, the Fourth Circuit reversed the district court holding and remanded for implementation of the county's proposed remedial plan. The court did not reject the lower court's finding of facts with regard to the existing voter dilution or the difficulties faced by black voters in electing a candidate of their choice. Rather, the court found that the district court erred in not accepting the county's plan as a complete remedy because the plan was legally adequate. The district court was given the option of either canceling the primary results and enjoining the general election, and keeping the board members elected under the district court's plan in place until a special primary and general election could take place or permitting the general election and allowing members elected under the district court's plan to serve until successors were elected in a new primary and general election following the county plan.

Montgomery County Branch of the N.A.A.C.P. v. Montgomery County Board of Elections, 3:90-cv-00027 (M.D.N.C. 1990)

The NAACP and individual black voters filed suit in 1990 arguing that the at-large method of electing the county Board of Commissioners violated Section 2 of the Voting Rights Act. The board consisted of five members elected at-large. Candidates for four of the five seats were required to live in residency districts and the candidate for the fifth seat could live anywhere in the county. Black citizens constituted 24.6 percent of the county's population. Black candidates ran for seats eight times since 1976, but none had ever been nominated or elected and no black candidate was known to have been elected before that date either.

The parties entered a consent decree. The consent decree modified the method of electing Montgomery County Board of Commissioners, providing for four members to be elected from three districts (one district would elect two commissioners from different sub-district residency areas) and a fifth member to be elected at-large. Under the new system, plaintiffs agreed that black voters would finally have an opportunity to elect representatives of their choice.

In 2001, the case was reopened when the Board of Commissioners applied to the court for relief from the consent decree. Over the plaintiffs' objections, the court agreed in

2003 to modify the 1990 Consent Decree. Under the modified plan, the board consists of four members to each serve terms of four years, except for one transitional term for District 3. Since 2004, two commissioners have been elected at-large and one commissioner elected from each of three districts. To be an eligible candidate from a district, the candidate must live in the district, but at-large members can reside anywhere in the county. Elections are staggered with district representatives elected simultaneously and at-large members elected simultaneously.

The case was then placed on inactive status where it will remain for five years and be dismissed if, at that point, no party has sought to reopen it or alter the method of election.

Moore v. Beaufort County, 936 F.2d 159 (4th Cir. 1991)

Black voters filed suit under Section 2 of the Voting Rights Act against the county and Board of Commissioners, claiming the county's system of at-large elections denied black voters the opportunity to elect candidates of their choice. Plaintiffs provided evidence that although approximately 30 percent of the residents of Beaufort County were black, no black candidate had been elected to the Board of County Commissioners for at least 30 years. Plaintiffs blamed the at-large election system. The parties entered a settlement, but the board refused to honor the agreement. The U.S. District Court for Eastern North Carolina granted black voters' motion to enforce the settlement. This appeal followed.

In 1989, the county and the plaintiffs entered settlement negotiations based on a limited voting plan. Under such a plan, voters would be limited in the number of votes they could cast. For example, if several seats were up for election, each voter might only be able to vote for a single candidate, allowing minorities to rally around a candidate. In April, 1989, the board agreed to settle the suit by accepting limited voting and instructed their attorney to negotiate the details with the plaintiffs. The attorney, Mr. Crowell, informed the plaintiffs' attorney that the board was willing to adopt a new election plan that would enable black voters to better elect a candidate of their choice and commence a new election method in 1990. Plaintiffs accepted the offer to settle.

After this negotiation, however, when the completed agreement documents were presented to the board at a regularly scheduled board meeting, the board was dissatisfied with the wording of the documents and specifically concerned that the documents would expose them to liability for attorney's fees. While the board was attempting to have the documents reworded, it learned of public opposition to limited voting and, during a meeting, voted to reject the settlement. The board then refused to honor the settlement it had reached with plaintiffs.

The Fourth Circuit upheld the district court's ruling that the settlement must be honored. The court found that the parties intended to settle the litigation. There was an offer to settle that was accepted by the plaintiffs. Mr. Crowell was acting within his authority from the board to settle the case and he was empowered to bind the board to the settlement. The court found that the settlement should be enforced and remanded to the

district court for submission to the Justice Department for preclearance in accordance with Section 5 of the Voting Rights Act.

N.A.A.C.P. of Stanley County v. City of Albemarle, 4:87-cv-00468-RCE (M.D.N.C. 1988)

Individual voters and the Stanley County branch of the NAACP brought suit to challenge the at-large method of electing City Council members. The black community in Albemarle constituted over 17 percent of the population, and had strong voter turnout. In spite of this, the at-large method of voting prevented black voters from electing a candidate of their choice. When black voters appealed to the City Council for relief, some members were supportive, but not a sufficient number to force change.

Voters filed suit to challenge the system. The plaintiffs attempted to convince the court to issue a preliminary injunction to halt the upcoming election, but were unsuccessful. Despite this failure, the election worked to the plaintiffs' advantage when the remaining City Council members who opposed changing the system lost their seats. The newly elected members joined the previous members who had agreed to change voting procedure and the North Carolina General Assembly passed legislation implementing change. Plaintiffs then agreed to dismiss the suit.

Under the new system, there are seven members of the City Council. Three are elected at-large and four are elected by district. With election by district, black voters, who live in fairly compact communities, were able to elect a black member to the city council and have continued to have regular success in electing a candidate of their choice. The Albemarle City Council currently has one black member.

N.A.A.C.P. v. Anson County Board of Education, 1990 WL 123822 (W.D.N.C. 1990)

Individual black voters and the NAACP challenged the method and form of election to the county Board of Education under Section 2 of the Voting Rights Act and constitutional provisions. The plaintiffs alleged the method of electing members to the board for staggered terms diluted minority voting strength, had the purpose and effect of discriminating against black citizens and deprived black citizens of their constitutional rights. Plaintiffs argued for an at-large election without staggered terms. From 1984 to the time of suit, the board of Education consisted of seven white members and two black members.

During the suit, the state House passed House Bill 670. On November 15, 1989, the court entered a consent order that enjoined and restrained defendants from using its previous method of electing members to the Board of Education and ordered them to use the method in Bill 670, unless it did not achieve preclearance. The new system would elect nine members to the board of Education for a term of four years. Seven members of the board would be elected by voters from their specific voting district and two members would be elected at-large. Elections would be staggered and a candidate for an at-large seat needed 40 percent plurality to win. The plaintiffs claimed the staggered terms of the new voting procedure would unlawfully dilute minority voting rights. They presented

evidence to show segregation was ingrained in the culture of Anson County and that the county showed a pattern of polarized voting, socioeconomic differences between whites and blacks and cohesive voting among blacks.

The court concluded that the plaintiffs had not adequately shown that election by staggered terms would dilute minority voting. However, because the DOJ did not preclear the plan, leaving the county without a method of electing members to the board of Education, the court told defendants they must either submit a modification of the plan to DOJ or seek declaratory judgment of the U.S. District Court for the District of Columbia that the plan was, in fact, acceptable.

N.A.A.C.P. v. Caswell County Board, 2:86-cv-00708 (M.D.N.C. 1989)

Individual black voters and the NAACP brought suit alleging that the method of electing the Caswell County Board of Commissioners and the School board denied minority voters the equal opportunity to elect representatives of their choice. At the time of the suit, roughly 40.8 percent of the population of Caswell County was black and the black population had a high rate of voter turnout, but the at-large method of election prevented voters from being able to elect minority preferred candidates.

The suit was terminated when the parties were able to agree to a new method of election from districts. Since the suit, black candidates have had more regular success in being elected to both boards.

N.A.A.C.P. v. City of Statesville, 606 F. Supp 569 (W.D.N.C. 1985)

By consent order entered separately the same day of this decision, the parties resolved the major issues of the case. The plaintiffs succeeding in having the at-large method of electing members of the City Council for the city of Statesville declared a violation of Section 2. To remedy the problematic voting system, the parties reached a settlement, creating a new City Council composed of members representing a combination of single districts (wards) and the city at-large. Two of the wards were designed to contain a black majority voting age population. Candidates for ward seats were elected in staggered elections. The issue for the court to decide was the "least dilutive or discriminatory method and term for electing the two at-large members to the City Council."

The court held an evidentiary hearing to evaluate the remaining question, which was whether staggered terms or election as a group for the at-large seats would be least dilutive or discriminatory. The city advocated staggered terms, while plaintiffs favored a system where more than one candidate was elected at a time so that black voters would have a greater chance of having a candidate of their choice elected. The plaintiffs argued that with staggered terms, where only one person was elected at a time, the white majority electorate could always out-vote the black electorate. Plaintiffs also favored longer terms so that candidates with fewer resources would not be required to stand for reelection so often. The court found that while it could not guarantee the success of either plan, the group method of electing advocated by the NAACP was the least dilutive and

discriminatory and that elections every four years would be less demanding of resources scarce in the black community.

N.A.A.C.P. v. City of Thomasville, 4:86-cv-00291 (M.D.N.C. 1987)

Two black voters and the NAACP brought suit challenging the method of election of the City Council of Thomasville. The City Council consisted of five members and a mayor, all of whom were elected at-large. Four of the five council members were required to live in wards, but they were elected by the city at-large. Under the at-large system, in spite of having run for office several times, black candidates had never been elected to the council. Plaintiffs successfully showed that the system operated to dilute minority voting strength in violation of Section 2 of the Voting Rights Act.

With the consent of the parties, the court ordered that the City Council be expanded to eight members (a mayor and seven council members). Two council members would be elected at-large every two years and the remaining five members would be elected by wards every four years for staggered terms. One of the wards would have a majority-minority population. With the new system in place, minority voters were able to consistently elect a representative of their choice in the minority ward.

The case was reopened in 2003 when voters of Thomasville voted to change the method of voting to reinstate the at-large method of electing all members. In response, black voters filed a motion for preliminary injunction asking the court to halt implementation of the new method of voting. The court granted the preliminary injunction. An election was then held using the combination ward/at-large method adopted in the 1987 consent decree. In 2004, the town then filed a motion for relief from the consent decree.

After hearing evidence and over the objections of black voters, the court vacated the 1987 judgment. The plaintiffs showed evidence that the ward system had consistently given black voters the opportunity to elect a candidate of their choice in Ward 3. In spite of this important improvement, the court determined that because the at-large seats had also been won by individuals who appeared to be minority-preferred candidates, the judgment was no longer necessary. The court also concluded that the new at-large system would not be as problematic as the one existing prior to 1987 because it did not impose residency requirements or staggered terms.

N.A.A.C.P. v. Duplin County, 88-5-CIV-7 (E.D.N.C. 1988)

Black voters and the NAACP brought suit under Section 2 of the Voting Rights Act opposing the method of electing the Duplin County Board of Commissioners and the Board of Education. Under the existing elections system, both boards consisted of five members nominated in primaries held in districts and elected at-large countywide. The members of both boards served four-year staggered terms. Recognizing that the system had the effect of denying black voters the opportunity to elect candidates of their choice, the parties entered a consent decree. At the time of suit, roughly 33 percent of the county population was black.

Under the new system, both boards consist of six members elected from six districts and only voters who reside in a district may vote in the party primaries and general election for that district. Since the change to the election system, black candidates have had greater success and black commissioners currently represent Districts five and six on the board.

N.A.A.C.P. v. Elizabeth City, 83-39-CIV-2 (E.D.N.C. 1984)

The NAACP brought suit under Section 2 opposing the at-large method of election, which prevented black voters from electing candidates of their choice. During the course of the suit, the parties agreed to a consent decree that would involve the creation of districts for voting. In spite of this agreement, the city proceeded to select a method of election with four single-member districts and four at-large seats with residency requirements.

When the city applied for preclearance pursuant to Section 5, the attorney general interposed objection finding that by maintaining the four at-large seats, the system chosen would unnecessarily limit the potential for black voters to elect representatives. The proposed system still contained the discriminatory features of the pure at-large system. The city was unable to show that the 4-4 system was adopted without the purpose of denying or abridging the right to vote on account of race. The city has since adopted a ward system. The city is divided into four wards that each elect two representatives. Four of the members of the current City Council are black.

N.A.A.C.P. v. Forsyth County, 6:86-cv-00803-EAG-RAE (M.D.N.C. 1988)

Black voters filed suit against the county Board of Commissioners and the school board to change the method of elections from an at-large system that diluted minority voting strength. The population of Forsyth County was almost 25 percent black, but the system of election prevented minority voters from electing representatives of their choice. During the course of the suit, the parties agreed to a settlement that changed the method of voting from at-large to election by district.

Under the new system, the Board of Commissioners is composed of seven members elected in partisan elections. Six of the commissioners are elected from two multi-member districts and one is elected at-large. Board members serve four-year staggered terms. Minority candidates have had consistent success under this system and tow members of the current board are black.

N.A.A.C.P. v. Reidsville, 2:91-cv-00281-WLO-PTS (M.D.N.C. 1992)

The NAACP and individual plaintiffs filed suit to change the at-large method of electing City Council and county board members. The population of Reidsville was nearly 40 percent black, but only one black member had previously been elected to the seven-member council. While the suit was progressing, the city was in the process of an

annexation. Outlying areas to be annexed also opposed the at-large method of electing members because it favored entrenched council members who were potentially less responsive to the newly annexed communities.

Black voters and voters to be annexed formed an alliance favoring election by district that would allow them to elect City Council members and county board members that represented their compact communities. In response to this united front, the City agreed to a new voting system. The current City Council is composed of seven members serving four-year terms. There are two districts that each elect two members, two members elected at-large, and a mayor elected at-large. Since the change in the voting system, black candidates have had consistent success and there are currently two black members on the City Council.

N.A.A.C.P. v. Richmond County, 3:87-cv-00484 (M.D.N.C. 1988)

Plaintiffs brought action opposing the method of electing the Richmond County board of Education. The board of Education consisted of five members elected at-large in nonpartisan elections subject to majority-vote and run-off requirements. Candidates for four of the five seats were required to reside in districts, but candidates for the fifth seat could reside anywhere in the county. Candidates served four-year terms and were elected in staggered elections with two elected in a given year and three elected two years later.

Black citizens constituted 26.7 percent of the Richmond County population according to the 1980 census, but no black person had been elected to the board of Education under the existing method of election. Under a previous method of election, which did not use residency districts and more seats were elected in each election, black candidates were elected to the board in 1972, 1980, and 1982.

A consent decree was adopted changing the method of election in order to allow black voters of Richmond County the equal opportunity to elect candidates of their choice. Following the 1990 election, the board would consist of seven members elected at-large. In each election, all candidates would be listed together on a ballot and each voter could vote for as many candidates as there were seats being filled in that election. The candidates with the highest number of votes would be elected with no run-off elections. The elections would be staggered so that four members would be elected in a given year and three members elected two years later. Candidates would serve four-year terms. There is currently one black member on the board.

N.A.A.C.P. v. Roanoke Rapids, 2:91-cv-00036-BO (E.D.N.C. 1992)

Individual black voters and the NAACP filed suit pursuant to Section 2 of the Voting Rights Act against the city of Roanoke Rapids and the Halifax County Board of Elections challenging the method of election of the City Council of Roanoke Rapids. At the time of the suit, the Roanoke Rapids City Council consisted of four members elected at-large for four-year terms. Elections were staggered, with two council members elected every two

years. The mayor was elected in a separate at-large election. Approximately 17 percent of the population of Roanoke Rapids was black.

During the course of the suit, the parties entered a consent decree changing the method of election. Under the new system, five council members are elected from three districts. Districts 1 and 2 each elect two members and District 3 elects one. The mayor is still elected in a separate at-large election. Under the new system, black candidates have had more regular success and there is currently one black member of the council.

N.A.A.C.P. v. Rowan Board of Education, 4:91-cv-00293-FWB-RAE (M.D.N.C. 1994)

Plaintiffs filed suit to change the method of electing members to the Rowan County Board of Education. The previous method was at-large election. Under the at-large system, black voters had been unsuccessful in electing members to the board. Black residents of Rowan County constituted 16 percent of the population and lived in highly compact communities, primarily in Salisbury.

The school district was divided into attendance zones. The plaintiffs wanted election districts that would match the attendance zones so that black voters would have the opportunity to elect members to the board of Education that were representative of the attendance zones. Because the black population of Rowan County was highly concentrated, election by districts matching the attendance zones would provide black voters with a realistic opportunity to elect at least one representative of their choice.

The case ended when the court entered a consent decree that changed the method of election. Consistent with Chapter 890 of the 1987 Session Laws of the General Assembly, candidates would be elected by districts matching attendance districts. Under the changed system, black voters were able to successful elect representatives to the board. Some problems arose during 2004 when the county sought to redraw attendance zones, but the issues were resolved without changing election districts.

N.A.A.C.P. v. Winston-Salem/Forsyth County Bd. Of Educ., 1992 U.S. App. LEXIS 6221 (4th Cir. 1992)

Four black registered voters of Forsyth County, North Carolina and the Winston-Salem Branch of the NAACP alleged the voting system - electing at-large members to the nine-member Winston-Salem/Forsyth County Board of Education with staggered terms - deprived black citizens of representation. Beginning in January, 1990, the NAACP branch and other citizens requested the board of Education to adopt a district system of electing members, but the board consistently tabled the motions. A research committee was then appointed by the board to study the problem and agreed that the board should abandon the at-large method of electing members. The plaintiffs filed suit in 1991 and while the suit was pending, the state legislature passed a compromise bill to address the plaintiffs' concerns about the negative impact of staggered elections. The state legislature's bill changed the election system to provide simultaneous election of board members by district.

The question in this appeal was whether the district court had properly dismissed the plaintiffs' suit without naming the plaintiffs as the prevailing party after the legislative changes. Plaintiffs sought to be named the prevailing party so that they would be able to obtain attorneys' fees. The court affirmed the district court holding that the plaintiffs could not be declared the prevailing party because the defendants had not acted to end the suit and give plaintiffs relief, and the defendants continued to argue for affirmative defenses.

Pitt County Concerned Citizens for Justice v. Pitt County, 87-129-CIV-4 (E.D.N.C. 1988)

Plaintiffs filed suit, pursuant to Section 2 of the Voting Rights Act objecting to the method of electing the Pitt County Board of Commissioners. Under the existing method, the board consisted of six members elected at-large, but required to live in residency districts. The members served four-year staggered terms.

In 1987, at the request of the board, the state General Assembly enacted a new method of electing the board. The new bill provided for a nine-member board. Six members would be elected from districts and three at-large. The change was submitted for preclearance, but no response had been received at the time of filing. After filing, the attorney general objected to the change so it could not be implemented.

The parties entered a consent decree to change the method of election because it did not provide equal opportunity for black voters to elect representatives of their choice. At the time of suit, the population of Pitt County was roughly 33 percent. Under the new system, the board consists of nine members. One member is elected from each of six districts and only voters residing in a district may vote for that seat. One member is then elected from three consolidated districts. Districts 1 and 2 are combined to form Consolidated District A, Districts 3 and 6 are combined to form Consolidated District B, and Districts 4 and 5 are combined to form Consolidated District C. Terms are four years. Black representatives currently hold seats on the board for District 1 and Consolidated District A.

Porter v. Steward, 5:88-cv-00950 (E.D.N.C. 2003)

In 1988, the plaintiffs instituted this suit to challenge the at-large method of electing members to the Harnett County Board of Commissioners and Board of Education. Plaintiffs argued that the at-large method of election prevented black voters from electing representatives of their choice. Black candidates had run for election to both boards, but no black candidate had ever been elected to either board.

After negotiation, the parties reached an agreement in 1989 to change the method of election. The county was divided into five single-member districts that would each elect one member and only voters residing in the particular district could cast votes in that district. The districts were drawn based on the 1980 Census data. Under the new plan, District 1 was established with a black majority. In the 1990 election immediately

following the suit, District 1 successfully elected a black candidate to the Board of Commissioners and to the board of Education.

After the release of 1990 Census data, the defendants filed an action to modify the previous consent order plan so that districts could be changed slightly due to population shifts. The plaintiffs did not oppose.

When the census was released in 2000, the board again sought to change the districts. The census showed that 22.5 percent of the population of Harnett County was black. It also showed that the five districts that had been drawn deviated greatly. The population deviation between District 2 and District 5, for example, was over 57 percent. The Board of Commissioners hired a consultant who designed four plans for redistricting. The board initially selected Option 4, which was submitted to the Department of Justice, but not approved because it would not preserve minority voting strength. The board then considered several other plans.

In 2002, the Harnett County Board of Commissioners approved a new set of modifications to the five-member district plan and in 2003, the attorney general approved the plan. The new plan proposed to equalize the voting districts, while still providing one majority-minority district, meaning it would not reduce black voters' opportunity to elect a candidate of their choice. The court approved the plan in August 2003. The continued participation of the district court in Harnett County voting procedures has allowed black voters to preserve the gains they made in the initial suit and continue to elect a representative of their choice.

Republican Party of North Carolina v. Martin, 980 F.2d 943 (4th Cir. 1992)

The Republican Party and others challenged state officials, alleging that the state election system of Superior Court judges on a statewide partisan ballot effectively disenfranchised minority party voters by diluting their strength, and that minority judges would have been elected in some districts if the elections were district-wide rather than statewide.

Since 1868, the Constitution of North Carolina had allowed the General Assembly to choose between statewide or district-wide popular elections to select Superior Court judges. In 1877, the General Assembly implemented the statewide election scheme and in 1915 that system was modified to include a requirement that candidates for the office be nominated through primaries. The primaries were held by local district, resulting in a system where voters nominated candidates for judgeships in local party primaries in each district and the successful primary candidates ran against each other in a general, statewide election. Judges were required to reside in the district in which they were elected, but the state constitution granted them statewide jurisdiction and permitted rotation from district to district within a judicial division, of which there were four.

During the mid-1980s, the North Carolina Association of Black Lawyers and others brought suit against Governor Martin, complaining the system of elections had the purpose and effect of abridging nonwhite voting strength in violation of the Voting

Rights Act and the Constitution. This litigation ended by a consent decree and upon adoption by the General Assembly of Chapter 509 of the North Carolina Session of Laws of 1987. See *Alexander v. Martin*, No., No. 86-1048-CIV-5 (E.D.N.C. Nov. 25, 1987). Chapter 509 eliminated staggered terms within multimember judicial districts and mandated the redrawing of judicial districts. See state *ex rel. Martin v. Preston*, 325 N.C. 438, 385 S.E.2d 473, 476-77 (N.C. 1989); N.C. Gen. Stat. § 7A-41 (setting forth superior court divisions and districts). As a result, the number of judicial districts increased from 34 to approximately 70. Unlike past configurations, the new district lines often split counties and some of the new districts consisted of parts of more than one county. Chapter 509 also set forth the requirement that all individuals seeking nomination for the position of superior court judge must, at the time of filing, reside in the district for which they seek election.

The Republican Party contended that judges did not, in fact, serve statewide because they rarely served outside the judicial division they were assigned to and judges held unique statutory powers within their own districts, to appoint the local defender, for example. They also questioned the validity of some of the new districts created in Chapter 509, alleging that sixteen of the new districts did not have a courthouse, a clerk of court, or any other official associated with the district except for the local superior court judge. The Republican Party argued that, from 1900 to 1987, only one Republican had been elected to a Superior Court judgeship (that position was later eliminated during redistricting) and that if elections had been conducted district-wide rather than statewide, four of ten Republican candidates for judgeships since 1968 would have won. The party claimed that Republicans cast a large number of votes, but the election system structurally diluted their votes and prevented election of candidates of their choice.

The defendants essentially argued that because Superior Court judges were not representative governmental officials, the issues presented to the court did not raise questions of fair representation on the part of the elected officials and did not, therefore, necessarily involve a justiciable political question. The district court dismissed the case. On appeal, the Fourth Circuit disagreed, finding there was a prima facie claim of voter dilution resulting from a defective election scheme and that manageable standards did exist for resolving the case. The court found that election of judges did implicate the goal of equal protection and issues of fair effective representation. It remanded for consideration of this claim, while dismissing other First Amendment claims.

Rowsom v. Tyrrell County Commissioners, 2:93-cv-00033 (E.D.N.C. 1994)

Black citizens of Tyrrell County brought suit pursuant to the Voting Rights Act, and the First, Thirteenth, Fourteenth, and Fifteenth Amendments contending that the method of electing the Tyrrell County Board of Commissioners and Board of Education denied black citizens an equal opportunity to elect candidates of their choice. Under the existing system, the Board of Commissioners consisted of five members elected at-large in staggered elections for four-year terms. The elections were partisan and preceded by primaries. The Board of Education also consisted of five members elected at-large for

staggered four-year terms, but those elections were nonpartisan and there were no primaries.

According to the 1990 census, black citizens constituted 40 percent of the county's population and 37 percent of the voting age population. Since 1984, however, black candidates ran for seats on the Board of Commissioners at least seven times and were elected only once. Since 1982, black candidates had run for positions on the board of Education at least nine times and were elected twice.

The court stated that if the case were tried, the plaintiffs could present evidence that would establish a plausible claim that the method of election had the effect of denying black citizens the equal opportunity to elect candidates of their choice. The parties entered a consent decree that changed the method of election. The parties agreed that while single-member district elections are generally favored to remedy voting rights cases, it would not be possible to do so in Tyrrell County because, among other concerns, the population was so sparse and districts would potentially divide communities with similar interests.

The system was changed, subject to preclearance. Under the new system, the Board of Commissioners consists of five members elected in partisan elections for staggered four-year terms. In the primary election, all candidates are listed on a single ballot, but voters may only vote for one candidate and the candidate with the most votes is the general election candidate, with no run-off held. In the general election, all candidates nominated by parties or otherwise qualified are listed on a single ballot and voters can vote for a single candidate. The two candidates receiving the most votes are elected and in the following election held two years later, the three candidates receiving the most votes are elected.

The method of electing members to the Board of Education was also changed. Five members are elected for staggered four-year terms in nonpartisan elections. All candidates are listed on a single ballot, but voters may only vote for one candidate. The candidates with the most votes are elected, with no run-offs.

Sample v. Jenkins, 5:02-cv-00383 (E.D.N.C. 2002)

A black registered voter of Cumberland County brought suit complaining that the voting changes resulting from the North Carolina Supreme Court holding in *Stephenson v. Bartlett* (No. 94PA02) were being implemented prior to preclearance. In *Stephenson*, Republican voters and state representatives brought suit alleging Democrats overseeing reapportionment of state voting were creating a reapportionment scheme that unfairly favored Democratic candidates. Much of their complaint was based on the argument that the potential plan would violate the whole county provision of the state constitution, a provision providing that no county could be divided in the formation of a Senate or House district. That case resulted in the postponement of primary elections because, according to the North Carolina Supreme Court, certain aspects of the reapportionment were unacceptable under the state constitution. The plaintiffs in the immediate suit

contended that the changes resulting from *Stephenson* were the most sweeping since the Voting Rights Act was enacted and needed preclearance.

The NAACP intervened in the suit. The NAACP had several concerns, among them that the cancellation of a runoff primary could have negative effects on African-American candidates by forcing candidates to run against each other in the general election, which would divide the black vote; and that the elimination of the primary election was not precleared. Cumberland County is covered by Section 5 and changes to voting there must be precleared prior to implementation. The plaintiffs argued the court order should not have been able to serve as a remedial plan absent preclearance. They sought an injunction to halt the court and state officials from implementation of these changes until preclearance was obtained.

Defendants moved to dismiss the suit when preclearance was obtained.

Sellars v. Lee County Board, 1:89-cv-00294 (M.D.N.C. 1992)

Black voters filed suit to change the at-large method of electing members to both the Lee County Board of Commissioners and the Sanford City Council. Claims against the county were dismissed. In 1989, the Lee County Board of Commissioners had already undergone a change in the system of election to increase black voters' opportunity to elect representatives of their choice. The 1989 resolution removed the previous method of electing five members at-large to staggered four-year terms, and in its place implemented a system that elects seven members, four from single-member districts and three at-large.

In the immediate suit, however, the plaintiffs were successful in having a change implemented to the system of electing the Sanford City Council. In 1990, the black population of Lee County was 22.7 percent of the population. More than half of the black population of Lee County lived in the city of Sanford. Almost 35 percent of the city of Sanford was black. However, black voters had been unable to elect representatives of their choice due to voter dilution.

As a result of the suit, the plaintiffs were able to garner a change in the method of election. The city of Sanford is now represented by a seven-member council. Five of the members are elected from wards and two at-large. Members serve four-year terms. As a result of the change to a ward system of voting, two of the current members of the city council are black.

Sewell v. Town of Smithfield, 5:89-cv-00360 (E.D.N.C. 1990)

Plaintiffs filed suit to change the method of election in the town of Smithfield, arguing that the at-large method of election impermissibly diluted black voter strength. In 1990, the town of Smithfield was 35 percent black but, due to the method of election, black voters had been unable to elect representatives of their choice. The case was closed when plaintiffs were able to successfully obtain a change in the method of election.

As a result of the suit, the town of Smithfield changed its method of election to a system that mixes at-large election and election by ward. Under the new system, seven members are elected to the council, four by district and three at-large, for four-year staggered terms. A mayor is selected at-large to serve every two years.

There is currently one black member of the City Council in Smithfield, which in 2000 had a population that was 31 percent black.

Speller v. Laurinburg, N.C., 3:93-cv-00365 (M.D.N.C. 1994)

Black voters brought suit opposing the at-large method of electing members to the Laurinburg City Council. In 1990, the population of Laurinburg was 45 percent black and other minority populations composed an additional almost 5 percent of the population. The method of election, however, served to dilute minority voting, leaving nearly half the population of the town unable to elect representatives of their choice.

The case resulted in a change of the method of electing City Council members. The new council is composed of five members and a mayor. Two districts each elect two representatives and the fifth member is elected at-large. The new system has enabled black voters to successfully elect representatives of their choice. Three of the current council members are black.

Thornburg v. Gingles, 478 U.S. 30 (1986)

The *Gingles* case was the first major test of the 1982 amendments to the Voting Rights Act.

The plaintiffs, individually and as representatives of a class of black citizens in North Carolina, filed suit on September 16, 1981, claiming that the state's redistricting plan diluted the vote of black citizens. The plaintiffs were specifically concerned about seven districts, one single-member and six multimember, which they believed would impair black voters' ability to elect representatives of their choice. The plaintiffs raised several arguments against the new plan, including: that the population disparities between the legislative districts violated the one-person, one-vote requirement; that multimember districts would dilute minority voting strength; and that the "whole county" provision of the state constitution prohibiting division of counties in drawing districts had not been precleared pursuant to Section 5. This action was consolidated with another case then pending, *Pugh v. Hunt,* No. 81-1066-CIV-5.

After the plaintiffs filed suit, the state submitted the 1968 "whole county" provision to the Department of Justice (DOJ) for preclearance. The DOJ interposed an objection on November 30. The DOJ followed this objection with subsequent letters objecting to the entire state reapportionment plan. In response, the state Senate and House developed new plans, but the DOJ again rejected those in April 1982. When the legislature reconvened to again adopt a new plan, it selected one that provided for black majority districts in some of the Section 5 covered counties. This plan was precleared. The state also modified its

reapportionment plan to better conform to the one-person, one-vote standard. The focus of the trial became seven specific districts where plaintiffs complained black voter strength was not adequately protected.

After the suit was filed, Congress enacted the 1982 amendments to the Voting Rights Act, which changed Section 2 to remove the requirement that plaintiffs show intent to discriminate as a necessary component of a voter dilution claim. Prior to these amendments, plaintiffs were required to show not only a discriminatory dilutive effect traceable to some aspect of the election system, but also a specific intent on the part of officials to create that effect. The *Gingles* case became the first major test of the amendments.

The district court made extensive factual findings about racial discrimination in the challenged districts and the ability of state legislators to develop plans that would have protected minority voting power. The court found that black citizens constituted a distinct population and registered voter minority in each. In each of the multimember districts, there were concentrations of black citizens within the boundaries that were sufficiently large and contiguous to constitute effective voting majorities in single-member districts lying wholly within the boundaries of the multimember districts. With respect to the challenged single-member district, the court found that it contained a concentration of black citizens within its boundaries and within those of an adjoining district sufficient in numbers and continuity to constitute an effective voting majority in a single-member district. Generally, the court found that in each of the challenged districts, there were sufficient minority populations so that black majority, single-member districts could have been drawn.

The court also made findings with regard to the history of voter discrimination in the challenged areas, including: 1) there was a clear history of voter discrimination in North Carolina; 2) there existed a history of segregation in North Carolina and the state's black population occupied a lower socioeconomic status; 3) voting procedures operated to lessen the opportunity of black voters to elect candidates of their choice; 4) white voters generally did not vote for black candidates; 5) black candidates had low rates of election; and 6) there was a persistence of severely racially polarized voting. Based on these factors and the problems with the new districting plans, the district court found for the plaintiffs.

The case was appealed to the Supreme Court, where the district court's findings were affirmed. In the majority opinion, Justice Brennan reviewed the Senate Judiciary Committee majority report that accompanied the Amendments to the Voting Rights Act. That report provided typical factors that might be probative of a Section 2 violation. Justice Brennan then laid out certain factors that were necessary for a showing of a Section 2 violation. These factors continue to guide Section 2 cases to this day. In the context of multimember election districts, those factors are: 1) the minority group must be able to show it is sufficiently large and compact to constitute a majority in a single-member district; 2) the minority group must be able to demonstrative political cohesiveness; and 3) the minority group must be able to demonstrate that the white majority votes in a bloc that would usually enable it to defeat the minority's preferred

candidate. The guarantee of an equal opportunity was not the guarantee that minority candidates would be elected, but rather that minority voters would at least have the opportunity to elect candidates of their choice. Moreover, the fact that some minority candidates had been elected in the challenged area did not foreclose a Section 2 claim.

The Supreme Court outlined how courts should evaluate minority vote dilution claims, including analyzing the presence of racially polarized voting, the presence of systems that operate to dilute minority voter strength, the percentage of minority registered voters, the size of the district and whether vote dilution persisted over more than one election. The Supreme Court affirmed the strength of the new Amendments by holding that intent is not a component of proving a Section 2 claim. With regard to the specific facts in *Gingles*, the court held that, with one exception, the redistricting plan violated Section 2 by impairing black voters' ability to participate in the political process and elect representatives of their choice.

The *Gingles* decision created a framework for courts to evaluate Section 2 claims.

United States v. Anson Board of Education, 3:93-cv-00210 (W.D.N.C. 1994)

The United States brought suit under Section 2 against the Anson County Board of Education. Although the population of Anson County was over 47 percent black, the method of election of school board members denied black voters the equal opportunity to elect representatives of their choice.

During the course of the suit, the parties entered a consent decree establishing a new method of election. In the new system, the board consists of nine members. Seven are elected from single member districts and two are elected at-large. The at-large elections use limited voting, with each voter having one vote.

United States v. Granville County Board of Education, 5:87-cv-00353 (E.D.N.C. 1989)

The United States brought action under Section 2 contending that the at-large method of electing members to the Granville County Board of Education denied black voters the equal opportunity to elect candidates of their choice. The parties entered a consent decree.

Under the new method of election, the seven members of the Board of Education are elected from separate districts. Elections are staggered and terms are six years. The parties agreed that the district system would give black voters the equal opportunity to elect preferred candidates.

United States v. Lenoir County, 87-105-CIV-84 (E.D.N.C. 1987)

The United States filed suit to enforce Section 2 of the Voting Rights Act, alleging that the at-large method of electing the Lenoir County Board of Commissioners denied black citizens equal opportunity to participate in the political process and elect candidates of

their choice. According to the 1980 Census, 38.1 percent of the population of Lenoir County was black and 34.8 percent of the voting age population was black. Under the existing system, the board was composed of five members elected at-large to four-year, staggered terms. Black candidates had run in every election since 1972, but due to racially polarized voting, only one black candidate had ever been elected using the at-large system.

In response to the suit, the county agreed to change the method of election and apply for preclearance of the newly selected system. The Board of Commissioners currently consists of seven members elected for staggered, 4-year terms. Two commissioners are elected countywide and five commissioners are elected from districts. Commissioners elected by district must reside within the boundaries of respective district. As a result of the change, black candidates have had greater success and there are currently two black board members, one of whom serves as chairman.

United States v. North Carolina Republican Party, 5:92-cv-00161 (E.D.N.C. 1992)

In 1990, just days before the general election in which Harvey Gantt, an African American, was running against Jessie Helms for U.S. Senate, postcards headed "Voter Registration Bulletin" were mailed to 125,000 African-American voters throughout the state. The bulletin suggested, incorrectly, that they could not vote if they had moved within 30 days of the election and threatened criminal prosecution, J.S. 93a-94a, n. 57; J.A. 673-74; Ex. 526, Consent Order in *U.S. v. North Carolina Republican Party*, No. 91-161-CIV-5F (E.D.N.C.) (February 27, 1992), Tt. 1011. The postcards were sent to black voters who had lived at the same address for years. Ex. 502, statements of J. Foxx, J.C. Harris, & G. Simpkins. As a result of the postcard campaign, black voters were confused about whether or not they could vote and some went to their local board of election office to try to vote there. Considerable resources were devoted to trying to clear up the confusion. Ex. 502, statements of Jane Burts, Charles Johnson, Ellen Emerson, Melvin Watt. J.A. 495-96.

United States v. Onslow County, 638 F.Supp. 1021 (E.D.N.C. 1988)

In the mid-1980s, Onslow County's population was twenty percent black, but a black candidate had not been elected to either the county Board of Education or the county commissioners since the passage of the Voting Rights Act. In fact, just one year after the Act was passed, the method of electing candidates was changed from a single-member district system to an at-large system, pursuant to a consent decree entered in a then-pending lawsuit, *Mendelson v. Walton*, No. 666 (E.D.N.C. Feb. 23, 1966). In 1969, the General Assembly passed legislation increasing the terms of board members to four years and imposing staggered terms. The changes were implemented in 1970 without being precleared as required by Section 5 of the Voting Rights Act. For nearly twenty years, the county operated in violation of the preclearance requirement. When, in 1987, the county sought preclearance of the 1969 legislation, the attorney general objected to the county's use of staggered terms because they made it more difficult for black voters to have an

equal opportunity to elect their candidates of choice, but approved the at-large nomination method and use of four-year terms.

The United States filed this suit against the county to force it to hold elections for all five seats on the Board of Commissioners in 1988. The county wanted only to hold elections for two of the seats whose members' terms would normally expire under the illegal staggered term system. The court held that since proper preclearance pursuant to Section 5 had not been obtained, all five seats must now be declared vacant and a new election held in 1988. The court found that because the attorney general had opposed the staggered terms on the grounds that they "deprived black voters of their best opportunity to elect a commissioner of their choice," it could not allow those elected under the unfair system to stay in office or "that evil would not be corrected." The court held that the voting procedure did not have proper clearance and was, therefore, legally unenforceable and enjoined defendants from further implementation of staggered terms.

Thus, it took the passage of 18 years and the entry of a court order for Onslow County to finally hold elections for its Board of Commissioners that were in compliance with the Voting Rights Act. Today, the Board of Commissioners is still elected at-large. The county is 18 percent black according to the 2000 census. No African American currently serves on the five-member board.

Ward v. Columbus County, 782 F.Supp. 1097 (E.D.N.C. 1991)

Eight registered black voters brought suit challenging the method of electing members to the Board of County Commissioners in Columbus County as a violation of Section 2 of the Voting Rights Act. The board consisted of five members elected from residency districts. Each candidate for the board had to run for the seat assigned to the area in which he resided, but all of the voters of the county voted at-large for each representative. The commissioners served four-year, staggered terms and were nominated in partisan primaries. The plaintiffs contended that the method of election combined with racially polarized voting made it virtually impossible for black voters to elect a candidate of their choice.

At the time of the suit, the population of Columbus County was 30.61 percent black and 27.58 percent of the voting population was black. No black person had been elected to the board, or had been nominated in the Democratic primary for the board, in the twentieth century. The black community was also underrepresented on boards and committees appointed by the Board of Commissioners. Of the 229 people appointed by the board, only 13.97 percent were black and 2.18 percent were Native American.

The court found that voting among black voters in Columbus County was consistently cohesive since 1985 and irregularly cohesive prior to that time. Since the mid-1980s, black voters had overwhelmingly voted for black or other minority candidates in elections. Prior to that time, when voting for black candidates seemed futile to black voters, it was often difficult to recruit black candidates. Those candidates who did run had difficulty mounting effective campaigns. Accordingly, black voters often sought to

gain some political influence by supporting a white candidate who had a realistic chance of winning. White voters fairly consistently failed to vote for black candidates. White voters had the opportunity to vote for a black candidate in a county-wide or larger Democratic primary or runoff election twelve times from 1980 through 1990 and in seven of those twelve elections, the black candidate received votes from less than 10 percent of white voters. The court found that racial bock voting was "extreme and persistent" among white voters of Columbus County. The county also suffered a long history of intimidation and violence toward black voters and candidates and through the modern era, racial appeals in elections where a minority candidate or a candidate thought to sympathize with minorities ran for office.

The at-large method of election was problematic because Columbus County was one of the largest counties in North Carolina, making campaigning county-wide for Board of Commissioners and Board of Education difficult for minority candidates who had less access to resources for traveling and advertising. Also, the residency requirement for elections prevented black voters from maximizing their voting strength by use of single shot voting.

The court found that the plaintiffs had sufficiently proven the at-large election method of selecting county Board of Commissioners violated Section 2 by denying black citizens an equal opportunity to participate in the political process and elect representatives of their choice, and that there was no compelling governmental need for this system. The black community in certain parts of the county was sufficiently large and geographically compact to allow creation of a majority black single-member district. The county could, for example, be divided into five districts of equal population with at least one majority black voting-age population district. The plaintiffs presented two plans suggested for division. The court ordered defendants to create a method of election for presentation to the court that would remedy these problems. Commissioners are currently elected from seven districts and there is one black member of the board.

Webster v. Board of Education of Person County, 1:91-cv-554 (M.D.N.C. 1991)

Black citizens of Person County brought suit against the Board of Education and county Board of Education, arguing that the method of electing the Board of Education denied black citizens equal opportunity in voting. At the time of suit, the board consisted of five members elected at-large in partisan elections for staggered four-year terms. The population of Person County was 30.2 percent black and 28.5 percent of the voting age population was black. Black candidates had run in nine of the eleven school board elections since 1974, each time in the Democratic primary, but only one black candidate was ever nominated or elected.

The parties entered a consent decree to change the method of election to enhance the opportunity for black citizens to elect candidates of their choice. Under the new method of election, all five members of the Board of Education are elected for concurrent four-year terms in nonpartisan elections determined by plurality voting. The candidates are elected at-large with the top five candidates elected without run-offs. In addition to the

voting change, the Person County Board of Commissioners, which was not party to the suit, agreed to establish a Task Force on Education to study and address concerns that the board of Education was not responsive to interests of the black community.

White v. Franklin County, 5:03-cv-00481 (E.D.N.C. 2004)

Black and white voters of Franklin County brought suit under Section 2 of the Voting Rights Act challenging the at-large election plan for the Franklin County Board of Commissioners. The at-large system had been in place for 100 years and operated to dilute black voting strength. On April 21, 2003, the Board of Commissioners adopted a new voting plan, but minority voters complained it was not submitted for Section 5 preclearance and it would not operate to improve voting strength for black voters.

According to 2000 Census data, the population of Franklin County was 30 percent black and 4 percent other minorities, and 29 percent of the voting age population was black. From the formation of the existing method of election in the late 1800s to the filing of suit, only one African American was elected to the board and no black person was currently serving on the board. The board was composed of five members elected at-large, but each seat was assigned to a residency district where the commissioner had to live. board members served for four years and the elections were staggered.

The African-American population was largely concentrated in a few geographically compact parts of the county. White bloc voting operated to ensure defeat of African-American candidates to both the county board and Board of Education. Though 37 percent of school-aged children in the county were black, since 1993, African Americans were generally only able to elect one out of seven (14 percent) members to the county Board of Education.

In March 2003, one of the plaintiffs presented the board with three alternative election plans for the county commissioners. Each contained five single-member districts with at least one district majority-minority. The board took no action on these suggested plans. In April 2003, the board instead adopted a new plan that increased the number of commissioners from five to seven. Four of the commissioners would be elected from single-member districts and the remaining three would be elected at-large. In this plan, no district would contain a majority of African-American residents. The plan would instead further fracture black voters. The plan went so far in dividing black voters as to split contiguous African-American communities. When the board discussed this plan in a closed executive session, only 1.5 hours of discussion were held and members of the public were not allowed to provide input about alternative election plans.

Plaintiffs wanted the court to immediately halt the use of the new plan and the old system so they could not be used in the 2004 election. The complaint was filed in June 2003. While the suit was pending, a referendum was held in November 2003 that changed the method of voting. The suit was stayed pending the outcome of the vote. The new method would elect five commissioners from districts and two from the county at-large, pending

preclearance. Once the method of election was changed, the parties took a dismissal with each party paying its own attorney's fees, expenses, and costs.

Wilkins v. Washington County Commissioners, 2:93-cv-00012 (E.D.N.C. 1996)

Black citizens of Washington County filed suit pursuant to Section 2 of the Voting Rights Act. The Washington County Board of Commissioners consisted of five members elected in staggered elections with partisan primaries for four-year terms. Four of the five commissioners were nominated in party primaries held within districts and then elected at-large. The fifth commissioner was both nominated and elected from the county at-large.

By consent order entered in 1994, the court determined that the four districts violated the requirement of one-person, one-vote and had to be redrawn. The court delayed further relief, however, to allow the parties the opportunity to resolve the claims under the Voting Rights Act.

According to the 1990 Census, 45.4 percent of the Washington County population was black and 41.6 percent of the voting age population was black. Only two black candidates had, however, been elected to the Board of Commissioners. As a result of the suit, the parties entered a consent decree agreeing to a new method of election.

Under the new method, five members are elected for four-year staggered terms in partisan elections. One Commissioner is elected from each of four districts and the remaining commissioner is elected at-large. Black voters constitute a majority of the voting age population in two of the four districts.

Willingham v. City of Jacksonville, 4:89-cv-00046 (E.D.N.C. 1991)

Plaintiffs filed suit pursuant to Section 2 of the Voting Rights Act, opposing the method of election of the City Council. In response to the suit, the City voluntarily changed the method of election in May of 1991. Under the new system, four council members are elected from wards and two are elected at-large. The mayor is elected in a separate at-large election.

The city had previously attempted in 1989 to change to a ward system, but the new system was not implemented until 1991 due to problems with preclearance. These problems were resolved when a significant portion of the Camp Lejuene Marine Corps Base was annexed into the city in 1990 and that territory was used to help create minority wards. The two minority wards that exist under the final plan actually have large majorities of white residents when the total population is considered, but are effectively minority districts because so much of the population consists of military personnel who do not vote in city elections. There are currently two black members of the City Council representing Districts One and Four.

1803

Information on the following cases was not available:

Hole v. NC board of Election, 1:00-cv-00477 (M.D.N.C. 2001)
Kingsberry v. Nash County Board of Education, 5:89-cv-00173 (E.D.N.C. 1989)
Person v. Moore County Commission, 3:89-cv-0135 (M.D.N.C. 1989)
Patterson v. Siler City, 1:88-cv-00701-NCT (M.D.N.C. 1989)

Selected Socio-Economic Data

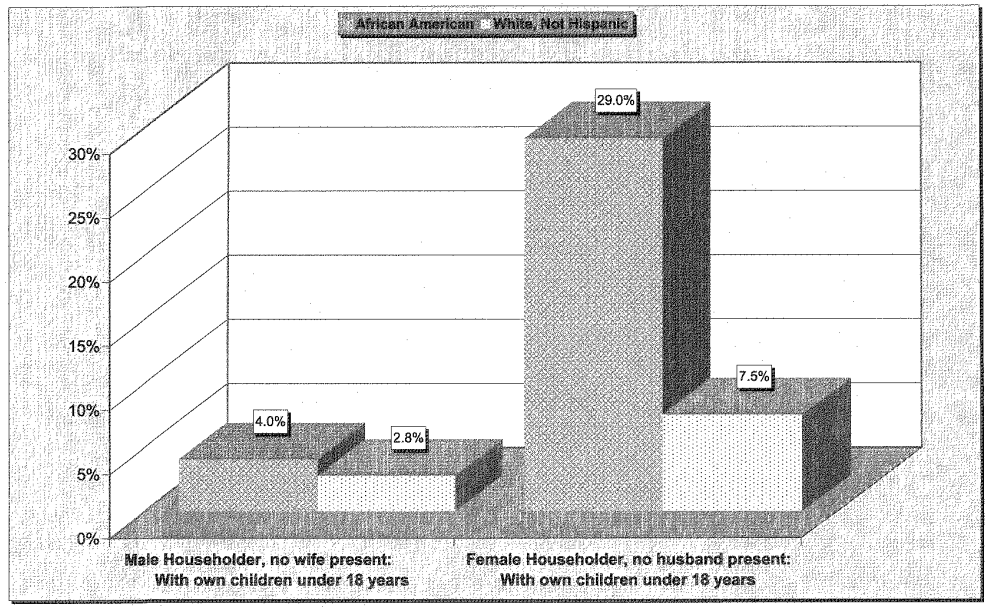
North Carolina

African American and White, Not Hispanic

Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data

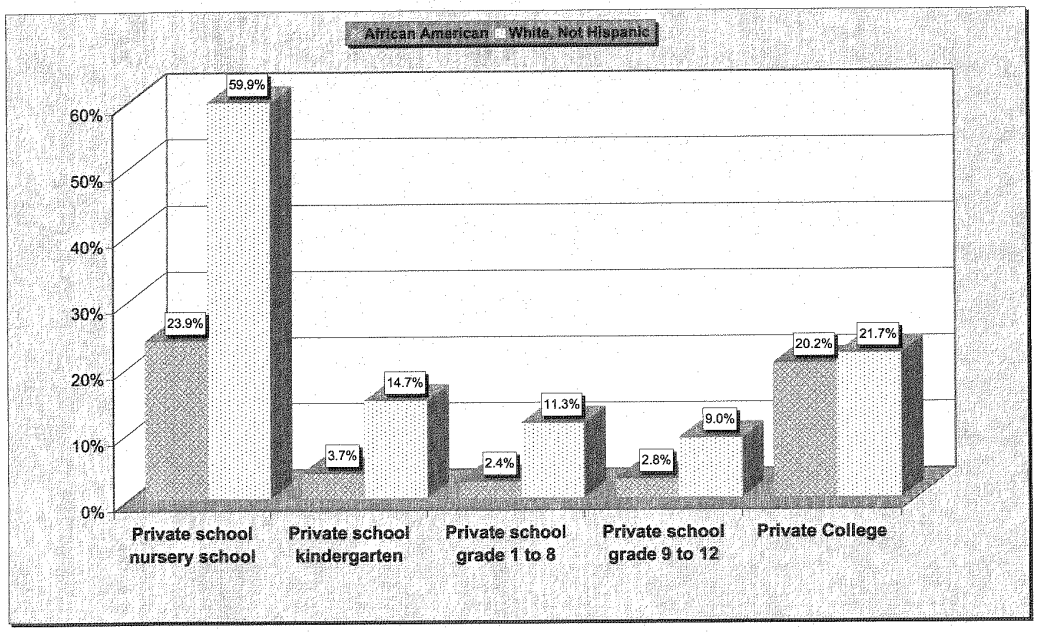
www.fairdata2000.com
5-May-03

Chart 1 -- Single-Parent Family Households (Householder 15 to 64 years)
North Carolina



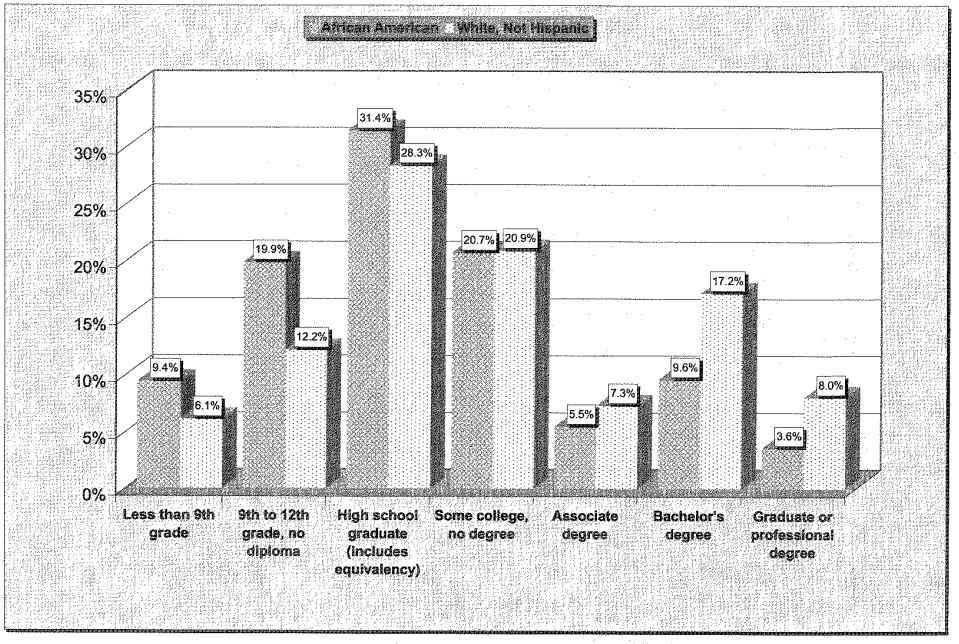
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data - P146B. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [31] - Universe: Households with a householder who is Black or African American alone; P146I. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [31] - Universe: Households with a householder who is White alone, not Hispanic or Latino.

Chart 2 -- Private School Enrollment (3 years and over)
North Carolina



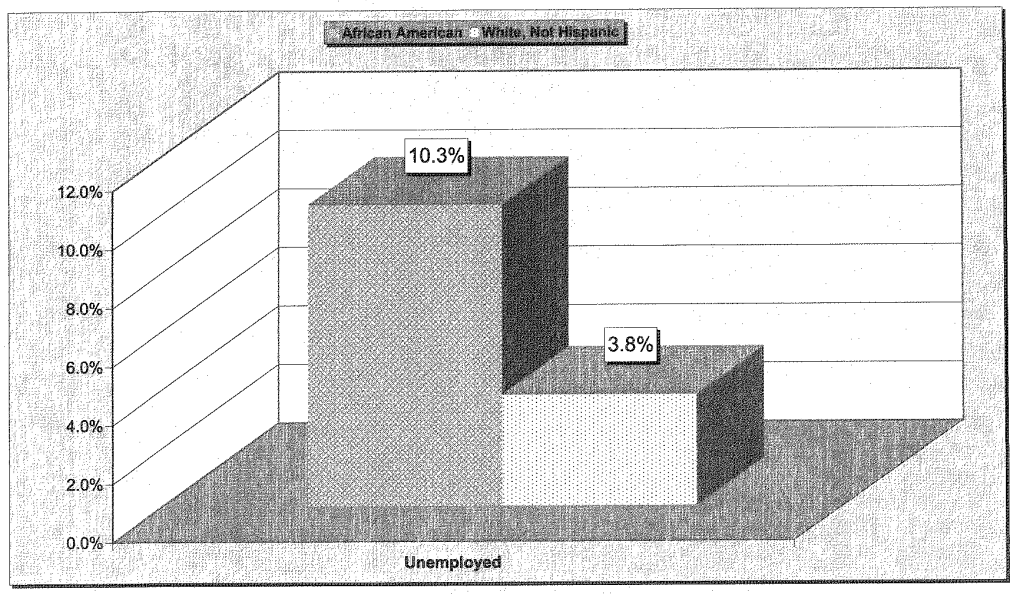
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – P147B. SCHOOL ENROLLMENT BY LEVEL OF SCHOOL BY TYPE OF SCHOOL FOR THE POPULATION 3 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [17] - Universe: Black or African American alone 3 years and over; P147I. SCHOOL ENROLLMENT BY LEVEL OF SCHOOL BY TYPE OF SCHOOL FOR THE POPULATION 3 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [17] - Universe: White alone, not Hispanic or Latino population 3 years and over.

Chart 3 -- Educational Attainment (25 years and over)
North Carolina



Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P148B. SEX BY EDUCATIONAL ATTAINMENT FOR THE POPULATION 25 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [17] - Universe: Black or African American alone 25 years and over; P148I. SEX BY EDUCATIONAL ATTAINMENT FOR THE POPULATION 25 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [17] - Universe: White alone, not Hispanic or Latino population 25 years and over.

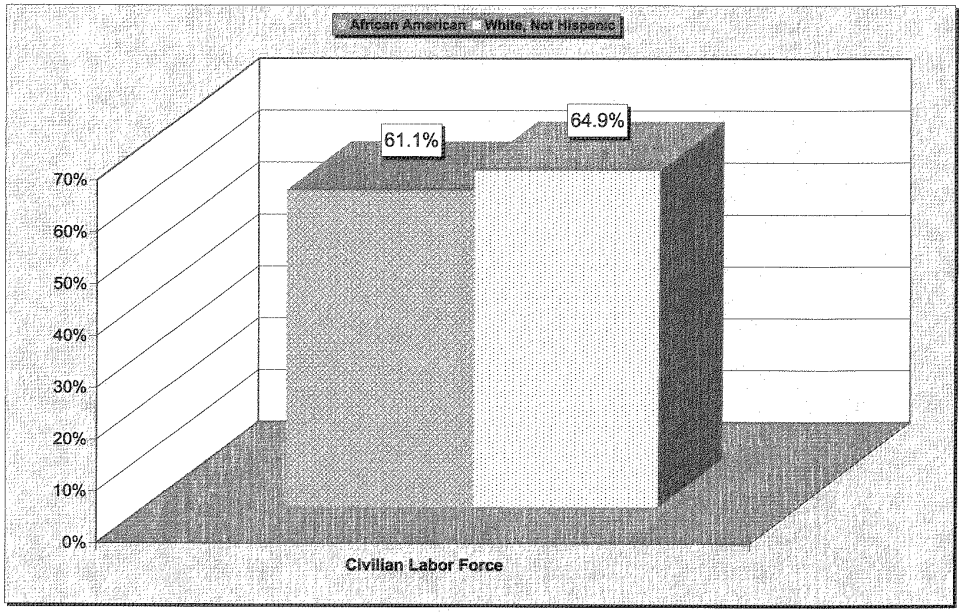
Chart 4 -- Unemployment Rate (Civilian Labor Force)
North Carolina



Note: Unemployment rate is defined as a percentage of the civilian labor force.

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P150B. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [15] - Universe: Black or African American alone 16 years and over; P150I. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [15] - Universe: White alone, not Hispanic or Latino population 16 years and over.

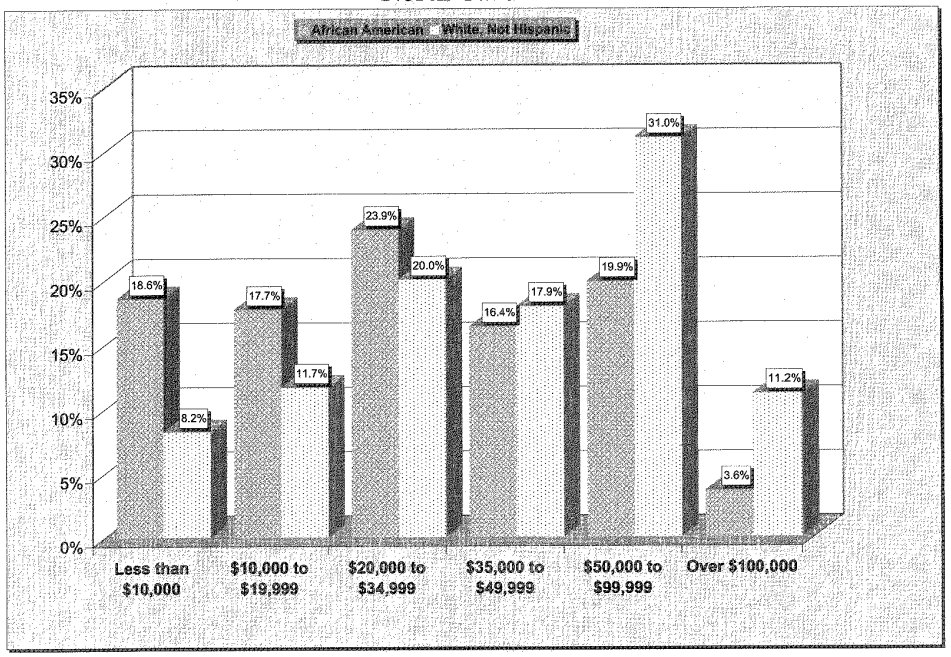
Chart 5 -- Labor Force Participation (Civilian Labor Force)
North Carolina



Note: Labor force participation rate is defined as a percentage of the civilian population over 16.

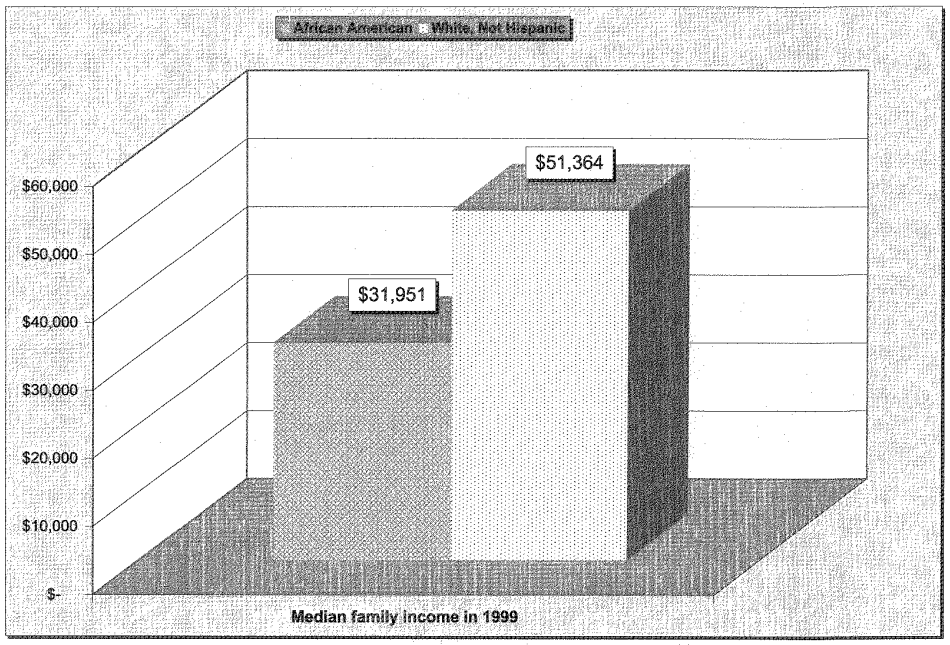
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P150B. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [15] - Universe: Black or African American alone 16 years and over; P150I. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [15] - Universe: White alone, not Hispanic or Latino population 16 years and over.

Chart 6 -- Household Income in 1999
North Carolina



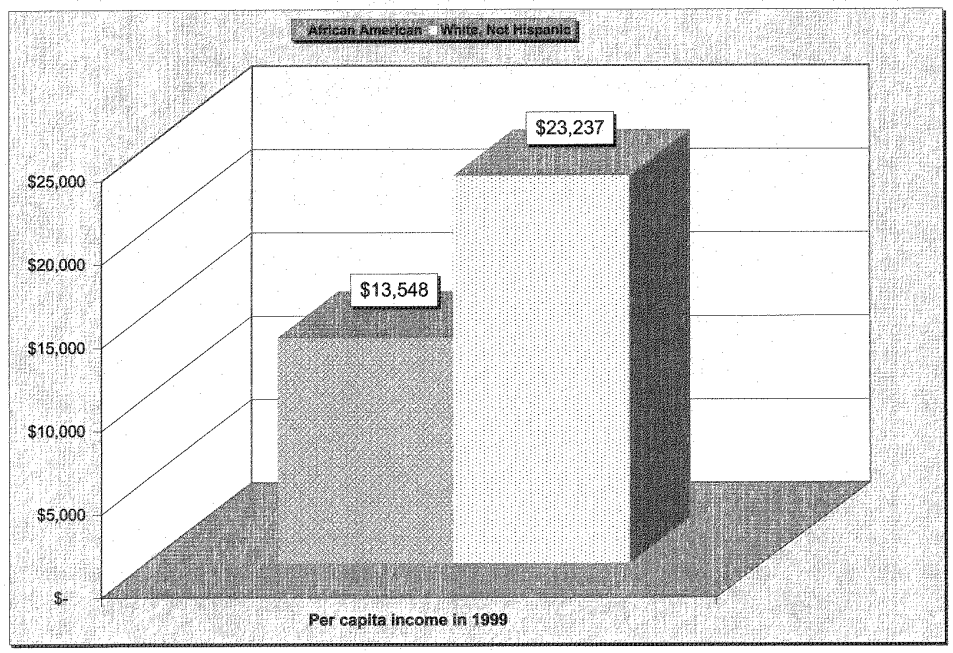
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – P151B. HOUSEHOLD INCOME IN 1999 (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [17] - Universe: Households with a householder who is Black or African American alone; P151I. HOUSEHOLD INCOME IN 1999 (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [17] - Universe: Households with a householder who is White alone, not Hispanic or Latino.

Chart 7 -- Median Family Income In 1999
North Carolina



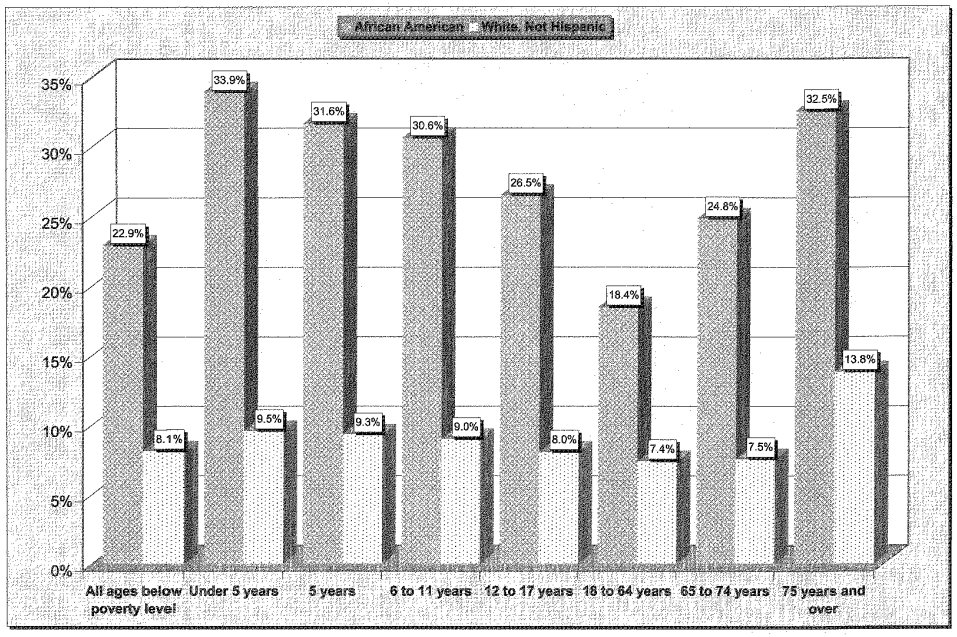
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P155B. MEDIAN FAMILY INCOME IN 1999 (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Families with a householder who is Black or African American alone ; P155I. MEDIAN FAMILY INCOME IN 1999 (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Families with a householder who is White alone, not Hispanic or Latino.

Chart 8 -- Per Capita Income In 1999
North Carolina



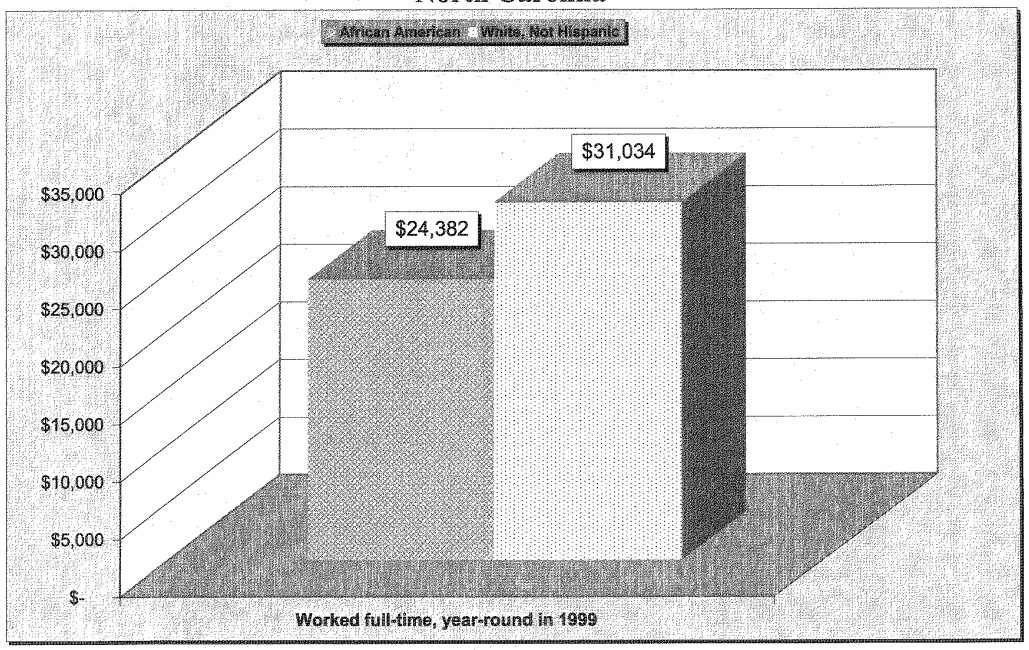
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P157B. PER CAPITA INCOME IN 1999 (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE) [1] - Universe: Black or African American alone; P157I. PER CAPITA INCOME IN 1999 (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO) [1] - Universe: White alone, not Hispanic or Latino population.

Chart 9 -- Income in 1999 Below Poverty Level by Age
North Carolina



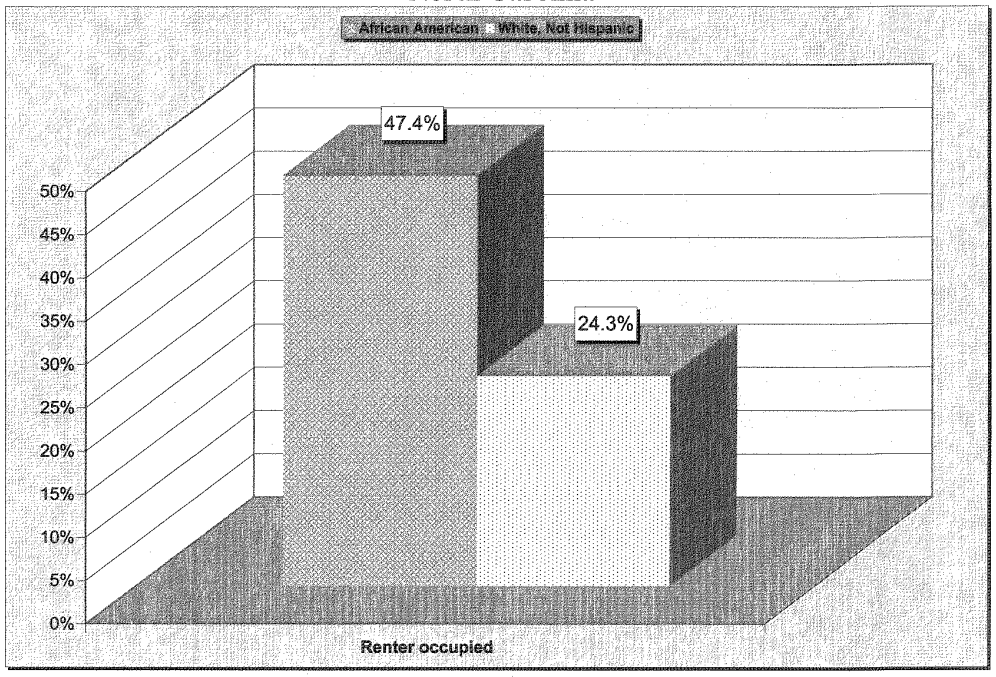
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – P159B. POVERTY STATUS IN 1999 BY AGE (BLACK OR AFRICAN AMERICAN ALONE) [17] - Universe: Black or African American alone for whom poverty status is determined;P159I. POVERTY STATUS IN 1999 BY AGE (WHITE ALONE, NOT HISPANIC OR LATINO) [17] - Universe: White alone, not Hispanic or Latino population for whom poverty status is determined.

Chart 10 -- Median Earnings in 1999
North Carolina



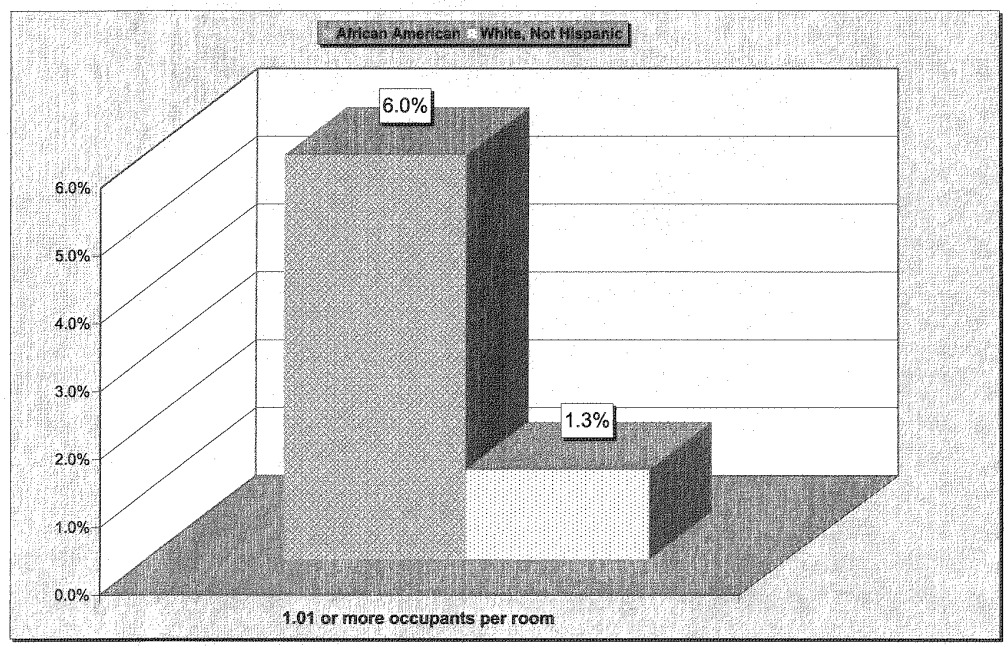
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- PCT74B. MEDIAN EARNINGS IN 1999 (DOLLARS) BY WORK EXPERIENCE IN 1999 BY SEX FOR THE POPULATION 16 YEARS AND OVER WITH EARNINGS (BLACK OR AFRICAN AMERICAN ALONE) [6] - Universe: Black or African American alone 16 years and over with earnings in 1999; PCT74I. MEDIAN EARNINGS IN 1999 (DOLLARS) BY WORK EXPERIENCE IN 1999 BY SEX FOR THE POPULATION 16 YEARS AND OVER WITH EARNINGS (WHITE ALONE, NOT HISPANIC OR LATINO) [6] - Universe: White alone, not Hispanic or Latino population 16 years and over with earnings in 1999.

Chart 11 -- Renter-Occupied Housing
North Carolina



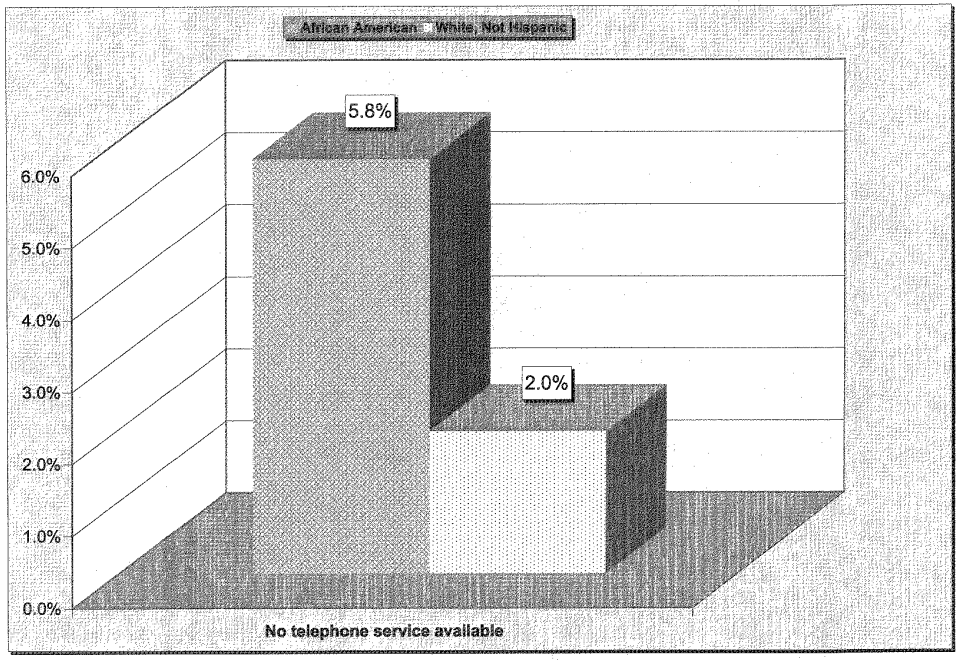
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- H11. TENURE BY RACE OF HOUSEHOLDER [17] - Universe: Occupied housing units; H13. TENURE (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 12 -- Occupants Per Room (Crowding) by Household
North Carolina



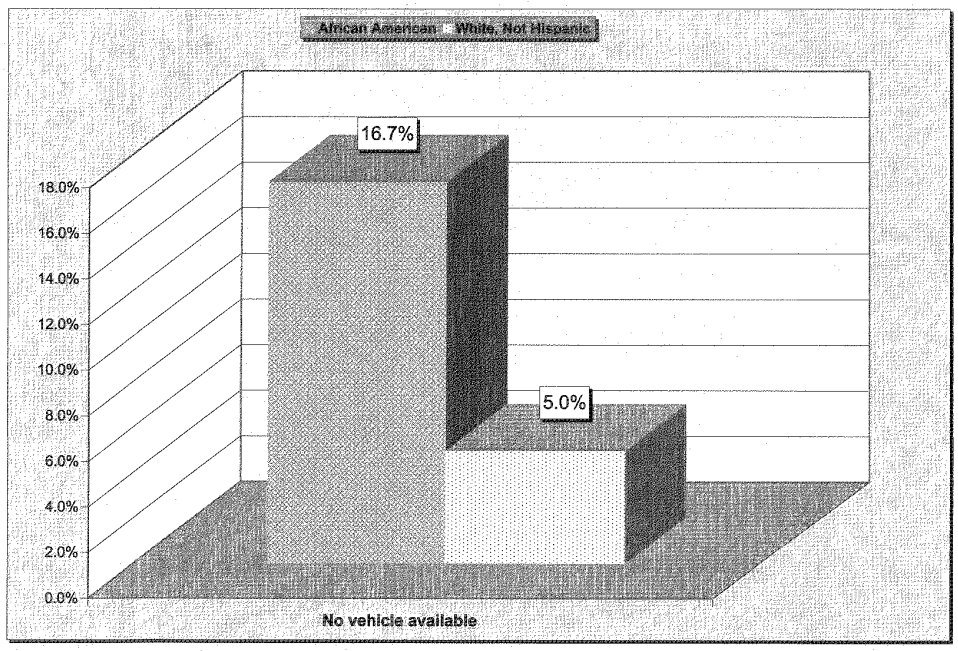
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT29B. OCCUPANTS PER ROOM (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT29I. OCCUPANTS PER ROOM (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 13 -- Lack of Telephone Service by Household
North Carolina



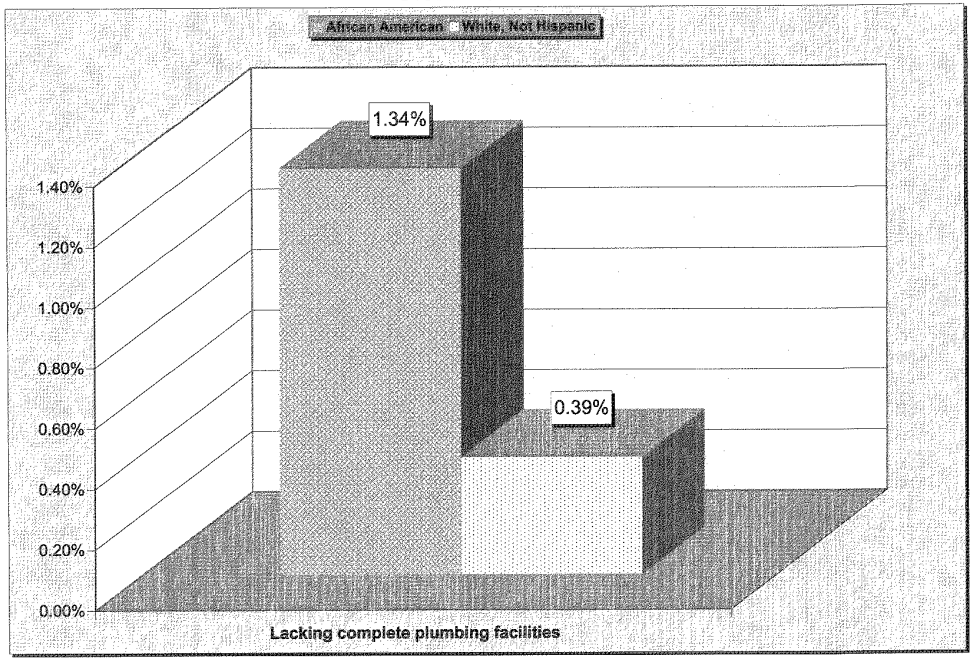
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT32B. TELEPHONE SERVICE AVAILABLE (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT32I. TELEPHONE SERVICE AVAILABLE (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 14 -- Lack of Vehicle By Household
North Carolina



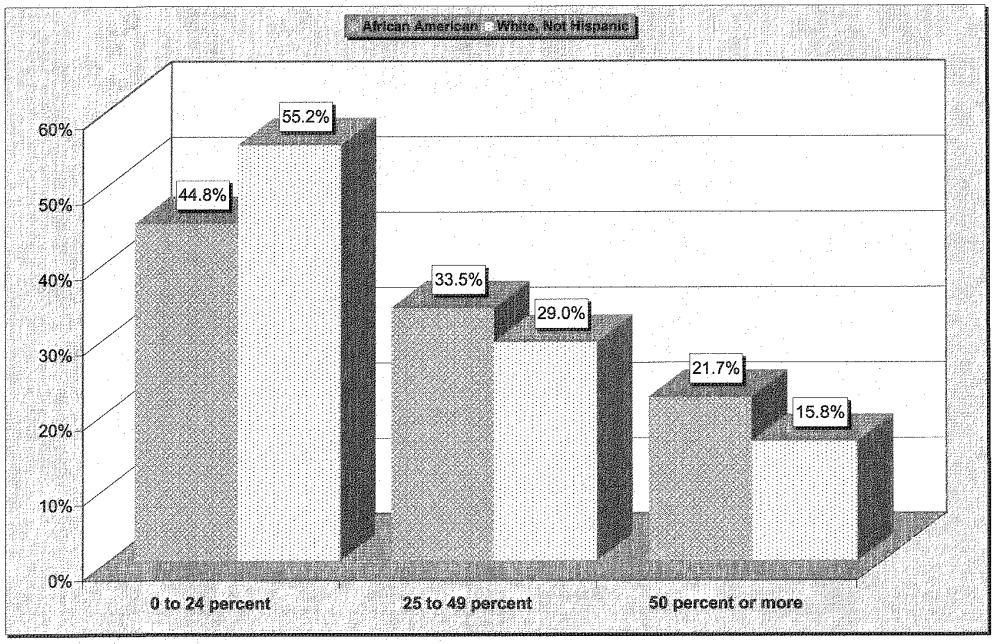
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT33B. VEHICLES AVAILABLE (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone;; HCT33I. VEHICLES AVAILABLE (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 15 -- Lack of Plumbing By Household
North Carolina



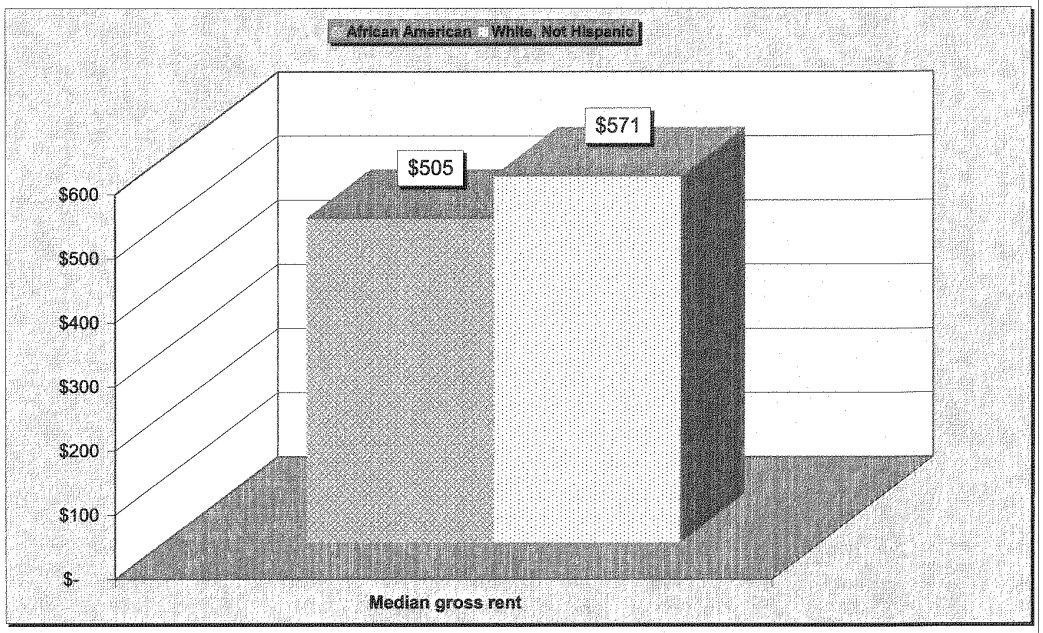
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – HCT34B. PLUMBING FACILITIES (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT34I. PLUMBING FACILITIES (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 16 -- Gross Rent as a Percentage of Household Income in 1999
North Carolina



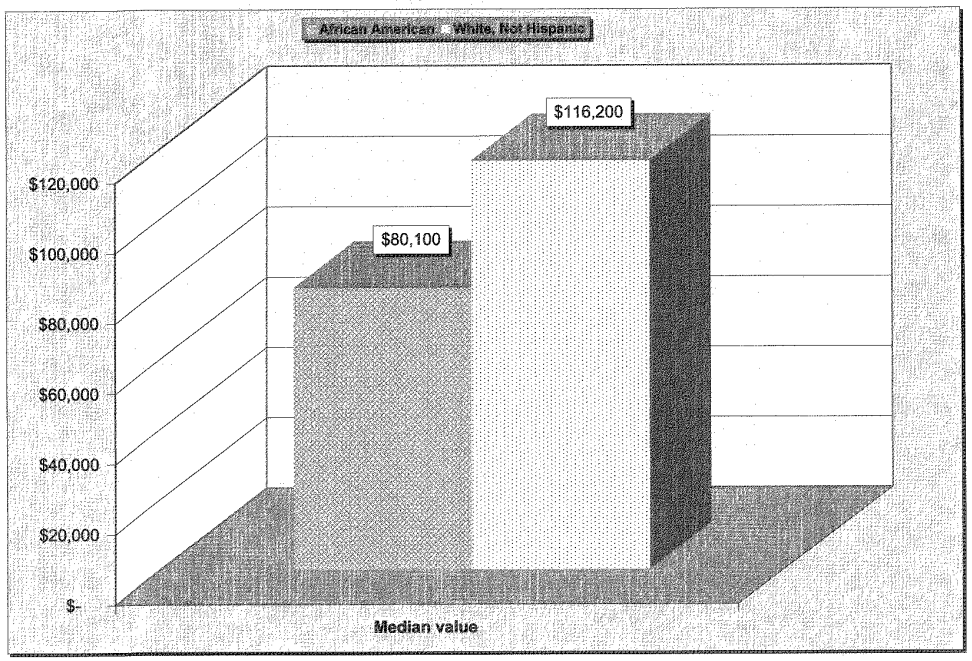
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT39B. GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999 (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [11] - Universe: Specified renter-occupied housing units with a householder who is Black or African American alone; HCT39I. GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999 (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [11] - Universe: Specified renter-occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 17 -- Median Gross Rent By Household
North Carolina



Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT37B. MEDIAN GROSS RENT (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Specified renter-occupied housing units paying cash rent with a householder who is Black or African American alone; HCT37I. MEDIAN GROSS RENT (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Specified renter-occupied housing units paying cash rent with a householder who is White alone, not Hispanic or Latino.

Chart 18 -- Median Home Value By Household
North Carolina



Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT42B. MEDIAN VALUE (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Specified owner-occupied housing units with a householder who is Black or African American alone; HCT42I. MEDIAN VALUE (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Specified owner-occupied housing units with a householder who is White alone, not Hispanic or Latino.

HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS

Source data for Chart 1

	African American	White, Not Hispanic
	North Carolina	North Carolina
Total:	627,854	2,321,636
Householder 15 to 64 years:	525,233	1,810,306
Family households:	378,764	1,317,491
Married-couple family:	194,681	1,109,267
With own children under 18 years	111,051	552,336
No own children under 18 years	83,630	556,931
Other family:	184,083	208,224
Male householder, no wife present:	28,160	61,429
With own children under 18 years	15,298	36,463
No own children under 18 years	12,862	24,966
Female householder, no husband present:	155,923	146,795
With own children under 18 years	109,996	98,941
No own children under 18 years	45,927	47,854
Nonfamily households:	146,469	492,815
Householder living alone	120,430	376,093
Householder not living alone	26,039	116,722
Householder 65 years and over:	102,621	511,330
Family households:	54,977	281,556
Married-couple family:	28,132	240,805
With own children under 18 years	608	1,359
No own children under 18 years	27,524	239,446
Other family:	26,845	40,751
Male householder, no wife present:	4,278	7,283
With own children under 18 years	246	139
No own children under 18 years	4,032	7,144
Female householder, no husband present:	22,567	33,468
With own children under 18 years	222	85
No own children under 18 years	22,345	33,383
Nonfamily households:	47,644	229,774
Householder living alone	45,991	223,607
Householder not living alone	1,653	6,167

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data - P146B. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [31] - Universe: Households with a householder who is Black or African American alone; P146I. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [31] - Universe: Households with a householder who is White alone, not Hispanic or Latino.

SCHOOL ENROLLMENT BY LEVEL OF SCHOOL BY TYPE OF SCHOOL FOR THE POPULATION 3 YEARS AND OVER

Source data for Chart 2

	African American	White, Not Hispanic
	North Carolina	North Carolina
Total:	1,655,443	5,450,650
Enrolled in nursery school, preschool:	36,712	86,492
Public school	27,950	34,724
Private school	8,762	51,768
Enrolled in kindergarten:	30,912	70,152
Public school	29,755	59,831
Private school	1,157	10,321
Enrolled in grade 1 to grade 8:	253,247	571,564
Public school	247,043	506,930
Private school	6,204	64,634
Enrolled in grade 9 to grade 12:	118,931	263,499
Public school	115,601	239,889
Private school	3,330	23,610
Enrolled in college:	109,592	314,688
Public school	87,452	246,443
Private school	22,140	68,245
Not enrolled in school	1,106,049	4,144,255

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data - P146B. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [31] - Universe: Households with a householder who is Black or African American alone; P146I. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [31] - Universe: Households with a householder who is White alone, not Hispanic or Latino.

SEX BY EDUCATIONAL ATTAINMENT FOR THE POPULATION 25 YEARS AND OVER

Source data for Chart 3

	African American	White, Not Hispanic
	North Carolina	North Carolina
Total:	1,025,276	3,920,336
Male:	458,381	1,873,207
Less than 9th grade	45,398	120,210
9th to 12th grade, no diploma	94,585	234,457
High school graduate (includes equivalency)	154,799	511,180
Some college, no degree	89,000	383,250
Associate degree	22,197	124,702
Bachelor's degree	37,675	330,171
Graduate or professional degree	14,727	169,237
Female:	566,895	2,047,129
Less than 9th grade	51,168	118,709
9th to 12th grade, no diploma	108,993	242,658
High school graduate (includes equivalency)	167,262	600,208
Some college, no degree	123,354	435,290
Associate degree	33,745	161,283
Bachelor's degree	60,496	342,780
Graduate or professional degree	21,877	146,201

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P148B. SEX BY EDUCATIONAL ATTAINMENT FOR THE POPULATION 25 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [17] - Universe: Black or African American alone 25 years and over; P148I. SEX BY EDUCATIONAL ATTAINMENT FOR THE POPULATION 25 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [17] - Universe: White alone, not Hispanic or Latino population 25 years and over.

SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER

Source data for Charts 4 and 5

	African American	White, Not Hispanic
	North Carolina	North Carolina
Total:	1,269,882	4,549,492
Male:	578,213	2,197,369
In labor force:	372,332	1,633,812
In Armed Forces	14675	55,110
Civilian:	357,657	1,578,702
Employed	319,926	1,524,382
Unemployed	37,731	54,320
Not in labor force	205,881	563,557
Female:	691,669	2,352,123
In labor force:	420,702	1,379,720
In Armed Forces	3016	4,329
Civilian:	417,686	1,375,391
Employed	375,689	1,317,721
Unemployed	41,997	57,670
Not in labor force	270,967	972,403

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P150B. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [15] - Universe: Black or African American alone 16 years and over; P150I. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [15] - Universe: White alone, not Hispanic or Latino population 16 years and over.

HOUSEHOLD INCOME IN 1999

Source data for Chart 6

	African American	White, Not Hispanic
	North Carolina	North Carolina
Total:	627,854	2,321,636
Less than $10,000	116,636	191,185
$10,000 to $14,999	56,327	131,995
$15,000 to $19,999	54,908	138,859
$20,000 to $24,999	54,699	152,911
$25,000 to $29,999	50,727	155,907
$30,000 to $34,999	44,527	155,806
$35,000 to $39,999	39,017	146,038
$40,000 to $44,999	35,294	143,802
$45,000 to $49,999	28,383	126,432
$50,000 to $59,999	47,169	231,262
$60,000 to $74,999	44,752	254,356
$75,000 to $99,999	32,756	234,150
$100,000 to $124,999	11,168	111,420
$125,000 to $149,999	4,430	52,572
$150,000 to $199,999	3,137	45,341
$200,000 or more	3,924	49,600

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – P151B. HOUSEHOLD INCOME IN 1999 (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [17] - Universe: Households with a householder who is Black or African American alone; P151I. HOUSEHOLD INCOME IN 1999 (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [17] - Universe: Households with a householder who is White alone, not Hispanic or Latino.

MEDIAN FAMILY INCOME IN 1999

Source data for Chart 7

	African American	White, Not Hispanic
	North Carolina	North Carolina
Median family income in 1999	$ 31,951	$ 51,364

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P155B. MEDIAN FAMILY INCOME IN 1999 (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Families with a householder who is Black or African American alone ; P155I. MEDIAN FAMILY INCOME IN 1999 (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Families with a householder who is White alone, not Hispanic or Latino.

PER CAPITA INCOME IN 1999

Source data for Chart 8

	African American	White, Not Hispanic
	North Carolina	North Carolina
Per capita income in 1999	$ 13,548	$ 23,237

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P157B. PER CAPITA INCOME IN 1999 (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE) [1] - Universe: Black or African American alone; P157I. PER CAPITA INCOME IN 1999 (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO) [1] - Universe: White alone, not Hispanic or Latino population.

POVERTY STATUS IN 1999 BY AGE

Source data for Chart 9

	African American	White, Not Hispanic
	North Carolina	North Carolina
Total:	1,657,228	5,501,865
Income in 1999 below poverty level:	379,349	444,465
Under 5 years	43,856	30,999
5 years	9,159	6,170
6 to 11 years	56,434	37,650
12 to 17 years	43,889	32,342
18 to 64 years	185,114	259,821
65 to 74 years	20,901	32,638
75 years and over	19,996	44,845
Income in 1999 at or above poverty level:	1,277,879	5,057,400
Under 5 years	85,447	294,144
5 years	19,783	60,208
6 to 11 years	127,845	382,320
12 to 17 years	121,766	370,190
18 to 64 years	818,263	3,268,760
65 to 74 years	63,330	401,325
75 years and over	41,445	280,453

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – P159B. POVERTY STATUS IN 1999 BY AGE (BLACK OR AFRICAN AMERICAN ALONE) [17] - Universe: Black or African American alone for whom poverty status is determined;P159I. POVERTY STATUS IN 1999 BY AGE (WHITE ALONE, NOT HISPANIC OR LATINO) [17] - Universe: White alone, not Hispanic or Latino population for whom poverty status is determined.

MEDIAN EARNINGS IN 1999

Source data for Chart 10

	African American	White, Not Hispanic
	North Carolina	North Carolina
Median earnings in 1999 --		
Worked full-time, year-round in 1999 --		
Total	$ 24,382	$ 31,034
Male	$ 26,654	$ 35,532
Female	$ 21,968	$ 26,089
Other --		
Total	$ 9,508	$ 10,348
Male	$ 10,044	$ 11,634
Female	$ 9,163	$ 9,519

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- PCT74B. MEDIAN EARNINGS IN 1999 (DOLLARS) BY WORK EXPERIENCE IN 1999 BY SEX FOR THE POPULATION 16 YEARS AND OVER WITH EARNINGS (BLACK OR AFRICAN AMERICAN ALONE) [6] - Universe: Black or African American alone 16 years and over with earnings in 1999; PCT74I. MEDIAN EARNINGS IN 1999 (DOLLARS) BY WORK EXPERIENCE IN 1999 BY SEX FOR THE POPULATION 16 YEARS AND OVER WITH EARNINGS (WHITE ALONE, NOT HISPANIC OR LATINO) [6] - Universe: White alone, not Hispanic or Latino population 16 years and over with earnings in 1999.

Source data for Chart 11

	North Carolina
Total:	3,132,013
Owner occupied:	2,172,270
Householder who is White alone	1,776,042
Householder who is Black or African American alone	329,069
Householder who is American Indian and Alaska Native alone	24,235
Householder who is Asian alone	16,302
Householder who is Native Hawaiian and Other Pacific Islander alone	403
Householder who is Some other race alone	12,544
Householder who is Two or more races	13,675
Renter occupied:	959,743
Householder who is White alone	589,713
Householder who is Black or African American alone	296,844
Householder who is American Indian and Alaska Native alone	10,586
Householder who is Asian alone	15,641
Householder who is Native Hawaiian and Other Pacific Islander alone	504
Householder who is Some other race alone	30,399
Householder who is Two or more races	16,056

White alone, not Hispanic **White, Not Hispanic**

		North Carolina
Total:		2,327,753
Owner occupied		1,762,580
Renter occupied		565,173

OCCUPANTS PER ROOM

Source data for Chart 12

	African American	White, Not Hispanic
	North Carolina	North Carolina
Total:	625,913	2,327,753
1.00 or less occupants per room	588,620	2,296,984
1.01 or more occupants per room	37,293	30,769

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT29B. OCCUPANTS PER ROOM (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT29I. OCCUPANTS PER ROOM (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

TELEPHONE SERVICE AVAILABLE

Source data for Chart 13

	African American	White, Not Hispanic
	North Carolina	North Carolina
Total:	625,913	2,327,753
With telephone service available	589,896	2,281,696
No telephone service available	36,017	46,057

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT32B. TELEPHONE SERVICE AVAILABLE (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT32I. TELEPHONE SERVICE AVAILABLE (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

VEHICLES AVAILABLE

Source data for Chart 14

	African American	White, Not Hispanic
	North Carolina	North Carolina
Total:	625,913	2,327,753
No vehicle available	104,727	115,400
1 or more vehicles available	521,186	2,212,353

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT33B. VEHICLES AVAILABLE (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone;; HCT33I. VEHICLES AVAILABLE (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

PLUMBING FACILITIES

Source data for Chart 15

	African American	White, Not Hispanic
	North Carolina	North Carolina
Total:	625,913	2,327,753
Complete plumbing facilities	617,517	2,318,749
Lacking complete plumbing facilities	8396	9,004

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT34B. PLUMBING FACILITIES (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT34I. PLUMBING FACILITIES (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] -

GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999

Source data for Chart 16

	African American	White, Not Hispanic
	North Carolina	North Carolina
Total:	295,136	552,082
Less than 10 percent	17463	38,006
10 to 14 percent	29,724	73,604
15 to 19 percent	37552	85,475
20 to 24 percent	35103	72,403
25 to 29 percent	30489	51,666
30 to 34 percent	21798	34,670
35 to 39 percent	16318	24,289
40 to 49 percent	21081	31,133
50 percent or more	57,965	77,289
Not computed	27643	63,547

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – HCT39B. GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999 (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [11] - Universe: Specified renter-occupied housing units with a householder who is Black or African American alone; HCT39I. GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999 (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [11] - Universe: Specified renter-occupied housing units with a householder who is White alone, not Hispanic or Latino.

MEDIAN GROSS RENT

Source data for Chart 17

	African American	White, Not Hispanic
	North Carolina	North Carolina
Median gross rent	$ 505	$ 571

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT37B. MEDIAN GROSS RENT (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Specified renter-occupied housing units paying cash rent with a householder who is Black or African American alone; HCT37I. MEDIAN GROSS RENT (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Specified renter-occupied housing units paying cash rent with a householder who is White alone, not Hispanic or Latino.

MEDIAN HOME VALUE

Source data for Chart 18

	African American	White, Not Hispanic
	North Carolina	North Carolina
Median value	$ 80,100	$ 116,200

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT42B. MEDIAN VALUE (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Specified owner-occupied housing units with a householder who is Black or African American alone; HCT42I. MEDIAN VALUE (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Specified owner-occupied housing units with a householder who is White alone, not Hispanic or Latino.

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VOTING RIGHTS IN NEW YORK 1982-2006

A REPORT OF RENEWTHEVRA.ORG
PREPARED BY JUAN CARTAGENA

MARCH 2006

VOTING RIGHTS IN NEW YORK 1982-2006

JUAN CARTAGENA[1]

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INTRODUCTION TO THE VOTING RIGHTS ACT

At the time of the 1982 amendments to the Voting Rights Act and the continuation of Section 5 coverage to three counties in New York City, the city was at a major crossroads regarding faithful compliance with the mandates of the Act. Just one year earlier in the largest city in the United States, the largest municipal election apparatus in the country was brought to a screeching halt in September 1981 when the federal courts enjoined the mayoral primaries – two days before Election Day – because the city failed to obtain preclearance of new (and discriminatory) city council lines and election district changes.[2] The cost of closing down the election was enormous and a lesson was painfully learned: minority voters knew how to get back to court, the courts would not stand by idly in the face of obvious Section 5 noncompliance, and business-as-usual politics would no longer be the same. Weeks later, the Department of Justice (DOJ) would not only officially deny preclearance to the city council plan but would find that its egregious disregard of the burgeoning African-American and Latino voting strength in the city had a discriminatory purpose and a discriminatory effect.

In this context, the 1982 extension of Section 5 to parts of New York City should not have seemed so anomalous to a country that continued to harbor stereotypes about how voter discrimination was a monopoly of the deep South. For racial and language minorities in New York City, the truth was otherwise. New York's history was replete with numerous examples where the color of one's skin, the foreignness of one's ancestry, and the difficulty with which one brokered the English language all worked to deny the franchise to its citizens. Similar to the 1970 coverage of New York, Kings, and Bronx counties under Section 5, the official pronouncement that New York City continued to require special vigilance when it came to the ballot box was not surprising to its African-American, Puerto Rican, and Chinese-American residents. Indeed, in a related context, the city itself would agree when it conceded, in 1992, that its failures in the past to comply with the Voting Rights Act required special, remedial measures to fully integrate racial and language minorities into decision-making bodies.[3]

Section 5 coverage in 1970 and again in 1982 was necessary; as was the coverage of the language assistance provisions of Section 4(f)(4) and Section 203 of the Act. The latter was particularly relevant since New York City's Puerto Rican community was instrumental in showing the country that bilingual election systems could work – and in the country's largest city at that.

Three counties in New York state – all in New York City – are covered under Section 5 (Bronx, Kings, and New York), requiring preclearance of all election changes. Bronx and Kings counties are also covered under Section 4(f)(4) of the Act (requiring preclearance for certain language minority citizens). At present seven counties in the State are covered under Section 203 of the Act, requiring language assistance in voting for certain language minority citizens: Spanish-language: Bronx, Nassau, Kings, New York, Queens, Suffolk, Westchester; Chinese-language: Kings, New York, Queens; Korean-language: Queens. Finally, the VRA's federal observer provisions have been implemented in New York City on multiple occasions as well to prevent violations of the VRA against racial and language minority groups.

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[2] Heron v. Koch, 523 F. Supp. 167 (E.D.N.Y. 1981).
[3] Ravitch v. City of New York, 1992 U.S. Dist. LEXIS 11481, *16 (S.D.N.Y. 1992). See Appendix D.

New York is unique in the way the Voting Rights Act operates on multiple levels and on such a large scale. The complexities and breadth of the coverage of the temporary provisions of the VRA are significant in New York City: approximately 5,797 election districts with close to 6,400 voting machines and 25,000 poll workers are in operation in a city of 8 million residents. And yet the interconnection between the requirements of the VRA is an important element in the VRA's reach in the city – as will be explained in this report. Federal observers – deployed under the authority of the VRA – provide information that is then used by the U.S. Attorney General in assessing the fairness of election changes for language minority voters. Litigation under Section 2 of the Act is used to bolster denials of preclearance under Section 5. And Section 203 compliance issues become the focus of Section 5 inquiries by DOJ. Thus, despite its coverage of only a few counties in the State of New York, the temporary provisions of the VRA, in tandem with litigation filed outside of Section 5 and Section 203, have addressed a breadth of voting rights issues in the city.

This report, and its appendices, document the state of New York voting rights from the end of 1982 through the present as part of a larger attempt to provide Congress a full record with which to consider the reauthorization of certain provisions of the Voting Rights Act which are set to expire in 2007. For this period in New York City, electoral politics is fascinating in its own right. A series of unprecedented, but in reality long-overdue, and bittersweet firsts occurred: the first and only African-American Mayor (David Dinkins); the first and only Latino candidate to finally capture the nomination for mayor of one of the two major parties (Fernando Ferrer); the first and only Asian American to finally win a city council seat (John Liu); and the first and only African-American to win a statewide office (Carl McCall). But the period also includes a number of debates and challenges that forced the city to look to its unfortunate, racially-based past in the area of voting rights (such as the racist attitudes of New York's Constitutional Conventions of the 1800s) and that also force the city to look to its future (such as the pending court challenge to force full language assistance for Asian American voters).

The political empowerment of racial and language minorities in New York City since the 1982 amendments to the Voting Rights Act has made great strides, while also leaving much more work to be done to eliminate discrimination in the area of voting. Election day practices that impede the full participation of racial and language minorities, unfair redistricting plans, and inadequate language assistance are repetitive barriers to the full enfranchisement of the protected classes under the Voting Rights Act. The preclearance process under Section 5 of the Voting Rights Act has been particularly successful in blocking discriminatory changes outright, and, equally important, in preventing unfair changes in election law and practice from ever coming to light. The result, we posit, is that New York City, overall, still needs the protections of Section 5, the promise of Section 203, and the vigilance required in the federal observer provisions of the Voting Rights Act.

I. Section 5 Preclearance Activity by the U.S. Attorney General in New York City: Objections and More Information Requests

Since 1982,[4] Section 5 preclearance requests in New York City have been almost exclusively lodged with DOJ. Throughout the relevant time period, with only one exception related to the creation of elected judgeships in 1994,[5] New York City has consistently availed itself of the administrative preclearance process instead of seeking preclearance in the U.S. District Court for the District of Columbia. The administrative response by DOJ to requests for preclearance involves the grant or denial of preclearance requests and/or the issuance of More Information Request letters to the submitting jurisdiction. In the period from 1990 to 2005 alone, a total of 2,611 changes affecting New York's three covered counties (Bronx, Brooklyn, and New York counties – all located in New York City) were submitted to DOJ.[6] While the overall number of objections is relatively low compared to other Section 5 jurisdictions, the variety of changes that have resulted in denials of preclearance is telling: methods of elections in community school board contests; packing and fracturing of minority communities in redistricting plans; changes from elected positions to appointed positions; language assistance barriers; and judicial elections have all been subject to objections preventing their implementation under Section 5. These proposed objections along with role of More Information Requests from DOJ, are discussed below.

A. Section 5 Objections Post-1982

The U.S. Attorney General has interposed fourteen objections under Section 5 in seven separate letters, post 1982. Indeed, two-thirds of all the objections ever interposed by the Attorney General in New York City were made after 1982.

July 19, 1991 Objection: New York City Council Redistricting Plan Discriminates against Latino Voters: Following a pattern developed with the 1970s and 1980s redistricting efforts,[7] New York once again could not prove the absence of discrimination in the adoption of state and city redistricting plans after the 1990 Census resulting in an Attorney General objection under

[4] Section 5 preclearance activity for New York's three covered counties starts in 1974 – after litigation that temporarily exempted New York from coverage and then reopened the matter to once again Section 5 review. For a full discussion of which racial and language minority groups were covered and why see Appendix E.

[5] See, Letter of Loretta King, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 5 December 1994, Re: Submission No. 93-0672. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005).

[6] Luis Ricardo Fraga & Maria Lizet Ocampo, "The Deterrent Effect of Section 5 of the Voting Rights Act: The Role of More Information Requests," Table 2, Conference Paper, "Protecting Democracy: Using Research to Inform the Voting Rights Reauthorization Debate," Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity at the University of California, Berkeley School of Law and the Institute for Governmental Studies, University of California, Berkeley. February 9, 2005. See Appendix G. We have yet to analyze data regarding the total number of submissions for preclearance submitted in the period from 1983 through 1989, inclusive. What is clear, however, is that there are no Section 5 objections on file from 1983 through 1989.

[7] Submission V6107 for preclearance of Congressional, State Assembly and State Senate redistricting plans was the subject of an Attorney General objection in April 1974; Submission 81-1901 regarding the New York City Council redistricting plan met with an objection in October 1981; and the Attorney General interposed an objection to the Congressional, State Senate and State Assembly redistricting plans in June 1982 (Submission 82-2462). See www.uksdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed on 8 June 2005).

Section 5.[8] At issue in the city council redistricting effort was the creation of a new paradigm of 51 councilmanic districts, created by voter referendum after the U.S. Supreme Court ruled that the city's board of estimate was unconstitutionally devised in violation of the "one person, one vote" principle of the Equal Protection Clause.[9] The task, in DOJ's opinion, was

> a job of staggering proportions, namely, to divide a city of over seven million people into 51 new council districts *while addressing the historical inability of the many minority communities in the city to elect candidates of their choice.*[10]

Despite its efforts, the New York City Districting Commission created a plan that had an impermissible, discriminatory effect on Latino voters in at least two separate areas of the city: Williamsburg / Bushwick in Kings County and East Harlem / Bronx in New York and Bronx counties. The Department of Justice objected to unnecessary packing of Latino voters in the Williamsburg district, and the denial of a fair chance of electing candidates of choice in the adjacent Bushwick district. In East Harlem, the objection centered on the failure to create a district that crossed county lines that would give Latino voters a chance to elect candidates of choice. [11]

June 24, 1992 Objection: New York State Assembly Redistricting Plan Discriminates against Latino Voters: Faced with an identifiable, compact community of Latino voters in Washington Heights in Northern Manhattan, many of them from the Dominican Republic, New York state authorities were stopped from fracturing the community between two Assembly districts: District 71, represented by the African American, Herman Farrell, and District 72, represented by a non-Hispanic white, John Brian Murtagh. The objection letter highlighted the existence of racially polarized voting in that area. It also found that the state knowingly proceeded to fracture the Latino community and reduce its ability to elect candidates of choice:

> The proposed district boundary lines appear to minimize Hispanic voting strength in light of prevailing patterns of polarized voting. Moreover, the state was *aware* of this consequence given its own estimates of likely voter turnout in Districts 71 and 72.[12]

In 1996, Adriano Espaillat won election in Assembly District 72, becoming the first Dominican ever elected to the New York Legislature.

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[8] Submission 91-1902 for the New York City Council resulted in an objection; Submission 92-2184 for the State Assembly redistricting plan also resulted in a Section 5 objection. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005).

[9] Board of Estimate v. Morris, 489 U.S. 688 (1989).

[10] Letter of John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 19 July 1991, Re: Submission No. 91-1902. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005). (Emphasis added.)

[11] The Department of Justice also went out of its way to comment on the districting of Queens County as well, despite the fact that the county is not covered under Section 5 of the VRA. The concern in Queens centered on the plan's overall effects on Latino representation in the new 51-member City Council -- specifically District 21 in Queens did not present, in the Attorney General's view, an equal opportunity for Latinos in that borough to participate in the political process.

[12] Letter of James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 24 June 1992, Re: Submission No. 92-2184. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005). (Emphasis added.)

August 9, 1993 Objections: New York City Board of Elections Discriminates against Chinese-American Voters by Failing to Provide Appropriate Language Assistance: A proposed board of elections Chinese-language targeting program, intended to serve Chinese American citizens who were limited-English proficient and in need of information in their native language was categorically rejected by DOJ under Section 5.[13] The board's plan failed to translate the actual ballot on its voting machines; failed to include any measures for quality control over the accuracy or completeness of any translations provided; failed to acknowledge the presence of different dialects of the Chinese language among its voters; failed to train Chinese translators or interpreters; failed to allocate available translators to election districts according to need (one translator would be assigned to one election district whether it had 261 Chinese-speaking voters or 2,629 such voters); and failed to appropriately target language assistance in either New York, Kings or Queens counties. Specifically, since polling sites in New York City regularly contain multiple election districts, the board's proposed targeting plan of limiting Chinese language information to districts that had 200 or more Chinese eligible voters, would, in DOJ's opinion, severely underserve Chinese voters throughout the three Section 203 covered counties. For Kings and New York counties, the plan would have reached only 50 percent of the 34,000 Chinese American voters that qualified for assistance.[14] Accordingly, DOJ objected to each of the four changes submitted in the plan as applied in New York and Kings counties.

The plan was modified substantially after the denial of preclearance, but is nonetheless the subject of controversy. In 2006, Chinese voters sued to enforce the guarantees of Section 203 in *Chinatown Voter Education Alliance v. Ravitz* (see Section IV, below).

May 13, 1994 Objection: New York City Board of Elections Discriminates against Chinese-American Voters by Failing to Translate Candidate's Names and Machine Operating Instructions: In 1994, DOJ denied preclearance to Chinese-language election procedures in Kings and New York counties in two material respects: the failure to translate candidates' names on machine ballots during both primary and general elections and the failure to translate operating instructions for voting machines during general elections. In doing so, DOJ did not accept various arguments by the board of elections that space and/or time limitations prevented it from complying with Section 203 and Section 5, or that the translation of candidates' names into Chinese would confuse voters or that the provision of sample ballots on site would solve any problem associated with failing to translate directly on the machines.[15]

Regarding the provision of translations for operating instructions, DOJ relied in part on the documentation provided by its own federal observers to conclude that "many Chinese-speaking voters have encountered difficulties as a direct result of the board's failure to translate these instructions." However, with respect to the board's refusal to translate candidates' names, even

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[13] Letter of James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 9 August 1993, Re: Submission No. 92-4334; 92-4790; 93-1552; 93-0057. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005).

[14] While not a Section 5 jurisdiction the Department also noted that in Queens County, where 20,000 voting age Chinese-speaking citizens are limited-English proficient and eligible for language assistance, not one election district would qualify for Chinese voting information under the Board's plan.

[15] Letter of Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 13 May 1994, Re: Submission No. 93-4733. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005).

where space on the ballot existed, Assistant Attorney General Patrick was even more explicit in stating the obvious:

> Our analysis shows that a candidate's name is one of the most important items of information sought by a voter before casting his or her ballot for a particular candidate. . . For voters who need Chinese-language materials, the translation of candidates' names is important because Roman characters are completely different from Chinese characters. Consequently, it would be extremely difficult, if not impossible, for these voters to understand names written in English.[16]

The New York City Board of Elections conceded these points and modified its plan accordingly.

December 5, 1994 Objections: New York's Creation of Additional Elected Judgeships for the New York Supreme Court and Court of Claims Discriminates against African-American and Latino Voters: By 1994, the state of New York had continued to run elections for justices to the Supreme Court of New York – New York's court of first instance – as per the mandates of its constitution. Justices are elected by the voters from judicial districts that in some cases are coterminous with county boundaries in the city of New York. On a number of occasions, however, particularly in 1982, the state created additional positions for justices and allocated them among the districts without obtaining the necessary preclearance under Section 5. These positions were filled in the normal course – a process that limits the political party's nominees to a delegate convention conducted by the parties and not an open, competitive primary. Moreover, the state devised a practice of using its appointment power to select judges to the New York Court of Claims that were then transferred to the Supreme Court, thus circumventing the election process. These issues and others came to the forefront in 1994 when the state finally sought preclearance, retroactively, for some changes and prospectively for a number of proposed changes in the manner of elected justices to the Supreme Court. Specifically, the state sought retroactive preclearance to the creation of additional judgeships in the Supreme Court and the Court of Claims that dated back to 1982 and 1994, respectively. It also sought preclearance of legislation in 1994 that established new procedures designating candidates to particular Supreme Court positions and the creation of one additional Supreme Court judgeship. DOJ denied preclearance to each of these changes – five in all.[17]

DOJ completed an encompassing analysis of the closed door process of nominating judges for the Supreme Court through political party nominating conventions, "dominated by a relative handful of political leaders" and attacked repeatedly as being "racially discriminatory."[18] Effectively, party delegates, controlled by the party leaders, monopolized the selection of the candidates for the Democratic Party primaries – which, in a city like New York was tantamount

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[16] Id.
[17] Letter of Loretta King, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 5 December 1994, Re: Submission No. 93-0672. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005).
[18] Id.

to securing victory in the general election.[19] The practice shut out voter participation in the primaries and hindered competition among potential judicial candidates.

In 1994, DOJ in this instance made a number of important findings to support its objection under Section 5: 1) that the "legislature was aware of the racially discriminatory nature of the election system" that was well documented before its 1994 proposed legislation; 2) that racial minorities were the majority of the voting age population in both the Second Judicial District (Kings and Richmond counties) and the Twelfth Judicial District (Bronx County); 3) that New York created and maintained 14 "unprecleared judgeships" in the Second Judicial District that produced "disproportionate results disfavoring minority voters;" 4) that patterns of racially polarized voting in the Section 5-covered counties of New York contributed to these election results; 5) that the "slating process used to nominate judicial candidates to the supreme court prevents minority voters from having an equal opportunity to elect candidates of their choice;" 6) that minority voters have less access to the slating process than white voters; 7) that under the present system, minority voters would have to wait "until well into the next century"[20] to have an equal opportunity to elect candidates of their choice because of the "long judicial terms of the office [14 year terms] and the ingrained tradition of renominating incumbent judges, most of whom are white;" 8) that the 1994 procedure designating specific candidates to particular positions on the court had no basis in state law and was *intended* instead to put minority candidates, not white candidates, at risk by designating them to unprecleared positions; and 9) that the state in 1982 and 1990 created fictitious Court of Claims judgeships, appointed by the Governor, of judges "who never sit on the court of claims" and are effectively transferred to the Supreme Court in violation of the New York constitution, thus changing "the method of selecting a class of supreme court judges from election to appointment."

The U.S. Attorney General concluded that New York was clearly unable to meet its burden that the previously unprecleared and currently proposed changes to judges' elections were made without a discriminatory purpose or with the absence of a discriminatory effect against racial and language minorities.

November 15, 1996 Objection: New York City Discriminates against African-American and Latino Voters by Replacing Elected Community School Board Members with Appointed Trustees: New York City ran its public schools under a dual system of local control (referred to as decentralization and embodied in 32 community school districts each led by a 9-member, elected community school board) and a central authority that resided in an appointed board of education. The mayor and each of the five borough presidents appointed members of the central board of education and they in turn, appointed a chancellor. Community school boards had the authority to appoint the superintendent of their respective community school district. In 1996, the chancellor advised the elected members of Community School District 12 in Bronx County that they would be relieved of their duties, replaced temporarily by three appointed trustees and then replaced by five appointed trustees who would assume their duties until the next scheduled

[19] Years later, these same findings were the basis of a successful constitutional challenge to the candidate selection process for these same primaries in Lopez Torres v. New York State Board of Elections, 04 CV 1129, E.D.N.Y. Gleeson, J., Slip Opinion dated January 27, 2006. For a full discussion of Lopez Torres, see Appendix D.
[20] A remarkably prescient observation in light of the Lopez Torres v. New York State Board of Elections decision in 2006. See Appendix D.

election. DOJ interposed an objection under Section 5 to the substitution of elected officials with appointed officials.[21]

DOJ found that Latinos made up 54 percent of the electorate in School District 12 and that blacks made up 36 percent of the electorate. There were more than 46,000 parent voters in Community School District 12. DOJ also noted that all nine school district members elected in May 1996 (to a three-year term) and replaced by the chancellor were either Latino (7) or African-American (2). Comparatively, DOJ found that blacks and Latinos comprised 49 percent of the city's population as per the 1990 Census. This distinction was telling, since black and Latino voters could only exert influence on the chancellor through their collective voting strength in the five boroughs and in the city as a whole, because the mayor and the borough presidents appoint the chancellor:

> Thus, it appears that Hispanic and black voters will have considerably less influence over the selection of CSB 12 board members through the choices of the appointing authority than they have under the direct-election system currently in place for CSB 12.[22]

Coupled with the finding that black and Latino voters had either "literally no input" or no "meaningful input" into the appointment of the temporary or permanent trustees, respectively, DOJ noted that the city failed to meet its burden under Section 5.

February 4, 1999 Objection: New York State Discriminates against African-American, Latino and Asian American Voters by Switching Method of Election of Community School Boards from Single Transferable Votes to Limited Voting: The decentralization of the city's board of education into 32 community school districts established a proportional representation system for election to these community school boards. The system used by the city since the inception of the community school board is choice voting or the Single Transferable Votes method (STV). It allows voters to rank order their preferred candidates anywhere from one to nine. Votes are then tallied in the order of the first-preference candidate; once that candidate receives the threshold number sufficient for election to the board all remaining votes exhibiting a first-preference for that candidate are tallied in favor the second-preference candidate on that ballot. This process continues until all nine members are elected. Under this system, minority voters[23] need only to constitute 10 percent of the electorate to elect candidates of choice because the threshold for representation for one seat is 10 percent and every 10 percent jump in a voting group's share provides an opportunity to win another seat.

In 1998, New York state passed a series of measures ostensibly to increase voter turnout in New York City school board elections. As DOJ noted in its letter,[24] most of the measures that would

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[21] Letter of Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 15 November 1996, Re: Submission No. 96-3759. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005).

[22] Id.

[23] For Section 5 purposes we refer to racial and language minorities but STV allows for any other minority bloc to successfully elect their candidates.

[24] Letter of Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 4 February 1999, Re: Submission No. 98-3193. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005).

reasonably lead to higher turnout rates, were precleared. However, DOJ was unconvinced that a switch from STV to Limited Voting, another form of proportional representation, would increase turnout.

More importantly, it concluded that the switch would actually diminish minority voting strength in violation of its non-retrogression standard. Limited Voting provides for fair representation of minority voting blocs (whether or not they are racial minorities) because each voter has fewer votes than the total of seats to be filled in a legislative body. Voters may combine their votes in favor of one or more candidates but they will always have fewer votes than seats to be filled. In this instance, the state proposed a Limited Voting system with four votes per voter in a nine-member school board. DOJ calculated that the minority threshold for electability is 10 percent under the STV method and 31 percent under the Limited Voting method. It then found that there were 18 school districts where the minority groups' share of the voting age population was more than 10 percent but less than 31 percent thus putting at risk their ability to elect candidates of choice if Limited Voting with four votes were instituted.

While this comparison alone would have justified an objection, DOJ made a more important and related finding: voting in community school board elections was racially polarized. Citing two VRA cases decided in New York,[25] and relying on its own analysis of election returns provided by the state, DOJ concluded:

> [T]he information we have indicates that the degree of racial bloc voting in Community School Board elections, in the covered counties and throughout the city, is such that the ability of minority voters to elect their candidates of choice will be considerably reduced under the submitted change in voting method.[26]

The state ultimately abandoned its attempts to alter the method of elections in New York City community school board elections.

B. Department of Justice More Information Requests Post-1982

Rigorous analysis of the impact of More Information Requests in the context of assessing the effectiveness of Section 5 for protecting racial and language minorities is of recent vintage. In one of the few projects of its type, research conducted in 2005 by Luis Ricardo Fraga and Maria Lizet Ocampo at Stanford University set forth a number of objective factors that can document the full, deterrent effect of Section 5 on covered jurisdictions. Simply put, the number of actual objections interposed in the Section 5 process does not fully explain the reach of the VRA in preventing voting rights abuses. More Information Requests ("MIR") by DOJ provide another way to measure the impact of Section 5, as well as the episodes of discriminatory conduct that jurisdictions were prepared to implement but have decided to forego. In other words, any

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[25] Puerto Rican Legal Defense and Education Fund v. Gantt, 796 F. Supp. 681 (E.D.N.Y. 1992); Butts v. City of New York, 614 F. Supp. 1527 (S.D.N.Y. 1985). For a discussion of both of these cases see Section VI below and Appendix B.

[26] Letter of Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 4 February 1999, Re: Submission No. 98-3193. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005).

analysis of Section 5 activity that does not account for MIR does not fully analyze the deterrent, prophylactic effect of the VRA.

More Information Requests are merely requests for additional data or information that will allow DOJ to make a final decision on a preclearance request. A submitting authority can decide to provide the information, withdraw the request, supersede the request to preclear a change with another proposed change, or simply refuse to respond. Since changes that are not precleared are, by definition, inoperable and illegal, the effect of withdrawal, substituting changes for other changes, and not responding are equivalent to denials of preclearance. "The purpose of an MIR is to make sure that the DOJ has the information it needs to comprehensively review a proposed change. In doing so, it can also send signals to submitting jurisdictions about the assessment of their proposed change."[27]

The significant deterrent effect of Justice Department activity is supported by the views of former Department of Justice officials, like Joseph D. Rich, former Acting Chief, then Chief, of the Department's Voting Section (from 1999 to 2005) and a 36-year veteran of the Department's Civil Rights Division. In testimony he provided to the National Commission on the Voting Rights Act in June 2005 in New York City, Mr. Rich noted that

> [O]n many occasions the department has deterred potential voting changes with discriminatory impact or purpose by sending letters seeking further information – letters which usually signal department concern with the law under review. These letters often result in abandonment of, or changes in, the proposed law to remove any discriminatory impact or purpose.[28]

Fraga and Ocampo analyzed data from 1990 to 2005, including the Department's Submission Tracking and Processing System. They created statistical reports that, for the first time, in or out of the Department, analyzed and coded data associated with submitted changes receiving an MIR. This data was coded by state, type of change, and outcomes (withdrawals, superceding changes, no responses, etc.). They conclude that MIRs play a critical role in the enforcement of Section 5: MIRs are issued at much higher rates than objections to preclearance; MIRs effectively double the number of changes that are prevented by DOJ; and MIRs have a separate impact on preventing illegal changes, separate from whether objections are issued. The conclusions reached by Fraga and Ocampo – that MIRs *double* the number of illegal changes reached directly by objection letters – point toward a strong deterrent effect upon submitting jurisdictions, which has yet to be fully realized by Congress and the VRA's protected classes:

> A total of 792 objections were made to proposed changes during 1990-2005, however only 365 of these objections contained the issuance of a MIR at some point in the process of review. However, the sum of the outcomes of withdrawals, superseded changes, and

[27] Luis Ricardo Fraga & Maria Lizet Ocampo, "The Deterrent Effect of Section 5 of the Voting Rights Act: The Role of More Information Requests," p. 4, Conference Paper, "Protecting Democracy: Using Research to Inform the Voting Rights Reauthorization Debate," Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity at the University of California, Berkeley School of Law and the Institute for Governmental Studies, University of California, Berkeley. February 9, 2005. See Appendix G.

[28] Joseph D. Rich, "Statement of Joseph D. Rich Before the National Commission on the Voting Rights Act," June 14, 2005. See Appendix G.

> no responses, resulting from an MIR, is 855. This means that MIRs have resulted in directly affecting 855 additional changes, making their implementation illegal, in addition to the 792 changes that resulted in objections. *MIRs increased the impact of the DOJ on submitted changes by 110 percent, i.e., doubling the number of changes that were not precleared by the DOJ.*[29]

In New York, between 1990 and 2005, the effect of MIRs is considerable.[30] New York's three covered counties collectively ranked 6th out of the 19 jurisdictions studied by Fraga and Ocampo with the highest number of changes prevented by MIRs – even when the jurisdictions analyzed included whole states like Louisiana, Texas, and the like. A total of 113 MIRs were issued to New York in the relevant time period, of which 28 resulted in no objection, four resulted in an objection, and 53 resulted in outcomes that are the equivalent of interposing an objection (withdrawals, superceding changes or no response). [31]

Thus, in effect, from 1990 to 2005, 53 voting changes to the 14 voting changes can be added that were subject to an objection, for a total of 67 changes that were thwarted by the Section 5 preclearance process.

II. Deployment of Federal Observers Post-1982

The Department of Justice has the authority under Section 8 of the VRA to assign federal observers to monitor elections. The decision to deploy federal observers is one that is not taken lightly by DOJ. Indeed, the decision reflects "evidence of potential voting rights act violations which arise most often in elections pitting minority candidates against white candidates, resulting in increased racial or ethnic tensions."[32] In the view of former DOJ officials like Joseph D. Rich, the "presence of federal observers serves an important deterrent – in this case to discriminatory actions during an election."[33]

In New York, federal observers and monitors have been deployed since 1985 precisely for these reasons. For the period November 1985 to November 2004, review of the instances when observers and monitors have been dispatched[34] to document potential violations of the Section 5 and Section 203, and otherwise deter potential violations, reveals the following:

County	Number of Observers/Monitors Dispatched
Bronx County	175
Kings County	286
New York County	353
Queens County	12 (Shared with Suffolk County. 2002)
Suffolk County	12 (Shared with Queens County. 2002)

[29] Id. at 15-16 (emphasis added).
[30] Id., Table 9 and text on p. 17. We have been unable to review MIRs issued to New York City between 1982 and 1989.
[31] The remainder received a follow-up letter from the Department seeking yet additional documentation.
[32] Joseph D. Rich, "Statement of Joseph D. Rich Before the National Commission on the Voting Rights Act," June 14, 2005. See Appendix G.
[33] Id.
[34] See Appendix G.

	55 (Suffolk only. 2004)
Total	**881**

Access to the reports and/or recommendations of any of the federal observers within the Department of Justice is not available to the public. However, DOJ has relied upon their observer coverage to gather information it reviews in the Section 5 preclearance process in New York. Finally, the deployment of observers on such a large scale, 881 in 19 years, is another indication of the state of voting rights in New York – and the need to continue to provide vigilance and redress.

Data available to us on the deployment of federal observers to elections in New York City (see Appendix G) do not include findings, reports, or final observations made by the Department of Justice election observers. However, in limited situations, the reasons underlying the assignment of observers to specific elections in specific counties are described in advance. On those limited occasions from 1985 to 2004, the data show that DOJ concerns over compliance with the language assistance mandates of Section 203 for Chinese voters led to the presence of federal observers on ten occasions in various elections and counties; concerns over Section 203 compliance for both Chinese-language and Spanish-language voters resulted in observers being dispatched on
seven occasions; and concerns for the treatment of Korean-language and Spanish-language voters led to assignment of observers on two occasions.

On the remaining occasions when federal observers were used to monitor elections, 25 occasions in all, no information was available to indicate the reason for the deployment. In effect, any potential violation of the VRA would have justified the order to send federal observers. Moreover, the inability to fully comply with Section 203 requirements for Latino voters resulted in the assignment of federal observers in a number of elections since the 1992 amendments to Section 203. Of the multiple times federal observers were present, the following elections were identified specifically because of concerns over Latino voters and bilingual assistance: September 2001 (Kings and New York counties); October 2001 (Bronx County); September 2004 (Queens County).

III. Language Assistance Litigation and Compliance Issues Post-1982

Language assistance for citizens who have yet to master the English language has been a feature of New York City elections since the adoption in 1965 of Section 4(e) of the Voting Rights Act, 42 U.S.C. § 1973b(e). Section 4(e) was specifically aimed at remedying the discriminatory election practices that prevented Puerto Ricans in New York City from voting because of their inability to pass an English literacy requirement as a prerequisite for voter registration.[35] Litigation under Section 4(e) of the VRA established meaningful access to the political process by creating a full system of language assistance for Puerto Ricans, who by operation of law were already U.S. citizens.[36] Indeed, these early Section 4(e) cases[37] led to the universally applicable pronouncement by the court in *Torres v. Sachs* that:

[35] Katzenbach v. Morgan, 384 U.S. 641, 652 (1966).
[36] In 1917 Congress declared Puerto Ricans citizens of the United States. This status was re-codified in 8 U.S.C. § 1402

> Plaintiffs cannot cast an effective vote without being able to comprehend fully the registration and election forms and the ballot itself.[38]

The language assistance provisions of the VRA, enacted nationally in 1975, relied, in part, on this model in New York City, especially since it reached close to 813,000 Puerto Ricans living in the city, plus thousands of other citizens who needed and used Spanish-language assistance in voting – demonstrating to Congress that language assistance could work on a very large scale.[39] In New York City, language assistance was provided to Spanish-language voters in Bronx, Kings, New York, and Queens counties; Chinese-language voters in New York, Kings and Queens counties; and to Korean voters in Queens County. Outside of New York City, Section 203 eventually required Westchester, Nassau, and Suffolk counties to provide language assistance in Spanish to Latino voters.

Recent research conducted in six Section 203 covered New York counties points to the salutary effects of providing language assistance for both Latino and Asian-American voters: namely, the positive correlation that exists between providing Section 203 language assistance and increased voter registration. One such study for New York concludes that after controlling for other factors that affect registration (e.g., education levels, nativity, residential mobility, etc.), the use of ballots and registration materials in the covered language was significantly correlated to increased registration levels at both the city and county level and for both Spanish and Chinese-speaking voters.[40]

Nonetheless, the language assistance provisions of the VRA have never been fully implemented in New York City – and the problems with compliance have been especially detrimental to the Asian-American community. Since 1988, a comprehensive election-monitoring program created by the Asian American Legal Defense & Education Fund ("AALDEF") has documented a litany of recurrent problems, abuse, errors, and direct evidence of intimidation and discrimination visited upon Asian-American voters in need of language assistance in New York City. The AALDEF project is the only one of its kind in New York City and it provides a wealth of valuable information. The breadth and scope of the documentation provided by the AALDEF reports[41] leads to only one conclusion: New York has consistently failed to address the

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[37] Lopez v. Dinkins, No. 73 Civ. 695 (S.D.N.Y. Feb. 14, 1973); Coalition for Education in District One v. Board of Elections, 370 F. Supp. 42 (S.D.N.Y. 1974); Torres v. Sachs, 381 F. Supp. 309 (S.D.N.Y. 1974).

[38] Torres v. Sachs, 381 F. Supp. at 312.

[39] In 1975 the House Committee on the Judiciary noted: "The provision of bilingual materials is certainly not a radical step . . . Courts in New York have ordered complete bilingual election assistance, from dissemination of registration information through bilingual media to use of bilingual election inspectors." H.R. Rep. No. 94-196, at 24-25 (1975). See, Juan Cartagena, "Latinos and Section 5 of the Voting Rights Act: Beyond Black and White, 18 Nat'l Black L.J. 201, 209-210 (2005).

[40] Michael Jones-Correa & Karthick Ramakrishnan, "Studying the Effects of Language Provisions Under the Voting Rights Act," 2004 Paper, Western Political Science Association Meeting. See Appendix G.

[41] The reports, hereafter "AALDEF Reports," include: "Access to Democracy: Language Assistance and Section 203 of the Voting Rights Act," July 2000 [covering 1998 and 1999 Elections]; "Access to Democracy Denied: An assessment of the NYC Board of Elections compliance with the Language Assistance Provisions of the Voting Rights Act, Section 203, in the 2000 Elections," 2001; "Asian American Access to Democracy in the NYC 2001 Elections," April 2002; "Asian American Access to Democracy in the 2002 Elections in NYC," September 2003; "Asian American Access to Democracy in the 2003 Elections in NYC," May 2004; "The Asian American Vote

widespread nature of voter discrimination suffered by the Asian-American community. In 2006, AALDEF filed, on behalf of Chinese-language and Korean-language voters, one of the few Section 203 challenges in New York: *Chinatown Voter Education Alliance v. Ravitz*,[42] which is currently pending in federal district court.

The AALDEF reports, which were published beginning in 1998, document a number of categories of non-compliance with Section 203. A full discussion of the findings of AALDEF's research is found in Appendix A: Language Assistance Compliance & Asian American Voters. Some of the highlights include:

Erroneous or Ineffective Translations: In Queens County for the general election of 2000, the Democratic candidates for Congress, State Senate and Assembly, justices of the Supreme Court and judges for Civil Court, were listed under erroneously translated party headings, and misidentified as Republicans. Likewise, the Republican candidates were listed under the mistranslated heading as Democrats.[43] Notifying the board of elections of this major error by 9:45 A.M., election officials from the central board would not arrive to correct the mistake until 4:00, 5:30 and in one case, 6:55 P.M. In addition, paper ballots for justices of the Supreme Court required translation for the phrase "vote for any three" which was erroneously translated as "vote for any five." For the 2002 primary and general elections, of the more than 3,000 voters surveyed, 27 percent of Chinese voters and 30 percent of Korean voters reported having difficulty reading the ballot because of the small typeset used by the board of elections. Magnifying sheets issued by the board of elections ostensibly to solve this problem were not available in all sites and in Queens, one inspector was reported to have hidden the device to avoid its use. Transliteration of candidates' names surfaced as a problem again: "Mary O'Connor' was translated as "Mary O'Party;" and the Korean transliteration of John Liu's name was not what he submitted to the board or what he used in Korean media.

Racial Epithets or Hostile Remarks: During the 2001 elections monitored by AALDEF the following episode was documented: At IS 228, a polling site coordinator, trying to thwart interpreters from performing their duties, yelled "You f---ing Chinese, there's too many of you!" In their monitoring project for the 2002 elections, AALDEF documented other incidents: At PS 82 and at Botanical Garden, some of the comments made to Asian-American voters included calling South Asian voters "terrorists" and mocking the physical features of Asian eyes while stating: "I can tell the difference between a Chinese and a Japanese by their chinky eyes." And in 2003, the project reported that in PS 126 in Manhattan's Chinatown, poll inspectors ridiculed a voter's surname ("Ho"); in PS 115 in Queens, disparaging remarks were directed at South Asian voters, with one coordinator continuously referring to herself as a "U.S. citizen" and that she, unlike them, was "born here" and that the other workers needed to "keep an eye" on all South Asian voters; at Flushing Bland Center in Queens, the site coordinator complained that Asian-American voters "should learn to speak English."

2004: A Report on the Multilingual Exit Poll in the 2004 Presidential Election," 2005. See Appendix A: Language Assistance Compliance & Asian American Voters for a further discussion of the details of these reports and see Appendix G __ to __ for the reports themselves.

[42] 06 Civ 913 (NRB), S.D.N.Y. 2006 (Reice Buchwald, J.). The case includes claims under Section 203 of the VRA and under Section 208 of the VRA (the assistor provision of the Act). The Complaint in this matter is attached as Appendix G.

[43] This glaring mistake was observed in Queens at PS 22, JHS 189, JSH 185, PS 20, IS 145 and Senior Center.

Written Language Materials: The unavailability of written materials in the appropriate Asian languages, or the deliberate efforts to avoid displaying them, has been consistently documented in the AALDEF reports. For example, during the elections of 2002, survey results documented that 37 percent of Chinese voters and 43 percent of Korean voters need the assistance of translated materials. Instead, voter rights flyers, voter registration forms, affidavit ballots, and envelopes in Chinese were routinely missing as well. Korean language materials were kept in their supply packets and unavailable consistently in Queens. In 2003, 49 percent of the Chinese voters surveyed, and 47 percent of the Korean voters surveyed required the assistance of translated written materials. Yet, no ballots were translated for Chinese voters in PS 250 in Williamsburg despite its designation as a targeted site by the board of elections; voters were observed having difficulty voting as a result. Translated voter registration forms and affidavit ballot envelopes were frequently missing and once again, the requisite materials were found, unopened, in their original containers. Polling inspectors routinely refused to display the available materials, insisting that they were only required to do so if requested by a voter – with some remarking that they needed to keep their tables "clean" and others remarking that their manual required them to keep their tables free of "clutter."

Oral Language Assistance: The shortage of available interpreters is another constant problem in this area, as are the efforts of some poll workers to impede the work of the interpreters who are available. The reports noted that in 2002, 33 percent of Chinese voters surveyed and 46 percent of Korean voters reported needing the assistance of interpreters. Interpreters were in short supply in Queens and in Manhattan. In the 2003 elections, 36 percent of Chinese voters and 42 percent of Korean voters reported that they required the assistance of interpreters. Once again, the supply of interpreters could not meet the need. The monitoring revealed that, overall, one out of three interpreters assigned to the polling sites did not show up to work. And in 2004, slightly more than 7,200 Asian-American voters were surveyed in New York City, reporting that for Chinese voters in New York, Kings, and Queens counties, 37 percent needed an interpreter and 36 percent needed translated written materials to effectuate their right to vote.

The problems in complying with the language assistance guarantees of the VRA in the city were not limited to Asian-American voters, however. After the 2000 general elections the New York State Attorney General investigated "serious" allegations regarding the failure of the city board of elections to provide appropriate language assistance to Latino voters (and Asian Americans). His office also investigated allegations that Latino voters were harassed, intimidated and intentionally misinformed about voter registration laws and procedures in the city.[44] Documenting future complaints and evaluating "flaws in election administration that may affect voters on the basis of race or ethnicity" were among the recommendations made as a result.[45] Major problems in securing oral assistance in Spanish at the polls continued to plague New York City elections. In 2001, the board was short 3,371 poll inspectors – 15 percent of the total need. It was short 33 percent of the total number of Spanish interpreters it needed for that election.[46]

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[44] Office of Attorney General Eliot Spitzer, Voting Matters in New York: Participation, Choice, Action, Integrity, February 12, 2001.
[45] Id.
[46] Ron Hayduk, Gatekeepers to the Franchise: Shaping Election Administration in New York, Northern Illinois University Press. Dekalb, 2005. P.198.

Even considering the longevity of the Latino population in the city – especially its Puerto Rican community – the prevalence of Spanish language use at home and corresponding lower proficiency in English is clearly a continuing phenomenon in New York City.[47] For Latinos nationally, the percentage of persons who speak English less than "very well" and who report that Spanish is spoken in their homes is 40.6 percent. In New York City, 51 percent of Latinos who speak Spanish at home report lower proficiency levels in English. It is important to note here that the measure of speaking English less than "very well" is the measure used by the Census Bureau, along with other indicia, to certify Section 203 coverage. Family literacy centers in New York City – indeed, all places where adults can try to learn English – are in very short supply with demand far exceeding supply.[48] And as noted above, the inability to fully comply with Section 203 requirements for Latino voters resulted in the assignment of federal observers in a number of elections since the 1992 amendments to Section 203. Of the multiple times federal observers were present, the following elections were identified specifically because of concerns over Latino voters and bilingual assistance: September 2001 (Kings and New York counties); October 2001 (Bronx County); September 2004 (Queens County).

New York City continues to be the city with the largest number of Puerto Rican residents. Puerto Ricans, a sizeable force of more than 789,000, are the city's largest ethnic group and the largest national origin group among the city's 2.2 million Latino residents.[49] The conditions that led to their ability to gain access to New York's political process, through Spanish-language assistance, including their strong ties to the Spanish language, the circular migration between Puerto Rico and New York City, and the juridical foundation of the unique relationship between the United States and Puerto Rico, has not undergone any appreciable change, thus making their need for language assistance in elections today as viable as it was in the 1960s and 1970s.[50]

A. Language Assistance Litigation and Compliance Issues outside of New York City

Section 203 compliance problems are not limited to the four covered counties in New York City. Westchester, Suffolk, and Nassau counties are required to provide Spanish-language assistance to Latino voters. On-site compliance monitoring in 2005 by Cornell University students revealed that in Nassau and Suffolk counties, there were failures to provide voter registration materials in Spanish.[51] This research also evidenced less than full compliance in providing personnel capable of handling requests in Spanish.

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[47] New York City data reported in this paragraph comes from the 2000 Census as analyzed by the Queens College Department of Sociology. Nina Bernstein, "Proficiency in English Decreases Over a Decade," The New York Times, 19 January 2005. National data is derived from the Census Bureau: Roberto R. Ramirez, We the People: Hispanics in the United States. Census 2000 Special Reports, issued December 2004.

[48] Nina Bernstein, "Proficiency in English Decreases Over a Decade," supra.

[49] Angelo Falcón, "De'tras Pa'lante: The Future of Puerto Rican History in New York City," in Gabriel Haslip-Viera, Angelo Falcón & Félix Matos Rodríguez, Boricuas in Gotham: Puerto Ricans in the Making of Modern New York City , Markus Weiner Publishers. Princeton 2004.

[50] Juan Cartagena, "Testimony of Juan Cartagena, General Counsel, Community Service Society Before the Subcommittee on the Constitution of the House Committee on the Judiciary of the United States House of Representatives," November 9, 2005.

[51] Michael Jones-Correa & Israel Waismel-Manor, "Verifying Implementation of Language Provisions in the Voting Rights Act," Conference Paper, "Protecting Democracy: Using Research to Inform the Voting Rights Reauthorization Debate," Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity at the University of

Compliance problems with Section 203 generally led to litigation against Suffolk and Westchester counties filed by the Department of Justice in 2004 and 2005, respectively. Each of the suits resulted in settlements that improved the language assistance programs in each of the two covered counties. In *United States v. Suffolk County*[52] Suffolk County eventually agreed to a Consent Decree to create an improved Spanish-language assistance plan that would increase the number of Spanish-speaking election officials; increase the availability of Spanish-language written materials; improve the training of poll workers; and end the hostile treatment directed at Latino voters. The Consent Decree also allowed the Department of Justice to deploy federal observers in future elections. *United States v. Westchester County, New York*[53] similarly addressed the failure to provide adequate Spanish-language assistance to Latino voters, including the county's failure to post Spanish-language information at targeted polling sites under both Section 203 and the Help America Vote Act. A Consent Decree was entered in 2005 that improved the county's language assistance program considerably.

An additional Section 203 case was filed by the Department of Justice in Suffolk County against the Brentwood School District. *United States v. Brentwood Union Free District*.[54] The school district's failure to provide adequate oral and written language assistance in Spanish (including the failure to properly train personnel and the inability to curb hostilities against Latino voters) was the subject of a comprehensive Consent Decree that runs through January 2007.

IV. Voting Rights Litigation Post-1982

Litigation under the VRA in New York City has had limited success in the nearly 25 years that have elapsed since the continuation of Section 5 coverage to New York's three covered counties. It must be assessed alongside litigation filed under the Constitution and under the National Voter Registration Act (see below).

With respect to the VRA, it is important to differentiate between Section 5 and Section 2 litigation in this regard, however. In New York, Section 5 litigation is characterized by actions instituted by private litigants against election authorities of the state. These lawsuits are, by their nature, limited to seeking court orders to stop the implementation of election changes that have not been precleared. Once preclearance is granted the suit is effectively terminated, since only a subsequent challenge on racial discrimination grounds (e.g. a Section 2 case) can reach the merits. In addition, since Section 5 of the VRA exists to protect the rights of racial and language minorities to equal participation in the political process, Section 5 lawsuits that fail to raise issues of race add little to the focus contained in this report: the state of racial and language minority equality in the political process in New York since 1982.

California, Berkeley School of Law and the Institute for Governmental Studies, University of California, Berkeley. February 9, 2005 (on file with author); email correspondence from Michael Jones-Correa, 11 February 2005. See Appendix G.

[52] No. 04-2698 (E.D.N.Y. 2004).

[53] No. 05-0650 (S.D.N.Y. 2005).

[54] See www.uddoj.gov/crt/voting/litigation/caselist.htm (last viewed on February 27, 2006).

Approximately six cases filed since 1982 raised Section 5 claims directly.[55] In four of these cases, the U.S. Attorney General issued preclearance before the decision was issued, effectively rendering the lawsuits moot.[56] In two of these four cases, no issues were presented about the effect that such un-precleared election changes had, if any, on the city's racial and language minorities.[57] The remaining two unsuccessful decisions sought to extend the scope of Section 5 coverage: *Merced v. Koch* raised legitimate questions about the applicability of Section 5 to elections to "Area Policy Boards" in low-income neighborhoods that play a decisive role in the distributed anti-poverty funds to community based organizations; the second case, *African-American Legal Defense Fund v. New York State Department of Education*, presented a vague challenge to the composition of both the central and community boards of education that the court deemed too amorphous to consider without re-interpreting the allegations under the rubric of the VRA. Moreover, its challenge to the discriminatory nature of the composition of community school boards – considered one of the most racially diverse entities in city history since 1969 – is inexplicable. In effect, the Section 5 lawsuits, in spite of their results, have not enhanced or diminished the record of voting discrimination in New York in any meaningful way.

Section 2 litigation in New York City is also an important marker for potential voter related discrimination in the relevant jurisdiction. While the standards of proof are different than Section 5, the evidence of potential voter dilution, or in some cases discriminatory vote denial practices, do lend themselves to the assessment we make in this report. The Section 2 lawsuits summarized below run the gamut from challenges to structural impediments that potentially lead to vote dilution (redistricting plans; primary runoff requirements; nonvoting purges, etc.) to straight-forward vote denial claims (e.g. felon disfranchisement).

Fourteen cases raising Section 2 claims have been identified.[58] Cases that appeared to raise incontrovertible proof of unlawful discriminatory effects against racial and language minorities were settled, a not surprising result in this field.[59] These settled cases are significant in their own right. In *United Parents Associations v. Board of Elections*, proof of discriminatory effects upon black and Latino voters stopped the implementation of two successive legislative enactments to institute – and then re-institute – the discriminatory nonvoting purge law. At risk were hundreds of thousands of voter registrations. In *Ashe*, the Board of Elections was forced to begin a series of reviews and assessments regarding the training of its personnel and the deployment of adequately functioning machines. The settlement in *Ashe v. Board of Elections* was but the tip of the iceberg of recurring problems that faulty election administration has on racial and language minority voters. And in *Campaign For a Progressive Bronx v. Black*, language assistance for

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[55] African-American Legal Defense Fund v. NYS Department of Education; Dobbs v. Crew; East Flatbush Election Committee v. Cuomo; Kolashi v. NYC Board of Elections; Merced v. Koch; and Rogers v. NYC Board of Directors. See Appendix B.

[56] Dobbs; East Flatbush Election Committee; Kaloshi; and Rogers.

[57] Kaloshi and Rogers.

[58] The 14 cases are summarized below in Appendix B. The only case, which defies categorization, in part, is Puerto Rican Legal Defense & Education Fund v. Gantt – it was brought to enjoin the Congressional elections of 1992 unless the districts were redrawn to meet one person, one vote and VRA guarantees. The case was subsequently dismissed as moot once the Legislature passed a last-minute redistricting plan that received preclearance just before the court's deadline.

[59] See, Ashe v. Board of Elections; Campaign for a Progressive Bronx v. Black; and United Parents Associations v. Board of Elections.

Latino voters in the most clearly identifiable Latino county in the state had to be forced once again on an election apparatus that could not implement the most basic of voting guarantees for language-minority citizens.

Other cases that alleged constitutional infirmities (or statutory violations) against election practices with decades or centuries of tradition were forced to judgment – some still pending and others upholding the state's position.[60] The bulk of the remaining cases are standard redistricting challenges where African-American and Latino voters sought to expand their opportunities above and beyond what they achieved through the Section 5 preclearance process – apparently with little success.[61] In many of the cases where plaintiffs were unsuccessful, district courts have ventured a number of opinions on the Senate factors that are used to assess a violation of Section 2 under the totality of circumstances – and as seen in Appendix B, these opinions lack the guidance of Second Circuit precedent.

A compendium of Section 5 and Section 2 cases appears in Appendix B.

Litigation under the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-1 ("NVRA"), was another significant tool in securing equal political rights for racial and language minorities. The litigation to date – summarized in Appendix C – is the culmination of years of efforts to establish agency-based voter registration in government agencies that serve low-income populations on a regular basis – and by extension in New York, racial and language minorities. All the cases to date address compliance issues in agencies that provide public benefits (federal means-tested public benefits) and the state agencies that provide for unemployment insurance. The settlements reached in these cases have worked to offer voter registration opportunities to thousands of black, Latino, and Asian-American voters.

Constitutional litigation in New York City – summarized in Appendix D – has also opened additional avenues to the full realization of equal opportunity to the political process. The 2006 opinion in *Lopez Torres v. New York State Board of Elections*, if upheld, will provide for competitive primaries for justices to the Supreme Court – a constant battle in New York over the last 25 years. Other constitutional cases, while not advancing access for racial and language minorities per se, do contain important findings about racially polarized voting (*Diaz v. Silver*) and about the city's historical inability to comply with the mandates of the VRA (*Ravitch v. City of New York*) and are thus useful for understanding the state of voting rights in New York today.

V. Racially Polarized Voting in New York

Whether voting is characterized by racial polarization is a critical indicator of discrimination in voting. Racially Polarized Voting ("RPV") is an indispensable element of voting rights analysis in redistricting and other cases where structural impediments are challenged as preventing full

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[60] Such as challenges to the primary election run-off requirement (Butts v. City of New York); judicial elections that are nestled with the State's Constitution (France v. Pataki); and the still pending challenges to felon disfranchisement – a feature of New York election law since 1821 (Hayden v. Pataki and Muntaqim v. Coombe). Another pending Section 2 case is the challenge to the creation of a second Surrogate Court seat in Brooklyn (Maldonado v. Pataki).

[61] These include Rodriguez v. Pataki; Torres v. Cuomo; and FAIR v. Weprin.

and fair participation of the country's racial and language minorities. The data – a comparison of election returns at the election district level with demographic data at the smallest geographical unit – are analyzed using sophisticated statistical methods to prove the relationships between the race of the voter and the race of the candidate, while controlling for other factors. Two related phenomena are analyzed: the level of political cohesion that may exist with the racial or language minority group (i.e., do minorities tend to support minority candidates? Or are there clearly identifiable minority-preferred candidates, irrespective of race?) and the presence of white bloc voting that tends to defeat minority-preferred candidates.

New York has had numerous episodes where RPV has affected the outcome of its elections. Not all the data has been put to rigorous analysis, but there are enough episodes, in and outside of the realm of statistical scrutiny, that speak to a continued problem in the city.

One of the earlier documented examples of RPV – under more rigorous regression analyses – was conducted by Professor Richard Engstrom and led to a district court's finding of significant racially polarized voting in the 1985 case, *Butts v. City of New York.*[62] Professor Engstrom analyzed two post-1982 elections: the 1982 Democratic primary for lieutenant governor where H. Carl McCall, an African American, ran against white candidates; and the 1984 Democratic presidential primary where Jesse Jackson ran against Walter Mondale and other white candidates. Engstrom, using regression analysis, documented significant cohesion by African American and Latinos for McCall and by black voters for Jesse Jackson. White voters,[63] on the other hand, only gave McCall 24 percent of their vote and virtually no support to Jackson in 1984 (4 percent). Coupled with an analysis of the 1973 run-off election between Herman Badillo (Puerto Rican) and Abraham Beame (white), and even considering the state's expert testimony of coalition voting by all groups in New York, the district court in *Butts v. City of New York* found that "racial and ethnic polarization and bloc voting exists in New York City to a significant degree."[64]

The Department of Justice has justified, in part, a number of its objections to preclearance under Section 5 in New York City on the basis of the existence of RPV. For example, the 1992 state assembly plan was denied preclearance when it minimized Latino voting strength in Upper Manhattan by fracturing an identifiable community that was already suffering the effects of RPV. While not specifying the evidence at hand, DOJ recognized "the prevailing patterns of polarized voting" in the area and found that the legislature was well aware of the discriminatory effects of its plan in Upper Manhattan.[65] The proposed changes in judicial elections in 1994, in

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[62] Butts v. City of New York, 614 F. Supp. 1527, 1545 (S.D.N.Y. 1985). The findings of RPV by the District Court were left undisturbed by the Second Circuit in its reversal of Judge Brieant's judgment for the plaintiffs in Butts v. City of New York, 779 F.2d 141 (2d Cir. 1985). Prof. Engstrom's analysis was subsequently cited by Prof. James Loewen as one of the earliest, probative examples of RPV in New York City. See, Richard Engstom, "Polarized Voting in Citywide Elections in New York: 1977-1984," cited in James Loewen, "Levels of Political Mobilization and Racial Bloc Voting Among Latinos, Anglos, and African-Americans in New York City," 13 Chicano-Latino L. Rev. 38, 41 (1993).

[63] The Engstrom analysis uses "other" voters to include both White, by far the bulk of this category, and Asian American voters.

[64] Butts v. City of New York, 614 F. Supp. at 1547. See Appendix B.

[65] Letter of James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 24 June 1992, Re: Submission No. 92-2184. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005).

1982, and in 1990, where the state sought retroactive preclearance, were denied, in part, based on the existence of RPV. DOJ finding that out of 10 judgeships created in 1982 for justice of the New York Supreme Court, not one resulted in the election of a minority judge, concluded:

> In the context of the apparent pattern of racially polarized voting which characterizes elections in the covered counties in New York City, we cannot say that like results would flow from a racially fair election system.[66]

In *France v. Pataki*, however, an unsuccessful Section 2 challenge to the closed nature of primary elections for justices of the Supreme Court of New York, the U.S. District Court for the Southern District accepted evidence of RPV in judicial elections and found that blacks and Latinos were politically cohesive in judicial elections in New York City.[67] Based on the evidence presented, however, the court did not find that white bloc voting in judicial elections in New York City existed.[68] Part of the reasoning in *France* was the evidence presented on coalition building in creating multi-racial slates of candidates in judicial elections and the role that African-American and Latino leaders within the Democratic party play as gate-keepers to the nomination and selection of justices to the Supreme Court. The court relied in part on the testimony of insiders like Assemblyman Herman Ferrell (New York County chair of the Democratic party), Assemblyman Clarence Norman (Kings County chair of the Democratic party), and Roberto Ramirez (at the time a significant operative of the Bronx County Democratic party). Almost 6 years later, the U.S. District Court for the Eastern District rejected the arguments that the same party delegate convention system for choosing judicial candidates for the primaries was necessary to promote racial diversity on the bench, in the face of system that unconstitutionally stifles voter participation. *Lopez Torres v. New York State Board of Elections*.[69] The focus in *Lopez Torres* was the raw monopolization that the party delegate convention system held over contenders who sought the Democratic primary nod, which operated to not only stifle competitive races among deserving candidates but to also curtail the right of voters to participate directly in deciding the party's nominee.

The 1991 elections for New York City Council and the 1990 elections for New York State Assembly in districts contained within New York City have been identified as evidence of RPV by at least two federal courts. *Puerto Rican Legal Defense & Education Fund v. Gantt*[70] and *Diaz v. Silver*.[71] The RPV analysis was proffered to support the creation of a third Latino Congressional district following the 1990 census. The court in *PRLDEF* was prepared to order its creation in a constitutional case that challenged the legislature's inability to decide on a new congressional redistricting plan. It found that plaintiffs met their initial burden under the seminal

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[66] Letter of Loretta King, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 5 December 1994, Re: Submission No. 93-0672. See www.usdoj.gov/crt/voting/sec_5/ny_obj2.htm (last viewed 8 June 2005).
[67] France v. Pataki, 71 F. Supp. 2d at 327.
[68] Id. 71 F. Supp. at 329.
[69] 04 CV 1129, E.D.N.Y. Gleeson, J., Slip Opinion dated January 27, 2006, pp. 68-69
[70] Puerto Rican Legal Defense & Education Fund v. Gantt, 796 F. Supp. 677 (E.D.N.Y. 1992); 796 F. Supp. 681 (E.D.N.Y. 1992); 796 F.Supp. 698 (E.D.N.Y. 1992) are cases addressing the redistricting of New York's Congressional districts following the 1990 census. See Appendix B.
[71] Diaz v. Silver, 978 F. Supp. 96 (E.D.N.Y. 1997). See Appendix D.

case, *Thornburg v. Gingles,*[72] but eventually dismissed the case as moot once the Department of Justice precleared the legislature's plan creating two majority Latino districts in the city. Years later, in the constitutional challenge to the contours of one of the two Latino districts, *Diaz v. Silver*, the court held that District 12 was impermissibly drawn by using race as a predominant factor at the expense of traditional criteria for redistricting. In assessing the defendants' and defendant-intervenor's claim that the district was justified as a measure to protect Latinos as a distinct community of interest, the court did not contradict the presence of RPV that was found in *PRLDEF*, but only held that RPV alone does not establish a community of interest sufficient to justify the contours of District 12. The proof of RPV, accepted in both cases, addressed election returns for the 1991 city council and 1990 state assembly in which at least one Latino candidate ran. The statistical analysis performed by Professor Allan Lichtman found that:

> The elections examined show a pattern of polarized voting between Latinos and non-Latinos in elections with Latino and non-Latino candidates. The cohesion of Latino voters is extremely strong: almost invariably a substantial majority of Latino voters united behind Latino candidates. The pattern among non-Latino voters is more mixed given the multiracial character of the non-Latino vote (black, Asians, and non-Hispanic whites). Still, a substantial majority of non-Latino voters typically lined up behind non-Latino candidates, especially in city council contests.[73]

The 2004 case of *Rodriguez v. Pataki* offers a limited analysis of RPV in a portion of Bronx County in a case that challenged, *inter alia*, the alleged packing of State Senate districts in the 2000 round of redistricting in violation of Section 2. The court ruled in favor of the defendants, noting that the evidence of RPV failed to show a persistent and significant degree of RPV, and even if RPV were present, Latinos in the Bronx were proportionately represented in the state senate.[74] Despite its conclusion, the court made a number of relevant findings regarding RPV in the city. It found that Bronx Latino voters in State Senate Districts 34 and 35 were politically cohesive in 82 percent to 85 percent of the endogenous and exogenous elections analyzed when RPV analysis was conducted.[75] It also concluded that in all endogenous elections studied, white bloc voting defeated the Latino-preferred candidate.[76] While the evidence is limited – and ultimately the court denied the Section 2 claim – the findings of the court are relevant here.

The *Rodriguez* case also offers a glimpse of additional evidence of political cohesion within black and Latino communities in the city. In rejecting a Section 2 challenge to Congressional District 17, the court ruled that there was insufficient evidence of racial polarization to demonstrate that blacks and Latinos combined are politically cohesive; and without aggregating both minorities, a precondition of *Gingles* – that an effective majority in a compact district must be available – was unmet. [77] Nonetheless, the elections presented to the court and analyzed by

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[72] 478 U.S. 30 (1986).
[73] Diaz v. Silver, 978 F. Supp. at 101.
[74] Rodriguez v. Pataki, 308 F. Supp. 2d 346, 433, 429 (S.D.N.Y.2004). See Appendix B.
[75] Id. at 420, footnote 116 and accompanying text.
[76] Id. at 425. Seven elections were at issue and the Latino voters supported the Latino preferred candidate with anywhere from 72 percent to 99 percent of their vote, while White voters provided anywhere from 27 percent to 40 percent of their votes. The elections included State Senate contests from 1996 to 2002 in Districts 34 and 35. Id. at 423.
[77] Id. at 441-445.

the intervenor's expert, Frank Lewis, were telling. In the 2001 mayoral primary where Fernando Ferrer, a Puerto Rican, ran against Mark Green and other white candidates, Latinos and blacks coalesced behind Ferrer – the only election cited by the court where they may have been cohesion between the two groups. In other contests, election results demonstrated political cohesion within each of the two minority groups. Thus, African-American voters demonstrate cohesion in the 1997 mayoral primary (63 percent voting for the Rev. Al Sharpton), and in the 2001 city comptroller race (where William Thompson, an African-American, defeated a white candidate, Harold Berman), but apparently did not coalesce behind Larry Seabrook and rejected the Latino-preferred candidate in the 1994 Congressional district primary (Willie Colon) and the 2001 citywide race for public advocate (Willie Colon, again). Similarly, Latino voters showed levels of political cohesion for Willie Colon, a Puerto Rican, on two occasions (the 1994 Congressional Democratic primary and the 2001 public advocate race) but rejected the African-American-preferred candidates in the 1997 mayoral primary (Rev. Al Sharpton) and the 2001 city comptroller race (William Thompson).

In the Asian-American community in New York, racially polarized voting is exemplified in the very center of its community in the city: Manhattan's Chinatown.[78] As noted in Appendix F, the efforts to create an Asian-American presence in the expanded New York City council focused first on Manhattan's Chinatown community. Faced with redistricting proposals from competing Asian-American groups, the city opted to join Chinatown with communities to its west and north: Battery Park City, Tribeca, and SoHo. Reviewing the results in four separate City Council races (1991, 1993, 1997, and 2001) the Asian American Legal Defense & Education Fund ("AALDEF") concluded that racially polarized voting was a persistent feature in all of the elections studied – namely, that election districts with majority Asian populations voted in large proportions for Asian-American candidates while majority-white election districts rejected them. The conclusions were reached by apparently comparing homogeneous precincts instead of conducting a regression analysis. Thus in 1991, Margaret Chin, the sole Asian-American candidate, captured 33 percent of the Democratic primary vote. In 1993, Ms. Chin was the only Asian American candidate in the primary and was only able to capture 27 percent of the vote. In 1997, in the same primary, Ms. Jennifer Lim replaced Ms. Chin as the only candidate from Chinatown and captured 30 percent of the vote. In the 2001 primary – a race with no incumbent – three Asian-American candidates (Rocky Chin, Kwong Hui, Margaret Chin) amassed only 40 percent of the vote while all white candidates combined obtained 60 percent of the primary vote. "In all these races, Asian American candidates have always lost to white candidates coming from the west side of the district. The winners of the Democratic Primary Elections have always gone on to win the General Elections in District 1. . . District 1 was created as an 'Asian American district' in 1991, but Asian Americans in Lower Manhattan have never had a real chance to influence the elections."[79]

A comprehensive analysis of RPV in New York City was performed in 1991 by Prof. James Loewen for the Community Service Society in its Comment under Section 5 to the Department of Justice regarding the viability of the city council redistricting plan after the 1990 Census. The

[78] Data in this paragraph is derived by the New York City Council election results outlined in a publication by the Asian American Legal Defense & Education Fund, "Can an Asian American Win in District 1?" See Appendix G.
[79] Id.

study was subsequently expanded and published in 1993.[80] It analyzed a number of elections in the city where a minority candidate ran against a white candidate. Five elections were included:

a) The 1985 mayoral race (where Herman Ferrell, African-American, ran against five white candidates, including the incumbent, Edward Koch);
b) The 1985 contest for president of the city council (where Andrew Stein, the winner, ran against 3 Latino candidates and one black candidate);
c) The 1988 presidential Democratic primary (where Jesse Jackson ran against Walter Mondale and other white candidates);
d) The 1989 mayoral race (where David Dinkins bested the incumbent, Edward Koch, and two other white candidates);
e) The 1989 race for president of the city council (pitting the incumbent Stein, against one Latino candidate, Ralph Mendez).

In presenting the results of voter behavior citywide, all the elections analyzed returns compared to the composition of city council districts. The highlights include two primarily Latino-white races, for the citywide position of president of the city council. In 1985 three Latino candidates faced off against two white candidates (the African-American candidate was not considered a major candidate in the analysis) and there was high cohesion among Latinos for the Latino candidates and high cohesion by white voters for the white candidates. Using regression analysis Prof. Loewen concluded that in 1989, Mr. Stein, the incumbent, captured 90 percent of the white vote, Mr. Ralph Mendez captured 75 percent of the Latino vote and blacks split among the two, but generally supported the white candidate.

The remaining elections included in the Loewen analysis are effectively black-white contests. The 1985 mayoral contest, where the incumbent, Edward Koch won, did not produce "legally meaningful" RPV[81] but did demonstrate differences between black and white voters. Herman Ferrell "was not a major candidate [and] received less than 40 percent of the African-Americans votes, virtually no white votes, and perhaps one Latino vote in seven."[82] Whites bloc voted overwhelmingly for the white candidates, to the level of 98 percent. In the 1989 mayoral primary election, Prof. Loewen also analyzes RPV among the "roll on" vote (i.e., the percentage of voters whose votes counted) and demonstrates that white voters gave Dinkins 23 percent of their vote, blacks gave him 93 percent of their votes and Latinos gave him 56 percent of their votes. Finally, in the 1988 presidential primary, the analysis again shows that New Yorkers voted along racial lines. Black voters had a higher "roll on" rate than whites, demonstrating an energized African-American electorate, and gave 92 percent of their votes to Jesse Jackson, Latinos gave 49 percent of their votes to Mr. Jackson and the rest to the remaining white candidates, while white voters gave only 9 percent of their votes to Mr. Jackson. The Loewen study has a separate analysis for Asian-American voting behavior in Lower Manhattan – required in part because of the deficient data in the 1980s, which collapsed Asians into the white category.

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[80] James Loewen, "Levels of Political Mobilization and Racial Bloc Voting Among Latinos, Anglos, and African-Americans in New York City," 13 Chicano-Latino L. Rev. 38, 41 (1993).
[81] Id. at 56.
[82] Id. at 57.

Prof. Loewen also made a number of other important findings. He found that in general, white voters were the "most polarized group" among the voters he analyzed.[83] For Latino voters, he generally found the presence of RPV in the elections analyzed – both in their cohesion for Latino candidates and in the failure of white voters mostly, and to a much lesser extent, black voters, to support Latino candidates. He also found that Latinos were less like to roll on (cast votes) as they go down the ticket to lesser offices.[84] African Americans exhibited higher roll on rates (turn out in proportion to their Voting Age Population) than even whites in the 1988 Presidential primary and the 1989 Mayoral election.[85]

Finally, it is important to note the Loewen study was completed in advance of the newly expanded city council, which increased to 51 seats from 35 – an improvement in the opportunities that would be afforded to the city's growing racial and language minorities. The study concluded with the admonition that "levels of political mobilization and racial bloc voting in New York City change constantly, due to registration drives, new candidacies, and changes in the underlying age structure and citizenship rate in the city's various ethnic and racial groups."[86]

CONCLUSION

New York still has its fair share of voting rights abuses, impediments, and practices that have yet to be fully eradicated in the nearly 25 years covered by this report. This is evident in the numerous ways that racial and language minorities must still avail themselves of the preventative features of Section 5 review to stop administratively what they lack in political strength to stop outright. Recent denials of preclearance addressing methods of election or access to the voting booth for language minority citizens continue to raise the specter of increased and necessary screening.

Equally important, the racial tensions that surface when emerging communities start growing in the city and seek their place in the halls of legislative bodies are manifested in stark ways even today. Yelling at South Asian voters and labeling them "terrorists" or intimidating the burgeoning community of Chinese American citizens with epithets like "You f***ing Chinese, there's too many of you" puts in context the consistently documented concerns of the city's Asian-American citizens. For them, forcing compliance in New York City for language assistance through the courts, like the litigation outside of the city for Spanish-language voters, is still required today.

In many ways, New York has made great strides in electing candidates of their choice – but in a city with such a large proportion of African-American, Latino and Asian-American voters, the accomplishments of a number of important "firsts" do little today to counter an imbalance between electoral outcomes and the active and growing minority electorate from these communities. Much of this, albeit not all, is placed in the manifestation of the phenomenon of racially polarized voting. In that regard, New York City, like so many jurisdictions benefiting

[83] Id. at 48.
[84] Id. at 62.
[85] Id. at 61.
[86] Id. at 72.

from protections of Section 5, Section 203, and Section 8, has a long road ahead to overcome the episodic, but still critically important and debilitating, episodes of polarized voting today.

Equally important, recent trends regarding election administration in New York City portend additional problems for racial and language minorities. The recently published research of Professor Ron Hayduk documents in detail[87] the level of misinformation, faulty voting machines, and mismanagement that is disproportionately found in minority polling sites in this decade. Indeed, with the state's inability to resolve political stalemates, federal funds under the Help America Vote Act have yet to make a dent in the real-life experiences of Election Day in African-American, Latino, and Asian-American communities. New York state has recently been sued by the Department of Justice for failing to comply with these HAVA mandates, potentially forfeiting more than $49 million dollars in federal funds for machine upgrades.[88] In recent elections, Prof. Hayduk documents that the city board of elections in 2001 was short 25 percent of the Chinese interpreters it needed, 33 percent of the Spanish interpreters it needed, and 59 percent of the Korean interpreters it needed. Documented "undervotes" – the number of votes lost when voters go to the polls but do not cast a vote – caused primarily by the deactivation of a special latch on the 40-year old voting machines (which was not fixed until 2004) resulted in New York City having a higher proportion of undervotes in 2000 than all of Florida. The pattern of "undervotes" in New York City was racially skewed (and even more so than Florida in 2000) with the Bronx having a rate of 4.7 percent to Staten Island's 1.6 percent. Using multiple regression analysis of the presence of poll site, and administrative, and voting machine problems, Prof. Hayduk found that blacks and Latinos had a higher proportion of election machine problems. Finally, the Hayduk study focuses on the 1993 mayoral election (Dinkins - Giuliani) and concludes that the pattern of excessive challenges to eligible voters, disruptions, and an unusually high incidence of the use of affidavit ballots (signifying a greater possibility of administrative error and correspondingly higher rate of disfranchisement) occurred in neighborhoods where predominately low-income and minority voters reside. This is not surprising news to the cadre of voting rights advocates in New York.

This report documents not only what has occurred since 1982 with respect to the promise of an open, fair, and equitable democracy in the city. It also points to what could have happened if the temporary provisions of the VRA were not in place; if every discriminatory change stopped in its tracks had been implemented, nonetheless; if 881 federal observers were not dispatched to the beacon of urban America that is New York; if cavalier decisions about not translating candidates' names in Chinese were allowed to reach fruition; and if the deterrence embodied in Section 5 were never there to help the small handful of voting rights advocates in their quest to monitor 25,000 poll workers, 6,000+ outdated and faulty voting machines, nearly 5,800 election districts, millions of voters, and another million or more, eligible, but not registered voters, in the biggest city in America.

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[87] Ron Hayduk, Gatekeepers to the Franchise: Shaping Election Administration in New York, Northern Illinois University Press. DeKalb 2005.

[88] United States v. New York State Board of Elections, Civil Action No. 06-CV-0263 (N.D.N.Y. 2006) at www.usdoj.gov/crt/voting/hava/ny_hava.htm (last viewed 6 March 2006).

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It is hard to imagine what an election in this part of the country would be like without the protections of the Voting Rights Act. But it is easier to imagine a future where its tools would be put to full use to eradicate what is left of a history of exclusion.

Language Assistance Compliance and Asian American Voters

The following is a summary of critical language assistance compliance problems in Asian American communities post-1982 that are documented by the Asian American Legal Defense & Education Fund ("AALDEF") in a series of written reports starting in 1998.[1]

1998 Primary, 1998 General and 1999 School Board Elections: AALDEF monitored twenty-two polling sites, seventeen sites and nineteen sites, respectively in the these elections in Chinatown (New York County); Flushing (Queens County) and Sunset Park (Kings County) and found the following: *Erroneous or Ineffective Translations*: A referendum on campaign finance reform translated the term "prohibiting corporate contributions" to "prohibiting contributions from community organizations." Candidates' names were incorrectly transliterated on the ballots. And the Chinese translations were too small in typeface to be effective. *Oral Language Assistance*: Chinese translators were not available or did not appear on Election Day or were assigned to do other tasks at the polls. *Written Language Materials*: Chinese language materials, if available, were not available for affidavit ballots, affidavit ballot envelopes, voter registration forms, ballot proposals and the voting rights flyer. In Queens and Kings

[1] The reports, hereafter "AALDEF Reports," include: "Access to Democracy: Language Assistance and Section 203 of the Voting Rights Act," July 2000 [covering 1998 and 1999 Elections]; "Access to Democracy Denied: An assessment of the NYC Board of Elections compliance with the Language Assistance Provisions of the Voting Rights Act, Section 203, in the 2000 Elections," 2001; "Asian American Access to Democracy in the NYC 2001 Elections," April 2002; "Asian American Access to Democracy in the 2002 Elections in NYC," September 2003; "Asian American Access to Democracy in the 2003 Elections in NYC," May 2004; "The Asian American Vote 2004: A Report on the Multilingual Exit Poll in the 2004 Presidential Election," 2005. See Appendix G __ to __ for the reports themselves.

counties some polling sites had no Chinese language materials. Others, such as in Queens, had the materials but would not open it for use by voters. *Signage*: Signs announcing the availability of interpreters were either missing or not readily visible.

2000 Primary and 2000 General Elections: Approximately 2,000 AALDEF volunteers monitored 22 polling sites in the primary and 20 polling sites in the general elections in Kings, New York and Queens counties and documented: *Erroneous or Ineffective Translations*: In Queens for the general election the Democratic candidates for Congress, State Senate and Assembly, Justices of the Supreme Court and Judges for Civil Court were listed under erroneously translated party heading and misidentified as Republicans. Likewise, the Republican candidates were listed under the mistranslated heading as Democrats.[2] Notifying the Board of Elections of this major error by 9:45 A.M., election officials from the central board would not arrive to correct the mistake until 4:00, 5:30 and in one case, 6:55 P.M. Paper ballots for Justices of the Supreme Court required translation for the phrase "vote for any three" which was erroneously translated as "vote for any five." In an attempt to address the typeface used for Chinese translations, the Board issued magnifying devices in the Chinese language supply kits – poll workers were unaware of their existence, or untrained in their use. *Oral Language Assistance*: In New York County, assigned interpreters failed to show up for their assignments for the primary election.[3] At some of these sites the same noncompliance was repeated at the general election. At Lands End I, the lack of sufficient interpreters resulted in two voters

[2] This glaring mistake was observed in Queens at PS 22, JHS 189, JSH 185, PS 20, IS 145 and Senior Center.
[3] This was observed at Lands End II. PS 2, PS 124, PS 131, PS 130, Little Italy Senior Center and St. Patrick's Youth Center.

losing their votes because of their inability to understand the operating instructions in English. In Queens County and Kings County many sites failed to have fully staffed interpreters.[4] *Written Language Materials*: In Queens County at Cardozo HS, ED56/AD 35,[5] no bilingual materials were available for the primary and for the general election at JHS 189 there pages were missing in the translated referendum, and no bilingual registration forms or affidavit ballot envelopes were available. Other sites had missing bilingual materials in either the primary or general election.[6] In Kings County for both the primary and general elections, similar problems were reported, along with reports that poll workers would keep all Chinese language materials in their original envelopes without displaying them, at the following sites.[7]

2001 Primary, 2001 Primary Runoff, 2001 General Elections: In these elections AALDEF volunteers monitored 35 polling sites in Chinatown (New York County), Flushing, Elmhurst, Floral Park, Richmond Hill (Queens County), and Sunset Park and Homecrest in Kings County and documented: *Erroneous or Ineffective Translations*: 71 Chinese voters in the primary and 135 Chinese voters the general election had difficulty reading the typeset used for the Chinese-language ballot. The magnifiers issued by the Board of Elections were missing in New York County at Confucius Plaza, Little Italy Senior Center and JHS 185. *Oral Language Assistance*: Poll workers interfered with the

[4] These included PS 162, IS 145, PS 22, PS 89, St. Sebastian's School, and Senior Center in Queens and PS 194 in Kings.
[5] Election districts in New York are cross-referenced by their location in New York State Assembly districts. ED refers to election district and AD refers to Assembly District.
[6] PS 89, Senior Center, Newton HS, IS 145, and PS 162.
[7] These reports came from PS 314, ED15/AD48, PS 94 ED19/AD48, ED20/AD51, and PS 105, ED17/AD48. At PS 94 compliance was worse for the general election than it was in the primary election.

right of Asian American voters to receive help from the available language interpreters. At Rutger Houses in Chinatown, the workers would not allow the interpreter to enter the booth with the voter to provide assistance – a practice that is legal as longer as the voter requests it. At PS 94 in Sunset Park (Kings County) poll workers would interfere with Chinese voters who brought their own assistors to help them navigate the ballot. *Written Language Materials*: Insufficient language materials were reported in Queens County[8] and poll workers deliberately refused to display Chinese language materials (or lie about their existence) at others.[9] *Improper Demands for Identification*: Nearly 350 Chinese voters were asked to produce identification before exercising their right to vote, especially in polling sites in Chinatown, New York and Flushing, Queens. At Senior Center ED20/AD25, one polling inspector refused to allow the vote to Chinese voters who failed to carry identification. *Racial Epithets or Hostile Remarks*: At IS 228 a polling site coordinator reacted in extreme fashion to thwart interpreters from performing their duties, yelling out "You f---ing Chinese, there's too many of you!"

<u>2002 Primary and 2002 General Elections</u>: More than 3,000 Asian American voters were surveyed in these elections by AALDEF volunteers in 56 polling sites in the primary election and 50 polling sites in the general election in Queens (Flushing, Bayside, Elmhurst/Jackson Heights, Woodside/Sunnyside, Jamaica/Briarwood, Richmond Hill, Floral Park); Brooklyn (Sunset Park, Williamsburg, Sheepshead Bay) and Manhattan (Chinatown). The findings are: *Erroneous or Ineffective Translations*: Of the more than 3,000 voters surveyed, 27% of Chinese voters and 30% of Korean voters reported having

[8] Reports from (JHS 189) and Kings County (PS 94 and PS 314).
[9] Observed at JHS 189, Newton HS, Senior Center, ED25/AD25 and PS 314.

difficulty reading the ballot because of the small typeset used by the Board of Elections. Once again, magnifying sheets were not available in all sites and in Queens (Bayside HS) one inspector was reported hiding the device to avoid its use. Transliteration of candidates' names surfaced as a problem again: "Mary O'Connor' was translated as "Mary O'Party;" and the Korean transliteration of John Liu's name was not what he submitted to the Board or what he used in Korean media. *Oral Language Assistance*: Thirty-three percent of Chinese voters surveyed and 46% of Korean voters reported needing assistance of interpreters. Interpreters were in short supply in Queens[10] and in Manhattan (Lands End II). At least one voter left without voting as a result (PS 12). The quality and training of interpreters was also suspect with some in PS 2 (New York) unable to understand English and at PS 169 Korean interpreters who did not know that written materials in Korean were available. Once again poll workers would interfere with the provision of language assistance by interpreters or assistors of choice: at ED40/AD22, a polling inspector insisted that the curtain to the booth remain open if the interpreter was allowed in; at JHS 189, the worker prohibited assistors of choice to help with language problems; at PS 314 requests for language assistance went ignored. *Written Language Materials*: Survey results documented that 37% of Chinese voters and 43% of Korean voters need the assistance of translated materials. Instead, voter rights flyers, voter registration forms, affidavit ballots and envelopes in Chinese were routinely missing as well.[11] Korean language materials were kept in their supply packets and unavailable consistently in Queens.[12] At least one Korean-language voter in St

[10] At PS 82, JHS 185, Bayside HS, PS 12, JHS 185, and Cardozo HS.
[11] See reports for Botanical Gardens, PS 154, PS 163, PS 13, PS 82 PS 250.
[12] These occurred at St. Sebastian's, Flushing Bland Center, PS 46.

Sebastian's left without voting because these materials were not displayed. In polling sites where both Chinese and Korean language assistance is required, materials were also absent.[13] *Signage*: Numerous reports of missing or hardly visible signage were made in both Chinese and Korean neighborhoods.[14] Despite AALDEF's warning to the Board in advance, the predictable confusion between Chinese signs and Korean signs was problematic, and AALDEF documented multiple episodes where the poll workers did not know the difference, e.g., at Flushing House and Botanical Gardens. *Improper Demands for Identification*: Botanical Gardens and PS 250 (Williamsburg) were the source of these complaints with one instance where a voter was advised to return with three forms of identification. *Racial Epithets or Hostile Remarks*: Calling South Asian voters "terrorists" and mocking the physical features of Asian eyes while stating: "I can tell the difference between a Chinese and a Japanese by their chinky eyes" are some of the comments made to Asian American voters at PS 82 (ED50/AD25) and at Botanical Gardens.

The AALDEF report for the 2002 elections also faulted the Board of Elections for failing to adequately advertise the availability of Korean-language assistance by failing to use Korean-language media to advertise the service. The Board also failed to deploy Korean language speakers on its telephone hotline service.

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[13] PS 150, Flushing HS, PS 12, and JHS 189.
[14] See PS 145, IS 237, PS 314, PS 154, PS 105, PS 169, Newton HS, JHS 189, PS 2, St.Sebastian's, PS 46, PS 150, PS 11, PS 69 and others.

2003 Primary and 2003 General Elections: AALDEF volunteers monitored 42 polling sites in the primary and 70 polling sites in the general election in Queens (Flushing, Jackson Heights, Fresh Meadows, Jamaica, Bayside, Elmhurst, Woodside, Sunnyside, Forest Hills, Floral Park, Richmond Hills), Brooklyn (Sunset Park, Bensonhurst, Sheepshead Bay, Williamsburg) and Manhattan (Chinatown, Battery Park City, Lower East Side). In addition, 981 Asian Americans were included in their survey which was available in twelve Asian languages and dialects. This effort revealed the following: *Erroneous or Ineffective Translations*: Interpreters at PS 134 and Masaryk Towers in Chinatown complained that the Chinese translations were too small to read. This echoed the survey findings that 37% of Chinese voters in Chinatown and 22% of Korean voters in Flushing had difficulty reading the ballot because of the small typeset. Once again, AALDEF volunteers reported that the magnifying sheets were routinely missing from the tables and the voting machines. *Oral Language Assistance*: For the 2003 elections, 36% of Chinese voters and 42% of Korean voters reported that they required the assistance of interpreters. Once again, the supply of interpreters could not meet the need. The monitoring revealed that, overall, one out of three interpreters assigned to the polling sites did not show up to work. Moreover, 6 polling sites where interpreters were assigned had no oral language assistance available at all.[15] At Civil Court in Chinatown, interpreters were required to perform general election duties because of a shortage of poll inspectors. In Newton HS poll inspectors in ED44/AD35 would not direct Asian American voters to interpreters – and at least one voter lost his vote as a result. Interpreters at PS 250 in Williamsburg were not given tables and chairs and told instead

[15] Reported at Southbridge Towers in Manhattan; PS 212, PS 131, JHS 217, PS 5, and CWV Post 970 in Queens.

that they had to stand all day. *Written Language Materials*: Forty-nine percent of the Chinese voters surveyed, and 47% of the Korean voters surveyed require the assistance of translated written materials. Yet no ballots were translated for Chinese voters in PS 250 in Williamsburg despite its designation as a targeted site by the Board of Elections and voters were observed having difficulty voting as a result. Translated voter registration forms and affidavit ballot envelopes were frequently missing and once again, the requisite materials were found, unopened, in their original containers. Polling inspectors routinely would refuse to display the available materials, insisting that they were only required to do so if requested by a voter – with some remarking that they needed to keep their tables "clean" and others remarking that their manual required them to keep their tables free of "clutter." At PS 69 in Queens, poll inspectors defiantly refused to display the materials – even after directed to do so by a Board of Elections official. *Signage*: Chinese and Korean "Interpreter Available" and "Vote Here" signs were reported missing on poll site entrances where they belong. *Improper Demands for Identification*: A total of 85 Asian American voters, almost 10% of the voters surveyed, reported that they were required to produce identification in order to vote -- and this was above and beyond the new Help America Vote Act identification requirement for first-time voters. *Racial Epithets or Hostile Remarks*: At PS 126 in Manhattan's Chinatown, 17ED/AD64, poll inspectors ridiculed a voter's surname ("Ho"); in PS 115 in Queens, disparaging remarks were directed at South Asian voters, with one coordinator continuously referring to herself as a "US citizen" and that she, unlike them, was "born here" and that the other workers needed to "keep an eye" on all South Asian voters; at Flushing Bland Center in

Queens, the site coordinator complained that Asian American voters "should learn to speak English."

2004 General Election: In this election AALDEF conducted a broad exit poll of close to 11,000 Asian American voters in 23 cities across 8 states, including New York. Slightly more than 7,200 voters were surveyed in New York City. Among the issues covered in the survey was the reliance on written and oral language assistance by Asian American voters. This report documents that in November 2004, for Chinese voters in New York, Kings and Queens counties, 37% reported needing an interpreter and 36% reported needing translated written materials to effectuate their right to vote.

Section 2 and Section 5 Litigation Post 1982

This section gathers every reported and unreported decision we have identified alleging Section 5 and Section 2 violations from 1982 to the present. We have focused on litigation affecting New York City, with one exception (FAIR v. Weprin). Our focus is dictated by the exploration of discriminatory practices in voting in New York City's Section 5 and Section 203 covered counties, and in practices targeted at the Latino populations of the three counties outside New York City that are covered under Section 203 (Westchester, Nassau and Suffolk counties). Critically important cases like Goosby v. Town Board of the Town of Hempstead, 180 F.3d 476 (2d Cir. 1999) are not included despite its presence in Nassau County because it does not address discrimination against the minority group that engendered Section 203 coverage in the first place. We urge the reader to explore the Goosby opinion for an excellent summary of how African Americans have had to overcome voter discrimination against that Town's government.

African American Legal Defense Fund v. New York State Department of Education, 8 F. Supp. 2d 330 (S.D.N.Y. 1998) (Owen, J.). This is an unsuccessful, generalized VRA challenge to the composition of the central Board of Education and the manner of electing Community School Board members. The suit combined a constitutional and statutory challenge to the financing mechanisms of New York City's public schools. The court dismissed all claims related to the public financing of the schools. The general VRA challenge to the composition of the appointed central Board of Education was interpreted by the Court to be a challenge under Section 5. Such a claim was dismissed

in the absence of allegations that the City switched from an elective body to an appointed body. To the extent that the complaint set forth a Section 2 dilution claim to the composition of the Board of Education, the court rejected that as well since the central Board is composed of appointees – not persons directly elected to office. Another Section 2 dilution claim was made to the method of election for community school boards in the City. This claim was dismissed as well since there were no allegations made concerning the basic elements of a dilution claim under Thornberg v. Gingles – especially, any allegations of racially polarized voting.

Ashe v. Board of Elections of the City of NY, 88 Civ. 1566 (E.D.N.Y. 1988 (Sifton, J.); 1988 U.S. Dist. LEXIS 10067 (E.D.N.Y. 1988). Settled in 1993 this successful Section 2 case challenged the Board's failure to: a) train Poll Inspectors; b) process affidavit ballots correctly; c) assign Poll Coordinators; d) provide language assistance in Spanish and Chinese in the completion of voter registration forms; e) inspect and certify operable voting machines; and f) ensure that repairs of inoperable machines in African American and Latino communities were completed expeditiously. The settlement included increased training requirements for Poll Inspectors, Translators and other personnel, requirements for the designation of Poll Coordinators and Information Clerks, signage requirements, outreach to black and Latino communities, modifications to the voter registration forms, and requirements for the use of certified voting machines.[1]

[1] Ashe v. Board of Elections, 88 Civ. 1566 (CPS). See, Stipulation of Settlement, Appendix G.

Baker v. Cuomo (Baker v. Pataki) 842 F. Supp. 718 (S.D.N.Y. 1993); 85 F.3d 919 (2d Cir. 1996). This is an unsuccessful Section 2 and constitutional law challenge to New York's felon disfranchisement law, Election Law § 5-106. Plaintiffs' claims were dismissed by the District Court. The District Court made no findings under Section 2's totality of circumstances except to say that the "[d]isproportionate racial impact of felon disenfranchisement on a minority voting population does not establish a violation of the Voting Rights Act absent other reasons to find discrimination."[2] The Second Circuit reversed on the Section 2 claim, then granted a rehearing *en banc* limited to the Section 2 claim. The sole issue addressed in the 1996 divided opinion was whether a Section 2 claim lies against a state's felon disfranchisement law in the face of proof of discriminatory results only. The Second Circuit, *en banc*, was evenly split, five to five, on this issue. Accordingly, the decision of the District Court dismissing the claims was affirmed with Second Circuit noting *per curiam* that its decisions are without precedential effect.

Butts v. City of New York, 614 F. Supp. 1527 (S.D.N.Y. 1985), 779 F.2d 141 (2d Cir. 1985). The imposition of the primary run-off law in 1972 (Election Law § 6-162) – requiring that in primary elections for New York City's three city-wide offices, a primary run-off is required if no candidate obtains at least 40% of the primary vote – was the subject of this constitutional and Section 2 challenge by black and Latino voters. The District Court held that the law was passed with a discriminatory purpose to make it more difficult for African American and Latino voters to win citywide contests. The court

[2] Baker v. Cuomo, 842 F. Supp. at 722.

credited evidence that the Legislature sought to cure the "Badillo scare" – the 1969 Democratic Primary when Herman Badillo (Puerto Rican) nearly captured the nomination for Mayor. It also found that the law violated Section 2 because of its discriminatory purpose and discriminatory effects. The Second Circuit reversed on appeal and upheld the legality of Election Law § 6-162. The appellate court credited the Legislature with other, nondiscriminatory motives for passing the primary run-off law. On the VRA claim the court clearly noted that Section 2 could not apply to the electoral mechanism challenged in this case – applying Section 2 jurisprudence based on access to multimember legislative bodies cannot be reconciled with notions of equal political opportunity in elections for single-member offices. "There can be no equal opportunity for representation within an office filled by one person."[3] Despite this threshold conclusion, the Second Circuit went on, in dicta,[4] to counter a number of findings made by the District Court regarding the Senate Factors. It observed that the proof presented to the District Court could not support a finding of a history of official discrimination in voting rights, episodes of racial appeals in campaigns, or a lack of success by minorities in securing elected positions. The Second Circuit, however, left undisturbed all the findings of Racially Polarized Voting made by the District Court in certain elections from 1973 to 1984.

Years later in 2001, the primary run-off law would force Fernando Ferrer (Puerto Rican) – who came in first in the mayoral primary but had less than 40% of the vote– into a

[3] Butts v. City of New York, 779 F.2d at 148.
[4] The court first noted that by applying the correct standard for determining Section 2's applicability as a threshold matter, an analysis of the Section 2's objective factors was not even triggered (id. at 149) and was indeed, "immaterial." Id. at 150. Then it went ahead and analyzed them nonetheless. Id. at 150-151.

primary run-off with Mark Green. Mr. Green won the primary then lost the general election. The primary run-off law is still part of New York's election law.

Campaign For A Progressive Bronx v. Black, 85 Civ. 6443 (S.D.N.Y., Knapp, J.). See, 631 F. Supp. 975 (S.D.N.Y. 1986). Thus suit is a successful Section 2 challenge by Latino voters to the Board of Election's failure to assign adequate and properly trained bilingual election inspectors and polling clerks in Bronx County. Injunctive relief was stipulated to by the parties in September 1985 requiring an educational campaign in Spanish to advise voters that voter identification cards provided by the Board of Elections were not required to cast a ballot; requiring notice to the plaintiffs of the election districts targeted for language assistance; and requiring cooperation with the plaintiffs to secure an adequate number of bilingual election inspectors.[5]

Denis v. New York City Board of Elections, 1994 U.S. Dist. LEXIS 15819 (S.D.N.Y. 1994) (Wood, J.). Unsuccessful Section 2 and constitutional challenge to a series of irregularities (broken lights, unsealed polling booths, machine malfunctions) in the conduct of the 1994 primary election for State Assembly in the 68th District in East Harlem. Plaintiffs Equal Protection Clause and Due Process Clause claims were dismissed.[6] Plaintiffs' brought a Section 2 vote dilution claim premised in large part on allegations that the irregularities they experienced in minority neighborhoods of the 68th Assembly District were not present in the white neighborhoods of the district. Their motion for preliminary injunction was denied when the court ruled that they were

[5] Campaign For A Progressive Bronx v. Black, 631 F. Supp. 975, 978-979 (S.D.N.Y. 1986)
[6] Denis v. New York City Board of Elections, 1994 U.S. Dist. LEXIS 15819, *11 (S.D.N.Y. 1994).

unlikely to succeed on the merits. Plaintiffs conceded a lack of Racially Polarized Voting in the 68th District and, in the court's opinion, failed to substantiate any of the Section 2 Senate Factors that would lead to a finding of a Section 2 violation.[7]

Dobbs v. Crew, 1996 U.S. Dist. LEXIS 20129 (E.D.N.Y. 1996). These were consolidated cases that unsuccessfully challenged under Section 5, the suspension of elected Community School District Board members in Boards 17, 9 and 7 without obtaining preclearance. The court denied the motion for preliminary injunction on mootness grounds after the Department of Justice granted preclearance. The court noted that the preclearance granted by the Attorney General was limited to the suspensions at hand, and that any future suspensions or removal required preclearance anew.[8] This position is consistent with the November 15, 1996 objection to preclearance issued by the Attorney General regarding the removal of the entire board of Community School District 12, described in Section II, A of the Final Report. For a related case, see Green v. Crew, below.

East Flatbush Election Committee v. Cuomo, 643 F. Supp. 260 (E.D.N.Y 1986). This is a Section 5 challenge to changes in a number of polling places and the modification of the schedule to submit specifications to substantiate nominating petitions (from 6 to 3 days) in advance of a Community School Board election, where plaintiffs sought injunctive relief to order a new school board election. The court denied the request for injunctive relief holding that the polling site changes were "retroactively precleared"

[7] Id. at *21, *25.
[8] Dobbs v. Crew, 1996 U.S. Dist. LEXIS 20129, at *9.

eventually by the Department of Justice and that such practice, while a concern to the court, did not violate Section 5. The court also delayed any issuance of a court order regarding the modification of the candidate challenge schedule until the Department of Justice could finish its Section 5 review of the change upon a resubmission of the schedule change.

Fund for Accurate and Informed Representation (FAIR) v. Weprin, 796 F. Supp. 662 (N.D.N.Y. 1992). This is a general constitutional and Section 2 challenge to 1990s Assembly redistricting plan alleging unlawful packing and fracturing of minority communities throughout the State and general one person, one vote claims applicable to the entire state. The court denied all Section 2 claims – specifically holding that there was no unlawful fracturing of minority communities in the Assembly plan for Monroe, Nassau, Erie or Westchester counties. The court acknowledged the U.S. Attorney General's denial of preclearance in June 1992 to two Assembly districts (A.D. 71 & 72) in Manhattan (see Section II,A of the Final Report) and merely ordered a Special Master to redraw those districts alone to bring them in compliance with the VRA. All other claims were likewise dismissed.

France v. Pataki, 71 F. Supp. 2d 317 (S.D.N.Y. 1999) (Sprizzo, J.). Filed on behalf of black and Latino plaintiffs, this is Section 2 challenge to the selection, nomination and election of New York State Supreme Court Justices. Plaintiffs sought the creation of single-member subdistricts of each Judicial District in New York City. The court rejected the Section 2 challenge holding that proof on Gingles One was lacking because

the plans proposed by the plaintiffs were primarily driven by considerations of race and did not survive strict scrutiny, had failed to meet the equal population criteria of the one person, one vote standard; did not abide by traditional criteria used in redistricting; and failed to account for citizenship voting age population. The court did find that Gingles Two was present in that black and Latino voters were politically cohesive. The court failed to find sufficient proof of Gingles Three (bloc voting by whites against minority-preferred candidates) and noted that defendant's expert report on the lack of white bloc voting in Supreme Court elections went unchallenged. Finally, the court found that the under the totality of circumstances rubric of Section 2, blacks and Latinos were not deprived of an equal opportunity to participate in the political process of electing Supreme Court justices

Green v. Crew, 1996 U.S. Dist. LEXIS 20227 (E.D.N.Y. 1996) (Sifton, J.). This is an unsuccessful Section 2 and Equal Protection Challenge to the removal, continued suspension and replacement of elected Community School Board members from District 17 in Kings County with appointed trustees.

The court ruled that a Section 2 challenge may be raised in conjunction with the removal and replacement of elected officials and relied in part on the Department of Justice's interpretation that such removals were a voting practice subject to preclearance under Section 5. The court did deny, however, the plaintiffs' motion for a preliminary injunction because of a failure to show that they would likely succeed on the merits of their Section 2 dilution claim in the absence of evidence of political cohesion by racial minority voters or racially polarized voting by white voters. The court, however, did

allow the Equal Protection Clause claim to go forward on the showing that the Chancellor lifted the suspension of some, but not all School Board members.

Hayden v. Pataki, 2004 WL 1335921 (S.D.N.Y. June 14, 2004) (McKenna, J.). This is a Section 2 and constitutional law challenge to New York's felon disfranchisement law that is currently consolidated on appeal for Section 2 purposes only with Muntaqim v. Coombe (see below). The case alleges that Election Law § 5-106 is discriminatory in purpose and effect. The allegations concerning intentional discrimination in the enactment and perpetuation of New York's felon disfranchisement law are also on appeal to the Second Circuit. Plaintiffs' discriminatory impact allegations center on their assertions that African Americans and Latinos are disproportionately stopped, arrested, charged, convicted, and sentenced to prison more than similarly situated whites in the State of New York. The District Court ruled that the complaint in this case failed to state a claim under the various theories advanced by the plaintiffs. As to the Section 2 claims, however, the court refused to reach them and relied on the lower court opinion in Muntaqim v. Coombe to dismiss them in their entirety.

Kaloshi v. New York City Board of Elections, 2003 U.S. App. LEXIS 13423 (E.D.N.Y. 2002). Section 5 case alleging that the modification of a candidate petitioning period in June 2002, without preclearance, was illegal. The court dismissed the Section 5 claim upon a showing that the Department of Justice had precleared the changes without objection, on June 7, 2002. The case raised no issues of discriminatory purpose or discriminatory effect against racial and language minorities in New York City.

Maldonado v. Pataki, 2005 U.S. Dist. LEXIS 36933 (05 Civ. 5158, E.D.N.Y., Townes, J.) This is a pending challenge under Section 2 to the creation of a new judgeship, the second Surrogate Court position in Kings County in 2005. In fashioning the effective date of the law past the first day of circulating nominating petitions, the Legislature avoided holding a primary election in Kings County for the new Surrogate's seat and instead, pursuant to New York Election Law §6-116, the Kings County Democratic Party selected its nominee directly. In the 2005 general election, Frank Seddio, a Caucasian male, won election to a 14-year term as a Kings County Surrogate. Black and Latino registered Democratic voters in Brooklyn brought suit alleging that Section 2 afforded them a right to a primary election under these circumstances and sought a preliminary injunction to stop the certification of the election results. No proof was presented to the court to demonstrate racially polarized voting if the primary election were to have been held. The court denied the motion holding that plaintiffs failed to prove a likelihood of success on the merits. Effectively, the court ruled that plaintiffs failed to show that the application of the state's election code deprived them of an equal opportunity to participate in the political process since all voters in Brooklyn, irrespective of race, were denied the a primary election.[9] The court also rejected the argument that plaintiffs had a statutory right to a primary election.[10] The case is still pending in the Eastern District.

Muntaqim v. Coombe, 366 F.3d 102 (2d Cir. 2004); 396 F.3d 95 (2d Cir. 2004)(order granting rehearing *en banc*). This is a Section 2 challenge to New York's felon

[9] Maldonado v. Pataki, 2005 U.S. Dist. LEXIS 36933 at *11.
[10] Id. at *12-*16.

disfranchisement law, now consolidated on appeal with Hayden v. Pataki and awaiting decision on a rehearing *en banc* to the Second Circuit. The first panel in Muntaqim ruled that Section 2 does not apply to New York's felon disfranchisement statute, Election Law § 5-106, and indicated that under the circumstances of felon disfranchisement some causal connection between purposeful discrimination and the discriminatory effects of the challenge rule would be necessary. It deliberately did not address the type or quantum of statistical evidence needed to assert a Section 2 claim in the context of felon disfranchisement: "We also do not purport to decide what type of statistical evidence might be sufficient to support an inference that racial bias exists at any given state in the criminal process."[11] Nor would it opine on the relevance of any of the Senate Factors (accompanying the passage of the amendments to Section 2 in 1982) to Section Two's treatment of felon disfranchisement.[12] Since Mr. Muntaqim did allege racial disparities in the sentencing of felons in New York Courts, the panel concluded that if Section 2 did apply to felon disfranchisement, the plaintiff stated a valid initial claim.[13] In the Second Circuit order granting rehearing en banc, however, the Circuit requested briefing on a number of issues directly relating to the alleged discriminatory effects of the criminal justice system in New York and its effect on the political participation of African American and Latino voters.[14] It also asked for briefing on the Section 2 vote dilution claim raised in Hayden v. Pataki case as well. A decision on those issues, plus the

[11] Muntaqim v. Coombe, 366 F.3d at 118.
[12] Id.
[13] Id.
[14] Muntaqim v. Coombe, 396 F.3d 95 (specifically asking the parties to brief what kind of data demonstrating racial bias in conviction and sentencing, statistical and otherwise, should a court rely upon if the case were remanded).

constitutional issues raised by the original panel regarding applying Section 2 to felon disfranchisement, is still pending

Merced v. Koch, 574 F. Supp. 498 (S.D.N.Y. 1983). This is a Section 5 action to enjoin Area Policy Board elections – which determined how anti-poverty funds would be distributed within Neighborhood Development Areas administered by the City's Community Development Agency – for failure to obtain preclearance of changes in the method of election. Plaintiffs alleged that changes in the composition of each Area Policy Board would have a discriminatory impact upon black and Latino voters. The court denied the injunction and questioned whether these Area Policy Board elections were elections covered under Section 5 of the VRA. The complaint was subsequently withdrawn.

Puerto Rican Legal Defense & Education Fund v. Gantt, 796 F. Supp. 677, 796 F. Supp. 681, 796 F. Supp. 698 (E.D.N.Y. 1992). This litigation addressed a Legislative stalemate to redistrict New York's congressional districts into 31, rather than the current 34, districts as a result of population shifts documented by the 1990 Census. In its June 1992 decision the court conditionally adopted the proposed plan of a Special Master it commissioned to devise a 31-seat congressional plan. Ultimately, the Special Master's plan was unnecessary once the Department of Justice precleared the Legislature's last-minute congressional plan. For Latino and African American voters in New York City there was a marked difference between the Special Master's plan and the Legislature's plan: the Master's plan created 3 majority-Latino districts and 4 majority-African

American districts, while the Legislature's plan maintained the current, 2 majority-Latino districts in place and created five majority-black districts. Plaintiffs in Puerto Rican Legal Defense & Education Fund sought to raise a Section 2 challenge to 1990s Congressional redistricting plan finally adopted by the Legislature. The court, however, denied that request in its July 1992 decision and dismissed the suit as moot once preclearance was issued. Nonetheless, the court did recognize that the Special Master's plan it adopted satisfied Section 2 and found that "groups purporting to represent the African-American and Latino voters have established their initial burden under Gingles."[15] The Gingles factors include the existence of a compact district that is composed of a majority of minority group members; the existence of political cohesion within that minority group; and the existence of white bloc voting that tends to defeat the minority-preferred candidate. These last two prongs evidence Racially Polarized Voting, discussed further in Section VI of the Final Report.

Rodriguez v. Pataki, 308 F. Supp.2d 346 (S.D.N.Y. 2004). This was an unsuccessful Section 2 and constitutional challenge to 2002 Congressional and State Senate redistricting plan as it applied to Bronx, Suffolk and Nassau Counties. A three-judge District Court granted summary judgment to the defendants on some counts, and granted judgment after trial to defendants on all other counts. The court rejected the plaintiffs' constitutional challenge on basis of the one person, one vote doctrine of the Equal Protection Clause. The court noted that the plan overall was within the maximum population deviation allowed by law and was still legal even if the State Senate created

[15] PRLDEF v. Gantt, 796 F. Supp. at 693.

overpopulated districts "downstate" and more under-populated districts upstate.[16] The court rejected section 2 claims against the State Senate districts in Nassau and Suffolk counties as well. In the challenge to Nassau County Senate Districts 6 through 9, the court ruled that the plaintiffs failed to show the existence of an alternative plan where blacks in Nassau County would constitute the majority in a compact Senatorial district – thus failing to satisfy the first preconditioin of Thornberg v. Gingles. The attempt to prove intentional discrimination in the Legislature's deliberate failure to create a black majority district in Suffolk County was rejected as well by the District Court – at best, the court ruled, the plaintiffs demonstrated that the Legislature was aware of the racial effect the final plan would have. In the court's words, "consciousness of minority groups is not evidence of intentional discrimination."[17] The remaining Section 2 challenges to the Senate Districts in Bronx County were rejected after a trial. The challenge to Senate Districts 34 and 35 are discussed below in the section on Racially Polarized Voting. See Section VI of the Final Report. This challenge was ultimately unsuccessful because under the "totality of circumstances" test under Section 2, the court found that Bronx Latinos were proportionately represented in the Senate overall. The court also rejected a Section 2 challenge to Senate District 31 (New York-Bronx counties) filed by Latino intervenors in the case primarily because of the failure to present evidence that white voters voted as a bloc to defeat minority preferred candidates – the 3rd factor under Thornberg v. Gingles. Finally, the court rejected a Section 2 challenge to Congressional District 17 (Bronx-Westchester-Rockland counties) asserted by African American intervenors. It ruled that Gingles One could not be met when the intervenors sought to

[16] Rodriguez v. Pataki, 308 F. Supp. at 370-371.
[17] Id.

combine black voters and Latino voters to create an effective majority-minority congressional district because they failed to prove that blacks and Latinos combined in District 17 are politically cohesive.[18]

Rogers v. New York City Board of Directors, 988 F. Supp. 409 (S.D.N.Y. 1997) (Scheindlin, J.). Plaintiff, a mayoral candidate in 1997 brought this Section 5 case but failed to allege any discriminatory purpose or discriminatory effect that emanated from the imposition, without preclearance, of a firm deadline for applications for matching public funds from the Campaign Finance Board. The court dismissed the Section 5 claim because the case did not allege that race or color had anything to do with the imposition, administration or effect of the Campaign Finance Board's deadline.

Torres v. Cuomo, 1993 U.S. Dist. LEXIS 1165 (S.D.N.Y. 1993). This is an unsuccessful Section 2, 14th Amendment and 15th Amendment challenge to the 1992 New York Congressional District plan for failing to create a third Latino majority district as per the recommendations of the Special Master appointed by the court in PRLDEF v. Gantt, above. The court denied motions to dismiss the claims on the basis that Latino voters were precluded from litigating the challenge anew since they participated in previous court cases to assert their rights to create majority-Latino congressional districts. Ultimately, however, the court rejected the statutory and constitutional claims to create a 3rd Latino congressional district in New York.

[18] Id. at 441-445.

United Parents Associations v. Board of Elections. 89 Civ. 0612 (Sifton, J.). This is a successful Section 2 challenge to Election Law § 5-406, New York's nonvoting purge law. The law allowed the Board of Elections to cancel the voter registration of any voter who failed to vote in four years. Plaintiffs' submitted expert testimony that law's application had an unlawful, racially discriminatory effect as black and Latino voters were 32% more likely to be purged for non-voting than whites. In 1989 the court preliminarily enjoined the Board of Elections from continuing its nonvoting purge. The State Legislature amended its nonvoting purge law to allow for the cancellation of a voter's registration for failure to vote in all elections in a period covering two successive presidential elections. In 1992 plaintiffs secured another court order prohibiting the implementation of the new purge law upon a statistical analysis that it too had a racially discriminatory effect under Section 2. With the passage of National Voter Registration Act of 1993 looming, the parties agreed to a Consent Decree, upheld by court order, that permanently enjoined purging in New York for nonvoting in any stated period.[19]

[19] Consent Decree, United Parents Associations v. Board of Elections, May 6, 1993. See Appendix G.

NVRA Litigation Related to Racial and Language Minority Voters

The passage of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-1 ("NVRA"), presented racial and language minorities in New York City an opportunity to further an agenda of requiring government agencies to actively register the large number of eligible, but unregistered, voters among poor populations in the City.[1] The NVRA, made effective in 1995, and created agency-based voter registration requirements for certain State agencies, eliminated the requirements for in-person registration by mandating mail-in voter registration throughout the country, and placed curbs on a number list maintenance policies that purged voters from state voter lists.

The NVRA requires agencies that provide public benefits (e.g., Temporary Aid to Needy Families, Medicaid, and Food Stamps) to offer voter registration opportunities to all persons applying for benefits or reinstatements. Given the relatively low socio-economic status of racial and language minorities in the City, NVRA registrations have the potential of closing the gap in political participation between poor racial and language minority communities and the rest of the electorate. In New York City, NVRA litigation,

[1] In 1990 voters and advocates sued in state court to enforce the Governor's Executive Order 136 that required facilitation of agency-based voter registration throughout the state, particularly in agencies serving poor communities in New York City. 100%VOTE v. New York State Board of Elections (Supreme Court of the State of New York, New York County, Index No. 21920/90). On February 21, 1991, Justice Santaella granted plaintiffs a writ of mandamus to force compliance with the executive order. In 1995 another suit in state court sought to fully implement voter registration in City mayoral agencies in In the Matter of the Application of Disabled in Action of Metropolitan New York v. Giuliani (Supreme Court of the State of New York, New York County, Index No. 110646/95, Freidman, J.) with the courts only upholding the right of the Commissioner of the New York City Voter Assistance Commission to obtain annual reports on compliance.

initiated exclusively to force compliance with these mandates, forced a reticent and indifferent agency apparatus to provide access to voter registration in agencies processing Medicaid, "welfare," and, as a result of a State designation, unemployment insurance benefits.

In National Congress for Puerto Rican Rights v. Sweeney, 95 Civ. 8742, S.D.N.Y. (Owen, J.) Latino voters and others forced the New York State Department of Labor to offer voter registration at Unemployment Insurance Offices reaching 80,000 applicants per year as per the requirements of New York's enabling statute that enforced the NVRA. The court entered a Consent Decree[2] in January 1996 that established a comprehensive mechanism of integrating voter registration opportunities in the intake procedures for new applicants.

In Disabled in Action v. Hammons, 96 CV 5894, E.D.N.Y. (Block, J), consolidated with United States v. New York, 3 F. Supp. 298 [CHECK CITE] (E.D.N.Y. 1998), aff'd in part, rev'd in part, 203 F.3d 110 (2d Cir. 2000) disabled litigants sought to increase the reach of the NVRA by seeking full NVRA compliance in every setting where Medicaid applications were processed – from hospitals to medical offices. The State had effectively delegated the responsibilities of accepting Medicaid applications in a number of settings, including those in the private sector. As a means-tested benefit program, full compliance along the lines of that sought by the plaintiffs in this action would have captured thousands of eligible racial and language minority registrants. Instead, the court

[2] See Appendix G.

rejected the full sweep of the relief plaintiffs sought and ruled that NVRA obligations could only be extended to public hospitals. In 2000 the parties settled the case along the lines of the Second Circuit's opinion.[3]

Finally, in United States v. New York, 96 CV 5562, E.D.N.Y. (Block, J.) the federal government sued the State of New York to force adequate and consistent NVRA compliance in public assistance agencies and in state agencies that primarily serve the disabled. Regarding the claims concerning public benefits, U.S. v. N.Y., overlapped in part with Disabled in Actions v. Hammons, supra. This case is still pending.

[3] See Appendix G.

Constitutional Litigation Related to Voting by Racial and Language Minorities

In 1992 in a case challenging the composition of the New York City Districting Commission, the City defended racial and language minority diversity on the commission and conceded that it engaged in a "history of discrimination specific to voting rights in New York City and its earlier districting and council bodies." Ravitch v. City of New York, 1992 U.S. Dist. LEXIS 11481, *16 (S.D.N.Y. 1992). At issue was a City Charter provision adopted by referendum in 1989 that required that subsequent City Council redistricting commissions reflect the City's racial and language minorities protected by the Voting Rights Act, "in proportion, as close as practicable, to their population in the City." New York City Charter, § 50(b)(1). After the provision was granted preclearance under Section 5 by the Department of Justice the plaintiffs in Ravitch challenged the constitutionality of the provision as creating an impermissible race-based criterion for participation in the Districting Commission. The City of New York vigorously defended the constitutionality of § 50(b)(1) by convincing the court that it was required to take all necessary steps to remedy its prior violations of the Voting Rights Act. In particular, the City was forced to adopt remedies to prior intentional discrimination against African American and Latino voters in the City Council redistricting plan that was adopted after the 1980 Census. Id. at 17. In addressing the concerns confronting the Charter Commission that recommended § 50(b)(1), the District Court found that:

> "[T]he defendants did, in fact, have a firm and substantial basis for believing that remedial action was warranted. *The [Charter] Commission was faced with the*

task of making substantial changes to the structure of New York City's government, which had been found to discriminate in a variety of ways over the previous twenty years."

Id. at 16 (emphasis added). The court accepted the defense that the City had a compelling governmental interest in adopting remedial legislation to counter-act the official voting discrimination that existed against the VRA's protected minorities, but eventually ruled that § 50(b)(1) was not narrowly tailored to pass strict scrutiny under the Equal Protection Clause. Id. at *18.

Another constitutional law case affecting voting rights in New York City is the successful Shaw[1] challenge to New York's 12th Congressional District represented by Congresswoman Nydia Velázquez, the first and only Puerto Rican woman elected to Congress. Diaz v. Silver, 978 F. Supp. 96 (E.D.N.Y. 1997). The three-judge District Court upheld the Equal Protection Clause challenge by holding that the creation of the 12th Congressional District, covering portions of three counties, was significantly motivated by race to the detriment of other traditional criteria for redistricting and could not withstand strict scrutiny analysis. The court rejected the defense that the 12th Congressional District was created to preserve a Latino community of interest and inferred that Asian Americans in the district were a community of interest.[2] Defendants and defendant-intervenors presented proof of racially polarized voting between Latinos

[1] Shaw v. Reno, 509 U.S. 630 (1993). A Shaw challenge is based on the Equal Protection Clause and alleges that race was a dominant factor in the creation of majority minority districts at the expense of other traditional criteria for redistricting.
[2] Id. 978 F. Supp. at 123-126.

and non-Latinos in the 12th Congressional District. The court, however, ruled that polarized voting, by itself, would not establish a community of interest that would justify the contours of 12th Congressional District.[3] It found the 12th Congressional District to be unconstitutional as configured, and ordered New York State to redistrict the District and other affected congressional districts. The Legislature subsequently passed a new redistricting plan reconfiguring the 12th Congressional District and its neighboring districts, shortly thereafter.

Finally, in a recent case alleging violations of both the First Amendment and the Equal Protection Clause, a federal court found that the delegate convention system of selecting candidates for elected Supreme Court Justices unconstitutionally deprived voters of the right to choose their parties' judicial candidates and hindered competitive primaries. Lopez Torres v. New York State Board of Elections, 04 CV 1129, E.D.N.Y. Gleeson, J., Slip Opinion dated January 27, 2006. The case represents the culmination of previous, unsuccessful attempts – alleging VRA violations – in the delegate selection process for these same judicial positions. France v. Pataki, 71 F. Supp. 317 (S.D.N.Y. 1999). Racial fairness in the system challenged in Lopez Torres was raised directly by the defendants who argued that the delegate convention system of nominating judges to primaries serves the goal of racial and ethnic diversity, a legitimate goal of the State. The court ultimately ruled that the delegate convention system was not narrowly tailored to meet the State's interest in racial diversity. It specifically found that the challenged system severely curtails voter participation in the primaries. The court also recognized the existence of

[3] Id. at 124.

proportional representation methods of election that would allow minority voters to exercise their collective voting strength to their advantage. And finally, the court recognized that alterations in the judicial district lines may also serve to protect minority voters' interests. Lopez Torres, Slip Op. pp. 68-71.

Abbreviated History of Official Voter Related Discrimination in New York [1]

The history of voter discrimination in New York has yet to receive a full exploration by the Second Circuit and the recent challenges to felon disfranchisement appear to point the way to an appropriate discussion between race and citizenship in the Empire State.[2] In the 18th and 19th centuries both the New York State Legislature and delegates to various New York State Constitutional Conventions intended to, and did, discriminate against blacks with respect to the franchise and made their intentions explicitly known. Starting in with the 1777 New York Constitution, blacks suffered from a number of *de jure* limitations on their ability to vote: In 1777 suffrage was limited to property holders and free men;[3] in 1801 the legislature eliminated property restrictions from the voting requirements to New York's first Constitutional Convention – but then expressly excluded blacks from participating. The 1821 Constitutional Convention – the very Convention that enacted the State's first felon disfranchisement law – was dominated by racist invective. Delegates to this Convention expressed their views that blacks, as a "degraded" people, were unfit to participate in the body politic by virtue of their natural

[1] For a discussion of historical developments in the election of minority Justices to the Supreme Court of New York, see Appendix F, Minority Elected Officials in New York Post 1982.
[2] Hayden v. Pataki in particular (discussed in Appendix B of this report) addresses these historical developments because of its allegations of intentional discrimination in the enactment and perpetuation of New York's felon disfranchisement laws in the 19th and 20th centuries. The references in the next two paragraphs come from the pleadings, briefs and materials presented to the District Court and the Second Circuit in this litigation. The intentional discrimination claim in Hayden is on appeal to the Second Circuit at this time.
[3] N.Y. Const., art. VII (repealed 1826).

inferiority[4] and created new property requirements applicable only to "men of color" in state.[5] The same Convention enacted a new felon disfranchisement provision, which was done with the express purpose of further denying the franchise to blacks in New York. The debate surrounding this new disqualification clearly reflects the racist nature of its motivation[6] summed up in the observation of one delegate who stated:

> "Survey you prisons – your alms houses – your bridewells an your penitenciaries and what a darkening host meets your eye! More than one-third of the convicts and felons which those walls enclose, are of your sable population."[7]

Subsequent Constitutional Conventions continued to debate the *de jure* racial qualification placed on voting in New York, and each one was as equally brazen as the next. In the 1846 Convention one statement summed up the majority's opposition to repealing the racial classification: "[Blacks] were an inferior race to whites, and would always remain so."[8] In the 1866-1867 Constitutional Convention the delegates would only place the issue of eliminating the racially based property qualification as a separate

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[4] Nathanial Carter, William Stone & Marcus Gould, Reports of the Proceedings and Debates of the Convention of 1821, 198 (Albany: E. & E. Hosford, 1821) (hereafter "Debates of 1821").
[5] Blacks were required to posses a freehold estate worth at least $250. N.Y. Const. (1821), art. II, § 1 (repealed in 1870). This property qualification "was an attempt to do a thing indirectly which we appeared to either be ashamed of doing, or for some reason chose not to do directly . . This freehold qualification is [for Blacks] a practical exclusion [from the franchise]." New York State Constitutional Convention Committee, Problems Relating to Home Rule and Local Government, 143, n. 13 (Albany, NY: J.B. Lyon Company, 1938). The property requirement "was merely a subterfuge for keeping suffrage from the Negro." Id. at 161. The requirement worked effectively as only 1% of the Black population met the new requirements.
[6] One delegate summed up the goals of the 1821Constitutional Convention by stating that "all who are not white ought to be excluded from political rights." Debates of 1821, p.183.
[7] Debates of 1821, p. 199.
[8] Constitutional Convention of 1846, p. 1033.

question to the voters where it was known to fail.[9] In 1869, New Yorkers, as expected, voted to maintain the racially discriminatory language of the 1821 Constitution.[10]

Not until the adoption of the Fifteenth Amendment to the U.S. Constitution – which New York *opposed* by attempting to withdraw its earlier ratification of the Amendment,[11] and not until the passage of the Federal Enforcement Acts of 1870 and 1871, did equal manhood suffrage reach New York State, despite the opposition of New York's voters and political leadership, dominated by anit-black Democrats in 1870 and 1871.[12] According to Professor David Quigley, New York's first election in which black men were freely allowed to vote occurred in the presence of federal militia, deployed to the City to ensure order.[13]

The next major development in the protection of the exclusionary features of New York election laws was the adoption of literacy tests for voting. In New York the antecedents of the provision eventually adopted in the 20th century to back go the 1872-1873 Constitutional Commission where the incorporation of a literacy test for suffrage was first proposed for the State in the aftermath of the passage of the Fifteenth Amendment.[14] In the 1900s New York's literacy test requirement had a history of discriminatory use

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[9] Documents of the Convention of the State of New York, 1867-1868, No. 16, 3, Volume One. Albany: Weed, Pearsons and Co., 1868.
[10] David Nathaniel Gellman & David Quigley, Jim Crow New York: A Documentary History of Race and Citizenship, 1777-1877, 293, (NYU Press 2003).
[11] Cong. Globe, 41st Cong. 2d Sess. At 1447-81.
[12] David Quigley, Second Founding: New York City, Reconstruction, and the Making of American Democracy, Chapter 5, (2004).
[13] Id.
[14] Journal of the Constitutional Commission of the State of New York, Begun and Held in the Common Council Chamber, in the City of Albany, on the Fourth Day of December, 1872, 339-393 (Weed, Parsons & Co. 1873).

against vulnerable populations of the state. In general, historians have identified Southern and Eastern European immigrants as the target for literacy tests' exclusionary function in the area of immigration.[15] In New York the 1921 state constitutional provision mandating literacy tests for voting was equally exclusionary. As early as 1915 the debates by constitutional delegates established its clear racial purposes.[16]

The English literacy requirement became the linchpin for the Voting Rights Act's application to New York in a number of ways. In 1965 one of the biggest obstacles to the full enfranchisement of African Americans and a clear target of the VRA were literacy tests. Despite the Supreme Court's pronouncement that literacy tests were facially constitutional,[17] the danger of the tests in the Deep South was also in their discriminatory application. As a result, the coverage formula for Section 5's protections specifically included literacy tests among the "tests or devices" that were used to trigger the VRA's most exacting provisions. Section 5's initial geographic scope was limited to a small number of states and jurisdictions, all of them in the South. In 1965, however, the discriminatory use of literacy tests as a prerequisite for voting was not within the exclusive domain of Southern states. New York was a prime example. Indeed, New

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[15] The tests "provided a highly 'respectable' cultural determinant which could also minister to Anglo-Saxon sensibilities." John Higham, Stangers in the Land: Patterns of American Nativism, 1860 – 1925, Atheneum, p.101. New Brunswick, 1985 (1955).

[16] One New York constitucional delegate noted: "More precious even than the forms of government are the mental qualities of our race. They are exposed to a single danger, and that is that by constantly changing our voting citizenship through the wholesale but necessary and valuable infusion of Southern and Eastern European races, whose traditions and inheritances are wholly different from our own, without education, we shall imperil the structure we have so laboriously struggled to maintain. The danger has begun. It is more imminent than ever before. We should check it." Record of the Constitutional Convention of the State of New York 1915, Begun and Held at the Capitol in the City of Albany on Tuesday the Sixth Day of April, Vol. III, p. 2912, J.B. Lyon Co. Albany 1915.

[17] Lassiter v. Northampton County Bd. Of Election, 360 U.S. 45 (1959).

York's English literacy requirement prompted the enactment of Section 4(e) of the 1965 Act, a provision which was directed exclusively to benefit the Puerto Rican community. Section 4(e)[18] was prompted not only by concerns in Congress to the way New York's Puerto Rican community – all U.S. citizens by operation of law – were excluded from the franchise but also by the discriminatory *application* of the requirement to Puerto Rican registrants.[19]

Section 5 coverage to New York's three covered counties after the Census determinations following the 1970 Census are also linked to the discrimination that resulted from New York's English literacy requirement. By 1971 the U.S. Attorney General determined that New York's literacy requirement was a "test or device" under the VRA and the Census certified that Bronx, Kings and New York counties met the threshold criteria regarding registration and turnout based on the 1968 elections. New York won a declaratory judgment exempting it from coverage under Section 5[20] only to be brought back into coverage by the finding that New York did in fact use its English literacy requirement in a discriminatory fashion as proven in a series of suits filed by Puerto Rican voters under Section 4(e).[21]

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[18] 42 U.S.C. § 1973b(e).
[19] The testimony of Herman Badillo, Irma Vidal Santaella and Gilberto Gerena Valentin to Congress in 1965 is summarized in Juan Cartagena, "Latinos and Section 5 of the Voting Rights Act: Beyond Black and White," 18 Nat'l Black Law J. 201 (2005).
[20] New York v. United States, 65 F.R.D. 10, 11 (D.D.C. 1974).
[21] Id. at 12. For a full discussion of the interplay between Section 4(e) cases and Section 5 coverage in New York City, see Juan Cartagena, "Latinos and Section 5 of the Voting Rights Act: Beyond Black and White," 18 Nat'l Black Law J. 201 (2005).

Language assistance as a feature of election practice and policy thus began as early as the 1965 Voting Rights Act and culminated with the decision in Torres v. Sachs, 381 F. Supp. 309 (S.D.N.Y. 1974) that to cast a meaningful vote requires full understanding of the ballot and all registration procedures. By the time of the 1975 amendments to the VRA, creating language assistance in voting for Asian Americans, Native Americans, and other Latino national origin groups, New York City had been operating a bilingual election apparatus, albeit with major problems in compliance, for a number of years. Section 203 – a self regulating provision that targets coverage for language assistance on demographics – eventually required Chinese-language assistance in New York, Kings and Queens counties and Korean-language assistance in Queens County as well.

The Second Circuit Court of Appeals has addressed New York's record of official discrimination in voting on limited occasions. In Butts v. City of New York in 1985 the court in dicta, noted that the proof of official discrimination in voting presented to the District Court was insufficient to consider under the Senate Factors listed for Section 2's totality of the circumstances analysis. Instead the court observed that New York allowed African Americans the right to vote on equal terms with whites since 1874 after the adoption of the Fifteenth Amendment. At no time in the District Court or in the Second Circuit, did the tortured history of resistance to African American suffrage in New York in the 1800s, summarized herein, get to the attention of the court. The Second Circuit

also credited New York with affirmative steps in ensuring minority voting such as a Task Force created by Governor Cuomo and the adoption of mail registration.[22]

In 1999, however, in its decision in Goosby v. Town Board of the Town of Hempstead, the Second Circuit let stand as not clearly erroneous a District Court finding that the relevant Senate Factor under Section 2 of the VRA (whether there is a history of official discrimination in the area of voting) was satisfied on the basis of two historical events: a) application of New York's nonvoting purge law had a discriminatory effect upon African American voters in the Town of Hempstead in the early 1990s; and b) there was proof of a "fair inference" that the English literacy test administered in Nassau County form 1922 to 1969 pursuant to New York law had a discriminatory impact on black voters.[23]

The Goosby standard for proof of a history of official discrimination in voting in a Section 2 case is markedly different than the dicta in Butts. In New York City the United Parents Associations case sets forth the discriminatory nature of New York's former nonvoting purge on minority voters in the City. That plus the numerous incidents of discrimination that resulted from New York's English literacy requirement should easily meet the Goosby standard. Finally, the historical events outlined herein on how racial and language minorities in New York have fared over time in the Empire State add considerable historical evidence that should satisfy any court in exploring the record of official discrimination in the area of voting in New York.

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[22] After Butts a number of District Courts interpreting Section 2 repeated these and other ameliorative efforts to increase minority voting by the State of New York. See, France v. Pataki; Green v. Crew; Rodriguez v. Pataki; and Denis v. NYC Board of Elections summarized in Appendix B.
[23] Goosby v. Town Board of the Town of Hempstead, 180 F.3d 476, 494 (2d Cir. 1999).

Minority Elected Officials in New York Post 1982

Among the numerous elected offices that are available to New York City's racial and language minority voters, and the sporadic success that they have enjoyed in achieving direct representation in those positions, four distinct episodes stand out: 1) the short-lived tenure of New York's first African-American mayor, David Dinkins; 2) the statewide election of New York's first African-American Comptroller, H. Carl McCall; 3) the 2005 Mayoral election where the first Latino candidate to capture the Democratic primary election for Mayor, Fernando Ferrer, ran and lost; and 4) the shattering of the glass ceiling on Asian American representation with the 2001 election of John Liu to one of 51 seats on the New York City Council in a City that is 10% Asian American.

David Dinkins: The 1989 election of the New York City's first African American mayor, an historic event in its own right, should be assessed in the context of the success of African American mayoral candidates in other municipalities. By the time Mr. Dinkins secured the mayoralty, New York City was the largest city in the country that never had a African American or Latino mayor. Cities like Los Angeles, Chicago, Philadelphia, Detroit, Washington, D.C., Atlanta, Cleveland, New Orleans, Newark and Birmingham had elected African American mayors. Other major cities like San Antonio, Denver and Miami had elected Latino mayors. Under these circumstances, with a majority of the City comprised of racial and language minorities, the election of any minority member to lead the City was a long time coming.

Mr. Dinkins secured the mayoralty after beating the incumbent, Edward Koch, in the Democratic Primary. Mayor Koch had not consistently enjoyed the support of the majority of black voters – despite incredibly wide over all margins of victory in his mayoral bids. Previously, Mr. Dinkins had won the 1985 election for Manhattan Borough President – the same year that then State Senator José Serrano, Puerto Rican, lost to a white, incumbent Bronx Borough President and that State Assemblyman Al Vann, African American, came in third, behind two white candidates, for Brooklyn Borough President. It took blacks and Latinos years to replicate the string of victories in the Borough Presidencies that were made decades earlier with the election of Percy Sutton, African American, in Manhattan and Herman Badillo, Puerto Rican, in the Bronx. After Mr. Dinkins secured the Manhattan Borough Presidency, an African American female, C. Virginia Fields was elected to two consecutive terms that ended in 2005. This position is no longer held by a racial or language minority member. In the Bronx, decades later, the voters returned another Puerto Rican to the borough presidency (Fernando Ferrer) for multiple terms and another Puerto Rican, Adolfo Carrion, now occupies the seat. In Brooklyn, no Latino or black has ever won the Borough Presidency. But in Queens, Helen Marshall, African American, secured the Borough Presidency in 2001 and was reelected in 2005. Ms. Marshall's 2001 bid was important in that she had captured 53% of the vote against two prominent Democrats in the primary (Carol Gresser & Sheldon Leffler) and then went on to win the general election with 68% of the vote. In Staten Island, no Latino or African American has ever captured the Borough Presidency –

indeed, as of 1991 there were only two African American elected officials in Staten Island and both were members of Community School Board 31.

Mr. Dinkins was voted out of office after one term as the overwhelmingly Democratic City jumped parties to elect Rudolph Giuliani, a Republican in 1993 – whom Mr. Dinkins defeated in the general election of 1989. The defeat for Mr. Dinkins was the first time an incumbent Mayor in the City of New York had failed to secure reelection after only one term. Mr. Giuliani was the first Republican to gain the Mayor's seat since John Lindsay in the 1960s who ran on both Republican and Liberal Party lines. Indeed, prior to the 1993 general election U.S. Senator Alfonso D'Amato (Republican) captured only 38% of the City's vote in 1992, President George H. Bush (Republican) captured only 23% of the City's vote in 1992 and "GOP candidates for president, senator, governor or mayor who weren't incumbents frequently garnered less than a fifth of the city's vote."[1] The results of the 1993 vote for Mayor revealed a divided and racially polarized city:

> "How could a mere lawyer who'd never been elected to any public office, and whose last public service ended almost five years before the 1993 election, expect to [beat Dinkins]? What besides race could explain why, according to exit polls, 64 percent of the city's white Democrats and 77 percent of all white voters would vote for him?"[2]

Professor John Mollenkopf studied the election returns of the 1993 Mayor's race as part of his research on the makings of the Koch Coalition. With respect to the Dinkins – Giuliani race in 1993, he concluded:

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[1] Wayne Barrett, Rudy: An Investigative Biography of Rudolph Giuliani. Basic Books, New York, 2000.
[2] Id. at 266.

> "To the extent that Dinkins' weaknesses among his core constituencies contributed to his defeat, his greatest failure was among his strongest supporters. The outcome of the election, however, was not decided within constituencies that had favored Dinkins in 1989, but among those that had opposed him . . . As a result, the 1993 electorate was slightly more white and less black and Latino than in 1989 and its preferences were also slightly more racially polarized. The higher the percentage of registered voters who were white, the less likely an ED was to experience a vote decline between 1989 and 1993 and the more likely it was to shift toward Rudolph Giuliani."[3]

According to some exit polls Latino voters strongly supported Dinkins giving him anywhere from 65% to 73% of their vote in 1989 and 60% of their vote in 1993.[4]

The Democratic Party nomination for mayor would not go to another African American or Latino candidate until 2005 with the contest between Fernando Ferrer and Michael Bloomberg.

H.Carl McCall: H. Carl McCall was appointed New York State Comptroller in 1993 to fill an unexpired term. In 1994 he became the first member of New York's racial and language minorities to capture the nomination of any of the two major parties to run for this statewide office and the first African-American to win a statewide office. It has been noted by one court that this 1994 election had one of the lowest levels of racially polarized voting in some time.[5] Previous to McCall's run in 1994, only Herman Badillo (Puerto Rican) captured any of the two major party's nomination for statewide office.

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[3] John Hull Mollenkopf, A Phoenix in the Ashes: The Rise and Fall of the Koch Coalition and New York City Politics, 212, Princeton University Press. Princeton 1994.
[4] Doug Muzzio, "The Hispanic Vote," Gotham Gazette, 26 March 2003, www.gothamgazette.com (last viewed: 18 February 2006).
[5] See France v. Pataki in Appendix B.

Mr. Badillo, running for Comptroller on the Democratic Party line, lost in 1986 to Edward Regan, the incumbent. In 1998 Carl McCall won his reelection bid garnering 2.9 million votes statewide, more than any other statewide candidate. Indeed, since his election as Comptroller, and his subsequent failed bid to oust Governor George Pataki on the Democratic Party line in 2002, there has only been one other minority candidate for statewide office on either the Republican or Democrat line: Dora Irizarry, Puerto Rican, who ran for Attorney General on the Republican ticket becoming the first Latina woman to run for statewide office in New York. She lost convincingly to the incumbent, Eliot Spitzer by a margin of 66% to 30%. With only four statewide offices in New York (Governor, Lieutenant Governor, Comptroller, and Attorney General) the opportunities to run on that scale on a major party line are limited, making Mr. McCall's election all the more extraordinary.

Fernando Ferrer: Former Bronx Borough President and Puerto Rican Fernando Ferrer launched two credible campaigns for Mayor this decade, becoming the first serious Latino candidate for Mayor since Herman Badillo thirty years before. In the Democratic Primary of 2001, Mr. Ferrer came in first place but failed to secure the nomination outright. Latino voters, according to exit polls, came out in record numbers representing 23% of the votes cast and supporting Mr. Ferrer with 72% of their vote.[6] Mark Green forced a runoff election, won the nomination, then lost to Michael Bloomberg. Four years later Ferrer captured the nomination and become the first Latino candidate ever to win the nomination of any of the two major political parties in New York in his

[6] Doug Muzzio, "The Hispanic Vote," Gotham Gazette, 26 March 2003, www.gothamgazette.com (last viewed: 18 February 2006).

unsuccessful quest to become the first Latino mayor in New York City. Capturing close to 80% of the Latino vote,[7] Mr. Ferrer lost nonetheless, to the incumbent Michael Bloomberg in 2005. In many ways the Ferrer 2005 candidacy revealed other fissures in the City's electorate: once again, white voters abandoned the Democratic Party and voted for the Republican incumbent at just shy of 90%. African American voters gave Ferrer only 46% of their vote and Asian Americans gave him 22% of their vote.[8] Incumbency, obviously, is a major factor in electability in New York City mayoral politics – except, ironically and tellingly, in the re-election bid of David Dinkins.

Asian Americans: The limited success of electing Asian Americans to positions in New York City requires separate analysis in light of the fact that New York City enjoys the largest number of Asian residents of any city in the country and that it was not until 2001, when they composed 10% of the population, that the first Asian American was elected to the 51 member New York City Council. Structural impediments, manifested by council district formations, and racially polarized voting explain in large part the absence of direct Asian American representation in the 1980s and 1990s.

The Asian American population in the City more than doubled from 1980 to 1990 (three to seven percent) and the City's Chinatown in New York County remained divided among multiple assembly districts, school districts and community board districts. Each of these districts contains less population than a New York City Council district and

[7] Andrew Beveridge, "Hispanics and the Ferrer Candidacy," Gotham Gazette, 22 December 2005, www.gothamgazette.com (last viewed 13 February 2006).
[8] Id.

could have provided the spawning ground for higher office if the historic epicenter of the Asian community was not fractured in two. In Flushing, Queens, however, Chinese and Korean neighborhoods were also experiencing rapid growth during this period as well. An expansion to 51 councilmanic districts along with the publication of the 1990 Census, allowed the City another opportunity to create districts that would fairly reflect the growing voting strength of the Asian American community. Competing and conflicting proposals to the Districting Commission from Asian American advocates over the Chinatown district alternated between adjoining it to the Latino, working class neighborhoods of the Lower East Side or to the white, more affluent neighborhoods of Battery Park City, Tribeca and SoHo. The Districting Commission opted for a Chinatown district that expanded west to encompass Battery Park, Tribeca and SoHo and was 39% Asian American, 37% white, 17 % Latino and 6% black.[9] Whites, however, had a decided advantage in the registered voter pool and Margaret Chin, an elected Democratic Party delegate from Chinatown, garnered only 33% of the 1991 Democratic primary vote and only 25% of the general election tallies (when she ran on the Liberal Party line) to Kathryn Freed's 53%, with another Asian American, Fred Teng (Republican) coming in third with 23%. Subsequently, in the 1993 Democratic Party, Ms. Chin was again the sole Asian American candidate, but was only able to garner 27% of primary vote.[10] In the 1997 Democratic primary, Ms. Jennnifer Lim was the sole Asian American candidate but received only 30% of the primary vote and in 2001

[9] For an account of the fate of Asian American candidates in New York City in the 1980s and 1990s, see Keith Aoki, "Asian Pacific American Electoral and Political Power: A Tale of Three Cities: Thoughts on Asian American Electoral and Political Power After 2000," 8 U.C.L.A. Asian Pac. Am. L.J. 1 (2002).
[10] Asian American Legal Defense & Education Fund, "Can an Asian American Win in District 1?" See Appendix G.

Democratic Primary, three Asian American candidates collectively received only 40% of the primary vote.[11]

To date, Chinatown has yet to elect an Asian American to the City Council. The Asian American Legal Defense & Education Fund attributes the failure to elect an Asian American in what was purportedly an "Asian American district" to the existence of racially polarized voting and to the combination of Chinatown with the more affluent areas of Lower Manhattan which do not vote along the same patterns.[12]

In Flushing, Queens, however, Asian Americans finally overcame years of competing Asian American candidates vying for the same office to secure a seat on the City Council with the historic election of John Liu, a Korean-American, in 2001. The 1990 Districting Commission created a councilmanic district (District 20) that was 31% Asian American and 40% white. In 1991 the incumbent, Julia Harrison, defeated Pauline Chu in the Democratic primary and Chun Soo Pyun, a Republican, in the general election. In 1995 the Asian American primary vote was split between Pauline Chu and John Liu allowing Ms. Harrison to win again and again defeat Mr. Soo Pyun in the general election. Ms. Harrison was noted for making a number of anti-Asian and anti-immigrant remarks in this period; at one time describing the arrival of Asians to Flushing as an "invasion not an assimilation."[13] In 2001, with Ms. Harrison no longer eligible because of term limits, Mr. Liu defeated Ethel Chen in the Democratic primary and went on to win the general

[11] Id.
[12] Id.
[13] Keith Aoki, supra, at 30.

election. Mr. Liu credits the VRA with allowing Asian American voters to access the political process in Queens: "I would never be standing before you as the first Asian elected official if it were not for the bilingual provisions of the Voting Rights Act," he noted in 2005.[14]

In 2004 Jimmy Meng made history when he was elected as the first Asian American to serve in the New York State Assembly. He represents the 22nd Assembly District in Queens.

Asian Americans had also obtained obtain a measure of success at the community school board level up through the dismantling of that system in the late 1990s. As noted above, community school board elections used a form of proportional representation known as choice voting (specifically, Single Transferable Votes) which allowed voters to rank order their preferences for candidates. The Asian American Legal Defense & Education fund reported that in the 1996 school board elections, eleven out of fifteen Asian American candidates for community school boards, were elected under this system.[15]

Judicial Elections

As noted above, questions about the fairness of the current system of electing judges in New York have surfaced repeatedly in the last 25 years from in various forums: the 1994

[14] Gerson Borrero, "Lo que sabe un chino sobre el VRA" ["What the Asian knows about the VRA"], El Diario, La Prensa, 5 August 2005 (translation provided).
[15] Comment Letter of Margaret Fung & Tito Sinha, Asian American Legal Defense and Education Fund, 8 October 1998, to the Department of Justice [Re: Submission No. 98-3193]. See Appendix G.

denial of preclearance to various changes for elections to the Supreme Court; the 1999 decision by Judge Sprizzo in France v. Pataki and the 2006 decision by Judge Gleeson in Lopez Torres v. New York State Board of Elections.

Historically, integrating the bench in New York State, however, has never been easy. On numerous occasions the judicial branch itself has commented on the need to increase diversity and fairness within its ranks. In New York these efforts have manifested themselves in the Franklin H. Williams Judicial Commission on Minorities – an important component of the New York State judiciary that seeks, *inter alia*, to review the processes of appointments and elections to the bench to determine how greater minority representation could be achieved. Created in 1988 the Williams Judicial Commission has issued a number of reports and has documented, in part, the inroads that have been made by African American, Latino and Asian American lawyers in the judiciary.

Judges in two courts in the State are subject to elections administered by the election boards of the state and county governments: Justices to the Supreme Court elected to 14-year terms, and Judges to the New York City Civil Court elected to 10-year terms. The ability to elect minority judges has not been as easy as it would seem given the large share of the electorate and the populace that minorities have held in the last 25 years. Through the work of the Williams Judicial Commission we have learned[16] that in New York City African American judges first secured positions on the bench via appointments. One of the earliest Justices to be elected from the black community was

[16] Franklin H. Williams Judicial Commission on Minorities, "Equal Justice: A Work In Progress: Five Year Report, 1991-1996."

the Hon. Harold Stevens in 1955. Decades later, the Hon. Edith Miller became the first African American woman to be elected to a New York Court. Within the last 25 years a few more "firsts" were accomplished: in 1990 the first African American woman was elected in Kings County Supreme Court, Justice Michele Weston Patterson and in 1986 the Hon. Yvonne Lewis became the first African American woman to be elected to the Civil Court of the City of New York. For Latino judges the history was much shorter: the Hon. Emilio Nuñez became the first Latino elected to the Supreme Court in 1968 in New York County. In 1982, the Hon. Carmen Beauchamp Ciparick became the first woman elected to the Supreme Court. And for Asian Americans the history is even younger still: not until 1987 did an Asian American win election to the court with the election of the Hon. Dorothy Chin-Brandt and the Hon. Peter Tom to the New York City Civil Court in New York County.

The 1996 report of the Williams Judicial Commission notes that out of 1,163 judges in New York State, elected and appointed, only 87 were African American (7%), only 37 were Latino (3%) and only 8 were Asian American (0.6%). When judicial elections are analyzed separately, the Commission found[17] that 14.3% of all Supreme Court Justices were minority. By 2000, the Commission reported that 15.1% (52/344) of the Justices of the Supreme Court, statewide, were minority. Using 2003 data the Commission reported

[17] Id. Appendix A, p. 67. The data provided for New York City Civil Court in this table did not disaggregate Civil Court Judges who are elected from Housing Court Judges who are appointed.

in 2005 that statewide for both appointed and elected judges in New York, minorities were 13.2% of the total.[18]

A comparison of the total number of New York City Civil Court judgeships for 2004-2005 reported by the City[19] for the boroughs of Bronx, Brooklyn, Manhattan and Queens only with the roster of minority elected officials included in this report (see below) reveals that there are approximately 115 judgeships in that court and that approximately 20 judges from minority backgrounds have been elected to that court at present for a proportion of 17%.

Post 1982 Roster of African American, Latino and Asian American Elected Officials:

(*Former Elected Officials in Italics.*)

New York Statewide Offices

H. Carl McCall (B), New York State Comptroller, 1993 to 2002

New York Citywide Offices

William Thompson (B), New York City Comptroller, 2001 to present

David Dinkins (B), New York City Mayor, 1989 to 1993

[18] Franklin H. Williams Judicial Commission on Minorities, "Findings from the Leadership Development Conference: Courts for the 21st Century, Upstate Conference," January 2005.
[19] See, The 2004-2005 Green Book: Official Directory of the City of New York.

Borough Wide Offices

Adolfo Carrion (L), Bronx Borough President, 2001 to present

Robert Johnson (B), Bronx District Attorney, 1988 to present

Margarita Lopez Torres (L), Kings County Surrogate Judge, 2005 to present Helen

Marshall (B), Queens Borough President, 2001 to present

David Dinkins (B), Manhattan Borough President, 1985 to 1989

C. Virginia Fields (B), Manhattan Borough President, 1997 to 2005

Fernando Ferrer (L), Bronx Borough President, 1987 to 2001

U.S. Congress

Gregory Meeks (B), District 6, Queens, 1998 to present

Major Owens (B), District 11, Brooklyn, 1982 to present

Charles Rangel (B), District 15, Manhattan, 1970 to present

José Serrano (L), District 16, Bronx 1990 to present

Edolphus Towns (B), District 10, Brooklyn, 1982 to present

Nydia Velázquez (L), District 12, Brooklyn, 1992 to present

Floyd Flake (B), District 6, Queens 1986 to 1998

Robert García (L), District 18, Bronx 1982 to 1990

New York State Senate

Carl Andrews (B), District 20, Brooklyn, 2002 to present

Rubén Díaz (L), District 32, Bronx, 2002 to present

Efrain González (L), District 33, Bronx, 1989 to present

Ruth Hassell-Thompson (B), District 36, Bronx/Westchester 2000 to present

Martin Malave Dilán (L), District 17, Brooklyn, 2002 to present

Velmanette Montgomery (B), District 18, Brooklyn, 1985 to present

Kevin Parker (B), District 21, Brooklyn, 2003 to present

John L. Sampson (B), District 19, Brooklyn, 1996 to present

David Patterson (B), District 30, New York, 1985 to present

José M. Serrano (L), District 28, New York/Bronx, 2005 to present

Ada L. Smith (B), District 10, Queens, 1989 to present

Malcolm A. Smith (B), District 14, Queens, 2000 to present

Pedro Espada (L), District , Bronx,

Andrew Jenkins (B), District 10, Queens, 1985-1990

Joseph Galiber (B), District 33, Bronx, Pre-1982 to 1996

Olga Mendez (L), District 30, New York/Bronx, 1982-2004

David Rosado (L), District 32, Bronx, 1997-2002

Israel Ruiz (L), District 32, Bronx, Pre-1982-1989

Nellie Santiago (L), District 17, Brooklyn, 1993-2002

New York State Assembly

Carmen Arroyo (L), District 84, Bronx, 1994 to present

Jeffrion Aubrey (B), District 35, Queens, 1992 to present

Michael Benjamin (B), District 79, Bronx, 2003 to present

William Boyland, Jr. (B), District 55, Brooklyn, 2003 to present

Barbara Clark (B), District 33, Queens, 1986 to present

Adam Clayton Powell, IV (L-B), District 68, New York, 2000 to present

Vivian Cook (B), District 32, Queens, 1990 to present

Luis Díaz (L), District 86, Bronx, 2000 to present

Ruben Díaz, Jr. (L), District 75, Bronx, 1997 to present

Adriano Espaillat (L), District 72, 1996 to present

Herman Ferrell (B), District 71, New York, Pre-1982 to present

Diane Gordon (B), District 40, Brooklyn, 2000 to present

Roger Green (B), District 57, Brooklyn, Pre-1982 to 2005

2006 to present

Aurelia Greene (B), District 77, Bronx, 1982 to present

Carl Heatsie (B), District 83, Bronx, 2004 to present

Jimmy Meng (A), District 22, Queens, 2004 to present

Felix Ortíz (L), District 51, Brooklyn, 1994 to present

José Peralta (L), District 39, Queens, 2004 to present

N. Nick Perry (B), District 58, Brooklyn, 1992 to present

José Rivera (L), District 78, Bronx, 2000 to present

District 77, Bronx, 1982 - 1987

Naomi Rivera (L), District 80, Bronx, 2005 to present

Peter Rivera (L), District 76, Bronx, 1992 to present

Annette Robinson (B), District 56, Brooklyn, 2002 to present

William Scarborough (B), Disrict 29, Queens, 1994 to present

Darryl Towns (B), District 54, Brooklyn, 1993 to present

Keith Wright (B), District 70, New York, 1992 to present

Geraldine Daniels (B), District 70, New York, Pre 1982-1992

Gloria Davis (B), District 78, Bronx, Pre-1982 to present

Angelo Del Toro (L), District 68, New York, 1985-

Nelson Denis (L), District 68, New York, 1996-2000

Francisco Díaz, Jr. (L), District 68, New York, 1994-1996

Héctor Díaz (L), District 74, Bronx, 1985-

Cynthia Jenkins (B), District 29, Queens, 1985-2000

Helen Marshall (B), District 35, Queens, 1982-1992

Gregory Meeks (B), District 31, Queens, 1992-1998

Clarence Norman (B), District 43, Brooklyn, 1985-2005

Roberto Ramirez (L), District __ Bronx, 1990-2000

David Rosado (L), District 17, Bronx, 1990-1993

Larry Seabrook (B), District 82, Bronx, 1985-

José Serrano (L), District 73, Bronx, Pre 1982-1990

Albert Vann (B), District 56, Brooklyn, Pre 1982-2001

New York City Council

María Del Carmen Arroyo (L), District 17, Bronx, 2005 to present

María Baez (L), District 14, Bronx, 2002 to present

Charles Barron (B), District 42, Brooklyn, 2002 to present

Yvette Clark (B), District 40, Brooklyn, 2002 to present

Leroy Comrie (B), District 27, Queens, 2002 to present

Inez Dickens (B), District 9, Manhattan, 2006 to present

Helen Foster (B), District 16, Bronx, 2002 to present

Sarah González (L), District 38, Brooklyn, 2002 to present

Robert Jackson (B), District 7, Manhattan, 2002 to present

Letitia James (B), District 35, Brooklyn, 2003 to present

John Liu (A), District 20, Queens, 2002 to present

Melissa Mark Viverito (L), District 8, Manhattan/Bronx, 2006 to present

Erik Martin-Dilan (L), District 37, Brooklyn, 2001 to present

Miguel Martínez (L), District 10, Manhattan, 2002 to present

Darlene Mealy (B), District 41, Brooklyn, 2006 to present

Rosie Méndez (L), District 2, Manhattan, 2006 to present

Hiram Monserrate (L), District 21, Queens, 2001 to present

Annabel Palma (L), District 18, Bronx, 2004 to present

Diana Reyna (L), District 34, Brooklyn, 2002 to present

Joel Rivera (L), District 15, Bronx, 2002 to present

James Sanders (B), District 31, Queens, 2002 to present

Larry Seabrook (B), District 12, Bronx, 2001 to present

Kendall Stewart (B), District 45, Brooklyn, 2001 to present

Albert Vann (B), District 36, Brooklyn, 2002 to present

Thomas White, Jr. (B), District 28, Queens, 2006 to present

Tracy Boyland (B), District 41, Brooklyn, 1997-2005

Adolfo Carrion (L), District 14, Bronx, 1997-2001

Rafael Castaneira Colón (L), District 11, Bronx, 1982-1994

Hilton Clark (B), District 5, Manhattan, 1985-

Una Clarke (B), District 40, Brooklyn, 1997-

Adam Clayton Powell, IV (L-B), District 8, Manhattan, 1992-1997

Lucy Cruz (L), District 18, Bronx, 1997-2001

James Davis (B), District 35, Brooklyn, 2001-2003

Ruben Díaz (L), District 18, Bronx, 2001-2002

Fernando Ferrer (L), District 13, Bronx, 1982-1987

C. Virginia Fields (B), District 9, Manhattan, 1989-1997

Wendel Foster (B), District 9, Bronx, 1982-

Pedro Gautier Espada (L), District 17, Bronx, 1997-2001

Allan Jennings (B), District 28, Queens, 2001 to 2005

Guillermo Linares (L), District 10, 1991-2001

Margarita Lopez (L), District 2, Manhattan, 1997-2005

Martin Malave Dilan (L), District 37, Brooklyn, 1992-2002

Helen Marshall (B), District 21, Queens, 1991-2001

Luis Olmedo (L), District 27, Brooklyn Pre-1982 -1984

Antonio Pagán(L), District 2, Manhattan, 1992-1997

Bill Perkins (B), District 9, Manhattan, 1997-2005

Mary Pinkett (B), District 28, Brooklyn, 1982-

Phillip Reed (B), District 8, Manhattan, 1997-2005

José Rivera (L), District 15, Bronx, 1987-1999???

Annette Robinson (B), District 36, Brooklyn, 1991-2002

Victor Robles (L), District 27, Brooklyn, 1985-2001

Angel Rodríguez (L), District 38, Brooklyn, 1997-2001

David Rosado (L), District 17, Bronx, 1993-1997

Frederick Samuel (B), District 5, Manhattan, 1982-1985

José M. Serrano (L), District 17, Bronx, 2001-2004

Archie Spigner (B), District 17, Queens, Pre 1982-

Enoch Williams (B), District 26, Brooklyn, 1982-

Priscilla Wooten (B), District 24, Brooklyn, 1982-2002

Justices of the New York State Supreme Court

Sheila Abdus-Salaam (B), 1st District, New York, 1993 to present

Rolando Acosta (L), 1st District, New York, 2002 to present

Efrain Alvarado (L), 12th District, Bronx, 1996 to present

Bettsy Barros (L), 2nd District, Kings-Richmond, 1996 to present

Bernadette Bayne (B), 2nd District, Kings-Richmond, 2002 to present

Ariel Belen (L), 2nd District, Kings-Richmond, 1995 to present

Peter Benitez (L), 12th District, Bronx, __ to present

Juanita Bing Newton (B), 1st District, New York, 1996 to present

Laura Blackburne (B), 11th District, Queens, 1993 to present

Janice Bowman (B), 12th District, Bronx, 1996 to present

Valerie Brathwaite Nelson (B), 12th District, Bronx, __ to present

Maryann Briganti-Hughes (L), 12th District, Bronx, __ to present

Bert Bunyan (B), 2nd District, Kings-Richmond, __ to present

Gregory Carro (L), 1st District, New York, __ to present

John Carter (B), 12th District, Bronx, __ to present

Cheryl Chambers, 2nd District, Kings-Richmond, 1998 to present

Gloria Dabiri (B), 2nd District, Kings-Richmond, 1994 to present

Leland DeGrasse (B), 1st District, New York, 2003 to present

Lewis L. Douglass (B), 2nd District, Kings-Richmond, 1990 ?? to present

Deborah Dowling (B), 2nd District, Kings-Richmond, 1996 to present

Luther Dye (B), 11th District, Queens, __ to present

Carol Edmead (B), 1st District, New York, 2003 to present

Randall Eng (A), 11th District, Queens, 1983 to present

Nicholas Figueroa (L), 1st District, New York, __ to present

Fern Fisher (B), 1st District, New York, 1993 to present

Yvonne González (L), 12th District, Bronx, 1998 to present

L. Priscilla Hall (B), 2nd District, Kings-Richmond, 1993 to present

Duane Hart (B), 11th District, Queens, 2001 to present

Ronald Hollie (B), 11th District, Queens, 2001 to present

Carol Huff (B), 1st District, New York, 2003 to present

Alexander Hunter, Jr. (B), 12th District, Bronx, 1994 to present

Allen Hurkin-Torres (L), 2nd District, Kings-Richmond, 2001 to present

M. Randolph Jackson (B), 2nd District, Kings-Richmond, 1999 to present

Debra James (B), 1st District, New York, __ to present

Diana Johnson (B), 2nd District, Kings-Richmond, 2000 to present

Theodore Jones, Jr., 2nd District, Kings-Richmond, __ to present

Leslie Leach (B), 11th District, Queens, 2002 to present

Daniel Lewis (B), 11th District, Queens, 1995 to present

Yvonne Lewis (B), 2nd District, Kings-Richmond, 1991 to present

Doris Ling-Cohan (A), 2nd District, Kings-Richmond, 2002 to present

Plummer Lott (B), 2nd District, Kings-Richmond, 1994 to present

Richard Lowe, III (B), 1st District, New York, __

Nelida Malave (L), 12th District, Bronx, __ to present

Sallie Manzanet (L), 12th District, Bronx, __ to present

Louis Marrero (L), 2nd District, Kings-Richmond,

Larry Martin (B), 2nd District, Kings-Richmond, 1993 to present

La Tia Martin (B), 12th District, Bronx, 1994 to present

Donna Mills (B), 1st District, New York, __ to present

Jose Padilla, Jr. (L), 1st District, New York, __ to present

Eduardo Padro (L), 1st District, New York, 2002 to present

Kibbie Payne (B), 1st District, New York, __ to present

Charles Ramos (L), 1st District, New York, 1993 to present

Dianne Renwick (B), 12th District, Bronx, 2001 to present

Jaime Rios (L), 11th District, Queens, 1994 to present

Francois Rivera (L), 2nd District, Kings-Richmond, 1996 to present

Nelson Román (L), 12th District, Bronx, 2002 to present

Norma Ruiz (L), 12th District, Bronx, 1999 to present

Patricia Satterfield (B), 11th District, Queens, 1998 to present

Faviola Soto (L), 1st District, New York, __ to present

Mark Spires (B), 11th District, Queens, 1990 to present

James Sullivan (B), 2nd District, Kings-Richmond, 2002 to present

Janice Taylor (B), 11th District, Queens, 1997 to present

Charles Tejada (L), 1st District, New York, 1994 to present

Kenneth Thompson (B), 12th District, Bronx, 1995 to present

Milton Tingling, Jr. (B), 1st District, New York, 2001 to present

Analisa Torres (L), 12th District, Bronx, __ to present

Edwin Torres (L), 1st District, New York, 1982 to present

Robert Torres (L), 12th District, Bronx, __ to present

Alison Tuitt (B), 12th District, Bronx, __ to present

George Villegas (L), 12th District, Bronx, __ to present

Laura Visitacion-Lewis (L), 1st District, New York, __ to present

Lottie Wilkens (B), 1st District, New York, 1991 to present

Patricia Anne Williams (B), 12th District, Bronx, 1995 to present

Douglas Wong (A), 11th District, Queens, __ to present

Carmen Beauchamp Ciparick (L), 1st District, New York, 1982-1994

William Davis (B), ___ District, ___, 1987-1996

Thomas R. Jones (B), 2nd District, Kings-Richmond, Pre-1982 to 1985

Gilbert Ramirez (L), 2nd District, Kings-Richmond, Pre 1982 to 1997

Irma Santaella (L), 12th District, Bronx, 1983 to __

Lucindo Suarez (L), 1st District, New York, 1996 to__

Peter Tom (A), 1st District, New York, 1990-1994

Frank Torres (L), 12th District, Bronx, 1984 to 1998

Michelle Weston Patterson (B), 2nd District, Kings-Richmond, 1990 to __

Bruce Wright (B), 1st District, New York, Pre 1982 to 1994

Judges of the New York City Civil Court

Dorothy Chin Brandt (A), New York, 1987 to present

Raul Cruz (L), Bronx, 2002 to present

Laura Douglas (B), Bronx, __ to present

Genine Edwards (B), Brooklyn, __ to present

Lizbeth Gonzalez (L), Bronx, __ to present

Marguerite Grays (B), Queens, __ to present

Wilma Guzman (L), Bronx, 1998 to present

Kathy King (B), Brooklyn, 2003 to present

Howard Lane (B), Queens, 2003 to present

Milagros Matos (L), New York, __ to present

Manuel Melendez (L), New York, 2003 to present

Jeffrey Oing (A), New York, 2003 to present

Diccia Pineda-Kirwan (L), Queens, 2002 to present

Julia Rodríguez (L), Bronx, 2003 to present

Anil Singh (A), New York, 2002 to present

Fernando Tapia (L), Bronx, 2002 to present

Dolores Thomas (B), Brooklyn, 2002 to present

Dolores Waltrous (B), Brooklyn, 1998 to present

Troy K. Webber (B), New York, 1994 to present

Geoffrey Wright (B), New York, 1997 to present

Antonio Brandveen (B), 1985 to __

Leland DeGrasse (B), 1985 to __

Doris Ling-Cohan (A), 1995-2002

Margarita Lopez Torres (L), Kings, 2002-2005

José Padilla (L), New York, __ to __

Charles Ramos (L), 1984 to 1993

Peter Tom (A), 1987-1990

Analisa Torres (L), New York, 1999 to __

Robert Torres (L), Bronx, 1996 to __

George Villegas (L), Bronx, 2002 to __

Protect Voting Rights: RenewtheVRA.org

VOTING RIGHTS IN SOUTH CAROLINA 1982-2006

A REPORT OF RENEWTHEVRA.ORG
PREPARED BY JOHN C. RUOFF AND
HERBERT E. BUHL III

MARCH 2006

VOTING RIGHTS IN SOUTH CAROLINA 1982-2006

JOHN C. RUOFF, PH.D. AND HERBERT E. BUHL III, ESQ.

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EXECUTIVE SUMMARY

Prior to passage of the Voting Rights Act, South Carolina, a state whose population is 30 percent African-American, had elected no black official in the Twentieth Century. South Carolina's history of discrimination resulted in the entire state being covered by the preclearance provisions of Section 5 of the Act.

Vigorous enforcement of Section 2 and Section 5 of the Voting Rights Act has expanded and then protected the ability of South Carolina African-Americans to participate fully in the voting process and to elect candidates of their choice. The transition of single-member districts for both houses of the General Assembly, county councils, municipal governing bodies, and school boards has greatly expanded black representation.

The number of black elected officials in South Carolina increased to 38 in 1970 and then to 540 in 2000. The growth of black representation has come in the face of strong resistance by the state and localities to black representation and to the Voting Rights Act and through vigorous enforcement of the Voting Rights Act. Along with vote dilution litigation under Section 2 of the Act, the Section 5 requirement that changes in electoral practices or procedures be precleared by the Attorney General or the District Court for the District of Columbia has produced and protected that expansion of black representation.

That expansion of black representation is closely linked to the creation and maintenance of single-member district systems. No African American has been elected to statewide office since passage of the Voting Rights Act. Governor Mark Sanford told a reporter in 2005 that he did not expect to see such an election "[i]n the foreseeable future." In state legislative and county council elections, black candidates have been successful almost exclusively in districts which are majority or near majority black. Not one of South Carolina's 8 black state Senators or 23 black House of Representatives members was elected in a district with less than 45 percent black voting age population. Only three of the current 99 African-American county council members have been elected in districts with less than 45 percent black voter registration.

Since 1972, the Department of Justice has objected 120 times to discriminatory changes in voting practices or procedures in South Carolina. Sixty-one percent of those objections (73) have come since the 1982 renewal of the Voting Rights Act.

Those discriminatory practices have covered a wide variety of changes which affected nearly every aspect of black citizens' participation in South Carolina's electoral processes, including discriminatory redistricting plans, racially selective annexations, and changes in methods of election which reduced the ability of black voters to elect candidates of their choice. They have covered all levels of government from the South Carolina General Assembly to a municipal board of public works. No region of South Carolina has been untouched by these proposed discriminatory changes. Many South Carolina jurisdictions engaged in decades-long resistance to the Voting Rights Act and full representation for their African-American citizens.

Even in this young century, South Carolina's black citizens have relied for protection of their voting rights on objections to a rich variety of discriminatory changes across the state. Just since

2000 in Charleston, Cherokee, Greenville, Lexington, Richland, Spartanburg, Sumter and Union counties public officials have changed district lines or voting rules in ways which would diminish the ability of African-American voters to elect candidates of their choice.

The compelling need for majority or near-majority black districts is driven by the persistence in South Carolina of racially polarized voting. "Voting in South Carolina continues to be racially polarized to a very high degree, in all regions of the state and in both primary elections and general elections."[1]. The overwhelming reality for African-American voters is that "in order to give minority voters an equal opportunity to elect a minority candidate of choice ..., a majority-minority or very near majority-minority black voting age population in each district remains a minimum requirement."[2]

Moreover, voter fraud, harassment, and intimidation of black voters have continued to recent years. Election observers have been assigned to 37 South Carolina elections, 23 times since 1982. Most of the communities to which observers have been sent have repeatedly requested assistance under the Act to protect the ability of African-American voters fully to participate in the electoral process. In Charleston County, the district court found "... significant evidence of intimidation and harassment ...."[3]

Charleston County spent $2 million to defend its discriminatory election method. Section 5 administrative review of proposed electoral changes by the Attorney General importantly contributes to efficient resolution when changes are proposed while protecting the voting rights of minority citizens.

Although successful *Shaw/Miller* constitutional challenges have been brought to a number of districting plans in South Carolina, subsequent history has seen that adjustments were made and constitutional districts in which African-American citizens are able to elect candidates of their choice were drawn.

South Carolina has made remarkable progress in the forty years since passage of the Voting Rights Act and in the twenty-five years since the Act was last renewed. In a state marked by very high levels of racially polarized voting, that progress has come largely in bodies elected from single member districts. Enforcement of Section 2 has extended, and vigorous enforcement of Section 5 has protected, the expansion of black representation in South Carolina – in the face of official resistance stretching, in many jurisdictions, over decades. Section 5's protections against back-sliding are critical to maintaining the expansion of black representation which has seen this state go from zero to 540 elected black officials in the life of the Act. Retrogressive redistricting plans, changes in the method of elections and racially selective annexations even in the 21st Century demonstrate the continued need for Section 5 preclearance requirements.

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[1] *Colleton County Council v. McConnell*, 201 F.Supp.2d, 618, 641 (D.S.C., 2002)
[2] *Id.* at 643.
[3] 316 F. Supp. 2d 268, 286 n.23 (D.S.C., 2003), aff'd *United States v. Charleston County*, 365 F.3d 341 (4th Cir. 2004); *Charleston County v. United States*, 125 S.Ct. 606 (2004) (cert. denied).

INTRODUCTION TO THE VOTING RIGHTS ACT

Prior to passage of the Voting Rights Act, South Carolina had elected no black officials in the twentieth century.[4] No African-American has been elected to statewide office since passage of the Voting Rights Act. Governor Mark Sanford told a reporter in 2005 that he did not expect to see such an election "[i]n the foreseeable future."[5]

With a large African-American population, South Carolina has a significant history of attempts to deprive those citizens of opportunities fully to participate in its electoral systems. The exclusion of black voters from political processes was sufficiently widespread and severe that the entire state is a covered by preclearance provisions of Section 5 of the Act.

That history includes resistance to the Voting Rights Act and efforts under it to enforce equal opportunity for the state's African-American population. Upon passage of the Act, South Carolina immediately and unsuccessfully moved to challenge the constitutionality of Section 5 of the Act.[6] Many South Carolina jurisdictions engaged in decades long resistance to the Voting Rights Act and full representation for their African-American citizens.

South Carolina's population grew from 3,121,820 in 1980 to 4,012,012 in 2000. The African-American proportion of that population has declined modestly from 30.4 percent to 29.6 percent. African-American voting age population in 2000 was 27.1 percent of the total compared to 27.3 in 1980 and 26.8 percent in 1990.[7] The Census Bureau's American Community Survey places the black only proportion at 28.9 percent in 2004.

There is a small but rapidly growing Hispanic population in South Carolina. The 2004 American Community Survey found that Hispanic population had quadrupled since 1990, from 30,551 to 120,681, 3 percent of the state's population.[8] Knowledgeable observers place the number of Hispanic residents at around 400,000.[9]

African-American voters, who were 27.8 percent of registered voters in 1982, make up 26.9 percent of that registration in 2006. Hispanic voters (13,469) make up only 0.6 percent of the total registration (2,400,358) in 2006. That was a significant increase just from 2002 when there

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[4] Orville Vernon Burton, Terence R. Finnegan, Peyton McCrary and James W. Loewen, "South Carolina" in Chandler Davidson and Bernard Grofman, eds., *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990* (1994), 199.

[5] "A Quick Spin Around The State House," *The* (Columbia) *State* (May 11, 2005), B3.

[6] *South Carolina v. Katzenbach,* 383 U.S. 301 (1966)

[7] Bureau of the Census, 1980 Census of Population and Housing, General Population Characteristics: South Carolina, Table 19. Bureau of the Census, 1990 Census of Population and Housing, Public Law 94-171 data; Bureau of the Census, 2000 Census of Population and Housing, Public Law 94-171 data. The Bureau of the Census estimates the state's population increased to 4,255,083 in 2005. Figures used for 2000 are based on the Maptitude for Redistricting category NH_DOJ_Blk which includes persons identifying themselves as Black, black and white or white and black. Black only persons were 29.5 percent of the total. Bureau of the Census, "Table 1: Annual Estimates of the Population for the United States and States, and for Puerto Rico: April 1, 2000 to July 1, 2005," at http://www.census.gov/popest/states/tables/NST-EST2005-01.xls.

[8] See 2004 American Community Survey, South Carolina, Data Profile Highlights at http://factfinder.census.gov/.

[9] Jim DuPlessis, "Hispanics' Impact on Economy Unclear," *The* (Columbia) *State* (December 4, 2005), F1.

were only 7,598 registered Hispanic voters or 0.4 percent. In 2002, there were more Asian citizens (8,788) registered to vote than Hispanic. In 2006, Asian registrants lag behind Hispanic registrants, 11,070 to 13,469.[10]

Substantial change has occurred in South Carolina since 1965. An all-white General Assembly now includes eight black Senators and twenty-three black representatives.[11] Statewide, 99 of the 334 members of county councils are African-American. Another 164 African-Americans are elected public school trustees out of a total of 567 elected trustees.[12]

That progress has come because of vigorous enforcement of the Voting Rights Act through Section 2 vote dilution litigation and Section 5 objections and litigation. Since 1972, the United States Department of Justice has objected 120 times to discriminatory changes in voting practices or procedures in South Carolina. Sixty-one percent of those objections (73) have come since the 1982 renewal of the Voting Rights Act.

Those discriminatory practices have covered a wide variety of changes that affected nearly every aspect of black citizens' participation in South Carolina's electoral processes, including discriminatory redistricting plans, racially selective annexations, and changes in methods of election which reduced to the ability of black voters to elect candidates of their choice. They have covered all levels of government from the South Carolina General Assembly to a municipal board of public works. No region of South Carolina has been untouched by these proposed discriminatory changes.

That expansion and protection of single-member districts through Voting Rights Act enforcement has been the critical factor in that progress because "in order to give minority voters an equal opportunity to elect a minority candidate of choice as well as an equal opportunity to elect a white candidate of choice in a primary election in South Carolina, a majority- minority or very near majority-minority black voting age population in each district remains a minimum requirement."[13]

High levels of racially polarized voting drives the need for majority or near-majority African American districts. As recently as 2002, the court in *Colleton County Council v. McConnell* found: "Voting in South Carolina continues to be racially polarized to a very high degree in all regions of the state and in primary elections and general elections. Statewide, black citizens generally are a highly politically cohesive group and whites engage in significant white-bloc voting. Indeed, this fact is not seriously in dispute."[14]

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[10] *Report of the South Carolina Elections Commission for the Period Ending June 30, 1983*, Vol. 1 (1983), 439; S.C. Elections Commission, Registration Tally July 1, 2002; S.C. Elections Commission, Registration Tally January 1, 2006.

[11] The race of elected members was determined from voter registration lists, county, and school district website photos and personal knowledge.

[12] Another 55 trustees are appointed by countywide school Boards of Education. Those appointed trustees are in majority black counties Marion and Clarendon and 46 percent black Dillon County.

[13] *Colleton County Council v. McConnell*, 201 F.Supp.2d, 618, 643 (D.S.C., 2002).

[14] *Colleton County Council v. McConnell*, 201 F.Supp.2d 618, 641 (D.S.C., 2002).

Even in this young century, South Carolina's black citizens have relied for protection of their voting rights on objections to a rich variety of discriminatory changes across the state. Just since 2000, public officials in Charleston, Cherokee, Greenville, Lexington, Richland, Spartanburg, Sumter, and Union counties have changed district lines or voting rules in ways that would diminish the ability of African-American voters to elect candidates of their choice.

I. State and Local Government in South Carolina

The Voting Rights Act was one of two significant developments framing the change in black representation in South Carolina. "One person, one vote" litigation in the 1960s triggered the end of South Carolina's traditional domination of local government by county legislative delegations led by baronial senators. In that process, single-member districts eventually came to both the South Carolina House and Senate. As formerly appointed county governing bodies and school boards became elective and Voting Rights Act enforcement led to single member districts, black citizens had new opportunities elect candidates of their choice to county councils and school boards

The 1895 Constitution of South Carolina created a framework of legislative dominance of the state at all levels of government. The General Assembly was apportioned along county lines with one senator and one or more representatives.[15] That county delegation, and especially the senator, ruled the county. As V.O. Key had written over a decade earlier, "County legislative delegations constitute the real governing bodies of the respective counties."[16] "The ... legislative delegation performed the legislative, executive and taxing functions for the county."[17] Many local officials, including members of county commissions and county boards of education, were appointed by the Governor upon nomination of the delegation. County operations were funded through Supply Bills adopted by the General Assembly as local legislation upon which only the affected delegation voted.

In 1966, the federal court in *O'Shields v. McNair*[18], ruled unconstitutional on one-person, one-vote principles the apportionment scheme embodied in the 1895 Constitution. Prior to *O'Shields* every county was politically controlled by a senator who resided in the county. After *O'Shields*, some rural counties no longer had resident senators.

Following a constitutional amendment in 1973, a statewide Home Rule Act in 1975 transferred significant powers to county governments, pushing forward a piecemeal process of empowering local citizens to "enact ordinances, require licenses and permits of various sorts, and raise or lower property tax rates."[19] It was 1982 before the General Assembly transferred authority to redistrict single member district county councils to those councils statewide.[20] Attending that shift in power, each county was required to choose a form of government and method of election or accept the form and method of election specified for it by state law.[21] The move to Home

[15] *SC Constitution*, Article III, Sections 4 and 6.
[16] V.O. Key, Jr., *Southern Politics in State and Nation* (1949), 151.
[17] *Horry County v. United States*, 449 F.Supp. 990, 993 (D.D.C., 1978).
[18] 254 F.Supp. 708 (D.S.C., 1966).
[19] Walter Edgar, *South Carolina: A History* (1998), 551.
[20] Act 313 of 1982.
[21] Section 4-9-10, *S.C. Code of Laws (1976), as amended.*

Rule in the mid to late-1970s accounted for DOJ objections in eleven South Carolina counties.[22] In their study of the impact of the Voting Rights Act to 1990, Orville Vernon Burton and his colleagues found: "The Home Rule Act accounted for more than 40 percent (fifteen of thirty-five) of the changes from at-large to district election plans that have occurred in South Carolina county councils between 1974 and 1989...."[23]

That process of devolution of power from the delegation to local government is far from complete. Magistrates, the lowest level of court in South Carolina, are still appointed by the governor on nomination of the county's senators.[24] The General Assembly routinely passes legislation to, for example, to regulate local mowing on state highways, excuse students in particular school districts from days lost to snow or set school start and end dates in specific counties.

Although most local appointment powers have been devolved on county councils, legislative delegations continue to control county boards of registration and elections, precinct lines and method of election and district lines for many boards of school trustees. That continued involvement of state legislators in local affairs removes African-American citizens from participation in critical decisions as discriminatory changes are proposed.

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[22] Those include Aiken, Bamberg (3 objections), Charleston, Chester (2 objections), Clarendon, Colleton, Edgefield Horry, Sumter, Lancaster, and York counties.
[23] *Quiet Revolution*, 205. The Home Rule Act did not address the method of election of either municipal governments or school district trustees.
[24] *SC Constitution*, Article V, Sections 26.

II. Minority Office Holders in South Carolina

> In an interview on WIS-TV in Columbia, Sanford was asked about blacks winning statewide office. "Can I interject?" Sanford asked, interrupting the show's host. "I think there never will be," Sanford said.
>
> "You said you don't think there ever will be?" asked Craig Melvin, who hosts "Awareness."
>
> "In the foreseeable future," Sanford said. It hasn't happened in the past 100 years, and "that is tragic," said the governor, who is a white Republican.
>
> "A Quick Spin Around The State House," *The* (Columbia) *State* (May 11, 2005), B3.

South Carolina greeted passage of the Voting Rights Act with no black elected officials in a state that was approximately 33 percent black.[25] Through vigorous enforcement of the Voting Rights Act, especially through the creation of single member districts with majority and near-majority black districts, the number of black elected officials had grown to 534 in 2001.[26]

A. Statewide Offices

No African American has been elected to statewide office in South Carolina since the end of Reconstruction. Since 1982, African-American candidates have offered for governor, attorney general, and secretary of state as Democrats.

In 1982, South Carolina's African-American citizens were represented largely by white elected officials. The Congressional delegation and the state Senate, elected from numbered posts in multi-member districts, were all white. The South Carolina House, elected from single-member districts in 1982, included 13 African Americans among its 124 members.

The first African-American state senator in the 20th century, I. DeQuincey Newman, was sworn in on October 25, 1983 after winning a special election. Four additional African Americans joined Newman in the Senate in 1985 after the Senate was reapportioned into 46 single member districts.

In 2006, African-Americans occupy one of six congressional seats, eight of forty-six state Senate seats and 23 of 124 state House seats.

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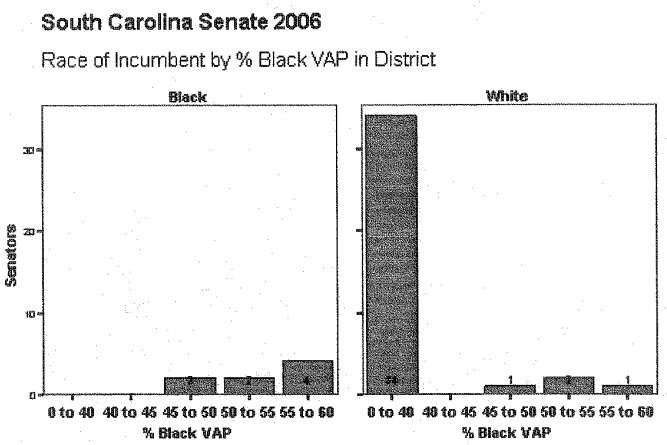
[25] Averaging 1960 and 1970 percent black and others from S.C. Budget & Control Board, Division of Research & Statistics, "South Carolina Population by Race 1790-1980," *South Carolina Statistical Abstract 1985* (1985), 311.
[26] David A. Bostitis, "Black Elected Officials: A Statistical Summary 2000,' Joint Center on Political and Economic Studies (2002), 18.

The overwhelming reality for African-American voters is that "in order to give minority voters an equal opportunity to elect a minority candidate of choice as well as an equal opportunity to elect a white candidate of choice in a primary election in South Carolina, a majority- minority or very near majority-minority black voting age population in each district remains a minimum requirement."[27]

The only congressional seat occupied by an African-American is District Six which has a 54 percent black voting age population by 2000 Census population data. Prior to the 1992 creation of the majority black Sixth District, no African American had served in Congress from South Carolina in the twentieth century. The remaining districts range in black voting age population from 18 to 30 percent.

Figure 1



Eight of the 46 South Carolina Senate districts have an African-American incumbent. Only two of those districts (Districts 7 and District 29) have less than a majority black voting population. (See Figure 1.) District 7 has a majority nonwhite voter registration (51 percent) compared to its 47 percent black voting age population. District 29 has a 45 percent black voting age population but a 47 percent nonwhite registration.[28] Figure 1 clearly demonstrates the relationship between the race of the incumbent and the racial composition of the district.

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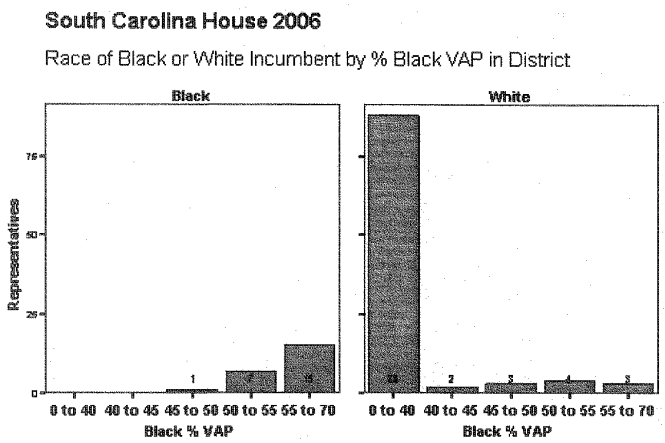
[27] *Colleton County Council*, 201 F.Supp.2d at 643.

[28] Registration figures are taken from http://www.state.sc.us/scsec/regist/senate.html. The South Carolina Elections Commission's principal reports distinguish between "White" and "Nonwhite" voters. "Nonwhite" voters, to date,

The South Carolina House of Representatives has 124 members. Twenty-three of those Representatives are African-American, 100 are white and one is Asian, Indian.[29] (See Figure 2.) The African-American voting age population in each of those districts is at least 49 percent and nonwhite voter registration exceeds 50 percent in each of those districts.

Figure 2



Solicitors, the local prosecutors, are elected from multi-county districts. Only one of those districts, Judicial Circuit 3 in Clarendon, Lee, Sumter and Williamsburg counties, had a black majority population in 2000 (53 percent). All fourteen of the solicitors are white.[30]

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are substantially all black. Congressional and Senate population figures based on maps created by Maptitude for Redistricting from block equivalency files at http://www.scstatehouse.net/redist/senate/senred.htm. House population files are based on block equivalency files downloaded from http://www.scstatehouse.net/redist/house/houred.htm.

[29] Rep. Nikki Randawha Haley represents 92 percent white District 87 in Lexington County. In her first election, her opponent attempted to make her Sikh faith an issue in the campaign. Brad Warthen, "Voters Embraced American Dream in Choosing Nikki Haley," *The* (Columbia) *State* (June 27, 2004), D4; Tim Flach, "Indian American Group Hails Haley's Win," *The* (Columbia) *State* (June 24, 2004), B1.

[30] Ralph J. Wilson, an African-American, was elected to solicitor in the majority white 15th Judicial Circuit (Georgetown and Horry counties) in 1990 and 1994, but defeated in 1998. African-American Thomas R. Sims was appointed solicitor in the 1st Judicial circuit (Orangeburg, Calhoun, and Colleton counties). He was defeated for election in 1992.

B. Local Government.

The expansion of single member districts has preceded the expansion of black representation at the local level in South Carolina. Only two of South Carolina's 46 counties elect its council members at large, the black majority Hampton and Jasper counties. There are 315 county council members elected from single-member districts. As Table 1 and Figure 3, below, demonstrate, 30 percent of those members are African-American. Only eight of those 94 are elected from districts with less than majority black voter registration. Nineteen council members are elected from at large seats. Five of those are black, all elected in majority black counties.

Figure 3

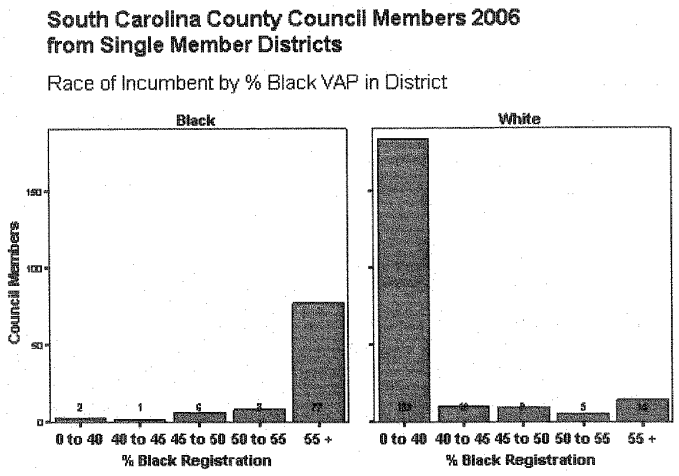


Table 1

Percent Black Voter Registration by Race of County Council Member
Single Member Districts

		% Black Registration					Total
		0 to 40	40 to 45	45 to 50	50 to 55	55 to 100	
Black	Count	2	1	6	8	77	94
	% within % Black Registration	1.1%	9.1%	40.0%	61.5%	84.6%	29.8%
White	Count	183	10	9	5	14	221
	% within % Black Registration	98.9%	90.9%	60.0%	38.5%	15.4%	70.2%
Total	Count	185	11	15	13	91	315

Table 2 shows that only South Carolina school trustees and sheriffs come close to matching the state's 30 percent black population proportion. Not one of South Carolina's solicitors, the state's elected prosecuting attorneys, is black. Figure 4 shows that for county-elected officials other than sheriff the same patterns hold true. Other than for sheriff, African-Americans can only rarely be elected in majority white counties.[31]

Table 2

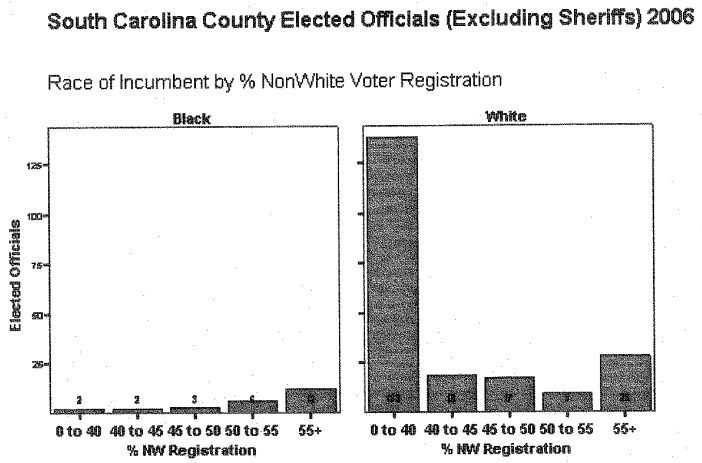
Elected Countywide Officials and School Trustees

Office	Total	African-American	Percent AA
Auditor	46	7	15
Clerk of Court	46	6	13
Coroner	46	5	11
Probate Judge	46	2	4
Register of Deeds or Mesne Conveyances	5	0	0
Sheriff	46	12	26
Treasurer	46	5	11
School Trustee	567	164	29

[31] The elected officials in counties with less than 45 percent black voter registration include four sheriffs (Abbeville, Colleton, Edgefield and McCormick), two Clerks of Court (Colleton and Georgetown), one Treasurer (Georgetown) and one Coroner (McCormick).

Voting in South Carolina remains highly racially polarized. For legislative bodies especially, election of African-American candidates of choice in districts that do not have African-American majorities or near majorities is a rare event.

Figure 4



We have not undertaken a study of minority municipal officeholders in South Carolina. The Joint Center for Political and Economic Studies found 227 black members of municipal governing bodies and 29 black mayors in South Carolina in 2000.[32]

Section 5 has been especially critical in helping to push jurisdictions in South Carolina to adopt single-member districts, to draw those districts fairly so that African-American citizens could choose candidates of their choice and to ensure that those advances were not taken back in subsequent redistricting. Absent that, we would be much closer to the all-white elected officialdom which confronted South Carolina when the Voting Rights Act first passed. Since 1982, significant advances have been made as school boards and county councils increasingly reflect the state's population.

[32] Bostitis, "Black Elected Officials," 19.

III. Section 5 of the Voting Rights Act

South Carolina has been a covered jurisdiction under Section 5 of the Voting Rights Act of 1965, 42 USC § 1973 (c), since its passage, because of its history of discriminatory voting practices. The Act has been extended in 1970, 1975, and 1982.

Under Section 5, any change with respect to voting in a covered jurisdiction may not be implemented or 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 United States Attorney General. This requires that the jurisdiction provide 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 demonstrate the absence of such discrimination, the district court must deny the requested declaratory judgment or in the case of administrative submissions, the Attorney General must object to the voting change and the change is legally unenforceable.

As the Supreme Court noted in rebuffing South Carolina's challenge to preclearance provision of Section 5:

> Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.[33]

Reno v. Bossier Parish School Board[34] and *Reno v. Bossier Parish School Board*[35] have limited the scope of Section 5 preclearance review to whether proposed changes are retrogressive, that is, whether they diminish the opportunity of minority voters to elect candidates of their choice. Relying on *Beer v. United States,*[36] (which held that an election plan has a prohibited "effect" only if it is retrogressive.), the U.S. Supreme Court held that Section 5 does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose.[37]

The Department of Justice (DOJ) is responsible for defending declaratory judgment actions in the district court and DOJ may bring lawsuits to enjoin the enforcement of voting changes that have not received Section 5 preclearance. Private parties may also bring suits to enjoin voting changes, which have not been submitted to the Attorney General and received preclearance.

Voting changes in South Carolina jurisdictions have occasioned numerous objections and required several lawsuits by private citizens and the United States to enforce Section 5.

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[33] *Katzenbach*, 383 U.S. at 327-28
[34] 520 U.S. 471 (1997)
[35] 528 U.S. 320 (2000)
[36] 425 U.S. 130 (1976)
[37] Justice Souter, in dissent, pointed out that Bossier Parish officials had exercised their energies for decades in an effort to "limit or evade" their obligation to desegregate the parish schools.

IV. Section 5 Objections

The Department of Justice (DOJ) has, since 1971, objected to preclearance of discriminatory changes in voting practices or procedures in South Carolina 120 times. Sixty-one percent of those objections (73) have come since the 1982 renewal of the Voting Rights Act. Since 1982, the objected to discriminatory practices have covered a wide variety of changes that affected nearly every aspect of black citizens' participation in South Carolina's electoral processes, including discriminatory redistricting, annexations, voter assistance, changing county boundaries, eliminating offices, reducing the number of seats on a public body, majority vote requirements, changing to at-large elections, using numbered posts or residency requirements, staggering terms, unfair scheduling of elections, changing from nonpartisan to partisan elections, and limiting the ability of African-American citizens to run for office.

Table 3

Department of Justice Objections[38]
1982 - 2004

Issue	No.
Redistricting	27
Annexation	9
Other	8
Staggered Terms	8
Method of Selection	7
Majority Vote Requirement	6
Schedule of Election	6
Change in No. of Seats	4
Eliminates County Bd of Ed or Superintendent	3
At Large with Residency Districts	1
Required resignation of public employees	1

Since 1982, those Department of Justice objections to discriminatory practices have covered all levels of government: the General Assembly (both Senate and House), counties,[39] county boards of education,[40] school districts[41], cities and municipalities[42] and a board of public works.[43] As the map on the next page shows, they have covered the state, as well.

Many of those jurisdictions engaged in decades-long resistance to the Voting Rights Act and full representation for their African-American citizens.

The principal focus of objections in South Carolina prior to 2000 was on the discriminatory intent of the jurisdictions rather than the retrogressive effect of the proposed changes.

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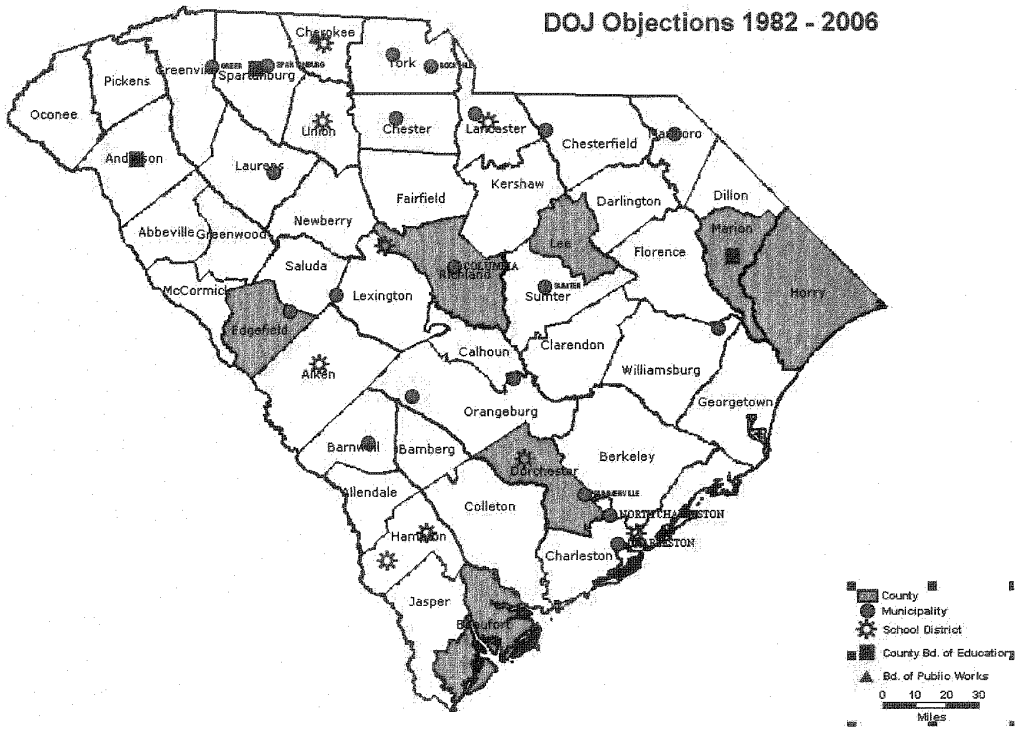
[38] The Department of Justice provides a complete listing of Section 5 objections at its website: http://www.usdoj.gov/crt/voting/sec_5/obj_activ.htm.
[39] Those include Beaufort, Dorchester, Edgefield, Horry, Lee, Marion, Orangeburg, Richland, Sumter and Williamsburg counties as well as statewide legislation affecting qualifications for probate judges.
[40] Those include Anderson, Hampton, Marion, and Spartanburg County Boards of Education.
[41] Those include Consolidated School District of Aiken County, Charleston County School District, Cherokee County School District 1, Dorchester District 4, Edgefield County School District, Hampton County School Districts 1 and 2, Lancaster County School District, Lee County School District, Newberry County School District, Richland-Lexington School District 5 and Union County School District.
[29] Those include Barnwell, Batesburg, BatesburgLeesville, Bennettsville, Charleston, Chester, Clinton, Columbia, Elloree, Greer, Hemingway, Jefferson, Johnston, Lancaster, North Charleston, Norway, Rock Hill, Spartanburg, Summerville, Sumter and York.
[43] Gaffney Board of Public Works.


DOJ Objections 1982 - 2006
Cherokee
Pickens
Greenville
Spartanburg
York
Oconee
Union
Chester
Lancaster
Chesterfield
Marlboro
Anderson
Laurens
Kershaw
Fairfield
Darlington
Dillon
Marion
Newberry
Abbeville
Greenwood
Lee
Florence
Saluda
Richland
Sumter
Horry
McCormick
Lexington
Edgefield
Clarendon
Calhoun
Aiken
Williamsburg
Georgetown
Orangeburg
Barnwell
Bamberg
Berkeley
Dorchester
Allendale
Colleton
Hampton
Charleston
Jasper
Beaufort
County
Municipality
School District
County Bd. of Education
Bd. of Public Works
0 10 20 30
Miles

A. Objections in the 2000 Cycle

The opponents of the Voting Rights Act often suggest that the types of discriminatory practices that led to passage of the Act and Section 5, in particular, are part of an ancient history now happily buried. However, the objections which the Department of Justice has entered to attempted changes in South Carolina just since the release of the 2000 Census belies this and underlines the importance of the continued requirement that voting changes go to the Department of Justice for preclearance.

South Carolina jurisdictions have continued to attempt discriminatory changes to which the Attorney General, even with the narrowed review following the *Bossier Parish* decision in 2000, objected.

1. Charleston County School Board

Following the 2000 General Election, African Americans comprised a majority (five of nine) on the Charleston County School Board. School trustees in Charleston County are elected at-large from four residency districts. There is no majority vote requirement. The district court in *United States v. Charleston County*, a challenge to at-large partisan County Council elections, had found that "special circumstances unique to the school board" explained "... the contemporary and inordinate African American-candidate success that is out of balance with the characteristically poor results for African American candidates in all other jurisdictional elections."[44]

In finding against the county council, the court had ruled that partisan elections, with their attendant primary processes, created "a *de facto* majority vote requirement [which] makes it more difficult for the African-American community to employ a traditional strategy of bullet voting in order to improve their chances of electing candidates of their choosing."[45] The *Charleston County* court expressed "particular concern" over a 2002 effort to convert the school trustees to partisan elections as one of "two recent episodes of racial discrimination against African-American citizens attempting to participate in the local political process."[46]

In 2003, the South Carolina General Assembly (which is to say, the Charleston legislative delegation) passed Act 128 of 2003, which would have changed the method of elections for Trustees of the Charleston County School District from nonpartisan to partisan elections—essentially recreating the electoral system for county council that the district court had just found "denies African Americans, on account of their race and color, equal access to the electoral and political process, in contravention of Section 2 of the Voting Rights Act."[47]

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[44] 316 F. Supp. 2d 268, 281 (D.S.C., 2003), affirmed *United States v. Charleston County*, 365 F.3d 341 (4th Cir. 2004); *Charleston County v. United States*, 125 S.Ct. 606 (2004) (writ denied).
[45] *Id.* at 294.
[46] *Id.* at 286, fn. 23.
[47] *Charleston County*, 316 F. Supp. 2d. at 307. The vote in the Senate was again on racial lines. *Journal of the South Carolina Senate*, April 16, 2003. In the House of Representatives, one white member voted with his African-American delegation colleagues on the losing end of a 7-6 vote. *Journal of the South Carolina House of Representatives*, May 22, 2003.

On February 26, 2004, the Department of Justice objected to the legislation because "[t]he proposed change would significantly impair the present ability of minority voters to elect candidates of choice to the school board and to participate fully in the political process. In addition, it was enacted despite the existence of a nonretrogressive alternative."[48]

The special circumstances that led to the election of black candidates have only been repeated once. The Board of Trustees now has one remaining African-American member, Hillery Douglas, who was reelected without opposition in 2004.[49]

2. Sumter County Council

Sumter County Council has a long history of attempts to limit the ability of African-American citizens to fully participate in the political process which continued through redistricting in 2001. Single-member districts for Sumter County Council only came after a long process of resistance beginning in 1967 with adoption of at-large elections for the newly created council.[50] No effort was made to seek preclearance of that change and elections were held under the unprecleared system from 1968 through 1974. Following adoption of the 1975 Home Rule Act, Sumter did not adopt a new form of government but accepted the Act's designation of a council-administrator form with at-large elections. The Attorney General objected to adoption of that form on December 3, 1976. Private parties and the United States sought and were granted an injunction in the South Carolina district court against implementation of the at-large election system.[51]

Following several attempts to convince the attorney general to reconsider and a referendum adopting at-large elections for Sumter County Council, the county convinced a three-judge federal panel, that its requests for reconsideration constituted a request for preclearance under the Section 5 and that the attorney general had failed to timely object to this request. *Blanding v. Dubose.*[52] On appeal, the Supreme Court rejected that argument and reversed the district court's judgment.

In 1984, Sumter County Council sought a declaratory judgment from the district court of the District of Columbia, pre-clearing at-large elections for Sumter County Council. The district court refused, finding that only one African American had been elected under the at-large system. "A fairly drawn single-member district plan for the Sumter County Council is more likely to allow black citizens to elect candidates of their choice in three of seven districts (or 42.8 percent of the representation on the Council)." *County Council of Sumter County, S.C. v. U.S.*[53].

The Court found that Sumter County had failed to prove "that the legislature did not pass Act 371 in 1967 for a racially discriminatory purpose at the insistence of the white majority in

[48] Objection letter, February 26, 2004.
[49] SC Elections Commission, *Election Report 2004*, 143-144.
[50] Act 371 of 1967.
[51] This history is set forth in *Quiet Revolution*, 208-209, and *Blanding v. DuBose*, 454 US 393 (1982).
[52] 509 F.Supp. 1334 (D.S.C., 1981).
[53] , 596 F.Supp. 35, 37 (DDC, 1984).

Sumter County…" or "that the at-large system was not maintained after 1967 for racially discriminatory purposes and with racially discriminatory effect."[54]

From 1984, elections for Sumter County have been held from single-member districts. In 2001, Sumter County was 47 percent black and 49 percent non-Hispanic white. African Americans made up three of the county's seven council members. District 7, which had been a barely white majority district when drawn in the 1990s and was represented by a white council member, had become increasingly African-American as a result of demographic changes. The benchmark plan for Sumter County council showed four heavily black majority districts, including District 7, which had a nearly 59 percent black voting age population. The district was not malapportioned and could have remained unchanged.

The county adopted and submitted to the Department of Justice for preclearance a plan that included only three districts in which African-American citizens would be able to elect candidates of choice. District 7 had been drawn to reduce its black voting age population from 59 percent to 49 percent black. The Justice Department objected to the plan on June 27, 2002, finding that because of a pattern of racially polarized voting in the district "under the proposed plan, the black candidate of choice would lose, or at best win by an extremely narrow margin." The plan was retrogressive.[55]

Over the next several months, the council made numerous attempts to agree on a new plan in a racially charged atmosphere. White members pushed for a variant of a 3-3-1 plan not significantly different from the plan rejected by the Department of Justice.

In an editorial, the Sumter *Daily Item*'s Robbie Evans wrote: "The very fact that voting lines must be determined by race is inherently an insult to every Sumter resident who queues up at a polling place each November. What it states, bluntly, is that 200 years after Abraham Lincoln, we, blacks and whites, still are unable to see past the color of a candidate's skin."[56]

At a public hearing, a white council member declared: "This is about black power." Another white council member moved to challenge Section 5 "all the way to the Supreme Court" because it was an imperative to defend the rights of Asian (0.9 percent of the population) and Hispanic (1.8 percent of the population) minorities who would get no district.[57]

Nearly a year later, the council still had not adopted a plan. At a November 11, 2003, meeting, a white member of the council, Carol Burr, demanded the removal of African-American citizens Carl Holmes and Eugene Baten, who were silently holding signs saying "Don't reduce the Black Vote" and "Respect the Voting Rights Act." Burr stormed from the meeting after the council chair, on advice of counsel, allowed the citizens to remain. Another white member left before Baten told the council: "All that I ask is that the plan you pass is legal." White member Charles Eden said: "I'm tired of hearing what he has to say. I've heard it a hundred times."[58]

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[54] *Sumter County* 596 F.Supp. at 38.
[55] Letter, Assistant General Ralph F. Boyd, Jr., to Sumter County Council Chair Charles T. Edens, June 27, 2002.
[56] Robbie Evans, "Council Reaches Distasteful Racial 'Compromise,' Sumter *Daily Item* (October 16, 2003), 6A.
[57] Author John Ruoff was present at the December 10, 2002, meeting.
[58] Braden Bunch, "Redistricting Compromise Implodes," Sumter *Daily Item* (November 12, 2003).

Two weeks later, on November 25, 2003, the Sumter County Council finally adopted a new redistricting plan with a 55 percent black voting age population in District 7. Under that plan, to which the Attorney General did not object, Eugene Baten was elected to represent District 7.[59]

3. Union County Board of School Trustees

Union County came to national attention in 1994 when a young white woman, Susan Smith, murdered her two children and attempted to deflect law enforcement attention by playing on racial stereotypes, claiming that her car, with the children in it, had been carjacked by "a black male in his late 20s to early 30s, wearing a plaid shirt, jeans and a toboggan-type hat."[60]

Following the 2000 Census, the county's black citizens faced two attacks on their ability to elect candidates of their choice. In 2002, the General Assembly passed Act 462 of 2002, which redistricted the Board of Trustees of the Union County School District. Union County School District is coextensive with the county. The county is a rural, upstate county with a 2002 Census population of only 29,881 of whom 31 percent are black according to the 2000 Census. The district's nine trustees were elected on staggered terms from single-member districts in nonpartisan elections. Two of those districts in 2002 had African-American majorities and were represented by African-American candidates of choice.

As the Department of Justice noted in objecting to the plan:

> Also revealing is the fact that, in contrast to the process which led to the 1989 benchmark plan, the proposed plan here was developed without any formal public hearings in the county, and without any opportunity for black members of the local board of trustees and the local black community to voice what we understand to be considerable concerns regarding the plan, resulting in an atmosphere of secrecy. [61]

Indeed, "[t]he School Board in Union County found out that this Bill had been introduced and adopted when the chairman of the board saw a little article in the newspaper that said that Representative Fleming was going to meet with the Town Council Members from Jonesville, which is a small town in Union County, to discuss with them the school board redistricting lines."[62]

District 1 had a 60 percent black voting age population and District 7 had a 68 percent black voting age population in the benchmark plan. The black proportion of the voting age population, due to voter participation levels in District 7, especially, could not be significantly reduced from the benchmarks without impairing the ability of African-American citizens to elect candidates of

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[59] Sumter County Council Members, http://www.sumtercountysc.org/council.htm.
[60] The story can be traced in the nearby Spartanburg Herald-Journal, *Nine Days in Union* at http://www.teleplex.net/shj/smith/ninedays/ninedays.html.
[61] Letter, Asst. US Atty. Gen'l. Ralph F. Boyd to Sr. Asst. S.C. Atty. Gen'l. C. Havird Jones, September 3, 2002.
[62] Sen. Linda Short, *Journal of the South Carolina Senate*, February 7, 2002. The transcript of the debate on H. 4351 is in the web version (http://www.scstatehouse.net/sess114_2001-2002/sj02/20020207.htm) but not the printed version of the journal for that day.

their choice.[63] Act 462 had black voting age populations of 56 percent and 61 percent in Districts 1 and 7. An alternative plan prepared at the request of the Board of Trustees and offered as an amendment during the Senate debate "avoided significant reductions in black voting strength while adhering substantially to the State's redistricting goals as presented in [the state's] submission."[64] Despite "repeated requests," the state failed to provide "further information concerning black and white candidates."[65]

Act 164 of 2003 enacted a plan substantially the same as the alternative offered during the senate debate in 2002.[66] The Department of Justice did not object to it. The Union County School District Board of Trustees has two African-American members in 2006.[67]

While dealing with the effort to reduce black voting strength in majority black school districts, the Union black community was also confronted with a challenge to one of the two majority black county council districts. In the year 2000, Union County redistricted its council districts. That plan maintained two African-American majority districts, District 2 and 5. District 2 had in both the 1990 and 2000 redistricting split the town of Jonesville, a place with 982 people of whom 322 were black. Private white plaintiffs filed a challenge on April 6, 2002, to District 2 alleging that the split of Jonesville was unconstitutional because race predominated in the drawing of the district.[68]

On December 30, 2003, a Consent Order and Agreement was filed which settled the case. That Consent Order and Agreement found "that there is statistically significant racial bloc voting in Union County and specifically in Districts 2 and 5.... [T]his racial bloc voting leads to the white voting majority in Union County being able to defeat the African American candidate of choice."[69]

The plaintiffs, defendants and defendant-intervenors, the Union County Branch of the NAACP and black voters, agreed to a new map that made very small changes to District 2 by removing 128 people in Jonesville from District 2.

4. Cherokee County School District No. 1

In 2002, the South Carolina General Assembly adopted Act 416 of 2002 which, among other provisions, decreased the number of members of the Board of Trustees from nine to seven.

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[63] See Expert Report of John C. Ruoff, Ph.D., Regarding Racial Dimensions Of Elections And Voting In Union County, South Carolina Elections For Defendant Intervenors Keenan et al. (January 23, 2003) in *Rodgers v. Union County, C.A. No. 7:02-1390-MBS (D.S.C., filed April 26, 2002).* .

[64] *Id.* The Board of Trustees requested of Senator Linda Short: "The board would like this plan developed by the Office of Research and Statistics in consultation with Dr. John Ruoff of the NAACP. This plan should include all criteria required by the Justice Department and the Voting Rights Act."

[65] Boyd to Jones, 2.

[66] A private citizen brought litigation seeking to enjoin elections under the1990s plan as that plan was malapportioned. *Sanders v. Vanderford*, C.A. No. 7:02-4076-20 (D.S.C., 2002). That suit was dismissed after the new plan was passed and precleared. Order of Dismissal, *Sanders v. Vanderford* (October 6, 2003).

[67] Union County Board of School Trustees, http://www.union.k12.sc.us/District/School%20Board/Board.html.

[68] *Rodgers v. Union County, South Carolina*, C.A. No. 7:02-1390-MBS (D.S.C., filed April 26, 2002).

[69] *Union County* (D.S.C., Consent Order and Agreement, December 30, 2003).

The benchmark plan for Cherokee County School District No. 1 had been developed in 1993 after African-American citizens had sued the school district under Section 5 to enjoin an unprecleared plan.[70] Two of the nine districts had African-American majorities and African-American incumbents.

Under a seven member plan, black citizens in the 21 percent black district would likely only be able to elect one candidate of their choice. The district maintained in its submission that a "viable cross-over phenomenon" in the 36 percent black voting age population District 4 created an opportunity for black voters to elect a candidate of their choice. However, the Department of Justice concluded that even in the unlikely event that that phenomenon might benefit the black incumbent—as was urged by local officials—it was unclear that another candidate of choice of black voters would benefit from it. Any seven-member configuration would have this retrogressive effect.[71]

As noted in the attorney general's letter, the local NAACP branch had presented a nine member plan without retrogressive effect to Rep. Olin Phillips, chair of the legislative delegation, at a May 2002 meeting. The majority of the school board supported a nine member plan.

5. Richland-Lexington School District 5 (Richland and Lexington counties)

In 2004, the General Assembly adopted Act 326 of 2002, implementing changes to the method of election in Richland-Lexington School District 5.[72] Prior to 2004, trustees were elected to staggered, four-year terms. Five were elected from Lexington County and two from Richland County. Contests are at-large within each county. Act 326 moved one seat from Lexington to Richland County to account for population changes. In addition, it created numbered posts and a new majority vote requirement.

The district's voting age population was 14 percent black according to the 2000 Census. The minority population has been growing rapidly, particularly in Richland County. No black person had been elected to the Richland-Lexington School District 5 Board of Trustees since 1992. According to Department of Justice analyses, the winner in 1992, Sherman Anderson, would have been defeated under a majority vote requirement. In addition, with an additional third seat, Anderson, the African-American preferred incumbent, would have been elected as one of the top two vote-getters in Richland County in 1996—absent the new numbered post system and majority vote requirements.[73]

Race was not part of the discussion when Act 326 of 2002 was under consideration. Black citizens were simply ignored. However, with growing African-American population on the

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[70] *South Carolina State Conference NAACP v. Cherokee County School District No. 1,* C.A. No. 7:92-cv-02948-GRA (D.S.C., 1992).

[71] Letter, Asst. US Atty. Gen'l. Ralph F. Boyd, Jr., to Sr. Asst. SC Atty. Gen'l. C. Havird Jones, Jr., June 16, 2003.

[72] This legislation is entitled "Richland County School Districts Property Tax Relief Act" and covers, in addition to school board elections and property tax relief, membership on the local Airport Commission and the technical school commission.

[73] Letter, Asst. US Atty. Gen'l. R. Alexander Acosta to Sr. Asst. SC Atty. Gen'l. C. Havird Jones, Jr., June 25, 2004. The Attorney General did not object to the move of one member from Lexington to Richland County.

Richland County side of the district, the possibility of black voters electing candidates of choice increases. In Richland-Lexington 5, three minority candidates ran unsuccessfully for the two seats available in 2002. No minority candidates campaigned for the single seat up in 2004.[74] Absent the Section 5 objection, black voters in Richland-Lexington School District 5 would be even further from electing candidates of their choice in the face of racially polarized voting.

6. City of Greer (Greenville and Spartanburg Counties)

Greer, which sits astride the county line between Greenville and Spartanburg counties, had seen the location of a BMW assembly plant and other development since the 1990 Census. In that period, the city had grown from a population of 10,322, of whom 2,728 (26.4 percent) were non-Hispanic black and 80 (0.8 percent) Hispanic to 16,843, of whom 19.7 percent are black and 8.2 percent are Hispanic, according to the 2000 Census. As the mayor notes: "Greer continues to be one of the fastest growing cities in the state."[75] Although Greer had two African-American representatives prior to 2000, "it is no longer feasible to devise a redistricting plan, which complies with one-person, one-vote standards, and which contains two districts in which minority voters can elect candidates of choice."[76]

The city preferred a plan that protected white incumbents and split historic communities of interest. While arguing that the *Shaw v. Reno* line of cases precluded drawing the district preferred by black citizens, the city drew a minority district that was less compact. That district was not a district in which African-American citizens were likely to elect a candidate of their choice. The Department of Justice found Greer officials "to have been more responsive to the concerns of white individuals than to concerns expressed by minority citizens." Thus, when a white incumbent was drawn out of his district and a white neighborhood split by the initial plan drawn by the state's redistricting office,[77] the city immediately responded to white citizen concerns by changing the lines. DOJ found that "the city has failed to meet its burden of establishing an absence of a purpose to retrogress minority voting strength in the adoption of the plan."

Today, after being forced to draw a redistricting plan that did not retrogress, the Greer City Council has one African-American member.[78]

7. City of Charleston (Charleston County)

In the 1990s, the City of Charleston's Council had six black members and six white members along with a white mayor. The city's population of 80,414 in the 1990 Census was 42 percent

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[74] See, Chuck Crumbo, "District 5 Board Plan on Hold," *The* (Columbia) *State* (May 16,2002), B3; Bill Robinson, "Minority Presence Strong in Board Races," *The* (Columbia) *State* (October 17, 2002), B1; S.C. Elections Commission, *Election Report 2002*, 324; S.C. Elections Commission, *Election Report 2004*, 304.
[75] Mayor and City Council, http://www.cityofgreer.org/Government/CityCouncil.aspx.
[76] Letter, Asst. US Atty. Gen'l. Ralph F. Boyd, Jr., to John B. Duggan, November 2, 2001.
[77] Nearly all redistricting plans for county, municipal and school districts in South Carolina are prepared by the Office of Research and Statistics of the state's Budget and Control Board. That office's Director, Bobby Bowers, has played a critical role over the years in reducing the number of objection letters in South Carolina by having prayer with elected officials over plans which would not pass muster with the Department of Justice.
[78] City of Greer, Mayor and City council, http://www.cityofgreer.org/Government/CityCouncil.aspx.

black. By the 2000 Census, that population had grown to 96,650, of whom 34 percent were black. Much of that growth was the product of annexations that stretched the city both north and south. The 1990 Census city was 43.24 square miles, compared to a 2000 Census city of 106.42 square miles. Much of that physical growth was on Daniel Island, north of the peninsular city in Berkeley County. However, only 1,156 persons lived there in 2000. In the future, that will change as substantial development is both ongoing and planned on Daniel Island. City planning documents in 2000 projected 658 percent growth on Daniel Island from 1990 to 2015.[79]

The benchmark plan for the city of Charleston still included six majority black districts, although only five with voting age population majorities. A proposed redistricting plan would include an unavoidable reduction in majority African-American districts. However, the city redrew its districts in a way that combined Districts 2 and 4 in revised nominally majority black District 4. DOJ conceded that District 4 might, in the next election, be a district in which black voters could elect a candidate of choice. However, the largely white growth on Daniel Island would change that "in a matter of only a few years." DOJ observed that "Section 5 looks not only to the present effects of changes but to their future effects as well."[80]

By drawing the developing areas of Daniel Island into District 1 with downtown Charleston,[81] the city was able to create a District 4 that is likely to remain a district in which African-American are likely to elect a candidate of their choice for many years. Charleston City Council in 2006 has five black members.[82]

8. City of Clinton (Laurens County)

Clinton, in Laurens County, South Carolina, had a population of 8,091 persons, according to the 2000 Census, 38 percent of whom were black. Three of six wards were wards in which African-American citizens had an opportunity to elect candidates of their choice—Wards 1, 2, and 3. In a series of four annexations from 1993 through 2001, the city added population that it designated to Ward 1, the city's only majority African-American ward. The addition of Lydia Mills to Ward 1 dropped that ward's minority population from 59.3 percent to 50.3 percent.[83]

The Attorney General expressed concern that preclearing the Lydia Mills annexation would establish:

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[79] City of Charleston, *Charleston Century V City Plan* (2000), 63, 65.

[80] *Bossier Parish*, 528 U.S. at 340, citing *City of Pleasant Grove v. United States*, 479 U.S. 462, 471 (1987). Letter, Acting Asst. US Atty. Gen'l. R. Alex Acosta to Francis I. Cantwell, October 12, 2001.

[81] There is no elegant way to draw city council districts joining Daniel Island and the Cainhoy Peninsula to the rest of the city. Daniel Island is separated from the remainder of the city by the Cooper River and has no roads directly connecting the two parts of the city. Contiguity between the two districts on Cainhoy Peninsula, Districts 4 and 1, with their Charleston peninsular parts are necessarily by water only.
http://www.ci.charleston.sc.us/shared/docs/0/overall_councilsb.pdf

[82] http://www.ci.charleston.sc.us/dept/content.aspx?nid=661

[83] Letter, Asst. US Atty. Gen'l. Ralph F. Boyd to City Manager C. Samuel Bennett, II, December 9, 2002. The city disputed 2000 Census numbers for Lydia Mills, claiming that it was both larger and blacker than the census figures. DOJ's letter notes: "... regardless of which data are used, the result of the proposed designation of the annexations to Ward 1 results in lowering the black voting age population in the ward to less than 50 percent."

> a benchmark plan of only two viable districts for minority voters against which any future redistricting plan would be measured. Although the city asserts that the annexations will not affect its goal of maintaining three districts with majority black populations when it does decide to redistrict, the city, under a non-retrogression standard, is free to devise a plan that does nothing more than replicate the plan that would be in effect following the annexations: three districts with a majority black total population, but only two in which black voters can elect a candidate of choice.

The benchmark plan used in redistricting in 2004 had exactly that conformation.[84] In 2006, the Clinton City Council has two African-American members.[85]

9. Town of North (Orangeburg County)

The Town of North, in Orangeburg County, South Carolina, in two annexations in 2002 sought to add two persons to the town that had a 2000 Census population of 813 of whom 377 (46 percent) were black. Both persons in these annexations were white, perpetuating a practice that "white petitioners [for annexation] have no difficulty in annexing their property to town. In fact, they received help and assistance from town officials." Black citizens seeking annexation, however, received little or no help in annexing. Indeed, often city officials simply "fail to respond to their requests, whether formal or informal...." One of those proposed annexations in the early 1990s would have given the town a black majority. Apparently, the town simply ignored the request.

North not only ignored black petitioners, it failed to respond fully to the Department of Justice's requests for additional information and follow-up questions. Current and former town officials declined to speak to the department about these matters. The town made no effort to rebut departmental findings that North had made "racially selective annexations" and "failed to provide equal access to the annexation process" and that "race appears to be an overriding factor in how the town responds to annexation requests."[86]

These objections since 2000 demonstrate the continued need for Section 5 and its vigorous enforcement. Absence of Section 5 review of the General Assembly's efforts to impose a racially discriminatory election system for Charleston County, school trustees would have imposed on Charleston's black citizens the obligation to mount costly Section 2 litigation to challenge an electoral system that the district court had just found discriminatory. In the city of Charleston, African-American citizens would have forseeably and avoidably seen a district in which black citizens could elect candidates of their choice quickly change to one in which they could not. In Sumter County, the county council could have deprived black citizens of the ability to elect a candidate of their choice in District 7, protecting a white incumbent and continuing a thirty-year pattern of opposing full voting rights for Sumter's African-American citizens. In

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[84] E-mail, Wayne Gilbert, SC Office of Research and Statistics, to John C. Ruoff, September 1, 2004, containing the updated benchmark plan including annexations. The annexed area of Lydia Mill is included in Ward 1 of the benchmark plan.

[85] http://clintonsouthcarolina.homestead.com/CityCouncil.html. Apparently the Department of Justice did not object to the redistricting submitted on January 28, 2005 (Submission 2005-0273).

[86] Letter, Acting Asst. US Atty. Gen'l. R. Alex Acosta to Mayor H. Bruce Buckheister, September 16, 2003.

Union County, a local state representative could have imposed on the school board a redistricting plan that made it much less likely African-American citizens would continue to be able to elect two candidates of their choice to the Board of Trustees. In Greer, in order to protect a white incumbent and cater to white citizens' demands, African-American citizens would have been deprived of the ability to elect even one candidate of their choice to the city council. In Richland County, imposition of majority vote requirements would have put off the day that a growing black population would be able to elect a candidate of its choice to the Richland-Lexington School District 5 Board of Trustees. In North, white city officials would have continued admitting white citizens, while excluding their black neighbors from annexing and participating in town elections.

In some of these instances, costly and time-consuming Section 2 actions could have been brought to repair these discriminatory actions. Those costs go to both plaintiffs and defendants. In the Charleston County case, for example, the county's costs alone to defend its discriminatory system were $2 million.[87]

In the meantime, those discriminatory systems would have been implemented. In Richland-Lexington School District 5, where a majority African-American district cannot yet be drawn, a Section 2 challenge employing the *Gingles* factors would have failed while possible success under the at-large system would have been denied.

And the number of discriminatory changes by legislative, school, municipal, and county officials, facing only the vague threat of lawsuits whose outcomes would have no impact for years, and without DOJ review or letters of objection would increase dramatically.

As the Supreme Court noted in *Katzenbach*:

> Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration.[88]

B. Statewide Redistricting

1. South Carolina Senate

The South Carolina Senate was all-white when the Voting Rights Act passed and remained so through the 1982 renewal. The first black senator in the 20th century, I. DeQuincey Newman, was elected in a special election late in 1983.

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[87] *Charleston County*, C.A. No. 2:01-0155-23 (D.S.C., Order, August 8, 2005), fn. 26.
[88] *Katzenbach*, 383 U.S. at 314.

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The history of Section 5 is inextricably linked with redistricting for the South Carolina General Assembly. The first two objections by the Attorney General to changes in South Carolina came in 1972 and 1973 in reaction to redistricting of the all-white South Carolina Senate as that body rejected single-member districts in favor of white majority multi-member districts, numbered posts, and majority vote requirements.[89] In the end, when the Supreme Court ruled the 1973 objection untimely, those discriminatory features stood through the 1970s until 1984.

When the all-white Senate attempted redistricting in 1983, it sought a Section 5 declaratory judgment that Act 257 of 1983 complied with Section 5. That Act created 46 single-member districts for the Senate, splitting counties for the first time. While that declaratory judgment action was pending, the General Assembly sought to proceed as if Act 257 would be cleared by establishing a primary election schedule and opening filing. On March 20, 1984, the Department of Justice objected to that procedure. The D.C. District Court also declared those candidate filings null and void and enjoined the State from taking any further action pursuant to Act 257 until the Act received preclearance.[90]

While that action was pending, private litigants brought an action in the district court in South Carolina, asking that court to impose a plan for Senate elections in 1984. The Senate, through Act 513 of 1984, replaced an interim plan issued by the South Carolina district court in *Graham v. South Carolina*,[91] which had created 46 single-member districts.[92]

That Act 513 plan included 10 majority black districts of which 7 had black majority voting age populations.[93] Four black senators were immediately elected under the 1984 plan (Districts 7, 19, 39 and 42). A fifth joined them in 1985 (District 30) and a 6th in a special election in 1990 (45).

Following the 1990 Census, the General Assembly passed legislation redistricting the South Carolina Senate (S. 1003, R. 258 of 1992) and the South Carolina House of Representatives (H. 3834, R. 259 of 1992). Governor Carroll A. Campbell vetoed both bills observing:

> Upon reviewing the objection letters from the United States Department of Justice concerning certain reapportionment plans in New York, Virginia, Georgia, North

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[89] The objections to Act 932 of 1971 were mooted when the South Carolina District Court rejected Fifteenth Amendment arguments but declared that plan unconstitutional on Fourteenth Amendment malapportionment grounds. *Twiggs v. West*, Civ. No. 71-1106 (SC, Apr. 7, 1972). The July 20, 1973, objection to Act 1205 of 1972 was ruled untimely in *Morris v. Gressette*, 432 U.S. 491 (1977). The South Carolina District Court had ruled Act 1205 constitutional. *Twiggs v. West* (May 23, 1972), *affirmed Powell v. West*, 413 U.S. 901 (1973). The attorney general deferred to that ruling until the District Court for the District of Columbia directed him to review Act 1205 under Section 5 notwithstanding the South Carolina District Court's ruling in *Twiggs v. West*. *Harper v. Kleindienst*, 362 F. Supp. 742, 746 (1973), *affirmed Harper v. Levi*, 171 U.S. App. D.C. 321, 520 F.2d 53 (1975).

[90] *South Carolina v. United States*, 585 F.Supp. 418 (D.D.C., 1984), *appeal dismissed*, 469 U.S. 875 (1984).

[91] Civil Action No. 3:84-1430-15 (D.S.C., June 13, 1984).

[92] *Able v. Wilkins, Smith v. Beasley*, 946 F.Supp. 1174, 1177-78 (D.S.C. 1996), discusses the history of redistricting of the South Carolina General Assembly. This discussion follows that history.

[93] "South Carolina Senatorial Districts, Senate Act 513, August 8, 1984," *South Carolina Statistical Abstract, 1985*, at 153.

> Carolina, Texas and Louisiana, I am convinced that the Justice Department would not preclear this plan as provided under Section 5 of the Voting Rights Act. [94]

After both bodies sustained Governor Campbell's vetoes, redistricting returned to the district court for trial and imposition of an interim plan. The *Burton* Court in 1992 issued a Senate plan that included 11 African-American majority population districts, 10 with black voting age population majorities.[95] Seven black senators were elected under that plan, although in a special election in 1995, a white candidate replaced African-American Senator Theo Mitchell in Senate District 7 in Greenville County.

The U.S. Supreme Court vacated *Burton* in 1993. Facing no elections in 1994, the Senate delayed reapportionment on remand until after the House of Representatives submitted a redistricting plan. The Department of Justice denied preclearance to the initial House plan, resulting in a significantly changed plan passed by a coalition of the House Republicans and the Legislative Black Caucus. In describing Senate thinking on redistricting in 1995, Speaker *pro Tempore* and Judiciary Committee Chair Glenn McConnell testified later: "The Senate decided to take a noncombative posture in dealing with the Department of Justice. We had found it better and cheaper to cooperate and to get clearance ... we were familiar with what happened to the House and we wanted preclearance."[96]

In 1995, the South Carolina Senate adopted a new districting plan (Act 49 of 1995), which created additional districts with African-American voting age population majorities in Districts 29 and 37. DeWitt Williams, an African-American house member, joined the Senate in 1996, bringing the total number of African-American senators to 7.

In 1996, in *Smith v. Beasley,* Districts 29, 34 and 37 of that plan were found unconstitutional in that race had predominated over traditional districting principles in their drawing. In 1997, the Senate adopted a new plan (Act 1 of 1997), which no longer included African-American majorities in Districts 29 and 37. In objecting to preclearance of the revised District 37, the Department of Justice noted "there were choices available to the state that would substantially address the *Smith* court's constitutional concerns and not significantly diminish black voting strength in neighboring senate districts."[97]

When the Senate failed to pass a new plan, the *Smith* court adopted the bulk of Act 1, but crafted new districts in Districts 37 and the adjoining Districts 34, 37, 38 and 44. In its order, the court strongly rejected the Department's reliance on a benchmark that used the "unconstitutional plan embodied in Act No. 49 (1995) 'modified to address the constitutional infirmities in that plan

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[94] Veto Letter, Governor Carroll A. Campbell, Jr., to President of the Senate Nick A. Theodore, January 29, 1992, published *Journal of the South Carolina Senate* (January 30, 1992) and Veto Letter, Governor Carroll A. Campbell, Jr., to Speaker of the House of Representative Robert J. Sheheen, January 29, 1992, published *Journal of the South Carolina House of Representatives* (January 30, 1992).

[95] *Burton v. Sheheen*, 793 F. Supp 1329 (D.S.C., 1992), *vacated sub nom. Statewide Reapportionment Comm. v. Theodore, 508 U.S. 968* (1993), and *Campbell v. Theodore*, 508 U.S. 968 (1993).

[96] *Smith,* 946 F.Supp. at 1201.

[97] Letter, Acting Asst. US Atty. Gen'l. Isabelle Katz Pinzler to President Pro Tempore South Carolina Senate John W. Drummond (April 1, 1997).

identified by the court.'"[98] The *Smith* court, instead, relied on the 1984 Senate plan, the "last plan that was legally adopted by the General Assembly that has not been set aside by the court or superseded by action of the General Assembly that has not been altered by the court."[99]

DOJ had objected to the Senate plan on Section 2 grounds, as well, prior to the Supreme Court's 1997 decision in *Bossier Parish* limiting Section 5 preclearance to retrogression review.

Special elections were held for the South Carolina Senate in 1997. Senator DeWitt Williams was defeated in the now 45.8 percent black voting age population district with 5,280 votes to his white opponent's 5,793 votes.[100]

After the 2000 Census, redistricting for the Senate also ended up before a three-judge panel when the General Assembly was unable to pass a plan after Governor Jim Hodges vetoed H. 3003 on "The Governor's stated reason for vetoing the legislatively passed redistricting plan centered on the claim that the House and Senate plans should have created more so-called minority "influence districts," defined by the Governor as districts with a black voting age population ("BVAP") of between 25 percent and 50 percent, and a claim that the Congressional Plan unnecessarily split several counties within the state."[101]

In reviewing plans proposed by the parties to statewide redistricting in 2002, the court took special note that the governor and the legislature "have proposed plans that are primarily driven by policy choices designed to effect their particular partisan goals And, in many cases, the choices appear to be reflective of little more than an individual legislator's desire to strengthen his or her ability to be re-elected to the seat in question."[102]

The court engaged in a searching analysis of racial polarization, black political cohesiveness, and white bloc voting, concluding:

> This evidence overwhelmingly demonstrates that the first two *Gingles* factors, necessary for the creation of majority-black legislative and congressional districts in areas where minorities are sufficiently large and geographically compact to constitute a majority in a single-member district, are present statewide. Minority voters are generally politically cohesive to a very high degree and, as a rule, the majority usually votes sufficiently as a bloc to defeat the minority's preferred candidate. *See Gingles,* 478 U.S. at 51, 106 S.Ct. 2752. Thus, we can and should consider race in each of our redistricting plans to ensure that they do not have the unintended effect of diluting the voting strength of a reasonably compact, majority-minority population. *Id.,* at 642.

The remedial plan drawn by the district court included 11 districts with majority African-American population and 10 with majority African-American voting age populations. Those

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[98] *Smith v. Beasley,* C.A. No. 3:95-3235-0 (D.S.C., May 28, 1997) at 4-5.
[99] *Id.* at 13.
[100] *South Carolina Election Commission Reports, 1997 & 1998, 376.*
[101] *Colleton County Council,* 201 F.Supp.2d at 624.
[102] *Id.,* at 628-629.

figures do not include the barely under 50 percent District 7 in Greenville County which has consistently elected African-American candidates of choice.

In 2003, the Senate redrew those lines to adjust the court's plan. Act 55 of 2003 included 12 districts with African-American population majorities and 10 with majority African-American voting age populations. District 7 was increased to 50 percent black population. In addition, District 29, which the Court had reduced to 43 percent black population, was redrawn to bring back in historic constituencies, increasing its African-American proportions to 48 percent black population and 45 percent black voting age population after African-American candidate Gerald Malloy was elected to represent Senate District 29 in a special election in November 2002 using the 1997 lines.[103]

2. House of Representatives

The House of Representatives was integrated a decade before the Senate. Even so, redistricting in the House was marked by Department of Justice objections to its reapportionment plans in 1974, 1981, and 1994.

The House of Representatives in the 1970s fought a delaying action. Although three African-Americans were elected to the House in 1970, the reapportionment following the 1970 Census saw the drawing of a plan which employed multimember districts and a full-slate requirement.[104] Black voters challenged the plan, which was ruled unconstitutional because of the full-slate requirement in *Stevenson v. West*.[105]

The South Carolina General Assembly replaced that plan with another multi-member district plan (Act 1204 of 1972), with numbered posts replacing the full slate law as an impediment to black voters choosing candidates of their choice. The Department of Justice objected to that change on February 14, 1974. Elections for 1972 proceeded under the multi-member plan without the full-slate provisions.

The Supreme Court in 1973 summarily reversed the decision of the *Stevenson* court approving multi-member districts. The General Assembly again redistricted in time for the 1974 elections with single-member districts. The number of African-American House members increased from four in 1974 to thirteen in 1975.[106]

In 1981, the General Assembly passed a new districting plan to which the Department of Justice objected. The Department objected to the fragmentation and dilution of black voting strength in Florence County, Richland County, Lee County, Allendale-Bamberg-Barnwell Counties, and Jasper-Beaufort Counties where "alternate proposals were presented which would have avoided

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[103] After issuing its order in *Colleton County*, the District Court appended an Order of Clarification which authorized the use of pre-*Colleton County* lines for special elections in November 2002. *Colleton County Council*, 201 F.Supp.2d at 669-671.
[104] This discussion of the 1970s follows *Quiet Revolution*, 204-205. Under a full-slate requirement, voters are required to cast a ballot for every office.
[105] C.A. No. 72-45 (D.S.C., 1972), *rev'd and remand, Stevenson v. West*, 413 U.S. 902 (1973).
[106] *South Carolina Legislative Manual*, 1974 and 1975.

the fragmentation and dilution of minority voting strength in each of the referenced areas."[107] The General Assembly addressed those areas in Act 312 of 1982. That plan had 26 districts with black population majorities.

In the 1990s, Section 5 review played a key role in expanding the number of House districts in which African-American voters were able to elect candidates of their choice. The General Assembly passed reapportionment legislation in 1992, but was unable to override the veto of Governor Carroll A. Campbell, Jr. In vetoing the House's plan, Campbell argued that the plan would not receive Department of Justice preclearance because it: "...fail[ed] to create additional minority districts"; "reduce[ed] minority populations in existing minority districts"; and "[f]ractur[ed] ... minority populations to benefit white incumbents at the expense of the creation of electable minority districts." Campbell pointed to seven additional minority districts that could be drawn.[108]

Unable to pass a plan, the parties ended up before the *Burton* Court in 1992. That court issued an interim plan that included 27 African-American majority population districts; however only 22 had black voting age population majorities.[109] Elections held under the *Burton* plan in 1992 had produced 18 African-American House members. In 1993, the U.S. Supreme Court vacated *Burton,* pointing to the Solicitor General's brief on appeal. The *Smith* Court summarized that brief:

> The Solicitor General's brief in *Burton* argued that the district court had not given adequate consideration to the requirements of section 2 of the Voting Rights Act in imposing its redistricting plan. The Solicitor General argued that the district court erred in viewing the litigation as arising under section 5 of the Act, which covers preclearance, instead of section 2 of the Act. According to the Solicitor General, because the *Burton* plaintiffs alleged that the existing election districts violated both section 2 and the United States Constitution, the court was required to ensure that any plan it adopted complied in all respects with section 2. The Solicitor General also argued that the court refused to resolve the issue of racially polarized voting and did not respond adequately to the question of whether additional compact and contiguous districts with black majorities could and should have been created in disputed areas to avoid dilution in voting strength in violation of section 2. In addition, the Solicitor General contended there was no basis for the court's finding that any district in which blacks constitute more than 50 percent of the voting age population may be considered a "black opportunity district." Finally, the Solicitor General also contended that the *Burton* court appeared to have given undue deference to "state policy" in formulating its plans with primary emphasis on preserving county and precinct lines. *Smith.*[110]

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[107] Act 173 of 1981; Objection Letter, November 18, 1981. The Department withdrew its objection to the districts in the Allendale, Bamberg and Barnwell areas on February 25, 1982.
[108] Veto Letter, Governor Carroll A. Campbell, Jr., to Speaker of the House of Representative Robert J. Sheheen, January 29, 1992, published *Journal of the South Carolina House of Representatives* (January 30, 1992).
[109] John Ruoff, testifying on behalf of the Statewide Advisory Reapportionment Committee, had offered a plan to the Burton court which included 32 effective majority-minority House districts.
[110] 946 F.Supp. at 1181.

The *Burton* Court held off issuing a new plan, giving the General Assembly an opportunity to craft its own districts. The House of Representatives in 1994 substantially recreated the *Burton* plan in Act 284 of 1994. An amendment proposed in the House Judiciary Committee, the Legislative Black Caucus's Plan A would have increased the number of districts with African-American voting age majorities to 32, but that plan was rejected. Rather than veto the House plan, Governor Campbell let it become law without his signature in order to allow it to get to the Department of Justice for review. *Smith.*[111]

On May 2, 1994, Assistant Attorney General Deval L. Patrick wrote Speaker Robert J. Sheheen to communicate the Attorney General's objection to H. 4333. In that letter, Patrick noted that "legislative elections throughout the state are characterized by a pattern of racially polarized voting." Further, "[a]ll [18 black House members] were elected in districts where blacks constitute a majority of the voting age population (excluding military residents), who generally do not participate in local elections), and 14 of the 18 were elected in districts where blacks constitute over 55 percent of the voting age population." Patrick's letter pointed to nine "specific areas of the state where the state's concern for incumbency protection, and disregard for black electoral opportunity, yielded districting configurations that do not satisfy the Section 5 purpose and effect test."

Early in the morning on May 11, 1994, following a long day of procedural maneuvers, a coalition of Republicans and the Legislative Black Caucus forced a late-night agreement to recall H. 4349 from the Judiciary Committee.[112] On May 12, Amendment 2, co-sponsored by House Minority Leader Howell Clyborne and Legislative Black Caucus redistricting leader Don Beatty formed the base of what became Act 477 of 1994. That plan, mirroring the arguments of the Department of Justice, included nine new African-American majority districts. On May 31, 1994, one day before the *Burton* Court's deadline, the Department advised Speaker Sheheen that the Attorney General did not object to the redistricting plan.

Elections held under Act 477 in 1996 produced 25 African-American members of the South Carolina House of Representatives. However, a constitutional challenge to those nine new districts under newly developed *Shaw/Miller* theories had already been brought in *Able v. Wilkins.*[113] The opinion in that case, which had been combined with *Smith v. Beasley,*[114] contained a detailed and scathing review of the Justice Department's role in passage of those plans. The court concluded: "The evidence is overwhelming that race was the predominant factor in drawing House districts 12, 54, 82, 91, 103, and 121. Race predominated to such an extent as to obliterate any other factor."[115]

In 1997, the House redistricted (Act 1 of 1997) to cure the constitutional defects in the 1994 plan.[116] That plan still included 32 majority black population districts, including all six of the districts found unconstitutional by the Court. Twenty-nine of those districts included African-

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[111] 946 F.Supp. at 1181.
[112] *Journal of the South Carolina House of Representatives* (May 10, 1994).
[113] C.A. No. 3:96-0003-O (D.S.C., 1996).
[114] C.A. No. 3:95-3235-O (D.S.C., 1996).
[115] *Smith,* 946 F.Supp. at 1193.
[116] The plaintiffs in *Able v. Wilkins* challenged the redraws of Districts 12 and 121. In an April 28, 1997, Order, the court found those districts constitutional.

American voting age population majorities when adjusted for military populations. In special elections held in 1997, only the black incumbent in District 12, Anne Parks, lost in a very close contest in a district which had a 51 percent black population and a 48 percent black voting age population.[117] Representative Parks retook the seat in 1998 and represents District 12 in 2006. All of the districts successfully challenged in *Able v. Wilkins* are represented in 2006 by African-American legislators except District 54 which is still served by white Rep. Douglas Jennings.

Redistricting following the 2000 Census started on a similar path. The General Assembly was unable to pass legislation because of a gubernatorial veto,[118] a federal court redistricted the state[119] and the General Assembly adjusted the court plan in later legislation which largely provided greater incumbency protection in affected districts.[120] The *Colleton County* Court plan included 31 districts with majority black population and 28 with majority black voting age population.

When the Justice Department first objected to a redistricting plan in 1971, the South Carolina General Assembly had an all-white Senate elected from multi-member districts and a House of Representatives which had only just admitted its first three African-American elected in multi-member districts. The bulk of the objections entered by the Department of Justice to legislative reapportionment in South Carolina focused on vote dilution rather than retrogression. In 1971, it was nearly impossible to retrogress through reapportionment in South Carolina, although the House of Representatives' change to numbered posts when the full-slate law was found unconstitutional showed the lengths to which the General Assembly would go to impede black representation.

C. Jurisdictions with Repeated Objections

In addition to state legislative redistricting, several of these jurisdictions have attempted discriminatory changes more than once. Notably, objections from the Department of Justice and Section 2 litigation have gone hand-in-hand in many of these jurisdictions as officials, forced to single member districts, have attempted to make other changes to undermine or defeat those expansions of black representation. In others, a pattern of discriminatory practices has also led to Section 2 litigation.

1. Lancaster County School District

The General Assembly three times (Act 1622 of 1972; Act R 700 of 1976 and Act 601 of 1984) adopted staggered terms for the at-large county board of education and area school boards. In 1974, 1983, and 1984, the Department objected to this same device which "[a]s we indicated in our previous objections, the use of staggered terms in Lancaster County school board elections, where the at-large system is used and racial bloc voting seems to exist, limits the potential for

[117] Parks' loss, by 32 votes, was to Jennings McAbee who had represented the district since 1975 until being defeated by Parks in 1996. SC Elections Commission, *South Carolina Election Report 1997 & 1998*, 378-381.
[118] Veto Letter Gov. Jim Hodges to Speaker of the House of Representatives David H. Wilkins (August 30,2001) published *Journal of the South Carolina House of Representatives* (September 4, 2001). Hodges argued that the plan passed for the House (H. 3003, R. 165 of 2001) failed to create sufficient "influence" districts.
[119] *Colleton County Council*, 201 F.Supp.2d 618.
[120] Act 55 of 2003.

black voters to participate effectively in the electoral process by reducing the ability of those voters to use single-shot voting."[121] Finally, with Act 602 of 1984, staggered terms were taken off the books for Lancaster County school elections. Lancaster County now elects school board members from single member districts.

2. City of Lancaster (Lancaster County)

In 1976, the city of Lancaster adopted, among other changes, majority vote requirements for regular and contested elections. Those changes were submitted for preclearance on October 25, 1982. On December 27, 1982, William Bradford Reynolds, Assistant Attorney General, wrote the city's administrator objecting to majority vote requirements for contested elections on the same grounds that he had objected to majority vote requirements for regular elections on September 18, 1978.

In 1989, following settlement of Section 2 claims in *NAACP v. City of Lancaster*,[122] the city adopted a redistricting plan that changed a system of seven members, including the mayor, elected at large by plurality votes to a nine-member council, six elected from single member districts and three, including the mayor, elected at large by plurality vote in staggered terms. In objecting to the two additional members, DOJ noted that the additional districts appeared to have been added after it became clear that black citizens would have an opportunity to elect candidates of their choice in three of the six districts, creating a city council that mirrored the 41 percent African-American population. Further, DOJ observed that preserving seats for two white incumbents was a major consideration in the addition.

In 2006, three African-Americans serve on the seven member council.[123]

3. Richland County

In 1982, Richland County attempted to reduce its county council from eleven members to seven. The Department of Justice objected to this change because its analysis showed that black voters had then "an existing real opportunity for electing candidates of their choice to at least two of the eleven seats on the council. On the other hand, our analysis shows that, with one explainable exception, blacks have never won with a standing higher than fourth among the winning candidates."[124] A reduction in the number of positions on that council would reduce the likelihood of black political success to one in eleven. Richland County was 39 percent African-American in 1980.[125]

In 1986, the Richland County adopted an ordinance requiring an employee to resign his or her employment before running for political office. Black persons constituted approximately 31 percent of the employees of Richland County. DOJ objected to this change because it would "impact more heavily on the black potential candidates than on the white potential candidates…"

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[121] Letter Wm. Bradford Reynolds to C. Havird Jones, Jr., Esq., April 27, 1984 (84-3398).
[122] (D.S.C., 1989).
[123] http://www.lancastercitysc.com/Government_CityCouncil.aspx.
[124] Letter Wm. Bradford Reynolds to J. Lewis Cromer, Esq., January 12, 1983 (82-2662).
[125] *South Carolina Statistical Abstract 1985*, 329.

and "significantly affect black voters in Richland County because it limits the pool of potential candidates likely to be the candidates of choice of the black constituency."[126]

In 1988, Richland County Council adopted single member districts for county council in settlement of a Section 2 claim in *NAACP v. Richland County Council.*[127] In 2006, African-Americans occupy four of the eleven districts.[128]

4. Spartanburg County Board of Education

In 1991, the South Carolina Conference of Branches NAACP and private African-American plaintiffs brought a Section 2 action challenging at-large school board elections in Spartanburg County, South Carolina, for the countywide school board and for School Districts 5 and 7. That litigation was successfully settled with single member districts for the County Board of Education and School District 5 and a mixed system of single-member and multimember districts in District 7.[129]

In 1994, the Spartanburg County Board of Education began elections in single-member districts, three of which had African-American majorities. Prior to 1994, no black members served on the County Board of Education. The Spartanburg County School District had a 1990 Census population of 220,225, of whom 44,451 (20 percent) were black. The voting age population in the jurisdiction was 18 percent black according to the 1990 Census.[130]

Immediately, the Spartanburg Legislative Delegation moved to abolish the County Board of Education, passing Act No. 610 of 1994, devolving its duties on the separate school districts and to replace it with an Education Oversight Committee made up of the chairs of the seven school district boards of trustees. This was the second bill passed by the Legislative Delegation in 1994 to limit the power and authority of the newly single-member district board of education. Act 606 of 1994 required the board of education to exercise its authority to change school district boundaries only with the advice and consent of the legislative delegation.

On December 13, 1994, the Department of Justice objected to implementation of Act 610 of 1994, which effectively negated the plan precleared on August 15, 1994, under which "black voters will have an opportunity to elect two or three seats on the sixteen member body." The Justice Department concluded:

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[126] Letter Wm. Bradford Reynolds to C. Dennis Aughtry, Esq., September 23, 1988 (88-4728).
[127] (D.S.C., 1988).
[128] Richland County, County Council, http://www.richlandonline.com/departments/countycouncil/councilmembers.asp.
[129] *NAACP v. Spartanburg County Board of Education*, C.A. No. 7:91-03111 (D.S.C., 1991-1995). The challenge to the Board of Education was amended to include a malapportionment claim.
[130] Memo of John C. Ruoff, Ph.D., to William McBee Smith (Counsel to Spartanburg Board of Education) and Bruce Roberts, Nyisha Shakur and Michael Talley (Counsel to the NAACP and private plaintiffs), November 30, 1993, in possession of the author. The seven school districts that made up the jurisdiction of the Spartanburg County Board of Education are largely, but not completely coextensive with Spartanburg County. They include portions of Cherokee and Greenville Counties, but do not include a portion of Spartanburg County near Greer which is part of the Greenville County School District.

> The sequence of events surrounding the adoption of Act [610] also gives rise to an obvious inference of discriminatory purpose. Based on the information supplied by you and many others, we have not been persuaded that it is coincidental that the state abolished the county board only after a new method of election was in place that promised equal minority electoral opportunity, and replaced it with an appointed body on which minority voters will have little opportunity to influence appointments.[131]

Undeterred by the objection to dissolving the Spartenburg County Board of Education, the Legislative Delegation proceeded to strip it of its most significant power, fiscal control of the seven school districts. Act 189 of 1995 distributed the assets of the Spartenburg County Board of Education and provided fiscal autonomy, the ability to set their own budget and school tax rate, to the seven school districts.

The board of education was stripped of significant powers but "the county board retain[ed] substantial powers and duties (similar to those proposed for an appointed education oversight committee in 1994), although it will have a very limited budget with which to perform those duties." Thus, the Attorney General did not find that Act 189 was a voting change covered by the Voting Rights Act.

However, as the Department noted in objecting to Section 19.67 of Part 1B of Act 145 of 1995, the 1995-96 Fiscal Year Appropriations Act had allocated those funds directly to the seven school districts and prohibited any funds going to the County Board of Education. "It appears, therefore, that the change embodied in Section 19.67 affects voting because it results in the de facto elimination of the county board (at least for one year) within the meaning of the exception recognized by the Court in Presley. On this basis, we conclude that Section 19.67 is a voting change subject to review under Section 5."[132]

By 1999, however, the Spartanburg County Board of Education was abolished. Act 499 of 1998 established the Education Oversight Committee and devolved the functions of the Spartanburg County Board of Education on it. The Attorney General did not object to this act.

5. City of Barnwell

Barnwell, the county seat of Barnwell County, had a population that was 38 percent black, according to the 1980 Census. Despite repeated candidacies, no black person had been elected in the nine previous elections to the at large aldermanic body. In 1983, Barnwell moved to make election even more difficult by introducing staggered terms. Staggered terms in an at large system reduce the number of officials elected making it less likely that a candidate receiving fewer votes than the top vote getter will be elected. In addition, DOJ discovered an unprecleared majority vote requirement. When Barnwell submitted that change, DOJ affirmed its denial of preclearance of staggered terms and objected to the 1966 change to a majority vote

[131] Letter, Deval L. Patrick, Asst. US Atty. Gen'l. to Asst. SC Atty. Gen'l. C. Havird Jones, Jr., December 13, 1994.
[132] Letter, Deval L. Patrick, Asst. US Atty. Gen'l. to Asst. SC Atty. Gen'l. C. Havird Jones, Jr., November 20, 1995.

requirement.[133] The city of Barnwell simply ignored the Attorney Generals' objection and proceeded to hold elections under the unprecleared plans. DOJ went into the district court that enjoined unprecleared elections in 1986.[134]

In 1994, with the city's black population having increased from 38 percent to 43 percent, according to the 1990 Census, the city adopted a single-member districting plan for the six-council members, three of which had black majority voting age populations. For both the mayor and city council, the city attempted to reinstitute the same majority vote requirement to which DOJ had objected a decade before and elections that the district court had enjoined.

In making this change, "city officials did not seek the views of the minority community (*e.g.*, the city did not appoint minority persons to the study committee for the new method of election, which appears to have recommended the adoption of the majority vote requirement)." The city officials wanted to return things to their view of the status quo "prior to the Federal Court Order"—the unprecleared plan under which it had illegally operated from 1966 to 1986. The attorney general again objected to the majority vote requirement for mayor.[135]

Section 5 offers jurisdictions two paths on which to seek preclearance of voting changes: judicially by seeking a declaratory judgment from the District Court for the District of Columbia or administratively from the attorney general. Since 1972, only four times have South Carolina jurisdictions sought declaratory judgments under Section 5 from the District Court for the District of Columbia: Horry County (1977),[136] Colleton County (1981),[137] Sumter County,[138] and the South Carolina Senate.[139] Only Colleton County, which entered into a consent order creating single member districts, was granted preclearance through a declaratory judgment from the District Court for the District of Columbia.[140]

The vast majority of changes have been reviewed administratively, a process that greatly improves efficiency by saving both the jurisdiction and interested parties the significant expenditure of resources required to bring or defend a challenge to a voting practice. The $2 million spent by Charleston County to defend its discriminatory at-large scheme for elections to county council is only a token of the countless millions that South Carolina jurisdictions would have been required to spend defending the 120 objected-to changes reviewed here. In addition, although Section 5 preclearance by the attorney general does not bar litigation by other parties, that administrative clearance functions to reduce potential litigation on the thousands of changes which are precleared.

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[133] Letters, Asst. US Atty. Gen'l. Wm. Bradford Reynolds to Thomas M. Boulware, March 26, 1984; and Letter, Asst. US Atty. Gen'l. Wm. Bradford Reynolds to Asst. SC Atty. Gen'l. C. Havird Jones, Jr., August 31, 1984.
[134] *United States v. City of Barnwell* (D.S.C., 1984).
[135] Letter, Acting Asst. US Atty. Gen'l. Loretta King to Thomas M. Boulware, August 15, 1994.
[136] *Horry County*, 449 F. Supp 990.
[137] *Colleton County v. United States*, C.A. No. 81-2664 (D.D.C., consent order April 28, 1982).
[138] *County Council of Sumter County*, 596 F.Supp. 35.
[139] *South Carolina,* 585 F.Supp. 418.
[140] *Quiet Revolution*, 228.

Section 5 administrative review of proposed electoral changes by the attorney general importantly contributes to efficient resolution when changes are proposed while protecting the voting rights of minority citizens.

D. Other Section 5 Enforcement Litigation

When a covered jurisdiction attempts to implement a change that has not been precleared, either the United States or a private party can go into the district court to seek to enjoin implementation. In South Carolina, the United States and private parties have been forced to go to court to enjoin unprecleared changes in South Carolina elections under Section 5.

Those changes have included the 1966 creation of at large county council districts in Edgefield for which no preclearance was sought for nearly two decades; and unprecleared annexations in the town of Hemingway, which brought in white populations while excluding black population. Principally, however, they involved jurisdictions going forward to hold elections, sometimes under circumstances which particularly disadvantaged black voters, while redistricting plans or changes to the method of election had yet to be precleared.

1. Edgefield County Council — *McCain v. Lybrand*

Edgefield County, home to long-time U.S. Senator J. Strom Thurmond, was the focus of protracted litigation in an attempt to open the electoral system to the county's African-American citizens.[141] In litigation begun in 1974, private plaintiffs challenged the county's at-large system of electing county council. They were initially successful in their constitutional claim of vote discrimination, as District Court Judge Robert Chapman found "bloc voting by the whites on a scale that this court has never before observed."[142] *McCain v. Lybrand*, C.A. No. 74-281 (D.S.C., slip op., April 17, 1980), 17-18. However, after the Supreme Court's decision in *City of Mobile v. Bolden* requiring plaintiffs to show a racially discriminatory purpose in adopting or maintaining a discriminatory election system, Judge Chapman vacated his own ruling.

Armand Derfner and Laughlin McDonald, representing the plaintiffs, began examining the origins of the county council's electoral system and amended their complaint to include a Section

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[141]Edgefield County even offered resistance to the extension of the Voting Rights Act in 1982. Reverend Jesse Jackson and other black citizens were denied the right to assemble and hold a prayer vigil in support of the Voting Rights Act extension by the Edgefield County School Board on the grounds that it would embarrass Senator Thurmond who, at the time, opposed the extension of the Voting Rights Act. In *Jesse Jackson v. Edgefield County District School Board of Trustees*, C.A. No. 81-1316-3 (D.S.C. 1981), plaintiffs sued the board on June 25, 1981, for injunctive and declaratory relief to redress the deprivation of rights guaranteed to plaintiffs by the First, Thirteenth and fourteenth Amendments to the United States Constitution. Plaintiffs had requested the use of the public school grounds as part of a nationwide campaign to convince Congress to extend the Voting Rights Act. Plaintiffs contended that the School Board's decision to deny plaintiffs' use of grounds and facilities at Strom Thurmond High School deprived them of the rights of speech, assembly, petition, association, equal protection and due process in violation of the First, thirteenth and Fourteenth Amendments to the United States Constitution. On June 27, 1981, the day before the scheduled demonstration, the district court granted Plaintiffs' motion for a preliminary injunction and granted plaintiffs the right to assemble and hold a peaceful prayer vigil at Strom Thurmond High School.

[142]The history of litigation in Edgefield County is laid out in *Quiet Revolution*, 209-211, and in *McCain v. Lybrand*, 465 U.S. 236, 238-243 (1984).

5 violation. The 1966 law which created the Edgefield County council, abolishing the old supervisor and commission form of government, had never been precleared by the Department of Justice.[143] A three-judge district court panel ruled that the county's submission and the attorney general's not interposing an objection to a 1971 change (Act 521 of 1971), which increased the number of council members from three to five, blessed the 1966 change.[144]

The Supreme Court unanimously overturned the ruling of the District Court:

> To the extent there was any ambiguity in the scope of the preclearance request, the structure and purpose of the preclearance requirement plainly counsel against resolving such ambiguities in favor of the submitting jurisdiction in the circumstances of this case. The preclearance process is by design a stringent one; it is predicated on the congressional finding that there is a risk that covered jurisdictions may attempt to circumvent the protections afforded by the Act.[145]

On remand, the district court ordered implementation of a single-member district plan for Edgefield County Council under which African-Americans won three of five seats.

As Vernon Burton and his colleagues note in *A Quiet Revolution*, the decision in *McCain v. Lybrand* triggered a series of successful suits and negotiated agreements involving town councils, school boards, and county councils, which led to single member districts and election of African-American candidates including Edgefield County School Board, Johnston Town Council, Laurens County Council, Saluda County Council, Abbeville County Council, and Richland County Council.[146]

2. *NAACP v. Hampton County*

In 1982, the General Assembly wrestled with the future of the Hampton County Board of Education, which had oversight responsibilities over the two school districts in the majority African-American county. Initially Act 547 of 1982, adopted in February of 1982 and submitted to the attorney general for preclearance, changed the countywide board to an elected, rather than appointed body, elected at large. The first election was to be held at the General Election in November 1982, with candidate filing scheduled for August 16 through August 31, 1982.[147]

In April of 1982, before the Attorney General had acted on Act 547, the General Assembly passed Act 549 of 1982 which abolished the county board and made those trustees elective rather than appointive subject to a referendum in May 1982. On April 29, the attorney general notified the state that he would not object to Act 547.

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[143] Act 1104 of 1966. The Attorney General objected on June 11, 1984, to the implementation of Act 1104. Letter, Asst. US Atty. Gen'l. Wm. Bradford Reynolds to Asst. SC Atty. Gen'l. C. Havird Jones, Jr., June 11, 1984.
[144] *McCain v. Lybrand* (D.S.C., May 10, 1982).
[145] *McCain v. Lybrand,* 465 U.S. 236, 257 (1984).
[146] *Quiet Revolution*., 210-11.
[147] The following procedural history is taken from *NAACP v. Hampton County Election Comm'n*, 470 U.S. 166, 170-171 (1985).

On August 23, the attorney general initially objected to abolition of the Hampton County Board of Education, principally because of a misunderstanding about whether abolishing the county board would reduce the possibility of merging Hampton School Districts 1 and 2.[148] Anticipating a requested reconsideration by the attorney general, Hampton County officials proceeded to accept filings in the August filing period.

When the attorney general had not reconsidered his objection by the date of the General Election, elections were held for the Hampton County Board of Education under Act 547, but not for the district trustees under Act 549. He withdrew that objection on November 19, 1982, past the date of the elections proposed in both the precleared Act 547 and the unprecleared Act 549.[149]

Rather than reopening filing for the election now scheduled for March 15, 1983, county officials simply declared that the filing period was the August 1982 filing period when the Act had not yet been precleared. Potential candidates who were black had not filed to run in an unprecleared election.

The NAACP and other parties filed suit in the district court. A three judge panel denied a preliminary injunction and then denied both a permanent injunction and declaratory relief, finding that Section 5 did not apply since "the scheduling of the election and the filing period were simply 'ministerial acts necessary to accomplish the statute's purpose ....'"[150] "Relying on *Berry v. Doles*,[151] the district court held as an alternative ground that these changes were implicitly approved when the Attorney General withdrew his objection to Act No. 549."[152]

The Supreme Court disagreed, ruling that:

> Appellees' use of an August filing period in conjunction with a March election, and the setting of the March election date itself, were changes that should have been submitted to the Attorney General under 5. These changes cannot be said to have been approved along with Act No. 549. ... [I]t is appropriate in these circumstances for the District Court to enter an order allowing appellees 30 days in which to submit these changes to the Attorney General for approval. If appellees fail to seek this approval, or if approval is not forthcoming, the results of the March 1983 election should be set aside. If, however, the Attorney General determines that the changes had no discriminatory purpose or effect, the District Court should determine, in the exercise of its equitable discretion, whether the results of the election may stand.[153]

Upon submission, DOJ found that "the restriction on candidacies for the March 15, 1983, election adversely affected the opportunity of black voters to elect candidates of their choice."

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[148] Letter, Asst. U.S. Atty. Gen'l. Wm. Bradford Reynolds to Asst. S.C. Atty. Gen'l. C. Havird Jones, Jr., August 23, 1982.
[149] Letter, Asst. U.S. Atty. Gen'l. Wm. Bradford Reynolds to Asst. S.C. Atty. Gen'l. C. Havird Jones, Jr., November 19, 1982. The initial submission was delayed until June 16, 1982.
[150] *NAACP v. Hampton County Election Comm'n*, 470 U.S. 166, 174 (1985)
[151] 438 U.S. 190 (1978).
[152] *Id.* at 181.
[153] *Id.* at 182-3.

The attorney general objected to the qualifying period for the special election, voiding the March 1983 elections.[154]

3. *NAACP v. Mayor and Council of Hemingway, S.C.* and *Franklin v. Lawrimore*

Between 1986 and 1991, Hemingway a small, nearly all-white (97 percent according to the 1990 Census), town in Williamsburg County annexed seven pieces of land. Those annexed areas were all white according to the town's preclearance submission. A black community immediately adjacent to Hemingway, Donnelly, had requested annexation in the 1970s to obtain water and sewer service and was denied in a referendum vote. A similarly situated white community, Pine Crest, sought annexation in the mid-1980s. The regional planning agency had studied the financial feasibility of annexation for both Donnelly and Pine Crest and found Donnelly feasible, but Pine Crest not feasible. The town annexed white Pine Crest, but denied black Donnelly.[155]

In 1992, Hemingway and the surrounding area sought to secede from majority black Williamsburg and annex itself to majority white Florence County. Donnelly was not included in the transfer area which included about 2,500 people of whom 21 percent were African-American. Because state law prohibited altering a county boundary if the change split a town between two counties, the Department of Justice considered the annexations and county transfer issues together.

In October of 1993, while awaiting action by the attorney general, two groups of plaintiffs represented by the same counsel filed lawsuits alleging Section 5 and Section 2 violations. In *NAACP v. Hemingway*, the parties entered into a consent order that recognized that Hemingway had filed to obtain preclearance for five annexation areas and enjoined the town from allowing persons in those annexed areas to vote in town elections unless they were precleared. *Franklin v. Lawrimore* was dismissed as moot.[156]

On July 22, 1994, DOJ denied preclearance for five of the seven annexations involving population and for the proposed boundary changes.[157]

In 2006, Hemingway remains in Williamsburg County and Donnelly remains outside the town. Rather than admit black citizens through annexation, Hemingway chose to exclude its previously annexed white citizens.

4. *United States v. Orangeburg County Council*

In 1984, the Orangeburg County Council redistricted itself. The county's population in 1980 of 82,276 was, according to the census, 56 percent African-American. The plan adopted by the

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[154] Letter, Reynolds to Jones, June 28, 1985.
[155] Letter, Asst. US Atty. Gen'l. Deval L. Patrick to Gregory B. Askins, July 22, 1994.
[156] *South Carolina Conference of Branches of the NAACP v. Mayor and Council of Hemingway, S.C.*, C.A. No. 4:93-2733-21 (D.S.C., filed October 18, 1993) and *Franklin v. Lawrimore*, C.A. No. 4:93-2760-21 (D.S.C., filed October 19, 1993).
[157] Letter, Patrick to Askins.

Council "failed to reflect … the measurable increase in the county's minority voters." DOJ eventually objected to a redistricting plan in Orangeburg County.[158] However, Orangeburg attempted to proceed with elections under the unprecleared plan before the Department entered its objection. The district court enjoined elections under the unprecleared plan. *United States v. Orangeburg County Council* (D.S.C., 1984).

DOJ again objected to the redistricting plan adopted by Orangeburg County Council during the next decade. In objecting, DOJ found that Orangeburg County Council had unnecessarily removed black population from District 5 in order to reduce its black proportion to a targeted level. The county council did not give serious consideration to a series of alternatives offered by the black community. "In this regard, many of the reasons presented to us for rejecting these alternative plans appear to pretextual. Furthermore, it appears that the protection of incumbents, particularly white incumbents, and the desire to confine the black population percentage in District 5 to a predetermined and unnecessarily low level were dominant factors in the council's redistricting choices."[159]

5. *United States v. Lee County* and *NAACP v. Lee County Council*

Lee County, South Carolina, is a majority African-American county. In 1990, the census found that 62 percent of the county's population and 57 percent of its voting population were African-American. The benchmark plan in 1992 included two districts with black populations over 74 percent and five districts with black populations in the 52 to 63 percent range. However, in 1992, the county's black voters had only been able to elect black persons to two seats on county council and on the school board which used the same districts. Those were in the 74 percent or higher districts.

Controlled by four white council members, "[t]he self-described goal of the council was to draw a plan that retained Districts 3 and 5 as districts with sizeable black population majorities while drawing two other districts with no more than a 65 percent black share of the population." In order to limit black population in two districts to no more than 65 percent, "black population concentrations have been fragmented."

DOJ concluded that the county had given short shrift to an alternative plan offered by the African-American community and had rejected a proposal for a bi-racial committee to look at redistricting. That alternative proposal had shown that it was possible to draw more than two districts with greater than 70 percent African-American population, the minimum required to create a district in which black citizens could elect candidates of their choice in this county with repressed black voter participation.[160]

Lee County revised its redistricting plan and the revised plan was precleared in 1993. The county set an expedited special election schedule, even though the new plan included substantial

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[158] Letter, Asst. US Atty. Gen'l. Wm. Bradford Reynolds to Robert R. Borger, September 3, 1985.
[159] Letter, Asst. US Atty. Gen'l. John R. Dunne to Robert R. Borger, July 21, 1992.
[160] Letter, Acting Asst. US Atty. Gen'l. James P. Turner to County Council Chair Herman H. Felix, February 8, 1993.

changes from the previous plan. The county held a primary in 1994, even though the plan had not been precleared. There was substantial voter confusion in that unprecleared special primary.

> The circumstances presented by the instant submission suggest that the county's selection of the early schedule was motivated, at least in part, by a desire to diminish black voting potential. The implementation of the new redistricting plan effected significant changes in district assignments for many black voters. The increase in the black percentage in District 1 created a new opportunity for black voters to elect candidates of their choice. The county, however, failed to take adequate steps under these circumstances to publicize information regarding the new district boundaries and to notify black voters (and election day personnel) of their location in the respective districts in advance of the election. The consequence of these actions, which was reasonably foreseeable, was reduced black voter participation in the special primary election.[161]

The attorney general objected to the special election schedule for the county council and school board. That letter is dated the day before the special general election was scheduled, but after candidate qualification periods and the special primary election. The county requested reconsideration, but was rejected.[162]

Both the Department of Justice (on June 6, 1994) and the NAACP (on June 3, 1994) filed in the district court to enjoin the special general elections and to vacate the special primary. The court issued a temporary restraining order. A three-judge panel granted summary judgments motions by the plaintiffs vacating the April 19, 1994, special primary and enjoining further implementation of the special election procedure.[163]

6. *NAACP v. Greenwood County Board of Education 50*

In Greenwood County, the Greenwood County Board of Education 50 and the legislative delegation had come to an agreement with the African-American community to adopt single-member districts. The legislation making the change, Act 595 of 1994, only became law on May 4, 1994, with trustee elections scheduled for May 10. On May 5, the NAACP sought to enjoin those elections until they were precleared. The injunction was granted on May 10, 1997.[164]

V. Examiners, Observers, Voter Intimidation and Voter Fraud

The Attorney General has certified the need for election examiners in seven South Carolina counties pursuant to Section 6 of the Voting Rights Act since 1982: Bamberg County (10/10/84); Calhoun County (09/28/84); Chester County (06/08/90); Colleton County (10/10/84); Hampton County (10/10/84); Richland County (09/28/84); and Williamsburg County (09/28/84).[165]

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[161] Letter, Acting Asst. US Atty. Gen'l. James P. Turner to Jacob H. Jennings, June 6, 1994.
[162] Letter, Asst. US Atty. Gen'l. Deval L. Patrick to Helen T. McFadden, June 23, 1994.
[163] *N.A.A.C. P. v. Lee County Council*, C.A. No. 3:94-01575-17 (D.S.C., 1994); *United States v. Lee County*, C.A. No. 3:94-01582-17 (D.S.C., 1994).
[164] *NAACP v. Greenwood County Board of Education 50*, C.A. No. 8-94-01223-WBT (D.S.C., 1994).
[165] *Id.* Bamberg County (10/10/84); Calhoun County (09/28/84); Chester County (06/08/90); Colleton County (10/10/84); Hampton County (10/10/84); Richland County (09/28/84) and Williamsburg County (09/28/84).

Election observers have been assigned to 37 South Carolina elections, 23 times since 1982.[166] Most of the communities to which observers have been sent have repeatedly requested assistance under the Act to protect the ability of African-American voters fully to participate in the electoral process. Those include Bamberg County (1984, 1985), Calhoun County (1984, 1988), Chester (twice in 1990, twice in 1991, 1993 and 1996), Dorchester (1990, 1996 and 2001), Marion (1984 and 1996) and Williamsburg (1984, 1988, and twice in 1996).

However, other areas could have used observers. In McCormick County in 1994, following redrawing of South Carolina House District 12 as a majority African-American district, a heated election between long-time white incumbent Jennings McAbee and black candidate Willie N. Norman, Jr. was marked by voter fraud advantaging the white incumbent in the McCormick County portion of the district. McAbee, running as an independent, defeated Norman 3,155 votes to 2,878 votes. McAbee's 1,009 vote difference in his home county of McCormick assured the victory. A year later, the clerk of the McCormick County Board of Registration was indicted for, to use the words of South Carolina Attorney General Charles Condon, "voting early and often."[167] Georgetta M. Wiggleton pled guilty to voter fraud. "Ms. Wiggleton admitted that the false ballots were a 'significant factor' in the outcome of that race."[168]

During trial of Section 2 claims in Charleston County, the United States "put forward voluminous testimony concerning what it characterized as a consistent and more recent pattern of white persons acting to intimidate and harass voters at the polls during the 1980s and even as late as the 2000 General election. ... [T]he Court agrees that there is significant evidence of intimidation and harassment ...." The court found poll managers assigned to African-American precincts who "... caused confusion, intimidated African-American voters, and had the tendency to be condescending to those voters." Further, "poll managers interfered with certain African-American voters' right to receive assistance during the voting process." One particularly problematic white "poll manager's ongoing interference with African-American voters in Charleston County polling places prompted a Charleston County Circuit to issue a restraining order against the election Commission requiring its agents to cease interfering with the voting process." The court stated, "In the 1990 election, a member of the Charleston County Election Commission and others participated in a Ballot Security Group that sought to prevent African-American voters from seeking assistance in casting their ballots" and "Moreover, in the 1980 election, the *News and Courier* reported that some college students, claiming that they were federal poll watchers, intimidated some voters at the Fraser Elementary School, a predominantly African-American precinct in the City of Charleston's East Side. The students threatened to 'lock up' voters." As the court noted: "And while the Defendants suggest that such instances of harassment of and intimidation against African-American voters were attributable solely to partisan politics and not race, the uncontroverted testimony establishes that such conduct never occurred at predominantly white polling places, including those that tended to support Democratic candidates."[169]

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[166] U.S. Department of Justice, Geographic Public Listing: Elections in All States" (November 10, 2003), 40-42.
[167] Lee Bandy, "McCormick Registrar Indicted," *The* (Columbia) *State* (September 14, 1995), B3.
[168] Augusta Chronicle, "Across the Area: Ex-clerk Sentenced in Voter Fraud" (July 7, 2000), at http://chronicle.augusta.com/stories/072700/met_029-3419.000.shtml.
[169] *Charleston County*, 365 F.3d at 351-53; 316 F.Supp.2d at 286 n.23 (citations omitted).

As recently as the 2004 General Election, at Richland County's black Ward 8, which includes the historically black Benedict College, "GOP monitors challenged students who held S.C. voter registration cards, but did not have driver's licenses or state-issued identification cards." As African-American Columbia City Council member E.W. Cromartie noted: "It reinforced the fact you still have to fight to make sure democracy is the way it is supposed to be."[170]

VI. Racially Polarized Voting

If voting in South Carolina were not so racially polarized, neither Section 2 nor Section 5 of the Voting Rights Act would have much impact on the state. Black voters would be routinely able to elect candidates of their choice in majority white districts and at-large elections. High levels of racially polarized voting across South Carolina provides the predicate condition making Section 2 and Section 5 so critical to the growth of black representation and its maintenance in the face of continued resistance by public officials.

That voting in South Carolina is racially polarized is practically a given. When the district court in *McCain v. Lybrand* looked at expert reports on polarized voting in Edgefield county, Judge Robert Chapman found "bloc voting by the whites on a scale that this court has never before observed."[171]

In 1990, James W. Loewen analyzed 130 black/white elections from 1972 through 1984. Loewen found:

> A reasonable summary would be that voting was polarized throughout the period. Eighty percent of the variance in these election returns is associated with the racial composition of the precinct or county. Overall, whites cast about 90 percent of their votes for white candidates, while blacks cast about 85 percent for black candidates. Thus, the primary determinant of election results in these interracial contests was the racial composition of the turnout.[172]

In the *Burton* statewide redistricting case in 1992, the parties stipulated that "since 1984 there is evidence of racially polarized voting." James Loewen and Theodore Arrington offered expert testimony that voting in South Carolina was racially polarized and that polarization had increased since 1982.[173]

The district court in *Smith v. Beasley* and *Able v. Wilkins* found:

> In South Carolina, voting has been, and still is, polarized by race. This voting pattern is general throughout the state and is present in all of the challenged House and Senate districts in this litigation. There is only one exception

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[170] John C. Drake, Benedict Students Face GOP Challengers," *The* (Columbia) *State* (November 4, 2004), B5.
[171] *McCain* (D.S.C., slip op., April 17, 1980), 17-18.
[172] "Racial bloc Voting and Political Mobilization in South Carolina," *The Review of Black Political Economy*, 19 (Summer 1990), 23, 25.
[173] *Burton*, 793 F. Supp. at 1357-58 and fn. 49.

> according to Defendants' expert, Dr. Ruoff, who has studied the voting history of South Carolina for a number of years. He testified, "Whites almost always vote for whites and blacks almost always vote for blacks unless the candidate is a black Republican and then never.[174]

In the most recent statewide litigation, the district court found: "The history of racially polarized voting in South Carolina is long and well- documented ...."[175] John Ruoff, testifying on behalf of African-American voters, presented a study of 401 elections in the previous decade.

> Specifically, [Ruoff] offered undisputed testimony that South Carolinians are still very divided in terms of where they live and that elections throughout South Carolina continue to be marked by very high levels of racial polarization in voting. Black voters are generally politically cohesive and white voters almost always vote in blocs to defeat the minority's candidate of choice. Racial polarization is highest in black-white elections--those involving a black candidate running against a white candidate. ... The other experts retained by the parties in this case substantially concurred in this portion of Dr. Ruoff's opinion, which was likewise supported by the statistical and other evidence presented to the court by all of the parties.
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> By way of summary, the evidence revealed that in black-white, single seat elections, the median level of black voters voting for black candidates was 98% in general elections and 86% in primary contests. Although white voters will cross over to vote for black candidates at a rate of 21% in general elections, they will cross over to vote for a black candidate in primary elections at a rate of only 8%. In addition, voter mobilization among blacks in general elections is lower than among white residents, but greater in black- majority districts.[176]

Even more recently, the *Charleston County* district court found:

> Dr. Theodore Arrington, expert for the United States, found that out of 31 contested, County-Council elections studied from 1984 to 2000, voting was racially polarized 29 times (94%). The findings of Defendants' own expert, Dr. Ronald Weber, also confirm that voting in Charleston County Council elections is severely and characteristically polarized along racial lines. *Charleston County*, 316 F.Supp. 2d at 277.

As the *Colleton County Council* court concluded: "Voting in South Carolina continues to be racially polarized to a very high degree, in all regions of the state and in both primary elections and general elections. Statewide, black citizens generally are a highly politically cohesive group and whites engage in significant white-bloc voting. Indeed, this fact is not seriously in dispute."[177]

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[174] *Smith*, 946 F.Supp. at 1202-3.
[175] *Colleton County Council*, 201 F.Supp.2d at 640.
[176] *Id.* at 641 (footnotes omitted).
[177] *Colleton County Council*, 201 F.Supp.2d at 641.

VII. Socio-Economic Disparities

Contributing to the problems that African-American voters have in electing candidates of their choice are significant socio-economic disparities between white and black citizens.

Relying on 1990 Census data, the Smith Court found "a socio-economic gap between the average white citizen and the average black citizen. There is a larger percentage of blacks than whites below the poverty level; the household income of blacks is generally less than that of whites; unemployment is greater among blacks; and the level of formal education among blacks is less. There are more whites than blacks residing in married-couple households, and more blacks live in single-female households. More blacks than whites are without private means of transportation, and more whites than blacks own their own homes. Infant mortality is greater among blacks."[178]

In 1999, median household incomes for black households was $25,032, compared to $42,158 for white households.[179] Twenty-six percent of black South Carolinians and only 8 percent of white South Carolinians lived below poverty in 1999.[180] Thirty-nine percent of black households rented compared to 23 percent of white households in 1999.[181] Black households were three times as likely (8.2 percent compared to 2.5 percent) as white households to lack a telephone, a critical tool in political communications, in 1999.[182] Twenty percent of black households and only five percent of white households lacked a vehicle.[183] Black South Carolinians in 2003 were twice as likely to be unemployed, 11.2 percent compared to 5.1 percent for white residents.[184]

Thirty percent of African-American family households in 1999 were female-headed with children. Only 11 percent of white households had that structure.[185] From 2000 to 2003, black children had significantly higher infant mortality rates than white children—14.8 percent to 5.8 percent.[186]

South Carolina's African-American citizens lag behind in education. Among the population 25 and older, 35 percent of black citizens lack a high school diploma or equivalency compared to 19 percent of white residents. Conversely, nearly a third of white South Carolinians have at least an Associate degree compared to 15 percent of black residents.[187]

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[178] *Smith*, 946 F.Supp. at 1203.
[179] U.S. Census 2000 Summary File 3, Table P152. Throughout this discussion, data for whites is for nonHispanic whites where the Census made that distinction.
[180] U.S. Census 2000 Summary File 3, Table P159.
[181] U.S. Census 2000 Summary File 3, Table H11.
[182] U.S. Census 2000 Summary File 3, Table HCT32.
[183] U.S. Census 2000 Summary File 3, Table HCT33.
[184] Office of Statistics and Research, S.C. Budget & Control board, *Statistical Abstract 2005*, Employment Table 20, "South Carolina Unemployment Rates by Age, Race and Sex (1999-2003)" at http://www.ors2.state.sc.us/abstract/chapter8/employment20.asp.
[185] U.S. Census 2000 Summary File 3, Table P 146.
[186] S.C. Dept. of Health & Environmental Control, SCAN, Infant Mortality at http://scangis.dhec.sc.gov/scan/mch/infm/input.aspx.
[187] U.S. Census 2000 Summary File 3, Table P148.

By any measure, the racial disparities in socio-economic conditions noted by the *Smith* Court continue in the 21st century.

VIII. Section 2 Litigation in South Carolina since 1982

Section 2 of the Voting Rights Act of 1965, prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified in Section 4 (f)(2) of the Act. In 1982, Congress amended the Act to provide that a plaintiff could establish a violation of the section if the evidence established that, in the context of the "totality of the circumstances of the local electoral process," the standard, practice or procedure being challenged had the result of denying a racial or language minority an equal opportunity to participate in the political process.

The courts have considered the following factors in determining, if within the totality of the circumstances in a jurisdiction, the operation of the challenged electoral device results in a violation of Section 2:

1. the history of official voting-related discrimination in the state or political subdivision;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting;
4. the exclusion of members of the minority group from candidate slating processes;
5. the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
6. the use of overt or subtle racial appeals in political campaigns; and
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.[188]

A plaintiff need not prove any particular number or even a majority of these factors to prevail in a vote dilution claim.

Recent cases such as *United States v. Charleston County*,[189] and *Colleton County Council v. McConnell*,[190] demonstrate the continued need for Section 2 of the Voting Rights Act. South Carolina's long history of racial discrimination and severely polarized voting makes the extension of Section 2 critical. Successful Section 2 litigation from the 1970's to the present day cannot be allowed to be forfeited. Significant changes wrought by minority voters cannot be abandoned.

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[188] S. Rep. No. 97-417, 97th Cong., 2d Sess. (1982), pages 28-29.
[189] 365 F.3d 341 (4th Cir. 2004).
[190] 201 F. Supp. 2d 618 (D.S.C. 2002)

1978

The victory of black plaintiffs in *McCain v. Lybrand* discussed above and the 1982 changes to the Voting Rights Act triggered significant legal activity to expand the rights of South Carolina's African-American citizens by challenges to discriminatory electoral systems across the state over the next decade. Attorneys from the American Civil Liberties Union and the NAACP brought numerous actions under Section 2, principally challenging at large electoral systems.

In *Jackson v. Edgefield County South Carolina School District*,[191] black voters of Edgefield County, South Carolina, brought suit alleging that the at-large electoral system used to elect members of the School Board of Trustees resulted in impermissible dilution of voting strength of black voters in violation of their constitutional rights and Section 2 of the Voting Rights Act. The district court held that the at-large method of election for membership on Edgefield County School Board of Trustees resulted in the denial or abridgement of voting rights of black citizens in violation of Section 2 of the Voting Rights Act. As the court concluded:

> [W]e find that there is credible and substantive evidence showing that a pervasive racial discrimination has left the county's black citizens economically, socially and politically disadvantaged and that a severe degree of racial bloc voting and the minimal degree of electoral success by minority candidates exacerbate the difficulties faced by black candidates seeking election to the position of the School Board Trustees under the existing at-large electoral structure and practice.[192]

Thereafter, a number of jurisdictions, when challenged pursuant to Section 2 of the Voting Rights Act, agreed to adopt single member district plans, which allowed minorities an opportunity to elect candidates of their choice. See Attachment 1, "Section 2 Litigation Leading to Single Member or Mixed Systems, South Carolina, 1982 – 2003". In those jurisdictions, the method of discrimination in voting has taken many forms—manipulation of boundaries to maintain white control; intimidation and harassment of minority and poor voters at the polls; and the presence of pervasive racial polarization among voters.

County councils in Abbeville, Barnwell, Darlington, Fairfield, Georgetown, Laurens, Richland and Saluda counties entered into consent decrees. Only in Kershaw and Charleston did the cases reach trial. In Kershaw County, the District Court found for the plaintiffs.[193] A single-member system with the chair elected at-large followed. This report has discussed at length the Court's findings in *Charleston County*.

School districts and Boards of Education in Abbeville, Chesterfield, Laurens, Spartanburg, Florence and York settled challenges to their at-large systems following *Jackson v. Edgefield County South Carolina School District*.

In municipalities across South Carolina, Aiken, Edgefield, Manning, Johnston, Winnsboro, Lancaster, Laurens, Cayce, Mullins, Bennettsville, Orangeburg, Holly Hill, Elloree, Spartanburg,

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[191] 650 F. Supp. 1176 (D.S.C. 1986).
[192] *Id.* at 1204.
[193] *NAACP v. Kershaw County*, C.A. No. 3:90-01132-DWS (D.S.C., November 29, 1993).

Saluda, Union, and Kingstree agreed to single member or mixed systems that afforded African-American citizens the opportunity to elect candidates of their choice after litigation was filed.[194]

In Laurens, the commissioners of public works agreed to single member districts.

After the *Charleston County* case, only two at-large county councils remain—in majority black Hampton and Jasper counties. All others are single member district or single member district with the chair or supervisor elected at large.

According to the South Carolina School Boards Association: "Thirty-nine districts choose board members from single-member districts, 30 retain at-large representation and 16 districts use a combination."[195]

IX. Other *Shaw/Miller* Cases

The 1990s saw significant changes in voting rights jurisprudence. The Supreme Court, through a series of cases (*Shaw/Miller)*, granted white citizens the right to challenge districts that had been crafted so that African-American citizens could elect candidates of choice. These decisions rested on the grounds that race had predominated over traditional districting principles in drawing those districts, and that even where compliance with the Voting Rights Act required race-conscious drawing, those districts had not been narrowly tailored to meet those compelling state needs.[196]

South Carolina has seen five challenges to districting plans brought under *Shaw/Miller* theories. The *Smith v. Beasley* (South Carolina Senate) and *Able v. Wilkins* (South Carolina House of Representatives) challenges to legislative redistricting and the *Rodgers v. Union County* challenge to a county council district are discussed above.

A. United States Congressional District Six

Following the *Smith v. Beasley* and *Able v. Wilkins* findings with respect to House and Senate districts, private plaintiffs brought a Shaw/Miller challenge in late 1996 to the Sixth Congressional District as *Leonard v. Beasley*.[197] The district, which encompassed large portions of the Pee Dee region, the majority black I-95 Corridor, and black areas of Charleston and Columbia, was first drawn as a majority black district by the *Burton* Court in 1992. The district

[194] The only case in this period involving a Section 2 challenge to the method of election in which a court found that the plaintiffs failed to establish that African American citizens had less opportunity than others in the electorate to participate in the political process and to elect candidates of their choice was *NAACP v. City of Columbia* 850 F.Supp. 404 (1993); aff'd 33 F. 3rd 52 (4th Cir., 1994). That was a challenge to a mixed-system in the state's capitol.
[195] South Carolina School Boards Association, *Board Member Selection* (August 2005) at http://scsba.org/acrobat/050901_bdmemberselection2005.pdf.
[196] *Shaw v. Reno*, 509 U.S. 630 (1993); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Miller v. Johnson*, 515 U.S. 900 (1995).
[197] *Leonard v. Beasley*, C.A. No.3:96-03640 (D.S.C., filed December 6, 1996).

had 62 percent black population and 58 percent black voting age population. When redrawing district lines in 1994, the General Assembly essentially replicated the *Burton* Court district.[198]

Leonard v. Beasley settled in 1997. The defendants agreed for settlement purposes that the plaintiffs "had a strong factual and legal claim ... that the creation of the Sixth Congressional District subordinated traditional districting principles to racial considerations." Conversely., the plaintiffs agreed that "the State has a compelling state interest in adopting an congressional plan that does not have the purpose, effect or result of providing minority citizens with less opportunity than other members of the electorate to elect representatives of their choice." The parties also agreed that a narrowly tailored, majority black voting age population district could be drawn in South Carolina. The parties agreed that the General Assembly should attempt to redistrict congressional districts and, failing that, the plaintiffs could reinstitute the action.[199]

The Sixth Congressional District remained unchanged and unchallenged until after the 2000 Census when the *Colleton County* court found "that § 2 and § 5 of the Voting Rights Act require the maintenance of the Sixth District as a majority-minority district."[200] The court, after "correction of some of the questionable aspects of the existing plan ..." crafted a "constitutionally proper draw that has a 53.75% BVAP in the district."[201]

B. Horry County Council

In 1991, Horry County Council redistricted its 11 single member districts, which also apply to the Horry County School Board of Trustees. In that process it created a new majority African-American district (District 9) and strengthened an existing district (District 7). Under the new plan, District 7 had a 60 percent African-American population, and District 9 a 65 percent African-American population.

On January 31, 1997, white plaintiffs from Horry County filed suit on *Shaw/Miller* grounds challenging Districts 7 and 9. On May 8, 1997, the parties entered a consent order in which the defendant County Council "conceded liability in that it used impermissible factors in redistricting Horry County." On May 23, 1997, the NAACP and private African-American citizens sought to intervene in that proceeding. The district court denied that motion on October 30, 1997, while declaring the districts unconstitutional. The white-majority defendant County Council offered no defense of the plans, blaming the districts on "a desire to appease the NAACP and to meet the Department of Justice's preclearance requirements."[202]

When Districts 7 and 9 were redrawn, District 9 was drawn to a 50 percent black population and 44 percent black voting age population, while District 7 was drawn to a 47 percent black population and 43 percent black voting age population. Although nominally having a majority

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[198] Act 321 of 1994. The changes were to accommodate individual politicians who wanted into or out of the Sixth District. Cindi Ross Scoppe, "Charleston Lawmaker's Home Moved into District He Hopes to Represent," *The* (Columbia) *State* (March 9, 1994), 6B.
[199] *Leonard,*(D.S.C., Settlement Agreement, August 6, 1997) at 3-6.
[200] *Colleton County*, 201 F. Supp. 2d at 665.
[201] *Id.* at 665-666.
[202] *Prince v. Horry County*, C.A. No. 4-97-0273-12 (D.S.C., slip op. October 31, 1997), *appeal terminated w/o judicial action, Prince v. NAACP, Incorporated*, Docket No. 97-2661 (4th Cir., August 3, 1998).

black population, District 9 was an area of significant white growth. By 1998, its voter registration was only 35 percent black in the proposed district.[203] The benchmark plan for District 7 had "a 54 percent black population majority, and a 50 percent voting age population majority."

The county's demographers had drawn a compact district with a black majority population and 49 percent black voter registration which the council had rejected. "Because these alternate redistricting configurations illustrate the ability to create a reasonably compact district that reduces black voting strength to a lesser extent than the proposed plan," the Department of Justice objected to the initial proposal to redraw Horry County Council lines.[204] A redrawn plan was approved in July of 1998.[205]

In 2006, one African-American, James Frazier, serves on the Horry County Council. He represents District 7, the district that had been the subject of the attorney general's objection. District had only 42 percent black voter registration in 2004.[206] Black council member Frazier has had no white opposition since 1998.[207] Three of the twelve members of the Board of Education, which uses the same lines, are African-American in 2006.[208]

Although successful *Shaw/Miller* constitutional challenges have been brought to a number of districting plans in South Carolina, subsequent history has seen that adjustments were made and constitutional districts in which African-American citizens are able to elect candidates of their choice were drawn.

CONCLUSION

The Joint Center for Political and Economic Studies has been tracking black elected officials for many years. Their 2000 report shows that the number of black elected officials in South Carolina increasing from 38 in 1970 to 540 in 2000.[209] Most of that progress has been the product of vigorous enforcement of the Voting Rights Act in the face of significant resistance.

Although some would argue that those advances make the Act now unnecessary, precious little of that progress was granted willingly. Across South Carolina, black citizens have had to fight for the opportunity to elect candidates of their choice. And public officials have shown only too ready a willingness to undermine those advances. We have reviewed efforts in this young century in Charleston, Cherokee, Greenville, Lexington, Richland, Spartanburg, Sumter, and Union to change district lines or voting rules to diminish the ability of African-American voters to elect candidates of their choice.

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[203] The tremendous white growth in the District 9 area may well have led to natural retrogression, the loss of a black majority district because of population changes, in 2000 in any case.
[204] Letter, Acting Asst. US Atty. Gen'l. Bill Lann Lee to John C. Henry, May 20, 1998.
[205] Craig S. Lovelace, "New districts OK's," *The* (Myrtle Beach) *Sun News* (July 2, 1998), 1A.
[206] S.C. Elections Commission, County Council Tally, October 1, 2004.
[207] S.C. Election Commission, *Election Reports*, 1998, 2000 and 2004.
[208] http://www3.hcs.k12.sc.us/AboutUs/SchoolBoard/index.html.
[209] Bostitis, "Black Elected Officials, 28.

As South Carolina jurisdictions have adopted single member districts, many of the other election practices that reduced the ability of black voters to elect candidates of choice, such as staggered terms and majority vote requirements, have ceased to have those discriminatory effects. Indeed, increasingly, the points of contention have been over district lines that split African American communities or pack black voters into districts so that their ability to elect candidates of choice in other districts is reduced.

Annexations continue to create concern in black communities. In the city of Aiken, governed by a mixed system of single-member and at-large elections for city council, two solidly majority-African American districts became bare majority black districts with redistricting after the 2000 Census because of significant annexations of the white communities south of the city. A 2003 referendum to change the 4-2-1 system to a 5-1-1 was rejected by the white majority electorate despite the endorsement of the mayor.[210]

In reviewing plans proposed by the parties to statewide redistricting in 2002, the court took special note that the governor and the legislature "have proposed plans that are primarily driven by policy choices designed to effect their particular partisan goals And, in many cases, the choices appear to be reflective of little more than an individual legislator's desire to strengthen his or her ability to be re-elected to the seat in question."[211]

Throughout the Section 5 objections, we see that discriminatory actions were taken to protect white incumbents. Leaving South Carolina's black citizens at the mercy of incumbency-protection for majority white legislative bodies will only lead to a reduction in the ability of South Carolina's black citizens to effectively participate in political processes and elect candidates of their choice. Section 5 preclearance review is critical to protecting those gains.

South Carolina has made remarkable progress in the forty years since the passage of the Voting Rights Act and in the twenty-five years since the Act was last renewed. In a state marked by very high levels of racial polarization and continuing socio-economic disparities between her white and black citizens, that progress, however, has come almost exclusively in bodies elected from single member districts. Those districting schemes have been largely the product of vigorous enforcement of the Voting Rights Act, through both Section 2 and Section 5, in the face of official resistance stretching, in many jurisdictions, over decades. Section 5's protections against back-sliding are critical to maintaining the expansion of black representation that has seen this state go from zero to 540 elected black officials in the life of the Act.

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[210] Philip Lord, "Residents Vote to Keep Current Election System," *Aiken Standard* (April 2, 2003); Mayor Fred B. Cavanaugh, Jr., "Citizens to decide Aiken's district-voting plan," *Aiken Standard* (March 14, 2003).
[211] *Colleton County Council*, 201 F.Supp.2d at 628-629, 659.

South Carolina Report
Attachment 1

Section 2 Litigation Leading to Single Member or Mixed Systems
South Carolina 1982 - 2003

Case Name/Matter	Year Resolved	State	County	Subjurisdiction
		County Councils		
Robinson v. Savitz	1989	South Carolina	Abbeville	Abbeville County
Houston v. Barnwell County	1988	South Carolina	Barnwell	Barnwell
United States v. Charleston County	2003	South Carolina	Charleston	Charleston County
United States v. Darlington County	1986	South Carolina	Darlington	Darlington
Walker v. Fairfield County	1990	South Carolina	Fairfield	Fairfield County
Watkins v. Scoville	1984	South Carolina	Georgetown	Georgetown
NAACP v. Kershaw County	1993	South Carolina	Kershaw	Kershaw County
Beasley v. Laurens County	1988	South Carolina	Laurens	Laurens County
NAACP v. Richland County	1988	South Carolina	Richland	Richland
Lewis v. Saluda County	1985	South Carolina	Saluda	Saluda County
		School Boards of Education/Trustees		
NAACP v. Abbeville Sch. Dist. No. 60	1994	South Carolina	Abbeville	Abbeville County Sch. Dist. #60
NAACP v. Chesterfield County BOE	1993	South Carolina	Chesterfield	Chesterfield County BOE
Jackson v. Edgefield Co, SC School District	1986	South Carolina	Edgefield	Edgefield County SD
Smith v. Laurens County	1987	South Carolina	Laurens	Laurens County SD No. 55
Smith v. Laurens County	1987	South Carolina	Laurens	Laurens County SD No. 56
NAACP v. Spartanburg County School Board	1994	South Carolina	Spartanburg	Spartanburg County SB
NAACP v. Spartanburg County School Board	1994	South Carolina	Spartanburg	Spartanburg County SB No. 5
NAACP v. Spartanburg County School Board	1994	South Carolina	Spartanburg	Spartanburg County SB No. 7
NAAACP v. Truitt	1997	South Carolina	Florence	Florence County SD #1
Love v. York County School District #1	2000	South Carolina	York	York County Sch. Dist.
		Municipal Governing Bodies		
United States v. City of Aiken	1988	South Carolina	Aiken	City of Aiken
NAACP v. City of Gaffney	1990	South Carolina	Cherokee	City of Gaffney
NAACP v. City of Manning	1992	South Carolina	Clarendon	City of Manning
Thomas v. Mayor and Town Council of Edgefield	1987	South Carolina	Edgefield	Town of Edgefield
Jackson v. Johnston	1987	South Carolina	Edgefield	City of Johnston

South Carolina Report
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Broome v. Winnsboro	1989	South Carolina	Fairfield	City of Winnsboro
NAACP v. City of Lancaster (D.S.C., 1989)	1989	South Carolina	Lancaster	City of Lancaster
Glover v. Laurens	1988	South Carolina	Laurens	City of Laurens
NAACP v. City of Cayce	1992	South Carolina	Lexington	City of Cayce
Reaves v. City Council of Mullins	1990	South Carolina	Marion	City of Mullins
United States v. City of Bennettsville	1990	South Carolina	Marlboro	City of Bennettsville
Owens v. City Council of Orangeburg	1988	South Carolina	Orangeburg	City of Orangeburg
NAACP v. Town of Holly Hill	1992	South Carolina	Orangeburg	Town of Holly Hill
NAACP v. Town of Elloree	1993	South Carolina	Orangeburg	Town of Elloree
NAACP and United States v. City of Spartanburg	1988	South Carolina	Spartanburg	City of Spartanburg
NAACP v. Town of Saluda	1989	South Carolina	Saluda	Town of Saluda
NAACP v. City of Union	1990	South Carolina	Union	City of Union
NAACP v. Town of Kingstree	1991	South Carolina	Williamsburg	Town of Kingstree
	Board of Public Works			
NAACP v. Board of Comm'rs. of Public Works	1991	South Carolina	Laurens	Laurens Co. Bd. Of Public Works

South Carolina Report
Attachment 2

South Carolina Successful Section 5 Enforcement Actions

Case Number/Matter	Year of Inception	Year Resolved	County	Subjurisdiction	How Resolved	Resolution
McCain v. Lybrand	1974	1984	Edgefield	Edgefield County		
Blanding v. Dubose	1978-1982		Sumter	Sumter Co. Council	Order	Unprecleared change enjoined
NAACP v. Hampton County		1984	Hampton	Hampton County School District	Order	Unprecleared change enjoined
United States v. Orangeburg County Council	1984	1985	Orangeburg	Orangeburg	Order	Unprecleared redistricting plan enjoined
United States v. City of Barnwell	1984	1986	Barnwell	Barnwell	Order	Enjoined unprecleared changes -- staggered, maj. Vote
United States v. Lee County	1994	1994	Lee	Lee	Order	Unprecleared election vacated
Rutherford v. South Carolina Republican Party	2000	2000		South Carolina Republican Party	Settlement	Settlement re polling places for 2000 primary
SRAC v. Campbell	1991	1994		South Carolina	Order	Redistricting plan must be precleared
NAACP v. Cherokee County School District	1992	1992	Cherokee	Cherokee County School District	TRO	Case settled after unprecleared dist. Plan enjoined
NAACP v. Town of Hemingway	1993	1994		Town of Hemingway	Settlement	Annexations submitted under Section 5
NAACP v. Greenwood County BOE No. 50	1994	1994	Greenwood	Greenwood County BOE No. 50	TRO	Election using unprecleared plan enjoined

APPENDIX TO THE STATEMENT OF WADE HENDERSON, "VOTING RIGHTS IN SOUTH DAKOTA, 1982–2006," A REPORT OF RENEWTHEVRA.ORG

VOTING RIGHTS IN SOUTH DAKOTA 1982-2006

LAUGHLIN MCDONALD[1], JANINE PEASE[2], D. ED., AND RICHARD GUEST[3]

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[2] Director of Native American Studies at Rocky Mountain College in Billings, Montana. An enrolled Crow Indian, Dr. Pease holds a B.A. in Sociology and Anthropology (1970) from Central Washington University and a master's and doctorate in higher education from Montana State University. Dr. Pease was the lead plaintiff in *Windy Boy v. Big Horn County et. al.*, a voting rights case in Montana during the 1980s, and she served as Presiding Officer of the Montana Districting and Apportionment Commission from 1999–2003. Ms. Pease was president of Little Big Horn College on the Crow Indian Reservation for 18 years, from 1982 to 2000.

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EXECUTIVE SUMMARY

In the past 40 years, South Dakota has become a battleground for American Indian voting rights. Since 1966, of the sixty-six lawsuits filed nationwide in which voting rights of Indians were at issue, seventeen have been filed in South Dakota. In 1977, then-South Dakota Attorney General William Janklow expressed his outrage over the extension of Section 5 (the preclearance requirement) and Sections 4(f)(4) and 203 (the minority language assistance provision) of the Voting Rights Act ("VRA") to his state on behalf of American Indians. He derided Section 5 as a "facial absurdity" and, in a formal legal opinion, he advised the Secretary of State to ignore the preclearance requirement, stating: "I see no need to proceed with undue speed to subject our State's laws to a 'one-man veto' by the United States Attorney General." This official practice of ignoring the preclearance requirement of the VRA continued virtually unabated for the next twenty-five years.

Janklow's position was consistent with the history of discrimination in South Dakota. Part I of this report is a reprint of an article recently published in the American Indian Law Review by Laughlin McDonald, Director of the ACLU Voting Rights Project, entitled "The Voting Rights Act in Indian Country: South Dakota, A Case Study." Part I recounts this history of discrimination in detail. When the very first territorial assembly of South Dakota met in 1862, it determined that the right to vote and the ability to hold office would be limited to free white men. The early territorial laws described Indians either as "red children" and "the poor child" of the prairie, or as the "revengeful and murderous savage." As a matter of territorial, and then state law, Indians were systematically denied the right to vote or the ability to hold office. South Dakota enacted and enforced its very own "anti-Indian civil right statute."

In 1924, Congress adopted the Indian Citizenship Act, which granted citizenship to "all non-citizen Indians born within the territorial limits of the United States." Although this law definitively granted Indians citizenship, it still left open the question of whether Indians could vote in South Dakota. Once again, state officials determined that an Indian could only vote if he completely severed his tribal relations and fully adopted the habits of "civilized" life – a determination to be made on a case-by-case basis. South Dakota did not repeal the state law denying Indians the right to vote until 1951, making it one of the last states in the nation to officially grant the right to vote to all Indians.

Yet, discrimination persisted. Even after adoption of the VRA in 1965 and the subsequent amendments in 1975, legal restrictions on voting by Indians and restrictions on Indians' ability to hold offices were still in place as late as 1980. South Dakota prohibited Indians from voting in elections in counties that were "unorganized" under state law and prohibited residents of the unorganized counties from holding office. The three unorganized counties at that time were Todd, Shannon, and Washabaugh counties, whose residents were overwhelmingly Indian. These laws only ended as a result of litigation.

One of the many legacies of discrimination Indians have encountered is the severe depressed socio-economic status of American Indians in South Dakota and its direct link to reduced political participation. Part I highlights the socio-economic barriers confronting American Indians South Dakota, including unemployment rates on Indian reservations in excess of 70-80 percent; a poverty rate approaching 50 percent; a high school drop-out rate of 24 percent; and an infant mortality rate double the national average. Given these statistics, it is not surprising that, as late as 1985, only 9.9 percent of Indians in South Dakota were registered to vote. In a 2000 report, the South Dakota Advisory Committee to the U.S. Commission on Civil Rights concluded: " For the most part, Native Americans are very much separate and unequal members of society ... [who] do not fully participate in local, State and Federal elections. This absence from the electoral process results in a lack of political representation at all levels of government and helps to ensure the continued neglect and inattention to issues of disparity and inequality."

Finally, Part I thoroughly chronicles the recent Indian voting rights litigation in South Dakota, which has involved the entire range of jurisdictions, from challenging state legislative redistricting plans, to opposing at-large elections for school districts, to vindicating the right of Indians to vote in a sanitary district election. In case after case, the state raised the "Reservation" defense, arguing that the Indians' loyalty was to tribal elections; accordingly, Indians simply did not care about participating in state elections. But the courts uniformly rejected this argument, noting that it completely overlooks the fact that the state, by historically denying Indians the right to vote, had itself been responsible for denying Indians the opportunity to participate in state elections.

Part II of this report is an article by Janine Pease, Director of Native American Studies at Rocky Mountain College, entitled "Voting Rights, American Indians and South Dakota," which documents her ongoing research and analysis of voting rights, emerging trends, and resulting backlash. This part provides an overview of the legal, geographic, social, and economic barriers that American Indians must overcome to exercise their right to vote. Next, the emerging trends in voting rights in South Dakota are examined. Grassroots American Indian organizations have registered several thousand new American Indian voters, voters who turned out in record numbers in the 2002 and 2004 elections. In addition, Indians from throughout the State are seeking protection under the Voting Rights Act under Sections 2 and 5 and the minority language provisions. The growth of the American Indian population, the young age of many tribe members, and the increasing rates of Indian voter participation are beginning to re-shape the politics of the state. American Indian voters have demonstrated their voting power in their search for representation in sanitation districts, school districts, cities, counties, and legislative districts, as well as in congressional elections.

Finally, this report covers some of the negative aspects of the voting process itself that tend to disproportionately affect, or be targeted at, minorities, such as voter intimidation, accusations of voter fraud, and "anti-fraud" programs. Recent legislative proposals reflect present-day hostility toward Indian voters.

The history of voting rights in South Dakota strongly supports the extension of the temporary provisions of the Voting Rights Act – preclearance and minority language assistance. Unfortunately, however, the difficulties that Indians experience in participating effectively in state and local politics and electing candidates of their choice are not restricted to South Dakota.

A variety of common factors have coalesced to isolate Indian voters from the political mainstream throughout the West: historical discrimination; polarized voting; overt hostility of white public officials; cultural and language barriers; a depressed socioeconomic status; inability to finance campaigns; difficulties in establishing coalitions with white voters; a lack of faith in the state system; and conflicts with non-Indians over issues such as water rights, taxation, and tribal jurisdiction.

It is apparent that "inequalities in political opportunities that exist due to vestigial effects of past purposeful discrimination," and which the Voting Rights Act was designed to eradicate, still persist throughout the West. The Voting Rights Act, including the special preclearance requirement of Section 5 and minority language provisions of Sections 4(f)(4) and Section 203, are still urgently needed in Indian Country. Of all the modern legislation enacted to redress the problems facing American Indians, the Voting Rights Act provides the most effective means of advancing the goals of self-development and self-determination that are central to the survival and prosperity of the Indian community in the United States.

I. The Voting Rights Act in Indian Country: South Dakota, A Case Study

The problems that Indians continue to experience in South Dakota in securing an equal right to vote strongly support the extension of the special provisions of the Voting Rights Act scheduled to expire in 2007. They also demonstrate the ultimate wisdom of Congress in making permanent and nationwide the basic guarantee of equal political participation contained in the Act.[4]

A. South Dakota's Refusal to Comply with Section 5

Ten years after its enactment in 1965, Congress amended the Voting Rights Act to include American Indians, to expand the geographic reach of the special preclearance provisions of Section 5, and to require certain jurisdictions to provide bilingual election materials to language minorities. As a result of the amendments, Shannon and Todd Counties in South Dakota, home to the Pine Ridge and Rosebud Indian Reservations respectively, became subject to preclearance.[5] Further, eight counties in the state, because of their significant Indian populations, were required to conduct bilingual elections—Todd, Shannon, Bennett, Charles Mix, Corson, Lyman, Mellette, and Washabaugh.[6]

William Janklow, at that time attorney general of South Dakota, was outraged over the extension of Section 5 and the bilingual election requirement to his state. In a formal opinion addressed to the Secretary of State, he derided the 1975 law as a "facial absurdity." Borrowing the states' rights rhetoric of southern politicians who opposed the modern civil rights movement, he condemned the Voting Rights Act as an unconstitutional federal encroachment that rendered state power "almost meaningless." He quoted with approval Justice Hugo Black's famous

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4 The permanent provisions of the act and the special provisions scheduled to expire in 2007 are set out in the attached addendum.

5 41 Fed. Reg. 784 (Jan. 5, 1976).

6 41 Fed. Reg. 30,002 (July 20, 1976).

dissent in *South Carolina v. Katzenbach*,[7] arguing that Section 5 treated covered jurisdictions as "little more than conquered provinces."[8] Janklow expressed hope that Congress would soon repeal "the Voting Rights Act currently plaguing South Dakota." In the meantime, he advised the secretary of state not to comply with the preclearance requirement. "I see no need," he said, "to proceed with undue speed to subject our State's laws to a 'one-man veto' by the United States Attorney General."[9]

Although the 1975 amendments were never in fact repealed, state officials followed Janklow's advice and essentially ignored the preclearance requirement. From the date of its official coverage in 1976 until 2002, South Dakota enacted more than six hundred statutes and regulations having an effect on elections or voting in Shannon and Todd Counties, but submitted fewer than ten for preclearance.

B. How the Special Provisions Work

The Voting Rights Act of 1965 was a complex, interlocking set of permanent provisions that applied nationwide, along with special provisions that applied only in jurisdictions that had used a "test or devise" for voting and in which registration and voting were depressed. The most controversial of the special provisions was Section 5,[10] which covered most of the South where discrimination against blacks in voting had been most persistent and flagrant.

Section 5 requires "covered" jurisdictions to preclear any changes in their voting practices or procedures and prove that they do not have a discriminatory, or retrogressive, purpose or effect. A voting change is deemed to be retrogressive if it diminishes the "effective exercise" of minority political participation compared to the preexisting practice.[11] Preclearance can be obtained by making an administrative submission to the attorney general or by bringing a declaratory judgment action in the federal court in the District of Columbia. The purpose of the preclearance requirement, as explained by the Supreme Court, was "to shift the advantages of time and inertia from the perpetrators of evil (of discrimination in voting) to its victims."[12] The majority of the Supreme Court acknowledged that Section 5 was an uncommon exercise of congressional power, but found that it was justified by the "insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution."[13]

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7 383 U.S. 301 (1966).

8 *Id.* at 328 (Black, J., dissenting).

9 77 S.D. Op. Att'y Gen. 175 (1977).

10 42 U.S.C. § 1973c (2000).

11 *Beer v. United States*, 425 U.S. 130, 151 (1976).

12 *Katzenbach*, 383 U.S. at 328.

13 *Id.* at 309.

The 1975 amendments extended the protections of the act to "language minorities," defined as American Indians, Asian-Americans, Alaskan Natives, and persons of Spanish Heritage.[14] The amendments also expanded the geographic coverage of Section 5 by including in the definition of a "test or device" the use of English-only election materials in jurisdictions where more than 5 percent of the voting age citizen population was comprised of a single-language minority group.[15] As a result of this new definition, the preclearance requirement was extended to counties in California, Florida, Michigan, New Hampshire, New York, South Dakota, and the state of Texas.[16]

The 1975 amendments also required certain states and political subdivisions to provide voting materials in languages other than English.[17] While there are several tests for "coverage," the requirement is imposed upon jurisdictions with significant language minority populations who are limited-English proficient and where the illiteracy rate of the language minority is higher than the national illiteracy rate. Covered jurisdictions are required to furnish voting materials in the language of the applicable minority group as well as in English. Jurisdictions covered by the bilingual election requirement include the entire states of California, New Mexico, and Texas, and several hundred counties and townships in Alaska, Arizona, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah and Washington.[18]

Indians, as a "cognizable racial groups," were undoubtedly already covered by the permanent provisions of the 1965 Voting Rights Act, which prohibited discrimination on the basis of "race or color."[19] In a 1955 decision, for example, the Supreme Court acknowledged that an Indian would be entitled to the protection of a state law prohibiting discrimination on the basis of "race or color."[20] In a variety of contexts, courts have held that Indians were a racial group entitled to the protection of the constitution and federal civil rights laws, e.g., in legislative redistricting,[21] in jury selection,[22] in employment,[23] in public education,[24] in access to services,[25] etc. In addition, a

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14 42 U.S.C. § 1973aa-1a(e) (2000).

15 S. REP. NO. 94-295, at 9 (1975), *reprinted in* 1975 U.S.C.C.A.N. 774, 775.

16 28 C.F.R pt. 51, app. (1990).

17 42 U.S.C. § 1973aa-1a.

18 28 C.F.R. pt. 55, app (1990).

19 42 U.S.C. § 1973.

20 *Rice v. Sioux City Mem'l Part Cemetery*, 349 U.S. 70, 76 (1955).

21 *Klahr v. Williams*, 339 F. Supp. 922, 927 (D. Ariz. 1972); *Goodluck v. Apache County*, 417 F. Supp. 13 (D. Ariz. 1975).

22 *United States v. Iron Moccasin*, 878 F. 2d 226 (8th Cir. 1989); *United States v. Raszkiewicz*, 169 F. 3d 459, 464 (7th Cir. 1999).

23 *Poolaw v. City of Anadarko, Okla.*, 660 F. 2d 459 (10th Cir. 1981).

24 *Natonabah v. Bd. Of Educ.*, 355 F. Supp. 716, 724 (D.N. Mex. 1973).

number of jurisdictions that had substantial Native American populations were covered by the special preclearance provisions of the 1965 Act, including the state of Alaska and four counties in Arizona.[26] The 1975 amendments, however, expanded the geographic reach of Section 5 and made the coverage of Indians explicit.

C. The Reasons for Extending the Coverage

During hearings on the 1975 amendments, Rep. Peter Rodino, chair of the House Judiciary Committee, said that members of language minority groups, including American Indians, related "instances of discriminatory plans, discriminatory annexations, and acts of physical and economic intimidation."[27] According to Rodino, "(t)he entire situation of these uncovered jurisdictions is tragically reminiscent of the earlier and, in some respects, current problems experienced by blacks in currently covered areas."[28] Rep. Robert Drinan noted similarly during the floor debate that there was "evidence that American Indians do suffer from extensive infringement of their voting rights," and that the Department of Justice "has been involved in thirty-three cases involving discrimination against Indians since 1970."[29] House members also took note of various court decisions documenting voting discrimination against Native American, including *Klahr v. Williams*,[30] *Oregon v. Mitchell*,[31] and *Goodluck v. Apache County*.[32]

The House report that accompanied the 1975 amendments of the Act found "a close and direct correlation between high illiteracy among (language minority) groups and low voter participation."[33] The illiteracy rate among American Indians was 15.5 percent, compared to a nationwide illiteracy rate of only 4.5 percent for Anglos. The report concluded that these

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25 *Scott v. Eversole Mortuary*, 522 F. 2d 1110, 1112 (9th Cir. 1975).

26 Three counties in Arizona—Apache, Navajo, and Coconino—were allowed to "bail out" from Section 5 coverage after the court concluded that the state's literacy test had not been discriminatorily applied against American Indians. *Apache County v. United States*, 256 F. Supp. 903, 913 (D.D.C. 1966). The state of Alaska, with its substantial Alaskan Native population, was also removed to bail out and for similar reasons. *Alaska v. United States*, No. 101-66 (D.D.C. Aug. 17, 1966). As a result of subsequent amendments to the act, both Alaska and Arizona were "recaptured" by Section 5.

27 121 CONG. REC. 16,244 (1975) (statement of Rep. Rodino).

28 *Id.*

29 121 CONG. REC. 16,262 (1975) (statement of Rep. Drinan).

30 Klahr, 339 F. Supp. At 927 (finding that legislative redistricting in Arizona had been adopted for the purpose of diluting Indian voting strength), cited in Extension of the Voting Rights Act: Hearings Before the Subcomm. On Civil and Constitutional Rights of the House Judiciary Comm. 94th Cong., app. at 1225-30 (1975) (hereinafter 1975 House Hearings).

31 400 U.S. 112, 147 (1970) (Douglas, J., concurring) (noting that literacy "tests have been used at times as a discriminatory weapon against … American Indians"), cited in 121 CONG. REC. 16,245 (1975) (statement of Rep. Edwards).

32 *Goodluck*, 417 F. Supp. At 14 (finding that a county redistricting plan had been adopted to diminish Indian voting strength, cited in 1975 House Hearings, supra note 27, app. at 1225-30; 121 CONG.REC. 16,250 (1975) (statement of Rep. Young).

33 H. REP. NO. 94-196, at 30 (1975).

disparities were "the product of the failure of state and local officials to offer equal educational opportunities to members of minority groups."[34]

During debate in the Senate, Senator William Scott read into the record a report prepared by the Library of Congress, "Prejudice and Discrimination in American History," which concluded that:

> Discrimination of the most basic kind has been directed against the American Indian from the day that settlers from Europe set foot upon American shores … (A)s late as 1948 certain Indians were still refused the right to vote. The resulting distress of Indians is as severe as that of any group discriminated against in American society.[35]

Discrimination against Indians has not only been severe, it has been unique. Even during the days of slavery, blacks, who were regarded as valuable property, were never subjected to the kind of extermination policies that were often visited upon tribal members in the West.[36]

The first laws enacted by the Dakota Territory involving Indians were distinctly racist. They praised the "indomitable spirit of the Anglo-Saxon," and described Indians as "red children" and the "poor child" of the prairie.[37] Four years later, the legislature described Indians as the "revengeful and murderous savage."[38]

Territorial laws (and later state laws) restricted voting and office-holding to free white males and citizens of the United States.[39] Indians who sustained tribal relations, received support from the government, or held untaxable land were prohibited from voting in any state election.[40] The establishment of precincts on Indian reservations was forbidden,[41] and as election judges and clerks were required to have the "qualifications of electors," Indians were effectively denied the right to serve as election officials.[42]

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[34] *Id.*

[35] 121 CONG. REC. 13,603 (1975) (statement of Sen. Scott).

[36] This bleak chapter in American history has been recounted in many places, including in Dee Alexander Brown's Bury My Heart at Wounded Knee: An Indian History of the American West (1970).

[37] 1862 Dakota Terr. Laws Preface.

[38] Memorial and Joint Resolution Regarding the Appointment of an Indian Agent, ch. 38, 1866 Dakota Terr. Laws 551.

[39] *See, e.g.,* Act of Jan. 14, 1864, ch. 19, 1864 Dakota Terr. Laws 51; Civil Code § 26, 1866 Dakota Terr. Laws 1, 4 (providing that Indians cannot vote or hold office); Act of Mar. 8, 1890, ch. 45, 1890 S.D. Laws 118.

[40] Act of Mar. 8, 1890, ch. 45, 1890 S.D. Laws 118.

[41] Act of Mar. 12, 1895, ch. 84, 1895 Dakota Terr. Laws 88.

[42] Dakota Terr. Comp. L. §§ 1442-1443 (1887).

South Dakota discriminated against Indians in a variety of other ways. Indians were prohibited from entering ceded lands without a permit.[43] It was a crime to harbor or keep on one's premises or within any village settlement of white people any reservation Indians "who have not adopted the manners and habits of civilized life."[44]

Jury service was restricted to "free white males."[45] The intermarriage of white persons with persons of color" was prohibited.[46] Further, it was a crime to provide instruction in any language other than English.[47]

South Dakota also played a leading role in breaking various treaties between tribes and the United States. The legislature sent a stream of resolutions and memorials to Congress urging it to extinguish Indian title to land and remove the Indians to make way for white settlement. In 1862, it asked Congress to extinguish title "to the country now claimed and occupied by the Brule Sioux Indians,"[48] and to extinguish title to land occupied by the Chippewa Indians. [49] Four years later, it requested the Secretary of War to establish a military post to protect "the colonization of the Black Hills."[50] In 1868, it proposed the removal of Dakota Indians and exclusion from "habitation of the Indians that portion of Dakota known as the Black Hills."[51] On December 31, 1870, it renewed its request for the removal of Chippewa Indians from ceded lands.[52] In 1873, it again asked Congress to open Indian lands, including the Black Hills, to white settlement.[53] As a result of the intense pressure from the territorial government and white miners and settlers, and the United States' capitulation to it, the Black Hills and other traditional tribal lands were finally taken from the Indians.[54] The Supreme Court, commenting on the expropriation of the Black Hills from the Sioux in 1877, said that "(a) more ripe and rank case of dishonorable dealing will never, in all probability, be found in our history.[55] Shortly after the

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43 Act to Prevent Indians From Trespassing on Ceded Lands, ch. 46, 1862 Dakota Terr. Laws 319.

44 Act Prohibiting the Harboring of Indians Within the Organized Counties, ch. 19, 1866 Dakota Terr. Laws 482.

45 Act Respecting Jurors, Ch. 52, 1862 Dakota Terr. Laws 374; *see also* Act of Mar. 5, 1901, Ch. 168, 1901 S.D. Laws 270 (providing for the selection of jurors from tax lists).

46 Act Regulating Marriages, Ch. 59, 1862 Dakota Terr. Laws 390; see also Act of Mar 14, 1913, Ch. 226, 1913 S.D. Laws 406 (prohibiting the "intermarriage, or illicit cohabitation" of members of the white and colored races).

47 Act of Mar. 11, 1921, ch. 203, 1921 S.D. Laws 307.

48 Memorial and Joint Resolution Regarding the Brule Sioux Indians, ch. 99, 1862 Dakota Terr. Laws 503.

49 Memorial to Congress Regarding the Chippewa Indians, ch. 100, 1862 Dakota Terr. Laws 505.

50 Memorial to the Secretary of War, ch. 50, 1866 Dakota Terr. Laws 566.

51 Memorial and Joint Resolution Regarding Indian Affairs, 1867 Dakota Terr. Laws 275.

52 Memorial to the President, 1870 Dakota Terr. Laws 585.

53 Memorial to Congress, 1872 Dakota Terr. Laws 204.

54 BROWN, supra note 33, at 269.

55 *United States v. Sioux Nation of Indians*, 448 U.S. 371, 387 (1980).

turn of the century, South Dakota, by then a state, asked Congress to open portions of the Rosebud Reservation to white settlement.[56]

Despite passage of the Indian Citizenship Act of 1924,[57] which granted full rights of citizenship to Indians, South Dakota officially excluded Indians from voting and holding office until the 1940's.[58] Even after the repeal of state law denying Indians the right to vote, as late as 1975, the state prohibited Indians from voting in elections in counties that were "unorganized" under state law.[59] The three unorganized counties were Todd, Shannon, and Washabaugh, whose residents were overwhelmingly Indian. The state also prohibited residents of the unorganized counties from holding county office until as late as 1980.[60]

For most of the Twentieth Century, voters were required to register in person at the office of the county auditor.[61] Getting to the county seat was a hardship for Indians who lacked transportation, particularly for those in unorganized counties who were required to travel to another county to register. Moreover, state law did not allow the auditor to appoint a tribal official as a deputy to register Indian voters in their own communities.[62] There was one exception, however. State law required the tax assessor to register property owners in the course of assessing the value of their land. Thus, taxpayers were automatically registered to vote, while non-taxpayers, many of whom were Indians, were required to make the trip to the courthouse to register in person.[63] Mail-in registration was not fully implemented in South Dakota until 1973.[64]

D. Depressed Socioeconomic Status and Reduced Political Participation

One of the many legacies of discrimination against Indians is a severely depressed socioeconomic status. According to the 2000 Census, the unemployment rate for Indians in South Dakota was 23.6 percent, compared to 3.2 percent for whites.[65] Unemployment rates on the reservations were even higher. In 1997, the unemployment rate on the Cheyenne River

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[56] House Joint Resolution 6, Ch. 147, 1901 S.D. Laws 248.

[57] 8 U.S.C. § 1401(a)(2)(2000).

[58] *Buckanaga v. Sisseton Indep. Sch. Dist.*, 804 F. 2d 469, 474 (8th Cir. 1986).

[59] *Little Thunder v. South Dakota*, 518 F. 2d 1253, 1255-57 (8th Cir. 1975).

[60] *United States v. South Dakota*, 636 F. 2d 241, 244-45 (8th Cir. 1980).

[61] S.D.CODIFIED LAWS §§ 16.0701-.0706 (Michie 1939).

[62] 1963–1964 S.D. ATT'Y GEN. BIEENNIAL REP. 341.

[63] *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1024 (D.S.D 2004).

[64] Act of Mar. 27, 1973, Ch. 70, 1973 S.D. Laws 111.

[65] U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, SOUTH DAKOTA: 2000: CENSUS 2000 SUMMARY FILE 3 (2002) (hereinafter U.S. CENSUS SUMMARY FILE 3).

Sioux Reservation was 80 percent. At the Standing Rock Indian Reservation it was 74 percent.[66] The average life expectancy of Indians is shorter than that of other Americans. According to a report drafted by the South Dakota Advisory Committee to the U.S. Commission on Civil Rights, "Indian men in South Dakota ... usually live only into their mid-50's."[67] Infant mortality in Indian Country "is double the national average."[68]

Native Americans experience a poverty rate that is five times the poverty rate for whites. The 2000 Census reported the 48.1 percent of Indians in South Dakota were living below the poverty line, compared to 9.7 percent of whites. Sixty-one percent of Native American households received incomes below $20,000, compared to 24.4 percent of white households. The per capita income of Indians was $6,799 compared to $28,837 for whites.[69]

Of Native Americans twenty-five years of age and over, 29 percent have not finished high school, while 14 percent of whites are without a high school diploma. The drop-out rate among Indians aged sixteen through nineteen is 24 percent, four times the drop-out rate for whites. Nearly one-fourth of Indian households live in crowded conditions, compared to 1.6 percent for whites. Approximately 21 percent of Indian households lack telephones, compared to 1.2 percent of white households. Native American households are three times as likely as white households to be without access to vehicles; 17.9 percent of Native American households are without access to vehicles versus 5.4 percent of white households.[70]

The link between depressed socioeconomic status and reduced political participation is direct. As the Supreme Court has recognized, "political participation tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes."[71] Numerous appellate and trial court decisions, including those from Indian country, are to the same effect.

In a case from South Dakota involving the Sisseton Independent School District, the U.S. Court of Appeals for the Eighth Circuit concluded that "(l)ow political participation is one of the effects of past discrimination."[72] Similarly, in a case involving tribal members in Thurston County, Nebraska, the court held that "disparate socio-economic status is causally connected to Native Americans' depressed level of political participation."[73] Finally, the Court of Appeals for

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[66] South Dakota Advisory Committee to the U.S. Commission on Civil Rights, Native Americans in South Dakota: An Erosion of Confidence in the Justice System 6 (2000) (hereinafter S.D. ADVISORY COMM. REPORT (2000)).

[67] *Id.*

[68] *Id.* at 6–7.

[69] U.S. CENSUS SUMMARY FILE 3, *supra* note 62.

[70] *Id.*

[71] *Thornburg v. Gingles*, 478 U.S. 30, 69 (1986).

[72] *Buckanaga*, 804 F. 2d at 475.

[73] *Stabler v. County of Thurston*, 129 F. 3d 1015, 1023 (8th Cir. 1997).

the Ninth Circuit held that "lower … social and economic factors hinder the ability of American Indians in Montana to participate fully in the political process."[74]

Given the socioeconomic status of Indians in South Dakota, it is not surprising that their voter registration and political participation have been severely depressed. As late as 1985, only 9.9 percent of Indians in the state were registered to vote.[75] The South Dakota Advisory Committee to the U.S. Commission on Civil Rights soberly concluded in a 2000 report that:

> For the most part, Native Americans are very much separate and unequal members of society … (who) do not fully participate in local, State and Federal elections. This absence from the electoral process results in a lack of political representation at all levels of government and helps to ensure the continued neglect and inattention to issues of disparity and inequality.[76]

E. Indian Voting Rights Litigation

Despite the application of the Voting Rights Act to Indians, both in its enactment in 1965 and extension in 1975, relatively little litigation to enforce the Act, or the constitution, was brought on behalf of Indian voters in the West until fairly recently. Indian country was largely bypassed by the extensive voting rights litigation campaign that was waged elsewhere, particularly in the South, after the amendment of Section 2 of the Voting Rights Act in 1982 to incorporate a discriminatory "results" standard.[77]

Section 2, one of the original provisions of the 1965 Act, was a permanent, nationwide prohibition on the use of voting practices or procedures that "deny or abridge" the right to vote on the basis of race or color. The Supreme Court subsequently held in *Mobile v. Bolden*[78] that proof of a discriminatory purpose, as was the case for a constitutional violation, was also required for a violation of Section 2. Two years later, Congress responded to *Mobile v. Bolden* by amending Section 2 and dispensing with the requirement of proving that a challenged practice was enacted, or was being maintained, with a discriminatory purpose.[79] Congress also made explicit that Section 2 protected the equal right of minorities "to elect representatives of their choice."

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[74] *Old Person v. Cooney*, 230 F.3d 1113, 1129 (9th Cir. 2000); *accord, Windy Boy v. County of Big Horn*, 647 F. Supp. 1002, 1016-017 (D. Mont. 1986) ("Reduced participation and reduced effective participation of Indians in local politics can be explained by many factors … but the lingering effects of past discrimination is certainly one of those factors.").

[75] *Buckanaga*, 804 F.2d at 474.

[76] S.D. ADVISORY COMM. REPORT (2000), *supra* note 63, at 38-39.

[77] *See* 42 U.S.C. § 1973 (2000).

[78] 446 U.S. 55 (1980).

[79] S. REP. NO. 97–417, at 36 (1982) U.S.C.C.A.N. 177, 214.

The Supreme Court construed Section 2 for the first time in *Thornburg v. Gingles*,[80] and simplified the test for proving a violation of the statute by identifying three factors as most probative of minority vote dilution: geographic compactness, political cohesion, and legally significant white bloc voting.[81] The ultimate test under Section 2 is whether a challenged practice, based on the totality of circumstances, "interacts with social and historical conditions to create an inequality in the opportunities enjoyed by (minority) and white voters."[82] The amendment of Section 2 and *Gingles* were critical in facilitating what has accurately been described as a "quiet revolution" in minority voting rights and office holding.[83]

The lack of enforcement of the Voting Rights Act in Indian country was the result of a combination of factors. They included a lack of resources and access to legal assistance by the Indian community, lax enforcement of the Voting Rights Act by the Department of Justice, the isolation of the Indian community, and the debilitating legacy of years of discrimination by the federal and state governments.

The first challenge under amended Section 2 in South Dakota was brought in 1984 by members of the Sisseton-Wahpeton Sioux Tribe in Roberts and Marshall Counties. Represented by the Native American Rights Fund, they claimed that the at-large method of electing members of the board of education of the Sisseton Independent School District diluted Indian voting strength. The trial court dismissed the complaint, but the Eighth Circuit reversed. It held that the trial court failed to consider "substantial evidence … that voting in the District was polarized along racial lines."[84] The trial court had also failed to discuss the "substantial" evidence of discrimination against Indians in voting and office holding, the "substantial evidence regarding the present social and economic disparities between Indians and whites,"[85] the discriminatory impact of staggered terms of office and apportioning "seats between rural and urban members on the basis of registered voters"[86] which underrepresented Indians, and "the presence of only two

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[80] 478 U.S. 30 (1986).

[81] *Id.* at 50–51.

[82] *Id.* at 47; *accord* Johnson v. DeGrandy, 512 U.S. 997, 1012 (1994).

[83] *See e.g.* Laughlin McDonald, *The Quiet Revolution in Minority Voting Rights*, 42 VAND. L. REV. 1249 (1989); QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 1965-1990 (Chandler Davidson & Bernard Grofman eds., 1994).

[84] *Buckanaga,* 804 F.2d at 473.

[85] *Id.* at 474.

[86] *Id.* at 475.

polling places."[87] On remand, the parties reached a settlement utilizing cumulative voting for the election of school board members.[88]

In 1986, Alberta Black Bull and other Indian residents of the Cheyenne River Sioux Reservation brought a successful Section 2 suit against Ziebach County because of its failure to provide sufficient polling places for school district elections.[89] The same year, Indian plaintiffs on the reservation secured an order requiring the auditor of Dewey County to provide Indians additional voter registration cards and extend the deadline for voter registration.[90]

Some thirteen years later, in 1999, the United States sued officials in Day County for denying Indians the right to vote in elections for a sanitary district in the area of Enemy Swim Lake and Campbell Slough. Under the challenged scheme, only residents of several non-contiguous pieces of land owned by whites could vote, while residents of the remaining 87 percent of the land around the two lakes, which was owned by the Sisseton-Wahpeton Sioux Tribe and about two hundred tribal members, were excluded from the electorate. In an agreement settling the litigation, local officials admitted that Indians had been unlawfully denied the right to vote, and agreed upon a new sanitation district that included the Indian owned land around the two lakes.[91]

Steven Emery, Rocky LeCompte, and James Picotte, residents of the Cheyenne River Sioux Reservation, and represented by the ACLU's Voting Rights Project, filed suit in 2000 challenging the state's 1996 interim legislative redistricting plan. In the 1970s, a special task force consisting of the nine tribal chairs, four members of the legislature, and five lay people undertook a study of Indian/state government relations. One of the staff reports of the commission concluded that "(w)ith the present arrangement of legislative districts, Indian people have had their voting potential in South Dakota diluted."[92] The report recommended the creation of a majority Indian district in the area of Shannon, Washabaugh, Todd and Bennett Counties.[93] Under the existing plan, there were twenty-eight legislative districts, all of which were majority white and none of which had ever elected an Indians.[94] Thomas Short Bull, a member of the Oglala Sioux Tribe and the executive director of the task force, said that the plan gerrymandered the Rosebud and Pine Ridge Reservations by "divid(ing them) into three legislative districts,

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87 *Id.* at 476.

88 *See* Jeanette Wolfley, *Jim Crow, Indian Style: The Disenfranchisement of Native Americans,* 16 AM. INDIAN L. REV. 167, 200 (1991); *see also Dillard v. Chilton County Bd. of Educ.*, 699 F. Supp. 870, 872, 874 (M.D. Ala. 1988) (discussing cumulative voting).

89 *Black Bull v. Dupree Sch. Dist.*, No. 86-3012 (D.S.D. May 14, 1986).

90 *Fiddler v. Sieker*, No. 85-3050 (D.S.D. Oct. 24, 1986).

91 *United States v. Day County*, S.D., No. 99-1024 (D.S.D. June 16, 2000).

92 Task Force on Indian-State Government Relations, Legislative Apportionment and Indian Voter Potential 17 (1974).

93 *Id.* at 25.

94 *Bone Shirt*, 336 F. Supp.2d at 980.

effectively neutralizing the Indian vote in that area."[95] The legislature, however, ignored the task force's recommendation. According to Short Bull, "the state representatives and senators felt it was a political hot potato … (T)his was just too pro-Indian to take as an item of action."[96]

Prior to the 1980s round of redistricting, the South Dakota Advisory Committee to the U.S. Commission on Civil Rights made a similar recommendation that the legislature create a majority Indian district in the area of the Pine Ridge and Rosebud Reservations. The committee issued a report in which it said that the existing districts "inherently discriminate against Native Americans in South Dakota who might be able to elect one legislator in a single member district."[97] The Department of Justice, pursuant to its oversight under Section 5, advised the state that it would not preclear any legislative redistricting plan that did not contain a majority Indian district in the Rosebud/Pine Ridge area. The state bowed to the inevitable and, in 1981, drew a redistricting plan creating for the first time in the state's history a majority Indian district, District 28, which included Shannon and Todd Counties and half of Bennett County.[98] Thomas Short Bull, an early proponent of equal voting rights for Indians, ran for the state Senate the following year from District 28 and was elected, becoming the first Indian ever to serve in the state's upper chamber.

The South Dakota legislature adopted a new redistricting plan in 1991.[99] The plan divided the state into thirty-five districts and provided, with one exception, that each district would be entitled to one Senate member and two House members elected at-large from within the district. The exception was new House District 28. The 1991 legislation provided that "in order to protect minority voting rights, District No. 28 shall consist of two single-member house districts."[100] District 28A consisted of Dewey and Ziebach counties and portions of Corson County, and included the Cheyenne River Sioux Reservation and portions of the Standing Rock Sioux Reservation. District 28B consisted of Harding and Perkins Counties and portions of Corson and Butte counties. According to 1990 Census data, Indians were 60 percent of the voting age population (VAP) of House district 28A, and less than 4 percent of the VAP of House District 28B.

Five years later, despite its pledge to protect minority voting rights, the legislature abolished House Districts 28A and 28B and required candidates for the House to run in District 28 at-large.[101] Tellingly, the repeal took place after an Indian candidate, Mark Van Norman, won the

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[95] *Id.* at 981.

[96] *Id.*

[97] *Id.*

[98] *Bone Shirt*, 336 F. Supp. 2d at 981.

[99] Act to Redistrict the Legislature, ch.1, 1991 S.D. Laws 1st Spec. Sess. 1 (codified as amended at S.D. CODIFIED LAWS §§ 2-2-24 through 2-2-31 (Michie 2000)).

[100] *Id.* § 5, 1991 S.D. Laws 1st Spec. Sess. 1, 5.

[101] Act to Eliminate the Single-Member House Districts in District 28, Ch. 21, 1996 S.D. Laws 45 (amending S.D. CODIFIED LAWS § 2-2-28 (Michie 2000)).

Democratic primary in District 28A in 1994. A chief sponsor of the repealing legislation was Eric Bogue, the Republican candidate who defeated Van Norman in the general election.[102] The reconstituted House District 28 contained an Indian VAP of 29 percent. Given the prevailing patterns of racially polarized voting, which members of the legislature were surely aware of, Indian voters could not realistically expect to elect a candidate of their choice in the new district.

The Emery plaintiffs claimed that the changes in District 28 violated Section 2 of the Voting Rights Act, as well as Article III, Section 5 of the South Dakota Constitution. The state constitution provided that:

> An apportionment shall be made by the Legislature in 1983 and in 1991, and every ten years after 1991. Such apportionment shall be accomplished by December first of the year in which the apportionment is required. If any Legislature whose duty it is to make an apportionment shall fail to make the same as herein provided, it shall be the duty of the Supreme Court within ninety days to make such apportionment.[103]

The constitution thus contained both an affirmative mandate and an implied prohibition. It mandated reapportionment in 1983, 1991, and in every tenth year thereafter, and it also prohibited all interstitial reapportionment. The South Dakota Supreme Court had expressly held that "when a Legislature once makes an apportionment following an enumeration no Legislature can make another until after the next enumeration."[104] Any reapportionment that occurred outside of the authority granted by the state constitution was therefore invalid as a matter of state law.[105]

Pronouncements by the South Dakota Legislative Research Council were to the same effect. According to a 1995 memorandum prepared by the council, "(i)n the absence of a successful legal challenge, Article III, section 5 of the South Dakota Constitution precludes any redistricting before 2001."[106] In another memorandum prepared in 1998, the council reiterated that "(u)nder the provisions of Article III, section 5, the legislature is, however, restricted to redistricting only once every ten years."[107] Despite the prohibitions of the state constitution and the views of the

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[102] House State Affairs Comm., Minutes 5 (Jan. 29, 1996).

[103] S.D. CONST. Art. III, § 5.

[104] *In re Legislative Reapportionment*, 246 N.W. 295, 297 (S.D. 1933).

[105] *In re State Census*, 62 N.W. 129, 130 (S.D. 1895). Other states have similar constitutional provisions, and courts have interpreted them in the same way. *See, e.g. Exon v. Tiemann*, 279 F. Supp. 603, 608 (D. Neb. 1967) (per curiam) (three judge court) (interpreting the Nebraska Constitution); *Legislature of Cal. v. Deukmejian*, 669 P.2d 17 (Cal. 1983) (per curiam); *In re Interrogatories*, 536 P.2d 308 (Colo. 1975).

[106] South Dakota Legislative Research Council, Issue Memorandum 95-36, Majority-Minority Districts: Legislative Reapportionment After *Miller v. Johnson* 6 (1995).

[107] South Dakota Legislative Research Council, Issue Memorandum 98-12, Comparison of Single Member and Multiple Member House Districts 5 (1998).

research council, the legislature adopted the mid-census plan abolishing majority Indian District 28A.

Dr. Steven Cole, an expert witness for the *Emery* plaintiffs, analyzed the six legislative contests involving Indian and non-Indian candidates in District 28 held under the 1991 plan between 1992-1994, to determine the existence, and extent, of any racial bloc voting. Indian voters favored the Indian candidates at an average rate of 81 percent, while whites voted for the white candidates at an average rate of 93 percent. In all six of the contests, the candidate preferred by Indians was defeated.[108]

Dr. Cole also analyzed one countywide contest involving an Indian candidate, the 1992 general election for treasurer of Dewey County. Indian cohesion was 100 percent, white cohesion was 95 percent, and again the Indian-preferred candidate was defeated.[109]

There were five white-white legislative contests from 1992-1998, four of which were head-to-head contests, and one of which was a vote-for-two contest. All of the contests showed significant levels of polarized voting. For the six seats filled in the five contests, the candidates preferred by Indians lost four times. Notably, the Indian-preferred white candidate(s) won only in majority Indian District 28A. Schrempp, the white candidate, was preferred by Indian voters in District 28A in the 1992 and 1996 general elections, and won both times. In the 1998 general election, however, he ran for state Senate in District 28. Although he was again preferred by Indian voters, running in a district in which Indians were 29 percent of the VAP, he lost. This sequence of elections demonstrates in an obvious way the manner in which at-large elections in District 28 dilute or submerge the voting strength of Indian voters.[110]

White cohesion also fluctuated widely depending on whether or not an Indian was a candidate. In the four head-to-head white-white legislative contests, where there was no possibility of electing an Indian candidate, the average level of white cohesion was 68 percent. In the Indian-white legislative contests, the average level of white cohesion jumped to 94 percent.[111] This phenomenon of increased white cohesion to defeat minority candidates has been called "targeting," and illustrates the way in which majority white districts operate to dilute minority voting strength.[112]

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[108] *Emery v. Hunt*, No. 00-3008 (D.S.D. 2000), Report of Steven P. Cole, at tbls. 1 & 2 (hereinafter Report of Steven Cole). Dr. Cole used two standard techniques for determining the existence of cohesion and racial bloc voting, bivariate ecological regression analysis (BERA) and homogeneous precinct analysis.

[109] *Id.*

[110] *Id.* at tbl. 3.

[111] *Id.* at tbls. 1 & 3.

[112] See *Clarke v. City of Cincinnati*, 40 F.3d 807, 812 (6th Cir. 1994) ("When white bloc voting is 'targeted' against black candidates, black voters are denied an opportunity enjoyed by white voters, namely, the opportunity to elect a candidate of their own race."); *RWTAAAC v. Sundquist*, 29 F. Supp. 2d 448, 457 (W.D. Tenn. 1998) (same), aff'd, 209 F.3d 835 (6th Cir. 2000).

The vote-for-two election for the House in 1998, the first such election held after the repeal of District 28A, also showed a remarkable divergence between Indian and white voters. The candidate with the least amount of Indian support (Wetz, with 8 percent of the Indian vote) got the highest amount of support from white voters (70 percent). The candidate with the next lowest support from Indian voters (Klaudt) received the second highest white support.[113]

The plaintiffs' Section 2 claim was strong. They met the basic requirements set out in *Gingles* for proof of vote dilution: they were sufficiently geographically compact to constitute a majority in a single member district; they were politically cohesive; and whites voted as a bloc usually to defeat the candidates of their choice. In addition, there were present other "totality of circumstances" factors that were probative of vote dilution identified in *Gingles* and the Senate report that accompanied the 1982 amendments. Indians had a depressed socioeconomic status. There was an extensive history of discrimination in the state, including discrimination that impeded the ability of Indians to register and otherwise participate in the political process. The history of Indian and white relations in South Dakota was, in the words of the South Dakota Advisory Committee, one of "broken treaties, and policies aimed at assimilation and acculturation that severed Indians of their language, customs, and beliefs."[114] Voting was polarized. District 28 was also large, *i.e.*, twice the size of District 28A, making it much more difficult for poorly financed Indian candidates to campaign.

But before the Section 2 vote dilution claim could be heard, the district court certified the state law question to the South Dakota Supreme Court. That court accepted certification and held that in enacting the 1996 redistricting plan "the Legislature acted beyond its constitutional limits."[115] It declared the plan null and void and reinstated the preexisting 1991 plan. At the ensuing special election ordered by the district court, Tom Van Norman was elected from District 28A, the first Indian in history to be elected to the state house from the Cheyenne River Sioux Indian Reservation.

Another Section 2 case was filed in March 2002 by Indian plaintiffs against the at-large method of electing the board of education of the Wagner Community School District in Charles Mix County. The parties eventually agreed on a method of elections using cumulative voting to replace the at-large system, and a consent decree was entered by the court on March 18, 2003.[116] At the next election John Sully, an Indian, was elected to the board of education. A similar Section 2 suit against the city of Martin is pending.[117]

One of the most blatant schemes to disfranchise Indian voters was employed in Buffalo County. The population of the county was approximately 2,000 people, 83 percent of whom were Indian,

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[113] Report of Steven Cole, *supra* note 105, at tbl. 3.

[114] S.D. ADVISORY COMM. REPORT (2000), *supra* note 63, at ch. 3.

[115] *Emery v. Hunt*, 615 N.W.2d 590, 597 (S.D. 2000).

[116] *Weddell v. Wagner Cmty. Sch. Dist.*, No. 02-4056 (D.S.D. Mar. 18, 2003).

[117] *Wilcox v. City of Martin*, No. 02-5021 (D.S.D.).

and members primarily of the Crow Creek Sioux Tribe. Under the plan for electing the three-member county commission, which had been in effect for decades, nearly all of the Indian population—some 1,500 people—were packed in one district. Whites, though only 17 percent of the population, controlled the remaining two districts, and thus the county government. The system was not only in violation of one-person, one-vote, but had clearly been implemented and maintained to dilute the Indian vote and insure white control of county government. Tribal members, represented by the ACLU, brought suit in 2003 alleging that the districting plan was malapportioned and had been drawn purposefully to discriminate against Indian voters. The case was settled by a consent decree in which the county admitted that its plan was discriminatory and agreed to submit to federal supervision of its future plans under Section 5 of the Voting Rights Act through January 2013.[118]

F. The Unsubmitted Voting Changes

A number of the voting changes which South Dakota enacted after it became covered by Section 5, but which it refused to submit for preclearance, had the potential for diluting Indian voting strength. One was authorization for municipalities to adopt numbered seat requirements. A numbered seat provision, as the Supreme Court has noted, disadvantages minorities because it creates head-to-head contests and prevents a cohesive political group from single-shot voting, or "concentrating on a single candidate."[119] Another unsubmitted change was the requirement of a majority vote for nomination in primary elections for United States Senate, House of Representatives, and governor.[120] A majority vote requirement can "significantly" decrease the electoral opportunities of a racial minority by allowing the numerical majority to prevail in all elections.[121] Still another voting change the state failed to submit was its 2001 legislative redistricting plan.

The 2001 plan divided the state into thirty-five legislative districts, each of which elected one senator and two members of the House of Representatives.[122] No doubt due to the litigation involving the 1996 plan, the legislature continued the exception of using two subdistricts in District 28, one of which included the Cheyenne River Sioux Reservation and a portion of the Standing Rocky Indian Reservation. The boundaries of the district that included Shannon and Todd counties, District 27, were altered only slightly under the 2001 plan, but the demographic composition of the district was substantially changed. Indians were 87 percent of the population of District 27 under the 1991 plan, and the district was one of the most underpopulated in the state. Under the 2001 plan, Indians were 90 percent of the population, while the district was one of the most overpopulated in the state. As was apparent, Indians were more "packed," or over-

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[118] *Kirkie v. Buffalo County*, S.D., No. 03-3011 (D.S.D. Feb. 12, 2004).

[119] *Rogers v. Lodge*, 458 U.S. 613, 627 (1982).

[120] Act of July 1, 1985, ch. 110, 1985 S.D. Laws 295.

[121] *City of Rome, Ga. v. United States*, 447 U.S. 156, 183-84 (1980).

[122] S.D. CODIFIED LAWS § 2-2-34 (Michie 2001).

concentrated, in the new District 27 than under the 1991 plan. Had Indians been "unpacked," they could have been a majority in a house district in adjacent District 26.

Indeed, James Bradford, an Indian representative from District 27, proposed an amendment reconfiguring District 26 and 27 that would have retained District 27 as majority Indian and divided up District 26 into two House districts, one of which, District 26A, would have had an Indian majority. Bradford's amendment was voted down fifty-one to sixteen.[123] Thomas Short Bull criticized the way in which District 27 had been drawn because there were "just too many Indians in that legislative district," which he said diluted the Indian vote.[124] Elsie Meeks, a tribal member at Pine Ridge and the first Indian to serve on the U.S. Commission on Civil Rights, said that the plan "segregates Indians," and denies them equal voting power.[125]

Despite enacting these admitted changes in voting—a new legislative plan affecting Todd and Shannon counties, which were covered by Section 5—the state refused to submit the 2001 plan for preclearance. Alfred Bone Shirt and three other Indian residents from Districts 26 and 27, with the assistance of the ACLU, sued the state in December 2001 for its failure to submit its redistricting plan for preclearance. The plaintiffs also claim that the plan unnecessarily packed Indian voters in violation of Section 2 and deprived them of an equal opportunity to elect candidates of their choice.

A three-judge court was convened to hear the plaintiffs' Section 5 claim. The state argued that since district lines had not been significantly changed insofar as they affected Shannon and Todd counties, there was no need to comply with Section 5. The three-judge court disagreed. It held that "demographic shifts render the new District 27 a change 'in voting' for the voters of Shannon and Todd counties that must be precleared under (Section) 5."[126] The state submitted the plan to the attorney general, who precleared it, apparently concluding the additional packing of Indians in District 27 did not have a retrogressive effect.

The district court, sitting as a single-judge court, heard plaintiffs' Section 2 claim and, in a detailed 144-page opinion, invalidated the state's 2001 legislative plan as diluting Indian voting strength. The court found that Indians were geographically compact and could constitute a majority in an additional House district in the area of Pine Ridge and Rosebud Indian Reservations. Indians were politically cohesive, as a significant number of Indians usually voted for the same candidates, shared common beliefs, ideals, and concerns, and had organized themselves politically and in other areas. The court also found that plaintiffs established the third *Gingles* factor, *i.e.*, that whites voted as a bloc usually to defeat the candidates favored by Indians.[127]

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[123] *Bone Shirt*, 336 F. Supp. 2d at 984.

[124] *Id.* at 985.

[125] *Id.*

[126] *Bone Shirt v. Hazeltine*, 200 F. Supp. 2d 1150, 1154 (D.S.D. 2002) (three-judge court).

[127] *Bone Shirt*, 336 F. Supp. 2d at 987-1017.

Turning to the totality of circumstances analysis required by Section 2, the court found there was "substantial evidence that South Dakota officially excluded Indians from voting and holding office."[128] Indians in recent times have encountered numerous difficulties in obtaining registration cards from their county auditors, whose behavior "ranged from unhelpful to hostile."[129] Indians involved in voter registration drives have regularly been accused of engaging in voter fraud by local officials, and while the accusations have proved to be unfounded, they have "intimidated Indian voters."[130] According to Dr. Dan McCool, the director of the American West Center at the University of Utah and an expert witness for the plaintiffs, the accusations of voter fraud were "part of an effort to create a racially hostile and polarized atmosphere. It's based on negative stereotypes, and I think it's a symbol of just how polarized politics are in the state in regard to Indians and non-Indians."[131]

Following the 2002 elections, which saw a surge in Indian political activity, the legislature passed laws that added additional requirements to voting, including a law requiring photo identification at the polls.[132] Representative Van Norman said that in passing the burdensome new photo requirement, "the legislature was retaliating because the Indian vote was a big factor in new registrants and a close senatorial race."[133] During the legislative debate on a bill that would have made it easier for Indians to vote, representatives made comments that were openly hostile to Indian political participation. According to one opponent of the bill, "I, in my heart, feel that this bill … will encourage those who we don't particularly want to have in the system." Alluding to the Indian voters, he said "I'm not sure we want that sort of person in the polling place."[134] Bennett County did not comply with the provisions of the Voting Rights Act until prior to the 2002 elections, and only then because it was directed to do so by the Department of Justice.[135]

The district court also found that "(n)umerous reports and volumes of public testimony document the perception of Indian people that they have been discriminated against in various ways in the administration of justice."[136] Thomas Hennies, Chief of Police in Rapid City, has stated publicly that "I personally know that there is racism and there is discrimination and there are prejudices among all people and that they're apparent in law enforcement."[137] Don Holloway, the sheriff of

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[128] *Id.* at 1019.

[129] *Id.* at 1025.

[130] *Id.* at 1026.

[131] *Id.*

[132] *Id.*

[133] *Id.*

[134] *Id.* (comments of Rep. Stanford Addelstein).

[135] *Id.* at 1028.

[136] *Id.* at 1030.

[137] *Id.*

Pennington County, concurred that prejudice and the perception of prejudice in the community were "true or accurate descriptions."[138]

The court concluded that "Indians in South Dakota bear the effects of discrimination in such areas as education, employment and health, which hinders their ability to participate effectively in the political process."[139] There was also "a significant lack of responsiveness on the part of elected officials to Indian concerns."[140] Representative Van Norman noted that in the legislature any bill that has "(a)nything to do with Indians instantly is, in my experience treated in a different way unless acceptable to all." "(W)hen it comes to issues of race or discrimination," he said, "people don't want to hear that." One member of the legislature even accused Van Norman of "being racist" for introducing a bill requiring law enforcement officials to keep records of people they pulled over for traffic stops.[141]

Indians in South Dakota, as found by the district court, "have also been subject to discrimination in lending."[142] Monica Drapeau, a business owner in Martin, said that she was unable to obtain a loan from the local Blackpipe State Bank, even though other banks in the state readily lent her money.[143] Blackpipe was later sued by the United States and agreed to end its policy of refusing to make secured loans subject to tribal court jurisdiction and agreed to pay $125,000 to the victims of its lending policies.[144]

Some of the most compelling testimony in the *Bone Shirt* case, and which was credited by the district court, came from tribal members who recounted "numerous incidents of being mistreated, embarrassed or humiliated by whites."[145] Elsie Meeks, for example, told about her first exposure to the non-Indian world and the fact "that there might be some people who didn't think well of people from the reservation." When she and her sister enrolled in a predominantly white school in Fall River County and were riding the bus, "somebody behind us said … the Indians should go back to the reservation. And I mean I was fairly hurt by it … it was just sort of a shock to me." Meeks said that here is a "disconnect between Indians and non-Indians" in the state. "(W)hat most people don't realize is that many Indians, they experience this racism in some form from non-Indians nearly every time they go into a border town community … (T)hen

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[138] *Id.*

[139] *Id.* at 1037.

[140] *Id.* at 1046.

[141] *Id.*

[142] *Id.* at 1031.

[143] *Id.*

[144] *Id.*

[145] *Id.* at 1032.

their … reciprocal feelings are based on that, that they know, or at least feel that the non-Indians don't like them and don't trust them."[146]

When Meeks was a candidate for lieutenant governor in 1998, she felt welcome "in Sioux Falls and lot of the East River communities." But in the towns bordering the reservations, the reception "was more hostile." There, she ran into "this whole notion that … Indians shouldn't be allowed to run on the statewide ticket and this perception by non-Indians that … we don't pay property tax … that we shouldn't be allowed (to run for office.)"[147] Such views were expressed by a member of the state legislature who said that he would be "leading the charge … to support Native American voting rights when Indians decide to be citizens of the state by giving up tribal sovereignty and paying their fair share of the tax burden."[148]

Craig Dillon, a tribal member living in Bennett County, told of his experience playing on the varsity football team of the county high school. After practice, members of the team would go to the home of the mayor's son for "fun and games." The mayor, however, "interviewed" Dillon in his office to see if he was "good enough" to be a friend of his son's. Dillon says that he flunked the interview. "I guess I didn't measure up because … I was the only one that wasn't invited back to the house after football practice after that." He found the experience to "pretty demoralizing."[149]

Monica Drapeau said that one of the reasons she didn't want to attend the public school in Winner was because of the racial tension that existed there. White students often called Indians "prairie niggers" and made other derogatory comments.[150]

Arlene Brandis, a tribal member a Rosebud, remembers walking to and from school in Tripp County. "Cars would drive by and they would holler at us and call us names … like dirty Indian, drunken Indian, and say why don't you go back to the reservation."[151]

Lyla Young, who grew up in Parmalee, said that the first contact she had with whites was when she went to high school in Todd County. The Indian students lived in a segregated dorm at the Rosebud boarding school, and were bussed to the high school, then bussed back to the dorm for lunch, then bussed again to the high school for the afternoon session. The white students referred to Indian students as "GI's," which stood for government issue. "I just withdrew. I had no friends at school. Most of the girls that I dormed with didn't finish high school … I didn't associate with anybody," Young said. Even today, Young has little contact with the white community. "I don't want to. I have no desire to open up my life or my children's life to any

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[146] *Id.*

[147] *Id.* at 1035-36.

[148] *Id.* at 1046.

[149] *Id.* at 1032.

[150] *Id.*

[151] *Id.* at 1033.

kind of discrimination or harsh treatment. Things are tough enough without inviting more." Testifying in court was particularly difficult for her. "This was a big job for me to come here today ... I'm the only Indian woman in here, and I'm nervous. I'm very uncomfortable."[152]

The testimony of Young, Meeks, and the others illustrates the polarization that continues to exist between the Indian and white communities in South Dakota, which manifests itself in many ways, including in patterns of racially polarized voting.

The district court, based upon proof of the three *Gingles* factors and the totality of circumstances, concluded that the state's legislative plan violated Section 2. Bryan Sells, the lead ACLU lawyer for the plaintiffs in *Bone Shirt,* said that "no impartial observer of the political process in South Dakota could reach a conclusion other than that of the district court, that the 2001 plan diluted Indian voting strength."[153]

As for the other six hundred odd unsubmitted voting changes, Elaine Quick Bear Quiver and several other members of the Oglala and Rosebud Sioux Tribes in Shannon and Todd Counties, again represented by the ACLU's Voting Rights Project, brought suit against the state in August 2002 to force it to comply with Section 5.[154] Following negotiations among the parties, the court entered a consent order in December 2002, in which it immediately enjoined implementation of the numbered seat and majority vote requirements absent preclearance, and directed the state to develop a comprehensive plan "that will promptly bring the State into full compliance with its obligations under Section 5."[155] The state made its first submission in April 2003, and thus began a process that is expected to take up to three years to complete.

Many jurisdictions in the south also failed to comply with Section 5 in the years following their coverage. But in none was the failure so deliberate and prolonged as in South Dakota.[156]

G. The "Reservation" Defense

The state conceded in the lawsuit over the 1996 interim redistricting plan that Indians were not equal participants in elections in District 28, but argued that it was the "reservation system" and "not the multimember district which is the cause of (the) 'problem' identified by Plaintiffs."[157] According to defendants, Indians' loyalty was to tribal elections; they simply did not care about participating in elections run by the state. The argument overlooked the fact that the state historically denied Indians the opportunity to develop a "loyalty" to state elections. As the court

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[152] *Id.*

[153] Interview of Bryan Sells, staff attorney for ACLU's Voting Rights Project, in Atlanta, Georgia, September 28, 2004.

[154] *Quick Bear Quiver v. Hazeltine*, No. 02-5069 (D.S.D. Dec. 27, 2002) (three-judge court).

[155] *Id.*, Slip Op. at 3.

[156] For a discussion of noncompliance with Section 5 by covered jurisdictions in the South, see Laughlin McDonald, *The 1982 Extension of Section 5 of the Voting Rights Act: The Continued Need for Preclearance,* 51 TENN. L. REV. 1, 62-67 (1983).

[157] State Defendants' Response at 26, *Emery v. Hunt*, 615 N.W.2d 590, 597 (S.D. 2000) (No. 00-3008).

concluded in *Bone Shirt*, "the long history of discrimination against Indians has wrongfully denied Indians an equal opportunity to get involved in the political process."[158]

Factually, however, defendants were incorrect. While Indian political participation was undoubtedly depressed, Indians did care about state politics. Indians were candidates for the House and Senate in 1992 and 1994, and received overwhelming support from Indian voters. An Indian ran for Treasurer of Dewey County, in 1992 and received 100 percent of the Indian vote. Indians have also run for and been elected to other offices in District 28A. If Indians didn't care about state politics, they would not have run for office, nor would they have supported the Indian candidates.

Undoubtedly, more Indians would have run for office had they believed that the state system was fair and provided them a realistic chance of being elected. As one court has explained, the lack of minority candidates "is a likely result of a racially discriminatory system."[159] As another court has said, white bloc voting "undoubtedly discourages (minority) candidates because they face the certain prospect of defeat."[160]

The Cheyenne River Sioux have made a decision to conduct elections for the Tribe and the state at the same time, a measure designed to increase Indian participation in state elections. The Sisseton-Wahpeton litigation; the suits brought by Indians in 1986 protesting the failure of county officials to provide sufficient polling places for elections and voter registration cards; the challenge to the 1996 legislative redistricting; the Section 5 enforcement law suit; the challenge to the 2001 redistricting plan; and the dilution claims filed in Charles Mix County and the city of Martin, and Buffalo County further show that Indians do care about participating in state and local elections.

The state's "reservation" defense was not new. An alleged lack of Indian interest in state elections was also advanced as a defense by South Dakota in the cases that involved denying residents of the unorganized counties the right to vote for officials in organized counties on the ground that a majority of the residents were "reservation Indians" who "do not share the same interest in county government as the residents of the organized counties."[161] The court rejected the defense, noting that a claim that a particular class of voters lacks a substantial interest in local elections should be viewed with "skepticism," because "'(a)ll too often, lack of a 'substantial interest' might mean no more than a different interest, and '(f)encing out' from the franchise a sector of the population because of the way they may vote.'" The court concluded that Indians residing on the reservation had a "substantial interest" in the choice of county officials, and held the state scheme unconstitutional.[162]

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[158] *Bone Shirt*, 336 F. Supp. 2d at 1022.

[159] *McMillan v. Escambia County*, 748 F.2d 1037, 1045 (11th Cir. 1984).

[160] *Hendrix v. McKinney*, 460 F. Supp. 626, 632 (M.D. Ala. 1978).

[161] *Little Thunder*, 518 F.2d at 1255.

[162] *Id.* at 1256.

In the second case, the state argued that denying residents in unorganized counties the right to run for office in organized counties was justifiable because most of them lived on an "Indian Reservation and hence have little, if any, interest in county government."[163] Again, the court disagreed. It held that the "presumption" that Indians lacked a substantial interest in county elections "is not a reasonable one."[164]

The "reservation" defense has been raised—and rejected—in other voting cases brought by Native Americans in the West. In a suit by Crow and Northern Cheyenne in Big Horn County, Montana, the county argued that Indian dual sovereignty, not at-large voting, was the cause of reduced Indian participation in county politics. The court disagreed, noting that Indians had run for office in recent years and were as concerned about issues relating to their welfare as white voters. According to the court, "Racially polarized voting and the effects of past and present discrimination explain the lack of Indian political influence in the county, far better than existence of tribal government."[165]

Similarly, in a case in Montezuma County, Colorado, the court found that Indian participation in elections was depressed and noted "the reticence of the Native American population of Montezuma County to integrate into the non-Indian population."[166] But instead of counting this "reticence" against a finding of vote dilution, the court concluded that it was "an obvious outgrowth of the discrimination and mistreatment of the Native Americans in the past."[167] Further, in a case from Montana involving Indians in Blaine County, most of whom resided on the Fort Belknap Reservation, the court rejected the argument that low voter participation was a defense to a vote dilution claim. The court reasoned that:

> if low voter turnout could defeat a section 2 claim, excluded minority voters would find themselves in a vicious cycle: their exclusion from the political process would increase apathy, which in turn would undermine their ability to bring a legal challenge to discriminatory practices, which would perpetuate low voter turnout, and so on.[168]

South Dakota's claims that Indians didn't care about state politics was familiar for another reason. It was virtually identical to the argument that whites in the South made in an attempt to defeat challenges brought by blacks to election systems that diluted black voting strength. "It's not the method of elections," they said in cases from Arkansas to Mississippi, "black voters are just apathetic." But as the court held in a case from Marengo County, Alabama "(b)oth Congress

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[163] *United States v. South Dakota*, 636 F.2d at 244.

[164] *Id.* at 245.

[165] *Windy Boy*, 647 F. Supp. at 1021.

[166] *Cuthair v. Montezuma-Cortez, Colo. Sch. Dist.*, No. RE-1, 7 F. Supp. 2d 1152, 1161 (D. Colo. 1998).

[167] *Id.*

[168] *United States v. Blaine County, Mont.*, 363 F.3d 897, 911 (9th Cir. 2004).

and the courts have rejected efforts to blame reduced black participation on 'apathy.'"[169] The real cause of the depressed level of political participation by blacks in Marengo County was:

> racially polarized voting; a nearly complete absence of black elected officials; a history of pervasive discrimination that has left Marengo County blacks economically, educationally, socially, and politically disadvantaged; polling practices that have impaired the ability of blacks to register and participate actively in the electoral process; election features that enhance the opportunity for dilution; and considerable unresponsiveness on the part of some public bodies.[170]

The court could have been writing about Indians in South Dakota.

In a case from Mississippi, the court rejected a similar "apathy" defense. "Voter apathy," it said, "is not a matter for judicial notice."[171] According to the court, "(t)he considerable evidence of the socioeconomic differences between black and white voters in Attala County argues against the … reiteration that black voter apathy is the reason for generally lower black political participation."[172] It is convenient and reassuring for a jurisdiction to blame the victims of discrimination for their conditions, but it is not a defense to a challenge under Section 2.

The basic purpose of the Voting Rights Act is "to banish the blight of racial discrimination in voting."[173] To argue, as South Dakota and other states have frequently done, that the depressed levels of minority political participation preclude a claim under Section 2 would reward jurisdictions with the worst records of discrimination by making them the most secure from challenge under the act. Congress could not have intended such an inappropriate result. In *Gingles*, the Supreme Court said that:

> The essence of a (Section) 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.[174]

There can be no serious doubt that social and historical conditions, whatever their causes, have created a condition under which at-large voting and other election practices dilute the voting strength of Indian voters.

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[169] *United States v. Marengo County Comm'n*, 731 F. 2d 1546, 1568 (11th Cir. 1984).

[170] *Id.* at 1574.

[171] *Teague v. Attala County, Miss.*, 92 F. 3d 283, 295 (5th Cir. 1996).

[172] *Id.* at 294. Other courts have similarly rejected "apathy" as the cause for low minority voter political participation. *See, e.g., Whitfield v. Democratic Party of State of Ark.*, 890 F. 2d 1423, 1431 (8th Cir. 1989); *Kirksey v. Bd. Of Supervisors of Hinds County, Miss.*, 554 F. 2d 139, 145, & n. 13 (5th Cir. 1977) (rejecting the apathy defense and listing past discrimination, socioeconomic disparities, and bloc voting as causes for nonregistration).

[173] *Katzenbach*, 383 U.S. at 308.

[174] *Gingles*, 478 U.S. at 47.

H. Conclusion

The history of voting rights in South Dakota strongly supports the extension of the special provisions of the Voting Rights Act, and demonstrates the wisdom of Congress in making permanent and nationwide the basic guarantee of equal political participation contained in the Act. Unfortunately, however, the difficulties Indians experience in participating effectively in state and local politics and electing candidates of their choice are not restricted to South Dakota. A variety of common factors have coalesced to isolate Indian voters from the political mainstream throughout the West: past discrimination; polarized voting; overt hostility of white public officials; cultural and language barriers; a depressed socioeconomic status; inability to finance campaigns; difficulties in establishing coalitions with white voters; a lack of faith in the state system; and conflicts with non-Indians over issues such as water rights; taxation; and tribal jurisdiction.

President Nixon, in a special message to Congress in 1970, gave a grim assessment of the status of Native Americans in the United States:

> The First Americans—the Indians—are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement—employment, income, education, health—the condition of the Indian people ranks at the bottom.
>
> This condition is the heritage of centuries of injustice. From the time of their first contact with European settles, the American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny.[175]

Recent voting rights litigation in South Dakota and other western states shows that the conditions described by President Nixon have not been significantly ameliorated.

In a recent suit invalidating at-large elections in Montezuma County, Colorado, brought by residents of the Ute Mountain Ute Reservation, for example, the court found: a "history of discrimination—social, economic, and political, including official discrimination by the state and federal government;" a "strong" pattern of racially polarized voting; depressed Indian political participation; a "depressed socio-economic status of Native Americans;" and a lack of Indian elected officials.[176]

In a case from Nebraska involving Omaha and Winnebago Indians, the court found "legally significant: white bloc voting, a "lack of success achieved by Native American candidates," that Indians "bear the effects of social, economic, and educational discrimination," that Indians had a

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[175] President's Special Message to Congress on Indian Affairs, PUB. PAPERS: RICHARD NIXON 564–76 (1970).

[176] *Cuthair*, 7 F. Supp. 2d at 1169–70.

"depressed level of political participation," there was a lack of "interaction" between Indians and whites, and there was "overt and subtle discrimination in the community."[177]

In another case brought by residents of the Crow and Northern Cheyenne Reservations in Montana, the court found "recent interference with the right of Indians to vote," "the polarized nature of campaigns," "official acts of discrimination that have interfered with the rights of Indian citizens to register and to vote," "a strong desire on the part of some white citizens to keep Indians out of Big Horn county government," polarized "voting patterns," the continuing "effects on Indians of being frozen out of county government," and a depressed socioeconomic status that makes it "more difficult for Indians to participate in the political process."[178]

As is apparent, the "inequalities in political opportunities that exist due to vestigial effects of past purposeful discrimination," and which the Voting Rights Act was designed to eradicate, still persist throughout the West.[179] The Voting Rights Act, including the special preclearance requirement of Section 5, is still urgently needed in Indian Country. Of all the modern legislation enacted to redress the problems facing American Indians,[180] the Voting Rights Act provides the most effective means of advancing the goals of self-development and self-determination that are central to the survival and prosperity of the Indian community in the United States.

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[177] *Stabler*, 129 F. 3d at 1023.

[178] *Windy Boy*, 647 F. Supp. at 1016, 1022.

[179] *Gingles*, 478 U.S. at 69.

[180] *See, e.g.*, Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203 (1975); Indian Health Care Improvement Act, Pub. L. No. 94-437, 90 Stat. 1400 (1976); American Indian Religious Freedom Act, Pub. L. No. 95-341, 92 Stat. 469 (1978); Indian Child Welfare Act, Pub. L. No. 95-608, 92 Stat. 3069 (1978).

II. Voting Rights, American Indians, and South Dakota

South Dakota is the homeland of the Lakota, Dakota and Nakoda People—the Great Sioux Nation. Today, there are nine federally recognized Indian tribes in South Dakota: the Cheyenne River Sioux; the Crow Creek Sioux; the Flandreau Santee Sioux; the Lower Brule Sioux; the Oglala Sioux; the Rosebud Sioux; the Sisseton-Wahpeton Oyate; the Standing Rock Sioux; and the Yankton Sioux. See Chart 1, "American Indian Tribes of South Dakota." According to the 2000 Census, South Dakota is home to 63,652 American Indians, or 8.3 percent of the total state population.

In the 1879 trial of Chief Standing Bear, the federal courts were faced with the questions of whether American Indians were "persons" protected under the laws of the United States and whether Indians were "citizens" entitled to protection under the newly adopted 14th Amendment to the U.S. Constitution. In addressing the court, Standing Bear, who did not speak English, rose from his seat, extended his hand, and eloquently stated:

> That hand is not the color of yours, but if I pierce it, I shall feel pain. If you pierce your hand, you also feel pain. The blood that will flow from mine will be the same color as yours. I am a man. God made us both.

In his famous ruling, Judge Dundy declared that "[an] *Indian* is a person within the meaning of the laws of the United States … [who has] the inalienable right to 'life, liberty and the pursuit of happiness.'"[181] But his opinion was silent on the question of whether Indians are "citizens" with all the privileges and immunities secured under the 14th Amendment, including the right to vote. Indeed, Indians were not given the right of citizenship until 1924 and the right to vote until decades later. Today, federal courtrooms in South Dakota remain a battleground for American Indians to vindicate their rights, including their right to vote.

Several conditions coincide to create a highly litigious and politically charged voting rights environment in South Dakota. First, two South Dakota counties with Indian populations of between 85 and 95 percent are "covered" jurisdictions under Section 5 of the Voting Rights Act (the "VRA"), and eighteen South Dakota counties are required to provide minority language assistance to American Indian voters under Section 203. Second, remarkable demographic shifts are occurring in South Dakota, particularly in the rural areas where the American Indian population is steadily growing and the white population is steadily declining. These shifts threaten the balance of power in the many local jurisdictions.

Third, South Dakota's official defiance of the VRA, ignoring the preclearance requirement of Section 5 for more than twenty-five years (1977–2002), created a significant preclearance backlog[182] and increased the level of animosity between Indians and non-Indians. Fourth, recent high-profile congressional races have split South Dakota's voters down the middle, making the Indian voter bloc highly sought after and highly scrutinized because the Indian vote has been

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[181] *United States ex rel Standing Bear v. Crook*,25 F.Cas. 695, 700-01 (D.NB 1879). A narrative summary of the trial proceedings is available at www.nebraskastudies.org/0600/stories/0601_0106.html

[182] *Quiver v. Nelson*, 387 F.Supp.2d 1027 (D.SD 2005).

decisive in close elections. These four factors have united to catalyze South Dakota into a hotbed of voting rights litigation, with thirteen voting rights lawsuits initiated on behalf of South Dakota's American Indian people in the past ten years.

Chart 1: American Indian Tribes of South Dakota

Tribe	Population (Enrolled Tribal Members)[183]	Name of Federal Reservation (size in sq. mi.)[184]	Counties (Indian majority counties in bold)
Cheyenne River Sioux	8,470	Cheyenne River Reservation (4,420)	**Dewey**, **Ziebach**
Crow Creek Sioux	2,225	Crow Creek Sioux Reservation (461)	**Buffalo**, Hyde, Hughes
Flandreau Santee	408	Flandreau Santee Sioux Reservation (4)	Moody
Lower Brule Sioux	1,353	Lower Brule Sioux Indian Reservation (390)	Lyman, Stanley
Oglala Sioux	15,507	Pine Ridge Reservation (3,471)*	**Shannon, Bennett**, Jackson
Rosebud Sioux	10,469	Rosebud Reservation (1,975)	**Todd, Mellette,** Tripp
Sisseton-Wahpeton Oyate	10,217	(Former) Lake Traverse Reservation (1,401) †	Roberts, Day, Codington, Marshall, Grant
Standing Rock Sioux	4,206[185]	Standing Rock Reservation (2,534) †	**Corson**
Yankton Sioux	6,500	Yankton Reservation (684)	Charles Mix

* A small amount of the reservation land is in Nebraska.
† A small amount of the reservation land is in North Dakota.

[183] U.S. Census 2000 Data for Reservations and Other American Indian and Alaska Native Areas. *See* http://factfinder.census.gov/home/aian/sf1_sf3.html

[184] U.S. Census Bureau Geographic Comparison Table: "GCT-PH1. Population, Housing Units, Area and Density: 2000." http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=04000US46&-_box_head_nbr=GCT-PH1&-ds_name=DEC_2000_SF1_U&-format=ST-8

[185] The population of the South Dakota reservation lands is 4,206. The population of the South Dakota and North Dakota lands combined is 8,250.

For American Indians, there is no one defining moment when the right to vote was secured. Rather, the struggle for that right has been "an extraordinarily prolonged, complex and piecemeal process that has yet to be fully resolved."[186] While the barriers that keep Indians from voting today are not as obvious as those of the past, they do exist. Historical discrimination against Indians, which included voting-related discrimination, was severe and continues to color the attitudes of Indians and non-Indians alike. Below is an overview of the status of the VRA in South Dakota; identifies emerging trends in voting by American Indians in South Dakota; and chronicles the continuing attempts by state and local officials to suppress Indians' right to vote.

A. In South Dakota, American Indians Have Had to Overcome Legal, Geographic, Social, and Economic Barriers in Order to Exercise Their Right to Vote

1. South Dakota's Indians Are Separated And Isolated From the Rest of the State

To participate in the electoral process, Indians must overcome separation and isolation. The federal reservation system physically, socially, politically, and economically separates Indians from their white neighbors. Alfred Bone Shirt, lead plaintiff in the lawsuit concerning South Dakota's compliance with Section 5, stated, "This is a system ... that has alienated my people from the political process for decades."[187] In further testimony in the *Bone Shirt* case, Belva Black Lance from the Rosebud Indian Reservation recounted her experience attending school in Todd County, where Indian students were severely disciplined if they talked in their own language. In today's world, she is afraid to leave the Reservation: "It seems like we left a safe area and go to an area where its prejudiced."[188] Arlene Brandeis, an enrolled member of the Rosebud Sioux Tribe testified that while growing up in Winner, South Dakota, she experienced racial slurs and social segregation: "As we were walking down the street [from school], cars would drive by. They would holler at us and call us names. 'Dirty Indians, drunken Indians. Why don't you go back to the Reservation?'"[189] As of the 2000 Census, the vast majority of South Dakota's Indians lived on the nine reservations within the state. Steve Emery, attorney for the Standing Rock tribe, described the separate status of Indians:

> Out in the [South Dakota] counties close to and bordering the reservations, what is clear is that there are Indians and there are non-Indians. They only meet at

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[186] Evans, Suzanne E. (University of California at Berkeley), "Voting," Encyclopedia of North American Indians. Houghton Mifflin, College Division: (on-line) http://college.hmco.com/history/readerscomp/naind/html/na_ 041800_voting.htm. pp. 1–2.

[187] Ross, Denise. "Judge says South Dakota violates federal voting rights law." *Rapid City Journal*. September 16, 2004.

[188] Ross, Denise. "Witnesses testify on racism at ACLU trial." *Rapid City Journal*. April 15, 2004.

[189] *Id.*

> school. You can't legislate societal change. Folks in those counties have never paid attention to the Voting Rights Act.[190]

Distance from mainstream population centers, poor road conditions, and the distinctive Indian cultures and languages only heighten the separation and inequality experienced by American Indians. This has had an impact on voting. Even registering to vote has been difficult for American Indians. Since the 1950s, many counties limited access to voter registration. In the recent past, rural counties required in-person registration at the county clerk or auditor's office in the county courthouse, which most often was located in a non-Indian town bordering the reservation. For American Indians, registering or "signing up" has negative associations and is reminiscent of past abuses inherent in the reservations system. Under the early reservation system, the U.S. government took household censuses on the reservations. Indian families were "registered" or "enrolled" and subsequently assigned to specific reservation districts. The reservation system did not allow Indians mobility among communities, except with permission from the appropriate government agent. Furthermore, requiring an Indian to "sign here" is reminiscent of coerced land leases or sales, or even the forced removal of Indian children from their families. Children were taken by tribal police or government officials to far-away Indian boarding schools.[191]

These geographic barriers continue to the present day. In testimony before the National Commission on the Voting Rights Act, Raymond Uses the Knife explained: "When election time comes, people can't find rides. A lot of our people don't have transportation [and] ... it's a common fact that it costs $50 just to get a ride to the hub of the reservation some places. Eighty miles from Bridger to the middle of the reservation, Promise, Black Foot also eighty miles to the central reservation. Lack of transportation, lack of transit systems, you name it."[192]

2. South Dakota's Indians Are Among the Poorest Citizens of the United States

South Dakota's Indians are among the poorest of all U.S. citizens. As Chart 2 shows, all eight of South Dakota's majority-Indian counties are among the very poorest counties in the United States. Five of the ten poorest U.S. counties are majority-Indian counties in South Dakota. Buffalo County, with an 81.6 percent Indian population, was the poorest county in the country as of 2000. Shannon County, which has the highest percentage Indian population of any U.S. county at 94.2 percent, was the second-poorest county nationwide. In South Dakota, 13.3 percent of all families lived below the poverty line in 2000. In Todd County, which includes the Rosebud Sioux Reservation, 48.3 percent of families were living below the poverty line, and in Shannon County, which includes the Pine Ridge Reservation, 52.3 percent of families were

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190 Interview of Steve Emery, attorney for the Standing Rock Sioux Tribe of North and South Dakota and lead plaintiff in *Emery v. Hunt*. By Janine Pease in Rosebud, South Dakota, January 12, 2006.

191 Report of the Senate Democratic Policy Committee: "The American Indian Vote: Celebrating 80 Years of U.S. Citizenship," http://www.democrats.senate.gov/dpc/dpc-new.cfm?doc_name=sr-108-2-283.

192 Testimony of Raymond Uses the Knife before the National Commission on the Voting Rights Act, South Dakota Hearing, Rapid City, South Dakota, September 9, 2005. Transcript pp. 55–56.

below the poverty line. Median household incomes in Shannon and Todd counties were $20,916 and $20,035, respectively, as compared to $35,282 for South Dakota as a whole.

Chart 2: The Eight Majority-Indian Counties in South Dakota Listed in Order of Poverty Ranking Among All U.S. Counties, per Census 2000

County	Percent Indian	Poverty Ranking Among All U.S. Counties	Per-Capita Income	Percent Below Poverty Line
Buffalo*	81.6	**1**	$5,213	
Shannon	94.2	**2**	$6,286	52.3
Ziebach	72.3	**4**	$7,463	49.9
Todd	85.6	**5**	$7,714	48.3
Corson*	60.8	**7**	$8,615	41.0
Dewey	74.2	**11**	$9,251	33.6
Bennett	52.1	**25**	$10,106	39.2
Mellette	52.4	**32**	$10,362	35.8
South Dakota	*8.3*	*n/a*	*$17,562*	*13.3*
** Not covered by Sections 203 and 4(f)(4) (bilingual assistance provisions)*				

The Supreme Court "has recognized [that] political participation tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities and low incomes."[193] As discussed below, even with the recent surge in Indian electoral participation, a racial gap remains and Indians have not been able to fully overcome the effects on participation of poor employment, low rates of educational attainment, and low income. Former state senator Thomas Short Bull noted a consistent reluctance among state legislators to address the serious and pressing needs of Indian people: "I noticed in the legislature, they would say 'why can't you people be like us, and pull yourself up by the bootstraps?' But there is no means for Indian people to join mainstream America, if you are American Indian in South Dakota."[194]

3. South Dakota's Indians Have High Rates of Illiteracy and Limited English Proficiency

Language can be one of the most significant barriers to voting. The primary language-related barriers faced by Indian voters in South Dakota are illiteracy and limited English proficiency. The illiteracy rate within South Dakota's Indian population is very high, and many Indians still speak their Native languages. Significant numbers of Indians require assistance in the form of

[193] *Thornburg v. Gingles*, 478 U.S. 30, 69 (1986).

[194] Interview of Thomas Short Bull, President of Oglala Lakota College, former South Dakota State Senator, and member of Oglala Sioux. By Janine Pease in Kyle, South Dakota, January 10, 2006.

translations of ballots and election materials published in the Lakota and Dakota languages as well as oral assistance in Lakota and Dakota.

a. The Language Assistance Provisions of the VRA Are Intended to Break Down Language-Related Barriers to Voting

Jurisdictions covered for a particular minority language under Sections 4(f)(4) or Section 203 are required to provide language assistance to voters from that minority language at all stages of the electoral process. Depending on the needs of the voters, the assistance can be written, oral, or both. Eighteen South Dakota counties meet the coverage criteria of either Section 203 or Section 4(f)(4), or both. See Table 4. The coverage criteria are summarized as follows: A county is covered by Section 203 if (1) more than 5 percent of its voting age citizens ("CVAP") are limited English proficient ("LEP") and belong to single minority language group, *or* (2) more than 10,000 individuals in the county's CVAP are LEP and belong to a single language minority group, *or* (3) the county is within a Indian reservation where more than 5 percent of the Indian CVAP is LEP and belongs to a single language minority group, *and* (4) the illiteracy rate within the language minority group is higher than the national illiteracy rate. [195]

The coverage formula for Section 4(f)(4) is based on whether the jurisdiction (the county, in the case of South Dakota), at the time of the 1972 Presidential election, maintained any English-only elections, had a CVAP of 5 percent or more from a minority language group, and where less than 50 percent of the eligible voters were registered or turned out to vote.[196]

[195] For the purposes of the VRA, "illiteracy" means the failure to complete the 5th primary grade.

[196] 42 U.S.C. § 1973b – (b)

Chart 3: Eighteen South Dakota Counties Covered by Sections 203 and 4(f)(4)

(The Bilingual Assistance Provisions of the VRA)
Listed by Percentage of Residents Who Speak a Language Other than English

	Population, (2004 Est.)	Percent Indian (2000)	Percent Who Speak a Language Other than English*	Percent Under 18
1. Shannon	13,346	**94.2**	**26.2**	45.3
2. Ziebach	2,658	**72.3**	**23.8**	40.6
3. Todd	9,738	**85.6**	**22.0**	44.0
4. Dewey	6,115	**74.2**	**16.2**	38.9
5. Mellette	2,089	**52.4**	**15.8**	35.3
6. Bennett	3,522	**52.1**	**13.7**	36.3
7. Jackson	2,910	47.8	**13.4**	36.5
8. Marshall	4,354	6.3	8.8	27.0
9. Roberts	10,056	29.9	6.8	30.0
10. Lyman	3,977	33.3	4.9	32.1
11. Meade	24,856	2.0	4.3	28.4
12. Day	5,865	7.4	3.9	25.5
13. Codington	25,914	1.4	3.8	26.8
14. Tripp	6,075	11.2	3.8	27.7
15. Stanley	2,802	4.9	3.7	27.1
16. Haakon	1,998	2.5	3.2	25.7
17. Grant	7,598	0.4	3.0	26.6
18. Gregory	4,332	5.6	2.1	24.3
S. Dakota	*770,883*	*8.3*	*6.5*	*26.8*

b. The Covered Counties' Lack of Compliance with Sections 203 and 4(f)(4)

According to Steve Emery, VRA plaintiff and attorney for the Standing Rock tribe,

> the state and subdivisions have never produced a single document in the Lakota language explaining the ballot or any literature about the ballot or about the voting process. Personally, I have offered to translate whatever materials they needed. But this has never happened.[197]

[197] *Id.* Interview of Steve Emery, January 2006.

Raymond Uses The Knife, a Cheyenne River Tribe councilmember who was present during the 2004 elections, testified that poll workers on the Pine Ridge Indian Reservation failed to provide the required assistance to Lakota speakers:

> Polls on the reservation are … very limited. Accessibility is not there, and a lot of the issues pertaining to language proficiency [are] very, very real. A lot of my people are Lakota speakers. Lakota is our number one language and English is our number two language. So when it comes time to vote … and you don't understand the English, you want to ask questions, and the … poll watchers are there from the county governments or their representatives … and you want to know what's going on, … sometimes you're made to feel like you have no business there, … like you're taking up too much of their time….

About a voter who needed literacy assistance, Raymond Uses the Knife testified,

> I've also witnessed one of our tribal members didn't know how to read or write and he needed help from his wife. His wife was proficient in the English language, and that's what his request was, but this [assistance] was denied. So he was so upset with this situation that he picked up his ballot and tore it in half and threw it in the trash can. He said this is the second time that this is the way he was treated at the polls.[198]

B. The Current Political Landscape for South Dakota's American Indians: Voting Trends and Progress Toward Political Power

Since the 1990s, voting among South Dakota's Indians has been increasing. As a result of this trend, along with the protections afforded by the VRA, Indians are wielding somewhat more political influence in South Dakota. The increase in voter turnout has been driven primarily by growth of the Indian population and voter registration drives, but in some cases, it can also be attributed to the popularity of a particular candidate on the ballot. The statistics are encouraging, but there is evidence of backlash to the threat of Indians' increasing political power, which proves the importance of renewing Sections 203, 4(f)(4), and 5 of the VRA.

1. South Dakota's Indians Are Voting in Greater Numbers, Driven by Growth of the Indian Population

Voting among Indians in South Dakota has surged since 1994. In that year, in majority-Indian Todd County, voter registration was 65.8 percent of VAP, compared to 84.7 percent statewide, and voter turnout was 47.1 percent, compared to 73.7 percent statewide. But ten years later, in 2004, turnout in Todd County was 65.17 percent, compared to 78.6 percent statewide.[199] In majority-Indian Shannon County, turnout rose from 38 percent in 2000 to 45 percent in 2002.

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[198] *Id.* Testimony of Raymond Uses The Knife (Poll watcher on the Pine Ridge Reservation in the 2004 elections). p. 53.

[199] Website of the South Dakota Secretary of State (http://www.sdsos.gov/2004/04countyvoterturnout.htm and http://www.sdsos.gov/Elections)

South Dakota Secretary of State Chris Nelson recounted more of these encouraging statistics during the South Dakota Hearing of the National Commission on the Voting Rights Act in September 2005. Nelson noted that voter turnout statewide increased about 23 percent from 2000 to 2004, but in the counties covered by the Cheyenne River and Standing Rock reservations, the increases in turnout were 40–57 percent over the same time period. In Shannon County, that same statistic was 122 percent, and in Todd County, 139 percent—almost six times the increase elsewhere in the state. In addition, five of the top six counties in South Dakota in terms of percent of VAP registered are majority- or significantly-Indian counties, and of the eight majority-Indian counties in South Dakota, six have voter turnout rates higher than the state average.[200] Nelson noted that these changes in Indian voter turnout were in "profound contrast" to figures from 1985, when only 9.9 percent of South Dakota's Indians were registered to vote.

At the same time that the percentage of Indian turnout is increasing, the number of eligible of Indian voters is increasing. Nationwide, the Indian population grew 38 percent between 1990 and 2000. The population of South Dakota as a whole increased 6.8 percent during the decade, but the populations of the majority-Indian counties of Shannon, Bennett, and Todd increased 25.9 percent, 11.5 percent, and 8.4 percent, respectively. The growth of the Indian population naturally has simultaneously lowered the average age of the population. According to census data, 33 percent of all American Indians in the United States are 18 or younger, compared to 25.6 percent of all Americans.[201] In the South Dakota population as a whole, 26.8 percent are 18 and younger, whereas the majority-Indian counties of Shannon, Todd, and Bennett are 45.3 percent, 44.0 percent, and 36.3 percent, respectively, 18 or younger.[202] These statistics suggest that the trend will continue, or at least that voting among Indians is not likely to decline, as children reach the age of 18 and begin voting.

2. South Dakota's Indians Are Having More Political Influence

The growth of the Indian population and the simultaneous decline in the white population (due to low birth rates, an aging population, and rural population losses) have meant an increase in the power of the existing and potential American Indian voter bloc, as well as an increase in tensions between Indians and non-Indian South Dakotans. Particularly in close elections, this influence has been seen. The results of the 2000, 2002, and 2004 elections demonstrated that elections can be inordinately influenced by 1–5 percent of the votes cast.

The 2002 and 2004 races for Congress also demonstrate the impact of the American Indian vote in South Dakota. Following one of the closest elections in the 2002 mid-term election, decided by only 500 votes, Senator Tim Johnson stated,

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[200] Testimony of South Dakota Secretary of State Chris Nelson before the National Commission on the Voting Rights Act, South Dakota Hearing, Rapid City, South Dakota, September 9, 2005. Transcript pp. 18–19

[201] U.S. Census 2000. "Characteristics of American Indians and Alaska Natives by Tribe and Language." *See* http://www.census.gov.

[202] U.S. Census 2000, "State and County Quickfacts" for Shannon, Todd, and Bennett counties. (http://quickfacts.census.gov/qfd/maps/south_dakota_map.html)

> I think the Native vote developed into a power that is showcasing to the world. I think politicians from every stripe will have to deal with the Native vote. This is a real presence in South Dakota. … this was a lesson heard around the world that Native power is part of the political process and can't be ignored.[203]

State House member Paul Valandra said of the '02 election of Senator Johnson that that election "gave American Indian voter participation a bump." But Valandra said he would like to see the patterns in Indians' voting connected to routine and basic reasons for voting, not just tied to the high-profile candidates like Johnson. Indian voters also contributed to the special congressional election of Stephanie Herseth in June 2004. That was a special election for the vacancy left by Janklow's resignation in 2004. Herseth collected 94 percent of the vote on the Pine Ridge reservation, contributing to a close victory.[204]

The American Indian vote has been recognized as a swing vote in close races at many levels. The swing vote has been especially influential when the particular state is not clearly "red" or "blue." The Indian percentages in Western states can make a difference. Unfortunately, this potential places Indian voters under increased scrutiny. Candidates will be "courting the Indian vote," and more election monitors will be required when elections are close.[205]

3. South Dakota's Indian Candidates Are Finally Getting Elected in Majority-Indian Counties

Since the VRA was amended in 1975, only seven American Indians have served in the South Dakota legislature. *See* Chart 4. But times are changing. The 2006 Legislature is currently in session, with four American Indian legislators: Two Bulls, Valandra, Van Norman, and Bradford. Six legislators were elected to the House or the Senate based on the majority-Indian legislative districts established since 1980, and based on the VRA protections that address voter dilution. Nearly all of these districts were formed through extensive litigation, court orders, and the supervision of the Department of Justice in the Section 5 preclearance process.

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[203] Melmer, David. "Indian power surge; Rez vote elects Johnson." *Indian Country Today*. November 8, 2002.

[204] Melmer, David. "Indian voices heard at the polls." *Indian Country Today*. June 11, 2004.

[205] Horsechief, Geneva. "Primaries, Caucuses and Earning the Native Vote." *Native American Times*. February 6, 2004.

Chart 4: American Indian Office Holders

Office-Holder	District	Office	VRA Reference
James Bradford Oglala Sioux	SD 27	S.D. State Senator	Section 5 Preclearance 1981
Richard "Dick" Hagaen Oglala Sioux	Former HD 27	S.D. House Member	Section 5 Preclearance 1981
Thomas Short Bull Oglala Sioux	Former, SD	S.D. State Senator	Section 5 Preclearance 1981
Theresa Two Bulls Oglala Sioux	SD 27	S.D. State Senator	*Bone Shirt v. Hazeltine*, 2002
Paul Valandra Rosebud Sioux	HD 27	H.D. House Member	*Bone Shirt v. Hazeltine*, 2002
Tom Van Norman Cheyenne River Sioux	HD 28A	H.D. House Member	*Emery v. Hunt*, 2000
Jim Emery	Custer Co.	S.D. House Member	Elected under 1970's Schemes

Source: Interviews with Paul Valandra, Thomas Short Bull, and Steve Emery, January 2006.

C. Two Steps Forward, One Step Back: South Dakota's Resistance to Progress under the Voting Rights Act

One reaction by whites to the increase of Indian voter participation has been to accuse Indian voters of engaging in fraud and implementing or attempting to implement "anti-fraud" measures. Prior to the 2002 election, there was an aggressive effort by South Dakota's Attorney General, in conjunction with DOJ's "Voting Integrity Initiative," to investigate programs focused at registering Indian voters.[206]

According to Paul Valandra, Senator Johnson's victory in the 2002 election "caused a serious backlash based on the Indian voter turnout."[207] Indeed, soon after the 2002 election, the results of which were credited to the turnout of Indian voters, several legislative initiatives that would make voting and registering to vote more difficult were introduced in the South Dakota legislature. In particular, in early 2003, state legislators introduced HB 1176, a bill requiring a photo I.D. to vote, to register to vote, and to acquire an absentee ballot.[208] The bill became law but is still opposed by many. Thomas Short Bull, asserts that it "punishes" American Indian

[206] McDonald, Laughlin. "The New Poll Tax: Republican-sponsored ballot-security measures are being used to keep minorities from voting." *American Prospect*. January 2, 2003, p. 1.

[207] *Id.* Interview of Paul Valandra, January 2006.

[208] To obtain an absentee ballot without a photo ID, the absentee ballot request must be notarized.

voters for the outcome of the 2002 election, prevents eligible Indian voters from voting, and is not necessary, as the state contends, to prevent voter fraud, since never in the state's history has anyone been prosecuted for voter fraud at the polls.[209] Short Bull stated, "The polling place … is not made friendly with the photo I.D." Another opponent of the law, attorney Oliver Semans of the non-profit voter registration organization Four Seasons Committee, pointed out that it could be "culturally incorrect" to ask an elderly Indian to pull out a photo I.D.[210] The law has also been criticized because, in its implementation, it was not always made clear to potential voters that individuals without photo I.D. could still vote, by filling out an affidavit at the polling place. Another bill introduced in the state legislature just after the 2002 elections would have made it illegal to give or receive payment for registering new voters, a clear attempt to chill the successful voter registration drives on Indian reservations.[211]

Another example of resistance encountered by Indians seeking to improve their access to the ballot box occurred when members of the Cheyenne River Sioux Tribe proposed legislation that would expand the number of polling places on the Cheyenne River reservation. Steve Emery, the lead plaintiff in *Emery v. Hunt*, recalled, "We wanted to establish polling places for the state and county elections where American Indian voters could vote for tribal elections on one end of the polling place and the state, county and national elections on the other."[212] The arrangement, according to Emery, would have increased voter turnout. The bill was introduced by legislator Tom Van Norman. The hearing was scheduled for Pierre (the capital of South Dakota) at 7:30 a.m., which made it difficult for tribal members to attend, as the trip from Eagle Butte is three and one half hours in good weather. The bill was defeated in committee.

Several incidents of discriminatory treatment were documented during the 2004 elections. At the Porcupine polling place on the Pine Ridge Reservation, two poll watchers, Amalia Anderson and Alyssa Burhans, were told by a precinct representative that they "did not need to be here." According to their affidavits, they were then directed to the lobby in a different room, 50 feet from the ballot box. Not until an attorney for Four Directions Foundation, a voting rights organization, intervened were the two allowed to view the ballot box."[213]

Another complaint filed by Alton Mousseaux and Stella White Eyes involved South Dakota's photo I.D. law, which was relatively new at the time. The law requires that a photo I.D. be presented in order to receive a ballot, but if a voter does not have photo I.D., he may instead sign an affidavit as proof of his address. However, a precinct representative at the Porcupine polling place insisted that voters needed to show photo I.D. in order to receive an affidavit.[214]

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[209] Melmer, David. "Hearing conducted on new voting law." *Indian Country Today*. July 23, 2004.

[210] *Id.*

[211] Melmer, David. "Republican voter regulations may target American Indians." *Indian Country Today*. February 25, 2003.

[212] *Id.* Interview of Steve Emery, January 2006.

[213] Melmer, David. "Indian voices heard at the polls." *Indian Country Today*. June 11, 2004.

[214] *Id.*

Elections in the unorganized county of Shannon are administered by officials of Fall River County. On election day 2004, the Fall River Sheriff's vehicles were present near the polling places. "[T]he presence of law enforcement vehicles and personnel has the effect of intimidating American Indian people ... [W]itnesses said many people were seen leaving the area, rather than entering the voting location."[215]

Another reflection of the present day voting discrimination and resistance of whites to Indians achieving full electoral participation is recent litigation. In 2001, the year prior to the landmark 2002 elections, the state legislature enacted a redistricting plan that was later found to violate the VRA. In 2005, several South Dakota legislators were "willing to roll the dice in an appeals court rather than redo [the] 2001 redistricting plan that a federal judge said violates Native Americans' voting rights." This position appears in spite of the number of VRA violations found to have occurred in South Dakota. State Senator Broderick of Canton said, "I think at the time we voted on that plan, the Legislature had a good level of comfort that we were doing the right thing, following the necessary laws and trying to protect voting rights."[216] The legislators interviewed for the Woster article perceived the courts as a mere gamble and gauged the voter protections in their legislative redistricting on the basis of "comfort" and following "necessary laws."

That is only one several examples. In 1986, Ziebach County failed to provide polling places on the Cheyenne River Sioux reservation.[217] In 1999, members of the Sisseton-Wahpeton Oyate found themselves excluded from the sanitary district elections.[218]Buffalo County is more than 80 percent Indian. To avoid having an Indian majority on the three-member county commission, Buffalo County packed over 80 percent of its overall population and most of its Indian population into one district until a 2004 lawsuit equalized the population in the districts. The city of Martin also maintained districts that were unequal in population at the expense of Indian voters.[219] The mayor of the city of Martin said the city needed more information on race in Martin and complained he needed more time to acquire the race data before any redistricting of the city wards even though such information is readily available.[220]

The contrasting demographic dynamics of an expanding Indian population and a shrinking white population exacerbate frictions between Indians and whites, heightening the "us vs. them" mentality. Uncertainty permeates both sides of this demographic shift, for the potential change of power in city and county government or the school boards means a change in the decision makers—the officeholders. Officeholders determine the allocation of services and funds and the hiring of personnel. In many of the small and rural areas in Indian country, the jurisdictions represent a significant sector of economic life. In the past, jurisdictions were conducted at the

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[215] *Id.*

[216] Woster, Terry. "Lawmakers ponder redistricting appeal." *Argus Leader*. July 10, 2005.

[217] *Black Bull v. Dupree School Dist.*, No. 86-3012 (D.S.D. May 14, 1986).

[218] *United States v. Day County, S.D.*, No. 99-1024 (D.S.D. June 16, 2000).

[219] Melmer, David. "Voting Rights Violation Argued." *Indian Country Today*. July 12, 2004.

[220] *Id.*

exclusion of Indian people. The ballot box wields the power to elect, and with it economic impact. The control of South Dakota cities, counties, and legislative districts will not change hands easily or without a struggle.

D. Conclusion

Since 2000, voting rights in Indian Country has become an especially contested field. Election schemes that dilute American Indian voting strength at the city, school board, county, and legislative district levels are under challenge and before the federal courts in South Dakota, on behalf of American Indian people. Court-ordered reorganizations of election schemes have resulted in elections of American Indians. Indian people are exerting their voting rights and participating in the election process in steadily increasing percentages, accompanied by reactionary legislative initiatives to install hyper-technical voting procedures and forestall the fulfillment American Indian voter strength and influence.

The combination of South Dakota's history of discrimination against Indians in voting, shifting demographics, and an environment of racial hostility make the state of South Dakota a prime candidate for future challenges under the VRA. A growing American Indian population and greater numbers of American Indians voting will bring additional jurisdictions into the sights of American Indian voters and their advocates, at all levels. South Dakota's jurisdictions have shown persistent resistance to the standard of "one-person, one-vote," in open defiance of the standards of equality in redistricting and the VRA protections for racial and language minorities. Section 5 preclearance requirements and the minority language provisions in 4(f)(4) and Section 203 must be extended on behalf of American Indian voters and their future access to voting and holding office.

APPENDIX TO THE STATEMENT OF WADE HENDERSON, "VOTING RIGHTS IN VIRGINIA, 1982–2006," A REPORT OF RENEWTHEVRA.ORG

VOTING RIGHTS IN VIRGINIA 1982-2006

ANITA S. EARLS, KARA MILLONZI, ONI SELISKI, TORREY DIXON[1]

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INTRODUCTION TO THE VOTING RIGHTS ACT

Virginia was one of the six original states covered entirely by Section 5 of the Voting Rights Act[2][hereinafter VRA] as a result of its long history of intentional discrimination against African Americans.[3] The VRA has succeeded in removing some of the direct and indirect barriers to voting by African Americans and other racial minorities. A period of forty years of VRA protection, however, has been insufficient to completely erase the effects and continued practice of voting discrimination. To the extent that there has been progress, it has come at the behest of the Department of Justice (DOJ) or the federal courts, sometimes after extensive litigation. For example, as detailed below, there have been numerous Section 5 objections in every decade since the last reauthorization of the VRA in 1982 and in a wide range of areas, including: redistricting, voting procedures, election schedules, and the structure of elected bodies. In addition to the Section 5 objections, there have been multiple successful Section 2 vote dilution challenges, consent decrees and even constitutional challenges to discriminatory voting practices in Virginia.

Overall, Virginia's progress in providing electoral practices and structures that can provide equal opportunities for minority voters is mixed. One the one hand, it is the only Section 5 covered jurisdiction to have elected an African-American governor in recent times. On the other hand, racially polarized voting persists and blacks are elected to Congress, the state legislature and to local governing bodies at rates significantly lower than their percentages in the population. In 2000, the state's population of more than seven million was 70.1 percent white (non-Hispanic), 20.1 percent black (non-Hispanic) alone or in combination, 4.7 percent Hispanic of any race, and 4.2 percent Asian (non-Hispanic) alone or in combination.[4] Population estimates for 2004 suggest that while the population in the state is growing overall, the relative percentages of each minority group did not shift significantly in the first part of the decade.[5]

There were eighteen objections to voting changes in Virginia issued by the Department of Justice under Section 5 of the Voting Rights Act from 1982 through 2004, most dealing with redistricting plans.[6] Voting rights litigation on behalf of minorities in the state has ranged from challenges to the state's legislative and congressional redistricting plans following the 1990 and 2000 Censuses,[7] to the Supreme Court's ruling in 1996 that the state Republican Party's requirement that delegates to the nominating convention pay a registration fee is subject to challenge under Section 2 of the Voting Rights Act.[8] The state is also one of the few that

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[2]Pub. L. 89-110, title I, Sec. 5, 79 Stat. 439,(Aug. 6, 1965) (codified at 42 U.S.C. §1973c); 30 Fed. Reg. 9897 (Aug. 7 1965).

[3] Thomas R. Morris & Neil Bradley, *Virginia*, in QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 1965-1990 271, 271 (Chandler Davidson & Bernard Grofman eds., 1994) [hereinafter *Virginia*, QUIET REVOLUTION].

[4] U.S. Census Bureau, Census 2000, Profile of General Demographic Characteristics, Race Alone or in Combination and Hispanic or Latino, American Factfinder, *available at* http://.factfinder.census.gov.

[5] See U.S. Census Bureau, Annual Estimates of the Population by Sex, Race and Hispanic or Latino Origin for Virginia: April 1, 2000 to July 1, 2004, available at: http://www.coopercenter.org/demographics/sitefiles/documents/excel/popestimatesagesexrace/varace_ethnicity.xls.

[6] See Appendix 1 – Section 5 Objections in Virginia, 1982-Present.

[7] *Meadows v. Moon,* 521 U.S. 1113 (1997) (Mem); *Wilkins v. West*, 264 Va. 447, 571 S.E.2d 100 (Va. 2002); *Hall v. Virginia,* 385 F.3d 421 (4th Cir. 2004).

[8] *Morse v. Republican Party of Virginia,* 517 U.S. 186 (1996).

permanently disenfranchises former felons,[9] and was one of just a handful of states that unsuccessfully litigated against implementation of the National Voter Registration Act.[10]

Virginia is also noteworthy because ten local jurisdictions have made use of the bailout process to end their coverage under Section 5. The state as a whole unsuccessfully sought to bail out in 1974,[11] but since then a handful of cities and counties around the state have successfully petitioned for bailout. Evidence indicates that other jurisdictions in Virginia have considered bailout and decided not to pursue it.

I. Factors Impacting Minority Political Participation in Virginia

Before turning to the specifics of Virginia's experience with the VRA since 1982, it is important to place the voting experiences of Virginia's African-American citizens in the context of their broader social and economic experiences. In 1988, in analyzing an alleged Section 2 vote dilution claim, the U.S. District Court for the Eastern District of Virginia described the socio-economic disparities among African-American citizens and white citizens in Virginia. The court found that African Americans

> continue to suffer from the socio-economic consequences of past discrimination . . . [The] effects are evident in all facets of everyday life. They include depressed economic, educational and employment levels and inferior residential circumstances. In general, blacks have less education than do whites of the same age, have higher rates of unemployment, lower per capita income and lower quality of housing than do whites. . . . [T]hese depressed socio-economic conditions are likely to result (and have resulted) in lower voter registration and
> voter turnout on the part of blacks. [12]

And, in fact, throughout the 1980s, African Americans in Virginia were registered to vote in lower percentages than whites.[13]

African Americans (and other racial minorities) have not made significant socio-economic gains since the late 1980s.[14] In 1999, the median income of African Americans in Virginia was 36 percent lower than that of whites.[15] The unemployment rate for African Americans was more than double that of whites.[16] In 2003-2004, 25 percent of African Americans lived below the poverty level, as compared to only 10 percent of whites.[17] During that same time period, 19

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[9] VA. CONST. art. II, § 1; *See also* Va. Code Ann. § 24.2-427, (providing that the general registrar "shall cancel the registration of (i) all persons known by him to be … disqualified to vote by reason of a felony conviction.")
[10] *Commonwealth of Virginia v. United States*, Civ. Action No. 3:95CV357 (E.D. Va. 1995).
[11] *Commonwealth of Virginia v. United States,* 386 F. Supp. 1319 (D.D.C. 1974), *aff'd mem.*, 420 U.S. 901 (1975).
[12] *Neal v. Coleburn*, 689 F. Supp. 1426, 1428 (E.D. Va. 1988).
[13] *See id.*
[14] *See generally,* Appendix 2, "Selected Socio-Economic Data: Virginia", compiled May 5, 2003.
[15] Census 2000 Demographic Profile Highlights for Black or African Americans and Whites in Virginia, U.S. Census Bureau, American FactFinder, *available at* http://factfinder.census.gov.
[16] Unemployment Rate (Civilian Labor Force) Virginia, Selected Socio-Economic Data: Virginia African American and White, Not Hispanic, Chart 4, *available at* www.fairdata2000.com (May 5, 2003).
[17] Virginia: Poverty Rate by Race/Ethnicity, states (2003-2004), The Henry J. Kaiser Family Foundation: Statehealthfacts.org.

percent of nonelderly African Americans were enrolled in Medicaid, while only 5 percent of white citizens were enrolled.[18] Whereas 73 percent of whites received employer-sponsored health insurance coverage in 2004, only 15 percent of African Americans and 5 percent of Hispanics received coverage.[19] In 2002, African Americans had a 62.5 rate of teen births per 1,000 population; Hispanics had a 75.7 rate per 1,000; whites had only a 27.3 rate per 1,000.[20] At 15.8 percent, the infant death rate of African Americans is roughly three times that of whites in Virginia and is higher than the national average.[21] In 2004, the rate of African Americans with AIDS was 42.2 per 100,000, as compared to 5.1 per 100,000 for white citizens.[22]

African Americans continue to lag behind whites in education and housing. In 2000, the median home value for homes owned by African Americans was $85,700. It was $132,400 for homes owned by whites.[23] 4.6 percent of African-American households lack telephone services; 16.7 percent lack vehicles – both more than three times the number of whites.[24] In 2002, the mean SAT scores for whites were over 100 points higher than for African Americans in both verbal and math.[25] Finally, as a further legacy of prior intentional discrimination in education, African Americans remain behind whites in all levels of higher education attainment.[26]

II. Section 5 Coverage of Virginia

A. History of Voting Discrimination Before the VRA

In 1870, the Virginia state legislature passed a statute providing for separate voting registration books for blacks and whites. Keeping separate logs made it easier to limit the number of African-American voters through such "technical delays" as misplacing the black voter list while limiting the time period allowed for voting.[27] During reapportionment in the late 1800s, pockets of African-American voters were "cracked" through racial and political gerrymandering, further

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[18] Health Insurance Coverage Rate of Nonelderly Medicaid Enrollees by Race/Ethnicity, states (2003-2004), The Henry J. Kaiser Family Foundation: Statehealthfacts.org.
[19] Health Insurance Coverage of Nonelderly with Employer Coverage by Race/Ethnicity, states (2003-2004), The Henry J. Kaiser Family Foundation: Statehealthfacts.org.
[20] Rate of Teen Births per 1,000 Population by Race/Ethnicity, 2002, The Henry J. Kaiser Family Foundation: Statehealthfacts.org.
[21] Infant Death Rate by Race/Ethnicity, 2001, The Henry J. Kaiser Family Foundation: Statehealthfacts.org.
[22] Adult and Adolescent Annual AIDS Case Rate per 100,000 Population by Race/Ethnicity (2004), The Henry J. Kaiser Family Foundation: Statehealthfacts.org.
[23] Median Home Value by Household Virginia, Selected Socio-Economic Data: Virginia African American and White, Not Hispanic, Chart 18, *available at* www.fairdata2000.com (May 5, 2003).
[24] Lack of Telephone Service by Household Virginia, Selected Socio-Economic Data: Virginia African American and White, Not Hispanic, Chart 13, *available at* www.fairdata2000.com (May 5, 2003); Lack of Vehicle By Household Virginia, Selected Socio-Economic Data: Virginia African American and White, Not Hispanic, Chart 14, *available at* www.fairdata2000.com (May 5, 2003).
[25] Mean SAT Scores, By Race and Ethnicity, 2002, Virginia Education Statistics By Race, Ethnicity and Gender, *available at* http://www.maec.org/vastats.html.
[26] Educational Attainment (25 years and over) Virginia, Chart 3, *available at* www.fairdata2000.com (May 5, 2003).
[27] *Virginia*, QUIET REVOLUTION, *supra* note 2, at 272. This practice was declared unconstitutional in 1964. *See Hamm v. Virginia State Bd. of Elections*, 230 F. Supp. 156 (E.D. Va. 1964), *aff'd sub nom. Tancil v. Woolls*, 379 U.S. 19 (1964) (declaring unconstitutional Virginia laws requiring separation of names by race on voter registration, poll tax and residence-certificate lists, and on property ownership and tax lists).

diluting the power and influence of minorities.[28] In 1876, legislators pushed through a state constitutional amendment making payment of a poll tax a prerequisite for voting.[29] The poll tax was repealed in 1882, but the overt discrimination against African Americans did not end.[30] In 1894, the legislature enacted the Walton Act, which allowed for publicly printed ballots to be marked secretly in booths. There were no party names or symbols allowed on the ballots and, although special election judges were allowed to assist illiterates, "the practical effect was to end voting by most blacks in Virginia."[31]

Disenfranchisement efforts continued into the 1900s with the Virginia constitutional convention of 1901-02 including provisions for a framework of poll taxes, an "understanding clause," and literacy tests designed explicitly for the purpose of disenfranchising African-American voters.[32] The Fourth Circuit has held that the purpose of the 1902 state constitutional convention was to "disenfranchise as many impoverished people, including most blacks," as possible.[33] Thus, in the early to mid-1900s, African Americans were virtually eliminated from electoral participation in Virginia. As two leading commentators note, "between the 1870s and 1960s[ ] various suffrage restrictions effectively limited black voting to a level that was not threatening to white supremacists and virtually eliminated black officeholding."[34]

When it was apparent in 1963 that the poll tax would be eliminated, Virginia convened a special session of the state legislature to design an alternative way of limiting participation by African Americans. They enacted legislation requiring each voter to file a certificate of residence six months before each federal election.[35] Although the provision was invalidated by a federal district court in 1964, it symbolized the continued resistance of the white population in Virginia to enfranchise African Americans. This was further underscored by the fact that almost the entire Virginia congressional delegation voted against the VRA and its three subsequent extensions.[36] Moreover, until 1974, the Virginia Constitution required proof of literacy for persons registering to vote, in violation of Section 5,[37] and before 1966, Virginia unconstitutionally maintained a poll tax that was specifically recognized as intended to discriminate against African American voters.[38] In fact, in the mid to late 1960s, in contrast with Virginia, Mississippi was considered a "hotbed of democracy."[39]

Virginia's racially discriminatory voting practices illustrate only a few examples of a long history of discriminatory traditions aimed at suppressing minority populations. As part of its "massive resistance" to school desegregation, Virginia shut down many of its public schools and created private academies for white students in the wake of the Supreme Court's 1954 decision

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[28] *Id.* at 272.
[29] *Id.*
[30] *Id.* at 273.
[31] *Id.*.
[32] *Id.*
[33] *Irby v. Virginia State Bd. of Elections*, 889 F.2d 1352, 1354 (4th Cir. 1989).
[34] *Virginia*, QUIET REVOLUTION, *supra* note 2, at 275.
[35] *Virginia*, QUIET REVOLUTION, *supra* note 2, at 276.
[36] *Id.* at 279.
[37] *See Commonwealth of Virginia v. United States*, 386 F. Supp. 1319 (D.D.C. 1974), *aff'd* 420 U.S. 901 (1975).
[38] *See Harper v. Virginia State Bd.*, 383 U.S. 663 (1966).
[39] V.O. KEY, JR., SOUTHERN POLITICS IN STATE AND NATION 20 (Knoxville, TN, reprinted 1984).

in *Brown v. Board of Education*. Public schools in Prince Edward County, for example, did not reopen until 1964.[40] Furthermore, until 1963, Virginia statutes required racial segregation in places of public assemblage;[41] interracial marriage was prohibited by law until 1967.[42]

B. History of Voting Discrimination After the VRA

1. "[P]our[ing] old poison into new bottles"[43]

After the enactment of the VRA, Virginia began a new phase of its campaign to minimize the African-American vote through the use of multi-member districts, municipal annexations, and at-large city elections.

In fact, Virginia's record of legislative redistricting was one of the primary reasons cited for the need to extend the VRA in 1982. The state legislature failed to make significant improvements in the 1980's round of redistricting. At the time of reapportionment in the 1980s, only 4 of the 100 members of the Virginia House of Delegates were African-American because "the drawing of legislative boundaries and the extensive use of multimember districts has limited black opportunities for elected office."[44] The total number of African-American elected officials in Virginia (federal, state, county and municipal) was 124—the lowest number of such officials in any state covered by Section 5 of the Voting Rights Act.[45] Thus, although African Americans made up 18.9 percent of the population, African Americans only held 4.1 percent of elected offices.[46] Virginia had the dubious distinction of having the lowest level of black legislative representation in the South. Instead of remedying this situation in the process of redistricting following the 1980 Census, the legislature attempted to further suppress minority electoral participation. "In 1981-82 there were some fourteen legislative sessions, six redistricting plans, a ruling of unconstitutional population disparities by a three-judge panel, a gubernatorial veto, and Justice Department section 5 objections to plans for both houses."[47]

In the early 1990s, there were only 151 black elected officials in Virginia, below the national average and again among the lowest number in jurisdictions covered by Section 5. African Americans held only three Senate and seven House of Delegates seats in the Virginia legislature and no Congressional offices.[48] The low numbers of African-American representatives reflected both the socio-economic disparities and structural impediments to effectively participating in the electoral process. As of 1991, only nine of the state's forty-one cities abandoned at-large council elections.[49] Eight of the nine converted because of litigation under the equal protection clause,

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[40] Smith, Robert Collins, *The Crippled Generation*, in THEY CLOSED THEIR SCHOOLS: PRINCE EDWARD COUNTY, VIRGINIA, 1951-1964 (University of North Carolina Press 1965).
[41] *See Brown v. City of Richmond*, 132 S.E.2d 495 (Va. 1963).
[42] *See Loving v. Virginia*, 388 U.S. 1 (1967).
[43] *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 366 (2000).
[44] U.S. Commission on Civil Rights, *The Voting Rights Act: Unfulfilled Goals* ¶¶ 56-57 (Washington, D.C. Sept. 1981).
[45] *Id.* at 12, Table 2.1.
[46] *Id.* at 15, Tables 2.3 & 2.4.
[47] *Virginia*, QUIET REVOLUTION, *supra* note 2, at 281.
[48] BLACK ELECTED OFFICIALS: A NATIONAL ROSTER 435 (Joint Center for Political and Economic Studies Press, 1990).
[49] *Virginia*, QUIET REVOLUTION, *supra* note 2, at 290.

or Justice Department intervention under the VRA. Without the VRA, African Americans would have undoubtedly been denied participation or accorded only token representation on governing bodies in these jurisdictions. Further, Virginia is one of only four states in which judges are elected by the state legislature. As a result of this practice, in 1990, "fewer than 5 percent of Virginia's judges were black in a state whose black population was 19 percent . . . ."[50] According to Thomas Morris and Neil Bradley, as of 1990,

> The virtual absence of blacks from the state's town councils indicates a continuing racial polarization at the grass-roots level—a polarization also reflected in the difficulty blacks have in winning in majority-white jurisdictions . . . . The continuing underrepresentation of blacks on many at-large county and city governments drives this fact home, as does the resistance of at large jurisdictions to adopting an election structure that gives blacks a better chance of representation.[51]

This is still true today. African Americans make up 20.1 percent of the Virginia population, but only 11 percent of the state House Representatives, 12.5 percent of the state Senators and 9.1 percent of the U.S. House Representatives. Further, 91 percent of the African-American state House Representatives, 83 percent of the African-American state Senators and the only African-American member of Congress are elected from black-majority districts.[52]

Electoral structure, capitalizing on racially polarized voting patterns, plays a significant role in limiting the political power and influence of African Americans. A comprehensive study of minority elected officials in eight Southern states, including Virginia, found that although there has been an increase in the number of African American representatives since 1982, it is due largely to the effects of VRA litigation and enforcement.[53] The study found no indication that the increase was a result of a decline in racially polarized voting. A few high-profile examples of African Americans elected in majority-white jurisdictions, such as Virginia's Governor L. Douglas Wilder in 1990, appear to be the exceptions to the general rule, and, according to leading scholars, should not be viewed as evidence that the protections of the Act are no longer needed.[54] In fact, "the noteworthy instances of Black electoral success in White jurisdictions, fully understood, often suggest that safe districts have played an important integrative role."[55] Governor Wilder, for example, started his political career in a "safe" majority-minority district.[56] Moreover, Wilder's victory was by the closest margin in a Virginia gubernatorial election in that century. It is estimated that he won only 41 percent of the white vote, and benefited from a

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[50] *Id.* at 286.
[51] *Id.* at 291.
[52] David Lublin, et al., *Redistricting in the 2000s*, Tbls. 1 & 3, *available at* http://www.american.edu/dlublin/redistricting.
[53] 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 IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 1965-1990 340 (Chandler Davidson & Bernard Grofman eds., 1994).
[54] *See, e.g.*, Richard H. Pildes, *The Politics of Race: Quiet Revolution in the South*, 108 HARV. L. REV. 1359,1375-76 (1995).
[55] *Id.*
[56] *Id.*

turnout rate among black registered voters that was 8 percentage points higher than the figure for white voters.[57]

A more recent example of how electoral structures impede black representation comes from the testimony of the Chairman of the Danville Democratic Party, Sheila Baynes, at the January 19, 2006 public hearing in Danville, Virginia. The city of Danville holds at-large elections for city council, which limits the ability of segments of the African-American population to elect representatives of choice. There are currently two African-American representatives on the nine-member council - only one of the two was elected, the other was appointed – even though African Americans make up approximately 40 percent of the population of Danville.[58] The situation in Danville is certainly not an anomaly. Similar voting structures exist across the state.

Dr. John Boyd, of Mecklenburg County, Virginia, who testified at a January 26, 2006 public hearing in Raleigh, North Carolina, also provided a poignant illustration of the continued prevalence of racially polarized voting. In the past several years, Dr. Boyd has twice run to be the congressional representative from Virginia's Fifth District.[59] While campaigning, he attended a political function in the Southwest part of the state. He encountered a white woman at the function who stated, "It's a pleasure to meet you. You speak very well. You would have done a lot better if you had not made an appearance here because you have a White last name, which is Boyd, and we're all voting for those candidates."[60]

In general, despite the many Section 5 objections, successful Section 2 vote dilution claims, and other litigation challenging practices and structures that disadvantage minority voters, it is still true that racially polarized voting hinders the ability of minority voters to participate in the political process. The Virginia State Supreme Court observed, as recently as 2002, that there is "a high correlation between race and voting patterns."[61] In these circumstances, the protections afforded by the preclearance requirement are still required to prevent any erosion in the ability of minority voters to have an equal opportunity to participate in the electoral processes at the local, state, and federal levels.

2. Section 5 Objections Since 1982

As stated above, since 1982, Section 5 objections have helped prevent discriminatory changes in a wide range of areas, including: redistricting, voting procedures, and election schedules or structure of elected bodies. Below are examples from each decade since the last reauthorization of the VRA.

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[57] *Virginia*, QUIET REVOLUTION, *supra* note 2, at 278.
[58] Testimony of Sheila Baynes, Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, p. 23, ln. 1-25, p. 24, ln. 1-8 (Danville, Va. Jan. 19, 2006).
[59] Testimony of Dr. John Boyd, Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, p. 20, ln. 8-11, p. 24, ln. 22-25 (Raleigh, N.C. Jan. 26, 2006).
[60] *Id.* at p. 27, ln. 16-25.
[61] *Wilkins v. West,* 571 S.E.2d 100, 115 (Va. 2002).

a. Redistricting

Most of Virginia's Section 5 objections since 1982 have involved redistricting. Officials have consistently attempted to limit African-American voters' political influence by "packing" them into a few districts or dispersing them among several majority-white districts to limit their ability to elect candidates of choice. This form of "vote dilution" is designed to cabin minority voting power, and is indeed "old poison in new bottles." Moreover, changes made during redistricting usually have an impact for a decade or even beyond. Section 5's role in ensuring that the political opportunities of African Americans are not further limited during redistricting has likely protected the rights of innumerable African-American voters.

- March 1982. The Petersburg City Council proposed an ordinance (Ordinance No. 8191) to realign the voting districts and change voting precinct boundaries and polling places for the City of Petersburg. The DOJ objected, finding that the proposed redistricting plan would lower the black proportions in the First District from 69.9 percent to 61.5 percent and in the Fourth District from 71.2 percent to 61.6 percent. According to the DOJ, such a diminution was intended by the majority-white city council to increase white voting strength in those districts and would, likewise, diminish the opportunity of African-American voters to elect candidates of choice and lead to a decline in African-American representation.[62]

- March 1982. The DOJ objected to portions of the 1981 reapportionment of the Virginia House of Delegates. Specifically, the DOJ noted that the city of Norfolk was retained as a large multi-member district, whereas a fairly apportioned plan of single-member districts would have provided for two districts with substantial black majorities. The multi-member district plan had the inevitable effect of limiting the potential of African Americans to elect their candidates of choice. Further, the DOJ rejected the stated rationale for the plan—that the city of Norfolk had a large population that did not vote locally—finding that this rationale was not applied uniformly throughout the state. The DOJ also objected to the packing of African-American populations in Hampton and Newport News into one 75 percent African-American district. The remainder of the African-American population was divided among three other districts, all of which had substantial white majorities. According to the DOJ, a fairly drawn plan in this area would have two districts with a substantial African- American majority. Finally, the DOJ found that although District 90 contained a sizeable African-American majority, it was so contorted as to likely confuse voters and candidates, exacerbating financial and other disadvantages experienced by many African-American candidates.[63]

- November 1982. Greensville County proposed a redistricting ordinance to change four single-member districts into two double-member districts and to add a fifth member to be elected at-large. The DOJ objected because the plan attempted to merge districts with politically active black voters with districts that were politically inactive, thereby

[62] Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to John F. Kay, Jr., Esq. (March 1, 1982).
[63] Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to the Honorable Gerald L. Baliles, Attorney General, Commonwealth of Virginia (March 12, 1982).

reducing the electoral capability of African-American voters. According to the DOJ, because the current four single-member districts provided an opportunity for African Americans to elect their candidates of choice, the plan presented a clear retrogression of African-American voting strength.[64]

- March 1986. The city of Franklin proposed three annexations that would have reduced the city's African-American population by 3.7 percent - from 55.4 percent to 51.7 percent - causing the city's voting-age population to shift from a black majority (51.9 percent) to a white majority (51.7 percent). The DOJ objected, finding that under the city's at-large election system, African-American candidates had limited success because of racial bloc voting. The proposed annexations would have perpetuated and enhanced the existing restrictions on the ability of African Americans to realize their voting potential.[65]

- July 1991. The DOJ objected to a portion of the 1991 reapportionment of the Virginia House of Delegates. The DOJ found that the proposed configuration of district boundary lines appeared to have been drawn in such a way as to minimize black voting strength in Charles City County, James City County, and the Richmond/Henrico County areas. Specifically, there were large concentrations of African Americans placed in majority-white districts. The legislature rejected available alternatives that would have recognized this concentration of voters by drawing them into a district with African-American voters in the Richmond area. Such a configuration likely would have resulted in an additional district, providing African-American voters an equal opportunity to participate in the political process and elect candidates of their choice. The DOJ noted that the protection of incumbents, which the state explained was the reason for this districting, was not in itself inappropriate, but it could not be done at the expense of minority voting rights.[66]

- November 1991. The DOJ objected to the proposed redistricting of supervisor districts and precinct realignment in Powhatan County. The DOJ found that although the county had a 21.4 percent African-American population, no African American ever had been elected county supervisor. The county's African American population was concentrated in such a manner that available alternatives would have allowed African-American voters an opportunity to elect candidates of choice in one of the five supervisor districts. This result was avoided, however, through the division of the county's African-American population between Districts Three and Five. Even though District Three had a majority African-American total population, it was only 38 percent when the non-voting population of the Powhatan Correctional Center was excluded. The county rejected a plan that would have created a district that combined the African- American population in the northern portion of the county in one district, which could recognize better the voting potential of African American citizens. Again, the DOJ noted that the county's actions may have been motivated in large part by the desire to maintain districts conducive to the

[64] Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Charles Sabo, Chairman, Greensville County (Nov. 15, 1982).
[65] Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Carter Glass, IV, Esq. of Mays, Valentine, Davenport & Moore (March 11, 1986).
[66] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to K. Marshall Cook, Deputy Attorney General of Richmond, VA (July 16, 1991).

re-election of the incumbent supervisors who were all white, which was not per se improper. The protection of incumbents, however, could not be achieved at the expense of minority voting potential.[67]

- April 2002. Pittsylvania County proposed a redistricting plan for its board of supervisors and school board members which would have reduced the African- American population in the only majority-minority district in the county (Bannister District). The DOJ objected, finding the proposed reduction was retrogressive. In fact, according to the DOJ, even a minute reduction would have greatly impaired African-American voters' ability to elect candidates of choice. Furthermore, the existence of alternative plans that actually ameliorated minority voters' ability to elect their choice candidates underscored the DOJ's objection.[68]

- July 2002. The DOJ objected to Cumberland County's proposed redistricting plan for its board of supervisors. The DOJ found that District 3 was the only district in which African Americans constitute a majority (55.9 percent) of the population. The proposed plan would have reduced that majority to 55.3 percent and reduced the voting-age African-American population from 55.7 percent to 55.2 percent.[69]

- Sept. 2001, May 2003 & Oct. 2003. Northampton County proposed a change in the method of electing the board of supervisors by collapsing six districts into three larger districts. The DOJ objected, finding that three of the six districts were majority-minority districts in which African-American voters regularly elected their candidates of choice. The new plan would have diluted the minority-majorities and caused them to completely disappear in two of the three new districts—clearly having retrogressive effects. Two years later, the county provided a new six-district plan, which had the same retrogressive effects of the three-district plan. The DOJ objected and provided a model non-retrogressive, six-district plan, which has yet to be followed by the county.[70]

b. Voting Procedures

In addition to redistricting, jurisdictions have also pursued new ways to prevent African-American voters from achieving electoral power. One particularly successful method in Virginia has been the use of at-large election methods. As the discussion above indicates, African Americans have been largely unsuccessful in electing candidates of choice in at-large elections mainly due to racially polarized voting.

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[67] Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to James N. Hopper of Parvin, Wilson, Barnett & Hopper (Nov. 12, 1991).
[68] Letter from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, U.S. DOJ., to William Sleeper, County Administrator, and Fred M. Ingram, Chairperson, Board of Supervisors of Chatham, VA (Apr. 29, 2002).
[69] Letter from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Darvin Satterwhite, County Attorney, Goochland, VA (July 9, 2002).
[70] Letter from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Bruce Jones, County Attorney for Northampton County, VA (Sept. 28, 2001); Letter from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Bruce Jones, County Attorney for Northampton County, VA (May 19, 2003); Letter from J. Michael Wiggins, Acting Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Bruce Jones, County Attorney for Northampton County, VA (Oct. 21, 2003).

- August 1984. A proposed change to Chapter 775 of the Virginia Laws would have excepted "a candidate for an office to be voted on at the election" from helping voters needing assistance to vote by reason of blindness, disability or inability to read or write. The DOJ objected, finding that this provision did not conform to the requirements of Section 208 of the Voting Rights Act.[71]

- February 1993. The DOJ objected to the proposed adoption of an at-large method of election of school board members in Newport News. African Americans made up 33 percent of the city's population and 31 percent of its voting-age population. Under the then-existing appointment system for the school board, the city council had consistently (since 1982) appointed two African Americans to serve on the seven-member board. The DOJ found that under the proposed school board election system, members would be elected using the same at-large system as the city council. Since 1989, the minority community had been largely unsuccessful in electing candidates of choice to the city council under the existing at-large system. Moreover, the decision to propose an at-large election system was made without public hearings, consideration of alternative electoral systems, or input from the minority community.[72]

- June 1994. The DOJ objected to the proposed adoption of an at-large method of election for the board of education in the city of Chesapeake. According to the 1990 Census, Chesapeake had a total population of 151,976, of which 27.2 percent were African American. African Americans comprised 25.6 percent of the voting age population. Under the existing plan, school board members were appointed by the city council, which had three African American members. The proposed plan would have elected a city school board at-large, composed of nine members serving four-year staggered terms. The council had adopted the at-large proposal over the objection of two of its African-American council members. The DOJ was particularly concerned with whether the at-large method would allow African-American voters an equal opportunity to elect their candidates of choice to the school board. At the time, an at-large system was used to elect the city council, and, according to the DOJ, there was evidence of persistent and severe polarization along racial lines in these elections. In fact, in each election in the preceding decade, one or more African-American candidates had been the leading candidates of choice among African-American voters, but these candidates generally had not finished among the group of candidates white voters favored for election to the council. For example, in 1994, an African-American candidate appeared to have received nearly unanimous black support but received almost no votes among white voters and, thus, was defeated.[73]

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[71] Letter from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. DOJ., to William Bridge, Assistant Attorney General of VA (Aug. 3, 1984).
[72] Letter from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. DOJ., toVerbena Askew, City Attorney of Newport News, VA (Feb. 16, 1993).
[73] Letter from Gerald W. Jones, Acting Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Martin McMahon, Assistant City Attorney for Chesapeake, VA (June 20, 1994).

- October 1999. In 1999, the County Board of Supervisors of Dinwiddie County was forced to move the location of the polling center for the Darvills Precinct (No. 101) because the previous center burned down. Precinct voting was moved to the Cut Bank Hunt Club ("Hunt Club"). The Hunt Club was privately owned with a large African-American membership. Subsequently, one hundred and five citizens submitted their signatures to have the precinct moved to the Mansons United Methodist Church, located three miles southeast of the Hunt Club. The petition's stated purpose for moving the precinct was for a "more central location." Before the board's meeting to discuss moving the polling place, the Mansons United Methodist Church withdrew its name as a possible location. The board then placed an advertisement for a public hearing on changing the polling place which stated that if any "suitable centrally located location [could] be found prior to July 15, 1999," they would consider moving it there. On July 12, 1999, the Bott Memorial Presbyterian Church members offered their facilities for polling. On August 4, 1999, the board approved changing the polling place to Bott Memorial Presbyterian Church. The church is located at the extreme east end of the precinct, however, and 1990 Census data showed that a significant portion of the black population resides in the western end of the precinct. Thus, the DOJ objected to the change, finding that the polling place was moved for discriminatory reasons because the local officials failed to prove otherwise.[74]

c. Election Schedules or Structure of Elected Bodies

Finally, where African Americans have had some success in electing at least one representative of choice under at-large voting systems, some jurisdictions have sought to reduce the number of board seats available, undeniably leading to retrogressive results for minority voters.

- April 1988. The DOJ objected to a proposed reduction in the number of council members from seven to six with three elected at-large to concurrent terms and three elected from single-member districts. The DOJ found that, although there did not appear to be any racial animus underlying the proposed 3-3 system, the opportunity for African-American voters to elect a representative of their choice to an at-large position would be limited because of the reduced number of seats to be filled at-large and less opportunity to participate in election of a representative from one of the districts as they were drawn. The 3-3 election system would have led to retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.[75]

- July 1989. The DOJ objected to a proposed change in the method for staggering city council terms for the city of Newport News implemented in conjunction with a change from having the city council members elect one of their number as Mayor to direct election of the Mayor, who would also continue to serve as a member of the council. The Department found that the proposed change would cause the election system to go from four regular council members elected at-large as a group in one election year and three in

[74] Letter from Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Benjamin W. Emerson of Sands, Anderson, Marks & Miller (Oct. 27, 1999).
[75] Letter from Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ., to James Pates, City Attorney of Fredericksburg (Apr. 7, 1988).

the following election year to three elected at-large as a group in each election. The DOJ noted that African-American voters had only limited success in electing candidates of their choice to office, that African-American candidates typically won by narrow margins, only a few votes ahead of their rivals, and that African-American candidates often came in fourth in election years where there were only three seats available. Because of these circumstances, the DOJ determined that a change from a 4-3 to a 3-3 system would diminish the electoral opportunity provided to African-American voters. The loss of the fourth seat would be retrogressive in the context of an at-large election system characterized by racially polarized voting and limited African-American success in electing candidates of choice to office.[76]

- February 1990. The city of Newport News requested the DOJ to reconsider its July 1989 objection to its proposed change in the method of staggering city council terms. The city contended that the DOJ erred in focusing solely on the success of the African-American candidates, because there had been white candidates elected for whom more than 50 percent of the African American voters had cast one of their available votes, and these candidates should also be considered "candidates of choice" for African-American voters. The city contended that there was no difference in African-American electoral opportunity when three or four seats are open for election. The DOJ declined to withdraw its objection, however, noting that except for possibly one white candidate elected in 1980, white candidates who received majority African-American voter support may not properly be considered "candidates of choice" by African-American voters. The white candidates with apparent African-American voter support ran in contests with no African-American candidates that also had abnormally low African-American voter turnout. Other white candidates elected with African-American voter support all received significantly fewer votes among African-American voters than the minority candidates running in the same election. Thus, according to the DOJ, the city had not satisfied its burden under Section 5 of showing that the proposed changes lacked a prohibited retrogressive effect.[77]

3. Withdrawn Pre-clearance Submissions Since 1982

In addition to the Section 5 objections discussed above, other preclearance requests were withdrawn before the review period was over, when it became clear that the DOJ was likely to object. Since 1982, there have been at least four such withdrawals in Virginia involving polling place changes and a redistricting plan, with the most recent occurring in 2001.[78]

4. Section 5 Litigation Since 1982

Morse v. Republican Party of Virginia, 517 U.S. 186 (1996). In 1994, all registered voters in Virginia who were willing to declare their intent to support the Republican Party's nominees for

[76] Letter from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Michael Korb, Jr., Assistant City Attorney of Newport News, VA (July 24, 1989).
[77] Letter from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. DOJ., to Michael Korb, Jr., Assistant City Attorney of Newport News, VA (Feb. 9, 1990).
[78] See Appendix 3, Virginia Submissions Withdrawn 1982 – Present.

public office at the next election could participate in the nomination of the party's candidate for the office of U.S. Senator if they paid either a $35 or $45 registration fee. Plaintiffs filed suit in district court claiming that the imposition of the fee as a condition precedent to participation in the candidate selection process was a poll tax prohibited by the Voting Rights Act of 1965 and also violated the Equal Protection Clause of the Fourteenth Amendment and the Twenty-Fourth Amendment to the U.S. Constitution. A three-judge panel granted the defendants' motion to dismiss the claims, concluding that the Section 5 of the Voting Rights Act did not apply to the selection of delegates to a state nominating convention.

On review of the three-judge panel's decision, however, the U.S. Supreme Court reversed and remanded. The Court concluded that the party's decision to exact the registration fee was subject to Section 5 of the Voting Rights Act, which, among other things, prohibits Virginia and other covered jurisdictions from enacting or enforcing "any voting qualification or prerequisite . . . different from that in force . . . on" a specified date unless the change has been precleared by the DOJ. The Court held that the party was clearly "acting under authority explicitly or implicitly granted by a covered jurisdiction" and, thus, subject to the preclearance requirement. Further, Section 5 requires preclearance of any change bearing on the "effectiveness" of a vote cast in a primary, special or general election, including changes in the composition of the electorate that votes for a particular office. By limiting the opportunity for voters to participate in the convention, the party's filing fee undercut their influence on the field of candidates whose names will appear on the ballot, and thus weakened the "effectiveness" of their votes cast in the general election itself. The Court noted, significantly, that in light of the legislative history demonstrating that, in 1965, Congress was well aware of the White Primary Cases, the failure of case-by-case enforcement of the Fifteenth Amendment, and Mississippi's then-recent efforts to use an "all-white" convention process to help nominate a Democratic candidate for president, and that the Act's "party office" provision was adopted to cover the latter type of situation. Accordingly, the Act could not be interpreted to contain a loophole excluding all political party activity, but must be read to apply to certain convention-based practices and procedures with respect to voting.

5. Deterrent Impact of Section 5

The need for Section 5's ongoing protection is further underscored when one considers that awareness of the necessity of Section 5 pre-clearance has likely deterred even greater levels of voting discrimination.

In fact, Sheila Baynes testified at the January 19 hearing that she believes the VRA's protections are still necessary to protect minority citizens from overt and covert discriminatory tactics aimed at limiting their political power and influence in Danville.[79] Danville was the site of the most violent episode of the civil rights movement, during the summer of 1963. "Not only did the city resist the so-called [Civil Rights] Movement's demands, but in a coordinated fashion every

[79] Testimony of Sheila Baynes, Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, p. 20, ln. 19-22 (Danville, Va. Jan. 19, 2006); see also Statement of Jerry L. Williams, Jr., Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, p. 38, ln. 1-3 (Danville, Va. Jan. 19, 2006).

instrument of power was used to create an atmosphere of intimidation . . . ."[80] Today in Danville, African Americans are still the victims of overt and covert racial intimidation and discrimination campaigns. For example, Mr. Wyatt Watkins testified that, during the fall of 2005, hate literature was distributed in his neighborhood, threatening to "lynch" African Americans and warning that if citizens "did not vote in a certain way bad things would happen to them."[81]

6. Section 5 Bailouts Since 1982

Since 1982, ten jurisdictions have successfully bailed out of Section 5 coverage and all of them are in Virginia.[82] Although Section 4 establishes specific bailout criteria, in general terms, jurisdictions must establish that they are free of racial discrimination in voting and that they have complied with the VRA. In some respects, the successful use of the bailout provision in Virginia reflects a degree of progress in overcoming the legacy of discrimination that may not exist in many other covered jurisdictions.

The successful bailouts in Virginia illustrate two points--first, it is possible for jurisdictions to successfully bailout under the current formula,[83] and second, that covered jurisdictions within Virginia are aware of bailout procedures. The low numbers of local jurisdictions that have actually applied for bailout do not appear to result from structural disincentives or inadequacies of the bailout process. Rather, at least in part, jurisdictions are making individualized assessments and informed decisions after weighing cost savings against concerns of their own citizens who believe the protections of the VRA are still necessary.

Some estimates indicate that as of 1984, 51 counties and about 16 cities in Virginia were eligible for bailout, yet only ten have bailed out since the 1982 VRA Amendments became effective.[84] Further, in 2002, the Virginia General Assembly passed a joint resolution requesting the Virginia Attorney General

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[80] *Danville*, The Civil Rights Movement in Virginia, Virginia Historical Society, *available at* www.vahistorical.org/civilrights/danville.htm.

[81] Testimony of Wyatt Watkins, Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, p. 29, ln. 17-20; p. 30, ln. 1-3 (Danville, Va. Jan. 19, 2006).

[82] The jurisdictions that have successfully bailed out are Fairfax City (Oct. 1997), Frederick County (Sept. 1999), Shenandoah County (Oct. 1999), Roanoke County (Jan. 2001), Winchester City (May 2001), Harrisonburg City (Apr. 2002), Rockingham County (May 2002), Warren County (Nov. 2002), and Greene County (Jan. 2004). Augusta County (November 2005). *See The Voting Rights Act: An Examination of the Scope and Criteria for Coverage Under the Special Provisions of the Act: Hearing Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 109th Cong. (2005) (Statement of J. Gerald Hebert).

[83] In 1973, the Virginia General Assembly passed a resolution directing the state attorney general to take the necessary steps to bail out Virginia from coverage of Section 5 of the Act. *Virginia*, Quiet Revolution at 279. The state filed suit in the U.S. District Court for the District of Columbia claiming that it met the statutory requirement of a ten-year absence of any evidence of discriminatory device for voting because its literacy test had been fairly administered before it was banned by the Act. *Commonwealth of Virginia v. United States*, 386 F. Supp. 1319, 1325 (DDC 1975). The court denied Virginia's petition, however, finding that the state's record of segregated, inferior education for blacks contributed to low literacy rates, negatively impacting the ability of African Americans to satisfy the literacy requirements. *Id.*

[84] *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).

> 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.[85]

Despite this statewide effort, not all jurisdictions are seeking bailouts. For example, at the January 19 Danville hearing, Jerry Williams, Jr. stated that one of the members of the electoral board proposed that Danville apply for bailout in order to save the expense of having to pre-clear all changes with the DOJ. During a public hearing in which the potential cost savings were explained to the community, citizens in attendance nevertheless overwhelmingly opposed the proposal to apply for bailout.[86] Danville remains subject to the preclearance requirement.

III. Section 2 Voting Rights Litigation Since 1982

In addition to the fact that many changes affecting voting failed to obtain preclearance under Section 5 of the VRA, minorities in Virginia also have initiated successful vote dilution claims under Section 2 since 1982.[87] One of the most notable is *Collins v. City of Norfolk.*[88] In this case, filed in 1983 seven African-American citizens of Norfolk, Virginia and the Norfolk Branch of the NAACP, alleged that the at-large system of electing members of the Norfolk City Council unlawfully diluted black voting strength and that the system had been maintained for racially discriminatory purposes. Since 1952, the council had consisted of seven members elected at-large. Council members served four-year, staggered terms, so every two years three or four of the seven seats were contested. From 1918 until 1968, every member of Norfolk's city council was white. In 1968, a black citizen was elected to the council and from that time until the filing of the initial action, the council had one black member. Thus, although the city's population was 35 percent African American and the rate of African-American participation in the electoral process was high, African Americans were unable to elect more than one African American member to the seven-member council. One of the most significant legal issues in the case was how to identify a "candidate of choice" of black voters in a multi-seat election where each voter can vote for more than one candidate.

After lengthy litigation, including six reported opinions and one *vacatur* by the Supreme Court,[89] the plaintiffs eventually were able to establish a violation of Section 2. The Fourth Circuit ultimately reasoned that the critical factor was the difference between the African-American support for the candidate who received the most black votes yet lost and the candidates who won

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[85] 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.
[86] Statement of Jerry L. Williams, Jr., Public Hearing on Reauthorization of the Expiring Provisions of the Voting Rights Act, p. 38, ln. 3-25 (Danville, Va. Jan. 19, 2006).
[87] See Appendix 4 for an extended summary of these cases.
[88] 883 F.2d 1232 (4th Cir. 1989), *cert. denied*, 498 U.S. 938 (1990).
[89] *See id.,* 883 F.2d at 1234, n.2.

with fewer black votes.[90] The court relied upon data showing that from 1968 until 1984, all of the minority-preferred candidates for a second seat on the council were defeated by candidates preferred by white voters and statistics showing that before 1984, white voters were able to defeat the combined strength of African-American voters and white crossover voters to deny the African-American community a second seat on the council. Furthermore, the court held that recent re-elections of African-American incumbents did not negate the existence of white bloc voting. Thus, the court reversed the district court's judgment and held that VRA Section 2 was violated.

The plaintiffs in a 1988 case, *McDaniels v. Mehfoud*,[91] were also successful in proving illegal vote dilution. Henrico County is an urban and suburban county bordering Richmond, Virginia. According to the 1980 census data, the total population of Henrico County was 180,735, of which 15 percent were African Americans. In analyzing the plaintiffs' Section 2 claim, the court found that the African-American population in Henrico County was sufficiently large and geographically compact to constitute a majority in one or more single-member districts. Further, voting patterns in the county revealed a severe and persistent pattern of racially polarized voting, there was a legacy of official discrimination in voting matters and, to a lesser extent, continuing effects of discrimination in education and employment. The court found that these factors, combined with the single-member districting scheme, impeded the ability of a geographically compact and politically cohesive group of African Americans to participate equally in the political process and to elect their candidates of choice in violation of the Voting Rights Act of 1965.

In *Neal v. Coleburn*,[92] the African-American plaintiffs successfully challenged the method of electing the Nottoway County Board of Supervisors. The county is predominantly rural. According to the 1980 Census, the total population was 14,666—39.04 percent of whom were African-American and 60.69 percent of whom were white. The five-member board of supervisors was elected from single-member districts for four-year terms. Despite the substantial African-American population, the supervisor districts had been drawn so that none of them contained a black majority.

In its analysis of the vote dilution claim, the court noted the extensive history of discrimination in Virginia and how its lingering effects on socio-economic conditions of African Americans contributed to the lack of opportunities for African Americans to effectively participate in the political process. Thus, "the Court [found] that the political processes in Nottoway County [had] been largely under white control and associated with white political dominance. . . . As a result of past official discrimination and continuing segregation, black[s] . . . still feel intimidated by the white domination of local politics."[93] Moreover, the court found significant evidence of racially polarized voting, noting that "whites generally have not supported or voted for black candidates, nor will they." The court ultimately ruled that the plaintiffs had satisfied their burden to prove a Section 2 violation and ordered adoption of the plaintiffs' proposed remedy.

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[90] *Id.*, 883 F.2d at 1238.
[91] 702 F. Supp. 588 (E.D. Va. 1988).
[92] 689 F. Supp. 1426 (E.D. Va. 1988).
[93] *Id.*, 689 F. Supp. at 1430.

Neal v. Coleburn is typical of many voting rights cases at the local level because the plaintiffs filed a companion case challenging the method of electing the town council for the county's largest town, Blackstone. In *Neal v. Harris,*[94] the defendants initially fought any change in the at-large method of electing the seven-member town council. This was a town where, when an African American ran for the town council for the first time in 1965, the all-white county elections board struck his name from the ballot on the grounds that he had not paid his poll taxes for the previous six months. Although African Americans constituted almost 45 percent of Blackstone's population, no African-American won election to the town council until 1984. On the eve of trial, the town agreed to settle the case, and the district court adopted a remedial plan that provided for five single-member districts and two at-large seats, with three of the five single-member districts having a majority African-American population.

In a recent Section 2 case, *Hall v. Virginia,*[95] plaintiffs challenged the Virginia legislature's Congressional redistricting plan enacted following the 2000 Census because it failed to draw a second district that would have allowed black voters to elect a candidate of their choice in combination with reliable crossover votes from non-black voters, even though the second district would not have been majority-black. Virginia's Congressional redistricting plan, adopted in 2001, changed the boundary lines of the Fourth District so as to shift a number of African-American citizens out of the Fourth District and into the Third and Fifth Districts. Before the redistricting, African Americans comprised 39.4 percent of the total population and 37.8 percent of the voting-age population. After the redistricting, they constituted 33.6 percent of the total population and 32.3 percent of its voting-age population.

Plaintiffs, nine registered voters who resided in the Fourth District or were shifted out of the district as a result of the redistricting, filed suit in district court alleging that the reconfiguration of the Fourth District diluted minority voting strength in violation of Section 2 of the VRA. Specifically, they claimed that that in the newly-drawn Fourth District, African Americans "are too small in number to form the same wining collation with 'crossover' white voters that existed before the enactment of the 2001 Redistricting Plan." According to the plaintiffs, "the first *Gingles* precondition is satisfied not only when a minority group constitutes a numerical majority in a single-member district, but also when minorities are sufficiently numerous to form an 'effective' or 'functional' majority in a single-member district by combining voters from other racial or ethnic groups."[96] The district court rejected this argument, however, concluding that African Americans would not form a population of voting-age majority in the Fourth District even if the district was restored to the original boundaries. The Fourth Circuit affirmed, holding that "when minority voters, as a group, are too small or loosely distributed to form a majority in a single-member district, they have no ability to elect candidates of their own choice, but must instead rely on the support of other groups to elect candidates. . . . [they] cannot claim that their voting strength—that is, the potential to independently decide the outcome of an election—has been diluted in violation of Section 2."[97] This issue is now pending before the Supreme Court in the Texas redistricting case argued on March 1, 2006.[98]

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[94] 837 F.2d 632 (4th Cir. 1987) (per curiam).
[95] 385 F.3d 421 (4th Cir. 2004).
[96] *Id.,* 385 F.3d at 427.
[97] *Id.,* 385 F.3d at 429.
[98] *Jackson v. Perry,* No. 05-276.

IV. Consent Decrees

Courts have also approved numerous consent decrees in Virginia, whereby local jurisdictions have agreed to adopt electoral reforms to come into compliance with the provisions of the VRA. One of these cases demonstrates one important way that Section 5 reinforces the remedies available under Section 2. Prince Edward County is a jurisdiction where a combination of district and at-large seats was implemented following a consent decree. When a subsequent redistricting plan was enacted in 1993, the Department of Justice raised concerns about its fairness to minority voters and the submission was withdrawn before being put into effect.

These brief summaries demonstrate the changes accomplished by settlements in Section 2 cases:[99]

- *Harris v. City of Hopewell*, No. 82-0036-R (E.D. Va. Jan. 5, 1983): Issuing a consent judgment in which Hopewell agreed to create a mixed ward/at-large electoral system to replace its all at-large method of electing city council members.

- *Eggleston v. Crute*, No. 83-0287-R (E.D. Va. 1984): Consent decrees changed the methods of election for the Prince Edward County Board of Supervisors and the Farmville Town Council. The supervisors would be elected from a combination of single-member districts for county residents and a three seat, at-large district for city residents. The seven-member town council would be elected from five single-member districts, two of which were majority black, and two at-large seats.

- *Carr v. Covington,* No. 85-0011-D (W.D. Va. 1986): Consent decree established a new method of election for the town of Halifax, where no African-American had been elected to the town council since the town's incorporation in 1875. Replacing an at-large system, the seven member council would be elected from four single-member districts and three at-large seats, resulting in the election of one African-American to the town council in 1986.

- *Person v. Ligon*, No. 84-0270-R (E.D. Va. Jan. 12, 1988); Establishing a new method of election for the City of Emporia, just north of the North Carolina border in Brunswick County. The decree reduced the size of the city council from nine to eight members, and created an election system with three single member districts and two multi-member districts. Following implementation of the plan, three black candidates were elected to the city council.

[99] This is an illustrative list. Consent Decrees also were entered in the following cases: *Watkins v. Thomas*, No. 87-0709-R (E.D. Va. May 20, 1988); *King v. Blalock*, No. CA-88-0811-R (E.D. Va. June 6, 1989); *Feggins v. Horne*, No. CA-88-0865-R (E.D. Va. June 19, 1989); *Brunswick County League of Progress v. Town Council of Lawrenceville*, No. 3:91cv00091 (E.D. Va. Nov. 5, 1991).

- *Taylor v. Forrester*, No. 89-00777-R (E.D. Va. May 17, 1990): Expanding the Lancaster County Board of Supervisors from three to five members, to be elected from five single-member districts.

- *U.S. v. City of Newport News*, No. 4:94-cv-00155 (Nov. 4, 1994): Issuing consent judgment enjoining City of Newport from conducting future elections under the at-large method and establishing three two-member districts and one at-large seat for the Newport News town council. Currently the vice-mayor and one other council member are African-American.

V. Additional Notable Voting Rights Litigation

A. Redistricting Cases

After the 2000 Census, the Virginia General Assembly enacted new state legislative districts to comply with constitutional requirements. Shortly after adoption of the redistricting scheme, a group of citizens initiated suit in state court, claiming that certain districts failed to comply with the contiguous and compactness requirements of Article II, § 6 of the Virginia Constitution, and that other districts violated Article I, §§ 1 and 11 of the Constitution because the General Assembly subordinated traditional redistricting principles to race in drawing district lines. The trial court ruled in favor of the plaintiffs and enjoined the defendants from conducting any elections under the redistricting scheme. On appeal, however, the Supreme Court of Virginia reversed.[100]

With respect to the contiguous and compactness claim, the court noted that where "in a redistricting case, the validity of the legislature's reconciliation of various criteria is fairly debatable and not clearly erroneous, arbitrary or wholly unwarranted, neither a trial court nor a reviewing court can conclude that the resulting electoral district fails to comply with the compactness and contiguous requirements" of the Virginia Constitution. The court also stated that physical access from one part of a voting district to all the other parts is not necessary for exercising the right to vote and is not an undue impediment to forming communities of interest or disseminating information in today's world of mass media and technology. The court held that the evidence in this case was wholly insufficient to support a conclusion that the districts at issue clearly violated or were plainly repugnant to the compactness and contiguity requirements.

With respect to the racial gerrymandering claim, the court noted at the outset that *Hunt v. Cromartie* provided the framework for its analysis—"[a] party asserting that a legislative redistricting plan has improperly used race as a criterion must show that the legislature subordinated traditional redistricting principles to racial considerations and that race was not merely a factor in the design of the district, but was the predominant factor." Significantly, the court held that race clearly was a consideration in drawing district lines because this was required under the VRA, which mandates that a redistricting plan not dilute African-American voter strength and that there be no retrogression. The court concluded, however, that race was not the predominant factor used by the General Assembly. In fact, race was considered "along with traditional redistricting principles of retaining core areas, population equality, compactness

[100] *Wilkins v. West*, 571 S.E.2d 100 (Va. 2002).

and contiguity, partisan voting behavior, and protection of incumbents." The significance of this case however, is that it demonstrates the vulnerability of black voters to being "packed" and "cracked" for political purposes when race correlates highly with partisan affiliation. Without the protection of Section 5 of the Voting Rights Act, Virginia's state legislative districts may be redrawn without protecting minority voters.

The creation of a majority-minority Congressional District in Virginia following the 1990 Census was the subject of a racial gerrymandering challenge in the late 1990's.[101] When State Senator Bobby Scott was elected in Virginia's Third Congressional District in 1992, he became only the second African American to be elected to Congress from Virginia, and the first since Reconstruction. The case went to trial in September, 1996. The district court invalidated the district in February, 1997, finding that race predominated in drawing the districts and that the state could not adequately justify its use of race. The defendants appealed, but the Supreme Court affirmed without an opinion.[102] On remand, the general assembly redrew the Third Congressional District, making it more compact. It remained a majority-black district, however, and voters have continued to reelect the incumbent Congressman Bobby Scott.

B. Other Voting Rights Cases Affecting the Ability of Minority Voters to Register and Vote

In *Howard v. Gilmore,*[103] a pro se plaintiff raised Voting Rights Act, constitutional, and other claims concerning Virginia's felony disenfranchisement laws. His case was dismissed in a short, unreported opinion for failure to state a claim for relief. Virginia is one of only three states that permanently disenfranchise all people with felony convictions unless they receive clemency.[104] Every individual convicted of any level or grade of felony is permanently disenfranchised unless the individual requests to have his or her rights restored. Ex-felons who wish to vote must petition the circuit court, and even if the court approves the petition, they must obtain the approval of the Governor.[105] The governor of Virginia, however, has the sole discretion to grant or deny any such restoration and is not required to provide an explanation to anyone regarding how he reached his decision.[106] The decision of the governor cannot be appealed and the applicant must wait two years before re-applying.[107] Furthermore, only those who have been out of the system for five years (seven years for felony drug offenses) may apply.[108] Convictions for certain felonies can exclude individuals from eligibility altogether.[109]

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[101] *Moon v. Meadows,* 952 F. Supp. 1141 (E.D. Va. 1997) (three-judge district court).
[102] *Meadows v. Moon,* 521 U.S. 1113 (1997) (mem.).
[103] 205 F.3d 1333 (4th Cir. 2000) (unreported, text available at 2000 U.S. App. LEXIS 2680) (holding that in order to state a claim under the Fourteenth and Fifteenth Amendments, Howard must establish that the Commonwealth's decision to disenfranchise felons was motivated by race which he cannot do because the felony disenfranchisement provisions predated blacks having the right to vote.)
[104] The Virginia Constitution provides that "[n]o person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority." VA. CONST. Art. II, §1.
[105] Va. Code Ann. § 53.1-231.2.
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.*

As with poll taxes and literacy tests, evidence shows that the "ostensibly race-neutral" felony disenfranchisement rule was adopted in a segregated, Jim Crow Virginia to exclude African Americans from the political process. According to a transcript of proceedings from the Virginia Constitutional Convention of 1901-02, Carter Glass, a delegate to the convention, stated that the plan that included the felon disenfranchisement provision (as well as the literacy test and poll tax) "will eliminate the darkey as a political factor in this State in less than 5 years, so that in no single county . . . will there be the least concern felt for the complete supremacy of the white race in the affairs of government."[110] Less than ninety days after the adoption of the constitutional amendments "more than 125,000 of the 147,000 black voters in the state had been stricken from the rolls."[111]

Today, nearly 6 percent of the voting-age population in Virginia has lost the right to vote because of a felony conviction, barring as many as 310,000 citizens from the ballot box.[112] And, despite the fact that African Americans make up only 20 percent of Virginia's total population, approximately 52 percent of those disenfranchised (160,000) are African American.[113] In fact 16 percent of all adult African Americans in Virginia cannot vote because of a felony conviction.[114]

Virginia's disenfranchisement scheme "strips away the political power of communities of color."[115] For example, 7 percent of all Virginians released from prison in 2002 were originally committed by Richmond City Court. Of those returning to the Richmond community, nearly half returned to neighborhoods where the population was between 46.6 percent and 98.9 percent African-American.[116] Another 8 percent of those released from prison were originally committed by Norfolk City Court, one-third of whom returned to communities that are 79 percent to 100 percent African-American.[117] The significance of Virginia's practice of felony disenfranchisement is that it continues to deny African Americans their fair share of political power, yielding governments less responsive to their concerns.

During its 1999 session, the General Assembly of Virginia authorized the state board to conduct a pilot program requiring mandatory voter identification at the polling place. Pursuant to that authority, the board selected ten jurisdictions as participants in the pilot of the I.D. program. The Department of Justice precleared the pilot program. The Virginia Beach Democratic Committee subsequently sought to mail its own identification cards to persons with Democratic Party leaning. The board rejected the Democratic Committee's proposal. The committee, along with

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[110] *Access Denied: The Impact of Virginia's Felony Disenfranchisement Laws*, Advancement Project (December 2005), *available at* http://www.advancementproject.org/pd/vrr/VAdisencosts.pdf.
[111] *The Civil Rights Movement in Virginia*, The Virginia Historical Society online, at www.vahistorical.org/civilrights/vote.htm.
[112] *Access Denied: The Impact of Virginia's Felony Disenfranchisement Laws*, Advancement Project (December 2005), *available at* http://www.advancementproject.org/pd/vrr/VAdisencosts.pdf.
[113] *Id.*
[114] *Id.* Virginia's Department of Corrections does not collect data on Latino or Hispanic persons, thus it is difficult to assess the impact of the felon disenfranchisement law on Latino or Hispanic populations. *See* Diminished Voting Power in the Latino Community: The Impact of Felony Disenfranchisement Laws in Ten Targeted States, MALDEF (Dec. 2003), *available at* http://www.maldef.org/pdf/LatinoVoting Report.pdf.
[115] *Id.*
[116] *Id.*
[117] *Id.*

eleven individual voters, filed suit in state court seeking an injunction preventing the Board from implementing the pilot program. The court granted the injunction because "[g]iven the importance of the right to vote, the complainants' claims raise the spectre of having different eligibility standards for some voters in Virginia and, moreover, for some voters voting in the same legislative district in different precincts for the same candidate."[118]

In 1995, Virginia unsuccessfully sued the federal government claiming that the National Voter Registration Act, 42 U.S.C. §1973gg, violated the Tenth Amendment.[119] Several public interest groups immediately filed suit as well, seeking to require the state to implement the NVRA.[120] At this time, only 65.4 percent of eligible voters were registered in Virginia. Ultimately, the state was required to follow federal law and allow voters to register to vote by mail and at DMV offices.

VI. Sections 4(f)(4) and 203

Virginia is not currently subject to Section 203 of the VRA. That does not mean that language minorities do not experience voting difficulties in Virginia. On November 2, 2004, the Asian American Legal Defense and Education Fund and the Asian Pacific Americans Legal Resource Center conducted an exit poll at five poll sites in two counties in Northern Virginia with significant numbers of Asian-American voters. Although their findings indicated that the 2004 general election proceeded mostly free of major incident in Northern Virginia, they did document at least nine complaints of the general lack of interpreters at poll sites. According to their poll statistics, they found significant limited-English-proficiency rates for Vietnamese-American voters in Falls Church and Annandale. In Falls Church, 55 percent of poll respondents had limited English proficiency. Of these, 29 percent needed an interpreter and 24 percent needed translated materials. In Annandale, 43 percent had limited English proficiency; 29 percent needed an interpreter; and 27 percent needed translated materials.[121]

CONCLUSION

Virginia's electoral processes at the state and local level have opened up somewhat for African-American voters. It is not a state where other minority groups currently live in large enough numbers to be a major factor in the political life of the state, although in future decades, and in some local instances, Hispanic and Asian voters will become more of a political force in years to come.

However, on virtually all measures of political empowerment, African-American voters remain at a significant disadvantage to their white counterparts. Racially polarized voting continues to dominate elections in Virginia and, with a few notable exceptions, most successful candidates of

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[118] *Democratic Party of Virginia v. State Bd. of Elections*, 1999 Va. Cir. LEXIS 551 (Va. Cir. Oct. 19, 1999).
[119] *Commonwealth of Virginia v. United States*, Civ. Action No. 3:95CV357 (E.D. Va. 1995).
[120] *Richmond Crusade for Voters v. Allen,* No. 3:95CV531 (E.D. Va. 1995) and *League of Women Voters of Virginia v. Allen,* No. 3:95CV532 (E.D. Va. 1995).
[121] Letter from Glenn D. Magpantay, Staff Attorney, Asian American Legal Defense and Education Fund & Nicholas Rathod, Language Access Project Director, Asian Pacific Americans Legal Resource Center to Michael Brown, Chairman, Virginia State Board of Elections, Allen H. Harrison, Jr., Chairman, Arlington County Electoral Board & Nancy Krakover, Chairwoman, Fairfax County Electoral Board (May 9, 2005).

choice of black voters are elected in districts that are majority-black. Virginia residents themselves believe that retrogressive changes in districting and other aspects of elections will occur if the protections of the Section 5 preclearance process are removed at this time.

Local jurisdictions in Virginia have demonstrated that the bailout process works well in those areas of the state where it is justified and that other areas wish to remain subject to preclearance. Virginia's experience also demonstrates the importance of Section 5 as a back-up to Section 2 litigation, ensuring that gains in won in litigation are not eroded when districts are redrawn to comply with the one-person, one-vote rule. Virginia remains an important argument for the need to keep Section 5 in place for the time being.

APPENDIX 1 – SECTION 5 OBJECTIONS IN VIRGINIA, 1982-PRESENT

Jurisdiction & Submission Number	Description of Change	Date of Objection
Petersburg (81-2199) (Independent city)	Ordinance No. 8191 (1981) realignment of councilmanic districts, realignment of certain precinct boundaries, polling places	3-1-82
State (82-2748)	Chapter 16--House reapportionment	3-12-82
Southampton County (81-2235)	Redistricting	6-21-82 Withdrawn 9-7-82
Greensville County (82-2786)	Ordinance which redistricts the election districts into two double-member districts; the ordinance which creates an at-large position on the board of supervisors; and the ordinance which realigns voting precincts and creates Voting Precinct 4B and the polling place	11-15-82
State (84-3793)	Chapter 775 (1984)--prohibition on candidates assisting voters	8-3-84
Franklin (86-4549) (Independent city)	Three annexations	3-11-86 Withdrawn 5-18-87 upon preclearance of new method of election
Fredericksburg (87-4154) (Independent city)	1987 reduction in the size of the city council (from ten councilmembers and the mayor, to six councilmembers and the mayor) in the context of the 3-3 method of election and districting plan adopted for electing the council as so reduced	4-7-88
Newport News (88-5098) (Independent city)	Change from a 4-3 to 3-3 method of staggering council elections	7-24-89
State (91-1483)	Chapters 11 and 16 (1991)--redistricting plan for the State House of Delegates	7-16-91
Powhatan County (91-2115)	Redistricting plan (supervisor districts)	11-12-91
Newport News School District (92-3887) (Independent city)	Adoption of an at-large method of electing school board members	2-16-93

Jurisdiction & Submission Number	Description of Change	Date of Objection
Chesapeake School District (93-4561) (Independent city)	At-large method of electing the board of education	6-20-94 Withdrawn 8-28-95
Dinwiddie County (99-2229)	Polling place	10-27-99
Northampton County (2001-1495)	Method of electing the board of supervisors from six single-member districts to three double-member districts and the 2001 redistricting plan for the board of supervisors	9-28-01
Pittsylvania County (2001-2026) 2001-2501)	2001 redistricting plan for the board of supervisors and school board	4-29-02
Cumberland County (2001-2374)	2001 Redistricting plan for the board of supervisors	7-9-02
Northampton County (2002-5693)	2002 redistricting plan for the board of supervisors	5-19-03
Northampton County (2003-3010)	Redistricting plan	10-21-03

Source: U.S. Department of Justice, Section 5 Objection Determinations, available at: http://www.usdoj.gov/crt/voting/sec_5/va_obj2.htm.

Selected Socio-Economic Data

Virginia

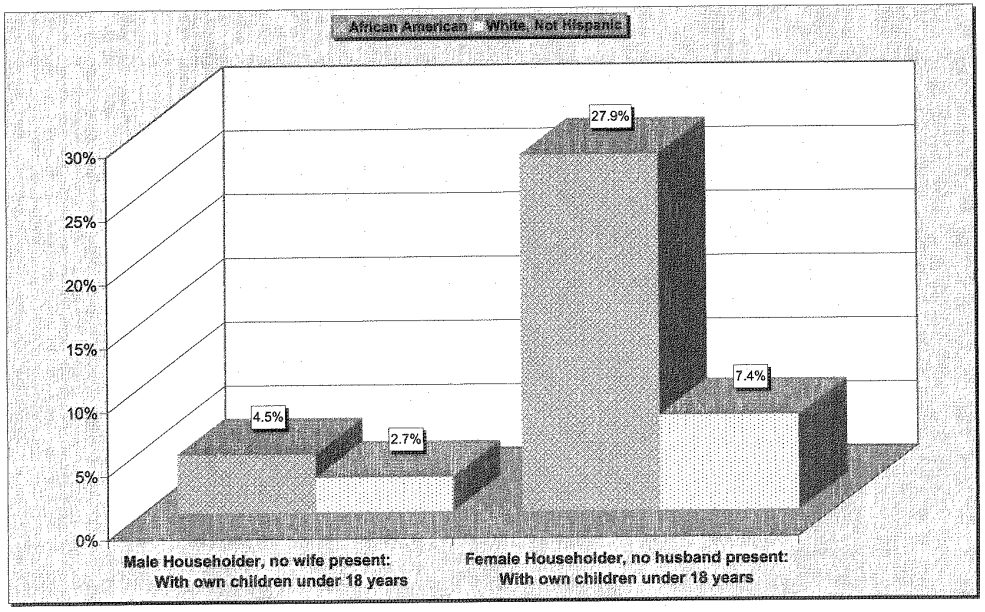
African American and White, Not Hispanic

Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data

2057

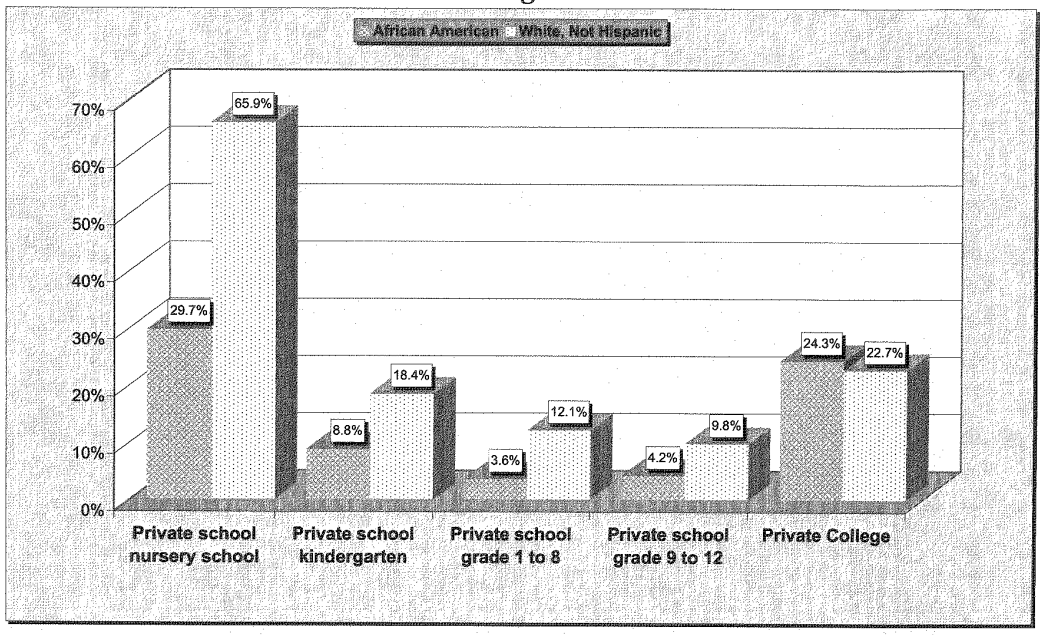
www.fairdata2000.com
5-May-03

Chart 1 -- Single-Parent Family Households (Householder 15 to 64 years)
Virginia



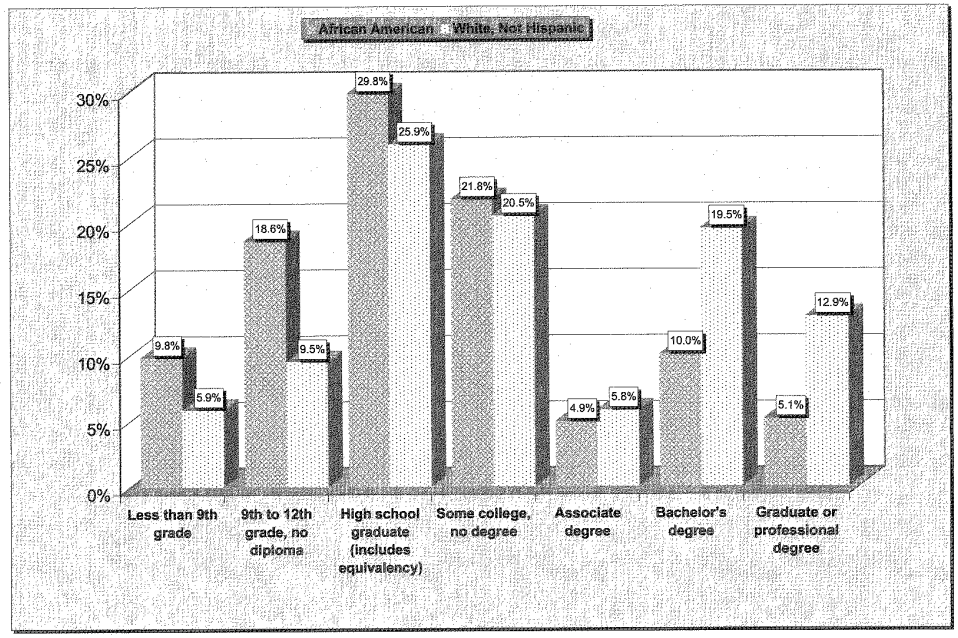
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data - P146B. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [31] - Universe: Households with a householder who is Black or African American alone; P146I. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [31] - Universe: Households with a householder who is White alone, not Hispanic or Latino.

Chart 2 -- Private School Enrollment (3 years and over)
Virginia



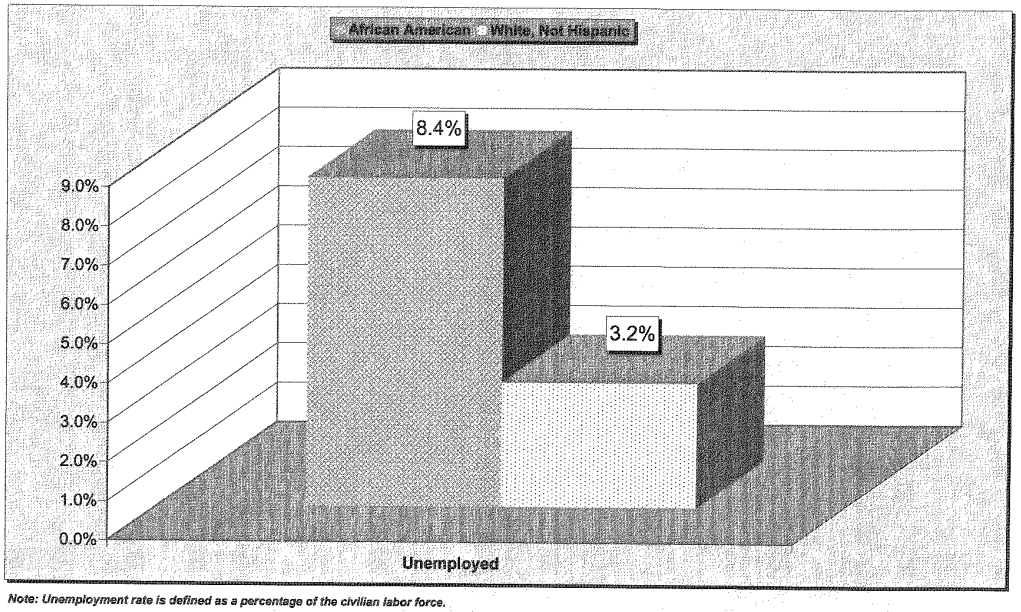
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – P147B. SCHOOL ENROLLMENT BY LEVEL OF SCHOOL BY TYPE OF SCHOOL FOR THE POPULATION 3 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [17] - Universe: Black or African American alone 3 years and over; P147I. SCHOOL ENROLLMENT BY LEVEL OF SCHOOL BY TYPE OF SCHOOL FOR THE POPULATION 3 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [17] - Universe: White alone, not Hispanic or Latino population 3 years and over.

Chart 3 -- Educational Attainment (25 years and over)
Virginia



Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P148B. SEX BY EDUCATIONAL ATTAINMENT FOR THE POPULATION 25 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [17] - Universe: Black or African American alone 25 years and over; P148I. SEX BY EDUCATIONAL ATTAINMENT FOR THE POPULATION 25 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [17] - Universe: White alone, not Hispanic or Latino population 25 years and over.

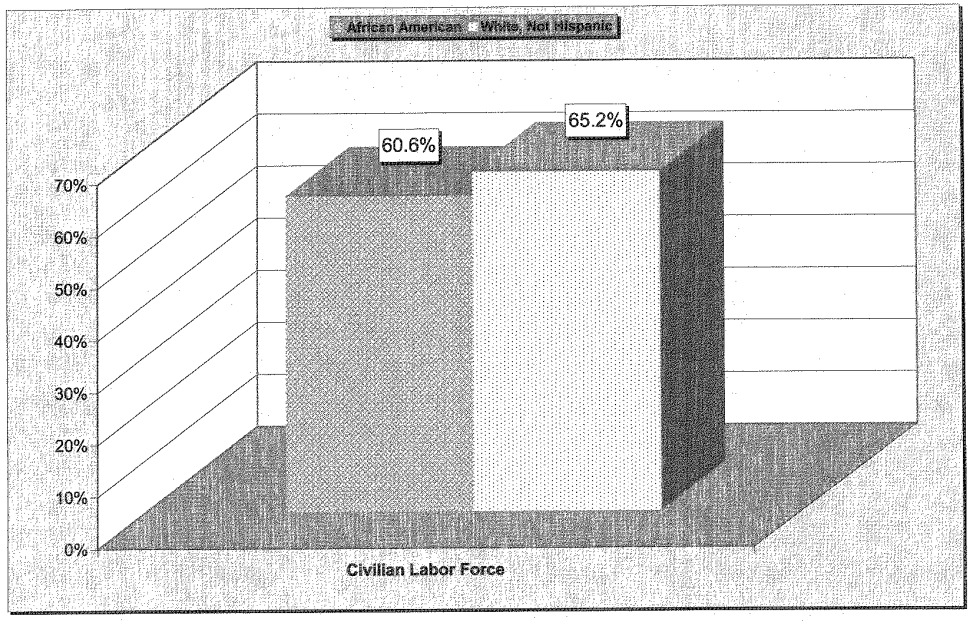
Chart 4 -- Unemployment Rate (Civilian Labor Force)
Virginia



Note: Unemployment rate is defined as a percentage of the civilian labor force.

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P150B. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [15] - Universe: Black or African American alone 16 years and over; P150I. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [15] - Universe: White alone, not Hispanic or Latino population 16 years and over.

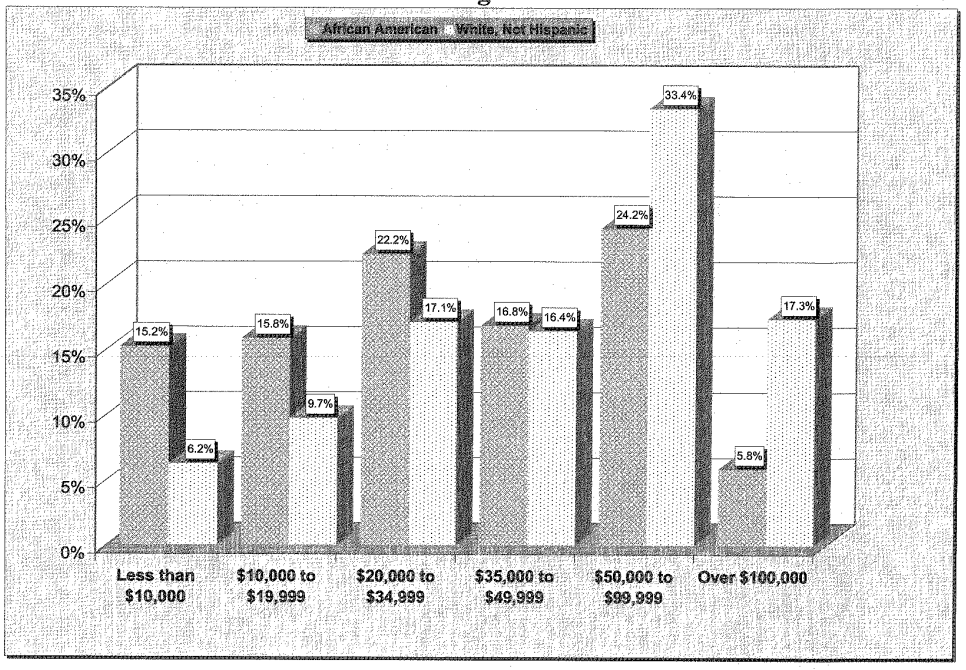
Chart 5 -- Labor Force Participation (Civilian Labor Force)
Virginia



Note: Labor force participation rate is defined as a percentage of the civilian population over 16.

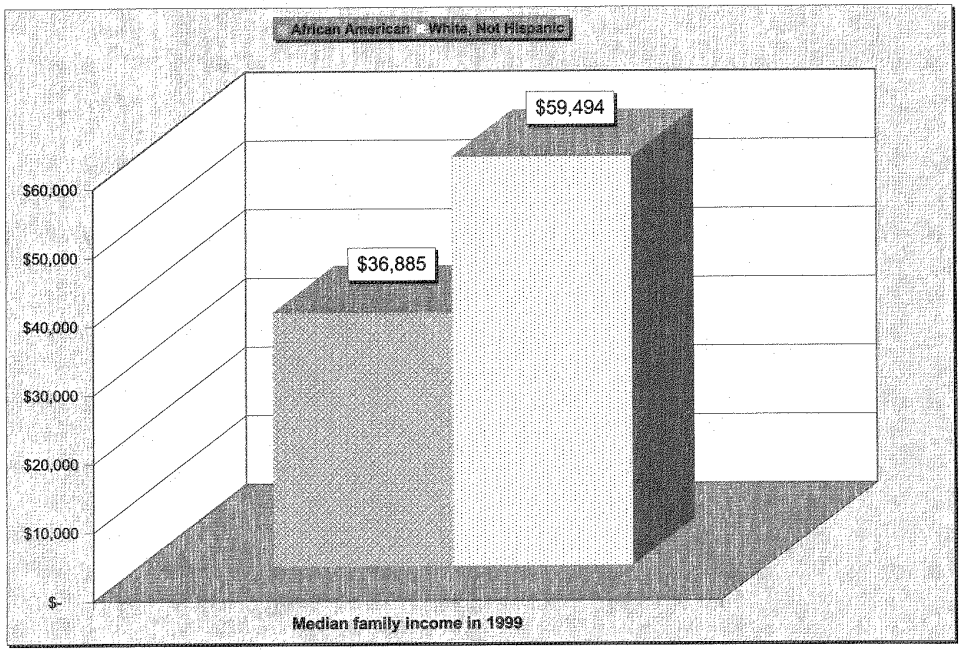
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P150B. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [15] - Universe: Black or African American alone 16 years and over; P150I. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [15] - Universe: White alone, not Hispanic or Latino population 16 years and over.

Chart 6 -- Household Income in 1999
Virginia



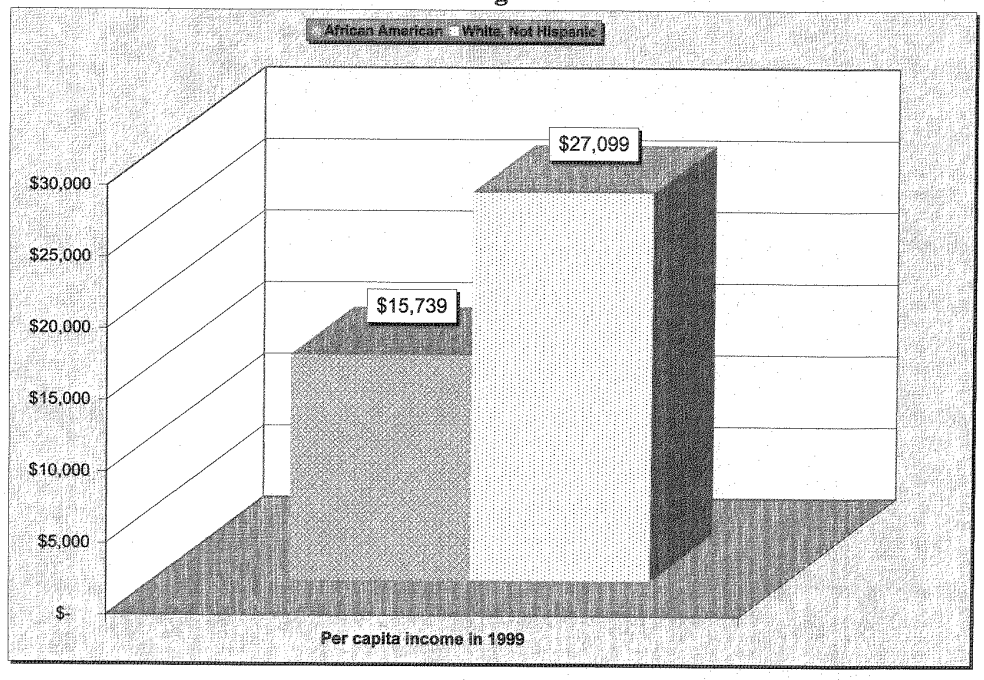
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – P151B. HOUSEHOLD INCOME IN 1999 (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [17] - Universe: Households with a householder who is Black or African American alone; P151I. HOUSEHOLD INCOME IN 1999 (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [17] - Universe: Households with a householder who is White alone, not Hispanic or Latino.

Chart 7 -- Median Family Income In 1999
Virginia



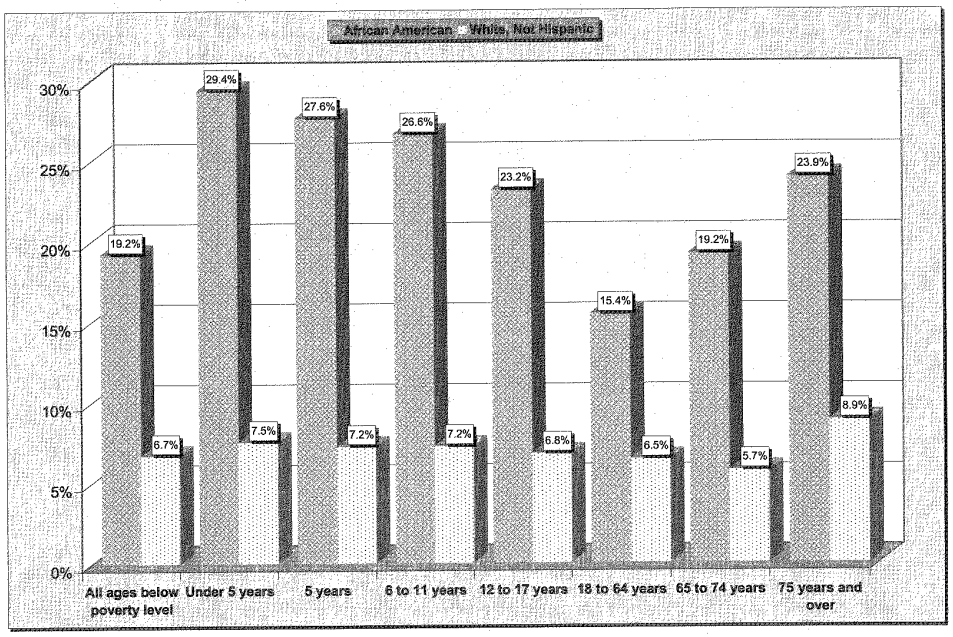
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P155B. MEDIAN FAMILY INCOME IN 1999 (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Families with a householder who is Black or African American alone ; P155I. MEDIAN FAMILY INCOME IN 1999 (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Families with a householder who is White alone, not Hispanic or Latino.

Chart 8 -- Per Capita Income In 1999
Virginia



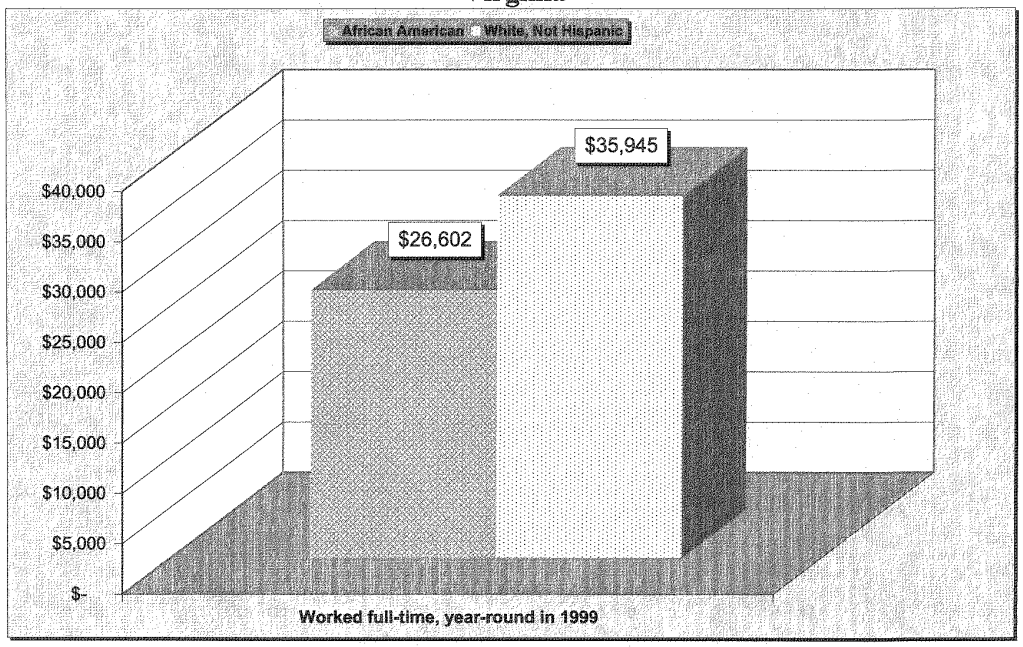
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P157B. PER CAPITA INCOME IN 1999 (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE) [1] - Universe: Black or African American alone; P157I. PER CAPITA INCOME IN 1999 (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO) [1] - Universe: White alone, not Hispanic or Latino population.

Chart 9 -- Income in 1999 Below Poverty Level by Age
Virginia



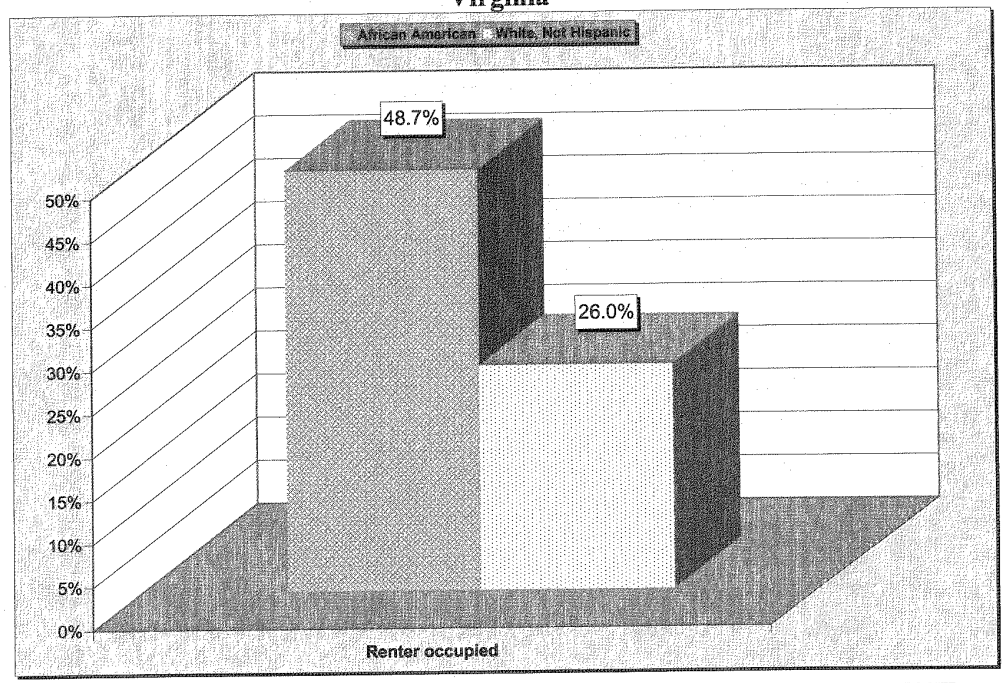
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – P159B. POVERTY STATUS IN 1999 BY AGE (BLACK OR AFRICAN AMERICAN ALONE) [17] - Universe: Black or African American alone for whom poverty status is determined;P159I. POVERTY STATUS IN 1999 BY AGE (WHITE ALONE, NOT HISPANIC OR LATINO) [17] - Universe: White alone, not Hispanic or Latino population for whom poverty status is determined.

Chart 10 -- Median Earnings in 1999
Virginia



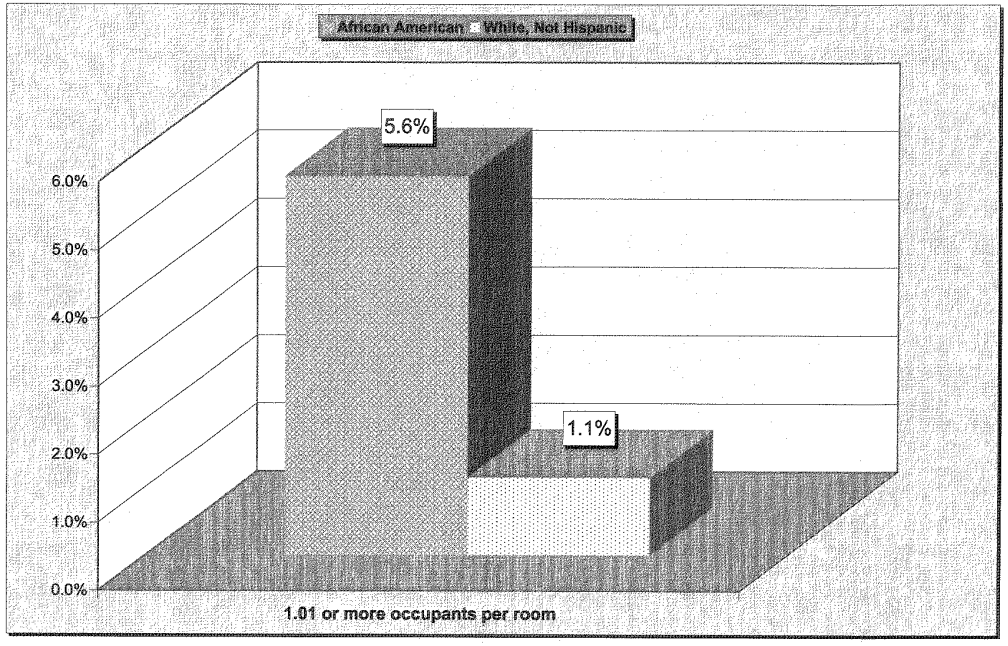
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – PCT74B. MEDIAN EARNINGS IN 1999 (DOLLARS) BY WORK EXPERIENCE IN 1999 BY SEX FOR THE POPULATION 16 YEARS AND OVER WITH EARNINGS (BLACK OR AFRICAN AMERICAN ALONE) [6] - Universe: Black or African American alone 16 years and over with earnings in 1999; PCT74I. MEDIAN EARNINGS IN 1999 (DOLLARS) BY WORK EXPERIENCE IN 1999 BY SEX FOR THE POPULATION 16 YEARS AND OVER WITH EARNINGS (WHITE ALONE, NOT HISPANIC OR LATINO) [6] - Universe: White alone, not Hispanic or Latino population 16 years and over with earnings in 1999.

Chart 11 -- Renter-Occupied Housing
Virginia



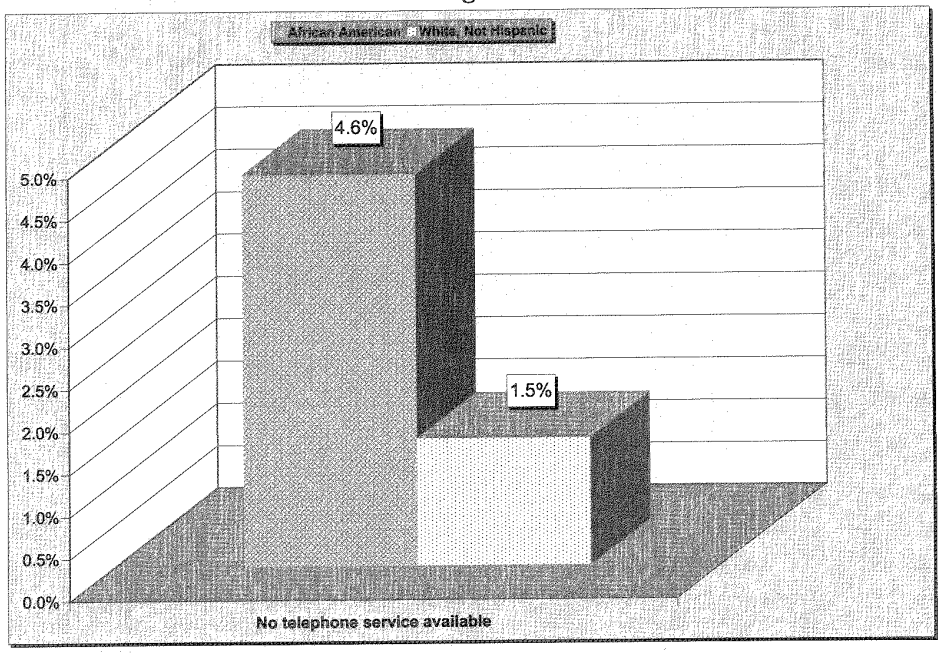
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- H11. TENURE BY RACE OF HOUSEHOLDER [17] - Universe: Occupied housing units; H13. TENURE (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 12 -- Occupants Per Room (Crowding) by Household
Virginia



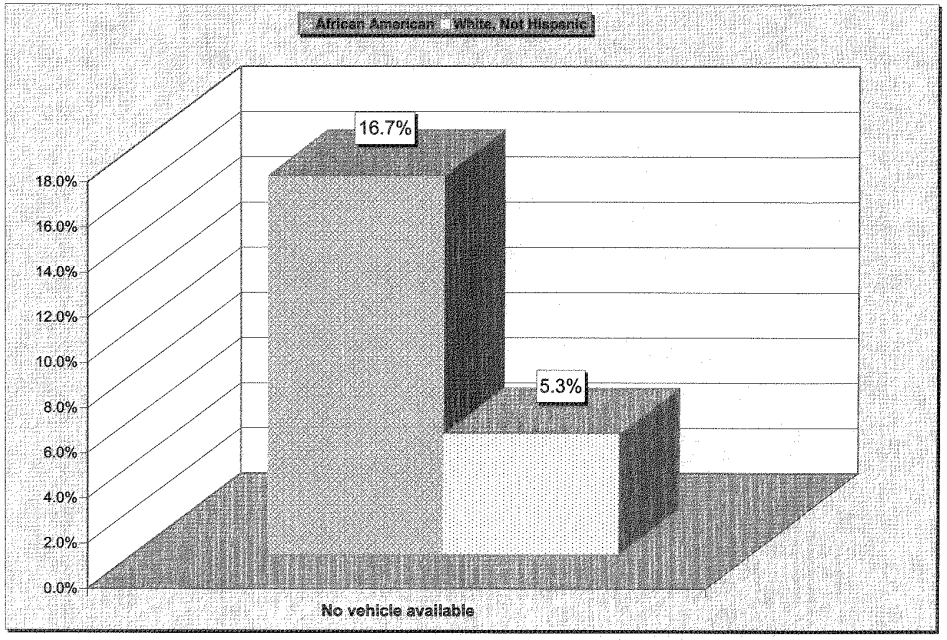
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT29B. OCCUPANTS PER ROOM (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT29I. OCCUPANTS PER ROOM (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 13 -- Lack of Telephone Service by Household
Virginia



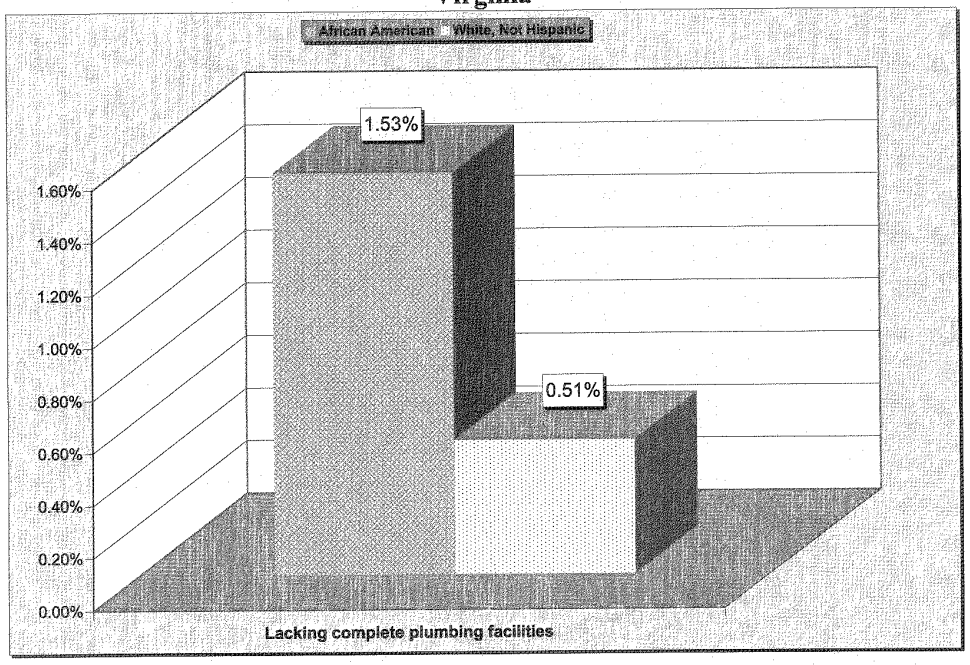
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT32B. TELEPHONE SERVICE AVAILABLE (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT32I. TELEPHONE SERVICE AVAILABLE (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 14 -- Lack of Vehicle By Household
Virginia



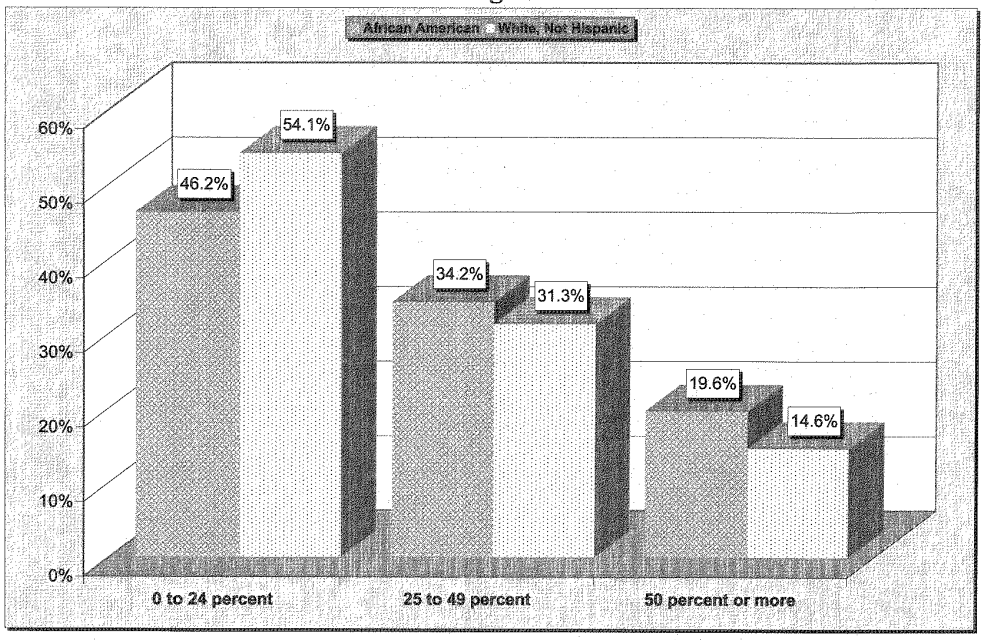
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – HCT33B. VEHICLES AVAILABLE (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone;; HCT33I. VEHICLES AVAILABLE (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 15 -- Lack of Plumbing By Household
Virginia



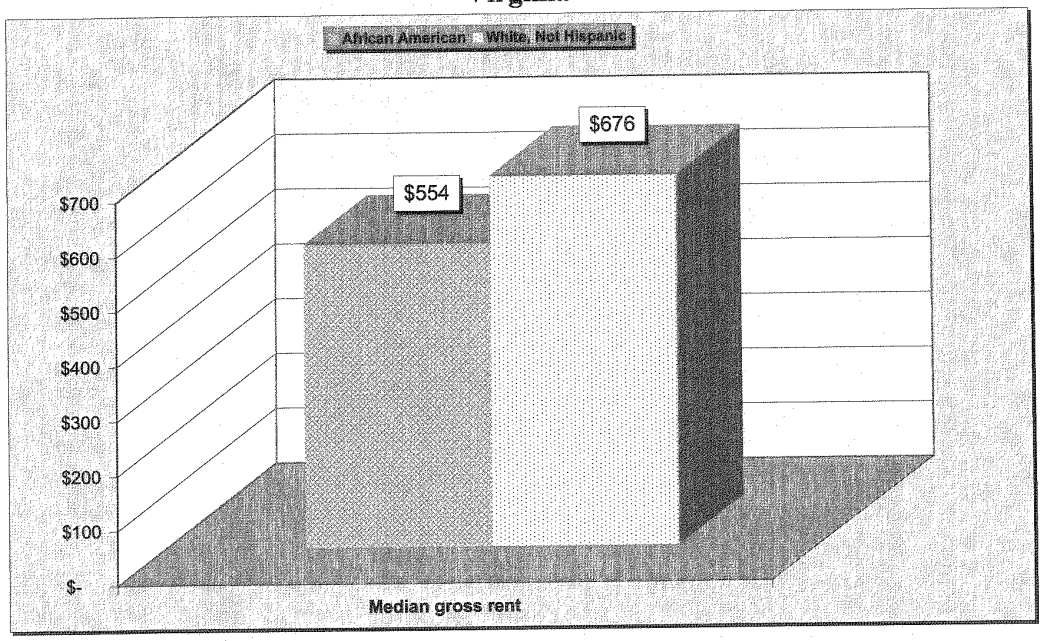
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT34B. PLUMBING FACILITIES (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT34I. PLUMBING FACILITIES (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 16 -- Gross Rent as a Percentage of Household Income in 1999
Virginia



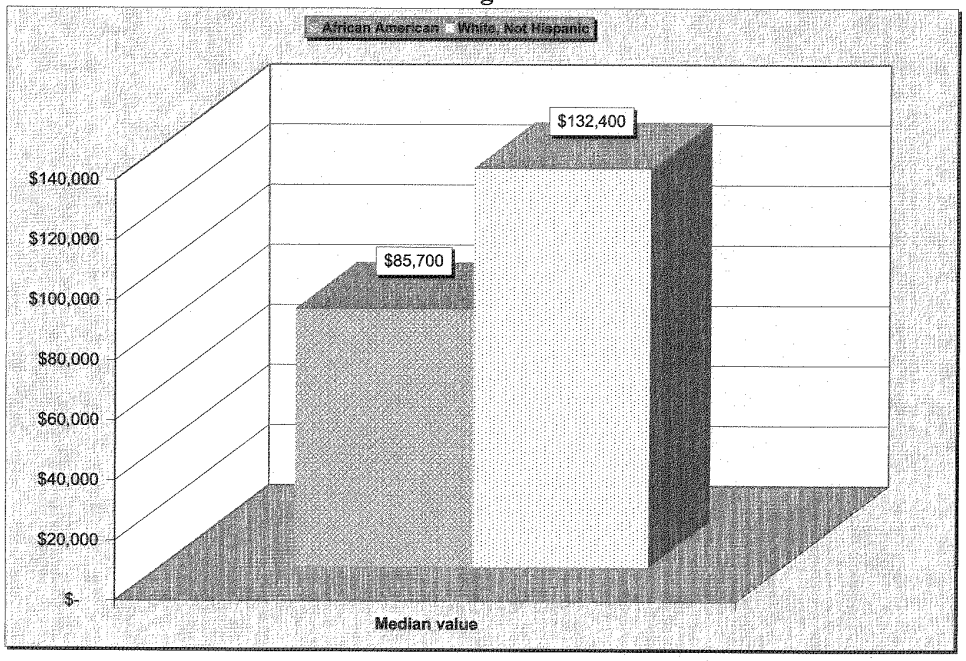
Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT39B. GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999 (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [11] - Universe: Specified renter-occupied housing units with a householder who is Black or African American alone; HCT39I. GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999 (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [11] - Universe: Specified renter-occupied housing units with a householder who is White alone, not Hispanic or Latino.

Chart 17 -- Median Gross Rent By Household
Virginia



Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT37B. MEDIAN GROSS RENT (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Specified renter-occupied housing units paying cash rent with a householder who is Black or African American alone; HCT37I. MEDIAN GROSS RENT (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Specified renter-occupied housing units paying cash rent with a householder who is White alone, not Hispanic or Latino.

Chart 18 -- Median Home Value By Household
Virginia



Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT42B. MEDIAN VALUE (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Specified owner-occupied housing units with a householder who is Black or African American alone; HCT42I. MEDIAN VALUE (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Specified owner-occupied housing units with a householder who is White alone, not Hispanic or Latino.

HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS

Source data for Chart 1

	African American	White, Not Hispanic
	Virginia	Virginia
Total:	493,797	2,004,156
Householder 15 to 64 years:	413,095	1,593,454
Family households:	298,748	1,137,803
Married-couple family:	158,043	957,975
With own children under 18 years	92,098	495,952
No own children under 18 years	65,945	462,023
Other family:	140,705	179,828
Male householder, no wife present:	23,493	52,736
With own children under 18 years	13,581	30,945
No own children under 18 years	9,912	21,791
Female householder, no husband present:	117,212	127,092
With own children under 18 years	83,261	84,526
No own children under 18 years	33,951	42,566
Nonfamily households:	114,347	455,651
Householder living alone	92,064	337,611
Householder not living alone	22,283	118,040
Householder 65 years and over:	80,702	410,702
Family households:	43,972	225,724
Married-couple family:	24,858	190,070
With own children under 18 years	625	1,507
No own children under 18 years	24,233	188,563
Other family:	19,114	35,654
Male householder, no wife present:	3,528	7,288
With own children under 18 years	228	193
No own children under 18 years	3,300	7,095
Female householder, no husband present:	15,586	28,366
With own children under 18 years	148	70
No own children under 18 years	15,438	28,296
Nonfamily households:	36,730	184,978
Householder living alone	34,786	179,050
Householder not living alone	1,944	5,928

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data - P146B. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [31] - Universe: Households with a householder who is Black or African American alone; P146I. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [31] - Universe: Households with a householder who is White alone, not Hispanic or Latino.

SCHOOL ENROLLMENT BY LEVEL OF SCHOOL BY TYPE OF SCHOOL FOR THE POPULATION 3 YEARS AND OVER

Source data for Chart 2

	African American	White, Not Hispanic
	Virginia	Virginia
Total:	1,324,067	4,790,338
Enrolled in nursery school, preschool:	27,621	83,127
Public school	19,428	28,345
Private school	8,193	54,782
Enrolled in kindergarten:	23,962	63,556
Public school	21,862	51,843
Private school	2,100	11,713
Enrolled in grade 1 to grade 8:	196,647	515,536
Public school	189,547	453,100
Private school	7,100	62,436
Enrolled in grade 9 to grade 12:	93,352	245,249
Public school	89,444	221,187
Private school	3,908	24,062
Enrolled in college:	87,515	299,803
Public school	66,280	231,747
Private school	21,235	68,056
Not enrolled in school	894,970	3,583,067

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data - P146B. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [31] - Universe: Households with a householder who is Black or African American alone; P146I. HOUSEHOLDS BY AGE OF HOUSEHOLDER BY HOUSEHOLD TYPE (INCLUDING LIVING ALONE) BY PRESENCE OF OWN CHILDREN UNDER 18 YEARS (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [31] - Universe: Households with a householder who is White alone, not Hispanic or Latino.

SEX BY EDUCATIONAL ATTAINMENT FOR THE POPULATION 25 YEARS AND OVER

Source data for Chart 3

	African American	White, Not Hispanic
	Virginia	Virginia
Total:	833,512	3,418,030
Male:	382,449	1,645,543
Less than 9th grade	40,854	103,399
9th to 12th grade, no diploma	75,645	158,122
High school graduate (includes equivalency)	120,076	401,615
Some college, no degree	76,982	317,679
Associate degree	16,821	85,606
Bachelor's degree	34,099	325,814
Graduate or professional degree	17,972	253,308
Female:	451,063	1,772,487
Less than 9th grade	40,869	97,025
9th to 12th grade, no diploma	79,551	166,312
High school graduate (includes equivalency)	128,042	484,663
Some college, no degree	104,409	383,189
Associate degree	24,265	112,819
Bachelor's degree	49,285	342,030
Graduate or professional degree	24,642	186,449

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P148B. SEX BY EDUCATIONAL ATTAINMENT FOR THE POPULATION 25 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [17] - Universe: Black or African American alone 25 years and over; P148I. SEX BY EDUCATIONAL ATTAINMENT FOR THE POPULATION 25 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [17] - Universe: White alone, not Hispanic or Latino population 25 years and over.

SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER

Source data for Charts 4 and 5

	African American	White, Not Hispanic
	Virginia	Virginia
Total:	1,023,750	3,973,735
Male:	477,970	1,931,375
In labor force:	309,494	1,450,424
In Armed Forces	24134	74,018
Civilian:	285,360	1,376,406
Employed	260,601	1,333,731
Unemployed	24,759	42,675
Not in labor force	168,476	480,951
Female:	545,780	2,042,360
In labor force:	342,131	1,223,004
In Armed Forces	7007	10,186
Civilian:	335,124	1,212,818
Employed	308,018	1,173,298
Unemployed	27,106	39,520
Not in labor force	203,649	819,356

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P150B. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (BLACK OR AFRICAN AMERICAN ALONE) [15] - Universe: Black or African American alone 16 years and over; P150I. SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER (WHITE ALONE, NOT HISPANIC OR LATINO) [15] - Universe: White alone, not Hispanic or Latino population 16 years and over.

HOUSEHOLD INCOME IN 1999

Source data for Chart 6

	African American	White, Not Hispanic
	Virginia	Virginia
Total:	493,797	2,004,156
Less than $10,000	74,863	124,345
$10,000 to $14,999	38,833	95,182
$15,000 to $19,999	39,182	99,153
$20,000 to $24,999	39,208	109,723
$25,000 to $29,999	36,904	114,946
$30,000 to $34,999	33,690	117,277
$35,000 to $39,999	30,176	115,623
$40,000 to $44,999	27,539	111,777
$45,000 to $49,999	25,114	100,460
$50,000 to $59,999	40,505	189,577
$60,000 to $74,999	42,810	233,500
$75,000 to $99,999	36,190	245,543
$100,000 to $124,999	14,458	138,314
$125,000 to $149,999	6,235	75,137
$150,000 to $199,999	4,219	69,493
$200,000 or more	3,871	64,106

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P151B. HOUSEHOLD INCOME IN 1999 (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [17] - Universe: Households with a householder who is Black or African American alone; P151I. HOUSEHOLD INCOME IN 1999 (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [17] - Universe: Households with a householder who is White alone, not Hispanic or Latino.

MEDIAN FAMILY INCOME IN 1999

Source data for Chart 7

	African American	White, Not Hispanic
	Virginia	Virginia
Median family income in 1999	$ 36,885	$ 59,494

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P155B. MEDIAN FAMILY INCOME IN 1999 (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Families with a householder who is Black or African American alone ; P155I. MEDIAN FAMILY INCOME IN 1999 (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Families with a householder who is White alone, not Hispanic or Latino.

PER CAPITA INCOME IN 1999

Source data for Chart 8

	African American	White, Not Hispanic
	Virginia	Virginia
Per capita income in 1999	$ 15,739	$ 27,099

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P157B. PER CAPITA INCOME IN 1999 (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE) [1] - Universe: Black or African American alone; P157I. PER CAPITA INCOME IN 1999 (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO) [1] - Universe: White alone, not Hispanic or Latino population.

POVERTY STATUS IN 1999 BY AGE

Source data for Chart 9

	African American	White, Not Hispanic
	Virginia	Virginia
Total:	1,306,107	4,826,931
Income in 1999 below poverty level:	250,903	323,226
Under 5 years	28,826	21,504
5 years	5,963	4,389
6 to 11 years	38,285	27,477
12 to 17 years	30,235	25,301
18 to 64 years	122,861	201,279
65 to 74 years	13,070	19,658
75 years and over	11,663	23,618
Income in 1999 at or above poverty level:	1,055,204	4,503,705
Under 5 years	69,356	264,211
5 years	15,616	56,189
6 to 11 years	105,474	351,689
12 to 17 years	100,221	347,143
18 to 64 years	672,467	2,918,554
65 to 74 years	55,023	322,845
75 years and over	37,047	243,074

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- P159B. POVERTY STATUS IN 1999 BY AGE (BLACK OR AFRICAN AMERICAN ALONE) [17] - Universe: Black or African American alone for whom poverty status is determined;P159I. POVERTY STATUS IN 1999 BY AGE (WHITE ALONE, NOT HISPANIC OR LATINO) [17] - Universe: White alone, not Hispanic or Latino population for whom poverty status is determined.

MEDIAN EARNINGS IN 1999

Source data for Chart 10

	African American	White, Not Hispanic
	Virginia	Virginia
Median earnings in 1999 --		
Worked full-time, year-round in 1999 --		
Total	$ 26,602	$ 35,945
Male	$ 29,357	$ 40,793
Female	$ 24,140	$ 29,946
Other --		
Total	$ 9,781	$ 10,217
Male	$ 10,462	$ 11,364
Female	$ 9,273	$ 9,485

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- PCT74B. MEDIAN EARNINGS IN 1999 (DOLLARS) BY WORK EXPERIENCE IN 1999 BY SEX FOR THE POPULATION 16 YEARS AND OVER WITH EARNINGS (BLACK OR AFRICAN AMERICAN ALONE) [6] - Universe: Black or African American alone 16 years and over with earnings in 1999; PCT74I. MEDIAN EARNINGS IN 1999 (DOLLARS) BY WORK EXPERIENCE IN 1999 BY SEX FOR THE POPULATION 16 YEARS AND OVER WITH EARNINGS (WHITE ALONE, NOT HISPANIC OR LATINO) [6] - Universe: White alone, not Hispanic or Latino population 16 years and over with earnings in 1999.

TENURE BY RACE OF HOUSEHOLDER

Source data for Chart 11

	Virginia
Total:	2,699,173
Owner occupied:	1,837,958
Householder who is White alone	1,504,263
Householder who is Black or African American alone	252,367
Householder who is American Indian and Alaska Native alone	4,705
Householder who is Asian alone	44,185
Householder who is Native Hawaiian and Other Pacific Islander alone	468
Householder who is Some other race alone	12,663
Householder who is Two or more races	19,307
Renter occupied:	861,215
Householder who is White alone	542,039
Householder who is Black or African American alone	240,004
Householder who is American Indian and Alaska Native alone	3,537
Householder who is Asian alone	33,580
Householder who is Native Hawaiian and Other Pacific Islander alone	527
Householder who is Some other race alone	20,332
Householder who is Two or more races	21,196

White alone, not Hispanic **White, Not Hispanic**

		Virginia
Total:		2,006,000
Owner occupied		1,484,322
Renter occupied		521,678

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – H11. TENURE BY RACE OF HOUSEHOLDER [17] - Universe: Occupied housing units; H13. TENURE (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

OCCUPANTS PER ROOM

Source data for Chart 12

	African American	White, Not Hispanic
	Virginia	Virginia
Total:	492,371	2,006,000
1.00 or less occupants per room	464,969	1,983,025
1.01 or more occupants per room	27,402	22,975

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – HCT29B. OCCUPANTS PER ROOM (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT29I. OCCUPANTS PER ROOM (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

TELEPHONE SERVICE AVAILABLE

Source data for Chart 13

	African American	White, Not Hispanic
	Virginia	Virginia
Total:	492,371	2,006,000
With telephone service available	469,581	1,975,761
No telephone service available	22,790	30,239

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – HCT32B. TELEPHONE SERVICE AVAILABLE (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT32I. TELEPHONE SERVICE AVAILABLE (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

VEHICLES AVAILABLE

Source data for Chart 14

	African American	White, Not Hispanic
	Virginia	Virginia
Total:	492,371	2,006,000
No vehicle available	82,431	106,925
1 or more vehicles available	409,940	1,899,075

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – HCT33B. VEHICLES AVAILABLE (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone;; HCT33I. VEHICLES AVAILABLE (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

PLUMBING FACILITIES

Source data for Chart 15

	African American	White, Not Hispanic
	Virginia	Virginia
Total:	492,371	2,006,000
Complete plumbing facilities	484,852	1,995,751
Lacking complete plumbing facilities	7519	10,249

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data – HCT34B. PLUMBING FACILITIES (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is Black or African American alone; HCT34I. PLUMBING FACILITIES (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [3] - Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999

Source data for Chart 16

	African American	White, Not Hispanic
	Virginia	Virginia
Total:	237,559	506,891
Less than 10 percent	14138	30,589
10 to 14 percent	24,178	66,336
15 to 19 percent	32613	82,721
20 to 24 percent	30689	72,552
25 to 29 percent	26610	54,269
30 to 34 percent	19016	36,945
35 to 39 percent	12905	24,554
40 to 49 percent	16608	29,937
50 percent or more	43,066	68,017
Not computed	17736	40,971

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT39B. GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999 (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [11] - Universe: Specified renter-occupied housing units with a householder who is Black or African American alone; HCT39I. GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999 (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [11] - Universe: Specified renter-occupied housing units with a householder who is White alone, not Hispanic or Latino.

MEDIAN GROSS RENT

Source data for Chart 17

	African American	White, Not Hispanic
	Virginia	Virginia
Median gross rent	$ 554	$ 676

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT37B. MEDIAN GROSS RENT (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Specified renter-occupied housing units paying cash rent with a householder who is Black or African American alone; HCT37I. MEDIAN GROSS RENT (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Specified renter-occupied housing units paying cash rent with a householder who is White alone, not Hispanic or Latino.

MEDIAN HOME VALUE

Source data for Chart 18

	African American	White, Not Hispanic
	Virginia	Virginia
Median value	$ 85,700	$ 132,400

Source: Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data -- HCT42B. MEDIAN VALUE (DOLLARS) (BLACK OR AFRICAN AMERICAN ALONE HOUSEHOLDER) [1] - Universe: Specified owner-occupied housing units with a householder who is Black or African American alone; HCT42I. MEDIAN VALUE (DOLLARS) (WHITE ALONE, NOT HISPANIC OR LATINO HOUSEHOLDER) [1] - Universe: Specified owner-occupied housing units with a householder who is White alone, not Hispanic or Latino.

Appendix 3 - Virginia Submissions Withdrawn 1982- Present

Submission #	State	County	Type of Change	Date of Withdrawal
1993-2632	Virginia	Cumberland, Prince Edward	Redist.	22-Nov-93
2001-1838	Virginia	Henrico	Poll Place (changed)	28-Aug-01
1989-3822	Virginia	Lunenburg	Poll Place	1-May-89
1987-4154	Virginia		Poll Place (changed) (3)	9-Mar-88

Source: U.S. DOJ, Civil Rights Division, FOIA request

Appendix 4 – Summary of Voting Rights Litigation in Virginia 1982 to Present

- *McDaniels v. Mehfoud*, 702 F. Supp. 588 (E.D. Va. 1988). Plaintiffs, African American citizens and registered voters of Henrico County, Virginia, brought suit in district court claiming that the county's 1981 redistricting plan impermissibly denied their right to vote on account of race, in violation of Section 2 of the Voting Rights Act, and was adopted and maintained purposefully to dilute African-American voting strength. Henrico County is an urban and suburban county boarding Richmond, Virginia. According to the 1980 census data, the total population of Henrico County was 180,735, of which 15% were African Americans. In analyzing the plaintiffs' Section 2 claim, the court found that the African-American population in Henrico County was sufficiently large and geographically compact to constitute a majority in one or more single-member districts. Further, voting patterns in the county revealed a severe and persistent pattern of racially polarized voting, there was a legacy of official discrimination in voting matters and to a lesser extent continuing effects of discrimination in education and employment. These factors, combined with the single-member districting scheme, impeded the ability of a geographically compact and politically cohesive group of African Americans to participate equally in the political process and to elect their candidates of choice in violation of the Voting Rights Act of 1965.

- *Neal v. Coleburn*, 689 F. Supp. 1426 (E.D. Va. 1988). The plaintiffs, African American citizens and registered voters of Nottoway County, Virginia, initiated suit in district court, alleging that the method for electing the board of supervisors for Nottoway County impermissibly diluted the voting power of the county's African-American voters, in violation of Section 2 of the Voting Rights Act and the U.S. Constitution. The county was predominantly rural, located in Southside Virginia. According to the 1980 Census, the total population was 14,666—39.04% of whom were African American and 60.69% of whom were white. The county was governed by a five-member board of supervisors; each supervisor was elected by a plurality vote for a four-year term from a single-member district. The terms were not staggered. Despite the fact that the county's population was nearly 40% African American, the districts were not drawn such that any of them contained a black majority. In its analysis of the vote dilution claim, the court noted the extensive history of discrimination in Virginia and how its lingering effects on socio-economic conditions of African Americans contributed to the lack of opportunities for African Americans to effectively participate in the political process. Thus, "the Court [found] that the political processes in Nottoway County [had] been largely under white control and associated with white political dominance. . . . As a result of past official discrimination and continuing segregation, black[s] . . . still feel intimidated by the white domination of local politics." Moreover, the court found significant evidence of racially polarized voting, noting that "whites generally have not supported or voted for black candidates, nor will they." The court ultimately ruled that the plaintiffs had satisfied their burden to prove a Section 2 violation and ordered adoption of the plaintiffs' proposed remedy.

- *Collins v. City of Norfolk*, 883 F.2d 1232 (4th Cir. 1989), *cert. denied, City of Norfolk v. Collins*, 498 U.S. 938 (1990). Plaintiffs, seven African-American citizens of Norfolk, Virginia and the Norfolk Branch of the NAACP, initiated an action in the district court, alleging that the at-large system of electing members of the Norfolk City Council unlawfully diluted black voting strength and that the system had been maintained for racially discriminatory purposes. Since 1952, the council had consisted of seven members elected at-large. Council members served four-year, staggered terms, so every two years three or four of the seven seats were contested. From 1918 until 1968, every member of Norfolk's city council was white. In 1968, a black citizen was elected to the council and from that time until the filing of the initial action, the council had one black member. Thus, although the city's population was 35% African American and the rate of African-American participation in the electoral process was high, African Americans were unable to elect more than one African American member to the seven-member council. Despite this evidence, the district entered judgment in favor of the defendants finding that African Americans were able to elect representatives of their choice because some white candidates had received more than 50% of the African-American vote. The district court's holding was affirmed by the Fourth Circuit. The United States Supreme Court, however, vacated and remanded. On remand, the district court again entered judgment for the defendants. This time, the Fourth Circuit reversed. Specifically, the court held that the presumption that successful white candidates who received more than 50% of the black vote were not "representatives of their choice" where candidates who received much higher percentage of the black vote were defeated was not overcome by testimony that successful candidates were endorsed by black political organizations and had black support greater than some of the African-American candidates. Instead, the critical factor was the difference between the African American support for the candidate who received the most black votes yet lost versus the candidates who won with fewer black votes. The court cited statistics showing that from 1968 until 1984 all of the minority-preferred candidates for a second seat on the council were defeated by candidates preferred by white voters and statistics showing that before 1984, white voters were able to defeat the combined strength of African-American voters and white crossover voters to deny the African-American community a second seat on the council. Furthermore, the court held that recent re-elections of African-American incumbents did not negate the existence of white bloc voting. Thus, the court reversed the district court's judgment and held that VRA Section 2 was violated. The case was remanded with these instructions: the district court should enjoin at-large elections for city council, allow the city a reasonable time to prepare a remedial plan, and submit the plan for clearance under Section 5 of the VRA.

- *Hall v. Virginia*, 385 F.3d 421 (4th Cir. 2004). In 2001, the Virginia General Assembly adopted a redistricting plan, changing the boundary lines of the Fourth District so as to shift a number of African-American citizens out of the Fourth District and into the Third and Fifth Districts. Before the redistricting, African Americans comprised 39.4% of the total population and 37.8% of the voting-age population. After the redistricting, they constituted 33.6% of the total population and 32.3% of its voting-age population. Plaintiffs, nine registered voters who resided in the Fourth District or were shifted out of

the district as a result of the redistricting, filed suit in district court alleging that the reconfiguration of the Fourth District diluted minority voting strength in violation of Section 2 of the VRA. Specifically, they claimed that that in the newly-drawn Fourth District, African Americans "are too small in number to form the same wining collation with 'crossover' white voters that existed before the enactment of the 2001 Redistricting Plan." According to the plaintiffs, "the first *Gingles* precondition is satisfied not only when a minority group constitutes a numerical majority in a single-member district, but also when minorities are sufficiently numerous to form an 'effective' or 'functional' majority in a single-member district by combining voters from other racial or ethnic groups." The district court rejected this argument, however, concluding that African Americans would not form a population of voting-age majority in the Fourth District even if the district was restored to the original boundaries. The Fourth Circuit affirmed, holding that "when minority voters, as a group, are too small or loosely distributed to form a majority in a single-member district, they have no ability to elect candidates of their own choice, but must instead rely on the support of other groups to elect candidates. . . . [they] cannot claim that their voting strength—that is, the potential to independently decide the outcome of an election—has been diluted in violation of Section 2."

Consent Decrees

- *Harris v. City of Hopewell*, Civ. No. 82-0036-R (E.D. Va. Jan. 5, 1983).
- *Eggleston v. Crute*, Civ No. 83-0287-R (E.D. Va. 1984).
- *Watkins v. Thomas*, Civ. No. 87-0709-R (E.D. Va. May 20, 1988).
- *Person v. Ligon*, Civ. No. 84-0270-R (E.D. Va. Jan. 12, 1988).
- *King v. Blalock*, Civ. No. CA-88-0811-R (E.D. Va. June 6, 1989).
- *Feggins v. Horne*, Civ. No. CA-88-0865-R (E.D. Va. June 19, 1989).
- *Taylor v. Forrester*, Civ. No. 89-00777-R (E.D. Va. May 17, 1990).
- *Brunswick County League of Progress v. Town Council of Lawrenceville*, Civ. No. 3:91cv00091 (E.D. Va. Nov. 5, 1991).
- *U.S. v. City of Newport News*, Civ. No. 4:94-cv-00155 (Nov. 4, 1994).

UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, VOTING SECTION, "THE EFFECT OF THE VOTING RIGHTS ACT"

United States Department of Justice
Civil Rights Division
Voting Section

Introduction To Federal Voting Rights Laws

- Introduction To Federal Voting Rights Laws
- Before the Voting Rights Act
- The Voting Rights Act of 1965
- The Effect of the Voting Rights Act

The Effect of the Voting Rights Act

Soon after passage of the Voting Rights Act, federal examiners were conducting voter registration, and black voter registration began a sharp increase. The cumulative effect of the Supreme Court's decisions, Congress' enactment of voting rights legislation, and the ongoing efforts of concerned private citizens and the Department of Justice, has been to restore the right to vote guaranteed by the 14th and 15th Amendments. The Voting Rights Act itself has been called the single most effective piece of civil rights legislation ever passed by Congress.

The following table compares black voter registration rates with white voter registration rates in seven Southern States in 1965 and 1988:

Voter Registration Rates (1965 vs. 1988)

	March 1965			November 1988		
	Black	**White**	**Gap**	**Black**	**White**	**Gap**
Alabama	19.3	69.2	49.9	68.4	75.0	6.6
Georgia	27.4	62.6	35.2	56.8	63.9	7.1
Louisiana	31.6	80.5	48.9	77.1	75.1	-2.0
Mississippi	6.7	69.9	63.2	74.2	80.5	6.3
North Carolina	46.8	96.8	50.0	58.2	65.6	7.4
South Carolina	37.3	75.7	38.4	56.7	61.8	5.1
Virginia	38.3	61.1	22.8	63.8	68.5	4.7

Adapted from Bernard Grofman, Lisa Handley and Richard G. Niemi. 1992. *Minority Representation and the Quest for*

Minority Language Assistance Practices

In Public Elections:

Executive Summary

March 7, 2006

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Language Assistance under the Voting Rights Act

Congress enacted the language assistance provisions of the Voting Rights Act to remove obstacles posed by illiteracy and lack of adequate bilingual language assistance for members of language minority groups. Specifically, Congress found that "through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, 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." 42 U.S.C. § 1973aa-1a(a).

The Act's language assistance provisions apply to four language groups: "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage."[1] 42 U.S.C. § 1973l(c)(3). Congress intended that the census definition for each of these language groups be applied to determine which languages have to be offered in covered jurisdictions. The four language groups were selected for coverage based upon the following evidence: members of the groups had suffered from voting or other forms of discrimination that limited their access to the political process; members of each language group suffered from severe language barriers and illiteracy; and each of the four groups had depressed voter registration and turnout. Other language groups were not included because there was no evidence that they experienced similar difficulties in voting.

Once a jurisdiction is covered by the language assistance provisions, all "voting materials" it provides in English generally must be provided in the language of all groups or sub-groups that trigger coverage. Voting materials include the following:

- Voter registration materials
- Voting notices (including information about opportunities to register, registration deadlines, time/places/locations of polling places, and absentee voting)
- Voting materials provided by mail
- All election forms
- Polling place activities and materials
- Instructions
- Publicity
- Ballots
- Other materials or information relating to the electoral process
- Assistance

See 42 U.S.C. § 1973aa-1a(c); 28 C.F.R. §§ 55.15, 55.18. Written materials generally do not have to be provided to members of Alaskan Native and American Indian groups whose languages historically are unwritten. Instead, oral instructions, assistance, or other information in the covered language must be available for members of those groups at every stage of the electoral process. *See* 42 U.S.C. § 1973aa-1a(c). The

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covered jurisdiction is responsible for providing effective assistance to members of the covered minority language groups. *See* 28 C.F.R. § 55.2(c).

The minority language assistance provisions apply to all stages of the electoral process for "any type of election, whether it is a primary, general or special election." 28 C.F.R. § 55.10. This includes not only elections of officers, but also elections on such matters as bond issues, constitutional amendments and referendums. Federal, State, and local elections are covered, as well as special district elections, such as school districts and water districts. *See* 28 C.F.R. § 55.10.

The provisions initially were adopted in 1975 for a period of ten years, were extended for an additional ten years in 1982, and another fifteen years in 1992. The provisions will expire on August 6, 2007, unless Congress extends them further.

Selection of Jurisdictions for Coverage under Section 4(f)(4)

The selection of jurisdictions for coverage by the language assistance provisions is made through two distinct "triggering" formulas or "triggers": one under Section 4(f)(4) of the Act, and the other under Section 203 of the Act.

The Section 4(f)(4) trigger targets "those jurisdictions with the more serious problems" of voting discrimination against language minorities. S. REP. NO. 94-295 at 31, *reprinted in* 1975 U.S.C.C.A.N. 798. Specifically, "the more severe remedies ... are premised not only on educational disparities" (like the less stringent provisions under Section 203(c)), "but also on evidence that language minorities have been subjected to 'physical, economic, and political intimidation' when they seek to participate in the political process." 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards).

Under Section 4(f)(4), a jurisdiction is covered only if the Attorney General and Director of the Census determine it meets all three of the following requirements:

- Over five percent of the voting-age citizens (persons 18 years and older) on November 1, 1972 were members of a single language minority group; and
- The United States Attorney General finds that election materials were provided in English only on November 1, 1972; and
- 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 Presidential election.

Determinations are not reviewable in any court and are effective upon publication in the Federal Register. *See* 42 U.S.C. § 1973b(b).

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The Section 4(f)(4) trigger is "essentially identical to the traditional trigger" found in Section 4(b) of the Act, which already had proven effective in covering jurisdictions with a history of discriminating against African-Americans. S. REP. NO. 94-295 at 32, *reprinted in* 1975 U.S.C.C.A.N. 798.

States or political subdivisions covered under Section 4(f)(4) have to comply with Section 203 by providing all election materials, including assistance and ballots, in the language of the applicable language minority group. *See* 28 C.F.R. § 55.8(a).

In addition, 4(f)(4) covered jurisdictions are subject to all the Act's special provisions, including administrative preclearance of voting changes under Section 5, the use of federal examiners to enroll and list eligible voters, and election coverage by federal observers.

Selection of Jurisdictions for Coverage under Section 203(c)

The Section 203(c) trigger covers those jurisdictions "with less severe voting difficulties" than those covered by Section 4(f)(4) of the Act. S. REP. NO. 94-295 at 31, *reprinted in* 1975 U.S.C.C.A.N. 798. This trigger enhances the policy of "removing obstructions at the polls for illiterate citizens" and is "specifically directed to the problems of 'language minority groups.'" S. REP. NO. 94-295 at 37, *reprinted in* 1975 U.S.C.C.A.N. 804.

Congress found that the high illiteracy rates experienced by language minorities were "not the result of choice or mere happenstance," but instead resulted from "the failure of state and local officials to afford equal educational opportunities." S. REP. NO. 94-295 at 28, *reprinted in* 1975 U.S.C.C.A.N. 794; *see also* 42 U.S.C. § 1973aa-1a(a). The obstacle that illiteracy posed for language minority citizens attempting to vote was exacerbated even further by the lack of adequate bilingual assistance at the polls. S. REP. NO. 94-295 at 39, *reprinted in* 1975 U.S.C.C.A.N. 805-06. Section 203 adopts a practical approach to the illiteracy problem. "[T]he purpose of suspending English-only and requiring bilingual elections is not to correct the deficiencies of prior educational inequality. It is to permit persons disabled by such disparities to vote now." S. REP. NO. 94-295 at 34, *reprinted in* 1975 U.S.C.C.A.N. 800.

Under Section 203(c) of the Voting Rights Act, a State or political subdivision is covered by the minority language assistance provisions if it has a sufficient number of "limited-English proficient" single-language minority citizens who experience a higher illiteracy rate than the national average. "Limited-English proficient," or "LEP," is defined as the inability "to speak or understand English adequately enough to participate in the electoral process." 42 U.S.C. § 1973aa-1a(b)(3)(B).

The Section 203 trigger is based upon the number or percentage of LEP citizens in the jurisdiction.

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A jurisdiction becomes covered if the number of limited-English proficient United States citizens of voting age in a single language group within the jurisdiction:

- Is more than 10,000; or
- Is more than five percent of all citizens of voting age; or
- On an Indian reservation, more than five percent of the American Indian voting-age citizens are members of a single language minority and are limited-English proficient; and
- The illiteracy rate of the citizens in the language minority group is higher than the national illiteracy rate.

See 42 U.S.C. § 1973aa-1a(b)(2)(A).

Minority "populations cannot be aggregated from among the four language minority groups" to meet the citizen LEP thresholds, but "subgroups within a single language minority group are to be aggregated for coverage determination purposes." 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards).

Coverage under the Section 203(c) trigger is both "broader and narrower" than the Section 4(f)(4) trigger because it "covers more areas but imposes less stringent remedies." 121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards). Jurisdictions coming under the Section 203 trigger generally are prohibited from providing English-only "voting materials" in any election, but are not automatically covered by the special provisions of the Voting Rights Act. *See* 42 U.S.C. § 1973aa-1a(b)(1).

"Bailout" From Coverage Under Sections 4(f)(4) and 203(c)

The "bailout" provision in section 4(a) of the Voting Rights Act allows a state or political subdivision to be removed from coverage under section 4(f)(4) if it obtains a declaratory judgment in the District Court of the District of Columbia that it has not used English-only elections or any other "test or device" in a discriminatory manner against language minorities and other racial or ethnic groups for the preceding ten years. *See* 42 U.S.C. § 1973b(a); *see also* S. REP. NO. 94-295 at 35, *reprinted in* 1975 U.S.C.C.A.N. 801-02 (describing "bailout" for areas covered by section 4(f)(4) "where there has been no voting discrimination").

Representative Edwards described how he anticipated the bailout provision would work for a jurisdiction covered by section 4(f)(4):

> [I]t is expected that a successful bailout could typically be achieved if the jurisdiction can demonstrate factors such as high turnout and participation by its language minority population; and literacy in the English language among that group. It is clear that if factors such as these could be demonstrated, for the 10 years preceding the filing of the bailout action, then the jurisdiction's past use of English-only election procedures did not have a discriminatory effect.

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121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards). Moreover, a covered jurisdiction may bailout from the bilingual elections mandate in section 4(f)(4) "on a subgroup-by-subgroup basis" where the jurisdiction can show that it has "not discriminated against one or more of the pertinent subgroups." 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards). For example, a jurisdiction that is covered for Chinese and Korean language minorities, may be able to bailout of coverage for Chinese-speaking voters if it can prove that it has not discriminated against this Asian language "subgroup." *See id.*; *see also* 121 CONG. REC. H4886-4887 (daily ed. June 4, 1975) (statement of Rep. Edwards) (describing bailout on a subgroup-by-subgroup basis).

Similarly, Section 203(d) of the Act provides that a covered jurisdiction may bailout from coverage under the bilingual election provisions if it can demonstrate "that the illiteracy rate of the applicable language minority group" that triggered coverage "is equal to or less than the national illiteracy rate." 42 U.S.C. § 1973aa-1a(d). "Having found that the voting barriers experienced by these citizens is in large part due to disparate and inadequate educational opportunities," this bailout procedure "rewards" jurisdictions that are able to remove these barriers. 121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards). Also, like the section 4(f)(4) bailout procedure, it helps ensure that application of section 203(c) is limited to only those jurisdictions where it is needed.

Where a jurisdiction is covered by both section 4(f)(4) and section 203, termination of coverage under one of these sections does not have the effect of terminating coverage under the other section. *See* S. REP. NO. 94-295 at 46, *reprinted in* 1975 U.S.C.C.A.N. 813. Certain covered counties in Colorado, New Mexico, and Oklahoma have bailed out of section 4(f)(4) coverage pursuant to section 4(a). The bailout provisions ensure that the triggers in Sections 4(f)(4) and 203(b) are not overbroad and only captures those jurisdictions where coverage is necessary.

July 2002 Section 203(c) Coverage Determinations

On July 26, 2002, the Director of the Bureau of the Census issued a notice of determination as to which states and political subdivisions are subject to the minority language assistance provisions of Section 203 of the Voting Rights Act. *See* Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 48,871 (July 26, 2002) (to be codified at 28 C.F.R. pt. 55).

The Director of the Census is authorized by statute to determine which states and political subdivisions are covered by Section 203(c). The Director's determinations are not reviewable in any court and are effective upon publication in the Federal Register. *See* 42 U.S.C. § 1973aa-1a(b)(4). Although the new determinations are based upon 2000 Census data, the Director of the Census may update census data and publish Section 203 determinations more frequently than decennially, as new data becomes available. *See Doi v. Bell*, 449 F. Supp. 267 (D. Haw. 1978).

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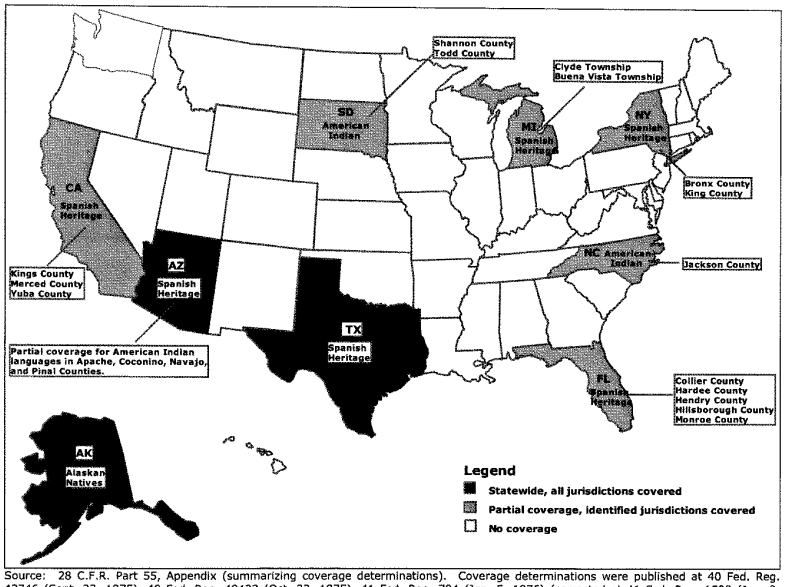
The Section 203 determinations made by the Director of the Census on July 26, 2002 replace the previous Section 203 determinations. No further determinations were made under Section 4(f)(4) of the Voting Rights Act. Existing 4(f)(4) determinations remain in effect and are unaffected by the new Section 203 determinations.

The Number of Covered Jurisdictions

Section 4(f)(4) coverage applies to three states (Alaska for Alaskan Natives, and Arizona and Texas for Spanish Heritage) and nineteen counties or townships in six additional states. *See* Figure 1. Covered counties in Colorado, New Mexico, and Oklahoma have bailed out from coverage pursuant to Section 4(a) of the Voting Rights Act. *See* 28 C.F.R. § 55.7(a).

Figure 1: Jurisdictions Covered by Section 4(f)(4) of the Voting Rights Act, by State.



Source: 28 C.F.R. Part 55, Appendix (summarizing coverage determinations). Coverage determinations were published at 40 Fed. Reg. 43746 (Sept. 23, 1975), 40 Fed. Reg. 49422 (Oct. 22, 1975), 41 Fed. Reg. 784 (Jan. 5, 1976) (corrected at 41 Fed. Reg. 1503 (Jan. 8, 1976)), and 41 Fed. Reg. 34329 (Aug. 13, 1976).

As a result of the 2002 determinations made by the Director of the Census, the number of states covered in whole or in part by Section 203 has increased from twenty-seven states to thirty-one. Section 203 now

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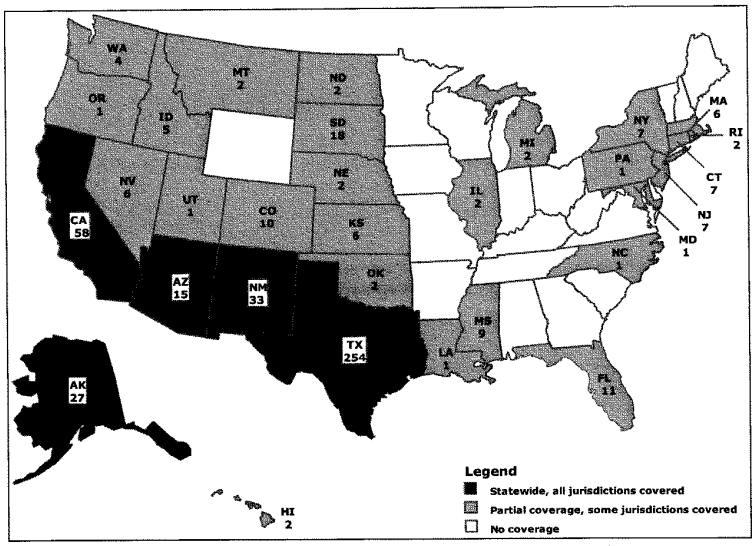
covers three states in their entirety (California, New Mexico, and Texas for Spanish Heritage), in addition to the two other states covered statewide under Section 203 because of previous Section 4(f)(4) determinations (Alaska for Alaskan Natives and Arizona for Spanish Heritage).

Two states that previously were covered in part, Iowa and Wisconsin, no longer are covered, while Section 203 coverage has been extended to five new states: Kansas, Maryland, Montana, Nebraska, and Washington. *See* Figure 2.

Figure 2: Jurisdictions Covered by Section 203 of the Voting Rights Act, by State.



Source: Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 48,871 (July 26, 2002) ("2002 Census Determinations"). Figure 2 includes all 4(f)(4) covered jurisdictions, which also must comply with Section 203.

Demographic changes have led to 27 political subdivisions losing their coverage under Section 203 and the addition of 73 new political subdivisions. A total of 505 political subdivisions now are covered by one or both of the language assistance triggers. Forty-eight of the covered political subdivisions have to provide assistance in more than one language: 31 in two languages; 14 in three languages; two in four languages; and one, Los Angeles County, California, in six languages (Spanish, Chinese, Filipino, Japanese, Korean, and Vietnamese).

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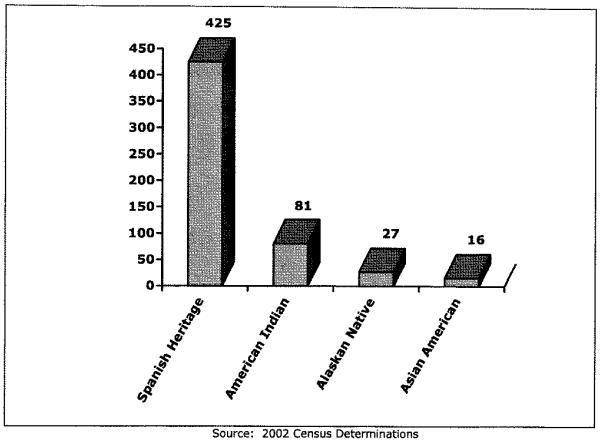
Federal regulations provide that "[w]here a political subdivision (e.g., a county) is determined to be subject to" the minority language assistance provisions of the Voting Rights Act, "all political units that hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision." 28 C.F.R. § 55.9. Figure 1.2 includes all Section 4(f)(4) jurisdictions, all counties that are covered in their own right or as political subdivisions of states that are covered in their entirety, as well as cities or townships specifically identified by the Census Director's 2002 determinations.

The Number of Jurisdictions Covered for Each Language Group

Spanish remains the predominant language triggering coverage. Of the 505 jurisdictions covered overall, 84.2 percent (N = 425) are required to provide Spanish language assistance. American Indian coverage is the next most common, with 16.0 percent (N = 81) of all covered jurisdictions required to provide assistance in eighteen different language groupings. Language assistance to Alaskan Natives must be provided statewide in Alaska, comprising 5.3 percent (N = 27) of all covered jurisdictions. Asian-American language assistance must be provided in 3.2 percent (N = 16) of all covered jurisdictions. *See* Figure 3.

Figure 3: Number of Covered Jurisdictions, by Minority Language Groups.



Source: 2002 Census Determinations

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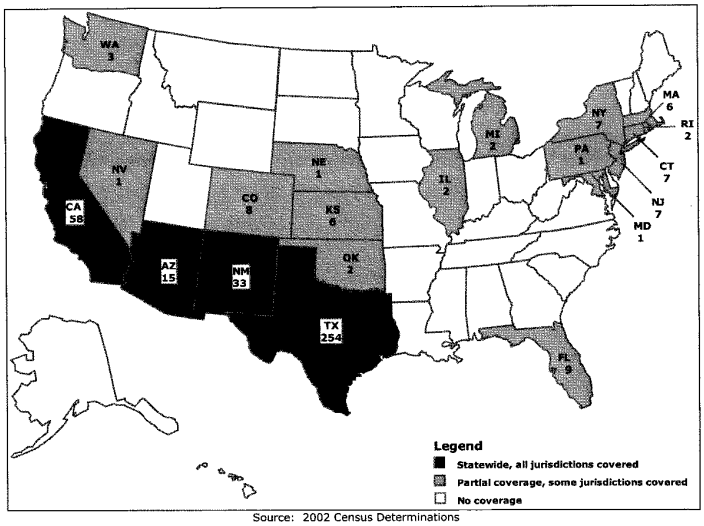
Spanish Heritage Coverage

Spanish language assistance must be provided statewide in Arizona, California, New Mexico, Texas, and a total of 224 additional political subdivisions in 20 states. As a result of the 2002 Census determinations, political subdivisions of five states are required to provide Spanish language assistance for the first time: six counties in Kansas, Montgomery County (metropolitan Washington, D.C.) in Maryland, Colfax County in Nebraska, Clark County (metropolitan Las Vegas) in Nevada, Harmon and Texas Counties in Oklahoma, and three counties in Washington. In addition, Spanish is covered in several municipalities, including two townships in Michigan, and larger urban populations in Connecticut, Massachusetts, and Rhode Island. Wisconsin, which previously was covered for Spanish in a township in Clark County, no longer is covered as a result of the 2002 Census determinations. *See* Figure 4.

Figure 4: Jurisdictions Covered for Spanish, by State.



Source: 2002 Census Determinations

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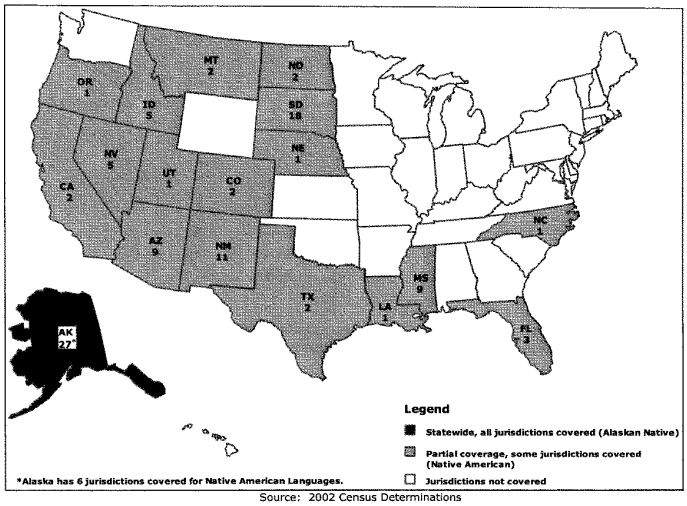
Alaskan Native & American Indian Coverage

Alaskan Native language assistance must be provided statewide in Alaska. *See* Figure 5. Thirteen political subdivisions of Alaska are separately covered as a result of the 2002 determinations.

Figure 5: Jurisdictions Covered for Alaskan Native or American Indian Languages, by State.



Source: 2002 Census Determinations

The following number of boroughs and Census Areas are required to provide language assistance: all 27 political subdivisions for Alaskan Native languages; eight for Eskimo; five for Athabascan; three for Aleut; and three for Other Alaskan Native languages. The five Alaskan Native language groups are a result of the definition used by the Director of the Census and actually include over two hundred distinct languages.

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American Indian language assistance must be provided in political subdivisions of eighteen states. South Dakota had the largest number of political subdivisions added under American Indian coverage, more than doubling from 8 under the previous determinations to 18 under the new determinations. Two states that previously did not have to provide language assistance to any American Indian groups, Montana and Nebraska, must now do so as a result of the 2002 determinations. Two states that previously were covered for American Indian languages, Iowa and Oklahoma, no longer are covered as a result of the 2002 Census determinations.

Jurisdictions are covered for a total of eighteen American Indian language groups. *See* Figure 6.

Figure 6: Jurisdictions Covered for American Indian Languages.

Language	Political Subdivisions Covered	Affected States
Sioux	21	NE, ND, SD
Other American Indian Languages	16	AK, ID, LA, NC, NV, OR, TX
Navajo	13	AZ, CO, NM, UT
Pueblo	13	AZ, NM, TX
Choctaw	9	MS
Apache	5	AZ
Unspecified American Indian Languages	4	AK
Ute	4	CO, NM, UT
Seminole	3	FL
Shoshone	3	NV
Tohono O'Odham	3	AZ
Central/South American Indian	2	CA
Cheyenne	2	MT
Yuman	2	AZ, CA
Chickasaw	1	AK
Paiute	1	NV
Yacqui	1	AZ
Zuni	1	NM

Source: 2002 Census Determinations

However, language assistance has to be provided in more than the 21 Alaskan Native and American Indian languages because many of the language groups listed above include several different languages or dialects. For example, the Pueblo group includes the Havasupai, Hopi,

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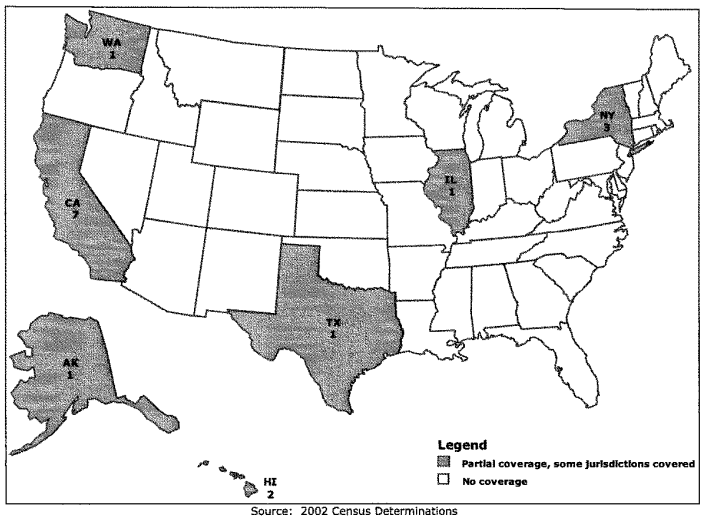
Keres, Tiwa, and Towa Indian languages. The Sioux group includes Dakota, Lakota, and Nakota. Many of the descriptions for language minority groups changed as a result of new Census Bureau definitions used for the first time in the 2000 Census.

Asian Language Coverage

Seven states have political subdivisions that are covered for the five Asian languages. *See* Figure 7.

Figure 7: Jurisdictions Covered for Asian Languages, by State.



Source: 2002 Census Determinations

Chinese language assistance must be provided in a total of twelve political subdivisions including six urban counties in California, Honolulu County in Hawaii, Cook County in Illinois (encompassing metropolitan Chicago), three counties in the New York City metropolitan area, and King County in Washington State (encompassing metropolitan Seattle). Filipino language assistance must be provided in the Kodiak Island Borough of Alaska, three urban counties in California, and two counties in Hawaii. Vietnamese language assistance must be provided in

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three urban counties in California and in Harris County, Texas (encompassing metropolitan Houston). Japanese language assistance must be provided in Los Angeles County, California and Honolulu County, Hawaii.

Prior Studies of Section 203 of the Voting Rights Act

There have been few studies examining how jurisdictions have actually implemented the Congressional mandate to provide language assistance in public elections. Congress previously commissioned the General Accounting Office (GAO) in 1984 and 1997 to determine the costs associated with language materials and assistance under Section 203. Congress relied upon the 1984 GAO report to extend Section 203 in 1992.

The 1984 GAO study obtained information from 318 political subdivisions and nineteen state governments.[2] The 1997 study reported data from 292 covered jurisdictions in 26 states.[3] Both studies were limited somewhat by the inability of many responding jurisdictions to provide the costs of bilingual voting assistance. Our study encountered similar problems. Nevertheless, for those jurisdictions that reported complete expense data, the costs of compliance generally comprise only a small fraction of total election expenses.

Overview and Purpose of the Study

The purposes of the study are to update the cost data collected by the two GAO studies and to determine the practices of public elections officials in providing oral and written language assistance.

The study assesses the availability and quality of assistance in several different areas: the use of bilingual coordinators who act as liaisons between the election office and the covered language groups; recruitment and training of election day poll workers; telephone assistance; oral language assistance at every stage of the election process; written language materials provided to limited-English proficient voters; outreach and publicity; and the ability of voters to receive assistance from the person of their choice. These areas were selected because they are common components of successful language assistance programs.

Finally, respondents were asked their opinion of the language assistance provisions, including whether the provisions should be reauthorized, the role of the federal government in public elections, and an open-ended question to provide any additional comments.

Survey Questions

The study was conducted through a survey of election officials in jurisdictions currently or formerly covered by the language assistance provisions. All survey questions were derived from the Voting Rights Act, the legislative history of the Act, Department of Justice guidelines, and commonly used Census terms.

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The survey was designed to provoke honest answers from respondents about the actual election practices in their respective jurisdictions. Survey questions were worded carefully to avoid skewing the results by revealing what is legally required of the jurisdiction. Non-leading questions were used in combination with a non-exhaustive list of possible responses. Respondents were encouraged to provide amplifying information by checking "other" and specifying responses not included in the survey.

Selection of Surveyed Jurisdictions

Since the study focuses on the practices of public elections officials in providing oral and written language assistance, only those jurisdictions currently or formerly covered by Section 203 were surveyed. Jurisdictions identified for the survey included the following:

- All jurisdictions specifically identified in the Federal Register and Code of Federal Regulations as currently covered under either Section 4(f)(4) or Section 203
- All counties in the five states that are currently covered statewide under either Section 4(f)(4) or Section 203
- All cities in covered jurisdictions that the 2000 Census reports as having 50,000 or more people
- The handful of jurisdictions that no longer are covered as a result of the 2002 Census determinations
- The chief elections officer in each of the surveyed states

Initial application of these criteria yielded a total of 847 jurisdictions in thirty-three states. This number was reduced because some of the jurisdictions do not have election officers. In addition, several Census Areas in Alaska do not have an organized government and therefore do not have any officials who could be designated to receive the survey. Some rural counties in South Dakota and Texas also were eliminated because they share or pool their election offices with other counties. Election officials responsible for more than one jurisdiction's elections were sent a single survey for all of their responses.

Contact information for each jurisdiction receiving a survey was obtained through the Internet. Project staff verified the contact information by calling each jurisdiction. Each survey was personally addressed to the official in charge of his or her jurisdiction's elections. Election officials in jurisdictions that do not have elections offices were still encouraged to provide as much information as they could on the survey.

In the end, a total of 810 surveys were mailed out. Respondents were sent a cover letter, instruction sheet, survey, and pre-paid self-addressed return envelope. To increase the response rate, jurisdictions were guaranteed anonymity. In addition, respondents were offered a complimentary copy of the final report.

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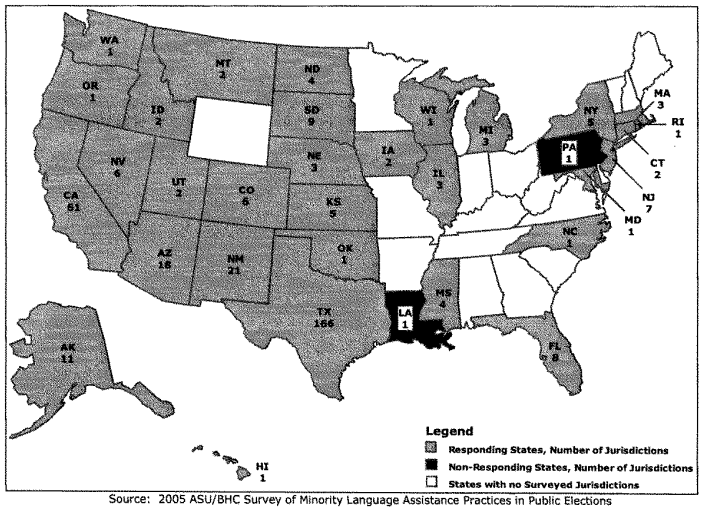
Survey Response Rate and Description of Respondents

810 jurisdictions in 33 states were surveyed. Over half of all surveyed jurisdictions, 411 in total, responded. Complete responses were received from 361 jurisdictions in 31 states. A response was considered "complete" if the responding jurisdiction answered at least half of all the survey questions. Responses also were received from 50 additional jurisdictions that did not complete the survey because they reported that their elections were handled by other surveyed jurisdictions. The actual number of responses varies because some questions did not apply to all respondents and some respondents chose not to answer certain questions.

Figure 8 depicts the states and covered political subdivisions that responded to the survey. Of the 33 states receiving the survey, 93.9 percent responded (N = 31). Two states with a single covered county or parish, Louisiana and Pennsylvania, did not respond. The number of responding jurisdictions is provided for each state.

Figure 8: Number of Jurisdictions Responding to Survey, by State.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections

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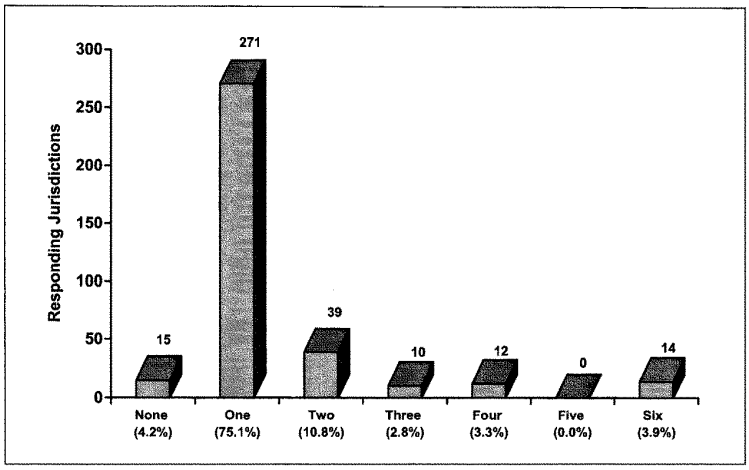
Seventy-two percent of all responding jurisdictions are counties, twenty-six percent are cities or boroughs, and two percent are states. Responding jurisdictions ranged from a low population of 67 people to a high of over eight million people, with a mean population of 33,627 people. Among the respondents, 57.9 percent (N = 209) are required to make Section 5 submissions because of coverage under Section 4(f)(4) or Section 4(b) of the Voting Rights Act.

Texas and California had the largest number of responses, comprising 62.9 percent (N = 227) of all responding jurisdictions. However, the percentage of responses from these two states is proportionate to the number of surveys they received, which comprised 62.1 percent (N = 503) of the 810 surveys that were mailed.

Figure 9: Number of Languages Covered in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections and 28 C.F.R. Part 55, Appendix (summarizing coverage determinations).

Figure 9 depicts the number of languages covered in the responding jurisdictions. Responding jurisdictions were covered for an average of 1.4 languages, with the mean jurisdiction covered for one language. No respondent was covered for five languages because there are no such jurisdictions based upon the 2002 Census determinations.

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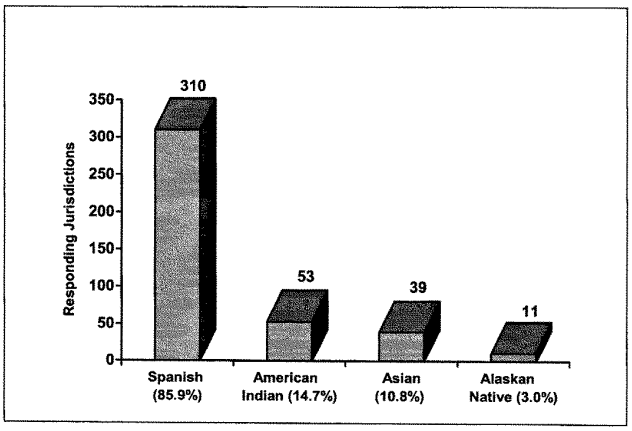
Fourteen of the responding jurisdictions were in Los Angeles County, California, where six languages are covered (Spanish, Chinese, Filipino, Japanese, Korean, and Vietnamese).

The fifteen respondents with no covered language are either previously covered jurisdictions that lost coverage as a result of the 2002 Census determinations or are states that are not covered in their own right but have covered political subdivisions (such as counties, boroughs, cities, or towns).

Figure 10 depicts the languages covered in the responding jurisdictions. Among the respondents, 85.9 percent (N = 310) are covered for Spanish, 14.7 percent (N = 53) for American Indian languages, 10.8 percent (N = 39) for Asian languages, and 3.0 percent (N = 11) for Alaskan Native languages.

Figure 10: Number of Language Groups Covered in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections and 28 C.F.R. Part 55, Appendix (summarizing coverage determinations).

Respondents include jurisdictions covered by 89.7 percent of the 29 languages (N = 26) identified for coverage in the July 2002 Census determinations. Only three American Indian languages that are each covered in only a single jurisdiction are not encompassed by the survey responses. *See* Figures 6 and 12.

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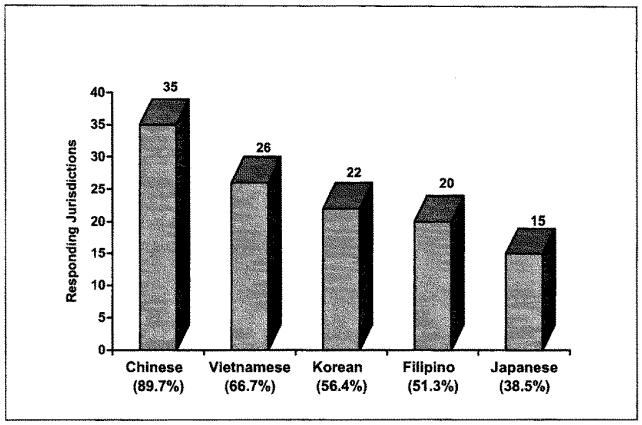
Only sixteen counties or boroughs are covered for Asian language assistance. *See* Figure 7 and accompanying text. However, more than fifty jurisdictions covered for Asian languages were surveyed because many of the covered counties include several cities with populations greater than 50,000 people, such as Los Angeles and Orange Counties in California. Nearly all respondents covered for Asian languages are located in densely populated urban centers.

Figure 11 depicts the number of responding jurisdictions covered by Section 203 of the Voting Rights Act for the identified Asian languages. Several of the responding jurisdictions, particularly those in California, are covered for multiple Asian languages.

Figure 11: Asian Languages Covered in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections and 28 C.F.R. Part 55, Appendix (summarizing coverage determinations).

Chinese is the most common covered language among the 39 responding jurisdictions covered for Asian languages, at 89.7 percent (N = 35), which is consistent with its designation as the most frequently covered Asian language. *See* Figure 7 and accompanying text. Vietnamese is the next most common, at 66.7 percent (N = 26), followed by Korean at 56.4 percent (N = 22), Filipino at 51.3 percent (N = 20), and Japanese at 38.5 percent (N = 15).

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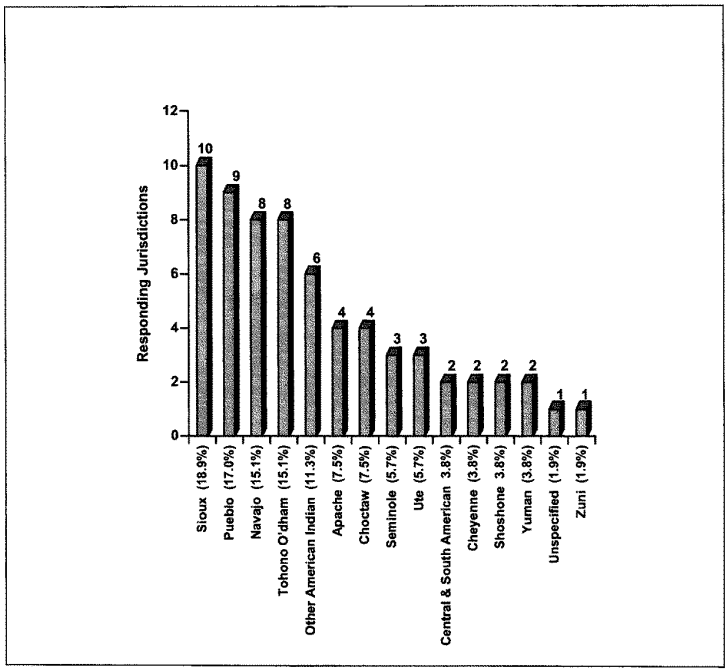
Vietnamese is a covered language in only three California counties and in Harris County, Texas. Again, the higher frequency of Vietnamese coverage among responding jurisdictions is attributable to the large number of covered cities in the four urban counties required to provide Vietnamese language assistance.

The smaller frequency of Japanese coverage is because Japanese language assistance is only required in Los Angeles County, California and Honolulu County, Hawaii. Most of the respondents covered for Japanese language assistance are located in Los Angeles County.

Figure 12: American Indian Languages Covered in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections and 28 C.F.R. Part 55, Appendix (summarizing coverage determinations).

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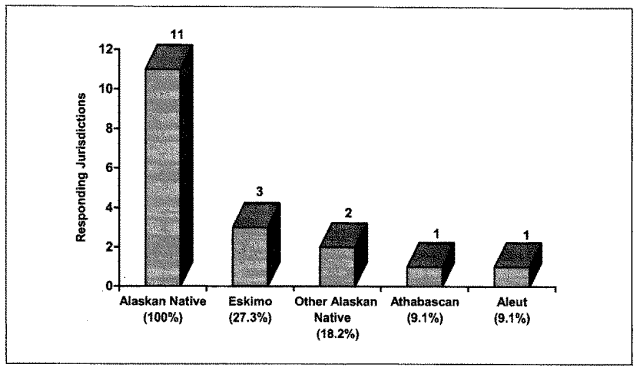
Figure 12 depicts the number of responding jurisdictions covered by Section 203 of the Voting Rights Act for the identified American Indian languages. The percentages indicate the percent of all jurisdictions covered for an American Indian language that are covered for each identified language.

The respondents are covered for 83 percent of the eighteen American Indian language groups (N = 15). No responses were received from jurisdictions covered for the Chickasaw, Paiute, and Yacqui languages, each of which is only covered in a single jurisdiction. Some responding jurisdictions in Alaska, Arizona, Nevada, and New Mexico are covered by more than one American Indian language.

Figure 13: Alaskan Native Languages Covered in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections and 28 C.F.R. Part 55, Appendix (summarizing coverage determinations).

Figure 13 depicts the number of responding jurisdictions covered by Section 203 of the Voting Rights Act for the identified Alaskan Native languages. At least one response was received from jurisdictions covered by each of the five Alaskan Native languages. All jurisdictions in the State of Alaska are covered for the Alaskan Native languages.

Summary of Findings on Language Assistance Need

The Section 203 triggers determine which jurisdictions have citizens of voting age who need language assistance to participate in public elections. According to the July 2002 Census determinations:

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- In the 367 covered political subdivisions,[4] an average of 8,403 citizens of voting age are limited-English proficient (LEP) in the 464 languages triggering coverage.[5]

- Among the 403 language groups for which Census data is available in the 367 covered political subdivisions,[6] an average of 13.1 percent of citizens of voting age are LEP in the languages triggering coverage.

- Among the 403 language groups for which Census data is available in the 367 covered political subdivisions, the average illiteracy rate of voting age citizens in the covered language groups is 18.8 percent, nearly fourteen times the national rate.[7]

- Among the three states covered statewide under Section 203 for Spanish Heritage, an average of 632,345 citizens of voting age (5.8 percent of all voting age citizens) are LEP.

- Among the three states covered statewide under Section 203 for Spanish Heritage, an average of 16.3 percent of Spanish Heritage voting age citizens are illiterate, twelve times the national illiteracy rate.

- Among the 221 jurisdictions covered for Spanish Heritage, 71.9 percent are covered because of the 5 percent trigger, 14.9 percent because of the 10,000-person trigger, and 13.1 percent as a result of both triggers.

- Among the 21 political subdivisions covered for Alaskan Native languages, 71.4 percent are covered because of the partial reservation trigger and 28.6 percent are covered because of both the partial reservation and 5 percent triggers.

- Among the 101 political subdivisions covered for American Indian languages, 91.1 percent are covered because of the partial reservation trigger and 6.9 percent are covered because of both the partial reservation and 5 percent triggers.

- Among the 27 political subdivisions covered for Asian languages, 88.9 percent are covered because of the 10,000-person trigger, 7.4 percent are covered because of the 5 percent trigger, and 13.1 percent are covered because of both triggers.

Survey respondents were also asked for their perceptions of the need for language assistance in their respective jurisdictions. Their responses were compared to 2000 Census data, which revealed:

- The 271 responding election officials estimate that an average of 5.5 percent of their jurisdiction's voters requires oral language assistance in the covered languages, which is approximately half of the actual need, or 10.9 percent.

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- The divergence between the perception and reality of the need for language assistance is the same regardless of how much language assistance the jurisdiction provides, if any.

In many cases, the failure of jurisdictions to provide language assistance appears attributable to misperceptions by election officials about the need for assistance.

Summary of Findings on the Availability of Language Assistance

Respondents were asked several questions to assess the extent to which language assistance is offered to voters. Their responses indicate that:

- 80.6 percent of jurisdictions report that they provide at least some type of language assistance to voters.
- Jurisdictions providing language assistance are more likely to be covered under Section 4(f)(4) or Section 203 in their own right than those that do not.
- 19.4 percent of jurisdictions provide no language assistance and 14 percent of jurisdictions provide only bilingual written materials. These jurisdictions generally have high percentages of LEP voters in one or more covered languages.
- 6.2 percent of jurisdictions provide only oral language assistance, two-thirds of which are covered for Alaskan Native or American Indian languages that are historically unwritten.
- 39.0 percent of jurisdictions provide assistance for telephone inquiries in all of the languages covered in those jurisdictions.
- 57.1 percent of jurisdictions do not have at least one full-time worker in the languages covered in those jurisdictions.
- Two-thirds of jurisdictions report that they translate more than half of all written election materials.
- 32.9 percent of jurisdictions report that they provide oral language assistance for more than half of all common election activities.

The jurisdictions were candid in their responses. In several cases, they acknowledged that they were not complying with Section 203.

Summary of Findings on the Quality of Language Assistance

Respondents were asked a variety of questions to assess the quality of language assistance offered to voters. Their responses indicate that:

- 61.8 percent of responding jurisdictions report that they do not use bilingual coordinators to act as a liaison between the elections office and voters in the covered language groups.

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- Jurisdictions with larger populations are more likely to use bilingual coordinators than less populated jurisdictions.
- Over two-thirds of responding jurisdictions report that they do not confirm the language abilities of part-time election workers who claim to speak one or more covered languages.
- Nearly two-thirds of responding jurisdictions report that they do not provide any training on providing assistance in the covered languages.
- Approximately 90 percent of responding jurisdictions report using voter assistance practices that do not comply with Section 208 of the Voting Rights Act.
- Most jurisdictions that provide bilingual written election materials report using full-time election workers or professional services to translate those materials into the covered languages.
- Approximately two-thirds of responding jurisdictions report that they inform voters in the covered languages about the availability of language assistance for voting activities.
- Nearly two-thirds of responding jurisdictions report that they do not consult with community organizations about providing assistance in the covered languages.

Summary of Findings on the Costs of Providing Language Assistance

Respondents were asked to identify the costs that their jurisdictions incur for providing language assistance to voters in public elections. Their responses indicate that:

- 59.1 percent of the jurisdictions reporting oral language assistance expenses incur no extra costs attributable to that assistance.
- Ninety percent of jurisdictions reporting oral language assistance expenses indicate that those expenses comprise an average of 1.5 percent of their total election costs.
- 54.2 percent of the jurisdictions reporting bilingual written material expenses incur no extra costs attributable to those materials.
- Ninety percent of jurisdictions reporting bilingual written material expenses indicate that those expenses comprise an average of 3.0 percent of their total election costs.
- Many responding jurisdictions with Alaskan Native and American Indian voters report that they incur no additional

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costs for bilingual written materials because the covered languages are unwritten.

- 39.5 percent of the jurisdictions reporting complete election expenses incur no extra costs for providing oral and written language assistance.

- Responding jurisdictions reporting language assistance for telephone inquiries indicate that those expenses comprise an average of 0.6 percent of their total election costs, with 74 percent incurring no additional costs.

- Many responding jurisdictions report minimizing the costs of providing language assistance to voters by targeting the assistance to only those areas that need it.

- Less populated jurisdictions are more likely to attribute most, and in some cases all, of their election costs to providing language assistance, including expenses they would have to incur anyways, such as poll workers.

- Many jurisdictions are unable to identify the costs, if any, of their language assistance programs because they do not track such costs in their budgets, or because the costs are included in expenses they would have to incur anyway.

These findings are consistent with the cost data reported by the GAO in its 1984 and 1997 studies.

Summary of Respondent Opinions

Section H concluded the survey by asking respondents for their opinions and comments on the language assistance provisions of the Voting Rights Act. The respondents' responses indicate that:

- 71.3 percent (N = 181) of responding jurisdictions support reauthorizing the language assistance provisions of the Voting Rights Act.

- Support for reauthorization is virtually the same regardless of whether the jurisdictions are covered by Section 5 of the Voting Rights Act.

- 3.3 percent (N = 12) of responding jurisdictions expressed opinions suggesting that the coverage formula for the language assistance provisions be changed.

- 3.3 percent (N = 12) of responding jurisdictions feel that elections should be English-only.

- Nearly half of the 12.7 percent (N = 46) of responding jurisdictions that request federal funding for language

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assistance programs report that they do not incur any costs for their own programs.

- Ten jurisdictions request additional federal funding for ESL programs.
- Most responding jurisdictions believe the federal government and the Department of Justice are doing a commendable job enforcing the language assistance provisions.
- Several jurisdictions recommend that the federal government should provide more support to facilitate compliance under the language assistance provisions.

Respondents offered extensive narrative comments in response to all of the open-ended questions in the survey.

Recommendations on the Need for Assistance

Recommendations concerning the need for language assistance:

- The three population triggers for Section 203 coverage should remain in place to address the distinct needs of voting age citizens in the covered language groups.[8]
- Section 203's coverage formula should retain a requirement that the illiteracy rate of citizens in the covered language group exceeds the national illiteracy rate to ensure that the formula is constitutional.
- Election officials should become better informed about the need for language assistance in their jurisdictions among voting age citizens who are LEP in the covered languages.
- Election officials should identify what language assistance is necessary to meet the unique needs of voting age citizens who are LEP in the covered languages.
- Election officials in covered jurisdictions should disseminate more information about language assistance needs to all political subdivisions of their jurisdictions.

Recommendations on the Availability of Assistance

Recommendations concerning the availability of language assistance:

- The chief elections officer for each state should ensure that all political subdivisions provide effective language assistance to covered language minority voting age citizens.

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- Covered jurisdictions should provide oral language assistance at every stage of the voting and election process for voting age citizens who need assistance in the covered languages.
- Covered jurisdictions should ensure that all written election materials available in English are available in covered Spanish and Asian languages and accurate oral translations are provided in covered Alaskan Native and American Indian languages.
- Election officials in covered jurisdictions should conduct poll worker recruitment in the covered languages, and not just in English.
- Covered jurisdictions should promote hiring and retention of full-time workers who are bilingual in English and one or more of the covered languages.
- Covered jurisdictions should hire more part-time Election Day workers who are fluent and literate in English and one or more of the covered languages and have back-up workers available in case of no-shows.
- Covered jurisdictions should ensure that language assistance for telephone inquiries is available in all covered languages through employees or volunteers fluent in those languages.

Recommendations on the Quality of Assistance

Recommendations concerning the quality of language assistance:

- More covered jurisdictions should utilize bilingual coordinators to help implement effective assistance programs in all of the covered languages.
- Election officials in covered jurisdictions should confirm the language abilities of all employees and volunteers who are utilized to provide assistance in the covered languages.
- Election officials in covered jurisdictions should include information in their training programs about language assistance in the covered languages.
- The chief elections officer for each state should ensure that election officials receive proper training on the voter assistance requirements in Section 208 of the Voting Rights Act and that violations do not occur because of conflicting state laws.
- Election officials in covered jurisdictions should consult with language minority community organizations and individuals to make language assistance programs more effective.

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- Covered jurisdictions should advertise the availability of language assistance at every stage to voting age citizens in the covered languages through appropriate outreach and publicity.

Recommendations on the Cost of Assistance

Recommendations concerning the cost of language assistance:

- Covered jurisdictions should recruit and retain bilingual individuals to fill full-time and part-time election worker positions to provide oral language assistance at no added cost.
- Covered jurisdictions should use volunteers from the covered language groups to assist in translating written election materials to minimize costs and improve the accuracy of translations.
- The chief elections officer of each state should provide common forms, signs, and other written election materials in all covered Spanish and Asian languages to minimize duplication of costs.
- Jurisdictions should target language assistance and resources to areas where language assistance is needed by relying upon voter requests for language assistance, suggestions by community groups and individuals, Census data, surname analysis, and personal knowledge, among other methods.
- Covered political subdivisions should work in partnership with other covered jurisdictions in the area to reduce any common costs that are incurred.
- Covered jurisdictions should maintain and work with local groups and individuals to improve language assistance programs and minimize any costs that are incurred.

Recommendations on VRA Reauthorization and How to Improve Compliance

Recommendations concerning reauthorization and improving language assistance programs:

- The temporary provisions of the Voting Rights Act, including the language assistance provisions, should be reauthorized for an additional twenty-five years.
- The chief elections officer for each state should be more proactive in providing language assistance training to covered political subdivisions and monitoring Section 203 compliance.

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[1] "Spanish Heritage" and "Spanish" are used interchangeably throughout this executive summary.

[2] *See* U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: COSTS OF AND USE DURING THE 1984 GENERAL ELECTION 11-12 (1986) ("1984 GAO Study").

[3] *See* U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: ASSISTANCE PROVIDED AND COSTS 1, 33 (1997) ("1997 GAO Study").

[4] "Political subdivision" refers to the subdivisions of states that are covered by Section 203. The term excludes the three states (California, New Mexico, and Texas) that are covered statewide, but includes all of the subdivisions of those states that are covered in their own right as a result of the July 2002 Census determinations.

[5] The 464 languages include each instance in which a jurisdiction is covered for a distinct language group. Several of the 367 political subdivisions are covered by more than one language under Section 203.

[6] The Census Bureau has suppressed some of the data used in the July 2002 determinations.

[7] According to the 2000 Census, the national illiteracy rate is 1.35 percent.

[8] This report makes no recommendation about whether the 10,000-person trigger should be lowered, as some civil rights groups have proposed.

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Minority Language Assistance Practices

In Public Elections:

Executive Summary

March 7, 2006

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Chapter 1:
The Language Assistance Provisions of the Voting Rights Act

Language Assistance under the Voting Rights Act

Congress enacted the language assistance provisions of the Voting Rights Act to remove obstacles posed by illiteracy and lack of adequate bilingual language assistance for members of language minority groups. Specifically, Congress found that "through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, 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." 42 U.S.C. § 1973aa-1a(a).

The Act's language assistance provisions apply to four language groups: "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage."[1] 42 U.S.C. § 1973l(c)(3). Congress intended that the census definition for each of these language groups be applied to determine which languages have to be offered in covered jurisdictions. The four language groups were selected for coverage based upon the following evidence: members of the groups had suffered from voting or other forms of discrimination that limited their access to the political process; members of each language group suffered from severe language barriers and illiteracy; and each of the four groups had depressed voter registration and turnout. Other language groups were not included because there was no evidence that they experienced similar difficulties in voting.

Once a jurisdiction is covered by the language assistance provisions, all "voting materials" it provides in English generally must be provided in the language of all groups or sub-groups that trigger coverage. Voting materials include the following:

- Voter registration materials
- Voting notices (including information about opportunities to register, registration deadlines, time/places/locations of polling places, and absentee voting)
- Voting materials provided by mail
- All election forms
- Polling place activities and materials
- Instructions
- Publicity
- Ballots
- Other materials or information relating to the electoral process
- Assistance

See 42 U.S.C. § 1973aa-1a(c); 28 C.F.R. §§ 55.15, 55.18. Written materials generally do not have to be provided to members of Alaskan Native and American Indian groups whose languages historically are

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unwritten. Instead, oral instructions, assistance, or other information in the covered language must be available for members of those groups at every stage of the electoral process. *See* 42 U.S.C. § 1973aa-1a(c). The covered jurisdiction is responsible for providing effective assistance to members of the covered minority language groups. *See* 28 C.F.R. § 55.2(c).

The minority language assistance provisions apply to all stages of the electoral process for "any type of election, whether it is a primary, general or special election." 28 C.F.R. § 55.10. This includes not only elections of officers, but also elections on such matters as bond issues, constitutional amendments and referendums. Federal, State, and local elections are covered, as well as special district elections, such as school districts and water districts. *See* 28 C.F.R. § 55.10.

The provisions initially were adopted in 1975 for a period of ten years, were extended for an additional ten years in 1982, and another fifteen years in 1992. The provisions will expire on August 6, 2007, unless Congress extends them further.

Selection of Jurisdictions for Coverage under Section 4(f)(4)

The selection of jurisdictions for coverage by the language assistance provisions is made through two distinct "triggering" formulas or "triggers": one under Section 4(f)(4) of the Act, and the other under Section 203 of the Act.

The Section 4(f)(4) trigger targets "those jurisdictions with the more serious problems" of voting discrimination against language minorities. S. REP. NO. 94-295 at 31, *reprinted in* 1975 U.S.C.C.A.N. 798. Specifically, "the more severe remedies ... are premised not only on educational disparities" (like the less stringent provisions under Section 203(c)), "but also on evidence that language minorities have been subjected to 'physical, economic, and political intimidation' when they seek to participate in the political process." 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards).

Under Section 4(f)(4), a jurisdiction is covered only if the Attorney General and Director of the Census determine it meets all three of the following requirements:

- Over five percent of the voting-age citizens (persons 18 years and older) on November 1, 1972 were members of a single language minority group; and
- The United States Attorney General finds that election materials were provided in English only on November 1, 1972; and
- 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 Presidential election.

Determinations are not reviewable in any court and are effective upon publication in the Federal Register. *See* 42 U.S.C. § 1973b(b).

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The Section 4(f)(4) trigger is "essentially identical to the traditional trigger" found in Section 4(b) of the Act, which already had proven effective in covering jurisdictions with a history of discriminating against African-Americans. S. REP. NO. 94-295 at 32, *reprinted in* 1975 U.S.C.C.A.N. 798.

States or political subdivisions covered under Section 4(f)(4) have to comply with Section 203 by providing all election materials, including assistance and ballots, in the language of the applicable language minority group. *See* 28 C.F.R. § 55.8(a).

In addition, 4(f)(4) covered jurisdictions are subject to all the Act's special provisions, including administrative preclearance of voting changes under Section 5, the use of federal examiners to enroll and list eligible voters, and election coverage by federal observers.

Selection of Jurisdictions for Coverage under Section 203(c)

The Section 203(c) trigger covers those jurisdictions "with less severe voting difficulties" than those covered by Section 4(f)(4) of the Act. S. REP. NO. 94-295 at 31, *reprinted in* 1975 U.S.C.C.A.N. 798. This trigger enhances the policy of "removing obstructions at the polls for illiterate citizens" and is "specifically directed to the problems of 'language minority groups.'" S. REP. NO. 94-295 at 37, *reprinted in* 1975 U.S.C.C.A.N. 804.

Congress found that the high illiteracy rates experienced by language minorities were "not the result of choice or mere happenstance," but instead resulted from "the failure of state and local officials to afford equal educational opportunities." S. REP. NO. 94-295 at 28, *reprinted in* 1975 U.S.C.C.A.N. 794; *see also* 42 U.S.C. § 1973aa-1a(a). The obstacle that illiteracy posed for language minority citizens attempting to vote was exacerbated even further by the lack of adequate bilingual assistance at the polls. S. REP. NO. 94-295 at 39, *reprinted in* 1975 U.S.C.C.A.N. 805-06. Section 203 adopts a practical approach to the illiteracy problem. "[T]he purpose of suspending English-only and requiring bilingual elections is not to correct the deficiencies of prior educational inequality. It is to permit persons disabled by such disparities to vote now." S. REP. NO. 94-295 at 34, *reprinted in* 1975 U.S.C.C.A.N. 800.

Under Section 203(c) of the Voting Rights Act, a State or political subdivision is covered by the minority language assistance provisions if it has a sufficient number of "limited-English proficient" single-language minority citizens who experience a higher illiteracy rate than the national average. "Limited-English proficient," or "LEP," is defined as the inability "to speak or understand English adequately enough to participate in the electoral process." 42 U.S.C. § 1973aa-1a(b)(3)(B).

The Section 203 trigger is based upon the number or percentage of LEP citizens in the jurisdiction.

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A jurisdiction becomes covered if the number of limited-English proficient United States citizens of voting age in a single language group within the jurisdiction:

- Is more than 10,000; or
- Is more than five percent of all citizens of voting age; or
- On an Indian reservation, more than five percent of the American Indian voting-age citizens are members of a single language minority and are limited-English proficient; and
- The illiteracy rate of the citizens in the language minority group is higher than the national illiteracy rate.

See 42 U.S.C. § 1973aa-1a(b)(2)(A).

Minority "populations cannot be aggregated from among the four language minority groups" to meet the citizen LEP thresholds, but "subgroups within a single language minority group are to be aggregated for coverage determination purposes." 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards).

Coverage under the Section 203(c) trigger is both "broader and narrower" than the Section 4(f)(4) trigger because it "covers more areas but imposes less stringent remedies." 121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards). Jurisdictions coming under the Section 203 trigger generally are prohibited from providing English-only "voting materials" in any election, but are not automatically covered by the special provisions of the Voting Rights Act. *See* 42 U.S.C. § 1973aa-1a(b)(1).

"Bailout" From Coverage Under Sections 4(f)(4) and 203(c)

The "bailout" provision in section 4(a) of the Voting Rights Act allows a state or political subdivision to be removed from coverage under section 4(f)(4) if it obtains a declaratory judgment in the District Court of the District of Columbia that it has not used English-only elections or any other "test or device" in a discriminatory manner against language minorities and other racial or ethnic groups for the preceding ten years. *See* 42 U.S.C. § 1973b(a). *See also* S. REP. NO. 94-295 at 35, *reprinted in* 1975 U.S.C.C.A.N. 801-02 (describing "bailout" for areas covered by section 4(f)(4) "where there has been no voting discrimination").

Representative Edwards described how he anticipated the bailout provision would work for a jurisdiction covered by section 4(f)(4):

> [I]t is expected that a successful bailout could typically be achieved if the jurisdiction can demonstrate factors such as high turnout and participation by its language minority population; and literacy in the English language among that group. It is clear that if factors such as these could be demonstrated, for the 10 years preceding the filing of the bailout action, then the jurisdiction's past use of English-only election procedures did not have a discriminatory effect.

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121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards). Moreover, a covered jurisdiction may bailout from the bilingual elections mandate in section 4(f)(4) "on a subgroup-by-subgroup basis" where the jurisdiction can show that it has "not discriminated against one or more of the pertinent subgroups." 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards). For example, a jurisdiction that is covered for Chinese and Korean language minorities, may be able to bailout of coverage for Chinese-speaking voters if it can prove that it has not discriminated against this Asian language "subgroup." *See id.*; *see also* 121 CONG. REC. H4886-4887 (daily ed. June 4, 1975) (statement of Rep. Edwards) (describing bailout on a subgroup-by-subgroup basis).

Similarly, Section 203(d) of the Act provides that a covered jurisdiction may bailout from coverage under the bilingual election provisions if it can demonstrate "that the illiteracy rate of the applicable language minority group" that triggered coverage "is equal to or less than the national illiteracy rate." 42 U.S.C. § 1973aa-1a(d). "Having found that the voting barriers experienced by these citizens is in large part due to disparate and inadequate educational opportunities," this bailout procedure "rewards" jurisdictions that are able to remove these barriers. 121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards). Also, like the section 4(f)(4) bailout procedure, it helps ensure that application of section 203(c) is limited to only those jurisdictions where it is needed.

Where a jurisdiction is covered by both section 4(f)(4) and section 203, termination of coverage under one of these sections does not have the effect of terminating coverage under the other section. *See* S. REP. NO. 94-295 at 46, *reprinted in* 1975 U.S.C.C.A.N. 813. Certain covered counties in Colorado, New Mexico, and Oklahoma have bailed out of section 4(f)(4) coverage pursuant to section 4(a). The bailout provisions ensure that the triggers in Sections 4(f)(4) and 203(b) are not overbroad and only captures those jurisdictions where coverage is necessary.

July 2002 Section 203(c) Coverage Determinations

On July 26, 2002, the Director of the Bureau of the Census issued a notice of determination as to which states and political subdivisions are subject to the minority language assistance provisions of Section 203 of the Voting Rights Act. *See* Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 48,871 (July 26, 2002) (to be codified at 28 C.F.R. pt. 55).

The Director of the Census is authorized by statute to determine which states and political subdivisions are covered by Section 203(c). The Director's determinations are not reviewable in any court and are effective upon publication in the Federal Register. *See* 42 U.S.C. § 1973aa-1a(b)(4). Although the new determinations are based upon 2000 Census data, the Director of the Census may update census data and publish Section 203 determinations more frequently than decennially, as new data becomes available. *See Doi v. Bell*, 449 F. Supp. 267 (D. Haw. 1978).

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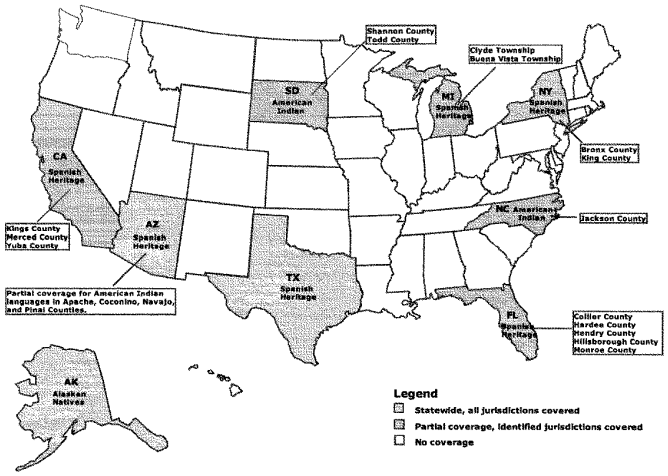
The Section 203 determinations made by the Director of the Census on July 26, 2002 replace the previous Section 203 determinations. No further determinations were made under Section 4(f)(4) of the Voting Rights Act. Existing 4(f)(4) determinations remain in effect and are unaffected by the new Section 203 determinations.

The Number of Covered Jurisdictions

Section 4(f)(4) coverage applies to three states (Alaska for Alaskan Natives, and Arizona and Texas for Spanish Heritage) and nineteen counties or townships in six additional states. *See* Figure 1.1. Covered counties in Colorado, New Mexico, and Oklahoma have bailed out from coverage pursuant to Section 4(a) of the Voting Rights Act. *See* 28 C.F.R. § 55.7(a).

Figure 1.1: Jurisdictions Covered by Section 4(f)(4) of the Voting Rights Act, by State.



Source: 28 C.F.R. Part 55, Appendix (summarizing coverage determinations). Coverage determinations were published at 40 Fed. Reg. 43746 (Sept. 23, 1975), 40 Fed. Reg. 49422 (Oct. 22, 1975), 41 Fed. Reg. 784 (Jan. 5, 1976) (corrected at 41 Fed. Reg. 1503 (Jan. 8, 1976)), and 41 Fed. Reg. 34329 (Aug. 13, 1976).

As a result of the 2002 determinations made by the Director of the Census, the number of states covered in whole or in part by Section 203 has increased from twenty-seven states to thirty-one. Section 203 now covers three states in their entirety (California, New Mexico, and Texas for Spanish Heritage), in addition to the two other states covered statewide under Section 203 because of previous Section 4(f)(4)

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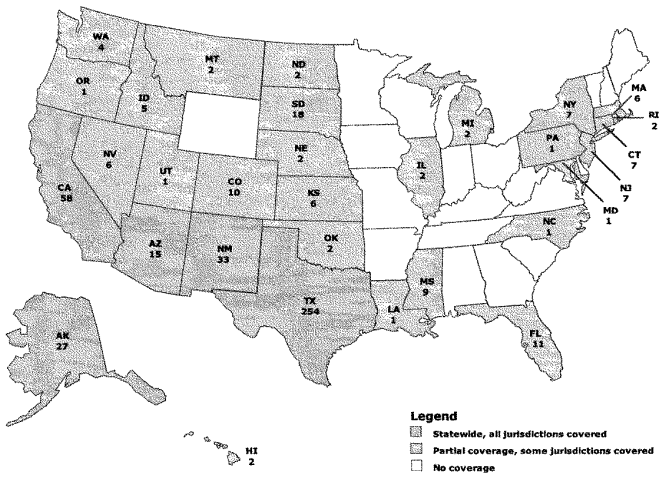
determinations (Alaska for Alaskan Natives and Arizona for Spanish Heritage).

Two states that previously were covered in part, Iowa and Wisconsin, no longer are covered, while Section 203 coverage has been extended to five new states: Kansas, Maryland, Montana, Nebraska, and Washington. *See* Figure 1.2.

Figure 1.2: Jurisdictions Covered by Section 203 of the Voting Rights Act, by State.



Source: Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 48,871 (July 26, 2002) ("2002 Census Determinations")

Demographic changes have led to 27 political subdivisions losing their coverage under Section 203 and the addition of 73 new political subdivisions. A total of 505 political subdivisions now are covered by one or both of the language assistance triggers. Forty-eight of the covered political subdivisions have to provide assistance in more than one language: 31 in two languages; 14 in three languages; two in four languages; and one, Los Angeles County, California, in six languages (Spanish, Chinese, Filipino, Japanese, Korean, and Vietnamese).

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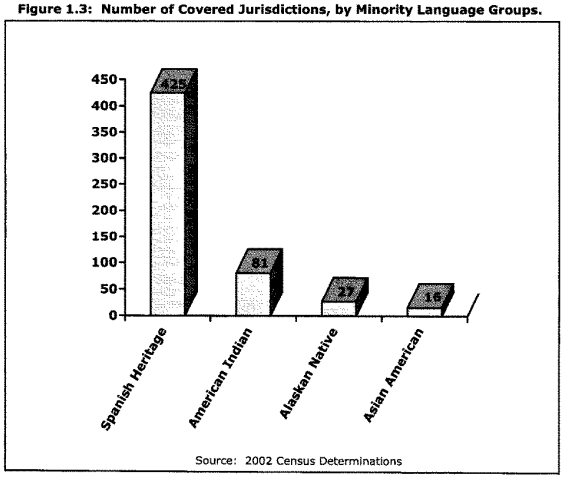
Federal regulations provide that "[w]here a political subdivision (e.g., a county) is determined to be subject to" the minority language assistance provisions of the Voting Rights Act, "all political units that hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision." 28 C.F.R. § 55.9. Figure 1.2 includes all Section 4(f)(4) jurisdictions, all counties that are covered in their own right or as political subdivisions of states that are covered in their entirety, as well as cities or townships specifically identified by the Census Director's 2002 determinations.

The Number of Jurisdictions Covered for Each Language Group

Spanish remains the predominant language triggering coverage. Of the 505 jurisdictions covered overall, 84.2 percent (425) are required to provide Spanish language assistance. American Indian coverage is the next most common, with 16.0 percent (81) of all covered jurisdictions required to provide assistance in eighteen different language groupings. Language assistance to Alaskan Natives must be provided statewide in Alaska, comprising 5.3 percent (27) of all covered jurisdictions. Asian-American language assistance must be provided in 3.2 percent (16) of all covered jurisdictions. *See* Figure 1.3.

Figure 1.3: Number of Covered Jurisdictions, by Minority Language Groups.



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Spanish Heritage Coverage

Spanish language assistance must be provided statewide in Arizona, California, New Mexico, Texas, and a total of 224 additional political subdivisions in 20 states. As a result of the 2002 Census determinations, political subdivisions of five states are required to provide Spanish language assistance for the first time: six counties in Kansas, Montgomery County (metropolitan Washington, D.C.) in Maryland, Colfax County in Nebraska, Clark County (metropolitan Las Vegas) in Nevada, Harmon and Texas Counties in Oklahoma, and three counties in Washington. *See* Table C-1. In addition, Spanish is covered in several municipalities, including two townships in Michigan, and larger urban populations in Connecticut, Massachusetts, and Rhode Island. Wisconsin, which previously was covered for Spanish in a township in Clark County, no longer is covered as a result of the 2002 Census determinations. *See* Figure 1.4.

Figure 1.4: Jurisdictions Covered for Spanish, by State.

Source: 2002 Census Determinations

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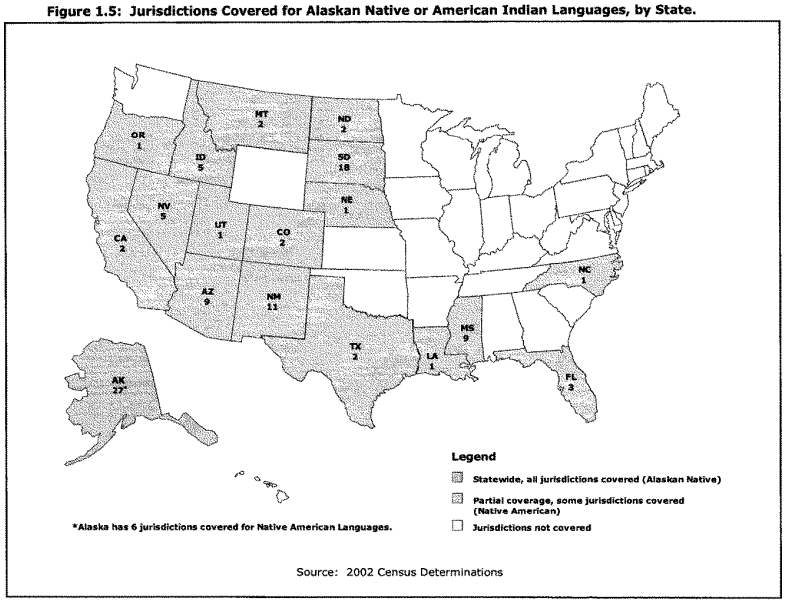
Alaskan Native & American Indian Coverage

Alaskan Native language assistance must be provided statewide in Alaska. *See* Figure 1.5. Thirteen political subdivisions of Alaska are separately covered as a result of the 2002 determinations.

Figure 1.5: Jurisdictions Covered for Alaskan Native or American Indian Languages, by State.



Source: 2002 Census Determinations

The following number of boroughs and Census Areas are required to provide language assistance: all 27 political subdivisions for Alaskan Native languages; eight for Eskimo; five for Athabascan; three for Aleut; and three for Other Alaskan Native languages. The five Alaskan Native language groups are a result of the definition used by the Director of the Census and actually include over two hundred distinct languages. *See* Table C-2.

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American Indian language assistance must be provided in political subdivisions of eighteen states. South Dakota had the largest number of political subdivisions added under American Indian coverage, more than doubling from 8 under the previous determinations to 18 under the new determinations. Two states that previously did not have to provide language assistance to any American Indian groups, Montana and Nebraska, must now do so as a result of the 2002 determinations. *See* Table C-3. Two states that previously were covered for American Indian languages, Iowa and Oklahoma, no longer are covered as a result of the 2002 Census determinations.

Jurisdictions are covered for a total of eighteen American Indian language groups. *See* Figure 1.6.

Figure 1.6: Jurisdictions Covered for American Indian Languages.

Language	Political Subdivisions Covered	Affected States
Sioux	21	NE, ND, SD
Other American Indian Languages	16	AK, ID, LA, NC, NV, OR, TX
Navajo	13	AZ, CO, NM, UT
Pueblo	13	AZ, NM, TX
Choctaw	9	MS
Apache	5	AZ
Unspecified American Indian Languages	4	AK
Ute	4	CO, NM, UT
Seminole	3	FL
Shoshone	3	NV
Tohono O'Odham	3	AZ
Central/South American Indian	2	CA
Cheyenne	2	MT
Yuman	2	AZ, CA
Chickasaw	1	AK
Paiute	1	NV
Yacqui	1	AZ
Zuni	1	NM

Source: 2002 Census Determinations

However, language assistance has to be provided in more than the 21 Alaskan Native and American Indian languages because many of the language groups listed above include several different languages or dialects. For example, the Pueblo group includes the Havasupai, Hopi,

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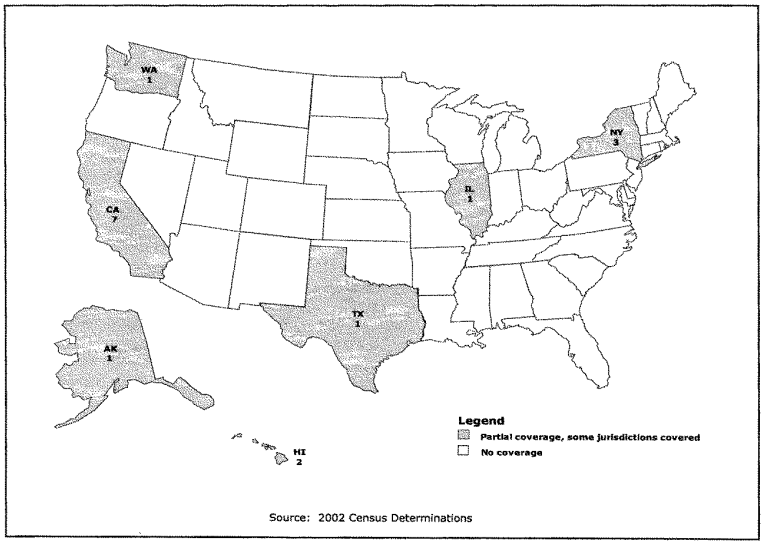
Keres, Tiwa, and Towa Indian languages. The Sioux group includes Dakota, Lakota, and Nakota. Many of the descriptions for language minority groups changed as a result of new Census Bureau definitions used for the first time in the 2000 Census.

Asian Language Coverage

Seven states have political subdivisions that are covered for the five Asian languages. *See* Figure 1.7.

Figure 1.7: Jurisdictions Covered for Asian Languages, by State.



Source: 2002 Census Determinations

Chinese language assistance must be provided in a total of twelve political subdivisions including six urban counties in California, Honolulu County in Hawaii, Cook County in Illinois (encompassing metropolitan Chicago), three counties in the New York City metropolitan area, and King County in Washington State (encompassing metropolitan Seattle). Filipino language assistance must be provided in the Kodiak Island Borough of Alaska, three urban counties in California, and two counties in Hawaii. Vietnamese language assistance must be provided in

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three urban counties in California and in Harris County, Texas (encompassing metropolitan Houston). Japanese language assistance must be provided in Los Angeles County, California and Honolulu County, Hawaii. *See* Table C-4.

[1] "Spanish Heritage" and "Spanish" are used interchangeably throughout this report.

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Chapter 2:
Study Methodology and Respondents

Prior Studies of Section 203 of the Voting Rights Act

There have been few studies examining how jurisdictions have actually implemented the Congressional mandate to provide language assistance in public elections. Congress previously commissioned the General Accounting Office (GAO) in 1984 and 1997 to determine the costs associated with language materials and assistance under Section 203. Congress relied upon the 1984 GAO report to extend Section 203 in 1992.

The 1984 GAO study obtained information from 318 political subdivisions and nineteen state governments.[1] The 1997 study reported data from 292 covered jurisdictions in 26 states.[2] Both studies were limited somewhat by the inability of many responding jurisdictions to provide the costs of bilingual voting assistance. Our study encountered similar problems.[3] Nevertheless, for those jurisdictions that reported complete expense data, the costs of compliance generally comprise only a small fraction of total election expenses.

Overview and Purpose of the Study

The purposes of the study are to update the cost data collected by the two GAO studies and to determine the practices of public elections officials in providing oral and written language assistance.

The study assesses the availability and quality of assistance in several different areas: the use of bilingual coordinators who act as liaisons between the election office and the covered language groups; recruitment and training of election day poll workers; telephone assistance; oral language assistance at every stage of the election process; written language materials provided to limited-English proficient voters; outreach and publicity; and the ability of voters to receive assistance from the person of their choice. These areas were selected because they are common components of successful language assistance programs.

Finally, respondents were asked their opinion of the language assistance provisions, including whether the provisions should be reauthorized, the role of the federal government in public elections, and an open-ended question to provide any additional comments.

Survey Questions

The study was conducted through a survey of election officials in jurisdictions currently or formerly covered by the language assistance provisions. All survey questions were derived from the Voting Rights Act, the legislative history of the Act, Department of Justice guidelines, and commonly used Census terms.

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The survey was designed to provoke honest answers from respondents about the actual election practices in their respective jurisdictions. Survey questions were worded carefully to avoid skewing the results by revealing what is legally required of the jurisdiction. Non-leading questions were used in combination with a non-exhaustive list of possible responses. Respondents were encouraged to provide amplifying information by checking "other" and specifying responses not included in the survey.

Several attorneys, voting rights experts, and social scientists with experience enforcing the language assistance provisions reviewed the survey questions. Early versions of the survey were pre-tested by election officials, who provided suggestions that were incorporated into the final version used in the study.

The survey consisted of eight sections. The questions were broad enough that responding election officials could complete the entire survey in as little as ten minutes. Respondents were asked to provide estimates for many questions to decrease the burden on them and thereby increase the overall response rate.

Section A of the survey requested information about the respondent, including the number and type of public elections administered each year, the method of casting ballots, and the number of registered voters, election precincts, full-time election workers, and bilingual employees. The questions focused on "public elections" that are covered by the language assistance provisions of the Voting Rights Act.

In Section B, respondents were asked about their bilingual coordinator program, if any. A bilingual coordinator is the liaison between the election office and covered language minority groups. Although not expressly required by statute, bilingual coordinator programs often facilitate implementation of targeted, effective language assistance to those voters who need it. Respondents with bilingual coordinator programs were asked to provide information about recruitment, coordinator responsibilities, and associated costs.

Section C focused on part-time election workers, or those temporary employees hired to work primarily on or around Election Day. Respondents were asked to provide the number of part-time workers and their responsibilities, the percentage of workers who are bilingual and how their language abilities are confirmed, how workers are recruited, the content and frequency of their training, and their annual cost.

Section D asked respondents whether they provide assistance in some or all of the covered languages for telephone inquiries, how assistance is provided, and the cost. The questions were asked because telephone calls are one of the most common methods used by voters or potential voters to obtain election or voting information.

Sections E and F inquired about oral and written language assistance practices, respectively. Respondents were asked whether they provided assistance and materials in the covered languages and if so, the manner

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of assistance and any additional costs incurred. The extent to which respondents engaged in outreach to covered language minority groups by informing them about the availability of assistance, input on translating materials, and special requests were also measured. Respondents also were asked to describe who is permitted to provide assistance in the voting booth, to assess whether their practices comply with Section 208 of the Voting Rights Act.

Section G requested information about the respondent's election-related activities and costs. Respondents were asked whether they consult with community groups and individuals about the jurisdiction's language assistance program and to identify those groups or individuals. Respondents also were requested to estimate their total election costs and the additional costs, if any, that the jurisdiction incurred to provide oral and written language assistance. If cost estimates were not provided, the respondent was asked to explain why.

Section H concluded the survey by asking the respondents about their opinion on reauthorization and the federal government's role in providing language assistance. Finally, the survey included an open-ended question about the respondents' experiences under Section 203. These questions were included to permit election officials to provide insight into how the language assistance provisions have worked in practice.

Selection of Surveyed Jurisdictions

Since the study focuses on the practices of public elections officials in providing oral and written language assistance, only those jurisdictions currently or formerly covered by Section 203 were surveyed. Jurisdictions identified for the survey included the following:

- All jurisdictions specifically identified in the Federal Register and Code of Federal Regulations as currently covered under either Section 4(f)(4) or Section 203
- All counties in the five states that are currently covered statewide under either Section 4(f)(4) or Section 203
- All cities in covered jurisdictions that the 2000 Census reports as having 50,000 or more people
- The handful of jurisdictions that no longer are covered as a result of the 2002 Census determinations
- The chief elections officer in each of the surveyed states

Initial application of these criteria yielded a total of 847 jurisdictions in thirty-three states. *See* Appendix E. This number was reduced because some of the jurisdictions do not have election officers. In addition, several Census Areas in Alaska do not have an organized government and therefore do not have any officials who could be designated to receive the survey. Some rural counties in South Dakota and Texas also were eliminated because they share or pool their election offices with other counties. Election officials responsible for more than one jurisdiction's elections were sent a single survey for all of their responses.

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Contact information for each jurisdiction receiving a survey was obtained through the Internet. Project staff verified the contact information by calling each jurisdiction. Each survey was personally addressed to the official in charge of his or her jurisdiction's elections. Election officials in jurisdictions that do not have elections offices were still encouraged to provide as much information as they could on the survey. In the end, a total of 810 surveys were mailed out.

Survey Mailings and Follow-up Communications

After all jurisdictions were identified, project staff compiled a mailing database. Respondents were sent a cover letter, instruction sheet, survey, and pre-paid self-addressed return envelope. To increase the response rate, jurisdictions were guaranteed anonymity. In addition, respondents were offered a complimentary copy of the final report. A copy of the survey package is included in Appendix D.

Each jurisdiction was randomly assigned a survey ID number to ensure anonymity. The unique ID number was included at the top of the survey. The survey number was included to allow project staff members to follow up with jurisdictions that had not returned their surveys

Election officials were offered two methods of completing the survey. First, they could return the paper survey via fax or in the enclosed pre-paid self-addressed envelope. Second, they were offered the option of completing an electronic version of the survey and submitting it online. Approximately thirty surveys were received online, with the rest of the responses returned by fax or mail.

Project staff engaged in regular follow-up communications with surveyed jurisdictions to increase the response rate. Two weeks after the surveys were mailed, follow-up postcards were mailed requesting respondents return the completed surveys as soon as possible. Three weeks later, three staff members made follow-up phone calls to each of the jurisdictions that had not yet responded. Dr. Rodolfo Espino, the Project Co-Director, also had regular e-mail and telephone communications with respondents who had questions about the survey.

Survey Response Rate and Description of Respondents

810 jurisdictions in 33 states were surveyed. Over half of all surveyed jurisdictions, 411 in total, responded. Complete responses were received from 361 jurisdictions in 31 states. A response was considered "complete" if the responding jurisdiction answered at least half of all the survey questions. Responses also were received from 50 additional jurisdictions that did not complete the survey because they reported that their elections were handled by other surveyed jurisdictions. The actual number of responses varies because some questions did not apply to all respondents and some respondents chose not to answer certain questions.

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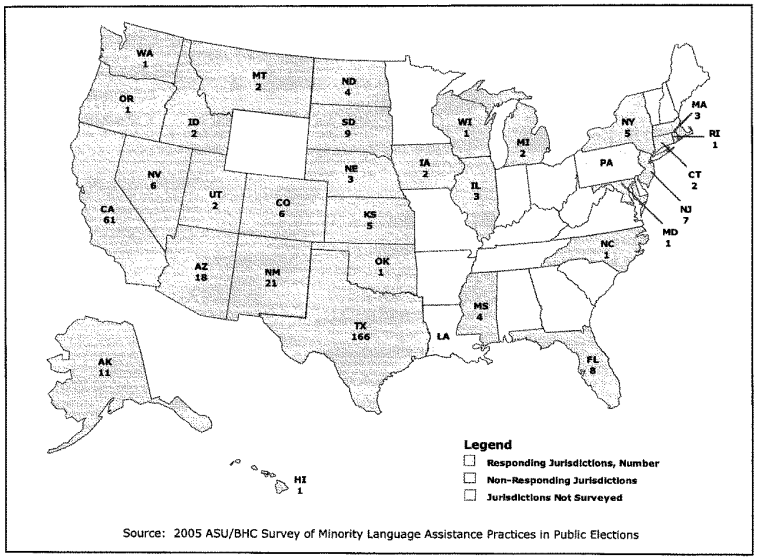
Figure 2.1 depicts the states and covered political subdivisions that responded to the survey. Of the 33 states receiving the survey, 93.9 percent responded (N = 31). Two states with a single covered county or parish, Louisiana and Pennsylvania, did not respond. The number of responding jurisdictions is provided for each state.

Figure 2.1: Number of Jurisdictions Responding to Survey, by State.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections

Seventy-two percent of all responding jurisdictions are counties, twenty-six percent are cities or boroughs, and two percent are states. Responding jurisdictions ranged from a low population of 67 people to a high of over eight million people, with a mean population of 33,627 people. Among the respondents, 57.9 percent (N = 209) are required to make Section 5 submissions because of coverage under Section 4(f)(4) or Section 4(b) of the Voting Rights Act.

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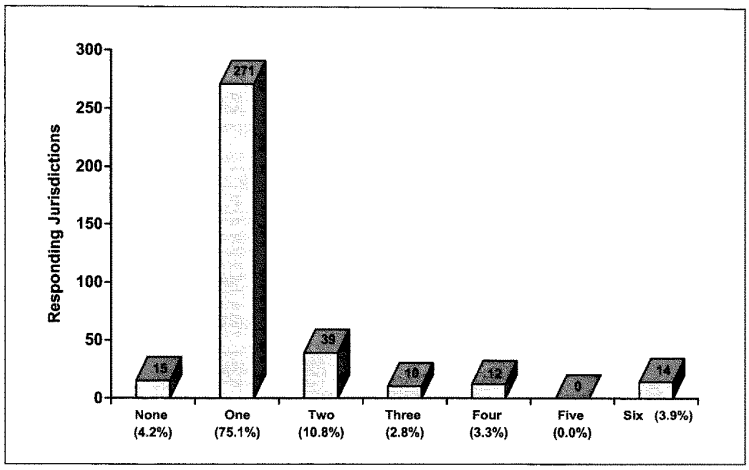
Texas and California had the largest number of responses, comprising 62.9 percent (N = 227) of all responding jurisdictions. However, the percentage of responses from these two states is proportionate to the number of surveys they received, which comprised 62.1 percent (N = 503) of the 810 surveys that were mailed.

Figure 2.2: Number of Languages Covered in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections and 28 C.F.R. Part 55, Appendix (summarizing coverage determinations).

Figure 2.2 depicts the number of languages covered in the responding jurisdictions. Responding jurisdictions were covered for an average of 1.4 languages, with the mean jurisdiction covered for one language. No respondent was covered for five covered because there are no such jurisdictions based upon the 2002 Census determinations.

Fourteen of the responding jurisdictions were in Los Angeles County, California, where six languages are covered (Spanish, Chinese, Filipino, Japanese, Korean, and Vietnamese).

The fifteen respondents with no covered language are either previously covered jurisdictions that lost coverage as a result of the 2002 Census determinations or are states that are not covered in their own right but have covered political subdivisions (such as counties, boroughs, cities, or towns).

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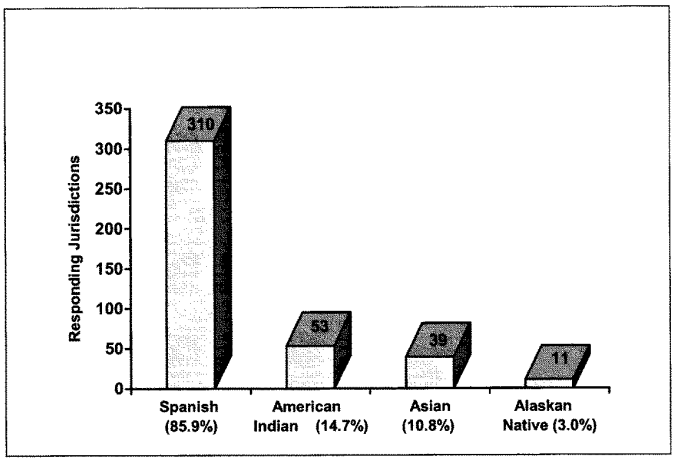
Figure 2.3 depicts the languages covered in the responding jurisdictions. Among the respondents, 85.9 percent (N = 310) are covered for Spanish, 14.7 percent (N = 53) for American Indian languages, 10.8 percent (N = 39) for Asian languages, and 3.0 percent (N = 11) for Alaskan Native languages.

Figure 2.3: Number of Language Groups Covered in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections and 28 C.F.R. Part 55, Appendix (summarizing coverage determinations).

Respondents include jurisdictions covered by 89.7 percent of the 29 languages (N = 26) identified for coverage in the July 2002 Census determinations. Only three American Indian languages that are each covered in only a single jurisdiction are not encompassed by the survey responses. *See* Figures 1.6 and 2.5.

As discussed in Chapter 1, only sixteen counties or boroughs are covered for Asian language assistance. *See* Figure 1.7 and accompanying text. However, more than fifty jurisdictions covered for Asian languages were surveyed because many of the covered counties include several cities with populations greater than 50,000 people, such as Los Angeles and Orange Counties in California. Nearly all respondents covered for Asian languages are located in densely populated urban centers.

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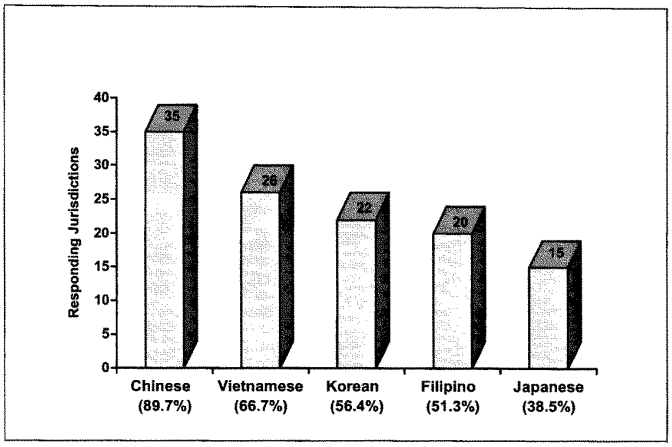
Figure 2.4 depicts the number of responding jurisdictions covered by Section 203 of the Voting Rights Act for the identified Asian languages. Several of the responding jurisdictions, particularly those in California, are covered for multiple Asian languages.

Figure 2.4: Asian Languages Covered in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections and 28 C.F.R. Part 55, Appendix (summarizing coverage determinations).

Chinese is the most common covered language among the 39 responding jurisdictions covered for Asian languages, at 89.7 percent (N = 35), which is consistent with its designation as the most frequently covered Asian language. *See* Figure 1.7 and accompanying text. Vietnamese is the next most common, at 66.7 percent (N = 26), followed by Korean at 56.4 percent (N = 22), Filipino at 51.3 percent (N = 20), and Japanese at 38.5 percent (N = 15).

Vietnamese is a covered language in only three California counties and in Harris County, Texas. Again, the higher frequency of Vietnamese coverage among responding jurisdictions is attributable to the large number of covered cities in the four urban counties required to provide Vietnamese language assistance.

The smaller frequency of Japanese coverage is because Japanese language assistance is only required in Los Angeles County, California and Honolulu County, Hawaii. Most of the respondents covered for Japanese language assistance are located in Los Angeles County.

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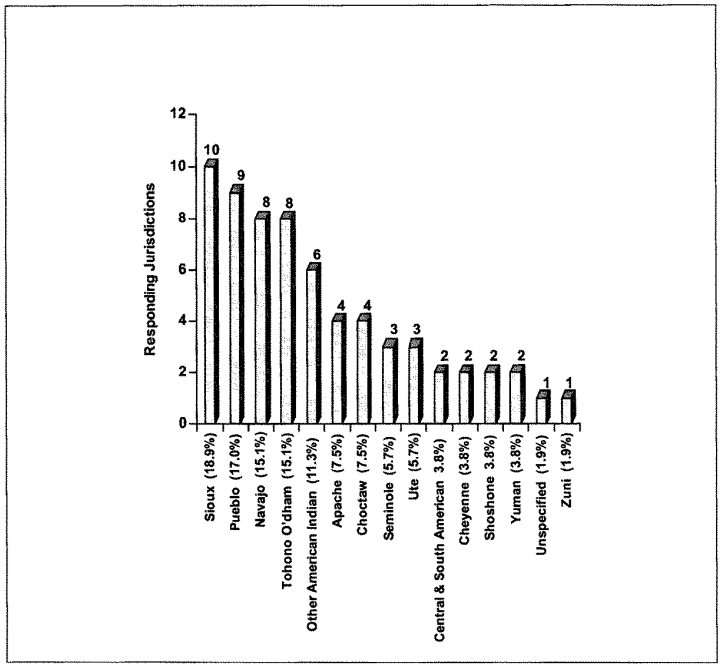
Figure 2.5: American Indian Languages Covered in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections and 28 C.F.R. Part 55, Appendix (summarizing coverage determinations).

Figure 2.5 depicts the number of responding jurisdictions covered by Section 203 of the Voting Rights Act for the identified American Indian languages. The percentages indicate the percent of all jurisdictions covered for an American Indian language that are covered for each identified language.

The respondents are covered for 83 percent of the eighteen American Indian language groups (N = 15). No responses were received from jurisdictions covered for the Chickasaw, Paiute, and Yacqui languages, each of which is only covered in a single jurisdiction. Some responding jurisdictions in Alaska, Arizona, Nevada, and New Mexico are covered by more than one American Indian language.

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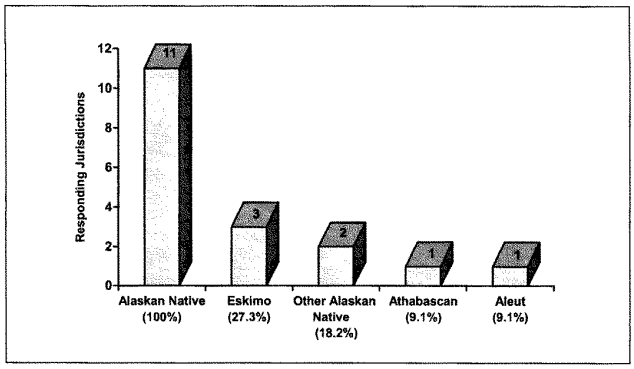
Figure 2.6: Alaskan Native Languages Covered in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections and 28 C.F.R. Part 55, Appendix (summarizing coverage determinations).

Figure 2.6 depicts the number of responding jurisdictions covered by Section 203 of the Voting Rights Act for the identified Alaskan Native languages. At least one response was received from jurisdictions covered by each of the five Alaskan Native languages. All jurisdictions in the State of Alaska are covered for the Alaskan Native languages.

[1] *See* U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: COSTS OF AND USE DURING THE 1984 GENERAL ELECTION 11-12 (1986) ("1984 GAO Study").

[2] *See* U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: ASSISTANCE PROVIDED AND COSTS 1, 33 (1997) ("1997 GAO Study").

[3] *See* Chapter 6.

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Chapter 3:
The Need for Language Assistance in Public Elections

Summary of Findings on Language Assistance Need

The Section 203 triggers determine which jurisdictions have citizens of voting age who need language assistance to participate in public elections. According to the July 2002 Census determinations:

- In the 367 covered political subdivisions,[1] an average of 8,403 citizens of voting age are limited-English proficient (LEP) in the 464 languages triggering coverage.[2]
- Among the 403 language groups for which Census data is available in the 367 covered political subdivisions,[3] an average of 13.1 percent of citizens of voting age are LEP in the languages triggering coverage.
- Among the 403 language groups for which Census data is available in the 367 covered political subdivisions, the average illiteracy rate of voting age citizens in the covered language groups is 18.8 percent, nearly fourteen times the national rate.
- Among the three states covered statewide under Section 203 for Spanish Heritage, an average of 632,345 citizens of voting age (5.8 percent of all voting age citizens) are LEP.
- Among the three states covered statewide under Section 203 for Spanish Heritage, an average of 16.3 percent of Spanish Heritage voting age citizens are illiterate, twelve times the national illiteracy rate.
- Among the 221 jurisdictions covered for Spanish Heritage, 71.9 percent are covered because of the 5 percent trigger, 14.9 percent because of the 10,000-person trigger, and 13.1 percent as a result of both triggers.
- Among the 21 political subdivisions covered for Alaskan Native languages, 71.4 percent are covered because of the partial reservation trigger and 28.6 percent are covered because of both the partial reservation and 5 percent triggers.
- Among the 101 political subdivisions covered for American Indian languages, 91.1 percent are covered because of the partial reservation trigger and 6.9 percent are covered because of both the partial reservation and 5 percent triggers.
- Among the 27 political subdivisions covered for Asian languages, 88.9 percent are covered because of the 10,000-person trigger, 7.4 percent are covered because of the 5 percent trigger, and 13.1 percent are covered because of both triggers.

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Survey respondents were also asked for their perceptions of the need for language assistance in their respective jurisdictions. Their responses were compared to 2000 Census data, which revealed:

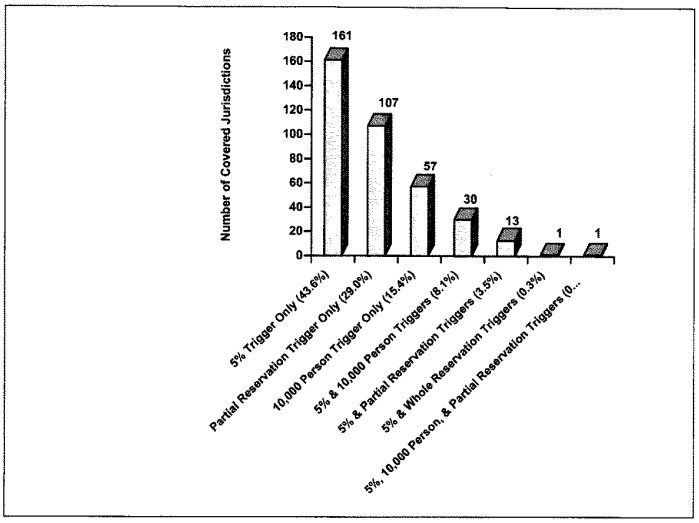
- The 271 responding election officials estimate that an average of 5.5 percent of their jurisdiction's voters requires oral language assistance in the covered languages, which is approximately half of the actual need, or 10.9 percent.
- The divergence between the perception and reality of the need for language assistance is the same regardless of how much language assistance the jurisdiction provides, if any.

In many cases, the failure of jurisdictions to provide language assistance appears attributable to misperceptions by election officials about the need for assistance.

Triggers Responsible for Section 203 Coverage

Figure 3.1 depicts the triggers responsible for Section 203 coverage of all jurisdictions in the Census Director's July 26, 2002 determinations. Several of these jurisdictions are covered by more than one language.

Figure 3.1: Type of Trigger Resulting in Coverage of Jurisdictions for all Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

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Figure 3.1 depicts the three different triggers used to determine coverage for each jurisdiction under Section 203 of the Voting Rights Act:

- 10,000 or more LEP voting age citizens in a single language group;
- LEP voting age citizens in a single language group comprise more than five percent of all citizens of voting age; and
- LEP voting age citizens in a single Alaskan Native or American Indian language comprise more than five percent of all citizens of voting age on a reservation.

Jurisdictions covered as a result of the reservation trigger are divided into those containing a part of a reservation ("Partial Reservation") and those containing the entire reservation ("Whole Reservation"). The illiteracy rate of the citizens in the language group triggering coverage also must be higher than the national illiteracy rate.

Among the 370 jurisdictions specifically identified for Section 203 coverage, 55.4 percent (N = 205) are covered as a result of the five percent trigger, 32.7 percent (N = 121) as a result of the partial reservation trigger, 23.8 percent (N = 88) as a result of the 10,000-person trigger, and 0.3 percent (N = 1) as a result of the whole reservation trigger. The percentages add up to more than 100 percent because 12.2 percent (N = 45) of all jurisdictions are covered because of more than one trigger.

Among the 45 jurisdictions covered because of more than one trigger, two-thirds (N = 30) are covered under both the five percent and 10,000-person triggers and 28.9 percent (N = 13) are covered under both the five percent and partial reservation triggers. One jurisdiction is covered because of both the five percent and whole reservation triggers. One jurisdiction is covered because of three triggers: the five percent, 10,000-person, and partial reservation triggers.

Number and Percent of LEP Citizens of Voting Age in the Covered Jurisdictions

In the 367 covered political subdivisions, an average of 8,403 citizens of voting age are limited-English proficient (LEP) in the 464 language groups triggering coverage. Among the three states covered statewide under Section 203 for Spanish Heritage (California, New Mexico, and Texas), an average of 632,345 citizens of voting age are LEP.

In the 403 language groups for which Census data is available in the 367 covered political subdivisions, an average of 13.1 percent of citizens of voting age are LEP in the languages triggering coverage. Among the three states covered statewide under Section 203 for Spanish Heritage (California, New Mexico, and Texas), an average of 5.8 percent of all voting age citizens are LEP.

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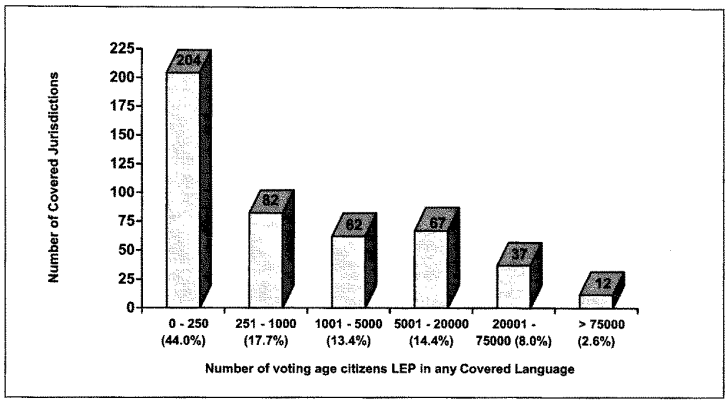
Figure 3.2 depicts the number of LEP voters in the 464 language groups covered in the 367 political subdivisions.

Among these jurisdictions, 61.6 percent (N = 286) have 1,000 or fewer citizens of voting age in the covered language group who are LEP. The Census Bureau has suppressed LEP data for specific language groups in nineteen of these 286 jurisdictions. Among the remaining 267 jurisdictions, over three-quarters (N = 203) are covered for Alaskan Native or American Indian languages. The large number of Alaskan Native and American Indian jurisdictions with 1,000 or fewer LEP citizens of voting age reflects the more sparsely populated locations of covered reservations.

Figure 3.2: Number of LEP Voters in Jurisdictions Covered by Section 203 for any Language Group, Excluding Statewide Spanish Heritage Coverage in California, New Mexico, and Texas.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Conversely, the overwhelming majority of the 116 jurisdictions with more than 5,000 voting age citizens who are LEP are covered for Spanish Heritage or Asian languages. Among the 77 covered jurisdictions falling into this category for which Census data is available, 54.5 percent (N = 42) are covered for Spanish Heritage and 33.8 percent (N = 26) are covered for Asian languages. Only 11.7 percent (N = 9) of these jurisdictions are covered for American Indian languages, and none are covered for Alaskan Native languages.

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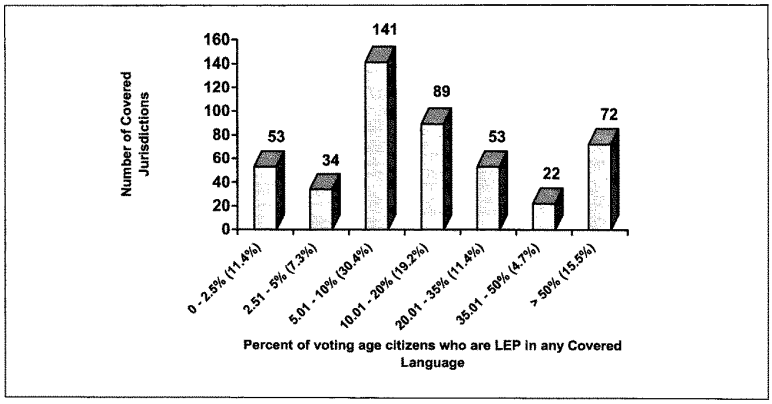
In summary, Figure 3.2 reveals that jurisdictions covered for Spanish Heritage and Asian languages are more likely to be covered by the 10,000-person trigger than Alaskan Native or American Indian languages. Furthermore, jurisdictions covered for Spanish Heritage and Asian languages are more likely to be in more populous regions and urban centers.

Figure 3.3: Percent of LEP Voters in Jurisdictions Covered by Section 203 for any Language Group, Excluding Statewide Spanish Heritage Coverage in California, New Mexico, and Texas.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Figure 3.3 depicts the percent of citizens of voting age who are LEP in the languages covered in the jurisdictions. Among the 464 language groups covered in the 367 political subdivisions, nearly one-third (N = 147) of the covered language groups have LEP rates exceeding twenty percent. In 15.5 percent (N = 72) of the 464 language groups, more than one-half of all citizens of voting age in the covered language are LEP.

Conversely, 18.7 percent (N = 87) of the 464 language groups covered in the 367 political subdivisions do not have a sufficient number of citizens of voting age who are LEP in the covered language to meet the five percent trigger. As a result, these 87 jurisdictions are covered under either the 10,000-person or reservation triggers.

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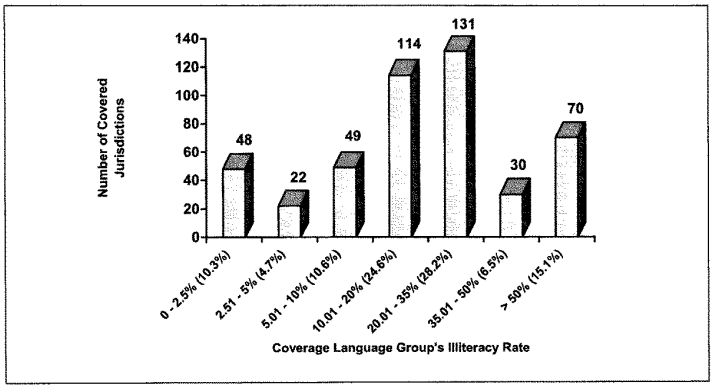
Illiteracy Rate in the Covered Jurisdictions

The Census Bureau defines "illiteracy" as those persons having less than a fifth grade education.[4] According to the 2000 Census, the illiteracy rate of citizens of voting age in the United States is 1.35 percent. Jurisdictions are covered by Section 203 if a single language group meets at least one of the triggers described above and "the illiteracy rate of the citizens in the language group is higher than the national illiteracy rate."[5]

Figure 3.4 depicts the illiteracy rates for the 464 language groups covered in the 367 political subdivisions.

Figure 3.4: Illiteracy Rate for Jurisdictions Covered by Section 203 for any Language Group, Excluding Statewide Spanish Heritage Coverage in California, New Mexico, and Texas.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Among the 464 covered language groups, only 10.3 percent (N = 48) have lower illiteracy rates of 2.5 percent or less. By comparison, approximately three-quarters (N = 345) of voting age citizens in the covered language groups have illiteracy rates that are over seven times higher than the national illiteracy rate. Over 15 percent (N = 70) of the covered language groups have illiteracy rates among voting age citizens in their group that exceed 50 percent, which is more than 37 times the national illiteracy rate.

Among the 403 language groups for which complete Census data is available, the average illiteracy rate of voting age citizens in the covered language groups is 18.8 percent, or nearly 14 times the national

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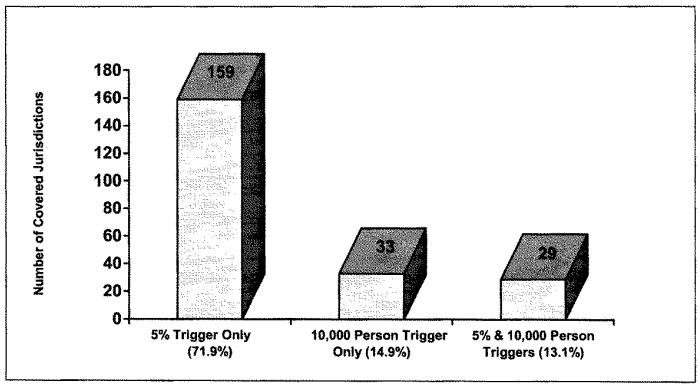
illiteracy rate. The combination of limited-English proficiency and high illiteracy rates results in a particularly acute need for language assistance among these groups. Availability of oral language assistance at every stage of the election process is especially important for illiterate LEP voters.

Need for Assistance Among Spanish Heritage Voters

Figure 3.5 depicts the triggers responsible for Spanish Heritage coverage of jurisdictions in the Census Director's July 26, 2002 determinations.

Figure 3.5: Type of Trigger Resulting in Coverage of Jurisdictions for Spanish Heritage.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Among the 221 jurisdictions specifically identified for Spanish Heritage coverage, 85 percent (N = 188) are covered as a result of the five percent trigger and 28 percent (N = 62) as a result of the 10,000-person trigger. The percentages add up to more than 100 percent because 13.1 percent (N = 29) of all jurisdictions are covered because of both the five percent and 10,000-person triggers.

Three states, California, New Mexico, and Texas, are covered for Spanish Heritage as a result of the five percent trigger. Although California barely meets the five percent trigger at 5.02 percent, it has over one million Spanish Heritage voting age citizens who are LEP. In New Mexico, more than 6 percent (N = 74855) of Spanish Heritage voting age citizens are LEP. Texas has the highest LEP rate among the three states at 6.15 percent, which includes 818,185 Spanish heritage voting age citizens.[6]

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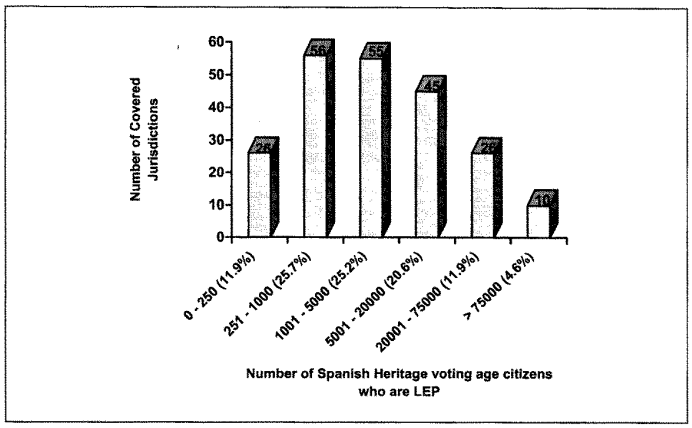
Among the three states covered statewide under Section 203 for Spanish Heritage, an average of 632,345 voting age citizens (5.8 percent of all voting age citizens) are LEP.

Figure 3.6 depicts the number of LEP voters in the 218 political subdivisions covered for Spanish Heritage. The 218 political subdivisions have an average of 14,335 Spanish Heritage voting citizens who are LEP.

Figure 3.6: Number of LEP Voters in Jurisdictions Covered Under Section 203 for Spanish Heritage, Excluding Statewide Coverage in California, New Mexico, and Texas.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Among the 218 political jurisdictions, nearly two-thirds (N = 136) have more than 1,000 LEP Spanish Heritage voting age citizens. The remaining 82 jurisdictions have 1,000 or fewer LEP Spanish Heritage voting age citizens. Most of these jurisdictions are located in sparsely populated rural areas in Texas. However, the percentage of LEP Spanish Heritage voting age citizens remains high even among these jurisdictions, as depicted in Table C-1.

Over one-third (N = 81) of the 218 political subdivisions have more than 5,000 LEP Spanish Heritage voting age citizens.

Ten jurisdictions in large urban areas have more than 75,000 LEP Spanish Heritage voting age citizens: Los Angeles County, California; Miami-Dade County, Florida; Cook County (metro Chicago), Illinois; Bronx, Kings, New York, and Queens Counties in metropolitan New York City; Bexar County (San Antonio), Texas; El Paso County, Texas; and Harris County (Houston), Texas.

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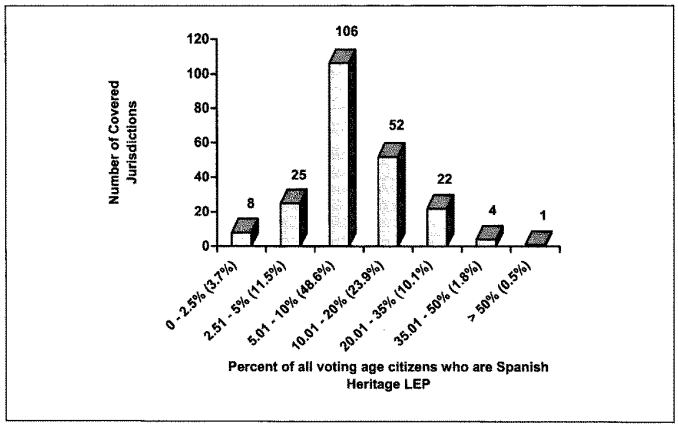
Figure 3.7 depicts the percent of all voting age citizens who are LEP in Spanish. In the 217 political subdivisions for which complete Census data is available,[7] an average of 10.4 percent of all voting age citizens are Spanish Heritage LEP citizens.

Among these 217 political subdivisions, only 15.2 percent (N = 33) have five percent or less Spanish Heritage voting age citizens who are LEP. These 33 jurisdictions are covered as a result of the 10,000-person trigger and are located in populous urban centers.

Figure 3.7: Percent of LEP Voters in Jurisdictions Covered by Section 203 for Spanish Heritage, Excluding Statewide Coverage in California, New Mexico, and Texas.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

For example, although Spanish Heritage voting age citizens who are LEP comprise only 3.84 percent of all voting age citizens in Cook County (Chicago), Illinois, the County is covered because there are 131,530 Spanish Heritage voting age citizens who are LEP.[8]

Nearly half (N = 106) of the 217 political subdivisions covered for Spanish Heritage have Spanish LEP percentages among voting age citizens of between 5 and 10 percent. Approximately one-quarter (N = 52) have Spanish LEP percentages among voting age citizens of between 10 and 20 percent. The remaining 12.4 percent (N = 27) have Spanish LEP percentages among voting age citizens of over 20 percent. Five jurisdictions have Spanish LEP percentages among voting age citizens of over 35 percent.

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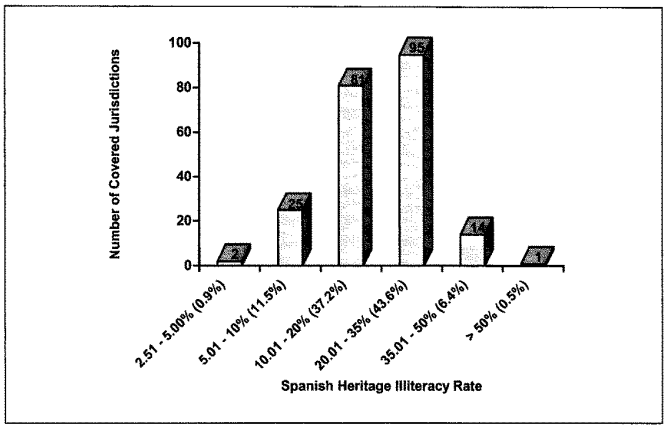
Figure 3.8 depicts the illiteracy rates for 217 of the 218 political subdivisions covered for Spanish Heritage.[9] Among these 217 political subdivisions, an average of 20.8 percent of Spanish Heritage voting age citizens are illiterate, over 15 times the national illiteracy rate.

Among the three states covered statewide under Section 203 for Spanish Heritage, an average of 16.3 percent of Spanish Heritage voting age citizens are illiterate, 12 times the national illiteracy rate.

Figure 3.8: Illiteracy Rate for Jurisdictions Covered by Section 203 for Spanish Heritage, Excluding Statewide Spanish Heritage Coverage in California, New Mexico, and Texas.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Only two jurisdictions have Spanish Heritage citizens of voting age with an illiteracy rate of less than 5 percent. In both cases, the illiteracy rates still far exceed the national illiteracy rate. Greenlee County, Arizona has an illiteracy rate of 4.76 percent among Spanish Heritage voting age citizens, over three times the national rate. Bergen County, New Jersey has the lowest illiteracy rate of Spanish Heritage voting age citizens, which at 3.76 percent is still nearly three times the national rate.[10]

Over half (N = 110) of the 217 political subdivisions have illiteracy rates among Spanish Heritage voting age citizens greater than 20 percent. Fifteen of these political subdivisions have illiteracy rates among Spanish Heritage voting age citizens greater than 35 percent.

The high illiteracy rates among Spanish Heritage voting age citizens confirms Congressional findings that educational disparities continue to result in barriers to political participation by those citizens.[11]

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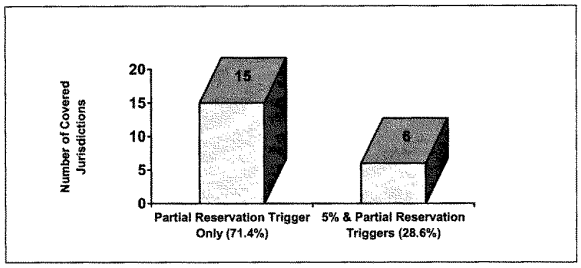
Need for Assistance Among Alaskan Native Voters

Figure 3.9 depicts the triggers responsible for Alaskan Native coverage of jurisdictions in the Census Director's July 26, 2002 determinations. All of the jurisdictions are covered as a result of the partial reservation trigger. A little more than one-quarter of the jurisdictions are also covered as a result of the five percent trigger.

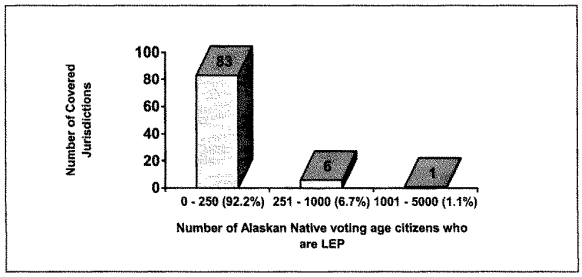
Figure 3.9: Type of Trigger Resulting in Coverage of Jurisdictions for Alaskan Native Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Figure 3.10 depicts the number of LEP voters in the 21 political subdivisions covered for Alaskan Native languages. These jurisdictions include portions of 90 Alaskan Native reservations.[12] The 90 reservations have an average of 86 Alaskan Native voting citizens who are LEP. The low number reflects very sparsely populated and geographically isolated communities of Alaskan Native voting age citizens.

Figure 3.10: Number of LEP Voters in Jurisdictions Covered Under Section 203 for Alaskan Native Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

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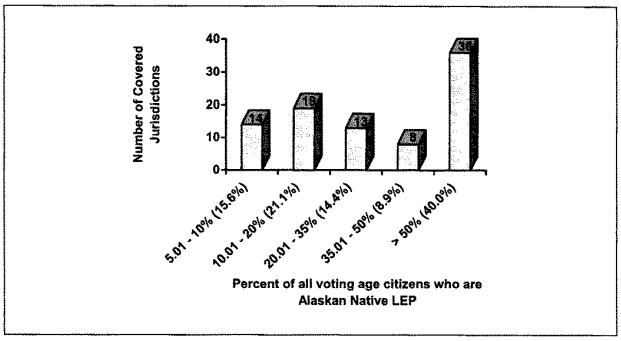
Figure 3.11 depicts the percent of all voting age citizens in the 21 covered political subdivisions who are LEP in Alaskan Native languages.

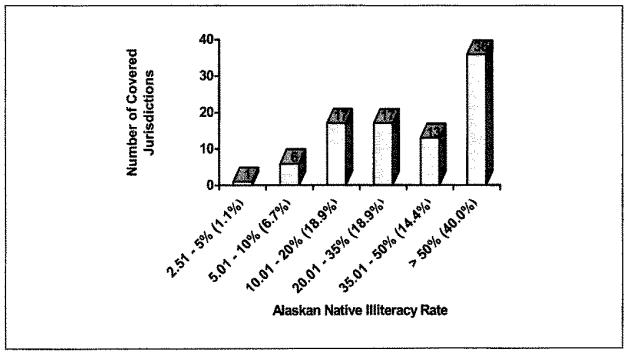
Figure 3.11: Percent of LEP Voters in Jurisdictions Covered by Section 203 for Alaskan Native Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Complete Census data is only available for 59 of the 90 Alaskan Native reservations in these jurisdictions.[13] These 59 reservations have an average of 22.6 percent of all voting age citizens who are Alaskan Native LEP citizens. The rate of non-English speaking voting age citizens is especially high among Alaskan Natives, with 40 percent (N = 36) of all reservations with LEP rates greater than 50 percent.

Figure 3.12: Illiteracy Rate for Jurisdictions Covered by Section 203 for Alaskan Native Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

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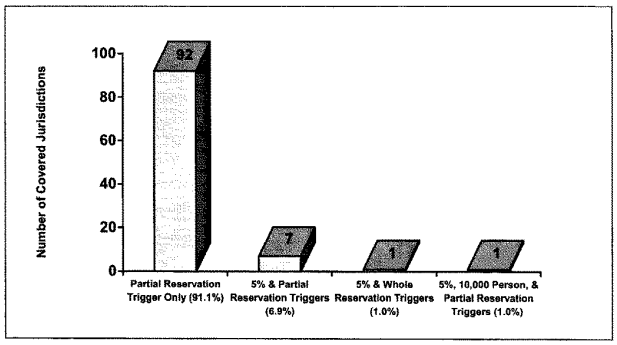
Figure 3.12 depicts the illiteracy rates for the 59 Alaskan Native reservations triggering coverage. Among these 59 reservations, an average of 28.3 percent of Alaskan Native voting age citizens are illiterate, nearly 21 times the national illiteracy rate. Forty percent (N = 36) of these reservations have illiteracy rates greater than 50 percent.

Need for Assistance Among American Indian Voters

Figure 3.13 depicts the triggers responsible for American Indian coverage of jurisdictions in the Census Director's July 26, 2002 determinations. All 101 of the jurisdictions are covered as a result of a reservation trigger. Only one of these jurisdictions, the Rosebud Reservation in Todd County, South Dakota, is covered as a result of the whole reservation trigger; the remaining 100 jurisdictions are covered because of the partial reservation trigger.

The extensive coverage under the partial reservation trigger confirms Congressional findings underlying the 1992 Voting Rights Act Amendments, which added the trigger. All of the covered American Indian reservations except the Rosebud Reservation are divided between multiple political subdivisions, and in many cases, between several states.

Figure 3.13: Type of Trigger Resulting in Coverage of Jurisdictions for American Indian Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Only 8.9 percent (N = 9) of American Indian covered counties meet the five percent trigger for two languages. Six of these counties are covered for the Navajo language, including: Apache, Coconino, and Navajo Counties in Arizona; McKinley and San Juan Counties in New Mexico; and San Juan County in Utah. The remaining three counties are located

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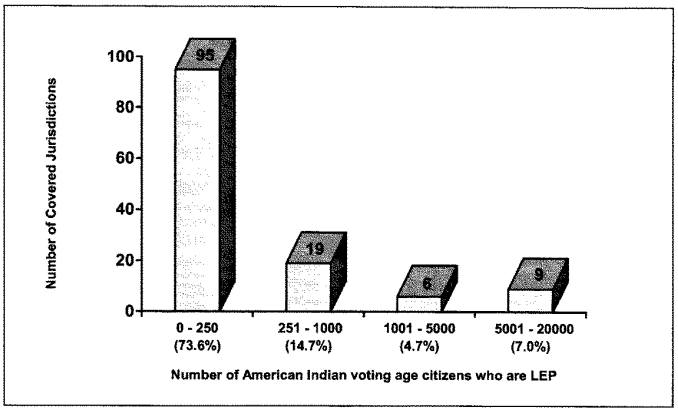
in South Dakota and are covered for the Sioux language: Shannon, Todd, and Ziebach Counties.[14]

Apache County, Arizona is the only jurisdiction that is covered for an American Indian language (Navajo) because of all three triggers. The Navajo Nation has its capital in Window Rock, Arizona, located in northern Apache County near the New Mexico border. According to the 2000 Census, there are 11,245 Navajo voting age citizens who are LEP, comprising 26.5 percent of all voting age citizens in Apache County. The illiteracy rate among Navajo voting age citizens is 25.4 percent, which is nearly 19 times the national illiteracy rate of 1.35 percent.[15] Apache County also is covered for the Apache and Hopi (Pueblo) languages under the partial reservation trigger.

Figure 3.14: Number of LEP Voters in Jurisdictions Covered Under Section 203 for American Indian Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Figure 3.14 depicts the number of LEP voters in the 129 reservations triggering American Indian language coverage. The 129 reservations have an average of 721 American Indian voting age citizens who are LEP. The average is raised dramatically by jurisdictions containing portions of the Navajo Nation or Sioux reservations, which have the largest populations of LEP American Indian voting age citizens. Most of the remaining American Indian reservations have an average of fewer than 251 American Indian voting age citizens who are LEP. The low number reflects sparsely populated and geographically isolated communities of American Indian voting age citizens.

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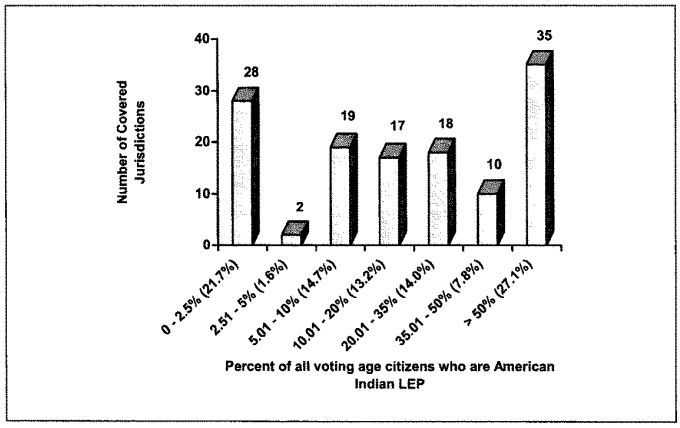
Many of the jurisdictions covered for American Indian languages do not have any voting age citizens who are in LEP in the covered language. For example, Bernalillo County, New Mexico, is covered for the Pueblo (Keres and Tiwa[16]) language because it contains a portion of the Laguna Pueblo and off-reservation trust law, which meets the five percent trigger. However, the Census reports that Bernalillo County does not contain any voting age citizens who are LEP in the Pueblo language. By comparison, Cibola County, New Mexico, which also is covered for the Pueblo language because of the Laguna Pueblo, has 430 voting age citizens who are LEP on the portion of the reservation in the County.

Jurisdictions covered under the partial reservation trigger that do not contain any LEP voting age citizens in the covered language, such as Bernalillo County, are not required to provide language assistance. Instead, use of targeting would allow the jurisdiction to determine that no assistance is needed because there are no voters who need it.[17] Only a small number of jurisdictions with no LEP voters are covered as a result of the partial reservation trigger, which is necessary for the reasons discussed above.

Figure 3.15: Percent of LEP Voters in Jurisdictions Covered by Section 203 for American Indian Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Figure 3.15 depicts the percent of all voting age citizens in the 129 covered reservations who are LEP in American Indian languages.[18] Among the 100 reservations for which complete Census data is available, an average of 16.3 percent of all voting age citizens are LEP in American Indian languages. Over one-quarter (N = 35) of all reservations have LEP rates greater than 50 percent.

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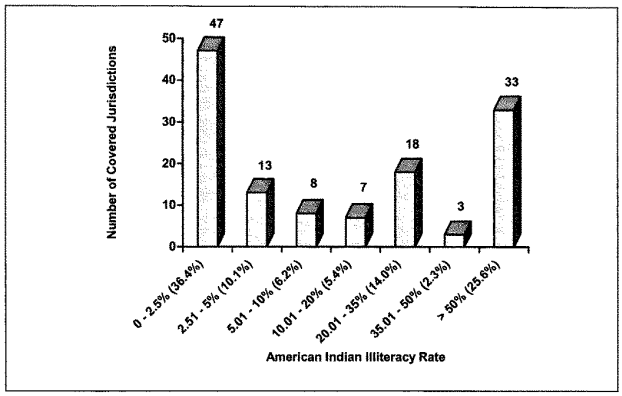
Figure 3.16 depicts the illiteracy rates for the 100 American Indian reservations triggering coverage. Among these 100 reservations, an average of 11.7 percent of American Indian voting age citizens are illiterate, nearly nine times the national illiteracy rate. Over one-quarter (N = 33) of these reservations have illiteracy rates greater than 50 percent.

Figure 3.16: Illiteracy Rate for Jurisdictions Covered by Section 203 for American Indian Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

American Indian citizens of voting age have a very high illiteracy rate on many reservations. For example, four of the six counties covered in Arizona for the Navajo and Tohono O'Odham languages have illiteracy rates of at least 25 percent among voting age citizens in the covered language groups, over 18 times the national illiteracy rate. Similarly, Maverick County, Texas, which is covered for the Kickapoo language, has an illiteracy rate of 86.2 percent among voting age citizens in the covered language group.[19]

Need for Assistance Among Asian Voters

Figure 3.17 depicts the triggers responsible for Asian coverage of jurisdictions in the Census Director's July 26, 2002 determinations. Of the 27 jurisdictions covered for Asian languages, 88.9 percent (N = 24) are covered because of the 10,000-person trigger and 7.4 percent (N = 2) because of the five percent trigger. Only one jurisdiction, San Francisco County for Chinese, is covered as a result of both the 10,000-person and five percent triggers.

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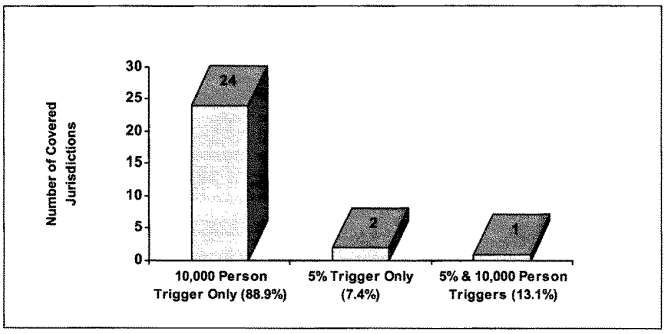
Figure 3.17 confirms that a numerically based trigger, such as the 10,000-person trigger, is necessary to cover Asian languages in populous urban counties. Without that trigger, only three jurisdictions would be covered (under the five percent trigger): Kodiak Island Borough, Alaska, for Filipino; San Francisco County, California, for Chinese; and Maui County, Hawaii, for Filipino.[20]

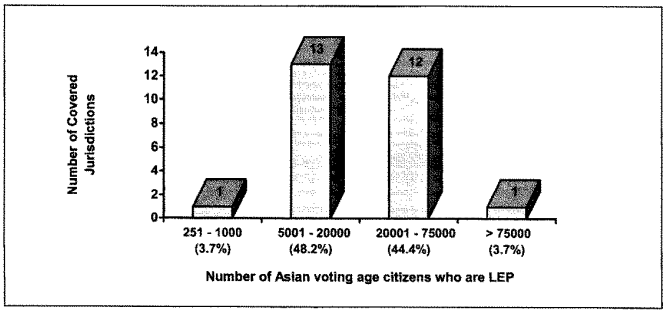
Figure 3.17: Type of Trigger Resulting in Coverage of Jurisdictions for Asian Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Figure 3.18 depicts the number of LEP voters among the 27 jurisdictions covered for Asian languages. The 27 covered jurisdictions have the highest average number of voting age citizens who are LEP in the covered language among all four principal language groups, with an average of 24,917.

Figure 3.18: Number of LEP Voters in Jurisdictions Covered Under Section 203 for Asian Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

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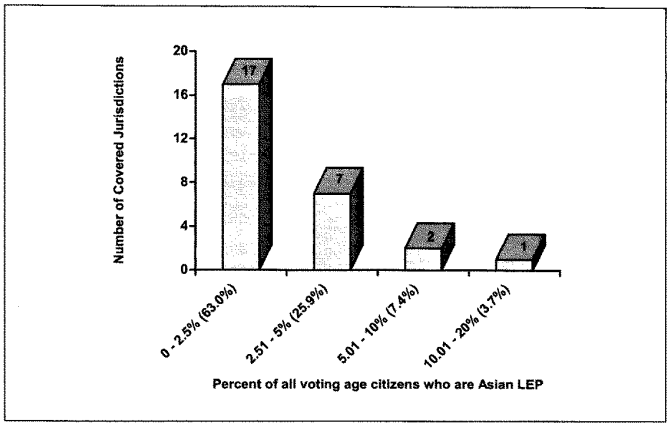
Only two jurisdictions covered for Asian languages, Kodiak Island Borough in Alaska and Maui County in Hawaii, have Asian voting age citizen LEP populations less than 10,000.[21] On the other hand, nearly half (N = 13) of all jurisdictions covered for Asian languages have more than 20,000 voting age citizens who are LEP in the language triggering coverage.

Figure 3.19 depicts the percent of all voting age citizens who are LEP in the 27 jurisdictions covered for Asian languages. On average, 2.4 percent of all voting age citizens in the covered languages are LEP.

Figure 3.19: Percent of LEP Voters in Jurisdictions Covered by Section 203 for Asian Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

The low percentage of voting age citizens who are LEP in Asian languages masks the widespread need for language assistance in jurisdictions covered for Asian languages. For example, in Los Angeles County, California, none of the five covered Asian language groups have LEP voting age citizens who comprise more than 2 percent of the County's voting age citizens. At the same time, there are nearly a quarter million LEP Asian voting age citizens in the County, including: 95,700 Chinese-speaking citizens; 42,930 Korean-speaking citizens; 34,985 Filipino-speaking citizens; 30,340 Vietnamese-speaking citizens; and 12,510 Japanese-speaking citizens.[22] The large population of urban centers such as Los Angeles County prevents nearly all groups of Asian voting age citizens who are LEP from meeting the five percent trigger.

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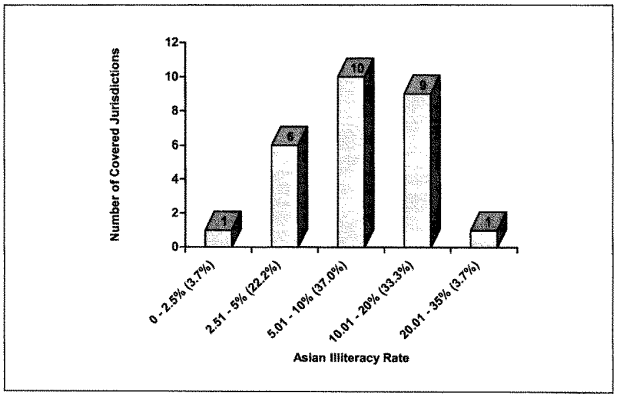
Figure 3.20 depicts the illiteracy rates for the 27 jurisdictions covered for Asian languages. Covered Asian groups have the lowest illiteracy rates among all of the covered language groups. Nevertheless, Asian-covered jurisdictions still have an average illiteracy rate of 8.5 percent among Asian voting age citizens, more than six times the national illiteracy rate.

Figure 3.20: Illiteracy Rate for Jurisdictions Covered by Section 203 for Asian Languages.



Source: 2002 Voting Rights Determination File, available at http://www.census.gov/mp/www/spectab/specialtab.html.

Election Official Perceptions of the Need for Language Assistance

Question E-1 of the survey asked election officials to "Estimate the percentage of voters in your jurisdiction who need oral language assistance to vote in public elections?" The question was included to determine whether the perceptions of election officials corresponded to Census data used for the July 2002 Section 2003 determinations. To increase the likelihood of their providing candid estimates, election officials were not informed that their responses would be compared to Census data.

Of the 361 jurisdictions providing complete responses to the survey, three-quarters (N = 271) answered Question E-1. Responses to Question E-1 were compared to 2000 Census data and responses to availability questions to determine the extent, if any, that perceptions might vary depending upon the amount of language assistance provided.

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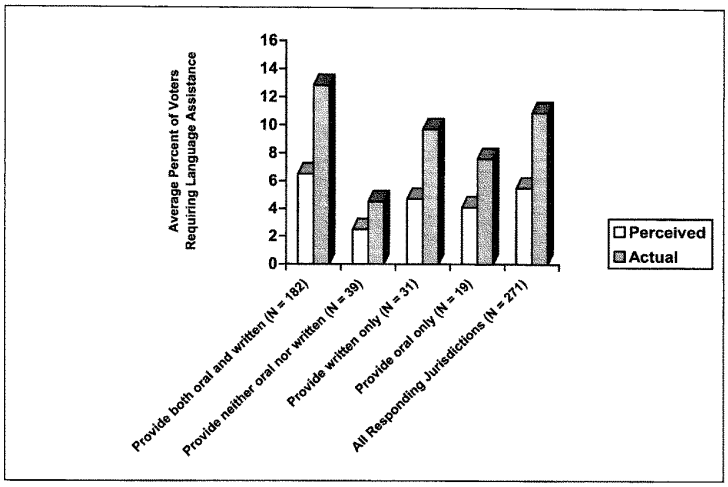
Figure 3.21 depicts the average number of voters whom election officials estimate require oral language assistance to vote, compared to the average number of voters identified in the 2000 Census for the responding jurisdictions. The 271 respondents estimate that an average of 5.5 percent of their jurisdiction's voters requires oral language assistance in the covered language. However, according to the 2000 Census, the average number of limited-English proficient voters in these jurisdictions is actually double that number, or 10.9 percent.

Figure 3.21: Jurisdictions' Estimates of Need for Language Assistance Compared to 2000 Census, by Type of Assistance Jurisdiction Provides.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions E-1, E-4, and F-1 and 2000 Census, Summary Tape File 3.

This divergence between perception and reality is the same regardless of how much language assistance the jurisdiction provides, if any.

Of the 271 responding jurisdictions, 67.2 percent (N = 182) indicated in response to Questions F-1 and E-4 of the survey that they provide both oral and written assistance to voters. The 182 election officials reported an estimated average assistance need of 6.5 percent. According to the 2000 Census, the actual average percent of limited-English proficient voters in those jurisdictions is almost double the election officials' estimate, at 12.8 percent.

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Of the 271 responding jurisdictions, 14.4 percent (N = 39) indicated in response to Questions F-1 and E-4 of the survey that they provide neither oral nor written assistance to voters. The 39 election officials reported an estimated average assistance need of 2.5 percent. According to the 2000 Census, the actual average percent of limited-English proficient voters in those jurisdictions is nearly double the election officials' estimate, at 4.5 percent.

Slightly more than 11 percent (N = 31) of the 271 responding jurisdictions indicated in response to Questions F-1 and E-4 of the survey that they provide only written language materials to voters. The 39 election officials reported an estimated average assistance need of 2.5 percent. According to the 2000 Census, the actual average percent of limited-English proficient voters in those jurisdictions is nearly double the election officials' estimate, at 4.5 percent.

Election officials providing only oral language assistance also underestimated the need for assistance in their jurisdictions by half. Among the 7 percent (N = 19) of responding jurisdictions providing only oral language assistance, election officials reported an estimated average assistance need of 4.6 percent. According to the 2000 Census, the actual average percent of limited-English proficient voters in those jurisdictions is 7.6 percent.

It appears that the acknowledged failure of many jurisdictions to provide language assistance in the covered languages is attributable to the misperception of election officials about the need for assistance.

There may be several reasons for these misperceptions. Nearly two-thirds of all covered jurisdictions report that they do not engage in outreach and consultation with community organizations or individuals in the covered language groups.[23] It appears that the absence of outreach causes many election officials to underestimate the need for language assistance in their covered jurisdictions.

In a similar vein, election officials may not understand how voters are determined to be limited-English proficient and in need of language assistance for public elections. Some election officials appear to perceive that voters who speak some English do not need language assistance, even if they speak English less than "very well." For example, one election official notes that language assistance is not needed in their jurisdiction because "Everyone in the community speaks English."[24] Another election official says the lack of need for assistance is because "The majority of our voters speak English fluently, even those with Spanish surnames."[25]

Other election officials appear to rely upon the absence of requests for language assistance as evidence that such assistance not needed.[26] One election official reports an "[e]xtremely low use of both oral and written mediums" of assistance.[27] In some cases, the absence of requests

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can be an indication that assistance is not needed. However, often the absence of requests is the result of LEP voters failing to participate in the election process because of the lack of language assistance or the failure to publicize that it is available.[28]

It appears that at least some election officials underestimate the need for language assistance because of confusion over what Section 203 requires. As one election official reports, "Have had no experiences in providing language assistance to voters."[29] Indeed, one-third of all election officials report that they either provide no language assistance or only written language materials in the covered language despite the identified need for assistance in their jurisdiction.[30] Training and information about Section 203 can dispel misconceptions of what the federal language assistance provisions require.

Some election officials may underestimate the need for language assistance because they are ideologically opposed to such assistance. There appear to be very few election officials who fall into this category. Only 12 jurisdictions expressly advocated English-only elections.[31] Conversely, nearly three-quarters of responding jurisdictions indicated that they believe the federal language assistance provisions should remain in effect for public elections.[32]

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[1] "Political subdivision" refers to the subdivisions of states that are covered by Section 203. The term excludes the three states (California, New Mexico, and Texas) that are covered statewide, but includes all of the subdivisions of those states that are covered in their own right as a result of the July 2002 Census determinations.

[2] The 464 languages include each instance in which a jurisdiction is covered for a distinct language group. Several of the 367 political subdivisions are covered by more than one language under Section 203. *See* Appendix C.

[3] The Census Bureau has suppressed some of the data used in the July 2002 determinations, as explained in Appendix C.

[4] *See* U.S. Bureau of the Census, Voting Rights Output File Documentation (Sept. 2, 2004), *available at* www2.census.gov/census_2000/ datasets/determination/vr_doc_rev7.wpd.

[5] 42 U.S.C. § 1973aa-1a(b)(2)(A)(ii).

[6] *See* Table C-1.

[7] Census data for Borden County, Texas has been suppressed. *See* Table C-1.

[8] *See* Table C-1.

[9] Census data for Borden County, Texas has been suppressed. *See* Table C-1.

[10] *See* Table C-1.

[11] In Section 203(a) of the Voting Rights Act, Congress found that "[a]mong 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." 42 U.S.C. § 1973aa-1a(a).

[12] *See* Table C-2.

[13] Reservations with suppressed Census are identified by an asterisk in Table C-2.

[14] *See* Table C-3.

[15] *See* Table C-3.

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[16] *See* the table in 28 C.F.R. Part 55, which indicates that the covered Pueblo languages in Bernalillo County are Keres and Tiwa. The Census Bureau aggregated these and other American Indian languages for pueblo tribes, such as the Hopi, into a single "Pueblo" language group.

[17] Targeting is discussed in greater detail in Chapter 6.

[18] Reservations with suppressed Census are identified by an asterisk in Table C-3.

[19] *See* Table C-3.

[20] *See* Table C-4.

[21] *See* Table C-4.

[22] *See* Table C-4.

[23] *See* Figure 5.11 and accompanying text.

[24] Respondent 269.

[25] Respondent 624.

[26] For example, see Respondents 364, 412, 639, 706, 758, 854, 987 & 1029.

[27] Respondent 357.

[28] *See* Figure 5.10 and accompanying text.

[29] Respondent 1029.

[30] *See* Figure 4.1 and accompanying text.

[31] *See* Chapter 6.

[32] *See* Figure 6.3.

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Chapter 4:
The Availability of Language Assistance in Public Elections

Summary of Findings on the Availability of Language Assistance

Respondents were asked several questions to assess the extent to which language assistance is offered to voters. Their responses indicate that:

- 80.6 percent of jurisdictions report that they provide at least some type of language assistance to voters.
- Jurisdictions providing language assistance are more likely to be covered under Section 4(f)(4) or Section 203 in their own right than those that do not.
- 19.4 percent of jurisdictions provide no language assistance and 14 percent of jurisdictions provide only bilingual written materials. These jurisdictions generally have high percentages of LEP voters in one or more covered languages.
- 6.2 percent of jurisdictions provide only oral language assistance, two-thirds of which are covered for Alaskan Native or American Indian languages that are historically unwritten.
- 39.0 percent of jurisdictions provide assistance for telephone inquiries in all of the languages covered in those jurisdictions.
- 57.1 percent of jurisdictions do not have at least one full-time worker in the languages covered in those jurisdictions.
- Two-thirds of jurisdictions report that they translate more than half of all written election materials.
- 32.9 percent of jurisdictions report that they provide oral language assistance for more than half of all common election activities.

The jurisdictions were candid in their responses. In several cases, they acknowledged that they were not complying with Section 203.

Availability Questions and Response Rate

The survey asked a series of questions to assess the extent to which jurisdictions provide language assistance to voters. Respondents were asked in Sections A and C to identify whether they had any full-time or part-time workers fluent in the jurisdiction's covered language(s). Section D asked respondents whether and in what manner language assistance was provided for telephone inquiries. In Sections E and F, respondents were asked to provide details about the jurisdiction's practices for providing oral and written assistance, respectively.

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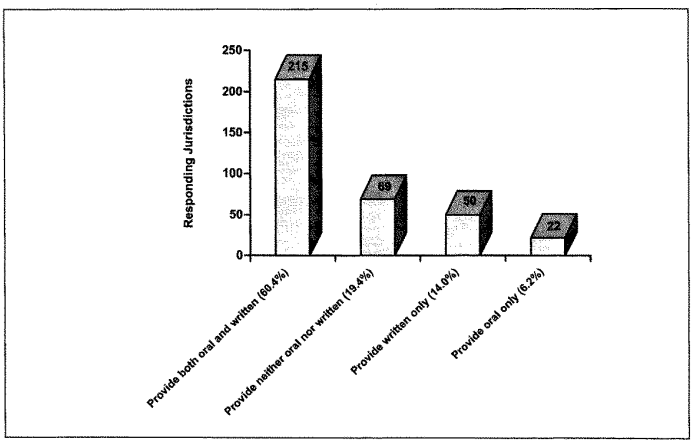
Responses to these questions were correlated with 2000 Census data including the jurisdiction's population and percentage of LEP voters in each of the covered language groups. The response rates for each question are provided below.

In some cases, the total response rate for the availability questions exceeds one hundred percent because many jurisdictions are covered by more than one language.

Language Assistance Types Available in Jurisdictions

Question E-4 asked respondents whether or not oral language assistance is provided at the polls on Election Day. Likewise, Question F-1 asked respondents whether written materials are provided in the covered languages.

Figure 4.1: Type of Language Assistance That Jurisdictions Report Providing.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions E-4 and F-1.

Figure 4.1 shows that many covered jurisdictions report election practices that fall short of complying with the language assistance provisions of the Voting Rights Act. Of the jurisdictions responding to the survey, 80.6 percent (N = 287) report providing some type of language assistance to voters: 60.4 percent (N = 215) report providing both oral and written language assistance; 14 percent (N = 50) report providing only written language materials; and 6.2 percent (N = 22) report providing only oral language assistance.

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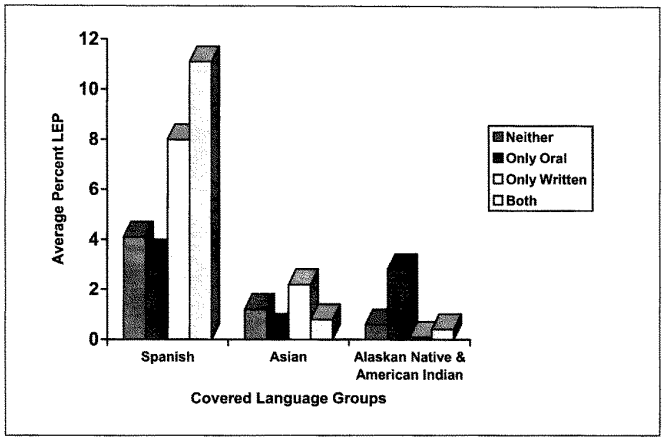
Figure 4.2 depicts the average LEP for responding jurisdictions, by language, for the type of language assistance offered. The availability of both oral and written language assistance increases as the Spanish-speaking LEP increases. Jurisdictions with the lowest Spanish-speaking LEP are more likely to provide only oral language assistance or no language assistance. Jurisdictions with the highest Asian language-speaking LEP report that generally only written language assistance is available. Jurisdictions with the highest Alaskan Native or American Indian language-speaking LEP reported that they generally only provide oral language assistance.

Figure 4.2: Types of Language Assistance Available, by LEP of Covered Language Groups.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions E-4 and F-1 and 2000 Census, STF-3 and STF-4.

Jurisdictions providing language assistance are more likely to be covered under Section 4(f)(4) or Section 203 in their own right than those that do not, which tend to be covered sub-jurisdictions such as counties or cities. There is no relationship between the jurisdiction's total population and whether that jurisdiction provides assistance.

Language Assistance for Spanish Heritage Voters

Three hundred eight of the responding jurisdictions are covered for Spanish Heritage, among other languages. Of these 308 jurisdictions, 13.3 percent (N = 41) report providing no assistance, 2.9 percent (N = 9) report providing only oral language assistance, 15.3 percent (N = 47)

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report providing only written language assistance, and 68.5 percent (N = 211) report providing both oral and written language assistance.

These percentages are slightly different when jurisdictions covered only for Spanish Heritage are considered. Excluding those Spanish Heritage covered jurisdictions that also are covered for Asian or American Indian languages, 14 percent of the 243 responding jurisdictions (N = 34) report providing no language assistance, 2.5 percent (N = 6) report providing only oral language assistance, 13.2 percent (N = 32) report providing only written language assistance, and 70.4 percent (N = 171) report providing both oral and written language assistance.

Language Assistance for Alaskan Native & American Indian Voters

Sixty-two of the responding jurisdictions are covered for an Alaskan Native or American Indian language, among other languages. Of these 62 jurisdictions, 30.7 percent (N= 19) report providing neither oral nor written language assistance, 24.2 percent (N = 15) report providing only oral language assistance, 3.2 percent (N = 2) report providing only written language assistance, and 41.9 percent (N = 26) report providing both oral and written language assistance.

Jurisdictions that provide bilingual written materials do so for other covered languages, and not the covered Alaskan Native or American Indian languages. Twenty-eight responding jurisdictions covered for Alaskan Native or American Indian languages also are covered for at least one other language group, generally Spanish.

Among the 34 responding jurisdictions covered only for Alaskan Native or American Indian languages, 55.9 percent (N = 19) report providing no language assistance, 38.2 percent (N = 13) report providing only oral language assistance, and 5.9 percent (N = 2) report providing both oral and written language assistance. None of these 34 jurisdictions report providing only written language assistance. This finding is consistent with the fact that these languages are historically unwritten and generally do not require bilingual written materials.

Language Assistance for Asian Voters

Thirty-seven responding jurisdictions are covered for an Asian language. Of these 37 jurisdictions, 18.9 percent (N = 7) report providing no language assistance, 2.7 percent (N = 1) report providing only oral language assistance, 35.1 percent (N = 13) report providing only written language assistance, and 43.2 percent (N = 16) report providing both oral and written language assistance.

All responding jurisdictions covered for Asian languages are also covered by another language, generally Spanish. As a result, it is not possible to provide data for jurisdictions covered only for Asian languages.

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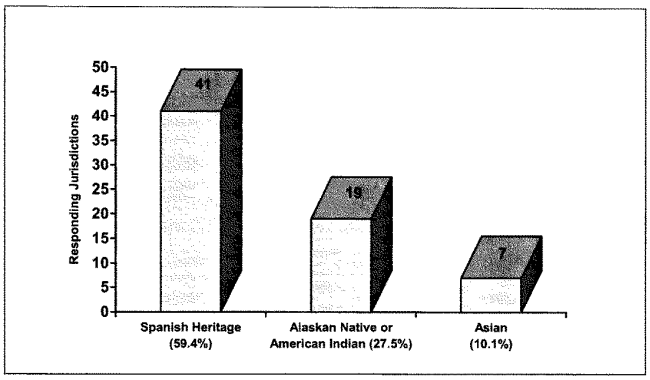
Jurisdictions Providing No Language Assistance

Figure 4.3 depicts the 19.4 percent of responding jurisdictions (N = 69) that report providing no language assistance of any kind.

Every covered language group is affected by the lack of assistance in these 69 jurisdictions: 59.4 percent (N = 41) are covered for Spanish Heritage, with an average Hispanic voting age population (VAP) of 18.8 percent, of whom 39.4 percent are limited-English proficient; 27.5 percent (N = 19) are covered for Alaskan Native or American Indian languages, with an average Alaskan Native or American Indian VAP of 17.4 percent, of whom 6.0 percent are limited-English proficient; and 10.1 percent (N = 7) are covered for Asian-American languages, with an average Asian VAP of 13.8 percent, of whom 40.7 percent are limited-English proficient.

A few of the jurisdictions that reported they do not provide any language assistance are not covered under either Section 4(f)(4) or Section 203.

Figure 4.3: Jurisdictions Reporting Neither Oral Nor Written Language Assistance is Provided.



Sources: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions E-4 and F-1; 28 C.F.R. Part 55, Appendix (summarizing coverage determinations); and 2002 Census Determinations.

According to the 2000 Census, of the jurisdictions providing no language assistance, the mean Hispanic VAP is 12.7 percent, with a mean LEP of 32.0 percent. This yields a Hispanic LEP among all voters in these jurisdictions of 4.1 percent.

The mean Asian VAP of these jurisdictions is 3.2 percent, with a mean LEP of 37.3 percent. This yields an Asian LEP among all voters in these jurisdictions of 1.2 percent.

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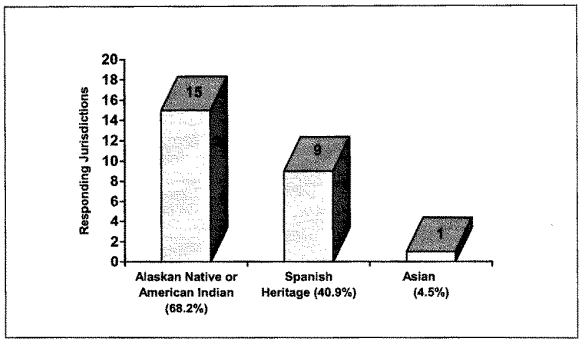
Among these jurisdictions, the mean Alaskan Native/American Indian VAP is 6.7 percent, with a mean LEP of 8.7 percent. This yields an Alaskan Native/American Indian LEP among all voters in these jurisdictions of 0.6 percent.

Jurisdictions Providing Only Oral Language Assistance

Figure 4.4 depicts the 6.2 percent of responding jurisdictions (N = 22) that report providing only oral language assistance.

Over two-thirds of these 22 jurisdictions (N = 15) are covered for Alaskan Native and/or American Indian languages, which generally do not require written materials. These 15 jurisdictions have an average American Indian voting age population of 27.7 percent, of whom 15.0 percent are limited-English proficient. Only one of the 63 respondents covered for Alaskan Native or American Indian languages report receiving voter requests for bilingual election materials.

Figure 4.4: Jurisdictions Reporting Only Oral Language Assistance is Provided.



Sources: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions E-4 and F-1; 28 C.F.R. Part 55, Appendix (summarizing coverage determinations); and 2002 Census Determinations.

Jurisdictions providing only oral language assistance also include: 40.9 percent (N = 9) covered for Spanish Heritage, with an average Hispanic VAP of 23.5 percent, of whom 37.2 percent are limited-English proficient; and 4.5 percent (N = 1) covered for Asian-American languages, with an Asian VAP of 7.6 percent, of whom 48.5 percent are limited-English proficient.

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According to the 2000 Census, of the jurisdictions providing only oral language assistance, the mean Hispanic VAP is 12.4 percent, with a mean LEP of 27.7 percent. This yields a Hispanic LEP among all voters in these jurisdictions of 3.4 percent.

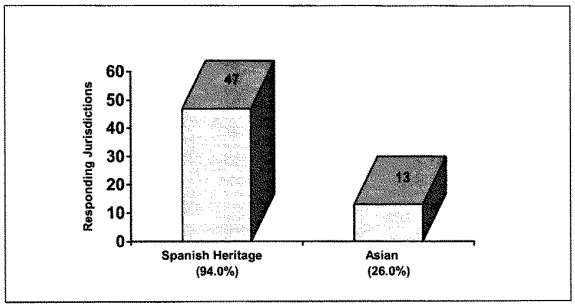
Among these jurisdictions, the mean Alaskan Native/American Indian VAP is 19.1 percent, with a mean LEP of 14.9 percent. This yields an Alaskan Native/American Indian LEP among all voters in these jurisdictions of 2.8 percent.

The mean Asian VAP of these jurisdictions is 1.4 percent, with a mean LEP of 24.1 percent. This yields an Asian LEP among all voters in these jurisdictions of 0.4 percent.

Jurisdictions Providing Only Bilingual Written Materials

Figure 4.5 depicts the 14 percent of responding jurisdictions (N = 50) that report providing only bilingual written materials. Two responding jurisdictions are covered for Alaskan Native or American Indian languages, but have been excluded because those languages are historically unwritten and the bilingual materials are provided in other covered languages.

Figure 4.5: Jurisdictions Reporting Only Bilingual Written Materials Are Provided.



Sources: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions E-4 and F-1; 28 C.F.R. Part 55, Appendix (summarizing coverage determinations); and 2002 Census Determinations.

The 50 jurisdictions that report providing only bilingual written materials generally have large numbers of limited-English proficient voters in one or more of the covered languages. Ninety-four percent (N = 47) of this group is covered for Spanish Heritage, with an average Hispanic VAP of 18.3 percent, of whom 45.4 percent are limited-English proficient.

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Twenty-six percent of the jurisdictions providing only bilingual written materials (N = 13) are covered for Asian-American languages, even though these jurisdictions have higher percentages of Asian VAP and LEP voters than the 16 Asian-American covered jurisdictions providing both oral and written language assistance. According to the 2000 Census, these 13 jurisdictions have an average Asian VAP of 17.0 percent, of whom 44.6 percent are limited-English proficient.

According to the 2000 Census, of the jurisdictions providing only bilingual written materials, the mean Hispanic VAP is 17.5 percent, with a mean LEP of 45.7 percent. This yields a Hispanic LEP among all voters in these jurisdictions of 8.0 percent.

The mean Asian VAP of these jurisdictions is 5.5 percent, with a mean LEP of 39.6 percent. This yields an Asian LEP among all voters in these jurisdictions of 2.2 percent.

The average percentages of both Spanish Heritage and Asian-American voting age citizens in all 50 jurisdictions are high enough to require full compliance with Section 203. Moreover, the absence of bilingual oral language assistance in these jurisdictions can be a significant deterrent to LEP voters seeking to participate in elections.

Jurisdictions Providing both Oral and Written Language Assistance

Figure 4.6 depicts the 60.4 percent of responding jurisdictions (N = 215) that report providing both oral and written language assistance.

Among jurisdictions providing both oral and written language assistance, 98.1 percent (N = 211) are covered for Spanish Heritage, with an average Hispanic VAP of 29.0 percent, of whom 39.0 percent are limited-English proficient; 12.1 percent (N = 26) are covered for Alaskan Native or American Indian languages, with an average VAP of 12.4 percent, of whom 20.5 percent are limited-English proficient; and 7.4 percent (N = 16) are covered for Asian-American languages, with an average VAP of 13.8 percent, of whom 43.3 percent are limited-English proficient.

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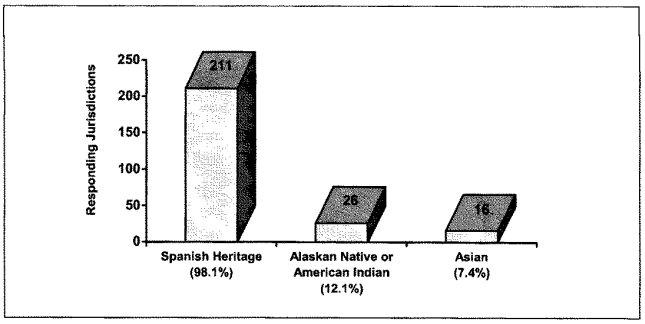
Figure 4.6: Jurisdictions Reporting Both Oral and Written Language Assistance Are Provided.



Sources: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions E-4 and F-1; 28 C.F.R. Part 55, Appendix (summarizing coverage determinations); and 2002 Census Determinations.

According to the 2000 Census, of the jurisdictions providing both oral and written language assistance, the mean Hispanic VAP is 28.6 percent, with a mean LEP of 38.7 percent. This yields a Hispanic LEP among all voters in these jurisdictions of 11.1 percent.

The mean Alaskan Native/American Indian VAP is 2.2 percent, with a mean LEP of 17.2 percent. This yields an Alaskan Native/American Indian LEP among all voters in these jurisdictions of 0.4 percent.

Among these jurisdictions, the mean Asian VAP of these jurisdictions is 2.2 percent, with a mean LEP of 35.7 percent. This yields an Asian LEP among all voters in these jurisdictions of 0.8 percent.

Scope of Oral Language Assistance Available for Election Activities

Slightly more than two-thirds of all jurisdictions (N = 237) reported that they provide at least some oral language assistance in public elections. *See* Figure 4.1. However, according to the jurisdictions, the scope of oral language assistance provided is limited.

Respondents were asked to identify whether they provide oral language assistance for fourteen types of common election activities, including voter registration, voter purges, polling place information, absentee and early voting, and casting a ballot on Election Day. Nearly all covered jurisdictions acknowledged that they do not provide oral language assistance at all stages of the election process.

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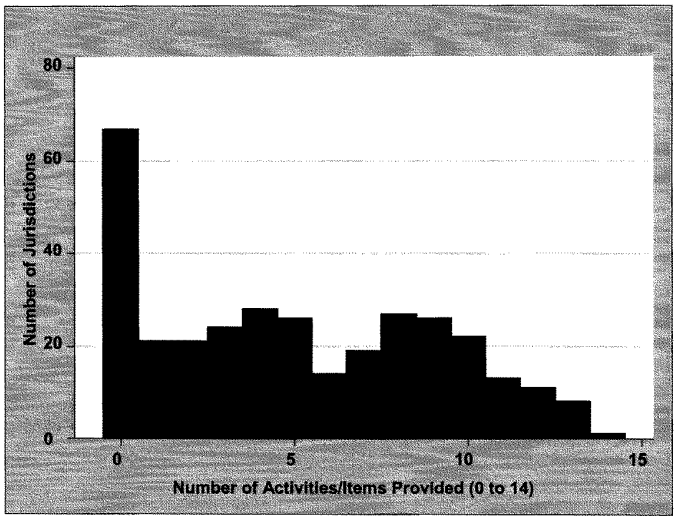
Figure 4.7 shows that of the 328 responding jurisdictions, only 32.9 percent (N = 108) report that they provide language assistance for more than half of all election activities.

Figure 4.7: Number of Election Activities for Which Jurisdictions Report Providing Oral Language Assistance.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question E-2.

Jurisdictions that translate more than half of all election materials are more likely to provide oral language assistance for election activities than those translating less than half of all election materials.

The absence of oral language assistance at all stages of the election process is inconsistent with Department of Justice guidelines. According to the guidelines, Section 203 "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 … of notifications, announcements, or other informational materials concerning the opportunity to register … the time, places and subject matters of elections, and the absentee voting process."[1] Nevertheless, less than one-third of responding jurisdictions report that they do so.

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Figure 4.8 summarizes the election activities for which jurisdictions report providing oral language assistance. Only four of the 14 activities were provided in the covered languages by at least half of the jurisdictions: reading the ballot, Election Day information, explaining ballot questions, and absentee voting. No activity was provided in the covered language by more than two-thirds of the jurisdictions.

The absence of oral language assistance may be explained in part by the lack of poll worker recruitment in the covered languages by three-quarters of all jurisdictions.

Figure 4.8: Election Activities for Which Jurisdictions Report Providing Oral Language Assistance.

Election Activity	Number Providing	Percent
Reading the ballot	199	61.6%
Election Day information	194	60.1%
Explaining ballot questions	164	50.8%
Absentee voting	163	50.5%
Early or mail-in voting	156	48.3%
Polling place locations and changes	150	46.4%
Checking in at the polling place	146	45.2%
Voter registration	132	40.9%
Voting machine instructions	104	32.2%
Poll worker recruitment	79	24.5%
Election results	69	21.4%
Candidate qualification	63	19.5%
Voter purges	23	7.1%
Other (specify)	15	4.6%

Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question E-2.

Moreover, a majority of the 323 responding jurisdictions report that oral language assistance is unavailable for activities likely to have the greatest impact upon persons attempting to vote for the first time. Only 40.9 percent indicate that assistance is available for voter registration. Similarly, only 46.4 percent of jurisdictions provide oral language

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assistance on polling place locations and changes, 45.2 percent for checking in at the polling place, and 32.2 percent provide voting machine instructions.

Only 7.1 percent of responding jurisdictions report providing oral language assistance for voter purges. The absence of assistance may result in the removal of minority language voters who are not informed of what they must do to remain on the active voter registration list. Lack of notice for purges is inconsistent with Section 203 and may violate the National Voter Registration Act (NVRA), or federal "Motor-Voter" law.[2]

Few jurisdictions reported providing oral language assistance for candidate qualification. Of 323 responding jurisdictions, only 19.5 percent (N = 63) have assistance available in covered languages for potential candidates. Nearly the same number of jurisdictions indicated that election results are provided in English-only.

High illiteracy rates may make it impossible for many minority language voters to utilize any bilingual written materials that may be available.[3] The absence of oral language assistance for these voters may prevent them from casting a meaningful ballot. Moreover, requiring an illiterate voter to rely upon written materials may constitute a "test or device" in violation of Section 201 of the Voting Rights Act.[4]

Bilingual Written Materials Provided by Jurisdictions

Approximately three-quarters of all jurisdictions (N = 265) reported that they provide at least some bilingual written materials for public elections. *See* Figure 4.1.

Respondents were asked to identify whether they provide bilingual written materials for 18 types of common election materials. These materials included ballots and voting materials, Election Day information and signage, voter registration forms, and other common types of election outreach and publicity.

Generally, jurisdictions report providing bilingual written materials for activities including those for which they do not provide oral language assistance. According to the results summarized in Figure 4.9, a majority of the 279 responding jurisdictions indicate that they provide bilingual versions of 13 types of written election materials.

However, less than one-fifth of the 279 responding jurisdictions (N = 55) reported that they used bilingual poll worker recruitment materials. The failure to provide bilingual poll worker publicity materials may exacerbate the general absence of oral language assistance.

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Question F-5 asked jurisdictions, "What, if any, written election materials are not available in the covered language(s)?" Several jurisdictions responded to this question by acknowledging that they do not provide required election materials in one or more covered languages that have written languages.

Figure 4.9: Type of Bilingual Written Materials Jurisdictions Report Providing.

Election Material	Number Providing	Percent
Sample ballots	254	91.0%
Ballots	229	82.1%
Early voting or mail-in voting materials	224	80.3%
Absentee ballots	222	79.6%
Instructions on provisional ballots	218	78.1%
Polling place signs	213	76.3%
Instructions on using voting machine or ballot	211	75.6%
Voters' rights or other information pamphlets	205	73.5%
Voter registration materials	201	72.0%
Election Day information	196	70.3%
Election Day forms (challenge paperwork, etc.)	185	66.3%
Publicity regarding polling place locations	172	61.7%
Communications from elections office	141	50.5%
Check-in information	96	34.5%
Internet or web-based information	59	21.2%
Election results	58	20.8%
Poll worker recruitment	55	19.7%
Other (please specify)	15	5.4%

Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question F-2.

Four jurisdictions report that they do not offer ballots, sample ballots, or provisional ballots in covered languages.[5] Four jurisdictions indicate that they do not offer instructions, polling place signs, and other Election Day materials.[6] Two jurisdictions do not offer voter registration and

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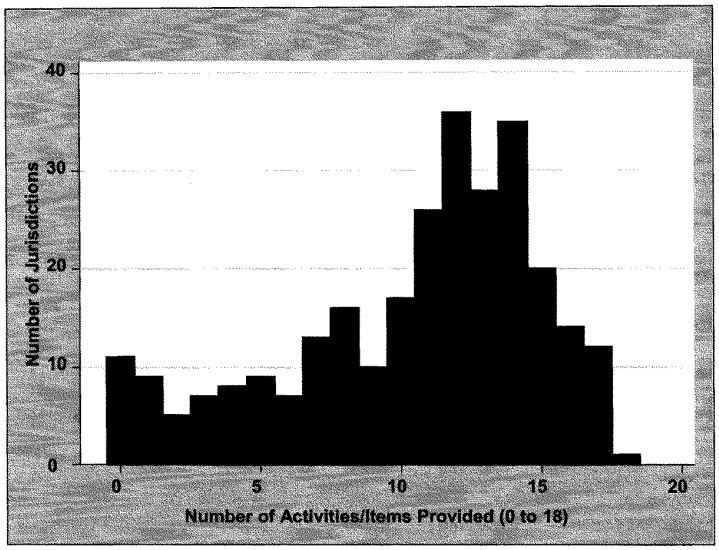
materials required by the NVRA.[7] One jurisdiction with an election office webpage acknowledged that it was not translated.[8] Seven jurisdictions report that they do not offer candidate qualifying information and forms in the covered languages.[9] Six jurisdictions note that they do not provide election results in the covered languages.[10]

Figure 4.10: Number of Bilingual Written Materials Jurisdictions Report Providing.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question F-2.

As depicted in Figure 4.10, of 284 responding jurisdictions, two-thirds (N = 189) report that they translate more than half of all election materials. The jurisdiction's population has no relationship to whether bilingual materials are provided.

Some jurisdictions report that they intend to provide required bilingual written materials in the future.[11] Other jurisdictions report they will not provide bilingual materials because of cost,[12] the failure of vendors to offer translation services,[13] technological issues,[14] or the use of bilingual poll workers to translate materials for voters.[15]

Eighteen respondents report that only Alaskan Native or American Indian languages are covered in their respective jurisdictions, and that bilingual written materials are not needed. Only one respondent

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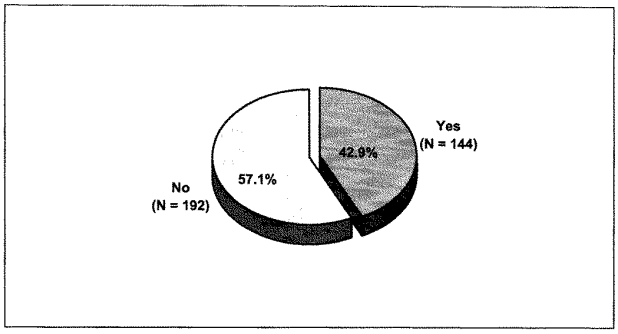
reports that bilingual materials had been requested for an American Indian language.

Bilingual Full-Time Election Workers

Question A-10 of the survey asked whether the jurisdiction employs at least one full-time employee who is fluent in a language besides English, regardless of whether it is a covered language. Figure 4.11 shows that of the 336 responding jurisdictions,[16] 57.1 percent (N = 192) report having no full-time employees fluent in another language.

Figure 4.11: Jurisdictions Reporting at Least One Full-Time Worker Fluent in Covered Language.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question A-10.

The percentage of jurisdictions with at least one full-time worker in a covered language is less than 42.9 percent. Respondents' answers to Question A-10 were correlated with the languages for which they are covered under either Section 4(f)(4) or Section 203 of the Voting Rights Act.

Figure 4.12 depicts the percentage of jurisdictions with at least one full-time worker fluent in a covered language. Of the 391 responding jurisdictions covered for one or more languages, 39.1 percent (N = 153) report having at least one full-time worker who is fluent in a covered language.[17]

Of the jurisdictions answering Questions A-9 and A-10, 299 are covered for Spanish. Among Spanish-covered jurisdictions, 55.8 percent (N = 167) do not employ a Spanish-speaking full-time worker. Among the 48 jurisdictions not covered for Spanish, 6.2 percent (N = 3) employ at least one full-time worker fluent in Spanish.

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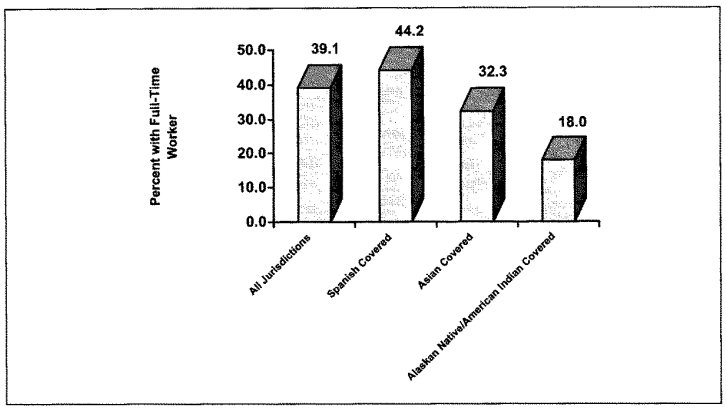
Sixty-one of the jurisdictions answering Questions A-9 and A-10 are covered for at least one Alaskan Native or American Indian language. Of these 61 covered jurisdictions, 81.9 percent (N = 50) have no full-time employees fluent in the covered Alaskan Native or American Indian language. One of the non-covered jurisdictions employs a full-time worker fluent in an Alaskan Native or American Indian language.

Figure 4.12: Percent of Jurisdictions Reporting at Least One Full-Time Worker Fluent in a Covered Language, by Covered Language Group.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question A-10.

Fifty-two of the responding jurisdictions are covered for an American Indian language but not an Alaskan Native language. Among these jurisdictions, 81.8 percent (N = 42) do not employ a full-time worker fluent in an American Indian language. Of the ten responding jurisdictions covered for an Alaskan Native language, only 10.0 percent (N = 1) report having a full-time employee fluent in a covered language.

Thirty-one of the jurisdictions answering Questions A-9 and A-10 are covered for at least one Asian language. Of these 31 jurisdictions, over two-thirds (N = 21) have no full-time employees fluent in an Asian language. Seven jurisdictions not covered for an Asian language report having a full-time worker fluent in one or more of those languages.

There is a strong positive relationship between the percentage of limited-English proficient voters and whether jurisdictions employ bilingual full-time workers in the covered languages.

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Jurisdictions employing at least one full-time, Spanish-speaking employee have a higher LEP on average than jurisdictions that do not. Of the responding jurisdictions with at least one full-time Spanish-speaking employee, the mean Spanish VAP is 31.5 percent, of which 37.9 percent is LEP, meaning that approximately 11.9 percent of all voters are LEP. By contrast, of the responding jurisdictions that do not employ at least one full-time Spanish-speaking employee, the mean Hispanic VAP is 17.4 percent, of which 37.5 percent is LEP, meaning that approximately 6.5 percent of all voters are LEP.

A similar pattern emerges for Alaskan Native and American Indian covered jurisdictions. Of the responding jurisdictions employing at least one full-time Native American or Alaskan Native-speaking employee, the mean Native language-speaking VAP is 31.3 percent, of which 20.9 percent is LEP, meaning that approximately 6.5 percent of voters are LEP. In comparison, of the responding jurisdictions that do not employ at least one full-time, Native American or Alaskan Native-speaking employee, the mean Native language-speaking VAP is 3.0 percent of which 14.3 percent is LEP, meaning that approximately 0.4 percent of all voters are LEP.

Likewise, jurisdictions employing at least one full-time Asian language-speaking employee have a higher LEP than jurisdictions that do not. Responding jurisdictions employing at least one full-time Asian language-speaking employee have a mean Asian-language VAP of 9.8 percent, of which 38.8 percent is LEP, meaning that approximately 3.8 percent of voters are LEP. On the other hand, of the responding jurisdictions that do not employ at least one full-time Asian language-speaking employee, the mean Asian-language VAP is 2.1 percent, of which 35.2 percent is LEP, meaning that 0.7 percent of the voters are LEP.

Bilingual Part-Time Election Workers

Question C-3 of the survey asked jurisdictions to estimate the percentage of part-time election workers who are fluent in a language besides English, and to specify the languages. Responding jurisdictions reported that an average of 12.2 percent of part-time workers are fluent in Spanish, 0.6 percent are fluent in an Alaskan Native or American Indian language, and 0.1 percent are fluent in an Asian language. However, the median percentages for part-time workers fluent in these language groups are substantially lower. Among responding jurisdictions, the median percentage of part-time workers fluent in Spanish is 2.0 percent, and the median percentages for Alaskan Native/American Indian and Asian languages is 0 percent.

It appears that the lower median percentages are caused by a small group of jurisdictions. The outlying one percent of Spanish-covered jurisdictions reported that 90 to 100 percent of their part-time employees are fluent in Spanish. Similarly, the outlying one percent of Alaskan Native/America Indian covered jurisdictions reported that 15 to 25

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percent of their part-time employees are fluent in a covered language. For Asian languages, the outlying one percent reported having 3.3 to eight percent of part-time employees fluent in an Asian language.

There is a strong relationship between the availability of bilingual part-time employees and coverage under either Section 4(f)(4) or Section 203. Among jurisdictions covered for Spanish, the mean percentage of part-time employees fluent in Spanish is 14.0 percent, compared to 0.5 percent for jurisdictions not covered for Spanish. Among jurisdictions covered for Alaskan Native or American Indian languages, 2.7 percent of part-time employees speak a covered language fluently, in contrast to 0.1 percent in jurisdictions not covered for those languages. Jurisdictions covered for an Asian language report that 1.0 percent of their part-time employees are fluent in an Asian language, compared to 0 percent for jurisdictions not covered for Asian languages.

There also is a strong positive relationship between the percentage of limited-English proficient voters and whether jurisdictions employ bilingual part-time workers in the covered languages.

Jurisdictions employing at least one part-time Spanish-speaking employee have a higher LEP on average than jurisdictions that do not. Of the responding jurisdictions with at least one part-time Spanish-speaking employee, the mean Spanish VAP is 29.0 percent, of which 38.9 percent is LEP, meaning that approximately 11.3 percent of all voters are LEP. By contrast, of the responding jurisdictions that do not employ at least one part-time Spanish-speaking employee, the mean Hispanic VAP is 19.5 percent, of which 41.9 percent is LEP, meaning that approximately 8.2 percent of all voters are LEP.

A similar pattern emerges for Alaskan Native and American Indian covered jurisdictions. Of the responding jurisdictions employing at least one part-time Native American or Alaskan Native-speaking employee, the mean Native language-speaking VAP is 29.7 percent, of which 15.5 percent is LEP, meaning that approximately 4.6 percent of voters are LEP. In comparison, of the responding jurisdictions that do not employ at least one part-time Native American or Alaskan Native-speaking employee, the mean Native language-speaking VAP is 7.4 percent, of which 13.7 percent is LEP, meaning that approximately 1.0 percent of all voters are LEP.

Likewise, jurisdictions employing at least one part-time Asian language-speaking employee have a higher LEP than jurisdictions that do not. Responding jurisdictions employing at least one part-time Asian language-speaking employee have a mean Asian-language VAP of 17.2 percent, of which 44.1 percent is LEP, meaning that approximately 7.6 percent of voters are LEP. On the other hand, of the responding jurisdictions that do not employ at least one full-time, Asian language-speaking employee, the mean Asian-language VAP is 13.1 percent, of which 40.2 percent is LEP, meaning that 5.3 percent of the voters are LEP.

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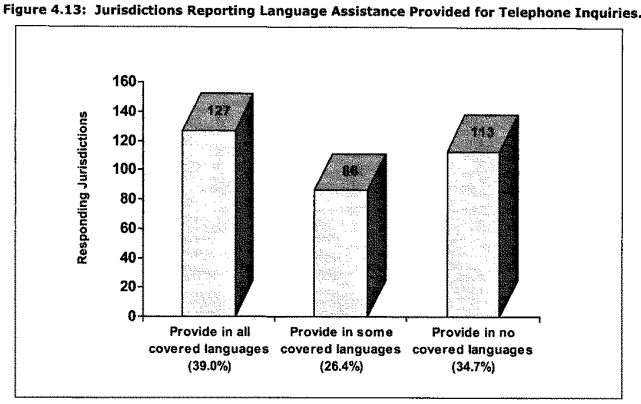
Availability of Language Assistance for Telephone Inquiries

Question D-1 of the survey asked respondents, "How many of the covered languages in your jurisdiction have someone fluent available for telephone inquiries?"

Responsive categories included "none," "some," and "all." Figure 4.13 shows that less than half of the 326 responding jurisdictions report providing assistance for telephone inquiries from voters in all of the covered languages: 39.0 percent (N = 127) provide assistance in all covered languages; 26.4 percent (N = 86) in some covered languages; and 34.7 percent (N = 113) in none of the covered languages.

Figure 4.13: Jurisdictions Reporting Language Assistance Provided for Telephone Inquiries.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question D-1.

Figure 4.1 shows that two-thirds of jurisdictions report that they provide oral language assistance. However, Figure 4.13 demonstrates that only half of the jurisdictions providing oral language assistance, or one-third of all jurisdictions, do so for all covered languages.

As discussed above, jurisdictions are more likely to provide oral language assistance for Spanish than Alaskan Native, American Indian, and Asian languages. Nevertheless, one-quarter of all Spanish-covered jurisdictions do not provide oral language assistance to voters.

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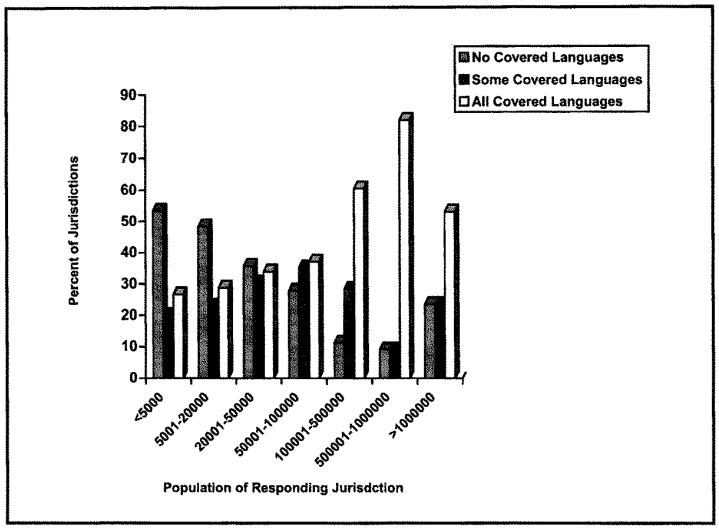
The relationship between the availability of telephone assistance and jurisdiction size is depicted in Figure 4.14.

Figure 4.14: Availability of Telephone Assistance, by Population.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question D-1 and 2000 Census, STF-1.

Figure 4.14 shows the percentage of jurisdictions that provide no telephone assistance decreases as the population of the jurisdiction increases. Conversely, the percentage of jurisdictions that provide telephone assistance in some of the covered languages increases as the jurisdiction's population increases until the population is greater than 100,000, when the percentage starts to decline.

The percentage of jurisdictions that report providing telephone assistance in all of their covered languages slowly increases as population size increases until the population is greater than 100,000, when there is a large increase in the percentage of available telephone assistance.

Similarly, there is an interesting pattern for jurisdictions with populations greater than one million people. For these jurisdictions, there is a notable increase in both the "none" and "some" categories, while there is also a decrease in the "all" category.

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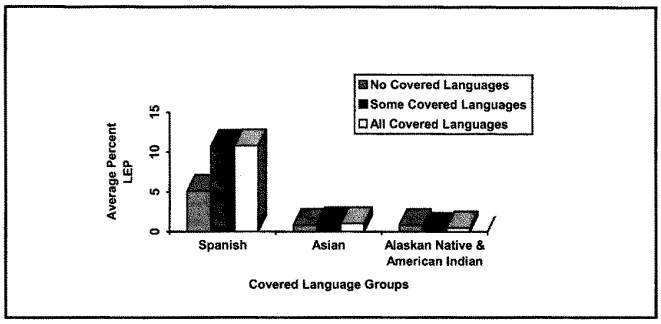
Jurisdictions with a higher percentage of limited-English proficient voters are more likely to provide telephone assistance in the covered languages. The overall LEP among each population group is depicted in Figure 4.15.

Figure 4.15 demonstrates that for jurisdictions that do not provide telephone assistance, the Spanish LEP is lower than the Spanish LEP for jurisdictions that do provide at least some telephone assistance. The same effect is not as notable for Asian-speaking LEP and Native-speaking LEP. Instead, while Asian-speaking LEP increases only slightly as the availability of telephone assistance increases, Native-speaking LEP actually decreases. It is unclear what is causing these variations.

Figure 4.15: Availability of Telephone Assistance in Covered Languages, by LEP of Covered Language Groups.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question D-1 and 2000 Census, STF-3 and STF-4.

Among responding jurisdictions that do not provide telephone assistance in any of the covered languages, the mean Hispanic VAP is 13.9 percent of which the LEP is 36.6 percent, meaning that 5.1 percent of Hispanic voters are LEP. For these same jurisdictions, the mean Alaskan Native/American Indian VAP is 7.1 percent of which the LEP is 11.5 percent, with an overall LEP of 0.8 percent among Alaskan Native/American Indian voters. In these jurisdictions, the mean Asian VAP is 2.2 percent of which the LEP is 34.9 percent, meaning that 0.8 percent of Asian voters are LEP.

For responding jurisdictions that provide telephone assistance in some of the covered languages, the mean Spanish-speaking VAP is 27.0 percent of which the LEP is 39.5 percent, meaning that 10.7 percent of Hispanic voters are LEP. Among this same group of jurisdictions, Alaskan

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Native/American Indian VAP is 2.1 percent, of which the LEP is 16.1 percent, meaning that 0.3 percent of Alaskan Native/American Indian voters are LEP. In these jurisdictions, the mean Asian VAP is 2.7 percent, of which the LEP is 36.9 percent, meaning that 1.0 percent of Asian voters are LEP.

For responding jurisdictions that provide telephone assistance in all of their covered languages, the mean Hispanic VAP is 29.1 percent, of which 37.1 percent is LEP, yielding a 10.8 percent LEP among Hispanic voters. Among these jurisdictions, the mean Alaskan Native/American Indian VAP is 2.7 percent, of which the 16.7 percent is LEP, meaning that 0.5 percent of Alaskan Native/American Indian voters are LEP. For these same jurisdictions, the mean Asian VAP is 2.9 percent, of which 35.7 percent is LEP, meaning that 1.0 percent of Asian voters are LEP.

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[1] 28 C.F.R. § 55.15.

[2] 42 U.S.C. §§ 1973gg, *et seq.*

[3] *See* Chapter 3 and Tables A-1 through A-4.

[4] Section 201 defines a "test or device" as including "any requirement that a person as a prerequisite for voting or registering for voting demonstrate the ability to read, write, understand, or interpret any matter." 42 U.S.C. § 1973aa(b).

[5] Respondents 350, 395, 412, & 714.

[6] Respondents 395, 441, 451, & 639.

[7] Respondents 350 & 672.

[8] Respondent 441.

[9] Respondents 350, 571, 760, 833, 839, 857, & 901.

[10] Respondents 299m 441, 639, 709, 786, & 987.

[11] Respondents 431 & 839.

[12] Respondents 486, 561, 760, & 888.

[13] Respondents 672 & 833.

[14] Respondents 709 & 786.

[15] Respondent 421.

[16] The number of jurisdictions responding to Questions A-9 and A-10 varies because some respondents did not answer both questions. The number of responding jurisdictions is provided with the accompanying data.

[17] The 391 jurisdictions is the aggregate of the data depicted in Figure 4.12. If a jurisdiction is covered for two distinct language groups (e.g., Spanish Heritage and American Indian), it is counted for each of those language groups. This approach is used to better depict whether a bilingual full-time worker is available for each of the covered language groups. It does not depict whether a bilingual full-time worker is available in each language in the covered language group (e.g., Chinese, Filipino, Japanese, Korean, and Vietnamese for Asian language coverage), and therefore still may overestimate the extent of full-time bilingual workers available.

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Chapter 5:
The Quality of Language Assistance in Public Elections

Summary of Findings on the Quality of Language Assistance

Respondents were asked a variety of questions to assess the quality of language assistance offered to voters. Their responses indicate that:

- 61.8 percent of responding jurisdictions report that they do not use bilingual coordinators to act as a liaison between the elections office and voters in the covered language groups.
- Jurisdictions with larger populations are more likely to use bilingual coordinators than less populated jurisdictions.
- Over two-thirds of responding jurisdictions report that they do not confirm the language abilities of part-time election workers who claim to speak one or more covered languages.
- Nearly two-thirds of responding jurisdictions report that they do not provide any training on providing assistance in the covered languages.
- Approximately 90 percent of responding jurisdictions report using voter assistance practices that do not comply Section 208 of the Voting Rights Act.
- Most jurisdictions that provide bilingual written election materials report using full-time election workers or professional services to translate those materials into the covered languages.
- Approximately two-thirds of responding jurisdictions report that they inform voters in the covered languages about the availability of language assistance for voting activities.
- Nearly two-thirds of responding jurisdictions report that they do not consult with community organizations about providing assistance in the covered languages.

Quality Questions and Response Rate

Several questions throughout the survey were directed at the quality of language assistance offered to voters in public elections. In Section B of the survey, jurisdictions were asked whether they use bilingual coordinators, and if so, how coordinators are recruited and what role they play in providing language assistance. Section D asked respondents about recruitment, training, and confirmation of language skills of their part-time Election Day workers. Jurisdictions were asked in Section E for information about how they inform voters about the availability of language assistance and who is permitted to provide assistance in the voting booth. Sections F and G asked for information about outreach to

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members of the covered language groups about the jurisdiction's language assistance program.

Responses to these questions were correlated with 2000 Census data including the jurisdiction's population and percentage of LEP voters in each of the covered language groups. The response rates for each question are provided below.

Why the Quality of Language Assistance Should Be Assessed

Each covered jurisdiction must "determine what actions by it are required for compliance with the requirements of section 4(f)(4) and section 203(c)."[1] Compliance is assessed by an "effectiveness" standard, which ensures that a language assistance program "is designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them."[2] Covered jurisdictions need to make certain that election information, materials, and announcements are as readily available in the covered language(s) as they are in English, and must ensure public awareness about the jurisdiction's minority language assistance program.[3] Assessing the quality of language materials, assistance, outreach, and publicity is essential to determine whether jurisdictions are fully complying with the language assistance provisions of the Voting Rights Act.

The Department of Justice offers guidance on how to comply with Section 203. Because election systems and minority language needs vary widely between covered jurisdictions, the Department "has identified both guiding principles and practical suggestions for local election officials to pursue with their local language minority communities to serve them effectively and efficiently."[4] These guidelines suggest that election officials talk to a broad range of organizations and individuals in the minority community to identify the most effective program possible. This Chapter discusses several common ways in which covered jurisdictions may assess and improve the quality of their language assistance programs.

Bilingual Coordinators and their Role in Improving Quality

Bilingual coordinators act as a liaison between election officials and members of covered language groups to improve the availability and quality of language assistance that is provided to voters who need it. Bilingual coordinators may have responsibilities such as:

- Training election officials and poll workers about the jurisdiction's language assistance program and federal, state, and local requirements for providing assistance.
- Recruiting bilingual voters to serve as poll workers and confirming their spoken and written language abilities.
- Identifying locations where voters require language assistance and ensuring adequate bilingual poll worker staffing on Election Day.

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- Facilitating voter registration drives for members of the covered language groups.
- Recruiting bilingual volunteers or employees who can be available to provide language assistance for inquiries made in person or by telephone, e-mail, mail, or other medium.
- Determining whether members of the covered language groups have special needs, such as distinct dialects, difficulty getting to polling places, and illiteracy in the covered language, and addressing those needs.
- Engaging in outreach and publicity with members of covered language groups about the jurisdiction's language assistance program.
- Ensuring written voting materials are accurately translated into the covered languages and soliciting input from community organizations and members of covered language groups about the quality of translations.
- Working with local media outlets to get election information out to the covered language groups in the most effective manner, including television, radio, print, and Internet sources.
- Conducting new voter training in the covered languages, including voting machine demonstrations, voter rights information, and polling place locations.
- Establishing a program for receiving and investigating complaints from voters in the covered language groups about the quality of the language program and their treatment at the polls.
- Troubleshooting Election Day problems and creating a quality control system for the language assistance program.

Bilingual coordinators can be volunteers or paid employees. They should be fluent in both English and the covered language. It is also helpful if they have established contacts in the covered language groups. They should be fully trained on all election procedures.

Bilingual coordinators are not required by statute or regulation. However, jurisdictions that use them are much more likely to comply with the language assistance provisions of the Voting Rights Act than those that do not. Therefore, bilingual coordinators are routinely required in consent decrees and judicial remedies for Section 203 violations.[5]

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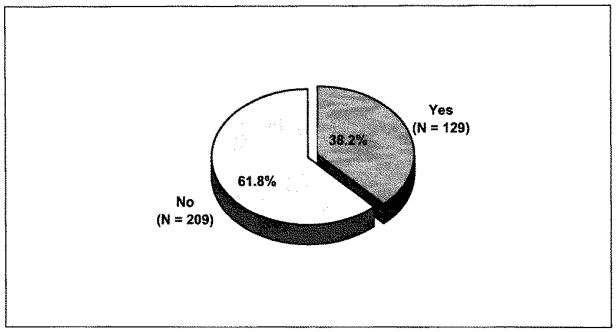
Bilingual Coordinator Use Reported by Jurisdictions

Question B-1 asked jurisdictions, "Does your jurisdiction have any bilingual coordinators who are responsible for acting as liaisons between the election office and language minority groups (such as Spanish-speaking voters, etc.)?" Figure 5.1 depicts that of the 338 responding jurisdictions, 38.2 percent (N = 129) use bilingual coordinators, while 61.8 percent (N = 209) do not.

Figure 5.1: Jurisdictions Reporting Bilingual Coordinators Used for Election Activities.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question B-1.

Of the jurisdictions that report using bilingual coordinators, 91.5 percent (N = 118) are covered for Spanish Heritage; 19.4 percent (N = 25) are covered for Alaskan Native or American Indian languages; and 12.4 percent (n = 16) are covered for Asian languages. Of the jurisdictions that report that they do not use bilingual coordinators, 82.3 percent (N = 172) are covered for Spanish Heritage; 16.8 percent (N = 35) are covered for Alaskan Native or American Indian Languages; and 7.7 percent (N = 16) are covered for Asian languages.

There is little difference between the LEP of jurisdictions that use bilingual coordinators and those that do not. In jurisdictions using bilingual coordinators, the average percent of voters who are LEP in the covered languages is 38.4 percent among voters; 15.4 percent among Alaskan Native and American Indian voters; and 34.6 percent among Asian voters. By comparison, in jurisdictions that do not use bilingual coordinators, the average percent of voters who are LEP in the covered languages is 37.0 percent among Hispanic voters, 14.4 percent among Alaskan Native and American Indian voters; and 36.7 percent among Asian voters.

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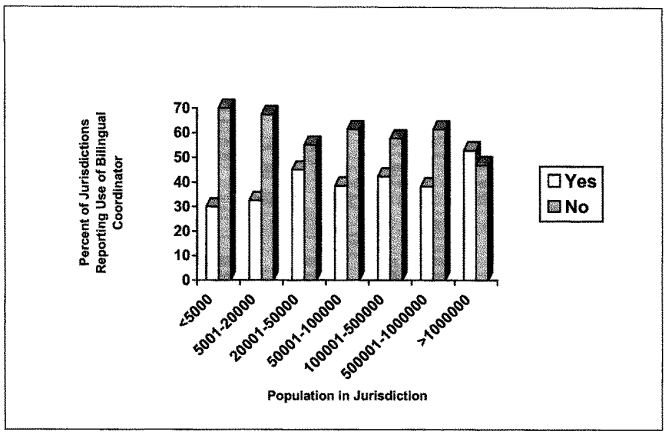
Figure 5.2 depicts the populations of jurisdictions that report using bilingual coordinators.

Figure 5.2: Percent of Jurisdictions Reporting Use of Bilingual Coordinators, by Population.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question B-1 and 2000 Census, STF-1.

There is a positive correlation between the population of covered jurisdictions and whether they report using bilingual coordinators. Generally, jurisdictions with larger populations are more likely to use bilingual coordinators than those with smaller populations. Bilingual coordinator use is highest among jurisdictions with populations of more than one million. Specifically, of the 17 responding jurisdictions with over one million people, 52.9 percent (N = 9) report using a bilingual coordinator. By contrast, of the 50 smallest jurisdictions with populations of 5,000 people or less, only 30 percent (N = 15) report using bilingual coordinators.

Bilingual Coordinator Status

Question B-3 asked jurisdictions to best describe the status of bilingual coordinators. If more than one category was applicable, jurisdictions were asked to specify the number of bilingual coordinators in each category. Out of the 129 jurisdictions reporting that they use a bilingual coordinator, 89.1 percent (N = 115) identified the status of their coordinator.

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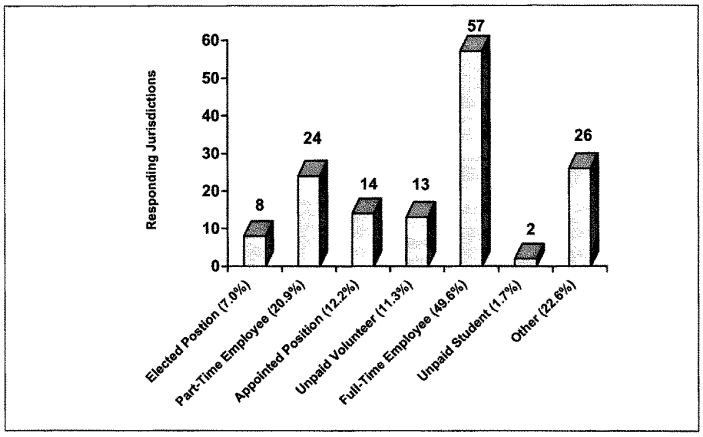
Figure 5.3 depicts that while slightly more than one-third (38.2 percent) of the jurisdictions report that they use bilingual coordinators, 49 percent (N = 57) of those jurisdictions use full-time employees instead of part-time employees or volunteers.

The use of full-time employees may be the result of several factors, such as: election offices with more full-time staff, particularly in more populous jurisdictions; requirements to employ full-time bilingual coordinators under consent decrees or other court orders; requirements under state or local law; or jurisdictions searching for professionally trained bilingual coordinators who have the time to manage language assistance programs.

Figure 5.3: Status of Bilingual Coordinators in Jurisdictions that Report Using Them.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question B-3.

Among the remaining jurisdictions, 20.9 percent (N = 24) use part-time employees; 12.2 percent (N = 14) use bilingual coordinators appointed to the position; 11.3 percent (N = 13) use unpaid volunteers; 7.0 percent (N = 8) use bilingual coordinators who are elected to the position; and 1.7 percent (N = 2) use unpaid students. In addition, 22.6 percent (N= 26) of jurisdictions marked "other" to describe the status of their bilingual coordinators.

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Methods Used to Recruit Bilingual Coordinators

Question B-4 asked jurisdictions to identify the methods used to recruit bilingual coordinators. The question offered twelve options, and jurisdictions were instructed to select all that applied. Of the 116 responding jurisdictions, 72 jurisdictions selected one method, 23 jurisdictions selected two methods, 12 jurisdictions selected three methods, six jurisdictions selected four methods, two jurisdictions selected five methods, and one jurisdiction selected six methods. Seventeen jurisdictions did not report any method of recruiting bilingual coordinators.

Figure 5.4: Methods Jurisdictions Report They Use to Recruit Bilingual Coordinators.

Recruitment Method	Number	Percent
Direct solicitation	48	41.4%
Other (specify)	32	27.6%
Community organizations	30	25.9%
Government or school employees	23	19.8%
Political parties	21	18.1%
Newspaper advertisements	18	15.5%
Election materials mailed to voters	7	6.0%
Television advertisements	4	3.5%
Translation agencies	3	2.6%
Temporary services	3	2.6%
Radio advertisements	2	1.7%
Flyers	0	0.0%

Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question B-4.

Figure 5.4 depicts the wide range of methods that jurisdictions use to recruit bilingual coordinators. Direct solicitation and use of community organizations are the most common methods, although they are used by less than half of all jurisdictions. Community-based recruitment may make it more likely that bilingual coordinators who are hired understand the needs of covered language groups. Furthermore, recruiting with the assistance of community organizations may facilitate the ability of bilingual coordinators to work with those organizations after they are retained.

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Responsibilities of Bilingual Coordinators

Jurisdictions were asked in Question B-5 to identify the responsibilities of their bilingual coordinators. The question offered eleven options, and jurisdictions were instructed to select all that applied. Of the 125 responding jurisdictions, 26 jurisdictions selected one option, 21 jurisdictions selected two options, 21 jurisdictions selected three options, 12 jurisdictions selected four options, nine jurisdictions selected five options, 11 jurisdictions selected six options, 10 jurisdictions selected seven options, six jurisdictions selected eight options, four jurisdictions selected nine options, and five jurisdictions selected ten options.

Figure 5.5: Reported Bilingual Coordinator Responsibilities.

Responsibility	Number	Percent
Voter instruction	87	69.6%
Translation of written materials	84	67.2%
Election Day troubleshooting	84	67.2%
Preparing written election materials	43	34.4%
Recruiting poll workers	42	33.6%
Community outreach	37	29.6%
Training poll workers	35	28.0%
Media liaison	32	25.6%
Training other election officials	24	19.2%
Compliance with court order or consent decree	13	10.4%
Other (specify)	13	10.4%

Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question B-5.

Figure 5.5 depicts the bilingual coordinator responsibilities identified by responding jurisdictions. Approximately two-thirds of responding jurisdictions report that their bilingual coordinators provide voter instruction, Election Day trouble shooting, and translate written election materials. However, approximately one-third or fewer jurisdictions use bilingual coordinators to recruit and train poll workers, engage in community outreach, or prepare written materials such as voter education guides. It appears that jurisdictions are underutilizing the knowledge, experience, and contacts bilingual coordinators have of the covered language groups.

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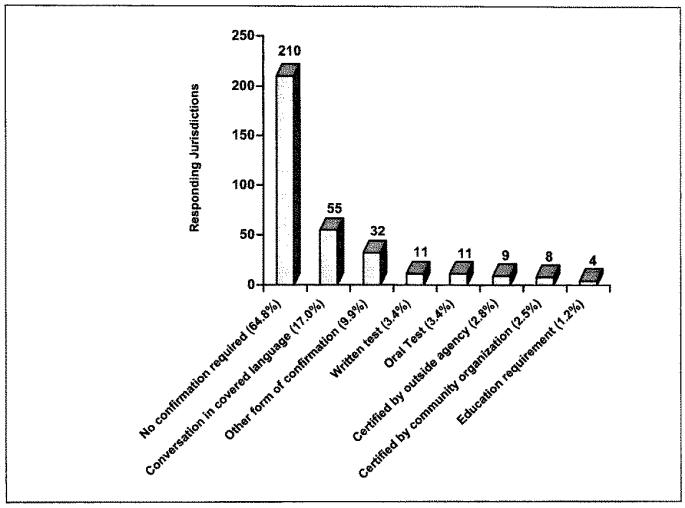
Confirmation of Poll Worker Language Abilities

Even where oral language assistance is provided at the polls, it may be impaired if bilingual election workers are not actually fluent in the covered languages. Question C-5 asked how jurisdictions confirm the language abilities of part-time election workers. The question offered eight options, and jurisdictions were instructed to select all that applied. Of the 324 responding jurisdictions, all but 22 selected only one option.[6]

Figure 5.6: Manner in Which Jurisdictions Report Confirming Language Abilities of Part-Time Election Workers.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question C-5.

Figure 5.6 depicts that nearly two-thirds (N = 210) of the 324 responding jurisdictions do not require any confirmation of the language abilities of part-time poll workers. Part-time workers may overestimate or inaccurately report their oral or written language abilities.[7] Where this occurs, language assistance may be unavailable at polling places where election officials believe it is being provided.

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Among the minority of responding jurisdictions that report confirming language abilities, conversations with the worker in the covered language is the most common method used. Of the 114 jurisdictions that confirm language abilities, 48.2 percent (N = 55) employ this method. Bilingual full-time election workers and bilingual coordinators may perform this method of confirmation, at no additional expense to the jurisdiction other than the time that it takes them to do so. Nevertheless, 83.0 percent of all 324 responding jurisdictions fail to use this confirmation method.

A small number of jurisdictions confirm language abilities through an oral or written exam (N = 11 for each), outside agency (N = 9), community organization (N = 8), or through an education requirement (N = 4). Approximately ten percent of the 324 responding jurisdictions (N = 32) report that they use some "other" method of confirmation.

Among the respondents checking "other," eleven indicate that they confirm the language abilities of part-time election workers by asking the election worker about his or her language abilities or that the language abilities are self-reported by the election worker or another person.[8] For example, one respondent replied, "They tell me (if I ask) if they can speak [the covered language]."[9] Relying upon the self-reported abilities of the part-time workers is not an independent means of confirmation, and places these eleven jurisdictions in the same category as the 210 jurisdictions reporting that no confirmation is required. As a result, it appears that 66.2 percent (N = 221) of jurisdictions require no confirmation.

Seven respondents indicate that part-time election workers are hired by local election officers or by another office or jurisdiction subsequently responsible for confirming the workers' language abilities.[10] Six respondents report that language abilities are confirmed by their own personal knowledge of the election workers' language abilities.[11] Two respondents report that other election officials test part-time election workers to confirm their language abilities.[12] Two respondents indicate that a tribal government or organization confirms the language abilities of part-time election workers fluent in Alaskan Native or American Indian languages.[13]

Frequency and Content of Poll Worker Training

Questions C-6 and C-7 of the survey asked jurisdictions to describe the frequency and content of the training that is provided to part-time election workers.

Responding jurisdictions generally provide regular training for poll workers. Of the 316 responding jurisdictions, 67.4 percent (N = 221) require a training session before each election, 19.2 percent (N = 63) require annual training sessions, 7.6 percent (N = 25) "other," and 6.4 percent (N = 21) do not any provide training. Most jurisdictions report that they train part-time election workers before each election.[14]

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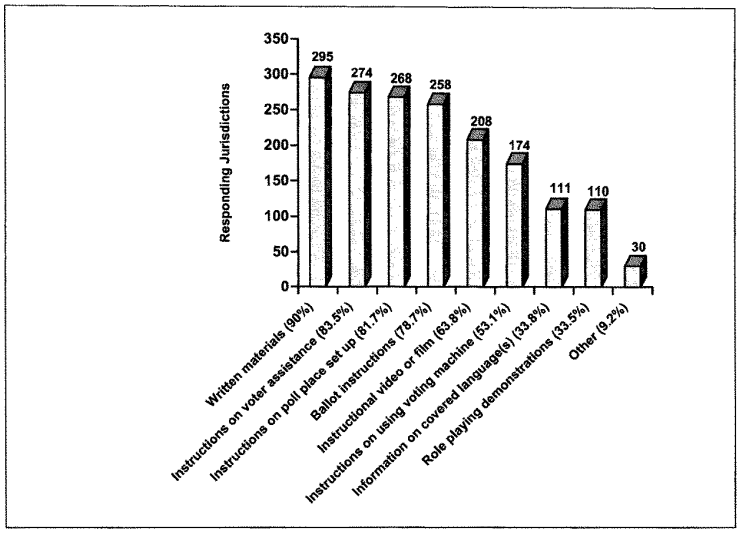
Question C-7 asked jurisdictions to identify the content of poll worker training. The question presented nine options and election officials were asked to select all that applied. Most of the 328 responding jurisdictions selected more than one option.[15]

Figure 5.7: Type of Training Jurisdictions Report Providing to Part-Time Election Workers.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question C-7.

Two-thirds of the 328 respondents (N = 217) report that their poll worker training does not include information on the languages covered in the jurisdiction. This number may be due to the lack of information included about language assistance in instructional videos, which are used by 63.8 percent (208 jurisdictions) of all respondents. In several cases, jurisdictions report that videos are provided by the state's chief elections officer and do not include information about language assistance. Furthermore, the absence of training may be attributable in part to the failure of two-thirds of jurisdictions using bilingual coordinators to include them in election official training.[16]

Furthermore, two-thirds of responding jurisdictions (N = 110) report that they do not use role-playing demonstrations as part of their poll worker training. Role-playing can provide an effective way to educate poll workers on common problems experienced by LEP voters in the

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covered language groups, such as problems checking in, locating their name on the voter registration list (a common problem where voters often use more than one surname), voting machine instructions, and assistance. Role-playing also allows poll workers to observe first hand the proper way to treat voters and respond to inquiries.

A little more than half of responding jurisdictions (N = 174) provide training on how to use the voting machine. The absence of such training can make it difficult for all poll workers, including bilingual poll workers, to provide assistance to first-time voters or voters using new voting equipment.

Thirty jurisdictions say they provide some "other" form of training. Among these jurisdictions, 10 report using Power Point presentations,[17] six report using hands-on exercises,[18] and two report using audio tapes, CDs, or other media.[19]

Voter Assistance Training and Failure to Comply with Section 208 of the Voting Rights Act

Although 83.5 percent of jurisdictions (N = 274) report providing training to poll workers on voter assistance,[20] that training does not necessarily include accurate training on federal requirements. Question E-6 asked jurisdictions, "Who of the following may accompany voters who need assistance in the voting booth?" Jurisdictions could select one or more of the nine choices provided.[21]

Section 208 of the Voting Rights Act provides that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice," except for the voter's employer or union representative.[22] Section 208 provides nationwide coverage, independent of the language assistance provisions. Unlike Section 203, Section 208 does not require that a jurisdiction provide language assistance to voters who need it. On the other hand, Section 208 compliments the language assistance provisions by describing the extent to which jurisdictions must permit voters to receive assistance, regardless of whether the jurisdiction has an affirmative obligation under Section 203 to provide it.[23]

None of the responding jurisdictions selected the "none" option, indicating that all of the responding jurisdictions report allowing at least some form of assistance in the voting booth. However, only 10.3 percent (N = 27) of the 263 responding jurisdictions report voter assistance practices that are at least as protective as Section 208: 1.9 percent (N = 5) correctly stated the federal standard; and 8.4 percent (N = 22) permit voters to receive assistance from their person of choice, even if it falls into one of the two exceptions in Section 208.

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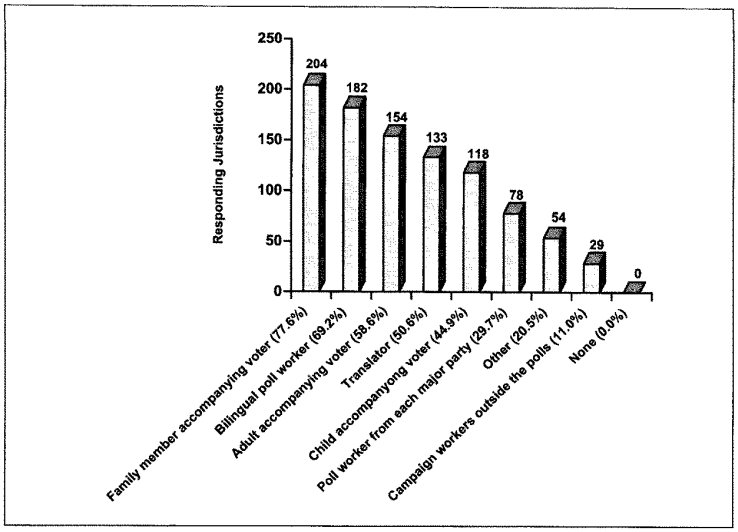
Figure 5.8 depicts the persons reportedly allowed by jurisdictions to provide assistance in the voting booth.

Figure 5.8: Persons Whom Jurisdictions Report Are Allowed to Provide Assistance in the Voting Booth.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question E-6.

It appears that in many cases, these voter assistance practices are the result of jurisdictions complying with state laws that are more restrictive than Section 208 allows. For example, over half of all responding jurisdictions report that they do not permit voters to receive assistance from their own children, which parallels requirements that only eligible voters are qualified to be poll workers. Nevertheless, minors frequently are fully capable of providing effective assistance (whether language or otherwise) to their parents.

Only 11 percent of responding jurisdictions (N = 29) permit voters to receive assistance from campaign workers. The reluctance of many jurisdictions may be due to concerns about voting fraud or electioneering by campaign workers in the polls. Nevertheless, under Section 208, a voter is entitled to receive assistance from a campaign worker as long as it is the voter's choice. Concerns about assistance from these individuals may be addressed by observing the manner in which assistance is provided.

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Approximately 30 percent of responding jurisdictions (N = 81) indicate that bilingual poll workers are not permitted to provide assistance to voters in the voting booth. Similarly, about one-half of responding jurisdictions (N = 130) do not allow a voter to receive assistance in the voting booth from a translator. In some cases, the failure to permit assistance from these individuals is due to requirements that assistance only be provided by certain election officials such as a presiding judge.[24]

Approximately 90 percent of responding election officials identify voter assistance measures that are more restrictive than Section 208. As a result, it is likely that poll workers in those jurisdictions are not receiving voter assistance training that accurately states federal requirements. Restrictions on voter assistance under Section 208 have a correspondingly negative impact on the ability of voters to receive language assistance under Section 203.

Translation of Written Election Materials

Justice Department guidelines describe the importance of translations in assessing the quality of materials in the covered languages:

> 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.[25]

The Department's Section 203 brochure further explains, "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 election officials to provide a translation that local voters actually can use."[26]

Question F-3 asked jurisdictions, "Who of the following are involved in translating written election materials from English to the covered languages?" The question presented six options and asked jurisdictions to check all that applied. Most of the 256 responding jurisdictions selected two or fewer options.[27]

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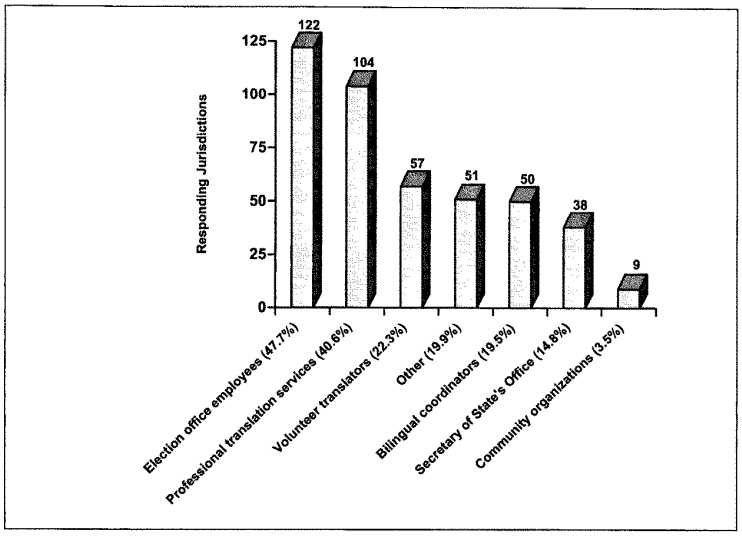
Figure 5.9 depicts that less than a quarter of responding jurisdictions report that bilingual coordinators or community organizations are involved in translating written election materials.

Figure 5.9: Persons Jurisdictions Report are Involved in Translating Written Election Materials.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question F-3.

Of the 51 jurisdictions that selected "other,"[28] most provided responses that fell into one of the options included on the survey.[29] Six jurisdictions report using computer or Internet translation programs. Four jurisdictions report using newspapers for the translation of written election materials. Three jurisdictions report using advisory committees or outreach to members of the covered language groups. One jurisdiction reports using school employees.

Nearly half of responding jurisdictions (N = 122) report using election office employees to translate written materials. Election officials may be more familiar with election requirements than others involved in translating election materials. However, the failure of most jurisdictions to include members of the covered language group in the translation process likely has a negative impact on the quality of written translations.

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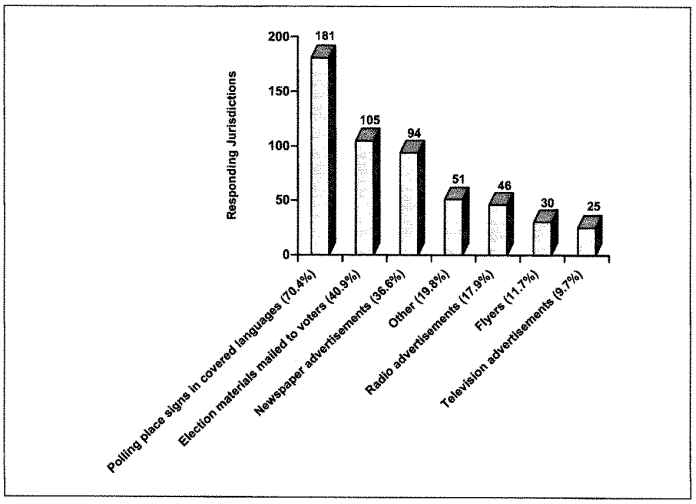
Publicity About the Availability of Language Assistance

The Justice Department's guidelines emphasize the importance of publicizing the availability of language assistance in public elections:

> 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 organizations.[30]

In summary, it is difficult for language minority voters to use language assistance if they are unaware it is available.

Figure 5.10: Methods Jurisdictions Report Using to Inform Voters About Language Assistance Availability.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question E-3.

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Question E-3 of the survey asked jurisdictions, "How are voters informed about the availability of oral language assistance?" The question presented seven options and asked jurisdictions to check all that applied. Three-quarters of the 257 responding jurisdictions selected two or fewer options.[31]

Figure 5.10 depicts the responses. Polling place signage is the most common method of informing voters about language assistance, with 70.4 percent of responding jurisdictions (N = 181) reporting that they use that method. Jurisdictions also report informing voters about the availability of language assistance through web advertisements or the Internet,[32] community organizations or community centers,[33] public service announcements,[34] and in election materials provided in the covered languages.[35]

A majority of jurisdictions report that they do not inform voters about the availability of assistance in the covered languages prior to elections. Several respondents indicate that voters are not told about language assistance until they arrive at their polling place on Election Day.[36]

Many jurisdictions report that they do not actively publicize the availability of language assistance. Eight jurisdictions report providing oral language assistance upon voter request.[37] For example, one respondent wrote, "They either come in or are one the phone and say they cannot speak English, and we get the person who speaks [the covered language] to help them"[38] Two jurisdictions report that voters "are not"[39] informed except by "word of mouth."[40] Two jurisdictions report that no publicity is necessary because it is "common knowledge."[41] One jurisdiction reports that it only publicizes the availability of language assistance in "election worker training," and does not inform voters who do not serve as poll workers.[42]

Jurisdictions that do not inform voters of the availability of oral language assistance may decrease participation among language minority voters who are unaware that they can receive help at the polls.

Outreach to Members of the Covered Language Groups

The Department of Justice stresses the importance of engaging in outreach to community organizations and members of the covered language groups to ensure that effective language assistance is provided:

> The cornerstone of every successful [language assistance] 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

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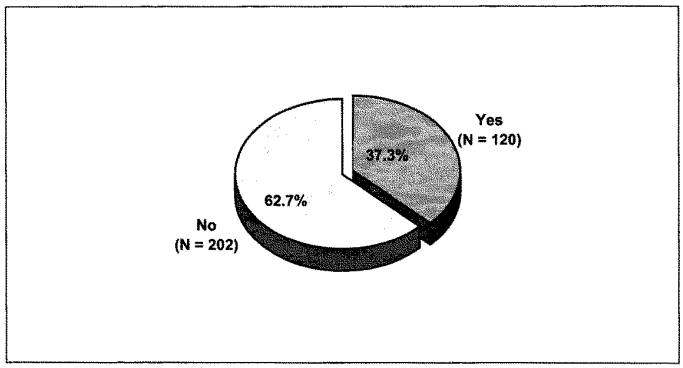
community and those who work with it regularly. Election officials should talk to them.[43]

Question G-1 of the survey asked jurisdictions whether they "consult with community organizations and/or individuals about providing assistance in elections in the covered language(s)?" Figure 5.11 depicts that of the 322 responding jurisdictions, only 37.2 percent (N = 120) report consulting with community organizations; the remaining 62.7 percent (N = 202) do not.

Figure 5.11: Jurisdictions Reporting Consultation with Community Organizations or Individuals.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-1.

Jurisdictions that consult with community organizations in the preparation of election assistance in the covered languages are more likely to have a better understanding of the needs of minority language voters. Consulting with community organizations also may be one non-controlling factor that a jurisdiction has taken steps to comply with Section 203.[44]

Question G-1a of the survey asked jurisdictions, "Which of the following does your jurisdiction consult with in regards to providing assistance in the covered language?" The question presented six options and asked jurisdictions to check all that applied. Of the 113 responding jurisdictions, 30.1 percent (N = 34) selected one option, 24.8 percent (N = 28) selected two options, 21.2 percent (N = 24) selected three options, 6.2 percent (N = 7) selected four options, 13.3 percent (N = 15) selected five options, and 4.4 percent (N = 5) selected all six options.

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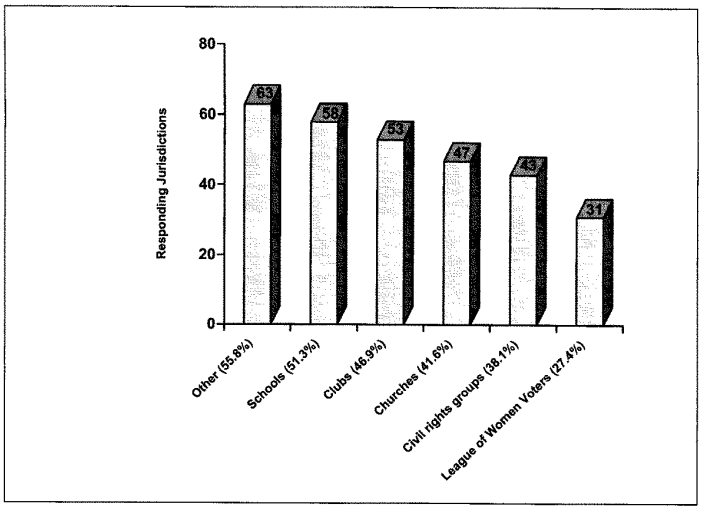
Figure 5.12: Organizations with Which Jurisdictions Reportedly Consult about Language Assistance Programs.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-1a.

Figure 5.12 depicts the organizations with which jurisdictions report that they consult about their language assistance program. "Other" was the most common option selected, with the following explanations:

- Fifteen jurisdictions consult with tribal governments.
- Nine jurisdictions consult with election officials or other governmental employees.
- Eight jurisdictions consult with community organizations or groups.
- Eight jurisdictions consult with office holders or leaders from the covered language group.
- Six jurisdictions consult with community activist groups.
- Four jurisdictions consult with political parties.
- Four jurisdictions consult with bilingual advisory committees.

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- Three jurisdictions consult with other language minority citizens.
- Three jurisdictions consult with the Chamber of Commerce.
- Three jurisdictions consult with the state or a state agency.
- Three jurisdictions consult with media outlets servicing the covered language groups.
- Two jurisdictions consult with senior citizen groups.
- Two jurisdictions consult with contracting individuals.
- One jurisdiction each consults with employers and homeowners associations.

The variety of narrative responses demonstrates the extent to which outreach must be tailored for each community.

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[1] 28 C.F.R. § 55.14(c).

[2] 28 C.F.R. § 55.17.

[3] 42 U.S.C. § 1973aa-1a(c); 28 C.F.R. §§ 55.18-.20.

[4] United States Department of Justice, Civil Rights Division, Voting Section, *About Language Minority Voting Rights*. available at http://www.usdoj.gov/crt/voting/sec_203/activ_203.htm#langguide.

[5] For examples of bilingual coordinator requirements in consent decrees in Azusa and Ventura California and Osceola County, Florida, among others, go to http://www.usdoj.gov/crt/voting/sec_203/documents.

[6] Of the 22 jurisdictions that checked more than one method of confirming language abilities, 16 selected two methods, five selected three methods, and one elected five methods.

[7] There are several problems relying on self-reported language ability. *See* Paul Siegal et al., U.S. Census Bureau, *Language Use and Linguistic Isolation: Historical Data and Methodological Issues* 6-8 (Feb. 12, 2001).

[8] Respondents 234, 272, 306, 322, 334, 418, 672, 859, 869, 887 & 926.

[9] Respondent 272.

[10] Respondents 729, 812, 861, 886, 905, 968 & 1009.

[11] Respondents 245, 664, 714, 821, 889 & 940.

[12] Respondents 691 & 909.

[13] Respondents 347 & 706.

[14] Of the 316 responding jurisdictions, 95.9 percent (N= 303) selected one option, 3.8 percent (N = 12) selected two options, and 0.3 percent (N = 1) selected three options.

[15] Of the 328 responding jurisdictions, 8 selected one option, 15 selected two options, 12 selected three options, 33 selected four options, 73 selected five options, 69 selected six options, 59 selected seven options, 30 selected eight options, and 10 selected nine options.

[16] *See* Figure 5.5.

[17] Respondents 234, 334, 600, 767, 831, 839, 857, 883, 884 & 887.

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[18] Respondents 224, 299, 311, 384, 386 & 920.

[19] Respondents 460 & 862.

[20] *See* Figure 5.7.

[21] Of the 263 responding jurisdictions, 39 jurisdictions selected one option, 28 selected two options, 40 jurisdictions selected three options, 53 jurisdictions selected four options, 47 jurisdictions selected five options, 18 jurisdictions selected six options, 18 jurisdictions selected seven options, and seven jurisdictions selected eight options.

[22] 42 U.S.C. § 1973aa-6.

[23] Compare 42 U.S.C. § 1973aa-6 (Section 208) with 42 U.S.C. § 1973aa-1a (Section 203).

[24] Respondents 308, 448, 691 & 888.

[25] 28 C.F.R. § 55.19(b).

[26] United States Department of Justice, Civil Rights Division, Voting Section, *Minority Language Citizens: Section 203 of the Voting Rights Act*, available at http://www.usdoj.gov/crt/voting/sec_203/203_brochure.htm.

[27] Of the 256 responding jurisdictions, 135 jurisdictions selected one option, 82 jurisdictions selected two options, 25 jurisdictions selected three options, 13 jurisdictions selected four options, and one jurisdiction selected five options.

[28] Thirty-eight jurisdictions indicated in response to the "other" option that the Secretary of State's office was involved in translating written election materials. These 38 jurisdictions are not included in the 51 jurisdictions.

[29] Twenty-two jurisdictions reported that vendors are involved in the translation of written materials, ten reported using employees to translate written election materials, nine reported using another office or jurisdiction's employees, and four reported using paid translators or certified translation services.

[30] 28 C.F.R. § 55.18(e).

[31] Of the 257 responding jurisdictions, 127 jurisdictions selected one option, 64 jurisdictions selected two options, 27 jurisdictions selected three options, 13 jurisdictions selected four options, 14 jurisdictions selected five options, 10 jurisdictions selected six options, and 2 jurisdictions selected seven options.

[32] Respondents 224, 306, 357, 461, 486, 715 & 857.

[33] Respondents 393, 461, 462, 767, 810 & 857.

[34] Respondents 311, 334, 563 & 600.

[35] Respondents 575, 693 & 940.

[36] Respondents 319, 347, 394, 441, 449, 460, 526, 807, 871 & 1012.

[37] Respondents 238, 272, 277, 416, 500, 581, 616 & 870.

[38] Respondent 272.

[39] Respondent 766.

[40] Respondent 725.

[41] Respondents 550 & 820.

[42] Respondent 987.

[43] United States Department of Justice, Civil Rights Division, Voting Section, *Minority Language Citizens: Section 203 of the Voting Rights Act*, available at http://www.usdoj.gov/crt/voting/sec_203/203_brochure.htm.

[44] 28 C.F.R. § 55.19(b).

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Chapter 6:
The Cost of Providing Language Assistance in Public Elections

Summary of Findings on the Costs of Providing Language Assistance

Respondents were asked to identify the costs that their jurisdictions incur for providing language assistance to voters in public elections. Their responses indicate that:

- 59.1 percent of the jurisdictions reporting oral language assistance expenses incur no extra costs attributable to that assistance.
- Ninety percent of jurisdictions reporting oral language assistance expenses indicate that those expenses comprise an average of 1.5 percent of their total election costs.
- 54.2 percent of the jurisdictions reporting bilingual written material expenses incur no extra costs attributable to those materials.
- Ninety percent of jurisdictions reporting bilingual written material expenses indicate that those expenses comprise an average of 3.0 percent of their total election costs.
- Many responding jurisdictions with Alaskan Native and American Indian voters report that they incur no additional costs for bilingual written materials because the covered languages are unwritten.
- 39.5 percent of the jurisdictions reporting complete election expenses incur no extra costs for providing oral and written language assistance.
- Responding jurisdictions reporting language assistance for telephone inquiries indicate that those expenses comprise an average of 0.6 percent of their total election costs, with 74 percent incurring no additional costs.
- Many responding jurisdictions report minimizing the costs of providing language assistance to voters by targeting the assistance to only those areas that need it.
- Less populated jurisdictions are more likely to attribute most, and in some cases all, of their election costs to providing language assistance, including expenses they would have to incur anyways, such as poll workers.
- Many jurisdictions are unable to identify the costs, if any, of their language assistance programs because they do not track such costs in their budgets, or because the costs are included in expenses they would have to incur anyway.

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These findings are consistent with the cost data reported by the GAO in its 1984 and 1997 studies.

Cost Questions and Response Rate

Several survey questions were directed at the costs, if any, of providing language assistance to voters in public elections. Additional questions were directed at election costs that may be unrelated to language assistance programs.

Question B-6 asked respondents, "What, if any, is the approximate total annual cost to your jurisdiction for the bilingual coordinator program?" Of the 361 respondents providing complete responses to the survey, 19.9 percent (N = 72) answered this question.

Question C-8 asked respondents, "What, if any, is the approximate total annual cost to your jurisdiction for part-time election-day workers?" Of the 361 respondents providing complete responses to the survey, 69.8 percent (N = 252) answered this question.

Question D-3 asked respondents, "What, if any, is the approximate total annual cost to your jurisdiction for telephone inquiry assistance in the covered language(s)?" Of the 361 respondents providing complete responses to the survey, 32.1 percent (N = 116) answered this question.

Question E-7 asked respondents, "What, if any, is the approximate total annual cost to your jurisdiction for oral language assistance at the polls on election day?" Of the 361 respondents providing complete responses to the survey, 42.4 percent (N = 153) answered this question.

Question F-4 asked respondents, "What, if any, is the approximate total annual cost to your jurisdiction for providing written election materials in the covered language(s)?" Respondents were asked to identify the amount of those costs for "Translation," "Printing," and "Other Costs (please specify)." Of the 361 respondents providing complete responses to the survey, 37.7 percent (N = 136) answered this question.

Question G-2 asked respondents, "What, if any, is the approximate total annual cost to your jurisdiction for all election-related activities?" Of the 361 respondents providing complete responses to the survey, 65.9 percent (N = 238) answered this question.

Question G-2a asked respondents, "What, if any, is the approximate total annual cost to your jurisdiction for providing oral language assistance in the covered languages for election-related activities?" Of the 361 respondents providing complete responses to the survey, 43.8 percent (N = 158) answered this question.

Question G-2b asked respondents, "What, if any, is the approximate total annual cost to your jurisdiction for providing written language materials in the covered languages for election-related activities?" Of the 361 respondents providing complete responses to the survey, 43.5 percent (N = 157) answered this question.

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Average costs were calculated by dividing the aggregate of all costs reported for the particular category by the aggregate of total reported election costs. If respondents failed to provide election costs for a particular category, their response was excluded from that category. If a respondents failed to provide their total annual election expenses in response to Question G-2, their responses were excluded from all cost categories. For example, the average cost for providing oral language assistance in public elections includes responses from all jurisdictions providing cost data in response to both Questions G-2 and G-2a. The response rate used to calculate each category of language assistance cost is provided below.

Reasons Cost Data Was Unavailable

A majority of respondents reported that they were unable to provide the costs of their language assistance programs. Of the 361 respondents providing complete responses to the survey, 42.7 percent (N = 154) were able to provide complete cost data for oral language assistance and 39.9 percent (N = 144) were able to provide complete cost data for bilingual written materials.

The GAO encountered similar problems in its own language assistance studies. The GAO reported in its 1984 study that, "nearly two-thirds (191) of the 295 responding jurisdictions that reported providing written assistance did not know their additional costs for the assistance."[1] Likewise, the GAO reported in its 1997 study that, "[a]bout 76 percent of the jurisdictions and 42 percent of the states that provided bilingual voting assistance were unable to determine the costs of doing so."[2]

Many respondents report that they do not have a language assistance program and therefore have no costs. Some of these jurisdictions indicate that they are not required to provide language assistance to voters.[3] Others state that they have few, if any, voters who need assistance.[4] The remaining respondents indicate that they do not provide assistance,[5] with one respondent reporting, "We do our best to muddle through if services are requested."[6]

Other jurisdictions did not provide cost data because they do not incur costs for their language assistance programs. Thirty-three jurisdictions report that they do not have any costs for their oral language assistance programs. Twenty-nine jurisdictions report that they do not have any added costs for providing bilingual written materials. The reasons that these jurisdictions do not incur additional expenses are discussed below.

The remaining respondents report a variety of reasons for why they cannot provide the costs of their language assistance programs.

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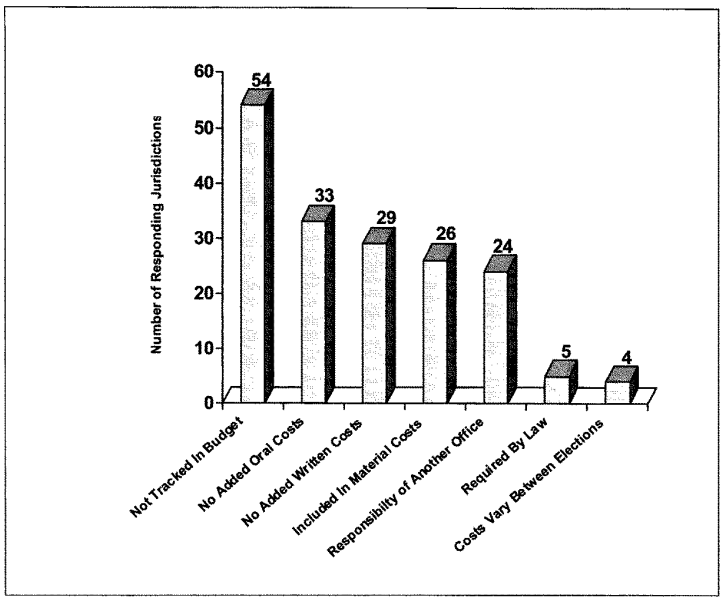
Figure 6.1 depicts the reasons why jurisdictions report being unable to provide cost data for their language assistance programs.

Figure 6.1: Reasons Jurisdictions Reported Cost Data Could Not Be Provided.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-2c.

"Costs are not separated"[7] in the budgets of many of the jurisdictions unable to provide cost data. Fifty-four jurisdictions report that they do not track the costs in their respective budgets. As one respondent explains,

> Many costs related to elections are not itemized separately from other activities. Oral language costs are not tracked separately or itemized. All election items are printed in English and [the covered language] in the same document. No estimates are available for one language only.[8]

Twenty-six jurisdictions report that their vendors print written language materials on the same forms as English materials and do not break out the costs attributed to the covered language(s).

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Twenty-four jurisdictions indicate that another office provides the assistance, incurs any costs, or would otherwise have any cost information that was available.

Five jurisdictions report that they do not incur any additional costs by providing language assistance under the Voting Rights Act because the law requires they provide it. One respondent observes, "It does not cost any extra [money]... [O]ur state law requires everything to be in [the covered language] as well as English."[9]

Four respondents state that they cannot provide estimates of their language assistance costs because they vary too much between elections. One elaborates,

> Each election is different and there are various factors in place based on the number of polling places used, the number of staff used, and the assistance that we may get from a contracting entity that provides their own translators or material already in [the covered language].[10]

The remaining respondents provide a variety of other reasons for the unavailability of their cost data.

These reasons are consistent with the GAO's earlier findings. In the 1997 study, the GAO reported the following reasons jurisdictions could not identify the costs of their language assistance programs:

- Not tracked because the jurisdiction had provided bilingual assistance for several years.
- Printers did not provide itemized statements.
- Their accounting systems or budgets did not itemize costs.
- Inability to separate federal from state assistance requirements.[11]

The GAO reached the same conclusions in its 1984 study, observing that there "are no federal requirements that such information be collected and maintained."[12]

The General Absence of Language Assistance Costs

Some critics oppose Section 203 because they believe it imposes high costs on local election officials. Their fears have not materialized. The costs of compliance are modest if there are any costs at all. A majority of respondents report that they only incur costs either for oral language assistance or bilingual written materials, but not both.

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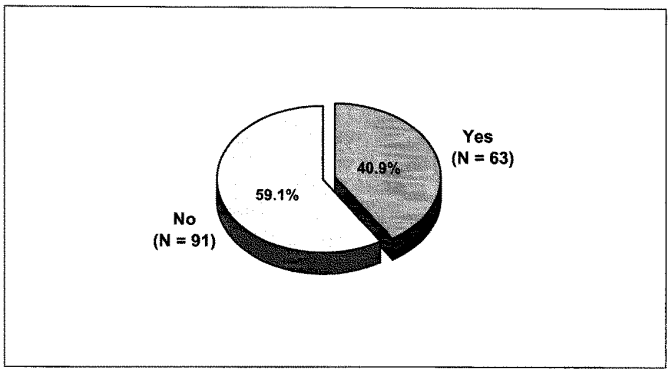
Oral Language Assistance Costs

Figure 6.2 depicts that of the 154 jurisdictions reporting oral language assistance expenses, 59.1 percent (N = 91) incur no extra costs. Twenty-three additional jurisdictions provided narrative responses indicating that they do not incur any additional costs for providing oral language assistance.

Figure 6.2: Respondents Incurring Costs for Oral Language Assistance.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-2a.

Respondents attribute the lack of additional costs to several factors. A number of jurisdictions in New Mexico and Texas report that state laws have language assistance requirements similar to Section 203, resulting in no additional cost for federal compliance.

Many jurisdictions report hiring bilingual poll workers who are paid the same wages as other poll workers. One respondent explains, "The bilingual poll workers we hire are filling positions that would have to be filled by another individual."[13] Another jurisdiction indicates, "We do not pay any extra… if you are bilingual and helping with the election."[14]

Some respondents also report that many full-time employees are bilingual and available to provide oral language assistance at every stage of the election process.[15] Other jurisdictions use unpaid volunteers to provide oral language assistance whenever necessary.[16]

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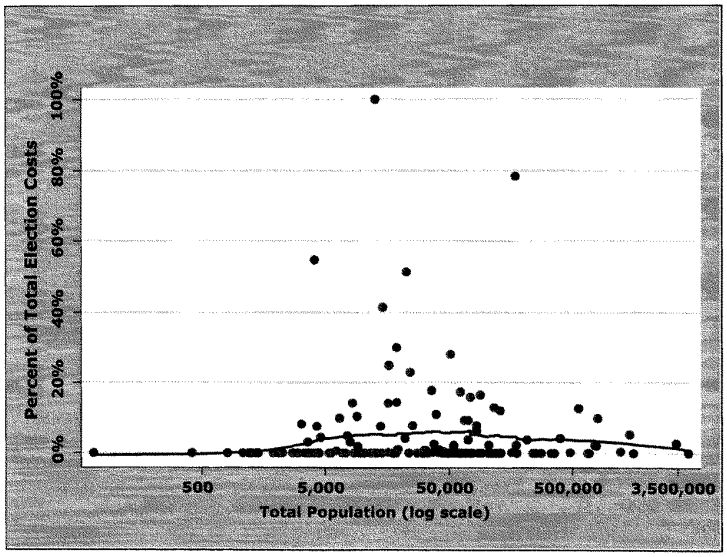
Of the 154 jurisdictions reporting complete data for oral language assistance, the average cost is 4.9 percent of all election expenses.

Figure 6.3 depicts that the average cost of providing oral language assistance (the red line) remains approximately the same regardless of the responding jurisdiction's population. A majority of all responding jurisdictions reporting no oral assistance costs is depicted on the very bottom of Figure 6.3, with the mean jurisdiction incurring no additional costs.

Figure 6.3: Cost of Oral Language Assistance, by Population of Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-2a and 2000 Census, Summary Tape File 1.

Approximately 10 percent of all responding jurisdictions report costs far in excess of the average cost reported by the remaining 90 percent of respondents. These 16 outliers are depicted at the top of Figure 6.3. The outlying jurisdictions skewed the results by reporting average oral language assistance costs of 34 percent. One jurisdiction reports that 100 percent of its total election costs are attributable to oral language assistance.

By contrast, the remaining 138 jurisdictions report average oral language costs of only 1.5 percent.

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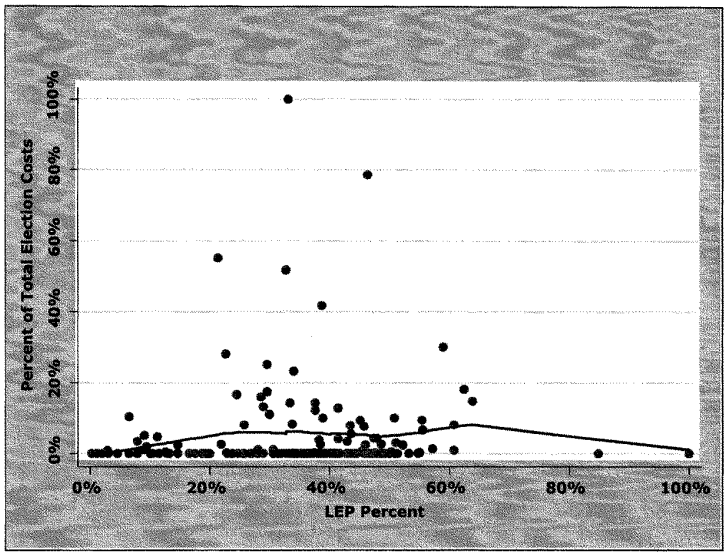
Two factors contribute to the disparate results. Some of the 16 jurisdictions attribute all of their election expenses, including costs for hiring permanent staff and Election Day poll workers who have to be hired regardless of Section 203, to oral language assistance. Furthermore, the 16 jurisdictions are less populated, with an average total population of 40,262, compared to an average total population of 170,439 in the remaining jurisdictions.

When these factors are taken into consideration, oral language costs are close to the average of 2.9 percent reported by the GAO in 1984.[17]

Figure 6.4: Cost of Oral Language Assistance, by Limited English proficient (LEP) Percent of Covered Languages in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-2a and 2000 Census, Summary Tape File 3.

Figure 6.4 depicts that the average cost of providing oral language assistance (the red line) remains approximately the same regardless of the percentage of Limited-English Proficient (LEP) voters in the responding jurisdiction. Generally, there is no relationship between the percent of LEP voters in the responding jurisdiction and the costs the jurisdiction incurs to provide oral language assistance.

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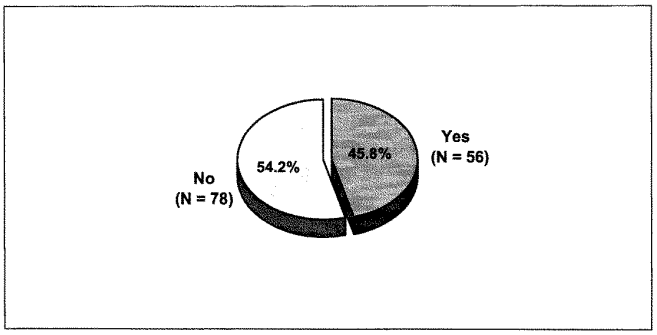
One hundred fifty-four jurisdictions reported that the cost of providing oral language assistance at polling sites on Election Day comprised an average of 4.9 percent of all election expenses. Reported costs for Election Day oral language assistance at the polls range from no cost at all to 100 percent of election expenses.

The narrative responses indicated that the low cost of providing oral language assistance is attributable to the use of bilingual election workers who are paid at the same rate as other election workers.

Bilingual Written Material Costs

Figure 6.5 depicts that of the 144 jurisdictions reporting written language material expenses, 54.2 percent (N = 78) incur no extra costs. Thirteen additional jurisdictions provide narrative responses indicating that they do not incur any additional costs for providing bilingual written materials.

Figure 6.5: Respondents Incurring Costs for Written Language Assistance.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-2b.

Jurisdictions report several reasons for why they do not incur any costs for bilingual written materials.

Jurisdictions with Alaskan Native and American Indian voters report that bilingual materials are not provided because the covered languages are unwritten.[18] Some jurisdictions providing bilingual written materials use election officials or community volunteers to translate materials, resulting in no additional costs.[19]

In many cases, printing costs do not increase as a result of having bilingual written materials. One respondent observes that, "materials are printed in both languages – there is no added cost for this service."[20]

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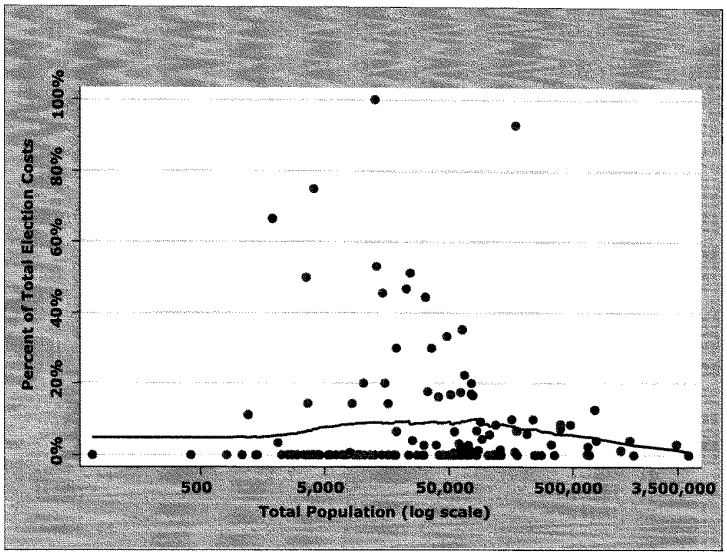
Another jurisdiction reports, "All election materials are preprinted in English and [the covered language]. We do not pay a separate charge for the... translations."[21] Several respondents indicate that their vendors do not have any additional charges for providing election materials in the covered languages.[22] Of the 144 jurisdictions reporting complete data for bilingual written materials, the average cost is 8.1 percent of all election expenses.

Figure 6.6: Cost of Bilingual Written Materials, by Population of Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-2b and 2000 Census, Summary Tape File 1.

Figure 6.6 depicts that the average cost of providing bilingual written materials (the red line) remains approximately the same regardless of the responding jurisdiction's population. A majority of all responding jurisdictions reporting no bilingual material costs is depicted on the very bottom of Figure 6.6, with the mean jurisdiction incurring no additional costs.

Approximately 10 percent of all responding jurisdictions report costs far in excess of the average cost reported by the remaining 90 percent of respondents. These 15 outliers are depicted at the top of Figure 6.6. The outlying jurisdictions skewed the results by reporting average bilingual written costs of 51.8 percent.

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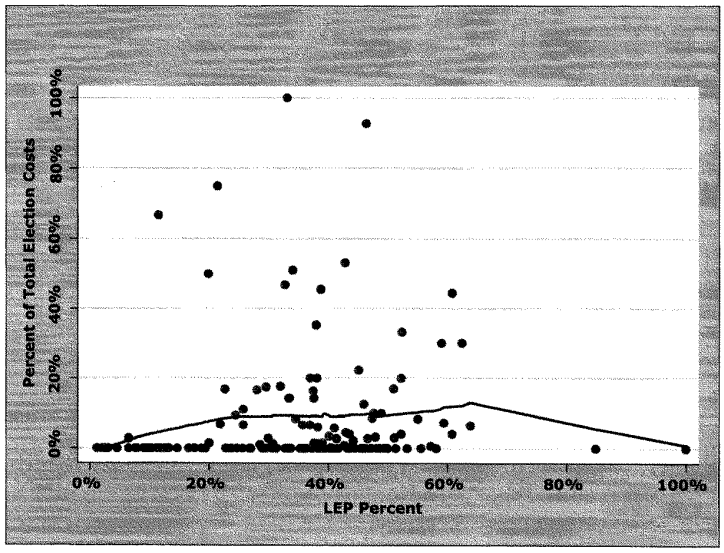
By contrast, the remaining 129 jurisdictions report average bilingual written material costs of only 3.0 percent.

These disparate results occur for the same reasons as those reported for oral language assistance. Three jurisdictions report that all election costs are attributable to bilingual written materials assistance, including ballots, signs, public notices, and other publicity that would be incurred regardless of Section 203. In addition, the fifteen outlying jurisdictions have an average total population of 35,664, compared to an average total population of 180,529 for the other 129 jurisdictions. All of the outliers also attribute most, if not all, of their total written costs to bilingual election materials.

When these factors are taken into consideration, the average cost of providing written language materials is substantially below the 7.6 percent reported by the GAO in 1984.[23]

Figure 6.7: Cost of Bilingual Written Materials, by Limited English proficient (LEP) Percent of Covered Languages in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-2b and 2000 Census, Summary Tape File 3.

Figure 6.7 depicts that the average cost of providing bilingual written materials (the red line) remains approximately the same regardless of the percentage of LEP voters in the responding jurisdiction. Generally, there

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is no relationship between the percent of LEP voters in the responding jurisdiction and the costs the jurisdiction incurs to provide bilingual written materials.

Types of Bilingual Written Material Costs

Approximately 40.2 percent of all responding jurisdictions (N = 145) reported their annual written language assistance expenses.

Of the 145 jurisdictions, 93.8 percent (N = 136) reported costs for translating materials. Approximately two-thirds (N = 90) of the 136 responding jurisdictions report incurring no translation costs. Reported costs for translating materials from no cost at all to $300,000. The average translating cost is $4,981.29, with a median cost of $0.

Ninety-one percent of the 145 jurisdictions (N = 132) reported costs for printing bilingual materials. Over half (N = 71) of the responding jurisdictions report incurring no additional printing costs. Reported costs for printing materials from no cost at all to $1,092,000. The average printing cost is $23,957.17, with a median cost of $0.

Over 81 percent of the 145 jurisdictions (N = 118) reported other costs that might be incurred in translating and printing bilingual written materials. Of the 118 jurisdictions, 85.6 percent (N = 101) report incurring no other costs. Reported costs for other bilingual material expenses from no cost at all to $493,000. The average cost is $9,848.86, with a median cost of $0.

Use of Targeting to Minimize Language Assistance Costs

Even where some costs are incurred, most jurisdictions report that they are negligible because the jurisdictions "target" language assistance to only those areas that require it.

Targeting allows a covered jurisdiction to provide bilingual materials and assistance "only to the language minority citizens and not to every voter in the jurisdiction."[24] Although the Voting Rights Act does not expressly provide for targeting, the legislative history of the Act demonstrates that Congress intended to allow covered jurisdictions flexibility in devising appropriate methods to provide bilingual language assistance.[25] Targeting is permissible as long as it ensures language minority voters have "access to bilingual materials" and "does not place an unequal burden upon those voters requiring information and materials in a language other than English."[26]

During the 1992 hearings, Congress described effective targeting as whether "it is designed and implemented in a manner that ensures that all members of the language minority who need assistance, receive assistance."[27] Some jurisdictions have heeded these instructions to minimize their costs.

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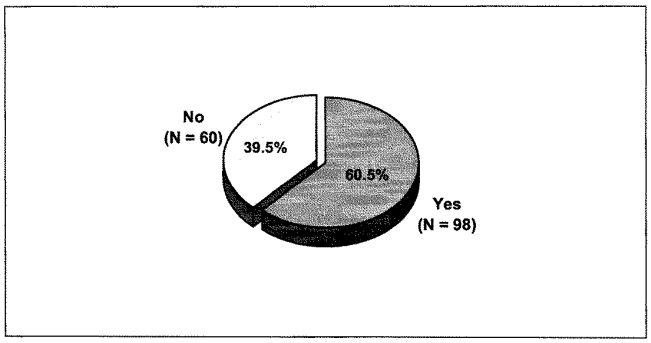
Jurisdictions That Report Incurring Some Language Assistance Costs

Figure 6.8 depicts that of the 158 jurisdictions reporting complete expenses for both oral and written language assistance, 39.5 percent (N = 60) do not incur any added costs for their language assistance programs. Six additional jurisdictions provided narrative responses indicating that they do not incur any additional costs for their language assistance programs.

Figure 6.8: Respondents Incurring Costs for Either Oral or Written Language Assistance.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions G-2a and G-2b.

Figure 6.9 depicts that the average cost of providing both oral and written language assistance (the red line) remains approximately the same regardless of the jurisdiction's population.

The overwhelming majority of responding jurisdictions report total language assistance costs far below the average cost reported by all jurisdictions.

Approximately ten percent of the jurisdictions remain outliers, with several jurisdictions attributing all or nearly all of their total election costs to language assistance. Three responding jurisdictions were dropped from Figure 6.9 because they attribute more than 100 percent of their total election costs to language assistance.

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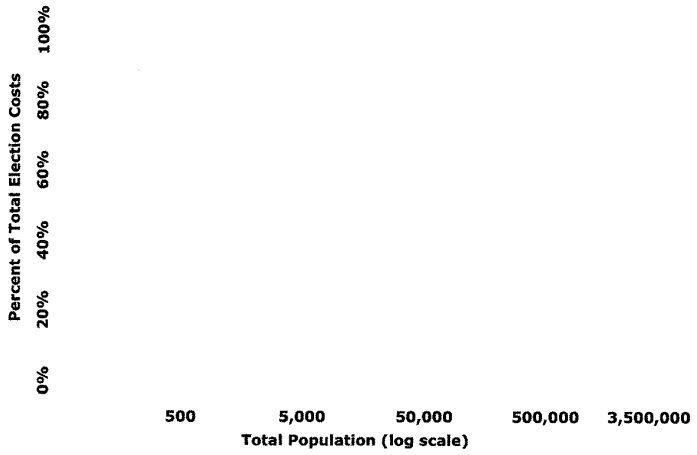
Figure 6.9: Cost of Oral and Written Language Assistance, by Population of Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions G-2a and G-2b and 2000 Census, Summary Tape File 1.

The presence of outliers among the medium-sized jurisdictions explains why the average total costs appear to be higher for those jurisdictions. When these outliers are excluded, the average costs are normalized at a level that is approximately the same regardless of population.

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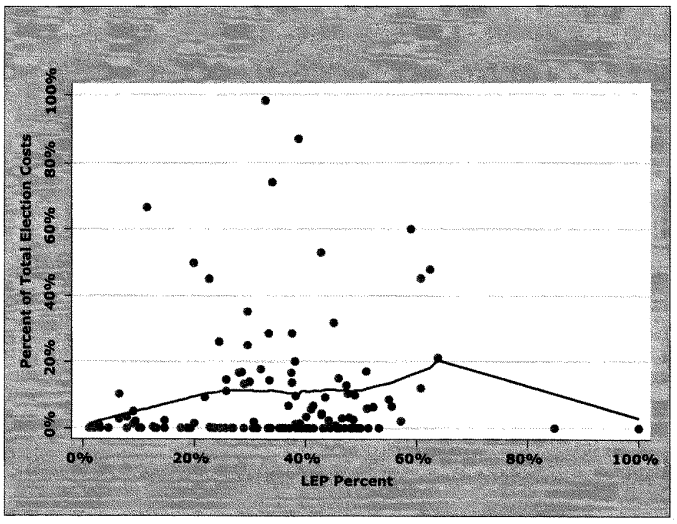
Figure 6.10: Cost of Oral and Written Language Assistance, by Limited English proficient (LEP) Percent of Covered Languages in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions G-2a and G-2b and 2000 Census, Summary Tape File 3.

Figure 6.10 depicts only a slight positive relationship between the percent of limited-English proficient voters in a responding jurisdiction and the cost of providing language assistance in that jurisdiction.

Miscellaneous Language Assistance Costs

Seventy-two jurisdictions reported costs for a bilingual coordinator program. The small number of responses to this question is attributable, at least in part, to the absence of a bilingual coordinator program in approximately two-thirds of responding jurisdictions. Reported costs for bilingual coordinators range from no cost at all to $464,000. The average reported cost for bilingual coordinators is $29,099.86 with a median cost of $1,300.

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Of the 116 jurisdictions providing telephonic language assistance that reported their costs, the average cost was only .6 percent of total election expenses.[28] Seventy-four percent (N = 86) report incurring no costs at all. Many jurisdictions report that their low costs are attributed to their use of full-time election workers or volunteers who are fluent in the covered languages.

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[1] 1984 GAO Study, at 16.

[2] 1997 GAO Study, at 16.

[3] Respondents 207, 232, 279, 353, 810.

[4] Respondents 585, 646.

[5] Respondents 421, 561, 854, 1029.

[6] Respondent 854.

[7] Respondent 750.

[8] Respondent 693.

[9] Respondent 773.

[10] Respondent 474.

[11] 1997 GAO Study, at 16-18.

[12] 1984 GAO Study, at 17.

[13] Respondent 615.

[14] Respondent 822.

[15] Respondents 280, 317, 488, 710, 742, 749, 767, 790, 816, 915, 925.

[16] Respondent 725.

[17] *See* 1984 GAO Study at 20.

[18] Respondents 319, 347, 349, 395, 402, 453, 460, 617, 652, 690, 862, 881, 887, 993.

[19] Respondents 238 & 889.

[20] Respondent 284.

[21] Respondent 306.

[22] Respondents 284, 306, 339, 340, 418, 488, 933, 938.

[23] *See* 1984 GAO Study at 17.

[24] S. REP. NO. 94-295 at 39, *reprinted in* 1975 U.S.C.C.A.N. 806.

[25] *See* 121 CONG. REC. S13650 (daily ed. July 24, 1975) (statement of Sen. Tunney).

[26] S. REP. NO. 94-295 at 69, *reprinted in* 1975 U.S.C.C.A.N. 820. *See also* 28 C.F.R. § 55.17 (stating the Attorney General's view "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").

[27] H. REP. NO. 102-655 at 9, *reprinted in* 1992 U.S.C.C.A.N. 773. The legislative history from the original 1975 amendments also describes the use of effective targeting. *See* CONG. REC. S13650 (daily ed. July 24, 1975) (statement of Sen. Tunney); S. REP. NO. 94-295 at 69, *reprinted in* 1975 U.S.C.C.A.N. 820. The Department of Justice guidelines explicitly provide for targeting. *See also* 28 C.F.R. § 55.17 (stating the Attorney General's view "that a targeting system will normally fulfill the

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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").

[28] The average cost was calculated from the 95 jurisdictions submitting complete cost data that responded to this question.

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Chapter 7:
Respondent Opinions on Language Assistance in Public Elections

Summary of Opinions

Section H concluded the survey by asking respondents for their opinions and comments on the language assistance provisions of the Voting Rights Act. The respondents' responses indicate that:

- 71.3 percent (N = 181) of responding jurisdictions support reauthorizing the language assistance provisions of the Voting Rights Act.
- Support for reauthorization is virtually the same regardless of whether the jurisdictions are covered by Section 5 of the Voting Rights Act.
- 3.3 percent (N = 12) of responding jurisdictions expressed opinions suggesting that the coverage formula for the language assistance provisions be changed.
- 3.3 percent (N = 12) of responding jurisdictions feel that elections should be English-only.
- Nearly half of the 12.7 percent (N = 46) of responding jurisdictions that request federal funding for language assistance programs report that they do not incur any costs for their own programs.
- Ten jurisdictions request additional federal funding for ESL programs.
- Most responding jurisdictions believe the federal government and the Department of Justice are doing a commendable job enforcing the language assistance provisions.
- Several jurisdictions recommend that the federal government should provide more support to facilitate compliance under the language assistance provisions.

Respondents offered extensive narrative comments in response to all of the open-ended questions in the survey. Appendix F includes all of the responses to questions in Section H of the survey.

Opinion Questions and Response Rate

Question H-1 asked respondents, "What, if anything, do you think the federal government can do to provide minority language assistance to voters?" Of the 361 respondents providing complete responses to the survey, 31.6 percent (N = 114) answered this question.

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Question H-2 asked respondents, "Do you think the language assistance provisions to the Voting Rights Act should remain in effect?" Of the 361 respondents providing complete responses to the survey, 70.4 percent (N = 254) answered this question.

Question H-3 asked respondents, "Please provide any additional comments about your experiences in providing language assistance to voters." Of the 361 respondents providing complete responses to the survey, 38.8 percent (N = 140) answered this question.

Explanation of Narrative Response Coding and Treatment

Some election officials provided responses to other sections of the survey are also responsive to the opinion questions in Section H of the survey. Where this occurred, their opinions were included in Section H by identifying the actual question to which they had responded.

In addition, some election officials expressed several opinions in response to a single question. Where this occurred, each of their separate opinions was included with comparable opinions expressed by other election officials. If a respondent's opinion was unclear or ambiguous, it was allocated to "miscellaneous comments."

The respondent's randomly assigned survey identification number is included at the end of each response. Ellipses indicate that only a portion of the respondent's complete answer is applicable to the identified opinion.

All identifying information has been removed from the respondents' opinions to preserve their anonymity. [Brackets] indicate where identifying information has been removed. In some cases, the entire response has been redacted. Where this occurred, the response was included with comparable opinions with a notation that it was "[Redacted]." Wherever possible, a paraphrased summary of the redacted opinion has been provided without revealing any identifying information about the respondent.

Opinions on the Selection of Jurisdictions for Language Assistance Coverage

Of the 361 respondents providing complete responses to the survey, 3.3 percent (N = 12) expressed opinions about how jurisdictions are selected for language assistance coverage.

Five respondents to question H-3 suggest that the coverage formulas for the language assistance provisions should be changed. One respondent indicates that in that jurisdiction, the "Indian language requirement seems unnecessary because no one can speak it any more."[1] Another respondent states that language assistance is "not necessary in all areas."[2] Two respondents suggest that less populated counties be exempted from coverage,[3] with one explaining:

> .... The threshold for providing language assistance in a county should be raised to 5 percent or 25,000,

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> whichever is lower. It is very expensive to provide this assistance to a small population of voters. Also, the act should specify that if a jurisdiction is holding a special, stand-alone election and has no voters or less than 5 percent of voters in a covered language minority, then translations of election materials are not required.[4]

Another respondent reports the belief that Census data overestimates the need for language assistance in that jurisdiction.[5]

Seven respondents to questions H-1 and H-3 suggest that language assistance should be targeted to only those areas where it is needed. Four of these respondents note that areas should not be selected for coverage on the basis of Spanish surnames.[6] One explained, "The majority of our voters speak English fluently, even those with Spanish surnames. To determine the percentage of Spanish voters based on Spanish surnames is not a very good formula for determining that percentage."[7] The remaining three respondents suggest an "actual assessment of the need to provide minority language assistance"[8] that includes asking "the community leaders if they need interpreters or printed materials in their language.[9]

Opinions on How Language Assistance Can be improved by the Federal Government

Several respondents answered Question H-1 by suggesting ways in which the Federal Government can facilitate their ability to provide language assistance in public elections.

Eleven respondents suggest that the Federal Government should provide more guidance on complying with the language assistance provisions. Their suggestions include:

- Establishing a "hotline, Internet site, or phone bank for election officials to utilize similar to [what is available for] military voters."[10]
- Providing specific guidelines to covered jurisdictions, including "their required response under Section 203."[11]
- Cooperating more with covered jurisdictions by serving as "a clearinghouse for best practices," being "forward-looking instead of punitive," and recognizing "positive steps and practices."[12]
- Providing a "list of local bilingual resources and organizations" to covered jurisdictions.[13]
- Making "more training" available to election officials about the language assistance provisions.[14]
- Providing "special training for bilingual election workers."[15]

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Ten respondents request that the Federal Government provide them with the tools necessary for their respective language assistance programs. Their requests include:

- Providing "federal mandate posters" translated in the covered languages, much like the Federal Government has for minimum wage and EEO laws.[16]
- Translating all bilingual written materials and providing them to covered jurisdictions.[17]
- Providing professional translation services.[18]
- Offering "computerized voice recognition/language software" and "audio recordings" in the covered languages.[19]
- Providing bilingual translators on Election Day.[20]

Eight respondents ask that the Federal Government assist in providing outreach and education to covered language minority voters. Their suggestions include:

- Making "videos and television spots to encourage minority voting."[21]
- Newspaper articles, advertisements, and pamphlets in the covered languages sent to voters and available at public offices.[22]
- "Voter awareness campaigns" and voter education classes.[23]
- Voter registration and "other proactive outreach activities" in areas with language minority voters.[24]

One respondent explains how a comprehensive language assistance program should be designed:

> In order to comply with the Voting Right Act and HAVA, specific outreach needs should be identified and these requirements budgeted for. These needs would encompass multi-lingual election staffing, standardized multi-lingual glossary, outreach materials that are culturally sensitive, educational programs that are embedded into other social services in order to reach a greater number possible voters, identify and advocate for voter-specific issues, tackle the issue of illiteracy as an obstacle for naturalized citizens."[25]

Other respondents request alternative forms of support to enhance their language assistance programs. One respondent suggests the difficulty in recruiting bilingual poll workers could be overcome by paying "enough to get minorities involved."[26] Another respondent requests legislation

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"that allows state, federal, and government workers to take Election Day off to assist at polls."[27]

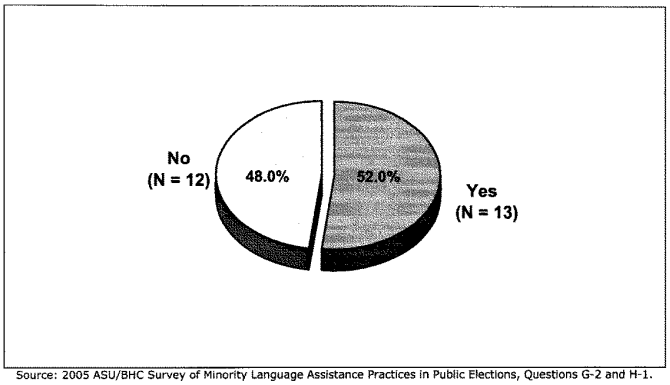
Opinions on the Need for Federal Funding of Language Assistance

A majority of respondents indicate that they incur no additional costs as a result of providing oral language assistance and/or bilingual election materials. In addition, with the exception of a few outliers, most jurisdictions report that any additional costs for their language assistance programs are only a small fraction of their total election expenses. *See* Chapter 6.

Despite the minimal costs reported by most respondents, many ask for federal funding. Of the 361 respondents providing complete responses to the survey, 12.7 percent (N = 46) responded to Question H-1 by requesting that their jurisdictions be given "funds to meet federal obligations."[28]

A majority of the 46 jurisdictions requesting federal funding, 60.9 percent (N = 28), reported at least some cost data for their language assistance programs. Nearly half of all respondents that requested federal funding for their language assistance programs reported that their jurisdiction actually incurred no costs.

Figure 7.1: Respondents Requesting Federal Funding Who Reported Incurring No Costs for Providing Oral Language Assistance.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions G-2 and H-1.

Figure 7.1 depicts that nearly half of all respondents requesting federal funding for oral language assistance provided responses indicating that they may not need such funding. Twenty-five respondents requesting federal funding report oral language assistance costs. However, 48

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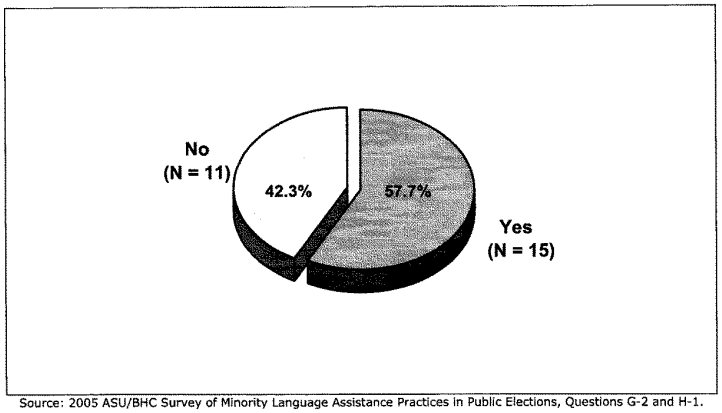
percent (N = 12) of these respondents report that their jurisdictions do not incur any additional costs for oral language assistance. Among these 12 jurisdictions, 83.3 percent (N = 10) report that they provide at least some language assistance.

Figure 7.2 depicts that nearly half of all respondents requesting federal funding for written language materials provided responses indicating that they may not need such funding. Twenty-six respondents requesting federal funding report written language material costs. However, 42.3 percent (N = 11) of these respondents report that their jurisdictions do not incur any additional costs for written language materials.

Figure 7.2: Respondents Requesting Federal Funding Who Reported Incurring No Costs for Providing Written Language Materials.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions G-2 and H-1.

Of the 46 respondents requesting federal funding, 23 reported complete cost data.[29] Of these respondents, 52.3 percent (N = 12) report incurring no additional costs for oral language assistance and 47.8 percent (N = 11) report incurring no additional costs for written language materials.

There are several possible explanations for the discrepancy between the perceived need for federal funding and the lack of additional costs for language assistance programs reported by jurisdictions.

Only two of the 12 respondents that did not report incurring language assistance costs also report their jurisdictions do not provide oral assistance and/or bilingual written materials. These two jurisdictions are covered as a result of statewide coverage and do not appear to have a large number of voters who need assistance. Of the 10 jurisdictions providing language assistance but not incurring any costs, half (N = 5) provide both oral and written language assistance, and 20 percent (N = 2)

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provide only oral language assistance because they are covered for American Indian languages that are historically unwritten. The remaining three jurisdictions that report providing only written assistance includes one jurisdiction covered in its own right for Spanish and one political subdivision of a county covered for Spanish and several Asian languages that have a sufficient number of LEP voting age citizens that also require oral language assistance that is not being provided.

Other respondents indicate that their language assistance programs have suffered because of budget cuts to their elections office unrelated to federal funding. One respondent to Question H-3 explains, "Budgeting limitations frustrate efforts – prior staff cuts hamper efforts. Despite obstacles, all efforts will be made to stay abreast of changing demographics and linguistic challenges presented by same."[30]

Finally, some jurisdictions may be incurring unnecessary expenses because they are not targeting assistance effectively to areas that need it. For example, one respondent notes the importance of language assistance, and suggests ways in which targeted assistance might be provided in that jurisdiction:

> We agree this bilingual information is important; however, the costs are significant for the number of voters who utilize the information. Possibly coordinating a voter training session for … non-English speaking voters would be more effective. If they can't speak or understand English, understanding candidates and their platform will be very difficult as well.[31]

Another respondent highlights the importance of targeted assistance because otherwise "it is very expensive to provide … assistance to a small population of voters."[32]

Opinions on Ways in Which Federal Funds for Language Assistance could be used

Respondents suggest several possible ways in which federal funds could be used for language assistance programs, including:

- Translation and printing of bilingual written materials.[33]
- Hiring bilingual poll workers and election officials.[34]
- Television, radio, and newspaper advertisements in the covered language(s).[35]
- Bilingual outreach programs with local universities and community organizations.[36]
- Educational materials.[37]
- Election worker training in the covered languages.[38]
- Election worker attendance in language courses.[39]

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Opinions on Allocation of Federal Funds for Language Assistance

Several respondents also expressed opinions in response to Question H-1 about how federal funds should be distributed for language assistance programs. Their opinions include:

- Allocating funding in a uniform manner among the states.[40]
- Making funding available "based on population."[41]
- Providing funding to jurisdictions that "have predominant bilingual populations."[42]
- Funding "small populated" jurisdictions that "do not have the tax base to fund the assistance that may be needed."[43]

One respondent suggests that if federal funding is provided, local jurisdictions should be permitted to "decide how to administer the programs."[44] Another expresses the opinion that "if we are to continue the efforts in providing [language assistance] it should be funded" because "it is difficult for jurisdictions to build an effective program with non-existent local resources."[45]

Opinions on Federal Funding for English as a Second Language (ESL) Programs

Ten respondents to Question H-1 indicate that the Federal Government should provide more funding for English as a Second Language (ESL) programs. One respondent suggests that the "government and community groups could encourage citizens to learn English through civil and educational support."[46] Another respondent is more direct, stating that the Federal Government should "mandate" an "ESL certificate" for language minority voters.[47] Other respondents suggest greater federal support for "teaching English to voters"[48] and providing "more ESL program money."[49] One respondent proposes, "the federal government could better use funds to set up programs in communities to help people learn the English language. I think it would better serve them in all areas of their lives."[50]

Opinions on English-Only Elections

Of the 361 respondents providing complete responses to the survey, 3.3 percent (N = 12) expressed opinions in response to Questions H-1 and H-3 that elections should be conducted entirely in English.[51] For example, one respondent asserts,

> I do not think that it is our responsibility to provide different languages. I think everything should be in English only! That is their responsibility (voter). Go to Mexico or other countries you have to learn their language. You come here and we have to learn theirs…."[52]

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Another respondent states, "A voter is required to be a citizen of the United States. A citizen of the United States should be required to read and write the English language before obtaining … citizenship."[53]

Some of these respondents express opinions on the availability of language assistance for English-only elections. One respondent indicates that the burden should be on the language minority voter, and not the jurisdiction, to "provide their own interpreter" if they cannot understand English.[54] Another respondent suggests that the jurisdiction would refrain from recruiting bilingual Election Day workers without the language assistance provisions, noting, "We have had to get bilingual workers instead of experienced election personnel to accommodate the law…."[55]

Most of the respondents, 96.7 percent (N = 349), did not express support for English-only elections. Three respondents state that all voters should learn English, but that it should not be a condition of voting.[56] As one respondent explains, the language assistance provisions of the Voting Rights Act "should be reenacted in order for them not to be denied their right to vote – but [they] should have to learn the official language of the United States."[57]

Opinions on the Roles of the Federal Government and Justice Department

A small minority of jurisdictions responded to Questions H-1 and H-3 with negative opinions of the Federal Government and/or the Department of Justice. In several instances, these respondents indicate that they are under a federal consent decree or have been sued or are under investigation by the Department of Justice.

Some respondents state that the Federal Government should not regulate local elections. Three respondents indicate that the "Federal Government has already done too much in the world of elections" and "complicates things."[58] Other respondents note that the local government is the "point of service" and that is the appropriate place where the authority for language assistance should lie.[59] A few respondents are more emphatic, stating, "we believe in states rights" and any oversight should "be at the state level."[60] One respondent expresses the opinion that "the results of this questionnaire would be a moot issue since the Federal Government will do what they want to anyway."[61]

Similarly, four respondents criticize enforcement efforts by the Department of Justice.[62] One indicates that the "DOJ acts like we're Mississippi."[63] Another respondent expresses the opinion that the Justice Department deals "with jurisdictions with an unsympathetic approach" including "threats to sue rather than cooperate."[64] Another respondent declares their support for reauthorization, even while complaining, "dealing with the U.S. Department of Justice is like being captive in a Kafka novel."[65]

On the other hand, a majority of respondents expressing opinions on the federal government reject these views. Many jurisdictions specifically commend the Justice Department's enforcement efforts. One respondent

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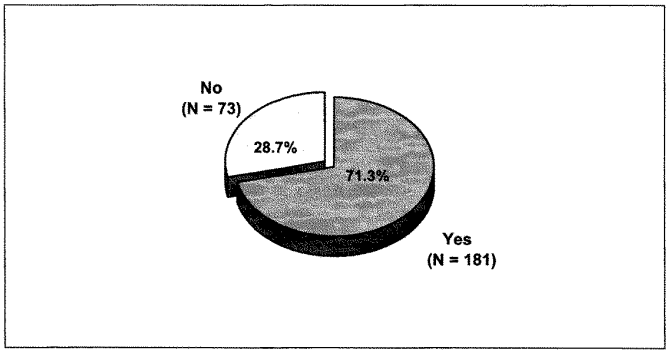
asks the federal government to "help us come up with the means of getting rid of the 'this is America, English only' attitude of many people out there, both voters and election board workers."[66] Another respondent requests that the Department of Justice do even more to "enforce existing rules."[67] One jurisdiction requests that voter assistance requirements also "should be enhanced to let citizens with limited English skills to bring friend or family to help or they should be encouraged to vote absentee."[68] Another respondent applauds the federal government's enforcement efforts by observing, "the federal government has done a lot to provide minority language assistance."[69]

Opinions on Reauthorization of the Language Assistance Provisions

Figure 7.3 depicts that of the 254 respondents expressing an opinion on reauthorization, 71.3 percent (N = 181), believe that the federal language assistance provisions should remain in effect for public elections.

Figure 7.3: Respondents Supporting Reauthorization of the Language Assistance Provisions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question H-2.

Figures 7.4 and 7.5 depict that the percentage of jurisdictions supporting reauthorization is approximately the same, regardless of whether the responding jurisdiction is covered by Section 5 of the Act.

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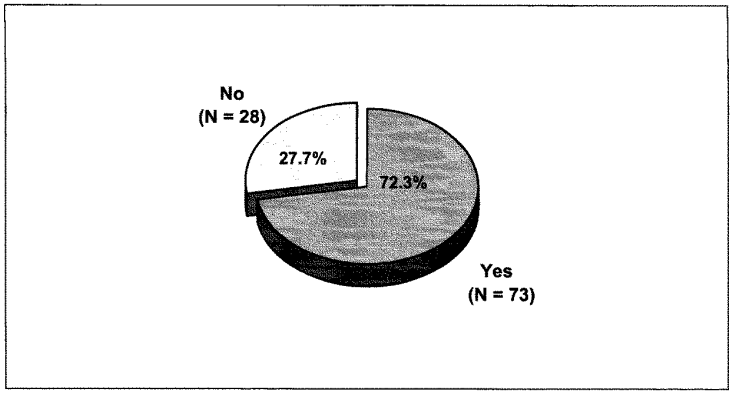
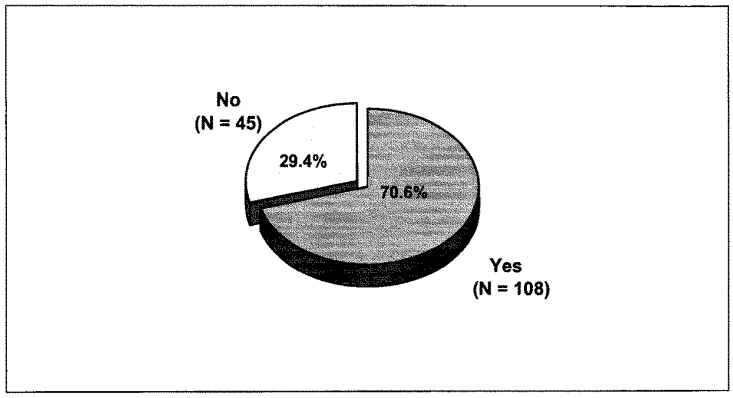
Figure 7.4: Jurisdictions Not Covered by Section 5 Supporting Reauthorization of the Language Assistance Provisions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question H-2, and 28 C.F.R. Part 55, Appendix (summarizing Section 5 coverage determinations).

Figure 7.5: Jurisdictions Not Covered by Section 5 Supporting Reauthorization of the Language Assistance Provisions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question H-2, and 28 C.F.R. Part 55, Appendix (summarizing Section 5 coverage determinations).

Few respondents suggest that language assistance be eliminated entirely. One respondent noted, ".... The citizens are split on the issues and have strong feelings that are expressed to election officials... I think the laws do a disservice to the ethnic citizen and work as a means of

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separate and polarize citizens not unite our voices. I think this message should be expressed to the Congress."[70] Another respondent indicates that language assistance is unnecessary because of the voter assistance provisions in Section 208 of the Voting Rights Act.[71]

Most respondents report that they support the language assistance provisions. Some respondents explain how they overcame their own doubts about the provisions. One observes:

> For the longest time I thought that if you live in the USA, you should learn English. It is very difficult to help someone who doesn't speak the language. My husband hunts in Mexico and the few times I went with him I felt helpless because I didn't understand Spanish. It is very overwhelming when you need assistance and can't get it because of the language barrier.[72]

Similarly, another respondent describes their family as "multi-ethnic and multi-cultural" and indicates that "although I feel everyone in America should learn the predominate language, I think we should assist them until they have the chance to learn English [and] then we need to always assist them."[73]

One respondent describes language assistance as "common sense."[74] Others emphasize the provisions' "inclusivity"[75] and tendency to make "voters feel comfortable coming to the polls knowing there is help there if needed."[76] One respondent describes the importance of language assistance and the challenges jurisdictions face in providing it:

> I believe the language translators are necessary and good. I prefer to have an informed voter casting a ballot rather than uninformed. If that takes providing election materials in their native language then I am all for it. However, it is extremely difficult to find sufficient numbers of bilingual workers. Bilingual workers are also very resistant to travel or work in non-[covered language] areas of the county.[77]

Another respondent echoes this view, observing that "language assistance is extremely important in ensuring the integrity of the U.S. Election process" and the legitimacy of government outcomes.[78] These concerns caused one respondent to suggest that Congress should "broaden the requirements."[79]

Several respondents describe their "good experience" under the language provisions.[80] One respondent indicates, "I'm all for bilingual helpers to assist the older voters with understanding the whole process of coming to the polls, getting the ballot, reading the ballot, and voting."[81]

Another respondent indicates the personal fulfillment achieved by assisting limited-English voters by noting, "Enjoy their learning and questions regarding elections" and the "diversity of the language and people who reside together."[82] In at least one instance, a respondent

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reports using positive experiences under the language assistance provisions to educate other jurisdictions: "We believe the minority language outreach programs are very important. We are currently working with other [jurisdiction] elections official to begin a statewide outreach group to share ideas and training."[83]

Finally, some respondents explain the impact of the language assistance provisions in their jurisdiction. One respondent notes how outreach to language minority voters increases their participation:

> A postcard was sent to all registered voters on file. This postcard asked if they wanted their voting materials in [the covered language]. The response increased the voter file of [the covered language] requests from 250 to approximately 1650.[84]

Another respondent describes the appreciation the jurisdiction received from American Indian voters by observing, "Many of our voters of the [covered] Tribes have expressed their appreciation of election information and instruction provided in [the covered language], both written and verbal."[85] For these and other similar reasons, responding jurisdictions express their overwhelming support for reauthorizing the language assistance provisions.

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[1] Respondent 238.

[2] Respondent 239.

[3] Respondents 311 and 663.

[4] Respondent 311.

[5] Respondent 974.

[6] Respondents 624, 693, 892, and 935.

[7] Respondent 624 [Question H-3 response]

[8] Respondent 993 [Question H-1 response]. Respondent 370 provided a similar response to Question H-1.

[9] Respondent 691 [Question H-1 response].

[10] Respondent 474. Respondents 206 and 277 provided similar opinions.

[11] Respondents 268, 357, and 857.

[12] Respondents 344 and 857.

[13] Respondent 857.

[14] Respondent 320.

[15] Respondent 236. Respondent 881 provided a similar opinion.

[16] Respondent 393.

[17] Respondents 277, 328, 394, 571, 831, and 939.

[18] Respondents 226 and 939.

[19] Respondents 646 and 989.

[20] Respondent 328.

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[21] Respondent 287. Respondents 451, 461, and 908 provided similar opinions.

[22] Respondents 299, 451, 461, and 908.

[23] Respondents 461 and 1012.

[24] Respondents 461 and 1012.

[25] Respondent 224. Respondent 208 provided a similar opinion.

[26] Respondent 804.

[27] Respondent 879.

[28] Respondent 259.

[29] A respondent reported complete cost data if they provided their total election expenses and all oral and written language assistance costs, if any, that their jurisdiction incurred for their language assistance program. *See* Chapter 6.

[30] Respondent 344.

[31] Respondent 857.

[32] Respondent 311.

[33] Respondents 287, 388, and 846.

[34] Respondents 322, 388, 442, 553, 853, and 929.

[35] Respondent 367.

[36] Respondent 715.

[37] Respondent 767.

[38] Respondent 881.

[39] Respondent 442.

[40] Respondent 399.

[41] Respondent 215.

[42] Respondent 306.

[43] Respondent 342.

[44] Respondent 780.

[45] Respondent 879.

[46] Respondent 402.

[47] Respondent 500.

[48] Respondent 253. Respondents 370, 402, 767, 830, 917, 938, and 1003 provided similar opinions.

[49] Respondent 288.

[50] Respondent 830.

[51] Respondents 239, 319, 343, 379, 437, 449, 558, 609, 816, 872, 876, and 889.

[52] Respondent 558.

[53] Respondent 889. Respondent 609 provided a similar opinion.

[54] Respondent 872.

[55] Respondent 816.

[56] Respondents 215, 520, and 901.

[57] Respondent 520.

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[58] Respondents 550, 615, and 951.

[59] Respondent 563. Respondents 476, 706, 780, and 897 provided similar opinions.

[60] Respondent 550. Respondents 357 and 395 provided similar opinions.

[61] Respondent 476.

[62] Respondents 311, 395, 402, 550.

[63] Respondent 395.

[64] Respondent 402.

[65] Respondent 311. Respondent 550 provided a similar opinion.

[66] Respondent 839.

[67] Respondent 276.

[68] Respondent 402.

[69] Respondent 434.

[70] Respondent 311.

[71] Respondent 402A.

[72] Respondent 773.

[73] Respondent 342.

[74] Respondent 652.

[75] Respondent 206.

[76] Respondent 949.

[77] Respondent 234.

[78] Respondent 537.

[79] Respondent 616.

[80] Respondent 259.

[81] Respondent 347.

[82] Respondent 767.

[83] Respondent 462.

[84] Respondent 600.

[85] Respondent 714.

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Chapter 8:
Recommendations on Language Assistance in Public Elections

Recommendations on the Need for Assistance

Recommendations concerning the need for language assistance:

- The three population triggers for Section 203 coverage should remain in place to address the distinct needs of voting age citizens in the covered language groups.[1]
- Section 203's coverage formula should retain a requirement that the illiteracy rate of citizens in the covered language group exceeds the national illiteracy rate to ensure that the formula is constitutional.
- Election officials should become better informed about the need for language assistance in their jurisdictions among voting age citizens who are LEP in the covered languages.
- Election officials should identify what language assistance is necessary to meet the unique needs of voting age citizens who are LEP in the covered languages.
- Election officials in covered jurisdictions should disseminate more information about language assistance needs to all political subdivisions of their jurisdictions.

Recommendations on the Availability of Assistance

Recommendations concerning the availability of language assistance:

- The chief elections officer for each state should ensure that all political subdivisions provide effective language assistance to covered language minority voting age citizens.
- Covered jurisdictions should provide oral language assistance at every stage of the voting and election process for voting age citizens who need assistance in the covered languages.
- Covered jurisdictions should ensure that all written election materials available in English are available in covered Spanish and Asian languages and accurate oral translations are provided in covered Alaskan Native and American Indian languages.
- Election officials in covered jurisdictions should conduct poll worker recruitment in the covered languages, and not just in English.
- Covered jurisdictions should promote hiring and retention of full-time workers who are bilingual in English and one or more of the covered languages.

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- Covered jurisdictions should hire more part-time Election Day workers who are fluent and literate in English and one or more of the covered languages and have back-up workers available in case of no-shows.

- Covered jurisdictions should ensure that language assistance for telephone inquiries is available in all covered languages through employees or volunteers fluent in those languages.

Recommendations on the Quality of Assistance

Recommendations concerning the quality of language assistance:

- More covered jurisdictions should utilize bilingual coordinators to help implement effective assistance programs in all of the covered languages.

- Election officials in covered jurisdictions should confirm the language abilities of all employees and volunteers who are utilized to provide assistance in the covered languages.

- Election officials in covered jurisdictions should include information in their training programs about language assistance in the covered languages.

- The chief elections officer for each state should ensure that election officials receive proper training on the voter assistance requirements in Section 208 of the Voting Rights Act and that violations do not occur because of conflicting state laws.

- Election officials in covered jurisdictions should consult with language minority community organizations and individuals to make language assistance programs more effective.

- Covered jurisdictions should advertise the availability of language assistance at every stage to voting age citizens in the covered languages through appropriate outreach and publicity.

Recommendations on the Cost of Assistance

Recommendations concerning the cost of language assistance:

- Covered jurisdictions should recruit and retain bilingual individuals to fill full-time and part-time election worker positions to provide oral language assistance at no added cost.

- Covered jurisdictions should use volunteers from the covered language groups to assist in translating written election materials to minimize costs and improve the accuracy of translations.

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- The chief elections officer of each state should provide common forms, signs, and other written election materials in all covered Spanish and Asian languages to minimize duplication of costs.

- Jurisdictions should target language assistance and resources to areas where language assistance is needed by relying upon voter requests for language assistance, suggestions by community groups and individuals, Census data, surname analysis, and personal knowledge, among other methods.

- Covered political subdivisions should work in partnership with other covered jurisdictions in the area to reduce any common costs that are incurred.

- Covered jurisdictions should maintain and work with local groups and individuals to improve language assistance programs and minimize any costs that are incurred.

Recommendations on VRA Reauthorization and How to Improve Compliance

Recommendations concerning reauthorization and improving language assistance programs:

- The temporary provisions of the Voting Rights Act, including the language assistance provisions, should be reauthorized for an additional twenty-five years.

- The chief elections officer for each state should be more proactive in providing language assistance training to covered political subdivisions and monitoring Section 203 compliance.

[1] This report makes no recommendation about whether the 10,000-person trigger should be lowered, as some civil rights groups have proposed.

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Appendix A:

Project Staff

Project Co-Directors

Dr. James Thomas Tucker (Chandler, Arizona)

Dr. Tucker is an Adjunct Professor at the Barrett Honors College at Arizona State University, and co-director of the study of minority language assistance practices in public elections. Dr. Tucker is a Shareholder with the Phoenix law firm of Ogletree Deakins, P.C. He formerly served as a senior trial attorney with the Voting Section of the Civil Rights Division at the United States Department of Justice in Washington, D.C. He has authored several articles on the Voting Rights Act, including a forthcoming piece on the language assistance provisions of the VRA. Dr. Tucker received his S.J.D. and LL.M. from the University of Pennsylvania, his J.D. from the University of Florida, his M.P.A. from the University of Oklahoma, and his B.A. in History from Arizona State University's Barrett Honors College.

Dr. Rodolfo Espino (Phoenix, Arizona)

Dr. Rodolfo Espino is an Assistant Professor in the Department of Political Science at Arizona State University, and is co-director of the study of minority language assistance practices in public elections. Dr. Espino received his B.A from Luther College and his M.A. and Ph.D. from the University of Wisconsin-Madison. Dr. Espino's primary research and teaching interests are in the fields of American politics and political methodology. Dr. Espino is presently engaged in a number of research projects, including an examination of the effects of residency patterns on public policy attitudes, the determinants of instability in congressional roll call voting, translation effects in surveys of Latinos in the United States, and midpoint inflation bias in public opinion surveys.

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Student Researchers at the Barrett Honors College

Rebecca Amrani (Wichita, Kansas)

Ms. Amrani is a Senior in the Barrett Honors College at Arizona State University, majoring in Media Management with a minor in Business. Ms. Amrani is a National Merit Scholar, and recipient of the Grady Gammage Memorial and Sun Devil Scholarships. After graduation, Ms. Amrani plans to pursue an MBA and work in the television industry.

Elizabeth Andrews (Tempe, Arizona)

Ms. Andrews is a Junior in the Barrett Honors College at Arizona State University, with a double major in Political Science and History. Ms. Andrews is a National Merit Scholar and is a receipient of the Leadership Scholarship, Robert C. Byrd Scholarship, and ASU President's Scholarship. Ms. Andrews presently is a Junior Fellow in the Department of Political Science and an Undergraduate Research Fellow in the Center for the Study of Religion and Conflict. After graduation, Ms. Andrews plans to pursue a graduate degree in public policy and attend to law school.

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Ms. Barney is a Senior in the Barrett Honors College at Arizona State University, with a double major in Political Science and Italian. Ms. Barney is a receipient of the Sun Devil Scholarship Scholarship. After graduation, Ms. Barney plans to attend law school.

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Appendix B:

Selected Provisions of the Voting Rights Act

1. Triggers for Coverage under the Language Assistance Provisions.

a. Section 4(f)(4) Trigger for Coverage Under the Language Assistance Provisions:

(b) Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register.
****
On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.
****
(f)(3) In addition to the meaning given the term under subsection (c) of this section, the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to subsection (b) of this section, the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

42 U.S.C. §§ 1973b(b) & (f)(3).

b. Section 203 Trigger for Coverage Under the Language Assistance Provisions:

(2) Covered States and political subdivisions

(A) Generally

A State or political subdivision is a covered State or political subdivision for the purposes of this subsection if the Director of the Census determines, based on census data, that--

(i)(I) more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient;

(II) more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; or

(III) in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and

(ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.

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(B) Exception

The prohibitions of this subsection do not apply in any political subdivision that has less than 5 percent voting age limited-English proficient citizens of each language minority which comprises over 5 percent of the statewide limited-English proficient population of voting age citizens, unless the political subdivision is a covered political subdivision independently from its State.

(3) Definitions

As used in this section--
****
(B) the term "limited-English proficient" means unable to speak or understand English adequately enough to participate in the electoral process;

(C) the term "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;

(D) the term "citizens" means citizens of the United States; and

(E) the term "illiteracy" means the failure to complete the 5th primary grade.

(4) Special rule

The 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.

(e) Definitions

For purposes of this section, the term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

42 U.S.C. § 1973aa-1a(b).

2. The Language Assistance Provisions.

a. Language Assistance Requirements under Section 4(f)(4):

(f) Congressional findings of voting discrimination against language minorities; prohibition of English-only elections; other remedial measures

(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen

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of the United States to vote because he is a member of a language minority group.

(3) In addition to the meaning given the term under subsection (c) of this section, the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to subsection (b) of this section, the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of subsection (a) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: *Provided,* That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan Natives and American Indians, if the predominate language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

42 U.S.C. § 1973b(f).

b. Language Assistance Requirements under Section 203:

(a) Congressional findings and declaration of policy

The Congress finds that, through 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.

(b) Bilingual voting materials requirement

(1) Generally

Before August 6, 2007, no covered State or political subdivision shall provide voting materials only in the English language.
****
(3) Definitions

As used in this section--

(A) the term "voting materials" means registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots;

****
(c) Requirement of voting notices, forms, instructions, assistance, or other materials and ballots in minority language

Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in

the language of the applicable minority group as well as in the English language: *Provided,* That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

****

(e) Definitions

For purposes of this section, the term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

42 U.S.C. § 1973aa-1a.

c. Language Assistance Requirements under Section 4(e):

(e) Completion of requisite grade level of education in American-flag schools in which the predominant classroom language was other than English

(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

42 U.S.C. § 1973b(e).

3. Bailout from the Language Assistance Provisions (not applicable to Section 4(e) of VRA).

a. Section 4(f)(4) Bailout:

Action by State or political subdivision for declaratory judgment of no denial or abridgement; three-judge district court; appeal to Supreme Court; retention of jurisdiction by three-judge court

(1) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to

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comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court determines 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 United States District Court for the District of Columbia 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.

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(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting 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 unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. Any aggrieved party may as of right intervene at any stage in such action.

(5) An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court. 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.

(6) If, after two years from the date of the filing of a declaratory judgment under this subsection, no date has been set for a hearing in such action, and that delay has not been the result of an avoidable delay on the part of counsel for any party, the chief judge of the United States District Court for the District of Columbia may request the Judicial Council for the Circuit of the District of Columbia to provide the necessary judicial resources to expedite any action filed under this section. If such resources are unavailable within the circuit, the chief judge shall file a certificate of necessity in accordance with section 292(d) of Title 28.

(7) The Congress shall reconsider the provisions of this section at the end of the fifteen-year period following the effective date of the amendments made by the Voting Rights Act Amendments of 1982.

(8) The provisions of this section shall expire at the end of the twenty-five-year period following the effective date of the amendments made by the Voting Rights Act Amendments of 1982.

(9) Nothing in this section shall prohibit the Attorney General from consenting to an entry of judgment if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of subsection (a)(1) of this section. Any aggrieved party may as of right intervene at

any stage in such action.

42 U.S.C. § 1973b(a).

b. Section 203 Bailout:

Action for declaratory judgment permitting English-only materials

Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

42 U.S.C. § 1973aa-1a(d).

4. Voter Assistance (Section 208 of VRA).

Voting assistance for blind, disabled or illiterate persons

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

42 U.S.C. § 1973aa-6.

5. Federal Examiners and Federal Observer Coverage.

a. Designation by Federal Court for Federal Observer Coverage (Section 3 of VRA):

Authorization by court for appointment of Federal examiners

Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the Director of the Office of Personnel Management in accordance with section 1973d of this title to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided,* That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

42 U.S.C. § 1973a(a).

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b. Designation by Attorney General for Federal Examiner and Observer Coverage (Section 6 of VRA):

Federal voting examiners; appointment.

Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 1973a(a) of this title, or (b) unless a declaratory judgment has been rendered under section 1973b(a) of this title, the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 1973b(b) of this title that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fourteenth or fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fourteenth or fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment, the Director of the Office of Personnel Management shall appoint as many examiners for such subdivision as the Director may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 1973g(a) of this title and other persons deemed necessary by the Director to carry out the provisions and purposes of subchapters I-A to I-C of this chapter shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Director of the Office of Personnel Management, and service under subchapters I-A to I-C of this chapter shall not be considered employment for the purposes of any statute administered by the Director of the Office of Personnel Management, except the provisions of subchapter III of chapter 73 of Title 5 relating to political activities: *Provided*, That the Director is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

42 U.S.C. § 1973d.

c. Purpose and Duties of Federal Observers (Section 8 of VRA):

Observers at elections; assignment; duties; reports.

Whenever an examiner is serving under subchapters I-A to I-C of this title in any political subdivision, the Director of the Office of Personnel Management may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 1973a(a) of this title, to the court.

42 U.S.C. § 1973f.

6. Ban on Test or Device as Prerequisite to Voting (Section 201 of VRA).

Application of prohibition to other States; "test or device" defined

(a) No citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.

(b) As used in this section, the term "test or device" means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

42 U.S.C. § 1973aa.

7. Enforcement Actions to Remedy Violations of the Language Assistance Provisions and Prohibition on Test or Device (Section 204 of VRA).

Judicial relief; civil actions by the Attorney General; three-judge district court; appeal to Supreme Court

Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 1973aa of this title, or (b) undertakes to deny the right to vote in any election in violation of section 1973aa-1 or 1973aa-1a of this title, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of Title 28, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall be to the Supreme Court.

42 U.S.C. § 1973aa-2.

8. General Non-discrimination Provision (Section 2 of VRA).

Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(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 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section 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) of this section 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.

42 U.S.C. § 1973.

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9. Administrative Preclearance of Voting Changes (Section 5 of VRA).

Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither 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. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

42 U.S.C. § 1973c.

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Appendix C:

Census Data from July 2002 Section 203(c) Coverage Determinations

Tables C-1 through C-4 were compiled from sampled data used by the Census Bureau to make its July 26, 2002 determinations under Section 203 of the Voting Rights Act. According to the Voting Rights Output File Documentation, the determination data was created from sampled weights of data from the Census 2000 long forms (Summary Table Files 3 and 4). The file contains records for the entire United States, including all states and political subdivisions, which are defined as "counties for all states except for Connecticut, Maine, Massachusetts, Michigan, New Hampshire, Rhode Island, Vermont, and Wisconsin" where political subdivisions are minor civil divisions ("MCDs") or MCD equivalents. There are 62 records in the file, including one each for total population and Spanish/Hispanic/Latino, one for American Indian/Alaskan Native and 42 for American Indian/Alaskan Natives tribal groups, one for Asian and 16 for Asian groups.

The Census Bureau has suppressed data for jurisdictions indicated by an asterisk ("*") to avoid disclosure of specific persons. According to Census documentation, "[t]his means that data in a record are suppressed if the unweighted count of voting age citizens for a record is less than 50 and the weighted population count for the record is not 0 or the unweighted population count for the record is not 0." The Census Bureau rounded data that has not been suppressed. Section 203 determinations are based on data prior to rounding and prior to suppression.

"LEP Number (N)" refers to the number of voting age citizens in the identified language group who are limited-English proficient, or "LEP." A person is LEP if they speak English less than "very well."

"LEP Percent (P)" refers to the percentage of voting age citizens in the identified language group who are LEP.

"Illiteracy Rate" refers to the percent of voting age citizens in the identified language group who are LEP and illiterate. According to the Census Bureau, "voting age limited-English proficient illiteracy" refers to all voting age citizens who are limited-English proficient and who have completed less than fifth grade. Jurisdictions are covered if they meet one of the population triggers and have an illiteracy rate among voting age citizens in a single language minority group that exceeds the national illiteracy rate of all voting age citizens of 1.35 percent.

"Coverage basis" refers to the population trigger resulting in Section 203 coverage. There are four different bases for coverage: "N" if the number of LEP voting age citizens in a single language group is more than 10,000; "P" if the percentage of LEP voting age citizens in a single language group is more than five percent of all voting age citizens; "RW" if an Alaskan Native or American Indian reservation is wholly located within the jurisdiction and the percentage of LEP voting age citizens in a single language group is more than five percent of all voting age citizens on that reservation; and "RP" if an Alaskan Native or American Indian reservation is partially located within the jurisdiction and the percentage of LEP voting age citizens in a single language group is more than five percent of all voting age citizens on that reservation. A jurisdiction can be covered for a single language group by multiple population triggers.

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Table C-1:

Jurisdictions Covered by Section 203 for Spanish Heritage, by State

ARIZONA

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Cochise County	4325	5.36	14.34	P
Greenlee County	315	5.52	4.76	P
Maricopa County	53385	2.70	12.71	N
Pima County	23220	3.97	12.36	N
Santa Cruz County	5585	29.68	8.59	P
Yuma County	7440	8.23	15.79	P

CALIFORNIA

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
State of California†	1003995	5.02	16.36	P
Alameda County	22010	2.45	13.90	N
Colusa County	805	8.31	31.06	P
Contra Costa County	13115	2.14	11.55	N
Fresno County	32195	7.21	24.13	N, P
Imperial County	16110	21.64	20.17	N, P
Kern County	23285	6.04	23.34	N, P
Kings County	5080	6.36	17.13	P
Los Angeles County	428580	8.58	15.92	N, P
Madera County	4380	6.13	23.29	P
Merced County	8500	7.73	23.00	P
Monterey County	16935	7.80	22.91	N, P
Orange County	64385	3.95	15.89	N
Riverside County	49495	5.39	15.83	N, P
Sacramento County	13440	1.69	14.32	N
San Benito County	2540	8.36	21.85	P
San Bernardino County	56250	5.69	13.50	N, P
San Diego County	65520	3.66	12.80	N
San Francisco County	14645	2.65	13.21	N
San Joaquin County	14630	4.42	17.19	N
San Mateo County	15365	3.46	12.50	N
Santa Barbara County	10595	4.20	16.66	N
Santa Clara County	33520	3.44	14.53	N
Stanislaus County	12035	4.53	19.53	N
Tulare County	15505	8.00	23.44	N, P
Ventura County	24505	5.35	18.87	N, P

† All 58 counties and their political subdivisions are covered as a result of statewide coverage of California.

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COLORADO

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Alamosa County	565	5.37	15.04	P
Conejos County	680	12.24	14.71	P
Costilla County	490	18.85	16.33	P
Crowley County	245	5.49	10.20	P
Denver County	10880	2.92	14.20	N
Otero County	840	5.91	19.64	P
Rio Grande County	535	6.22	15.89	P
Saguache County	250	6.74	34.00	P

CONNECTICUT

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bridgeport (Fairfield County)	9585	11.28	12.36	P
Hartford (Hartford County)	12400	16.69	14.44	N, P
Meriden (New Haven County)	2600	6.24	8.46	P
New Britain (Hartford County)	4140	8.62	8.57	P
New Haven (New Haven County)	5090	6.08	10.61	P
Waterbury (New Haven County)	5045	6.91	11.60	P
Windham (Windham County)	1180	7.17	12.29	P

FLORIDA

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Broward County	35780	3.42	5.14	N
Hardee County	900	5.52	35.00	P
Hendry County	1430	7.32	21.33	P
Hillsborough County	27480	3.99	9.04	N
Miami-Dade County	273975	23.53	8.27	N, P
Orange County	30935	5.10	6.24	N, P
Osceola County	11375	9.99	5.45	N, P
Palm Beach County	20020	2.52	9.24	N

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ILLINOIS

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Cook County	131530	3.84	12.61	N
Kane County	10055	4.12	13.53	N

KANSAS

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Finney County	1420	6.72	9.86	P
Ford County	990	5.62	15.15	P
Grant County	305	6.36	21.31	P
Haskell County	140	5.34	14.29	P
Kearny County	135	5.04	25.93	P
Seward County	1160	9.90	11.64	P

MARYLAND

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Montgomery County	10055	1.86	8.20	N

MASSACHUSETTS

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Boston (Suffolk County)	11820	3.04	11.59	N
Chelsea (Suffolk County)	2160	12.91	15.51	P
Holyoke (Hampden County)	3840	14.10	16.67	P
Lawrence (Essex County)	6410	18.02	10.92	P
Southbridge (Worcester County)	930	7.45	17.20	P
Springfield (Hampden County)	9560	9.33	17.05	P

MICHIGAN

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Clyde township, Allegan County	75	5.47	33.33	P

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NEBRASKA

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Colfax County	385	6.15	15.58	P

NEVADA

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Clark County	27020	3.03	12.12	N

NEW JERSEY

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bergen County	12885	2.19	3.76	N
Cumberland County	5685	5.44	11.70	P
Essex County	23065	4.56	9.73	N
Hudson County	47440	13.49	8.83	N, P
Middlesex County	14200	2.94	10.07	N
Passaic County	24270	8.20	8.67	N, P
Union County	17235	5.22	5.98	N, P

NEW MEXICO

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
State of New Mexico[†]	74855	6.08	13.21	P
Bernalillo County	18140	4.65	8.30	N
Chaves County	3220	8.10	19.25	P
De Baca County	160	9.55	21.88	P
Dona Ana County	13770	13.08	19.79	N, P
Eddy County	2715	7.62	24.31	P
Grant County	2015	8.96	13.15	P
Guadalupe County	440	12.83	10.23	P
Harding County	65	10.24	15.38	P
Hidalgo County	460	12.33	21.74	P
Lea County	2330	6.60	23.61	P
Luna County	1610	11.01	15.53	P
Mora County	985	26.09	11.17	P
Rio Arriba County	4025	14.16	10.06	P

[†] All 33 counties and their political subdivisions are covered as a result of statewide coverage of New Mexico.

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NEW MEXICO (CONT.)

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Roosevelt County	765	6.11	20.26	P
San Miguel County	2900	13.58	9.83	P
Santa Fe County	5060	5.59	7.71	P
Socorro County	870	7.11	12.07	P
Taos County	2395	10.90	5.01	P
Torrance County	600	5.25	18.33	P
Union County	200	6.70	17.50	P
Valencia County	2980	6.78	12.58	P

NEW YORK

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bronx County	119365	16.21	11.67	N, P
Kings County	84760	6.13	13.51	N, P
Nassau County	14820	1.62	9.99	N
New York County	80140	7.76	13.55	N, P
Queens County	84460	6.87	7.99	N, P
Suffolk County	16685	1.71	8.45	N
Westchester County	16305	2.77	9.14	N

OKLAHOMA

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Harmon County	145	6.04	31.03	P
Texas County	720	5.83	16.67	P

PENNSYLVANIA

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Philadelphia County	25660	2.39	13.33	N

RHODE ISLAND

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Central Falls (Providence County)	1305	13.80	8.81	P
Providence (Providence County)	7395	7.11	10.55	P

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TEXAS

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
State of Texas[†*]	818185	6.15	19.46	P
Andrews County	585	7.22	29.91	P
Atascosa County	3985	15.62	25.35	P
Bailey County	330	8.26	21.21	P
Bee County	3335	13.58	21.44	P
Bexar County	98165	10.65	15.22	N, P
Borden County	*	*	*	P
Brewster County	620	9.48	31.45	P
Brooks County	1540	29.39	24.03	P
Caldwell County	1790	8.06	21.51	P
Calhoun County	935	6.79	27.81	P
Cameron County	46875	26.84	25.05	N, P
Castro County	620	12.34	35.48	P
Cochran County	295	12.66	32.20	P
Concho County	265	8.14	24.53	P
Crane County	210	8.64	19.05	P
Crockett County	415	15.34	15.66	P
Crosby County	580	12.17	29.31	P
Culberson County	420	22.52	38.10	P
Dallas County	53985	4.17	17.42	N
Dawson County	1270	11.64	40.16	P
Deaf Smith County	1650	14.66	30.61	P
DeWitt County	890	5.94	34.83	P
Dimmit County	1950	29.84	34.87	P
Duval County	2500	27.65	22.40	P
Ector County	6775	8.75	18.97	P
Edwards County	230	15.70	32.61	P
El Paso County	85400	23.12	16.00	N, P
Fisher County	185	5.70	43.24	P
Floyd County	555	10.85	32.43	P
Frio County	2360	21.17	25.42	P
Gaines County	895	10.94	30.17	P
Garza County	365	10.80	10.96	P
Glasscock County	45	5.45	33.33	P
Goliad County	350	6.99	31.43	P
Gonzales County	1085	8.85	29.03	P
Guadalupe County	3540	5.79	20.34	P
Hale County	2625	10.97	27.43	P
Hall County	130	5.06	23.08	P

[†] All 254 counties and their political subdivisions are covered as a result of statewide coverage of Texas.

[*] Loving County apparently was inadvertently included by the Census Bureau in its coverage determination. Census data indicates it is only flagged for statewide coverage. Therefore, it is excluded from this table.

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TEXAS (CONT.)

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Hansford County	180	5.41	22.22	P
Harris County	107915	5.49	14.97	N, P
Hidalgo County	75255	27.86	26.04	N, P
Hockley County	1285	8.29	33.07	P
Howard County	1945	8.08	17.74	P
Hudspeth County	355	23.13	22.54	P
Irion County	75	5.88	33.33	P
Jeff Davis County	170	10.97	26.47	P
Jim Hogg County	1025	29.50	27.80	P
Jim Wells County	5530	20.99	19.26	P
Karnes County	1505	12.85	30.56	P
Kenedy County	90	33.33	22.22	P
Kinney County	365	15.77	38.36	P
Kleberg County	3430	15.64	16.18	P
Knox County	210	7.05	38.10	P
La Salle County	1170	28.92	28.63	P
Lamb County	1135	11.52	33.92	P
Live Oak County	815	8.64	28.83	P
Lubbock County	9285	5.26	25.20	P
Lynn County	495	11.47	33.33	P
Madison County	540	5.50	6.48	P
Martin County	320	10.88	40.63	P
Matagorda County	1385	5.64	31.77	P
Maverick County	8530	41.87	19.87	P
McMullen County	60	9.68	25.00	P
Medina County	2920	10.75	23.46	P
Menard County	145	8.41	44.83	P
Midland County	4290	5.62	21.21	P
Mitchell County	765	10.06	21.57	P
Moore County	940	8.67	23.94	P
Nolan County	625	5.54	39.20	P
Nueces County	26190	12.18	20.41	N, P
Parmer County	655	11.47	32.82	P
Pecos County	1850	16.88	33.51	P
Presidio County	955	29.25	30.37	P
Reagan County	175	9.51	20.00	P
Reeves County	2110	25.65	29.15	P
Refugio County	540	9.52	35.19	P
Runnels County	525	6.46	24.76	P
San Patricio County	5740	12.68	29.18	P
Schleicher County	230	11.86	34.78	P
Scurry County	660	5.52	35.61	P
Starr County	10050	44.47	24.08	N, P
Sterling County	75	8.11	46.67	P

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TEXAS (CONT.)

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Sutton County	375	14.34	29.33	P
Swisher County	430	7.44	32.56	P
Tarrant County	25350	2.71	16.33	N
Terrell County	70	9.66	21.43	P
Terry County	900	10.32	35.00	P
Titus County	1005	5.98	29.85	P
Tom Green County	4180	5.65	21.53	P
Travis County	19195	3.54	15.37	N
Upton County	260	11.85	36.54	P
Uvalde County	3245	19.99	29.43	P
Val Verde County	5740	23.07	24.22	P
Victoria County	3915	6.78	25.03	P
Ward County	785	10.84	24.84	P
Webb County	33000	36.03	14.91	N, P
Wharton County	1450	5.22	29.66	P
Willacy County	3875	30.96	32.26	P
Wilson County	1675	7.45	22.69	P
Winkler County	460	10.53	36.96	P
Yoakum County	390	9.08	25.64	P
Zapata County	1940	29.24	23.97	P
Zavala County	2860	40.92	30.42	P

WASHINGTON

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Adams County	745	8.76	28.19	P
Franklin County	1840	7.53	20.38	P
Yakima County	6950	5.36	28.92	P

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Table C-2:

Jurisdictions Covered by Section 203 for Alaskan Native Languages

Covered Jurisdiction	Covered Language	Indian Reservation	Number LEP	Percent LEP	Illiteracy Rate	Coverage Basis
Aleutians West Census Area	Aleut	Atka ANVSA	0	*	*	RP
	Aleut	Nikolski ANVSA	0	*	*	RP
	Aleut	St. Paul ANVSA	40	11.94	10	RP
Bethel Census Area	Eskimo		1980	20.82	21.46	P
	Eskimo	Akiachak ANVSA	75	23.44	26.67	RP
	Eskimo	Akiak ANVSA	25	17.24	40	RP
	Eskimo	Aniak ANVSA	15	6.98	66.67	RP
	Eskimo	Atmautluak ANVSA	105	51.22	19.05	RP
	Eskimo	Bethel ANVSA	195	9.31	20.51	RP
	Eskimo	Chefornak ANVSA	105	58.33	19.05	RP
	Eskimo	Goodnews Bay ANVSA	45	32.14	22.22	RP
	Eskimo	Kalskag ANVSA	0	*	*	RP
	Eskimo	Kasigluk ANVSA	105	38.89	14.29	RP
	Eskimo	Kipnuk ANVSA	170	45.95	14.71	RP
	Eskimo	Kwethluk ANVSA	90	25.71	27.78	RP
	Eskimo	Kwigillingok ANVSA	65	39.39	15.38	RP
	Eskimo	Mekoryuk ANVSA	20	16.67	75	RP
	Eskimo	Napakiak ANVSA	50	27.03	8	RP
	Eskimo	Napaskiak ANVSA	110	44.9	22.73	RP
	Eskimo	Newtok ANVSA	95	52.78	15.79	RP
	Eskimo	Nightmute ANVSA	0	*	*	RP
	Eskimo	Nunapitchuk ANVSA	105	43.75	14.29	RP
	Eskimo	Oscarville ANVSA	0	*	*	RP
	Eskimo	Platinum ANVSA	0	*	*	RP
	Eskimo	Toksook Bay ANVSA	180	65.45	16.67	RP
	Eskimo	Tuluksak ANVSA	70	25.45	28.57	RP
	Eskimo	Tuntutuliak ANVSA	80	50	31.25	RP
	Eskimo	Tununak ANVSA	100	60.61	15	RP
Denali Borough	Alaskan Athabascan	Cantwell ANVSA	0	*	*	RP
Dillingham Census Area	Eskimo		310	10.32	45.16	P
	Eskimo	Aleknagik ANVSA	0	*	*	RP

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Covered Jurisdiction	Covered Language	Indian Reservation	Number LEP	Percent LEP	Illiteracy Rate	Coverage Basis
Dillingham Census Area (continued)	Eskimo	Clark's Point ANVSA	0	*	*	RP
	Eskimo	Dillingham ANVSA	55	6.47	36.36	RP
	Eskimo	Manokotak ANVSA	0	*	*	RP
	Eskimo	New Koliganek ANVSA	0	*	*	RP
	Eskimo	New Stuyahok ANVSA	50	18.87	50	RP
	Eskimo	Togiak ANVSA	100	24.39	45	RP
	Eskimo	Twin Hills ANVSA	0	*	*	RP
	Other Alaska Native	Manokotak ANVSA	0	*	*	RP
Kenai Peninsula Borough	Aleut	Port Graham ANVSA	0	*	*	RP
Lake and Peninsula Borough	Alaskan Athabascan	Newhalen ANVSA	0	*	*	RP
	Aleut	Igiugig ANVSA	0	*	*	RP
	Aleut	Port Heiden ANVSA	0	*	*	RP
	Eskimo	Newhalen ANVSA	0	*	*	RP
Nome Census Area	Eskimo		360	6.26	12.50	P
	Eskimo	Brevig Mission ANVSA	15	11.54	26.67	RP
	Eskimo	Gambell ANVSA	75	22.39	5.33	RP
	Eskimo	Shishmaref ANVSA	40	12.7	10	RP
	Eskimo	Stebbins ANVSA	20	7.02	20	RP
	Eskimo	Teller ANVSA	10	7.41	40	RP
	Eskimo	Unalakleet ANVSA	30	7.5	13.33	RP
North Slope Borough	Eskimo		525	11.86	22.86	P
	Eskimo	Barrow ANVSA	350	21.21	21.43	RP
	Eskimo	Kaktovik ANVSA	20	14.81	50	RP
	Eskimo	Nuiqsut ANVSA	25	11.9	80	RP
	Eskimo	Point Hope ANVSA	65	17.57	15.38	RP
	Eskimo	Wainwright ANVSA	50	15.63	8	RP
Northwest Arctic Borough	Eskimo		335	7.98	13.43	P
	Eskimo	Kiana ANVSA	60	37.5	6.67	RP
	Eskimo	Kotzebue ANVSA	125	9.62	12	RP
	Eskimo	Noatak ANVSA	15	6.67	26.67	RP
	Eskimo	Noorvik ANVSA	35	9.09	11.43	RP
	Eskimo	Shungnak ANVSA	60	42.86	33.33	RP

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Covered Jurisdiction	Covered Language	Indian Reservation	Number LEP	Percent LEP	Illiteracy Rate	Coverage Basis
Northwest Arctic Borough (continued)	Other Alaska Native	Selawik ANVSA	80	21.33	5	RP
Southeast Fairbanks Census Area	Alaskan Athabascan	Northway ANVSA	0	*	*	RP
	Alaskan Athabascan	Tanacross ANVSA	0	*	*	RP
	Alaskan Athabascan	Tetlin TDSA	0	*	*	RP
	Other Alaska Native	Tetlin TDSA	0	*	*	RP
Valdez-Cordova Census Area	Alaskan Athabascan	Chistochina ANVSA	0	*	*	RP
Wade Hampton Census Area	Eskimo		570	15.24	36.84	P
	Eskimo	Alakanuk ANVSA	55	15.94	54.55	RP
	Eskimo	Algaacig ANVSA	35	18.92	28.57	RP
	Eskimo	Andreafsky ANVSA	0	*	*	RP
	Eskimo	Chevak ANVSA	20	6.06	50	RP
	Eskimo	Emmonak ANVSA	85	22.37	23.53	RP
	Eskimo	Hooper Bay ANVSA	100	20.2	45	RP
	Eskimo	Kotlik ANVSA	45	15.25	22.22	RP
	Eskimo	Marshall ANVSA	30	16.67	50	RP
	Eskimo	Mountain Village ANVSA	65	18.31	38.46	RP
	Eskimo	Nunam Iqua ANVSA	0	*	*	RP
	Eskimo	Pilot Station ANVSA	65	24.07	46.15	RP
	Eskimo	Pitkas Point ANVSA	0	*	*	RP
	Eskimo	Russian Mission ANVSA	20	14.81	75	RP
Yukon-Koyukuk Census Area	Alaskan Athabascan	Allakaket ANVSA	0	*	*	RP
	Alaskan Athabascan	Chalkyitsik ANVSA	0	*	*	RP
	Alaskan Athabascan	Fort Yukon ANVSA	25	6.58	16	RP
	Alaskan Athabascan	Galena ANVSA	15	5.56	26.67	RP
	Alaskan Athabascan	Nikolai ANVSA	0	*	*	RP
	Eskimo	Nikolai ANVSA	0	*	*	RP
	Eskimo	Stevens Village ANVSA	0	*	*	RP

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Table C-3:

Jurisdictions Covered by Section 203 for American Indian Languages, by State

ALASKA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bethel Census Area	American Indian	Eek ANVSA	80	53.33	5	RP
	American Indian	Kongiganak ANVSA	35	14	42.86	RP
	American Indian	Kwinhagak ANVSA	175	53.03	20	RP
	American Indian	Lower Kalskag ANVSA	10	7.14	100	RP
	American Indian	Sleetmute ANVSA	0	*	*	RP
	Other American Indian	Kwigillingok ANVSA	0	*	*	RP
Dillingham Census Area	Other American Indian	Manokotak ANVSA	0	*	*	RP
Kenai Peninsula Borough	American Indian	Port Graham ANVSA	0	*	*	RP
North Slope Borough	American Indian	Anaktuvuk Pass ANVSA	30	18.75	33.33	RP
Wade Hampton Census Area	American Indian	Nunam Iqua ANVSA	0	*	*	RP
	American Indian	Scammon Bay ANVSA	45	20.45	22.22	RP
	Chickasaw	Chevak ANVSA	45	13.64	33.33	RP
Yukon-Koyukuk Census Area	Other American Indian	Hughes ANVSA	0	*	*	RP

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ARIZONA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Apache County	Apache	Fort Apache Reservation	15	10	0	RP
	Navajo		11245	26.52	25.43	N, P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	11175	36.11	25.37	RP
	Pueblo	Zuni Reservation and Off Reservation Trust Land	0	0	0	RP
Coconino County	Navajo		5405	6.74	26.64	P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	4555	35.41	29.75	RP
	Pueblo	Hopi Reservation and Off-Reservation Trust Land	90	14.75	0	RP
Gila County	Apache	Fort Apache Reservation	270	32.53	1.48	RP
	Apache	San Carlos Reservation	570	22.01	2.63	RP
	Apache	Tonto Apache Reservation	0	*	*	RP
Graham County	Apache	San Carlos Reservation	715	29.24	0.56	RP
Maricopa County	Tohono O'Odham	Tohono O'odham Reservation and Off-Reservation Trust Land	190	62.3	28.95	RP
Navajo County	Apache	Fort Apache Reservation	1620	29.54	2.78	RP
	Navajo		7185	11.58	30.48	P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	6515	43.16	32.46	RP
	Pueblo	Hopi Reservation and Off-Reservation Trust Land	815	23.55	3.68	RP

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ARIZONA (CONT.)

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Pima County	Tohono O'Odham	Tohono O'odham Reservation and Off-Reservation Trust Land	1670	31.48	9.28	RP
	Yaqui	Pascua Yaqui Reservation	280	18.24	10.71	RP
Pinal County	Apache	San Carlos Reservation	0	0	0	RP
	Tohono O'Odham	Maricopa (Ak Chin) Reservation	45	11.84	8.89	RP
	Tohono O'Odham	Tohono O'odham Reservation and Off-Reservation Trust Land	170	39.08	14.71	RP
Yuma County	Yuman	Cocopah Reservation	80	20.78	37.5	RP
	Yuman	Fort Yuma Reservation	0	*	*	RP

CALIFORNIA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Imperial County	Latin American Indian	Torres-Martinez Reservation	0	0	0	RP
	Yuman	Fort Yuma Reservation	50	6.29	8	RP
Riverside County	Latin American Indian	Torres-Martinez Reservation	0	*	*	RP

COLORADO

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
La Plata County	Navajo	Ute Mountain Reservation and Off-Reservation Trust Land	0	0	0	RP
	Ute	Ute Mountain Reservation and Off-Reservation Trust Land	0	0	0	RP

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COLORADO (CONT.)

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Montezuma County	Navajo	Ute Mountain Reservation and Off-Reservation Trust Land	0	*	*	RP
	Ute	Ute Mountain Reservation and Off-Reservation Trust Land	200	23.67	10	RP

FLORIDA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Broward County	Seminole	Hollywood Reservation	35	11.29	57.14	RP
Collier County	Seminole	Immokalee Reservation	0	*	*	RP
Glades County	Seminole	Brighton Reservation	0	*	*	RP

IDAHO

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bannock County	Other American Indian	Fort Hall Reservation and Off-Reservation Trust Land	55	7.69	7.27	RP
Bingham County	Other American Indian	Fort Hall Reservation and Off-Reservation Trust Land	80	5.8	5	RP
Caribou County	Other American Indian	Fort Hall Reservation and Off-Reservation Trust Land	0	0	0	RP
Owyhee County	Other American Indian	Duck Valley Reservation	0	*	*	RP
Power County	Other American Indian	Fort Hall Reservation and Off-Reservation Trust Land	0	*	*	RP

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LOUISIANA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Allen Parish	Other American Indian	Coushatta Reservation	0	*	*	RP

MISSISSIPPI

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Attala County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	0	0	RP
Jackson County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	0	0	RP
Jones County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	*	*	RP
Kemper County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	*	*	RP
Leake County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	*	*	RP
Neshoba County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	620	38.39	16.13	RP
Newton County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	*	*	RP
Scott County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	0	0	RP
Winston County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	*	*	RP

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MONTANA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Big Horn County	Cheyenne	Northern Cheyenne Reservation and Off-Reservation	55	7.14	0	RP
Rosebud County	Cheyenne	Northern Cheyenne Reservation and Off-Reservation	170	11.6	2.35	RP

NEBRASKA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Sheridan County	Sioux	Pine Ridge Reservation and Off-Reservation	0	*	*	RP

NEVADA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Elko County	Other American Indian	Duck Valley Reservation	95	18.45	10.53	RP
	Shoshone	Elko Colony	40	9.64	10	RP
Humboldt County	Other American Indian	Fort McDermitt Reservation	60	31.58	6.67	RP
Lyon County	Paiute	Yerington Colony	0	*	*	RP
Nye County	Shoshone	Duckwater Reservation	0	*	*	RP
White Pine County	Shoshone	Ely Reservation	0	*	*	RP

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NEW MEXICO

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bernalillo County	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	265	31.55	26.42	RP
	Pueblo	Laguna Pueblo and Off-Reservation Trust Land	0	0	0	RP
Catron County	Pueblo	Acoma Pueblo and Off-Reservation Trust Land	0	0	0	RP
	Pueblo	Zuni Reservation and Off-Reservation Trust Land	0	0	0	RP
Cibola County	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	465	38.43	29.03	RP
	Pueblo	Acoma Pueblo and Off-Reservation Trust Land	300	16.9	3.33	RP
	Pueblo	Laguna Pueblo and Off-Reservation Trust Land	430	17.48	2.33	RP
	Pueblo	Zuni Reservation and Off-Reservation Trust Land	0	0	0	RP
McKinley County	Navajo		8510	18.58	25.91	P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	6640	34.35	27.41	RP
	Pueblo	Zuni Reservation and Off-Reservation Trust Land	1310	27.93	1.91	RP
Rio Arriba County	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	0	*	*	RP
San Juan County	Navajo		6730	8.95	25.33	P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	5325	32.13	27.98	RP
	Navajo	Ute Mountain Reservation and Off-Reservation Trust Land	0	0	0	RP
	Ute	Ute Mountain Reservation and Off-Reservation Trust Land	0	0	0	RP

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NEW MEXICO (CONT.)

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Sandoval County	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	795	50.64	35.22	RP
	Pueblo	Jemez Pueblo	525	42	1.9	RP
	Pueblo	Laguna Pueblo and Off-Reservation Trust Land	0	0	0	RP
	Pueblo	San Felipe Pueblo	600	38.71	4.17	RP
	Pueblo	Santo Domingo Pueblo	425	22.14	3.53	RP
	Pueblo	Zia Pueblo and Off-Reservation Trust Land	180	47.37	2.22	RP
Santa Fe County	Pueblo	Santo Domingo Pueblo	0	0	0	RP
	Pueblo	Tesuque Pueblo and Off-Reservation Trust Land	20	6.9	20	RP
Socorro County	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	575	62.84	13.04	RP
	Pueblo	Acoma Pueblo and Off-Reservation Trust Land	0	0	0	RP
Taos County	Pueblo	Taos Pueblo and Off-Reservation Trust Land	160	16.16	2.5	RP
Valencia County	Pueblo	Laguna Pueblo and Off-Reservation Trust Land	0	0	0	RP

NORTH DAKOTA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Richland County	Sioux	Lake Traverse Reservation	0	0	0	RP
Sargent County	Sioux	Lake Traverse Reservation	0	*	*	RP

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OREGON

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Malheur County	Other American Indian	Fort McDermitt Reservation	0	0	0	RP

SOUTH DAKOTA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bennett County	Sioux	Pine Ridge Reservation and Off-Reservation Trust Land	70	9.86	0	RP
Codington County	Sioux	Lake Traverse Reservation	0	0	0	RP
Day County	Sioux	Lake Traverse Reservation	30	20.69	0	RP
Dewey County	Sioux	Cheyenne River Reservation and Off-Reservation Trust Land	125	5.04	0	RP
Grant County	Sioux	Lake Traverse Reservation	0	0	0	RP
Gregory County	Sioux	Rosebud Reservation and Off-Reservation Trust Land	0	*	*	RP
Haakon County	Sioux	Cheyenne River Reservation and Off-Reservation Trust Land	0	0	0	RP
Jackson County	Sioux	Pine Ridge Reservation and Off-Reservation Trust Land	25	3.82	0	RP
Lyman County	Sioux	Rosebud Reservation and Off-Reservation Trust Land	0	0	0	RP
Marshall County	Sioux	Lake Traverse Reservation	15	9.09	0	RP
Meade County	Cheyenne	Northern Cheyenne Reservation and Off-Reservation Trust Land	0	0	0	RP
	Sioux	Cheyenne River Reservation and Off-Reservation Trust Land	0	0	0	RP
Mellette County	Sioux	Rosebud Reservation and Off-Reservation Trust Land	45	11.69	0	RP
Roberts County	Sioux	Lake Traverse Reservation	80	4.79	5	RP

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SOUTH DAKOTA (CONT.)

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Shannon County	Sioux		400	5.86	3.75	P
	Sioux	Pine Ridge Reservation and Off-Reservation Trust Land	400	6.38	3.75	RP
Stanley County	Sioux	Cheyenne River Reservation and Off-Reservation Trust Land	0	0	0	RP
Todd County	Sioux		265	5.25	1.51	P
	Sioux	Rosebud Reservation and Off-Reservation Trust Land	265	6.48	1.51	RW
Tripp County	Sioux	Rosebud Reservation and Off-Reservation Trust Land	0	*	*	RP
Ziebach County	Sioux		105	7.02	3.81	P
	Sioux	Cheyenne River Reservation and Off-Reservation Trust Land	105	10.94	3.81	RP

TEXAS

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
El Paso County	Pueblo	Ysleta Del Sur Pueblo and Off-Reservation Trust Land	40	24.24	10	RP
Maverick County	Other American Indian	Kickapoo (TX) Reservation	145	59.18	86.21	RP

UTAH

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
San Juan County	Navajo		1660	19.12	25.60	P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	1510	42.24	26.82	RP
	Navajo	Ute Mountain Reservation and Off-Reservation Trust Land	0	*	*	RP
	Ute	Ute Mountain Reservation and Off-Reservation Trust Land	15	8.82	66.67	RP

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Table C-4:

Jurisdictions Covered by Section 203 for Asian Languages, by State

ALASKA

Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Kodiak Island Borough	Filipino	470	5.58	12.77	P

CALIFORNIA

Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Alameda County	Chinese (including Taiwanese)	28280	3.15	10.98	N
Los Angeles County	Chinese (including Taiwanese)	95700	1.92	10.71	N
	Filipino	34985	0.7	4.46	N
	Japanese	12510	0.25	2.88	N
	Korean	42390	0.85	2.67	N
	Vietnamese	30340	0.61	10.42	N
Orange County	Chinese (including Taiwanese)	14805	0.91	4.36	N
	Korean	12240	0.75	2.37	N
	Vietnamese	45730	2.8	6.9	N
San Diego County	Filipino	17155	0.96	4.58	N
San Francisco County	Chinese (including Taiwanese)	58735	10.61	16.89	N, P
San Mateo County	Chinese (including Taiwanese)	11780	2.65	6.24	N
Santa Clara County	Chinese (including Taiwanese)	24895	2.56	5.12	N
	Filipino	11245	1.15	3.65	N
	Vietnamese	31265	3.21	5.76	N

HAWAII

Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Honolulu County	Chinese (including Taiwanese)	12640	2.07	13.49	N
	Filipino	24815	4.06	10.44	N
	Japanese	13865	2.27	5.27	N
Maui County	Filipino	5350	6.09	13.08	P

ILLINOIS

Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Cook County	Chinese (including Taiwanese)	11645	0.34	9.36	N

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NEW YORK

Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Kings County	Chinese (including Taiwanese)	33635	2.43	13.32	N
New York County	Chinese (including Taiwanese)	21070	2.04	21.33	N
Queens County	Chinese (including Taiwanese)	37865	3.08	8.05	N
	Korean	11835	0.96	6.46	N

TEXAS

Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Harris County	Vietnamese	16970	0.86	7.81	N

WASHINGTON

Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
King County	Chinese	10535	0.86	9.35	N

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Survey # _____

Language Assistance in Voting Survey

Would you like a copy of the survey report to be mailed to you?

___ Yes ___ No

Section A: Public Elections

A-1. How long have you been serving in your current capacity with respect to conducting **public elections?**

_____ Years _____ Months

A-2. On average, how many **public elections** does your jurisdiction have per year? (check one)

___ One ___ Two or Three ___ Four or Five ___ Six or more

A-3. On average, how many **public elections** is your office responsible for conducting per year?

___ One ___ Two or Three ___ Four or Five ___ Six or more

A-4. What type of **public elections** is your office responsible for conducting? (check all that apply

___ Federal general and/or primary (President and Congress)
___ State general and/or primary (Governor, state legislature, attorney general, etc.)
___ County general and/or primary (Board of supervisors, county attorney, sheriff, etc.)
___ City general and/or primary (Mayor, city council, etc.)
___ Judicial (retention or otherwise)
___ School board general and/or primary
___ Special district general and/or primary
___ Bond elections
___ Initiatives or referenda (ballot questions)
___ Other (please specify) _____

A-5. How do voters cast ballots at polling places? (check all that apply)

___ Punch card ___ Paper ballot ___ Optical scan
___ Touch Screen or DRE ___ Lever machine ___ Internet
___ Other method of electronic voting (please specify) _____
___ Other (please specify) _____

A-6. Has your jurisdiction changed its method of voting since 2000?

___ Yes (Please specify approximate date of change) _____
___ No (If no, skip to question A-7)

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Language Assistance in Voting Survey

A-6a. How did voters **previously** cast ballots at polling places?

___ Punch card ___ Paper ballot ___ Optical scan
___ Electronic voting ___ Lever machine ___ Internet
___ Other (please specify) _____

A-6b. Please indicate from which sources, if any, did your jurisdiction **receive funding** to implement this change.

___ Federal ___ State ___ Local
___ None ___ Other (please specify) _____

A-7. Approximately how many registered voters are there in your jurisdiction? (check one)

___ Less than 2,500 ___ 2,501 to 5,000 ___ 5,001 to 10,000
___ 10,001 to 25,000 ___ 25,001 to 50,000 ___ 50,001 to 100,000
___ 100,001 to 250,000 ___ 250.001 to 500,000 ___ 500,001 to 750,000
___ 750,001 to 1,000,000 ___ Over 1,000,000

A-8. How many election precincts are there in your jurisdiction? (check one)

___ 10 or Less ___ 11 to 25 ___ 26 to 100
___ 101 to 250 ___ 251 to 500 ___ 501 to 1,000
___ 1,001 to 1,500 ___ 1,501 to 3,000 ___ Over 3,000

A-9. How many **full-time employees** in your jurisdiction are responsible for conducting or assisting with public elections? (check one)

___ 1 or 2 ___ 3 to 5 ___ 6 to 10
___ 11 to 25 ___ 26 to 50 ___ 51 to 100
___ 101 to 150 ___ Over 150

A-10. Of the **full-time employees** in question A-9, identify the number who are fluent in the following specified languages: (if none, leave blank)

___ Alaskan Native ___ American Indian ___ Spanish
___ Chinese ___ Filipino/Tagalog ___ Japanese
___ Korean ___ Vietnamese
___ Other Asian languages (please specify all languages) _____
___ Other languages (please specify all languages) _____

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Language Assistance in Voting Survey

Section B: Bilingual Coordinators

B-1. Does your jurisdiction have any **bilingual coordinators** who are responsible for acting as liaisons between the election office and language minority groups (such as Spanish-speaking voters, etc.)?

___ Yes ___ No (If no, skip to Section C)

B-2. How many **bilingual coordinators** does your office have for each of the following languages? (if none, leave blank; if a bilingual coordinator is responsible for more than one language, please list all languages for which the coordinator is responsible in the multiple languages response)

___ Alaskan Native ___ American Indian ___ Spanish
___ Chinese ___ Filipino/Tagalog ___ Japanese
___ Korean ___ Vietnamese
___ Other Asian languages (please specify all languages) _____
___ Other languages (please specify all languages) _____
___ Multiple languages (please specify all languages) _____

B-3. Which of the following best describes the status of **bilingual coordinators?** If multiple categories apply, specify the number of bilingual coordinators for each category.

___ Elected position ___ Appointed position ___ Full-time employee
___ Part-time employee ___ Unpaid volunteer ___ Unpaid student
___ Other (please specify) _____

B-4. How do you recruit **bilingual coordinators?** (check all that apply)

___ Community organizations ___ Government or school employees
___ Direct solicitation ___ Temporary agencies
___ Translation agencies ___ Election materials mailed to voters
___ Flyers ___ Newspaper advertisements
___ Radio advertisements ___ Television advertisements
___ Political parties ___ Other (please specify)

B-5. Which of the following are responsibilities of **bilingual coordinators?** (check all that

___ Recruiting poll workers ___ Training poll workers
___ Training other election officials ___ Preparing written election materials
___ Translating written election materials ___ Community outreach
___ Media liaison ___ Voter instruction
___ Compliance with court order or consent decree
___ Election day trouble shooting
___ Other (please specify) _____

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Language Assistance in Voting Survey

B-6. What, if any, is the approximate total annual cost to your jurisdiction for the **bilingual coordinator** program?

$_____

Section C: Part-time Election Workers

C-1. How many **part-time** election day workers in your jurisdiction are responsible for conducting elections? (check one)

___	25 or less	___	26 to 50	___	51 to 100
___	101 to 250	___	251 to 500	___	501 to 1,000
___	1,001 to 2,500	___	2,501 to 5,000	___	5,001 to 10,000
___	Over 10,000				

C-2. What position(s) do the **part-time** election workers identified in response to question C-1 hold? (check all that apply)

___	Election judge	___	Poll/board worker	___	Liaison
___	Translator	___	Trouble-shooter	___	Other (please specify)

_____

C-3. Estimate the percentage of **part-time** election workers who are fluent in the following specified languages:

___	Alaskan Native	___	American Indian	___	Spanish
___	Chinese	___	Filipino/Tagalog	___	Japanese
___	Korean	___	Vietnamese		

___ Other Asian languages (please specify all languages) _____

___ Other languages (please specify all languages) _____

C-4. How do you recruit **part-time** election workers? (check all that apply and specify the language(s) of the recruitment materials on the line at the bottom)

___	Community organizations	___	Government or school employees
___	Direct solicitation	___	Temporary agencies
___	Translation agencies	___	Election materials mailed to voters
___	Flyers	___	Newspaper advertisements
___	Radio advertisements	___	Television advertisements
___	Political parties	___	Other (please specify) _____

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Language Assistance in Voting Survey

C-5. How do you confirm the language abilities of the **part-time** election workers? (check all that apply)

___ No confirmation required
___ Oral test
___ Certified by outside agency
___ Education requirement
___ Written test
___ Conversation in language
___ Certified by community organization
___ Other (please specify) _____

C-6. Which describes the frequency of training provided to **part-time** election workers? (check all that apply)

___ No training provided
___ Training session required each election
___ Training session required annually
___ Other (please specify frequency) _____

C-7. Which of the following is included in training provided to **part-time** election workers? (check all that apply)

___ Written materials
___ Instructions on setting up polling place
___ Instructions on using voting machine
___ Instructions on providing voter assistance
___ Role playing demonstrations
___ Ballot instructions
___ Information on covered language(s)
___ Instructional video or film
___ Other (please specify) _____

C-8. What, if any, is the approximate total annual cost to your jurisdiction for **part-time** election-day workers?

$_____

Section D: Telephone Inquiries

D-1. How many of the covered languages in your jurisdiction have someone fluent available for **telephone inquiries?**

___ All ___ Some ___ None (If none, skip to Section E)

D-2. How is assistance provided in covered language(s) for **telephone inquiries?** (check all that apply)

___ Separate phone number for covered language(s)
___ Phone directory in covered language(s)
___ Election worker fluent in covered language(s)
___ Phone calls directed to volunteer fluent in covered language(s)
___ Other (specify) _____

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Language Assistance in Voting Survey

D-3. What, if any, is the approximate total annual cost to your jurisdiction for **telephone inquiry assistance** in the covered language(s)?

$_____

Section E: Oral Language Assistance

E-1. Estimate the percentage of voters in your jurisdiction who need **oral language assistance** to vote in public elections?

_____%

E-2. For which of the following activities does your office provide **oral language assistance?** (check all that apply)

___ Poll worker recruitment
___ Candidate qualification
___ Early or mail-in voting
___ Voter purges
___ Checking in at the polling place
___ Reading the ballot
___ Election results
___ Voter registration
___ Election-day information
___ Absentee voting
___ Polling place locations and changes
___ Voting machine instructions
___ Explaining ballot questions
___ Other (specify) _____

E-3. How are voters informed about the availability of **oral language assistance?** (check all that apply)

___ Election materials mailed to voters
___ Signs in covered language(s) at polling place
___ Radio advertisements
___ Other (please specify) _____
___ Flyers
___ Newspaper advertisements
___ Television advertisements

E-4. Is **oral language assistance** provided in the covered language(s) at the polls on Election Day?

___ Yes ___ No (If no, skip to Section F)

E-5. How is **oral language assistance** provided in the covered langauge(s) at the polls on election day? (check all that apply)

___ Bilingual poll workers
___ Electronic machine with oral instructions
___ Other (please specify) _____
___ Bilingual translators
___ Bilingual recordings

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Language Assistance in Voting Survey

E-6. Who of the following may accompany voters who need assistance in the voting booth? (check all that apply)

___ Bilingual poll worker
___ Poll worker from each major party
___ Family member accompanying voter
___ Child accompanying voter
___ Other (please specify) _____
___ Translator
___ Campaign workers outside the polls
___ Adult accompanying voter
___ None

E-7. What, if any, is the approximate total annual cost to your jurisdiction for **oral language assistance** at the polls on election day?

$_____

E-8. Which of the following, if any, are additional costs for **part-time** poll workers who provide oral assistance in the covered language(s)? (check all that apply)

___ Training
___ Certification
___ Other (please specify) _____
___ Recruitment (other than costs in question C-6)
___ Use of professional translators

Section F: Written Language Materials

F-1. Does your jurisdiction provide **written language materials** in the covered language(s)?

___ Yes ___ No (If no, skip to question F-6)

F-2. For which of the following does your jurisdiction provide **written language materials** in the covered language(s)? (check all that apply)

___ Internet or web-based information
___ Communications from elections office
___ Voters' rights or other information pamphlets
___ Early voting or mail-in voting materials
___ Publicity regarding polling place locations
___ Polling place signs
___ Instructions on using voting machine or ballot
___ Instructions on provisional ballots
___ Election day forms (challenge paperwork, etc.)
___ Other (please specify) _____
___ Voter registration materials
___ Sample ballots
___ Poll worker recruitment
___ Absentee ballots
___ Election-day information
___ Check-in information
___ Ballots
___ Election results

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Language Assistance in Voting Survey

F-3. Who of the following are involved in translating **written election materials** from English to the covered languages? (check all that apply)

___ Bilingual coordinators
___ Volunteer translators
___ Community organizations
___ Other (please specify) _____
___ Election office employees
___ Professional translation services

F-4. What, if any, is the approximate total annual cost to your jurisdiction for providing **written election materials** in the covered language(s)?

$_____ Translation Costs $_____ Printing Costs
$_____ Other Costs (please specify) _____

F-5. What, if any, **written election materials** are not available in the covered language(s)? (If none, skip to question F-7)

_____
_____
_____

F-6. Why are the **written election materials** not available in the covered language(s)?

_____
_____
_____

F-7. Have any Alaskan Native or American Indian voters requested that **written election materials** be provided in their covered language(s)?

___ Yes ___ No

Section G: Election-Related Activities

G-1. Does your jurisdiction consult with community organizations and/or individuals about providing assistance in elections in the covered language(s)?

___ Yes ___ No (If no, skip to question G-2)

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Language Assistance in Voting Survey

G-1a. Which of the following does your jurisdiction consult with in regards to providing assistance in the covered language(s)? (check all that apply)

___ Churches
___ Civil rights groups
___ Clubs
___ Other (please specify) _____
___ Schools
___ League of Women Voters

G-2. What, if any, is the approximate total annual cost to your jurisdiction for all election-related activities?

$_____

G-2a. What, if any, is the approximate total annual cost to your jurisdiction for providing **oral language assistance** in the covered languages for election-related activities?

$_____

G-2b. What, if any, is the approximate total annual cost to your jurisdiction for providing **written language materials** in the covered languages for election-related activities?

$_____

G-2c. If you are unable to estimate the costs in 2a and 2b explain why:

_____
_____
_____

Section H: Additional Issues

H-1. What, if anything, do you think the federal government can do to provide minority language assistance to voters?

_____
_____
_____

H-2. Do you think the language assistance provisions to the Voting Rights Act should remain in effect?

___ Yes ___ No

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Language Assistance in Voting Survey

H-3. Please provide any additional comments about your experiences in providing language assistance to voters:

_____

_____

_____

_____

_____

Thank you for taking the time to complete this survey. Please return your completed survey in the pre-addressed, stamped envelope provided. If you have any questions, please contact

Professor Rodolfo Espino
Arizona State University
Department of Political Science
Box 873902
Tempe, AZ 85287-3902
480-965-5884
espino@asu.edu

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ARIZONA STATE UNIVERSITY

February 11, 2005

Dear [Public Election Official],

We recently contacted you about a survey we are conducting regarding the minority language assistance provisions of the Voting Rights Act. This survey is being sent to all elections officials in jurisdictions currently or formerly covered by Section 203 of the Voting Rights Act. The project is being conducted by ten honors students enrolled in the Barrett Honors College at Arizona State University under the supervision of Dr. James Tucker and Dr. Rodolfo Espino.

Results of the survey will be forwarded to Congress when it considers reauthorization of the Voting Rights Act. Our survey focuses on several provisions of the Act. The survey assesses the need for language assistance in voting, the costs of providing language assistance, the availability and quality of that assistance in covered jurisdictions, and how effective that assistance has been. Your input in this process is invaluable.

In addition, the survey provides a great opportunity for elections officials to share their experiences with language assistance in voting and other Election Day procedures. A complimentary copy of our results will be made available to those who complete the survey. If you would like to receive a copy of our final report, please check the appropriate box on the survey form.

A pre-paid envelope in which to return the survey is also enclosed. If you would prefer to complete this survey online, please go to:

www.public.asu.edu/~respino1/JurisSurvey.html.

The information that you provide on this survey will be treated as strictly confidential and will not be revealed. Your responses will only be used as part of an aggregate analysis and will not be linked to your name or jurisdiction.

Your participation in this survey is greatly appreciated. If you have any questions, please contact Dr. Rodolfo Espino at 480-965-5884 or espino@asu.edu. Thank you in advance for your assistance.

Very truly yours,

[signature of one of the Barrett Honors Students]

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THE BARRETT HONORS COLLEGE
PO BOX 871612, TEMPE, AZ 85287-1612
(480) 965-2359 FAX: (480) 965-0760

THE BARRETT
HONORS COLLEGE
at Arizona State University

Minority Language Assistance Jurisdiction Survey

Arizona State University and the Barrett Honors College are working together to collect data on the effects of the minority language assistance provisions of the Voting Rights Act of 1965 in local election jurisdictions. We appreciate your taking the time to complete this survey. The survey takes approximately eight minutes to complete.

Please note that the survey numbers will be used simply to record which jurisdictions have returned the surveys; the numbers will not in any way be linked to your responses. **All responses to this survey will be kept strictly confidential.**

Please answer the following questions to the best of your knowledge by checking the boxes or writing in answers where appropriate. When completed, please return the survey in the self-addressed, stamped envelope included in this packet. This survey is also available on the web at

www.public.asu.edu/~respino1/JurisSurvey.html.

Relevant definitions:

Covered Languages: The non-English language(s) for which your jurisdiction is required to provide language assistance under the federal Voting Rights Act of 1965, as amended. These languages could include Alaskan Native, American Indian, Asian (Chinese, Filipino/Tagalog, Japanese, Korean, Vietnamese), and/or Spanish.

Fluent: Having the ability to read, write and speak a language very well. For Alaskan Native and American Indian languages, fluent means the ability to speak the language very well.

Jurisdiction: The level of government for which you work, such as state, county or parish, city, town or township, or other public body.

Public Election: An election conducted for any governmental office or regarding any public ballot question.

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Appendix E:

Surveyed Jurisdictions

ALASKA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Alaska	State	Yes
Aleutians East Borough	Borough/City/Town	Yes
Aleutians West Census Area	Borough/City/Town	Yes
Anchorage	Borough/City/Town	Yes
Bethel Census Area	Borough/City/Town	Yes
Bristol Bay Borough	Borough/City/Town	Yes
Denali Borough	Borough/City/Town	Yes
Dillingham Census Area	Borough/City/Town	Yes
Fairbanks North Star Borough	Borough/City/Town	Yes
Haines Borough	Borough/City/Town	Yes
Juneau City and Borough	Borough/City/Town	Yes
Kenai Peininsula Borough	Borough/City/Town	Yes
Ketchikan Gateway Borough	Borough/City/Town	Yes
Kodiak Island Borough	Borough/City/Town	Yes
Lake and Peninsula Borough	Borough/City/Town	Yes
Matanuska - Susitna Borough	Borough/City/Town	Yes
Nome Census Area	Borough/City/Town	Yes
North Slope Borough	Borough/City/Town	Yes
Northwest Artic Borough	Borough/City/Town	Yes
Prince of Wales - Outer Ketchikan Census Area	Borough/City/Town	Yes
Sitka City and Borough	Borough/City/Town	Yes
Skagway-Yakutat-Angoon Census Area	Borough/City/Town	Yes
Southeast Fairbanks Census Area	Borough/City/Town	Yes
Valdez-Cordova Census Area	Borough/City/Town	Yes
Wade Hampton Census Area	Borough/City/Town	Yes
Wrangell-Petersburg Census Area	Borough/City/Town	Yes
Yakutat City and Borough	Borough/City/Town	Yes
Yukon-Koyukuk Census Area	Borough/City/Town	Yes

ARIZONA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Arizona	State	Yes
Apache County	County	Yes
Cochise County	County	Yes
Coconino County	County	Yes

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ARIZONA (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Gila County	County	Yes
Graham County	County	Yes
Greenlee County	County	Yes
La Paz County	County	Yes
Maricopa County	County	Yes
Mohave County	County	Yes
Navajo County	County	Yes
Pima County	County	Yes
Pinal County	County	Yes
Santa Cruz County	County	Yes
Yavapai County	County	Yes
Yuma County	County	Yes
Chandler	Borough/City/Town	Yes
Flagstaff	Borough/City/Town	Yes
Gilbert	Borough/City/Town	Yes
Glendale	Borough/City/Town	Yes
Mesa	Borough/City/Town	Yes
Peoria	Borough/City/Town	Yes
Phoenix	Borough/City/Town	Yes
Scottsdale	Borough/City/Town	Yes
Tempe	Borough/City/Town	Yes
Tucson	Borough/City/Town	Yes
Yuma	Borough/City/Town	Yes

CALIFORNIA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
California (Statewide)	State	Yes
Alameda County	County	No
Alpine County	County	No
Amador County	County	No
Butte County	County	No
Calaveras County	County	No
Colusa County	County	No
Contra Costa County	County	No
Del Norte County	County	No
El Dorado County	County	No
Fresno County	County	No

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CALIFORNIA (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Glenn County	County	No
Humboldt County	County	No
Imperial County	County	No
Inyo County	County	No
Kern County	County	No
Kings County	County	Yes
Lake County	County	No
Lassen County	County	No
Los Angeles County	County	No
Madera County	County	No
Marin County	County	No
Mariposa County	County	No
Mendocino County	County	No
Merced County	County	Yes
Modoc County	County	No
Mono County	County	No
Monterey County	County	No
Napa County	County	No
Nevada County	County	No
Orange County	County	No
Placer County	County	No
Plumas County	County	No
Riverside County	County	No
Sacramento County	County	No
San Benito County	County	No
San Bernardino County	County	No
San Diego County	County	No
San Francisco County	County	No
San Joaquin County	County	No
San Luis Obispo County	County	No
San Mateo County	County	No
Santa Barbara County	County	No
Santa Clara County	County	No
Santa Cruz County	County	No
Shasta County	County	No
Sierra County	County	No
Siskiyou County	County	No
Solano County	County	No
Sonomo County	County	No
Stanislaus County	County	No

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CALIFORNIA (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Sutter County	County	No
Tehama County	County	No
Trinity County	County	No
Tulare County	County	No
Tuolumne County	County	No
Ventura County	County	No
Yolo County	County	No
Yuba County	County	Yes
Alameda	Borough/City/Town	No
Alhambra	Borough/City/Town	No
Anaheim	Borough/City/Town	No
Antioch	Borough/City/Town	No
Apple Valley	Borough/City/Town	No
Arcadia	Borough/City/Town	No
Bakersfield	Borough/City/Town	No
Baldwin Park	Borough/City/Town	No
Bellflower	Borough/City/Town	No
Berkeley	Borough/City/Town	No
Buena Park	Borough/City/Town	No
Burbank	Borough/City/Town	No
Camarillo	Borough/City/Town	No
Carlsbad	Borough/City/Town	No
Carson	Borough/City/Town	No
Cerritos	Borough/City/Town	No
Chico	Borough/City/Town	No
Chino	Borough/City/Town	No
Chino Hills	Borough/City/Town	No
Chula Vista	Borough/City/Town	No
Citrus Heights	Borough/City/Town	No
Clovis	Borough/City/Town	No
Compton	Borough/City/Town	No
Concord	Borough/City/Town	No
Corona	Borough/City/Town	No
Costa Mesa	Borough/City/Town	No
Cupertino	Borough/City/Town	No
Daly City	Borough/City/Town	No
Davis	Borough/City/Town	No
Diamond Bar	Borough/City/Town	No
Downey	Borough/City/Town	No
El Cajon	Borough/City/Town	No

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CALIFORNIA (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
El Monte	Borough/City/Town	No
Encinitas	Borough/City/Town	No
Escondido	Borough/City/Town	No
Fairfield	Borough/City/Town	No
Fontana	Borough/City/Town	No
Fountain Valley	Borough/City/Town	No
Fremont	Borough/City/Town	No
Fresno	Borough/City/Town	No
Fullerton	Borough/City/Town	No
Garden Grove	Borough/City/Town	No
Gardena	Borough/City/Town	No
Glendale	Borough/City/Town	No
Hawthorne	Borough/City/Town	No
Hayward	Borough/City/Town	No
Hemet	Borough/City/Town	No
Hesperia	Borough/City/Town	No
Huntington Beach	Borough/City/Town	No
Huntington Park	Borough/City/Town	No
Inglewood	Borough/City/Town	No
Irvine	Borough/City/Town	No
La Habra	Borough/City/Town	No
La Mesa	Borough/City/Town	No
Laguna Niguel	Borough/City/Town	No
Lake Forest	Borough/City/Town	No
Lakewood	Borough/City/Town	No
Lancaster	Borough/City/Town	No
Livermore	Borough/City/Town	No
Lodi	Borough/City/Town	No
Long Beach	Borough/City/Town	No
Los Angeles	Borough/City/Town	No
Lynwood	Borough/City/Town	No
Merced	Borough/City/Town	Yes
Milpitas	Borough/City/Town	No
Mission Viejo	Borough/City/Town	No
Modesto	Borough/City/Town	No
Montebello	Borough/City/Town	No
Monterey Park	Borough/City/Town	No
Moreno Valley	Borough/City/Town	No
Mountain View	Borough/City/Town	No
Napa	Borough/City/Town	No

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CALIFORNIA (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
National City	Borough/City/Town	No
Newport Beach	Borough/City/Town	No
Norwalk	Borough/City/Town	No
Oakland	Borough/City/Town	No
Oceanside	Borough/City/Town	No
Ontario	Borough/City/Town	No
Orange	Borough/City/Town	No
Oxnard	Borough/City/Town	No
Palmdale	Borough/City/Town	No
Palo Alto	Borough/City/Town	No
Paramount	Borough/City/Town	No
Pasadena	Borough/City/Town	No
Petaluma	Borough/City/Town	No
Pico Rivera	Borough/City/Town	No
Pittsburg	Borough/City/Town	No
Pleasonton	Borough/City/Town	No
Pomona	Borough/City/Town	No
Rancho Cucamonga	Borough/City/Town	No
Redding	Borough/City/Town	No
Redlands	Borough/City/Town	No
Redondo Beach	Borough/City/Town	No
Redwood City	Borough/City/Town	No
Rialto	Borough/City/Town	No
Richmond	Borough/City/Town	No
Riverside	Borough/City/Town	No
Rosemead	Borough/City/Town	No
Roseville	Borough/City/Town	No
Sacramento	Borough/City/Town	No
Salinas	Borough/City/Town	No
San Bernardino	Borough/City/Town	No
San Buenaventura (Ventura)	Borough/City/Town	No
San Diego	Borough/City/Town	No
San Francisco	Borough/City/Town	No
San Jose	Borough/City/Town	No
San Leandro	Borough/City/Town	No
San Marcos	Borough/City/Town	No
San Mateo	Borough/City/Town	No
San Rafael	Borough/City/Town	No
Santa Anna	Borough/City/Town	No
Santa Barbara	Borough/City/Town	No

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CALIFORNIA (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Santa Clara	Borough/City/Town	No
Santa Clarita	Borough/City/Town	No
Santa Cruz	Borough/City/Town	No
Santa Maria	Borough/City/Town	No
Santa Monica	Borough/City/Town	No
Santa Rosa	Borough/City/Town	No
Santee	Borough/City/Town	No
Simi Valley	Borough/City/Town	No
South Gate	Borough/City/Town	No
South San Francisco	Borough/City/Town	No
Stockton	Borough/City/Town	No
Sunnyvale	Borough/City/Town	No
Temecula	Borough/City/Town	No
Thousand Oaks	Borough/City/Town	No
Torrance	Borough/City/Town	No
Tracy	Borough/City/Town	No
Turlock	Borough/City/Town	No
Tustin	Borough/City/Town	No
Union City	Borough/City/Town	No
Upland	Borough/City/Town	No
Vacaville	Borough/City/Town	No
Vallejo	Borough/City/Town	No
Victorville	Borough/City/Town	No
Visalia	Borough/City/Town	No
Vista	Borough/City/Town	No
Walnut Creek	Borough/City/Town	No
West Covina	Borough/City/Town	No
Westminster	Borough/City/Town	No
Whittier	Borough/City/Town	No
Yorba Linda	Borough/City/Town	No

COLORADO

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Colorado	State	No
Alamosa County	County	No
Archuleta County	County	No
Bent County	County	No
Conejos County	County	No

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COLORADO (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Costilla County	County	No
Crowley County	County	No
Denver County	County	No
La Plata County	County	No
Las Animas County	County	No
Monetzuma County	County	No
Otero County	County	No
Rio Grande County	County	No
Saguache County	County	No
Denver	Borough/City/Town	No

CONNECTICUT

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Connecticut	State	No
Bridgeport Town (Fairfield County)	Borough/City/Town	No
Hartford Town (Hartford County)	Borough/City/Town	No
Meriden Town (New Haven County)	Borough/City/Town	No
New Britain Town (Hartford County)	Borough/City/Town	No
New Haven Town (New Haven County)	Borough/City/Town	No
Waterbury Town (New Haven County)	Borough/City/Town	No
Windham Town (Windham County)	Borough/City/Town	No

FLORIDA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Florida	State	Yes
Broward County	County	No
Collier County	County	Yes
Glades County	County	No
Hardee County	County	Yes
Hendry County	County	Yes
Hillsborough County	County	Yes
Miami-Dade County	County	No
Monroe County	County	Yes
Orange County	County	No
Osceola County	County	No
Palm Beach County	County	No
Boca Raton	Borough/City/Town	No

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FLORIDA (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Boynton Beach	Borough/City/Town	No
Coral Springs	Borough/City/Town	No
Davie	Borough/City/Town	No
Deerfield Beach	Borough/City/Town	No
Delray Beach	Borough/City/Town	No
Fort Lauderdale	Borough/City/Town	No
Hialeah	Borough/City/Town	No
Hollywood	Borough/City/Town	No
Lauderhill	Borough/City/Town	No
Margate	Borough/City/Town	No
Miami	Borough/City/Town	No
Miami Beach	Borough/City/Town	No
Miramar	Borough/City/Town	No
North Miami	Borough/City/Town	No
Orlando	Borough/City/Town	No
Pembroke Pines	Borough/City/Town	No
Plantation	Borough/City/Town	No
Pompano Beach	Borough/City/Town	No
Sunrise	Borough/City/Town	No
Tamarac	Borough/City/Town	No
Tampa	Borough/City/Town	Yes
West Palm Beach	Borough/City/Town	No

HAWAII

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Hawaii	State	No
Honolulu County	County	No
Kauai County	County	No
Maui County	County	No
Honolulu	Borough/City/Town	No

IDAHO

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Idaho	State	No
Bannock County	County	No
Bingham County	County	No
Caribou County	County	No

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IDAHO (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Owyhee County	County	No
Power County	County	No
Pocatello	Borough/City/Town	No

ILLINOIS

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Illinois	State	No
Cook County	County	No
Kane County	County	No
Arlington Heights	Borough/City/Town	No
Aurora	Borough/City/Town	No
Berwyn	Borough/City/Town	No
Chicago	Borough/City/Town	No
Cicero	Borough/City/Town	No
Des Plaines	Borough/City/Town	No
Elgin	Borough/City/Town	No
Evanston	Borough/City/Town	No
Mount Prospect	Borough/City/Town	No
Oak Lawn	Borough/City/Town	No
Oak Park	Borough/City/Town	No
Orland Park	Borough/City/Town	No
Palatine	Borough/City/Town	No
Schaumburg	Borough/City/Town	No
Skokie	Borough/City/Town	No

IOWA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Iowa	State	No
Tama County	County	No

KANSAS

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Kansas	State	No
Finney County	County	No
Ford County	County	No

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KANSAS (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Grant County	County	No
Haskell County	County	No
Kearney County	County	No
Seward County	County	No

LOUISIANA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Louisiana	State	Yes
Allen Parish	County	Yes
Avoyelles Parish	County	Yes

MARYLAND

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Maryland	State	No
Montgomery County	County	No
Gaithersburg	Borough/City/Town	No

MASSACHUSETTS

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Massachusetts	State	No
Boston City (Suffolk County)	Borough/City/Town	No
Chelsea City (Suffolk County)	Borough/City/Town	No
Holyoke City (Hampden County)	Borough/City/Town	No
Lawrence City (Essex County)	Borough/City/Town	No
Southbridge Town (Worcester County)	Borough/City/Town	No
Springfield City (Hampden County)	Borough/City/Town	No

MICHIGAN

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Michigan	State	Yes
Buena Vista Township (Saginaw County)	Borough/City/Town	Yes
Clyde Township (Allegan County)	Borough/City/Town	Yes
Colfax Township (Oceana County)	Borough/City/Town	No

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MICHIGAN (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Zilwaukee Township (Saginaw County)	Borough/City/Town	No

MISSISSIPPI

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Mississippi	State	Yes
Attala County	County	Yes
Jackson County	County	Yes
Jones County	County	Yes
Kemper County	County	Yes
Leake County	County	Yes
Neshoba County	County	Yes
Newton County	County	Yes
Scott County	County	Yes
Winston County	County	Yes

MONTANA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Montana	State	No
Big Horn County	County	No
Rosebud County	County	No

NEBRASKA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Nebraska	State	No
Colfax County	County	No
Sheridan County	County	No

NEVADA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Nevada	State	No
Clark County	County	No
Elko County	County	No
Humboldt County	County	No

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NEVADA (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Lyon County	County	No
Nye County	County	No
White Pine County	County	No
Henderson	Borough/City/Town	No
Las Vegas	Borough/City/Town	No
North Las Vegas	Borough/City/Town	No

NEW JERSEY

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
New Jersey	State	No
Bergen County	County	No
Cumberland County	County	No
Essex County	County	No
Hudson County	County	No
Middlesex County	County	No
Passaic County	County	No
Union County	County	No
Bayonne	Borough/City/Town	No
Clifton	Borough/City/Town	No
East Orange	Borough/City/Town	No
Edison	Borough/City/Town	No
Elizabeth	Borough/City/Town	No
Irvington	Borough/City/Town	No
Jersey City	Borough/City/Town	No
Newark	Borough/City/Town	No
North Bergen (Hudson County)	Borough/City/Town	No
Old Bridge	Borough/City/Town	No
Passaic	Borough/City/Town	No
Paterson	Borough/City/Town	No
Piscataway (Middlesex County)	Borough/City/Town	No
Union	Borough/City/Town	No
Union City	Borough/City/Town	No
Vineland	Borough/City/Town	No
Wayne	Borough/City/Town	No
Woodbridge	Borough/City/Town	No

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NEW MEXICO

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
New Mexico	State	No
Bernalillo County	County	No
Catron County	County	No
Chaves County	County	No
Cibola County	County	No
Colfax County	County	No
Curry County	County	No
De Baca County	County	No
Dona Anna County	County	No
Eddy County	County	No
Grant County	County	No
Guadalupe County	County	No
Harding County	County	No
Hidalgo County	County	No
Lea County	County	No
Lincoln County	County	No
Los Alamos	County	No
Luna County	County	No
McKinley County	County	No
Mora County	County	No
Otero County	County	No
Quay County	County	No
Rio Arriba County	County	No
Roosevelt County	County	No
San Juan County	County	No
San Miguel County	County	No
Sandoval County	County	No
Sante Fe County	County	No
Sierra County	County	No
Socorro County	County	No
Taos County	County	No
Torrance County	County	No
Union County	County	No
Valencia County	County	No
Albuquerque	Borough/City/Town	No
Las Cruces	Borough/City/Town	No
Rio Rancho	Borough/City/Town	No
Sante Fe	Borough/City/Town	No

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NEW YORK

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
New York	State	Yes
Bronx County	County	Yes
Franklin County	County	No
Kings County	County	Yes
Nassau County	County	No
New York County	County	Yes
Queens County	County	No
Suffolk County	County	No
Westchester County	County	No
Babylon	Borough/City/Town	No
Bronx borough	Borough/City/Town	Yes
Brookhaven	Borough/City/Town	Yes
Brooklyn borough	Borough/City/Town	Yes
Greenburgh	Borough/City/Town	No
Hempstead town	Borough/City/Town	No
Hempstead village	Borough/City/Town	No
Huntington	Borough/City/Town	No
Islip	Borough/City/Town	No
Manhattan borough	Borough/City/Town	Yes
Mount Vernon	Borough/City/Town	No
New Rochelle	Borough/City/Town	No
New York City	Borough/City/Town	Yes
North Hempstead	Borough/City/Town	No
Oyster Bay	Borough/City/Town	No
Queens borough	Borough/City/Town	No
Smithtown	Borough/City/Town	No
Southampton	Borough/City/Town	No
White Plains	Borough/City/Town	No
Yonkers	Borough/City/Town	No

NORTH CAROLINA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
North Carolina	State	Yes
Jackson County	County	Yes

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NORTH DAKOTA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
North Dakota	State	No
Benson County	County	No
Eddy County	County	No
Ramsey County	County	No
Richland County	County	No
Sargent County	County	No

OKLAHOMA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Oklahoma	State	No
Adair County	County	No
Harmon County	County	No
Texas County	County	No

OREGON

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Oregon	State	No
Malheur County	County	No

PENNSYLVANIA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Pennsylvania	State	No
Philadelphia County	County	No
Philadelphia	Borough/City/Town	No

RHODE ISLAND

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Rhode Island	State	No
Central Falls City (Providence County)	Borough/City/Town	No
Providence City (Providence County)	Borough/City/Town	No

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SOUTH DAKOTA

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
South Dakota	State	Yes
Bennett County	County	No
Codington County	County	No
Day County	County	No
Dewey County	County	No
Grant County	County	No
Gregory County	County	No
Haakon County	County	No
Jackson County	County	No
Lyman County	County	No
Marshall County	County	No
Meade County	County	No
Mellette County	County	No
Roberts County	County	No
Shannon County	County	Yes
Stanley County	County	No
Todd County	County	Yes
Tripp County	County	No
Ziebach County	County	No

TEXAS

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Texas	State	Yes
Anderson County	County	Yes
Andrews County	County	Yes
Angelina County	County	Yes
Aransas County	County	Yes
Archer County	County	Yes
Armstrong County	County	Yes
Atascosa County	County	Yes
Austin County	County	Yes
Bailey County	County	Yes
Bandera County	County	Yes
Bastrop County	County	Yes
Baylor County	County	Yes
Bee County	County	Yes
Bell County	County	Yes
Bexar County	County	Yes

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TEXAS (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Blanco County	County	Yes
Borden County	County	Yes
Bosque County	County	Yes
Bowie County	County	Yes
Brazoria County	County	Yes
Brazos County	County	Yes
Brewster County	County	Yes
Briscoe County	County	Yes
Brooks County	County	Yes
Brown County	County	Yes
Burleson County	County	Yes
Burnet County	County	Yes
Caldwell County	County	Yes
Calhoun County	County	Yes
Callahan County	County	Yes
Cameron County	County	Yes
Camp County	County	Yes
Carson County	County	Yes
Cass County	County	Yes
Castro County	County	Yes
Chambers County	County	Yes
Cherokee County	County	Yes
Childress County	County	Yes
Clay County	County	Yes
Cochran County	County	Yes
Coke County	County	Yes
Coleman County	County	Yes
Collin County	County	Yes
Collingsworth County	County	Yes
Colorado County	County	Yes
Comal County	County	Yes
Comanche County	County	Yes
Concho County	County	Yes
Cooke County	County	Yes
Coryell County	County	Yes
Cottle County	County	Yes
Crane County	County	Yes
Crockett County	County	Yes
Crosby County	County	Yes
Culberson County	County	Yes

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TEXAS (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Dallam County	County	Yes
Dallas County	County	Yes
Dawson County	County	Yes
Deaf Smith County	County	Yes
Delta County	County	Yes
Denton County	County	Yes
DeWitt County	County	Yes
Dickens County	County	Yes
Dimmit County	County	Yes
Donley County	County	Yes
Duval County	County	Yes
Eastland County	County	Yes
Ector County	County	Yes
Edwards County	County	Yes
El Paso County	County	Yes
Ellis County	County	Yes
Erath County	County	Yes
Falls County	County	Yes
Fannin County	County	Yes
Fayette County	County	Yes
Fisher County	County	Yes
Floyd County	County	Yes
Foard County	County	Yes
Fort Bend County	County	Yes
Franklin County	County	Yes
Freestone County	County	Yes
Frio County	County	Yes
Gaines County	County	Yes
Galveston County	County	Yes
Garza County	County	Yes
Gillespie County	County	Yes
Glasscock County	County	Yes
Goliad County	County	Yes
Gonzales County	County	Yes
Gray County	County	Yes
Grayson County	County	Yes
Gregg County	County	Yes
Grimes County	County	Yes
Guadalupe County	County	Yes
Hale County	County	Yes

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TEXAS (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Hall County	County	Yes
Hamilton County	County	Yes
Hansford County	County	Yes
Hardeman County	County	Yes
Hardin County	County	Yes
Harris County	County	Yes
Harrison County	County	Yes
Hartley County	County	Yes
Haskell County	County	Yes
Hays County	County	Yes
Hemphill County	County	Yes
Henderson County	County	Yes
Hidalgo County	County	Yes
Hill County	County	Yes
Hockley County	County	Yes
Hood County	County	Yes
Hopkins County	County	Yes
Houston County	County	Yes
Howard County	County	Yes
Hudspeth County	County	Yes
Hunt County	County	Yes
Hutchison County	County	Yes
Irion County	County	Yes
Jack County	County	Yes
Jackson County	County	Yes
Jasper County	County	Yes
Jeff Davis County	County	Yes
Jefferson County	County	Yes
Jim Hogg County	County	Yes
Jim Wells County	County	Yes
Johnson County	County	Yes
Jones County	County	Yes
Karnes County	County	Yes
Kaufman County	County	Yes
Kendall County	County	Yes
Kenedy County	County	Yes
Kent County	County	Yes
Kerr County	County	Yes
Kimble County	County	Yes
King County	County	Yes

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TEXAS (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Kinney County	County	Yes
Kleberg County	County	Yes
Knox County	County	Yes
La Salle County	County	Yes
Lamar County	County	Yes
Lamb County	County	Yes
Lampasas County	County	Yes
Lavaca County	County	Yes
Lee County	County	Yes
Leon County	County	Yes
Liberty County	County	Yes
Limestone County	County	Yes
Lipscomb County	County	Yes
Live Oak County	County	Yes
Llano County	County	Yes
Loving County	County	Yes
Lubbock County	County	Yes
Lynn County	County	Yes
Madison County	County	Yes
Marion County	County	Yes
Martin County	County	Yes
Mason County	County	Yes
Matagorda County	County	Yes
Maverick County	County	Yes
McCulloch County	County	Yes
McLennan County	County	Yes
McMullen County	County	Yes
Medina County	County	Yes
Menard County	County	Yes
Midland County	County	Yes
Milam County	County	Yes
Mills County	County	Yes
Mitchell County	County	Yes
Montague County	County	Yes
Montgomery County	County	Yes
Moore County	County	Yes
Morris County	County	Yes
Motley County	County	Yes
Nacogdoches County	County	Yes
Navarro County	County	Yes

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TEXAS (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Newton County	County	Yes
Nolan County	County	Yes
Nueces County	County	Yes
Ochiltree County	County	Yes
Oldham County	County	Yes
Orange County	County	Yes
Palo Pinto County	County	Yes
Panola County	County	Yes
Parker County	County	Yes
Parmer County	County	Yes
Pecos County	County	Yes
Polk County	County	Yes
Potter County	County	Yes
Presidio County	County	Yes
Rains County	County	Yes
Randall County	County	Yes
Reagan County	County	Yes
Real County	County	Yes
Red River County	County	Yes
Reeves County	County	Yes
Refugio County	County	Yes
Roberts County	County	Yes
Robertston County	County	Yes
Rockwall County	County	Yes
Runnels County	County	Yes
Rusk County	County	Yes
Sabine County	County	Yes
San Augustine County	County	Yes
San Jacinto County	County	Yes
San Patricio County	County	Yes
San Saba County	County	Yes
Schleicher County	County	Yes
Scurry County	County	Yes
Shackleford County	County	Yes
Shelby County	County	Yes
Sherman County	County	Yes
Smith County	County	Yes
Somervell County	County	Yes
Starr County	County	Yes
Stephens County	County	Yes

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TEXAS (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Sterling County	County	Yes
Stonewall	County	Yes
Sutton County	County	Yes
Swisher County	County	Yes
Tarrant County	County	Yes
Taylor County	County	Yes
Terrell County	County	Yes
Terry County	County	Yes
Throckmorton County	County	Yes
Titus County	County	Yes
Tom Green County	County	Yes
Travis County	County	Yes
Trinity County	County	Yes
Tyler County	County	Yes
Upshur County	County	Yes
Upton County	County	Yes
Uvalde County	County	Yes
Val Verde County	County	Yes
Van Zandt County	County	Yes
Victoria County	County	Yes
Walker County	County	Yes
Waller County	County	Yes
Ward County	County	Yes
Washington County	County	Yes
Webb County	County	Yes
Wharton County	County	Yes
Wheeler County	County	Yes
Wichita County	County	Yes
Wilbarger County	County	Yes
Willacy County	County	Yes
Williamson County	County	Yes
Wilson County	County	Yes
Winkler County	County	Yes
Wise County	County	Yes
Wood County	County	Yes
Yoakum County	County	Yes
Young County	County	Yes
Zapata County	County	Yes
Zavala County	County	Yes
Abilene	Borough/City/Town	Yes

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TEXAS (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Amarillo	Borough/City/Town	Yes
Arlington	Borough/City/Town	Yes
Austin	Borough/City/Town	Yes
Baytown	Borough/City/Town	Yes
Beaumont	Borough/City/Town	Yes
Brownsville	Borough/City/Town	Yes
Bryan	Borough/City/Town	Yes
Carrollton	Borough/City/Town	Yes
College Station	Borough/City/Town	Yes
Corpus Christi	Borough/City/Town	Yes
Dallas	Borough/City/Town	Yes
Denton	Borough/City/Town	Yes
El Paso	Borough/City/Town	Yes
Flower Mound	Borough/City/Town	Yes
Forth Worth	Borough/City/Town	Yes
Galveston	Borough/City/Town	Yes
Garland	Borough/City/Town	Yes
Grand Prairie	Borough/City/Town	Yes
Harlingen	Borough/City/Town	Yes
Houston	Borough/City/Town	Yes
Irving	Borough/City/Town	Yes
Killeen	Borough/City/Town	Yes
Laredo	Borough/City/Town	Yes
Lewisville	Borough/City/Town	Yes
Longview	Borough/City/Town	Yes
Lubbock	Borough/City/Town	Yes
McAllen	Borough/City/Town	Yes
McKinney	Borough/City/Town	Yes
Mesquite	Borough/City/Town	Yes
Midland	Borough/City/Town	Yes
Missouri City	Borough/City/Town	Yes
North Richland Hills	Borough/City/Town	Yes
Odessa	Borough/City/Town	Yes
Pasadena	Borough/City/Town	Yes
Plano	Borough/City/Town	Yes
Port Arthur	Borough/City/Town	Yes
Richardson	Borough/City/Town	Yes
Round Rock	Borough/City/Town	Yes
San Angelo	Borough/City/Town	Yes
San Antonio	Borough/City/Town	Yes

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TEXAS (CONT.)

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Sugar Land	Borough/City/Town	Yes
Temple	Borough/City/Town	Yes
Tyler	Borough/City/Town	Yes
Victoria	Borough/City/Town	Yes
Waco	Borough/City/Town	Yes
Wichita Falls	Borough/City/Town	Yes

UTAH

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Utah	State	No
San Juan County	County	No

WASHINGTON

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Washington	State	No
Adams County	County	No
Franklin County	County	No
King County	County	No
Yakima County	County	No
Bellevue	Borough/City/Town	No
Federal Way	Borough/City/Town	No
Kent	Borough/City/Town	No
Renton	Borough/City/Town	No
Seattle	Borough/City/Town	No
Shoreline	Borough/City/Town	No
Yakima	Borough/City/Town	No

WISCONSIN

Jurisdiction Name	Jurisdiction Type	Section 5 Covered
Wisconsin	State	No
Curtiss Village - Clark County	Borough/City/Town	No

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Appendix F:

Selection of Redacted Responses to Open-Ended Survey Questions

Question H-1 Narrative Comments

What, if anything, do you think the federal government can do to provide minority language assistance to voters?

a. Establish a Telephone Number or Website for Compliance Questions:

"Have a central call center." (206)

".... Institute a (800) phone service for all elections related questions." (277)

"Provide a hotline, Internet site, or phone bank for election officials to utilize similar to the military voters (FPCA) for minority language assistance." (474)

b. Provide Compliance Training and Instructions to Election Officials / Be Cooperative:

"Be more cooperative to [jurisdictions]." (234)

"Provide ... special training for bilingual election workers." (236)

" ... Advise [jurisdictions] of their required response under Section 203, VRA ...." (268)

"Provide more training." (320)

"Be proactive in offering solutions - serve as a clearinghouse for 'best practices'; be forward-looking instead of punitive; recognize 'positive' steps and practices; we need help, not sanctions." (344)

".... The federal government should provide ... more specific legal implementation guidelines that are commensurate to each." (357)

".... Provide list of local bilingual resources and organizations. [P]rovide specific guidelines on election materials for both minority and English language." (857)

"Train the people who will be providing the assistance..." (881)

c. Outreach and Education to Language Minority Voters and Election Workers about Language Assistance and Voting:

"In order to comply with the Voting Right Act and HAVA, specific outreach needs should be identified and these requirements budgeted for. These needs would encompass multi-lingual election staffing, standardized multi-lingual glossary, outreach materials that are culturally sensitive, educational programs that are embedded into other social services in order to reach a greater number possible voters, identify and advocate for voter-specific issues, tackle the issue of illiteracy as an obstacle for naturalized citizens." (224)

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"…. Make videos and television spots to encourage minority voting." (287)

"Brochures in each language at polling locations and at county courthouses and other public offices." (299)

"Television advertisement, newspaper advertisement, radio advertisement." (451)

"Voter education classes, television specials and newspaper articles in [the covered language] could be required as well as a specific percentage of other proactive outreach activities." (461)

"Help us to come up with the means of getting rid of the 'this is America, English only' attitude of many people out there - both voters and election board workers." (839)

"Mail outs, pamphlets, radio ads, T.V. ads." (908)

"To require ongoing voter awareness campaigns relating to voter registration in the communities that require same." (1012)

d. Provide Written and/or Oral Language Assistance Materials to Election Officials:

"Provide professional translation services." (226)

"Provide all elections materials in different languages…." (277)

"Translate voting materials, or translators on election day." (328)

"Provide translated federal mandate posters. Provide translated ADA information." (393)

"Provide written language materials in the covered languages to election officials." (394)

"FPCA voters should have access to language materials covered under Voting Rights Act. Forms prescribed by Federal government should be translated by the Federal Government." (571)

"Make audio recordings and distribute these to election officials." (646)

"Provide written materials and pamphlets." (831)

"Help in providing materials and/or the translations." (939)

"Computerized voice recognition/language software." (989)

e. Provide Funding:

"Provide funding." (203)

"Assist [jurisdictions] with election related expenditures, based on population." (215)

"Provide funds …" (236)

"Provide us the funds to meet federal obligations." (259)

"Provide money for all they mandate." (260)

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".... Provide funding i.e., grants, to that end [to meet required response to Section 203 and the Voting Rights Act]." (268)

"Create a special allocation/provide funding for those communities that need the service." (269)

"Help financially with the translations and printing of materials...." (287)

"Pay for the costs of all the mandates the federal government have put in place." (290)

"Money." (302)

"Provide funding to [jurisdictions] which have predominant bilingual populations." (306)

"Provide funds to [jurisdictions] to cover the costs of this mandate." (311) ".... In addition, reimbursement should be provided to [jurisdictions] for these federal mandates...." (311) [Question H-3 Response]

"Money to states and counties." (317)

"Provide money to hire workers." (322)

"Fund the small populated [jurisdictions] who do not have the tax base to fund the assistance that may be needed." (342)

"Funding." (347)

".... The federal government should provide funding..." (357)

"Federal government should send money down to each state for funding of all advertisements printed, TV, radio which should be distributed to each community that is required to have (material/workers) in minority languages." (367)

"Provide money to cover additional expenses of employee pay and materials." (388)

"Money." (397)

"Money uniform in all states." (399)

"Pay for it if necessary." (441)

"Give grant funds to counties for recruitment and employment of temporary translators OR grant funds for employees to attend a language course." (442)

"Provide Funding." (462)

"Grants for computer software for [the covered language(s)]." (486)

"Provide funds to the local level to aid in assistance." (520)

"Help us with funded mandates. Am willing to cooperate in any way necessary to provide fair elections that our taxpayers can afford." (525)

"Funding for a translator at each polling place designation." (553)

"Funds are required to do the job right." (561)

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"Provide funding for federal mandates related to elections at a level sufficient to cover the costs to [the jurisdiction's] government." (600)

"Make funds available." (641)

"Provide funding." (652)

"Provide adequate funding." (681)

"I think the government should provide all the funding since it is a mandate." (690)

"Provide grant funding so that local municipalities and county governments can work with local universities and community associations to ensure that proper bilingual outreach is done." (715)

"Provide funding." (734)

"Provide monetary assistance to [jurisdictions] to help with educational materials." (767)

"Let local jurisdictions decide how to administer the programs, but provide adequate funding to do so." (780)

"Provide funding for printing and translating costs for all voting materials." (846)

"Provide funds – so the [jurisdiction] could hire translators." (853)

"Support with additional funding to local jurisdictions…." (857)

"Assist in funding." (862)

"Provide money." (877)

"Fund it…." (879) "if we are to continue the efforts in providing election materials both oral and written it should be funded as it is difficult for jurisdictions to build an effective program with non-existent local resources." (879) [Question H-3 Response]

"Pay for [election worker training]." (881)

"Pay to recruit translator for precincts." (929)

"Money – send us money." (932)

f. Provide English or ESL Training to Voters and/or Encourage Voters Learn English:

"English is the primary language in the USA. More education on teaching English to voters." (253)

"Provide More ESL program money." (288)

" …. Encourage voters to learn English and vote in English." (370)

"The government and community groups could encourage citizens to learn English through civil and educational support…." (402)

"Mandate ESL certificate." (500)

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"Provide monetary assistance to counties to help with educational materials." (767)

"I think the federal government could better use funds to set up programs in communities to help people learn the English language. I think it would better serve them in all areas of their lives." (830)

"Teach them to read and write English." (917)

"Encourage them to learn the process and, possibly, English." (938)

"Teach English as a first language!" (1003)

g. Target Language Assistance to Only Where Needed:

"Determine who really needs assistance and who doesn't for cost savings...." (370)

"Ask the community leaders if they need interpreters or printed materials in their language. Most of the minorit[ies] do not want someone to read the ballot to them." (691)

"Census data tracks Hispanic voters by surnames - this is not as accurate as tracking those whose primary language is Spanish. This information would be more useful in identifying, securing, and determining where to place bilingual poll workers." (693)

"I believe there should be an actual assessment of the need to provide minority language assistance." (993)

h. Leave to Local Jurisdictions / No Federal Involvement or Legislation Needed:

"Assistance not provided to French, Polish, or Portuguese. All people in America should learn English. One language, English, and save tax payers money." (343)

"Administration of election is (and should remain) as state responsibility...." (357)

"We have everything printed in two languages. If I went to a different country I would not expect their citizens to learn my language." (379)

"Leave states alone ....The DOJ acts like we're Mississippi instead of []." (395)

"Make everyone learn English. They are in America." (437)

"The results of this questionnaire would be a moot issue since the Federal Government will do what they want to anyway. Our bilingual workers do an excellent job helping the voters without any further government intervention." (476) [Question H-3 Response]

"Keep the politicians away from related election workers. The workers are trained for elections and the politicians are not." (549)

"None - We do not need federal help of any kind they only complicate things." (550) "....We believe in states rights - if there is to be any oversight let it be at the state level." (550) [Question H-3 Response]

"Federal government - nothing except enforce the VRA. Local government is point of service and that is where the service should be provided." (563)

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"None." (598)

"I think that U.S. citizens should read and speak English." (609)

"Nothing. The Federal Government has already done too much in the world of elections." (615)

"Allow local governments to decide/manage needs." (706)

"Let local jurisdictions decide how to administer the programs ..." (780)

"Nothing – everything is overboard now." (816)

"Nothing." (869)

"I believe voters should be able to speak and read English or provide their own interpreter." (872)

"It should be up to each local jurisdiction." (897)

"In [the covered jurisdiction], the federal government is doing plenty. I believe we accommodate all of our citizens who wish to vote." (951)

i. Miscellaneous:

"I think that the majority of minority language voters in our [jurisdiction] are older [members of the covered language group] and I think that with the new HAVA DRE requirements we will have less people voting. Because they will feel intimidated." (208)

"The government is already set up to provide our minorities with the area's language." (209)

"It is all covered." (210)

"Enforce existing rules." (276)

"Ballots all furnished the language and all voting material. DRE's are now required which they use if 5% of the voters speak a certain language." (285)

"Include states in section 203/Voting Rights Act, not just counties." (334)

"Too soon to comment." (362)

"Being established as we speak - new machines will be equipped." (366)

"We are already in the process of getting DRE mandatory 1-06." (380)

".... The laws should be enhanced to let citizens with limited English skills to bring friend or family to help or they should be encouraged to vote absentee." (402)

"I believe the federal government has done a lot to provide minority language assistance." (434)

"Money alone is not the answer." (460)

"See attached." (535)

"Broaden the requirements." (616)

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"DRE will be very helpful. Final testing should be completed prior to requiring us to make purchase." (664)

"Pay enough to get minorities involved." (804)

"Help us come up with the means of getting rid of the 'this is America, English only' attitude of many people out there, both voters and election board workers." (839)

"....Legislation that allows state, federal and local government workers to take election day off to assist at polls." (879)

"In [] we are already providing the minority language assistance." (925)

"They have done a lot and voters should take responsibility to learn on their own how to vote." (974)

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Question H-3 Narrative Comments

Please provide any additional comments about your experiences in providing language assistance to voters.

a. Voters Should Learn English / Funding Should be Provided for Education:

".... People who are American citizens should feel the responsibility to learn the English language, especially younger people. I am a naturalized American citizen, so I know from a personal point of view the importance of language as a tool." (215)

"Should be reenacted in order for them not to be denied their right to vote - but should have to learn the official language of the US." (520)

"It has been our experience that the majority of those residents who do not speak English are not American citizens. I have also found the [covered language group] culture is very leery of our governmental processes. Those two issues combined result in a very low voter turnout. Perhaps some of the money would be better spent in education programs." (901)

b. Elections Should be English-Only:

"....A registered voter should speak English." (239)

"If the voter cannot understand or read the English language then they better learn it prior to getting to vote in America!" (319)

"Assistance not provided to French, Polish, or Portuguese. All people in America should learn English. One language, English, and save tax payers money." (343) [Question H1 Response]

"We have everything printed in 2 languages. If I went to a different country I would not expect their citizens to learn my language." (379) [Question H1 Response]

"Make everyone learn English. They are in America." (437) [Question H1 Response]

"I think every registered voter in the U.S. should speak and understand English which is the language of this country." (449)

"I do not think that it is our responsibility to provide different languages. I think everything should be in English only! That is their responsibility (voter). Go to Mexico or other countries you have to learn their language. You come here and we have to learn theirs...." (558)

"I think that U.S. citizens should read and speak English." (609) [Question H1 Response]

"I think if you want to vote, you need to understand/speak English. We have gone so overboard with paying extra dollars for such a small number of people that need assistance; so bring someone of their own choosing anyway to help them. We have had to get bilingual workers instead of experienced election personnel to accommodate the law...." (816)

"English should be the national language. We should not have to print ballots in anything other than 'English.'" (872) "I believe voters should be able to speak and read English or provide their own interpreter." (872) [Question H1 Response]

"Designate English only requirement for all elections." (876) [Question H1 Response]

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"A voter is required to be a citizen of the US. A citizen of the US should be required to read and write the English language before obtaining the citizenship." (889)

c. Little or No Demand for Language Assistance in Jurisdiction:

"We have been fortunate to not have problems in language assistance. But I'm sure sometime this will arise with other languages besides English and [the covered language]." (226)

"Although we do have a minority [covered language group] populations in [] of our voting precincts, we have no [covered language]-speaking-only voters. We provide oral assistance in [the covered language] at those precincts but no translator has ever been needed.... Most non-English speakers in our community are not U.S. citizens." (236)

"Our county consists of English and [the covered language] speaking voters. The majority of [the covered language] speaking voters read, speak, and write the English language, so we have no problems in this area." (245)

"We have very few requests for language assistance." (272)

" .... Most of the population speaks a type of slang and cannot read [the covered language]...." (322)

"Extremely low use of both oral and written mediums." (357)

[Redacted – discusses targeting formula for Native American languages] (364)

"My election boards say the translators have never helped a voter. A voter can ask any person for assistance in the booth, so I feel it is an added expense to an already poor [jurisdiction]." (402A)

"Our county is []% Native American and our election board workers are []% Native American. They have informed us they have received 0-5% requests for assistance." (421)

[Lengthy paragraph redacted] As of now, I do not have a language problem in our county." (464)

"In our [] community we do not have residents that need assistance or speak in other languages...." (477) [Question H1 Response]

[Redacted] (515)

"In our area we have a very low minority citizens and we have had no call for minority language assistance." (557) [Question H1 Response]

"We have a few [the covered language] speaking registered voters, but they also speak English. Language assistance is not an issue in our county." (609)

"In the [] years I have worked in this office we have never needed language assistance. All American Indians can speak and understand English, as all are required to attend public schools for their education." (617)

"The majority of our voters speak English fluently, even those with Spanish surnames...." (624)

".... The majority of our voters are bilingual." (661)

[Redacted] (663) [Question H-1 Response]

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"We have Indian Reservations ... where the [] language is spoken. Most members can read and speak English, but they did not want any outside assistance." (688)

"During Election November 2004 I only had one [covered language group] man ask for someone to read the ballot to him, because he needed glasses. I read the names and office to him and he told me who he wanted to vote on. It took less than 5 minutes and he was finished. He thanked me for helping him. We have less than []% of voters that speak a second language. Therefore we only need one translator on call." (691)

"[We are] a small [jurisdiction] with [a] majority voters [of] speaking English...." (725)

"The majority of our non-English speaking residents are not registered to vote as they are illegal aliens or migrant farm workers. Most residents who are registered to vote are bilingual. We have had very limited requests for language assistance." (760)

"We find that even though information is provided in their languages, the majority prefer to receive the English version." (833)

[Lengthy paragraph redacted] (854)

"We are required to provide for [the covered language(s)], very few people speak the language. If they do, they speak it as a second language...." (869)

"We are a small [jurisdiction] with few minority voters.... My election clerk who is also a translator was never called or had to render assistance." (909)

"We only have [one covered language] in our county. For the most part, those who come to the polls read and write in the English language. We have a very minimal need for language assistance." (925)

"Very few voters in [the jurisdiction] require assistance. If they do, everything possible is done to accommodate them." (938)

"I was first elected clerk in []. We have provided one [the covered language] ballot to a voter since then...." (968)

d. No Language Assistance Problems / Issues in the Jurisdiction:

"I don't know - it's not a problem in our communities." (263) [Question H1 Response]

"....To my knowledge no complaints have been filed." (276)

"None – [our jurisdiction] does provide assistance to language minorities - I have not had ANY complaints in my years here...." (317)

"This is not a problem in this jurisdiction." (412)

"We do not have a language problem in our [jurisdiction]." (426) [Question H1 Response]

"Not an issue here." (431)

"This is not a real problem for us, yet. Have not had any problems in past elections." (603) [Question H1 Response]

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"Living in a small community, we do not have any problems with language assistance to voters...." (661)

"No problems so far." (706)

"Being a small [jurisdiction] with majority voters speaking English - we have not encountered many problems." (725)

"We are doing a very good job, no complaints." (822) [Question H1 Response]

".... We have never had a problem...." (909)

"We have not had any problems locally...." (999) "Seems to me that plenty is being done. We don't have any problems here." (999) [Question H1 Response]

e. Little or No Need for Written Language Materials:

".... Some of the publications in [the covered language] are a waste of funds." (322)

"Like I stated earlier, [the covered language] isn't easily written and read by many so the written is useless...." (347)

"Extremely low use of both oral and written mediums." (357)

"We have never in 45 years had anyone need assistance because of language." (431) [Question H1 Response]

"Not needed by American Indians in our area as all can speak and understand English. Tribal elections are all conducted in English." (617) [Question H1 Response]

".... We pay to have [covered language]-speaking poll workers who never have assisted a [covered language] speaking person yet...." (709)

f. Language Minority Voters Generally do not Need Assistance:

"I feel that translators are not needed in our area. Many of the voters do not even speak [the covered language]." (402) [Question H1 Response]

"Our voters that are [from the covered language group] can speak and read the English language...." (491)

"Many of our [covered language] voters have asked why the voter ballot and materials are written in English and [the covered language]. They say they can read the English and most cannot read the [covered language]." (552)

g. No Experience With Language Assistance in Jurisdiction / Not Required to Provide Assistance:

"Have not had any experiences or issues occurring with languages." (219)

"[Jurisdiction] was exempt from providing language assistance to voters." (279)

"We are not required to provide language assistance...." (681)

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"Have had no experiences in providing language assistance to voters." (1029)

h. Voters Bring Their Own Assister:

"Most people that vote bring someone they trust (that can speak both languages) to help them." (339)

"Most voters do not want assistance from poll workers. They prepare someone of their own choice particularly a family member or friend." (343)

"If we needed assistance in other language, I'm sure they would have someone along with them to translate for this person. We are a very small community." (477)

"Most of the voters who do not read or speak English bring their own interpreters with them." (895)

"Most voters who need assistance due to language barriers bring someone with them to the polling place." (987)

i. Criticism of United States Department of Justice / Federal Government:

"Section 203 should be reauthorized but the DOJ should hire attorneys with brains.... We are forced by the Act and the DOJ to provide translation in [the covered language(s)] of ballots and sample ballots when we conduct elections in jurisdictions that have no voters in [the] covered language[s]. This does not make any sense.... Although providing language assistance and working with community groups is very rewarding, dealing with the U.S. Dept of Justice is like being captive in a Kafka novel." (311)

".... The Department of Justice deal[s] with jurisdiction[s] with an unsympathetic approach which options results in threats to sue rather than cooperate...." (402)

"The results of this questionnaire would be a moot issue since the Federal Government will do what they want to anyway. Our bilingual workers do an excellent job helping the voters without any further government intervention." (476) [Question H-3 Response]

"We were under legal review of DOJ for nearly [] years and it accomplished nothing except problems and confusion...." (550)

"In [the jurisdiction], the federal government is doing plenty. I believe we accommodate all of our citizens who wish to vote." (951) [Question H-1 Response]

j. Expensive to Provide Language Assistance / Inadequate Resources to do so:

".... It is very expensive to provide this assistance to a small population of voters." (311)

"Budgeting limitations frustrate efforts - prior staff cuts hamper efforts. Despite obstacles, all efforts will be made to stay abreast of changing demographics and linguistic challenges presented by same." (344)

"The elections jurisdiction are spending enormous sums of money and other ... [resources] to establish regional programs...." (402)

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"We agree this bilingual information is important; however, the costs are significant for the number of voters who utilize the information. Possibly coordinating a voter training session for bilingual (non-English) speaking voters would be more cost effective. If they can't speak or understand English, understanding candidates and their platform will be very difficult as well." (857)

"We are required to provide for [the covered language(s)], very few people speak the language. If they do, they speak it as a second language. It is a needless waste of money and time (for getting the translator). We have many other jobs during the election that are more important." (869)

" ....It has cost us too much for what we get back." (974)

k. Description of Bilingual or Language Assistance Program:

"We are fortunate that [in the jurisdiction] there is a large number of residents who are bilingual (English-[the covered language]) it is not difficult to find election workers...." (215)

".... If they don't understand, we explain it to them." (263)

"We provided approximately 10 bilingual [jurisdiction] employees on Election Day. Several stayed at polls all day - 12 hours - foregoing their own jobs, and only 6 people in the entire [jurisdiction] needed any kind of assistance - but we were required to do so - so we did." (280)

"The [jurisdiction officials] work together to provide minority language assistance to voters. We do not have a specific person designated as the bilingual co-coordinator because all the bilingual people in the [] offices assist in the election process. The [jurisdiction official] is responsible for all election materials, absentee ballots and final tabulation and reports with the head moderator. The [other jurisdiction officials] are responsible for conducting the election and keeping the voter records. [] is the main liaison with our [covered language] community. All offices do outreach and recruitment of voters, poll workers and volunteers." (287)

"[The State] encourages each county to have at least one bilingual poll worker in each precinct on Election Day, which we do in our county because we have a lot of Hispanic population even though most Hispanics can read and write the English language." (299)

"Ballot is printed in two languages (English, [the covered language])." (308) [Question F-3 Response]

[Redacted] (318)

".... [The jurisdiction] has high [covered language] population.... Do not have stats for registered voters, but in my experience have fielded request for [other languages]. [The jurisdiction] does have a bilingual requirement for specified city positions...." (483)

"Our voters that are [from the covered language group] can speak and read the English language. We have an election judge that is [from the covered language group] and ... will help if needed." (491)

".... We use paper ballots for now. The only language we have to translate is [the covered language] – we have volunteers for that - and also know in advance who will need one." (529)

" ....We have very small [covered language] population in [] precincts. We provide translators in those precincts and all materials are in English and [the covered language]." (558)

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"A postcard was sent to all registered voters on file in Dec. 2003. This post card asked if they wanted their voting materials in [the covered language]. The response increased the voter file of [the covered language] requests from 250 to approximately 1650." (600)

".... Our ballots are printed in 2 languages." (603)

"We have several poll workers that are fluent in [the covered language] that work at the polls that have voters that may need assistance." (628)

"We do a one to one basis and it has worked out, because we are a medium size community still." (646)

"Providing assistance in [the covered language] has been required for [] years. Judges, clerks, and regular employees as well as part time employees provide assistance in [the covered language] directly or get assistance from an appropriate person...." (650)

"We print all election/UR material in English and [the covered language] and I am happy to do so. We pay to have [covered language]-speaking poll workers who never have assisted a [covered language] speaking person yet. It has been very difficult to find [covered language]-speaking workers in our [jurisdiction]." (709)

"We provide written materials in other languages even though we are not mandated to." (734)

"We often have to explain to voters why we are mandated to provide this. It does cause delays at times if we want to change a publication or put last minute info out, since we have to provide the translated portion. We have had comments over the years about the 'type' of [the covered language] – translators may vary within their language." (745)

"[Nearly all] of our polling places with at least one bilingual poll worker in the General Election of 2004. We worked on recruitment for 8 months and still had 3 locations with no bilingual clerk." (750)

"Though not required, we have our sample ballot booklet translated to [the covered language] by a ...certified translator." (757) [Question C-7 Response]

"English and [the covered language] are the only two languages that apply for this county.... We provided language assistance according to law requirements." (819)

"As [] clerk I am asking election judges to please have in place one [covered language]-speaking clerk on Election Day." (846)

"Allow voter to have assistant of their choice – we can give friend or relative an oath to allow them to assist voter." (854) [Question E-2 Response]

"I mail approximately 2000 facsimile sample ballot pamphlets in the [covered] language. It may be that the voter registration form could be re-worded as I think some voters who are bilingual check the box to receive [the covered language] material when in reality they are proficient in English. By checking the box they are signaling they also speak [the covered language]. Perhaps instead of indicating the voter 'prefers' election material in another language - the form could indicate the voter "requires" the materials in another language." (946)

[Redacted] (988)

".... [Covered language organizations] all cooperate with my office. We loan out voting machines to them for teaching voters-we go to schools and organizations, etc. I believe we have a good outreach program." (999)

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"Poll workers are limited to what can be translated and are not allowed to elaborate too much on the issues up for votes." (1012)

l. Contract with Other Jurisdictions for Elections:

"We are not a good source for this survey because we contract with the county to manage our elections. I don't know exact details of how they comply with the language requirements...." (276)

"As mentioned, we contract with the county registrar of voters to conduct our local elections. Because we consolidate with them they deal with polls, poll workers, translation needs. For that reason we were unable to answer all of your questions." (350)

"County provides most of language assistance in elections...." (483)

"We consolidate with [] Office ... to handle most of the election." (648)

"We contract and consolidate with the county.... The county provides all the language assistance ..." (801)

m. Language Minority Voters/Groups Do Not Cooperate in Jurisdiction's Assistance Efforts:

".... Twice we have reached out activity to [the covered language] population through their community leaders through placed of employment special celebrations and churches, but we have seen no discernable interest...." (236)

"Lack of interest and assistance from those we are trying to help." (370)

"The local [covered language] organizations have not been helpful in providing bilingual board workers or translators. Seem more interested in "election department" getting voters out instead of organizations doing so." (839)

"It has been very frustrating not to receive assistance from the people I am trying to provide a service for." (993)

n. Language Assistance Requirements are Necessary / Provisions Have Made a Difference or Have a Positive Impact / Support for Provisions or DOJ Enforcement:

"Providing language assistance creates a scenario for voter inclusivity." (206)

"Seems to work fine in our small ... precincts." (222)

"I believe the language translators are necessary and good. I prefer to have an informed voter casting a ballot rather than uninformed. If that takes providing election materials in their native language then I am all for it. However, it is extremely difficult to find sufficient numbers of bilingual workers. Bilingual workers are also very resistant to travel or work in non-[covered language] areas of the county." (234)

"It has been a good experience, no problems or concerns, but sometimes the Act demands more than what is necessary in my jurisdiction." (259)

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"As a small, resourceful community, we could probably swing any language barrier resolutions as needed, however, any opportunity to provide assistance to voters who need it should be granted." (269)

"Enforce existing rules." (276) [Question H-1 Response]

"Include states in section 203/Voting Rights Act, not just counties." (334) [Question H-1 Response]

"I know how important this issue is because my families are multi-ethnic and multi-cultural. Although I feel everyone in America should learn the predominate language, I think we should assist them until they have the chance to learn English then we need to always assist them." (342)

" ....I'm all for bilingual helpers to assist the older voters with understanding the whole process of coming to the polls, getting the ballot, reading the ballot, and voting." (347)

".... The laws should be enhanced to let citizens with limited English skills to bring friend or family to help or they should be encouraged to vote absentee." (402) [Question H-1 Response]

"I believe the federal government has done a lot to provide minority language assistance." (434) [Question H-1 Response]

"We believe the minority language outreach programs are very important. We are currently working with other [jurisdiction] elections official to begin a statewide outreach group to share ideas and training." (462)

"Should be reenacted in order for them not to be denied their right to vote - but should have to learn the official language of the US." (520)

"Language assistance is extremely important in ensuring the integrity of the US Election process." (537)

"A postcard was sent to all registered voters on file... This post card asked if they wanted their voting materials in [the covered language]. The response increased the voter file of [the covered language] requests from 250 to approximately 1650." (600)

"Broaden the requirements." (616) [Question H-1 Response]

"The concept is common sense." (652)

"It is very worthwhile to ensure voter participation by all qualified voters." (710)

"Many of our voters of the [] Tribes have expressed their appreciation of election information and instruction provided in [the covered language], both written and verbal." (714)

"Enjoy their learning and questions regarding elections. Diversity of the language and people who reside together." (767)

"For the longest time I thought that if you live in the USA, you should learn English. It is very difficult to help someone who doesn't speak the language. My husband hunts in Mexico and the few times I went with him I felt helpless because I didn't understand Spanish. It is very overwhelming when you need assistance and can't get it because of the language barrier." (773)

"Help us come up with the means of getting rid of the 'this is America, English only' attitude of many people out there, both voters and election board workers." (839) [Question H-1 Response]

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"We agree this bilingual information is important; however, the costs are significant for the number of voters who utilize the information...." (857)

"Voters feel comfortable coming to the polls - knowing there is help there if needed." (949)

o. Triggering Formula Should be Changed or Eliminated / Language Assistance Provisions Should be Changed or Eliminated:

"The Indian language requirement seems unnecessary because no one can speak it anymore." (238)

"Do not believe it increases voter turnout. Not necessary in all areas...." (239)

".... The threshold for providing language assistance in a county should be raised to 5% or 25,000, whichever is lower. It is very expensive to provide this assistance to a small population of voters. Also, the act should specify that if a jurisdiction is holding a special, stand-alone election and has no voters or less than 5% of voters in a covered language minority, then translations of election materials are not required. We are forced by the Act and the DOJ to provide translation in [the covered language(s)] of ballots and sample ballots when we conduct elections in jurisdictions that have no voters in either covered language. This does not make any sense." (311)

".... The citizens are split on the issues and have strong feelings that are expressed to election officials. Finally, I think the laws do a disservice to the ethnic citizen and work as a means of separate and polarize citizens not unite our voices. I think this message should be expressed to the Congress." (402)

"....A voter can ask any person for assistance in the booth, so I feel it is an added expense to an already poor [jurisdiction]." (402A)

"Larger counties probably need language assistance to voters. Smaller counties should not be forced to provide services that are not needed." (663)

"We were mandated to implement language assistance because of DOJ percentage of census -- However that law should be reconsidered because the percentage of our "non-English" speaking population cares nothing about voting, nor are they citizens -- who have the only right to vote. It has cost us too much for what we get back." (974)

p. Coverage Should Not Be Based Upon Spanish-Surnames / Target Language Assistance to Only Where Needed:

"The majority of our voters speak English fluently, even those with Spanish surnames. To determine the percentage of Spanish voters based on Spanish surnames is not a very good formula for determining that percentage." (624)

"I do not think language assistance should be based on surnames." (892)

"In some areas of our county there are no people who need assistance to vote because of language, yet because of Spanish last names, we are required to have bilinguals in place." (935)

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r. Miscellaneous:

"…. In addition, reimbursement should be provided to counties for these federal mandates…." (311)

"Due to the small population in this [jurisdiction], there are no other languages except [the covered language]." (320)

"We do a good job with our voters. We need a few more bilingual workers…." (322)

[Long paragraph redacted] (362)

[Redacted] (393)

"The one thing that I have learned is that regardless of how much you do - it is never enough." (460)

"…. {The jurisdiction] is much more responsive to language assistance, both written and oral; however, we need to be more proactive not just responsive." (461)

"See attached page." (486)

"My voters take pride in being able to read and write English!" (500)

"See attached." (516)

"The right to vote is a privilege in this country. Minority people feel intimidated about voting. This needs to be covered as part of naturalization process." (561)

"We have several elderly voters who have trouble seeing the ballot…." (603)

"…. No tracking of election costs for bilingual materials is known, as all supplies and forms are provided with [the covered language] translation." (650)

"…. Also, our election cycles differ in odd and even-numbered years. Odd years usually have one election and even years have two." (681)

(Survey only had through page 5 attached) (761)

"They aren't informed on elections in our area to be qualified to vote." (807)

"Everyone should be allowed to vote, if qualified, but how it's being done, needs to be studied further…." (822)

"If we are to continue the efforts in providing election materials both oral and written it should be funded as it is difficult for jurisdictions to build an effective program with non-existent local resources." (879)

"With electronic voting, the language barrier is definitely lifted." (886)

"I think those who are conscientious about elections will take the necessary steps to serve all well." (897)

"Make check into register holding election." (915)

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"It should be realized that some counties already accommodate voters of every language." (951)

"We provide [the covered language] translation only. We have never had a request for another language." (1007)

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An Assessment of Voting Rights Progress in North Carolina

EXECUTIVE SUMMARY
By Edward Blum

Sizeable progress has been achieved in North Carolina voting rights. Although minority representation has not quite achieved full proportionality, it is very close. The 2004 Census Bureau estimates show African Americans comprising 20.5 percent of the state's voting age population. Blacks currently hold 15.3 percent of the seats in the legislature.

Black voters are more likely to vote in North Carolina than in the non-southern states, but North Carolina black voters register and turnout at lower rates that North Carolina whites. The disparity between black and white voter participation has declined dramatically over the past two decades, as the two races are now less than 3 points apart on rates of participation.

Black voters have been able to elect candidates of choice to the legislature and the US House, and have continued to do so with the departure of incumbents from districts with lower black voter percentages than in the early 1990s. The success of Reps. Ballance and Butterfield in succeeding Rep. Clayton from the low country 1st congressional district is representative of this ability.

The old disparity in black and white registration rates in North Carolina has been substantially reduced and, in fact, was eliminated in the 2004 election with blacks reporting higher rates of registration than whites. Additionally, in 2004, the Census Bureau estimates that black voter participation at the polls was 63.1 percent while it was only 58.1 percent for whites. Black voter participation rates in North Carolina are sometimes exceeding black voter participation rates outside of the South.

By 2000, North Carolina had approximately 500 African America officeholders, up from only 40 in 1969. A high-profile African American, Harvey Gantt, has twice won the Democratic nomination for the U.S. Senate, once beating Michael Easley (a white who later became the state's governor) with 57 percent of the primary vote. Even though Gantt lost both bids for the Senate, his performance was on par with that of other white Democrats who had challenged the incumbent, Jesse Helms.

Between the two Gantt defeats was a statewide victory for an African American. In 1992, Ralph Campbell won the Democratic nomination for state auditor and then went on to win in the general election. Four years later, Campbell won a second term in this constitutional office. Campbell won reelection in 1996 when he competed on the same ballot with Harvey Gantt. Campbell ran four percentage points ahead of Gantt and won office, while Gantt lost once again. Campbell won a third term in 2000 but failed in his bid for a fourth term in 2004.

An Assessment of Voting Rights Progress in North Carolina

Prepared for the American Enterprise Institute

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North Carolina adopted disfranchising techniques in 1900 when amendments to the state constitution imposed a literacy test and a poll tax. Only 20 years later, however, North Carolina became the first southern state to eliminate the poll tax as a condition for voting.[1] The literacy test remained in place until struck down by the Voting Rights Act. Unlike most other southern states, North Carolina did not make use of a white primary as a technique for limiting African-American participation.[2]

Not all of North Carolina is subject to the trigger mechanism of the Voting Rights Act and therefore only certain counties are subject to having their election ordinances precleared by the Department of Justice. The trigger mechanism written into the 1965 statute - - the presence of tests or devices that prospective voters must satisfy coupled with a turnout rate in the 1964 presidential election or a registration rate at the time of that election of less than 50 percent of the age-eligible electorate - - subjected 40 of North Carolina's counties to preclearance (see Map 1). Statewide legislation affecting elections, such as redistricting plans, must go through the preclearance review before being implemented.

Black Registration and Turnout

The U.S. Civil Rights Commission estimated that at the time that the Voting Rights Act was originally passed, just over a quarter of a million non-whites and 1.9 million whites were registered to vote in North Carolina. These figures translated into a registration rate of 46.8 percent of the non-white and 96.8 percent of the whites of voting age.[3] As of February 1967, a year and a half after passage of the Voting Rights Act, figures reported by the North Carolina State Board of Elections for all but three medium-size counties showed 277,404 non-whites and 1,602,980 whites registered to vote. African – American registration had increased from 46.8 to 51.3 of the age eligible while among whites, 83 percent of the age-eligible had signed up to vote. The share of the non-white voting age population that had registered by 1967 in the 40 counties subject to Section 5 was substantially lower than the state as a whole. In these counties just over 40 percent of the non-white voting age population had registered. In only 5 of the 40 counties was a majority of the voting age population registered as of 1967. Thus the rate of registration among non-whites in the Section 5 counties continued to lag that for the remainder of the state. The counties included among the Section 5 counties were all of those in which a majority of the voting age population as of 1960 was not white. These counties tended to have small to moderate populations with the only one of the states major counties subject to Section being Guilford which contains the city of Greensboro.

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[1] J. Morgan Kousser, *The Shaping of Southern Politics* (New Haven: Yale University Press, 1974), p. 239.
[2] William R. Keech and Michael P. Sistrom, "North Carolina," in *Quiet Revolution in the South,* Chandler Davidson and Bernard Grofman, eds. (Princeton: Princeton University Press, 1994), p. 190.
[3] U.S. Commission on Civil Rights, *Political Participation* (Washington, DC: U.S. Government Printing Office, 1968), pp. 222-223.

The basis for activating the trigger mechanism is not that a majority of the non-white population be registered but rather that less than half of the total population was registered as of 1964. By 1967, in the Section 5 counties, 62.2 percent of the total voting age population from the 1960 census had registered.

Table 1 provides figures on black and white registration as compiled from surveys done by the U.S. Bureau of the Census after each general election. The figures here are self-reported and suffer from the tendency of respondents to claim to have participated at higher rates than they actually did. The Census Bureau figures, while probably inflating estimates for participation can be used for comparative purposes across time and across states on the assumption that the inflation is of similar magnitude across time and space. Moreover, these surveys were the basis for the kinds of estimates that the Census Bureau used in determining whether registration or turnout rates for jurisdictions were so low as to make them subject to the trigger mechanisms included in the 1965, 1970 and 1975 voting rights acts. These self-reported figures are based on the share of the age-eligible population registered at the time of the election.

As shown in Table 1, in 1980, just under half of the age-eligible blacks in North Carolina reported being registered to vote while 63.7 percent of the whites who were of age claimed to be registered. The disparity in reported racial registration rates widened in 1982 to almost 19 percentage points. Thereafter the disparities have been smaller shrinking to 7.5 points in 1984 and remaining at roughly that size through the rest of the 1980s.

(See Table 1)

The disparity in self-reported registration shrinks to 3.5 percentage points in 1990. It then expands to more than eight percentage points in the next two mid-term elections before shrinking back to approximately five percentage points in 2002. In the presidential elections of 1992, 1996 and 2000, approximately five percentage points more of the white than the African American voting age population claims to have been registered. In 2004, for the first time, the rate at which blacks reported registering exceeds that for whites with 70.4 percent of African Americans and 69.4 percent of the whites of voting age indicating that they registered.

The bottom half of Table 1 provides estimates for the non-South as a basis for comparison with the levels of black registration in North Carolina. During the 1980s, African Americans living outside of the South always reported higher registration rates than did North Carolina's black population. The greatest disparity occurred in 1982 when 61.7 percent of the non-South African Americans said they registered compared with 43.6 percent of the black population in North Carolina. During the remainder of the decade, the disparity was approximately seven percentage points. Beginning with 1990, the reported registration rate among North Carolina blacks usually slightly exceeded that of African Americans living outside of the region. In 1990, North Carolina blacks were 1.7 percentage points more likely to be registered than were non-southern blacks. The largest advantage for North Carolina blacks comes in 1996 when 65.5 percent of the

Tarheel African Americans compared with 62.0 percent of non-southern blacks claim to have been registered. In 2000 and 2002, the advantage for the North Carolina African Americans is little more than one percentage point.

One of the two elections since 1990 in which black registration in North Carolina did not exceed that of the non-South comes in 1994 when 58.3 percent of the non-southern blacks but only 53.1 percent of North Carolina's blacks claim to be registered. In the other year inconsistent with the post-1990 pattern, 1998, 58.5 percent of non-southern blacks and 57.4 percent of North Carolina blacks reported being registered.

The data in Table 1 show that the disparity in black and white registration rates in North Carolina have been substantially reduced and in the most recent election eliminated altogether with blacks reporting that they registered at a slightly higher rate than did whites. At the same time that the racial disparity in North Carolina was being eliminated, it had been reversed when the comparison is between African Americans in North Carolina and outside of the region. In all but two of the seven most recent elections for which the comparisons are possible, a higher proportion of North Carolina African Americans than non-southern blacks report that they had registered to vote.

Table 2 contains Census Bureau estimates of turnout by race in North Carolina from 1980 through 2004. The voting age population is the denominator used to calculate these percentages. Black self-reported participation rates do not exceed those for whites in North Carolina until 2004. In 1990, 1998 and 2002, the differences are small with the smallest difference coming in 2002 when 42.2 percent of blacks and 43.5 percent of whites reported having gone to the polls in the general election.

During the 1980s, whites reported voting at rates at least eight percentage points greater than did blacks and in the first three election years, the differences exceeded ten percentage points. Since 1996, the disparities have been less than nine percentage points and in the two most recent mid-term elections, differences were less than 2.5 percentage points.

In 2004, for the first time in the time series, the Census Bureau estimates of participation show blacks voting at higher rates than whites in North Carolina. Among blacks, 63.1 percent said that they participated in the 2004 election compared with 58.1 percent of the whites. The reported black participation in 2004 exceeds any figure for whites in the entire time series. This higher reported participation among blacks is also a break with the previous pattern in which whites' participation rates exceeded those for blacks by the larger margins in presidential years than in a adjacent mid-term elections.

(See Table 2)

During the 1980s, self-reported black participation in North Carolina was substantially below that in the non-South. In each of those five election years except for 1986, black turnout in North Carolina was at least nine percentage points lower than in the non-South. Beginning with 1990, black turnout rates in North Carolina exceed those for the non-

South in three of the next seven election years including a difference of almost three percentage points in 2002. The greatest disparity in favor of North Carolina blacks came in 1990 when the difference was almost ten percentage points. On the other hand, the greatest overall disparity since 1990 came in 1994 when outside the South 40.2 percent of African Americans said they voted compared with only 28.3 percent participation in North Carolina. In 1992, 1996, and 1998, the figures for North Carolina and the non-South were quite similar with differences of less than three percentage points. While we do not have figures for black participation outside of the South for 2004, the 63.1 percent of the North Carolina blacks who reported voting in the most recent election is a higher proportion than for blacks outside the South in any previous year.

The patterns reported in Table 2 indicate that black participation rates in North Carolina are increasingly approximating and sometimes exceeding those outside the South. There has also been a pattern of North Carolina black self-reported participation becoming increasingly like that of Tarheel whites although whites continue to report voting at higher rates than do blacks, except in the most recent election.

North Carolina is one of the five southern states that maintains registration data by race. Registration figures by race from the State Board of Election are available beginning with 1994. The official figures show that in October 1994, almost 640,000 blacks and 2.85 million whites were registered in the state. As Table 3 shows black registration increases by more than 450,000 from 1994 to 2006. There is also a substantial increase in white registration during the twelve years as it climbs from 2.85 to 4.15 million. In 1994, African Americans constituted 17.6 percent of the state's registered voters. A dozen years later, the proportion had increased to 20.1 percent, which almost equals the 20.5 percent of the state's voting age population estimated to be black in 2004 by the Census Bureau.

(See Table 3)

Only in 2002 did North Carolina begin to report official figures on turnout by race. Among those who had registered as of October 2002 and therefore were eligible to vote in that year's elections, 41 percent of the African Americans cast ballots as did 60 percent of the whites. It should be noted here that the denominator in calculating turnout is registrants while in Table 2, the Census Bureau uses the voting age population as the denominator in calculating turnout. The participation rates for the two races converge substantially in the 2004 presidential election. In 2004, the state reports that 59 percent of its black registrants and 66 percent of its white registrants went to the polls.

The statistics maintained by the North Carolina Board of Elections and presented in Table 4 show that since the beginning of their data presentation in 1972, a majority of North Carolinians have registered to vote. The figures range from a low of just under 60 percent in 1978 to a high of over 85 percent in 2004. Two sets of turnout percentages are calculated in Table 4. In the first calculation, turnout is calculated as a percentage of registered voters. These figures show that in every presidential year, a majority of the registrants came to the polls. In most mid-term elections less than a majority turned out.

The exceptions came in 1986 and 1990. In the most recent mid-term election, almost 47 percent of the registered voters cast ballots in 2002. When participation is calculated as a share of the voting age population, only infrequently did most North Carolinians cast ballots. Only in 1992 and 2004 did most of the age eligible go to the polls with almost 55 percent of the adult population voting in 2004. Participation rates in mid-term elections tend to be lower than in presidential elections and in three mid-term elections, fewer than 30 percent of the adults participated. The turnout figures show a general increase over time in the share of the voting age population casting ballots once a type of election is controlled for.

(See Table 4)

The farthest left column presents the Census Bureau estimates of turnout. These figures are calculated using the Census Bureau's estimates of the voting age population as the denominator. Census Bureau's estimates of participation rates always exceed those calculated using the state's official figures. Up through 1996, the Census Bureau estimates are often ten percentage points higher than the official figures. For the four most recent elections, the two sets of turnout figures based upon voting age population are much closer never differing by as much as five percentage points. In 2004, the difference is only 3.4 points.

If the appropriateness of the trigger mechanism for the state were to be recalculated based upon Census Bureau estimates of turnout of the voting age population in presidential years, then in every year a majority of North Carolinians went to the polls.

In the counties subject to Section 5, the number of African Americans registered to vote is now more than four times as high as the non-white registrants in 1967. In the most recent figures, released by the North Carolina Board of Elections, 528,848 African Americans had registered in these counties up from just under 121,000 non-whites registered in 1967. This compares with 1,223,692 whites on the voting rolls in 2006. That is an increase from 523,699 in 1967. As of 2006, African Americans constitute 28.8 percent of the registered voters in the Section 5 counties. This compares with the 18.8 percent of the registrants comprised of non-whites in 1967.

African American Officeholding

At the outset of record keeping on the numbers of African-American elected officials, North Carolina had 40 in 1969 with almost two-thirds of these serving in cities. Within three years, the total had reached 103 of whom two-thirds still served at the municipal level with very few county officials. The number of black county officials did not exceed ten until 1975 at which point there were still ten times as many municipal as county black officials. By 1976, the number of black officials reached 218 and increased to 353 in 1987. During the four years between 1985 and 1989, Table 5 shows a dramatic increase in black elected officials of more than 50 percent. This dramatic increase is partially attributable to the implementation of Section 2. The initial interpretation of this re-

written section that modified the Voting Rights Act in 1982 came in a North Carolina case. With the Supreme Court's blessing for efforts to force multi-member and at-large plans to be converted into single-member districts, large numbers of additional African Americans won local offices. In North Carolina much of the increase in black elected officials came at the municipal level where numbers rose from 162 in 1985 to 279 eight years later.

(See Table 5)

As the 20th century came to close, North Carolina had approximately 500 African Americans in public office. Just under 60 percent of the public officials hold municipal office. The state still had fewer than 100 black school board members and the 100 counties in the state had produced fewer than 65 black officials.

The African Americans in Congress

North Carolina has had two black members in Congress since the 1992 districting map was implemented. The initial map drawn by the state had one majority-black district and it was located in the eastern part of the state. The U.S. Department of Justice (DOJ) which has authority to review the state's districting plan since almost half of North Carolina is subject to Section 5 of the Voting Rights Act rejected that map. In rejecting North Carolina's first effort DOJ essentially instructed the state that to secure approval it would need to create a second majority black district. It had been many years since North Carolina had even one majority-black congressional district so that creation of a majority – black district was more than required under the non-retrogression rule that had been the standard in Section 5 reviews. In denying preclearance, DOJ relied on Section 2 and measured North Carolina's effort against a "max-black" standard. Since the state could have created a second majority-black district, DOJ required it.

In response to this directive, Republicans who constituted a minority in the legislature, pushed for a second majority-black district that would be located in the southern part of the state extending from Charlotte eastward. The legislature, however, opted for an alternative configuration that had been originally drawn by a Republican legislator. This alternative, which became known as the I-95 district because it tracked closely with the interstate highway, linked blacks in a series of urban areas in the Piedmont. The district ran from Gastonia in the west to Charlotte and next northward as far as Winston-Salem and then picked up High Point, Greensboro and extended on eastward before ending in Durham. This 160-mile long district united urban black populations but carefully avoided nearby concentrations of whites so as not to violate equal population standards. As a result, in some places the district was no wider than two lanes on I-95. At times the district crossed over from the northbound lanes to the southbound lanes and in some places the district was contiguous only at a touch point.

The configuration of this district outraged Duke University Law School Professor Robinson Everett. Everett, who had once served as the chief judge of a Court of Military

Appeals, filed suit on behalf of voters who objected to the plan. Initially, Everett was unsuccessful since the three-judge federal court convened in North Carolina found the issue raised by the plaintiffs to be non-justiciable. Everett appealed to the Supreme Court and where he succeeded in convincing a five-person majority that he had a claim. Writing for the majority, Justice Sandra Day O'Connor noted:

> Put differently, we believe that reapportionment is one area in which appearances *do* matter. 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 may have little in common with one another but the color of their skin, bears and uncomfortable resemblance to political apartheid.[4]

Following a hearing on the merits, the three-judge panel rejected Everett's claims. After a second appeal to the Supreme Court however, Everett finally prevailed and the court struck down the 12th district for violating the Equal Protection Clause because it had been drawn predominately on the basis of race.[5]

The state legislature produced a new plan that shortened the distance spanned by the twelfth district so that it extended only from Charlotte northward to Winston-Salem and Greensboro. Everett, however, continued to believe that race had been the predominate consideration in drawing this map in which the 12th district was 46.7 percent African American and filed another challenge. The trial court granted plaintiffs' motion for summary judgment forcing the legislature to draw a third map.[6] In this third map, which was used in the 1998 election, the black percentage in the district dropped to 35.6 and the district extended only from Charlotte to Winston-Salem.

The state appealed the summary judgment asserting that the legislature relied on partisan and not racial data in drawing the second map. Since the state's claims meant that the case involved a controversy, the Supreme Court overturned the trial court decision and ordered a full hearing on the merits.[7] In the subsequent hearing, the three-judge trial panel found again for the plaintiffs. The plaintiffs introduced into evidence an e-mail that had been sent by the staff person primarily responsible for redistricting to the senator who led the redistricting effort. In that e-mail, the staffer asked the chair of the Senate committee for guidance. "I have moved Greensboro Black community in to the 12th and now need to take 'bout [sic] 60,000 out of the 12th. I await your direction on this."[8] The trial court agreed with the plaintiffs that this email indicated that race and not partisan considerations had been the predominant factor in shaping the 12th district.

The state appealed again and in *Easley v. Cromartie,* the Supreme Court's fourth ruling on North Carolina redistricting efforts during the 1990s, the court upheld the state's

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[4] *Shaw v. Reno*, 509 U.S. 630 (1993).
[5] *Shaw v. Hunt*, 517 U.S. 899 (1996).
[6] *Cromartie v. Hunt*, No. 4: 96-CV-104. BO (3) (E.D. N.C., 1998)
[7] *Hunt v. Cromartie*, 526 U.S. 541 (1999).
[8] *Cromartie v. Hunt,* No. 4: 96-CV-104-BO (3) (E.D.N.C., 2000).

plan.[9] Justice O'Connor who had supported the first two challenges to North Carolina's plan, switched sides and now joined the more liberal wing of the court in a 5-4 opinion. In *Easley,* the Supreme Court accepted the state's contention that it had relied predominately upon partisan data from elections held almost a decade earlier and had considered race as nothing more than a secondary factor if that.

Table 6 shows the changes in the racial make up of the two districts that have elected African Americans since 1992. The First District in the eastern part of the state was represented by Eva Clayton from 1993 until 2003. Frank Ballance succeeded Clayton but resigned in 2004 shortly before pleading guilty to federal fraud charges. The seat is currently held by G.K. Butterfield. All three incumbents in the First District since 1993 have been African Americans. The district has had a black majority in its population since 1993 although the voting age population and the registered electorate have been majority white since the redistricting of 1998.

In contrast, the 12th District represented by Melvin Watt since 1993 lost its black majority with the first remapping pursuant to *Shaw* in 1998. Despite a dramatic drop in the black population from 56.6 percent to 35.6 percent, Watt won handily taking 56 percent of the vote. The next redistricting, the one used for the 2000 election, increased the black percentage in the 12th District to 46.7 percent of the population and again, Watt won easily with 65 percent of the vote. With the redrawing following the 2000 census, the black percentage dropped to 44.6 percent but Watt continues to win reelection.

(See Table 6)

Melvin Watt has successfully fashioned a biracial coalition and defended his seat even as it has undergone three reconfigurations and had its black population substantially reduced. In the First District, the black percentage has remained higher than in the 12th, nonetheless Eva Clayton and her successors have also fashioned biracial coalitions. The elections of Ballance and Butterfield following Clayton's retirement in 2002 indicate that it was not just incumbent Clayton who could win in this district in which most voters were white. In the critical 2002 Democratic primary, Ballance took 47 percent of the vote and thereby avoided a runoff.[10] The only white candidate in the four-person field, finished second with 26 percent of the vote. Now that many whites choose to participate in the Republican primary, it is not necessary that districts be majority minority in order to nominate African Americans.[11]

The success of African Americans in winning and holding two congressional seats in North Carolina since 1993 contrasts with the earlier unsuccessful efforts mounted by African Americans. Immediately after the 1982 redistricting, Mickey Michaux, a black legislator, ran for the open Second District that included Durham and portions of

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[9] *Easley v. Cromartie*, 532 U.S. 234 (2001).
[10] North Carolina requires 40 percent of the vote and not a majority to win a nomination.
[11] Bernard Grofman, Lisa Handley and David Lublin, "Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence," *North Carolina Law Review*, 29 (June 2001): 1383-1430.

northeast North Carolina. In the initial primary, Michaux captured 44 percent of the vote while Tim Valentine, a white former legislator, took 33 percent. The remainder of the vote went to a second white candidate. In the early 1980s, North Carolina still required a majority vote for nomination, a threshold later lowered to 40 percent. In the runoff, Valentine leap-frogged past Michaux and won the Democratic nomination with 54 percent. The district in which Valentine defeated Michaux was 40 percent black by total population. In 1984, a second black legislator, Kenneth Spalding challenged Valentine in the primary. Valentine once again survived but with only 52 percent of the vote.

Michaux's runoff defeat after having led in the primary prompted the Reverend Jesse Jackson to make the runoff requirement (used by a number of southern states in their primaries) a major issue in his 1984 campaign for the Democratic presidential nomination. Jackson contrasted Michaux's fate with the experience of Harold Washington who won the Democratic nomination to become mayor of Chicago with a plurality vote against multiple white candidates.

As far back as 1972, Chapel Hill Mayor Howard Lee competed for the open Second District Congressional seat. In this 40 percent black district, Lee, one of the first African-Americans to be elected mayor of a predominately white city in the South, lost the nomination to a white opponent. Paul Leuke, a Democratic legislator and sociologist, speculates that Lee probably did not help himself in this conservative district by running as an economic populist.[12]

African-American State Legislators

The first African American elected to the North Carolina legislature in modern times won a House seat in 1968. Little increase in the black presence in the House occurs until after the 1982 redistricting when blacks win eleven of the 120 seats. During the 1980s, black representation in the House hovers around ten percent. After the next redistricting in the early 1990s, black representation increased so that during the 1990s approximately 15 percent of the House seats were filled by African Americans as shown in Table 7. Redistricting at the beginning of the new century had no significant impact on the number of African Americans serving in the House.

(See Table 7)

In the Senate, no black won a seat until 1974 when two members entered the upper chamber. During the next 14 years no more than three of the 50 seats in the Senate were held by blacks. In 1989 the number of black senators roses to five and after a new redistricting, it went to seven, which remained the number in 2005.

The 2004 Census Bureau estimates show African Americans comprising 20.5 percent of the state's voting age population. Blacks currently hold 15.3 percent of the seats in the legislature.

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[12] Paul Leubke, *Tarheel Politics, 2000* (Chapel Hill: University of North Carolina Press, 1998), p. 157.

North Carolina has a tradition of multi-member districts. The consequences of this tradition for minority legislative representation was challenged in *Thornburg v. Gingles*, decided by the U.S. Supreme Court in 1986.[13] This was the first case in which the Supreme Court dealt with Section 2 as amended in the 1982 Voting Rights Act. At issue were six multimember legislative districts which in 1982 sent five African Americans to the General Assembly. Notwithstanding the fact that blacks were winning some seats in these districts, plaintiffs contended that they had less opportunity than whites to elect their candidates of choice. The plaintiffs sought to replace the multi-member districts with single-member districts. Under a single-member districting plan, it would be possible to draw a heavily black district within the confines of each of the multi-member districts being challenged. Although five of the multi-member districts at issue in *Thornburg* had a black member in the delegation at the time of the litigation, the Supreme Court struck down all but one of these districts. The one district that survived had a tradition of electing an African American.

In finding that the multi-member districts diluted black political influence, the court relied heavily upon the evidence presented by the plaintiffs to demonstrate the presence of racial bloc voting. The court put its stamp of approve on two techniques for measuring racial voting patterns. One of these is the homogenous precinct approach that calculates the share of the vote in heavily black precincts going to each candidate and the share of the vote in heavily white precincts going to these candidates. The second approach used by the plaintiffs' expert, Political Science Professor Bernard Grofman of the University of California at Irvine, was ecological regression and it is this approach that Grofman put more confidence in. The court accepted Grofman's definition that racial bloc voting occurs when white and black voters prefer different candidates. Thus if the candidate preferred by black voters loses despite receiving the bulk of the black vote, this would be evidence of racial bloc voting.

The court used the *Thornburg* decision to establish three preconditions for a successful Section 2 challenge. First, plaintiffs must demonstrate that minority voters are sufficiently numerous and compact to constitute a majority within a single-member district. Second, plaintiffs must prove that the minority electorate is cohesive in its political choices. Third, the plaintiffs must show that the political preferences of minority voters are usually defeated by a white bloc vote.

Statewide African-American Candidacies

A high-profile African-American candidate has twice won the Democratic nomination for the U.S. Senate from North Carolina. In 1990, Harvey Gantt, who had been the first African-American student at Clemson University and later won election as mayor of Charlotte, sought the Democratic nomination for the U.S. Senate. To win the Democratic nomination in 1990, Gantt defeated Michael Easley (later to become North Carolina's governor) with 57 percent of the primary vote.

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[13] *Thornburg v. Gingles*, 478 U.S. 30 (1986).

The general election pitted Gantt against Jesse Helms the Republican incumbent seeking his fourth term in the Senate. Despite being outspent by Helms by a margin of more than 2:1, most polls showed Gantt leading until the closing days of the campaign. Helms pulled out a 53 percent victory after airing what has become a classic racial appeal ad. In what has become known as the "white hands" ad, there was a picture of white hands crumpling an envelope. The voice over commiserated:

> You needed that job, and you were the best qualified. But they had to give it to a minority because of a racial quota. Is that really fair? Harvey Gantt says it is. Harvey Gantt supports Ted Kennedy's racial quota law that makes the color of your skin more important than your qualifications. You'll vote on this issue next Tuesday. For racial quotas: Harvey Gantt. Against racial quotas: Jesse Helms.[14]

This racial appeal helped mobilize conservative white Democrats in the eastern part of the state known as Jessecrats because of their willingness to forsake their Democratic moorings in order to support Helms.

In 1996, Gantt again opposed Helms as the conservative Republican mounted his last Senate election bid. The results were very similar to those six years earlier as Helms won again with 53 percent of the vote.

Even though Gantt failed in his two bids for the Senate, his performance was on par with that of the white Democrats who opposed Helms. In 1984, Helms had beaten Jim Hunt who had just completed two successful terms as governor. Helms devastated the popular governor with a series of ads showing conflicting statements made by the governor on key issues and then asked "Jim, where do you stand?" Helms took that election with 52 percent of the vote. Six years earlier, he had defeated state Insurance Commissioner John Ingram with 55 percent of the vote. While this was Helms' largest margin, it came against a Democrat who ran little more than a shadow campaign as Helms outspent Ingram by a margin of $7.5 million to $264,088.[15] In his initial election, Helms had won the open seat being vacated by B. Everett Jordan with 54 percent of the vote against U.S. Representative Nick Galifianakis. Thus the 53 percent of the vote that Helms took in his two victories over Gantt was right in line with his vote share against white Democratic challengers.

Between the two Gantt defeats was a statewide victory for an African American. In 1992, Ralph Campbell, the brother of Atlanta Mayor Bill Campbell, won the Democratic nomination for state auditor and then went on to win in the general election. Four years later, Campbell won a second term in this constitutional office. Campbell won reelection in 1996 when he competed on the same ballot with Harvey Gantt. As Gantt was losing,

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[14] Paul Luebke, *Tarheel Politics 2000.* (Chapel Hill: University of North Carolina Press, 1998): pp. 182-183.

[15] Michael Barone, Grant Ujifusa and Douglas Matthews, *The Almanac of American Politics, 1980.* (New York: E.P. Dutton, 1979), p. 649.

Campbell ran four percentage points ahead of the Democratic Senate candidate. Campbell won a third term in 2000 but failed in his bid for a fourth term in 2004.

The 2004 elections proved more difficult for Democrats than previous ones as the Democratic nominees lost the presidency, a Senate seat, the Commissioner of Agriculture and the Commissioner of Labor as well as the Auditor position. Although unsuccessful, Campbell polled 49.6 percent of the vote and took approximately 1,000 more votes than did the Senate nominee, Erskine Bowles. Since more votes were cast in the Senate than the Auditor's contest, Campbell ran 2.6 points ahead of Bowles. Campbell got almost six percentage points more of the vote than did the Democratic presidential ticket that included the retiring North Carolina Senator John Edwards.

In, a much earlier statewide contest, in 1976, Howard Lee, who seven years earlier had been elected mayor of the majority white university town of Chapel Hill, made it into the runoff for the Democratic nomination for lieutenant governor. Lee's white opponent, conservative Democrat, Jimmy Green turned to a racial appeal by running newspaper ads that contained pictures of the two candidates.[16]

The North Carolina Supreme Court currently has one black member its first African American woman. The newly elected representative from the First Congressional District, G.K. Butterfield, served briefly on the Supreme Court but was one of the victims of rising Republicanism. As far back as 1986, Henry Frye, who ultimately became Chief Justice, won a seat on the Supreme Court. Recently, black Democratic justices like white Democrats have fallen to Republicans in their election bids. Currently the Supreme Court has only two Democrats, one of whom, Justice Timmons-Goodson, was appointed to fill a vacancy by Democratic governor Mike Easley in early 2006. Although judicial elections became non-partisan with the 2004 election, five Supreme Court justices are Republicans, several of whom very narrowly defeated Democrats.

North Carolina's second highest court is the 15-member Court of Appeals. This body, which uses three-member panels to hear appeals on a wide range of issues, has had several African-American members. At times there have been as many as three. As of 2006, two blacks served on this court. Both the Court of Appeals and the Supreme Court are elected statewide.

Racial Voting Patterns

Estimates of racial voting behavior prepared by Richard Engstrom provide an indication of how North Carolina blacks and whites voted in the early 1980s. The Engstrom estimates indicate that Mickey Michaux and Kenneth Spaulding lost in Congressional District 2 despite winning approximately winning 90 percent of the black vote because

[16] Paul Luebke, *Tarheel Politics: Myth and Realities* (Chapel Hill: University of North Carolina Press, 1990), p. 118.

they failed to attract as much as 15 percent of the white vote in this 40 percent black district.[17]

As Table 8 shows, Howard Lee running in the Democratic primary in District 4 in 1984 attracted a larger share of the white vote (24.32 percent) than did Michaux or Spaulding, but was substantially weaker among black voters and failed to win the Democratic nomination.

(See Table 8)

Table 7 shows that in the 1992 primary in District 1, the black vote went heavily for black candidates. In the primary, it splintered among four African-American candidates but when the support for those four is summed, it accounts for approximately 90 percent of the black vote. In the other 1992 contests in District 1, Eva Clayton takes more than 90 percent of the black vote. In the general and special elections, the white vote is far less cohesive than the black vote with Clayton getting a third of the white vote in the general election and two-fifths of the white vote in the special election.

The results for the six statewide contests in Table 7 also show black voters to be generally more cohesive than white voters. In three of the contests, the black candidates get virtually all of the African American vote and in the 1990 Senate runoff, Gantt takes 86 percent of the black vote. In those four contests, 36 percent or more of the white votes are also cast for the black candidate. In the other two contests, the white vote is somewhat more cohesive than the black vote. In the 1990 Senate primary, Gantt takes 70.67 percent of the black vote while more than 76 percent of the white vote goes for Mike Easley, the white candidate. In the 1992 Democratic primary for Auditor, Campbell gets 65 percent of the black vote while 69 percent of the white vote is cast against him.

Table 9 provides additional estimates of racial voting behavior in Districts 1 and 12. These show that in 1994, 1996, and 1998, the black vote continued to be substantially more cohesive than the white vote. Three estimates of voting behavior of whites and blacks are provided. The first of these, OLS, is the ecological regression technique used by Bernard Grofman in *Thornburg v. Gingles*. The third estimate, HP, provides homogeneous precinct figures again comparable to what Grofman did in *Gingles*. The middle estimate, EI, uses the ecological inference technique developed by Gary King.[18]

(See Table 9)

The African American candidates consistently got more than 95 percent of the black vote in general elections. They usually attracted more than 30 percent of the white vote with Watt able to get slightly larger shares of the white vote than did Clayton.

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[17] Richard Engstrom, "Racial Differences in Candidate Preferences in North Carolina Elections," Report in *Shaw v. Reno.*

[18] Gary King, *A Solution to the Ecological Inference Problem*, (Princeton: Princeton University Press, 1997).

Table 10 presents estimates of white support for white Democratic candidates running in North Carolina congressional districts between 1994 and 1998. Like in Table 8, this table presents three sets of estimates of white support for the Democratic nominees. No Democratic candidate consistently attracts a majority of the white vote. Indeed, it is rare for a white candidate to be the candidate of choice among white North Carolinians. To put the performance of the two African-American members of Congress from North Carolina in perspective, their failure to attract most white voters is in line with the difficulties encountered by their white Democratic colleagues. By the mid-1990s, white North Carolinians had become predominately Republican in their congressional voting preferences. However, the share of the white vote going to the two African-American incumbents, Eva Clayton in the First District and Melvin Watt in the Twelfth District, are somewhat lower than the share of the white vote going to the white Democratic incumbents. The African-American incumbents, however, do frequently attract more white support than do white Democratic challengers.

This same point is reinforced by the analysis of the more recent congressional contests. Table 10 presents OLS estimates of white voter preferences in congressional elections in 2000 and 2002. All but two of these contests are incumbent elections. Regardless of the race, Democratic incumbents garnered at least an estimated 40% of the white vote, and some white Democratic incumbents even enjoyed majority support. In the open seat First District in 2002, OLS estimates showed the black candidate –Ballance -- polling majorities of the black and white vote. Other Democrats fared less well, usually pulling between 20% and 38% of the white vote in losing challenges to incumbent Republicans.

(See Table 10)

An examination of recent statewide election voting patterns reveals only minority-white support for Democratic candidates for statewide office. In 1996, 2000, and 2004, Democrats won 13 of 13, 13 of 16, and 9 of 12 statewide constitutional offices that were contested. In 1996, when the Democrats last swept all of the state offices, African-American candidate Ralph Campbell commanded the lowest estimated share of the white vote, 40.8 percent, in barely winning election. In 2000 he garnered the second lowest share of the white vote –39.7 percent -- in barely winning reelection. Campbell was defeated for reelection in 2004, though he bested two other losing Democrats in terms of white vote share. Overall, when Democrats won statewide, they ran as incumbents and were able to garner at least 40 percent of the white vote statewide.

(See Tables 11 and 12)

CONCLUSION

Substantial progress has been observed in North Carolina voting rights. Minority representation has not achieved full proportionality. Figures 1 and 2 show the relative ranking of North Carolina, compared to the other eight southern, Section 5 states, in

terms of attaining black proportionality in the legislature and the congressional delegation. The Tar Heel State ranks fourth in terms of congressional delegation proportionality and fifth of nine on state legislative proportionality.

Black voters are more likely to vote in North Carolina than in the non-southern states, but North Carolina black voters register and turnout at lower rates that North Carolina whites. The disparity between black and white voter participation has declined dramatically over the past two decades, as the two races are now less than 3 points apart on rates of participation.

Black voters have been able to elect candidates of choice to the legislature and the US House, and have continued to do so with the departure of incumbents from districts with lower black voter percentages than in the early 1990s. The success of Frank Ballance and G.K. Butterfield in succeeding Rep. Clayton from the low country first congressional district is representative of this ability.

Statewide, the ability to elect candidates preferred by blacks will rest on the ability to create coalition with white voters. For the past decade, Democrats have been generally successful in creating such coalitions. The lack of success of African-American candidates in 2004 indicates that the very fine line of white minority support required to elect Democrats could be crossed in the near future.

TABLE 1

REPORTED REGISTRATION BY RACE IN NORTH CAROLINA AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
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
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 2

REPORTED TURNOUT BY RACE IN NORTH CAROLINA AND OUTSIDE THE SOUTH, 1980-2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
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
Non-South													
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

TABLE 3

OFFICAL REGISTRATION AND TURNOUT IN

NORTH CAROLINA, 1994-2004

Date		Registration		Turnout	
		Black	White	Black	White
October	1994	639,642	2,847,688	na	na
October	1996	808,735	3,433,526	na	na
October	1998	885,159	3,721,525	na	na
October	2000	979,448	4,028,032	na	na
May	2002	848,939	3,567,520	na	na
October	2002	971,162	3,933,220	41%	60%
October	2004	1,112,959	4,224,098	59%	66%
February	2006	1,093,594	4,150,510		

Source: North Carolina State Board of Elections

TABLE 4

OFFICIAL NORTH CAROLINA REGISTRATION AND TURNOUT, 1972-2004

Voting Age Population	Registered Voters	Turnout	Percent Reg.	Percent Reg. TO	Percent VAP TO	Census Bureau TO Estimates
3,541,399	2,357,645	1,518,612	66.57	64.41	42.88	NA
3,725,037	2,279,646	1,020,367	61.20	44.76	27.39	NA
3,884,477	2,553,717	1,677,906	65.74	65.70	43.20	NA
4,053,977	2,430,306	1,135,814	59.95	46.74	28.02	NA
4,222,654	2,774,844	1,855,833	65.71	66.88	43.95	52.20
4,416,444	2,674,787	1,330,630	60.56	49.75	30.13	39.00
4,585,788	3,270,933	2,239,051	71.33	68.45	48.83	56.50
4,738,687	3,080,990	1,591,330	65.02	51.65	33.58	45.20
4,887,358	3,432,042	2,134,370	70.22	62.19	43.67	52.90
5,016,747	3,347,635	2,068,904	66.73	61.80	41.24	49.30
5,182,321	3,817,380	2,611,850	73.66	68.42	50.40	60.00
5,359,333	3,635,875	1,533,728	67.84	42.18	28.62	35.80
5,499,000	4,330,657	2,513,357	78.75	58.04	45.71	54.00
5,670,221	4,700,779	2,012,149	82.90	42.80	35.49	39.40
6,085,266	5,122,123	3,015,964	84.17	58.88	49.56	53.20
6,277,883	5,003,297	2,349,966	79.70	46.97	37.43	42.40
6,483,010	5,519,992	3,552,499	85.15	64.36	54.80	58.20

TABLE 5

NUMBER OF AFRICAN-AMERICAN ELECTED OFFICIALS
IN NORTH CAROLINA, 1969-2001

Year	Total	County	Municipal	School Board
1969	40	1	29	8
1970	62	1	47	15
1971	68	3	49	12
1972	103	3	68	29
1973	112	7	70	30
1974	159	7	113	34
1975	194	12	125	46
1976	218	14	140	53
1977	221	15	142	53
1980	247	20	152	62
1981	255	20	152	70
1984	294	27	163	79
1985	291	33	162	66
1987	353	34	213	66
1989	449	45	249	82
1991	443	48	276	74
1993	458	49	279	81
1995	----------No Data Gathered by Joint Center----------			
1997	506	64	290	96
1999	506	62	297	92
2001	491	61	288	85

Source: Various volumes of *The National Roster of Black Elected Officials* (Washington, D.C.: Joint Center for Political and Economic Studies).

TABLE 6

PERCENT BLACK IN NORTH CAROLINA CONGRESSIONAL DISTRICTS WITH A BLACK REPRESENTATIVE

District	Percent Black in Population 1993-1998	1999-2000	2001-2002	Since 2003
1	57.3	50.3	50.3	50.5
12	56.6	35.6	46.7	44.6

TABLE 7

RACIAL MAKEUP OF THE NORTH CAROLINA

GENERAL ASSEMBLY, 1967-2005

Year	Numbers of Blacks		Percent Black	
	Senate	House	Senate	House
1965	0	0	0.00	0.00
1967	0	0	0.00	0.00
1969	0	1	0.00	0.83
1971	0	2	0.00	1.67
1973	0	3	0.00	2.50
1975	2	4	4.00	3.33
1977	2	4	4.00	3.33
1979	1	4	2.00	3.33
1981	1	3	2.00	2.50
1983	1	11	2.00	9.17
1985	3	13	6.00	10.83
1987	2	13	4.00	10.83
1989	5	14	10.00	11.67
1991	5	14	10.00	11.67
1993	7	18	14.00	15.00
1995	7	17	14.00	14.17
1997	7	17	14.00	14.17
1999	7	17	14.00	14.17
2001	7	18	14.00	15.00
2003	6	18	12.00	15.00
2005	7	19	14.00	15.83

TABLE 8

ESTIMATES OF SUPPORT BY RACE FOR AFRICAN-AMERICAN CANDIDATES IN NORTH CAROLINA CONGRESSIONAL AND STATEWIDE CONTESTS, 1982 – 1992

Contest	Percentage of Support for African American Candidates Black Candidate(s)	White	African-America
1982 CD2 Primary	Michaux	13.88	88.55
1982 CD2 Runoff	Michaux	13.12	91.48
1984 CD2 Primary	Spaulding	14.10	89.70
1984 CD4 Primary	Lee	24.32	68.57
	Winters	9.17	13.86
1992 CD1 Primary	Clayton	1.38	51.88
	Riddick	3.00	15.07
	Hardaway	0.10	11.08
	Powell	0.53	11.02
1992 CD1 Runoff	Clayton	0.00	93.26
1992 CD1 General	Clayton	33.93	95.22
	Williams	2.47	0.80
1992 CD1 Special	Clayton	41.15	98.46
	Williams	2.56	0.22
1990 Senate Primary	Gantt	22.61	70.67
	Hannon	1.20	1.01
1990 Senate Runoff	Gantt	38.25	86.29
1990 Senate General	Gantt	36.73	98.14
1990 Ct of App Genl	Johnston	43.08	100
1992 Auditor Primary	Campbell	31.14	65.01
1992 Auditor General	Campbell	43.16	100

Source: Richard Engstrom, "Racial Differences in Candidate Preferences in North Carolina Elections," Report in *Shaw v. Reno*.

TABLE 9

RACIAL VOTING PATTERNS IN MAJORITY BLACK NORTH CAROLINA CONGRESSIONAL DISTRICTS INVOLVING AFRICAN-AMERICAN AND WHITE CANDIDATES, 1992 - 1998
(Percentages)

			WHITES				BLACKS			
	Race	Party	OLS	EI	HP	(N)	OLS	EI	HP	(N)
1992 Primaries										
District 1										
4 Candidates	B	D	3.8	n/a	10.4	(n/a)	88.8	n/a	90.5	(n/a)
3 Candidates	W	D	96.2	n/a	89.6		11.2	n/a	9.5	
1992 Runoffs										
District 1										
Clayton	B	D	0.0	n/a	4.3	(n/a)	93.3	n/a	96.4	(n/a)
Jones	W	D	100	n/a	95.7		6.7	n/a	3.6	
1992 General Election										
Clayton	B	D	33.9	n/a	34.6	(n/a)	95.2	n/a	97.9	(n/a)
Tyler	W	R	63.6	n/a	63.1		4.0	n/a	1.9	
1994 General Election										
District 12										
Watt	B	D(I)	32.2	36.4	30.1	(10)	100	98.7	97.5	(30)
Martino	W	R	67.8	63.6	69.9		0.0	1.3	2.5	
1996 General Election										
District 1										
Clayton	B	D(I)	27.9	34.3	28.6	(5)	100	99.0	97.7	(19)
Tyler	W	R	72.1	65.7	71.4		0.0	1.0	2.3	
District 12										
Watt	B	D(I)	35.3	41.8	34.3	(10)	100	99.3	98.0	(41)
Martino	W	R	64.7	58.2	65.7		0.0	0.7	2.0	
1998 General										
District 1										
Clayton	B	D(I)	27.9	33.0	29.6	(9)	100	98.2	96.8	(13)
Tyler	W	R	72.1	67.0	70.4		0.0	1.8	3.2	
District 12										
Watt	B	D(I)	32.8	38.3	31.0	(48)	100	98.7	97.9	(24)
Keadle	W	R	67.2	61.7	69.0		0.0	1.3	2.1	

TYPE refers to the type of candidate: I = incumbent; OS = open seat candidate; C = challenger.

OLS = ecological regression; EI = district - level estimates from King's method for ecological inference; HP = racially homogenous precincts. N = number of homogeneous precints.

Source: Charles S. Bullock, III, and Richard E. Dunn, "The Demise of Racial Districting and the Future of Black Representation," *Emory Law Journal* 48 (Fall 1999): 1209 - 1253.

TABLE 10

WHITE SUPPORT FOR WHITE NORTH CAROLINA DEMOCRAT

HOUSE CANDIDATES, 1994-1998 (Percentages)

		State	Dist.	Candidate	OLS	White Support EI	HP	(N)
1994								
	Moore	NC	2	OS	33.4	36.0	36.8	(66)
	Lancaster	NC	3	I	40.3	39.8	42.8	(106)
	Price	NC	4	I	46.3	44.0	50.7	(80)
	Sands	NC	5	OS	35.7	38.5	37.6	(128)
	Rose	NC	7	I	46.5	47.1	48.8	(65)
	Hefner	NC	8	I	44.0	47.0	45.0	(84)
	Blake	NC	9	OS	30.4	34.4	33.0	(113)
	Avery	NC	10	C	25.8	27.1	27.0	(200)
	Lauterer	NC	11	C	38.1	38.5	39.0	(233)
1996								
	Etheridge	NC	2	C	42.4	45.8	44.7	(57)
	Parrott	NC	3	C	26.4	27.1	29.7	(93)
	Price	NC	4	C	48.6	48.9	52.3	(92)
	Cashion	NC	5	C	28.8	28.4	31.3	(139)
	Costley	NC	6	C	19.6	22.9	22.8	(148)
	McIntyre	NC	7	OS	48.1	48.4	51.2	(64)
	Hefner	NC	8	I	44.9	48.0	45.3	(80)
	Daisley	NC	9	C	28.6	32.3	32.0	(103)
	Neill	NC	10	C	26.0	26.5	27.7	(188)
	Ferguson	NC	11	C	37.5	37.8	38.4	(232)
1998								
	Etheridge	NC	2	I	44.3	50.3	48.6	(6)
	Williams	NC	3	C	29.6	30.5	32.4	(97)
	Price	NC	4	I	49.9	51.5	51.8	(76)
	Robinson	NC	5	C	23.3	25.5	27.0	(135)
	Taylor	NC	8	OS	32.6	37.6	34.0	(79)
	Blake	NC	9	C	22.3	25.5	25.9	(113)
	Young	NC	11	C	39.8	41.5	41.0	(250)

OLS = ecological regression; EI = district-level estimates from King's (1997) method for ecological inference; HP = racially homogenous precincts; I = incumbent; OS = open seat candidate; C = challenger; N= number of homogeneous precincts.

Source: Charles S. Bullock, III, and Richard E. Dunn, "The Demise of Racial Districting and the Future of Black Representation," *Emory Law Journal* 48 (Fall 1999): 1209 - 1253.

TABLE 11
CONGRESSIONAL ELECTION RESULTS IN NORTH CAROLINA, 2000-2002

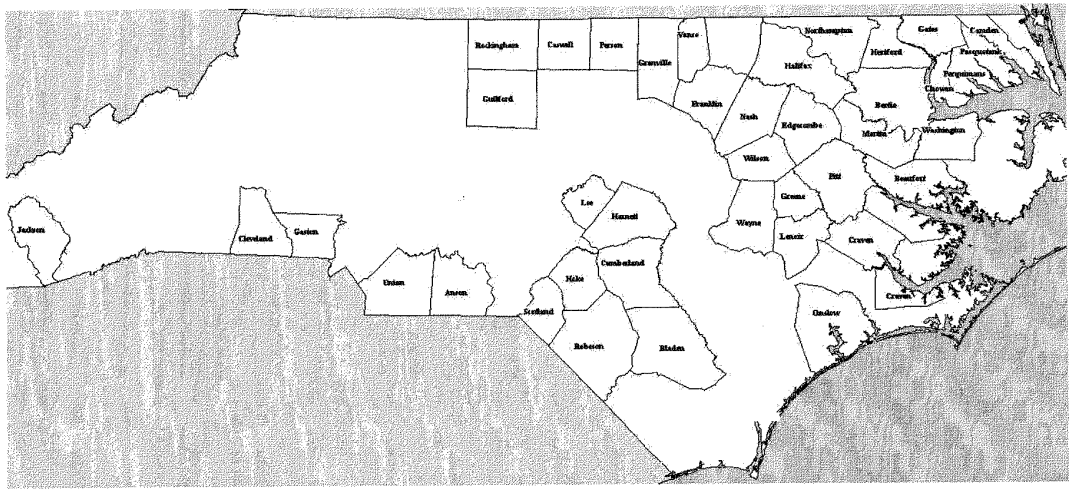
District	Democratic Candidate	Dem%	Dem%White-OLS
2000			
NC1	Black Inc.	66.0	46.0
NC2	White Inc.	58.0	51.6
NC3	White Ch.	37.0	36.3
NC4	White Inc.	62.0	55.9
NC5		---	---
NC6		---	---
NC7	White Inc.	70.0	66.4
NC8	White ch.	44.0	36.6
NC9	White ch.	30.0	20.5
NC10	White ch.	29.0	25.7
NC11	White ch.	42.0	39.2
NC12	Black Inc.	65.0	40.0
2002			
NC1	Black Open Seat	63.8	84.3
NC2	White Inc.	65.4	53.3
NC3		---	---
NC4	White Inc.	61.1	55.4
NC5	White Inc.	29.8	27.9
NC6		---	---
NC7	White Inc.	71.1	67.3
NC8	White Ch.	44.6	28.8
NC9	White Ch.	25.8	22.1
NC10	White Ch.	37.8	32.0
NC11	White Ch.	42.8	38.1
NC12	Black Inc.	65.2	41.8
NC13	White Open Seat	54.7	43.7

TABLE 12
STATEWIDE ELECTION RESULTS IN NORTH CAROLINA, 1996-2004

Office	Dem%	Dem%White-OLS
1996		
Attorney General	59.1	48.3
Auditor	49.9*	40.8
Agriculture Comm.	57.8	46.7
Insurance Comm.	56.7	46.3
Labor Comm.	51.0	40.9
Lt. Governor	55.0	44.8
Governor	55.9	
Sec'y of State	53.5	42.4
Supt. Public Instruction	52.0	42.4
Treasurer	50.6	41.8
Court of Appeals p1	52.0	43.1
Supreme Court p1	55.7	46.1
Supreme Court p2	51.3	41.4
2000		
Attorney General	51.0	39.4
Auditor	51.0	39.7
Agriculture Comm.	51.0	40.2
Insurance Comm.	57.0	45.4
Labor Comm.	50.0	39.0
Lt. Governor	52.0	41.5
Governor	52.0	42.1
Sec'y of State	54.0	43.3
Supt. Public Instruction	53.0	42.5
Treasurer	55.0	43.9
Court of Appeals p1	49.9	39.2
Court of Appeals p2	49.9	39.6
Court of Appeals p3	51.0	40.8
Court of Appeals p4	51.0	39.9
Court of Appeals p5	51.0	40.5
Supreme Court p1	48.0	38.0
2004		
Attorney General	55.6	44.6
Auditor	49.6	38.6
Agriculture Comm.	49.96	38.1
Insurance Comm.	57.6	46.9
Labor Comm.	47.9	37.5
Lt. Governor	55.6	
Governor	55.6	46.2
Sec'y of State	57.3	46.4
Supt. Public Instruction	50.1	39.4
Treasurer	54.5	42.6
Court of Appeals p1	55.1	49.6
Court of Appeals p2	54.5	50.4
Court of Appeals p3	57.8	51.8

*Plurality Winner

MAP 1: NORTH CAROLINA COUNTIES COVERED BY SECTION 5 OF THE VOTING RIGHTS ACT



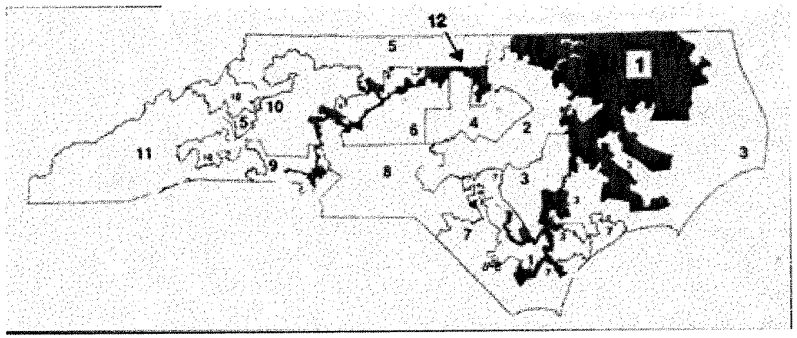
Source: http://www usdoj gov/crt/voting/sec_5/covered htm, accessed September 21 2005

Counties identified in Map 1:

County	Effective Date	County	Effective Date
Anson	Aug 7, 1965	Hoke	Aug 7, 1965
Beaufort	Mar 29, 1966	Jackson	Oct 22, 1975
Bertie	Aug 7, 1965	Lee	Mar 29, 1966
Bladen	Mar 29, 1966	Lenoir	Aug 7, 1965
Camden	Mar 2, 1966	Martin	Jan 4, 1966
Caswell	Aug 7, 1965	Nash	Aug 7, 1965
Chowan	Aug 7, 1965	Northampton	Aug 7, 1965
Cleveland	Mar 29, 1966	Onslow	Aug 7, 1965
Craven	Aug 7, 1965	Pasquotank	Aug 7, 1965
Cumberland	Aug 7, 1965	Perquimans	Mar 2, 1966
Edgecombe	Aug 7, 1965	Person	Aug 7, 1965
Franklin	Aug 7, 1965	Pitt	Aug 7, 1965
Gaston	Mar 29, 1966	Robeson	Aug 7, 1965
Gates	Aug 7, 1965	Rockingham	Mar 29, 1966
Granville	Aug 7, 1965	Scotland	Aug 7, 1965
Greene	Aug 7, 1965	Union	Mar 29, 1966
Guilford	Mar 29, 1966	Vance	Aug 7, 1965
Halifax	Aug 7, 1965	Washington	Jan 4, 1966
Harnett	Mar 29, 1966	Wayne	Aug 7, 1965
Hertford	Aug 7, 1965	Wilson	Aug 7, 1965

MAP 2

NORTH CAROLINA CONGRESSIONAL DISTRICTS 1 AND 12, 1992



Source: http://www.csulb.edu/~astevens/posc100/files/notes/REAPORT.htm

FIGURE 1

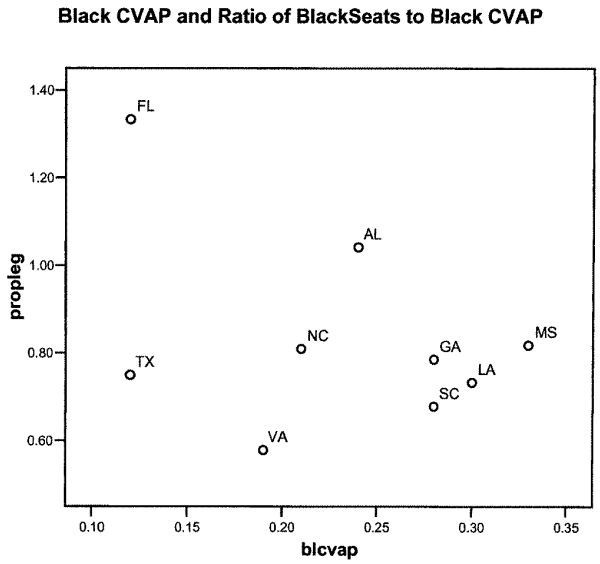
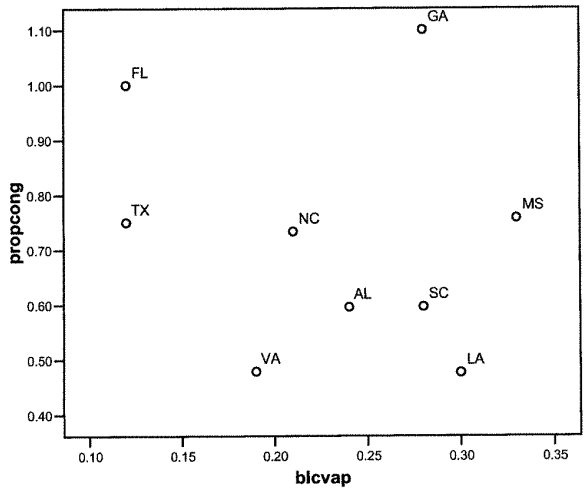

Black CVAP and Ratio of BlackSeats to Black CVAP
propleg
1.40
1.20
1.00
0.80
0.60
blcvap
0.10
0.15
0.20
0.25
0.30
0.35
FL
AL
NC
TX
GA
MS
LA
SC
VA

FIGURE 2

Black CVAP and Ratio of Black Congressional Seats to Black CVAP



American Enterprise Institute

The Project on Fair Representation

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An Assessment of Voting Rights Progress in Alaska, Michigan, New Hampshire, and South Dakota

Executive Summary

By Edward Blum

Alaska, Michigan, New Hampshire, and South Dakota exhibit different levels of progress in Voting Rights. Voter participation in the covered jurisdictions continues to lag for minority voters compared to Anglo whites, but there is contextual evidence of greater Native than white participation in Alaska, and of greater black than white voter participation in Buena Vista Township, Michigan.

There is little evidence of legally significant, racially-polarized voting in Alaska, and Native Alaskans make up over a quarter of all elected legislators (almost all elected Native legislators are candidates of choice). The overwhelmingly-white, covered townships of New Hampshire show lower rates of voter participation than the rest of the state, though a majority of voting age population participated in the covered New Hampshire townships in the 2000 general election. One New Hampshire township covered by Section 5 has no residents as of the 2000 census.

South Dakota shows the least progress of these four states, though the state is poised to attain Native American proportionality in the legislature. What progress has been accomplished on this front is more a product of efforts under section 2 of the Voting Rights Act than of the application of preclearance authority under section 5.

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When the Voting Rights Act was initially passed in 1965, Section 5 did not apply to Alaska, Michigan, New Hampshire or South Dakota. Select counties or townships in three of these states became subject to preclearance under the Voting Rights Act subsequent to the passage of the 1970 or 1975 VRA amendments, which expanded the trigger for coverage. The only exception is Alaska, which is entirely subject to preclearance review based on the 1975 provisions, and which had initially been caught in the trigger of the 1965 Act and was subsequently released in 1966.

Original coverage of a jurisdiction by the preclearance provision of the Voting Rights Act is determined by a formula in Section 4. This formula had two components in the original 1965 Act. First, the state or political subdivision maintained a "test or device" restricting the opportunity to vote as of November 1, 1964.[1] Second, less than half of the state or political subdivision's voting age population had registered to vote as of November 1, 1964, or had cast a ballot in the 1964 presidential election.

The 1970 reauthorization extended Section 5 coverage to jurisdictions that had a test or device as a prerequisite to registering and in which fewer than half the voting age population had registered to vote or voted in the 1968 presidential election.

The 1975 reauthorization extended the preclearance requirement to address low voting rates among linguistic minorities, defined as "American Indian, Asian American, Alaskan Natives" or people "of Spanish heritage." The definition of "test or device" was rewritten to encompass the failure to provide election materials in the language of a covered linguistic population in the jurisdiction. Jurisdiction came under coverage if: Over five percent of the voting-age citizens were members of a single language minority group as of November 1, 1972; registration and election materials were provided only in English in 1972; and fewer than 50 percent of the voting-age citizens were registered to vote or voted in the 1972 presidential election.

This report explores the progress on voting rights in the covered portions of four states. As indicated in Table 1, only Alaska is entirely covered by Section 5. In two of the states (Michigan and New Hampshire) it is the smallest possible political subdivision to administer elections– townships within counties – that are subject to preclearance. South Dakota has two counties subject to Section 5 enforcement.

(Table 1 goes here)

Table 2 shows how infrequently the Justice Department has objected to changes in the administration of elections in the four states. The Department of Justice (DOJ) has issued

[1] The Act defined a "test or device" as requirements such as a literacy test, a good character test, or requiring that another registered voter vouch for an applicant's qualifications to vote.

a total of four objections since 1975. Of these, three were in South Dakota and one in Alaska. There have been no preclearance objections in either Michigan or New Hampshire, and since 1995 only South Dakota has encountered even a single objection.

(Table 2 goes here)

ALASKA

Alaska has a little-known history of discrimination and segregation. [2] A hundred years ago, natives were often systematically excluded from business establishments, with "No Natives" signs often posted, and public accommodations were segregated. Alaska's Constitution barred many Natives from voting by requiring that registrants speak English, a requirement repealed in 1970. The previous use of this test, when combined with low registration and participation among Native Alaskans, led to coverage under Section 5 of the Voting Rights Act. The state was initially covered by the original trigger but was released from coverage in 1966. With the 1975 amendments, Alaska again came under federal oversight. The only DOJ challenge to a voting change in Alaska, an objection to the state's legislative districts, came in the early 1990s.

The population of Alaska is nearly 70 percent Anglo and 15.6 percent Native Alaskan. Alaska elects only one member to the US House of Representatives, and the state's rate of population growth indicates no likelihood of a second district in the foreseeable future.

The initial state legislative districting plan for the current decade, as crafted in 2001, included four state House districts and two state Senate districts with majority-Native populations, and another two state House districts and one Senate district having more than 35 percent Native population. Despite a challenge to the districting scheme by Aleut and other Native American groups, who objected to population equalization driving the map over other communities-of-interest consideration, the map was easily precleared.[3] This map was later rejected in March 2002 by the state Supreme Court in an opinion that cited compactness, population deviations, and other communities-of-interest arguments related to social and economic integration. A map satisfactory to the state courts was adopted in May of 2002, by the state's five-member redistricting board.

Voter Participation

Alaska originally fell under the Voting Rights Act for low voter participation and the use of a test (English language ability) as a qualification to vote. Tables 3 and 4 reveal that, more recently, voter participation as an estimated proportion of voting age population exceeds 50 percent, but that differences between Native and non-Native turnout have emerged in the most recent decade. This change is a consequence of increased

[2] Ben Speiss, "Racist history put state on fed's list," *Anchorage Daily News* (May 1, 2003): B1.
[3] Mike Chambers, "Justice approves redistricting plan over Aleut objection." Associated Press, October 3, 2001.

participation among non-Natives, rather than any downturn in Native participation. As indicated in Table 3, Natives and non-Natives turned out at comparable rates in the 1996 general election. OLS regression estimates indicate slightly higher non-Native than Native turnout, while Ei estimates show slightly higher rates of Native than non-Native participation. In 2000 Ei and OLS estimates indicate slightly higher Native turnout compared to 1996, and analysis for 2004 indicates slightly lower Native turnout. Estimated non-Native turnout jumped substantially, to over two-thirds of the voting age population by 2004.

(Table 3 goes here)

Estimates of localized participation paint a slightly different picture. Lisa Handley estimates Native and non-Native turnout in 1996-1998-2000 for ten contests for state Senate and state House across six different districts. All featured either Anglo-versus-Native or Native-versus-Native general election contests.[4] The estimates, which appear in Table 4, indicate that Native turnout exceeded non-Native turnout in nine of these ten contests. In three contests Native turnout exceeded 50 percent while a majority of non-Natives turned out only once. Under circumstances generally expected to pique minority interest – the presence of a minority candidate-- the minority turnout usually met or exceeded non-minority voting.

(Table 4 goes here)

Minority Legislators

Democrats were the first to recognize the value of the "Bush" (rural, isolated) vote. In 1966 Mike Gravel, then speaker of the state House, courted the Native vote in a failed US House bid. Those efforts would later pay off in his election to the US Senate. These efforts at courting and mobilizing minority voters created an electoral environment where, by 1972, Natives Americans and Aleuts constituted a quarter of all turnout. By 1972, despite reapportionment which reduced the electoral potential of the rural Alaskan Bush, nine Native American and Eskimo legislators were serving, which at the time accounted for over half of all Native American legislators in the United States.

While legislative districting, especially the one-person, one-vote requirements, has threaten the power of rural, Native communities of interest, it has not impeded the nomination or election of Native Alaskan candidates who are candidates of choice of Native voters. As reported in Table 5, Native legislators held 13 or 14 of the 60 seats in the 1990s. Natives consistently held 20 percent of seats in the state House of Representatives and 25-30 percent of seats in the Senate. These numbers are consistently greater than Alaska's Native population which stood at 15.4 percent in 2000.

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[4] Lisa Handley, *A Voting Rights Act Evaluation of the Proposed Alaska State Legislative Plans: Measuring the Degree of Racial Bloc Voting and Determining the Effectiveness of Proposed Minority Districts.* Prepared for the Alaska Redistricting Board, July 26, 2001.

(Table 5 goes here)

Vote Choices and Candidates of Choice

In contemporary America, Anglos have a tendency to vote Republican while African-Americans, Hispanics, and Native people generally prefer Democrats in general elections. This pattern has frequently emerged in recent, major Alaska elections. As indicated by the exit poll data in Table 6, Native and Anglo preferences are generally in opposition. In seven of eight major statewide contests for which there are exit poll data since 1992, a plurality of Alaska whites preferred the Republican candidate.[5] In five of eight instances, a plurality of Native/Other voters preferred the Democratic candidate. The differences in preferences are not terribly stark, and, in three instances, including the most-recent US House contest in 2004, a plurality of both groups voted Republican. Ecological regression estimates of Native and non-Native preferences for President and the US House in 2000 confirm the fluidity of Native preferences.

(Table 6 goes here)

As shown in Table 7, in 2000, an estimated 47.2 percent of Native voters cast Democratic ballots for President (compared to just 25.1 percent of non-Native voters). In that year's congressional election the ecological regression estimate is that 16.0 percent of the Native voters cast Democratic ballots, a proportion nearly the same as that estimated to have been cast by non-Natives (16.5 percent).

(Table 7 goes here)

Down-ticket, in state legislative contests, Native candidates enjoyed great success, and estimates of racial polarization in state legislative contests do not reveal legally-significant, racially-polarized voting. Tables 8 and 9 present data originally compiled by Lisa Handley that show Native candidate success and the frequency of election of Native candidates of choice in contested elections.[6] As indicated in Table 8, of the 85 Native candidates who competed in a legislative primary between 1994 and 2000, 57 (67 percent) succeeded. Native candidates competed in 61 districts elections and won the nomination in 57. Of the 58 Native candidates in general elections, 43 (74 percent) were elected, according to Handley. In 50 districts that might have been won by Native candidates, 43 elected a Native candidate to the legislature.

(Table 8 goes here)

Table 9 presents data on Native and non-Native preferences in general elections with at

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[5] Since Republican Lisa Murkowski won the 2004 Senate race by 9,349 votes, the exit poll showing a plurality of the whites and two-thirds of the Other/Native voters preferring the Democrat is slightly off.

[6] Lisa Handley, *A Voting Rights Act Evaluation of the Proposed Alaska State Legislative Plans: Measuring the Degree of Racial Bloc Voting and Determining the Effectiveness of Proposed Minority Districts.* Prepared for the Alaska Redistricting Board, July 26, 2001.

least one Native candidate. Of the fifteen contested general elections for House and Senate, eleven indicate different preferences between Native and non-Native votes on at least one of the three measures. However, in thirteen of fifteen instances, the Native-preferred, Native candidate prevailed over either a Native or Anglo opponent. All but one of the winning, Native-preferred candidates were Democrats, and the two Native candidates who lost, lost to other Native candidates who pulled substantial minorities of the estimated Native vote.

While Native Alaskans and no-Natives vote differently, those differences do not impede the election of candidates of choice by Native voters. Handley concludes that a district as low as 35 percent Native voting age population is sufficient to allow a Native candidate of choice to be elected. [7]

MICHIGAN

Two townships in Michigan are subject to Voting Rights Act Section 5 preclearance: Clyde Township, in the southwestern part of the lower peninsula of Michigan, and Buena Vista Chartered Township, in Saginaw County north of Detroit in the eastern part of the state. As reported in Table 10, Clyde Township had a voting age population of 1,469 according to the 2000 census, with a 25.3 percent Hispanic voting age population. The township is located in Allegan County, which had a total voting age population of 75,170 and a 4.4 percent Hispanic voting age population. Buena Vista Township had a 52.7 percent African-American voting age population and a 7.8 percent Hispanic voting age population. In 2000 the voting age population of Saginaw County was 16.2 percent African-American and 5.1 percent Hispanic.

(Table 10 goes here)

Low voter registration and participation rates, combined with the presence of the linguistic minority and the failure to provide election materials in Spanish in 1972 made these jurisdictions subject to Section 5. Voter participation in these jurisdictions still lags behind the rest of the larger respective counties and in the state of Michigan as reported in Table 11. Presidential election year turnout in Buena Vista Township for the two most recent presidential elections still fails to exceed 50 percent of registrants (who are numerically fewer that the voting age population). By comparison, the rest of Saginaw County had voter turnout in excess of 60 percent of registration for both presidential years.

(Table 11 goes here)

Clyde Township had higher rates of voter participation, exceeding half of the registrants in the two most recent presidential elections, and approaching 40 percent for the 2002 midterm. Turnout in Clyde lagged that in the rest of Allegan County by anywhere from 8.2 to 14.2 percentage points.

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[7] *Ibid.*

Of the three general elections held in Clyde Township since 2000, in only one (2004) does voter turnout as a share of voting age population exceed 50 percent (51.3 percent); in 2000 and 2004, voter turnout was 42.3 percent and 29.7 percent, respectively, of voting age population. The Census Bureau estimates that in Michigan, 60.1 percent of the voting age population went to the polls in 2002 and 64.7% turned out in 2004.

Michigan does not maintain voter registration or turnout data by race, ethnicity, or language group. However, Table 12 presents estimates of voter participation by racial and ethnic group for 1996 through 2004 for Buena Vista Township. The Township is divided into five precincts, three that are majority African-American, one in excess of 80 percent, and one that is over 90 percent Anglo by voting age population.[8] Two sets of estimates are presented: ecological inference estimates and ecological regression estimates.

(Table 12 goes here)

Separate Ei estimates were made for African-Americans, Hispanics, and non-Hispanic whites. In each of the five elections, African Americans went to the polls at higher rates than did non-Hispanic whites. For all three presidential year elections, the estimated share of the African-American, voting age population that turned out in Buena Vista Township exceeded 60 percent, and is estimated as high as 80 percent in the most recent election. In one of the two midterms, turnout for African-Americans is estimated to exceed 50 percent, and the estimated level of black voting age population turnout in 2002 is comparable to the registered voter turnout for all Michigan in 2002. Non-Hispanic white turnout was estimated lower, at between 32.9 percent and 38.7 percent for presidential years, and between 25.6 percent and 26.2 percent for midterms.

Estimates using ordinary least squares regression indicated higher black than white, Anglo turnout, but produced unrealistic (less than zero) estimates of Hispanic participation. An effort to determine Hispanic turnout with Ei produced estimates of Hispanic turnout as high as 50 percent, but the standard errors around these estimates were sufficiently large to make the estimates undifferentiated from zero. So, while black voter participation is strong in Buena Vista Township, the rationale for coverage – Hispanic voter participation – is not refuted, due to the lack of evidence of healthy Hispanic participation. Moreover, overall estimates of participation in Table 11 indicate that most of Buena Vista's voting age population still does not go to the polls in presidential elections. However, the absence of Section 5 objections suggests that the persistent low turnout rates among Hispanics has not resulted from attempts to change electoral laws in ways that would discourage Hispanic participation.[9]

Buena Vista Township has been consistently placed in a congressional district (MI-5) that

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[8] Similar estimates are impossible for Clyde Township since it has a single precinct.

[9] A multivariate OLS regression model was used to estimate voter turnout, controlling simultaneously for black and Hispanic voting age population shares. All Ei estimates are based on bivariate (racial group versus non-racial group) estimates of participation.

elects Democrats, who have probably been the preferences of most black and Hispanic Michiganders. Clyde Township was in the Second congressional district and more recently the Sixth district 6, both of which have consistently sent Republicans to Congress.

NEW HAMPSHIRE

Ten New Hampshire townships are subject to Section 5 preclearance (Table 1). These townships are located in seven counties: one each in Cheshire, Grafton, Hillsborough, Merrimac, Rockingham, and Sullivan, and four townships in Coos County.[10] New Hampshire came under coverage of Section 5 subsequent to the terms of the renewal of the VRA in 1970.

New Hampshire is among the whitest of the United States, with a minority population of less than four percent. Of the New Hampshire townships covered by Section 5, none is less than 95% non-Hispanic white by voting age population, and one, Millsfie in Coos County, is completely white (see Table 13). A total of 511 racial or linguistic minorities reside in the ten townships. It is little-known to some in the redistricting and voting rights industry that New Hampshire is subject to Section 5. For example, South Carolina based redistricting expert Bobby Bowers, appointed by the state court to assist in the New Hampshire state legislative redistricting as a technical advisor, was surprised when informed by a reporter (during the redistricting process) that New Hampshire was subject to Section 5.[11]

(Table 13 goes here)

No election law change by New Hampshire has ever been denied preclearance. In 2002, the state redrew its congressional boundaries, moving two townships -- Epsom and Pittsfield – from the First to the Second congressional district.

The tiny minority populations of these townships preclude any effort to analyze minority voting patterns in the constituencies. The state notes in its most recent redistricting submission to the Justice Department (2004) that "no data is available from state sources by racial or language group" and asserts that "New Hampshire is racially homogenous. Statewide statistics report the population is 96% white . . . the census tract with the largest population of non-whites is Hanover CDP, home of the State's Ivy league College – Dartmouth, with 14.7 percent" minority population."[12] On average, voter turnout in these ten townships is 12 points lower than in the rest of the state in 2000. Our examination of voter turnout in these townships in the 2000 general election revealed an average of 54.3 percent of the voting age population turned out in the covered New Hampshire townships, compared to 66.3 percent of the voting age population that turned

[10] One covered township, Pinkham's Grant, has no population.
[11] Tom Fahey, "Anthem's a done deal -- more or less." *Union-Leader,* June 02, 2002: B-3
[12] "New Hampshire Section 5 Submission," June 1, 2004, cover letter to the Voting Section Chief of the US Department of Justice, from Orville B. Fitch II, Assistant Attorney General of the State of New Hampshire.

out in the rest of the Granite State.[13]

SOUTH DAKOTA

Parts of South Dakota came under Section 5 authority subsequent to the 1975 amendments to the Voting Rights Act. The trigger mechanism has made two entire counties – Shannon and Todd – subject to preclearance. Both counties are located on the Nebraska-South Dakota border, and are separated by a third county, Bennett County, which has a sparse population.

The primary minority of interest in South Dakota is Native Americans. Most Native Americans in the state are members of the Sioux Nation, primarily the Lakota, but also the Nakota and Dakota tribes. Shannon County contains most of the Pine Ridge Reservation, and Todd County has the Rosebud Reservation. As indicated in Table 14, Shannon and Todd counties are the two most-heavily Native American counties in South Dakota, followed closely by Buffalo County. Bennett County, located between Todd and Shannon, is, by contrast, barely majority Native American. The percentage Native American is growing in all of the reservation counties, and this is readily evident in the size of the young populations in these counties. On average, the proportion of whites in a county who are under 18 is just half the proportion of Native Americans under 18. The presence of a large, young, non-voting population is common to Native American tribes, and especially the Lakota, more so than among African-Americans, Hawaiians, or Latinos. And, as noted in Table 15, Native American participation is substantially lower than other voter participation as recently as 2000, though intensive efforts to mobilize Native American voters can generate higher turnout.

(Tables 14 and 15 go here)

Entering the 2001 redistricting, Native Americans held five of 105 state legislative seats in South Dakota (4.76 percent of seats).[14] Native American constitute 6.25 percent of the state's voting age population. Election of one additional Native American member would bring them into rough proportionality with the voting age population share. A recent federal court decision has forced the state to institute a new map for the 2006 elections, which divides existing District 26 into a pair of single member districts, in order to enhance the prospects of electing a candidate of choice of the Native American community. This case is one in a set of five successful challenges by the ACLU regarding Native American voting rights in South Dakota.

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[13] Data obtained from David Lublin and D. Stephen Voss. 2001. "Federal Elections Project." American University, Washington, DC and the University of Kentucky, Lexington, KY.

[14] South Dakota is apportioned into 35 Senate districts, each of which elects one senator and two house members. One district – 28 – has been traditionally divided into a pair of single-member districts to accommodate Native American electoral opportunities in the northwestern part of the state, and district 26 is to be divided into a pair of single-member districts starting with the 2006 election, in order to accommodate Native American voting opportunities in the southern part of the state.

Historically the state has placed Todd and Shannon counties in one, heavily Native American Senate district that also served as a two-seat state House district from which representatives were selected using a "pure' multimember district election system. South Dakota is apportioned into 35 Senate districts, each of which elects one senator and two House members. One district – 28 – has been traditionally divided into a pair of single-member districts to accommodate Native American electoral opportunities in the northwestern part of the state, and District 26 is to be divided into a pair of single-member districts starting with the 2006 election, in order to accommodate Native American voting opportunities in the counties subject to Section 5.

This change results from a successful challenge to Senate District 27. In August 2005 a federal district court held that this district illegally packed Native Americans.[15] The district's population was nearly 90 percent Native American before and after redistricting, and had been precleared by the Justice Department. The court instituted a redistricting plan that altered District 27, the one district previously subject to preclearance review in 2001; District 26, which is redrawn to include Todd County and then divided into two single-member house districts; and District 21. The new map separates Shannon and Todd Counties, so that Shannon and the entire Pine Ridge Reservation become the basis for a new, 66 percent Native American voting age population Senate district. District 26 is divided so that Todd county becomes the foundation of a 74 percent Native American voting age House district, and also incorporates all of the Rosebud Reservation. District 21 is altered to accommodate these other changes. Plaintiffs demonstrated the *Gingles* prongs to the satisfaction of the federal court, including presentation of evidence of racially polarized voting. The new map appears in Figure 1.

(Figure 1 goes here)

Interestingly, the problem confronted by Native Americans in South Dakota was resolved not by Section 5 to which the area of interest is subjected, but instead by a suit brought under Section 2, a provision that applies nationwide. In the 30 years since coming under the sway of Section 5, the Department of Justice has found only one legislative change affecting the two counties to be unacceptable.

[15] *Bone Shirt v. Hazeltine (2005)* 3:01-cv-03032-KES.

TABLE 1: COVERAGE BY SECTION 5 OF THE VOTING RIGHTS ACT IN ALASKA, MICHIGAN, NEW HAMPSHIRE, AND SOUTH DAKOTA

Jurisdiction	Date	Fed Register	Date
Alaska (Entire State)	Nov 1, 1972	40 FR 49422	Oct 22, 1975
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
South Dakota:			
Shannon County	Nov 1, 1972	41 FR 784	Jan 5, 1976
Todd County	Nov 1, 1972	41 FR 784	Jan 5, 1976

Source: http://www usdoj gov/crt/voting/sec_5/covered htm, accessed September 21 2005

TABLE 2: PRECLEARANCE OBJECTIONS SINCE 1975, CALIFORNIA, MICHIGAN, NEW HAMPSHIRE, SOUTH DAKOTA, AND ALASKA

State	1975-1984	1985-1994	1995-Present
Michigan	0	0	0
New Hampshire	0	0	0
South Dakota	2	0	1
Alaska	0	1	0

Compiled by the authors from U.S. Department of Justice data posted at http://www.usdoj.gov/crt/voting/sec_5/obj_activ.htm (accessed September 15, 2005).

TABLE 3: ESTIMATED NATIVE AND OTHER TURNOUT (AS PERCENT OF VAP), ALASKA, 1996-2004

Year	Method	Native Turnout	Non-Native Turnout
1996	OLS	.427	.446
	Ei	.452	.441
2000	OLS	.438	.641
	Ei	.473	.635
2004	OLS	.414	.684
	Ei	.448	.676

TABLE 4: NATIVE AND OTHER VOTER TURNOUT RATES, SELECT ALASKA LEGISLATIVE DISTRICTS, 1996, 1998, 2000 GENERAL ELECTIONS

Year	District	Native Turnout	Non-Native Turnout
2000	House 5	***53.2***	45.7
	House 36	46.4	51
1998	House 36	***48.3***	42.1
	House 39	***43.8***	42.1
	Senate "R"	***46.4***	45.1
	Senate "T"	***45***	13.9
1996	House 5	***54.2***	45.6
	House 36	***46.1***	40.9
	House 39	***43.1***	28.2
	Senate "C"	***51.2***	39.6

Source: Lisa Handley, *A Voting Rights Act Evaluation of the Proposed Alaska State Legislative Plans: Measuring the Degree of Racial Bloc Voting and Determining the Effectiveness of Proposed Minority Districts.* Prepared for the Alaska Redistricting Board, July 26, 2001.

TABLE 5: MINORITY LEGISLATORS IN ALASKA, 1994-2000

	House			Senate		
Year	**White**	**Native**	**Black**	**White**	**Native**	**Black**
1994	31	8	1	15	5	0
	(77.5%)	(20.0%)	(2.5%)	(75.0)	(25.0)	(0.0%)
1996	32	8	0	14	6	0
	(80.0%)	(20.0%)	(0.0%)	(70.0)	(30.0)	(0.0%)
1998	32	8	0	14	6	0
	(80.0%)	(20.0%)	(0.0%)	(70.0)	(30.0)	(0.0%)
2000	31	8	1	14	5	1
	(77.5%)	(20.0%)	(2.5%)	(70.0)	(25.0)	(5.0%)

TABLE 6: WHITE AND OTHER (NATIVE) VOTE PREFERENCES, EXIT POLL DATA, 1992-2004

Year	Office	Vote Race	%D	%R	n
1992	President	White	32.2	40.0	423
		Other/Native	54.5	18.2	33
1992	US Senate	White	37.7	54.3	416
		Other/Native	58.8	32.4	34
1996	President	White	34.2	51.5	682
		Other/Native	39.5	33.3	81
1996	US Senate	White	8.6	80.3	654
		Other/Native	19.2	71.8	78
2000	President	White	27.8	61.2	623
		Other/Native	38.0	48.1	79
2004	President	White	42.5	54.2	931
		Other/Native	58.1	37.1	105
2004	US Senate	White	48.5	46.2	913
		Other/Native	67.6	22.5	102
2004	US House	White	26.0	64.4	899
		Other/Native	37.0	53.0	100

Source: VNS Exit Polls, various years.

TABLE 7: OLS ESTIMATES OF VOTE SHARES IN ALASKA, 2000, PRESIDENT AND US HOUSE OF REPRESENTATIVES

President

Voter Group	**Democrat**	**Republican**	**Other**
Native	47.2	45.1	7.7
Non-Native	25.1	59.1	15.7

US House of Representatives

Voter Group	**Democrat**	**Republican**	**Other**
Native	16.0	73.2	10.7
Non-Native	16.5	67.5	16.1

TABLE 8: FREQUENCY OF NATIVE CANDIDATE SUCCESS AND FAILURE IN ALASKA LEGISLATIVE PRIMARIES AND GENERAL ELECTIONS, 1994-2000

Year	Election	Total Native Candidates	Total Districts with Native Candidates	Notes
1994	Primary	11 of 15	11 of 11	All four Native losers lost to other Native candidates
	General	10 of 12	10 of 11	One of two Native losers lost to a Native candidate
1996	Primary	17 of 27	17 of 18	Five of ten native losers lost to a Native candidate
	General	12 of 17	12 of 15	Six of nine Natives running against Anglo whites prevailed
1998	Primary	13 of 18	13 of 14	Four of five Native losers lost to a Native candidate
	General	10 of 13	10 of 10	All three Native losers lost to Native candidates
2000	Primary	16 of 25	16 of 18	Three Native losers lost to other Native candidates
	General	11 of 16	11 of 14	Five of ten Native losers lost to other Native candidates

Source: Lisa Handley, *A Voting Rights Act Evaluation of the Proposed Alaska State Legislative Plans: Measuring the Degree of Racial Bloc Voting and Determining the Effectiveness of Proposed Minority Districts.* Prepared for the Alaska Redistricting Board, July 26, 2001.

TABLE 9: RACIAL POLARIZATION ANALYSIS OF SELECT ALASKA LEGISLATIVE GENERAL ELECTIONS, 1994-2000

				Native Preference			Non-Native Preference		
District/Candidate	**Year**	**Native/ Party**	**%Vote**	**HP**	**OLS**	**Ei**	**HP**	**OLS**	**Ei**
House 5									
Kookesh	2000	N, D	***60.7***	80	90.7	79.7	55.8	52.5	48.8
Pardee	2000	R	39.1	20	10.3	20.3	44.2	47.5	51.2
House 36									
Nicholia	2000	N, D	49.3	63.9	67.7	63	23.2	32.3	30.7
Morgan	2000	N, R*	***50.4***	50.4	26.4	37	76.8	73.6	69.3
House 36									
Nicholia	1998	N, D	49.9	53.7	57.1	57.8	31.6	37.9	37.9
Morgan	1998	N, R	***49.9***	46.3	42.9	42.2	68.4	62.1	62.1
House 39									
Notti	1998	N, D	26.6	26.4	28.1	28.1		21.1	21.1
Sattler-Kapsner	1998	R	***72.2***	73.6	71.9	72.2		75.7	78.9
Senate "R"									
Lincoln	1998	N, D	***54.0***	88.4	95.7	91.3	33.1	34.1	36.7
Smith	1998	R	46.0	11.6	4.3	8.7	66.9	65.9	63.3
Senate "T"									
Hoffman	1998	N, D	***73.5***	80.2	80.7	82.6	59.2	55.3	62.2
Hawk	1998	R	26.0	19.8	19.3	17.4	40.8	44.7	37.8
House 5									
Collins	1996	R	46.5		34.4	33.2	47.8	50.5	51.1
Kookish	1996	N, D	***53.2***		65.6	65.6	52.2	49.5	49.5
House 36									
Nicholia	1996	N, D	***52.0***	57.8	63.6	60.1	29.4	33.8	40.9
Morgan	1996	N, R	47.8	42.2	36.4	39.9	70.6	66.2	59
House 39									
Ivan	1996	N, D	***54.7***	65.6	68.8	65.8		0	21.6
Kasayulie	1996	N, WAI	45.1	34.4	31.2	34.3		100	78.3
Senate "C"									
Mackie	1996	N, D	***58.1***	87.5	60.5	74	55	53.3	56.2
Stevens	1996	R	41.5	12.5	39.5	27	45	46.7	43.5

District/Candidate	Year	Native/ Party	%Vote	Native Preference HP	Native Preference OLS	Native Preference Ei	Non-Native Preference HP	Non-Native Preference OLS	Non-Native Preference Ei
House 1									
Williams	1994	N, D	***43.3***		80	64.5		34.6	40.6
Davis	1994	D, I	24.3		25	31.2		23.2	22.5
Hargaves	1994	R	32.3		0	0.4		42.2	37.4
House 36									
Hurlburt	1994	O	37.1	26.4	24.9	27.6	61.4	55.6	50.5
Nicholia	1994	N, D	***62.8***	73.6	75.1	72.1	38.6	44.4	49.8
House 37									
Maclean	1994	N, O	***79.2***	70.6	70	73.2		100	75.3
Schaeffer	1994	N, D	26.9	29.4	30	27.1		0	23.9
Senate "R"									
Lincoln	1994	N, D	***62.1***	83.8	94.6	91.3	52.1	46.8	49
Miller	1994	R	37.7	16.2	5.4	8.4	47.9	53.2	51.3
Senate "T"									
Hoffman	1994	N, D	***50.5***	75.6	62.7	65.8	25.4	0	24.8
Freitas	1994	O	4.9	2	2.8	4.3	11.7	13	4.4
Edgmon	1994	O	44.5	22.4	34.6	32.9	62.9	93	65.2

*Handley designates Morgan as a Democrat in 2000, though he is identified by public sources as a Republican.

N = Native American Candidate; D = Democrat; R = Republican; O = Candidate who is not a Democrat or a Republican; WAI = Alaska Independence.

HP = Homogeneous Precinct analysis; OLS = Ecological Regression using ordinary least squares; Ei = Ecological Interence

Source: Lisa Handley, *A Voting Rights Act Evaluation of the Proposed Alaska State Legislative Plans: Measuring the Degree of Racial Bloc Voting and Determining the Effectiveness of Proposed Minority Districts.* Prepared for the Alaska Redistricting Board, July 26, 2001.

TABLE 10: VOTING AGE POPULATION DATA FOR COVERED JURISDICTIONS AND SURROUNDING COUNTIES, MICHIGAN, 1990 AND 2000 CENSUS

	Total	African-American	Hispanic
Buena Vista Township 1990	7,658	3,382	626
Buena Vista Township 2000	7,194	3,792	561
Saginaw County 1990	152,369	22,627	7,799
Saginaw County 2000	154,179	24,920	7,953
Clyde Township 1990	1,331	26	273
Clyde Township 2000	1,469	23	372
Allegan County 1990	63,644	1,076	1,700
Allegan County 2000	75,170	883	3,341

TABLE 11: REGISTERED VOTER PARTICIPATION RATES IN SECTION 5-COVERED AND GREATER JURISDICTIONS IN MICHIGAN, 2000-2004

	2000	2002	2004
Buena Vista Township	44.0	30.5	49.7
--Rest of Saginaw County	62.4	48.5	66.4
Clyde Township	52.7	39.3	64.2
--Rest of Allegan County	66.9	50.6	72.4
Michigan	62.4	46.7	67.5

TABLE 12: *Ei* AND OLS ESTIMATES OF BLACK AND OTHER VOTER PARTICIPATION IN BUENA VISTA TOWNSHIP, 1996-2004

	1996	**1998**	**2000**	**2002**	**2004**
Black (Ei)	63.6	53.4	69.6	46.6	79.8
Hispanic (Ei)*	53.1	10.7	50.9	0.16	49.7
Non-Hispanic whites (Ei)	38.3	26.2	32.9	25.6	38.7
Black (OLS)	85.3	76.0	87.6	65.9	90.8
Hispanic (OLS)*	<0	<0	<0	<0	<0
Non-Hispanic whites (OLS)	49.6	43.4	52.5	42.4	33.8

*Ei estimates of Hispanic voter participation resulted in very large predictive errors so large as to render Hispanic turnout estimates highly unstable.

**OLS estimates failed to return a positive rate of Hispanic turnout for any election.

TABLE 13: DEMOGRAPHIC PROFILE OF COVERED SECTION-5 NEW HAMPSHIRE TOWNSHIPS, 2000 CENSUS

County	Town	Turnout	HispVAP	BlackVAP	NativeVAP	WhiteVAP
Cheshire	Rindge	.551	.010	.012	.001	.961
Coos	Millsfie	.526	.000	.000	.000	1.000
Coos	Pinkham's Grant*	.000	.000	.000	.000	.000
Coos	Stewarts	.416	.001	.000	.001	.988
Coos	Stratfor	.392	.001	.000	.008	.969
Grafton	Benton	.482	.000	.000	.000	.980
Hillsbor	Antrim	.666	.008	.001	.002	.979
Merrimac	Boscawen	.511	.007	.005	.003	.975
Rockingh	Newingto	.844	.019	.013	.001	.953
Sullivan	Unity	.497	.005	.000	.000	.989

*The 2000 census revealed no population in this town.

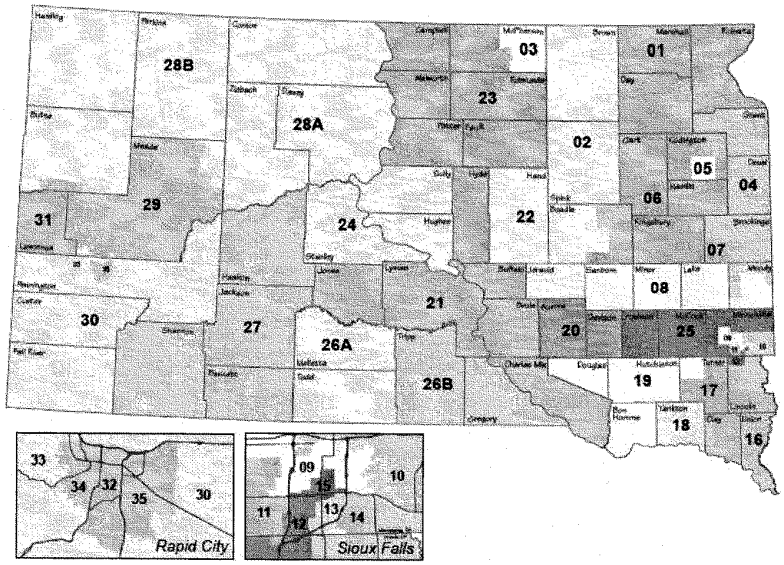
TABLE 14: NATIVE AMERICAN (LAKOTA, DAKOTA, NAKOTA) POPULATION CONCENTRATIONS IN RESERVATION COUNTIES OF SOUTH DAKOTA 1980-2000

County	%Native	County	%Native
Bennett		Lyman	
1980	44.4	1980	23.4
1990	46.2	1990	28.9
2000	52.1	2000	33.3
Buffalo		Mellette	
1980	70.6	1980	38.8
1990	77.6	1990	46.7
2000	81.6	2000	52.4
Charles Mix		Roberts	
1980	17.5	1980	19.4
1990	21.8	1990	23.0
2000	28.3	2000	29.9
Cotton		Shannon	
1980	47.3	1980	93.4
1990	48.5	1990	94.7
2000	60.8	2000	94.2
Dewey		Todd	
1980	58.0	1980	77.6
1990	66.6	1990	82.4
2000	74.2	2000	85.6
Jackson		Zlebach	
1980	43.4	1980	58.1
1990	42.4	1990	64.0
2000	47.8	2000	72.3

TABLE 15: ESTIMATED NATIVE AMERICAN AND NON-NATIVE TURNOUT, SOUTH DAKOTA, 2000

Year	Method	Native Turnout	Non-Native Turnout
2000	OLS	.347	.638
	Ei	.353	.603

FIGURE 1: NEW SOUTH DAKOTA LEGISLATIVE DISTRICTS FOR 2006



AN ASSESSMENT OF RACIALLY POLARIZED VOTING FOR AND AGAINST LATINO CANDIDATES

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An Assessment of Racially Polarized Voting For and Against Latino Candidates

ABSTRACT: Latino population growth figures are well known, and the subsequent growth in registration and voting is becoming more familiar. However, Latino elected representation may not keep pace with growth of Latino voters in the presence of racially polarized voting by non-Latinos. We assess 15 elections in California from 1994 – 2003 to determine the extent to which Latino candidates for office fail to win the support of non-Latinos, in the event that they are preferred candidate among Latinos. Through ecological regression and ecological inference, we determine that non-Latinos continue to systematically vote against Latino candidates and that Latino voters demonstrate very high rates of racial bloc voting in favor of co-ethnic candidates. Based on this analysis, and a careful review of the relevant VRA legal history, we conclude that Latino voters continue to need this important civil rights protection.

An Assessment of Racially Polarized Voting For and Against Latino Candidates

As the date for renewal of the Voting Rights Act approaches, the need for rigorous statistical analysis of voting behavior in minority communities increases, especially in those regions, and among those ethnicities which were not perhaps the primary focus of civil rights legislation in 1965, but have become increasingly salient ever since.

In recent cases, the U.S. Supreme Court has begun to signal a shift in its approach to claims brought under the VRA, and if there is reason to hope that Congress may amend the law to undo any unfavorable adjudication, there is also cause for concern that the Court will view such legislative rebuttals as usurpations of judicial power.

Aside from any possibility of a showdown between Congress and the Court on the meaning of the VRA, consensus on the continuing relevance and internal coherence of the law is beginning to fray. Scholars and Supreme Court Justices have begun to observe "discord and inconsistency" between the anti-dilution goal of Section 2 and the anti-retrogression goal of Section 5 (Pildes (2002); Epstein and O'Halloran (2005); *Georgia v. Ashcroft*, 539 U.S. 461 (2003) (*Kennedy, J.*, concurring in judgment)).

In order to show the need for renewal of the law and the basic coherence of its various provisions, as well as to preempt constitutional challenges to any prospective amendments, it is necessary to call attention to evidence of continuing discriminatory effects in existing electoral practices. The present study finds such evidence in the form of racially polarized voting by non-Latinos in Los Angeles County elections between 1994 and 2003.

In *Thornburg v. Gingles*, 478 US 30 (1986) the Supreme Court devised a three-prong test to identify violations of Section 2 of the recently amended VRA. Section 2 attacks the problem of qualitative vote dilution. Specifically, it prohibits any voting "standard, practice

or procedure" which denies any group of citizens an equal opportunity "to elect representatives of their choice" (42 U.S.C. 1973). Following the Court's opinion in *Gingles*, plaintiffs claiming dilution under Section 2 would have to demonstrate (a) that the minority group at issue is "sufficiently large and geographically compact to constitute a majority in a single member district," (b) that the minority group is "politically cohesive," and (c) that the surrounding majority group usually votes as a bloc to defeat the minority's preferred candidate. In combination, Congress's 1982 amendments to the VRA and the Court's ruling in *Gingles* seemed to warrant, if not actually to require, the drawing of majority-minority districts.

Not surprisingly, following the 1990 census, several states redrew congressional and state legislative maps so as to maximize the number of majority-minority districts. But in a series of cases over the next several years, the Supreme Court restricted the use of such districts—invalidating 9 of 13 majority-minority House districts in the South—and articulated a more subtle approach to the problem of qualitative dilution. To avoid falling afoul of the Equal Protection Clause, and thereby triggering strict scrutiny, states and localities must not use race as the sole, or possibly even the primary rationale for drawing districts. Race may enter into consideration, but not to the exclusion of traditional districting criteria such as compactness and respect for county or municipal boundaries (Shaw v. Reno; Miller v. Johnson).

The Court's reluctance to accept majority-minority districts as tools to remedy qualitative dilution has engendered heated debate in the scholarly community over their continuing relevance. Several scholars promote "coalitional districts" as a viable alternative (Pildes 2002; 116 Harv. L. Rev. 2208 (2003)). The claim is that coalitional districts are superior to majority-minority districts because the smaller the number of minority voters

required per district, the smaller the need to disregard traditional districting principles, and the less likely a newly drawn district is to be invalidated by the courts on Equal Protection grounds. As plausible as this argument may be in legal-theoretical terms, it runs into serious difficulty if the underlying facts fail to cooperate. In other words, if racially polarized voting has not truly declined, or has not declined in all regions and with respect to all ethnicities, then the majority-minority district is not the outmoded, pro-Republican implement its critics claim, but a still necessary tool in the fight against qualitative dilution.

In this paper, we question whether the facts are cooperating in the state of California. Specifically, we seek to demonstrate the extent to which voting in California is characterized by racial polarization between Whites and Latinos, its two largest ethnic groups. By extension, this analysis should also help to assess the degree to which Latinos may be considered a politically cohesive unit in a given political district.

The case for California

While the 2000 Census revealed that Latinos comprised 46% of the population in the County of Los Angeles, the County Board of Supervisors approved a redistricting plan that had only one seat in five that served the majority of Latinos residing in the county. This, of course, is essentially the same seat that was drawn into existence a decade ago. Thus, even as the 1990's brought tremendous growth in the Latino population, and as this population became increasingly active politically, Latino representation on the Board of Supervisors is today unchanged. An effort by the Los Angeles County Chicano Employees Association (hereinafter "LACCEA") to enhance the representation of Latinos on the Board of Supervisors by drawing an additional Supervisoral district in Los Angeles's San Gabriel Valley was stymied by the Board when it voted to approve a plan that deviated only slightly

from the existing arrangement. This paper examines the extent to which racial block voting (RBV) prevented Latino voters from electing a candidate of their choice in the current 3rd district; one of the three *Gingles* prongs in successful voting rights cases. Although the Latino population has grown throughout Los Angeles, and the 3rd district is solidly Democratic, Latino candidates have never fared well in the district, despite strong support from Latino voters, leaving Latinos with only one representative on the Los Angeles County Board.[1]

New population figures from the Census Bureau report that Latinos are now the largest minority group in the United States, numbering close to 40 million (U.S. Census Bureau 2004). Alongside this increase in population, more Latinos are seeking public office and winning seats at the local, state, and national level. As Latino political representation continues to increase, it is important to examine new trends in candidate preference and racial block voting. Gains by Latinos seeking office, are most certainly losses by non-Latinos and subsequently non-Latinos may try to keep Latinos out of office by systematically voting against Latino candidates (for a similar discussion of African Americans see Lublin 1999).

In no other county in California, and no other county in the country, is Latino population growth more pervasive than in Los Angeles County where the Latino population increased by 890,000 – or 26% – between 1990 and 2000. Over the same period, the non-Latino population *decreased* by 4%. Not only is the population growing, but the number of immigrants choosing to naturalize is also on the rise. Between 1990 and 2000 280,000

[1] This paper does not, by itself, make the entire case for the validity, or legality of the alternative plan presented by the LACCEA. Rather, our effort here is to specifically examine the prevalence of racial block voting in elections when Latinos are seeking office. In a previous paper, we examine the ramifications for Latino voting under either plan and determine that the proposed LACCEA plan is more efficacious for Latino voters and their ability to elect candidates of choice. As such, we do not explicitly speak directly to the issues of equality of population, compactness, boundaries, geographic regions, or community of interests, except in reference to the goals of the plans in questions. We do not empirically evaluate the plans on any of these dimensions however. In this analysis of RBV, we proceed from the assumption that the alternate LACCEA San Gabriel Valley district, as designed, meets all relevant federal and state requirements for districting.

immigrants from Mexico, Guatemala, and El Salvador became U.S. citizens in Los Angeles County alone. Finally, Latinos as a group are more politically involved at present in Los Angeles County than they were in 1990. For example, in other work, we demonstrate that the number of Latinos registering and turning out to vote increased dramatically during the 1990's (Barreto and Woods 2000; 2003). Survey research has also demonstrated that Latino voters in California generally are becoming more engaged and more interested in political affairs. In 1996, 42% of Latinos responded that they were "very interested" in politics and in 2000 this number had increased to 65%.[2]

Given this confluence of factors, one could anticipate that Latinos throughout the County would evidence high levels of political participation. In fact, between 1996 and 2000 the number of Latinos that voted grew by 42.5% while the non-Latino electorate grew by only 17.8% over the same period. Not only did Latino vote growth outpace that of non-Latinos but some portions of the County experienced greater increases in Latino voting. In Los Angeles County, nearly 50 communities experienced growth in the Latino vote of greater than 50% and many of these are substantial communities located in the proposed alternative district. Cities such as Pomona, West Covina, El Monte, Whittier for example, experienced growth in the Latino vote numbering in the thousands. Not only are more Latinos turning out to vote, but their voter turnout rates exceed those of non-Latinos in close to 80 communities throughout the County. However, if non-Latino voters continue to block-vote against Latino candidates, these gains are for not.

Beginning in 1994 with the anti-immigrant and possibly anti-Latino initiative Proposition 187, and extending through the anti-bilingual education (Proposition 209) and anti-affirmative action (Proposition 227) initiatives of 1996 and 1998 respectively, Latino

[2] Tomás Rivera Policy Institute, Survey of Latinos in California 1996; 2000.

politics in California has recently been a response to perceived attacks. Exit polls found that three of four Latinos turned out against the propositions, while a majority of White non-Latinos favored the propositions. We think that a clear result of this array of propositions, is that Latinos are more likely to align themselves with other Latinos on matters of political significance, even ones with whom they have only the term "Latino" in common (Segura, Falcon, Pachon 1997). As such, these Propositions and the political climate they engendered had the result of making Latinos more cohesive as a political force, and more likely to weigh in on political issues directly affecting them.

The increase in Latino voters seems to have had a profound effect. As of the 2000 elections, over half of the 212 Latino council members and mayors in California were elected in Los Angeles County (NALEO 2002). Cities within the LACCEA proposed District 3 such as Pomona, Norwalk, and Monterey Park have recently elected Latino mayors and many other cities have multiple Latinos on their cities councils (for example, El Monte, Pico Rivera, and Montebello). This discussion indicates that a closer look at the voting data for Los Angeles County will reveal several interesting patterns in Latino voting in Los Angeles County, many of which are specifically relevant to the question of drawing an additional Supervisoral District that will enable Latinos to elect candidates of choice. Indeed, as we have found in previous work on Los Angeles County, Latinos in the proposed 3rd district are anticipated to vote at higher rates than non-Latinos, and to support Latino candidates (Barreto and Woods 2002). However, before the courts have allowed alternative districting plans to move forward, the first step is to demonstrate that one or more status quo districts prevent Latino representation.

Twenty years ago, Navarro (1982), in commenting on the recent 1981 redistricting in Los Angeles County lamented the political possibilities of Latinos residing there. He wrote,

"the political challenge for the Chicano community is Los Angeles is formidable. The 1981 redistricting plans make the task of achieving a level of influence and representation for Latinos extremely difficult" (p. 175). The redistricting he referred to limited the possibility of Latinos influencing, in any substantive way, which candidates would be elected to the Los Angeles County Board. In that case, this outcome was a result of the limited political power possessed by the Latino community in Los Angeles at the time, at least relative to that of whites and African Americans. Navarro presaged the current 2001 debate over redistricting in stating further that, "without being overly pessimistic it appears that the Latino community of Los Angeles will continue to be underrepresented for some time to come" (p. 175).

What Navarro couldn't have known in 1982 is that while his sentiment still prevails – Latinos are still underrepresented – the reasons why Latinos are underrepresented today is no longer tied to a limited base of political power. In fact, as we point out above, and develop further below, the Latino community has never previously enjoyed the political weight it currently carries in Los Angeles, the state of California, or nationally. In spite of this, Latinos continue to be underrepresented on the County Board. The first major stride toward increased representation on the Board occurred following the 1990 census, when the Courts held that the proposed County Board of Supervisor districts violated the Voting Rights Act. In *Garza v. Los Angeles County*, the court found that Latino representation was undermined under the existing plan, and that the population was sufficient to warrant the drawing of a district favorable to the election of a Latino candidate. Specifically, Federal District Court Judge Kenyon noted that the primary goal of the redistricting in question was to preserve Board incumbents in office, and that the fragmentation of the Latino community was intended to do so. In the wake of this decision Gloria Molina was elected to the First

District in 1992, and became the first Hispanic Elected Official to serve on the County Board of Los Angeles. Her election was trumpeted within the Latino community, and by political observers generally as a crucial step in the process of facilitating increased Latino political representation.

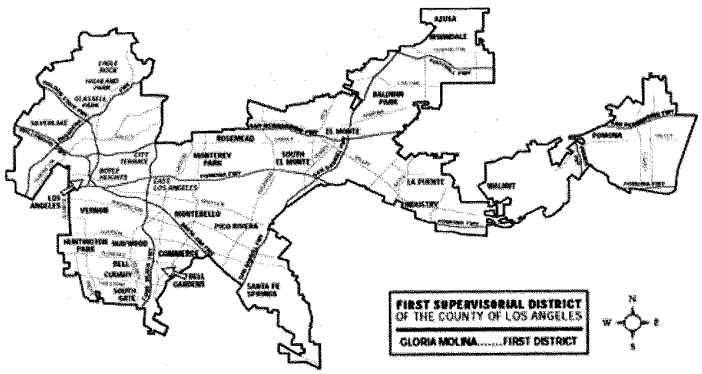
The Approved 2001 Los Angeles County Board of Supervisors Plan

Today, the issue of Latino representation and redistricting in Los Angeles County has emerged anew, as the Board unanimously approved a plan that essentially leaves the existing districts intact, thereby forestalling any possibility of increasing levels of representation on the County Board. The prevailing view of the Board, including that of Gloria Molina, was that it was best to alter the existing arrangement as little as possible, preserving the status quo, and each of the individual board member's political bases in the process. Molina's role in this process is especially interesting, in that she had championed the creation of the First District in 1990 under the banner of relieving the representational inequities facing the Latino community in Los Angeles. In casting her vote in favor of the status quo plan, Molina's actions suggest that she values her own political fortunes more than the increased Latino representation that would have been possible under an alternate plan.

The redistricting plan adopted by the County in 2001 crowds a large, and geographically dispersed Latino population into a single district, greatly diminishing the chances of a second Latino being elected to the Board of Supervisors. Figure 1 depicts the redistricting plan approved by the Board. The First Supervisorial District currently stretches from East Los Angeles, 35 miles to the eastern border of the County to Pomona and dips down to include the heavily Latino areas of Whittier and Baldwin Park (see Figure 1).

Looking more like a sand hazard in a Los Angeles Public Golf Course than a community-of-interest, the district appears to have been drawn exclusively around the heavily Latino parts of the County, thereby decreasing the percentage of Latinos found in neighboring districts.

FIGURE 1: STATUS QUO APPROVED 1ST SUPERVISORIAL DISTRICT, LOS ANGELES



Measured against the political landscape present in Los Angeles County in the 1970's and 1980's such a map would make some sense. Indeed the map ultimately approved for the 1990's as part of the Garza decision has many of the same attributes. However, there are at several reasons why this map is not sufficient to the task of adequately representing Latinos, and the San Gabriel Valley (see Figure 2, LACCEA Proposed Map). As important, the map as currently drawn probably does not meet constitutional muster in the aftermath of *Shaw v. Reno* (1993) and its progeny.

As approved by the Board of Supervisors, the existing map stands in sharp contrast to the alternative plan presented to the Board by the LACCEA. The organization maintains that their alternative plan will "give the residents of the County of Los Angeles new, more

geographically compatible board of supervisor seats…without affecting the voting rights seats promulgated pursuant to the consent decree in *Garza v. County of Los Angeles Board of Supervisors*," (Clayton et. al. 2002). The alternative plan incorporates the community-of-interest standard to keep cities, communities, and regions intact and to "ensure that the voting rights of African Americans, Latinos, and Asians are protected and that regional concerns are not neglected," (Clayton et. al. 2002). While the A2 planned adopted by the County divides communities, the LACCEA plan keeps "together the communities-of-interest that resulted from the demographic changes, from population movements, from extremely large increases in the number of new Latino citizens and from the significant increase in the population and voter registration numbers in the Latino community," (Clayton et. al. 2002).

FIGURE 2: LACCEA PROPOSED D1 REDISTRICTING PLAN, LOS ANGELES COUNTY BOARD

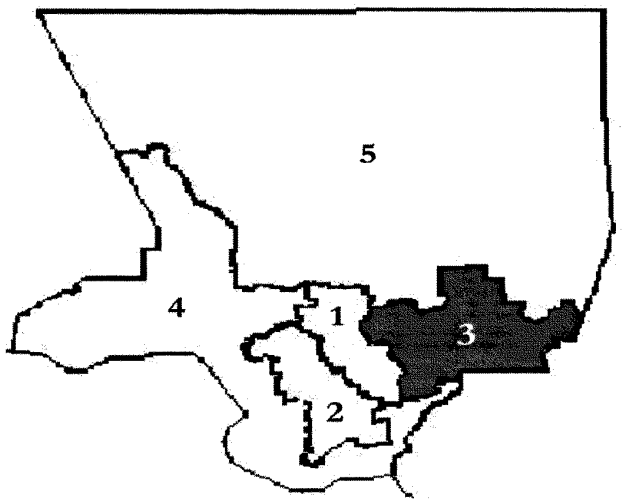


Figure 2 shows what the alternative plan proposed by the LACCEA would look like. Visually it seems clear; the districts in Figure 4 take on less bizarre shapes than do the Status Quo Districts, and while there is not sufficient detail in this map to show, there are few instances when district lines split a city or other community.

Polarized Voting and the VRA

To investigate polarized voting, we examine statewide election returns during the 1990s featuring Latino candidates, as well as the three propositions mentioned above. Specifically, do high percentage non-Latino precincts vote significantly different than high percentage Latino precincts? Through bivariate correlation, homogenous tract analysis, Goodman's ecological regression and King's ecological inference, we model candidate and issue preference at the precinct level, paying close attention to race and ethnicity. That is, do the voting habits of non-Latino voters within the status quo Supervisorial districts restrict the voting preferences of Latinos in such a way that a Latino candidate could not be elected? Our analysis of 15 candidates and issues between 1994 and 2003 reveals that polarized voting does exist and that the alternative redistricting plan is a suitable mechanism for addressing this problem.

Section 2 of the Voting Rights Act of 1965 forbids voting arrangements which result in dilution, or providing minorities "less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice." This prohibition applies throughout the United States, on a permanent basis.

In contrast to Section 2, Section 5 of the VRA applies only to specific jurisdictions, on a temporary basis. The difference is attributable to the uniquely intrusive character of Section 5, which requires covered jurisdictions—several entire states in the South, as well as

portions of states in other regions of the country—to submit all proposed changes in voting practices for "preclearance" by the Justice Department. Following several renewals for short periods, Congress decided, in 1982, to extend Section 5 for a full twenty-five years. Unless it is renewed again, the Section is due to expire in 2007.

Jurisdictions covered by Section 5 must show that a proposed change to voting practices "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" (42 U.S.C. § 1973c.). The purpose of the Section is to insure that voting procedures would not be changed in such a way as to cause "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 130, 141 (1976). Although the statutory language distinguishes purpose and effect, by the late 1990s, the conservative Rehnquist Court, generally skeptical about federal enforcement power under the Civil War Amendments (Karlan 2), limited the scope of Section 5 by requiring a single determination that proposed changes did not result in "retrogression" (*Reno v. Bossier Parish School Board* (1999) (*Bossier Parish II*)).

Georgia v. Ashcroft, the Court's most recent foray into the voting rights thicket, addresses Section 5 preclearance, but it is relevant also for the Section 2 vote dilution claims that set the legal context for the present study. The link between Sections 2 and 5 lies at the intersection of substantive and descriptive representational interests. If the standard for retrogression under Section 5 in the aftermath of *Georgia v. Ashcroft* is determined not by the number of minority officeholders but by the influence of minority voters, then what is good for the Democratic party may increasingly turn out to be bad for the enforcement of Section 2, which is to say, for the prospect of improving minorities' descriptive representation in the face of persistent dilutive electoral mechanisms.

Data and Implementation

All the data we use in the subsequent analysis is drawn from a CD-Rom provided by the Los Angeles County Internal Services Department entitled "Los Angeles County 2001 Redistricting: Final Consolidated CD." The CD is dated 8-10-2002, and contains a great deal of data and information (including geographic and mapping files and program applications), much of which was not relevant to our inquiry. Of specific use to us were data files that included statement of the vote election results for Los Angeles County, for each election cycle including primary elections in the 1990s. Corresponding Census data files were also included which included relevant race/ethnicity information as of both the 1990 and 2000 Census. From both Census files we were able to obtain information concerning the total populations, voting age populations, and registered populations for both Latinos and non-Latinos.

These data are organized at the level of the redistricting unit, labeled typically in the data as "RDU_KEY." The redistricting unit is a combination of the Census Bureau's Census Tract number, the County's Regional Planning Area number, and a Part number. The redistricting unit is the unit at which districts are designed following each decennial census. The redistricting units could, in theory, be linked with the precinct boundaries associated with each election if the proper documentation and matching files are available. In this case, these matching files were either unavailable, or unreliable.[3] In all subsequent

[3] These matching files are not made available on the CD provided by the County. In an effort to replicate our analyses reported here at the precinct level we found that precinct matching files found through other sources were not sufficiently reliable to match each redistricting unit to a precinct for each election. As a result, we undertook only this analysis at the level of the redistricting unit.

analyses, we use the redistricting unit as the aggregated unit of analysis.[4] While the redistricting unit may be less familiar as a unit of analysis in redistricting analyses, it does offer the benefit of being relatively smaller than precincts and census tracts. As such, estimates we derive here may be considered more reliable because they are drawn from the smallest available unit of aggregation. An additional benefit to employing the redistricting unit stems from its inclusion, as the linking mechanism, in each of the data files made available from the County. As such we were able to proceed without resorting to data complied by sources outside this Los Angeles County redistricting process.

Because we do not have information concerning the racial and ethnic background of individual voters, we undertake an analytical approach that allows us to reliably estimate racially polarized voting using aggregate data. Individual level data could only be obtained were race/ethnicity indicators to be included on a person's ballot (in California it is not), or if survey data were readily available (in this case they are not). Without such information we employ a variety of statistical methods that make it possible for us to infer from aggregate level information how individuals within given political sub-units have voted, and how Latinos may have voted differently from non-Latinos.

We use a number of methods, categorized into four sections of summary results to examine the issue of racial polarization in the County. Each has been used in several previous cases[5], and, as such have passed Court muster in a variety settings. These methods produce both statistical estimates of the level of support for Latino preferred candidates and causes, and a bevy of graphical representations as well. We use this wide array of approaches to comport with the spirit contained within one expert's advice (Grofman 2000),

[4] Although we use the redistricting unit, we may at times refer to precincts given the common usage of the word in these types of analyses. In all cases, the analysis occurs at the RDU level.
[5] These include, but are not limited to, *Thornburg v. Gingles*, 478 US 30 (1986), *Ruiz v. City of Santa Maria*, 160 F.3d 543 (9th Cir. 1998), *Gomez* v. *City of Watsonville* (9th Cir. 1988) 863 F.2d 1407.

which recommended "making use of the full range of available techniques" in an effort to guard as closely as possible against errors in interpretation. The first method (1) is simply the examination of a series of bivariate correlations between proportions of voter preference for a particular candidate or proposition and the proportion of relevant Latino population within the same redistricting unit. This is meant primarily to be an instructive device – as the presence of high, and statistically significant correlations suggests, but may not be in isolation, conclusive evidence of racially polarized voting. Nonetheless, consistently *negative* correlations between the proportion of non-Latino voters and voter preference for Latino preferred candidates provides evidence of polarization.

In a second approach (2), we use a "homogenous precincts" style analysis and look specifically at redistricting units where the percentage of Latino or non-Latino registrants are at or above 90% of the units' total registered population. Comparing the voting preferences of the most heavily Latino populated areas with the most heavily non-Latino populated areas gives some indication as to what the difference between the two groups of voters may be, and is a common first step in any analysis of this kind. By comparing these two types of units, we can limit the problems associated with inferring from aggregate level data, and in a straightforward manner determine polarized voting because nearly all the registered voters are of one group or the other. In general, results indicating that they two types of units are dramatically different from one another in the support they grant Latino candidates and issues provides further evidence of polarization in District 3.

Our third approach (3) is a series of straightforward bivariate ecological regressions. Here again, we examine how the size of the Latino population is related to the degree to which that population supports Latino candidates or positions. Relative to the homogenous precincts approach, this method allows us to include information for all redistricting units,

with every available combination of Latino and non-Latino populations. This, in a sense, accounts for the possibility that purely homogenous redistricting units of one population or the other may be different from those units that have a greater degree of variance in their population. Consistent differences between Latinos and non-Latinos in the levels of support demonstrated here would augment similar findings that emerge through the correlations and homogenous unit analysis.

Our fourth approach (4) to the issue of polarized voting uses a variety of techniques made possible through King's method of ecological inference, which offers another methodological approach to overcoming ecological data problems (see King 1997). In this, our last set of results (found in the Summary Results section below), we also provide estimates of polarization derived from Goodman's ecological regression model so that the estimates derived from King's MLE procedure might be readily compared with this more commonly utilized tool for determining polarization. If these two estimates are consistent with each other then any implications derived from them may be considered to be more substantial.

It is important to note from the outset that there is often no "silver bullet" in analyses of polarization, particularly when one is looking across different elections and election years. Here, we have endeavored to look at the issue in Los Angeles County's District 3 through as many available lenses as possible. For this reason, we have a included a great deal of summary estimates of the degree to which polarized voting appears. If a consistent set of results shows up across the various methods employed here, then, in our view, the conclusions we derive become substantially more reliable than if we were to report the results of a single method in isolation.

Two additional notes concerning the data and approach are relevant to report here. First, in each analysis reported, we use the *proportion of registered voters Latino* in a given redistricting unit (or inversely the *proportion of non-Latinos*) as the key independent variable in the following tables and charts. Second, in each election we examine except the 1994 election, we use data derived from the 2000 Census. In the 1994 contest we use data from the 1990 Census.

In full, we examine 15 election contests across the 1994 Primary, 1996 General, 1998 Primary, 2000 General, 2002 Primary and 2003 Special elections. The common thread across these elections is the presence of a Latino candidate or an issue of particular concern to the Latino community. A summary of the elections is contained in the table below.

Overview of Candidates and Elections Analyzed
Los Angeles County, California

Election	Candidate/Proposition	Election
1994 P	Carrillo	County Sheriff
1994 P	Torres	Insurance Commissioner
1996 G	Prop 209	Affirmative Action
1998 P	Prop 227	Bilingual Education
1998 P	Bustamante	Lieutenant Governor
1998 P	Calderon	Attorney General
1998 P	Martinez	Insurance Commissioner
1998 P	Robles	State Treasurer
1998 P	Baca	County Sheriff
1998 P	Gomez	County Sheriff
1998 P	Salazar	County Assessor
2000 G	Robles	County Assessor
2000 G	Garcia	County Assessor
2002 P	Calderon	Insurance Commissioner
2003 S	Bustamante	Recall / Governor

* 1998 reflects open primary results

These elections offer a nice cross-section of contests, years and electoral settings for examination. Covering four different election years, closed primaries, open primaries, and general elections, local candidates and statewide candidates and propositions, these data offer an insight into polarization that can not be limited to a particular set of unique circumstances. If polarization is in evidence consistently across these very different elections, we can be fairly confident that what we capture here is not simply an artifact of the data.

To get to the heart of racial bloc voting, we offer several different approaches that each tell a remarkably similar story about the degree to which polarized voting exists in Los Angeles County. Recall that, paraphrasing Justice Brennan's opinion in *Gingles*, racially polarized voting can be identified as occurring when there is a consistent relationship between the race of a voter and the way in which she votes. *In every election we examine here, such a consistent pattern emerges.* Indeed, under every different method we have employed here, *this pattern remains robust and consistent.* These results demonstrate that not only are Latinos politically cohesive in their support of Latino candidates in Los Angeles County, but also that non-Latinos vote consistently against Latino candidates and issues.

Our analysis of the votes taken across these 15 elections provides convincing evidence that racially polarized voting continues to disadvantage Latino candidates. The degree to which the polarization occurs may vary slightly between elections, and with the number of Latino candidates who are involved in a contest. Nonetheless, there can be no doubt that in each of these elections non-Latinos voted substantially against the Latino preferred candidate or issue.

Such a rigorous analysis is important as the Voting Rights Act comes up for renewal and reauthorization in 2007. While most research continues to focus on the VRA *vis-à-vis*

African American voters (in the South), the largest growing segment of minority voters today is Latinos. This paper answers one question, among many, that relate to Latinos and the VRA, a growing topic of concern for scholars and policymakers alike.

Summary of Results

As we noted above, our first line of inquiry was focused on determining, through simple correlation analysis, whether or not the data for District 3 indicated any degree of polarized voting between Latinos and non-Latinos.

Bivariate Correlations: Race and Support of Latino Candidate or Initiative

For each contest, we correlate both the proportion of the redistricting unit that is Latino and the proportion that is White, with the proportion supporting the Latino candidate, or Latino preferred position. In general, two variables may be positively correlated, negatively correlated, or be completely unrelated to one another. In our correlation estimates, the negative relationship is indicated in the negative (-) sign, and positive correlations are recorded without a sign. The larger the correlation coefficient becomes, the more robust the relationship between the variables in question (whether negative or positive). The values in parentheses found just below the correlation coefficient are p-values. Here, p-values of .00 indicate that the correlation between two variables cannot be due to chance – that is, the relationship between the two is statistically significant.

Table 2 (below) presents the results for the all contests between 1994 – 2003 (detailed above in Table 1). For all 15 elections, the strength and statistical significance of the relationship between the ethnic proportions and preference for the Latino candidate becomes immediately apparent. The two correlations are nearly diametrically opposed to one another, showing that, as the proportion of a redistricting unit becomes more Latino, support for Latino candidates increases. Likewise, as a district becomes more White in population, the proportion of votes going to Latino candidates diminishes. Although the

robustness of the correlation coefficients varies between contests, the sign associated with Percent White remains significantly negative, and the sign for Percent Latino remains significantly positive in each election.

Table 2
Correlation: Race and Support for Latino Candidates
Los Angeles County Supervisor District 3

	Percent Latino	Percent White
% Torres (1994 P)	0.75	-0.77
% Carrillo (1994 P)	0.70	-0.67
% No Prop. 209 (1996)	0.54	-0.51
% No Prop. 227 (1998 P)	0.65	-0.59
% Bustamante (1998 P)	0.66	-0.53
% Calderon (1998 P)	0.90	-0.78
% Martinez (1998 P)	0.89	-0.80
% Robles (1998 P)	0.90	-0.80
% Baca (Sheriff - 1998)	0.46	-0.38
% Gomez (Sheriff - 1998)	0.89	-0.85
% Sheriff Combined (1998)	0.84	-0.77
% Garcia (Assessor - 2000)	0.91	-0.85
% Salazar (Assessor - 2000)	0.91	-0.86
% Robles (Assessor - 2000)	0.74	-0.73
% Assessor Combined (2000)	0.93	-0.89
% Calderon (2002)	0.84	-0.81
% Bustamante (2003 S)	0.34	-0.33
** all values significant at $p < .00$*		

Taken as a whole, across the election years and contests there a clear pattern is indicated between the race/ethnicity of a redistricting unit and the support for Latino candidates and issues within a unit. The consistently negative and significant correlation between percent non-Latino and the vote share of Latino candidates, in conjunction with the corresponding positive and significant correlation for Latinos, provides compelling evidence

that voting is polarized in District 3. We turn next to our "homogenous precinct" style analysis.

Examining Homogenous Redistricting Units

This method is probably the simplest method for examining polarized voting. We use redistricting units within District 3 that are either 90% non-Latino (or greater) or 90% Latino (or greater) and compare the two against each other. The ease with which this sort of comparison can be made, indeed without resorting to statistics of any kind, make this a logical precursor to more sophisticated methods of analysis. A downside to this sort of analysis is the availability of units that are sufficiently homogenous to be compared. Also, depending on the political jurisdiction in question, there may be some issue with assuming the patterns in more heterogeneous units will reflect what we see in homogenous ones.

Our analysis, just below, is a series of t-tests that statistically measure the difference between the two types of units in the level of support granted to Latino candidates and issues. A benefit to this sort of analysis is that we report the mean (or average) support within each type of homogenous unit, the difference, and associated standard errors, which allow for a determination of whether the levels of support are statistically discernable from each other.

Table 3 summarizes the result for the 1994 – 2003 contests. Looking at the first candidate, for Torres, the mean support was almost forty percentage points higher in homogenous Latino units relative to homogenous non-Latino units. These two differences are not just large; they are statistically discernable from one another as well. Like the correlations we reported above, these t-tests of support for Latino candidates between homogenous Latino and homogenous non-Latino redistricting units and issues indicate a

clear pattern of polarization. Simply put, when homogenous non-Latino units are supporting Latino candidates at only half or even a quarter the rate that homogenous Latino precincts support these candidates, voting is racially polarized.

Table 3
T-Test Difference in Mean Support for Latino Candidates
Homogenous Tracts, Los Angeles County Supervisor District 3

		90% Non-Latino	90% Latino	Net Difference
Torres	Mean	29.33	68.75	-39.42
(1994 P)	S.E.	0.55	4.39	2.45
Carrillo	Mean	10.26	36.98	-26.73
(1994 P)	S.E.	0.27	3.20	1.34
Prop 209 No	Mean	51.63	79.47	-27.84
(1996)	S.E.	0.71	2.30	2.92
Prop 227 No	Mean	39.43	72.07	-32.64
(1998 P)	S.E.	0.65	1.94	2.65
Bustamante	Mean	41.85	70.11	-28.26
(1998 P)	S.E.	0.59	2.06	2.42
Calderon	Mean	12.19	51.19	-39.00
(1998 P)	S.E.	0.30	2.34	1.32
Robles	Mean	17.79	51.48	-33.68
(1998 P)	S.E.	0.27	1.83	1.17
Martinez	Mean	22.27	60.11	-37.84
(1998 P)	S.E.	0.36	1.90	1.52
Baca	Mean	30.12	38.79	-8.66
(Sheriff 1998)	S.E.	0.35	1.79	1.46
Gomez	Mean	7.53	31.38	-23.85
(Sheriff 1998)	S.E.	0.24	0.89	0.98
Combined	Mean	37.65	70.17	-32.52
(Sheriff 1998)	S.E.	0.50	1.93	2.09
Garcia	Mean	2.36	14.26	-11.90
(Assessor 2000)	S.E.	0.10	0.35	0.41
Robles	Mean	2.99	10.42	-7.43
(Assessor 2000)	S.E.	0.10	0.81	0.44
Salazar	Mean	10.42	40.75	-30.33
(Assessor 2000)	S.E.	0.26	1.43	1.11
Combined	Mean	15.76	65.42	-49.66
(Assessor 2000)	S.E.	0.37	2.09	1.58
Calderon	Mean	14.12	48.51	-34.38
(2002)	S.E.	0.01	0.01	0.01
Bustamante	Mean	36.17	56.41	-20.24
(2003 S)	S.E.	0.01	0.01	0.01

Bivariate Ecological Regression

We pointed out above that a potential problem with the homogenous precinct style analysis is that our conclusions, by implication, must rely on what we see in only a fraction of the available data. This does not, by any means, suggest that these conclusions are invalid, but rather that additional methods should be undertaken to augment and refine what the homogenous units suggest about polarization. Our next two approaches are intended to accomplish this task. The first, called bivariate ecological regression, makes use of all the available information, not just the homogenous units, and fits the best "line" to the relationships found in the data. In this case, we regress the proportion Latino in a given unit on the proportion of support for the Latino candidate in that unit. If there is a relationship between the two variables, the regression coefficient will be either positive or negative, and it will register statistical significance. If there is no relationship – for example if the proportion Latino was unrelated to the vote share of Latino candidates – then the coefficient will be insignificantly different from zero (0).[6]

In looking at Table 4 below, several items are worth noting. The first is the size and significance of the regression coefficient (each is statistically significant at well beyond two standard deviations or $p<=.05$, the common threshold for determining significance). The second is the value listed in the "Constant" row, as this is the estimate of the Percent of non-Latinos who supported the candidate. The third is the regression coefficient for Percent Latino. To calculate the percentage support for the candidate among Latinos, add the value of the constant to 100 multiplied by the coefficient for Latino (or

[6] In Appendix 1 we provide a series of scatter-plots that show the data points along an X-Y axis to which each regression line is fitted. If the data points were not clustered together in a roughly linear fashion, the data could not be fitted in this way, the coefficients for Percent Latino would be insignificant.

Constant+(100*Coefficient)).[7] For example, in the following Table the constant (representing non-Latino support for the Latino Candidate) is 27.32 in the Torres election. The coefficient for Latino is .36. Taking 100*.36 gets a value of 36, which added to 27.32 obtains the estimate for Latino support of 63.32%. Across all 15 elections, the slope for "% Latino" is positive and significant indicating that statistically noticeable gulf existed between Latino and non-Latino voting patterns. The largest gulf, for the combined Latino candidates for County Assessor is .67 suggesting Latinos preferred the three Latino candidates by 67 more percentage points than non-Latinos.

Taken together, these results buttress what the correlations (across all units) and t-tests (among homogenous units) suggest with regard to the degree to which voting is polarized between Latinos and non-Latinos in District 3. To this point each analytical technique we have employed has given us an indication that polarization exists, and that it is not isolated to a single election year or contest. We turn next to a final set of estimates, derived from King's (1997) ecological inference methods.

[7] See Lisa Handley's report on voting in Arizona for a more detailed description of this sort of calculation (2002).

Table 4
Bivariate Ecological Regression: Support for Latino Candidates
Los Angeles County Supervisor District 3

		Coef.	S.E.
Torres	% Latino	0.36	0.02
(1994 P)	Constant	27.32	0.57
Carrillo	% Latino	0.17	0.01
(1994 P)	Constant	8.73	0.32
Prop 209 No	% Latino	0.30	0.02
(1996)	Constant	49.65	0.66
Prop 227 No	% Latino	0.37	0.02
(1998 P)	Constant	37.39	0.60
Bustamante	% Latino	0.30	0.02
(1998 P)	Constant	39.14	0.48
Calderon	% Latino	0.45	0.01
(1998 P)	Constant	9.54	0.30
Robles	% Latino	0.40	0.01
(1998 P)	Constant	15.56	0.27
Martinez	% Latino	0.46	0.01
(1998 P)	Constant	19.75	0.33
Baca	% Latino	0.11	0.01
(Sheriff 1998)	Constant	29.84	0.31
Gomez	% Latino	0.31	0.01
(Sheriff 1998)	Constant	6.65	0.22
Combined	% Latino	0.42	0.01
(Sheriff 1998)	Constant	36.49	0.39
Garcia	% Latino	0.16	0.00
(Assessor 2000)	Constant	1.86	0.10
Robles	% Latino	0.11	0.00
(Assessor 2000)	Constant	2.81	0.13
Salazar	% Latino	0.40	0.01
(Assessor 2000)	Constant	9.17	0.25
Combined	% Latino	0.67	0.02
(Assessor 2000)	Constant	13.84	0.54
Calderon	% Latino	0.41	0.01
(2002)	Constant	11.36	0.07
Bustamante	% Latino	0.15	0.04
(2003 S)	Constant	34.79	0.28

Kings' Ecological Inference & Goodman's Regression

Gary King's 1997 book and the programming package that accompanies it are an effort to solve some of the more persistent problems associated with estimating individual level behavior from aggregate level information. The program offers users a variety of diagnostic tools and options to check the fit of the data, and ultimately obtain the most reliable estimate of a race/ethnic group's support for a particular candidate. Some of these diagnostic tools produced the scatter-plots, floating bar charts and tomographic charts supporting these summaries, which for page considerations, are not included here (but available from authors). The summary statistics produced by the program are included in the next sequence of tables, along with estimates of support based upon Goodman's regression. In both cases, the columns headed with "Beta B" indicate the proportion of Latino support for the candidate or proposition listed to the left hand side. "Beta W" on the other hand, is the estimate of non-Latino support for the candidate or proposition listed. Both can be interpreted as percentages.

As should be immediately clear, in virtually every contest both sets of estimates are remarkably similar. All of the races detailed here show quite a bit of polarized voting, and in most, the Latino candidate was clearly the most preferred candidate among Latino voters.

While each of the techniques we have employed have served some purpose in assessing the degree to which polarization is occurring in Districts 3, perhaps the most compelling is found in the proceeding Table 5. In all the elections considered, we obtain remarkably similar estimates of the proportion of support for Latino candidates by Latinos and non-Latinos. Even the bivariate regression found in Table 4 – the least refined of the estimates included – shows similar differences between Latinos and non-Latinos. The King

estimate and the Goodman's regression are nearly identical and together may be taken as reliable indicators of the degree to which polarization exists in District 3.

Table 5
Ecological Inference & Goodman's Regression
1994 – 2003 Elections, District 3

	King's EI		Goodman Reg	
	Beta B (Latino)	Beta W (Non-Latino)	Beta B (Latino)	Beta W (Non-Latino)
Torres (1994 P)	0.736	0.279	0.745	0.277
Carrillo (1994 P)	0.296	0.093	0.327	0.087
Prop 209 (1996)	0.801	0.504	0.795	0.499
Prop 227 (1998 P)	0.748	0.378	0.737	0.377
Bustamante (1998 P)	0.712	0.390	0.697	0.390
Calderon (1998 P)	0.531	0.100	0.541	0.096
Robles (1998 P)	0.557	0.159	0.561	0.156
Martinez (1998 P)	0.658	0.200	0.658	0.198
Baca (Sheriff 1998)	0.402	0.299	0.412	0.298
Gomez (Sheriff 1998)	0.378	0.067	0.374	0.067
Combined (Sheriff 1998)	0.775	0.367	0.785	0.365
Garcia (Assessor 2000)	0.199	0.015	0.183	0.019
Robles (Assessor 2000)	0.151	0.026	0.135	0.028
Salazar (Assessor 2000)	0.504	0.091	0.489	0.093
Combined (Assessor 2000)	0.850	0.132	0.808	0.139
Calderon (2002)	0.511	0.118	0.519	0.114
Bustamante (2003 S)	0.487	0.347	0.492	0.348

Discussion

We have offered several different approaches that each tell a remarkably similar story about the degree to which polarized voting exists in Los Angeles County Board of Supervisors District 3. Recall that, paraphrasing Justice Brennan's opinion in *Gingles*, racially polarized voting can be identified as occurring when there is a consistent relationship between the race of a voter and the way in which she votes. *In every election we examined here,*

such a consistent pattern emerges. Indeed, under every different method we have employed here, *this pattern remains robust and consistent.* These results demonstrate that not only are Latinos politically cohesive in their support of Latino candidates in Los Angeles County, but also that non-Latinos vote consistently against Latino candidates and issues.

It is worth noting that even in the elections that are not marked by extreme levels of polarization there are still differences. For example, in the 1998 Baca Primary election, the support he receives among non-Latinos is only between six and eight percentage points (Table 5) lower than the support he receives from Latinos. However, the other Latino candidate in the race (Gomez) polled nearly as well or better than Baca among Latinos, and received only a small fraction of the non-Latino vote. A similar picture emerges in the 2000 Assessors race (Table 5). In a crowded field of candidates the clear Latino favored candidate was Salazar, who polled between 48.9 and 50.3% among Latinos and received only 12% of the non-Latino vote.

The Bustamante election also provides a case in point. A moderate candidate, Bustamante was running against an opponent who spent very little, and yet Bustamante only received about 40% of the non-Latino vote in District 3, relative to the 57% he received among Latinos (see Table 5). This brings to light a key point – in each of the elections we considered, which include local County elections, as well as elections for statewide office and statewide propositions, no Latino candidate was the most preferred candidate of non-Latinos. In fact, in every case but the Bustamante and Baca elections, no candidate included in this analysis when on to be elected.

Our analysis of the votes taken across these thirteen elections provides convincing evidence that racially polarized voting has occurred in every election. The degree to which the polarization occurs may vary slightly between elections, and with the number of Latino

candidates who are involved in a contest. Nonetheless, there can be no doubt that in each of these elections non-Latinos voted substantially against the Latino preferred candidate or issue.

Under Section 2 of the VRA, jurisdictions faced with persistent, racially polarized voting patterns, such as those we find in California, are obligated to seek a remedy. In the past, the preferred remedy entailed maximizing the number of majority-minority districts. Proponents of this remedy are currently fighting on two fronts. On the side of constitutional law, the Supreme Court has issued a number of rulings in which majority-minority districts drawn to satisfy Section 2 are invalidated as violations of the Equal Protection Clause. On the side of empirical social science, a number of studies suggest that voting in some areas of the country may not be as racially polarized as it once was, and that equalizing minority groups' opportunity to elect candidates of their choosing may no longer require the drawing of majority-minority districts.

We think the present study has something to offer on both fronts of the war over majority-minority districts. On the constitutional law front, *Georgia v. Ashcroft* presents the same dire threat and mobilizing opportunity that *City of Mobile v. Bolden* did in 1980. Just as the *Bolden* Court's negation of the intent element of a Section 2 action inspired civil rights advocates to lobby successfully for the 1982 amendments to the VRA, the risk to an anti-dilution agenda coming from *Ashcroft*'s weakening of the preclearance regime raises the salience of studies such as ours for efforts to renew or to amend the VRA in the near future. On the empirical social science front, our findings suggest that recent interest in coalitional approaches to qualitative dilution, an interest largely driven by the Court's hostility towards majority-minority districts, must be tempered by evidence of continuing polarization.

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LANGUAGE ACCOMMODATION AND THE RIGHT TO VOTE

Angelo N. Ancheta*

INTRODUCTION

In October 2005, a federal district court approved a settlement agreement between the federal government and the City of Boston that spotlighted both overt discrimination against limited-English-proficient voters and the importance of providing language assistance to those voters – not only as a congressional remedy for past discrimination but as a vehicle for increasing civic engagement and political participation. In *United States v. City of Boston*, the U.S. Department of Justice alleged that the City had violated section 203[1] of the Voting Rights Act of 1965 – the Act's major language-assistance provision – by failing to provide adequate translation of election materials in Spanish and by failing to recruit, appoint, train, and maintain an adequate pool of bilingual poll workers.[2] In addition, the complaint alleged that the City of Boston had violated multiple sections of the law, including section 2, the Act's general antidiscrimination provision, in a variety of ways: by treating limited-English-proficient Latino and Asian American voters disrespectfully; by refusing to permit these voters to be aided by an assistor of their choice; by improperly influencing, coercing, or ignoring the voters' ballot choices; by failing to make bilingual personnel available to the voters; and by refusing or failing to provide provisional ballots.[3]

Typical of many recent cases, the court order in *United States v. City of Boston* contains sections applicable to Latino and Asian American voters that require improved translations of elections materials, an adequate supply of bilingual poll workers, greater dissemination of multilingual information, federal election monitoring, the designation of a language assistance coordinator, and the creation of a community-based advisory body.[4] The case is unusual, however, in that the order extended language-based remedies for section 2 violations to groups of voters that were not explicitly covered by section 203's protections. Although the Latino population in Boston was large enough to trigger section 203 coverage, the populations of limited-English-proficient Chinese Americans and Vietnamese Americans each fell well below the statistical thresholds necessary to invoke section 203; neither group constituted more than five percent of the voting age citizens in the jurisdiction or more than a total of 10,000 voting age citizens.[5] As remedies for violations of section 2, the mandates in *United States v. City of Boston* illustrate the central role that language assistance can play in redressing discrimination against

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[1] 42 U.S.C. § 1973aa-1a.

[2] Complaint, United States v. City of Boston, No. 05-11598 WGY (D. Mass. 2005).

[3] *Id.*

[4] United States v. City of Boston, No. 05-11598 WGY (D. Mass. Oct. 18, 2005) (three-judge court).

[5] 42 U.S.C. § 1973aa-1a. Chinese Americans numbered approximately 5,000, while Vietnamese Americans numbered approximately 3,000 <Confirm numbers> Presentation by Susana Lorenzo-Giguere, U.S. Department of Justice, at National Asian Pacific American Bar Association Annual Convention, Chicago, Ill. (Oct. 22, 2005).

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limited-English-proficient voters, even if those voters do not constitute a large-enough population to invoke formal coverage under section 203.

Cases such as *United States v. City of Boston* illuminate an important trend in voting rights law, one in which language assistance is not simply a structural remedy bound by the four corners of the Act, but a vehicle designed more broadly to accommodate differences among minority voters and to promote meaningful access to the political process. In other recent cases, the Justice Department has obtained settlements that have required language assistance to groups falling below the statistical benchmarks for section 203 coverage,[6] as well as to groups that are not covered by section 203, such as Arab Americans.[7] Moreover, voluntary assistance to non-covered groups has become increasingly common in major cities with growing immigrant populations. The Chicago Election Board, for example, is required under section 203 to provide language assistance in Spanish and Chinese, but also provides voluntary assistance in languages such as Polish, Russian, Greek, German, Korean, and Serbian.[8] And the City of Boston, notwithstanding the Justice Department's 2005 lawsuit, had already made commitments to provide voter materials in Spanish, Haitian Creole, Vietnamese, Cape Verdean Creole, Portuguese, Chinese, and Russian.[9]

Yet, moving beyond a strictly remedial basis for language assistance under the Voting Rights Act raises significant political and constitutional questions. Political support for language assistance in voting is hardly universal. Arguments for English-only elections to limit financial costs and to underscore the role of English as a civic *lingua franca* continue to animate opposition to language assistance under the Act. Indeed, there have been numerous attempts in recent years to repeal the language assistance provisions.[10] Additionally, recent U.S. Supreme Court cases have limited the scope of congressional power to remedy constitutional and civil rights violations committed by state governments, and have made antidiscrimination litigation increasingly problematic.[11] Without careful limitations and an especially strong factual record to justify congressional action, legislation designed to enforce guarantees of equality under the Fourteenth and Fifteenth Amendments may be constitutionally suspect.

This paper examines the expansion of language assistance under the Voting Rights Act from a structural remedy for past discrimination to a broader vehicle of language accommodation that encourages political participation by limited-English-proficient voters. In doing so, the paper examines constitutional requirements for existing mandates under the Voting Rights Act, while also cautioning against overly expansive measures that might arise in the course of reauthorizing

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[6] *See* United States v. San Diego County, No. 04CV1273JEG (S.D. Cal. 2004) (requiring language assistance in Vietnamese where population numbers fell just below 10,000).
[7] *See* United States v. City of Hamtramck, No. 00-73541(E.D. Mich. Aug. 7, 2000) (requiring language assistance in Arabic and Bengali as remedies for voter intimidation and harassment).
[8] *See* http://66.107.4.19/English2004.htm#LanguageASS (last visited Oct. 30, 2005).
[9] *See* http://www.cityofboston.gov/newbostonians/voterkit.asp (last visited Oct. 30, 2005).
[10] In August of 1996, for instance, the House of Representatives passed H.R. 123, the "Bill Emerson English Language Empowerment Act of 1996," which would have declared English to be the official language of the United States and would have repealed the language assistance provisions of the Voting Rights Act. The Senate did not vote on the bill.
[11] *See infra* notes __ to __ and accompanying text (discussing constitutional limitations on changes to the Voting Rights Act).

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section 203 and the Act's other language assistance provisions. Part I of the paper examines various antidiscrimination models under the Voting Rights Act, including section 203 and the Act's more general civil rights protections for limited-English-proficient voters. Part II offers a model of language accommodation that expands current voting rights jurisprudence, drawing on legal theories of language rights and extant antidiscrimination standards outside of voting. Part III suggests a framework for incorporating language accommodation norms into enforcement of the Voting Rights Act, as well as alternative vehicles for protecting language rights, such as Title VI of the Civil Rights of 1964 and election reform legislation such as the Help America Vote Act of 2002.

I. LANGUAGE MINORITIES AND THE VOTING RIGHTS ACT

To outline the growth of language assistance from its roots as a structural antidiscrimination remedy to an evolving norm of language accommodation, this Part discusses the 1975 amendments and later amendments to the Voting Rights Act focusing on language minorities. Although section 203 and other language assistance provisions remain the primary federal mandates requiring assistance to language minorities, other provisions of the Voting Rights Act also provide important, but underutilized, bases for protecting the rights of limited-English-proficient voters. Moreover, the various statutory protections available to limited-English-proficient voters represent significantly different models of civil rights enforcement: language assistance provisions such as section 203 typify a *structural remediation* model of voting rights law that addresses past discrimination against identified groups; section 2 of the Voting Rights Act, which has covered language minorities since 1975, typifies the *traditional antidiscrimination* model found in many civil rights laws prohibiting policies of differential treatment and disparate impact against minorities; and section 208 of the Voting Rights Act, a provision added in 1982 to improve electoral access to disabled and illiterate voters, typifies an *individual accommodation* model that has gained strength in recent years in civil rights enforcement affecting the disabled. Although complementary, none of these models offers a comprehensive approach that fully addresses the rights of limited-English-speaking voters.

A. Language Minorities and the 1975 Amendments

By expanding the reach and requirements of the original Voting Rights Act to include language minorities, the 1975 amendments to the Voting Rights Act were designed to promote two major goals. One goal was to clarify the Act's coverage of certain racial and ethnic minorities – Latinos in particular – who had suffered discrimination in the political process, but whose group status under the law remained uncertain. Defining the "Hispanic" or "Latino" population was problematic under the original Act because its members, by self-designation or by ascription, often eluded clear racial categorization and transcended strict racial labels such as "black" and "white." The "language minority" category was created to ensure full voting rights protections for individuals of "Spanish heritage," as well as for American Indians, Asian Americans, and Alaskan Natives.[12]

[12] 42 U.S.C. § 1973l(c)(3); *id.* § 1973aa-1a(e).

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The legislative history of the 1975 amendments reveals a clear congressional intent to expand the Act's coverage beyond black-white racial discrimination.[13] Although groups such as Asian Americans would have been considered racial groups even under the 1965 Act, their addition, along with the addition of Latinos and Native Americans, through the language minority amendments was grounded in both the Fourteenth Amendment's equal protection guarantees and the Fifteenth Amendment's prohibitions on racial discrimination in voting. By relying on equal protection doctrine, under which the courts had already recognized segregative classifications based on national origin, like racial classifications, to be presumptively unconstitutional,[14] Congress could base its extension of coverage on categories that might elude definition based on racial criteria, but were nonetheless the basis for extensive discrimination. However, Congress' choice to employ "language minority" status, rather than a broader and more commonly used category such as "national origin" or "ethnicity,"[15] effectively limited the Act's coverage to the enumerated groups and excluded other groups that might have been covered under a differently defined category.

Congress incorporated the language minority categories into the Voting Rights Act by amending the statute to ensure that the Act's preclearance requirements under section 5, applicable to areas with extensive histories of past discrimination, extended to language minority populations.[16] Moreover, the Act's ban on the use of a voting "test or device" was extended to include bans on English-only procedures or elections where a language minority group constitutes over five percent of the voting age population.[17] Congress also amended section 2, the general and permanent antidiscrimination provision of the Act, to add coverage for language minorities.[18]

A second goal of the 1975 amendments was to establish a set of structural remedies to address both past and ongoing discrimination against limited-English-proficient minorities. Section 4(e) of the original Act had already recognized the connection between English-language-proficiency and voting discrimination in the case of Puerto Rican voters, many of whom had been educated in Spanish-dominant educational environments; the Act prohibits English-only literacy tests for "persons educated in American-flag schools in which the predominant classroom language was other than English."[19] Congress further determined in 1975

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[13] *See* S. Rep. No. 94-295, at 35-37 (1975).
[14] Keyes v. School Dist. No. 1, 413 U.S. 189, 197 (1973); Hernandez v. Texas, 347 U.S. 475, 477-79 (1954).
[15] *See, e.g.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq.
[16] 42 U.S.C. § 1973b(f). Section 5 requires that state and local governments with an extensive history of discrimination that has resulted in depressed minority political participation groups must "preclear" any changes to their electoral procedures either through administrative review by the Department of Justice or a declaratory judgment by a three-judge panel of the U.S. District Court for the District of Columbia; a change must have neither a discriminatory purpose nor a discriminatory effect. 42 U.S.C. § 1973c.
[17] 42 U.S.C. § 1973b(f)(3).
[18] Section 2 provides in part: "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 1973b(f)(2) of this title [referring to language minorities]." 42 U.S.C. § 1973(a). Section 2 was amended in 1982 to create a "results" standard and effectively reverse Supreme Court case law imposing an intent requirement, but the language minority amendments of 1975 were left intact.
[19] 42 U.S.C. § 1973b(e). The U.S. Supreme Court upheld the constitutionality of section 4(e) in *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

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that educational discrimination, including overt segregation and disparities in public school funding and resource allocations, had led to high rates of illiteracy among language minorities throughout the country; these educational inequalities, combined with discrimination and intimidation in the electoral process, produced low rates of voter registration and voting among language minority groups.[20] Congress thus recognized the denial of voting rights inherent in many English-only election procedures and created two remedial vehicles requiring translated election materials, oral interpretation and aid, and other language-sensitive assistance: section 4(f) and section 203.[21] Because of Congress' findings of nationwide discrimination affecting language minorities, neither of the provisions requires proof of intentional discrimination or discriminatory effect by a local jurisdiction; only the satisfaction of appropriate triggering formulas is mandated.

Focusing on areas with more serious histories of discrimination, section 4(f) prohibits English-only materials and requires language assistance in states and political subdivisions that satisfy a triggering formula based on a historical snapshot for the year 1972, which combine a language minority group's size (over five percent), the use of English-only procedures, and low voter registration and turnout.[22] Preclearance of changes in election procedures under section 5 of the Act is required in these jurisdictions,[23] as is the appointment of federal examiners under section 6 of the Act.[24]

Under section 203, a variety of triggering formulas link minority group size and high rates of illiteracy (measured by grade completion below the fifth grade) to determine language

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[20] Section 4(f)(1) states:

> The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

42 U.S.C. § 1973b(f)(1). In addition, section 203(a) states:

> The Congress finds that, through 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.

42 U.S.C. § 1973aa-1a(a).

[21] Section 4(f) and section 203 were reauthorized in 1982 and 1992, and are scheduled to expire in August 2007 unless reauthorized.

[22] Section 4(f) prohibits English-only materials and requires language assistance in states and political subdivisions where (1) over five percent of the voting age citizens were, on November 1, 1972, members of a language minority group, (2) where registration and election materials were provided only in English on that date, and (3) less than 50 percent of the voting age citizens were registered to vote or voted in the 1972 presidential election. 42 U.S.C. § 1973b(f)(4).

[23] 42 U.S.C. § 1973c.

[24] 42 U.S.C. § 1973d.

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assistance coverage. As originally enacted and amended in 1982, section 203 has mandated language assistance in a state or political subdivision in which more than five percent of the voting age citizens are members of a language minority group and limited-English-proficient, and where the illiteracy rate for that group exceeds the national illiteracy rate.[25] To address the problem of excluding coverage for large numbers of language minority voters who might not meet the five-percent test in many of the country's largest population centers, Congress amended section 203 in 1992 to carry an additional test focusing on absolute numbers: a language minority group constituting a population with over 10,000 voting-age limited-English-proficient citizens in a jurisdiction and possessing an illiteracy rate above the national average is covered.[26]

Although designed to be temporary measures, the language assistance provisions of the Act have been in place for over three decades. And notwithstanding their lengthy history, recent litigation and election monitoring by community-based organizations have illuminated ongoing problems of noncompliance with the Act and its implementing regulations.[27] Common problems have revolved around inadequate numbers of trained bilingual poll workers, incomplete or insufficient amounts of translated election materials, and the failure to develop translated materials for the Internet and other electronic media. Group-specific issues such as transposing or incorrectly translating candidate names in Asian languages such as Chinese or Korean, mistranslating ballot initiative and referendum language, and establishing differential screening procedures for language minority voters have also been well-documented.[28] In addition, monitoring groups have chronicled numerous instances of voter intimidation, harassment, and discrimination (including the denial of ballots) against limited-English-proficient voters in many areas covered by section 4(f) and section 203.[29] Enforcement of section 203 by the Justice Department has been inconsistent as well. As the Department's Voting Rights Section itself divulged in 2005, more litigation had been filed since May 2004 than had been filed in the prior eight years,[30] which partly reflects the addition of new jurisdictions and language groups following the decennial census of 2000, but no doubt also reflects significant underenforcement of section 203 in previous years.

B. The Structural Remediation Model and the Language Assistance Provisions

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[25] 42 U.S.C. § 1973aa-1a(c). Congress amended section 203 in 1982 to require that a language minority group also be limited-English-proficient in order to satisfy the statistical benchmark, which led to a reduction in the number of eligible jurisdictions. H.R. Rep. No. 102-655, at 7 (1992).

[26] 42 U.S.C. § 1973aa-1a(b)(2)(A). The 1992 amendments also expanded section 203's coverage to include political subdivisions that contain all or any part of an Indian reservation in which over five percent of the residents are members of a single language group, are limited-English-proficient, and possess an illiteracy rate exceeding the national average. *Id.*

[27] Recent language minority litigation by the U.S. Justice Department is highlighted at http://www.usdoj.gov/crt/voting/litigation/caselist.htm#sec203cases.

[28] *See* National Asian Pacific American Legal Consortium, Sound Barriers: Asian Americans and Language Access in Election 2004 (2005); Asian American Legal Defense and Education Fund, Asian American Access to Democracy in the 2004 Elections (Aug. 2005); Glenn D. Magpantay, *Asian American Access to the Vote: The Language Assistance Provisions (Section 203) of the Voting Rights Act and Beyond,* 11 Asian L.J. 31, 37-48 (2004).

[29] Magpantay, *supra* note __.; Barry H. Weinberg & Lyn Utrecht, *Problems in America's Polling Places: How They Can Be Stopped,* 11 Temp. Pol. & Civ. Rts. L. Rev. 401, 410-15 (2002).

[30] http://www.usdoj.gov/crt/voting/sec_203/activ_203.htm#enforcement

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Like section 5, the Act's preclearance requirement, section 4(f) and section 203 are predicated on congressional findings of past discrimination and are designed to create structural remedies that are limited both in time (expiring in 2007 unless extended) and in scope. Consistent with their origins as remedial devices, section 4(f) and section 203 restrict their coverage in a number of important ways. First, the definition of "language minority" is limited to specific groups that Congress determined to have suffered significant discrimination in education and in the political process. Only language groups whose members are of Spanish heritage, American Indian, Asian American, or Alaskan Native are covered. Congress chose to omit limited-English-proficient voters from other racial and ethnic groups from the Act because discrimination against other groups was not as serious and did not result in comparably depressed levels of political participation.[31] Thus, limited-English-proficient voters whose primary language is European (other than Spanish), African, Middle Eastern, or Caribbean – notwithstanding group population size or level of illiteracy – are not covered by the Voting Rights Act's language assistance mandates.[32]

Second, the coverage mechanisms under section 4(f) and section 203 reflect Congress' employment of cost-benefit tradeoffs that limit assistance to only the largest language minority populations in a particular jurisdiction. The right to receive governmental assistance in one's primary language is not a core element of a group-based remedy unless one's group size is substantial and can justify the government's expense of providing assistance. Surpassing either the five percent benchmark or the numerical benchmark of 10,000 triggers section 203's language assistance requirements and any attendant rights. But, no statutory right to government-sponsored language assistance attaches – and none can be denied through English-only procedures – if a voter is a member of language minority group that is too small by congressional standards to justify receiving assistance.[33]

Third, section 203's illiteracy preconditions require a clear relationship between educational inequality and language assistance. Congress' findings have documented the links between discrimination in education, high levels of illiteracy, and depressed political participation. While a sizable language minority group may contain high numbers of adult immigrants who were educated abroad and completed their education beyond the fifth-grade level, large numbers of the same group might lack *English* literacy above the fifth-grade level, which can differ significantly from a figure based on grade-completion. Thus a language group might not satisfy the requirement that the group's illiteracy rate exceed the national rate, even though many voters might lack the necessary proficiency in English to participate in the political

[31] *See* S. Rep. No. 94-295, at 31 (1975) (highlighting census data showing that political participation rates in the 1972 Presidential election for voters of European origin greatly exceeded the rates for language minority groups).
[32] These groups can, however, be protected against violations of section 2 of the Voting Rights Act on the basis of racial discrimination, and language assistance may an appropriate remedy to address the section 2 violation.
[33] Even with these various limitations, the number of states and political subdivisions covered by section 4(f) and section 203 is extensive. *See* 28 C.F.R. pt. 55 & app. All of Alaska (for Alaskan Natives), Arizona (Spanish), and Texas (Spanish) are covered by section 4(f), as are political subdivisions in seven states (Spanish or American Indian languages). Section 203's coverage extends to jurisdictions in over thirty states, many with multiple language groups. For example, California's Los Angeles County must provide assistance to Spanish-speakers and five Asian language groups (Chinese, Filipino, Japanese, Korean, Vietnamese); Arizona's Pima County must provide assistance in Spanish and two American Indian languages (Yaqui, Tohono O'Odham); Alaska's Lake and Peninsula Borough must provide assistance in Athabascan, Aleut, and Eskimo. *See* Voting Rights Act Amendment of 1992, Determinations Under Section 203, 67 Fed. Reg. No. 144, 48871 (July 26, 2002).

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process.[34] The Act's illiteracy requirements elide this distinction and make the connection between past discrimination in U.S.-based education and language assistance remedies especially strong.

The language assistance provisions thus establish a remedial structure that is by design limited and subject to cost-benefit balancing that weighs group access to voting assistance against governmental resources and expenses. Although the language assistance provisions could be amended to expand coverage in a variety of ways – by lowering threshold statistical benchmarks to a percentage less than five percent or to absolute numbers less than 10,000,[35] by eliminating the illiteracy requirement, or by adding language groups against whom there has been significant discrimination[36] – the fundamental model revolves around remediation for specified groups and government-subsidized measures that apply only when costs are justified by sufficient numbers of minority voters.[37] The remedies are conspicuously incomplete: many voters who may face language barriers because of educational and political discrimination but whose numbers are lacking in a particular geographic location cannot avail themselves of the same statutory rights and government-mandated assistance. Nor are the language provisions, despite popular misconceptions about the law, designed to assist limited-English-speaking immigrant voters as a class, because of the limitations on group eligibility through the enumeration of protected minorities, as well as the requirement of illiteracy traceable to discrimination in the American educational system.

Nonetheless, the Act's remedial model does have significant parallels with statutes designed to promote language access and multilingual services in non-remedial settings. For example, under California's Dymally-Alatorre Bilingual Services Act,[38] a law enacted in the 1970s to provide multilingual assistance to limited-English-speaking individuals seeking state and local government services, government agencies must hire bilingual personnel, provide oral assistance, and develop and distribute translations of written materials when a "substantial number of non-English-speaking people" must be served by an agency. The state law establishes a statistical trigger of five percent of an agency's service population to indicate when a "substantial number" of individuals in a language group must receive language-appropriate

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[34] In the 1990s, for example, Korean American voters in Los Angeles County, despite possessing over twice the population needed to satisfy the 10,000 numerical benchmark, did not qualify for language assistance because their illiteracy rate did not exceed the national rate. *See* Glenn D. Magpantay, *Asian American Access to the Vote: The Language Assistance Provisions (Section 203) of the Voting Rights Act and Beyond,* 11 Asian L.J. 31, 50 (2004). After the year 2000, Korean Americans were covered under section 203 because census data revealed a group illiteracy rate above the national average.

[35] Advocates have proposed that the numerical threshold for section 203 should be lowered to 7,500, which has been estimated to add nine jurisdictions for Asian languages (over 77,000 voters) and six jurisdictions for Spanish (nearly 50,000 voters). *See* Testimony of Margaret Fung, Asian American Legal Defense and Education Fund Before the U.S. House of Representatives Committee on the Judiciary Subcommittee on the Constitution, Oversight Hearing on the Voting Rights Act: Section 203-Bilingual Election Requirements, Part I (Nov. 8, 2005), at 6, *available at* http://judiciary.house.gov/media/pdfs/fung110805.pdf.

[36] *See* Brenda Fathy Abdelall, *Not Enough of a Minority?: Arab Americans and the Language Assistance Provisions (Section 203) of the Voting Rights Act,* 38 U. Mich. J.L. Reform 911 (2005) (proposing the recognition of Arab Americans as a language minority group).

[37] For an analysis of the financial costs of language assistance implementation, see U.S. General Accounting Office, Bilingual Voting Assistance: Assistance Provided and Costs (1997).

[38] Cal. Gov. Code § 7290 et seq.

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services.[39] Local ordinances such as San Francisco's "Equal Access to Services" ordinance, enacted in 2001 to require oral and written translation for a variety of local services and procedures, track section 203's statistical benchmarks even more closely.[40] Under the San Francisco law, a "substantial number of limited English speaking persons" is defined by either a five percent trigger or a 10,000 population trigger for limited-English-speaking city residents from the same language group.

Similarly, Executive Order 13166 ("Improving Access to Services for Persons with Limited English Proficiency"), issued by President Clinton in 2000 to prevent national origin discrimination under Title VI of the Civil Rights of 1964,[41] establishes federal compliance standards that require agencies and recipients of federal funding to ensure that limited-English-proficient individuals receive "meaningful access" to federal programs and activities through appropriate assistance.[42] Agencies typically require language assistance in the form of interpretation services and translated materials, subject to a balancing test focusing on the number of limited-English-proficient persons to be served, the frequency with which individuals come in contact with a program, the importance of the program or service, and the costs and resources borne by the recipient.[43] Unlike the Voting Rights Act, the meaningful access guidelines do not rely on a fixed triggering mechanism, but they do employ a metric in which group size and interests are weighed against the costs of providing language-appropriate services. When justified, extensive interpreter services and written translations can be provided, but in some instances, the balancing test may tip in favor of providing limited assistance or no assistance – especially if the group is small, the interest is not deemed important, and the costs significantly outweigh the benefits.

C. Additional Enforcement Models: Section 2 and Section 208

Section 4(f) and section 203 impose the most extensive obligations on state and local governments to provide language assistance, but as structural remedies they are limited by their scope and their lifetimes. The Voting Rights Act offers additional protections to limited-English-proficient voters primarily through two permanent, but largely untapped, models of enforcement: (1) the general antidiscrimination provision contained in section 2 of the Act and (2) the voting assistor provision contained in section 208 of the Act.[44] Both of these sections – often applied in tandem with section 203 claims – have been employed with increasing frequency in Justice Department litigation designed to promote language assistance in local jurisdictions.

1. Section 2 and the Traditional Antidiscrimination Model

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[39] *Id.* § 7296.2.
[40] San Francisco, Cal., Admin. Code ch. 89. The text of the ordinance is available at http://www.las-elc.org/origin.html.
[41] 42 U.S.C. §§ 2000d- 2000d-4a.
[42] Exec. Order 13166, *reprinted in* 65 Fed. Reg. 50121 (Aug. 16, 2000).
[43] *See* 65 Fed. Reg. 50123, 50123-25 (Aug. 16, 2000).
[44] In addition, the Help America Vote Act of 2002 contains provisions ensuring that language minority voters receive appropriate assistance in new voting systems, including those systems using direct-recording electronic technologies, as well as provisions that create funding for increased research related to language accessibility.

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By prohibiting policies that can result in a denial or abridgement of the right to vote, section 2 offers the most general scope of protection for racial and language minorities under the Voting Rights Act. Like other federal antidiscrimination statutes such as Title VI[45] and Title VII[46] of the Civil Rights Act of 1964, section 2 is applicable nationwide, has no numerical trigger based on group size, and requires a determination of either intentional discrimination or discriminatory effects resulting from a challenged practice. Section 2 ensures that antidiscrimination protections extend, like similar statutes, to racial discrimination, but section 2 is unusual among federal antidiscrimination laws in that its protections beyond race or color are cabined by the definition of language minorities. Unlike Title VI and Title VII, which offer antidiscrimination protection on the basis of national origin – a category that has been interpreted through administrative regulation and case law to include protections against language-based discrimination – section 2's language minority category is bound by the same definition that applies to section 4(f) and section 203.[47] Section 2 is thus more explicit than other antidiscrimination laws in protecting against language discrimination, but individuals or groups who fall outside the protected language minority classes cannot assert claims unless the claims are based on race or color.[48]

Section 2 litigation on behalf of language minority plaintiffs has not typically focused on language-related claims; most claims have involved vote dilution, such as challenges to discriminatory at-large election systems or redistricting plans, and have proceeded as if they were race-based claims. But in *United States v. City of Hamtramck,* language assistance did play a central role in the remedial portion of a consent decree involving racial discrimination. The *Hamtramck* case revolved around race- and color-based claims brought on behalf of Arab American and darker-skinned Asian American voters whose citizenship and voter qualifications were challenged by members of a private citizens group during the November 1999 election in Hamtramck, Michigan – a problem that was largely unaddressed by local election officials.[49] In order to address problems of voter intimidation and harassment, the *Hamtramck* settlement required the training of officials on appropriate procedures for challenging voters and on methods to address voter intimidation; the consent decree went further and required that notices be prepared in English, Arabic, and Bengali to inform voters about the new practices and also required that bilingual workers be hired to assist on election day. Language assistance thus became a significant element of a remedy for section 2 violations based on race and color, but not on language per se.

Section 2 claims predicated on limited-English-proficiency are less common and usually appear in conjunction with language assistance enforcement actions by the Department of

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[45] 42 U.S.C. §§ 2000d- 2000d-4a

[46] 42 U.S.C. § 2000 et seq.

[47] In Hernandez v. Woodard, 714 F.Supp. 963, 968-69 (N.D. Ill. 1989), a federal district court made clear that section 2 claims on behalf of language minorities need not be coupled with section 203's statistical (5%) threshold in order to move forward.

[48] Recent case law interpreting the Fifteenth Amendment's prohibition on racial discrimination in voting to include ancestry-based classifications may provide support for a broader interpretation of "race" under the Voting Rights Act. *See* Rice v. Cayetano, 528 U.S. 495 (2000).

[49] United States v. City of Hamtramck, No. 00-73541(E.D. Mich. Aug. 7, 2000).

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Justice.[50] In *United States v. City of Boston*, for instance, the Justice Department alleged that the City had violated section 203 by failing to provide adequate Spanish-language assistance, but also alleged several section 2 violations involving not only Spanish speakers but also limited-English-proficient Chinese American and Vietnamese American voters who had been treated disrespectfully by election workers, had been ignored or improperly influenced in making ballot choices, and had been denied provisional ballots pursuant to the Help America Vote Act.[51] The court order in the *Boston* case included a set of policies common in Justice Department section 203 settlement agreements – improved translations of materials, a sufficient number of bilingual poll workers, dissemination of multilingual information, federal monitoring, and the development of a language assistance coordinator position and a community-based advisory body. But the court's section 2 remedies were merged with the section 203 mandates by applying language assistance to all three groups, even though only one group (Spanish speakers) was sufficiently large to be formally covered by section 203.

The antidiscrimination model available to limited-English-proficient voters under section 2 is thus evolving and may become an important source for the provision of language assistance, even if the claims focus on racial discrimination or on language minority status independent of actual language proficiency. However, language-based rights and remedies in section 2 jurisprudence are not as well developed as in other antidiscrimination laws such as Title VI, and section 2 enforcement has inherent limitations because it requires litigation and has largely been tethered to the law's remedial language assistance sections – both in the language of the section 2 and in its enforcement.

2. Section 208 and the Individual Accommodation Model

In 1982, Congress added section 208 to the Voting Rights Act, which states in part that "any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice."[52] Although established largely as an accommodation measure for disabled and illiterate voters, section 208 has been applied to limited-English-proficient voters (particularly those whose primary language is unwritten) when those voters require assistance to understand an English-only ballot and to exercise their right to vote. In formulating section 208, Congress recognized that having the assistance of a person of one's own choice may be "the only way to assure meaningful voting assistance and to avoid possible intimidation or manipulation of the voter."[53] Section 208 is a permanent provision of the Act that applies nationwide, and is not limited to the language minority groups specified in the Act's remedial language assistance sections.

Although section 208 imposes no affirmative obligations on state or local government to provide language assistance, it does create the basis for a Voting Rights Act violation if election officials impede or deny a voter's use of an assistor in order to vote. For example, in *United*

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[50] *See, e.g.*, United States v. City of Boston, No. 05-11598 WGY (D. Mass. Oct. 18, 2005) (three-judge court); United States v. Berks County, 277 F. Supp. 2d 570 (E.D. Pa. 2003).
[51] United States v. City of Boston, No. 05-11598 WGY (D. Mass. Oct. 18, 2005) (three-judge court).
[52] 42 U.S.C. 1973aa-6. Section 208 contains an exception precluding an assistor who is "the voter's employer or agent of that employer or officer or agent of the voter's union." *Id.*
[53] S. Rep. No 97-417, at 62 (1982).

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States v. Berks County, a 2003 case that also involved violations of section 4(e) and section 2, a federal district court found that Puerto Rican voters in Reading, Pennsylvania were barred from bringing their assistors of choice into the voting booth, just one form of voting rights violation reflecting an extensive pattern of "hostile and unequal treatment of Hispanic and Spanish-speaking voters by poll officials."[54] The court noted that when poll officials deny voters the right to bring their assistor of choice into the voting booth, "voters feel uncomfortable with the process, do not understand the ballot, do not know how to operate the voting machine, and cannot cast a meaningful vote."[55] The court ordered multiple remedies, including the development of Spanish-language publicity and election materials and the training of poll workers on the mandates of section 208.

Similarly, in *United States v. Miami-Dade County,* Haitian American voters who needed assistance in Creole were denied the full and effective use of assistors in the November 2000 presidential election.[56] Poll workers denied the use of assistors to many voters, and when assistance was allowed, it was often limited to demonstrations of voting procedures outside the voting booth. A consent decree between the federal government and Miami-Dade County required, among other things, new training programs for poll workers, voter education policies, and the employment of bilingual election employees in targeted precincts. Despite falling outside the coverage of section 4(f) or section 203, limited-English-proficient speakers of Haitian Creole – like any limited-English-proficient voters who need the help of an assistor – fall within the protection of section 208.

Section 208 typifies an accommodation model of civil rights enforcement that is common in disability law, albeit a weak version that imposes minimal obligations on government.[57] The law focuses on a legally recognized trait or characteristic (blindness, disability, or the inability to read or write in English) as well as an accompanying limitation which arises from that characteristic, and consequently requires a benefit or service – the accommodation – to help the voter overcome the limitation and gain full access to the ballot. A violation of the statutory right occurs when the accommodation is denied. Like other disability laws, section 208 fosters highly specific and personalized assistance, since the voter determines who will provide the assistance and what will be needed. However, unlike other areas covered by disability law such as the employment sector, where employers bear the cost of providing a reasonable accommodation for a disabled employee as long as there is no undue burden,[58] the costs under section 208 are carried largely by the private assistor and the affected voter, who bears the responsibility of arranging the assistance. The primary costs that state and local election officials assume is the cost of training their staff on how to prevent violations of the law because of interference with voters and their assistors; jurisdictions bear no significant costs in actually having to provide language

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[54] United States v. Berks County, No. 03-CV-1030 (E.D. Pa. Aug. 20, 2003), *available at* http://www.usdoj.gov/crt/voting/sec_2/berks_order.htm.
[55] *Id.*
[56] *See* United States v. Miami-Dade County, No. 02-21698, (S.D. Fla. June 17, 2002), *available at* http://www.usdoj.gov/crt/voting/sec_2/miamidade_cd.htm
[57] For a general discussion of the differences between traditional antidiscrimination law and disability accommodation law, see Pamela S. Karlan & George Rutherglen, *Disabilities, Discrimination, and Reasonable Accommodation,* 46 Duke L.J. 1 (1996).
[58] *See infra* notes ___ to ___ and accompanying test (discussing reasonable accommodations in employment).

assistance to the limited-English-proficient voter. And, the law imposes no standards whatsoever on the quality of the assistance provided to the voter.

Taken in combination, the remedial language assistance provisions in sections 203 and 4(f), the antidiscrimination requirements of section 2, and the accommodation provision in section 208 provide an array of potential enforcement tools, but they form a network of laws with significant theoretical and practical gaps. Section 4(f) and section 203 are powerful structural remedies that do not require individual findings of discrimination, but they are temporary and noticeably incomplete remedies. Section 2 jurisprudence on language rights is inchoate and bound by a definition of language groups that is specific but underinclusive; moreover, claims must be litigated and language assistance does not necessarily follow as a remedy. Section 208 is arguably the broadest enforcement mechanism for language assistance in the Voting Rights Act – allowing any limited-English-proficient voter to have assistance in voting – but the responsibilities for providing the accommodation fall largely on voters themselves, not on government.

Nevertheless, weaving together the different Voting Rights Act provisions has already found expression in recent language-assistance litigation, and reconciling the norms that underlie the various sections of the law can lead to a more effective model of voting rights enforcement, which can be further developed through case law, amendments to the Act, and administrative regulations. The next Part attempts to reconcile the strands of language rights models under the Act by offering a language accommodation model that draws on the Voting Rights Act and other antidiscrimination laws that focus on providing language assistance and meaningful access across a variety of settings.

II. FROM REMEDIATION TO LANGUAGE ACCOMMODATION

Language accommodation norms are inherent in various provisions of the Voting Rights Act, but Congress has not attempted to address the needs of limited-English-proficient voters in an integrated or comprehensive way. And such attempts may be problematic, at least in the near future, given recent developments in Supreme Court case law that have limited congressional power to enact civil rights legislation that may compromise principles of federalism, as well as a political climate in which any public policy proposing greater language assistance to minority voters is likely to see significant opposition. But formulating a more coherent basis for language assistance should prove useful in developing future voting rights legislation, and addressing the expansion or contraction of the current law, particularly sections 4(f) and 203, has immediate relevancy because of the debate over reauthorization of the Act's nonpermanent provisions.

A. Accommodation Norms in Theory and Practice

Although section 4(f) and section 203 are designed to be temporary and exceptional measures that address longstanding discrimination against particular groups, they contain the seeds of a broader language accommodation norm that has roots in both normative legal theory and existing laws addressing discrimination on the basis of national origin, religion, and disability. Accompanying this norm is a general legal framework that recognizes significant differences and limitations affecting the ability to participate fully in democratic life, imposes

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responsibilities and duties on appropriate actors to correct these limitations (subject to some degree of balancing against exceptional costs and hardships), and establishes civil rights claims when the duties are not satisfied or are impeded.

1. Accommodation and Democratic Participation

The question of providing language assistance to limited-English-proficient voters falls within a set of larger debates about the role of languages other than English in public life, civic unity and the assimilation of newcomers into American society, the responsibilities of government to its citizens and residents, and the basic goals of antidiscrimination law.[59] Outside of the voting rights context, there have been significant public debates in recent years over the use of bilingual education in the public schools, as well as the mandating of English as the official language of government, with initiatives and proposed statutes populating state ballots and legislative agendas.[60] The discord over language access and government-sponsored assistance has been particular acute because it has been tied to ongoing controversies over immigration policy and over linguistic and cultural diversity in American society.

Within these larger debates, language assistance in voting has been especially contentious because of conflicting views over the rights and responsibilities of voters, particularly those who are naturalized citizens. There is little disagreement that voting is essential for democratic governance and that discriminatory barriers to participation in the political process should be eliminated. But the overriding role of English in voting and the electoral process is subject to more heated dispute. Notwithstanding arguments criticizing the administrative and financial costs of providing language assistance, many detractors of language assistance philosophically oppose attempts to diminish the role of English as a civic unifier and a political *lingua franca.* Many see language assistance as a deterrent to learning English and disruptive of assimilation into American society; indeed, opponents of language assistance consider basic fluency in English to be a core element of American citizenship and point specifically to the requirements for naturalized citizenship, which, except for cases involving long-term elderly residents, include minimal literacy in English.[61]

On the other hand, support for language assistance policies draws on fundamental values of democratic participation and political empowerment for all citizens, as well as the need to eliminate discrimination and barriers to participation, which include linguistic barriers.[62] Arguments to make English proficiency a necessary precondition for citizenship and voting have

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[59] *See* Ronald Schmidt, Sr., Language Policy and Identity Politics in the United States (2000); Language Rights and Political Theory (Will Kymlicka & Alan Patten eds. 2003).

[60] *See, e.g.,* Crystal Goodson Wilkerson, Comment, *Patriotism or Prejudice: Alabama's Official English Amendment,* 34 Cumb. L. Rev. 253 (2003-2004); William Ryan, Note, *The Unz Initiatives and the Abolition of Bilingual Education,* 43 B.C. L. Rev. 487 (2002).

[61] 8 U.S.C. § 1423. The naturalization laws create exceptions for citizenship applicants who are over the age of 50 and have resided in the United States as a lawful permanent resident for over 20 years, or are over the age of 55 and have resided in the U.S. for over 15 years; these individuals need not demonstrate English literacy, but must still fulfill other statutory requirements, including demonstrating knowledge of American government and civics.

[62] *See* Cristina M. Rodríguez, *Accommodating Linguistic Difference: Toward a Comprehensive Theory of Language Rights in the United States,* 36 Harv. C.R.-C.L. L. Rev. 133 (2001); Cristina M. Rodríguez, Language and Participation, ___ Cal. L. Rev. ___ (forthcoming 2006).

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multiple flaws: While knowledge of basic English is a requirement for most of those seeking naturalized citizenship, the threshold for minimal English literacy required for naturalization falls well below what is needed to fully understand a ballot, particularly one that may contain initiatives or referenda. Moreover, as Congress itself recognized in passing the language assistance provisions in 1975, past and ongoing educational discrimination that leads to low levels of literacy can affect both immigrants and native-born citizens. And in the case of Native Americans, for whom American citizenship is not an issue, maintenance of a native language is not only desireable, it is strongly supported by federal efforts to preserve native languages.[63]

Normative arguments for language rights and language pluralism suggest that public policies should support multiple objectives that support broad goals of democratic participation: prohibiting language discrimination, such as workplace rules that proscribe the use of languages other than English; encouraging language assistance and English-language education for the limited-English-proficient to foster their incorporation into American society, and providing public support for the use and retention of languages other than English, which is essential in an increasingly globalized society.[64] Strong versions of these arguments thus pose that both antidiscrimination law and social welfare policies should establish regimes that recognize the right to use a language of one's choice, that prohibit infringements on these rights, and that impose responsibilities to provide language assistance across various sectors. Although antidiscrimination policy is not a substitute for social welfare policies or electoral policies that can mandate language assistance through the appropriation of government dollars, it can recognize sources of discrimination such as English-only rules and policies and impose responsibilities to accommodate language needs to remedy past discrimination and address ongoing discrimination.

Consistent with these normative theories, language assistance within the voting rights arena – independent of remediation predicated on congressional findings of discrimination – can advance two important and parallel goals: (1) promoting equality by preventing the subordination of limited-English-proficient citizens who are unable to participate in the political process because of language barriers, and (2) promoting civic engagement and political participation by voters who might otherwise be deterred or unable to participate in the political process without language assistance.

If one accepts the premise that there are sufficiently strong interests in addressing subordination and promoting civic engagement for limited-English-proficient voters to justify at least some forms of language assistance, the more difficult questions that follow focus on the type of legal regime to impose and on the appropriate allocation of resources and burdens that accompany the provision of language assistance. For instance, if the goal is minimally to provide an opportunity for voters to obtain some form of language assistance, section 208 of the Voting Rights Act already provides the basis for voters to receive language assistance through private, personal assistors and a minimal allocation of public resources. At the other extreme, a legal regime that imposes a governmental duty to provide language assistance to any limited-English-proficient voter who needs the assistance would establish an exceptionally demanding policy and entail very high public costs.

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[63] *See* Native American Languages Act of 1992, P.L. 102-524, 104 Stat. 883.
[64] *See* Schmidt, *supra* note __, at 130-162 (comparing linguistic pluralism and assimilationism arguments).

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Moreover, establishing a regime that creates significant governmental duties and shifts the costs among various private and public sectors generates thorny questions regarding the appropriate scope of a federal antidiscrimination law – compared to a public services or welfare policy – and could engender claims of unconstitutionality by exceeding Congress' enforcement powers under the Fourteenth and Fifteenth Amendments.[65] Between these extremes lies a norm that advances the equality and civic engagement interests, balances competing benefits and costs, and falls within the appropriate and constitutional scope of the Voting Rights Act. The next section draws on existing antidiscrimination laws to help inform this analysis.

2. Accommodation in Antidiscrimination Law

a. Title VI and Executive Order 13166

Compared to the Voting Rights Act, Title VI of the Civil Rights Act of 1964 has a more extensive history of administrative regulation and case law addressing limited-English-proficiency. Title VI does not explicitly proscribe discrimination on the basis of language use or limited English proficiency, but interpretations of the law by federal agencies have treated language-based discrimination as a species of national origin discrimination. Linguistic characteristics are often tightly bound with ethnicity and national origin, and a language-based policy can have discriminatory effects on members of a national origin group; thus, Title VI regulations and policy guidances issued by federal agencies typically prohibit language discrimination and impose obligations on recipients of funding to ensure that limited-English-proficient individuals have meaningful access to federally funded programs.[66]

In *Lau v. Nichols,*[67] the U.S. Supreme Court recognized the linkage between language and national origin discrimination when it concluded that the failure to provide language assistance to non-English-speaking Chinese American students in the San Francisco Unified School District violated Title VI regulations promulgated by the former Department of Health, Education, and Welfare. The federal regulations stated in part that "[w]here inability to speak and understand the English language excludes national origin-minority group children from

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[65] *See infra* notes ___ to ____ and accompanying text (regarding constitutional limitations on congressional legislation).

[66] The Department of Justice has issued Title VI implementing regulations for all executive agencies, requiring that grant recipients provide language assistance:

> "Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of the population, to provide information in appropriate languages to such persons.

28 C.F.R. § 42.405(d)(1); *see, e.g.,* 24 C.F.R. Part 100, App. B. at IV. L & M, V.D., VI.B. (Department of Education instructions to federal fund recipients to accommodate students with limited English proficiency to avoid national origin discrimination under Title VI); 45 Fed. Reg. 82,972 (Department of Health and Human Services observation that grant recipients "have an obligation under Title VI to communicate effectively with persons of limited English proficiency"). The relationship between language status and national origin has also been recognized under Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race or national origin in employment. *See* 29 C.F.R. § 1606.1 (Equal Employment Opportunity Commission regulations on national origin discrimination).

[67] 414 U.S. 563 (1974).

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effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students."[68] Inherent in the *Lau* Court's reasoning is the recognition of a difference and limitation – the inability to speak English – that gives rise to a claim of discrimination if government does not take affirmative steps to address the problem – in other words, if government does not make an accommodation.

President Clinton's Executive Order 13166 has reinforced the nexus between limited English proficiency and national origin discrimination by requiring federal agencies to examine their services, identify any special needs of limited-English-proficient individuals, and to develop and implement systems to provide those services so that individuals can have meaningful access to them.[69] The Executive Order also requires that federal agencies ensure that their recipients of federal funding provide meaningful access to limited-English-proficient applicants and beneficiaries. The Order and agency guidelines designed to implement it have led to the creation of structured plans and important developments in interpreter services and written translations across a wide variety of areas, including law enforcement, criminal justice administration, health care, and social services.

Governmental resources are, of course, neither unlimited nor universally guaranteed: the Department of Justice's policy guidance document for the Executive Order establishes compliance standards for both federal agencies and funding recipients that rely on a four-factor balancing test focusing on (1) the number or proportion of limited-English-proficient persons to be served, (2) the frequency with which these individuals come in contact with the program, (3) the nature and importance of the program or service to people's lives, and (4) the costs and resources available to the recipient.[70] For example, the guidelines for the Department of Health and Human Services, which provides extensive funding for health care services, contemplates a "mix" of services that can range from the use of on-site bilingual staff, access to commercial telephone services, and the use of family members or friends in the case of oral interpretation, and complete, partial, or summary translations in the case of written materials.[71] In some instances, the guidelines suggest that the costs may significantly outweigh the benefits, particularly when the number of individuals needing assistance is small and the service is not vital, and may justify only the most minimal language assistance.

The meaningful access guidelines thus allow a high degree of flexibility compared to the statistical triggering mechanisms of the Voting Rights Act. Yet even the enforcement of language rights under laws such as Title VI can prove to be elusive. Recent case law has limited private rights of action under Title VI to claims of intentional discrimination,[72] Executive Orders

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[68] *See id.* at 568. Soon after *Lau*, Congress ratified the holding in the Equal Educational Opportunity Amendments of 1974, where Congress stated that "the Federal government, as exemplified by Title VI of the Civil Rights Act of 1964, . . . has a special and continuing obligation to ensure that States and local school districts take appropriate action to provide equal educational opportunities to children and youth of limited English proficiency." 20 U.S.C. § 7402(a)(15).

[69] Exec. Order 13166, *reprinted in* 65 Fed. Reg. 50121 (Aug. 16, 2000).

[70] 65 Fed. Reg. 50123, 50123-25 (Aug. 16, 2000).

[71] 68 Fed. Reg. 47311, 47315-19 (Aug. 8, 2003).

[72] Alexander v. Sandoval, 532 U.S. 275 (2001) (concluding that there is no private right of action to enforce Title VI disparate impact regulations).

can be rescinded, and policy guidances issued by federal agencies, which are hortatory and by themselves do not carry the force of law, can be modified or repealed. Title VI and Executive Order 13166 actually can be applied to voting, but even with the extensive flow of federal funding to state and local governments involved in election administration, they are underutilized as enforcement tools. Government enforcement of Title VI and the Executive Order against election officials has essentially fallen between the cracks of agency responsibility: the voting rights section of the Justice Department does not currently enforce Title VI against state or local governments, and other sections of the Justice Department and other agencies that address program access for limited-English-proficient individuals do not enforce voting-related claims.[73]

Nonetheless, the Title VI and meaningful access mandates of Executive Order 13166 offer potential alternatives to the current Voting Rights Act regime – making explicit the relationship between national origin discrimination and the failure to provide assistance to limited-English-proficient individuals, and suggesting a more flexible regime of language assistance that provides at some degree of aid to a wide range of individuals.

b. Reasonable Accommodations in Disability Law

The "reasonable accommodation" standard employed in disability law provides an additional source for informing a language accommodation norm in voting rights law. Originating as a concept in employment discrimination law involving religion, where employers must provide an accommodation for an employee's religious observances or practices unless doing so would create an undue hardship,[74] the reasonable accommodation standard is well-established in laws such as the Americans with Disabilities Act (ADA) and the regulations for the Rehabilitation Act of 1973. For instance, under Title I of the ADA, which applies to disability discrimination in employment, illegal discrimination occurs when an employer fails to make reasonable accommodations for a disabled employee who can perform the essential functions of a job.[75] Examples of accommodations listed in the ADA include "job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations."[76]

Employers are not required to make every possible accommodation requested, however, and it may be appropriate in some instances for the employee to bear some of the costs of the accommodation. Moreover, employers can avoid the accommodation requirement altogether if they can demonstrate that the accommodation would impose an "undue hardship," which is an "action requiring significant difficulty or expense"[77] that involves weighing factors such as the

[73] Conversation with Merrily Ann Friedlander, Section Chief, U.S. Department of Justice, at National Asian Pacific American Bar Association Annual Convention, Chicago, Ill. (Oct. 22, 2005). <NOTE: Off the record interview; need e-mail to confirm.>
[74] *See* 29 C.F.R. § 1605.1. In Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977), the U.S. Supreme Court held that religious accommodations need only be made when costs are small and that anything "more than a de minimis cost" would impose an undue hardship. *Id.* at 84.
[75] 42 U.S.C. § 12111(8).
[76] *Id.* § 12111(9)(A).
[77] *Id.* § 12111(10)(A).

cost of the accommodation and the entity's size and financial resources.[78] Reasonable accommodation is thus a strongly individualized and case-specific legal regime in which disabled individuals and covered entities negotiate the accommodation in order to balance the interests of both the employee and the employer.

As Pamela Karlan and George Rutherglen have noted, the reasonable accommodation standard can be considered distinctive species of antidiscrimination law compared to the commonly used disparate treatment and disparate impact theories of liability, representing a "difference" model, rather than the more customary "sameness" model.[79] A difference model "assumes that individuals who possess the quality or trait at issue are different in a relevant respect from individuals who don't and that 'treating them similarly can itself become a form of oppression.'"[80] Disability accommodations theory further suggests that conventional structures and practices in the workplace and other settings are premised on what is perceived to be "normal" and already accommodate the needs of non-disabled individuals; providing a reasonable accommodation for a disabled individual should be considered neither "special" nor "extra," but simply a way of removing an existing barrier and stopping a different form of discrimination.[81]

Although the analogy is not perfect, the barriers encountered by the limited-English-proficient based on the "normal" nature of English language ballots and election materials can function in the same way that barriers in the workplace limit the employment opportunities of the physically or mentally disabled.[82] The individual who is unable to fully comprehend an English-only ballot, but could exercise an informed and effective vote if the election materials were available in the individual's first language, is much like the disabled individual who is able to perform the essential functions of job if accommodations such as equipment modifications or interpreter services are made available. Indeed, the legislative history of section 208 of the Voting Rights Act, which has covers blindness, disability, and illiteracy in a single sweep, captures some of the parallels between disability and limited English proficiency:

> Certain discrete groups of citizens are unable to exercise their rights to vote without obtaining assistance in voting including aid within the voting booth. These groups include the blind, the disabled, and those who either do not have a written language or who are unable to read or write sufficiently well to understand the election material and the ballot. Because of their need for assistance, members of these groups are more susceptible than the ordinary voter to having their vote unduly influenced or manipulated. As a result, members of such groups run the risk that they will be

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[78] 42 U.S.C. § 12111(10)(B).

[79] Karlan & Rutherglen, *supra* note ___, at 10. *But cf.* Christine Jolls, *Antidiscrimination and Accommodation,* 115 Harv. L. Rev. 642 (2001) (proposing strong similarities between traditional antidiscrimination models and accommodation models).

[80] Karlan & Rutherglen, *supra* note ___, at 10 (emphasis added).

[81] Mary Crossley, *Reasonable Accommodation as Part and Parcel of the Antidiscrimination Project,* 35 Rutgers L.J. 861, 890-93 (2004).

[82] The strength of the analogy rests primarily on a normative judgment about the whether limited-English-proficiency is a trait that is as deserving of recognition and special treatment as a physical or mental disability.

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discriminated against at the polls and that their right to vote in state and federal elections will not be protected.[83]

Like the meaningful access guidelines for limited English proficiency under Executive Order 13166, the reasonable accommodation standards in disability law require both the recognition of difference and affirmative steps to address problems caused by that difference, but they do not impose obligations that are fixed or inescapable. Costs and hardships are weighed and balanced against interests in providing access and the opportunity for meaningful participation in an institution, whether that involves receiving services or gaining employment.

B. A Language Accommodation Norm

While it is possible to develop a voting rights model that closely the meaningful access and accommodations standards that appear in other antidiscrimination laws, an effective model for language accommodation in the voting arena should recognize both the similarities between voting rights and other antidiscrimination guarantees and the differences that make voting a unique and vital element of a democratic society. As a vehicle for ensuring civic engagement and avenues for political participation and empowerment, voting enjoys a venerated position in the constellation of civil rights. The right to vote has been recognized as a fundamental right for purposes of equal protection review and is considered preservative of other basic civil and political rights.[84] Thus there are strong reasons for ensuring that the basic right to vote is preserved, even beyond the standards imposed to ensure statutory rights to nondiscrimination in laws such as Title VI or the ADA.

Accordingly, a model of language accommodation in voting should encompass the "difference" principle of antidiscrimination law inherent in the meaningful access and reasonable accommodations standards and incorporate the cost-benefit analyses that inevitably arise with the imposition of responsibilities on government. But, a model of voting rights protection should also militate strongly against infringements of the basic right to vote arising from the burdens that might be borne by government. In other words, where "undue hardship" in the voting context can create the functional equivalent of voter disenfranchisement, a language accommodation model should insist on some vehicle for ensuring meaningful access to the vote, even if that means shifting most of the burdens to voters and actors other than government – as does Section 208's guarantee of aid through private assistors. The model thus revolves around three key elements: (1) difference recognition, (2) appropriate accommodations, and (3) hardship boundaries.

1. Difference Recognition

Recognizing that limited-English-proficiency constitutes a basis for discrimination and should be addressed through some type of language assistance is an essential first step in articulating a language accommodation norm. The current language minority definitions of the Voting Rights Act reflect Congress' determination in 1975 that language status can closely track

[83] S. Rep. No. 97-417, at 62 (1982).
[84] *See* Harper v. Virginia Bd. of Elec., 383 U.S. 663 (1966) (the right to vote is fundamental right subject to strict scrutiny review under the equal protection clause).

race and color as bases for discrimination in voting. The recognition of difference is inherent in the creation of the language minority category: Congress determined that language characteristics – specifically for Latinos, Asian Americans, and Native Americans – formed the basis for extensive voting discrimination that was unaddressed through the wording of the original 1965 statute. Section 4(f) and section 203 are thus grounded in a difference principle focusing on characteristics involving English-language ability and literacy, imposing structural remedies that address language barriers caused by differences arising from discrimination in education and the political process.

But these differences need not be the only ones that are recognized. The current language minority definitions, when applied to general antidiscrimination provisions like section 2, are both overinclusive and underinclusive of limited-English-proficient voters.[85] As analogues to race, the definitions cover a spectrum of speakers and language communities ranging from monolingual English speakers to monolingual speakers of languages other English to those with varying degrees of bilingual ability – what Cristina Rodríguez has labeled a "mutability continuum"[86] – but not all language minority voters require assistance in order to cast a meaningful and effective vote. The definitions are overinclusive because they include voters who may suffer race-like discrimination because of status and group membership, but are not necessarily limited-English-proficient. Employed outside of the remediation mechanisms of sections 4(f) and 203 and applied to section 2, the definitions are underinclusive of limited-English-proficient voters who fall outside the enumerated groups; Arabic and Haitian Creole are just two examples of languages whose speakers fall outside the definitions.

When deployed as part of a structural remedy, the language minority category need not include groups that Congress has not found to have faced discrimination. But if a difference principle focusing on language is to apply to the general and permanent provisions of the Act, then another type of definition could be deployed. One method is through the category of "national origin," which has an established basis in equal protection jurisprudence and is well developed in antidiscrimination laws such as Title VI. Language proficiency is not directly implicated on the face of a national origin category, but agency regulations and guidances that draw on existing guidelines found in Title VI and Executive Order 13166 enforcement could ensure coverage. A second method is to address limited-English-proficiency directly, through a category that recognizes the barriers facing voters with limited English ability and that has an independent definition, such as "voters who are limited-English-proficient" or "voters who possess a language-based disability that limits their ability to meaningfully access the vote." Although a category based specifically on language proficiency may raise constitutional questions on the scope of congressional power (as discussed in Part III of this paper), they could provide more clarity to the current definitions attached to section 2 and foster more fitting accommodations.

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[85] To say that the language minority definitions are both underinclusive and overinclusive does not make them constitutionally defective, however. Underinclusive legislation is constitutionally tolerable, since legislatures may choose to address one or limited elements of a problem rather attack it comprehensively. *See, e.g.,* Railway Express Agency v. New York, 336 U.S. 106 (1949). Overinclusiveness, in this instance, reflects the dual nature of the language minority definitions; as analogues to race, they are not overinclusive at all, but with respect to the subset of individuals who are limited-English-proficient, the category does not fit as tightly as a category such as "limited-English-proficient language minorities."

[86] Rodríguez, *Accommodating Linguistic Difference, supra* note ___, at 142-43.

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2. Appropriate Accommodations

As a consequence of difference recognition, a language accommodation norm must create mechanisms for both individual and group access to the vote and shift the costs of assistance away from the voter alone. A strong accommodation norm can impose significant costs on government, while a weaker norm might simply create vehicles to prevent the denial of privately offered accommodations. Individual accommodation mechanisms already exist within the Voting Rights Act under section 208, while group-based accommodations are available under the language assistance provisions of section 4(f) and section 203. But even in combination the accommodations fall short of an ideal regime. Section 208 guarantees accommodation rights to any voter who needs a voting assistor, but the law imposes no checks on the quality of the assistance, nor does it impose any responsibility on local officials to provide assistance. The language assistance provisions of sections 4(f) and 203 establish a structural accommodation regime that is triggered by a combination of group definitions and statistical benchmarks, but like a light that is switched either on or off, the structural remedy either requires full-scale remedies or none at all. The expansion of litigation remedies to sub-benchmark populations in cases such as *United States v. Boston,* as well as voluntary efforts of local election officials to provide assistance to a growing number of language groups, demonstrate that accommodations need not be limited to populations that satisfy current triggers.

Subject to constitutional limitations, the Voting Rights Act can incorporate a wide range of accommodation mechanisms beyond the status quo. Disability law guidelines offer highly individualized accommodations, but they also create common categories of assistance that might engender parallel categories in the voting sector. The meaningful access guidelines for Executive Order 13166 also suggest that an array of measures short of full interpreter services and ballot translations can be adopted to provide some measure of assistance to language minority voters who fall below statistical benchmarks of section 203. In the context of voting, the four-factor meaningful access guidelines (numbers, frequency of contact, importance of interest, costs) can focus on key inquiries around the size and needs of language groups and the appropriate mechanisms based on the cost-effectiveness of assistance. For instance, when looking at groups whose size falls below the section 203 triggers, a sliding scale of interpreter services and written translations could developed based on group size, need, and the costs of hiring interpreters and creating translations. A relatively small group, such as one constituting between 1,000 and 3,000 voters, might justify a reduced pool of interpreters who are located only at key precincts or at a centralized location, along with more limited number of translated materials and centralized distribution areas; a larger group, but one still falling below the 10,000 benchmark might require a larger deployment of interpreters and more widespread availability of written translations. Some costs, such as transportation or accessing materials through the Internet could be borne by the voter, while others would be borne by government or by government contractors.

Moreover, if language-based differences are recognized as a basis for discrimination, language accommodations can be incorporated into potential remedies for violations of section 2. The language assistance remedies found in section 2 cases such as *United States v. Hamtramck* and *United States v. Boston* recognize that assistance mechanisms can be key components of make-whole remedies for both intentional discrimination and public policies that result in discrimination. A nascent language jurisprudence involving the general antidiscrimination

provisions of the Voting Rights Act can rely on the recent case law to develop language assistance remedies that mandate government-sponsored aid and create incentives for voters to employ language assistors.

3. Hardship Boundaries

Because of the basic nature and importance of voting, the cost-benefit calculus of a language accommodation regime must provide a baseline for language assistance that prevents the disenfranchisement of limited-English-proficient voters through claims of "undue hardship" by local jurisdictions. Under the current mandates of section 4(f) and section 203, the hardship calculation is built implicitly into the language of the statute: a jurisdiction with a language minority population falling below the statistical benchmark (5% or 10,000) necessarily incurs a hardship if it had to provide language assistance, because the costs of providing an accommodation to a population less than the trigger would be excessive.

But the hardships in addressing the needs of a smaller population need not be undue if appropriate mechanisms are in place. For example, even the smallest number of limited-English-proficient voters can receive an accommodation by requiring jurisdictions to provide simple translated notices that voters can use individual assistors pursuant to section 208. The financial costs of such accommodations would be minimal if they merely entailed translating a small number of sentences and printing them on election materials designed for the general populace, as well as materials targeted to the language group; oral notices, particularly for voters whose language with no written component, could be distributed via recorded public service announcements or to community organizations that work closely with the relevant populations.

Taken together, the difference recognition, appropriate accommodations, and hardship boundaries of a language accommodation norm are rooted in antidiscrimination law, drawing on theories and standards that are well established in both the Voting Rights Act and related areas of law. As discussed in the next Part, staying within the boundaries of antidiscrimination law is essential to offer language assistance through the Voting Rights Act and still stay within recent constitutional constraints imposed upon Congress.

III. IMPLEMENTING LANGUAGE ACCOMMODATION

Implementing a language accommodation norm within the Voting Rights Act requires amendments to the current statute, as well as parallel developments in administrative regulations and case law. Nevertheless, expanding voting rights standards beyond the status quo is also subject to strong constitutional and political constraints. This Part discusses the constitutional limitations on implementing a language accommodation norm and suggests a strategy that focuses on both the reauthorization of the current language assistance provisions and potential legislation to expand other areas of the law. It concludes with recommendations for stronger enforcement of Title VI of the Civil Rights Act of 1964 and the Help America Vote Act of 2002.

A. Constitutional Limitations

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At first glance, the basic constitutionality of language assistance under the Voting Rights Act would seem uncontroversial. Congressional exercises of power to enforce the protections of the Fourteenth and Fifteenth Amendments via the Act have been almost entirely upheld as constitutional, and have been used as judicial benchmarks for comparing other legitimate exercises of congressional powers. In *South Carolina v. Katzenbach,*[87] the U.S. Supreme Court upheld the constitutionality of major sections of the Voting Rights Act as consistent with Congress' powers to address discrimination pursuant to the Fifteenth Amendment, and in *Katzenbach v. Morgan,*[88] the Court specifically upheld the constitutionality of section 4(e), which in *Morgan* had been used to prohibit enforcement of a New York law that required English literacy as a precondition for voting and thus discriminated against limited-English-speaking Puerto Rican voters educated in Spanish-dominant schools. The *Morgan* Court concluded that Congress had broad powers to ban literacy tests consistent with both its findings of past discrimination and its interpretation of the equal protection clause – even though the Supreme Court had previously upheld the constitutionality of literacy tests[89] – and concluded that section 4(e) was "a proper exercise of the powers granted to Congress by § 5 of the Fourteenth Amendment."[90]

Recent case law, however, has circumscribed Congress' powers to breach state sovereign immunity and remedy discrimination pursuant to section 5 of the Fourteenth Amendment, casting doubt on *Morgan's* vitality as a general precedent.[91] Moreover, the powers of Congress to address language-based discrimination directly, rather than as a species of racial and national origin discrimination, remain problematic because the status of language groups under the Fourteenth Amendment is poorly defined by Supreme Court case law. Each of these constricting factors must be considered in developing any language accommodation regime.

1. Congruence and Proportionality Requirements

Since the late 1990s, the Supreme Court's "new federalism" jurisprudence has imposed significant limits on congressional powers to create remedies against the states in order to address discrimination. In *City of Boerne v. Flores,* the Court distinguished legislation that is "remedial" and falls within the powers of Congress under section 5 and legislation that makes a "substantive change" in rights and thus exceeds congressional powers.[92] The Court stated:

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[87] 383 U.S. 301 (1966).
[88] 384 U.S. 641 (1966).
[89] Lassiter v. Northampton Elec. Bd., 360 U.S. 45 (1959).
[90] *Morgan,* 384 U.S. at 652-53. Congressional power over voting rights enforcement was tempered in *Oregon v. Mitchell,* where a divided Court upheld several of the 1970 amendments to the Voting Rights Act, but struck down the section of the Act that lowered the minimum age in state and local elections from 21 to 18 as exceeding congressional powers.
[91] *See generally* Richard L. Hasen, Congressional Power to Renew the Preclearance Provisions of the Voting Rights Act After *Tennessee v. Lane,* 66 Ohio St. L.J. 177 (2005); Michael E. Waterstone, Lane, *Fundamental Rights, and Voting,* 56 Ala. L. Rev. 793 (2005).
[92] 512 U.S. 507 (1997). *City of Boerne* focused on the constitutionality of the Religious Freedom Restoration Act (RFRA), which was enacted in 1993 in response to the Supreme Court's decision in *Employment Div., Dept. of Human Resources v. Smith,* 494 U.S. 872 (1990), where the Court relaxed the protections of the First Amendment's free exercise clause in upholding a state drug law that Native Americans challenged as an infringement on their religious beliefs and their ceremonial use of peyote. The *City of Boerne* Court concluded that Congress' attempt to overturn the *Smith* case through the RFRA exceeded its § 5 powers.

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"Congress does not enforce a constitutional right by changing what the right is. It has been given the power 'to enforce,' not the power to determine what constitutes a constitutional violation."[93] The Court further concluded that "[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end. Lacking such a connection, legislation may become substantive in operation and effect."[94] In *Kimel v. Florida Board of Regents,*[95] the Court ruled that Congress' authorization of damages lawsuits against the states through the Age Discrimination in Employment Act exceeded Congress' section 5 powers because there had been no historical pattern of age discrimination and because age is not a "suspect class" subject to heightened review under the equal protection clause – and indeed can be a legitimate basis for government classifications. Congress' abrogation of sovereign immunity therefore lacked congruence and proportionality.

The congruence and proportionality test was further coupled with a heightened evidentiary standard in *Board of Trustees of the University of Alabama v. Garrett* to require that Congress thoroughly document state discrimination against a protected group in order justify the piercing of sovereign immunity.[96] The *Garrett* Court held that Congress had exceeded its powers by authorizing individual lawsuits for damages against state governments for violations of Title I of the ADA, which contains the ADA's reasonable accommodation standards for employment. Reasoning that because disability discrimination is not subject to heightened review under the equal protection clause, and because the ADA's reasonable accommodation mandate goes far beyond what the constitution requires, the *Garrett* Court concluded that Congress' response lacked proportionality and congruency. The majority found Congress' legislative record on disability-based discrimination by states to be insufficient, particularly when compared to the extensive legislative record for the Voting Rights Act. A pattern of widespread state discrimination in employment against the disabled, going beyond the record of private employment discrimination, would have been necessary to support such a strong congressional remedy.

Some of the Court's most recent cases have weakened *Garrett's* evidentiary requirements to some extent, at least in cases involving gender discrimination and the fundamental interest in gaining access to the courts, which are both subject to heightened review under the equal protection clause. In *Nevada Department of Human Resources v. Hibbs,*[97] the Court upheld the authorization of lawsuits against states under the Family Medical Leave Act, which entitles eligible employees to take up to twelve weeks of unpaid annual leave from work for, among other things, serious health conditions affecting a spouse. The *Hibbs* Court did not insist on a strong empirical basis for the contention that gender-role stereotyping and discrimination often occur through differential state employment policies, relying on the fact that the Court had already recognized gender should be subject to heightened equal protection review; thus, the congruence and proportionality requirements of *City of Boerne* were readily satisfied. Similarly, in *Tennessee v. Lane,*[98] the Court upheld congressional powers authorizing lawsuits against states

[93] 512 U.S. at 519.
[94] *Id.* at 520.
[95] 528 U.S. 62 (2000).
[96] 531 U.S. 356 (2000).
[97] 538 U.S. 721 (2003).
[98] 124 S. Ct. 1978 (2004).

for violating Title II of the ADA, which prohibits the exclusion of disabled individuals from public services and programs, where the disabled plaintiff was denied the fundamental right of access to courts.

The Court's federalism jurisprudence continues to evolve,[99] so there are few clear answers to the question of whether a language accommodation regime under the Voting Rights Act would necessarily satisfy the most recently developed standards. The recent cases have involved damages lawsuits against the states in abrogation of sovereign immunity, and the cases have not obstructed longstanding avenues for injunctive relief against state officials,[100] as well as suits against local governments, which are not protected by sovereign immunity. Damages actions are outside the Voting Rights Act's purview, but there is no guarantee that the Court would not apply similar standards of congruence and proportionality to the remedial mandates of the Act. There are strong parallels between language assistance in voting and the principles in recent cases such as *Hibbs* and *Tennessee v. Lane*. Like access to the courts, the basic right to vote is a fundamental interest that can invoke strict scrutiny under the equal protection clause. *Hibbs* also suggests that the Court is willing to accept at least weak versions of accommodations as proportional responses to equal protection violations. Requiring employers to grant unpaid leave time is a mild form of accommodation designed to shift some of the costs of family-related leaves to the employer; the failure to provide the leave time creates a statutory violation.

Under any circumstance, Congress must establish a solid predicate for structural remediation mandates such as section 203 and section 4(f). Even without amending the language assistance provisions, reauthorization efforts must focus on documenting educational discrimination and its effects on literacy and political participation, as well as discrimination in the electoral process itself. The literature demonstrating educational inequalities affecting language minorities and limited-English-proficient students in particular is broad; and, recent litigation and reports by groups monitoring implementation of section 203 and section 4(f) document that discrimination against language minorities is still a significant problem. But Congress must consider the empirical evidence and compile a sufficient record to establish the proportionality of its response.

Any accommodations measures that go beyond the existing mandates should also be especially well supported. In finding a lack of proportionality between the ADA's reasonable accommodation requirements and the record of state government discrimination against the disabled, the *Garrett* Court noted that the accommodation duty under the ADA "far exceeds what is constitutionally required in that it makes unlawful a range of alternate responses that would be reasonable but would fall short of imposing an 'undue burden' upon the employer. The Act also makes it the employer's duty to prove that it would suffer such a burden, instead of requiring (as the Constitution does) that the complaining party negate reasonable bases for the employer's decision."[101] Even with the more relaxed standards implied by *Hibbs* and *Lane,* the

[99] In its most recent term, the Court held that it was within Congress' powers to create a cause of action for damages under Title II of the ADA for conduct that *actually* violates the Fourteenth Amendment. United States v. Georgia, No. 04-1203 (Jan. 10, 2006). The case focused on a pro se prisoner's claims of Eighth Amendment and Title II violations arising from his prison conditions and his being a paraplegic.
[100] Ex Parte Young, 209 U.S. 123 (1908).
[101] 531 U.S. at 372.

Court's admonition against unusually strong accommodation remedies argues in favor of creating a strong evidentiary record of past discrimination in the language arena.

2. Language Classification Limits

Another key constitutional question is whether accommodations measures that create statutory rights on the basis of language proficiency alone would satisfy the congruence and proportionality tests. As currently defined, the language minority category closely tracks race and national origin; however, adding a new definition such "discrimination based on language proficiency" poses another set of questions regarding Congress' expansion of the equal protection clause beyond its current constellation of rights. The Supreme Court's equal protection jurisprudence regarding language status, untethered from race or national origin, is not well developed, and the Court has never held that limited-English-proficiency alone is a suspect classification deserving heightened scrutiny. Indeed, a number of lower federal courts have held that language does not identify members of a suspect class and have upheld English-only public services and conditions as constitutional.[102] This is not to say that Congress cannot prohibit discrimination on the basis of English proficiency; the legislative response must be proportional, and the Court's recent treatment of antidiscrimination laws based on the non-suspect classes of age and disability suggests that there may be strong restrictions for measures based solely on language ability.

The Court's equal protection jurisprudence on race and national origin is well established, but the Court has offered only glancing analysis to the relationship between language and race and to the status of language as an independent basis for heightened judicial review. Unlike agency regulations that have established a clear connection between language and disparate impacts on national origin groups, the Court's equal protection jurisprudence, which only covers claims of intentional discrimination, has been almost silent on the subject. While the Supreme Court has struck down bans on the use of languages other than English as violative of due process,[103] it has had little to say about protections for limited-English-proficient individuals. In *Hernandez v. New York,* the Supreme Court's only modern case addressing language-based discrimination under the equal protection clause, the Court upheld the use of peremptory strikes by prosecutors who argued that striking potential jurors from a jury venire was based on their bilingual ability and their potential inability to listen and follow a court interpreter, not on race or national origin.[104] Justice Kennedy's plurality opinion in *Hernandez* rejected a connection between bilingual ability and race under the specific facts of the case, but did indicate that language could serve as proxy for race:

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[102] In *Soberal-Perez v. Heckler,* for instance, the Second Circuit rejected a claim that the Secretary of Health and Human Services' failure to provide forms in Spanish violated equal protection, and stated: "A classification is implicitly made, but it is on the basis of language, i.e., English-speaking versus non-English-speaking individuals, and not on the basis of race, religion or national origin. Language, by itself, does not identify members of a suspect class." 717 F.2d 36, 41 (2d Cir. 1983), *cert. denied,* 466 U.S. 929 (1984); *see* Frontera v. Sindell, 522 F.2d 1215, 1219 (6th Cir.1975) ("We are not dealing here with a suspect nationality or race.); Carmona v. Sheffield, 475 F.2d 738, 739 (9th Cir.1973) (the state's choice "to deal only in English has a reasonable basis").

[103] *See* Meyer v. Nebraska, 262 U.S. 390 (1923); Yu Cong Eng v. Trinidad, 271 U.S. 500 (1926).

[104] 500 U.S. 532 (1991).

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> Just as shared language can serve to foster community, language differences can be a source of division. Language elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility. In holding that a race-neutral reason for a peremptory challenge means a reason other than race, we do not resolve the more difficult question of the breadth with which the concept of race should be defined for equal protection purposes. We would face a quite different case if the prosecutor had justified his peremptory challenges with the explanation that he did not want Spanish-speaking jurors. It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.[105]

Without a square holding that limited-English-proficiency forms the basis for a suspect classification, a language accommodation measure must either be coupled analytically with race and national origin or be evaluated through the lens of rationality review, which implies that the *City of Boerne/Garrett* line of cases may constrain the remedies and accommodations developed on the basis of language. Consequently, a wiser course to help ensure the constitutionality of an accommodations measure under the Voting Rights Act may be to rely on a group definition such as national origin, which rests on more solid constitutional ground as a suspect classification, and to employ administrative regulations to help cement the relationship between limited-English-proficiency and national origin discrimination.

B. Enforcing Accommodations Norms

There has not been a groundswell of legislative activity in the language rights area, and it would be naive to ignore the political opposition to subsidizing governmental language assistance of any kind, whether in the voting arena or in areas such as education and social services. Indeed, the depth of the controversies over language assistance crystallized in the mid-1990s after Congress passed the 1992 amendments to the Voting Rights Act, which extended the remedial language assistance provisions for an additional fifteen years. Only four years after the 1992 amendments were enacted, the House of Representatives, by a 259 to 169 vote, passed H.R. 123, which would have established English as the official language of the federal government and would have repealed section 4(f) and section 203. Senate inaction on H.R. 123 led to its eventual demise during the 104th Congress, but similar bills have been consistently introduced in Congress, and current opposition to language assistance measures is well beyond token.[106] A pragmatic strategy for legislative change should focus on incremental changes to the language assistance provisions, documented by adequate research and evidence of ongoing discrimination against language groups, as well as modest changes to the permanent provisions of the Act and implementing regulations.

Reauthorization of Section 4(f) and Section 203. As discussed above, the language assistance provisions offer no safety net for language minority voters whose numbers fall below the statistical triggers. Lowering numerical thresholds to a figure such as 7,500 is a useful

[105] *Id.* at 371.
[106] *See* http://ourworld.compuserve.com/homepages/JWCRAWFORD/langleg.htm (summarizing recent legislation and discussing H.R. 123).

amendment that will lead to coverage of more jurisdictions and more voters, but it would still replicate a model that offers no protections for sub-trigger populations. A flexible, sliding scale approach would offer a preferable regime – not as a substitute, but as an adjunct to a threshold mechanism that requires full accommodations to a large-enough language group in a jurisdiction. Sub-trigger groups could be ordered by categories and appropriate accommodations could deployed with each category. For purposes of structural remediation, the basic definitions of the language minority groups do not have to be amended, except to reflect Congress' addition of groups that have been shown to have suffered comparable levels of discrimination in education and the political process.

Section 2 and General Antidiscrimination Measures. The permanent provisions of the Voting Rights Act raise a different set of issues, with the Supreme Court's recent federalism cases posing limits on the creation of accommodations that might exceed congressional powers, and would require separate amendment. The language minority classification in section 2, drawn from the Act's remedial provisions, creates race-like categories to address status-based discrimination, but employing national origin as a basis for illegal discrimination would remove the limits imposed by the current definitions and allow the importation of standards from other civil rights laws. If the Act were to incorporate national origin protections within section 2, imposing a broader regime of accommodations would need to be justified by a strong predicate that documents problems of national origin and language discrimination in the political process.

Additionally, a regulatory regime comparable to the Title VI and Executive Order 13166 agency mandates would add greater clarity to section 2's general prohibition on discrimination and provide additional support for judicial remedies in litigation. Without duplicating the requirements under section 203 and section 4(f), a regulatory model could focus on more modest mandates and recommendations that cover all limited-English-speaking voters and do not require that illiteracy levels for language groups exceed the national average. A regulatory scheme which includes mechanisms for jurisdictions to provide notices of the section 208 assistor provisions to all voters in their ballot materials and to translate notices based on cost-benefit calculations is an example of a minimally intrusive requirement that should conform to constitutional limits.

Coordination with Title VI and the Help America Vote Act. Both Title VI and the Help America Vote Act of 2002 offer additional mechanisms to enforce language accommodation norms. Title VI and the Executive Order already offer statutory and regulatory bases for developing flexible language accommodations measures. Although private rights of action to enforce Title VI's disparate impact regulations can no longer be initiated because of recent Supreme Court case law, agency enforcement is still available and can be applied by the Department of Justice and attach through funding from various agencies, including the Federal Election Assistance Commission, which administers payments and grants in support of the Help America Vote Act (HAVA).[107]

HAVA itself offers a system of government payments and grants that allows language accommodation measures to be incorporated into voting systems improvements and technological innovations by states. The law already contains provisions for payments to the states for "improving the accessibility and quantity of polling places, including providing

[107] 42 U.S.C. § 15301 et seq.

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physical access for individuals with disabilities, providing nonvisual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language."[108] Moreover, HAVA requires that voting systems for federal elections must "provide alternative language accessibility pursuant to the requirements of [section 203 of the Voting Rights Act]."[109]

Although still viewed with some skepticism and still possessing problems involving security and accessibility, new technologies such as direct record electronic voting systems do have the potential to lower the costs and burdens imposed upon government to implement written translations. The lack of appropriations to support the HAVA mandates has been a major stumbling block to developing voting systems with strong language accommodations.[110] But HAVA and other election assistance laws based on congressional appropriations still have the potential to provide greater access to limited-English-proficient voters, as well as the advantage of bypassing the strictures of the courts' recent decisions on congressional enforcement of the Fourteenth Amendment by being attached to Congress' spending powers.

CONCLUSION

When Congress amended the Voting Rights Act in 1975 to recognize discrimination against language minorities, it created powerful mechanisms to ensure the right to vote and to increase the participation of minority voters. Yet, the guarantees have been uncertain and often incomplete. The current law has limitations, and the proposed model of language accommodation attempts to improve the statute and its implementation, and to place the Voting Rights Act in greater alignment with other federal antidiscrimination laws. But implementing a small but important set of changes in a single law must also be supported by a broader norm that acknowledges the linguistic diversity of the United States and an overriding goal of increasing civic engagement and electoral participation by all Americans. An antidiscrimination policy is not a substitute for an agenda that also includes public policies under which both language assistance and English-language learning are integrated into public services and the educational system. The proposed model is simply one step in advancing that agenda.

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[108] *Id.* § 15301(b)(1)(G).
[109] *Id.* § 15481(a)(4).
[110] *See* Daniel P. Tokaji, *Early Returns on Election Reform: Discretion, Disenfranchisement, and the Help American Vote Act,* 73 Geo. Wash. L. Rev. 1206, 1219 (2005).

SAVING SECTION 5: REFLECTIONS ON *GEORGIA V. ASHCROFT,* AND ITS IMPACT ON RENEWAL OF THE VOTING RIGHTS ACT

By
David J. Becker[1]

Introduction

In 2003, the U.S. Supreme Court decided the case of *Georgia v. Ashcroft*, 539 U.S. 461 (hereinafter, "*Ashcroft*"), interpreting Section 5 of the Voting Rights Act as it related to the 2001 Georgia legislative and congressional redistrictings, and in so doing, changed the face of the Voting Rights Act. Prior to *Ashcroft*, redistrictings in jurisdictions subject to Section 5 were analyzed according to the standard enunciated in *Beer v. United States,* 425 U.S. 130 (1976), which held that Section 5 prohibits retrogression in the ability of minority voters with respect to their opportunity to effectively exercise the franchise. For almost three decades, until the *Ashcroft* decision, the effective exercise of the franchise was defined by the ability of minority voters to elect candidates of their own choice. Thus, by freezing in place gains that minority voters had made in electing their candidates of choice, Section 5 helped contribute to an environment where the number of black members of the House of Representatives rose from 6 in 1965 to 42 today.

However, the *Ashcroft* decision changed this standard substantially. The Court, by a 5-4 margin, redefined the "effective exercise" standard, suggesting a "totality of the circumstances" test was more appropriate.[2] Such a test, as derived by Justice O'Connor, suggested that a covered jurisdiction could comply with Section 5, even if it reduced the

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[2] *Ashcroft,* at ____. **[not sure of the page in US Reports, but it's at 123 S.Ct. at 2511]**

ability of minority voters to elect candidates of their choice, if the jurisdiction otherwise increased the number of "influence districts," or districts which might elect candidates "sympathetic to the interests of minority voters."[3]

Not one of the parties to the action had suggested such a change in the standard, no briefs submitted to the Court had advocated such a standard, and this new standard had not been raised during oral argument. Nevertheless, in one of the most startling displays of judicial activism seen in voting rights jurisprudence, five members of the Court, led by Justice O'Connor, fundamentally altered thirty years of Section 5 jurisprudence, and the very meaning of the Voting Rights Act.

Understandably, this decision resulted in a lot of serious concern among advocates of the Voting Rights Act. It was (and is) unclear what this decision would mean for the advances minority voters had made throughout the last 40 years. Had minority voters really come so far that such a radical departure from established Voting Rights Act jurisprudence was warranted? Was it now possible, in covered jurisdictions, to replace minority voters' candidates of choice (who were usually minorities themselves) with whites who were perceived by some standard to be somehow sympathetic to minority interests? How could one measure a candidate's sympathy towards minorities? Could this "substantive representation" philosophy result in a blanching of legislative bodies in covered jurisdictions, and what would that mean for the minority constituencies they represent? Could unscrupulous jurisdictions draw district lines so as to intentionally reduce the ability of minority voters to effectively exercise the franchise, while using the mantra of "influence districts" as a pretext to win preclearance under Section 5? Could such a nebulous standard be administered by the Justice

[3] *Ashcroft*, at ____ **[123 S.Ct. at 2511-2513]**

Department and the District Court, and if so, how? And perhaps most importantly, does Justice O'Connor's opinion render Section 5 toothless and meaningless in today's political climate?

Several commentators, including Professors Samuel Issacharoff and Richard Pildes, have focused on variations of the last two questions.[4] Prof. Issacharoff in particular has concluded that the *Ashcroft* standard is irredeemably complex, particularly when compared to the pre-*Ashcroft* standard, which he perceives to have been so simple and mechanical as to be routinely mathematically applied.[5] Additionally, Prof. Issacharoff openly questioned "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."[6] Both Profs. Issacharoff and Pildes reached the conclusion that political developments with regard to racial minorities had so improved in this country, in large part due to the success of the Voting Rights Act, that Section 5 as applied could actually *harm* the rights of minority voters.[7]

This Essay will suggest that the concerns of commentators like Profs. Issacharoff and Pildes, while well-intentioned, and not without some merit, are nevertheless somewhat overstated. I will assert that the views of those commentators who perceive simplicity in the pre-*Ashcroft* standard, and who question the continued utility of Section

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[4] *See* Samuel Issacharoff, *Is Section 5 of the Voting Rights Act a Victim of its own Success?,* 104 Colum. L. Rev. 1710 (Oct., 2004), and Richard H. Pildes, *Political Competition and the Modern Era,* Russell Sage Conference, June, 2005.

[5] Issacharoff, at 1713 ("The [Beer standard's] required little more than the sort of sixth-grade arithmetic that has its own allure in the voting rights jurisprudence."); and at 1717 ("Justice O'Connor introduced a new test for section 5 that decisively abandoned the prior reliance on a straight-line mathematical comparison of minority voting strength before and after.")

[6] Issacharoff, at 1710.

[7] *See* Pildes, at 9 ("What a perversion of the VRA [the lower court's decision in *Ashcroft,* declining to preclear the Georgia State Senate plan] would have been in Georgia."), and Issacharoff, at 1714 ("The question for today is whether the successes of the VRA have compromised its mission") and at 1731 ("What seems less unclear, however, is the mischief that section 5 can play in stalling coalitional politics....).

5 (at least in the context of redistricting), are colored by misconceptions regarding the facts of the *Ashcroft* case, and some possible misinterpretations of the opinions in that case.

In Part I of this Essay, I will contend that the pre-*Ashcroft* standard, as first established in *Beer*, was not nearly as rigid, mechanical or simple as Prof. Issacharoff would suggest. Indeed, the pre-*Ashcroft* standard as applied predominantly by the Department of Justice ("DOJ"), and at times by the federal courts, was very complex, requiring the analysis of many diverse elements. In reality, neither the court nor the DOJ has relied upon the simplistic, mechanistic approach that Prof. Issacharoff and others perceive. Indeed, while remaining true to *Beer's* requirement that there can be no retrogression in minority voters' effective exercise of the franchise, as defined by their ability to elect candidates of their choice, the DOJ and the court in *Ashcroft* (and in other cases) reviewed massive amounts of evidence, including: expert testimony regarding voting patterns, racially polarized voting, and whether certain candidates (regardless of race) were the preferred candidates of minority voters; the demographic makeup of districts and the plans as a whole; the success of minority-preferred candidates in past elections; the approval or disapproval of minority legislators (as evidenced by not only their votes, but also their public statements expressed in the Legislature and otherwise); and the expressed opinions of minority leaders, candidates, and voters regarding the plans.

In Part II, I will discuss the facts as applied to the law at the time of the *Ashcroft* case, correcting many of the misconceptions that have permeated this discussion. In particular, I will discuss the actual electoral power of minority voters, as testified to by

expert witnesses, using both demographic measurements as well as other indications of voting clout. While many commentators, including Profs. Issacharoff and Pildes, have apparently relied *solely* upon the black voting age percentage in districts as a shorthand for the political power of black voters, I will demonstrate that the great variety of evidence introduced in the case helps to paint the full picture of minority voting rights in Georgia, albeit one not nearly as rosy as some have thought. Furthermore, I will attempt to lay bare the mistaken belief that black legislators were unanimous in their support of the Georgia State Senate plan, pointing out evidence that there was substantial dissent about the effect of the plan.

Finally, in Part III, I will discuss Justice O'Connor's opinion, and how it could be possible to answer some of the questions asked by many commentators. I agree that the *Beer* standard, as applied pre-*Ashcroft,* is a far more effective standard for measuring true retrogression under Section 5, and I would strongly advocate that Congress should reauthorize Section 5, and consider (and apparently *is* considering) restoring the *Beer* standard when it does so. However, even if an *Ashcroft*-fix is not in our future, I would propose that a Voting Rights Act with Section 5 in its present state is constitutional and administrable (though inarguably more difficult to administer), and is immeasurably preferable to a Voting Rights Act without any preclearance provisions at all. Nevertheless, contrary to the belief shared by Profs. Issacharoff and Pildes, the facts of *Ashcroft* amply demonstrate the continued need for Section 5 in some form. Indeed, by highlighting the comprehensive nature of Section 5 review pre-*Ashcroft*, one hopes that Congress can be convinced to revise and reauthorize Section 5 in a form which will

continue to protect minority voters from retrogression in their ability to elect candidates of their choice.

I.

There appears to be a great deal of misunderstanding about the retrogression standard as it existed pre-*Ashcroft*. In particular, it appears that many analysts perceive the standard to have been a simplistic, mechanical mathematical calculation, tallying up majority-minority districts in the benchmark, and comparing that number to the total of majority-minority districts in the proposed plan. Prof. Issacharoff in particular refers dozens of times to the simplicity of the analysis pre-*Ashcroft*, calling it "sixth-grade arithmetic",[8] "rigid",[9] "a simple quantitative definition of minority concentrations in specified districts",[10] and referring to the "ease of administration of a relatively mechanical test".[11] However, the suggestion that the pre-*Ashcroft* analysis was so crude and narrow-minded could not be further off the mark.

Prior to the *Ashcroft* case, the applicable standard in determining whether a redistricting plan violated Section 5 was first enunciated in the *Beer* case. In that case, the Supreme Court held that:

> "When it adopted a 7-year extension of the Voting Rights Act in 1975, Congress explicitly stated that "the standard [under Section 5] can only be fully satisfied by determining on the basis of the facts found by the Attorney General [or the District Court] to be true whether the ability of minority groups to participate in the political process and to elect their choices to office is augmented, diminished, or not affected by the change affecting voting . . . ." H. R. Rep. No. 94-196, p. 60 (emphasis added). In other words the purpose of [Section 5] has always been to insure that no voting-procedure changes would be made that would lead to

[8] Issacharoff, at 1713.
[9] *Id.*, at 1718.
[10] *Id.*, at 1722.
[11] *Id.*, at 1719. Issacharoff also states that "the Court introduced *for the first time* to section 5 the fine grained calculus of political influence versus descriptive representation." *Id.*, at 1720.

> retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."[12]

The Court expressly focused on the ability of minority voters to elect their candidates of choice, and in doing so, concentrated primarily on the black total population ("BPOP") and black voter registration ("BREG")[13] in the districts in determining the ability to elect.[14]

Over time, until the *Ashcroft* decision, there were few published cases discussing the *Beer* standard. Most of the redistrictings submitted for preclearance under Section 5 went through the DOJ.[15] However, the DOJ did develop guidance for analyzing redistricting plans pursuant to the *Beer* retrogression test.[16] In its Guidance, the DOJ stated that:

> "Division staff ... analyzes the proposed plan to determine whether it will reduce minority voting strength when compared to the benchmark plan, considering all of the relevant, available information. Although comparison of the census population of districts in the benchmark and proposed plans is the important starting point of any retrogression analysis, our review and analysis will be greatly facilitated by inclusion of additional demographic and election data in the submission. [Citation omitted]. For example, census population data may not reflect significant differences in group voting behavior. Therefore, election history and voting patterns within the jurisdiction, voter registration and turnout information, and other similar information are very important to an assessment of the actual effect

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[12] *Beer*, at 141.

[13] Note that the Court did *not* look at black voting age population ("BVAP"), which many litigants, commentators and courts have used as a shorthand for black voting power in the past. *See Ashcroft,* at ***[123 S.Ct. at 2506 – can't find the cite in US Reports]*** (Discussing the number of majority-minority districts in the benchmark and proposed plans as measured solely by BVAP).

[14] *Id.,* at 136 ("[The plan at issue] produced Negro population majorities in two districts and a Negro voter majority (52.6%) in one district."); *see also Id.,* at 141-142 ("Under the [benchmark plan] none of the five councilmanic districts had a clear Negro majority of registered voters, and no Negro has been elected to the New Orleans City Council while that apportionment system has been in effect. Under [the proposed plan], by contrast, Negroes will constitute a majority of the population in two of the five districts and a clear majority of the registered voters in one of them. Thus, there is every reason to predict, upon the District Court's hypothesis of bloc voting, that at least one and perhaps two Negroes may well be elected to the council under [the proposed plan].")

[15] *See* Michael J. Pitts, *Georgia V. Ashcroft: It's The End Of Section 5 As We Know It (And I Feel Fine),* 32 Pepp. L. Rev. 265, 273-274 (2005).

[16] Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 42, U.S.C. 1973c, 66 Fed. Reg. 5412, 5413 (Jan. 18, 2001) [hereinafter "Guidance"].

> of a redistricting plan. This information is used to compare minority voting strength in the benchmark plan as a whole with minority voting strength in the proposed plan as a whole."[17]

Thus, contrary to the impression that many promote, a large number of factors informed the Section 5 retrogression analysis pre-*Ashcroft*.[18] The DOJ most certainly did not simply focus on a mathematical calculation of the number of majority-minority districts – had that been the case, the DOJ would hardly have needed the full sixty days permitted under Section 5 to review even the most complex redistrictings. Any redistricting could have been fully analyzed in ten minutes.

The misunderstanding of the *Beer* standard has led to some common misconceptions. First, *Ashcroft* did not "introduc[e] … broad-range review"[19] under Section 5 – broad-range review of multiple factors in determining whether there has been a reduction in the effective exercise of minority electoral power has been around since *Beer*.[20] As described below, such a broad and comprehensive review was at the heart of the DOJ's case and the lower court majority opinion in *Ashcroft*.

Second, the pre-*Ashcroft* standard did not "hamper the very type of coalitional politics that traditional defenders of minority voting rights so adamantly fought to

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[17] *Id.* ("The Section 5 Procedures identify a number of factors that are considered in deciding whether or not a redistricting plan has a retrogressive purpose or effect. These factors include whether minority voting strength is reduced by the proposed redistricting; whether minority concentrations are fragmented among different districts; whether minorities are overconcentrated in one or more districts; whether available alternative plans satisfying the jurisdiction's legitimate governmental interests were considered; whether the proposed 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; and, whether the plan is inconsistent with the jurisdiction's stated redistricting standards.")

[18] *See also* Pitts, at 273-276.

[19] Issacharoff, at 1719.

[20] *See also Id.*, at 1722 (Prof. Issacharoff, in favorably comparing the analysis done in *Page v. Bartels*, 144 F. Supp. 2d 346 (D. N.J. 2001), notes that "the New Jersey court", in apparent contrast to his perception of the lower court in *Ashcroft*, "assessed the electoral prospects of minority-preferred candidates under an intensely local examination of political conditions." As demonstrated below, the *Ashcroft* defendants and the lower court did exactly that in the *Ashcroft* case as well.

protect…."[21] To the contrary, coalitional districts (i.e., districts in which minority voters did not make up a majority of all voters) where minority-preferred candidates were being elected were *absolutely* considered pursuant to the *Beer* standard and the Guidance. In other words, where there was a number of white voters (no matter how small) that had demonstrated their willingness to prefer the same candidates as minority voters, sufficient such that the minority voters' candidate of choice was being elected, such a district was considered an "ability to elect" district pursuant *Beer,* and the elimination of such a district would have raised serious problems under Section 5. Indeed, as discussed in detail below, the *Ashcroft* case included several such districts, and the court's and the DOJ's analysis of such districts in *Ashcroft* confirms that not only was Section 5 not "stalling coalition politics",[22] as Prof. Issacharoff suggests, but actually was instrumental in the development of such productive coalitions.

As discussed earlier, the lower court in *Ashcroft* applied the comprehensive *Beer* standard, analyzing a variety of factors to determine relative minority voting strength between the benchmark and proposed Georgia State Senate plans. In particular, it noted how the United States had "presented the court with a greater amount of and more detailed evidence [than the state], including voter registration data, precinct-level information, data and maps demonstrating exactly how district lines would be redrawn by the proposed plans, and testimony of numerous social leaders and local elected officials from the contested districts," as well as expert testimony regarding the presence of

[21] *Id.,* at 1728.
[22] *Id.,* at 1731.

racially polarized voting.[23] As an illustration of the pre-*Ashcroft* standard, let us review the evidence presented to and considered by the lower court.

A. Census Data

First, the lower court reviewed evidence regarding several types of census demographic data. The court determined that there were thirteen Senate districts with greater than 50 percent BPOP in both the benchmark and proposed plans.[24] The court also noted twelve Senate districts with more than 50 percent BVAP in the benchmark plan, compared to an apparent thirteen districts with more than 50 percent BVAP in the proposed plan.[25] In the benchmark plan, twelve of those districts had a BVAP of greater than 54 percent, while only seven districts in the proposed plan were greater than 54 percent BVAP, while six districts were barely greater than 50 percent BVAP, with none

[23] *Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 36-37 (D.D.C. 2002) [hereinafter, "*Georgia*"]
[24] *Georgia*, at 55-56.
[25] *Id.* Note that there was an ongoing minor dispute between Georgia and the DOJ about how to properly calculate BVAP in the proposed plan. For the first time, the 2000 Census included permitted respondents to list multiple races on their forms, thus resulting in individuals who had listed themselves as black in combination with one or more other races. The number of multiple-race respondents ended up being statistically irrelevant to the analysis of overall minority voting strength. Thus, to reduce the possibility of double-counting individuals for the purposes of analyzing redistrictings (i.e., counting someone who had listed themselves as both black and American Indian twice, as both), the DOJ Guidance, published before Georgia redistricted, clearly stated that, for purposes of analysis under Section 5, the DOJ would count only those individuals as a member of a particular minority group who had responded that they were solely of that group, or of that group in combination with white. Guidance, at 5414. In spite of the Guidance, Georgia calculated BVAP differently, totaling all those who indicated they were black in combination with any number of other races. Thus, Georgia calculated that there were thirteen BVAP majority districts in the proposed plan, with five of those districts being below 51 percent, while the DOJ calculated that there were only eleven BVAP majority districts in the proposed plan, with districts 2 and 34 falling below 50 percent BVAP using the method dictated by the Guidance. While the DOJ thought that both measures should be considered by the court, to facilitate the maximum understanding of the demographics and minority voting strength, Georgia sought to exclude the DOJ's BVAP measures. Plaintiff's Motion in Limine to Exclude Evidence, January 18, 2002. The DOJ successfully opposed that motion, and the court considered both measures of BVAP, deferring at times to the Georgia measurement, as that was the measure most favorable to the state (though Georgia held the burden of proof). United States' Opposition To Plaintiff's Motion In Limine, January 24, 2002; *Georgia*, at 79 ("The United States urges this court to refrain from choosing one measurement, and rather to evaluate the entire picture, taking into account the different measurements of eligible African American voting population. The court agrees that such an approach is both prudent and in keeping with controlling precedent.").

of those six reaching a BVAP higher than 51.5 percent.[26] In the three Senate districts challenged by the DOJ – districts 2, 12, and 26, in the Savannah, Albany, and Macon areas, respectively – evidence was presented indicated that the BVAP went from 60.6, 55.4, and 62.5 percent, respectively, in the benchmark plan, to 50.3, 50.7, and 50.8 percent, respectively, in the proposed plan.[27] The court further found that the overall BPOP in Georgia, according to the 2000 Census, was just under 29 percent, and the overall BVAP was just under 27 percent, both an increase from the 1990 Census.[28]

B. Voter Registration Data

The lower court determined that black voter registration in Georgia was over 25 percent of the statewide registered voters at the time of the 2000 general elections, up from approximately 22 percent in 1992.[29] Furthermore, the court admitted undisputed evidence that there were thirteen districts with BREG greater than 50 percent in the benchmark plan (actually, all were greater than 52.5 percent BREG), and only *eight* districts in the proposed plan with a BREG of greater than 50 percent – a reduction of five majority-black registration districts.[30] In districts in 2, 12, and 26, the BREG went from 62.4, 52.5, and 62.8 percent, respectively, to 48.4, 47.5, and 48.3 percent in the proposed plan.[31]

C. Election History

The evidence was undisputed that, in Georgia's history, no black candidate of choice had been elected to an open Senate seat in Georgia that had less than 53 percent

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[26] *Id.*
[27] *Id.*
[28] *Id.*, at 38-39.
[29] *Id.*, at 39.
[30] *Id.*, at 55-56.
[31] *Id.*

BVAP, and only one black candidate of choice had ever won election to the Senate, an incumbent, in a district with less than 50 percent BVAP.[32]

In all of the districts challenged by the DOJ, the court heard detailed testimony and evidence indicating presence of racially polarized voting, the prospects of black candidates of choice, and the electoral and racial climate in each of these districts.

In District 2, the court found that the black incumbent, who was the candidate of choice of black voters, had barely won the special election to her seat in 1999 (by a margin of fewer than 77 votes), over a white candidate.[33] Furthermore, the court heard testimony from eleven witnesses, and the DOJ's expert witness, indicating that voting in District 2 was severely racially polarized.[34]

In District 12, black voters had never been able to elect their preferred candidates, even though they made up a majority of the registered voters.[35] Indeed, even when a qualified black candidate (who had served for many terms in the Georgia State House) ran for the open seat in 1998, evidence demonstrated that this candidate lost the Democratic primary barely (by less than 3 percent of the vote) to a candidate (who had never run for office) preferred by white voters, in an election typified by extreme racial polarization.[36] Several witnesses testified without dispute to the existence of extremely racially polarized voting in District 12, and that it would be impossible to elect their candidate of choice in proposed District 12.[37]

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[32] Georgia's Exhibit 25, Appendix 1.
[33] *Georgia,* at 57-58.
[34] *Id.,* at 58-59.
[35] *Id.,* at 59-60. However, they had come very close, as indicated below. The changes to this district made it such that the gains black voters had made in coming close to electing their candidate of choice were reduced to the point where no black-preferred candidate could be elected.
[36] *Id.*
[37] *Id.,* at 60-61.

In District 26, testimony of several witnesses confirmed that, while the black incumbent in that district was fairly safe, there was substantial racial polarization in voting, and there were serious doubts as to whether another black candidate of choice could be elected in the proposed district.[38]

D. Support of Minority Legislators

While the lower court expressly refused to consider the votes of black legislators as being probative of retrogressive effect,[39] the Supreme Court obviously gave the support of minority legislators great weight, while ignoring much undisputed evidence indicating that such support was ambivalent, at best. It is true that all but two black legislators voted for the proposed plan.[40] However, just before the vote on the plans, several members of the Georgia Legislative Black Caucus (all of whom ended up voting for the plan) wrote a letter complaining that black legislators had been shut out of the process, and many others expressed serious reservations about the plan, including that the process "has resulted, among other things, in a legislative plan passing that has diluted majority-minority districts in both the House and the Senate."[41] Indeed, at least two black senators (both of whom voted for the plan) spoke from the well of the Senate to express concerns about the plan, with one going so far as to talk about the reductions in black voting strength in several Senate districts, including those challenged by the DOJ.[42] Finally, virtually every black legislator testified to the strong-arming tactics (both threats and promises) used by proponents of the plans to ensure their votes.[43]

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[38] *Id.*, at 61-62.
[39] *Id.*, at 89.
[40] *Id.*
[41] United States' Proposed Findings of Fact, Nos. 59-80.
[42] *Id.*
[43] *Id.*

This is obviously a truncated summary of the evidence produced in the *Ashcroft* case. Indeed, the lower court opinion has 35 pages of findings of fact alone, clearly indicating something more than a simple "straight-line mathematical comparison."[44] In addition, the parties submitted hundreds of pages of proposed findings of fact, evidence, and testimony. Had the standard been as simple as had been presumed, one can imagine that the only evidence required would have been the number of majority-minority districts in each plan. Nevertheless, the lower court engaged in the kind of comprehensive analysis of relative minority voting strength that *Beer* and the Guidance demanded.

II.

The *Ashcroft* case has been analyzed and re-analyzed, but nevertheless many misconceptions about the legal standard and the facts surround this case have developed and multiplied. To fully understand the implications of this case, these myths must be dispelled.

A. Did Georgia Maintain the Number of Majority-Minority Districts?

Prof. Issacharoff and the Supreme Court state that Georgia managed to maintain the same number of majority-minority districts in the proposed Senate plan as in the benchmark.[45] However, this statement is based solely on BVAP, and ignores other demographic measurements of minority voting strength. If one looks to BREG, *the same*

[44] *Georgia,* at 36-71.
[45] Issacharoff, at 1716; *Ashcroft,* at ____.

measure of black voting strength applied by the Beer court, the number of majority-minority districts fell from thirteen to eight – a net reduction of five.[46]

Additionally, it is a misnomer to use the term "majority-minority" as a shorthand to indicate a district where, in the words of *Beer*, minority voters could "elect their choices to office".[47] No longer can minority voting strength be so cavalierly determined, if it ever could be, as the facts in *Ashcroft* reveal.

It is often forgotten, but there were actually *three* different plans at issue in *Ashcroft* – the Georgia Senate plan (to which the DOJ objected), as well as the Georgia Congressional and State House plans (to which the DOJ did not object). The lower court spent fourteen pages analyzing the Congressional and State House plans.[48] Several of the districts in these plans to which neither the DOJ nor the lower court objected are instructive here. For instance, the benchmark Congressional plan contained only one district – District 5, represented by John Lewis – where the BVAP or BREG was greater than 50 percent.[49] Nevertheless, black voters demonstrated the ability to elect their candidates of choice (who were also black) in two other districts, in addition to Congressman Lewis' district – District 2 in southwestern Georgia, where Sanford Bishop was getting elected in a benchmark district with 37.4 percent BVAP and 35.7 percent BREG, and District 4, in the Atlanta metropolitan area, which Cynthia McKinney represented with a 46.2 percent BVAP and a 49.1 percent BREG.[50] Neither of these

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[46] *Georgia,* at 55-56.
[47] *Beer,* at 141.
[48] *Georgia*, at 42-55.
[49] *Id.*, at 42-43. The actual percentages in Congressman Lewis' benchmark district were 58.9 percent BVAP and 60.3 percent BREG.
[50] *Id.*

districts was majority-minority, and yet there was no question that each of these black members of Congress were candidates of choice of black voters.

Despite the fact that there was only one majority-minority district in the benchmark Congressional plan, it cannot be disputed that the benchmark contained three districts which satisfied the *Beer* standard for minority voting power – the ability to elect minority candidates of choice. Had the proposed plan eliminated any of these three districts – even one which was not technically "majority-minority" – *Beer* would have required that preclearance be denied. However, the state did an excellent job of complying with the *Beer* standard when it came to the Congressional plan. The proposed plan increased the BVAP and BREG in both districts 2 and 4,[51] and though District 5's BVAP and BREG were reduced to 52.0 percent and 53.4 percent, respectively, there was no evidence that said reduction would affect the ability to elect black candidates of choice, in this, John Lewis' district.[52]

Thus, the term "majority-minority" has two fundamental flaws. First, there is no specification regarding which measurement of majority population is more relevant – BREG as used in *Beer*, or BVAP, as used by most commentators and many courts. Often, these two measurements can conflict – Georgia's proposed Senate plan had thirteen BVAP-majority districts, but only eight BREG-majority districts. Second, the term "majority-minority" seems to be used as a shorthand to describe a district in which minority voters are electing their candidates of choice, when in actuality, the

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[51] *Id.*, at 44. Proposed District 2 contained 41.5 percent BVAP and 40.0 percent BREG, while proposed District 4 was drawn to contain 50.0 percent BVAP and 51.2 percent BREG.

[52] *Id.* Virtually all of the black population removed from District 5 went into District 4 to increase its BVAP and BREG. There was no evidence presented indicating that Congressman Lewis was put in the slightest danger by this small reduction in the black population in his district, and all the evidence indicated that he enjoyed remarkable white crossover in his elections, to the degree that he rarely had any serious challenger for the seat.

demographics of the district are but one factor – or, as the Guidance states, a "starting point" – in the complete analysis of minority voters effective exercise of the franchise.

Thus, I would suggest discarding the term "majority-minority" district altogether (except where explicitly referring only to the demographics of a district, not minority voting strength), in favor of the term "ability-to-elect" districts.[53] In reviewing the number of "ability-to-elect" districts in the Georgia Senate plan, the lower court expressly held that Georgia had not met its burden of proving that it maintained the number of "ability-to-elect" districts,[54] and the Supreme Court did not hold that the lower court's ruling on this discreet issue was erroneous.[55]

B. Was Georgia Trying to "Unpack" its Black-Majority Districts?

The Supreme Court routinely refers to Georgia's "strategy of 'unpacking' minority voters in some districts to create more influence and coalitional districts."[56] Prof. Issacharoff also perceives an attempt by Georgia to unpack, claiming that "the new Senate plan sought to leverage black political strength, [as it] diminished the locked-in protections of the overwhelmingly black-concentrated districts."[57] However, I would submit that to interpret the benchmark Senate plan as "packed" is to grossly misinterpret the undisputed evidence.

There were five Senate districts contested by any party – districts 2, 12, and 26 (to which the DOJ objected), and districts 15 and 22 (to which the intervenors objected). Of

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[53] This term is not new, and others have used it as well.
[54] *Georgia*, at 93-94.
[55] *Ashcroft*, at ____. Indeed, the Court acknowledged the diminution in "ability-to-elect" districts (districts 2, 12, and 26 in particular), but held that any retrogression in those districts may have been offset by increases in influence in other districts.
[56] *Id.*, at ____.
[57] Issacharoff, at 1717. *See also Id.*, at 1716 ("Part of the [Georgia] Democrats' strategy was not only to keep the same number of majority-minority districts, but to leverage black voting strength by diminishing the concentration of black voters in minority-dominated districts.").

these districts, not one had a benchmark BVAP above 63.5 percent, with District 12 having a BVAP just below 55 percent.[58] Whether such districts could qualify as "packed" is doubtful. However, even if the state could argue that it viewed these districts as seriously packed, it did not merely move what it viewed as the extra black population out of the district, in order to enhance black voting power statewide, as is the usual definition of "unpacking." Instead, it shaved the black populations in these districts so dangerously low that it put the continued ability of black voters to elect the candidates of their choice in serious jeopardy. In the proposed plan, not one of these five districts possessed a BVAP higher than 51.5 percent, and only one (District 15) had a bare majority BREG.[59] Regardless of how badly packed a district is (and to call a 63 percent BVAP district "packed" is highly questionable), it strains credulity to suggest that reducing such a district to less than 50 percent BREG constitutes "unpacking" that district. Indeed, if a jurisdiction were to take even a 90 percent minority registration district, and reduce it to 49 percent minority registration, such a reduction would be the very definition of retrogression under *Beer* (assuming racially polarized voting existed as it did in all five of these districts).

C. Did the Beer Standard Prevent the Building of Coalitional Districts?

The facts of the *Ashcroft* case make clear that, despite popular belief, not only did the pre-*Ashcroft* standard not impede the development of coalition districts, it actually aided in advancing coalitional politics. As discussed above, there were three plans at issue in *Ashcroft* – the Congressional and State House plans, as well as the State Senate

[58] *Georgia*, at 55-56.
[59] *Id.* The BVAP percentages in districts 2, 12, 15, 22, and 26 were reduced to 50.3, 50.7, 50.9, 51.5, and 50.8, respectively, while the BREG percentages in those districts were reduced to 48.4, 47.5, 50.3, 49.4, and 48.3, respectively.

plan, which was the only plan to which the DOJ objected. The benchmark Congressional plan contained at least two coalition districts – Sanford Bishop's District 2 and Cynthia McKinney's District 4 – in which black voters made up significantly less than 50 percent of the BVAP and BREG. However, in both those districts, white voters demonstrated a consistent willingness to vote for the black voters' candidates of choice (at least in Congressional elections).[60] Thus, while black voters could not control the election of their preferred candidate on their own, without white support, white crossover was substantial and consistent enough to create the very definition of a coalitional district.[61]

Similar coalitional considerations were made in the Senate plan. In District 22, for instance, the BVAP fell from 63.5 percent to 51.5 percent, and the BREG fell from 64.1 percent to 49.4 percent.[62] Thus, although there was massive reduction in BREG to below 50 percent, there was substantial evidence of significant, if not overwhelming, white crossover in Senate elections in this district.[63] Therefore, despite the fact that blacks no longer made up a majority of the voters in this district, and therefore could not control the outcome of the election on their own, the DOJ did not challenge this district, and neither the lower court nor the Supreme Court found retrogression here, because the evidence suggested that a coalition of black and some white voters could consistently elect the black-preferred candidate.[64]

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[60] The evidence suggested that in more localized elections in Congressional District 2 (such as State Senate and House elections), where voters actually knew the candidates, racially polarized voting among whites was much more prevalent. Senate District 12 was within Congressional District 2. *Georgia*, at 60, 84-88.
[61] A similar situation was found in benchmark State House District 89, centered in Athens, where a black representative and candidate of choice was consistently being elected in a district with less than 40 percent BVAP and BREG, thanks to consistent white crossover.
[62] *Id.*, at 56.
[63] *Id.*, at 63-64.
[64] Ironically, this conclusion ended up being premature. After the black incumbent in Senate District 22, Charles Walker, who also served as Senate Majority Leader, was accused of corruption prior to the 2002 elections, he lost to a white Republican by a very slim margin (0.8 percent of the total vote).

Notwithstanding the Supreme Court's suggestion that the *Beer* standard did not account for coalitional districts, or Prof. Issacharoff's suggestion that "it would be an irony of historic proportions if the VRA were to emerge as a brake on black political aspirations in the heart of the Deep South,"[65] the reality was far different. Where evidence demonstrated that non-minority voters in a district were routinely joining with minority voters to elect their candidates of choice, that district was considered an ability-to-elect district, from which retrogression was impermissible under Section 5. Suggestions otherwise to the contrary, the *Beer* standard adequately accounted for coalition districts.

D. Did Black Legislators Support the Plan?

The Supreme Court correctly notes that all but two of the black legislators in Georgia voted for the redistricting plans submitted for preclearance.[66] Prof. Issacharoff goes so far as to state that "[t]here was no mistaking that this was not a plan imposed on black elected officials…."[67] However, the mere fact that most black lawmakers ended up voting for the plans only tells part of the story. The Supreme Court, and the lower court dissent, placed much weight purely on the votes of these legislators, and the general testimony of the three black legislators (only two of whom voted on the plan) in favor of the plan. The Court looked particularly favorably on the testimony of Congressman Lewis, who, in written testimony submitted to the court, stated that the Senate plan would

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http://www.sos.state.ga.us/elections/election_results/2002_1105/senate.htm. He regained his seat in the 2004 elections by a comfortable margin. *http://www.sos.state.ga.us/elections/election_results/2004_1102/senate.htm*.

[65] Issacharoff, at 1717.

[66] *Ashcroft*, at **[123 S.Ct. at 2506-2507]**.

[67] Issacharoff, at 1716.

"give real meaning to voting for African Americans" because "you have a greater chance of putting in office people that are going to be responsive."[68]

Despite this testimony, the record reflects that the state did not ask Congressman Lewis to submit any testimony directly related to any of the three Senate districts challenged by the DOJ, a fact not lost on the lower court. Indeed, with the exception of Senate District 26, not one of the black legislators testifying on behalf of the state rendered any testimony relating to a challenged district.[69] In a finding left untouched by the Supreme Court,[70] Judge Edwards stated in his concurrence that:

> "First, nowhere do any of [the black politicians testifying for the state] purport to compare the proposed Senate plan with the existing apportionment scheme. Accordingly while some of what they have to say bear upon (albeit only in the most general terms) the opportunities available to minority candidates under the new plan, their testimony simply does not address *retrogression*.... Nor do these legislators address the polarization problem that is at the heart of the Court's decision to deny preclearance."[71]

Furthermore, Judge Edwards notes that "neither Congressman Lewis nor Senator Walker had any direct knowledge of the demographics and voting patterns in the contested districts."[72] Congressman Lewis, who was not a member of the Georgia Legislature, did not and could not vote on the plans.

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[68] *Ashcroft,* at **[123 S.Ct. at 2516]**

[69] The other black legislators testifying on behalf of the plan were Senator Charles Walker, representing District 22 and the Senate Majority leader, and Senator Robert Brown, representing District 26, and the vice-Chair of the Redistricting Committee that drew the plan. Senator Brown testified with somewhat more specificity about his district.

[70] The Court overturned only one specific factual finding of lower court, holding that the lower court's "statement that Georgia did not 'presen[t] evidence regarding potential gains in minority voting strength in Senate Districts other than Districts 2, 12, and 26' is therefore clearly erroneous." *Id.,* at ____ **[123 S.Ct. at 2514].** Indeed, with not one Justice reversing the factual findings of the lower court, the Court expressly stated that along with "the dissent, we accept the District Court's findings that the reductions in black voting age population in proposed Districts 2, 12, and 26 to just over 50% make it marginally less likely that minority voters can elect a candidate of their choice in those districts...." *Id.,* at ____ **[123 S.Ct. at 2414-2415]**

[71] *Georgia,* at 100.

[72] *Id.,* at 101. Judge Edwards goes on to state here that "their testimony about the general BVAP levels at which African American preferred candidates have a fair opportunity to compete, in addition to being

In fact, in the three Senate districts with which the DOJ took issue, there was only one black witness to testify with any competence about minority voting strength in those specific districts,[73] while the DOJ offered testimony from dozens of black politicians and activists in each of those districts which specifically detailed their problems with reduction in minority voting strength in the plan. Judge Edwards made the lower court's undisturbed findings clear when he stated:

> "The Voting Rights Act does not protect minority incumbents; it protects minority voters. It is thus a dangerous business to conflate a politician's assessment of her own continued electoral prospects with the genuine protection of African American voting strength.
>
> .... The three politicians on whom the dissent relies represent but a small slice of the testimony presented regarding the attitudes of Georgia's African American political leadership to the proposed Senate plan. Indeed, it is simply inaccurate to suggest that those leaders have spoken with a single voice. The United States offered the testimony of a number of prominent African Americans, from each of the three Senate Districts that it has challenged, in which those witnesses expressed considerable concern about the effect of the proposed changes on minority voting strength. The Senate plan, for whatever support it has received, cannot fairly be said to represent the unanimous preferences or desires of African American leaders in the State of Georgia."[74]

It is true that all but two of the black legislators voted for the plan. However, the votes as cast do not accurately represent the very serious doubts that black legislators had about retrogression, vote dilution, and discrimination in the Senate plan. In particular, less than a week before voting on the plan, six members of the Georgia Legislative Black

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tangential to the question of retrogression, has little bearing as to what levels might be required in Districts 2, 12, and 26."

[73] As indicated above, that witness was Senator Brown, who testified regarding his own District 26. Regarding his testimony, one must note that the lower court held that "the testimony of Senator Brown ... leaves little doubt that he was speaking primarily as a loyal Democrat, interested in advancing the political fortunes of his own party.... What is ... telling ... is Senator Brown's ready recognition that his motives were primarily partisan.... Brown acknowledged that 'I was not looking at race as a predominant concern....' Indeed, Senator Brown's enthusiasm for the plan seems to reflect a general agreement among Georgia Democrats that the present reapportionment will preserve their partisan interests more effectively than any alternative. While such considerations are not impermissible under the Voting Rights Act, they are certainly not sufficient to satisfy the demands of § 5." *Id.*, at 101 (Edwards, J., concurring).

[74] *Id.*, at 101-102.

Caucus ["GLBC"] wrote to the Chairman of the Caucus, stating that they were "concerned that the GLBC has not been involved in the redistricting process almost at all. This has resulted, among other things, in a legislative plan passing that has diluted majority-minority districts in both the House and the Senate."[75] The lower court noted that "the United States has presented extensive evidence of African American Senators' misgivings about the Senate plan."[76]

Nevertheless, the Supreme Court, without reaching any factual conclusions, held that "it is also significant, though not dispositive, whether the representatives elected from the very districts created and protected by the Voting Rights Act support the new redistricting plan" to determine both retrogressive purpose and effect.[77] The lower court had considered these facts, though, and while determining that the court should not consider the "support of African American legislators as evidence of the actual *effect* of the Senate redistricting plan,"[78] the court also recognized that a "vote for legislation is almost always a compromise of some sort, motivated by a complex intersection of self-interest and external pressures."[79]

Of the three districts which were challenged by the DOJ, only one – Senate District 26 – had the support of the black senator who represented "the very district created and protected by the Voting Rights Act."[80] In addition, there was ample evidence of such political horse-trading for the votes of other black legislators. The court heard

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[75] *Id.*, at 45-46.
[76] *Id.*, at 89.
[77] *Ashcroft*, at ____ **[123 S.Ct. at 2513]**
[78] *Georgia*, at 89.
[79] *Id.*
[80] District 2's black senator openly opposed the plan and voted against it, despite tremendous pressure from other Democrats, and District 12 was represented by a white senator who was not the candidate of choice of black voters, who voted for the plan. In addition, more than a dozen black politicians and leaders from these two districts testified in opposition to the plan, while the state put on no witnesses who resided in these two districts.

undisputed testimony from black legislators that they always had a handler present when viewing the plan,[81] that their input on the plan and their own districts was ignored,[82] that the plan was withheld from their scrutiny until mere minutes before the vote,[83] that they were heavily pressured to vote for the plan by other Democrats,[84] and that they were promised that they could later have any changes to their districts they wanted if they voted for the plan.[85]

Some even spoke openly in the well of the Senate of their concern about the vast reductions in black populations in their districts.[86] Senator Vincent Fort, the black senator who authored the letter to the GLBC complaining about the dilution in the plan, made the following statement of concern from the well just days before the vote:

> "I've looked at the data district by district regarding race and black voting district. I know that ten out of thirteen of these majority black districts have lost black VAP. Eight out of thirteen have lost more than 10 percent of black VAP. And then even more importantly, there are four districts that are below 50 percent black voter registration. I don't know whether that's dilution or retrogression; that's going to be for others to decide who have more experience and learning on this issue. But the question is a valid question ... [T]here is something going on here in the thirteen districts throughout the state. There have been some other things said. 45 percent has been thrown around and 49 percent has been thrown around as the benchmark to give an African American a reasonable chance to be elected ... I've not seen that data, I have not seen any calculations, any formulas; and to accept a benchmark, whether it's 49 or 44 or 40 or 40-something, does not make sense unless you have a chance to look at the data, and I have not had that chance; so I don't know what influence districts are. Did we get influence districts by decreasing black registration or black VAP in other districts? I mean, what is the road to influence districts? I think that's a question that needs to be asked."[87]

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[81] United States' Post-Trial Brief, pp. 11-12.
[82] *Id.*, at 12-13.
[83] *Id.*, at 14-15.
[84] *Id.*, at 9.
[85] *Id.*, at 21.
[86] *Id.*, at 16-17.
[87] *Id.*, at 17-18. Senator Fort also testified that it was "certainly" possible that the African-American candidate of choice could lose in Proposed Senate Districts 2, 15, 22, and 26. *Id.*, at 19.

Senator Fort nevertheless voted for the plan, after being promised support for his anti-predatory lending bill.[88]

Since the *Ashcroft* decision, several black legislators have come forward to clarify their position on State Senate plan, the *Ashcroft* case, and Section 5 overall. At recent Congressional hearings on renewal of the Section of the Voting Rights Act, Rep. Tyrone Brooks, a key black legislator who had voted for the plan, confirmed the difficulties black lawmakers had with the plan, stating that:

> "The arguments that the state recently made in the Supreme Court in Georgia v. Ashcroft are also very disturbing. They demonstrate a continuing disdain for the Voting Rights Act and a willingness to disregard the interests of minority voters. The state argued that Section 5 as applied by the federal court was unconstitutional. It said the retrogression standard of Section 5 should be abolished, that majority black districts were no longer needed, and that minorities should never be allowed to participate in the preclearance process.
>
> ....
>
> Georgia argued strenuously that its 2002 senate plan could not be deemed to dilute minority voting strength because black legislators supported the plan. But the support of the plan by black legislators should not be confused with their support of the state's arguments in the Supreme Court that majority black districts could be abolished, or that the retrogression standard should be abandoned, or that minority "influence" could be a substitute for the ability to elect.
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> Most of the members of the Legislative Black Caucus voted for the senate plan as a way of maintaining Democratic control of the legislature and holding onto committee chairs, and because any reductions made in their own districts did not compromise their reelection or the ability of minority voters to elect candidates of their choice. The overriding goals of the Democrats were to protect incumbents and increase the number of Democratic seats by not wasting the black votes in existing majority black districts. And while black caucus members agreed to the population reductions, they would never have agreed to the abolition of majority black districts. Black caucus member Bob Holmes, who has served in the Georgia house almost as long as I have, has said that "No one would have gone for that. There would not have been a black vote for that.
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> Notably, the black civil rights leadership of the state, including NAACP, Southern Christian Leadership Conference, RAINBOW/PUSH, Concerned Black Clergy, Georgia Association of Black Elected Officials, Georgia Coalition of Black Women, and Georgia Coalition for the Peoples' Agenda, filed an amicus brief in the Supreme Court urging it to affirm the decision of the lower court rejecting the state's senate redistricting plan. They asked the Court to reject the

[88] *Id.*, at 20.

> state's arguments for repeal of the retrogression standard, the abolition of majority-minority districts, and excluding minorities from the preclearance process.
>
> Most tellingly, black members of the legislature who had voted for the state's plan gave their full support to the filing of the amicus brief and said that it was the correct position for the civil rights community to take. I made a statement at the time that:
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>> We fully supported the filing of the amicus brief by the civil rights groups. We voted for the state's plan for political reasons, but we were appalled by the arguments the state made in its brief in Georgia v. Ashcroft. There is no question that abolishing the majority black districts would turn the clock back. The preservation of the majority black districts is critical to minority office holding and minority political participation. As its president, I can speak for the Georgia Association of Black Officials and say that we strongly disagreed with the state's arguments in the Supreme Court. "[89]

Interestingly, both Congressman Lewis and Senator Brown have also since come out in favor of reducing the impact of the *Ashcroft* decision, with Congressman Lewis finding himself in the ironic position of seeking to overturn a decision in which his testimony was used so unexpectedly to produce a result unfavorable to black voters.[90]

Accordingly, the lower court was quite right about the nature of political compromise, and the suggestion of nearly-unanimous black support for the plan was put in serious doubt by the weight of the evidence indicating black legislators' ambivalence, and even antipathy, towards the redistricting. The state presented virtually no evidence indicating that the black lawmakers' viewed the plan as non-retrogressive prior to voting, and in fact, the evidence suggested that they voted for the plan in spite of serious questions regarding retrogression.

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[89] *Hearings to Examine the Impact and Effectiveness of the Voting Rights Act, Before the Subcomm. on the Constitution of the House Judiciary Comm.,* 109th Cong., 1st Sess. (Nov. 9, 2005) (statement of Tyrone L. Brooks of the Georgia House of Representatives, Georgia Association of Black Elected Officials).

[90] Jonathan Tilove, Voting *Rights Act, at 40, Faces Reauthorization Amid Topsy-Turvy Politics,* Newhouse News Service, Aug. 4, 2005 (http://www.newhousenews.com/archive/tilove080405.html).

Prof. Issacharoff asks an interesting question related to this issue – "whether the protection of black voting interests was best left to the intervention of legal remedies or to the prospect of political trading and hauling, primarily through coalition politics within the Democratic Party."[91] When one reviews the facts of the *Ashcroft* case, the answer to this question should be clear, at least as it relates to the state of Georgia (and likely other Section 5 covered jurisdictions) – political trading and hauling, at best, protects only the interests of minority politicians and incumbents. To truly protect the rights of minority voters themselves, legal remedies, and Section 5 in particular, must be available. Thus, to read *Ashcroft* to suggest that 'black voters in Georgia have moved from a world of discrete status meriting protections external to the political system to a situation more closely approximating the normal give and take of politics,"[92] is to gravely misread the undisputed status of black voters in Georgia.

III.

The fact remains, as Profs. Issacharoff and Pildes intimate, that Justice O'Connor's *Ashcroft* opinion leaves many questions left unanswered. First, was the Court's focus on influence districts and substantive representation a necessary and natural result of Section 5's success? To my mind, the answer is unequivocally no. As outlined earlier, Section 5 was not a "victim of its own success," as Prof. Issacharoff suggests, but rather had *facilitated* the kind of descriptive *and* substantive representation that had enfranchised so many minority voters. Section 5 had encouraged and protected the kind of coalition building that black candidates (who were also candidates of choice of black

[91] Issacharoff, at 1724.
[92] *Id.*, at 1730.

voters and many white voters) were consistently being elected in Georgia in several legislative districts with BVAPs and BREGs less than 50 percent.[93] Rather than adapting Section 5 to changing conditions, as some suggest, the Court's alteration of the *Beer* standard that had worked so well in producing such ability-to-elect districts was to put in jeopardy the very gains for which minority voters had fought so hard. Rather than "impos[ing] … more racially homogenous constituencies,"[94] as Prof. Pildes declares, the *Beer* standard had forced and protected the development of racially diverse coalitions, where white crossover voting permitted. Indeed, I do not believe a single commentator has produced real evidence of a single coalitional district which the pre-*Ashcroft* standard allegedly put at risk – to the contrary, all the evidence from the *Ashcroft* case and others clearly outlines how Section 5 facilitated such coalitional districts. To put to rest this myth, virtually every black politician whose testimony was used to support the *Ashcroft* decision has since distanced themselves from the decision, and begun the fight to amend a renewed Section 5 to restore the pre-*Ashcroft* standard.

What has brought about such a prominent reversal, and recognition of the harms of the *Ashcroft* decision? I believe it is because those familiar with and indebted to the protections of Section 5 realized the natural result of Justice O'Connor's decision. Prof. Issacharoff is quite correct to question how one is to measure "influence" districts, as promoted by Justice O'Connor. If one reads her opinion closely, it would appear she is ready to ascribe "influence" to any district where minority voters make up between 25

[93] While there were several coalition districts, this was the exception rather than the rule in Georgia. In most locations and in most elections, white crossover voting was so minimal as to be statistically insignificant, rendering the possibility of black candidates being elected by a coalition of black and white voters virtually nonexistent. The existence of such racially-polarized voting, even in the year 2000, only highlights the continued need for Section 5.
[94] Pildes, at 92.

and 50 percent of the voting population.[95] To anyone familiar with politics in Georgia, or other Section 5 covered jurisdictions, such a thought must be incredible, and frightening. In fact, in the 2002 elections in Georgia, under a plan virtually identical to the proposed plan, there were 16 districts between 25 and 50 percent BVAP, and almost half of them were represented by white Republicans, who were unanimously determined *not* to be the candidates of choice of black voters.[96] Every one of the sixteen districts was represented by whites. To further document that such a doctrine of "influence" as measured by BVAP is not well-grounded in political reality, one need look no further than the highly-publicized vote to remove the Confederate battle emblem from the Georgia state flag. While the GLBC was unanimous in its support for the changing of the flag, twelve of the nineteen white senators elected from districts with more than 25 percent BVAP voted in 2003 *against* the changing of the flag.[97]

How then to measure such "influence"? Can it be measured? The best answer for this question comes from the DOJ, in its response to the lower court's Order to Show Cause on remand from the Supreme Court's decision. In that response, the DOJ suggested that two factors would be key in establishing the presence or absence of influence in a particular district. First, expert testimony regarding past election results in districts purported to be influence districts by the state. Second, testimony from experts and lay witnesses regarding the willingness of legislators from alleged influence districts to take the interests of the minority community into account.[98] Based on voting patterns,

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[95] *Ashcroft,* at ____ **[123 S.Ct. at 2506]**

[96] United States' Response to Order to Show Cause, Attachment C, Sept. 19, 2003. Seven of the 16 seats were held by white Republicans, with the other nine held by white Democrats. It is unclear whether *any* of the white Democrats was the candidate of choice of black voters, though there were races where black candidates ran unsuccessfully against these white Democrats in the Democratic primary.

[97] *Id.,* at 18.

[98] *Id.,* at 15-16.

including racially polarized voting, and analysis of legislators' actions, some degree of influence might be determined.

An essential element to the determination of influence is the burden of proof. In *Ashcroft,* the entire Court expressly upheld the long-standing principle that the burden of proof in a Section 5 proceeding falls entirely on the covered jurisdiction seeking preclearance.[99] As the DOJ argued, this means that when a jurisdiction claims that a reduction in ability-to-elect districts is offset by an increase in influence districts, it is the burden of the jurisdiction to prove the increase in influence, and that such an increase is sufficient to offset the losses in ability-to-elect. If such a standard is applied properly, any difficulty in administration of this standard falls entirely on the covered jurisdictions, for if they cannot prove a sufficient increase in influence to offset losses in ability-to-elect, the *Ashcroft* standard demands that preclearance be denied. Unless such a burden is applied strictly, as the Court demands, jurisdictions could effectively blanch entire plans, while creating some greater number of supposed influence districts that elected white representatives who could demonstrate no tangible sympathies or responsiveness to minority voters.

Thus, applying the standard as the Court dictates, it may be possible to administer the *Ashcroft* standard, while strictly imposing the burden of proof on the covered states.[100]

However, while the decision purports to grant the states greater flexibility, in actuality the burden on those states becomes greater, as it is no doubt much more difficult to

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[99] *Ashcroft,* at ____ **[123 S.Ct. at 2507]**

[100] For two excellent discussions of the administrability of Section 5 under the *Ashcroft* standard, both written by alumni of the DOJ's Voting Section familiar with the administration of Section 5, see the Pitts article, and Meghann E. Donahue, *"The Reports Of My Death Are Greatly Exaggerated": Administering Section 5 Of The Voting Rights Act After Georgia V. Ashcroft,* 104 Colum. L. Rev. 1651 (2004).

demonstrate the existence of "influence." Indeed, given this conundrum, the covered jurisdictions should join voting rights advocates, including those who testified for the state in *Ashcroft,* in promoting a return to the more-predictable, more-defined pre-*Ashcroft* ability-to-elect standard.

Regardless, even with the *Ashcroft* standard, minority voters are better off with Section 5 than without it. Section 5 provides an *additional*, not an alternative, recourse and remedy for minority voters. Other causes of action, including constitutional claims and claims under Section 2 of the Voting Rights Act, are available after Section 5 review, but without Section 5, those claims would be the *only* means of addressing potential discrimination. Even with a flawed standard, or a standard that is harder to implement, such an additional line of defense could be critical for minority voters, because *only* with Section 5 is the burden of proof not on those voters to prove discrimination, but on the jurisdiction to prove the absence of retrogression. As anyone who has ever litigated both Section 5 and Section 2 cases knows, such a distinction can be vital to obtaining necessary relief for minority voters.

Conclusion

As one looks more critically at the Court's decision, and at the facts as determined by the lower court and upheld by the Supreme Court, one begins to get a clearer picture of the reality of racial politics in this age. While advances have been made, without doubt, those advances have been compelled and nurtured by the Voting Rights Act, and Section 5 in particular. Section 5 has never required the packing of minority voters, and indeed, the Voting Rights Act prevents such packing as a dilution of minority voting

strength. Rather, it required – until the *Ashcroft* decision – that where minority voters had worked so hard to successfully elect candidates of their choice, that work could not be destroyed by a swipe of the governor's pen.

Perhaps most importantly, however, one must recognize the comprehensive nature of the pre-*Ashcroft* standard, and its flexibility regarding the consideration of all types of ability-to-elect districts, including coalitional districts. Understanding this standard, and its ability to promote positive developments in racial politics, including coalitional districts, will be an important factor in documenting the need to restore the standard during the reauthorization process. Furthermore, a complete grasp of the facts of *Ashcroft* and the application of the *Beer* standard to those facts will be a cornerstone in developing a record sufficient to justify restoring the standard.

And finally, it is essential to understand that Georgia, in an express attempt to maintain Democratic power in a state where such power was waning, sought to fortify white Democrats with black voters, at the expense of the black elected officials those black voters preferred.[101] Though Prof. Issacharoff contends that "[n]o longer are blacks political outsiders in the covered jurisdictions,"[102] and that "the Southern political process is highly attuned to black political claims,"[103] the *Ashcroft* case is actually proof that black voters continue to be traded, manipulated, and let down by the white power structure in covered jurisdictions. However, in the greatest irony, even this betrayal of black voters was not enough to keep the Democrats in power in the State Senate. After the 2002 elections, running in a plan virtually identical to the proposed plan at issue in

[101] As Prof. Issacharoff correctly notes, there was no mistaking "the evident partisan objectives of the plan…." Issacharoff, at 1716.
[102] *Id.*, at 1714
[103] *Id.*

Ashcroft, the Republicans held a 30-26 advantage in the Senate, and presently hold 34 seats.[104] Perhaps this is the greatest lesson of *Ashcroft* – that the betrayal of the Democrats' core constituencies cannot result in long-term electoral gains.

[104] Four white senators who had run as Democrats in so-called "influence" districts switched parties to Republican in the weeks following the 2002 general election, thereby permanently putting the Republicans into the majority. All three senators, who ran in Districts 2, 12, and 26 won re-election in 2002, including the two black incumbents, and continue to serve in the Senate at the present time.

Verifying Implementation of Language Provisions in the Voting Rights Act

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Verifying Implementation of Language Provisions in the Voting Rights Act

Abstract:

This is a study of the implementation of Section 203 of the Voting Rights Act (VRA). Given the centrality of the Voting Rights Act for the incorporation of ethnic and racial minorities into American electoral politics, we know remarkably little of how Section 203 has been implemented, or of the effects of its implementation.

To verify implementation of the provisions of Section 203 of the Voting Rights Act, field researchers conducted site visits with county clerks or registrars in 63 Section 203 covered counties in 15 states and 28 non-covered counties in 3 states. These site visits determined the availability of voter registration and voting materials in Section 203 covered languages, the presence of other materials (posters, etc.) in covered languages, and access to staff speaking Section 203 covered languages.

The findings indicated significant non-compliance with Section 203 provisions. Focusing on Spanish-language materials (all 63 of the covered counties in our sample were required under section 203 to provide materials for Spanish-language minorities), we found that in practice:

- ***One in seven*** of the 66 covered jurisdictions surveyed in the study could offer, upon request, registration materials in other languages as required under the law.

- ***One in four*** of the 66 of the covered jurisdictions in the study indicated they did not have personnel present who could offer aid in the languages indicated under the Voting Rights Act.

- Levels of compliance ranged widely across states, with five states—***Colorado, Kansas, Massachusetts, Nevada and Rhode Island***—having significantly lower compliance rates. In general states with larger Latino populations did well in providing both materials and language assistance.

Earlier analyses (Jones-Correa 2005; Jones-Correa and Ramakrishnan 2004) have indicated that Section 203 coverage has a significant effect on registration and voting rates of language minorities residing in those counties. The findings here suggest that this effect is present even though Section 203 compliance is very uneven, and therefore that the effects found in earlier research would be even greater if Section 203 compliance were complete in the covered counties. Greater emphasis needs to be placed on verification of the voting and registration standards set under the law.

The Implementation of Section 203 of the Voting Rights Act: A Proposal

Given the centrality of the Voting Rights Act for the incorporation of ethnic and racial minorities into American electoral politics, we know remarkably little of how Section 203 of the Act, which has direct implications for Asian and Latino registration and voting, has actually been implemented, or of the effects of its implementation. To verify implementation of the provisions of Section 203 of the Voting Rights Act, field researchers conducted site visits with county clerks or registrars in 63 Section 203 covered counties in 15 states and 28 non-covered counties in 3 states. These site visits determined the availability of voter registration and voting materials in Section 203 covered languages, the presence of other materials (posters, etc.) in covered languages, and access to staff speaking Section 203 covered languages.

Section 203 of the Voting Rights Act

When the Voting Rights Act was first passed, its primary focus were African-Americans in the South. Initially, the act was designed to facilitate voter enfranchisement--registration and voting--but very quickly the enforcement of the act shifted to the mechanisms of representation (drawing districts for representation, for example) under section 5 of the Act.

Latinos, Asians and Indians were not covered under the original Voting Rights Act in 1965, but the act was extended to include these groups in 1975 under section 203e, and sections 4f4. Coverage under the act for these groups, though, was not as members of racial/ethnic categories, but as 'linguistic minorities.' The justification for coverage was that language restrictions in voter materials and ballots were operating in much the same way as, say, poll taxes or literacy tests to keep linguistic minorities from the polls.

Section 203 of the act mandated the provision of translated voting materials in covered areas. Covered areas were counties in which 5 percent of the 1970 citizen population was

a 'linguistic minority' and in which fewer than 50 percent of registered citizens turned out to vote in the 1972 presidential elections. The definition of covered areas was broadened in 1982 and then again in 1990 to include counties where the citizen population of 'linguistic minorities' was 10,000 people or more.

Section 4f4 of the Voting Rights Act brought linguistic minorities under the umbrella of coverage under section 5 of the Act, the portion of the Act relating to concerns about the mechanisms of representation. This is how Latinos and Asians have been included in discussions about 'majority-minority' districts. However, coverage under this portion of the act is frozen; that is, coverage reflects Latino/Asian participation in 1972, but hasn't been changed since.

The critical significance of section 203, particularly as amended, is that unlike other parts of the VRA (like section 5 or 4f4), *coverage is updated* every ten years according to updated counts from the decennial census. Because of this, this is the portion of the act that most reflects changing demographic realities. It's also the case that, unlike the application of the VRA under sections 5 or 4f4, section 203 is really the only remaining portion of the VRA that still focuses on individual voters' access to the polls rather than representation more broadly (again, the drawing of districts).

Within a short period after its passage, the emphasis in the enforcement of the Voting Rights Act quickly shifted from the enfranchisement of individual voters to questions of representation, and, in particular, to a debate on the desirability and effectiveness of majority-minority districts (Grofman and Davidson 1992; Swain 1993; Lublin 1997; Canon 1999). With this shift in emphasis, both scholars and policy makers have lost sight of the effect of the Act on registration and voting. For instance, in Grofman and Davidson's collection of essays on the controversies surrounding the Voting Rights Act (Grofman and Davidson 1992), none is focused on enfranchisement. This is true as well of their later collection evaluating the impact of the Act on the South. Of thirteen chapters, all but one focuses on minority voter dilution and representation (Davidson and

Grofman 1994). Enfranchisement under the Voting Rights Act has not been controversial, and being uncontroversial, has become invisible.

This shift in attention away from enfranchisement might not be so problematic if the Voting Rights Act were applicable only to African-Americans. However, in 1975 Congress extended the Act to apply to certain linguistic minority groups—Asian Americans, Hispanics and American Indians. These groups continue to have lower rates of registration and voting than the population as a whole. In the 2000 presidential election, 55 percent of the total voting age population (111 million people), turned out to vote. However, as a proportion of the voting age population, only 25 percent of Asian and Pacific Islanders voted, while 28 percent of the Latino voting age population voted. This is compared to 60 percent of voting age Anglos, [1] and 54 percent of voting age blacks (Jamieson et al. 2001).[2] These differences in turnout among racial and ethnic groups have persisted over the last thirty-odd years.

The key points worth emphasizing here are that Section 203 continues the Act's original emphasis on voter enfranchisement and that, unlike other sections of the Voting Rights Act, has provisions to ensure that its coverage is updated every ten years, after each decennial census.

What Section 203 Sets Out To Do

Section 203 was implemented because, as the statute indicates, Congress believed that "through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process."

To end these practices, Section 203 indicates that "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,

[1] Meaning 'non-Hispanic whites'
[2] Data for the American Indian and Alaska Native population are not included in the November 2000 CPS Voter Supplement reports because of their small sample size (Jamieson et al. 2001: 3)

including ballots, it shall provide them in the language of the applicable minority group as well as in the English language." This means that all information that is provided in English at registrars and polling places must be provided in the minority language as well. This covers 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, and assistance is also required to be available in person, by staff speaking the covered languages.

The Act targeted specific language minority groups that Congress identified as having borne the brunt of particular linguistic barriers to the vote. The covered language groups were Spanish, Asian, Native American and Alaskan native. In some covered jurisdictions only one of these groups is present, in a few there are four or more (see T1: Number of jurisdictions covered under Section 203).[3]

T1: Number of jurisdictions covered under Section 203, by number of languages covered.

1 language	253
2 languages	29
3 languages	12
4 languages	3
5 languages	1
Total:	298 jurisdictions

As of 2002, Section 203 of the Voting Rights Act covers 298 jurisdictions (see M1: All counties covered under Section 203).

[insert M1: All counties covered under Section 203]

[3] *Federal Register* 67:44 July 26, 2002 pp. 48871-48877.

The single most widely covered language under Section 203 is Spanish. 219 of the 298 covered jurisdictions require the provision of Spanish-language registration and election-related materials (see T2: Section 203 jurisdictions covering Spanish linguistic minorities).

T2: Section 203 jurisdictions covering Spanish linguistic minorities, by state

Texas:	104
California:	25
New Mexico:	21
Colorado:	8
Florida:	8
Connecticut:	7
Massachusetts:	7
New Jersey:	7
New York:	7
Arizona:	6
Kansas:	6
Washington:	3
Illinois:	2
Oklahoma:	2
Rhode Island:	2
Maryland:	1
Nebraska:	1
Nevada:	1
Pennsylvania:	1
Alaska:	0
Hawaii:	0
Idaho:	0
Louisiana:	0
Mississippi:	0
Montana:	0
North Dakota:	0
Oregon:	0
South Dakota:	0
Utah:	0

These 219 jurisdictions (which aside from Hawaii, also include all jurisdictions with Asian language coverage as well) in 19 states are the focus of this study (see M2: All counties covering Spanish language minorities under Section 203).

[insert M2: All counties covering Spanish language minorities under Section 203]

Studying the Effects, and the Implementation, of Section 203

There has been virtually no scholarly study of the Voting Rights Act and its impact on Latinos and Asian Americans. In much of the literature there is only a glancing reference to the Voting Rights Act and its impact on Asian and Latino electoral participation, and often these references dismiss the importance of the Act altogether.[4] For example, in her discussion (Thernstrom 1987, ch. 3) Abigail Thernstrom cast doubt on the need for an extension of the Act to cover Hispanics, arguing that the (albeit scanty) pre-1975 literature on Hispanic political participation (Weeks 1930; Grebler et al. 1970; McCloskey and Merrill 1973) indicated that they were already active and well represented. Though they reach very different conclusions, de la Garza and De Sipio concur in most respects with Thernstrom's analysis. In their view, early studies of Latino participation "strongly indicate that prior to the [Voting Rights Act] Mexican-Americans were not excluded from the Texas and Los Angeles electorates (de la Garza and DeSipio 1997: 86). Furthermore, "[d]espite the protections of the [Act], Latino registration and voting rates have not increased significantly since 1975" (de la Garza and DeSipio 1997: 87). Finally, they note, if one of the most concrete provisions of the amended Voting Rights Act was the provision of voting materials for linguistic minorities, evidence from the 1989 Latino National Political Survey indicated that very few Latinos were taking advantage of the availability of Spanish-language voting materials (de la Garza and DeSipio 1997: 95). As it currently stands, the importance of the Act for Latino electoral participation, they conclude, is mostly symbolic, particularly for the native-born (de la Garza and DeSipio 1997:114; see also de la Garza 2004). Ramakrishnan's analysis of the language provisions of the Voting Rights Act concludes that the Act's language provisions are significant, but only for native-born Latinos but not newly-naturalized citizens, whether Latino or Asian (Ramakrishnan 2002).[5]

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[4] However, see Pantoja et al. 2001; and there is a considerable literature on Latino *representation* as a result of the VRA: see for example Tolbert and Hero 2001; Lublin 1997.

[5] Ramakrishnan's study, like the one here, uses the Census' Current Population Survey to analyze the effects of Voting Rights Act's language provisions. However, he uses a combined sample drawn from

However, Jones-Correa (2005) and Jones-Correa and Ramakrishnan (2004), have written pieces addressing the overall impact of Section 203 on the registration and voting rates of covered language minorities at the individual, municipal, and county levels. However, this work assumes that counties covered under the VRA are in fact faithful to the letter and spirit of the law, an assumption which an earlier GAO study (United States General Accounting Office, 1997) indicates cannot be taken for granted. The question raised in this study here, therefore, is how have covered jurisdictions under Section 203 of the VRA actually implemented the law?

Data Collection

The primary data for this project are on-the-spot checks of the registration and voting materials and assistance provided by county registrars and clerks' offices in Section 203 covered jurisdictions. These on-site visits were conducted by Cornell University undergraduates in the spring and summer of 2005.[6] Data were collected for 91 counties: 63 counties across 15 states covered under Section 203 of the Voting Rights Act, and 28 non-covered counties in three states (see M3: All counties included in the study, with control counties in red).

[insert M3: All counties included in the study]

The goal of the data collection was to visit sites in as many of the covered states and jurisdictions as possible, to test for variance in compliance across states. In addition, data on jurisdictions not covered by Section 203 was gathered in three states (Texas, New Mexico and Colorado) to see if there were significant differences in access to registration and voting for linguistic minorities in covered and non-covered jurisdictions.

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congressional and presidential elections (elections which have very different dynamics) and adds county-level demographic data as contextual variables, reducing his sample by at least a third (due to Census restrictions on county identifiers). The combination of these differences in approach leads to quite different results from those presented here.

[6] The fieldwork was sponsored by the Russell Sage Foundation and the College of Arts and Science at Cornell University, to whom we extend many thanks.

Staff at clerks' and registrars' offices in the covered jurisdictions were asked for registration forms in the covered language(s) and for any additional voting or election related materials in the covered language(s). In addition, staff were questioned as to the presence of staff capable of speaking the language(s) covered under Section 203 (in the case of the jurisdictions covered in this study, these were Spanish or Asian languages—Chinese, Korean, Filipino and Tagalog).

The Data

The data presented here include two measures of compliance with Section 203: the availability of registration materials in covered languages, and the presence of personnel capable of handing requests in covered languages. Under Section 203 of the Voting Rights Act, both materials and personnel to aid in registration and elections should be available upon the request of prospective voters.

Registration Materials

Table T3 presents the findings for the availability of registration materials in the covered languages, by state. The table has columns for state, jurisdictions in the study, and compliance. The study covered 15 states, listed in the states column. The county column indicates the number of counties visited in each state. The compliance column is a measure of '0' to '1', where '1' indicates every jurisdiction in the state provided the materials required under Section 203, and a '0' indicated that none had.

T3: Compliance in the Provision of Voter Registration Materials, by State

Voter Registration Materials		
State	Jurisdictions In the Study	Compliance
Arizona	5	1.00
California	7	1.00
Colorado	7	0.29
Connecticut	7	1.00
Florida	6	1.00
Illinois	2	1.00
Kansas	6	1.00
Massachusetts	1	1.00
New Jersey	3	1.00
New Mexico	8	0.88
Nevada	1	0.00
New York	6	1.00
Rhode Island	2	0.50
Texas	4	0.75
Washington	1	1.00
Total/ Average	66	0.86

Ten of the fifteen states had perfect compliance with this requirement under Section 203. This was particularly true of states with larger Latino populations—California, Florida, Illinois, and New York. Three of the four covered jurisdictions in Texas provided materials. Colorado and Rhode Island has the weakest coverage. Note however that only two jurisdictions were sampled in Rhode Island, while seven were sampled in Colorado. Findings across the larger sample size suggest that Colorado's non-compliance is systematic and widespread.

Personnel

Table T5 presents the findings for the availability of personnel capable of providing assistance in the covered languages, by state. Like Table T4, this table has columns for state, jurisdictions in the study, and compliance. Again, the first column is a list of states

included in the study, and the county column indicates the number of counties visited in each state. The compliance column is a measure of '0' to '1', where '1' indicates every jurisdiction in the state providing the assistance in covered languages required under Section 203, and a '0' indicated that none had

Table T5: Compliance in the Provision of Personnel Capable of Providing Assistance in Section 203 Covered Language(s), by State

Personnel State	Jurisdictions In the Study	Compliance
Arizona	5	1.00
California	7	1.00
Colorado	7	0.29
Connecticut	7	1.00
Florida	6	1.00
Illinois	2	1.00
Kansas	6	0.33
Massachusetts	1	0.00
New Jersey	3	1.00
New Mexico	8	0.63
Nevada	1	1.00
New York	6	0.83
Rhode Island	2	0.50
Texas	4	1.00
Washington	1	1.00
Total/Average	66	0.80

Nine states had perfect compliance with this provision of Section 203 of the Voting Rights Act: Arizona, California, Connecticut, Illinois, New Jersey, Nevada, Texas and Washington. The majority of covered jurisdictions surveyed met this provision of the Act, with 80 percent of the counties surveyed claiming to have staff that could provide assistance in the covered languages. Note that the inclusion of the word 'claimed' is not accidental. The field research team took claims of the presence of personnel, and their ability to speak the covered languages at face value. Also four states—Kansas, Massachusetts, New Mexico and Rhode Island—had significant compliance issues with respect to personnel required by the Voting Rights Act.

Voter Registration Materials and Personnel

Table T6 presents the findings for the availability of personnel capable of providing assistance in the covered languages, by state. Like Tables T4 and T5, this table has columns for state, counties in the study, and compliance. Again, the first column is a list of states included in the study, and the county column indicates the number of counties visited in each state. The compliance column is a measure of '0' to '2', where '2' indicates every jurisdiction in the state provided both registration materials and assistance in the covered languages required under Section 203, and a '0' indicated that the counties provided neither.

Table T6: Compliance in both the Provision of Materials and Personnel in Section 203 Covered Language(s), by State

Registration Materials and Personnel		
State	Jurisdictions In the Study	Compliance
Arizona	5	2.00
California	7	1.86
Colorado	7	1.14
Connecticut	7	1.86
Florida	6	2.00
Illinois	2	2.00
Kansas	6	1.33
Massachusetts	1	0.50
New Jersey	3	2.00
New Mexico	8	1.50
Nevada	1	0.50
New York	6	1.83
Rhode Island	2	0.50
Texas	4	1.75
Washington	1	2.00
Total/Average	66	1.67

Table T6 is a compilation of the data presented in Tables T4 and T5. What's clear from this compiled data is that few covered jurisdictions are not in compliance with Section 203 at all. Five of the state surveyed by the research team were fully in compliance—

Arizona, Florida, Illinois, New Jersey, and Washington State. Four others were, with rare exceptions, in full compliance as well—California, Connecticut, New York and Texas. The picture that emerges, overall, is of general compliance across the covered jurisdictions—reflected by the composite score of 1.83 out of 2 for compliance.

This said, there are a number of states that stand out for their non-compliance in either providing voter registration materials or personnel in the covered languages of the Voting Rights Act. These are Colorado, Kansas, Massachusetts, Nevada and Rhode Island.

Non-Covered Jurisdictions

As a control group the research team sampled an additional 28 non-covered jurisdictions or counties in Colorado, New Mexico and Texas-- states that included at least some covered jurisdictions. Interestingly the data indicate that coverage of materials and personnel for linguistic minorities in our control group of non-covered counties is not '0'. For the purposes of comparison tables for the provision of materials and personnel are presented below (Tables T7 and T8).

Table T7: Provision in Non-Covered Jurisdictions of Materials in Section 203 Covered Language(s), by State

Voter Registration Materials		
State	Jurisdictions in the Study	Compliance
TX Average	23	0.48
CO Average	2	0.00
NM Average	3	0.67
Total/Average	28	0.46

Table T8: Provision in Non-Covered Counties of Personnel Capable of Providing Assistance in Section 203 Covered Language(s), by State

Personnel

State	Jurisdictions in the Study	Compliance
TX Average	23	0.52
CO Average	2	0.50
NM Average	3	1.00
Total/Average	28	0.57

The majority of non-covered jurisdictions visited in these three states claimed to have Spanish-speaking personnel. These are also three states with high percentages of Latino residents, so perhaps this finding isn't so surprising; nonetheless, the fact remains that at least some of the non-covered counties in these three states seem to have staff assistance on hand for non-English speaking registrants.

The picture is less sanguine for the provision of registration materials: slightly under half of the non-covered jurisdictions visited offered translated registration materials. Note that this lower figure is largely due to the absence of any materials in Colorado. Non-covered jurisdictions in Texas and particularly New Mexico provide many of these materials. This is not too surprising: both states are covered at the state level by the Voting Rights Act, and voting materials are most likely prepared and distributed by the state government. This is not the case for Colorado.

The rate of coverage is only about half that of covered counties (.46 of the non-covered counties surveyed, for instance, offered voter registration materials, versus .86 percent of the covered counties; and .57 had personnel to offer language assistance versus 80 percent of covered jurisdictions). Nonetheless, these data indicate that even non-covered counties in states that have other covered jurisdictions offer some materials and services for non-English speaking citizens. This suggests that there are some salutary 'spill-over' effects of section 203 of the Voting Rights Act. This is particularly true of states—like New Mexico and Texas—covered in whole under the Voting Rights Act.

Next Steps

The next step in this study will be the analysis of these data in conjunction with voter registration data using either the November 2004 Census Current Population Surveyor or individual level registration and voting data from Voter Contact Services (VCS).[7] In addition the authors expect to analyze additional fieldwork data not presented in this initial paper. We expect that as this vein of research continues that the results of will mirror that of previous studies by Jones-Correa and Ramakrishnan: that is, that covered jurisdictions under Section 203 of the VRA will have significantly greater registration and turnout for linguistic minorities than non-covered areas. However, the research is also expected to indicate that there is variation in Section 203 compliance, and that counties that actually comply with Section 203 will have higher registration and voting rates by linguistic minorities than those that comply in part or not at all; and that there are likely to be some significant differences in voter registration and turnout depending on the location and kinds of materials being offered by state and county agencies.

The authors also collected data on services and materials provided at county department of motor vehicle offices. These data will be analyzed both with respect to the Voting Rights Act and the 2003 Help America Vote Act.

The fieldwork also included data on other materials present but not required at county clerks and registrars' offices (materials and posters in languages other than English, etc.) The authors will test whether counties and jurisdictions that go 'beyond the law', that is, that provide services beyond that required by Section 203 see higher registration rates for non-English speaking citizens than those that do not.

Conclusions

[7] VCS has allowed the Jones-Correa access to their data in the past (Jones-Correa and Ramakrishnan 2004). http://www.vcsnet.com/

The preliminary findings of this study suggest that there is significant non-compliance across covered counties with Section 203 provisions, in the areas of both the provision of materials for linguistic minorities, and the availability of staff assistance in languages other than English. To sum up:

- ***One in seven*** of the 66 covered jurisdictions surveyed in the study could offer, upon request, registration materials in other languages as required under the law.

- ***One in four*** of the 66 of the covered jurisdictions in the study indicated they did not have personnel present who could offer aid in the languages indicated under the Voting Rights Act.

- Levels of compliance ranged widely across states, with five states—***Colorado, Kansas, Massachusetts, Nevada and Rhode Island***—having significantly lower compliance rates. In general states with larger Latino populations did well in providing both materials and language assistance.

- While non-covered counties in Colorado, New Mexico and Texas offered some level of materials and assistance, these were approximately at levels about half those offered by covered jurisdictions. Nonetheless, these services indicate some salutary spill-over effects of the Voting Rights Act even in non-covered jurisdictions, particularly in states like New Mexico and Texas in which the states as a whole are covered under the Act.

Earlier analyses (Jones-Correa 2005; Jones-Correa and Ramakrishnan 2004) have indicated that Section 203 coverage has a significant effect on registration and voting rates of language minorities residing in those counties. The findings here suggest that this effect is present even though Section 203 compliance is very uneven, and therefore that the effects found in earlier research would be even greater if Section 203 compliance were universal. Greater emphasis needs to be placed on verification of the voting and registration standards set under the law.

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Verifying Implementation of Language Provisions in the Voting Rights Act

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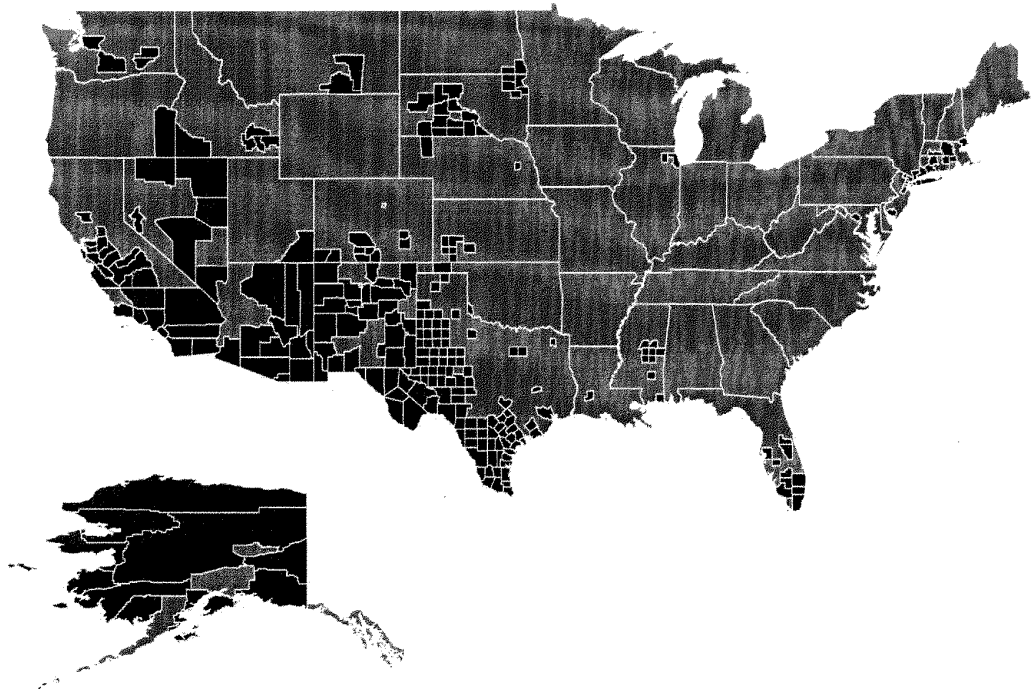
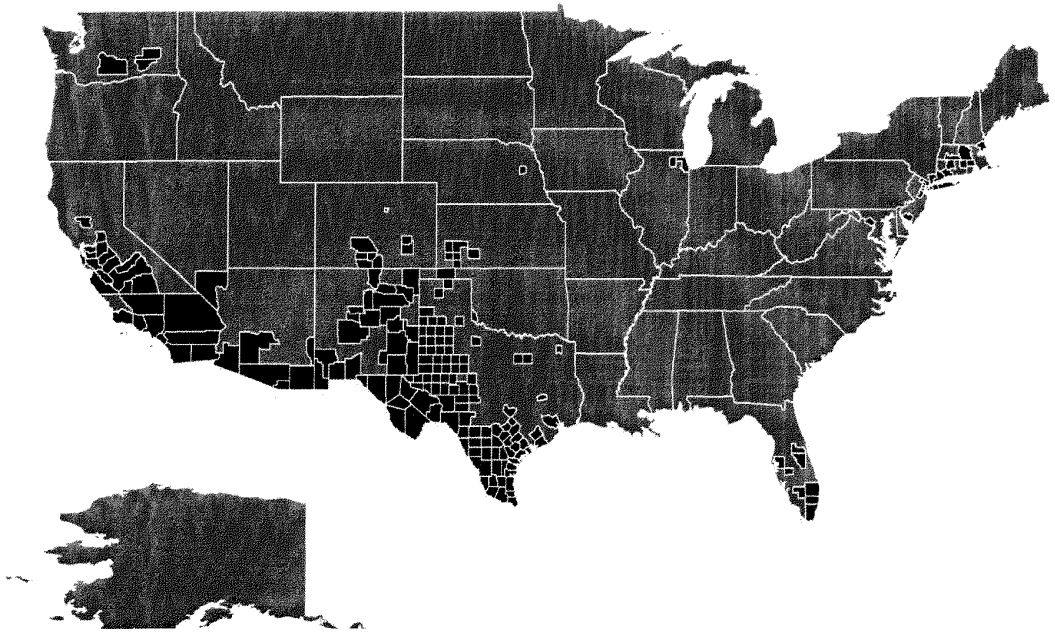
Symposium on "Protecting Democracy: Using Research to Inform the Voting Rights Reauthorization Debate," Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity at the University of California, Berkeley School of Law and the Institute for Governmental Studies, University of California, Berkeley, Washington D.C. February 9, 2006

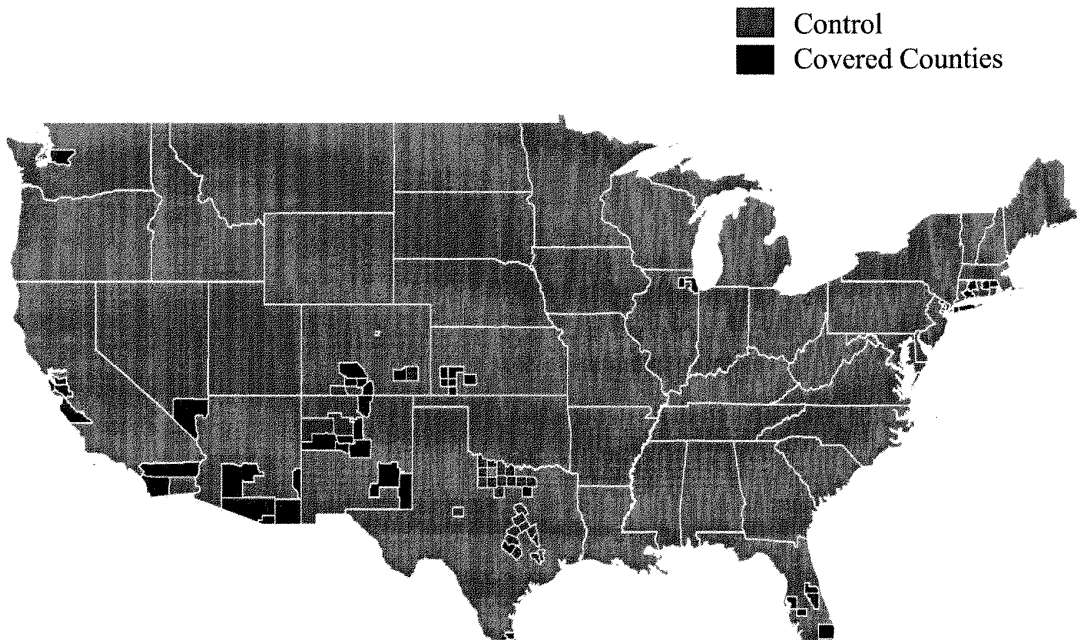
All counties covered under Section 203 of the VRA



All counties covering Spanish-language minorities
under Section 203 of the VRA



All counties included in the study
(with control counties in red)



The Deterrent Effect of Section 5 of the Voting Rights Act: The Role of More Information Requests

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It is impossible to assess the impact of the Voting Rights Act (VRA) without a thorough consideration of the role of the Section 5 Preclearance Provision. This subdivision of the law transformed the traditional relationship between national and state governments in that it gave the Department of Justice (DOJ) and the United States District Court for the District of Columbia[1] the capacity to directly review the potential impact of a broad range of proposed changes in electoral procedures and practices to determine if they might be discriminatory. This *ex ante* intervention was specifically designed to expand voting rights to African Americans, and later identified language minorities, by limiting their need to seek legal remedies in the federal courts after jurisdictions had already held elections in which discrimination was alleged. Section 5 was designed to overcome the need for plaintiffs to first file lawsuits in federal district courts within covered jurisdictions[2] where local judges might be inclined to make decisions in favor of traditional political interests.

The logic of Section 5 assumed that African Americans and language minorities were much more likely to have their interests fully considered by the Department of Justice (DOJ) or the DC Court than by a local federal district judge.[3] When the constitutionality of the entire VRA, including Section 5 specifically, was upheld by the Supreme Court in *South Carolina v. Katzenbach,*[4] the DOJ and the DC Court were given the capacity to become significant participants in the determining the impact of the Voting Rights Act. The capacity was expanded

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[1] Because so few changes are submitted to the DC District Court, we will refer to submission to the DOJ as the primary arena within which Section 5 is administered. We fully acknowledge that a jurisdiction can, at any time, choose to submit their change to the DC District Court for review.

[2] Explain the trigger formulas for covered jurisdictions.

[3] Roman argues that the inclusion of the Department of Justice in Section 5 review was an afterthought by the Congress. They expected most of the reviews to occur under the DC District Court. See John J. Roman, "Section Five of the VRA: The Formation of an Extraordinary Federal Remedy," *American University Law Review* 22 (2), 1972, p. 124.

[4] 383 U.S. 301 (1966).

even further in *Allen v. State Board of Elections*[5] in which the Supreme Court enlarged the scope of the VRA to prohibit practices and procedures that led to vote dilution.[6] Vote dilution could now be considered in preclearance reviews under Section 5.

The realization of the goals of the VRA, and perhaps especially those of Section 5, has always depended on both effective enforcement of its various sections and provisions by the federal courts and the Department of Justice and on voluntary compliance by covered jurisdictions. The number of personnel and other resources necessary to constantly monitor the hundreds of thousands of decisions and actions taken by state and local governments in the process of conducting elections has been a perennial issue challenging the federal government, and especially the DOJ, in the exercise of their responsibilities under the VRA. Ironically, despite the principled position taken by the Congress in 1965, and by the Supreme Court in 1966 and 1969, to promote the full and effective participation of African Americans in all aspects of elections, neither body has distributed or mandated the amount of money necessary to make sure that full enforcement of all provisions of VRA could occur.

Not surprisingly, a debate on the effectiveness of DOJ actions regarding Section 5 has always existed.[7] Two main criticisms have been levied against the DOJ. First, it is argued that the DOJ has no comprehensive way of knowing whether or not all covered jurisdictions have submitted all relevant election related changes to the DOJ for review. Second, because of the dependence of the DOJ on this voluntary submission, it has tended to engage in negotiations with covered jurisdictions that have not been as forceful or demanding as necessary to maximize the protection of voting rights. These two criticisms are outlined most clearly by Ball, Crane, and

[5] 393 U.S. 544 (1969).
[6] Definition of vote dilution from Davidson, 1992.
[7] The question of whether Section 5 should exist at all given its impact on only certain sections of the country and whether vote dilution is protected under its provisions are also debated. Our focus in this essay, however, is on the debate regarding implementation, not the debate on its legality or scope.

Lauth, where they refer to these limits in the implementation of Section 5 as leading to "compromised compliance."[8] Department of Justice officials, not surprisingly, argue that they do all that they can with the resources that they are given. Reliance on voluntary compliance is acknowledged, as is awareness that in some instances "second-best results" or the making of decisions largely on "political considerations" can occur.[9] These officials, however, are confident that the DOJ has most often promoted "high levels of compliance" by covered jurisdictions nonetheless.[10]

The DOJ has consistently issued objections to submitted changes. Ball, Crane, and Lauth report that from 1965 to 1981, a total of 35,000 changes were submitted for preclearance. The DOJ objected to 815, or 2.3%, of these changes.[11] From 1990 through July 29, 2005, 261,388 changes were submitted. A total of 792 objections to these changes were made by the DOJ. This represents 0.3% of all changes during this period of time.[12] Only 48 of objections were issued between 2001 and 2005.

Interestingly, both the critics and the supporters of DOJ enforcement of Section 5 make arguments with little systematic analysis of longitudinal data regarding DOJ internal review of submissions and the ultimate disposition of submitted changes. Using the number of objections to assess DOJ actions regarding Section 5 is useful, but it may miss other ways that the DOJ influences jurisdictions to comply with the VRA. Relatedly, interpreting the recent decrease in

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[8] Howard Ball, Dale Crane, and Thomas P. Lauth, *Compromised Compliance: Implementation of the 1965 Voting Rights Act*, Westport, CT: Greenwood Press, 1982, p. 57.

[9] Drew S. Days III, "Section 5 and the Role of the Justice Department," in *Controversies in Minority Voting: The Voting Rights Act in Perspective*, Bernard Grofman and Chandler Davidson, eds., Washington: DC: The Brookings Institution, 1992, p. 61. From 1990 through June 23, 2005, a total of 792 objections to proposed changes have been issued by the DOJ.[9] However, only 44 of these objections were issued between 2000 and 2005.

[10] Ibid.

[11] Ball, Crane, Lauth, 1982, p. 137.

[12] US Department of Justice. "Section 5 Objection Determinations." http://www.usdoj.gov/crt/voting/sec_5/obj-activ.htm.

the number of objections issued by the DOJ as an indicator that jurisdictions are now more prone to make electoral changes that comply with the VRA may underestimate the critical role that the DOJ can play in directing jurisdictions to comply. A systematic assessment of a fuller range of DOJ practices and decisions in the area of compliance fills a critical need in understanding the impact and continued need for Section 5 of the Voting Rights Act.

This essay is comprised of three parts. First, we develop a model of compliance to reexamine the debate regarding the impact of Section 5. In this model of compliance we specify the major players, their primary goals and strategies, and the final outcomes that structure the process of preclearance. Second, we specify the role of **more information requests (MIRs)** issued by the Department of Justice as part of their work in reviewing submitted changes. An MIR is a formal letter from an official within the DOJ to a submitting jurisdiction for additional information to evaluate a proposed change.[13] The purpose of an MIR is to make sure that the DOJ has the information it needs to comprehensively review a proposed change. In doing so, it can also send signals to submitting jurisdictions about the assessment of their proposed change.[14] Third, we provide the first-ever analysis of the actual issuance of MIRs by the DOJ for the period 1990-2005.[15] We analyze the frequency of MIRs and their distribution by type of electoral change and state from which changes were submitted. We also analyze the relationship of MIRs to the ultimate outcome of changes submitted to the DOJ when an MIR was issued.

In the end, we use our model of compliance and our analysis of DOJ generated data to specify the critical role that MIRs can play in promoting compliance by covered jurisdictions. MIRs are far more frequently issued than are objection letters, and may be a much needed added

[13] Department of Justice, 28 C.F.R. Part 51, §51.37, Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as Amended.
[14] An example of an MIR appears in Appendix A.
[15] Only partial data are presently available from the Department of Justice for 2005. The full data for 2005 will be added when the data become available.

measure to assess both compliance with and the continued need for Section 5 of the Voting Rights Act. MIRs are among the mechanisms used by the DOJ to promote submission, facilitate full review, and develop arenas of understanding with all relevant players in the preclearance process. MIRs may, ultimately, be a better indicator of how much compromised compliance actually occurs in the process of Section 5 preclearance.

Modeling Compliance

We define compliance as the submission to the DOJ,[16] with full information, of all changes in voting procedures or practices that may have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, and the acceptance by the submitting jurisdiction of the determination made by the DOJ or DC District Court. We posit that there are three primary actors[17] in the process of compliance with Section 5 of the Voting Rights Act. The first actor is the covered jurisdiction and those officials within a jurisdiction with direct responsibility for overseeing elections and voting. Under the VRA in 1965, a number of states, largely in the South, were subject to the Section 5 Preclearance Provision. They were identified on the basis of the trigger formula that was initially stated in this legislation. The trigger formula was modified in 1970 and especially in 1975 when the VRA was expanded to include language minorities. At present nine entire states are included under Section 5, as are fifty-four additional counties and twelve individual townships in selected other states.[18] All governmental subdivisions within a specified

[16] Or the District Court of the District of Columbia. See fn. 1.

[17] We do not include federal judges, members of Congress, or the President as primary actors. Clearly they have affected the evolution of Section 5 through court decisions and modifications of the legislation. We suggest that these players are better understood as decision-makers who sporadically affect interpretations of Section 5, but do not consistent participants in the implementation of Section 5.

[18] The states are: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia (six counties and three cities in Virginia have successfully bailed out of coverage). The number of covered counties in states not covered as a whole are: California-4, Florida-5, New York-3, North Carolina-40, South Dakota-2. The

jurisdiction are also covered under the Section 5 provision. The second major actor is comprised of subsets of African American and language minority voters. African Americans in specified jurisdictions were the original anticipated beneficiaries of the VRA. Likewise, language minorities, especially Latinos, certain Asian subgroups, and some Native American tribes, are now similarly positioned to benefit from the VRA. We place advocacy groups such as the Lawyer's Committee for Civil Rights (LCCR), the NAACP Legal Defense Fund, and the Mexican American Legal Defense and Education Fund (MALDEF) and private attorneys who represent African Americans and language minorities within this set of actors as well. The final actor in the preclearance process is the Department of Justice. Among the most important decision-makers within the DOJ affecting Section 5 is the Attorney General, the Assistant Attorney General for the Civil Rights Division, the attorneys in the Voting Rights Section, and the analysts or paraprofessionals who are generally the first to initially review a submission.

Each of these actors has a distinct set of goals in Section 5 Preclearance. Covered jurisdictions have as their primary goal to implement a proposed change. Whatever the nature of the change and whatever its purpose, our model posits that the interests that govern the jurisdiction have come to the decision to make the change consistent with the distribution of political influence currently operating in the jurisdiction. By comparison, the primary goal of African Americans, language minorities, and their advocates is to maximize their respective rates of voting participation and their related election of first choice candidates to public office. Lastly, the primary purpose of the DOJ is to guarantee that proposed changes in electoral procedures, practices, and effects comply with current legal standards of the Voting Rights Act.

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number of townships in states not covered as a whole are: Michigan-2, New Hampshire-10. The entire list of covered jurisdictions can be found at:
http://www.usdoj.gov/crt/voting/sec_5/covered.htm.

What becomes immediately apparent is that the goals of each of these actors need not be consistent with one another, although it is theoretically possible. The logic of Section 5 is to push the DOJ to object to any proposed changes where their purpose or effect is identifiably inconsistent with that of the protected group, given current standards of law.

What strategies and related actions, then, are pursued by each of the actors in their attempts to attain the goals specified above? It is here where we begin to see the critical role that MIRs can play in affecting any assessment of Section 5. There are four primary strategies that a covered jurisdiction can pursue to implement a desired change: 1) not submit the change to the DOJ, 2) submit the change for preclearance with limited or biased information in anticipation that the DOJ might not preclear a full submission, or 3) provide a full submission with all relevant information to the DOJ.[19] Clearly the first two strategies are not in compliance with the spirit or letter of the VRA. There are two primary strategies pursued by African Americans, language minorities, and those acting on their behalf. They can: 1) monitor changes in election procedures or practices occurring within jurisdictions, and 2) assess these changes to determine if they are discriminatory or not. Lastly, the DOJ has four strategies it can pursue in assessing submissions it has received. It can: 1) rely upon the information provided by the covered jurisdiction and included within its original submission, 2) rely upon the information provided by African Americans and language minorities in their assessments of proposed changes, 3) secure their own information based upon their independent research, or 4) secure additional information from the submitting jurisdiction through the issuance of a more information request (MIR) in a formal letter from the DOJ. There is variation in the extent that some actors can pursue multiple

[19]Guidelines for jurisdictions submitting changes to the DOJ are located at: http://www.usdoj.gov/crt/voting/sec_5/guidelines.htm.

strategies simultaneously. Submitting jurisdictions are limited to one strategy, however targeted groups and the DOJ can pursue several of the identified strategies at the same time.

The outcomes that can result from the process of compliance comprise the last component of our model. The primary ways that the outcomes of preclearance have been conceptualized is through determining whether or not the DOJ approves a proposed change or issues an objection. The issuance of the objection is the ultimate sanction that the DOJ can impose under Section 5 and is the clearest indication that a jurisdiction is proposing a change that has a discriminatory purpose or is likely to have a discriminatory effect. It is the lack of the issuance of objections that is the primary criticism levied against the DOJ. Rarely, however, is it also acknowledged that the covered jurisdictions can also take four distinct actions resulting from the issuance of an MIR. The actions also have clear consequences for affecting compliance. One, a jurisdiction can respond to the MIR by supplying the requested information. Two, it can withdraw the proposed change that led to the MIR. Three, it can submit another change that supersedes the original proposed change in response to the questions raised in the MIR. Four, it can choose not to respond to the MIR. In each of these last three circumstances, the covered jurisdiction, if it is complying with the law, is not implementing the original proposed change. Actions of withdrawal, superseded change, and no response can be understood as having the same ultimate impact as the issuance of an objection. Finally, African Americans and language minorities can take the actions of either accepting the decisions of the covered jurisdiction and the DOJ or litigating respective decisions in a court of law. It is, of course, likely that the chances such litigation will be successful are less if the proposed change is approved by the DOJ. We are also fully aware that pursuing such a strategy requires considerable financial and other resources.

This model of compliance is outlined in Figure 1. This model serves three purposes. First, it places any assessment of the impact of Section 5 within the appropriate context of understanding the range of actors, goals, strategies, and potential consequences that comprise the complex and interdependent relationships required under the Voting Rights Act. Second, it allows us to fully appreciate the critical role that can be played by MIRs in promoting compliance with Section 5 of the VRA. Objections are an appropriate indicator of DOJ actions. The issuance and consequences of the issuance of MIRs are also important, and previously little examined indicators of the impact of Section 5. Third, any possible revision in the structure and implementation of Section 5 that may be considered as it approaches renewal in 2007 can be informed by the interdependencies of interest and interaction outlined in our model. By specifying actors, goals, strategies, and consequences, we are in a better position to assess the likely impact of any proposed changes in the structure and operation of Section 5.

MIRs in the Process of Compliance

The critical role of MIRs is evident. MIRs serve as a means through which the DOJ enhances the information that it has available to assess a proposed change. It cannot issue an MIR when there is no submission provided. However, it can do so as a way of limiting the likelihood that jurisdictions will submit limited or biased information. It can also issue an MIR to further supplement the information provided by a jurisdiction when it has attempted to provide full information in good faith. Moreover, MIRs can signal to jurisdictions that a proposed change might have a discriminatory impact that the jurisdiction had not anticipated. It can also serve to help the DOJ better understand what a jurisdiction is attempting to do.

The Role of MIRs in Section 5 Compliance, 1990-2005

Sources of Data. The subsequent analysis utilizes data provided by the Department of Justice. We requested any combination of reports that showed changes, objections, and more information requests by year, jurisdiction, and change type for years 1982-2005. Additionally, we requested any reports showing MIRs since 1982 that resulted in a submission being withdrawn and then subsequently resubmitted. We also requested copies of all letters including MIRs since 1982. We received Submission Tracking and Processing System (STAPS) Statistic Reports for Changes and Objections by year and state, and by year and change type. No statistics report combining both state and change type for submissions and objections was available. No statistics report was available for More Information Requests which showed change type and/or state, and no statistics report was available for withdrawals. One MIR report was available that listed total MIRs by submission number. We received Submission Listing Report: Followup and Study Report for the Action ASK for all states. Initially, we received this information for each state, but in the process of making information requests the records software was updated and the report was able to include all states. This report gave us summary information for everything that happened within a submission that received a MIR. This 3,483 page document provides a summary of everything that happened within a submitted change receiving a MIR; therefore, it is more telling of MIRs than the reports that solely summarize changes and objections. In the end, we coded the following information for each submitted change receiving a MIR: state, county, subjurisdiction, submission number, change type, number of MIRs, more information followups, and the final outcomes of the original change submitted for the period 1990-2005. Summary reports with this information are not maintained by the

DOJ. We generated all of these summary statistics based on the detailed information on each submissions maintained by the DOJ.

We also received copies of each letter containing one or more MIRs from 2000-2005.[20] We entertained the idea of requesting a whole submission file to study the substantive changes that occurred throughout the process of preclearance. We were informed that securing this information would take a great deal of time and require redacting information.[21]

MIRs do not encompass all information requested from the jurisdiction. MIRs only encompass that information that was requested through a formal letter. Other information requests that might occur from conversations DOJ officials have with submitting jurisdictions are not a part of our analysis. The data we use includes only the requests for information made through formal letters sent by the DOJ to submitting jurisdictions.

The MIR data were coded into fifteen change types to mirror the categories used by the DOJ. These categories were: redistricting, annexation, polling place, precinct, re-registration or voter purge, incorporation, bilingual procedures, method of election, form of government, consolidation or division of political units, special election, voting methods, candidate qualifications, voter registration procedures, and miscellaneous.[22]

Outcomes of the issuance of MIRs were initially coded into twenty-seven categories. These were further reduced to fourteen categories for purposes of consistency. We focus our analysis on three specific outcome categories: objections, no objection, and the sum of

[20] We initially requested copies of each letter containing at least one MIR since 1982. We were informed that the cost of producing these letters would be in the thousands of dollars and that it would take a considerable period of time to complete.
[21] We plan to code the content of a sample of these letters to further understand the influence MIRs can have on submitting jurisdictions.
[22] A listing of all categories of change type appears in Appendix B.

withdrawals, no determination (ND)/superseded, and no response.[23] Objections refer to the issuance of a formal objection letter by the DOJ. No objection refers to an approval in the process of preclearance. The withdraw category contains all submitted changes that ended in withdrawal or no determination/withdrawal. In such circumstances the jurisdiction withdrew the proposed change initially submitted. Changes that ended in ND/superseded occur when the jurisdiction has decided to submit another proposed change to replace the change initially submitted. Finally, the no response category includes changes initially submitted that elicited a MIR or a more information follow-up. A more information follow-up is when an additional request for even more information provided from an initial MIR. In each of the circumstances we coded as a withdrawal, no determination superseded, and no response, the initial change has no legal approval to be implemented. As such, we argue that the impact of each of these outcomes can be understood as similar to the outcome that results from the issuance of a letter of objection. That is, the submitted change has no legal standing to be implemented.[24]

The Context of Compliance. Tables 1-6 provide longitudinal descriptive data for the years 1990-2005[25] on the total number of changes submitted for preclearance, objections issued to changes submitted, and number of MIRs sent. These data are subdivided by change type and by state from which the change was submitted. Several patterns appear in these data.

Overall, the total number of changes submitted is about the same for each of the years examined as revealed in Table 1. In 1990 a total of 17,900 changes were submitted for preclearance to the DOJ and in 2004 the number was 17,037. The smallest number of changes submitted was in 1995 at 14,149 and the largest number was in 1992 at 22,763. The numbers do

[23] A complete listing of coding categories for the impact of MIRs is provided in Appendix C.
[24] We are fully aware that the DOJ does not have the capacity to monitor whether or not any of these changes are subsequently implemented. We note that this is the same position for the DOJ even when it issues an objection letter.
[25] We only have data up through July for 2005.

go up in 1992 and 2002, years after which reapportionment and related redistricting have their greatest impact as a result of new population data provided by a decennial Census. A grand total of 261,390 changes were submitted between 1990 and June of 2005.

Within the categories provided by the DOJ, the largest number of changes, 59,002 (22.6%) were submitted for approval to modify polling places, followed by annexations at 54,760 (20.9%), precincts at 36,253 (13.9), and voter registration procedures at 22,002 (8.4%). These four types of changes accounted for a total of 65.8% of all changes submitted. The overall category of miscellaneous accounted for 41,340 (15.8%) of all submissions. The main categories of submitted changes do not change dramatically across the seventeen years examined, although the number of changes submitted regarding redistricting, polling places and precincts does increase in the first two years after a decennial Census.

More submissions consistently come from the states of Texas and Georgia relative to any other states, as revealed in Table 2. Texas surpasses all of the other states by far with a total of 112,261 submitted changes from 1990-2005. It is followed by Georgia with a total of 34,733 submissions, just under one-third the number from Texas. Louisiana, Arizona, Alabama, Virginia, and South Carolina comprise a third major group with 17,765, 17,612, 17,129, 16,697, and 15,358 submitted changes respectively. The number of submitted changes drops significantly to 8,229 from North Carolina and 7,411 from Mississippi.

Tables 3 and 4 display the number of objections issued through the DOJ by change type and by state. The number of objections has gone down dramatically since 1995. For the years 1990-1994, an average of 131.4 were issued as compared to the period 1995-2004 when the average was only 13.4. This is a dramatic reduction. It is evident from Table 3 that three types of changes account for the largest bulk of objections: method of election, redistricting, and

annexation. Together these three types of changes account for 82.3% of all objections issued. Interestingly, the top three states with the largest number of objections in rank order are Louisiana with 158, Georgia with 139, and Texas with 120. Together these three states account for over half of all objections, 52.7%. Recall that these three states also submitted the largest number of changes for preclearance. These states are followed by Alabama (84), Mississippi (77), South Carolina (66), California (60), North Carolina (35), Arizona (16), New York (14), Virginia (12), Florida (7), Alaska (2), New Mexico (1), and South Dakota (1). Covered jurisdictions in Arkansas, Michigan, and New Hampshire have never been issued an objection letter.

Patterns in the Issuance of More Information Requests. Following the analysis above, in Tables 5 and 6 we display the issuance of MIRs by year, change type, and state for 1990-2005. What becomes immediately apparent is that the number of MIRs, 6,717, far exceeds the number of objections. MIRs exceed objections by a factor of eight. However, similar to the decrease in the number of objections after 1994, there is a decrease in the number of MIRs. From 1990-1994 an average of 935.4 MIRs were issued per year, whereas the annual average for the period 1995 to 2004 was only 203.3.

The top six categories in which MIRs were issued are method of election, annexation, polling place, precinct, redistricting, and voter registration. Similar to the issuance of objection letters the categories of method of election, redistricting, and annexation account for a substantial portion, 49.5%, of all MIRs. However, a much wider range of types of change receive MIRs than was the case with objections. Table 6 reveals that the same three states of Texas, Georgia, and Louisiana are again the top three states to receive MIRs. Together they account for 56.9% of all MIRs issued between 1990 and 2005. Noticeably, South Carolina is the state that ranks

fourth in the receipt of MIRs although it ranks seventh in the total number of submissions and sixth in the total number of objections.

In Table 7 we reveal the distribution of MIRs by type of change for each state. There are several interesting patterns in the data. As previously stated, Texas was issued the largest number of MIRs, a total of 1,512. Within the categories specified by DOJ, most MIRs were issued regarding polling places (394), closely followed by method of election (381), precincts (184), redistricting (174), and annexation (105). The second highest number of MIRs, 1,325, was issued in Georgia. In contrast to Texas, however, the largest grouping of these by far was related to annexation (564), followed by method of election (342), and redistricting (108). Louisiana received the third highest number of MIRs, 983. The largest grouping of MIRs was for precincts (355), annexation (186), polling places (185), and redistricting (147). States are prone to receive MIRs clustered in distinct subsets of types of changes submitted.

Assessing the Outcomes of MIRs. The above analysis suggests that MIRs can play a significant role in the overall process of preclearance leading to compliance with the Voting Rights Act. They are issued with considerable frequency. Their focus can be consistent with that of objections; however, they also focus on a broader range of voting procedures and practices than do objections. Moreover, there is considerable variation in the number of MIRs made to submitting jurisdictions across states and variation in the focus of the MIRs by state. In this section, we assess the impact of MIRs on the documented outcomes of voting procedures and practices as determined by the DOJ. We pay special attention to comparing these documented outcomes to the issuance of formal objection letters by the DOJ.

Examination of Table 8 reveals that not every submitted change that ultimately results in an objection letter was preceded by the making of an MIR. A total of 792 objections were

made to proposed changes during 1990-2005, however only 365 of these objections contained the issuance of a MIR at some point in the process of review. However, the sum of the outcomes of withdrawals, superseded changes, and no responses, resulting from an MIR, is 855. This means that MIRs have resulted in directly affecting 855 additional changes, making their implementation illegal, in addition to the 792 changes that resulted in objections. MIRs increased the impact of the DOJ on submitted changes by 110%, i.e., doubling the number of changes that were not precleared by the DOJ. We calculated the ratio of MIR outcomes to objections for all change types and these ratios appear in the last column of Table 8.

There is considerable variation in the impact of MIRs, relative to objections, by change type. As stated earlier, during the period examined the DOJ issued 272 objections, its largest number, regarding changes related to method of election. MIRs had an equal impact in this area; 278 changes did not receive approved status as a result of an MIR. Two change types where the DOJ issued its second and third highest numbers of objections, redistricting (n=236) and annexations (n=144), did not result in nearly as many MIR affected outcomes. The ratio of MIR outcomes to objections was 0.6 for redistricting and a small 0.2 for annexations. However, in every other type of change type MIR outcomes very nearly equaled or surpassed the number of changes affected by an objection. The impact of MIRs on change outcomes, relative to objections, was greatest in the area of polling places where they affected just under eleven more times the number of changes that received objections. The other areas in which there were a considerable number of objections and where MIRs also affected submitted changes were precincts, special elections, voter registration procedures, and candidate qualifications. The respective MIR impact to objections ratios were 3.5, 1.3, 0.8, and 0.9 respectively.

Table 9 displays state comparisons of the impact of MIRs relative to objections. The rank ordering of states where MIRs have affected the most changes is as follows: Texas (290), Alabama (148), Georgia (97), South Carolina (79), Mississippi (65), New York (53), and Louisiana (52). In the two states that had the highest number of objections, Louisiana and Georgia, MIRs led to noticeably fewer outcomes; comparison ratios were 0.3 and 0.7 respectively. However, in Texas and Alabama, the states with next two highest number of objections, MIRs affected outcomes at much higher ratios; 2.4 for Texas and 1.8 for Alabama.

In Table 10 we provide longitudinal data of the impact of MIRs relative to objections. It is noteworthy that the number of submissions remains within the same general range from 13,000 to 17,000 throughout the entire period, with the exception of 1992 and 2002 when more submissions are made soon after new Census data are available. Nonetheless, our analysis reveals that beginning in 1999, the number of submitted changes affected by MIRs was consistently greater than the number of changes affected by objections. The ratio of MIR affected outcomes was 22.4 in 1999, 12.5 in 2000, and 8.8 in 2001. It drops noticeably lower in 2002, but MIRs still affect more than two times the number of changes than those affected by objections.

Finally, we present a comparison of the impact of MIRs to objections organized by presidential administration in Table 11. Interestingly, the impact of MIRs exceeds the impact of objections in both the George H.W. Bush administration, ratio is 1.7, and the current administration of his son George W. Bush, where the ratio of MIRs to objections is 3.8. The lowest relative impact of MIRs to objections occurs during the Clinton administration were the ratio across the entire eight years of the administration is only 0.8.

MIRs, Compliance, and the Deterrent Effect of Section Five

We began our analysis of more information requests by developing a model of compliance that outlined the primary actors, goals, strategies, and consequences that serve to structure the process of preclearance that operates under Section 5. This was done to better inform our understanding of the varied and oftentimes competing interests that determine the extent to which compliance with the Voting Rights Act is likely to occur. We also developed the model to better position the role that more information requests (MIRs) have in the overall process of preclearance. Although rarely studied as a critical part of assessing the impact of Section 5, we hypothesized that MIRs could be another major way that the DOJ could affect the extent that covered jurisdictions comply with their obligations to pursue and implement electoral procedures and practices that did not deny or abridge the right to vote and to cast a meaningful vote for African Americans and identified language minorities.

Our analysis of data provided by the DOJ for the period 1990-2005 allows us to reach two significant conclusions regarding the critical role of MIRs in the larger processes of preclearance and compliance under Section 5. First, MIRs are issued at far higher rates than are letters of objection. As such, they have the potential to affect a wider range and larger number of changes, relative to objections, submitted to the DOJ for review. The pattern in the number of MIRs issued does follow a similar decline to that seen in the making of objections. Moreover, the frequency of MIRs varies by change type, and especially by state. Second, our measure of the impact of MIRs that were likely to serve as deterrents to the pursuit of procedures and practices that could have a discriminatory effect on African Americans and language minorities demonstrates that MIRs double the number of changes that did not have legal standing to be

implemented under Section 5. Interestingly, MIRs do not have their greatest impact on submitting jurisdictions through their linkage to the ultimate issuance of objection letters. Less than half of all objections also contained an MIR. Rather, MIRs can have an impact entirely separate from whether an objection is issued. We also find that there is variation in this impact across change types and by state. Finally, we found that there is variation across each of the years examined and when MIR impact is aggregated across presidential administrations.

Our research has direct implications for the further consideration of the need to maintain Section 5 in the reauthorization of the Voting Rights Act. First, any assessment of the impact of Section 5 and the need for maintaining Section 5 that does systematically consider more information requests will be incomplete. We have clearly demonstrated that MIRs can be studied and their impact can be specified. Scholars and other analysts run the risk of underestimating the impact of Section 5 and underestimating the need for continuing Section 5 if they do not fully consider the role of MIRs in the larger processes of preclearance and compliance. Second, in the next phase of our research we will code the explicit content of a random sample of MIRs to gauge the extent that they provide specific guidance, and especially warning, to jurisdictions that proposed changes may have the purpose or effect of being in violation of the Voting Rights Act. Unfortunately, the DOJ does not code the content of MIRs beyond the general categories noted in our analysis. We must determine if variation in the content of MIRs has a systematic impact on the likelihood that a jurisdiction will withdraw a submitted change, submit a different change that compensates for the directives provided by the DOJ in an MIR, or is more likely to lead to a jurisdiction simply acquiescing to a perceived DOJ concern and thus not responding to the initial MIR or a follow up. Lastly, our analysis provides empirical evidence that can be used to more richly gauge how changes in case law regarding

Section 5, preclearance, and retrogression, affect the way that officials within the DOJ attempt to promote compliance with the Voting Rights Act. What is the relationship between the frequency and content of MIRs and significant changes in the scope and implementation of Section 5 when new law is established through court decision?[26] If the reauthorization of the VRA leads to considerable changes in Section 5 such as through a rewriting of the current trigger formula or the bailout provisions, how might the issuance of MIRs be affected and how might the full impact of Section 5 be changed?

It has always been understood by both critics and supporters of Section 5 that this provision of the Voting Rights Act simultaneously represented both the great promise of full and effective voter enfranchisement regardless of race, color, or language minority status, and was among the clearest examples in our federal law of selective enforcement targeting specific areas of the country for greater scrutiny and oversight by the DOJ. We are confident that our analysis of MIRs brings additional insight to both interpretations. We hope that with greater insight can come more opportunities to anticipate, clearly debate, and ultimately be more confident that any proposed changes or renewal of Section 5 will lead to consequences that can be predicted with high confidence. Undoubtedly, whose interests are likely to benefit most from these consequences will result much more from power politics and legislative compromise than from principled commitments to expand voting and representation fully. The consequences for segments of the population who have for so many years been kept at the margins of voting, representation, and the ultimate prize of benefiting from resulting public policy will be considerable. So will the consequences for the entire nation.

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[26] For example, in *Reno v. Bossier Parish School Bd. II* 528 U.S. 320 (2000) the Court held that "a voting change with a discriminatory but nonretrogressive purpose or effect does not violate Section 5."

Table 1
Changes by Type of Change and Year, 1990-2005

Type/Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Totals
Redistricting	164	916	974	512	325	213	116	105	65	67	49	985	1138	400	242	60	6331
Annexation	4409	2870	2297	2229	3480	3283	3409	3302	3236	3453	4500	3123	4466	4338	4515	1850	54760
Polling Place	3639	4326	5258	4252	4562	2713	5152	3754	4741	2859	4263	2669	4195	2819	3060	740	59002
Precinct	1618	3214	5331	3188	2517	1736	2327	3320	1900	1673	1763	1556	2674	1790	1296	350	36253
Reregistration or Voter Purge	16	18	10	12	17	5	1	9	5	8	6	8	11	2	2	2	132
Incorporation	162	115	202	136	98	193	119	187	179	197	133	250	149	136	153	62	2471
Bilingual Procedures	96	103	112	144	91	106	97	105	75	69	80	99	114	207	292	49	1839
Method of Election	915	973	1113	1283	738	722	468	541	487	583	434	816	495	475	344	139	10526
Form of Government	211	84	28	21	11	20	28	38	34	45	35	19	22	18	23	7	644
Consolidation or Division of Political Units	34	91	79	65	25	54	61	55	60	105	53	115	47	51	66	39	1000
Special Election	1247	946	1286	1269	1152	1101	1118	1329	1216	1215	1254	1226	1477	1232	1386	596	19050
Voting Methods	187	141	134	122	136	214	260	172	143	188	187	133	211	424	293	172	3117
Candidate Qualifications	167	204	223	256	187	228	147	225	160	209	208	237	156	171	112	33	2923
Voter Registration Procedures	3074	3554	3294	2050	2568	1625	1862	466	269	353	518	345	359	557	1014	94	22002
Miscellaneous	1961	1698	2422	2319	2315	1936	3427	2246	2256	2618	3075	2916	3050	3675	4239	1187	41340
Totals	17900	19253	22763	17858	18222	14149	18592	15854	14826	13642	16558	14497	18564	16295	17037	5380	261390

Table 2
Changes by States and Year, 1990-2005

State/Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Totals
ALABAMA 0/	1002	902	1302	693	919	691	1411	746	883	1041	1921	905	1277	1352	1659	425	17129
ALASKA 1/	251	219	298	174	287	119	227	137	300	167	182	297	244	201	225	36	3364
ARIZONA 2/	1042	571	1634	891	1498	1733	1248	1121	920	1152	1526	717	1201	1016	931	411	17612
ARKANSAS 5/	0	2	0	1	0	0	0	1	0	1	0	1	1	0	0	0	7
CALIFORNIA 8/	50	145	399	347	440	147	179	127	211	123	201	141	131	159	148	101	3049
FLORIDA 3/	103	109	186	151	304	134	172	70	298	114	162	122	181	119	178	6	2409
GEORGIA 0/	4444	2243	3270	2797	3099	1644	1390	1703	1320	1428	1533	1472	2505	2496	2650	739	34733
ILLINOIS 7/	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
LOUISIANA 0/	1148	2300	1473	1113	1037	878	1054	956	972	1184	635	441	1731	1377	1090	376	17765
MICHIGAN 4/	0	5	10	4	5	27	5	0	0	6	18	5	41	220	13	2	361
MISSISSIPPI 0/	499	1741	654	429	437	381	307	249	276	366	311	183	633	397	406	142	7411
NEW HAMPSHIRE 4/	0	0	13	0	1	0	0	0	0	0	0	0	8	0	186	15	223
NEW MEXICO 6/	14	96	8	13	2	3	0	10	3	4	1	0	18	3	4	0	179
NEW YORK 3/	159	269	583	248	108	102	147	150	213	96	51	151	99	126	68	41	2611
NORTH CAROLINA 3/	508	673	315	435	419	337	392	529	585	594	768	603	599	647	550	275	8229
SOUTH CAROLINA 0/	1068	705	1596	990	1013	1103	1078	940	894	805	1102	680	1085	923	1041	335	15358
SOUTH DAKOTA 3/	0	0	9	0	21	2	7	0	1	0	0	20	8	757	1032	132	1989
TEXAS 0/	6001	6983	9038	8044	7014	5320	9239	8557	7674	6177	7703	7688	8200	6055	6428	2140	112261
VIRGINIA 0/	1610	2290	1975	1528	1618	1528	1736	558	276	384	444	1071	602	447	426	204	16697
Totals	17900	19253	22763	17858	18222	14149	18592	15854	14826	13642	16558	14497	18564	16295	17035	5380	261388

Table 3
Objections by Type of Change and Year, 1990-2005

Type/Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Totals
Redistricting	6	66	67	40	10	7	3	2	3	1	1	4	19	5	1	1	236
Annexation	8	1	1	90	21	12	2	5	1	1	0	0	0	2	0	0	144
Polling Place	3	5	1	0	2	1	0	0	0	2	0	0	0	0	0	0	14
Precinct	0	0	0	24	0	0	0	0	1	0	0	0	0	0	0	0	25
Reregistration or Voter Purge	3	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	5
Incorporation	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Bilingual Procedures	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	3
Method of Election	73	52	18	25	73	7	1	2	3	1	4	5	2	2	4	0	272
Form of Government	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	2
Consolidation or Division of Political Units	1	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	3
Special Election	1	1	0	2	12	0	0	1	0	0	0	0	0	0	0	0	17
Voting Methods	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Candidate Qualifications	2	1	0	3	4	1	0	0	0	0	0	0	0	0	0	0	11
Voter Registration Procedures	1	0	3	1	1	2	1	8	0	0	0	0	0	0	0	0	17
Miscellaneous	11	2	2	4	8	0	1	0	9	0	1	1	2	0	0	0	41
Totals	110	129	92	193	133	32	9	18	17	5	6	10	23	9	5	1	792

Table 4
Objections by State and Year, 1990-2005

State/Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Totals
ALABAMA 0/	12	33	6	3	28	0	0	0	1	0	1	0	0	0	0	0	84
ALASKA 1/	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	2
ARIZONA 2/	0	1	8	1	4	0	0	0	0	0	0	0	1	1	0	0	16
ARKANSAS 5/	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CALIFORNIA 8/	0	0	1	58	0	0	0	0	0	0	0	0	1	0	0	0	60
FLORIDA 3/	0	0	1	0	0	0	0	0	5	0	0	0	1	0	0	0	7
GEORGIA 0/	20	15	17	52	19	4	2	0	0	0	4	2	4	0	0	0	139
LOUISIANA 0/	24	22	16	45	19	14	3	5	1	1	0	0	3	3	1	1	158
MICHIGAN 4/	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MISSISSIPPI 0/	9	27	7	9	5	6	0	9	3	1	0	1	0	0	0	0	77
NEW HAMPSHIRE 4/	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NEW MEXICO 6/	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
NEW YORK 3/	0	1	1	4	6	0	1	0	0	1	0	0	0	0	0	0	14
NORTH CAROLINA 3/	11	8	1	1	9	0	1	2	0	0	0	0	2	0	0	0	35
SOUTH CAROLINA 3/	9	0	5	6	28	2	1	1	1	0	0	2	4	3	4	0	66
SOUTH DAKOTA 3/	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
TEXAS 0/	25	19	29	11	14	5	1	1	6	1	1	3	4	0	0	0	120
VIRGINIA 0/	0	2	0	1	1	0	0	0	0	1	0	2	3	2	0	0	12
Totals	110	129	92	193	133	32	9	18	17	5	6	10	23	9	5	1	792

Table 5
MIRs by Change Type and Year, 1990-2005

Type	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000*	2001	2002	2003	2004	2005	Totals
Redistricting	54	181	115	83	51	26	9	14	6	8	8	66	79	22	15	0	737
Annexation	561	35	87	154	60	13	30	46	7	6	104	58	8	1	0	1	1171
Polling Place	58	325	221	36	131	61	6	45	3	1	33	111	31	4	2	0	1068
Precinct	42	458	204	59	12	47	6	26	3	58	31	18	13	2	4	0	983
Reregistration or Voter Purge	2	8	1	7	6	0	0	0	1	0	2	0	3	0	0	0	30
Incorporation	6	0	2	3	1	3	2	1	1	13	5	0	0	0	0	0	37
Bilingual Procedures	11	3	20	5	1	5	2	1	3	0	2	1	1	2	0	0	57
Method of Election	266	96	204	283	136	56	56	36	25	121	56	23	32	8	11	5	1414
Form of Government	16	2	2	2	0	4	2	3	1	1	2	0	1	0	0	0	36
Consolidation or Division of Political Units	2	0	5	1	2	5	2	12	1	2	12	0	0	0	0	0	44
Special Election	19	5	29	11	17	8	6	1	6	18	4	2	1	0	3	0	130
Voting Methods	3	0	1	0	1	2	2	0	1	0	1	0	1	0	0	0	12
Candidate Qualifications	16	6	21	48	13	19	4	10	2	7	5	2	4	0	0	0	157
Voter Registration Procedures	1	32	11	3	190	11	11	6	5	1	4	8	0	2	1	0	286
Miscellaneous	51	32	57	57	33	63	42	22	42	38	27	15	13	31	31	1	555
Totals	1108	1183	980	752	654	323	180	223	107	274	296	304	187	72	67	7	6717

Table 6
MIRs by State and Year, 1990-2005

State	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Totals
ALABAMA 0/	218	10	28	52	37	4	24	42	2	0	66	9	9	0	6	2	509
ALASKA 1/	0	5	0	0	3	0	1	0	0	13	0	0	0	0	0	0	22
ARIZONA 2/	63	17	90	15	12	77	5	9	1	4	5	0	5	1	0	0	304
ARKANSAS 5/											0	1	0	0	0	0	1
CALIFORNIA 8/	11	5	87	8	12	7	3	3	9	0	33	0	0	0	0	0	178
FLORIDA 3/	1	1	22	75	31	0	0	0	19	13	2	9	3	0	0	0	176
GEORGIA 0/	450	80	163	297	75	35	28	41	2	28	36	21	34	9	26	0	1325
LOUISIANA 0/	143	486	78	44	77	19	16	21	1	22	6	10	39	15	5	1	983
MICHIGAN 4/	0	1	0	0	1	0	0	0	0	0	0	0	4	19	0	0	25
MISSISSIPPI 0/	24	131	27	54	124	14	11	28	4	1	21	6	21	3	5	0	474
NEW HAMPSHIRE 4/											0	0	0	0	0	0	0
NEW MEXICO 6/	0	55	1	0	1	0	0	2	0	0	0	0	0	0	0	0	59
NEW YORK 3/	2	1	5	24	15	0	9	1	7	0	0	47	1	1	0	0	113
NORTH CAROLINA 3/	24	20	14	66	26	7	16	20	4	3	11	13	6	2	0	0	232
SOUTH CAROLINA 0/	25	10	274	38	31	12	15	3	25	55	53	4	26	5	3	0	579
SOUTH DAKOTA 3/	0	0	6	0	21	2	0	0	0	0	0	0	0	9	11	0	49
TEXAS 0/	147	301	158	74	188	119	52	51	32	134	46	157	38	6	8	1	1512
VIRGINIA 0/	0	60	27	5	0	27	0	2	1	1	17	27	1	2	3	3	176
Totals	1108	1183	980	752	654	323	180	223	107	274	296	304	187	72	67	7	6717

Table 7
MIRs By State and Type, 1990-2005

	1. Redistricting	2. Annexation	3. Polling Place	4. Precinct	5. Reregistration or Voter Purge	6.Incorporation	7. Bilingual Procedures	8. Method of Election	9. Form of Government	10. Consolidation or Division of Political Units	11. Special Election	12. Voting Methods	13. Candidate Qualifications	14. Voter Registration Procedures	15. Miscellaneous	Totals
ALABAMA 0/	56	135	32	5	2	2	0	201	7	2	6	0	12	0	49	509
ALASKA 1/	4	0	0	0	0	0	0	2	0	0	0	1	1	2	12	22
ARIZONA 2/	14	12	68	74	3	1	26	26	0	0	5	1	6	26	42	304
ARKANSAS 5/	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
CALIFORNIA 8/	8	79	0	0	0	2	1	37	2	9	5	0	6	15	14	178
FLORIDA 3/	6	0	0	0	4	0	0	100	0	1	4	0	18	7	36	176
GEORGIA 0/	108	564	25	23	5	1	0	342	5	11	39	2	58	23	119	1325
LOUISIANA 0/	147	186	185	355	0	0	0	53	2	0	8	0	5	24	18	983
MICHIGAN 4/	1	0	0	0	0	0	0	0	0	0	0	0	0	1	23	25
MISSISSIPPI 0/	102	12	80	77	13	4	0	28	4	2	10	2	7	112	21	474
NEW HAMPSHIRE 4/	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NEW MEXICO 6/	1	0	24	30	0	0	0	0	0	0	2	0	0	0	2	59
NEW YORK 3/	1	0	47	0	1	0	6	9	1	0	0	1	4	25	18	113
NORTH CAROLINA 3/	28	30	13	11	2	1	0	112	0	2	3	0	2	10	18	232
SOUTH CAROLINA 0/	55	46	157	177	0	0	0	80	4	2	7	0	19	1	31	579
SOUTH DAKOTA 3/	1	0	0	5	0	0	2	0	0	0	0	0	0	22	19	49
TEXAS 0/	174	105	394	184	0	26	22	381	11	15	39	5	17	15	124	1512
VIRGINIA 0/	31	2	43	42	0	0	0	42	0	0	2	0	2	3	9	176
Totals	737	1171	1068	983	30	37	57	1414	36	44	130	12	157	286	555	6717

Table 8
Outcome of MIRs Compared to All Changes and Objections by Change Type, 1990-2005

	All Submissions		Changes Receiving a MIR		Outcomes for Changes Receiving a MIR						
	Changes	Objections	# of MIR	More info Foll	No Objection	Objection	Withdraw	Superseded	No Response	Total MIR Outcome (W,S, NR)	MIR Outcome/All Objections
Redistricting	6331	236	737	148	380	152	109	17	24	150	0.6
Annexation	54760	144	1171	259	1007	10	30	0	4	34	0.2
Polling Place	59002	14	1068	117	648	15	113	1	38	152	10.9
Precinct	36253	25	983	99	682	31	54	3	31	88	3.5
Reregistration or Voter Purge	132	5	30	6	19	1	5	0	1	6	1.2
Incorporation	2471	1	37	22	32	0	1	0	3	4	4.0
Bilingual Procedures	1839	3	57	15	42	3	6	0	2	8	2.7
Method of Election	10526	272	1414	577	838	122	103	100	75	278	1.0
Form of Government	644	2	36	11	25	1	1	0	6	7	3.5
Consolidation or Division of Political Units	1000	3	44	7	37	0	3	0	2	5	1.7
Special Election	19050	17	130	36	90	3	4	11	7	22	1.3
Voting Methods	3117	1	12	3	7	1	1	0	2	3	3.0
Candidate Qualifications	2923	11	157	60	132	4	5	0	5	10	0.9
Voter Registration Procedures	22002	17	286	12	263	3	11	0	3	14	0.8
Miscellaneous	41340	41	555	153	402	19	30	15	29	74	1.8
Totals	261390	792	6717	1525	4604	365	476	147	232	855	1.1

Table 9
Outcome of MIRs Compared to All Changes and Objections by State, 1990-2005

	All Submissions		Changes Receiving a MIR		Outcomes for Changes Receiving a MIR						
	Changes	Objections	# of MIR	More info Foll	No Objection	Objection	Withdraw	Superseded	No Response	Total MIR Outcome (W,S, NR)	MIR Outcome/All Objections
ALABAMA 0/	17129	84	509	146	259	44	41	22	85	148	1.8
ALASKA 1/	3364	2	22	1	18	0	3	0	1	4	2.0
ARIZONA 2/	17612	16	304	23	249	7	8	2	8	18	1.1
ARKANSAS 5/	7	0	1	1	0	0	0	0	0	0	-
CALIFORNIA 8/	3049	60	178	9	106	2	4	1	0	5	0.1
FLORIDA 3/	2409	7	176	235	170	3	3	0	0	3	0.4
GEORGIA 0/	34733	139	1325	159	1055	44	90	2	5	97	0.7
ILLINOIS 7/	1	0	0	0	0	0	0	0	0	0	-
LOUISIANA 0/	17765	158	983	202	667	81	38	7	7	52	0.3
MICHIGAN 4/	361	0	25	1	20	0	5	0	0	5	-
MISSISSIPPI 0/	7411	77	474	90	284	55	44	2	19	65	0.8
NEW HAMPSHIRE 4/	223	0	0	0	0	0	0	0	0	0	-
NEW MEXICO 6/	179	1	59	57	55	0	0	1	3	4	4.0
NEW YORK 3/	2611	14	113	71	28	4	51	0	2	53	3.8
NORTH CAROLINA 3/	8229	35	232	11	169	22	21	1	1	23	0.7
SOUTH CAROLINA 0/	15358	66	579	94	432	37	26	2	51	79	1.2
SOUTH DAKOTA 3/	1989	1	49	0	49	0	0	0	0	0	0.0
TEXAS 0/	112261	120	1512	416	897	58	140	107	43	290	2.4
VIRGINIA 0/	16697	12	176	9	146	8	2	0	7	9	0.8
Totals	261388	792	6717	1525	4604	365	476	147	232	855	1.1

Table 10

Outcome of MIRs Compared to All Changes and Objections by Year, 1990-2005

	All Submissions		Changes Receiving a MIR		Outcomes for Changes Receiving a MIR						
	Changes	Objections	# of MIR	More Info Foll	No Objection	Objection	Withdraw	Superseded	No Response	Total MIR Outcome (W,S, NR)	MIR Outcome/All Objections
1990	17900	110	1108	303	755	71	60	18	92	170	1.5
1991	19253	129	1183	122	772	86	77	5	1	83	0.6
1992	22763	92	980	69	706	45	64	9	9	82	0.9
1993	17858	193	752	315	496	56	56	1	11	68	0.4
1994	18222	133	654	194	419	31	25	0	10	35	0.3
1995	14149	32	323	41	297	5	7	1	3	11	0.3
1996	18592	9	180	20	151	6	11	0	3	14	1.6
1997	15854	18	223	58	198	5	4	3	4	11	0.6
1998	14826	17	107	42	74	10	11	0	3	14	0.8
1999	13642	5	274	147	151	6	8	104	0	112	22.4
2000	16558	6	296	68	197	5	12	1	62	75	12.5
2001	14497	10	304	95	187	14	72	1	15	88	8.8
2002	18564	23	187	39	99	19	50	3	2	55	2.4
2003	16295	9	72	7	49	6	11	1	6	18	2.0
2004	17035	5	67	5	52	0	8	0	5	13	2.6
2005	5380	1	7	0	1	0	0	0	6	6	6.0
Total	261388	792	6717	1525	4604	365	476	147	232	855	1.1

Table 11

Outcome of MIRs Compared to All Changes and Objections by Presidential Administration, 1990-2005

	All Submissions		Changes Receiving a MIR		Outcomes for Changes Receiving a MIR						
	Changes	Objections	# of MIR	More info Foll	No Objection	Objection	Withdraw	Superseded	No Response	Total MIR Outcome (W,S, NR)	MIR Outcome/All Objections
Bush I	59916	331	3271	494	2233	202	201	32	335	568	1.7
Clinton	129701	413	2809	885	1983	124	134	110	96	340	0.8
Bush II	71771	48	637	146	388	39	141	5	34	180	3.8
Total	261388	792	6717	1525	4604	365	476	147	232	855	1.1

Figure 1. Modeling Compliance Under Section 5

ACTORS	GOALS	STRATEGIES	OUTCOMES
Covered Jurisdiction	Implement proposed change	Not Submit Selectively Submit Submit with limited/ biased information	Respond to MIR No response Superseded change Withdrawal
Affected Groups African Americans Language Minorities Advocacy Groups	Maximizing voting and representation	Monitor changes Assess changes	Accept Litigate
Dept. of Justice Attorney General Asst. AG Civil Rights Chief Voting Section Attorneys Voting Section Analysts/Paraprofessionals	Guarantee that proposed electoral procedures, practices, and effects comply with VRA	Rely upon information from covered jurisdiction Rely upon assessment of Af. Ams., language minorities Secure own information (FBI) **Secure additional information through more information requests (MIRs)**	Preclear Object More Information Follow-up

Appendix A. Sample More Information Letter

U.S. Department of Justice

Civil Rights Division

JDR:JBG:DCM:par
DJ 166-012-3
2000-0031

Voting Section
P.O. Box 66128
Washington, DC 20035-6128

April 17, 2000

Wilbur T. Gamble III, Esq.
Collier & Gamble
P.O. Box 577
Dawson, Georgia 31742

Dear Mr. Gamble:

This refers to the voter registration list maintenance and purge procedures for Webster County, Georgia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on February 15, 2000; supplemental information was received on April 13, 2000.

Our analysis indicates that the information sent is insufficient to enable us to determine that the proposed change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, as required under Section 5. The following information is necessary so that we may complete our review of your submission:

1. A detailed, chronological description of the process leading to the adoption of the procedures used between 1997 and 1999 to update the voter registration rolls and purge or remove the names of ineligible registrants. Include a description of the criteria used by the county to determine that a purge was necessary, and to identify which voters to target regarding their continued eligibility to remain on the voter registration list.

2. The name and race of each person removed from voter registration rolls since January 1, 1997, by reason of: a) death; b) felony conviction; c) request of the voter; d) change of residency outside the county; or e) any other reason. With regard to those registrants removed from the rolls for change of residency or a reason other than death, felony conviction or voter request, include a statement as to the factual basis for each removal and any supporting information or documentation available to the county at the time of the removal.

Additionally, please indicate which persons were mailed a notice regarding their residency or continuing eligibility to vote, and provide further indication for each person of whether or not their notice was returned with a confirming statement or reply regarding their ineligibility to vote in Webster County, whether their notice was returned by the United States Postal Service as undeliverable, or whether the notice received no response.

3. The name and race of each person for whom a hearing was conducted by the county board of elections regarding their eligibility to remain registered, including the date of the hearing, the name, race, and telephone number of each person present, the basis for questioning the voter's continued eligibility and the outcome of each hearing for each voter. In each instance where a determination was made following such a hearing to remove a voter from the registration list, indicate the reason for the removal and provide copies of any documentation available to the county that would support this determination, and/or a written description of any statements provided by any member of the community to support the ultimate removal determination. In addition, please explain the reason for removing the voter from the registration list altogether rather than placing the voter on an "inactive" list, pursuant to Section 8(d) of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg to 1973gg-10. Include the name, race, and telephone number of any person who offered such a statement to the county.

Concerns have been raised that the procedures utilized by the Webster County Board of Elections appear to differ from the voter list maintenance provisions adopted by the State of Georgia and precleared under Section 5 in October 1994 and July 1997, in that the registrants identified as potentially having moved were not placed on the inactive voter registration list, but rather were purged immediately and with little notice, which may have adversely affected minority voters. Additionally, concerns have been raised that the procedures utilized by the county may violate Section 8(d) of the National Voter Registration Act of 1993 in that persons who may have moved are removed from the rolls immediately rather than being placed on an inactive voter registration list, which would allow the voter to confirm their current residence at the polls through the next two general elections for federal office and vote once they have done so. Any response you may have to these concerns would assist us in our review of your submission.

-3-

The Attorney General has sixty days to consider a completed submission pursuant to Section 5. This sixty-day review period will begin when we receive the information specified above. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.37). However, if no response is received within sixty days of this request, the Attorney General may object to the proposed change consistent with the burden of proof placed upon the submitting authority. See 28 C.F.R. 51.40 and 51.52(a) and (c). Changes which affect voting are legally unenforceable unless Section 5 preclearance has been obtained. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10. Therefore, please inform us of the action Webster County plans to take to comply with this request.

If you have any questions concerning this letter or if we can assist you in obtaining the requested information, you should call Ms. Diana Mayer (202-307-2244) of our staff. Refer to File No. 2000-0031 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Joseph D. Rich
Acting Chief
Voting Section

Appendix B. Coding Categories for Change Type

Redistricting	Limited redistricting
	Redistricting plan
	Districting plan
Annexation	Annexation
	Deannexation
Polling Place	Polling place
Precinct	Precinct
Reregistration or Voter Purge	Purge/reidentification of voters
Incorporation	Creation of special district
	Incorporation
Bilingual Procedures	Bilingual procedures
Method of Election	Forty percent plurality requirement
	Abolishment of elected office
	Anti-single shot requirement adopted
	Anti-single shot requirement eliminated
	Concurrent terms
	Establishment of elected office
	Implementation schedule
	Majority vote requirement
	Method of staggering terms
	Method of selection
	Method of election
	Nominating procedures
	Nonpartisan elections
	Number of officials
	Numbered positions adopted
	Numbered positions eliminated
	Open primary
	Partisan elections
	Plurality vote requirement
	Residency districts adopted
	Residency districts eliminated
	Staggered terms
	Term of office
Form of Government	Form of government
	Powers and duties
	Transfer of powers
Consolidation or Division of Political Units	Boundary changes
	Consolidation of jurisdictions
	Consolidation or division of jurisdictions
	Dissolution of jurisdiction
	Division of jurisdictions
Special Election	Special election procedures
Voting Methods	Voting method
Candidate Qualifications	Candidate qualifications to serve in office
	Candidate qualification procedures

Voter Registration Procedures	Voter registration
	Voting qualifications/eligibility
Miscellaneous	Absentee Voting
	Designation of annexed area to election district
	Bailout
	Ballot format
	Campaign financing provisions
	Compensation
	Creation of judicial district
	Election administration
	Full vote on elected body
	General election
	Initiative, referendum, recall procedures
	Joint election procedures
	Other
	Political activity
	Primary election
	Redistricting procedures
	Referendum requirement
	Runoff election
	Tiebreaking vote
	Procedures for filling vacancies
	Voter assistance procedures

Appendix C. Coding Categories for MIR Outcomes

Outcome Categories	All Coded Outcomes	Description of Coded Outcomes
No Objection	No Objection	No objection
Objection	Objection	Objection
		Objection continued
Withdraw	Withdraw	Notice of withdrawal
	ND/wd	No determination--change withdrawn
	ND/rel ch	No determination--related change unprecleared
ND/Superseded	ND/Superseded	No determination--change superseded
	ND/not final	No determination--change not finally adopted
	ND/not cov	No determination--not covered by Section 5
	ND	No determination
	Admin Close	Administratively closed
No Response	More info request	Additional information requested
	More info foll	Additional information request follow-up
	Add info recd	Additional information received
	Other	Declaratory judgment denied
		Declaratory judgment action dismissed
		Declaratory judgment filed
		Declaratory judgment granted
		Improper submission--substantively deficient
		Interim response
		N/A
		No determination--declar. Judgmt. Action filed
		No determination--court ordered change
		No determination--improper submitting auth.
		Notice of objection reconsideration by A.G.
		Objection withdrawn
		Reconsideration of objection requested

CHRISTIAN R. GROSE, "BLACK-MAJORITY DISTRICTS OR BLACK INFLUENCE DISTRICTS? EVALUATING THE EFFECT OF DESCRIPTIVE REPRESENTATION ON THE SUBSTANTIVE REPRESENTATION OF AFRICAN-AMERICANS IN BLACK-MAJORITY AND BLACK INFLUENCE DISTRICTS IN THE WAKE OF *GEORGIA V. ASHCROFT*"

Black-Majority Districts or Black Influence Districts?
Evaluating the Effect of Descriptive Representation on the Substantive Representation of African-Americans in Black-Majority and Black Influence Districts in the Wake of *Georgia v. Ashcroft*

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Paper for:
The Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity,
University of California Berkeley, School of Law
"Voting Rights and Democratic Participation: The Decade Ahead"

Categories in which the paper fits:

• Section 5, "3. Increasing the effectiveness of Section 5"— research responding to *Georgia v. Ashcroft* and evaluating substantive representation in black influence districts

• Section 5, "4. Broad questions of electoral representation"— addressing questions such as "Should the VRA continue to protect and encourage the formation of majority-minority districts?" and "What are the comparative benefits of directing section 5 enforcement toward the goal of (1) descriptive representation; (2) substantive representation, or (3) enhancing the 'ability to participate in the process,' more broadly?"

Abstract:

What causes legislators to represent the substantive needs of black constituents in their districts as measured by roll-call voting *as well as through distributive policy-making*? Are legislators who are African-American more likely to reach out to black constituents than other legislators? Are legislators from black-majority or from black "influence" districts more likely to reach out to and effectively represent black constituents? Specifically, this research determines the effect of (1) electing black representatives; and (2) drawing black-majority districts or black influence districts on the substantive representation of black constituents. Few scholars have disentangled the separate effects of these factors. Also unlike previous researchers, these questions are answered by examining different modes of substantive representation in Congress: roll-call voting and federal "pork" project allocation. Quantitative analyses from districts in the 104th-106th Congresses (supplemented with interviews) are conducted to examine project allocation. Analyses from the 1970s and 1990s are conducted to examine civil rights policy change in Congress. The findings are as follows: (1) civil rights policy outcomes in the U.S. House have changed little between the 1970s and 1990s, and thus studying distributive policy decisions such as federal project allocation are preferable when assessing black-majority versus black influence districts and the effect of descriptive representation; (2) descriptive representation yields substantive representation in Congress, when measured as federal project allocation to black constituents. To increase the substantive representation of black interests as measured by the delivery of goods and services to black constituents, the best predictor is the election of black legislators. Specifically, the "best" district for achieving substantive representation of African-American voters is a black influence district where a black legislator is able to achieve victory. Thus, I argue that a combination of black-majority districts ($\geq$50% black) and black influence districts (see *Georgia v. Ashcroft*) that are 40-49% black (depending on the local context and the extent of racially polarized voting) should be suggested in redistricting plans when enforcing section 5 of the Voting Rights Act.

Black-Majority Districts or Black Influence Districts? Evaluating the Effect of Descriptive Representation on the Substantive Representation of African-Americans in Black-Majority and Black Influence Districts in the Wake of *Georgia v. Ashcroft*

Christian R. Grose
Vanderbilt University

When asked to rank the most important activity that members of Congress engage in, 47 percent of African-Americans chose "making sure the district gets its fair share of government money and projects" (Tate 2003). In contrast, only 15 percent of all U.S. citizens think this is a representative's most important responsibility.[1] Given the value that black Americans place on the delivery of projects, we would expect that scholars studying voting rights and minority representation would have addressed this topic. However, most scholars have only addressed the effect of black representation on roll-call voting. In fact, to my knowledge, no scholar has examined the impact of racial representation on the distribution of "pork" projects to black constituents.

In this paper, I answer four questions: (1) Is examining civil rights policy-making on the House floor or is examining distributive policymaking ("pork" project allocation) for African-Americans the best gauge of the efficacy of black-majority versus black influence districts? (2) Do representatives elected from majority-black districts allocate more federal projects to black constituents than representatives from other districts? (3) Do black representatives allocate more projects to black constituents than white representatives? And (4) do Democratic representatives allocate more projects to black constituents than Republican representatives? The four primary findings are as follows. First, I show that civil rights policy outcomes in the U.S. House have changed little between the 1970s and the 1990s, and thus studying distributive policy decisions such as federal project allocation—where legislative coalitions may be universal—are preferable when assessing the efficacy of black-majority versus black influence districts. Second, when examining the allocation of federal "pork" projects to African-Americans, the election of black legislators enhances the substantive representation of black interests: black

[1] This result for all U.S. citizens is from Cain, Ferejohn, and Fiorina (1987, 38). The question was the same in the Cain, Ferejohn, and Fiorina study (NES) as the Tate study (NBES).

representatives are more likely than white representatives to allocate projects to black constituents, all else being equal.

Third, in just the subset of districts *represented by black legislators*, black-majority districts do not enhance the substantive representation of black interests: black representatives elected from black influence or coalitional districts allocate more projects to black constituents than do black representatives from majority-black districts. Thus, in order to maximize the number of projects allocated to black constituents, *black influence districts where black candidates can win may be the best prescription. Further, black-majority districts that elect black legislators are preferable to black influence districts represented by nonblack legislators if the goal is to enhance African-American voting strength.* These results imply that *Georgia v. Ashcroft*'s conclusion that black influence districts are acceptable avenues to enhance minority voting strength is partially incorrect.

This paper is organized as follows. First, I explain why the debate over the effect of (1) majority-black versus black influence districts; and (2) Republican versus Democratic legislators is overblown when we examine the ideological locations of members of the U.S. House in the aggregate. Second, I show that the 218th vote in the U.S. House—the decisive legislator—has not shifted ideologically on civil rights regardless of whether Congress is controlled by Democrats or Republicans; whether black-majority districts or black influence districts predominate in state redistricting plans; or whether the Congress is the 93rd (1973-74) or the 104th (1995-96). Third, I explain why it is useful to examine the distribution of projects within districts—a universal legislative policy activity—instead of examining roll call voting. Fourth, I explain how I will track the distribution of projects to black constituents within congressional districts. Fifth, I hypothesize that both the presence of a black representative and a black-majority district will increase the likelihood of black constituents receiving federal projects. Sixth, I present the data and methods used to test these hypotheses. Seventh, I explain the results, focusing particularly on the importance of the presence of a black representative in a district and the black population of a district. Finally, I raise further questions and discuss conclusions regarding minority representation and federal project distribution in the wake of *Georgia v. Ashcroft*. I argue that black influence districts where black

legislators are very likely to win are useful goals of voting rights advocates. However, black-majority districts are preferable to black influence districts if black legislators are not likely to win in black influence districts.

Black-majority or Black Influence Districts? Black Legislators or White Legislators? A Solution to the Puzzle of Minority Representation by Moving Beyond Roll-Call Voting

This paper addresses a puzzle in the literature on minority representation. If we are interested in questions about American democracy and concerned about how best to enhance minority representation, is it important to elect black representatives? What arrangement of black voters in a district maximizes the representation of black interests via public policy (black influence districts as suggested by cases such as *Georgia v. Ashcroft* or black-majority districts as suggested by the Voting Rights Act extensions of 1982)? Scholars have not given a clear answer.

Early literature on the subject focuses on the need for enhanced descriptive representation—defined as the election of black representatives to office (Davidson and Grofman 1994; Parker 1990). These scholars argue that policy or substantive representation is more likely to reflect "black interests" if black-majority districts are drawn. They also suggest that the election of black officials is needed in order to enhance substantive black representation.

A second wave of studies, though, questions the efficacy of drawing black-majority districts (Cameron, Epstein, and O'Halloran 1996; Guinier 1994; Lublin 1997; Thernstrom and Thernstrom 1997; Whitby 1997). These scholars find that the creation of black-majority districts leads to "better" representation of black constituents only in those districts with black majorities; in the aggregate, however, these districts actually hurt black interests by packing black voters into a small number of districts. Others have raised serious questions about the need to elect blacks to office, claiming that the importance of race in policy-making is declining (Thernstrom 1987; Thernstrom and Thernstrom 1997). The most recent work, though, has contradicted these claims, finding that black-majority districts are likely to create more pro-African-American outcomes in the legislature as a whole (Shotts 2002, 2003a, 2003b). Further, recent scholarship has indicated that black descriptive representation provides benefits

for black voters through both roll-call voting and through enhanced participation among black voters relative to white voters (Canon 1999; Gay 2001, 2002; Tate 2003; Haynie 2001; Whitby 1997).

So, what do we make of these contradictory conclusions? One reason for this lack of consensus is that scholars are studying the same concept (African-American representation), but not addressing the fact that members of Congress engage in multiple activities. Where one scholar finds a deleterious effect when examining one set of roll-call votes, another points to just the opposite when looking at a different subset of votes. In order to see which, if any, of the above competing theories of black representation are accurate, I look at representational behavior beyond roll-call voting. By looking at other representational activities such as "pork barrelling," a clearer picture of this scholarly and policy debate will emerge.

Further, I argue that the focus on roll-call vote outcomes in the aggregate is inappropriate as the civil rights voting record of the median legislator in Congress has changed little in the last few decades. Scholars should instead examine policy-making that is not as zero-sum as a "yea" or "nay" roll call in order to best assess the value of (1) black-majority districts versus black influence districts; and (2) whether descriptive representation is an important predictor of beneficial outcomes for African-Americans in Congress.

Civil Rights and the Median Legislator: Why Racial Gerrymandering's Effect on Aggregate Policy-making is Not that Important

Even if states are required to maximize majority-minority districts, they are limited by geography and demography. Thus, the districts drawn for the 1992 elections likely represent the highest number of majority-minority districts geographically possible unless the demographics of the United States shift extensively. In the 104th Congress, for instance, only 32 of the 435 congressional districts in the U.S. House had a black population of 50 percent or greater. If all of these lead to dilutive effects in surrounding districts—then perhaps 60 to 90 districts of 435 are affected by black-majority maximization requirements. While this is a large number, it is still not the bulk of congressional districts in the United States—more than 80 percent of the House members will ultimately be elected from districts that are drawn with no bearing on African-American gerrymandering.

For instance, in Alabama, a black-majority district was created in 1992 (the 7th district). Scholars have noted that the surrounding district (6th district) that had been represented by Ben Erdreich (D-AL) became heavily white, diluting black voting strength by placing most of Birmingham's black community in the newly created 7th district. Lublin and Voss (2003) note that Erdreich was replaced by a conservative Republican. However, the 1992 congressional district re-map of Alabama only substantially affected districts 6 and 7 and the 1st, 2nd, 3rd, 4th, and 5th districts' lines were only slightly adjusted. Thus, the requirement to draw a black-majority district in Alabama may have caused Erdreich to lose, but this is only one congressional district of 435: one district becoming more conservative is likely a drop in the bucket when we aggregate policy outcomes to the House as a whole.

Essentially, my argument is that scholars' obsession with roll-call voting outcomes in a few state delegations misses the broader point of how policy is made on the floor of Congress. Because the bulk of U.S. state's congressional districting plans do not require preclearance, the median legislator in the U.S. House is unlikely to change dramatically with the addition—or subtraction—of a few black-majority districts in the states that are covered by section 5. Further, this suggests that the debate over black-majority versus black influence districts and whether descriptive representation affects policy outcomes is relatively unimportant once we examine aggregate policy outcomes in Congress. When we consider legislators' policy preferences from states without racial redistricting imperatives in conjunction with legislators' policy preferences in states where racial redistricting was required by the Voting Rights Act, the aggregate policy outcomes in Congress are likely to be dominated by the large supermajority of legislators hailing from states without racial gerrymandering.

As scholars of the spatial model of voting in legislatures note, there are certain pivotal legislators in Congress that can dominate policy outcomes (Krehbiel 2000). In the U.S. House, where 218 of 435 votes are required to pass legislation on the floor, the median legislator—the 218th legislator—on a left-right issue dimension is the critical legislator for determining roll-call outcomes in the legislature as a whole. Racial redistricting scholars have tended to focus on a few state delegations, instead of assessing the policy outcome in Congress as a whole based on the location of the median legislator. Shotts (2002,

2003a) is the only scholar who has used the logic of the spatial theory of voting in analyzing racial representation and he finds that majority-minority districts may move policy outcomes to the left under some conditions. However, Shotts (2003a, 2003b) also notes that majority-minority districts may also move policy outcomes to the right in the aggregate legislature under other conditions (e.g., in nonsouthern states with liberal voter preferences). Contrary to Shotts, Lublin and Voss (2003) argue that racial redistricting and black-majority districts will shift the median legislator in Congress to the right.

However, no one has empirically examined the ideological positions of members of the House on the ideological dimension of civil rights. The debate between Shotts (2003a, 2003b) and Lublin and Voss (2003) has examined how black-majority districts cause shifts leftward and rightward generally on all issues (using Poole and Rosenthal's (1997) NOMINATE scores). However, Canon (1999), Swain (1995), and Tate (2003) have noted that African-American voter preferences are not consistently liberal on public policy. In fact, there is great diversity of public opinion within the black community and thus using general left-right ideological measures of policy outcomes in Congress may not be the best proxy for policies in the interest of African-Americans. Canon (1999) and Tate (2003) note that African-American voters do, in fact, have distinct—and more liberal—policy preferences on civil rights issues than white Americans. Thus, I will use estimates of the ideological positions of members of Congress on just civil rights issues to determine if the median legislator in Congress has changed over time.

I estimate the civil rights issue space in the 93rd Congress (1973-1974), the 102nd Congress (1991-92), the 103rd Congress (1993-94), and the 104th Congress (1995-96). I use Bayesian Markov chain Monte Carlo (MCMC) methods to estimate ideal points on civil rights votes on the floor of the House during these Congresses. For technical details regarding the estimation process, please see Grose (n.d.). These ideological estimates use a method very similar to that used by Martin and Quinn (2002) and Martin, Quinn, and Epstein (2005) to estimate the ideological positions of Supreme Court Justices over time based on their revealed preferences in votes on the Court. They are also similar to methods used to analyze congressional voting (e.g., Clinton, Jackman, and Rivers 2004; Poole 2005).

The estimation is based on civil rights votes of members of Congress during these Congresses.[2] These civil rights ideal point estimates are comparable across time periods and vary over time for legislators who serve over multiple Congresses.[3] Thus, if a legislator serving in the 102nd Congress continues to serve in the 103rd and 104th, we can examine the point estimate of their ideological location in the civil rights issue space to determine if they became more liberal or more conservative when voting on civil rights.

Thus, we can assess whether the positions of legislators change over time. If maximizing black-majority districts in 1992 led to more conservative aggregate policy outcomes on civil rights in the legislature (as argued by Lublin and Voss 2003) or if maximizing black-majority districts in 1992 led to more liberal aggregate policy outcomes (as argued by Shotts 2003a), we can examine whether (a) the location of the median House member; and (b) the distribution of legislator preferences on civil rights has changed between the 102nd, 103rd, and 104th Congresses. The 102nd Congress (1991-92) was controlled by Democrats, but the new majority-minority districts in "covered" states had yet to be drawn. The 103rd Congress (1993-94) was also controlled by Democrats, but the covered states now had legislators elected from many more black-majority districts following redistricting in 1992. The 104th Congress (1995-96) was controlled by Republicans and still retained numerous black-majority districts in covered states. Thus, by examining the ideological locations of legislators during these Congresses, a natural experiment can be conducted to assess whether the legislators' preferences on civil rights in the aggregate legislature shifted dramatically. I also examine the 93rd Congress (1973-74) as a baseline comparison when Congress was not known to be particularly liberal on civil rights.

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[2] Again, see Grose (n.d.) for details. The civil rights votes were selected using the Leadership Conference on Civil Rights (LCCR) key civil rights votes over time. Instead of simply using the LCCR supplied scores, though, my estimation method is much more nuanced. For instance, a legislator who voted against an amendment supported by the LCCR because it may weaken other legislation the LCCR preferred would receive a lower score from the LCCR. However, there are occasional votes and amendments not supported by the LCCR that are actually very liberal on civil rights. Thus, by using my scaling method instead of LCCR votes, we are able to find that some legislators are actually to the left of the LCCR. Mel Watt (D-NC), for instance, had a voting record to the left of the LCCR during the 104th Congress (Watt was more pro-civil rights than the LCCR).

[3] I am able to estimate these ideal points over time by putting relatively tight priors on bill locations. Again, for technical details, please see Grose (n.d.). Also the position of the LCCR at -1 is fixed and the position of Phil Crane at +1 is fixed for his career (a Republican with an almost 0 percent lifetime LCCR voting record who served in the 93rd, 102nd, 103rd, and 104th Congresses).

Is the civil right issue space more liberal or conservative with majority-minority districts?

Figures 1 through 4 display kernel densities of the ideological distributions of all House members in the 93rd, 102nd, 103rd, and 104th Congresses. An immediate pattern stands out: while the number of legislators in each "hump" has changed over time (and thus the density in each figure is taller or lumpier), there are three "humps" during this entire time period on civil rights. Negative numbers are liberal positions on civil rights issues, while positive numbers are conservative positions on civil rights issues (on the x-axis). Against the conventional wisdom, while the shape of the distribution of legislators' policy preferences on civil rights has changed over time, the location of the median legislator has barely moved. Further, polarization seen in the modern Congress on other issues is not seen when examining only civil rights voting preferences.

FIGURES 1 THROUGH 4 HERE

Statistically, the position of the median—or middle, decisive legislator—has not changed between the 1973-74 session of Congress and the 1995-96 session of Congress. As noted in Figures 1 through 4, the median legislator on the civil rights issue dimension on the floor of the House in the 93rd Congress (1973-74) is at -0.035; the median in the 102nd Congress (1991-92) is at -0.056, the median in the 103rd Congress (1993-94) is at -0.085, and the median in the 104th Congress (1995-96) is at 0.151. While this shows a slight rightward shift (positive values are conservative) between the 103rd and 104th, the point estimates are statistically indistinguishable.[4]

Further, perhaps surprising to some, there are a number of House members in 1990s Congresses who were just as conservative on civil rights as segregationist members of Congress who served during the 1973-74 session (93rd Congress). For instance, in the 102d Congress, then-Congressman Rick Santorum (R-PA) was located on the far right on civil rights (though not in a pivotal position to affect policy outcomes) at 1.037. This is statistically similar to the civil rights ideal point estimates for a

[4] The 95 percent Highest Posterior Density (HPD) regions of the point estimates of the median in the 103rd and 104th Congress showed that these median legislators (Pete Peterson in the 103rd at -0.085 and Chris Smith in the 104th Congress at 0.151) were not distinguishable in terms of their ideological location along the civil rights issue dimension.

number of boll weevil Democrats who during the 93rd Congress (1973-74) opposed voting rights and civil rights legislation: Jamie Whitten (D-MS1) at 1.098; Sonny Montgomery (D-MS3) at 1.099; and Joseph Waggoner (D-LA4) at 0.99. However, while there are very conservative members of the House on civil rights in the 1990s era as well as in the early 1970s, the pivotal legislator is the median. This legislator over more than twenty years has consistently been a moderate on civil rights legislation.[5]

Based on this evidence, it is clear that the extensive debate over the efficacy of majority-minority districts on civil rights policy outcomes is unnecessary. Whether districting plans maximize black populations in a handful of black-majority districts or whether districting plans spread black voters out in a number of black "influence" districts is irrelevant to civil rights policy locations in the legislature (e.g., the 102nd Congress plan included many plans with influence districts, while the 103rd Congress included some states with black-majority maximization plans). Even when we examine a situation where Republicans controlled the legislature under a scenario with numerous black-majority districts (the 104th Congress), the median legislator in Congress as a whole has only slightly become more conservative on civil rights based on point estimates—and when we consider the 95% HPD regions—the median legislator in the Republican-controlled 104th Congress is statistically indistinguishable from the median legislator in the Democratically-controlled 103rd Congress.[6]

Examining the distributions of legislators' ideological locations between the 103rd and 104th Congresses does reveal what most scholars have already noted. That the number (and density) of conservative legislators increased. However, this peak is very skinny, and the density of legislators hovering near the 0 location in Figure 4 is also quite large. Thus, while more conservative Republicans on civil rights were clearly elected to this Congress, because of offsetting ideological locations from Democrats from majority-minority districts and from other legislators elected in districting plans from states not covered by section 5 of the Voting Rights Act, the median legislator on civil rights is still very moderate.

[5] I have also estimated comparable estimates of civil rights preferences for other Congresses, but I chose to focus on these four Congresses for the sake of parsimony and because they present a natural experiment.
[6] I do not consider how majority party medians have shifted here, though this should be examined in future work.

Remarkably, the ideological location of legislators on civil rights has only marginally changed between the early 1970s and the early 1990s—and regardless of whether black influence districts or majority-black districts predominate—and regardless of whether Republicans or Democrats control the House. Thus, returning to my initial argument that scholars need to examine policy-making that is more universal in nature than roll-call votes on the floor of the House, I turn to a different measure of substantive representation of African-American interests.

Federal Pork Projects: A New Measure of Policy Representation

As detailed above, the study of roll-call voting has been the bread-and-butter of scholars of both Congress and minority representation, yet the importance of congressional roll calls has been overstated by voting rights scholars when assessing districting plans. However, some congressional scholars (Cain, Ferejohn, Fiorina 1987; Fenno 1978; Hall 1996) have addressed other facets of legislative representation beyond the vote. Only a few scholars of minority representation, both empirical (Canon 1999; Sinclair-Chapman 2000; Swain 1995) and normative (Mansbridge 1999; Williams 1998), have begun to consider other ways of conceptualizing substantive or policy representation. Moving beyond policy representation, Tate (2003) and Gay (2001, 2002) have examined symbolic representation and political participation.

I extend the study of substantive representation and racial redistricting in a new direction by focusing on *distributive* public policy. I analyze the distribution of federal "pork" projects within congressional districts in order to capture manifestations of policy representation beyond roll-call voting. "Pork" projects are likely to be of importance to constituents in ways that voting on bills may not be. Tangible goods delivered to the district are important for legislators hoping to establish and expand personal connections within their districts.

Another advantage of studying the distribution of projects is that I am measuring legislative policy outputs of the type that are not typically based on ideology. Distributive policy outputs (or "pork" projects) are much more likely to be passed by an overwhelming margin on the House floor than other more ideologically-driven legislation that may be favored by black constituents, such as redistributive policies or social policies (e.g., affirmative action, civil rights, liberal economic policies). Unlike voting

on ideological policy, distributive politics is not always a zero-sum game between legislators of different parties (Weingast 1979; Shepsle and Weingast 1981; Weingast, Shepsle, and Johnsen 1981). By this, I mean that legislators often form large coalitions spanning party and ideology to support project delivery. Thus, individual legislators have the ability to garner projects and give them to multiple constituencies, while with roll-call voting they must cast either "yea" or "nay."

Also, congressional staff that I interviewed suggested that they have much greater control over their ability to deliver projects to constituents of their choosing than with roll-call voting. I asked all staff I interviewed for this project whether their congressional office seeks out grants from voters or whether they simply help with requests for applications. One staffer from Sanford Bishop's (D-GA) office, Hobby Stripling, said that a substantial portion (though not all) of his offices' assistance with project grants occurs based upon constituents' unsolicited requests: "We don't have to look for much business." Other staffers, though, indicated that they seek out projects for constituents, especially strong supporters. Tracey Lovett, a staffer in David Price's (D-NC) district office said that "it's a little bit of both [responding to constituents' project requests and seeking out constituents to apply for grants]." An example she offered was Price's work to encourage the continuation of funding for a program called the "Saturday Academy" at N.C. Central University, a historically black college in Durham, North Carolina. This program brings in African-American elementary and middle-school students to the university on the weekends for practice in taking standardized tests. Price was attending an event at the university one Saturday, and learned about the program while there. According to Lovett, he encouraged the program's administrators to apply for a federal grant for the program, saying he "'would hate to see this fall through the cracks.'" Thus, legislators both encourage grant applications from constituents who may not be aware of federal opportunities for funding, while also assisting those constituents who come directly to them. Given this pattern, it is likely a legislator's race may play a role in project allocation to black constituents.

Predominately Black Counties as Proxy Measures for Black Constituents

My goal is to measure the distribution of federal projects to black constituents within congressional districts. However, it is impossible to chart the flow of individual projects to each

individual recipient by race.[7] Thus, a proxy unit of analysis for black constituents is required. Due to residential and historical segregation in many parts of the U.S., members of individual racial groups are highly concentrated in some geographical areas. In this section, I look at one of these geographical subunits, counties within congressional districts. Specifically, I look at counties with significant black populations in order to capture the flow of federal projects to black constituents. While this is not a perfect surrogate measure of black constituents, it does have appeal, given what we know about how members of Congress view and compartmentalize their own districts.[8]

Many representatives regard counties as "building blocks" that make up their overall geographic constituency. Kathy Worthington, a staff member for former Representative Mark Sanford (R-SC), explained how Sanford regarded his district: she immediately divided up the district, county by county, detailing which county's residents were most likely to support Sanford. In fact, she mentioned one particular county that was visited less often than others when Sanford returned home on weekends and recesses. The explanations offered were that its population was small and that Sanford's support was particularly weak there, given the county's large proportion of black constituents. It was clear from this exchange that Sanford (or at least his staffer) intertwined county-based geography and race when thinking about the district.

In this section, I will look at the distribution of projects within congressional districts to those counties that have very high levels of black population. To capture the distribution of projects to black constituents, there are some obvious criteria to use when determining which counties to look at. Counties with substantial black populations are clearly of interest. Thus, I will estimate models with a sample of counties from all congressional districts in the 104th, 105th, and 106th Congresses (1995-2000). Specifically, I examine counties that are greater than 40 percent in black population in all congressional districts during these three Congresses.

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[7] Perhaps other scholars in the future can conduct such a study. Surveys of those recipients of projects could be conducted in order to learn which individual constituents receive projects and what impact this might have on opinions of their representatives.

[8] Other researchers also have examined the delivery of projects to geographic constituencies within congressional districts (Ansolabehere, Gerber, and Snyder 2002).

Data Variance Problems in Previous Work on African-American Representation

Why are cross-sectional data including these court-ordered districts so useful? The data are useful because previous researchers have not had enough variation in their samples to test competing theories. Scholars have made broad conclusions regarding the size of the African-American district population and the effect of a legislator's race and party on congressional vote outcomes. However, those who have tried to divine the differential effects of (1) electing black legislators and (2) the overall black population of districts on the substantive representation of black constituents typically run into a methodological "brick wall": multicollinearity. Until recently, nearly every black legislator was elected from a majority-black district. As a result, the correlation between these two variables was typically so high (> 0.9) that quantitative scholars have been forced to choose just one variable to include in models. Whitby and Krause (2001, 561) have called this problem a "dilemma [that] hampers all other research on this topic."

Multicollinearity is typically a problem in that it causes standard errors between correlated variables to become inflated even when the variables may in fact be significant. In fact, the "so-called multicollinearity problem" is simply a problem of sample size and of lack of variation among observations, as Achen (1982) has stated: [M]ulti-collinearity violates no regression assumptions. Unbiased, consistent estimates will occur.... The only effect of multicollinearity is to make it harder to get coefficient estimates with small standard errors." Previous scholars examining racial representation in Congress have faced this problem in part because the number of observations has been small (in some analyses), but for the most part simply due to the lack of variation that has historically existed between these two key independent variables (race of legislator and black district population).

Methodologically, by examining counties during the 104th through 106th Congresses, I am able to overcome this multicollinearity problem that has seriously hampered past scholars examining racial representation. The data and research design allow for inferences to be drawn about the effects of the race of the legislators, the black populations of the districts, and the party of the legislators in the same statistical model. The time period of the 104th-106th Congresses (1995-2000), in which I examine federal

project allocation, includes a substantial number of black legislators elected from districts without a black majority in order to reduce this multicollinearity problem (many black legislators were reelected in white-majority/black influence districts following court-ordered redistricting in the wake of cases such as *Miller v. Johnson*). For a more extensive discussion of how these congressional district data from 1995-2000 provide leverage on examining the effect of both the race of the legislator (descriptive representation) and the district black population (black-majority versus black influence districts), see Grose (2005).[9]

One additional point needs to be made about the unit of analysis. Above, I simply use the word "counties." However, in order to utilize more complete data, I also include those counties that are split into multiple congressional districts. Thus, the above measures include both whole counties and portions of counties. When I refer to "counties", I also include county portions that are split between congressional districts. However, for the sake of parsimony, I typically refer to all as "counties" throughout the paper.

Table 1 details the incidence of black representatives in congressional districts with varying levels of black population.[10] While there is obviously an asymmetry between the race of the representative and the district black population, the inclusion of districts redrawn due to court order will help reduce the multicollinearity between these two variables so that estimation can at least be attempted. For example, in the sample of counties that are at least 40 percent black in population, 70 counties are represented by a legislator of a different racial background than the majority of the constituents in the district (these are indicated in bold). This is much better than many previous studies with almost no black

[9] The correlation between the *black district population* and *black legislator* variables is high: 0.8. However, this is much lower than past studies where the correlation between these variables is well over 0.9. Demonstrating reduced levels of correlation does not fully demonstrate that multicollinearity is not present. Thus, we also conduct a diagnostic test of multicollinearity (examining the variance inflation factors, or VIFs, of all variables in the analyses) and multicollinearity was not detected. VIF values above 10 indicate high levels of multicollinearity (Chatterjee, Hadi, and Price, 2000). The values of the VIFs for all variables I discuss in the next section are lower than 10, and thus multicollinearity is not a serious problem (especially given the large sample size by looking at counties as the unit of analysis). The variance inflation factors (VIFs) were just above 5 for both the black legislator variable and the district black population variable (discussed fully in the next section).

[10] Unfortunately, data for many of the independent variables related to the 106th Congress in North Carolina and Virginia congressional districts are not available, and thus counties from districts in these two states for the 106th Congress were excluded from the analysis. Following the 1998 elections these states were forced to redraw their districts. In three of the districts, black representatives were redrawn into much whiter districts. The inclusion of these data could potentially reduce multicollinearity even more.

legislators representing districts without black majorities in their samples. Clearly, the variation caused by the election of African-American legislators in districts without black majorities is increased by expanding the sample size when the unit of analysis is the county.

TABLE 1 HERE

Hypotheses: The Effect of Racial Representation on Federal Project Allocations

To determine whether (1) black-majority districts versus black influence districts; (2) descriptive representation; and (3) political party affect distributive policy outcomes, I examine the effect of these factors on "pork" project allocation to these heavily black counties. These factors are likely to have an impact on the substantive representation of black constituents and below I briefly detail how we might expect these variables to affect project allocation to African-American constituents.

We know from the Congress literature that the size of particular constituency groups within a district affects the representative's responsiveness to that group. In order to secure reelection, a member of Congress cannot neglect large groups of voters within the district. Others studying roll-call voting have found that the black population of a district leads to a more pro-civil rights voting record in Congress at the level of the individual district. Taking this logic to the level of distributive policy projects, I expect that the larger the black constituency is in a district, the more likely that the district's representative will allocate projects to counties with substantial black populations.

Representatives who want to appeal broadly to black voters can do so by giving projects to counties that are predominately black. Jim Clyburn, who has represented South Carolina's black-majority 6th district since 1992, is an example of what to expect based on this hypothesis. Serving on the Transportation committee during the 105th Congress, he included many projects for his district in the committee's final authorization bill. Clyburn was asked about these "pork" projects by an interviewer, and his response is illuminating (Duncan and Nutting 1999, 1239):

> [Black constituents in my district] have been historically neglected....I do not take kindly to efforts to improve their quality of life being labeled pork....These [small, black] counties don't have the numbers. They don't have the political clout.

Although he bristled at the label "pork" given by the interviewer, it is clear from his response that Clyburn both directed projects toward black constituents and that he conceived of his black constituency in political-geographic terms. The question remains whether Clyburn's actions are more generalizable to other legislators from districts with large black populations.

Alternatively, perhaps Clyburn was not motivated by the size of his black constituency as much as his own racial background (e.g., Whitby 1997). Clyburn is South Carolina's first black legislator since Reconstruction, and his presence in office may also predict his focus on the delivery of projects to black constituents, regardless of the demographics of the district. Thus, I hypothesize that African-American legislators are more likely to deliver a larger number of projects to heavily black counties.

Third, in addition to examining the impact of the district black population and the presence of a black legislator, I also hypothesize that the interaction of these two variables will predict "pork" project allocations to black constituents. I term this interactive effect "racial trust." The idea here is that white legislators may be more responsive than black legislators once the district black population becomes very large. That is, due to the lack of a shared racial background, trust of white legislators will be lower among black constituents compared to black legislators, and thus white legislators will need to engage in activity that indicates to black constituents that they care about black voters. Thus the interaction of the race of the legislator and the district black population may also have an independent effect on project delivery outcomes. Further, Swain (1995) has shown that black legislators from supermajority black districts have less of an incentive to work extensively on constituency service and other activities geared toward the district compared to black legislators from more competitive districts. Thus this variable is included based on the expectation that black legislators from districts with fewer black constituents may be more likely to allocate projects than their African-American counterparts from heavily-black districts.

Finally, it is expected that Republicans will be less likely to reward those who do not support them, and thus are likely to deliver fewer projects to heavily black counties than Democrats. Since black voters have historically been unlikely to support Republican congressional candidates, it is also unlikely that Republican legislators will work extensively to distribute projects to African-American constituents.

Jay Dickey, a Republican who served the 4th district of Arkansas from 1993-2001, was caught admitting as much when speaking before a group of black farmers in his district. Dickey was asked why he did not secure more federal projects for black constituents in his district. His response was surprisingly blunt, but may characterize what many congressional Republicans are afraid to utter publicly:

> You want us to take away from projects that serve our base and give it to people who not only don't vote for you but who work for your defeat? It's a miracle I can get anything done for them [black farmers].[11]

If this statement is applicable to other members of Congress, then we should expect Democrats to reward black voters with higher levels of projects, while Republicans will not, since black constituents are rarely part of their electoral coalitions. Alternatively, other Republican legislators may not be as hostile to black constituents as Dickey was, but given that black constituents are usually not part of Republican electoral coalitions, it is still likely that Republicans will allocate fewer projects to black constituents.

Data and Methods

The data used in this part of the analysis for the dependent variable are from the Federal Awards Assistance Data System (FAADS). Other details regarding the unit of analysis were given earlier. However, more information about the data in both samples of counties is needed before we proceed to the analysis. The FAADS data are available from the U.S. census bureau as a list of every project allocated with associated geographic information. I began the data collection with the entire data set of all projects sent to all congressional districts in the 104th-106th Congresses and selected only those projects allocated to heavily-black counties ($\geq$ 40 percent black counties). Then, I excluded all types of federal assistance other than project grants—formula-based grants, loans, contingent financial aid, and so on were not included. Project grants are the most likely to be "pork" where legislators are able to control their distribution to particular constituencies (Stein and Bickers 1995). Next, I aggregated these data to each

[11] This statement, from George (2000, A1), caused a subsequent firestorm, hurting Dickey more than he may have anticipated. After extensive media attention and criticism, Dickey finally made peace with the black farmers' group and even sponsored legislation to assist black farmers in the district. It is unlikely that he would have sponsored this legislation, though, had he not made such an embarrassing public statement. Dickey lost his 2000 reelection bid.

county so that the *total number of projects* allocated to each county was known. Finally, I collected independent variables associated with each of these counties, their districts, and their representatives.

I only look at the final year of each session (1996, 1998, and 2000) for two reasons. First, "pork" projects may have a greater effect during election years.[12] Second, there is a lag between the time when a project is actually approved by Congress and when it is processed. Thus, it would be difficult to distinguish whether project data in early 1999, for example, was a result of maneuverings of the legislator elected to the district in November 1996 or of the legislator elected in November 1998.[13]

Modelling the Effect of Racial Representation on Project Allocations to Black Constituents

As mentioned above, I measure "pork" projects by looking at the total number of projects allocated to a particular county. The dependent variable in each model is the *number of new federal project grants allocated.* The number of projects, instead of dollar outlays, is the most appropriate measure (Stein and Bickers 1995).[14] The actual projects themselves are more likely to be remembered by constituents than are the aggregate totals of funding for each project grant. Similarly, maximizing the actual number of projects is likely to be the most politically important aspect to a member of Congress. Thus, consistent with previous research (e.g., Stein and Bickers 1995), the number of projects is the best measure since I am interested in capturing representatives' political objectives.[15]

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[12] Anagnoson (1982), for example, finds the electoral impact of projects to be greatest when they are announced near an election period.

[13] The data used are a count of the number of projects allocated. Ideally, we could chart each individual project given to each recipient by race, but this is not possible. The next best alternative is the data at hand, which are the total number of projects allocated to each county in a particular year. Thus the use of OLS may be inappropriate, and a non-linear event count model is needed. For these reasons, I estimate the model with the negative binomial distribution. The negative binomial regression model relaxes the assumption of constant mean and variance across observations that is required for a Poisson distribution (see Greene 1997, 941-942; King 1989, 51-54; and Long 1997, 230-38 for more information on the negative binomial regression model). I have hypothesized and past research indicates (Stein and Bickers 1995) that projects are not distributed equally: legislators attempt to reward supporters with projects. Additionally, the number of new projects allocated depends in part on demand in each county based on such variables as overall population, economic need, and the like (Rich 1989). Thus, the assumption of constant variance and mean required of the Poisson model will be difficult to meet and the negative binomial model is the most theoretically appropriate specification. Also, the models are estimated controlling for heteroscedasticity (using the "cluster" command in Stata, denoting each year of analysis).

[14] However, in analyses not presented here, I have also examined the impact of these variables on dollar amounts allocated and the results are very similar.

[15] The need to include portions of counties does not allow us to have precise measures of allocations to these portions. The FAADS data set only details which counties receive projects, not which portions of counties within

Independent variables of interest: racial representation variables

Four variables are needed to test the hypotheses. The first one is the *black population of the district*, included to test the first hypothesis. This variable is simply the percentage of the population that is black according to 1990 census figures.[16] In the sample of counties with a 40 percent black population or higher, the minimum value for this district variable is 11 (three counties in the sample are represented by a legislator from an 11 percent black district) and the maximum value is 74 percent black (3 counties).

Black representative. To test the second hypothesis, which addresses the effects of descriptive representation on the allocation of federal projects, I include a dummy variable. It is coded "1" for all counties that are represented by a black legislator and coded "0" for all counties with nonblack legislators. Three counties are represented by a Latino legislator (Jose Serrano from New York's 16th district).

Racial trust. This variable is the interaction of the district black population and the race of the representative and is specified in order to test the third hypothesis. I expect white representatives to be more responsive than black representatives to different levels of district black population, since black constituents tend to distrust white representatives. Higher levels of project allocation are one way that white representatives might bridge this trust divide. The actual variable is measured by multiplying the observations of the district black population variable and the race of representative variable. Thus, for nonblack representatives, the variable is coded "0"; for black legislators, the variable is the district black population percentage.

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congressional districts do. Bickers and Stein (1996) address this measurement problem in their study of congressional districts and federal projects. In those counties where congressional districts split counties, they assign the number of projects proportionally based on overall population of the portions of counties split. I do the same in this analysis. For example, assume a county is split between two congressional districts and receives three projects. District 1 contains one-third of the county's population, and district 2 contains two-thirds of the population. Thus, the dependent variable for the county portion in district 1 will be "1"; the dependent variable for district 2 will be "2". For those cases where the project allocations estimate for a county portion is not a whole number, I round to the nearest integer. Ideally, exact data would be available even to these county portions. Unfortunately, it is not, so I turn to the literature for a somewhat acceptable solution to this measurement problem. Also, just to be sure, I have estimated similar analyses as those presented later on just "whole" counties. The results are generally consistent. Fortunately, for all independent variables in the analysis, I was able to gather precise values for both whole counties and county portions and thus did not make similar estimations for split counties.

[16] Black voting age population was not available for a significant number of districts (any of those redistricted after the initial 1992 redistricting). Thus, I use black population.

Party of representative. Stein and Bickers (1994; 1995) find that the party of the representative has an impact on the allocation of projects. Also, I include this variable to test the fourth and final hypothesis. I expect that Republican legislators will allocate fewer projects to black constituents than will Democrats.

Other variables predicting project allocations. There are a number of other variables that are likely to predict project allocations. Most of these variables are based upon a legislator's status in the congressional hierarchy (e.g., seniority, whether on the Appropriations committee) and also based on demand for projects within the legislators' districts (e.g., percentage of constituency in agriculture). I include these additional variables in the analysis as well. However, since they are not central to the questions regarding racial representation, the descriptions and measures are included in the appendix.

Results: Racial Representation and Federal "Pork" Projects

The results from the analysis of counties is quite interesting. Holding all other variables at their means (see appendix), black representatives allocate more projects than their white colleagues do. However, the district's black population affects the allocation levels of projects for both black and white representatives in different ways. These findings lend support to arguments that descriptive representation matters, but so does the district black population. Table 2 details the results of the negative binomial regression analysis.

TABLE 2 HERE

Immediately, two results stand out. Two of the four variables of interest were significant—the race of the representative and the racial trust variable (the interaction of the legislator's race and district black population). The presence of a black representative had a positive and significant impact on allocations to black constituents at the 0.01 level. Interestingly, the racial trust variable is negative and significant at the 0.05 level. Given the potential multicollinearity between the race, district black population, and racial trust variables, we must be careful about conclusions related to just the district black population variable by itself (and its lack of significance). However, instead of dropping the racial trust variable as its inclusion is theoretically appropriate, the results of the analysis in table 2 suggest that

racial trust is an intervening variable and that the district black population, in isolation from other variables, has little impact of its own. Only when we consider the interaction of the presence of a black representative with the racial population of a district can we best understand the impact of racial representation on "pork" projects.[17]

A clearer interpretation of the impact of these variables is determined by computing the expected values of the number of federal project grants associated with each variable.[18] The following formula, derived from the negative binomial distribution accomplishes this (see Long, 1997, 224, 237): E (projects $| x) = e^{(x\beta)}$. After calculating these expectations, it becomes clear that the presence of a black representative leads to more project allocations. *A county with a black representative will receive 22.5 more projects than a similar county represented by a white legislator.*

Figure 5 visually displays the expected values of the district black population while varying the race of the representative and the racial trust/interaction term for these counties that are at least 40 percent black (holding other independent variables at their means). Surprisingly, heavily black counties receive substantially greater numbers of projects when represented by black representatives *in districts with a white majority.* Black representatives in black-majority districts allocate significantly fewer projects than their black colleagues from other districts.

FIGURE 5 HERE

For white representatives, though, the black population of their districts appears to have little effect on the number of projects allocated to black constituents. Only one black-majority district during this time period, though, is represented by a white representative (Pennsylvania's 1st district—two counties over three time periods). This district is 52 percent black in population. Also, districts during the 104th through 106th Congresses (1995-2000) represented by black representatives vary from 37 to 74 percent black. Thus, in the range of districts where black and white legislators overlap, *black*

[17] Due to potential multicollinearity concerns, I also estimated this analysis separately for black legislators and nonblack legislators. The results displayed in Table 2 and Figure 5 were consistent with this split-sample analysis as well.

[18] Note that for each sample, $p \leq 0.01$ for α. This indicates that overdispersion exists and the negative binomial specification was therefore more appropriate than the Poisson distribution.

representatives always allocate more projects than do white representatives. Thus, the results indicate that descriptive representation has a clear impact on project allocations to African-American constituents. Further, regardless of the black population of the district, white legislators allocate a static amount of projects to African-American constituents. However, black legislators clearly respond to differences in district black populations.

Black representatives are most likely to give substantial numbers of projects to black constituents in districts without black majorities. In figure 5, contrast the expected number of projects received when there is a black representative representing a 37 percent black district (37 percent is the district in the sample with the lowest black population, yet still represented by a black legislator) and when there is a black representative representing a majority-black district. In a 37 percent black district, a black representative allocates about 66 projects to counties with at least a 40 percent black population. A black legislator from a district with a 50 percent black population will allocate almost half that number, only approximately 30 projects.

In sum, these results demonstrate that racial representation affects the allocation of projects to black constituents. Black representatives allocate more projects than white representatives even when controlling for the district black population. Thus, a conclusion based on this evidence is that black legislators seem to view their role as being responsive to black constituents in general. Thus, any county in a black legislator's district with a significant black population ($\geq$ 40 percent) is likely to receive a larger number of projects.

Other variables also have an impact on the number of projects allocated, and deserve a brief mention. As seen in Table 2, most of the demand control variables and a couple of the congressional control variables affect levels of allocation. The overall county population, the percent over age 65, and the presence of a state capital, for instance, all have sizable effects on the number of projects. The three congressional variables that are predictors of increased project allocations are the previous general election margin of the House representative, the presence of a Senator on the Appropriations committee, and the combined seniority of Senators.

Finally, it is important to note that party was not significant. While we must be cautious with conclusions based upon a negative finding, it does appear that race is a more important factor than party when it comes to the distribution of project allocations to black constituents. Surprisingly, both Democrats and Republicans seem to exhibit similar levels of project allocation to these counties. Thus, electing black legislators has an impact on larger project allocations to black constituents, while electing Democratic legislators does not.

The Importance of Electoral Coalitions in Understanding Racial Representation in Black Influence and Black-Majority Districts: Implications for a Post-*Georgia v. Ashcroft* Voting Rights Landscape

The results from this analysis are important for three reasons. First, to my knowledge, never before has a scholar undertaken an examination of the effect of racial representation on "pork" projects. Second, the findings suggest that descriptive representation affects the substantive representation of black constituents, rebutting some scholars' claims. Third, the relationships between the black population of a district, the presence of a black representative, and policy outcomes are not always in the direction initially thought by most scholars. Given the Supreme Court's endorsement of black influence districts in *Georgia v. Ashcroft*, these results are particularly important as a guide for the enforcement of the Voting Rights Act—and congressional debates over its possible extension—in the context of this court case.

Clearly, black representatives allocate more projects to black constituents. While enough data do not exist to test what would occur when white legislators represent majority-black constituencies, these results at least suggest that black representatives in the 104th, 105th, and 106th Congresses allocated more projects to black constituents than did their white counterparts.

However, in isolation of constituency and electoral factors, this conclusion is too simplistic. To really understand the results, we have to consider the electoral coalitions of both white and black legislators, racial trust, the court-ordered redistricting that occurred in many southern states in the 1990s, and roll-call voting patterns of legislators.

All black legislators in this analysis are Democrats, and presumably, these legislators rely upon black voters in their districts as part of their "primary constituency." Glaser (1996, Ch. 5) shows that in

majority-black districts, black legislators primarily need black votes to win general elections. Especially in supermajority black districts where the constituency is "packed" with black constituents, the need for white voter support is likely to be minimal for black representatives.[19]

Given the racial demography of these districts with a large percentage of black constituents, black legislators do not need a large turnout of black voters on Election day in order to secure reelection. In fact, as Swain (1995) has demonstrated, black legislators in non-competitive supermajority black districts have little incentive to work extensively in their districts. This finding clearly extends to "pork" project allocations. Further, it is likely that just on ideological grounds, black Democratic legislators in majority-black districts have "substantively represented" the interests of their primary black constituents and this may be sufficient to motivate a majority of their districts' voters to the polls.

On the other hand, consider black representatives from black-minority constituencies. These representatives are divided into two categories: those with substantial populations of other minorities (usually Latino voters) and those with white majorities. Most of the black legislators representing constituencies without black majorities in the samples studied here fall into this latter category. Thanks to court-ordered redistricting in six southern states throughout the mid-1990s, black representatives initially elected in black-majority districts were forced to run again in substantially redrawn districts with reduced levels of black voters.

These representatives were initially elected in black-majority districts mostly with the support of black voters (see Voss and Lublin 2001 for evidence). These black representatives from districts without black majorities have more conservative voting records than black representatives from districts with large black populations. Having once represented majority-black districts with more liberal constituencies, redistricted black representatives now had to appeal to a biracial coalition (or in some cases a triracial or triethnic coalition) of voters. To do this, these black representatives from white-

[19] Parker (1990) is the primary proponent of the need for supermajority black districts. He argues that districts of at least 65 percent black population are needed to enhance black representation. In fact, my findings add to a voluminous literature rebutting Parker's claim (Grofman and Handley 1989; Grofman, Handley, and Niemi 1992; Lublin 1997; Swain 1995).

majority districts voted more conservatively than their counterparts from black-majority districts—and more conservatively than they had in previous congressional sessions (see Grose 2001 for evidence of this in terms of redistricting).

However, even with changed districts, these black legislators could not neglect black voters, their primary constituency (as well as a substantial minority of voters in these new districts). "Pork" projects are a perfect way to appeal to black constituents in the hopes of increasing black turnout. Partisan black voters who did not like the conservative tilt of some black representatives' roll-call votes could find solace in the fact that these black representatives were delivering projects.

And these black legislators not only worried about spurring black turnout in general elections, but they also relied on their black voter base of support in primary elections. Even though these districts were redrawn to be majority-white, they were still Democratic districts. Most black incumbents faced with new districts in 1996 or 1998 faced white primary challengers. However, the racial dynamics of Democratic primaries are distinct from the dynamics of general elections where a much larger (and whiter) group of voters participate. By continuing to appeal to black voters through project distribution, black incumbents could work towards a primary victory against white Democratic opponents.

For example, Sanford Bishop, a black Democrat, was initially elected to Georgia's 2nd district in 1992. At the time, the 2nd had a 57 percent black population. Although Bishop had a reputation as a moderate even then, he became decidedly more conservative once his district took on a whiter hue. In the 103rd Congress (1993-94), in a black-majority district, Bishop's DW-NOMINATE score was -0.334 (with – 1 being the most liberal possible score and + 1 being the most conservative possible score).[20] For the 1996 elections, following the Supreme Court's decision in *Miller* v. *Johnson*, his district was redrawn with a 39 percent black population. In the two Congresses after the district changed, the 105th Congress (1997-98) and the 106th Congress (1999-2000), Bishop's DW-NOMINATE score was -0.270 and -0.238 respectively. These scores were much more conservative than the scores of his colleagues from districts

[20] Bishop's DW-NOMINATE estimates are based on Poole and Rosenthal's scaling of House members from the 1st through 108th Congresses. See http://voteview.com and Poole and Rosenthal (1997) for more information.

with black-majority constituencies for the same Congresses. Without question, Bishop altered his ideological voting as the district took on more white constituents and the median voter in his district changed.

Hobby Striping, Bishop's district director, indicated in an interview with me that Bishop often catches flak from black constituents for voting too conservatively. According to Stripling, though, Bishop has a lot more leeway with black constituents thanks to the trust that exists based on shared racial background. He really had to work, especially initially in the redrawn majority-white district, with some whites who felt he was a little too liberal and voted with Democrats too much. The impression I received from talking with Stripling is that if an issue divides white and black constituents, then Bishop likely may vote with white constituents or at least try to avoid taking a stance altogether, as the African-American population will cut Bishop more slack than will white voters. Stripling said the typical response to a constituent who is unhappy with how Bishop voted on the bill is to say "After reviewing the bill entirely and looking at his *whole* district, he supports or opposes it." Most white constituents, on the other hand, do not have this trust and he really has to demonstrate on some issues that he is voting conservatively.

An example of this was the issue of the Georgia state flag. The flag of Georgia, until recently, prominently contained the confederate flag. Roy Barnes, the white former Democratic governor of the state, proposed changing (and eventually did change) Georgia's state flag. This was overwhelmingly favored by most African-American Georgians, and strongly opposed by many white Georgians, especially whites in the southern part of the state that Bishop represents. For Bishop, this issue was toxic as a substantial part of Bishop's reelection constituency could be offended by any position he took on the issue. As Stripling detailed: "During the flag issue, there were some people who tried to bring him into it. He refused to be brought into it. He said, 'Whatever the state flag is, I'm going to fly it.'" He essentially sidestepped taking a stance by pointing out that this was an issue for the state legislature and governor, not a member of Congress. In a black-majority district, it is unlikely he would have taken this non-position, and instead may have supported a new flag. However, there was a concern that taking a position on the flag would lead to a loss in white voter support, even if black voters were angry at Bishop.

However, to secure victory in both the general and primary elections, Bishop still needed to retain and mobilize his voter base of black constituents. Thus, his representational strategy was not only about appealing to a numerical majority of white voters, but also keeping black voters in the fold and enthusiastic. In the 1996 Democratic primary in his new white-majority district, Bishop faced two white challengers, W.T. Gamble III and Walter Lewis. Bishop was able to get enough white voter support through his conservative voting record, but was also able to rely on nearly unanimous support from the black voters in his district (Bullock and Dunn 1999).

FIGURES 6 AND 7 HERE

One way that Bishop appealed to his black constituents was to increase the number of projects distributed to counties with large black populations.[21] To provide evidence of this, it is useful to compare counties with the highest black population in Bishop's district with the counties in his district that received the most projects. Figure 6 shows two copies of the map of Bishop's district *prior to redistricting when his district had a black majority* (1993-96). In the map on the left, the ten counties (or portions of counties) with the largest black population are identified in bold. The district map on the right identifies which of these ten counties were *also* one of the top ten counties to receive the most projects in the district in the second year of the 104th Congress (1995-96), controlling for overall county population.[22] Clearly, the counties with the greatest black population did not receive most of the projects when Bishop represented a black-majority district. Only two of the ten most heavily black counties, Stewart and Talbot (labeled in bold), were in the group of ten counties that received the most projects.

Contrast this map with Bishop's new, white-majority district drawn for the 105th Congress (1997-98). Figure 7 shows the pattern of project distribution in this reconfigured district. The maps here are the same as Figure 6 with the top ten black counties on the left and the counties that are in both the top ten black counties and the top ten project recipient counties on the right. The only difference is that the

[21] Schiller (2000, Ch. 5) presents similar evidence of Senators attempting to use project delivery to appeal to various subsets of constituencies.
[22] To control for overall population, an index of the ten counties with the highest number of projects divided by the overall population of the county was created.

projects data are for the final year of the 105th Congress (1997-98) *after the district was changed to become majority-white*. Here, with a much whiter constituency, five of the top ten project recipient counties were also in the group of heavily-black counties. With a more conservative voting record, Bishop needed to utilize the other perquisites of office to reach black voters. Stripling, Bishop's district director, indicated that they were much more concerned about reaching black voters once the district was reshaped to become white-majority: "We spent an awful lot of effort making sure we got the black vote out. We wanted, er, we were very, very aware that we needed to attract white voters, [but] we really made an effort to reach the black vote." One way Bishop was able to reach out to black voters was via project delivery.

As evidenced here, Bishop delivered fewer projects to heavily-black counties prior to the remap. But, following the general pattern seen in the aggregate analyses, once he took on a white-majority district and a more conservative voting record, he increased his project allocations to counties with large black populations. This example helps explain the results we see for black representatives. Electoral coalitions differ for black representatives from black-majority districts and those from white-majority districts. For white representatives, though, we see a slightly different outcome.

Implications for the Future of Majority-Minority Districts and the Voting Rights Act

Benson (2004) has argued that *Georgia v. Ashcroft* should be the impetus the voting rights community needs to push for stronger protections for majority-minority districts. The Court's finding in the case, though, suggests that black influence districts may be the preferred method of insuring black interests in the future—and that majority-minority districts are no longer needed. I suggest a third way. Supporting the Court's implied support of influence districts, I find black influence districts are clearly the best solution for increasing the delivery of federal projects to African-American constituents. However, supporting legal advocates of majority-minority districts and not supporting the Court's interpretation, I find that only black influence districts that can elect black representatives provide enhanced minority representation. Thus, if the choice is a black influence district likely to elect a white legislator versus a black-majority district likely to elect a black legislator, then the black-majority district

is more likely to enhance the interests of African-American voters. Black influence districts represented by black legislators, though, are more preferable than black-majority districts represented by black legislators. This finding supports Swain's (1995) argument that safe black-majority districts lead to legislators who were less focused on constitutional responsiveness. Black influence districts are only useful mechanisms for enhancing black substantive representation when they will almost certainly elect black legislators. Unfortunately, given racially polarized voting, black influence districts do not frequently elect black legislators in open seat elections.

Gerken (2005, 1189) notes that the legal debate over Georgia v. Ashcroft centers on "the tradeoff between 'influence' and 'control'." My findings suggest that African-Americans do not have influence over the distribution of project allocations when black influence districts are represented by white legislators. Thus, districting plans that lean more heavily on the "control" side of the coin may deserve the most protection when attempting to protect African-American representational strength.

So, in conclusion, what is the "best" districting arrangement for enhancing black interests in Congress? In terms of project allocation, an arrangement that allows for the election of the most black representatives in black influence districts or perhaps districts that are just barely black-majority seems to be the best. This way, black legislators can win in districts that are not overwhelmingly black, yet surrounding districts will not be diluted so substantially that white representatives can ignore black constituents or take them for granted. Further, given that the ideological preferences of Congress in the aggregate do not change substantially due to racial redistricting, policy-making activities such as project allocation should be examined when determining how the Voting Rights Act should best be enforced.

Much has been written, by both scholars and judges, about the "best" districting arrangement to enhance the substantive representation of black voters. The Supreme Court in *Georgia v. Ashcroft* argued that maximizing black-majority districts may be a detriment to the best aggregate representation of black interests in the legislature (see also Cameron, Epstein, and O'Halloran 1996; Lublin 1997; Swain 1995; Whitby 1997). Others have pointed to other benefits besides roll-call voting inherent in descriptive

representation, though most of these have been theoretical arguments with little empirical evidence (Mansbridge 1999; Williams 1998).

The analysis presented here suggests a different view. The "best" districting arrangement would clearly be a districting plan that maximizes the election of black legislators from black influence districts, while leaving surrounding districts represented by white legislators with significant black populations as well. In the case of project allocations, black legislators (regardless of black population) allocated more projects than did white legislators. In black influence districts, however, black legislators allocated even greater numbers of projects to black constituents. Also, in Congress as a whole, I demonstrated that the median legislator's position on civil rights did not change substantially under a variety of districting aggregation schemes. In the aggregate, then, maximizing black legislators while not "diluting" surrounding districts clearly seems to be the best policy prescription for the maximization of substantive representation. This policy prescription differs substantially from scholars who have simply suggested that black influence districts are preferable. By noting the need for descriptive representation, I am suggesting that black influence districts should only be drawn under very narrow conditions: those in which black legislators are very likely to win, and not those in which black candidates have an even chance of victory. The even chance of victory has typically been the standard offered by other advocates of black influence districts.

This policy suggestion may be easier said than done, however. The cases analyzed here of black legislators from districts without a black-majority are only very recent phenomena. It is not clear whether white voters with histories of racially polarized voting are ready to elect black legislators in open seat elections. The cases of black legislators representing white-majority districts studied here are almost entirely those who were forced to run in white-majority districts as incumbents once the courts ruled their districts unconstitutional. Would African-American members of Congress Mel Watt (D-NC), Corrine Brown (D-FL), or even Sanford Bishop (D-GA) have been able to win in their court-ordered white-majority districts had they not been incumbents? Staff that I spoke with who worked for black legislators as well as surrounding white legislators all unanimously concluded that it would have been unlikely.

When I asked Hobby Stripling, Sanford Bishop's district director, whether he thought Bishop would have won in his white-majority (39 percent black) district without having initially been elected in a black-majority district, he remarked as follows: "Without having the name recognition and providing the services, no. Quite frankly because he's black. I wish it weren't true."

Few black members of Congress have been elected in districts that are white-majority, and most that have were initially elected in districts with a black-majority. To examine the opportunity for African-American candidates to be elected in Congress, see Tables 3 and 4. Table 3 charts the number and percentage of African-American congressional incumbents who were elected in 2000. Thirty-six black incumbents ran for reelection, and all were successful. Five of these were elected in white-majority districts and eight were elected in districts with a black minority but a majority of African-American, Asian-American, and/or Latino constituents. Table 4 shows the number and percentage of successful African-American challengers who ran against nonblack incumbents or who ran in open seats. Based on 2000 figures, non-incumbent black candidates clearly did not fare well. Of 15 black candidates who ran in open seats or against incumbents, only one was victorious: Lacy Clay, running in an open seat in a black-majority district. The other candidates, some of whom included lower-level elected officials and some of whom included inexperienced candidates, all lost when running for open seats or against incumbents in districts that did not have a black-majority population. Thus, prospects for many more black members of Congress appear bleak given these trends.

TABLES 3 AND 4 HERE

Recently, however, some black legislators have succeeded in winning in white-majority settings. Julia Carson (D-IN), representing the Indianapolis-based 10th district of Indiana, won an open seat election in a district with a 30 percent black population. David Scott (D-GA) also won in a newly-created 47 percent black district in the 2002 open seat election in the 13th district of Georgia.[23] While clearly a

[23] This black district population figure is based on dividing the district population identifying only as black or African American in the 2000 census divided by the total population in the district based on the 2000 census.

boon for both descriptive and substantive representation of black constituents, these examples may be rare occurrences.

Thus, local conditions should be examined when determining whether black legislators can succeed in garnering some nonblack voter support. What is different between Indianapolis where Carson was able to win, than, say Cincinnati? Indiana's 10th district is a compact district taking in most of Indianapolis and some surrounding areas. Ohio's first district is also compact, taking in most of Cincinnati and some surrounding areas of Hamilton County. Nationally, both cities are considered conservative for urban areas, though Cincinnati is more Democratic than Indianapolis. The racial and ethnic demographics are virtually the same in each district. In both Indiana's 10th and Ohio's 1st, the black population is approximately 30 percent and the white population is approximately 70 percent. Both cities have rich African-American histories and heritages. Also, outlying areas of the cities are somewhat affluent and give the areas a Republican bent. Yet, the first district of Ohio is represented by white Republican Steve Chabot while black Democrat Julia Carson represents the Indiana tenth. Future researchers should in more detail examine the preconditions that may allow for black candidates to win in white-majority settings to determine what causes these differences in outcomes by candidates such as Carson and Chabot.

Therefore, other strategies in addition to increasing the number of black legislators from white-majority districts may need to be found. Since black legislators enhance black representation, districts that are almost 50 percent black or exactly 50 percent black may be needed. This seriously increases the likelihood of a black candidate victory (Lublin 1997), yet keeps the district competitive so that the legislator will reach out to his or her primary constituency. In these districts, black legislators should be able to mobilize African-American voters in primary elections so that a black candidate is able to win the primary. And if the district is just slightly black minority, then it is also likely that at least a handful of nonblack voters can be found to crossover and support the black Democrat in the general election.

Also, some have suggested only drawing districts that are capable of electing black legislators in areas that will not result in diluting Democratic voting strength in surrounding districts, such as the

northeast or urban areas in other parts of the country (Cameron, Epstein, and O'Halloran 1996; Lublin 1997). The rationale here is that electing black legislators from black-majority districts may help increase substantive representation, so long as surrounding districts are not left with large majorities of conservative white constituents. This idea has some merit, but is flawed when we consider legislative behavior beyond roll-call voting.

Black legislators in southern and other states are better at delivering federal projects to black constituents than are their white colleagues. White representatives, both Democrat and Republican, simply did not match the efforts from black legislators. Thus, even in southern states and other states with conservative white populations, if we are concerned about project delivery to African-American constituents, then it still may be useful to draw black-majority districts (resulting in greater substantive representation for black constituents "beyond the vote").

Another strategy that can lead to more black legislators from districts without a black-majority, and thus increase substantive representation, is to create more majority-minority districts with a black plurality. Black legislators can more easily win in districts that are black and Latino majority, though with only a black minority. Also, a district with Asian-American, black, and/or Latino voters together may be more likely to elect a black legislator, though the evidence on the extent that Asian-American voters would be likely to crossover and vote for a black candidate is limited.

While drawing majority-minority districts with black pluralities in order to elect black legislators may enhance the substantive representation of black interests, it is not clear what impact this will have on other racial and ethnic minorities. Brischetto (1998) asks the normatively worrisome question: "If one racial or ethnic group is larger than another in a given locale, do members of the smaller group become simply 'filler people' in forming the district in which the larger group predominates?" This is especially the case when Latino voter registration rates may be significantly lower than black voter registration rates. Thus, a black plurality district in terms of population may result in the election of a black legislator, providing enhanced substantive representation for African-Americans but perhaps not for Latino

constituents. This question of Latino substantive representation by non-Anglo, non-Latino representatives deserves further study.

In sum, this study speaks to the Supreme Court decision in *Georgia v. Ashcroft*. In this case, the Supreme Court suggested majority-black districts no longer need to be maximized in districting plans. I concur mildly with their opinion. Districting plans that maximize black voters' interests and black voting rights are those that maximize the election of black legislators in relatively competitive districts. Thus, depending on the local context, the policy to be adopted should include black influence districts only if black legislators can win. Otherwise, black-majority districts are critically needed.

Table 1: Incidence of Counties Represented by Black and Nonblack Representatives by Black Population of Congressional District, 104th-106th Congress

	Counties that are at least 40 percent black in population*		
Black population of district (%)	*Black*	*Nonblack*†	*Total*
0-20	0 counties	44	44
21-30	0	91	91
31-40	**43**	112	155
41-50	**21**	28	49
51-60	152	**6**	158
61-70	226	0	226
71-75	6	0	6
All	448	275	723

*These data are based on all congressional districts in the 104th, 105th, and 106th Congresses (1995-2000). All districts with a county or counties that are 40 percent black or higher during this time period are included as the unit if analysis is counties $\geq$ 40 percent black.

† Three of the counties represented by a nonblack legislator in this sample are represented by a Latino legislator (Jose Serrano; NY-16); the rest are white legislators.

Table 2: The Effect of Racial Representation on the Number of "Pork" Projects Allocated to U.S. Counties with at Least a 40 Percent Black Population, 1996, 1998, 2000†

Dependent variable: Number of new project grants allocated from all federal programs

Independent variables:	*Coefficient (standard error)*
Racial representation variables:	
Black population of district (%)	-0.001 (0.003)
Black representative	2.014 (0.736)***
Racial trust (Black population of district x race of member)	-0.032 (0.013)**
Party of representative	-0.307 (0.251)
Congressional variables for those representing each county:	
Member on House Appropriations committee	-0.039 (0.273)
Previous election margin of House representative	0.006 (0.003)**
Senator on Senate Appropriations Committee	0.489 (0.125)***
Seniority of House member	-0.004 (0.007)
Seniority of Senators (combined total)	-0.007 (0.001)***
County-level project demand variables:	
Median family income in county (in 1000s)	-0.03 (0.002)***
Overall population of county (in 1000s)	0.004 (0.0003)***
Proportion below poverty in county	-0.287 (0.069)***
Proportion blue collar workers in county	-0.242 (0.082)***
Proportion in farming occupations in county	-5.630 (0.326)***
Proportion over age 65 in county	11.386 (2.914)***
Proportion under age 18 in county	-0.065 (0.237)
Proportion urban in county	1.717 (0.018)***
Proportion with less than high school diploma in county	-1.665 (0.328)***
State capital located in county	1.376 (0.181)***
Constant	2.392 (0.625)***
α (alpha)	1.536 (0.378)***
N	729 counties/portions of counties

† This model is estimated using negative binomial regression and controlling for heteroscedasticity (using the "cluster" command in Stata, denoting each year of analysis). The sample is counties in all congressional districts in the 104th, 105th, and 106th Congresses.

***$p \leq 0.01$; **$p \leq 0.05$; *$p \leq 0.10$

Table 3: Black Electoral Success in 2000 General Elections for Congress, Incumbents

	≥ 50% black districts	*< 50% black, but majority-minority districts**	*≥ 50% white***	*Total districts with at least one black candidate*
Successful incumbent black candidates	23	8	5	36 (100.0%)
Unsuccessful incumbent black candidates	0	0	0	0 (0.0%)
Total incumbent Black candidates	23 (46.0%)	8 (16.0%)	5 (10.0%)	36 (100.0%)

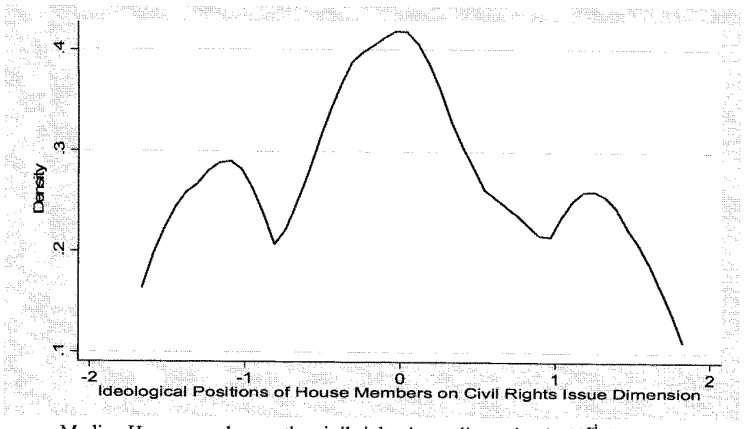
Racial population data of districts are from the 107th Congress edition of *Politics in America*.
* Majority-minority districts are those that have a combined black, Hispanic, and/or Asian population > 50 percent.
**non-Hispanic white.

Table 4: Black Electoral Success in 2000 General Elections, Challengers and Open Seats

	≥ 50% black districts	*< 50% black, but majority-minority districts**	*≥ 50% white***	*Total districts with at least one black candidate*
Successful non-incumbent black candidates	1	0	0	1 (7.1%)
Unsuccessful non-incumbent black candidates	0	1	13†	14 (92.9%)
Total non-incumbent black candidates	1 (7.1%)	1 (7.1%)	13 (85.7%)	15 (100.0%)

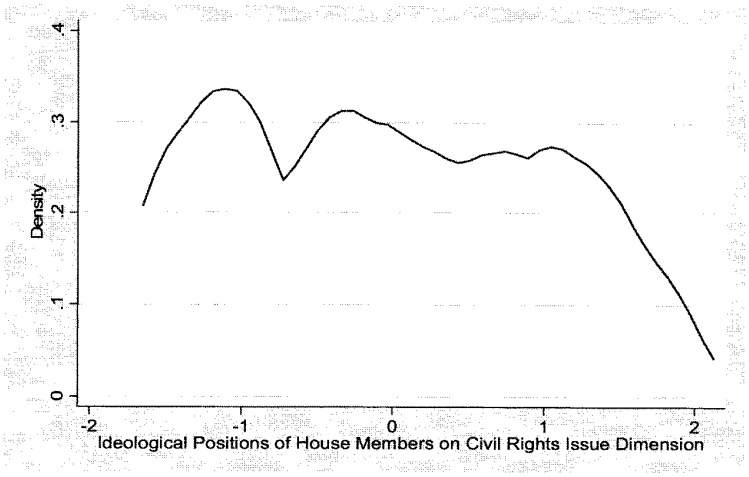
Racial population data of districts are from the 107th Congress edition of *Politics in America*.
* Majority-minority districts are those that have a combined black, Hispanic, and/or Asian population > 50 percent.
**non-Hispanic white.
†Includes 2001 special open seat election between Louise Lucas and Randy Forbes.

Figure1: 93rd Congress, Civil Rights Ideal Point Estimates, all members



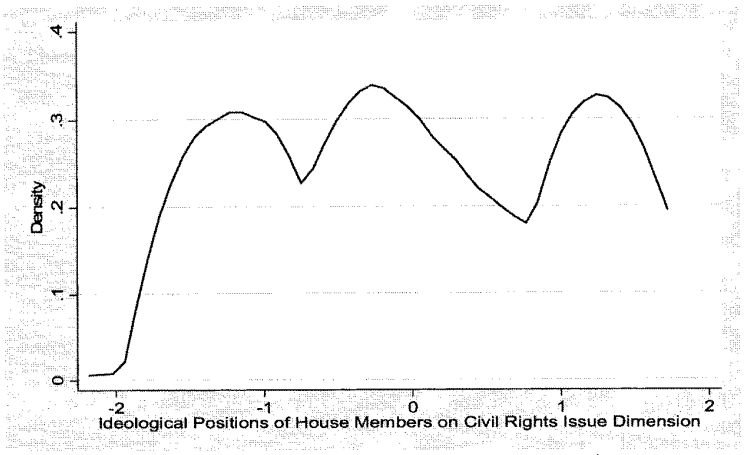
Median House member on the civil rights issue dimension in 93rd Congress:
Joseph Gaydos (D-PA20) at -0.035 on civil rights issue dimension (the median's location is statistically indistinguishable from point estimates of the median in 102d, 103d, and 104th)

Figure 2: 102d Congress, Civil Rights Ideal Point Estimates, all members



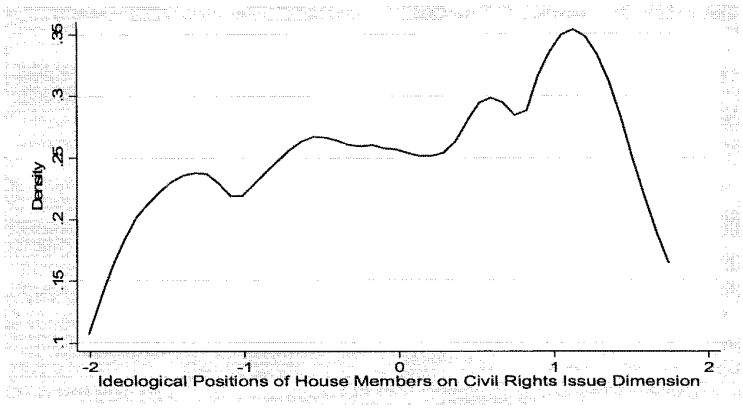
Median House member on the civil rights issue dimension in 102d Congress:
Dave McCurdy (D-OK4) at -0.056 on civil rights issue dimension (the median's location is statistically indistinguishable from point estimates of the median in 93d, 103d, and 104th)

Figure 3: 103[d] Congress, Civil Rights Ideal Point Estimates, all members



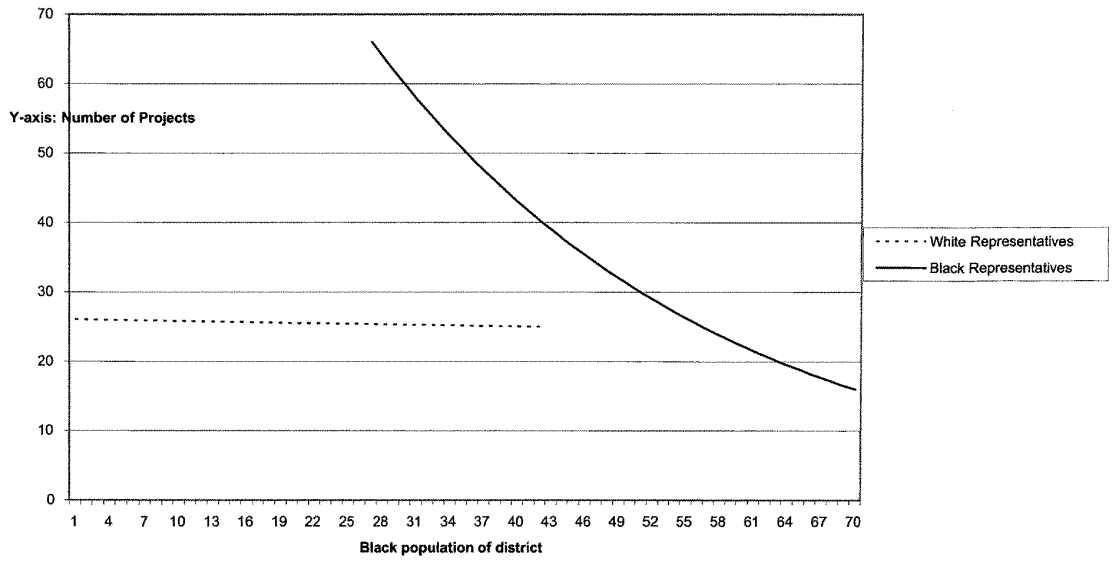
Median House member on the civil rights issue dimension in 103[d] Congress:
Pete Peterson (D-LF2) at -0.085 on civil rights issue dimension (the median's location is statistically indistinguishable from the point estimates of the median in 93[d], 102[d], and 104th)

Figure 4: 104th Congress, Civil Rights Ideal Point Estimates, all members



Median House member on the civil rights issue dimension in 104th Congress:
Christopher Smith (R-NJ4) at 0.151 on civil rights issue dimension (the median's location is statistically indistinguishable from point estimates of the median in the 93[d], 102[d], and 103[d])

Figure 5: Expected Number of Projects Allocated to Counties That Are 40 Percent Black and Higher, Dependent Upon the Representative's Race and the District's Black Population (Holding Other Variables Constant at Their Means)



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Figures 6 and 7 here—Bishop maps

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Appendix: Specification of other independent variables in pork project allocation model

Below I detail the other independent variables used in the negative binomial regression model shown in Table 2 and how they are measured:

Congressional variables. *Member on House Appropriations committee* is a variable included to control for the access to projects that legislators serving on this committee have (Arnold 1979; Ferejohn 1974). The expectation is that counties that are in districts represented by Appropriations committee members will receive more projects than counties without representation. The variable is coded "1" if the legislator representing the county is on the committee and is coded "0" if not.

Senator on Appropriations committee is a similar control variable. Lee (1998) shows that the Senate also plays a role in the distribution of projects. Here, too, the variable is coded "1" if a county is represented by a Senator who is on the Appropriations committee.[24]

Seniority of House member. The number of years that a legislator has previously served in the House affects the allocation of projects and this seniority could work in two possible directions. More junior members may have less access to the allocation of projects given their lower status in the House. On the other hand, very senior members, in the protectionist stage of their careers, may feel safe and will not need to work as hard to secure projects for constituents. Therefore, we may expect seniority to either decrease or increase project allocations. This variable is measured as the number of years served by a House member at the opening of the Congress in which the project is allocated.

Seniority of Senators. The seniority of Senators can also affect the allocation of projects. This variable is the total number of years served by both Senators in a state.

Previous election margin of House member. Stein and Bickers (1994; 1995) find that the lower the electoral margin of a House incumbent, the more likely an incumbent will allocate a greater number of projects in the subsequent Congress. Those legislators that are the most electorally unsafe will need to use all advantages available to incumbents, and "pork" project delivery is one of these advantages. Thus, I expect that the general election margin received by a legislator in the previous election will affect the number of project allocations.

Demand-level variables. I also need to account for project demand by constituents. Distributive policy projects are sometimes allocated because of political concerns, but also are often distributed purely out of need or demand (Stein 1981; Rich 1989). After all, even when political influence is involved, a potential grant recipient must still apply for a grant. A representative's influence is limited to the ability to advertise available grants to constituents and to work to procure specific grants once the grant has been applied for (see Ferejohn 1974 and Arnold 1979 for more details). Thus, well-specified models of project

[24] No Senators from the same state concurrently serve on the Appropriations committee in this sample, so a dichotomous variable is sufficient.

distribution need to consider that "some communities find project grants difficult to apply for and politically undesirable to accept" (Stein 1981).

The models presented involve U.S. counties. In order to determine which explanatory variables predict project allocations to counties, I turn to the literature on project distribution. This literature, though, has typically looked at only district or state level allocations. Because of this, the independent variables used are those found to affect project allocations at these higher levels of aggregation. In this analysis, they are applied to the county level.

The first and most obvious demand-level variable is the *overall population of the county*. Largely populated counties will receive more projects than those counties with few residents. Levitt and Snyder (1995), Stein (1981), and others have found that the overall population of a geographic area is one of the most important predictors of project allocations.

Other demand-level variables deal with the occupational backgrounds of constituents. Bickers and Potoski (2000) and Bickers and Stein (1996) find a negative relationship between the percentage of employees in agriculture and project allocations. Bickers and Potoski (2000), Bickers and Stein (1996), and Levitt and Snyder (1995) find that the higher the percentage employed in blue collar jobs, the less likely projects will be allocated. Thus, I include two independent variables to control for these factors. The *proportion in farming occupations* is the proportion of all employed people in each county who are classified as working in "farming, forestry, and fishing" occupations by the 1990 U.S. census. The *proportion of blue collar workers* is also calculated using census data: the proportion of all employed people in each category who are classified as working in one of four blue collar occupation categories.[25]

Similarly, economic variables pertaining to the residents of geographic areas are important. Levitt and Snyder (1995) and Bickers and Potoski (2000) find that the median family income has a negative impact on project allocation. The rationale is that very wealthy communities are more likely to seek market-based assistance or simply do not need government projects as much as more middle and low income communities. Also, though, very poor communities may not have the skills or resources to seek projects (Stein 1981), so a variable capturing poverty in each county is also needed. The *median family income* variable is the median family income in each county from the 1990 U.S. census. The *proportion below poverty* is the number of persons in poverty in each county divided by the number of persons for whom poverty status is established (also from the 1990 U.S. census).

Other demand-level constituency characteristics affect project allocation. Control variables for younger residents, senior residents, urban residents, and less educated residents are needed. Following

[25] The four census occupational categories used to calculate the blue collar variable are the following: (1) machine operators, assemblers, and inspectors; (2) transportation and material moving occupations; (3) handlers, equipment cleaners, helpers, and laborers; and (4) precision production, craft, and repair occupations.

Bickers and Potoski (2000) and Bickers and Stein (1996), I include the variables *proportion over age 65* and *proportion under age 18* in each county.[26] Large senior populations are more likely to receive projects than younger populated areas.

The *proportion urban* and the *proportion with less than a high school diploma* are included to control for demand and are both from the 1990 census. The urban variable is the number of persons living in urban areas divided by all persons in the county, while the education variable is the proportion of all persons under age 25 without a high school diploma living in each county. Urban residents are much more likely to receive projects (Bickers and Potoski 2000; Levitt and Snyder 1995). Less-educated populaces, on the other hand, are less likely to have the skills to apply for grants, and thus will not receive as many (Bickers and Stein 1996).

Finally, I also include a variable that designates whether a state capital is located in the county. Levitt and Snyder (1995) find this to be a significant predictor of project allocations. Given the way that the FAADS data are reported, many projects are allocated to the state government to distribute throughout the state. However, the actual coding in the FAADS database codes all of these projects as allocated to the county in which the state capital is located (Stein and Bickers 1995). Thus, I include a dummy variable indicating the presence of a state capital in a county as these counties will receive many more projects than others.

[26] Levitt and Snyder (1995) also find that the population over age 65 affects project allocation levels. The specific data for these variables is from the 1990 census as well.

Transforming Votes into Victories:

Turnout, Institutional Context, and Minority Representation in Local Politics

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Abstract

When the Voting Rights Act was passed, it sought to improve minority representation by expanding access to the vote and eradicating institutional barriers that reduced the influence of that vote. However, forty years later, minorities still vote much less regularly than whites and institutional arrangements that may hurt minority interests still exist in most American cities. In this article, we investigate whether low turnout and adverse institutional structures continue to be a factor behind minority under-representation. We find that low turnout leads to substantial reductions in the representation of Latinos and Asian Americans on city councils. For African Americans district elections and off-cycle local elections are more important barriers to representation.

One of the great hopes of the civil rights movement was that African Americans and other minorities would, by gaining the right to vote, be able to elect representatives of their choice who could ultimately reduce or even eradicate racial inequality. To achieve that end, the main tool put forward by the U.S. government was the Voting Rights Act of 1965. At the heart of the Voting Rights Act were two goals. The first and most pressing goal was to give racial and ethnic minorities full access to the vote. The second and in many ways more complicated task was to try to ensure that institutional barriers did not reduce the quality of that vote. If the Act succeeded, minorities in America would obtain equitable and fair representation in American democracy.

The ensuing forty years have been marked by major gains in minority officeholding. The gains have been the most pronounced for African Americans. In 1960 only 280 blacks held office across the entire United States (Jaynes and Williams 1989). Today there are over 9000 black elected officials in America (JCPS 2003). Blacks have won the mayoralty in most of the nation's big cities, there are roughly 600 African Americans in state legislatures nationwide, and blacks now hold about ten percent of the seats in the U.S. Congress. Latino and Asian Americans representation has, in recent years, also blossomed. The number of Latinos in office has more than doubled in the last two decades, so that today there are over 4500 Latino elected officials nationwide (NALEO 2005). Asian American representation, although starting from a much smaller base continues to grow and in just four years from 1996 and 2000 the number of Asian Americans holding office increased by 10 percent nationwide (APALC 2001).

These gains, however, tell only part of the story. The underlying truth is that four decades after the Voting Rights Act became law, racial and ethnic minorities remain greatly underrepresented in American democracy. Blacks, Latinos, and Asian Americans make up over a quarter of the national population but by all estimates, black, Latino, and Asian American elected officials make up less than five percent of the nation's elected officials (NALEO 2004, APALC 2005, JCPS 2004). Blacks have achieved close to proportional representation in one case, the House of Representatives, but at every other level, all three groups remain greatly underrepresented.[1] Ultimately, few would argue that the Voting Rights Act has produced fair and equitable representation (Guinier 1994).[2]

Why has minority representation stalled? In this article we examine two possible barriers to minority representation in American politics: 1) low voter turnout and 2) unfavorable institutional arrangements.[3] Although the Voting Rights Act sought to address each of these issues, there is evidence that both of these factors could continue to be real barriers to minority representation. Despite gains in minority participation, voting rates by race remain uneven. In the last few Presidential contests, for example, over 60 percent of whites adults voted compared to only about a third of Latinos and Asian Americans. Blacks fell somewhere in the middle.

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[1] For example, the ICMA reports that only 2.1 percent of all mayors in the nation are African American and only 1.8 percent are Latino - despite the fact that blacks and Latinos each make up well over ten percent of the national urban population (MacManus and Bullock 1993).

[2] There are, however, some critics who see the Act as affirmative action for minorities and who believe that American democracy is more than fair to minority voters (Thernstron 1987).

[3] We do not profess to be able to examine the range of possible reforms. There are, obviously, a long list of possible barriers and solutions. One might also want to address the lack of financial resources in the minority community and ongoing racial discrimination in many facets of American life (Karnig and Welch 1980). Others might focus on America's attachment to a majoritarian democracy and its resistance to broader changes like proportional representation (see Guinier 1994).

(U.S. Census Bureau 2004). Also, despite the enactments of the Voting Rights Act and its extensions, institutional structures remain far from fully reformed. At the local level, for example, most cities continue to employ at-large elections, well over half have not instituted term limits, and the vast majority hold off-cycle elections – all institutional features that could reduce minority influence (Hajnal and Lewis 2002).

In the remainder of this article, we show that both low voter turnout and electoral institutions continue to reduce minority representation. Focusing on local elections, we find that higher turnout is associated with more equitable racial and ethnic representation for Latinos and Asian Americans on city councils across the country. For African Americans turnout matters little but local electoral institutions can help. In particular, a move to district elections and on-cycle elections could help to further expand black representation.

Is Uneven Voting a Problem?

The Voting Rights Act has led to important increases in minority participation. Between 1964 and 1970 alone, the percentage of black adults registered to vote in the south increased from 42 percent to 67 percent (Parker 1990). Among the Asian American and Latino population, turnout rates have also increased (Lien 2001, Hero 1992). But the bottom line is that participation is still greatly skewed by race and ethnicity. In the last presidential contest, for example, white adults were twice as likely to report voting as Asian American and Latino adults. Some 66 percent of whites reported voting compared to just under 30 percent for both Asian Americans and Latinos (US Census Bureau 2005). Blacks were more involved than Latinos and

Asian Americans but still only 56 percent of African American adults voted. And it is not just national elections. Turnout by race is as skewed or even more skewed in state and local contests (Hajnal and Trounstine 2005, Hill and Leighley 1992).

Is this non-voting by such a large proportion of the minority community a problem for minority representation in American democracy? At first glance, the answer seems yes. Given that the vote is arguably the main tool for determining democratic outcomes, uneven turnout across race would seem to be an important barrier for minority representation. Moreover, everyone involved in politics, from candidates, to parties, to campaigns acts as if turnout of different groups is critical. After any close contest, candidates and commentators are likely to agree that "turnout emerged as a decisive factor in [the] elections" (Bumiller and Nagourney 2002). The notion that the electorate will tilt to the left if the electorate expands has, in fact, been one of the core principles behind Democratic Party efforts to make the vote more accessible and Republican efforts to oppose any such changes.

However compelling arguments about turnout may be, the empirical evidence to date suggests otherwise. Research on recent American elections has almost unanimously found that turnout does not greatly affected outcomes. Two sets of studies under gird this finding. First, studies show that the preferences of nonvoters do not differ markedly from the preferences of voters (e.g. Wolfinger and Rosenstone1980, Bennett and Resnick 1990, Gant and Lyons 1993, Norrander 1989, Verba, et al 1995). Indeed, according to Ellcessor and Leighley, "one of the least contested conclusions in the study of political behavior is that voters' political attitudes and

policy positions are fairly representative of non-voters" (2001:127). In other words, voters and non voters may look very different but they do not think all that differently.

More importantly, there is little evidence to suggest that altering turnout would change who wins and loses. Although some studies have found that increasing turnout might alter the margin of victory slightly in some contests, the findings are often highly variable and the effects are never large (Citrin et al 2003, De Nardo 1980, Nagel and McNulty 1996, Shields and Goidel 1997, Erickson 1995). There is even a prolonged debate over whether marginal benefits would accrue to Democrats or Republicans if turnout expanded (De Nardo 1980, Tucker and Vedlitz 1986, Nagel and McNulty 1996, Petrocik 1987). Most importantly, few of the elections examined would have ended with a different victor. "Simply put" say Highton and Wolfinger, "outcomes would not change if everyone voted" (2001:179). If this is true, it may be that low turnout rates are not the principal barrier to minority representation.

Why Turnout Might Still Matter

In this paper, we challenge this conclusion. We argue that the non-impact of a skewed electorate stems in part from the narrow focus of the existing empirical research. Nearly every study that looks at the effect of voter turnout on electoral outcomes focuses on the national electorate in presidential and Congressional elections.[4] This narrow focus reduces the possibility of finding bias for two reasons.

[4] Exceptions are Nagel and McNulty's (1996) research on gubernatorial elections, Hill et al's (1995) study of turnout across states, and a number of accounts of local elections (eg Browning, Marshall and Tabb 1984, Pinderhughes 1994, Wright 2000).

First, simple logic dictates that the *possible* extent of any skew produced by uneven turnout decreases as overall turnout levels increase. As detailed in Tingsten's (1937) "law of dispersion," the chances of skew are inversely proportional to overall electoral participation. If almost everybody turns out, there can be very little skew. If, however, only a small fraction of the population turns out, skew can be severe. Thus, if we are interested in revealing just how much turnout matters, we should not confine our research to national elections where turnout is relatively high. Bias could certainly exist at the national level where only about half of all eligible voters turn out but it could be that much worse at the local level where turnout averages half or less than half that of national elections (Karnig and Walter 1983, Hajnal et al 2002).

Second, by looking at the national electorate as a whole one ignores substantial variation in group size across geographic boundaries and almost necessarily diminishes the role that small minority groups can play. In national contests, only a few very large groups can have a significant affect on the outcome of the vote. Asian Americans, for example, are the third largest racial and ethnic minority group but they make up well under 4 percent of the total national population. Whether or not they vote is almost immaterial to the outcomes of national contests.

The same is not true for smaller geographic localities. Because people are distributed unevenly across geographic boundaries, groups that are small minorities and largely insignificant at the national level can be major players within many states, districts, or cities. This is especially true for race and ethnicity but segregation by income, education, and other measures of well-being also occurs. African Americans, for example, make up about a third of the population in New York, Philadelphia, and Chicago and almost two-thirds of the population in New Orleans,

Atlanta, and Washington. In fact, segregation by race and ethnicity is the rule rather than the exception. Although the national population is only 12 percent African American, 12 percent Latino, and 4 percent Asian American, data from a recent nationwide survey (the American Citizen Participation Study) indicate that the average Latino lives in a city that is 39 percent Hispanic, the average African American in a city that is 35 percent black, and the average Asian American in a city that is 7 percent Asian American.

Thus, if we are concerned about the effects of a skew in the electorate we need to look not just at the national electorate as a whole but at a series of smaller political units where the effect of different groups could begin to weigh in.[5] Only by examining each of these smaller units separately will we begin to get a second, perhaps more revealing look at the effects of uneven turnout on electoral outcomes. Unfortunately, although there are strong reasons to suspect that turnout is critical at the local level, there is, to date, little empirical evidence addressing this question. Leighley (2001) and Verba et al (1995) briefly report on participation rates for different racial, ethnic, and demographic groups in local elections but there appears to be no research that looks systematically across cities at the consequences of a skewed electorate at the local level.[6] Thus the question of whether or not turnout matters remains largely unanswered.

[5] Studies that disaggregate electoral results by each individual Senate or House elections at least partially address this problem (eg). Black and Black (1987) and others also demonstrated how relatively large minority populations at the state level (eg 20-25%) can affect electoral outcomes if they turn out and vote cohesively.

Are Electoral Institutions the Problem?

Despite the best efforts of racial and ethnic minorities and the provisions of the Voting Rights Act, there is also evidence to suggest that electoral structures could be an ongoing barrier to minority representation. Reforms have led to changes in electoral structure in many American cities and states but institutional arrangements that have been identified as limiting minority influence remain in place in most areas of the country. The institution, minority rights advocates have most concerned themselves with, at-large elections, remain in effect in most cases (Grofman and Davidson 1994, Engstrom and Mc Donald 1982). Nationwide, 64 percent of cities continue to use at-large elections to elect city council members and only 18 percent use a pure district system (Hajnal and Lewis 2003). And it is not just at-large elections. Council size, a feature of local government structure that may be related to minority representation has changed little in response to reform efforts (Bullock and MacManus 1987). There has been, in fact, little trend toward increasing the number of council members (as a function of the city population) and the standard five member city council remains in effect in a plurality of cities. Term limits, a procedural reform that some maintain could be a key to further expanding minority representation are still rare (Copeland 1997, Donovan and Snipp 1994). Only about 10 percent of the nation's cities have instituted term limits for city council elections (Hajnal and Lewis 2003). Finally, a set of structural factors, often called reform institutions, that tends to lower

[6] Several urban scholars do, however, note the importance of group mobilization for political incorporation (Dahl 1961, Browning, Marshall, and Tabb 1984, Erie 1988, Bridges 1997). This is especially true for accounts of the civil rights movement (Lee 2002, Parker 1990).

turnout and thus may serve to reduce minority influence also remains in place throughout the country (Hajnal and Lewis 2003). Roughly 80 percent of American cities hold off-cycle elections, 76 percent hold nonpartisan elections, and 52 percent use a city manager form of government. In short, institutional reform still appears to have real potential in efforts to expand minority representation.

Despite the seeming promise of institutional reform, recent empirical tests have cast some doubt on the ability of this kind of institutional strategy to rectify minority underrepresentation. Some of the most recent studies of black representation have found that institutional structure is less linked to black success that it once was (Welch 1990, Bullock and MacManus 1987). And research into Latino and Asian American representation has often failed to find a link between local electoral institutions and the representation of these two communities (Segura 1999, Bullock and MacManus 1990, Welch 1990, Alozie 1992, Alozie and Manganaro 1992). A good deal has changed in American politics since the Voting Rights Act was initially passed and there is at least a real possibility that relationships that once governed minority politics no longer exist. If America is generally more open to minority interests today, or if America is at least more open to Latino and Asian American interests than it has been to African American interests, then the changing racial demographics of the country could be contributing to new political world where institutional structure is largely irrelevant.[7]

[7] Another reason to revisit this question is a basic flaw in most of the existing empirical research. Most of the existing studies focus on only one or two institutional features of local government and do not simultaneously include controls for other basic features of the local electoral structure. Given that the presence of many of these structures is at least somewhat correlated, any study that does not control for the range of potentially relevant institutions may reach flawed conclusions about the impact of any single institution on representation.

Data and Methods

To determine if turnout and institutions affects who wins in local democracy, we focus on arguably the most central election in local politics, city council elections.[8] For each city, we use aggregate voter turnout, since data on the racial skew of the local electorate in different cities are simply not available. We expect that as turnout in city council elections expands, the vote will be less skewed by race and less advantaged interests will have more of say in determining outcomes. There is ample evidence that turnout is, in fact, less skewed as turnout increases. Both Hill and Leighley (1992) and Jackson et al (1998) have, for example, shown that class bias in turnout across states in presidential elections declines as aggregate state turnout increases. Others have similarly found that higher turnout national elections are more representative of the class and racial makeup of the population (Rosenstone and Hansen 1993). Our own analysis of the state-wide initiative vote in California suggests that the vote becomes substantially more representative by income, race, age, and other socioeconomic characteristics in higher turnout elections (analysis not shown). It is also worth noting that turnout is much less skewed for political activities that incorporate large shares of the population (ie voting) than it is for those that involve smaller shares (ie working on a campaign or attending a protest) (Verba et al 1995).

Since, aggregate turnout is likely to be only an imprecise proxy for racial skew. Given the noise in our measure, our results should, if anything, underestimate the magnitude of the

[8] Most U.S. cities have a council/city manager form of government and even in cities with mayors, the mayor seldom has veto power or unilateral control over the budget (Hajnal and Lewis 2003). Thus, council elections are almost always central to local policy making (Krebs and Pelissero 2003).

effects of racial skew on minority representation. If this noise is too severe or if we are wrong and there is no underlying relationship between local voter turnout and the skew of the electorate, our tests should reveal no relationship between turnout and representation.

To assess the relationships between turnout, institutions and minority representation, we utilize data from the 1986 International City/County Manager's Association survey (ICMA) which was mailed to city clerks in every city in the United States with over 2,500 residents.[9] Although there are more recent ICMA surveys, the 1986 survey is the only ICMA survey that asks specifically about local voter turnout. The 1986 ICMA survey reports figures for registration and turnout in the most recent city council election, the number of city council members who are white, African American, Latino, and Asian American, and the institutional and electoral structure of the city. For the turnout data, clerks are asked to provide the percentage of eligible voters who are registered to vote and the percentage of registered voters who voted in the most recent city wide election.[10] In subsequent analysis we focus primarily on turnout of registered voters but in alternate tests we repeat the analysis with turnout of eligible voters.[11]

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[9] The ICMA has a response rate of 65.6 percent. Analysis comparing the socioeconomic status and racial demographics of ICMA cities with the population of all U.S. cities indicates that the ICMA is representative of the nation as a whole (Aghion, Alesina, and Trebbi 2005). Similar analysis comparing cities that responded to the survey with cities that did not indicates that there is no obvious response bias (Aghion, Alesina, and Trebbi 2005).

[10] City clerk turnout reports have been validated elsewhere (Hajnal et al 2002). When we compared city clerk turnout figures to actual election returns reported by the board of elections for a sample of elections, we also found that the city clerk reports were quite accurate.

[11] Since different jurisdictions have used a range of registration requirements to exclude or include different segments of the population (Parker 1990, Davidson and Grofman 1994), one might want to focus exclusively on the turnout of eligible voters. The problem is that city clerks have to estimate the eligible population. There is no data source that provides yearly data on local eligible populations. Since, cities and counties (often city clerks themselves) must compile and record data on total voter turnout and voter registration for every election, reports of registered voter turnout are more accurate. In the end, it does not matter which measure we use. Turnout of

We focus on six sets of institutions that prior research has identified as being potentially related to minority representation. To examine the impact of district elections, we include a dummy variable that singles out all cities that elected all city council members through districts.[12] To assess the role of election timing, we include a dummy variable for cities whose most recent council election was in November of an even year.[13] The ICMA survey also asked whether candidates' party affiliation were included on the ballot. Cities that included party labels were identified as partisan. To test for the effects of term limits, we included another dummy variable singling out cities that placed any legal limit on the number of terms a council member may serve. The actually number of city council seats was included to determine if council size played a role in determining minority representation. Finally, city clerks were asked about the current form of government and were asked to distinguish between the mayor council form of government and the council manager form of government.[14] Cities with the mayor-council form of government likely had more at stake in local elections since elected officials had more say in local affairs and were thus expected to have higher turnout and perhaps more equitable representation.

To ensure that our analysis of local institutions and voter turnout is not biased by differences in demographic characteristics across cities, we merged this ICMA data with data on

registered and turnout of eligible voters are closely correlated (r=.87). Also, when we repeat the analysis with the percent of eligible voters, we get similar results.

[12] Several cities had some combination of at-large and single-member districts. Alternate tests indicate that these mixed systems were no more or less likely to produce minority representation than district or at-large cities.

[13] This is, obviously an imprecise measure of concurrent elections since it does not specify whether the election was actually held on the same day as a national or statewide contest. Additional tests, however, indicate that cities that held elections in November of even years generally held them concurrently with national or state level elections.

various city level demographic measures from the 1990 Census. Specifically, because willingness to vote for minority candidates has at times been linked to socioeconomic status and education as well as region, we include measures of educational attainment (percent college graduates), income (median household income), and region in our analysis (Sears and Kinder 1971, Williams 1990, Handley and Grofman 1994). In addition, we include controls for the racial and ethnic makeup of the population and the percentage of non-citizens in each city. Like previous research on minority representation, we restrict our analysis to cities where the group being assessed makes up at least five percent of the city population and thus has at least a nominal chance of winning a seat on the council. Using the ICMA data and Census data, we can then determine the relative effects of voter turnout, the institutional structure of a city, and city demographics on racial and ethnic minority representation on city councils.

Minority Representation on City Councils

Can we do something about minority underrepresentation on city councils? In Table One we begin to answer this question by assessing the effects of voter turnout and institutional structures on minority representation. The table reports the results of four separate O.L.S. regressions with the proportion of city councils that are white, African American, Latino, and Asian American respectively as the dependent variables. **[Table 2 about here]**

The results for voter turnout are clear. As can be seen in the first row of Table One, higher turnout in local elections leads to significantly greater numbers of Latinos and Asian

[14] Unfortunately, although recent analysis suggests that more and more cities are becoming hybrids in their

Americans on city councils. For whites, higher turnout appears to reduce representation on city councils, although the relationship is not quite statistically significant. For African Americans, on the other hand, there is no clear relationship between aggregate turnout and council representation. In other words, the more people who vote, the better Latinos and Asian Americans fare and the worse off whites are. And as we will see shortly, these effects can be substantial. [15]

The pattern in Table One fits well with what we might have expected had we simply compared the turnout rates of different racial and ethnic groups. Since African Americans vote at rates just below whites, one would not expect them to substantially lose or gain from an increase or decrease in turnout. Instead, the two groups likely to gain the most from expanded turnout are the two groups that normally vote the least – Latinos and Asian Americans.

To help ensure that these results do in fact measure the underlying relationship between turnout and representation, we undertook a series of additional tests [analysis available from the authors]. First, we re-ran the analysis using turnout of the eligible population rather than turnout of registered voters. All of the significant relationships remained intact. Second, we included all cities in the analysis rather than just cities where the target racial/ethnic group was over five

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governing structure, the ICMA survey only distinguishes between the two extremes.

[15] Two other important findings that emerge from Table One concern the role of citizenship and the nature of inter-group relations. First, across all four models, increases in the size of the non-citizen community are associated with the decreased representation of racial/ethnic minorities and increased representation of whites. In short, citizenship is an important barrier that representation at the local level. Second, the results in Table One shed some light on the degree to which different minority groups appear to cooperate with each other in local elections (see also McClain and Tauber 1998). Table One indicates that black and Asian American representation tends to increase as the size of the Hispanic population increases. This could indicate that African Americans and Asian Americans are gaining at the expense of low Hispanic participation, but it could also be a sign of inter-minority cooperation and in particular of fairly widespread Hispanic support for black and Asian American candidates.

percent of the population. This reduced the magnitude of the effects in most cases but the overall conclusions were the same. Increased turnout substantially increased Latino and Asian American representation and reform of electoral institutions significantly increased black representation.

Equity in Representation

To better gauge the substantive effects of turnout on racial/ethnic representation on city councils Figure 1 illustrates the relationship between turnout and proportional representation on city councils for each of the four racial/ethnic groups. To create Figure 1 we re-ran the analysis in Table One substituting a measure of the over/under-representation of each group (the percentage of a given racial/ethnic group on the council minus the percentage of that racial/ethnic group in the city's voting age population) as the dependent variable and then calculated predicted representation rates at a given turnout level for each group. The regression results, which essentially repeat Table One, are available from the authors. For comparison purposes each of the four graphs has a dotted line indicating the mean level of over/under-representation for each racial/ethnic group and a dashed line indicating parity or equity in representation. **[Figure 1 About Here]**

Before turning to the Figure 1 it is worth re-emphasizing the point that non-whites are greatly underrepresented on city councils nationwide. Latinos are the most under-represented of any group. In cities where they represent five percent or more of the population, Latino representation averages 13 percent below parity. Thus, for example, if Latinos were 30 percent of the city population, one might expect Latinos to hold 17 percent of the city council seats.

Asian Americans average 9 points below parity and African American council representation averages 8 points below parity. Also, for Latinos and Asian Americans, underrepresentation greatly increases as the size of each group grows. In cities where they represent at least a quarter of the population, Latinos are 25 points below parity and Asian Americans are 22 points below parity.

The question then becomes can increased turnout substantially reduce minority under-representation. As can be seen in the figure, the answer is a qualified yes. Increased turnout does not bring Latinos, Asian Americans, or African Americans to equity in representation on city councils but for Latinos and Asian Americans it has the potential to reduce underrepresentation considerably. For Latinos, moving from a city where 10 percent of registered voters turnout (the 10th percentile in terms of turnout) to a city where 69 percent of registered voters turnout (the 90th percentile) would decrease Latino under-representation on city councils by 3.2 percentage points roughly eliminating one quarter of the 13 point under-representation of Latinos.[16] A similar increase in turnout could reduce Asian American under-representation by 2.8 percentage points roughly accounting for a third of the 9 point average under-representation of Asian Americans in these cities. Likewise for whites, a similarly large increase in turnout would eliminate roughly a quarter of white over-representation on city councils. In short, if we seek to expand minority descriptive representation.[17]

[16] It is not unreasonable to expect large changes in turnout at the city level. Existing research suggests that simply the changing the timing of local elections to coincide with national elections increases registered voter turnout by 36 percentage points (Hajnal et al 2002).

[17] Descriptive representation and proportional representation obviously have both merits and shortcomings that are discussed in some detail in Guinier (1992), Thernstrom (1987), and Tate (2003). Judging by minority voting

At the same time, Figure 1 tells us that turnout can rectify only part of the problem of minority under-representation. Clearly, there are other barriers to minority representation like citizenship, local electoral institutions, the costs of running a campaign, finding candidates with the requisite political experience, and internal group divisions that also need to be considered.

To test the robustness of these findings, we re-ran the analysis using two different measures of representational equity. In one sets of tests, rather than look at small changes in representation, we calculated and used as the dependent variable the number of council seats that a given group was below racial parity. Given that it is impossible to win a proportion of a council seat, simply counting up the number of additional council seats that a group should have to achieve proportion representation in some ways more meaningfully captures the nature of electoral competition in cities. In another set of tests we re-ran the analysis with a logged representation ratio measure developed by Verba, Schlozman, and Brady (1995: see pages 571-577 for a description and explication of the measure). Although the logged representation ratio is harder to interpret, it has the advantage of being unaffected by the size of the group. Both alternate dependent variables led to similar conclusions about the effect of turnout on equity in council representation [analysis available from the authors].

Institutions and Representation

If we go back to Table One we can also learn about the relationships between institutional structure and minority representation. The Table shows that changes in local

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preferences in our mayoral contests and other past research, minority voters generally prefer minority candidates

institutional structures, an oft-cited alternative avenue to expanding minority representation, would only help one of the three minority groups: African Americans. Specifically, the coefficients in Table One indicate that moving from at-large to district elections and changing the dates of local elections to coincide with the dates of national elections would increase the proportion of blacks on city councils by a little over 6 percent, all else equal.[18] Since black underrepresentation averages around eight percent in our cities, these two institutional reforms could substantially reduce black underrepresentation. Moreover, given that most cities still retain at-large elections and off-cycle elections, it is clear that these two institutional changes could greatly influence black representation nationwide. None of the other proposed institutional solutions such as term limits, partisan elections, larger council size, or the mayor-council form of government is significantly related to African American city council representation.

For Latinos and Asians Americans, all of these institutional changes seem to offer much less hope in addressing inequalities in electoral outcomes.[19] The absence of clear link between institutional structures and Latino and Asian American representation fits well with recent studies which have found little connection between local institutional structure and Asian American and Latino representation (Segura 1999, Alozie 1992; Bullock and MacManus 1990). We suspect that lower levels of segregation and less racially polarized voting are two of the

(McCrary 1990, Hero 1989, Hajnal n.d.).

[18] This simulation and others in the rest of the paper were calculated using Clarify holding all other independent variables at their mean or modal value.

[19] Several of these institutional levers do, however, have at least an indirect effect on racial/ethnic representation on city councils. If registered voter turnout is substituted as the dependent variable, all of these institutions (except term limits) do affect voter turnout indicating that they may help minorities by offering an avenue to expand turnout (see also Hajnal et al 2002 for an account of how local institutions affect turnout).

primary reasons why these institutions matter less for Latinos and Asian Americans than for African Americans.

The Contingent Effects of Turnout

One of the main goals of this research has been to show that the effects of turnout on minority representation are pronounced at the local level. But this is, in many ways, only part of the story. There are also different contexts at the local level in which we would expect turnout to matter more than in other contexts. Obviously, one of the biggest determinants of how much turnout matters for any given group is how large that group is.[20] Put very simply, one would expect increases (or decreases) in turnout to affect minority representation more in cities where the minority in question makes up a larger share of the population. If Asian Americans, for example, make up only a tiny fraction of the population in a given city, it doesn't really matter whether they turnout at a rate of 100 percent or 10 percent. Thus, in Table Two, we attempted to determine how the effects of turnout on representation vary by the size of the minority population. To do so we repeated the analysis in Table One adding interaction terms for turnout and the size of the relevant minority population. **[Table Two About Here]**

The results are clear. For all groups except African Americans the interaction terms are positive and significant indicating that the effects of turnout on representation increase significantly as the group's proportion of the population of a city increases. In short, expanded

[20] A second set of factors that could mediate the effects of turnout are the electoral institutions of a city (Trounstine 2004). To see if institutions mediated the effects of turnout, we repeated the analysis in Table One adding interaction terms for turnout and each of the electoral institutions (district vs at-large elections, term limits, partisan vs nonpartisan elections, concurrent vs nonconcurrent election timing, and mayor-council vs city manager form of

turnout matters much more to Asian Americans, Latinos, and whites when they are large enough to substantially affect the outcome of the vote.

Conclusion

Our analysis has led us to identify two important barriers to minority representation in local politics. The first is voter turnout. The less regular voting participation of groups like Latinos and Asian Americans leads to their systematic under-representation on local governing bodies. The fact that minority candidates regularly fail to win because turnout has important implications for democracy. Given that past studies have shown that minority representation has consequences not only for improving racial and ethnic relations but also for the distribution of public goods in cities, there is a real possibility that minorities are losing out due to low voter turnout (Hajnal 2001, Browning, Marshall, and Tabb 1984, Eisinger 1983). In an era of policy devolution, as more and more policies are both initiated and implemented at the local level and as the problems of many urban areas become more acute, the decisions that local voters make are taking on growing importance (Sellers 2001). While presidential and Congressional elections get much of our attention, they are only one element of American democracy. The vast majority of elected officials emerge from local contests and more votes are cast in the multitude of local elections than in national contests. In short, it matters who wins and who loses in a political arena that touches regularly on the lives of residents.

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government). The results indicate that turnout effects are not significantly contingent on the type of electoral system [analysis not shown].

Unfortunately, identifying the problem is likely to be easier than solving the problem. Advocates of a streamlined citizenship process, funds to contact and mobilize racial and ethnic minorities, changes in the institutional structure of cities, proportional representation, cumulative voting, universal registration, and a host of other proposed solutions all believe that their proposed policies will help to address declining and uneven turnout (Shaw et al 2000, Hajnal and Lewis 2003, Guinier 1992). But just how much each of these proposed solutions could ultimately rectify the under-representation of racial and ethnic minorities and other disadvantaged demographic groups remains to be determined. Given the critical role that turnout plays in local elections, this is clearly an important area for future research.

Furthermore, we have probably exposed only a small fraction of the problem. Voting is the least skewed aspect of formal political participation (Verba and Nie 1972, Verba et al 1995). More severe imbalances in participation for other political acts such as campaign contributions or letter writing probably lead to even greater inequalities in political representation. It is also possible that the most important decisions city leaders make occur outside the realm of electoral politics and thus may be outside of the grasp of racial and ethnic minorities and other disadvantaged groups no matter how actively they mobilize (Bachrach and Baratz 1962, Gaventa 1980).

There is also the possibility that things will get worse before they get better. As Latinos and Asian Americans become ever larger portions of the urban electorate their potential influence will increase but so will the odds that they regularly lose out due to lower turnout. Latino and Asian American non-voting may be only symbolically important in places where

Latinos and Asian Americans make up a tiny fraction of the electorate but it is likely to be critical to the outcomes of elections and the distribution of public goods as these two groups begin to make up larger shares of the electorate.

The other important conclusion to emerge from this research is that institutions still matter. In line with past studies, we find that local institutions can have significant consequences for African American representation. Moving from at-large to district elections and moving the dates of local elections to coincide with national contests could substantially reduce black under-representation at the local level.

In this case, identifying the solution is easy. We need to consider reform of local institutional structures. Reform in every city is neither necessary, nor warranted but in cities with sizable African American populations, it seems clear that relatively small changes to the local electoral structure could have dramatic effects. What makes this solution particularly appealing is the ease with which local institutions can be changed. In most cases, only a local ordinance would need to be changed. Others would only require alterations to city charters or state law. And while there has sometimes been strong opposition to district elections, the move from off-cycle to on-cycle elections should be much easier. What makes timing even more appealing as a policy lever is that many cities have actively considered changes to the timing of their elections and there are strong incentives – aside from increasing minority representation – to switch to concurrent elections. In fact, the primary motivation for this move has usually been cost savings. In many states, municipalities typically pay the entire administrative costs of stand-alone elections but only a fraction of the costs of on-cycle elections. In many cases, this means

that they are already moving toward on-cycle elections. One survey, in California, for example, found that more than 40 percent of cities had changed the timing of municipal elections in recent years, with the vast majority of those switching from stand-alone elections to elections concurrent with statewide contests (Hajnal and Lewis 2003). In short, institutional change is a feasible and potentially productive solution.

At the same time, it is important to note that institutional change does not always work. Our analysis indicates that reform of local electoral structures is unlikely to be able to significantly aid in expanding Latino and Asian American representation. None of the electoral features that we examined was directly linked to Latino or Asian American success in city council elections. What this suggests is that institutional structure may be much more important when a group is more residentially segregated, more likely to vote as a block, and more likely to vote for candidates that are opposed by the white majority. For groups with a less united vote and a less clear place in America's racial hierarchy, solutions will undoubtedly be more complex.

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Table One. The Determinants of Racial Representation on City Councils

	Whites	Blacks	Latinos	Asian Americans
Turnout	-.04 (.02)	.03 (.03)	.05 (.02)*	.05 (.02)*
District Elections	-.01 (.01)	.03 (.01)*	.00(.01)	-.00 (.01)
Concurrent Elections	.00 (.01)	.03 (.01)*	.00 (.01)	-.01 (.01)
Partisan Elections	.00 (.01)	.00 (.01)	-.02 (.02)	.01 (.02)
Term Limits	.01 (.02)	.01 (.02)	-.00 (.02)	-.04 (.01)*
Mayor (vs city Manager)	.00 (.01)	-.00 (.01)	.02 (.01)	.01 (.02)
Council Size	-.01 (.00)*	.00 (.00)	.00 (.01)	-.00 (.00)
Population (log)	-.01 (.01)	.01 (.01)	.00 (.00)	-.00 (.01)
Percent Poor	-.33 (.08)*	.38 (.12)*	.16 (.12)	-.01 (.11)
Median Income	.00 (.01)	.00 (.00)	.00 (.01)	.00 (.01)
Percent College Grads	-.12 (.05)*	.15 (.08)	.22 (.07)*	.05 (.06)
Percent Latino	-.78 (.06)*	.31 (.09)*	.79 (.05)*	.20 (.08)*
Percent Asian	-.54 (.10)*	.10 (.15)	.06 (.08)	.60 (.06)*
Percent Black	-.55 (.04)*	.58 (.04)*	-.02 (.04)	.13 (.08)
Percent Non-citizen	.81 (.10)*	-.37 (.15)*	-.58 (.08)*	-.39 (.11)*
West	.01 (.01)	.02 (.02)	.01 (.01)	.01 (.02)
Midwest	-.01 (.01)	.02 (.01)	.01 (.02)	.01 (.02)
Northeast	.00 (.01)	.02 (.02)	.01 (.02)	-.00 (.02)
Constant	1.16 (.05)*	-.18 (.06)*	-.18 (.06)*	-.02 (.06)
Adj. R-squared	.33	.29	.51	.40
N	1695	567	570	223

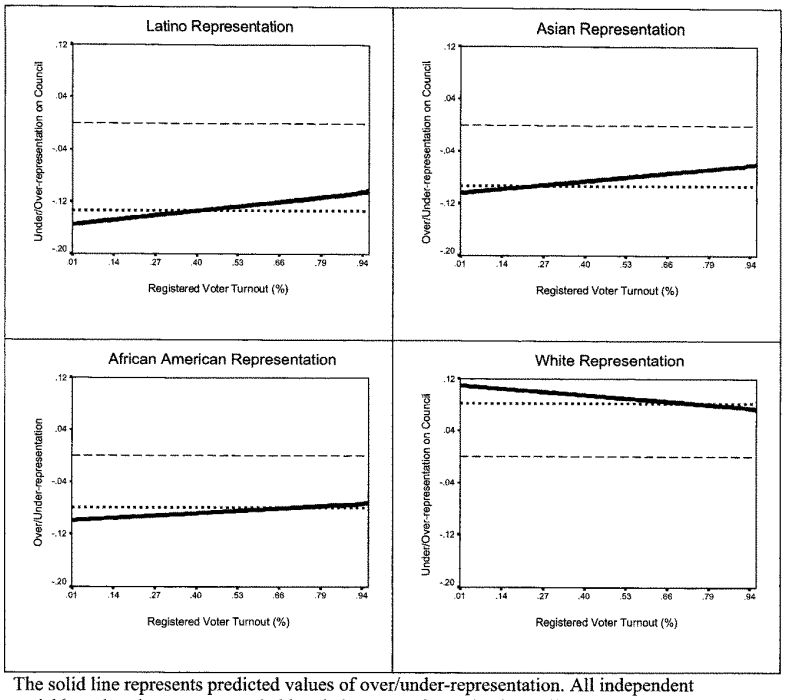
Source: ICMA Survey 1986, Census 1990. Figures are coefficient and their standard errors *p<.05

Table Two. Turnout Matters More When Groups Are Larger

	Whites	Blacks	Latinos	Asians
Turnout	-.21 (.09)*	.02 (.01)	.00 (.01)	-.01 (.00)*
% white*turnout	***.20 (.10)****	---	---	---
% black*turnout	---	***-.04 (.07)***	---	---
% latino*turnout	---	---	***.29 (.07)****	---
% asian*turnout	---	---	---	***.57 (.06)****
Districts	.00 (.01)	.01 (.00)*	.00 (.00)	.00 (.00)
Concurrent	.00 (.01)	.03 (.01)*	-.00 (.01)	-.00 (.01)
Partisan	.00 (.01)	.00 (.00)	-.02 (.02)	.00 (.00)
Term Limits	.01 (.02)	.00 (.01)	-.00 (.02)	-.01 (.00)*
Mayor	-.00 (.01)	-.00 (.01)	.00 (.00)	.00 (.00)
Council Size	-.01 (.00)*	.00 (.00)	.00 (.01)	-.00 (.00)
Pop (log)	-.00 (.01)	.01 (.00)*	.00 (.00)	-.01 (.00)
Percent Poor	-.36 (.08)*	.39 (.12)*	.06 (.03)*	-.02 (.01)
Med. Income	.00 (.01)	.00 (.00)	.00 (.01)	.01 (.00)*
College Grads	-.12 (.05)*	.03 (.02)	.09 (.02)*	.00 (.01)
% Latino	-.71 (.06)*	.09 (.03)*	.58 (.03)*	.04 (.01)*
% Asian	-.40 (.11)*	.01 (.05)	.06 (.04)	.13 (.03)*
% Black	-.50 (.05)*	.58 (.03)*	-.02 (.01)	.01 (.01)
% Non-citizen	.81 (.10)*	-.15 (.05)*	-.51 (.04)*	-.39 (.11)*
West	.01 (.01)	.01 (.01)	-.01 (.01)	.00 (.00)
Midwest	-.01 (.01)	.01 (.00)*	.00 (.00)	.00 (.00)
Northeast	.00 (.01)	.02 (.01)*	.00 (.01)	.00 (.00)
Constant	1.13 (.05)*	-.11 (.02)*	-.02 (.02)	.02 (.01)*
Adj. R2	.35	.54	.52	.33
N	1699	1699	1699	1699

Source: ICMA Survey 1986, Census 1990. Figures are coefficient and their standard errors
*p<.05

Figure 1. How Turnout Effects Racial/Ethnic Representation on City Councils



The solid line represents predicted values of over/under-representation. All independent variables other than turnout are held at their mean value. The dotted line represents the mean value of over/under-representation for a given racial/ethnic group. The dashed line indicates equity or proportional representation.

DRAFT

An Assessment of the Bailout Provisions of The Voting Rights Act

J. Gerald Hebert[1]

The marches, protests, struggles and sacrifices of the civil rights community and the Nation culminated in 1965 with the passage of the Voting Rights Act – the crown jewel of civil rights laws. Prior to 1965, case-by-case adjudication of voting disputes had proven ineffective in securing minority citizens an equal opportunity to register to vote and cast their ballots, so Congress took a fresh and unique approach in enacting the Voting Rights Act of 1965 ("VRA" or "the Act"). Sections 4 and 5 combined to establish a formula subjecting certain jurisdictions to administrative or judicial preclearance of all changes affecting voting. This insured that each and every change made by a covered jurisdiction was free of a racially discriminatory purpose and effect before it was implemented. Recognizing the coverage formula most likely reached some jurisdictions that had not employed racially discriminatory voting practices, Congress set up a means for those jurisdictions to bailout from coverage if they could prove that any tests or other devices they had used as a pre-requisite to registering to vote had not been used with the purpose or effect of discriminating on account of race or color.

This article will address the bailout provisions of the Voting Rights Act. In addition to providing background and explanation of the bailout provisions themselves, the paper examines whether the bailout provisions have worked effectively, and whether they should be changed.

[1] I served as legal counsel to all of the jurisdictions that have bailed out since the 1982 amendments were enacted, and I also serve as legal counsel to the two jurisdictions that are presently seeking a bailout.

At the outset, I believe the standards for establishing bailout eligibility that currently exist have proven to be both workable and practical. Since Congress amended the Act in 1982, ten jurisdictions have sought and obtained bailout, and at least two bailout requests are pending. As explained below, jurisdictions subjected to the Act's special remedial provisions, such as the preclearance provisions, have an effective opportunity to bailout today if they can prove nondiscrimination. Moreover, the bailout provisions are tailored in such a way as to require a covered jurisdiction to prove nondiscrimination in voting on the very issues that Congress intended to target when it enacted the special remedial provisions in the first place. The Act's special provisions target those jurisdictions with a long history of discrimination. The bailout provisions require those jurisdictions to show that those practices not only have been abandoned, but further that they have no lingering effects. The current bailout provisions, by allowing State and local governments with a history of discrimination the ability to avoid some of the Act's more intrusive requirements, insure that the Act remains consistent with sound principles of federalism.

The first part of this paper will identify the goals that Congress had in mind when it amended the Voting Rights Act in 1982, and whether the bailout provisions as amended have fulfilled those goals. Second, I look at the jurisdictions that have taken advantage of the bailout provisions, and the three phases that they go through to bring about a bailout. Part two also examines whether the bailout process has been shown to be cost-effective, timely and efficient. Part three examines whether the current bailout option is a realistic and fair opportunity to exempt jurisdictions from coverage. This part will also review what has worked and what has not worked with the legislation, and offer some explanations why more jurisdictions have not yet

pursued the option. The final part of this paper will discuss whether Congress should make any changes to the bailout formula and what those changes might be.

A. History of Bailout

Summary of the Voting Rights Act

A jurisdiction is "covered," meaning it is required to preclear all changes affecting voting with the Department of Justice or the United States District Court for the District of Columbia, if, as of November 1, 1964, it (1) maintained a racially discriminatory test or device as a prerequisite to voting or casting a ballot; and (2) if either less than 50 percent of its voting age residents were not registered to vote or less than 50 percent of its voting age residents actually voted at the time of the 1964, 1968, or 1972 Presidential elections.[2] Currently twelve townships and fifty-four counties in seven States, as well as nine States in their entirety, are covered under this formula.[3]

When the VRA was first enacted in 1965 and again when the Act was amended and extended in 1970, 1975 and 1982, Congress gathered extensive information and data, collecting vast evidence on voter discrimination that justified the Act's strong remedial provisions. In 1970, for example, the Act was extended because while there had been a significant increase in black voter registration in the covered states,[4] there was strong evidence that racial discrimination in the electoral process continued (*e.g.*, switching from single-member districts to at-large elections; redrawing boundaries to harm minority voters; minority candidates prevented

[2] 42 U.S.C. § 1973b(b) (2005).
[3] Voting Section, Civil Rights Division, U.S. Department of Justice, Section 5 Covered Jurisdictions, http://www.usdoj.gov/crt/voting/sec_5/covered.htm (last visited Oct. 19, 2005).
[4] Although the voter registration rates for black voters still lagged behind the rate for white voters. Paul F. Hancock and Lora L. Tredway, *The Bailout Standard of the Voting Rights Act: An Incentive to End Discrimination*, 17 Urb. Law. 379, 393-394 (1985).

from running; illiterate voters being denied assistance; racial discrimination in selection of poll officials; and harassment and intimidation of minority voters).

Similarly, at the time of the 1975 extension, minority voter registration rates had continued to improve, but still lagged behind whites (Anglos). Furthermore, the ability of minority voters and minority candidates to participate in the political process free of interference or intimidation still had not been achieved.[5]

1. The bailout provisions since 1965

Between 1965 and 1982, covered jurisdictions could bailout from coverage by demonstrating in an action for a declaratory judgment before a three-judge panel of the United States District Court of the District of Columbia that no test or device had been used since passage of the Act in 1965 in a manner that was racially discriminatory in either purpose or effect. The burden of proof was placed on the state or local government. Political subdivisions, such as counties, were prohibited from bailing out separately if they were located within a state that was covered in its entirety.[6]

The constitutionality of the Voting Rights Act was immediately challenged in *South Carolina v. Katzenbach*.[7] The Supreme Court upheld the Act in its entirety as an "appropriate" exercise of Congress' power under the Fifteenth Amendment.[8] With respect to the bailout provisions, the Court found the burden on a covered jurisdiction seeking bailout "quite bearable, particularly since the relevant facts relating to the conduct of voting officials are peculiarly within the knowledge of the States and political subdivisions themselves."[9] Furthermore, in response to *amici curiae* Alabama's argument that the trigger formula used to determine

[5] *Id.* at 397 fn. 93-98.
[6] *City of Rome v. United States*, 446 U.S. 156, 167 (1980).
[7] *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).
[8] *Id.* at 337.
[9] *Id.* at 332.

coverage was arbitrary because the Department of Justice's finding of coverage could not be appealed, the Court stated, "[i]n the event that the formula is improperly applied, the area affected can always go to court and obtain termination of coverage under Section 4(b)...This [bailout] procedure serves as a partial substitute for direct judicial review."[10]

The bailout provision in the 1965 Act only allowed those covered jurisdictions which, in the past five years, had not used a test or device with the purpose or effect of discriminating on the basis of race to bailout. For most covered jurisdictions, this meant that they would not be eligible for bailout until 1970. However, from 1965 to 1970, the Attorney General consented to the bailout of Alaska; Apache, Coconino and Navajo Counties, Arizona; Elmore County, Idaho; and Wake County North Carolina, because those localities proved that they had not used a test or device with a racially discriminatory purpose or effect within the previous five years.[11] The Attorney General opposed the bailout for Gaston and Nash Counties, North Carolina, however, because those jurisdictions were unable to prove their use of literacy tests were free of a nondiscriminatory purpose or effect.[12] Since each the jurisdiction had maintained historically inferior segregated schools, the use of literacy tests had the proscribed effect and these two counties were denied bailouts.

In 1970, the special provisions of the Voting Rights Act were extended for five years. The coverage formula was also amended to include the results of the 1968 presidential election, and the bailout provision was revised to require a jurisdiction to demonstrate a <u>ten</u> year record of not using any test or device with the purpose or effect of racial discrimination. From 1970 to 1975, a few more jurisdictions attempted to bailout. New York and Alaska, parts of which were covered under the expanded coverage formula imposed by the 1970 amendments, each

[10] *Id.* at 333.
[11] Hancock and Tredway, *supra* note 4, at 392.
[12] *Id.* at 392-393.

successfully obtained bailouts in 1972 on behalf of their covered jurisdictions in 1972.[13] In 1974, the New York jurisdictions were re-covered after court findings were made that those counties had used discriminatory tests or devices. Additionally, in 1974, Virginia unsuccessfully attempted a bailout after the court found Virginia's maintenance of inferior schools for minorities hindered their ability to pass Virginia's literacy test and thus the state could not show that it had employed a test or device free of a racially discriminatory effect.[14]

The Act was again extended and revised in 1975. The definition of tests or devices was expanded to include providing forms, materials or assistance related to elections in only English when at least five per cent of the population was of a single language minority group. Furthermore, in order to bailout, covered jurisdictions now had to prove no test or device had been used for a racially discriminatory purpose or effect within the past seventeen years.

From 1975 to 1982, there were several bailout actions brought by jurisdictions which sought to demonstrate that no test or device, under the now expanded definition, had been used in a racially discriminatory manner. In Maine, eighteen municipalities that had been covered under the 1970 formula successfully bailed out.[15] Additionally, in Oklahoma and New Mexico, counties covered under the 1975 minority language amendments bailed out because it was found that members of the language group spoke fluent English.[16] However, bailout was denied for City of Rome, GA, because the court found a political subdivision of a covered state lacked authority to bail itself out when the state itself was covered.[17] During this time, the Department of Justice opposed the bailouts of Alaska; Yuba County, California; and El Paso County,

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[13] *Id.* at 396.
[14] *Id.*
[15] *Id.* at 403.
[16] *Id.*
[17] *City of Rome*, 446 U.S. at 167.

Colorado.[18] The jurisdictions dismissed their bailout lawsuits rather than litigate against the federal government in a contested bailout lawsuit.

Finally, when the bailout provisions were revised in 1982, as discussed *infra*, the new provisions did not go into effect until 1984 in order to give the Department of Justice time to prepare for an anticipated increase in litigation. During the two-year delay in implementation of the 1982 amendments, the existing bailout standard was temporarily extended from seventeen to nineteen years.[19] From 1982 to 1984, a few more jurisdictions sought and obtained bailout under the "old" formula. These included: Elmore County, Idaho; Campbell County, Wyoming; Groton, Mansfield and Southbury, Connecticut; El Paso County, Colorado; and Honolulu County, Hawaii.[20]

3. Bailout provisions as established in 1982

In 1982, the U.S. Commission on Civil Rights prepared a detailed report that documented continued resistance by individuals and local jurisdictions to increased minority participation in elections and to complying with the Voting Rights Act. Absent a change in the bailout criteria, almost all of the then-covered jurisdictions would have been able to show that they had not used a test or device in a discriminatory manner since 1965.[21] Congress thought it "wholly unwarranted" to allow such a mass bailout at that time given "the continuing problems of discrimination and widespread failure to comply with the Voting Rights Act in the covered jurisdictions."[22] At the same time, the Congress wanted to "provide incentives to jurisdictions to attain compliance with the law and increase[e] participation by minority citizens in the political

[18] Hancock and Treadway, *supra* note 4, at 403.
[19] Hancock and Tredway, *supra* note 4, at 411.
[20] Hancock and Treadway, *supra* note 4, at 412-415.
[21] S. Rep. No. 97-417, at 43 (1982), *reprinted in* 1982 U.S.C.C.A.N. 178, 222.
[22] *Id.* at 44, *reprinted in* 1982 U.S.C.C.A.N. at 222.

process of their community."[23] These were the primary aims of Congress when it considered the bailout provisions in 1982.

With these two goals in mind, Congress enacted two major revisions to the bailout provisions. First, political subdivisions within a covered state were now given the opportunity to bailout separately from the state. Second, the bailout criteria were changed to "recogniz[e] and reward[] their good conduct, rather than require[] them to await an expiration date which is fixed regardless of the actual record."[24] Recognizing the potential for a dramatic increase in bailout litigation, Congress delayed implementation of the new bailout standard until August 5, 1984.[25]

Before the 1982 amendments to the VRA, political subunits of a covered jurisdiction lacked the ability to bailout independently of the jurisdiction.[26] For example, if an entire state was a covered jurisdiction, a city or county within that state was unable to seek bailout. This was because in a state that was entirely covered by the special provisions, no separate determination had been made that the political subunit was subject to the coverage formula.[27] After 1982, political subdivisions within a covered state were now eligible to initiate a bailout.[28]

The amendments also dramatically changed the bailout provisions themselves. Since 1982, covered jurisdictions now must demonstrate <u>both</u> a ten-year record of nondiscriminatory voting practices, and show current efforts to expand minority participation in all aspects of the political process before it can obtain a bailout. While this may seem onerous at first blush, in fact it is not.

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[23] *Id.*
[24] *Id.* at 46, *reprinted in* 1982 U.S.C.C.A.N. at 222.
[25] *Id.* at 59, *reprinted in* 1982 U.S.C.C.A.N. at 237.
[26] City of Rome, 446 U.S. at 167.
[27] *Id.* ("[T]he 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…On the face of the statute, the city fails to meet the definition of either term, since the coverage formula of § 4(b) has never been applied to it.")
[28] 42 U.S.C. § 1973b(a)(1) (2005).

Exactly what must a jurisdiction show in order to establish a ten-year record of nondiscriminatory voting practices? Since the 1982 amendments to the bailout provisions became effective covered jurisdictions must first demonstrate that in the past 10 years:

> (1) No test or device has been used to determine voter eligibility with the purpose or effect of discrimination;
>
> (2) No final judgments, consent decrees, or settlements have been entered against the jurisdiction for racially discriminatory voting practices;
>
> (3) No federal examiners have been assigned to monitor elections;
>
> (4) There has been timely preclearance submission of all voting changes and full compliance with Section 5; and
>
> (5) There have been no objections by the Department of Justice or the District Court for the District of Columbia to any submitted voting changes.[29]

Jurisdictions seeking a bailout must also bear the burden of proving nondiscrimination in all aspects of their voting and electoral processes including a showing that at the time bailout is sought:

> (1) Any dilutive voting or election procedures have been eliminated;
>
> (2) Constructive efforts have been made to eliminate any known harassment or intimidation of voters;
>
> (3) It has engaged in other constructive efforts at increasing minority voter participation such as, expanding opportunities for convenient registration and voting, and appointing minority election officials throughout all stages of the registration/election process.[30]

4. Proving The Ten-Year Record of Nondiscrimination

First, as noted above, the jurisdiction must show that it has not used a test or device for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.[31] Congress presumed this test would be relatively

[29] 42 U.S.C. § 1973b(1)(A-E) (2005).
[30] 42 U.S.C. § 1973b(1)(F) (2005).
[31] 42 U.S.C. § 1973b(a)(1)(A) (2005).

easy for covered jurisdictions to meet given the nationwide ban on such devices, a ban that had been made permanent in the 1970 amendments.[32] This requirement is directly linked to the coverage formula, and thus establishes a strong nexus between the bailout and coverage criteria.[33]

Second, the jurisdiction must also show that it has not had a final judgment of racially discriminatory voting practices entered against it during the previous ten years.[34] This means that "any jurisdiction that has entered into a consent decree settlement or agreement resulting in the abandonment of a voting practice" is precluded from obtaining a bailout, because their settlement is an effective admission that the abandoned practice was unlawful and discriminatory.[35] Additionally, "a decree granting bailout … must await final judgment in any pending suit that alleges voting discrimination."[36] Voting rights litigation reached its peak in the 1970's and 1980's and the number of lawsuits alleging racially discriminatory voting practices has significantly decreased in the last ten years.[37] Thus, this provision has not proven to be a significant bailout hurdle to a covered jurisdiction.

Third, the jurisdiction seeking bailout must show that no federal examiner has been assigned to the state or political subdivision within the past ten years.[38] Section 6 of the Voting Rights Act provides for the appointment of federal examiners if:

> (1) [the Attorney General] has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color…or (2) that in [the

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[32] S. Rep. No. 97-417, at 70, *reprinted in* 1982 U.S.C.C.A.N. at 248.
[33] *Id.*
[34] 42 U.S.C. § 1973b(a)(1)(B) (2005).
[35] S. Rep. No. 97-417, at 50, *reprinted in* 1982 U.S.C.C.A.N. at 228.
[36] S. Rep. No. 97-417, at 51, *reprinted in* 1982 U.S.C.C.A.N. at 229.
[37] *See e.g.* Ellen Katz, Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982 8 (2005) ("Courts identified violations of Section 2 more frequently between 1982 and 1992, than in the years since. Of the 86 total violations identified, courts found 61.6% of them during the first period, 38.4% since then.")
[38] 42 U.S.C. § 1973b(a)(1)(C) (2005).

> Attorney General's] judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to [the AG] to be reasonably attributable to violations of the fourteenth or fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fourteenth or fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment.[39]

Congress saw fit to add this element to the bailout provision, because "[t]he assignment of examiners is a good indication of voting rights abuses at the local level."[40] In many states subject to the Act's special provisions, such as Virginia, not a single federal examiner has ever been assigned, making this element also particularly easy to establish for many covered jurisdictions.

The fourth requirement for bailout under the 1982 Amendments, generally considered the most difficult to satisfy, requires a covered jurisdiction to show that for the last ten years, it has fully complied with the remedial provisions of Section 5, including timely submission for preclearance of any and all voting-related changes.[41] The covered jurisdiction "and *all governmental units within that jurisdiction*" must have timely submitted all voting changes; not have implemented any changes affecting voting without submitting them for preclearance; not have submitted any changes to which an objection has been entered; and repealed all changes to which an objection has been entered.[42] This means that in a county seeking a bailout, the county must not only establish bailout eligibility for itself, but must do so as well for "all governmental units within" it.

Importantly, the preclearance requirements serve to prevent new changes that affect voting that might have a racially discriminatory purpose or effect. Thus, demonstrated

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[39] 42 U.S.C. § 1973d (2005)
[40] S. Rep. No. 97-417, at 52, *reprinted in* 1982 U.S.C.C.A.N. at 230.
[41] 42 U.S.C. § 1973b(a)(1)(D) (2005).
[42] S. Rep. No. 97-417, at 71, *reprinted in* 1982 U.S.C.C.A.N. at 249-50.

compliance with Section 5 preclearance requirements is a central requirement for bailout. Compliance with the preclearance requirements by covered jurisdictions insures that potentially discriminatory voting practices and procedures have not been implemented.

Fifth, within the past ten years, there must not have been any objections to administrative or judicial preclearance submissions.[43] In adopting this element of the bailout provision, Congress recognized what the Supreme Court found in *City of Rome*, namely that the number and nature of objections interposed by the Attorney General is relevant to the need for continued coverage.[44] The number of objections interposed by the Department of Justice over the years has dropped.[45] For example, in Mississippi, between 1985 and 1994, the Department of Justice interposed 58 objections, whereas between 1995 and 2004, there were only 11 objections. Similarly, in the same time periods, objections dropped from 79 to 3 in Texas, and 35 to 2 in Alabama. To some, this decrease may signal that Section 5 preclearance is no longer needed. But it is more likely caused in large measure by the fact that most covered jurisdictions are aware of the substantive proscriptions of Section 5 and now avoid them when making changes.

A second major bailout provision requires a covered jurisdiction to demonstrate at the time bailout is sought that in the past 10 years it has: (1) "eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process; (2) "engaged in constructive efforts to eliminate intimidation and harassment of [minority voters]", and (3) "engaged in other constructive efforts" such as those aimed at increasing the ability of minority voters to register to vote or participate in the election process.[46] In determining whether the

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[43] 42 U.S.C. § 1973b(a)(1)(E) (2005).
[44] *City of Rome*, 446 U.S. at 181. *See also*, S. Rep. No. 97-417, at 48-49, *reprinted in* 1982 U.S.C.C.A.N. at 227.
[45] *See* Appendix B. During the last 10 years, there has been little litigation in the D.C. Circuit Court brought by covered jurisdictions seeking a declaratory judgment under the VRA. Aside from a handful of post-2000 lawsuits seeking preclearance of redistricting plans, no covered jurisdiction has been denied a declaratory judgment.
[46] 42 U.S.C. § 1973b(a)(1)(F) (2005).

jurisdiction employs any "procedures or methods 'inhibit or dilute equal access,' the standard to be applied is the 'results' standard" of Section 2 of the Voting Rights Act.[47] Thus, a bailout under Section 4 of the Act must be denied if the jurisdiction continues to utilize voting procedures that inhibit or dilute equal access to the political process in violation of Section 2.

For the most part, Section 2 litigation has been declining after a very active period in the 1980's where voting rights litigants filed numerous lawsuits to end dilute practices.[48] To date, each of the jurisdictions that have obtained a bailout has not encountered any difficulty satisfying these requirements.

Finally, a covered jurisdiction cannot bailout if it has violated any "provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color" in the past ten years.[49] The legislative history anticipated that "[t]his safeguard will permit evidence to be presented of voting rights infringements which have not previously been the subject of a judicial determination…However, such violations would not bar bailout if 'the plaintiff establishes that any such violation were trivial, were promptly corrected, and were not repeated.'"[50] What this means in practice is that a jurisdiction that inadvertently failed to submit a voting change for preclearance but implemented the change anyway will not be barred from obtaining a bailout even though such failures are technical violations of the preclearance provisions. Such "violations," if inadvertent, would fall into the "trivial" category.

The current bailout formula was an important step towards achieving the goals of the Voting Rights Act. It gave covered jurisdictions an incentive to move beyond the *status quo*, and

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[47] S. Rep. No. 97-417, at 72, *reprinted in* 1982 U.S.C.C.A.N. at 251.
[48] *See,* Katz, *supra* note 37.
[49] 42 U.S.C. § 1973b(a)(3) (2005).
[50] S. Rep. No. 97-417, at 53, *reprinted in* 1982 U.S.C.C.A.N. at 231.

to improve accessibility to the entire electoral process for racial and ethnic minorities. As the 1982 Senate Judiciary Committee report stated, "the goal of the bailout … is to give covered jurisdictions an incentive to eliminate practices denying or abridging opportunities for minorities to participate in the political process."[51] There is evidence that the bailout provisions have done precisely that. The bailout provisions actually "provide[d] additional incentives to the covered jurisdictions to comply with laws protecting the voting rights of minorities, and … improve[d] existing election practices."[52]

B. What Jurisdictions Have Pursued Bailout and How

There have been ten jurisdictions that have bailed out since the 1982 amendments to the VRA took effect. All of them are in Virginia and are listed in Appendix A. These ten jurisdictions worked cooperatively with Department of Justice officials in seeking a bailout to insure that all of their voting "standards, practices, and procedures" were in full compliance with the Act at the time they sought bailout. Each demonstrated a solid record of compliance with the Voting Rights Act over an extended period of time. This section provides the details of the process that each of the ten jurisdictions followed to obtain their bailout, a process that was followed to insure that bailout option was cost effective and that any problems that arose could be corrected before a bailout action was filed in the court.

Phase I: Research

The first phase of a bailout begins long before any papers are filed in federal court. The covered jurisdiction's bailout process begins by compiling voting and election data using its own

[51] S. Rep. No. 97-417, at 59, *reprinted in* 1982 U.S.C.C.A.N. at 238.
[52] S. Rep. No. 97-417, at 44, *reprinted in* 1982 U.S.C.C.A.N. at 222.

records to assess its eligibility for bailout. The jurisdiction may lower the cost of bailout by compiling this information itself under direction of its legal counsel.

Typical information that must be collected, and is needed to assess bailout eligibility, includes data on voter registration and voter turnout, the number of minority polling officials, the number of minority candidates (and whether they have been successful) and other similar information about minority electoral participation. Often the most important information to collect relates to changes effecting voting. Section 5 submissions to the Department of Justice are easily retrievable under the Freedom of Information Act. It is necessary to conduct this review to insure that all changes affecting voting have actually been submitted for preclearance. In addition, the DOJ records can be cross-checked culling the minutes of the local government's meetings and hearings to see what changes were actually made.

After collecting information and getting a general idea of whether the jurisdiction is eligible for bailout, it is advisable to reach out to the leaders of the minority community and open a dialogue with them about the bailout process. If a jurisdiction learns that its minority community is adamantly opposed to bailout, it is best to try and ascertain the basis for those concerns. It is important to learn what minority leaders and the community thinks early on in the bailout process, not only to engage them in the process itself and to educate the community about bailout, but also because legitimate concerns about racially discriminatory voting practices would likely preclude any bailout. It is better for a jurisdiction to learn about any potential problems early in the process, rather than later on.

Phase II: Remedying any Flaws

If it is discovered during the research phase that the jurisdiction is not immediately eligible for bailout, perhaps because it has inadvertently failed to make a preclearance

submission, Phase II of the bailout process entails remedying those problems. Voting-related changes that during Phase I are identified as not having been submitted for preclearance, should be promptly submitted for review in Phase II. If the Phase I review revealed any lack of minority participation in the election process, such as a lack of minority poll officials, the jurisdiction would want to review its practices to insure that its processes are fair and that corrective action, if needed, is undertaken before filing a bailout complaint in court.

For example, Shenandoah County, Virginia obtained a bailout in 1999. When it first began the process of seeking a bailout, the county found that a number of local towns within the county had made approximately two dozen voting changes without having obtained timely preclearance. Each town within the County promptly made a submission of the unprecleared changes which were then approved by the Department of Justice. This put the County and all political subunits in full compliance with the Section 5 preclearance provisions, and the Department of Justice then consented to the bailout. Similarly, King's County California has been required to make dozens of preclearance submissions to the Department of Justice of voting changes occasioned by governmental subunits, a number of whom are no longer even in existence.

At this stage, the jurisdiction seeking bailout will want to continue the dialogue it began with DOJ in the initial fact-gathering phase. This will enable the jurisdiction to learn whether, despite the failure of the jurisdiction to obtain timely preclearance of all its changes, the Department of Justice will consent to the bailout once all changes are submitted and precleared. If DOJ opposes bailout, the jurisdiction is still free to pursue the bailout in court, but the financial cost of pursuing and ultimately obtaining a bailout would increase substantially in such circumstances.

On average, Phases I and II have taken up to two years to complete especially if there are a number of unprecleared changes. During the early bailouts, the Department of Justice was slow to process the bailout requests, but recently these have been processed more efficiently and led to a reduction in the amount of time (and cost) for the bailout process.

Phase III: The Judicial Process

Once the bailout fact-gathering and compliance assessment phases are complete, the jurisdiction is then ready to pursue the bailout in court. In preparation for this stage, several documents need to be drafted: (1) Complaint; (2) Motion to Convene a Three-Judge Court; (3) Joint Motion For Entry of Consent Judgment and Decree (filed jointly with the Department of Justice); (4) Stipulation of Facts (signed by counsel for the jurisdiction and counsel for the United States) and (5) Consent Judgment and Decree.

There are minimal legal resources expended to complete these documents, and this portion of the bailout takes relatively the shortest amount of time. Although the first bailout filed in 1997 took thirteen months for the court to resolve after the initial court filing, the eight bailouts filed since then have taken an average of four months each from the time of the initial court filing to the court granting the bailout judgment.[53]

Phase IV: Conditions and the 10-Year Rule

There is nothing in the bailout provisions of the Voting Rights Act that preclude either the Department of Justice, the jurisdiction seeking bailout, or the minority community from entering into an agreement as part of the bailout judgment. As discussed above, every jurisdiction that is granted a bailout can be subjected to the special provisions of the Voting Rights Act once again if it adopts any retrogressive changes ten (10) years from the date that the

[53] See Appendix A.

bailout is granted. If such a change occurs, the Department of Justice may reactivate the bailout case or a person aggrieved may file a motion to reactivate the case.

However, since the changes are no longer being submitted to DOJ for preclearance and because these changes are not always easy to monitor, it may be difficult to detect what changes have been made by a 'bailed out' jurisdiction. How is the minority community going to be made aware of change being adopted? How is the minority community going to insure that voting changes adopted by a 'bailed out' jurisdiction are not retrogressive? When the jurisdiction was covered and subject to preclearance, there was federal oversight to insure nonretrogression. Federal authorities routinely contacted the minority community to obtain its views on proposed changes. One method by which the minority community can protect itself is to ask, as a precondition to their support of a bailout, that the jurisdiction agree to notify them of each and every voting change in the future (*i.e.*, post-bailout). This is more notice than currently exists in most places. And if such notice can be given before the change is implemented, even better. Local jurisdictions that I have represented have readily agreed to provide such advance notice.

In addition, a number of the bailout judgments have included reporting requirements. Jurisdictions have been required to file an annual report with the DOJ identifying changes they made affecting voting so DOJ can monitor the jurisdiction's electoral activity.[54] This type of reporting provision has been imposed by the Department of Justice in the part as a condition of their agreement to a bailout in those jurisdictions where a significant number of unprecleared

[54] For example, in *Shenandoah County v. Reno*, C.A. No. 1:99CV00992 (KLH, PLF, NHJ) (D.D.C. Oct. 15, 1999), Shenandoah County, Virginia agreed in the Consent Judgment and Decree to submit annual reports for five years from the time of bailout documenting all voting changes adopted by or within the County.

changes were discovered when they were pursuing a bailout. Additional information may also be requested in these annual reports that measure minority participation in the election process.[55]

In addition to including reporting provisions in bailout agreements, jurisdictions have also agreed to provisions that provide for continued federal review of certain voting changes for a period of years, even after bailout. For example, certain members of the minority community in Winchester City, Virginia were concerned about the City seeking bailout, because Winchester had been considering reducing the size of its large thirteen member city council. The City had three multi-member districts, each with staggered terms. The Justice Department and the minority community opined that reducing the council from thirteen to a smaller number might diminish the ability of minority voters to single-shot vote and adversely impact their opportunity to elect a candidate of choice. City and Justice officials thus agreed that as a condition of bailout, any changes in the form of government or method of election within three years of the bailout, would have to be pre-cleared by the Justice Department.[56] The City chose not to make such changes within the prescribed period.

C. Does the Bailout Process Work?

In order to obtain a bailout, a jurisdiction must show that the entirety of its electoral process, from voter registration to the election system used by it and all governmental subunits within it, does not deny equality of opportunity to minority voters. The burden is on the jurisdiction, as it properly should be, and the burden is neither too light nor too onerous. Not a

[55] In *Greene County v. Ashcroft*, C.A. No. 03-1877 (D.D.C. Jan. 19, 2004), Greene County, Virginia agreed in its Consent Judgment and Decree, among other things, to include a tally of how many African-Americans served as election officials and detail efforts to recruit African-Americans as election officials.

[56] *City of Winchester v. Ashcroft*, C.A. No. 1:00CV03073 (DHG, RCL, ESH) (D.D.C. May 31, 2001). See also *City of Harrisonburg v. Ashcroft*, C.A. No. 1:02CV00289 (D.D.C. April 17, 2002) (city agreeing "to record any complaints received by the City about voting … stemming from the City's efforts to make the precinct handicapped accessible").

single jurisdiction that has sought a bailout has been denied one. That all ten jurisdictions that have sought a bailout have been able to do so illustrates that the bailout provisions are working. The bailout option has proven to be an incentive for jurisdictions to bring their procedures into compliance with the Voting Rights Act, and to maintain them for an extended period of time (*i.e.*, ten years), just as Congress intended. Any jurisdiction which feels the preclearance process is too cumbersome or costly has a cost-effective alternative: to exempt itself from coverage.

Local jurisdictions with which I have worked have expressed to me several advantages that they derive from the current bailout formula. For instance, by requiring them to prove a ten-year record of good behavior and to demonstrate improvements to the elections process for minorities, these covered jurisdictions are afforded a public opportunity to prove and publicize that their voting and election practices are fair and non-discriminatory. Second, while bailouts come with some costs (on average around $5,000 for legal expenses), it is still less costly than making Section 5 preclearance submissions indefinitely. While precise figures are hard to calculate, it has been estimated that a submission to the Department of Justice cost local governments, on average, over $500 each. Thus, ten submissions to DOJ would exceed the cost of bailout. Most jurisdictions have made dozens of submissions to the Department. Finally, once bailout is achieved local jurisdictions are afforded much more flexibility and efficiency in making routine changes, such as moving a polling place or expanding voter registration opportunities.

For all of its advantages, however, only a few jurisdictions have bailed out. Some argue Section 5 should be retained *because* jurisdictions have not been achieving bailout on a mass scale, and that this may be proof there are still many problems with the election processes in

these jurisdictions.[57] To some extent, this assumes that jurisdictions are applying and being denied. Yet, as noted above, not a single jurisdiction that has sought bailout since 1982 has been denied a bailout. The real problem is that jurisdictions are just not applying.[58] Why is this?

One reason might be that smaller localities simply do not know the bailout option is even available to them; or even if they are aware of bailout, the process may be perceived as too complicated, time consuming, or costly.[59] For the vast majority of jurisdictions, the process is relatively straightforward and easy. Perhaps more importantly, it is cost effective.

Many local governments undoubtedly have become accustomed to Section 5's preclearance requirements, making preclearance submission to DOJ routine to the point where state and local governments now factor into their election calendar the time it will take to obtain preclearance review of their proposed changes. Others simply are not willing to invest the time to get with the leaders of the minority community to discuss why the local government is interested in pursuing a bailout. Whatever the reason, I would recommend that when the legislation is reauthorized, Congress suggest the Department of Justice provide more information to covered localities about the bailout provisions.

Another reason posited for the lack of bailouts is that the criteria are thought to be too difficult to meet. That is not the case. Most of the factors to be demonstrated, as discussed above, are easily proven for jurisdictions that do not discriminate in their voting practices. One factor, proving Section 5 compliance, is often cited as the most difficult to meet because opponents to bailout are likely to be able to find some small change that was not precleared. But, as noted above, this has not proven to be an insurmountable obstacle either.

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[57] Cf. Vernon Francis et al., *Preserving a Fundamental Right: Reauthorization of the Voting Rights Act,* Lawyers' Committee for Civil Rights Under Law, at 11, June 2003.
[58] See Appendix A.
[59] *Id.*

There are several reasons why demonstrating Section 5 compliance should be retained as part of the bailout formula. First, DOJ has allowed jurisdictions that inadvertently failed to submit a few minor changes to submit those changes for preclearance at the time bailout is being sought. The key here is that the jurisdiction's failure to submit changes for preclearance was inadvertent and not for the purpose of evading Section 5 review. Second, the legislative history shows that Congress thought that for changes which "are really *de minimis,*" the "courts and Department of Justice have used and will continue to use common sense."[60] While this process of going back and making these Section 5 submissions may be time-consuming and seem technical to some, it does ensure full compliance with the Act. Equally important, it is faithful to the language and spirit of the law.

Most jurisdictions that have sought or obtained a bailout since 1982 have had to make few such submissions of previously implemented but unprecleared changes.[61] In some places, county officials are aware that political subdivisions within the county, such as towns, cities, school districts, and special use districts, have not made any submissions. This failure, of course, affects the county's ability to obtain an expedited bailout. In King's County, California, for example, a county that has informed DOJ that it desires a bailout, it was discovered that 40-50 submissions had not been made by governmental subunits within the county. The county has had to bear this expense and the delay in the bailout process it has produced.[62] This has proven cumbersome, especially since some of these local governmental entities do not even exist anymore and the submission relates to changes that occurred years ago. Furthermore, King's

[60] S. Rep. No. 97-417, at 48, *reprinted in* 1982 U.S.C.C.A.N. at 226.
[61] See Appendix A.
[62] King's County informed DOJ in 1999 that it desired a bailout and the county is still in the process of making submissions on behalf of governmental subunits.

County's burden is even more pronounced inasmuch as the county does not have authority to compel certain localities to make Section 5 submissions.

The issue of easing the bailout process was addressed at the time of the 1982 amendments. Several amendments to the bailout provisions were proposed in 1982 which would have made it easier for States to bailout before each of the political subdivisions within the state had bailed out. Each amendment was rejected.[63] In rejecting these amendments, the Senate Report reasoned: 1) under the Fifteenth Amendment, States have the ultimately responsibility to enforce voting rights; 2) when States are involved in advising counties of their Voting Rights Act obligations, the counties exhibited greater compliance; and 3) most counties cannot or do not have independent authority to legislate in this area, such that the State may intervene and preempt local action with State legislation to enforce compliance.[64] Congress stated that, "this new opportunity for counties should not relieve a covered State of its fundamental responsible [sic] to protect the right to vote."[65] Thus, counties may bailout independently of the State, but the State may not bailout until each county has done so.

Similarly, the Voting Rights Act prohibits a county from bailing out until all of its governmental subunits are eligible. The Senate Report did not provide any specific rationale for this aspect of the legislation, focusing instead on States attempting to bailout before each of its counties have done so. Clearly, counties have an interest in bringing about compliance with the Voting Rights Act by local governments within their borders. Moreover, such compliance affects the county's eligibility to bailout. When counties become involved in advising political

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[63] H.Amdt. 266 to H.R. 3112, 97th Cong., 1st Sess., *offered* Oct. 5, 1981would have allowed a state to bailout if two-thirds of its political subdivisions bailed out. H.Amdt. 272 to H.R. 3112, *offered* Oct. 5, 1981 and S.UP.Amdt. 1029 to S. 1992, *offered* Jun. 18, 1982, both would have allowed a state to bailout if the state met all the criteria, even if its political subdivisions did not.
[64] *Id.* at 57-58, *reprinted in* 1982 U.S.C.C.A.N. at 235-236.
[65] S. Rep. No. 97-417, at 57, *reprinted in* 1982 U.S.C.C.A.N. at 235.

subunits about Voting Rights Act compliance including preclearance obligations, it has the salutary effect of bringing those subunits into compliance with the law. Of course, counties generally do not have the authority to force action by their political subunits. States generally do, however, and it is reasonable to assume that a political subunit which consistently refuses to meet its VRA obligations could be compelled to do so by State authorities. In any event, Congress in 1982 decided that counties should not be able to bailout until each of its political subunits is eligible.

Procedurally, there is a difference between how States as opposed to counties are allowed to bailout. A county within a covered State may bailout, leaving the state still covered. All state-wide voting changes still must be precleared while changes affecting voting within the bailed out county do not need to be precleared. However, a town may not independently bailout of a covered county.

A proposed solution that would make it more efficient for counties bailing out would be to allow towns, cities and other local governmental units within a covered county to bailout independently. Then, once each locality has bailed out, the county can then pursue its own bailout without having to bear the time or expense of making submissions of changes inadvertently implemented by cities or towns without preclearance. If this were to become law, the town-county relationship under a new bailout law would mirror the existing county-state relationship under the current bailout law. Covered states right now must continue to make submissions even though some of its counties have bailed out (Virginia being the only example). This has not caused any known administrative or enforcement problems for the State, the county, or the Department of Justice. Moreover, even if local governments within the county are

allowed to bail out, counties would still be obliged to comply with Section 5 until such time as the county seeks a bailout for itself.

To consider the merits of this possible amendment to the bailout law, Congress should examine Section 5 in covered states to see if allowing a bailout to jurisdictions within the state has proven to be problematic from an enforcement or compliance perspective. If counties can bailout now in a state that is completely covered (and, as noted above, they can and have done so in Virginia), Congress could consider if exempting parts of the State from preclearance obligations or other special remedial provisions of the VRA caused any problems from a law enforcement perspective. I am not aware of any and doubt any exist. In any event, such an inquiry would shed light on whether Congress should amend the bailout provisions and permit a local government within a covered county to bailout separately from the county.

D. Changes to Bailout and Coverage Formulas

Currently the bailout provision is linked to the coverage formula. Broadly, if a jurisdiction used a test or device as a prerequisite to registering to vote or casting a ballot as of the 1964, 1968 or 1972 presidential elections, and less than fifty per cent of the population was registered to vote or voted in that election, that jurisdiction is covered. States with a history of administering such tests or devices in a discriminatory manner were covered under this formula, primarily because such discrimination produced low registration and voter turnout rates below the formula's threshold. By requiring as a prerequisite to bailout that a jurisdiction show that minorities have had an equal opportunity to register to vote and that minority voters enjoy an effective opportunity to participate in the political process, the bailout provisions are closely tied to the coverage formula. Put another way, the coverage formula is designed to reach

jurisdictions that administered tests or devices that had a racially discriminatory purpose or effect, and which manifested themselves in a lower political participation rate for minorities within the jurisdiction; and the bailout provisions require a showing that the entire voting and election process is free of discrimination and that minority voters are no longer excluded from participation in that process.

Conclusion

In sum, the current standards for bailout are practical and are drafted in such a way as to require covered jurisdictions to prove the absence of those conditions which led to coverage in the first place. Congress, however, should examine the possibility of allowing local governmental subunits within a covered county to bailout. For the most part, jurisdictions subjected to the Act's special remedial provisions, such as the preclearance provisions, have an effective and reasonable opportunity to bailout today. Moreover, the bailout provisions are tailored in such a way as to require a covered jurisdiction to prove nondiscrimination in voting and elections on the very issues that Congress intended to target when it enacted the special remedial provisions in the first place. The Voting Rights Act has made our democracy stronger, and the extension of the special remedial provisions will help bring about a day when there will be no discrimination that affects the ability of any person to register to vote or to cast a ballot.

The Supreme Court has held the VRA to be constitutional because its remedial provisions are proportional to the injury Congress sought to remedy.[66] The bailout provisions help insure the Act's constitutionality because they provide a reasonable means by which covered jurisdictions can exempt themselves from the Act's special (and more intrusive) provisions, and because the bailout provisions, like other parts of the Act, relate so closely to the Act's original

[66] See *Katzenbach*, *supra* note 7; *City of Rome*, *supra* note 6.

purpose and the discrimination in voting it sought to eliminate. And finally, the bailout provisions serve the important function of insuring that state and local governments with a history of discrimination have eliminated such practices and have let minority voters take their rightful place as full participants in all aspects of the political process.

APPENDIX A

Bailouts Filed Since 1982 Amendments to VRA (Chronological)

Name of Jurisdiction	Bailout Filed Date	Bailout Granted Date	% Black	% Hispanic	# of Unprecleared Changes (if any)	# of Years Post-Bailout Reporting Required
Fairfax City, VA	September 25, 1997	October 21, 1997	4.5%	5.2%	0	0
Frederick County, VA	April 19, 1999	September 9, 1999	1.7%	0.5%	0	0
Shenandoah County, VA	April 21, 1999	October 15, 1999	1.1%	0.7%	31	5
Roanoke County, VA	August 11, 2000	January 24, 2001	2.5%	0.5%	6+	4
Winchester City, VA	December 22, 2000	May 31, 2001	9.1%	5.9%	0	4
Harrisonburg City, VA	February 14, 2002	April 17, 2002	5.5%	7.2%	0	3 (If requested by the DOJ)
Rockingham County, VA	March 28, 2002	May 21, 2002	1.3%	2.7%	1	1
Warren County, VA	August 30, 2002	November 25, 2002	4.7%	1.5%	7	3
Greene County, VA	September 8, 2003	January 19, 2004	6.1%	1.1%	1	2
Augusta County, VA	September 30, 2005	November 30, 2005	3.9%	0.8%	3	0

Bailouts Currently Pending

Name of Jurisdiction	Bailout Filed Date	Bailout Granted Date	% Black	% Hispanic	# of Unprecleared Changes (if any)	# of Years Post-Bailout Reporting Required
Kings, County, CA	(Pending)	N/A	8.3%	43.6%	40-50 (est.)	N/A

Bailouts Filed Since 1982 Amendments to VRA (Alphabetical)

Name of Jurisdiction	Bailout Filed Date	Bailout Granted Date	% Black	% Hispanic	# of Unprecleared Changes (if any)	# of Years Post-Bailout Reporting Required
Augusta County, VA	September 30, 2005	November 30, 2005	3.9%	0.8%	3	0
Fairfax City, VA	September 25, 1997	October 21, 1997	4.5%	5.2%	0	0
Frederick County, VA	April 19, 1999	September 9, 1999	1.7%	0.5%	0	0
Greene County, VA	September 8, 2003	January 19, 2004	6.1%	1.1%	1	2
Harrisonburg City, VA	February 14, 2002	April 17, 2002	5.5%	7.2%	0	3 (If requested by the DOJ)
Roanoke County, VA	August 11, 2000	January 24, 2001	2.5%	0.5%	6+	4
Rockingham County, VA	March 28, 2002	May 21, 2002	1.3%	2.7%	1	1
Shenandoah County, VA	April 21, 1999	October 15, 1999	1.1%	0.7%	31	5
Warren County, VA	August 30, 2002	November 25, 2002	4.7%	1.5%	7	3
Winchester City, VA	December 22, 2000	May 31, 2001	9.1%	5.9%	0	4

Bailouts Currently Pending

Name of Jurisdiction	Bailout Filed Date	Bailout Granted Date	% Black	% Hispanic	# of Unprecleared Changes (if any)	# of Years Post-Bailout Reporting Required
Kings, County, CA	(Pending)	N/A	8.3%	43.6%	40-50 (est.)	N/A

APPENDIX B

Alabama				
Justice Department Objections 1985 --1994			**Justice Department Objections 1995 - 2004**	
Houston County (80-1180, 84-1513)	10/15/1985		Tallapoosa County (97-1021)	2/6/1998
Greensboro (Hale Cty.) (85-1532)	10/21/1985		Alabaster (Shelby Cty.) (2000-2230)	8/16/2000
Marengo County (86-2012; 86-2013)	2/10/1986		**Total: 2**	
Dallas County (86-1882)	6/2/1986			
Bay Minette (Baldwin Cty.) (85-1442, 85-1443, 85-1445)	10/6/1986	withdrawn 6/22/87		
Alexander City (Tallapoosa Cty.) (86-2037)	12/1/1986	withdrawn 12/7/87		
Prichard (Mobile Cty.) (86-2037)	2/3/1987			
Leeds (Jefferson, St. Clair, and Shelby Ctys.) (85-1578, 85-1579, 86-1960, 87-1615)	5/4/1987			
Marion (Perry Cty.) (87-1706)	5/5/1987			
Dallas County School District (87-1555)	6/1/1987			
Roanoke (Randolph Cty.) (87-1722)	3/15/1988			
Tallassee (Elmore and Tallapoosa Ctys.) (88-1891)	12/19/1988			
State (89-1469) and Dothan (Dale, Henry, & Houston Ctys.) (89-1285, 89-4040)	6/12/1989			
Foley (Baldwin Cty.) (86-1811)	11/6/1989	withdrawn 7/1/96		
State Democratic Party (89-1264)	12/1/1989			
Dallas County (90-1693)	6/22/1990			
Valley (Chambers Cty.) (89-1242)	10/12/1990	withdrawn 7/27/92		
Democratic Party (Perry Cty.) (90-1837)	12/3/1990			
Valley (Chambers Cty.) (90-1663)	12/31/1990	withdrawn 12/9/91		
Democratic Party (Lamar Cty.) (90-1769)	1/25/1991			
Democratic Party (Limestone Cty.) (90-1789)	1/28/1991			
State (91-0518)	11/8/1991	withdrawn 3/18/96		
State (91-4215)	12/23/1991			
State (92-1176)	3/27/1992			
Dallas County (92-1001)	5/1/1992			
Dallas County (92-2503)	7/21/1992			
Selma (Dallas Cty.) (92-4187)	11/12/1992			
Greensboro (Hale Cty.) (92-3376)	12/4/1992			
Dallas County (92-4848)	12/24/1992			
Selma (Dallas Cty.) (93-0110)	3/15/1993			
Foley (Baldwin Cty.) (93-1106)	8/30/1993	withdrawn 7/1/96		
State (93-3476)	11/16/1993	withdrawn 3/18/96		
Greensboro (Hale Cty.) (93-4223)	1/3/1994			
State (89-1439)	1/31/1994			
State (93-3195-96) (93-2322)	4/14/1994	withdrawn 3/18/96		
Total: 35				

Mississippi

Justice Department Objections 1985 - 1994			Justice Department Objections 1995 - 2004		
State (86-3683)	7/1/1986		Adams County (94-4463)	1/30/1995	
Yazoo County (84-3024)	7/7/1986		State (94-4538)	2/6/1995	
Sunflower County (86-3763)	12/15/1986		Monroe County (95-0118)	3/20/1995	
Pike County School District (83-2512)	2/9/1987		Chickasaw County (94-4316)	4/11/1995	
Grenada County (87-3101)	6/2/1987		Union County (95-1234)	6/20/1995	
Washington County (87-3308)	6/19/1987		Aberdeen (Monroe Cty.) (95-1120)	12/4/1995	
Quitman County (87-3225)	9/28/1987		Grenada (Grenada Cty.) (96-3225)	3/3/1997	
Belzoni (Humphreys Cty.) (86-3627)	10/1/1987		State (95-0418)	9/22/1997	
Monroe County (87-3200)	1/12/1988		Grenada (Grenada Cty.) (96-2219)	8/17/1998	
Grenada Municipal Separate School District (Grenada Cty.) (87-3098-3099)	5/9/1988		McComb (Pike Cty.) (97-3795)	6/28/1999	withdrawn 9/20/1999
Greenville (Washington Cty.) (88-4074)	2/10/1989	withdrawn 2/14/90	Kilmichael (Montgomery Cty.) (2001-2130)	12/11/2001	
State (87-3282)	3/31/1989		**Total: 11**		
Houston Municipal Separate School District (Chickasaw Cty.) (87-3067)	4/14/1989				
Chickasaw County (89-2646)	2/27/1990				
State (88-4035)	5/25/1990				
Cleveland Constitutional School District (Bolivar Cty.) (90-3474)	10/2/1990				
Simpson County (90-3602 & 90-3604)	10/5/1990				
Monroe County (90-3575)	4/26/1991				
Tate County (91-1137)	7/2/1991				
State (91-1402)	7/2/1991				
Bolivar County (91-1457)	7/15/1991				
Hinds County (91-1503)	7/19/1991				
Union County (91-0800)	8/2/1991				
Lee County (91-1096)	8/23/1991				
Bolivar County (91-2939)	8/23/1991				
Amite County (91-1504)	8/23/1991				
Tunica County (91-1438)	9/3/1991	withdrawn 12/16/91			
Benton County (91-1097)	9/9/1991				
Harrison County (91-1401)	9/9/1991				
Jefferson Davis County (91-1559)	9/13/1991				
Montgomery County (91-1139)	9/16/1991				
Clarke County (91-1392)	9/24/1991				
Okibbeha County (91-1451)	9/30/1991				
Walthall County (91-1421)	9/30/1991				
Marshall County (91-1375)	9/30/1991				
(Cont. on next page)					
Lauderdale County (91-2342)	10/7/1991				

Forrest County (91-1506)	10/7/1991		
Tate County (91-2967)	10/11/1991		
Leflore County (91-1463)	10/21/1991		
Sunflower County (86-3763)	10/25/1991		
Perry County (91-1598)	11/19/1991		
Pearl River County (91-1579)	11/25/1991		
Attala County (91-2449)	1/13/1992		
State (92-0993)	3/30/1992		
Tallahatchie County (91-3011)	4/27/1992		
State (91-3975)	5/1/1992		
Sunflower County (92-1415)	5/21/1992		
Marshall County (92-3602)	10/13/1992		
Amite County (92-2548)	11/30/1992		
Greenville (Washington Cty.) (92-4012)	2/22/1992		
Lee County (93-0126)	3/22/1993		
Chickasaw County (92-4440)	3/26/1993		
Gloster (Amite Cty.) (92-4396)	3/30/1993		
Charleston (Tallahatchie Cty.) (93-1053)	6/4/1993		
Monroe County (93-0356)	9/17/1993		
Okolona (Chickasaw Cty.) (93-1558)	10/29/1993		
State (90-4933)	11/24/1993		
Canton (Madison Cty.) (93-0115)	12/21/1993		
Total: 58			

South Carolina				
Justice Department Objections 1985 - 1994			**Justice Department Objections 1995 - 2004**	
Hampton County School District Nos. 1 and 2 (85-3312; 85-3826)	6/28/1985		Bennettsville (Marlboro Cty.) (94-2216)	2/6/1995
Spartanburg (Spartanburg Cty.) (84-3504)	7/16/1985	withdrawn 10/6/87	Spartanburg County School District (Spartanburg Cty.) (94-2743)	11/20/1995
Orangeburg County (82-2622)	9/3/1985		Gaffney Board of Public Works (Cherokee Cty.) (95-2790)	3/5/1996
Sumter (Sumter Cty.) (83-2952, 84-3510, 84-3511, 84-3512)	10/21/1985		State (97-0529)	4/1/1997
Batesburg (Lexington and Saluda Ctys.) (85-3334)	2/24/1986		Horry County (97-3787)	5/20/1998
Sumter (Sumter Cty.) (86-4439, 86-4440, 86-4441)	4/10/1986	objection to annexations withdrawn 10/17/86	Charleston (Berkely and Charleston Ctys.) (2001-1578)	10/12/2001
Summerville (Dorchester Cty.)	10/10/1986	withdrawn 10/17/88 upon change in method of election	Greer (Greenville and Spartanburg Ctys.) (2001-1777)	11/2/2001
Consolidated School District of Aiken County (Aiken and Saluda Ctys.) (86-4090)	10/14/1986		Sumter County (2001-3865)	6/27/2002
Dorchester County School District No. 4 (Dorchester Cty.) (86-4224)	12/1/1986	withdrawn 2/12/87	Union County School District (Union Cty.) (2002-2379)	9/3/2002
Bamberg County (R1027; R1374)	12/29/1986		Clinton (Laurens Cty.) (2002-1512) (2002-2706)	12/9/2002
Edgefield County School District (Edgefield Cty.) (86-4224)	5/22/1987		Cherokee County School District No. 1 (Cherokee Cty.) (2002-3457)	6/16/2003
Rock Hill (York Cty.) (87-3969)	6/28/1988		North (Orangeburg Cty.) (2002-5306)	9/6/2003
School District No. 4 (Dorchester Cty.) (87-3809)	7/18/1988		Charleston County School District (2003-2066)	2/26/2004
Richland County (88-4728)	9/23/1988		Richland-Lexington School District No. 5 (2002-3766)	6/25/2004
Lancaster (Lancaster Cty.) (88-4655)	6/13/1989		**Total: 14**	
Beaufort County (89-3281)	7/18/1989			
Bennettsville (Marlboro Cty.) (90-4137)	2/2/1990			
Kershaw County (90-4108)	2/5/1990			
Anderson County School District (89-3259)	4/23/1990			
North Charleston (Charleston, Berkely, and Dorchester Ctys.) (90-4005)	5/3/1990			
Chester (Chester Cty.)	5/7/1990			
York (York Cty.) (90-4221)	8/10/1990			
State (90-3986)	10/15/1990			
Rock Hill (York Cty.) (91-2478)	1/17/1992			
Johnston (Edgefield Cty.) (92-1181)	6/5/1992			
Orangeburg County (92-0473)	7/21/1992			
(Cont. on next page)				

Dorchester County (92-0373)	8/28/1992		
(Cont. on next page)			
Norway (Orangeburg Cty.) (92-0156)	11/9/1992		
Marion County School District (Marion Cty.) (92-2803)	1/5/1993		
Marion County (92-2802)	1/5/1993		
Lee County School District (Lee Cty.) (92-4139)	2/8/1993		
Lee County (92-2259)	2/8/1993		
Batesburg-Leesville (Lexington and Saluda Ctys.)(92-4640)	6/1/1993		
Johnston (Edgefield Cty.) (93-1658)	7/6/1993		
State (94-1394)	5/2/1994		
Lee County (94-109) and Lee County School District (94-1722) (Lee Cty.)	6/6/1994		
Hemingway (Williamsburg Cty.) (93-4248)	7/22/1994		
Florence and Williamsburg Counties (93-5026, 93-4959)	7/22/1994		
Barnwell (Barnwell Cty.) (94-0431)	8/15/1994	withdrawn 2/13/95	
Georgetown County School District (Georgetown Cty.) (94-2274)	10/3/1994		
North Charleston (Berkely, Charleston, and Dorchester Ctys.)	10/17/1994	withdrawn 8/20/96	
Spartanburg County School District (Spartanburg Cty.) (94-2743)	12/13/1994		
Total: 42			

Texas					
Justice Department Objections 1985 - 1994			**Justice Department Objections 1995 - 2004**		
Rusk Independent School District (Cherokee Cty.) (83-0174)	1/18/1985		State (94-4077)	2/17/1995	
Liberty-Eylau Independent School District (Bowie Cty.) (84-0121)	2/26/1985		Edwards Underground Water Conservation District (Gonzales Cty.) (94-0333)	3/2/1995	
Dawson County (84-0343)	8/6/1985		Andrews (Andrews Cty.) (94-2271)	6/26/1995	
El Campo (Wharton Cty.) (84-1364)	11/8/1985		State (95-2017)	1/16/1996	
Lynn County (85-0895)	11/18/1985		Webster (Harris Cty.) (96-1006)	3/17/1997	withdrawn 4/7/98
Terrell County (85-0674)	1/13/1986		State (98-1365)	9/29/1998	withdrawn 10/21/98
Plainview Independent School District (Hale Cty.) (86-0674)	4/10/1986		Galveston (Galveston Cty.) (98-2149)	12/14/1998	withdrawn 02/04/02
El Campo (Wharton Cty.) (86-1633)	7/18/1986		Lamesa (Dawson City) (99-0270)	7/16/1999	
Trinity Valley Community College District (Anderson, Henderson, Hunt, Kaufman and Van Zandt Ctys.) (86-0002)	10/14/1986		Sealy Independent School District (Austin Cty.) (99-3823)	6/5/2000	
Wharton Independent School District (Falls Cty.) (87-0487)	12/29/1986		Haskell Consolidated Independent School District (Haskell, Knox, and Throckmorton Ctys.) (2000-4426)	9/24/2001	
Marlin Independent School District (Falls Cty.) (87-0487)	6/22/1987		State (2001-2430)	11/16/2001	
Crockett County (87-0300)	10/2/1987		Waller County (2001-3951)	6/21/2002	
Columbus Independent School District (Colorado and Austin Ctys.) (87-0025)	1/4/1988		Freeport (Brazoria Cty) (2002-1725)	8/12/2002	
Hondo Independent School District (Frio and Medina Ctys.) (87-0952)	1/22/1988		**Total: 13**		
Marshalltown Independent School District (Harrison Cty.) (87-0060)	4/18/1988				
San Patricio County (87-1132)	6/14/1988				
Jasper (Jasper Cty.) (88-0951)	8/12/1988	withdrawn 12/24/91			
Lynn County (85-0895)	9/26/1988				
El Campo (Wharton Cty.) (88-1471)	2/3/1989				
Dallas County (88-0363)	2/27/1989				
Baytown (Chambers and Harris Ctys.)(88-0634)	3/20/1989				
Refugio Independent School District (Refugio Cty.) (88-1251)	5/8/1989				
Cuero (DeWitt Cty.) (89-0326)	10/27/1989				
Denver City (Yoakum Cty.) (88-1530; 88-1533)	2/5/1990				
Nolan County Hospital District (89-0794)	2/12/1990				
San Patricio County (89-0874)	5/7/1990				
State (90-0015)	11/5/1990				
(Cont. on next page)					

Freeport (Brazoria Cty.) (90-0164)	11/13/1990		
(Cont. on next page)			
Grapeland (Houston Cty.) (90-0960)	12/21/1990		
Dallas (Collin, Dallas, Denton, Kaufman & Rockwall Ctys.) (89-0245)	3/13/1991		
Lubbock County Water Control and Improvement District No. 1 (Lubbock Cty.) (90-4938)	3/19/1991		
Refugio Independent School District (Refugio Cty.) (90-1268)	4/22/1991		
Dallas (Collin, Dallas, Denton, Kaufman & Rockwall Ctys.) (89-0425, 91-0642)	5/6/1991		
State (90-0003)	8/23/1991	withdrawn 8/4/92	
Houston (Harris, Montgomery and Fort Bend Ctys.) (91-2353)	10/4/1991		
State (91-3395)	11/12/1991		
Del Valle Independent School District (Travis Cty.) (91-3124)	12/24/1991		
El Campo (Wharton Cty.) (91-0530)	1/7/1992		
State (92-0070)	3/9/1992		
State (92-0146)	3/10/1992		
Gregg County (91-3349)	3/17/1992		
Calhoun County (91-3549)	3/17/1992		
Galveston County (91-3601)	3/17/1992		
Castro County (91-3780)	3/30/1992		
Monahans-Wickett-Pyote Independent School District (Ward Cty.) (91-3272)	3/30/1992		
Ellis County (91-4250)	3/30/1992		
Lubbock Independent School District (Lubbock Cty.) (91-3910)	3/30/1992		
Terrell County (91-4052)	4/6/1992		
Bailey County (91-3730)	4/6/1992		
Cochran County (91-4049)	4/6/1992		
Hale County (91-4048)	4/10/1992		
Deaf Smith County (91-4051)	4/10/1992		
Gaines County (91-3990)	7/14/1992		
Wilmer (Dallas Cty.) (90-0393)	7/20/1992		
Del Valle Independent School District (Travis Cty.) (7-31-92)	7/31/1992		
Ganado (Jackson Cty.) (92-0319)	8/17/1992	withdrawn 1/22/93	
Castro County (92-4027)	10/6/1992		
Galveston (Galveston Cty.) (92-0136)	12/14/1992		
Atlanta Independent School District (Cass Cty.) (92-3754)	2/19/1993		
(Cont. on next page)			

Carthage Independent School District (Panola Cty.) (92-4890)	3/22/1993	withdrawn 1/3/94	
Corsicana Independent School District (Navarro Cty.) (92-4186)	3/22/1993		
Lamesa (Dawson Cty.) (92-0907)	4/26/1993		
Bailey County (93-0880)	5/4/1993		
Castro County (93-0917)	5/10/1993		
(Cont. on next page)			
McCulloch County (93-0075)	6/4/1993		
Bailey County (93-0194)	7/19/1993		
Wharton County (92-5239)	8/30/1993		
Edwards Underground Water District (93-2267)	11/19/1993		
Marion County (93-3983)	4/18/1994		
State District Court (93-2585)	5/9/1994		
Harris County Criminal Court at Law (Harris Cty.) (93-2664)	5/31/1994		
Fort Bend County Court at Law (Fort Bend Cty.) (93-2475)	5/31/1994		
Mexia Independent School District (Limestone Cty.) (93-4623)	6/13/1994		
Tarrant County (94-3012)	8/15/1994		
Edna Independent School District (Jackson Cty.) (94-0866)	8/22/1994		
Morton (Cochran Cty.) (94-1303)	9/12/1994		
San Antonio (Bexar Cty.) (94-2531)	10/21/1994		
Karnes City (Karnes Cty.) (94-2366)	10/31/1994		
Judson Independent School District (Bexar Cty.) (94-4175)	11/18/1994		
Total: 79			

Virginia				
Justice Department Objections 1985 - 1994			**Justice Department Objections 1995 - 2004**	
Franklin (86-4549) (Independent city)	3/11/1986	withdrawn 5/18/87	Dinwiddie County (99-2229)	10/27/1999
Fredericksburg (87-4154)	4/7/1988		Northampton County (2001-1495)	9/28/2001
Newport News (88-5098)	7/24/1989		Pittsylvania County (2001-2026)	
State (91-1483)	7/16/1991		(2001-2501)	4/29/2001
Powhatan County (91-2115)	11/12/1991		Cumberland County (2001-2374)	7/9/2002
Newport News School District (92-3887)	2/16/1993		Northampton County (2002-5693)	5/19/2003
Chesapeake School District (93-4561)	6/20/1994	withdrawn 8/28/95	Northhampton County (2002-3010)	10/21/2003
Total: 7			**Total: 7**	

Racial Redistricting and the Election of African-American County Supervisors in Mississippi

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Abstract

Contrary to the findings of many recent studies of U.S. House elections, we find that the creation of black-majority districts remains crucial to the election of African Americans to the Board of Supervisors in Mississippi counties. Like several studies of national politics, we show that racial redistricting facilitates the election of greater numbers of Republican. However, unlike these studies, we find little evidence that racial redistricting has greatly undermined black substantive representation by promoting the election of many new Republicans on the Board of Supervisors in most Mississippi counties. Black supervisors, usually elected from black-majority districts, served in 61 of Mississippi's 82 counties. In contrast, Republicans won election in only 22 counties despite the concentration of black voters into black-majority districts. Only seven mostly heavily-white counties had a Republican majority on the Board of Supervisors. These findings suggest the continuing necessity of analyses specific to offices and jurisdictions in order to correctly apply recent Supreme Court rulings on racial redistricting.

Political scientists have clashed over the percentage of blacks needed to make possible the election of black-preferred candidates to political office. The crux of the debate centers on whether significant numbers of African Americans can win election from white-majority districts. This empirical question has important legal implications. In a series of decisions beginning with Shaw v. Reno (1993), the Supreme Court signaled that jurisdictions could not draw majority-minority districts with ever more complex boundaries as part of the effort to continue increasing minority representation. In a more recent decision, Georgia v. Ashcroft (2003), the Supreme Court held in a 5-4 ruling that courts need to consider the impact of a redistricting plan on substantive as well as descriptive representation. In writing for the majority in Georgia v. Ashcroft, Justice O'Connor stated that:

> In considering the other highly relevant factor in a retrogression inquiry—the extent to which a new plan changes the minority group's opportunity to participate in the political process—a court must examine whether the plan adds or subtracts "influence districts" where minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process.

In Georgia, Justice O'Connor considered the substitution of multiple "influence districts" for individual majority-minority districts especially justifiable because this substitution would help keep the Democrats, the party overwhelmingly favored by blacks, in the majority and thus preserve African-American influence in the legislature.

Justice Souter's dissent in Georgia strenuously disagreed with the majority's conclusions regarding the importance of considering substantive representation in voting

rights cases. However, justices in both the majority and the minority appeared to agree that states did not need to increase the percentage of minorities in a district above the percentage required to elect a minority-preferred candidate. States should focus on the number of districts above the effective percentage of minorities needed to elect minority candidates rather than on the number of majority-minority districts. For example, if a district that is 42% black will allow for the election of a black-preferred candidate, states can create a district that is 42% black instead of a majority-minority district. Conversely, states may need to increase the share of minorities in a district above 50% if a narrowly majority-minority district is insufficient to elect a candidate of choice.

The Supreme Court's decision in Georgia v. Ashcroft highlights the continuing relevance of political science debates over (1) the percentage of blacks required to make possible the election of a black-preferred candidates, and (2) the impact of racial redistricting on black substantive representation. This study examines these two questions in the context of county supervisor elections in Mississippi in 1999. Recent scholarship has become more optimistic about the possibility of black candidates winning election from districts less than 50% black. Is this true even for local elections in Mississippi – a state that elects more black officials than any other but also has a history of racial polarization? Several scholars have concluded that racial redistricting may hinder the adoption of policies favored by blacks because the creation of new majority-minority districts results in the election of greater numbers of Republicans opposed to policies supported by most blacks. However, almost all of these studies have focused on federal elections. Does racial redistricting have an adverse impact on the election of

Democratic county supervisors? Does it reduce net black substantive representation at the local level in Mississippi as well as the federal level?

We find that racial redistricting remains critical to the election of black county supervisors in the Magnolia State. African-American candidates in Mississippi still often require districts greater than 50% black in order to win election. Despite requiring super-majority districts in order to gain election, we find little evidence of a negative impact of racial redistricting on black substantive representation. The creation of new majority-minority districts has rarely resulted in Republican control of the Board of Supervisors in Mississippi counties. Indeed, Republicans are most likely to win control in counties with few blacks and it is more difficult to create majority-black districts in these counties. Although these results stem for analyzing local elections in one state, they are important because they caution a growing body of political science literature which has been highly influential on the judiciary. Contrary to recent findings by several scholars, racial redistricting remains necessary for the election of black officials and does not appear to adversely impact the local dominance of the Democrats, the party overwhelmingly supported by African Americans. Grofman, Handley, and Lublin's (2001) caution that it is important to conduct local analyses before reaching conclusions on the impact of redistricting plans on black representation in a specific jurisdiction and for a particular type of office appears all the more crucial.

After briefly reviewing some of the key racial redistricting literature with a particular emphasis on findings regarding Mississippi, we present the theory and data analysis that supports these conclusions.

Literature Review

Scholars have greatly debated the effective percentage of blacks required for a district to elect a black official. Many factors can influence the percentage of blacks needed to elect an African-American candidate. Studies have noted that black candidate success can be sensitive to racial differences in the voting-age population as well as registration and turnout rates. The number of black candidates, the electoral system, the degree of party cohesion and the level of racial polarization can also influence the success of black candidacies for public office (Abney 1974; Canon 1999; Grofman et al. 1992; Grofman and Handley 1989; Grofman and Handley 1998, Handley et al 1998; Lublin 1997; Parker et al 1998, Swain 1995).

Despite the multiplicity of factors that influence whether or not a district elects an African-American candidate, scholars have primarily divided over whether or not black-majority districts are required to assure the election of more than token numbers of black officials. In his path-breaking study of the impact of the Voting Rights Act on Mississippi politics, Parker (1990) argues that 65% black districts may be required to assure the election of black officials. According to Parker (1990), racial polarization in Mississippi elections is extremely high, rendering it difficult for black officials to win election from majority-white districts. The relatively higher percentage of African Americans who are not of voting age combined with relatively low black voter registration and turnout rates explain why districts greater than majority black are required to elect black officials in Mississippi (Parker 1989, 1990). Mary Coleman's (1993) analysis of post-1990 Mississippi legislatures similarly concluded that African-

American legislators usually win election from districts with a black-voting age population of greater than 60%.

Coleman (1993) and Parker (1989, 1990) are not alone in claiming that majority-black districts are vital to the election of black officials. Grofman and Handley (1989) argue that racial redistricting and black-majority districts are crucial to the election of significant numbers of African Americans to Congress. Handley, Grofman, and Arden (1998) come to similar conclusions in their examination of southern state legislative and congressional elections (see also Handley and Grofman 1994). Their examination of the Mississippi legislature in 1992 revealed that not a single district without a black majority elected either a black state representative or black state senator (Handley, Grofman, and Arden 1998: 21-2). Lublin (1997) finds that a 55% black majority district has an 86% chance of electing a black representative to Congress in most areas of the country. In their 1989 study of Mississippi cities with populations greater than 1000, Parker, Colby, and Morrison (1994) found that racial redistricting was critical to the election of large numbers of black city council members. Davidson and Grofman's (1994) survey of the election of blacks to city councils around the South reached similar conclusions.

Other scholars however, argue that non-majority-minority districts (sometime referred to as "minority-minority districts") frequently elect black candidates (Cameron, Epstein, and O'Halloran 1996; Swain 1995; Thernstrom 1987; Thernstrom and Thernstrom 1997). Cameron, Epstein, and O'Halloran (1996) suggest that there is a 50% chance of electing a black representative in the south when the black voting-age population is as low as 40.3%. They conclude: "It is rarely necessary for minority voters to be a clear majority within a district to have a good chance of electing a minority

representative, and the 65% rule enforced by the courts certainly seems excessive" (Cameron, Epstein, and O'Halloran 1996: 804). However, other scholars argue that the failure to take into account the share of Latinos in the non-black portion of the electorate leads to erroneous conclusions. For example, Grofman, Handley, and Lublin (2001: 1393) state: "[f]ailing to take Hispanic percentages into account will lead to regression estimates that understate the proportion of black population needed to provide black votes with an opportunity to elect black-preferred candidates in districts where the non-black voters are largely or entirely non-Hispanic" (see Grofman and Handley 1995; Kennedy 1993; Lublin 1999 for similar critiques, and Epstein and O'Halloran 1999 for a response).

Recently, scholars who in the past have contended that blacks rarely win outside of majority-minority districts conceded that blacks can win in majority-white districts under certain circumstances. Grofman, Handley, and Lublin (2001) argue that Republican gains among whites can allow black voters to dominate the Democratic primary even if blacks form only a minority of the district's population. In districts dominated by Democrats, African-American Democratic nominees can win the general election if sufficient numbers of white Democrats continue to support their party's nominee. Grofman, Handley, and Lublin (2001) conclude that the percentage of blacks needed to elect a black candidate varies according to local circumstances (see also Voss and Lublin 2001). While some areas may not need black majorities in order for black-preferred candidates to win, others may need districts greater than 50% black.

Even as scholars continue to debate the impact of racial redistricting on the descriptive representation of African Americans, a parallel debate rages over its impact on substantive representation. A variety of scholars have concluded that racial

redistricting undermines the representation of black interests (Swain 1993; Cameron, Epstein, and O'Halloran 1996; Lublin 1997). According to this argument, creating new black-majority districts requires reducing the percentage of blacks in other districts which results in the election of more Republicans. Republicans tend to be less supportive of black interests than either white or black Democrats, so racial redistricting actually undermines overall support for black interests.

Other scholars argue that racial redistricting either had little impact on support for black interests or increased black substantive representation. Petrocik and Desposato (1998) suggest that a "pro-GOP surge" rather than redistricting efforts actually caused the election of more conservative representatives in 1992 and 1994. Shotts (2003a) finds that although racial redistricting in the late 1980s to early 1990s produced a sharp decline in the number of House Democrats elected from the South, it nonetheless promoted liberal policy outcomes favored by blacks. In their study of southern state legislatures, including Mississippi, Lublin and Voss (2000) find that racial redistricting was much less important than shifts in voter support in explaining Republican gains.

Theory

Most studies of racial redistricting focus on the U.S. House of Representatives which is currently closely divided between Democrats and Republicans. Even when Democrats exercised firm control prior to 1994, the Republicans presented a viable and solid opposition. Ideological divisions between northern and southern Democrats have steadily declined over several decades to the point where they are largely insignificant (Poole and Rosenthal 2001; Black and Black 2002; Lublin and Voss 2003; Lublin 2004;

but see Shotts 2003a; 2003b). Consequently, if racial redistricting results in the election of greater numbers of Republicans, it reduces the total number of relatively liberal representatives available to support policies favored by blacks.

The situation in local politics in Mississippi could hardly be more different. Despite Republican success in federal elections in Mississippi, Democrats continue to overwhelmingly dominate local government. This success can be attributed to both demographics and the ideology of Democratic politicians in Mississippi. African Americans, who overwhelmingly support the Democrats, compose a higher share of the population in Mississippi than any other state. White Democratic politicians in Mississippi have historically taken conservative positions on issues (Black and Black 2002). This conservative approach makes it difficult for Republicans to make inroads with the Mississippi electorate at the local level. While Republicans also take a conservative approach, the failure of many white Mississippi Democratic politicians, especially at the local level, to shift toward liberalism, provides little incentive for white voters to abandon the Democrats. Additionally, local politics provide less occasion for the sorts of issues that have caused white Mississippians to massively shift toward the Republicans to arise. If nationally divisive social issues, such as school prayer or gun control, do arise, there is such a conservative consensus among both blacks and whites in Mississippi that politicians of both races often take similar positions and no partisan distinctions arise to promote realignment to the Republicans.

This political background has important implications for the impact of racial redistricting in Mississippi. As white Mississippians have remained more loyal to the Democrats below the federal level, blacks are less likely to control the Democratic

primary when they do not form a majority of the total electorate. Consequently, relatively few blacks should win election from majority-white districts to the office of county supervisor in Mississippi. Moreover, the history of extreme racial polarization combined with somewhat lower participation rates among blacks as compared to whites (Parker 1990) suggests that districts greater than 50% black may be required for black candidates to win election to local office in Mississippi. Lower rates of participation among Mississippi blacks are not especially surprising due to the racial gap in education and the strong relationship of education to voter turnout (Wolfinger and Rosenstone 1980). The average black citizen of Mississippi is younger than the average white citizen, so African Americans are also more likely to be below voting age and less likely to participate due to the positive relationship between age and participation (Wolfinger and Rosenstone 1980; Parker 1990; U.S. Census 2000).

As Democrats continue to heavily dominate Mississippi local politics, the creation of new majority-black districts should rarely shift control of the five-member Board of Supervisors to the Republicans. Race remains closely related to voting behavior with whites being much more likely to vote Republican than blacks. However, even if the concentration of blacks into black-majority districts results in the election of another Republican, it should rarely shift control of the Board of Supervisors away from the Democrats. Republicans are most likely to win seats and control of the Board of Supervisors in heavily white counties where the creation of a black district does not make the difference between Democratic and Republican control. Even if Democratic supervisors are more responsive than their Republican colleagues to African-American interests, advancing descriptive representation through the creation of black-majority

districts should only rarely result in the party which is less responsive winning control of the county legislative body.

One can additionally make the case that partisanship may be less relevant at the local level than in at the state legislative or congressional level. The conservatism of many white Mississippi Democrats facilitates continued Democratic dominance of local government in Mississippi. However, it suggests that one cannot quickly extrapolate the findings from the studies of the U.S. Congress to Mississippi county government. There may be little difference between Democrats and Republicans at the local level. If this is the case, a shift from Democratic to Republican control may have little or less significance for the representation of black interests than at the federal level.

Descriptive Representation

The 82 counties in Mississippi are all divided into five single-member districts. Each district, or "beat," in a county elects one of the five supervisors who collectively make up the Board of Supervisors for each county. Supervisors are elected to four-year terms with no term limits. The Board is the governing body of the county and has both legislative and executive power as well as some judicial power, such as the right to impose fines and subpoena witnesses. Mississippi counties have "home rule" which generally means that counties have the authority to regulate their own affairs. With regard to redistricting, a majority vote of county supervisors can change the boundaries of the districts, provided that the changed boundaries conform to natural boundaries such as streets and waterways. All of Mississippi is a "covered jurisdiction" under the Voting Rights Act, so all Mississippi counties must gain preclearance from either the U.S.

Attorney General or the D.C. District Court before their redistricting plans for the Board of Supervisors take effect.

Figure 1 is a histogram which breaks down the 410 county supervisor districts in Mississippi by black voting-age population (BVAP) and shows the percentage of African-American supervisors elected in 1999 from each BVAP category. The histogram reveals that the percentage of black supervisors rises with the BVAP with a dramatic increase in the black share of supervisors once the BVAP rises above 50%. None of the 137 districts less than 20% BVAP elected an African-American supervisor; only 5% of the 97 districts 20-40% BVAP elected black supervisors. While 19% of 31 districts 40-50% BVAP had black supervisors, slightly more than one-half (53%) of the 45 supervisors elected from districts 50-60% BVAP were African American. Slightly fewer than 70% of the 48 supervisors elected from 60-70% BVAP districts were African American. Over 85% of the 52 supervisors representing districts greater than 70% BVAP were African American.

(Figure 1 about here)

The election of some black supervisors from white-majority districts gives hope that perhaps the importance of race is declining in local elections in Mississippi. Eleven of the 114 black county supervisors represent districts with a black-voting age population under 50%. However, five of these eleven districts have black population majorities even if they lack BVAP majorities. Put another way, 90% of black supervisors represent districts with a BVAP majority and 95% serve in districts with a black population majority. It seems unlikely that there would be many black county supervisors in Mississippi if there were no black-majority districts.

Figure 2 shows the predicted probability of a district having an African-American supervisor after the 1999 elections. This figure is based on a probit analysis with race of supervisor as the dependent variable and BVAP as the sole independent variable. This figure suggests that African Americans have some possibility of winning in white-majority districts, though the probability drops rapidly as the BVAP sinks below 50%. Districts with a BVAP of 45% have a 23% chance of having a black supervisor while districts with a BVAP of 40% have a 14% probability of electing a black supervisor. Districts with a BVAP of less than 30% have less than a 5% likelihood of electing an African American; districts with a BVAP of under 20% have less than a 1% probability of being represented by an African American.

(Figure 2 about here)

The results presented in figure 2 further suggest that the creation of districts with a BVAP greater than 50% is critical to the election of African-American supervisors. Districts with a BVAP of 50% have only a one in three chance of electing a black county supervisor. One needs to raise the BVAP to 57% before a district has an even chance of electing a black supervisor. In order to make the election of a black supervisor more likely than not, one has to further increase the BVAP. A 63% BVAP district has a two-thirds chance of electing a black supervisor; a 76% BVAP district has a 90% probability of being represented by a black supervisor. These percentages are notably higher than the findings of many scholars for U.S. House elections (e.g. Cameron, Epstein, and O'Halloran 1996; Grofman and Handley 1989; Lublin 1997). However, they are consistent with Parker's (1990) and Coleman's (1993) findings that districts with bare

population majorities often insufficient to assure the election of black officials for city, state legislative or congressional office in Mississippi.

Racial Redistricting and the Election of Republicans

Racial context continues to have a huge influence on Republican candidacies and success in Mississippi county supervisor elections. Figures 3 and 4 show the probability of the Republicans fielding a candidate and winning the election, respectively, based on the racial composition of the district. These figures are based on a biprobit model with Republican candidate and Republican winner as the dependent variables and percent black of the voting-age population as the only independent variable. In both figures, the solid line presents the results based on all districts. The dotted line presents the results excluding the highly anomalous case of African-American Republican Charles Evers's victory in a district that is over 90% BVAP. (Evers was the only black Republican supervisor and the only Republican to win in a black-majority district.)

The probability of any Republican seeking election as a county supervisor declines as the BVAP rises (see figure 3). Republicans have a 55% probability of fielding a candidate in a district with no African Americans, but a 43% probability in a 20% BVAP district and a 31% probability in a 40% BVAP district. The probability of a Republican actually serving as supervisor declines even more rapidly as the BVAP rises (see figure 4). Based on the biprobit model excluding Evers, a district with no black residents has a 39% chance of having a Republican supervisor. The probability of a Republican representing a district drops to one in four as the BVAP rises to just 10%. Republicans have only a 15% chance of holding a district with a 20% BVAP. The

probability of a Republican supervisor falls below one in ten in 30% BVAP district and below one in twenty in a 40% BVAP district.

(Figures 3 and 4 about here)

At first blush, these results would seemingly support the conclusion that racial redistricting harms Democrats and potentially undermines black substantive representation by undercutting the party preferred by most African Americans. Creating new black-majority districts requires making other districts more white which encourages Republicans to seek office and renders it more likely that they will win the election. For example, according to the predictions (excluding Evers) presented in figure 4, reconfiguring two 35% BVAP districts into one 60% BVAP district and one 10% BVAP district, reduces Republican chances of victory by only 5% in the new black-majority district but increases them by 20% in the new "bleached" district. The election of additional Republican supervisors should make it easier for Republicans to win majority control of the Board and to adopt policies opposed to the wishes of blacks even if there is additional African-American representation on the Board.

While racial redistricting may sometimes aid the election of additional Republicans, it does not appear to have significantly aided Republican efforts to win control (i.e. three of five seats) of county boards in Mississippi. African Americans gained representation, primarily from black-majority districts, on 61, or 74%, of the 82 county boards in Mississippi. In contrast, only 22, or 27%, of Mississippi counties had even one Republican serving on the five-member board after the 1999 elections. Seven, or 9%, of Mississippi counties had Republican majorities on the Board of Supervisors. Democrats still swept the elections in many counties despite the presence of black-

majority districts. In the vast majority of counties, the existence of black-majority districts did not prevent Democrats from winning a majority on the Board of Supervisors. Blacks were a minority of the population in 41 of the 61 counties with black supervisors but the concentration of blacks into black-majority districts did not prevent Democrats from retaining control in most cases.

Republicans were most likely to win control in heavily white counties. Figure 5 shows the probability of Republican or African-American control of the Board of Supervisors based on the BVAP of county. (The figure is based on probit models of Republican/Black majority as the dependent variables and BVAP as the independent variable.) Republicans are most likely to control the Board of Supervisors in heavily white counties in which it is not possible to create a black-majority district. In a 10% BVAP county, the lowest percentage at which it is even theoretically possible to draw one black-majority district, the probability of a Republican majority is only 30% -- 20% less than when there are no blacks in the county. As the BVAP of a county rises from 10% to 20%, the probability of Republican majority halves to only 15%.

(Figure 5 about here)

Examining the actual seven counties with Republican majorities after the 1999 elections reinforces these conclusions. All but one county (Madison) were under 20% BVAP. Several counties were also bastions of suburban or urban Republican support (e.g. DeSoto, Harrison, Jackson, Madison and Rankin). Republican partisanship may be so strong among whites in these heavily Republican counties that it would likely be very difficult to elect more Democrats even if black voters were not concentrated into black-majority districts. In three (DeSoto, Pearl River and Rankin) of the seven counties,

Republicans hold four or five of the five seats on the Board of Supervisors. African Americans hold no seats in one (Lamar) of the four counties where Republicans have a three-seat majority. As a result, there are only three counties (Harrison, Jackson and Madison) where it is even conceivable that dismantling of a black-majority district might make it possible for Democrats to win control of the Board of Supervisors. All three are urban or suburban counties whose whites have been trending heavily Republican.

African Americans only win control of the county legislative body in counties with substantial black majorities. The probit model of black majority on the Board of Supervisors indicates that African-American supervisors have an even probability of controlling the Board once a county is 63% BVAP (see figure 5). The same model suggests that black supervisors have only an 11% chance of forming a majority in a 55% BVAP county. The chance of African-American supervisors controlling the Board rises to 2/3 at 67% BVAP and to 90% at 76% BVAP.

Discussion

Racial redistricting remains vital to the election of significant numbers of black county supervisors in Mississippi. Indeed, unlike in national elections, African Americans may often require districts greater than 50% in black voting-age population in order to have an even chance of electing their preferred candidate. Only a small percentage of black county supervisors win in white-majority districts.

As in national politics, racial redistricting may aid Republican efforts to win more seats on county boards in Mississippi. Creating additional black-majority districts inevitably requires reducing the number of African-American voters in other districts.

Republican chances of both recruiting a candidate and winning the election rise dramatically as the share of blacks declines, so racial redistricting should improve their electoral prospects in some districts.

Nevertheless, racial redistricting has thus far had little overall impact on Democratic dominance of Mississippi county government. African Americans have obtained representation on nearly three-quarters of county boards in Mississippi. Most of these black supervisors were elected in black-majority districts. In the vast majority of cases, Democrats nevertheless continue to retain control of the Board of Supervisors. Only in three counties is it even theoretically possible that dismantling a black district could aid in the election of an additional Democrat who would allow the Democrats to recapture the Board. High levels of racial polarization and strong attachment to the Republicans among whites in these three counties would make this outcome far from certain even if the Voting Rights Act were interpreted to permit this reduction in black descriptive representation.

Of course, this situation could evolve over time. If Republicans begin to make substantial inroads into local politics in Mississippi, the creation or protection of black-majority districts may begin to cost Democrats control of more county boards. Based on information from 75 of Mississippi's 82 counties on the outcome of the 2003 elections, Republican gains are occurring only slowly. Republicans experienced a net gain of seven seats, or 1.8%, in 2003 in the 75 counties for which data was available.[1] Democrats lost control of one additional Board in 2003; in 38% BVAP Lowndes County, Republicans

[1] No information was available on the outcome of the 2003 elections in Chickasaw, Harrison, Holmes, Itawamba, Perry, Rankin, and Sharkey Counties. Democrats held all the seats in Chickasaw, Holmes, Itawamba, Perry, and Sharkey Counties after the 1999 elections. Republicans held all of the seats in Rankin County and three of the seats in Harrison County after the 1999 elections.

captured a 3-2 majority on the Board of Supervisors. If partisanship is strongly related to support for pro-black policies, African Americans might begin to pay a greater cost for descriptive representation in terms of substantive representation if Republicans win more seats and control of a greater share of county boards. In short, county boards might become less likely to adopt policies endorsed by most Mississippi blacks.

However, even if racial redistricting cost the Democrats control of more county boards, efforts to protect black substantive representation at the expense of black descriptive representation may remain misguided. Unlike their national counterparts, local southern white Democrats may be more likely to take conservative positions closer to those held by many Republicans than to adopt positions similar to those taken by an African-American supervisor. It is critical to ascertain whether white county supervisors are substantially supportive of positions favored by blacks before assuming that a Board with a Democratic majority but little or no black representation would be more sympathetic to African-American concerns than a board with greater black representation and a Republican majority. Unlike in national politics, removing even one black district may completely eliminate black representation from a county board, so African Americans would naturally want to be extra careful about giving up hard-won gains in descriptive representation.

Local politics may also be fundamentally different from national or state politics in that supervisors often focus to an even greater extent on distributive politics. As a result, having a representative at the council table may be more important than having some influence over several representatives. For example, Mississippi county supervisors are in charge of deciding which roads to improve in their county. The Board

usually addresses the problem of dividing up funding for roads by allotting to each supervisor control over one-fifth of the budget (Gabris 1992; Hicks 1993). Gerald Gabris (1992: 234), an expert on local government in Mississippi, states that: "supervisors have total control over personnel decisions, contracting, and equipment purchases within their beats and do not usually have to answer to the board as a whole." The presence of black supervisor who depends heavily on black votes may be more helpful to African Americans than a pair of white supervisors who are most concerned with white swing voters. While it is in the black supervisor's interest to make sure that the black community's interests are protected and that some money is directed toward roads in black neighborhoods, white supervisors may find it politically more expedient to direct funds toward white neighborhoods home to the voters who they need to fend off black primary or general election challenges. Black supervisors may also simply be more aware of the needs of the black community.

If nothing else, this study indicates that case-by-case analyses within a particular jurisdiction and for a specific office of the impact of racial redistricting on descriptive and substantive representation remain vital to the correct implementation of the Supreme Court's standards for applying the Voting Rights Act. Several studies have found it unnecessary to create districts with sizeable black majorities in order to make likely the election of an African-American candidate to the U.S. House. However, this study concludes that super-majority districts often remain vital to black electoral prospects at the county level in Mississippi. At the same time, racial redistricting is currently less likely to undermine black substantive representation at the county level in Mississippi than in national politics.

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Figure 1: Percent Black Supervisors by District Racial Composition

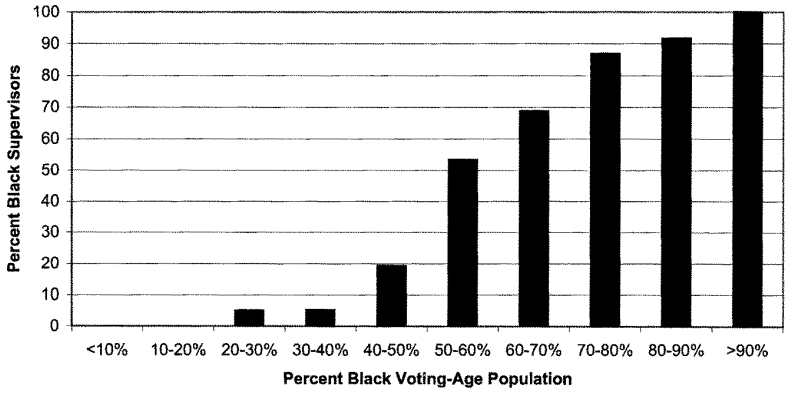


Figure 2: Probability of Black Supervisor

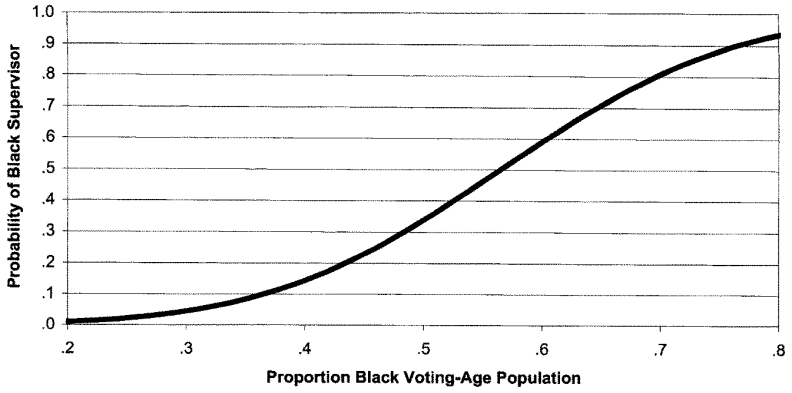


Figure 3: Probability of Republican Nominee

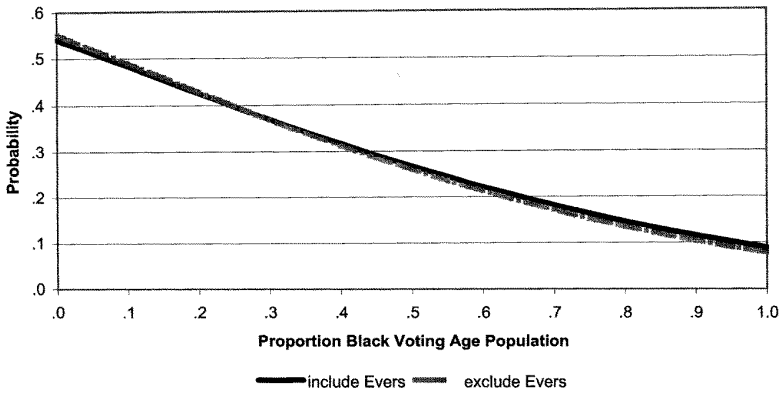


Figure 4: Probability of Republican Supervisor

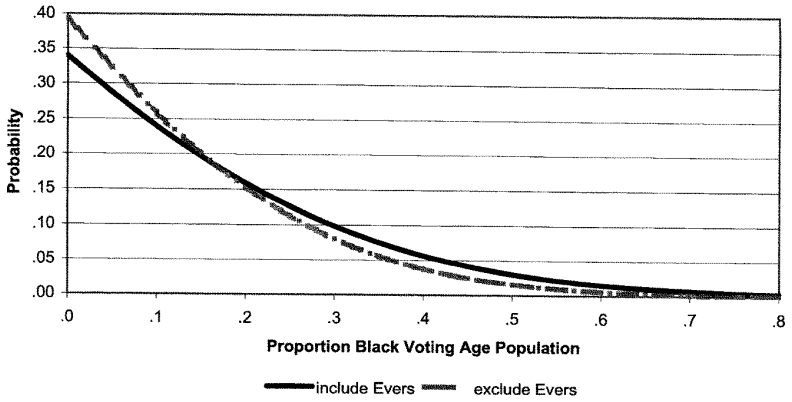
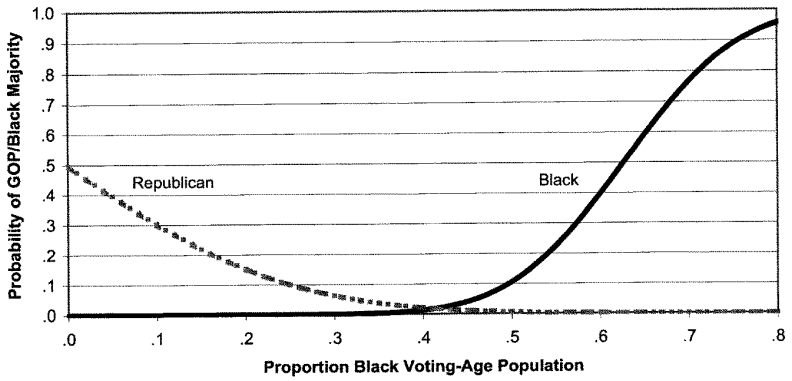


Figure 5: Probability of Republican or Black Majority on Board



Assessing the Effectiveness of Section 5 Pre-clearance of Annexations in North Carolina

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Municipalities in areas covered by Section 5 are required to prove that an annexation does not have the purpose or effect of making minority voters worse off than they were before the annexation. This paper presents a methodology that allows an empirical determination how annexations change the racial composition of a municipality. We demonstrate that all of the 10 "Section 5" municipalities in our preliminary sample used annexation in such a way as to decrease the percentage of the population that was African-American during the 1990s, and 3 of them would have been majority-African-American without annexation, but all remained majority white.

To measure the effect of annexation on racial composition , we decompose or separate changes in the racial composition of municipalities between 1990 and 2000 that are attributable to changes in the population within the 1990 borders and those attributable to annexation. We present results of this analysis for a set of towns in five south central North Carolina counties covered by Section 5 and from three towns in a county not covered. We choose North Carolina for two reasons. First, our preliminary research shows that African American neighborhoods are systematically excluded from annexation in many smaller cities and towns in North Carolina, while predominantly white areas are regularly annexed. This pattern of exclusion is attributable in part to the requirement that municipalities consider the fiscal impact of any annexation, resulting in annexation of high-value properties and the exclusion of lower-valued (and often African American occupied) properties. Second, this paper lays the foundation for a wider analysis of North Carolina where forty of the 100 counties are covered by Section 5 of the Voting Rights Act, while the others are not. This partial coverage provides the opportunity to assess the relative effects of Section 5 coverage on annexation controlling

for any effect of differences in annexation laws and procedures that could account for variation in comparisons between two or more states. We compare the changes between 1990 and 2000 rather than for single annexations because we have detailed census data, including municipal boundaries, from the decennial censuses conducted in those years.

Refusal to annex any areas could also disadvantage minorities. In North Carolina, refusal to annex limits the political voice of excluded neighborhoods because Extraterritorial Jurisdiction (ETJ) statutes in North Carolina grant municipalities control over zoning, permitting and land-use decisions up to three miles from the town limits, depending on the size of the municipality The residents of the ETJ have no vote for the government that controls their property. We discuss a case where refusal to annex appears to have the effect of making minorities who cannot vote worse off. As social scientists we defer to lawyers about the legality of these practices with respect to the VRA, but the impact on minority voices in the political system is dramatic.

Background and Significance

The essence of the argument made fifty years ago in *Brown v. Board of Education* was that segregation in and of itself damages African Americans by institutionalizing a subordinate position in American life. Our preliminary research medium- and small-sized towns outside of urban centers in North Carolina indicates that racial residential segregation institutionalizes subordinate positions for African Americans by diminishing or denying their political status in local affairs, by limiting their access to public services, and by reducing the value of their property. This institutionalization has been done by

local planning boards and town councils, as they shape the local social and political ecology.

Considerable attention was given to southern towns during the civil rights and voting rights drives of the 1960s. Since then, little attention has been paid to racial segregation in small southern towns by journalists or social scientists, and institutionalized segregation has taken new forms. While overt discrimination is less common in towns across the South than it once was, local institutions, such as public schools, are re-segregating (Orfield 2001), and varieties covert discrimination may be increasing (Johnson et al. 2003). And in spite of increased numbers of African Americans elected to local councils and commissions, the real political power in most southern towns still resides with the local white elite, whose political, governmental and commercial interests inevitably intersect, and whose commercial interests override public interests (Johnson et al. 2003). Both the relative isolation of such towns and the mundane nature of institutionalized regulatory segregation have largely kept such discriminatory practices and results from the public eye.

In a symposium published by the *Journal of Urban Law,* Hagman (1977) and colleagues document how local governments "use their powers to change or refuse to change their exterior boundary lines in order to disadvantage racial minorities." These "subtle" practices began in the early 1960s once more direct forms of discrimination became illegal. As Hagman observes that these techniques of creating racial disadvantage through manipulation of borders is subtle "to the point of invisibility in the literature." This thesis is supported by case studies we have conducted using Geographic Information Systems (GIS) data from local planning agencies combined with census data.

GIS is widely recognized as a key tool in reapportionment and in challenges to voting districts. The importance of this methodology for the assessment of annexations has not been well developed. The case studies presented in this paper are not statistically representative assessments of the effects of annexations on racial compositions of the towns in either the counties where pre-clearance is requires or in the others. However, the methods provide a pathway to make such an empirical assessment that may be useful to determine whether patterns of annexations have a retrogressive effect on the ability of minority voters to participate in the political process.

Section 5 of the Voting Rights Act provides that any change affecting voting in a covered jurisdiction cannot legally be enforced unless and until the jurisdiction first obtains pre-clearance (42 U.S.C. § 1973c). Pre-clearance may be obtained only from the United States District Court for the District of Columbia or from the United States Attorney General. Jurisdictions generally submit the vast majority of voting changes to the Department of Justice for pre-clearance.

Currently nine states are completely covered by Section 5, and parts of seven additional states are covered – usually counties or towns. When a state is covered in part, any change affecting the covered counties, even if it is a state-wide change, must be submitted for pre-clearance (see *Lopez* v. *Monterey County*, 119 S. Ct. 693, 1999). A broad range of officials 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).

Annexations can potentially affect voting because they can change the electorate who can participate in elections (*City of Pleasant Grove v. United States,* 479 U.S. 46, (1987); *City of Port Arthur v. United States*, 459 U.S. 15, (1982) .[1] In reviewing annexations, the Justice Department applies the following legal standards: First, to demonstrate the absence of discriminatory purpose with respect to an annexation, a jurisdiction must demonstrate that the revision of municipal boundaries to "include[e] certain voters within the city [while] leaving others outside," was not based, even in part, on race (*Perkins v. Matthews,* 400 U.S. 379, 388, 1971; see also *City of Pleasant Grove v. United States,* 479 U.S. 462, 1987). Another test for determining whether or not a jurisdiction has made racially selective annexations is whether the annexation policies and standards applied to white areas are different than those applied to minority areas. If the standards are not the same or have been applied inconsistently, there is a strong likelihood that the decision not to annex the minority area had a discriminatory purpose (*Pleasant Grove*, 479 U.S. at 470; *Perkins*, 400 U.S. at 388; *see also, Reno v. Bossier Parish,* 528 U.S. at 339-41).

With regard to determining whether the annexation has a discriminatory effect, general standard is to evaluate whether it has a "retrogressive" effect on the ability of minority voters to participate in the political process — would African American voters would be "worse off" under the proposed change than they are under the current system (*see Reno v. Bossier Parish School* Board at 95-1455, 520 US 471, 1997). Arguably every annexation that did not annex either a racially proportionate percentage of African Americans, or a disproportionately higher percentage of African Americans than whites

[1] From 1965 until 2004, the Justice Department reviewed a total of 82,171 submissions involving annexations, out of a total of 413,278 submissions overall. *See http://www.usdoj.gov/crt/voting/sec_5/changes.htm.*

would make African American voters worse off because it would make them a smaller percentage of the electorate. However, the Department of Justice has interpreted Section 5 to require that if an annexation significantly decreases minority voting strength, the reasons for the annexations must be objectively verifiable, and legitimate, and the post-annexation election system must fairly reflect the post-annexation voting strength of the minority community (*City of Richmond v. United States,* 422 U.S. 358 at 371-373, 1975; see also, *City of Pleasant Grove,* 479 U.S. at 470-71; *City of Port Arthur v. United States,* 459 U.S. 159, 1982).

In this enforcement scheme, what falls between the cracks are the incremental – but over time quite significant – changes in the relative populations of whites and minorities in a city or town because of repeated annexations. Such changes may diminish the voting strength of African American voters by bringing in either existing white neighborhoods or new planned developments that for economic reasons are unavailable to minority populations.

Racial Residential Segregation in Small Southern Towns

To fully comprehend the significance of the Voting Rights Act in the context of annexation and other municipal land use decisions, it is essential to first understand the current racial landscape in the South—especially outside of larger cities. Racial residential segregation remains a fact of life in small towns across the South (Hanchett 2003). But, in contrast to the extensive research on the nature, causes, and consequences of racial residential segregation in American cities (e.g. Massey and Denton, 1987; 1993;

Oliver and Shapiro, 1995; White and Shy 2002), social scientists have devoted inadequate research attention to segregation issues in small towns.

Our preliminary studies indicate that segregation in southern towns differs substantially from the well-documented urban patterns of concentration and isolation of African Americans in central cities. First, the smaller scale of towns reduces social and economic isolation and increases interaction between African Americans and whites. Second, as Figures 1 and 2 show, residential segregation in small towns is fragmented. Third, the historic land ownership patterns of freed slaves and the settlement patterns of rural African American migrants during the 1960s and 1970s resulted in high concentrations of African Americans just outside the borders of towns as well as segregation within towns (Cromartie and Beale 1996). This concentration of African Americans around the periphery of southern towns is an alternative form of social and economic isolation (Aiken 1985; 1987; 1990). Fourth, political boundaries continue to be drawn to exclude African American neighborhoods. The history of the manipulation of town boundaries to exclude and isolate African Americans is better known among legal scholars than social scientists. For example, in the mid-1950s, Tuskegee, Alabama, redrew its town boundaries to remove African American neighborhoods, an action reversed in 1960 by the Supreme Court in *Gomillion v. Lightfoot* 364 U.S. 339 (1960).

Data and Methodology

Demographic data for this analysis are from the 1990 and 2000 Censuses (www.census.gov). Municipalities examined are from five counties under Section 5 (Lee, Harnett, Hoke, Union and Scotland) and three counties not under Section 5 (Moore,

Richmond, Montgomery Counties). As the analysis continues, this information as well as data from additional counties will be included.

To determine the degree to which annexation over a decade affects the racial composition of a municipality, we decompose the changes in total population, in African American population, and in white population, into changes within the 1990 boundaries and changes attributable to the extension of municipal boundaries through annexation. We use 1990 and 2000 as the beginning and end points of this analysis because these are census dates, providing both the most complete and accurate demographic data as well as precise municipal boundaries. Municipalities that did not exist in 1990 were not included in the analysis.

Geographic Information Systems (GIS) is central to both determining the area annexed as well as the 1990 boundaries in 2000. Although all of the municipalities we examine have their own GIS systems with boundary files as well as other important information for town planning and administration (e.g. sewer lines), we use the Census Bureau TIGER files for boundary lines. Spatial correspondence of municipal boundary files with census files is often imperfect. All census population data is for specific geographic units, with the census block being the smallest unit. Block-level data are used for reapportionment, and we use this level in this analysis.

The 1990 and 2000 municipal boundaries are layered over census blocks to determine areas annexed as well as the area that was within the municipality in 1990. The areas between the 1990 and 2000 boundaries is the area annexed. The 1990 external boundaries do not necessarily correspond to the boundaries of Census 2000 blocks. Where there is not direct correspondence, the population is allocated between the town in

1990 and the area annexed. The population allocation is proportional by area within each region.. Population changes within the town boundaries is a result of the difference between births and deaths plus the difference between the number of people moving in relative to the number moving out, the demographic balancing equation.

Detailed data on the race of the residents of each census block was collected in each census. Race is self-identified. The racial categories changed in 2000, allowing individuals to identify themselves as having more than one racial identity. Less than two percent gave mixed racial identities. We use only single racial identities from the 2000 Census in this analysis. North Carolina had the highest rate of grown in the Latino population of any state between 1990 and 2000, and several of the counties in this analysis have high proportions of Latinos (e.g. Lee County, 10%) We compiled detailed data on those who identify themselves as Latino,[2] but we did not use this information in this analysis.

It is necessary to account for population changes within the municipalities because these changes—usually declines—can be significant. Small towns in North Carolina , like much of the rest of the country, had stagnant population growth during the 1990s because of the decline in agricultural and manufacturing jobs, unless the towns were near growing metropolitan areas or a recreational destination (Cromartie and Beale 1996). For much of the last century, young African Americans had a high likelihood of leaving small towns upon completion of their education, resulting in a slowing declining African American population. The decline in African American population has been offset to some degree by retiree migration.

Analysis

[2] Federal data recognize Latino or Hispanic as an ethnic rather than a racial identity.

Table 1 shows the total, white and African American populations for 10 municipalities in counties covered by Section 5. The first two panels show the populations for 2000 and 1990. Panel 3 shows the absolute and percentage changes between 1990 and 2000. Panel 4 shows the 2000 populations living in the areas annexed between 1990 and 2000 and the percentage of the total, white and African American change between 1990 and 2000 that is attributable to the populations within the annexed areas. Note that the denominator for the percentage changes come from panel 3, the absolute changes Panel 5 shows that absolute and percentage changes for the areas within the 1990 borders of these 10 municipalities.

There is a wide range of growth (or decline) from 1990 to 2000 among these 10 municipalities, with three places growing by more than 50% (Angier, Monroe and Sanford) and one declining (Raeford). Both Angier and Monroe[3] are on the edge of rapidly-growing metropolitan areas. Sanford clearly grew through annexation. Annexation in Sanford accounted for 70.6% of the town's population increase. Further, the white population in the area annexed was larger than the total white growth during the decade (119.2%). The white population within the 1990 borders of Sanford actually decreased by 743 people, -19.4%. Four other towns annexed a greater number of white people than the total growth of growth of the white population because of declines in the white population within the 1990 borders, with Laurinburg losing 1,459 white people within the 1990 borders during the decade. By simply separating the growth by race into that attributable to annexation relative to growth within the 1990 borders, interesting effects on the racial composition of some towns become apparent.

[3] The relative proportions of both white and Africans in Monroe declined because of the growth in the "other race" (almost certainly Latinos) from 97 in 1990 to 2,457 in 2000.

Table 2 expands upon the effects of growth or decline with the 1990 borders of these towns by estimating the size and the proportion of their populations that are white and African America if there had been no annexation. To do this, we simply subtracted the growth attributable to annexation from the decade's total growth, adding that to the 1990 populations. Panel 1 shows the 2000 total populations for these municipalities, and the estimated populations without annexation. Panels 2 and 3 compare the 2000 populations and proportions of African American and whites with the corresponding estimates had no annexation occurred. None of the 10 towns had a higher percentage of African Americans in 2000 than they would have had without annexation.
For example, Laurinburg would have a very different racial composition if there had been no annexation. In 2000, just over half of Laurinburg (50.5%) was white. Recall that the white population within the 1990 borders dropped by 1,459 during the 1990s. Without annexation, the proportion white would have dropped to 39.5%. Laurinburg would have become a majority African American town. (There is a significant Native American population in Laurinburg as well as a growing Latino population that classified their race as "other" accounting for the rest of the population.) We have not examined the annexation records of Laurinburg, so we do not know if annexation was incremental or a single large annexation.

Table 3 shows the proportion of the annexed areas for these ten towns that were African American and white, and compares these percentages with the percentages for each race in 1990 and 2000. In nine of the ten places, the proportion of the annexed areas that is white is higher than the proportion white in either census. Therefore, the proportion African American in nine of these annexed areas is lower than the proportions

in the towns, often significantly lower. In Erwin, 0.3% of the annexed population was African American, and in Coats, only 2.5% of the population in the annexed areas was African American. We have not closely examined whether there were significant African American areas that have been excluded from all of these towns, neighborhoods left just outside of the towns.. We have examined Monroe, which is in the most rapidly growing county in the state and the county with the highest income in the state. There are no clear African American areas excluded.

This is not the case for Raeford. As is shown in Figure 1, the area just outside of Raeford is overwhelmingly African American. North Carolina's extraterritorial jurisdiction (ETJ) statutes grant planning, zoning, and permitting authority to municipalities over an area up to three miles from the city limits, depending on the size of the municipality. The residents have no vote in the government that has great power over the use and value of their property. Over 70 percent of the people living in Raeford's ETJ are African American. Further, the population within Raeford's ETJ is sufficiently large that the Census Bureau has identified Silver City as a Census Designated Place with 1,146 people, 94 percent of the them African American. Raeford's 53.7 percent white population and its at-large voting results in an all-white town council. Hagman noted that failure to extend borders can also disadvantage minorities, and this appears to be the case in Raeford. Whether the failure to annex (while controlling a large African American population through ETJ) violates provisions of the VRA is another issue.

Table 4 contains the same information shown in Tables 1-3 for the towns of Aberdeen, Pinehurst and Southern Pines, three towns that border in Moore County, N.C. Moore County is not covered by Section 5. Figure 2 shows these towns and the

surrounding area with the underlying racial composition. This area has been identified by the UNC Center for Civil Rights as an area where the municipalities have a policy of excluding African American neighborhoods from the towns, surrounding several of these neighborhoods. This region is noted for its golf resorts, especially Pinehurst.

Table 4 shows little pattern across all three towns. Because the towns are overwhelmingly white, annexation had little effect on the 2000 racial balance. Alone of all of the towns under considerations in this paper, Aberdeen increased its African American percentage through annexation — but only from 17% to 22%, As the town with the lowest income levels, Aberdeen did include a significant proportion of African Americans in its annexations during the 1990s even as the white population within the 1990 borders declined slightly. Pinehurst had almost no African Americans, and they clearly made no significant effort to bring African Americans into the town through annexation. Whites are disproportionately represented in annexations by Southern Pines (89.5%) compared to African Americans (10.5%) even as the African American population within the 1990 borders declined. As with Raeford, the decisions not to annex African American neighborhoods combined with control of these areas through extraterritorial jurisdiction serves to further the political interests of the white majorities.

This lack of a pattern in the effects of annexation on the racial composition in a town may represent the situation in areas not covered by Section 5. However, many more cases must be included in a decomposition analysis before any conclusion can be reached.

To examine the relationship between the racial composition of a town and the racial composition of areas annexed by the town, we graph the relationship between the

Census 2000 racial composition within the 1990 boundaries, and the impact upon racial composition of the annexations (Figure 3). Data for this graph are from all municipalities in the five counties covered by Section 5 examined earlier. We see that the closer the percentage of African Americans in the town would have been to 50% had annexation not happened, the larger the decrease from annexation in percent African Americans . If there are no white areas to annex, the other option is that taken by Raeford: sharply limit annexations.

Discussion

A central issue in democratic theory is: Who is eligible to participate in which decision-making processes? (Arrhenius 2004). Citizenship in the United States has multiple layers — national, state and local citizenships—each with different authorities and responsibilities. Most attention is given to national and state citizenship, but we are also citizens of local territorial jurisdictions — counties, municipalities—with rights, benefits and obligations. These territorial jurisdictions are "the rigidly mapped territories within which formally-defined legal powers are exercised by formally-organized governmental institutions" (Ford 1999: 843). The political geography of understanding how territorial jurisdictions operate at the local level is central to understanding both the processes and consequences of racial exclusion.

The most obvious and explicit jurisdictional boundary of a municipality is the town limit. Those living within this boundary are citizens of the municipality with a voice in electing the local government, while those living beyond the boundary have no such citizenship rights. Within the boundary, the municipal government has authority

over most issues involving public safety, land use, permits and zoning, schools (in some cases). Most importantly, the municipality has authority for boundary-changing of the municipality itself. Thus, the town government has the authority to determine who becomes a citizen of the town and receives the benefits through annexation, the process through which the boundary changes. Therefore those who control the town have great ability to perpetuate or change the racial and ethnic composition of the town by setting boundaries. Whom does the local government consider to be desirable for addition to their community? Small town governments in the South for the most part remain dominated by the local business elite, who are overwhelmingly white. Community aims tend to be conservative, to build a community that consists of similar people in terms of economic status and, perhaps, race (see Johnson et al. 2003). The officials want an increased tax base with a population likely to continue to vote for them. Annexation grants local citizenship to those fitting the ideal of the local community.[4] This means that citizenship is extended to those in newly-built subdivisions, which both raises the local property tax base and—in the South— adds to or maintains the predominance of the white middle class. With the power to create and deny local citizenship, local governments add through annexation only those they desire, and minority neighborhoods appear to be rarely desired.

When examining annexations, can we empirically measure discriminatory purpose or discriminatory effect? Further, can we empirically assess the effect of Section 5 on racial patterns of annexation? The decomposition method we present is a central

[4] In his well-known book examining nationalism, *Imagined Communities*, Anderson (1991: 6) writes that "all communities larger than primordial villages . . . are imagined," and that how these communities are distinguished "by the style in which they are imagined." In a very real sense, the local governments control who can become part of these small "ideal" communities.

first step in being able to empirically determine racial patterns in annexation, but we have examined only a small set of towns. In addition, we have no estimated multivariate models that allow us to control for the effects of other factors on the patterns of annexation.

To specify the research questions further and to interpret the demographic patterns in terms of legal standards, collaboration with attorneys experienced in the Voting Rights Act will be necessary. As noted, North Carolina is an excellent location for such an analysis because of the partial coverage of Section 5. Whether the analysis can be used to directly assess the effects of Section 5, the results add further support to Hagman's hypothesis that municipalities "use their powers to change or refuse to change their exterior boundary lines in order to disadvantage racial minorities."

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Table 1: Population Change and Decomposition for Municipalities Covered by Section 5 of the VRA

	Angier	Coats	Dunn	Erwin	Laurinburg	Lillington	Marshville	Monroe	Raeford	Sanford
2000 Population										
Total	3,419	1,845	9,196	4,537	15,874	2,915	2,360	26,228	3,386	23,220
White	2,305	1,480	5,017	3,658	8,023	1,596	1,228	15,769	1,786	12,973
	67.4%	80.2%	54.6%	80.6%	50.5%	54.8%	52.0%	60.1%	52.7%	55.9%
African American	799	233	3,790	724	6,835	1,182	1,059	7,287	1,386	6,779
	23.4%	12.6%	41.2%	16.0%	43.1%	40.5%	44.9%	27.8%	40.9%	29.2%
1990 Population										
Total	2,235	1,493	8,336	4,061	11,643	2,048	2,020	16,127	3,469	14,475
White	1,553	1,273	4,768	3,543	5,827	1,193	1,199	9,397	1,974	9,154
	70.4%	86.7%	58.1%	88.3%	52.7%	59.6%	60.0%	59.2%	59.3%	64.5%
African American	653	195	3,435	469	5,239	808	801	6,483	1,355	5,045
	29.2%	13.1%	41.2%	11.5%	45.0%	39.5%	39.7%	40.2%	39.1%	34.9%
Change 1990-2000	1,184	352	860	476	4,231	867	340	10,101	-83	8,745
	53.0%	23.6%	10.3%	11.7%	36.3%	42.3%	16.8%	62.6%	-2.4%	60.4%
White	752	207	249	115	2,196	403	29	6,372	-188	3,819
	48.4%	16.3%	5.2%	3.2%	37.7%	33.8%	2.4%	67.8%	-9.5%	41.7%
African American	146	38	355	255	1,596	374	258	804	31	1,734
	22.4%	19.5%	10.3%	54.4%	30.5%	46.3%	32.2%	12.4%	2.3%	34.4%
Population Annexed	785	135	1,266	216	4,802	610	146	5,482	93	6,176
	66.3%	38.4%	147.3%	45.4%	113.5%	70.3%	43.0%	54.3%	-112.2%	70.6%
White	613	132	883	215	3,655	374	83	4,975	57	4,562
	81.5%	63.7%	354.5%	187.1%	166.4%	92.8%	287.5%	78.1%	-30.3%	119.4%
African American	172	3	384	1	1,148	236	63	508	36	1,614
	117.7%	8.7%	108.1%	0.3%	71.9%	63.0%	24.3%	63.2%	116.6%	93.1%
Within 1990 Boundaries	399	217	-406	260	-571	257	194	4,619	-176	2,569
	33.7%	61.6%	-47.3%	54.6%	-13.5%	29.7%	57.0%	45.7%	212.2%	29.4%
White	139	75	-634	-100	-1,459	29	-54	1,397	-245	-743
	18.5%	36.3%	-254.5%	-87.1%	-66.4%	7.2%	-187.5%	21.9%	130.3%	-19.4%
African American	-26	35	-29	254	448	138	195	296	-5	120
	-17.7%	91.3%	-8.1%	99.7%	28.1%	37.0%	75.7%	36.8%	-16.6%	6.9%

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Table 2: Comparison of the 2000 Populations and Estimated Populatinos if there Had been No Annexations

	Angier	Coats	Dunn	Erwin	Laurinburg	Lillington	Marshville	Monroe	Raeford	Sanford
Total in 2000	3,419	1,845	9,196	4,537	15,874	2,915	2,360	26,228	3,386	23,220
Without Annexation	2,634	1,710	7,930	4,321	11,072	2,305	2,214	20,746	3,293	17,044
White	2,305	1,480	5,017	3,658	8,023	1,596	1,228	15,769	1,786	12,973
	67.4%	80.2%	54.6%	80.6%	50.5%	54.8%	52.0%	60.1%	52.7%	55.9%
Without Annexation	**1,692**	**1,348**	**4,134**	**3,443**	**4,368**	**1,222**	**1,145**	**10,794**	**1,729**	**8,411**
	64.2%	**78.8%**	**52.1%**	**79.7%**	**39.5%**	**53.0%**	**51.7%**	**52.0%**	**52.5%**	**49.4%**
African American	799	233	3,790	724	6,835	1,182	1,059	7,287	1,386	6,779
	23.4%	12.6%	41.2%	16.0%	43.1%	40.5%	44.9%	27.8%	40.9%	29.2%
Without Annexation	**627**	**230**	**3,406**	**723**	**5,687**	**946**	**996**	**6,779**	**1,350**	**5,165**
	23.8%	**13.4%**	**43.0%**	**16.7%**	**51.4%**	**41.0%**	**45.0%**	**32.7%**	**41.0%**	**30.3%**

Note: Although Latino is not considered to be a racial identity by ther federal government, many Latinos identify their race as "other." This is evident in Sanford and Monroe, towns that experienced rapid growth in the Latino population in the 1990s.

Table 3: Racial Distribution witin Areas Annexed Between 1990 and 2000 Compared with 1990 and 2000 Distributions

		Angier	Coats	Dunn	Erwin	Laurinburg	Lillington	Marshville	Monroe	Raeford	Sanford
White		78.1%	97.5%	69.7%	99.7%	76.1%	61.3%	57.1%	90.7%	61.2%	73.9%
	1990	*70.4%*	*86.7%*	*58.1%*	*88.3%*	*52.7%*	*59.6%*	*60.0%*	*59.2%*	*59.3%*	*64.5%*
	2000	*67.4%*	*80.2%*	*54.6%*	*80.6%*	*50.5%*	*54.8%*	*52.0%*	*60.1%*	*52.7%*	*55.9%*
African American		21.9%	2.5%	30.3%	0.3%	23.9%	38.7%	42.9%	9.3%	38.8%	26.1%
	1990	*29.2%*	*13.1%*	*41.2%*	*11.5%*	*45.0%*	*39.5%*	*39.7%*	*40.2%*	*39.1%*	*34.9%*
	2000	*23.4%*	*12.6%*	*41.2%*	*16.0%*	*43.1%*	*40.5%*	*44.9%*	*27.8%*	*40.9%*	*29.2%*

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Table 4: Population Change and Decomposition for Municipalities Not Covered by Section 5

	Aberdeen	Pinehurst	Southern Pines
2000 Population			
Total	3,400	9,706	10,918
White	2,483	9,251	7,729
	73.0%	95.3%	70.8%
African American	740	317	2,901
	21.8%	3.3%	26.6%
1990 Population			
Total	2,700	5,103	9,129
White	2,255	4,995	5,906
	83.5%	97.9%	64.7%
African American	400	89	3,155
	14.8%	1.7%	34.6%
Change 1990-2000	700	4,603	1,789
	25.9%	90.2%	19.6%
White	228	4,256	1,823
	32.6%	92.5%	101.9%
African American	340	228	-254
	48.6%	5.0%	-14.2%
Population Annexed	589	2,073	1,602
	84.1%	45.0%	89.6%
White	333	2,020	1,434
	146.2%	47.5%	78.6%
African American	255	53	169
	75.1%	23.4%	-66.4%
Within 1990 Boundaries	111	2,530	187
	15.9%	55.0%	10.4%
White	-105	2,236	389
	-46.2%	52.5%	21.4%
African American	85	175	-423
	24.9%	76.6%	166.4%
Distributions Without Annexation	2,811	7,633	9,316
White	2,150	7,231	6,295
	76.5%	94.7%	67.6%
African American	825	492	2,478
	29.3%	6.4%	26.6%
Distribution in Annexations			
White	56.6%	97.4%	89.5%
African American	43.4%	2.6%	10.5%

Figure 1

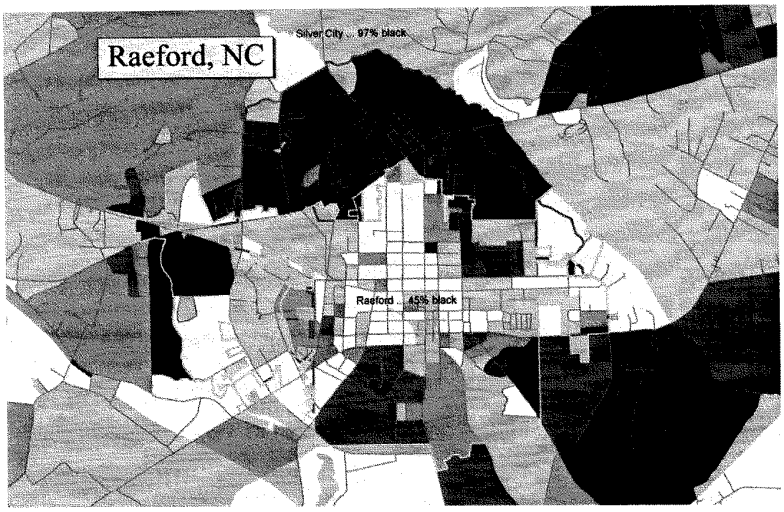


Figure 2

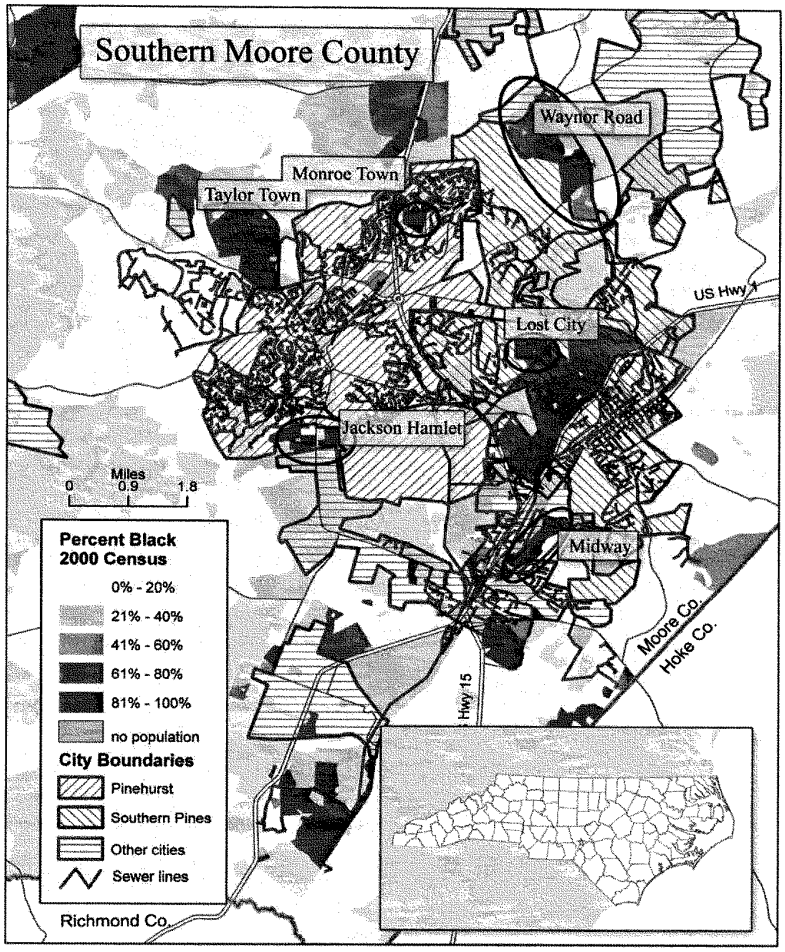
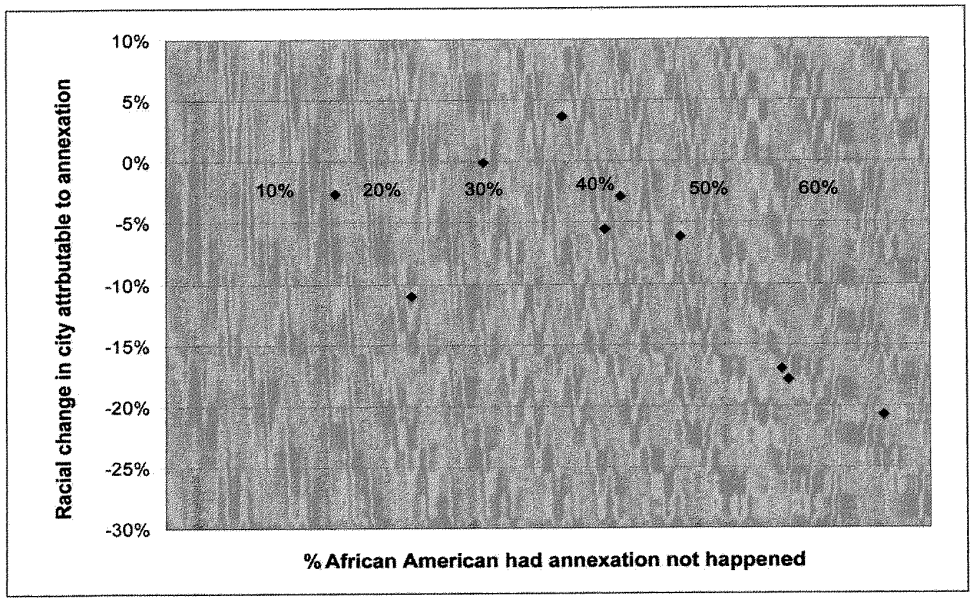

Southern Moore County
Waynor Road
Monroe Town
Taylor Town
US Hwy
Lost City
Jackson Hamlet
Miles
0
0.9
1.8
Percent Black
2000 Census
0% - 20%
21% - 40%
41% - 60%
61% - 80%
81% - 100%
no population
City Boundaries
Pinehurst
Southern Pines
Other cities
Sewer lines
Midway
Moore Co.
Hoke Co.
Hwy 15
Richmond Co.

Figure 3


10%
5%
0%
-5%
-10%
-15%
-20%
-25%
-30%
Racial change in city attributable to annexation
10%
20%
30%
40%
50%
60%
% African American had annexation not happened

Majority-Minority Districts, Co-ethnic Candidates, and Mobilization Effects

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Abstract

We estimate the effects of district demography and the possibility of co-ethnic representation on voter turnout and its political effects. We will examine vote histories from 1996-2000 for all registered voters in five California counties - Los Angeles, Orange, San Bernardino, Ventura, and Riverside, and data from 1996-2002 for all five boroughs of New York City. Moving beyond existing work, where we previously demonstrated the positive relationship between living in majority-minority electoral jurisdictions and the probability of voter turnout, we examine in greater detail the dynamics of the relationship between district population distributions and voter turnout. Using a continuous measure of Latino population share among registered voters and its square, we first replicate our previous findings, but in so doing demonstrate that the relationship between minority population share and turnout is both complex and non-linear. Findings simply comparing majority and non-majority contexts miss the important variation across levels of population. Second, we use data from both southern California and the five boroughs of New York, demonstrating that while the hypothesized effects are somewhat generalizable across Latino national origin groups and geographic context, there is important variation. Third, we examine the effect of turnout on electoral opportunity, and demonstrate how turnout differentials across Latino and non-Latino populations, coupled with the underlying population distributions among registered voters, can allow us to estimate important thresholds of political control. In the wake of the Supreme Court's decision in Georgia v. Ashcroft, we can use those functions and varying assumptions about white racial polarization and Latino unity to estimate the conditions under which potential political control can be translated into a legitimate chance for minority group members to elect a first-choice candidate.

Majority-Minority Districts, Co-ethnic Candidates, and Mobilization Effects

In part as a response to litigation brought under a rewritten Section 2 of the VRA, and in part as a function of the Justice Department's role in pre-clearance of districts pursuant to Section 5, the creation of majority-minority districts has become the standard method for securing minority representation in legislative institutions, a practice that increased markedly after the 1990 census.[i] Most scholars would agree that the establishment of these districts was remarkably successful at securing descriptive representation for minority voters. These districts generally did result in the election of an increasing number of African-Americans and Latinos to legislative office.

Less certain, however, is the impact of these districts on the political behavior of citizens residing in them. Some scholars suggest that majority-minority districts mobilize minority electorates, and find modest support at the mayoral level (Bobo and Gilliam 1990; Lublin and Tate 1992). Creating majority-minority districts provides minority voters with a new-found opportunity to elect a candidate of choice to office, thus empowering this previously excluded group and thereby increasing their incentives to turnout and vote. By contrast, others have taken a more skeptical view. The preponderance of early research reported no meaningful change in the turnout rates of minority voters (Brace et al, 1995; Gaddie and Bullock 1995). More ominously, Lani Guinier (1994) and others have suggested that low levels of competition in majority minority districts, coupled with disappointment associated with the lack of perceived policy effects from increased descriptive representation, serve as dual disincentives to participation. Any gains in turnout, she suggests, will be quickly dissipated by the irrelevance of voter participation.

This question, we would suggest, is of pivotal importance in any effort to evaluate the net effect of these specific aspects of Voting Rights Act on minority representation. How majority-minority districts influence the mobilization prospects of potential minority electorates is of tremendous relevance to the outcome of up-ballot races. If minority voting is enhanced by these structures, then their use as solution to minority under-representation does not alone impose negative externalities on other electoral contests. By contrast, if these districts result in the suppression of voter turnout among minority constituents, they could have profound and detrimental effects by diminishing the impact of minority voices and interests on up-ballot races where the outcome is less certain.

To date, there have been two broad-based efforts to answer this question. In the first, Claudine Gay (2001) used ecological inference (EI) to examine Congressional elections in majority-black districts. She found only modest evidence of increased African-American turnout, concluding that the likely overall effect of majority-black districts was negligible. By contrast, she did find significant declines in turnout among non-Hispanic whites.

The second effort was ours (Barreto, Segura, and Woods 2004). In that work, we set out to determine whether living in majority-minority districts was mobilizing for Latinos, and whether these effects would be better estimated by considering the larger electoral context. Our focus was exclusively on legislative elections and using turnout data at the individual level. Specifically, we estimated the influence of both single and overlapping majority-minority districts on individual level minority voter turnout, comparing the actual turnout of voters over multiple elections. We found a consistently positive effect on Latino turnout. That is, co-ethnic representation at every level had the effect on increasing the likelihood that a Latino voter turned out on election-day. Having the opportunity to elect a candidate of your choosing appears to be a

consistently empowering circumstance. Latinos vote more when in a majority-Latino district, contrary to the expectations of those who expected or feared minority demobilization. Moreover, the larger electoral context was found to play an important role in establishing the incentives or disincentives to vote. If living in one majority Latino district is good for turnout propensity, living in two or even three is better. By contrast, non-Hispanics living in Latino majority districts have less to cheer about and, apparently, less to drag them out to the polls on election-day. Like Gay, we find that non-Hispanic whites appear to vote less.

Our findings would initially appear to close the book on the question of majority-minority districts and voter turnout, at least for Latinos. They do, however, conflict with Gay's findings on African-Americans, and this difference, along with a number of other nagging and important questions, however, suggest the need for significant further inquiry.

At least one important motivation for reexamining this question is a recent development in the jurisprudence of majority-minority districting. After the 2000 Census and accompanying redistricting, the Supreme Court further complicated the calculus of minority districts with their decision in Georgia v. Ashcroft. Among the central elements in this case was the question of whether reducing minority voting strength in a district—something favored by a large majority of black legislators voting on the plan in question—could be acceptable, that is, found to not violate the no-retrogression standard long used for Section 5 pre-clearance. The Supreme Court found that reducing minority voter concentration in these districts was, in fact, acceptable.

The decision was and is controversial among advocates of minority voting rights. On the one hand, growing concentrations of minority voters in majority-minority districts may, in fact, be undermining minority representation by raising the numbers of minority legislators at a cost of reducing the overall impact of minority voters on the behavior and actions of all legislators.

On the other hand, co-ethnic representation has been repeatedly demonstrated to be the most reliable at directly representing the interests of minority voters, and any diminution of the security provided by majority-minority districts and pre-clearance is viewed ominously by advocates of minority representation. Knowing exactly how many minority voters are "enough" to secure a district, then, is of critical importance both given the desire of those hoping to reduce the apparent trade-off between descriptive and substantive representation as well as to the evolving interpretations of "no retrogression" and Section 5 compliance.

More importantly, especially for our purposes, the decision in Georgia v. Ashcroft necessitates that we move beyond the categorical measure of majority-minority districting used in our earlier work. Since that decision effectively permits the unpacking of minority districts, so long as the political opportunity to elect first choice candidates is not effectively diminished, we need a more exacting and nuanced understanding of how minority population share translates into political impact.

Anticipating the Impact of Minority Majority and Influence Districts

In drawing majority-minority districts, the guiding goal is the ability of previously marginalized sub-groups of the electorate to have a meaningful opportunity to elect first-choice candidates to public office. That is, the district is sufficient when the target population has some reasonable hope of electing like-minded representation. We have, often, simplified this calculation as one primarily driven by population, hence the popular moniker "majority-minority."

As a practical matter, however, that hope of electing first-choice candidates is the product of four distinct factors, only one of which is the jurisdiction's or district's demography. A second factor, of course, is turnout. We know that voter turnout among racial and ethnic

minorities generally lags behind that of whites. And our earlier work suggested that turnout is endogenous to the district demography itself, and will vary between majority-white and majority-minority jurisdictions. But the aforementioned implications of Georgia v. Ashcroft – i.e. the potential for partially unpacking some of these majority-minority districts—suggest that we need to understand what the turnout effects would be at various levels of minority group representation in the electorate. That is, while we might be certain that solidly Latino districts are both empowering to voters and successful at securing descriptive representation, we know far less about how marginal or influence districts might affect turnout, an effect whose importance is critical should Georgia v. Ashcroft actually result in the unpacking of some minority districts.

A related concern is whether the relationship between minority voter turnout and minority group share of a district's electorate a linear one. We have good reason to believe that it is not. That is, though our earlier findings suggest that turnout propensity grows with a majority or super-majority minority population share, it seems likely that this relationship flattens out at very high levels of minority population—where additional population share does little to ensure electoral success—and drops precipitously at lower levels where minority voices are too few to have an effect. To adjudicate the effects of minority districts on turnout, especially when considering influence districts as an alternative, we need a clearer specification of the functional form of that relationship. Specifically, at what population share does minority vote increase, and at which levels does that effect diminish?

Beyond population share and turnout, a third intrinsically important factor will be the level of political unity among the target population. Because, historically, our concerns regarding representation were largely focused on the African-American experience, the level of group unity was seldom considered beyond meeting the Gingles Standard's threshold. African-

Americans regularly exhibit 90%+ political unity. Latinos, on the other hand, are a far more politically diverse group. Their political identity, of course, needs to be sufficiently well-formed to meet the Gingles standard, but Latino unity—particularly on partisan matters—lags considerably behind that of African-Americans. Lower levels of target group unity suggest the need for higher population concentrations in order to translate population shares into political power.

A fourth consideration is the degree to which the non-target population manifests racially polarized bloc voting. The very existence of districting solutions to minority vote dilution is premised on the recognition that in many electoral environments, Anglos have historically been reluctant to vote for candidates of color, sometimes to alarmingly high degrees. Nevertheless, there is certainly variation in the degree to which this is the case, both across time and across locale. In some places, the racially polarized white bloc may constitute 90+% of white voters, necessitating a higher population share for a minority to be able to effectively exercise political control. In other environments, the level of racial polarization may only be 70% (that is, as many as 30% of whites showing some willingness to vote for candidates of color). In such an environment, the size of the minority population share necessary for exercising political control—that is, necessary to provide a realistic opportunity to elect first-choice candidates—would be significantly lower.

The implications of this variation are of particular importance in the wake of Georgia v. Ashcroft. That decision effectively permits the draw down of minority vote share in majority-minority districts, suggesting that it need not be inherently retrogressive. But the reduction of a minority vote share from, for example, 60 to 45% will have different effects in different environments. In places where the level of white unity is high, such a decrease is very likely to

be retrogressive, whereas in places where white unity is somewhat lower, the same decrease could actually increase minority voice. The problem, of course, is that the decision specifically allows plans to be judged on a jurisdiction wide basis, rather than on a district by district basis. That is, tradeoffs in district percentages are to be allowed across a jurisdiction. Such tradeoffs, however, would be a fool's bargain if we fail to consider the preferences of the non-minority voters newly districted into minority "influence" districts.

Data and Design

In this effort, we examine the question of how population distributions affect turnout, and how the two jointly interact with distributions of majority and minority preferences to produce political outcomes. Specifically, we intend to estimate the effects of district demography on voter turnout. We test three specific contentions. First, revising previous work on California with the inclusion of a continuous measure, we expect to replicate our finding that Latino voters are more likely to turnout in majority-minority environments. Second, that relationship is very likely to be curvilinear in nature. Third, the empowering nature of minority population concentrations can be found in other jurisdictions (namely, New York City), but there will be important differences in functional form as a consequence of important contextual variation. And fourth, variations in the relationship between turnout and minority population density necessarily imply similar variations in the level of minority and majority population shares and unity necessary to produce effective political voice for the minority population in question.

To test these contentions, we turn to Registrar-of-Voters' records for all registered voters from five counties in Southern California: Los Angeles, Orange, Riverside, San Bernardino, and Ventura,[ii] as well as records of all registered voters in the five boroughs of New York City. Specifically, we examine data on general elections from 1996-2002. Our dependent variables

are constructed using the actual record of whether or not individual registered voters turned out for a particular election.

Our unit of analysis is the individual, consistent with our earlier paper and a departure from previous work. The use of aggregate turnout numbers can often mask what is really happening at the level of individual choice. The universe of analysis is all registered voters in each jurisdiction.

This approach—individual level examination of actual election data—provides us with two advantages and one potential disadvantage. Unlike polling data, our analyses do not require inferences from samples to populations. And since Registrars' records do not rely on self-reporting, over-reporting due to a social-acceptability bias is not a problem. On the other hand, since our measure of turnout is, of necessity, only among registered voters, it is very likely that we may underestimate the empowering or demobilizing effects of living in a majority-minority electoral district since at least part of that effect will take place at the voter registration stage, not exclusively the actual election day decision to vote. In that sense, some of the variance that can be explained by minority district vote share has already been lost, but this loss should raise our confidence in any significant findings since they are more difficult to obtain.

We estimate the effect of living in an assembly district with varying shares of the electorate comprised by Latinos on the likelihood that a Latino citizen turns out to vote, controlling for other well-recognized determinants of behavior. We examine individual voter turnout in each general election. For each individual election, the dependent variable is *Voted*, and is coded one (1) if the registrant signed into the polls on election day, and zero (0) otherwise.

Identification of Latino voters is accomplished through the use of the Census Bureau's Spanish surname list, which flags those registrants with commonly occurring Hispanic

surnames.[iii] We identify Latino registered voters with the variable *Latino*, which is coded one (1) if the voter's surname indicates Hispanic origin. Given long-standing findings on the lower rates of turnout among all minority voters, *ceteris paribus*, we expect the coefficient on this variable to be negative, though some more recent findings about Latino mobilization in California give us caution with regard to these expectations (Barreto and Woods, 2000).

In estimating the principal effect, we measure the share of the registered voter pool in each Assembly district that are Latino. The resulting variable, *Latino Percent*, can theoretically vary between zero and 100%. We also include a squared version of this term (*Latino Percent*^{2}) to allow for the effect we estimate to be non-linear, as we previously suggested.

To differentiate the overall effect of Latino vote share on Latinos from the effect on non-Latinos, we interact both the *Latino Percent* and *Latino Percent*^{2} with the variable Latino. This allows us to estimate different effects of Latino vote share on Latinos and non-Latinos, consistent with our hypotheses. In order to estimate effects for Latino voters, we would need to sum the effects on the direct effect variables with those of the interaction terms (in much the same way as the intercept for Latinos requires us to sum the constant with the dummy variable for Latinos).

African-American voters have similarly demonstrated a lower propensity to turn out. Unfortunately, it is not possible to identify which registrants are African-Americans. To control for this effect, we code *Percent African-American* to capture the probability that a given voter is African-American, inferred from the proportion of non-Hispanic and non-Asian residents in that census tract that are black, ranging from zero (0) to one (1). This variable is set to zero when the registrant is coded as either Asian (in California) or Latino (since their probability of being African-American is known). While this estimate is of limited use for inferential purposes, it is

helpful in separating out the potentially different effects of living in majority-Latino districts on African-Americans and non-Hispanic whites. We would expect the coefficient to be consistently negative.

We control for party identification. We include dummy variables for Republicans and Democrats, with each coded as one (1), with all other voters coded as zero (0), leaving independents and third-party members as the unexpressed category. *Female* is a dichotomous variable. Determination of gender is directly from Registrar-of-Voters records. *Age* is also coded from records. Since younger citizens have been consistently found to vote less often, we would expect a positive coefficient. We include a squared-term to allow the effect of age to flatten at higher levels, so we'd expect a negative coefficient on this term.

In addition to these individual level effects (or proxies, as in the case of *Probability Black*), we include a battery of contextual effects to control for other well-recognized factors influencing turnout which are not part of the registrars' data-base and, hence, not available for each individual registrant. Each variable is coded using the census tract as the unit of analysis, and the data are drawn from the 1990 national Census, with the exception of *Probability Black*, which is drawn from the 2000 Census.

Income and education are the obvious necessary controls. For New York, income is coded by category, with the percent of households in each tract with income below 25000 (capturing the poor) and above 60000 (capturing the comfortable), with all other voters as the unexpressed category. For California, the figure represents the Median Income at the census-tract level of aggregation. *Percent College* captures the percent of residents in the tract with a college education or better. Both college education and higher income should be strongly and

positively associated with turnout, while the low income measure should be negatively associated with turnout.

Results of the Analysis

We present the results of probit analyses from metropolitan Los Angeles in Tables 1a-c, and the City of New York in Tables 2a-2d. Each table represents results at the Assembly district level, which we use because of a larger N and greater variation in the percent Latino at that level. (Results are roughly consistent across estimations for the state Senate and US House.) We look at three elections in California and four in New York. In each case, the dependent variable is whether the respondent signed in at the polls on election day or submitted an absentee ballot, as opposed to not having participated. Our central question is the relationship between Latino population share and the turnout of both Latinos and non-Latinos. Though the specifications vary slightly as a function of the data sets, the models are roughly comparable.

Table 1a-c about here

First, we evaluate whether the evidence supports our first hypothesis, that a continuous quadratic estimation for the California data will yield results consistent with those in our previous work. The data clearly suggest that this is the case. While Latinos are, ceteris paribus, less likely to vote than Anglos, the effect of living in districts with greater Latino population is, ultimately, mobilizing for Latinos and demobilizing for Anglos, ultimately resulting in higher levels of turnout for Latinos than Anglos in heavily Latino districts. Moreover, for both Latinos and non-Latinos, the relationship is curvilinear. The predicted probabilities generated by each model are illustrated in Figure 1.

Figure 1 about here

Our second query was with regard to the consistency of these effects across geographic region. Tables 2a-d report results from the estimations of New York state assembly districts within New York City's five boroughs.

Table 2a-d about here

These results are, in part, consistent with those from California, but they also depart in important ways. Latinos are again disadvantaged vis-à-vis whites. And again, importantly, as the share of the registered voters who are Latino climbs, the effect is empowering for Latinos, as compared to whites. But the effect of Latino vote share is not necessarily positive at lower values, as it was in California. As the illustration of predicted probabilities in Figure 2 suggest, for the lowest values of Latino vote share, the likelihood that a Latino registered voter turns out actually declines as vote share increases. The curvilinear effect, however, suggests that this effect turns positive between 40 and 55%, and since most Latino registered voters live in the higher concentration districts, the overall net effect is also positive.

Figure 2 about here

Results on control variables are generally as predicted and consistent across geographic region and election year. Higher income and higher median education are both positively associated with the likelihood of a registered voter turning out on election day. Similarly, older voters turn out more, though the negative coefficient on the squared term suggests that the effect flattens out above a certain threshold. Female registered voters turn out in greater numbers than males.[iv] In California, GOP voters turn out more than others, a result that differs from that of New York, where registered Democrats appear to turnout more, though the specification makes it difficult to assess whether this difference is significant. In a future iteration, we will use identical modeling approaches to see whether this anomaly disappears. Percent African-

American, which we use as a proxy for the probability that a voter is black, is consistently negatively related to turnout, a result consistent with the long-established finding that African-Americans vote less than Anglos.

Electability and the Translation of Population Share into Political Power

Having estimated the empirical relationship between minority share of a districts voters and the propensity of voters to turn out, we want to take the next step and illustrate the political consequences of these differences. First and most obviously, turnout differentials between minority voters and Anglos have long been considered as an important caveat when attempting to solve minority vote dilution problems. Effective minority control, for example, was often hypothesized to require super-majorities of 55, 60, or even 65% in the face of intransigent white opposition.

Earlier, we suggested that an important second step would be to incorporate additional evidence on the distribution of minority and non-minority preferences, which are an important consideration if we consider unpacking super-majority minority jurisdictions, and which we suggested are likely to vary considerably across electoral environments and time. Ecological regression has long been used in the voting rights arena to estimate the degree of racial polarization, so estimates of white and minority unity should be relatively straightforward to come by in most environments.

In this section, we set out to illustrate two things. First, we will demonstrate that the relationship between turnout and district demography will have meaningful effects on the share of the electorate that minority voters could meaningfully hope to comprise. Second, we will use varying assumptions regarding the level of minority and majority group unity to illustrate how

these effects begin to have political consequences as we seek to secure opportunities for minorities to elect first-choice candidates. In so doing, we will offer an evidentiary basis for our overarching concern that, without careful consideration of varying political contexts, the draw down of minority voters pursuant to Georgia v. Ashcroft could quite easily result in occasional or even frequent retrogression.

Turnout and Vote Share

We have estimated the effect of district demography on the turnout propensities of Latino voters. In order to assess the electoral effect of these relationships, we need to see how that turnout translates into vote share. Figures 3 and 4 illustrate the estimated relationship between demography and turnout for both regions in 1996. Each also estimates what the resulting Latino vote share would be by multiplying the predicted rate of turnout among registered Latinos by the share of the district's registered voters who are, in fact, Latino.

Figures 3 and 4 about here

Given important variation across regions in the relationship between demography and voter turnout, the net effects on the distribution of the turned out electorate also vary. Table 3 reports the anticipated share of the turned out vote constituted by Latinos based on the relationships estimated in Tables 1 and 2 and illustrated in Figures 3 and 4. It is immediately evident that important regional differences have an impact on Latino vote share. Latinos in Southern California, on average, will comprise about 3.5% more of the electorate than Latinos in New York City, holding Latino share of the registered voters constant. Moreover, the size of the difference is not constant but, rather, varies across levels of Latino registration in a curvilinear fashion, reflecting the functional forms found in the estimations of Tables 1 and 2.

Table 3 about here

Why does this matter? In attempting to engineer effective political influence for heretofore marginalized groups, an important intervening step is to arrive at accurate estimates of actual voter impact. The results presented in Figures 3 and 4 and Table 3 help illustrate two things: first, that the effects are dependent on the relationship between demography and turnout, and second, that important differences across space make generalized assumptions about the necessary level of population inappropriate. For example, in the California counties examined, the high levels of Latino mobilization mean that Latino turnout among registered voters consistently exceeds their population share. If, for example, we guessed that the politically necessary level of Latinos as a share of district registration was 50%, Latinos in California would comprise over 51% of the voters, whereas in New York, a 50% share of registrants would yield a share of the electorate less than 48%. While this difference might seem small, it is of crucial importance in a post- Georgia v. Ashcroft environment where drawing down of minority populations to the lowest level necessary to assure "influence" appears to have become permissible.

...and Electing First-Choice Candidates

Among the principal goals of majority-minority districting is the election of first-choice candidates, often assumed to be co-ethnic candidates of color. We have suggested that this opportunity is conditional on four factors, only two of which we have discussed so far...district demography and voter turnout rates, the latter of which is at least partially endogenous to the former. We would be remiss, however, to assume either that communities of interest vote in 100% blocs or that non-minorities are invariably united against minority candidates. While bloc voting certainly does occur, it seldom occurs at rates approaching 100% on either side. Rather, minority communities can vary in their level of unity, either as a consequence of partisan

differences, competing candidates of color, or other factors. And while a majority of whites may remain committed to racially polarized bloc voting, some share of white liberals may reliably support candidates of color.

We can estimate varying levels of unity and white bloc voting, and indeed this is often done for litigation over minority vote dilution claims. For our purposes here, we want to illustrate how varying levels of white and minority unity will produce thresholds of political control—that is, the opportunity for minorities to elect first-choice candidates—that vary across the estimated relationships between demography and turnout which, as we have demonstrated, should be estimated based on actual turnout, and which vary meaningfully across space and time.

Figures 5 and 6 about here

Figures 5 and 6 illustrated the relationship between minority population share and the share of votes received by the first-choice candidate or candidate of color, based on the estimations reported in Tables 1 and 2 and under varying assumptions regarding white and Latino unity. For ease of interpretation, we also report in Table 4 the level of Latino voter registration share where the resulting line crosses the 50% threshold.

Table 4 about here

Table 4 illustrates how the levels of Latino and white unity have a serious impact on the levels of minority population necessary to exercise effective political control. Under the most restrictive assumptions about minority chances, with only 75% Latino unity and a 90% racially polarized white bloc (meaning 10% of these voters would vote for a candidate of color), Latinos would need to comprise almost 60% of the registered voters in Southern California, and about 63.5% in New York, to have a chance of electing first-choice candidates. Again, differences between Southern California and New York City reflect the difference in the actual relationship between

demography and turnout. If, however, we look at the least restrictive assumptions about minority chances, with an 85% Latino unity and only 70% white bloc, Latinos would need only about 35.5% in Southern California and 38.5% in New York. It is worth noting that while the regional differences remain, they narrow somewhat. This narrowing is a reflection of the functional form estimated in the original equations presented in Tables 1 and 2.

Again, it is neither surprising nor new to suggest that the distribution of preferences among minorities and non-minorities will matter for minority chances of electing first-choice candidates. What's important here, however, is the recognition that, in terms of minority share of registered voters, how much is enough is endogenous to the relationship between demography and turnout, which is complex and varies across geographic locales.

And just as we estimated this relationship, we could similarly estimate the levels of bloc voting.[v] For illustrative purposes, we have assumed varying levels, but we could similarly plug in estimates drawn from ecological regression and arrive at region specific estimates of effective political control.

It is worth reemphasizing an important caveat regarding the analyses and simulations presented here. Our data consist of the behavior of registered voters, which is a self-selected sub-group of the larger population. Since at least some of the effects we discussed at the start of this effort will find effect in the rates of registration, these results generally *underestimate* the effect of population distributions on the propensity to vote, and the subsequent political effects derived from this likelihood.

Conclusion

If we begin to draw down minority population shares in hopes of minimizing the tradeoff between descriptive and substantive representation, we will naturally find ourselves having to

make specific estimates of the necessary and appropriate levels of minority population for achieving some form of influence or electoral control. One of the difficulties with that task is our tendency as social scientists and statisticians to make homogenizing assumptions about context. This homogenization is both more likely and more risky as a consequence of Georgia v. Ashcroft where the Court specifically abandoned single-district analysis and suggested that tradeoffs across different geographic regions of a state or other jurisdiction might be appropriate and not constitute retrogression.

We have demonstrated that effective political influence or control for minority populations is specifically the product of four factors, only one of which (population) is not endogenous to location. By demonstrating the endogeneity of turnout to population distributions, as well as important regional variation, we have shown that estimating the necessary population share to afford minority voters a chance at electing first-choice candidates is both necessary and doable. Blanket assumptions regarding turnout and preference distributions is, we think, very likely to result in retrogressive districting plans and significant setbacks in our efforts to assure equitable representation and access to the policy-making institutions of our society for racial and ethnic minority citizens.

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Table 1a
Results: California Assembly 1996

Probit regression

Number of obs	=	3391123
LR chi2(18)	=	434666.48
Prob > chi2	=	0.0000
Pseudo R2	=	0.0997

Log likelihood = -1962077.2

voted96	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
Latino	-.058425	.0067717	-8.63	0.000	-.0716973	-.0451526
Latino Pct	.004797	.0002977	16.12	0.000	.0042136	.0053804
L*Latino Pct	.0041079	.0004675	8.79	0.000	.0031916	.0050243
Pct Square	-.0000453	4.55e-06	-9.95	0.000	-.0000543	-.0000364
L*Pct Square	-.0000142	6.55e-06	-2.17	0.030	-.000027	-1.35e-06
gop	.1078595	.001688	63.90	0.000	.1045512	.1111679
age	.0496621	.0002331	213.05	0.000	.0492052	.0501189
age2	-.0003866	2.33e-06	-166.27	0.000	-.0003911	-.000382
female	.0406363	.001471	27.62	0.000	.0377531	.0435195
Pct College	.536823	.0116419	46.11	0.000	.5140053	.5596407
Med Income	1.30e-06	8.68e-08	15.00	0.000	1.13e-06	1.47e-06
Pct For Born	-.3324644	.0078704	-42.24	0.000	-.34789	-.3170387
Asian	-.187435	.0036324	-51.60	0.000	-.1945544	-.1803156
Pct Af-Amer	-.1044403	.0043422	-24.05	0.000	-.1129508	-.0959298
cnty1	-.0784909	.0030392	-25.83	0.000	-.0844477	-.0725342
cnty2	-.4304335	.0031896	-134.95	0.000	-.436685	-.424182
cnty3	-1.497619	.0038911	-384.89	0.000	-1.505246	-1.489993
cnty4	-.4955469	.0039793	-124.53	0.000	-.5033462	-.4877476
Constant	-.8602186	.0082607	-104.13	0.000	-.8764093	-.8440279

Measures of Fit for probit of voted96

Log-Lik Intercept Only:	-2.179e+06	Log-Lik Full Model:	-1.962e+06
D(3391104):	3924154.357	LR(18):	434666.483
		Prob > LR:	0.000
McFadden's R2:	0.100	McFadden's Adj R2:	0.100
ML (Cox-Snell) R2:	0.120	Cragg-Uhler(Nagelkerke) R2:	0.166
McKelvey & Zavoina's R2:	0.190	Efron's R2:	0.128
Variance of y*:	1.234	Variance of error:	1.000
Count R2:	0.708	Adj Count R2:	0.147
AIC:	1.157	AIC*n:	3924192.357
BIC:	-4.707e+07	BIC':	-434395.823
BIC used by Stata:	3924440.054	AIC used by Stata:	3924192.357

Table 1b
Results: California Assembly 1998

```
Probit regression                                 Number of obs   =    4317827
                                                  LR chi2(18)     =  398175.82
                                                  Prob > chi2     =     0.0000
Log likelihood =   -2762543                       Pseudo R2       =     0.0672

------------------------------------------------------------------------------
     voted98 |      Coef.   Std. Err.      z    P>|z|     [95% Conf. Interval]
-------------+----------------------------------------------------------------
      Latino |  -.0860264   .0056661   -15.18   0.000    -.0971317   -.0749211
  Latino Pct |   .0007524    .000255     2.95   0.003     .0002526    .0012522
L*Latino Pct |   .0051904   .0003919    13.24   0.000     .0044223    .0059585
  Pct Square |  -.0000257   3.92e-06    -6.56   0.000    -.0000334   -.0000181
L*Pct Square |  -8.17e-06   5.51e-06    -1.48   0.139     -.000019    2.64e-06
         gop |   .0867498   .0014547    59.64   0.000     .0838988    .0896009
         age |   .0730069    .000195   374.45   0.000     .0726247     .073389
        age2 |  -.0005436   1.91e-06  -284.05   0.000    -.0005474   -.0005399
      female |   .0198857   .0012514    15.89   0.000      .017433    .0223385
 Pct College |   .2605399   .0097835    26.63   0.000     .2413646    .2797153
  Med Income |   1.35e-06   7.32e-08    18.46   0.000     1.21e-06    1.49e-06
Pct For Born |  -.2394092   .0066855   -35.81   0.000    -.2525126   -.2263058
       Asian |   -.161899    .003128   -51.76   0.000    -.1680298   -.1557682
 Pct Af-Amer |  -.1695744   .0037884   -44.76   0.000    -.1769995   -.1621493
       cnty1 |  -.0325363   .0025508   -12.76   0.000    -.0375358   -.0275368
       cnty2 |  -.2815269   .0027031  -104.15   0.000    -.2868249   -.2762288
       cnty3 |  -.0369079   .0031435   -11.74   0.000     -.043069   -.0307468
       cnty4 |   .1317225   .0033883    38.88   0.000     .1250816    .1383634
    Constant |   -1.89891   .0070266  -270.25   0.000    -1.912681   -1.885138
------------------------------------------------------------------------------


Measures of Fit for probit of voted98

Log-Lik Intercept Only:     -2.962e+06   Log-Lik Full Model:          -2.763e+06
D(4317808):                5525085.996   LR(18):                      398175.821
                                         Prob > LR:                        0.000
McFadden's R2:                   0.067   McFadden's Adj R2:                0.067
ML (Cox-Snell) R2:               0.088   Cragg-Uhler(Nagelkerke) R2:       0.118
McKelvey & Zavoina's R2:         0.135   Efron's R2:                       0.090
Variance of y*:                  1.156   Variance of error:                1.000
Count R2:                        0.640   Adj Count R2:                     0.182
AIC:                             1.280   AIC*n:                     5525123.996
BIC:                      -6.044e+07     BIC':                      -397900.812
BIC used by Stata:         5525376.283    AIC used by Stata:          5525123.996
```

Table 1c
Results: California Assembly 2000

Probit regression

Number of obs	=	6660566
LR chi2(18)	=	509677.01
Prob > chi2	=	0.0000
Pseudo R2	=	0.0600

Log likelihood = -3994543.2

voted00	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
Latino	-.0931952	.0044027	-21.17	0.000	-.1018243	-.0845661
Latino Pct	-.0004946	.0002122	-2.33	0.020	-.0009105	-.0000786
L*Latino Pct	.0009867	.0003113	3.17	0.002	.0003765	.0015969
Pct Square	-.0000232	3.27e-06	-7.08	0.000	-.0000296	-.0000167
L*Pct Square	.000059	4.45e-06	13.24	0.000	.0000502	.0000677
gop	.1460139	.0012104	120.63	0.000	.1436415	.1483864
age	.0640163	.0001515	422.43	0.000	.0637193	.0643133
age2	-.0005002	1.50e-06	-333.93	0.000	-.0005031	-.0004973
female	.0707015	.0010346	68.34	0.000	.0686738	.0727292
Pct College	.1382189	.0078424	17.62	0.000	.122848	.1535899
Med Income	3.66e-06	6.19e-08	59.16	0.000	3.54e-06	3.78e-06
Pct For Born	-.2983499	.0055306	-53.95	0.000	-.3091897	-.2875102
Asian	-.1811729	.0024074	-75.26	0.000	-.1858913	-.1764545
Pct Af-Amer	-.3422104	.0032248	-106.12	0.000	-.3485309	-.33589
cnty1	-.0051977	.0022728	-2.29	0.022	-.0096523	-.0007431
cnty2	.0944315	.0023257	40.60	0.000	.0898733	.0989897
cnty3	-.0350988	.0027218	-12.90	0.000	-.0404335	-.0297642
cnty4	.1002354	.0030065	33.34	0.000	.0943427	.1061281
Constant	-1.41971	.0056941	-249.33	0.000	-1.430871	-1.40855

Measures of Fit for probit of voted00

Log-Lik Intercept Only:	-4.249e+06	Log-Lik Full Model:	-3.995e+06
D(6660547):	7989086.394	LR(18):	509677.014
		Prob > LR:	0.000
McFadden's R2:	0.060	McFadden's Adj R2:	0.060
ML (Cox-Snell) R2:	0.074	Cragg-Uhler(Nagelkerke) R2:	0.102
McKelvey & Zavoina's R2:	0.118	Efron's R2:	0.075
Variance of y*:	1.133	Variance of error:	1.000
Count R2:	0.679	Adj Count R2:	0.043
AIC:	1.199	AIC*n:	7989124.394
BIC:	-9.666e+07	BIC':	-509394.203
BIC used by Stata:	7989384.917	AIC used by Stata:	7989124.394

Table 2a
Results: New York 1996

Probit regression

Number of obs	=	1951838
LR chi2(18)	=	127203.56
Prob > chi2	=	0.0000
Pseudo R2	=	0.0493

Log likelihood = -1226771.2

vote96	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
Latino	-.2170409	.0077111	-28.15	0.000	-.2321544	-.2019274
Latino Pct	-.0107642	.0003154	-34.12	0.000	-.0113825	-.010146
L*Latino Pct	.0030058	.0006181	4.86	0.000	.0017943	.0042173
Pct Square	.0000976	5.69e-06	17.16	0.000	.0000864	.0001087
L*Pct Square	-.000022	9.97e-06	-2.21	0.027	-.0000416	-2.46e-06
dem	.339964	.0025853	131.50	0.000	.334897	.3450311
gop	.2213538	.0034348	64.45	0.000	.2146217	.2280858
age	.0145361	.0000596	243.95	0.000	.0144193	.0146529
age2	-7.19e-06	2.95e-08	-243.73	0.000	-7.24e-06	-7.13e-06
female	.1103789	.0018919	58.34	0.000	.1066708	.114087
Income<25000	-.187591	.0104174	-18.01	0.000	-.2080088	-.1671732
Income>60000	.0339439	.011913	2.85	0.004	.0105948	.057293
Pct College	.0768909	.0089192	8.62	0.000	.0594095	.0943722
Pct Af-Amer	-.1221884	.0035879	-34.06	0.000	-.1292205	-.1151564
Bronx	.090659	.003779	23.99	0.000	.0832522	.0980658
Kings	-.1280842	.0031831	-40.24	0.000	-.134323	-.1218454
Queens	.0297707	.0034961	8.52	0.000	.0229185	.0366229
Staten Isl	-.0840889	.004513	-18.63	0.000	-.0929342	-.0752436
Constant	-.3792903	.0093813	-40.43	0.000	-.3976773	-.3609033

Measures of Fit for probit of vote96

Log-Lik Intercept Only:	-1.290e+06	Log-Lik Full Model:	-1.227e+06
D(1951819):	2453542.479	LR(18):	127203.564
		Prob > LR:	0.000
McFadden's R2:	0.049	McFadden's Adj R2:	0.049
ML (Cox-Snell) R2:	0.063	Cragg-Uhler(Nagelkerke) R2:	0.086
McKelvey & Zavoina's R2:	0.101	Efron's R2:	0.066
Variance of y*:	1.113	Variance of error:	1.000
Count R2:	0.653	Adj Count R2:	0.072
AIC:	1.257	AIC*n:	2453580.479
BIC:	-2.582e+07	BIC':	-126942.847
BIC used by Stata:	2453817.680	AIC used by Stata:	2453580.479

Table 2b
Results: New York 1998

Probit regression

Number of obs	=	2214173
LR chi2(18)	=	213667.32
Prob > chi2	=	0.0000
Pseudo R2	=	0.0697

Log likelihood = -1426359.5

vote98	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
Latino	-.2942091	.0074335	-39.58	0.000	-.3087785	-.2796398
Latino Pct	-.008473	.0002903	-29.18	0.000	-.0090421	-.007904
L*Latino Pct	.0015738	.0005859	2.69	0.007	.0004255	.0027221
Pct Square	.0000396	5.20e-06	7.61	0.000	.0000294	.0000498
L*Pct Square	.0000237	9.36e-06	2.54	0.011	5.39e-06	.0000421
dem	.41313	.0024479	168.77	0.000	.4083321	.4179279
gop	.2820061	.0032365	87.13	0.000	.2756626	.2883495
age	.0187754	.0000544	345.02	0.000	.0186687	.018882
age2	-9.21e-06	2.69e-08	-342.29	0.000	-9.26e-06	-9.16e-06
female	.009531	.0017613	5.41	0.000	.0060789	.012983
Income<25000	-.1198623	.0097117	-12.34	0.000	-.1388968	-.1008278
Income>60000	.04591	.0109904	4.18	0.000	.0243692	.0674509
Pct College	.0956314	.0082786	11.55	0.000	.0794056	.1118572
Pct Af-Amer	-.11796	.0033427	-35.29	0.000	-.1245116	-.1114083
Bronx	.0101542	.003511	2.89	0.004	.0032727	.0170357
Kings	-.1220616	.0029707	-41.09	0.000	-.127884	-.1162391
Queens	-.0695634	.0032308	-21.53	0.000	-.0758957	-.063231
Staten Isl	-.1637624	.0041987	-39.00	0.000	-.1719917	-.155533
Constant	-.9634676	.0087644	-109.93	0.000	-.9806456	-.9462896

Measures of Fit for probit of vote98

Log-Lik Intercept Only:	-1.533e+06	Log-Lik Full Model:	-1.426e+06
D(2214154):	2852718.948	LR(18):	213667.322
		Prob > LR:	0.000
McFadden's R2:	0.070	McFadden's Adj R2:	0.070
ML (Cox-Snell) R2:	0.092	Cragg-Uhler(Nagelkerke) R2:	0.123
McKelvey & Zavoina's R2:	0.142	Efron's R2:	0.094
Variance of y*:	1.165	Variance of error:	1.000
Count R2:	0.637	Adj Count R2:	0.247
AIC:	1.288	AIC*n:	2852756.948
BIC:	-2.950e+07	BIC':	-213404.335
BIC used by Stata:	2852996.546	AIC used by Stata:	2852756.948

Table 2c
Results: New York 2000

```
Probit regression                                 Number of obs   =    2603249
                                                  LR chi2(18)     =  119237.66
                                                  Prob > chi2     =     0.0000
Log likelihood = -1660463.4                       Pseudo R2       =     0.0347
```

vote00	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
Latino	-.2718613	.0068005	-39.98	0.000	-.2851901	-.2585326
Latino Pct	-.0141879	.0002736	-51.86	0.000	-.0147241	-.0136516
L*Latino Pct	.0041909	.0005425	7.73	0.000	.0031277	.0052542
Pct Square	.0001363	4.90e-06	27.84	0.000	.0001267	.0001459
L*Pct Square	-.0000273	8.75e-06	-3.12	0.002	-.0000445	-.0000102
dem	.3375763	.0021295	158.53	0.000	.3334026	.34175
gop	.2261615	.0029331	77.11	0.000	.2204128	.2319102
age	.0085339	.0000491	173.96	0.000	.0084377	.00863
age2	-4.26e-06	2.43e-08	-175.41	0.000	-4.31e-06	-4.22e-06
female	.1136837	.001626	69.91	0.000	.1104967	.1168707
Income<25000	-.1533225	.0089406	-17.15	0.000	-.1708457	-.1357993
Income>60000	.0078061	.0102948	0.76	0.448	-.0123713	.0279836
Pct College	.1492586	.0077362	19.29	0.000	.134096	.1644213
Pct Af-Amer	-.1103778	.0030871	-35.75	0.000	-.1164285	-.1043272
Bronx	.0619324	.0032406	19.11	0.000	.0555808	.0682839
Kings	-.1453303	.0027121	-53.59	0.000	-.1506459	-.1400147
Queens	-.0299613	.002975	-10.07	0.000	-.0357923	-.0241304
Staten Isl	-.143815	.0039452	-36.45	0.000	-.1515474	-.1360826
Constant	-.0658261	.0080129	-8.21	0.000	-.0815312	-.050121

Measures of Fit for probit of vote00

Log-Lik Intercept Only:	-1.720e+06	Log-Lik Full Model:	-1.660e+06
D(2603230):	3320926.707	LR(18):	119237.661
		Prob > LR:	0.000
McFadden's R2:	0.035	McFadden's Adj R2:	0.035
ML (Cox-Snell) R2:	0.045	Cragg-Uhler(Nagelkerke) R2:	0.061
McKelvey & Zavoina's R2:	0.072	Efron's R2:	0.047
Variance of y*:	1.077	Variance of error:	1.000
Count R2:	0.644	Adj Count R2:	0.047
AIC:	1.276	AIC*n:	3320964.707
BIC:	-3.513e+07	BIC':	-118971.761
BIC used by Stata:	3321207.380	AIC used by Stata:	3320964.707

Table 2d
Results: New York 2002

```
Probit regression                                 Number of obs   =    3429653
                                                  LR chi2(14)     =  225721.52
                                                  Prob > chi2     =     0.0000
Log likelihood = -2162538.1                       Pseudo R2       =     0.0496
```

vote02	Coef.	Std. Err.	z	P>|z|	[95% Conf.	Interval]
Latino	-.2404042	.006268	-38.35	0.000	-.2526893	-.2281191
Latino Pct	-.005191	.0002193	-23.67	0.000	-.0056208	-.0047611
L*Latino Pct	-.0025352	.0004958	-5.11	0.000	-.003507	-.0015634
Pct Square	-6.95e-06	3.88e-06	-1.79	0.073	-.0000146	6.50e-07
L*Pct Square	.0000806	7.73e-06	10.43	0.000	.0000654	.0000957
dem	.3729722	.0019239	193.86	0.000	.3692015	.3767429
gop	.3191841	.0026355	121.11	0.000	.3140186	.3243496
age	.0148136	.0000423	350.03	0.000	.0147306	.0148965
age2	-7.26e-06	2.10e-08	-345.90	0.000	-7.30e-06	-7.22e-06
female	.0088921	.0014266	6.23	0.000	.006096	.0116881
Bronx	.0203169	.0025488	7.97	0.000	.0153213	.0253126
Kings	-.1151757	.0019739	-58.35	0.000	-.1190444	-.111307
Queens	-.0781879	.002036	-38.40	0.000	-.0821783	-.0741975
Staten Isl	-.0898164	.0032626	-27.53	0.000	-.0962109	-.0834219
Constant	-1.119754	.0035415	-316.18	0.000	-1.126696	-1.112813

Measures of Fit for probit of vote02

Log-Lik Intercept Only:	-2.275e+06	Log-Lik Full Model:	-2.163e+06
D(3429638):	4325076.263	LR(14):	225721.516
		Prob > LR:	0.000
McFadden's R2:	0.050	McFadden's Adj R2:	0.050
ML (Cox-Snell) R2:	0.064	Cragg-Uhler(Nagelkerke) R2:	0.087
McKelvey & Zavoina's R2:	0.103	Efron's R2:	0.063
Variance of y*:	1.115	Variance of error:	1.000
Count R2:	0.637	Adj Count R2:	0.040
AIC:	1.261	AIC*n:	4325106.263
BIC:	-4.728e+07	BIC':	-225510.844
BIC used by Stata:	4325301.982	AIC used by Stata:	4325106.263

Table 3
Predicted Turnout of Latinos as a Share of All Voters Across Varying Percentages of Latino Registrants in a District, 1996

	Latino Share of Voters on Who Turnout		Difference
Latino Share of Registered Voters	Southern California	New York City	
35	35.80	32.83	2.97
40	41.01	37.79	3.22
45	46.21	42.79	3.42
50	51.38	47.83	3.55
55	56.51	52.90	3.61
60	61.60	58.00	3.60
65	66.63	63.14	3.49

Figures in cells represent the predicted share of the total turned out electorate, obtained by multiplying the predicted turnout rate from the estimations above with the associated level of Latinos in the registered voter pool.

Table 4
Latino Share of Registered Voters Necessary to Elect First-Choice Candidates Under Varying Assumptions Regarding Levels of Latino and Majority Voter Unity

Assumed Preferences	Southern California	New York City	Difference
75% Latino Unity 90% White Bloc	59.94	63.44	3.50
85% Latino Unity 90% White Bloc	51.90	55.42	3.52
75% Latino Unity 70% White Bloc	43.30	46.64	3.34
85% Latino Unity 70% White Bloc	35.54	38.56	3.02

Figures in cells represent the level of Latino share of registered voters necessary such that the sum of the predicted share of turned out Latino and non-Latino voters, each multiplied by the proportion assumed to prefer Latino candidates for public office, exceeds 50%.

Figure 1:
Predicted Turnout Percentages for Latinos and Non-Latinos in Southern California Assembly Elections, 1996-2000.

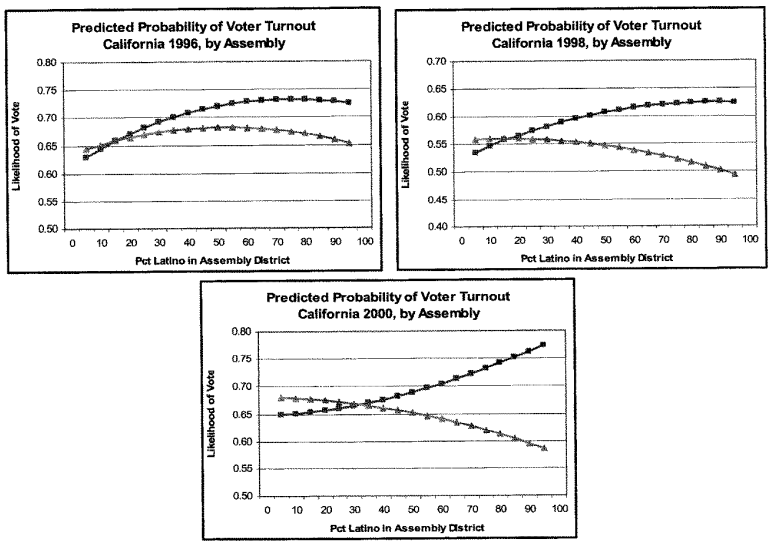


Figure 2:
Predicted Turnout Percentages for Latinos and Non-Latinos in New York City Assembly Elections, 1996-2002.

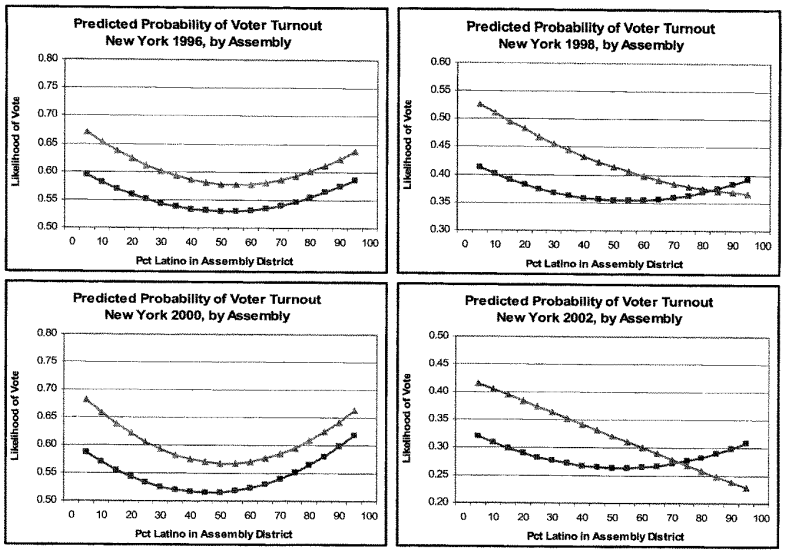
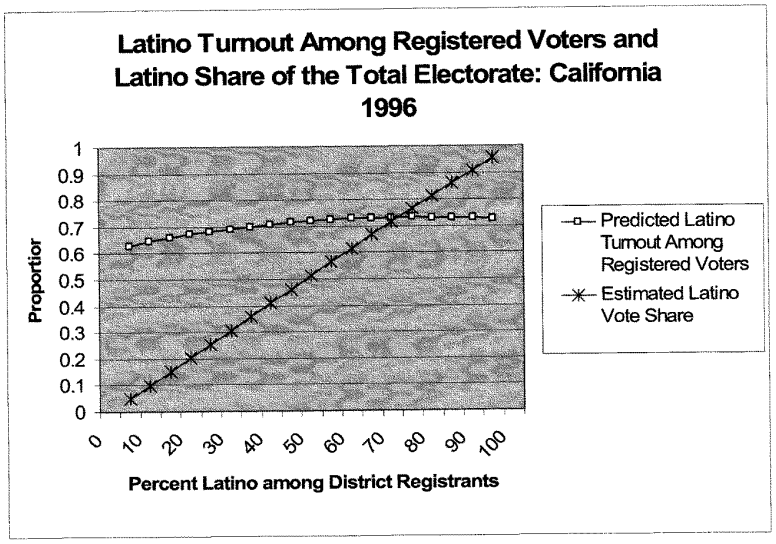


Figure 3


Latino Turnout Among Registered Voters and Latino Share of the Total Electorate: California 1996
Proportior
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
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0
10
20
30
40
50
60
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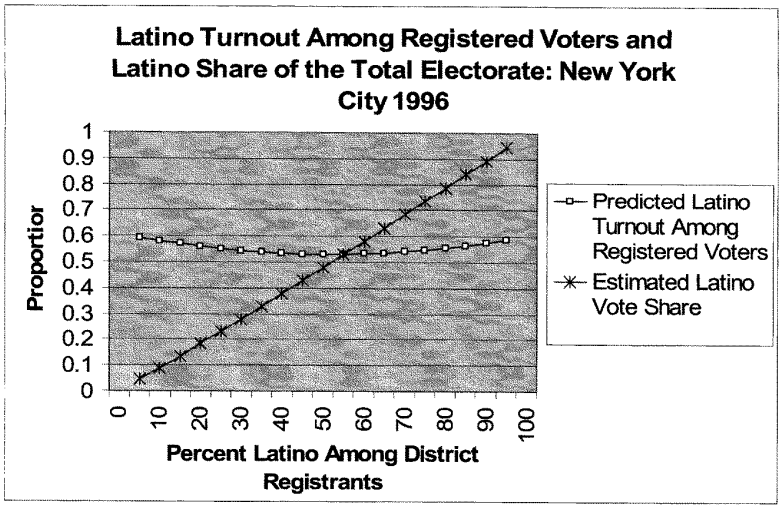
80
90
100
Percent Latino among District Registrants
Predicted Latino Turnout Among Registered Voters
Estimated Latino Vote Share

Figure 4


Latino Turnout Among Registered Voters and Latino Share of the Total Electorate: New York City 1996
Proportior
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
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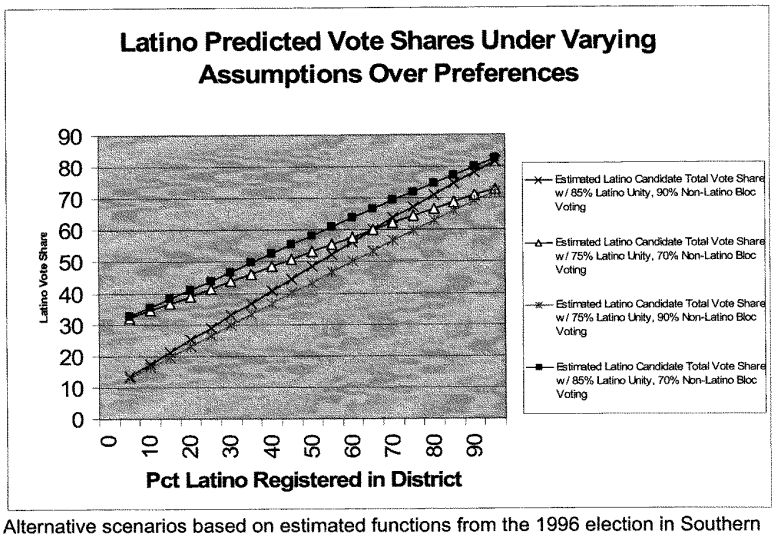
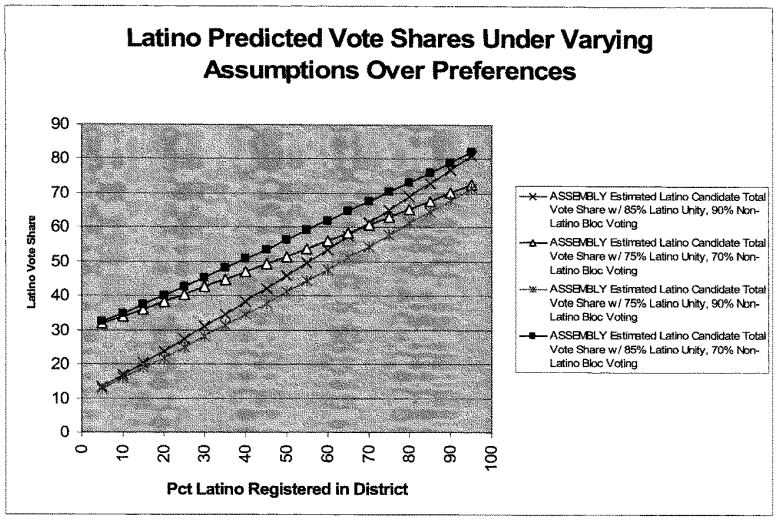
Percent Latino Among District Registrants
Predicted Latino Turnout Among Registered Voters
Estimated Latino Vote Share

Figure 5



Alternative scenarios based on estimated functions from the 1996 election in Southern California Assembly Districts.

Figure 6



Alternative scenarios based on estimated functions from the 1996 election in New York Assembly Districts.

NOTES

[i] Largely as a function of minority geographic population concentration and segregation, there were majority-minority districts in existence prior to the 1991 redistricting process. Majority-minority districts simply refer to electoral districts drawn with a sufficient minority population so that the minority population can elect a candidate of choice. Candidate of like race or ethnicity is typically used as a proxy for candidate of choice. What constitutes "sufficient" population size is a source of some debate, but typically ranges between 55% and 65%. See a recent exchange between Cameron, Epstein and O'Halloran 1996; 1999) and Lublin (1999) for a thorough review of this discussion.

[ii] With the exception of registered voters in assembly districts 67, 70, and 73 in the 1996 and 1998 election and district 73 in the 2000 election. Due to errors by Riverside County in collecting and recording vote history data, these data are not available. Fortunately, these areas are not within Latino-majority jurisdictions.

[iii] The Spanish Surname list is based on the 1990 Census and is constructed by tabulating the responses to the Hispanic origin question. Each surname is categorized by the percent of individuals that identified themselves as "Hispanic." Though the use of this instrument results in a modest underestimate, given the presence of Latinos with non-Hispanic surnames, the Census Bureau estimates this captures 93.6% of all Hispanics, and less than 5% of those identified are false. For a full explanation on the methodology of the list see Word and Perkins (1996).

[iv] Of course, if women register at lower rates, then total participation may still be higher for males, a question beyond the scope of this paper or these data.

[v] It is worth noting that the distribution of preferences could, itself, be endogenous to the demography of this district, something beyond the scope of this paper but part of our larger undertaking.

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Without Our Consent: Abuses of Bilingual Voting Statutes in the New Millennium

by

Jim Boulet, Jr., and Peter Weyrich[1]

[1] Jim Boulet, Jr., is Executive Director of English First Foundation. Peter Weyrich is an adjunct research fellow of the Foundation.

Executive Summary

Any election in the United States is a triumph of poorly-paid poll workers over the chaos of the voting process. People show up expecting to vote who have not registered. People arrive at the wrong polling place and will not listen to reason. Some people arrive eager and ready to vote while others are still making up their mind while they occupy a voting booth.

Los Angeles County alone might organize and staff 5,000 precincts, a number roughly equal to the number of Starbucks' coffee shops in the United States and double the number of Wal-Marts in the world. This means mistakes would happen, even if everyone voted in English.

Ever since the 2000 election, every aspect of the voting process, from registration to casting a ballot to tallying the votes, has undergone microscopic scrutiny.

But bilingual ballots, not only guarantee higher election costs but produce other problems as well.

Aggressive advocates of bilingual voting procedures, a group which includes the Department of Justice under President Bush, ignore the cost issue. They also avoid discussions of translation error, which has been a known problem virtually as long as bilingual ballots have existed.

The Department of Justice appears to be reading the principles of Clinton Executive Order 13166 into the Voting Rights Act. E.O. 13166 requires any recipient of federal funds, which would include any state or local election agency, to function in any language anyone chooses to speak at any time. If this trend is allowed to continue, the Voting Rights Act's limits of five percent of the population or 10,000 speakers of another language will drop to one speaker of any language on planet Earth.

When the Justice Department comes knocking, state and local politicians will agree to anything to make the problem go away, even if the problem barely existed. A Korean translator sent to help a speaker of Chinese is an innocent mistake but it can easily become the grounds for costly, time-consuming litigation. Why not sign a consent decree instead and move on?

Thus to understand the status of the bilingual provisions of the Voting Rights Act, Americans must understand how incredibly proscriptive and costly are the consent decrees the Act is generating during the Bush Administration. These consent decrees go much farther than Congress contemplated when it renewed bilingual voting requirements in 1992.

At the conclusion of this issue brief are two consent decrees reproduced in full so that the reader might evaluate the charges made by this issue brief in context.

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Your comments, suggestions, complaints and or corrections are invited. Send them via e-mail to jboulet@englishfirst.org or drop me a line at the address on the cover of this issue brief.

Jim Boulet, Jr.
Executive Director
December 31, 2005

Fully 296 jurisdictions must currently comply with the bilingual voting positions of the Voting Rights Act. What does "compliance" mean? English First Foundation set out to review some recent Voting Rights Act consent decrees entered into with the Department of Justice. Our findings should be of concern to every American.

While most people take notice of bilingual ballots only on Election Day, the Bush Department of Justice has been aggressively enforcing the broadest possible interpretation of the bilingual voting provisions of the Voting Rights Act:

> 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 (emphasis added).[2]

Portrait of an Election I: The 2005 California Primary

For a political campaign volunteer, Election Day is the climax of months of work followed by a victory party. For the election judge or poll watcher, every Election Day is their Super Bowl. Consider the numbers involved in Los Angeles, California:

> To run a countywide election, Los Angeles has to find 5,000 poll sites -- or approximately 2,000 poll sites if they consolidate precincts -- and to hire about

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[2] *The Attorney General's Language Minority Guidelines*, http://www.usdoj.gov/crt/voting/28cfr/55/28cfr55.htm Section 55:15. These *Guidelines* were referenced in an August 31, 2004 letter from Assistant Attorney General for Civil Rights R. Alex Acosta to Penny Pew, Elections Director, St. John's, Arizona, available at http://www.usdoj.gov/crt/voting/sec_203/nontx203.htm. These Guidelines also specifically state (Section 55:24):

> 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.

> 25,000 poll workers. To put these numbers in perspective, 5,000 sites is roughly equal to the number of Starbucks in the United States and 2,000 sites is larger than the number of Wal-Marts worldwide. The 25,000 poll workers in Los Angeles on Election Day outnumber the LAPD three to one.[3]

Numbers of this sort would present a quality control challenge of epic proportions. So how did L.A. do in March, 2005?

> City Clerk Frank Martinez said his office received more than 3,000 calls on Election Day, 913 of which resulted in a "trouble ticket," requiring some sort of response from city representatives in 559 precincts. According to Martinez, the city enlisted 7,000 volunteers, who were paid a stipend of $55 per day ($75 for the head poll worker at each location), along with 250 inspectors and 200 troubleshooters in the field, who received $300 per day. Six hundred city employees also received regular pay plus overtime to staff the polls, as part of the City Employee Poll Worker Program.
>
> "Our volunteers do a tremendous job, but how do you make sure 8,000 people show up on time?" said Martinez, who calls guaranteeing equal access to the city's 1,892 precincts a major undertaking. The majority of the calls received were about poll location and changes in the precincts, said Martinez — some were as minor as running out of "I Voted" stickers.
>
> Yet some 328 calls related to poll workers not showing up on time; 200 involved a lack of supplies or equipment failure; 109 claimed problems in setting up the voting booths; 82 cited access issues, such as lack of parking or improper lighting; 82 complained of inadequacies, such as names not appearing on the voting roster and failure to instruct on provisional-voting procedures; and 45 were miscellaneous problems, such as poll workers having no ride to the ballot-collection depot.
>
> Justice Department officials would not confirm the number of monitors, nor would a spokesman comment on the investigation's scope or duration. Community representatives who met with Ruisanchez said he told them that he observed several of the 27 complaints of improper poll-worker behavior, such as rudeness to voters, and several of **the 18 polls where there was inadequate language assistance for non-English-speaking voters** (emphasis added).[4]

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[3] "Ensuring the Continuity of the United States Government: The Congress," United States Senate, Committee on the Judiciary, 108th Congress, 1st Ses. (testimony of Thad Hall, The Century Foundation).

[4] Jeffrey Anderson, "A Flawed Democracy: Federal election monitors note a few problems in L.A.'s election last week," LA Weekly, March 18-24, 2005, available at http://www.laweekly.com/ink/05/17/news-anderson2.php.

Eighteen problems with bilingual voting in 1,892 precincts means that there were no bilingual voting problems in 1, 874 precincts. This Japanese-level of quality control merited federal commendation rather than federal censure.

This effort was far from inexpensive, given the cost figures for the proceeding election:

> The cost of providing written translations and bilingual poll workers can be significant, officials said. For the November 2004 general election in Los Angeles County, it amounted to $2.1 million out of the total cost of $16.3 million.[5]

Portrait of an Election II: The Department of Justice Aggressive Enforcement, 2003-2005

The Bush Justice Department actually boasts that "Since 2001, the Division has brought more lawsuits to enforce the minority-language provisions of the Act than were brought in the preceding 26 years combined." The lion's share of those actions were brought during the tenure of R. Alexander Acosta as Assistant Attorney General for Civil Rights.

Now just because a complaint is made does not mean any violation of election law has occurred. An investigation by the Justice Department of "11,000 complaints about the [2000] presidential election, the Justice Department found violations in the three counties -- mostly because of language barriers -- and this "may have resulted in at least 26 voters choosing to leave the polls."[6]

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[5] "Need for Bilingual Poll Workers Never Ends," Los Angeles Times, November 1, 2005.

[6] "U.S. backs off election lawsuits," *St. Petersburg Times*, May 29, 2002, http://www.sptimes.com/2002/05/29/news_pf/Worldandnation/US_backs_off_election.shtml. The details of the violations were given as follows:

> In one county, [Assistant Attorney General for Civil Rights Ralph] Boyd said, his investigators confirmed that a clerk denied poll watchers permission to help four voters who asked for bilingual assistance. The denial constitutes a violation of the Voting Rights Act.
>
> In another unidentified county, investigators found two cases of Haitian-American voters being denied language assistance, Boyd said. However, the investigation could not confirm 15 other allegations of voters being denied bilingual assistance.
>
> In the third county, political party poll watchers alleged that about 140 voters had difficulty casting ballots, "but it appears that in every instance the voter was referred to the Supervisor of Elections Office" for assistance, Boyd wrote. "The Civil Rights Division has no evidence that any of these individuals was unable to cast a ballot."

A review of Department of Justice press releases on its actions, accompanied whenever possible by reviewing the text of the actual consent decree or legal complaint, suggests that DOJ's enforcement efforts of various multilingual voting requirements was not only ratcheted up in sheer numbers, but came to involve nearly microscopic review of every aspect of voting procedures.

Quoting from the complaint[7] filed by the Justice Department against San Diego, California:

> 11. Because San Diego County is subject to the requirements of Section 203, "any registration or voting notice, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that Defendants provide in English must also be furnished in Spanish and Tagalog. 42 U.S.C. §1973aa-1a.
>
> 12. Defendants have not provided effective election-related materials, information, and/or assistance in Spanish or Tagalog to limited English proficient Hispanic and Filipino citizens as required by Section 203 of the Voting Rights Act, including, but not limited to, the following:
>
> a. failing to make available in Spanish and Tagalog an audible version of the ballot for the March 2, 2004 federal primary election such as was made available in English for voters unable to read the ballot;
>
> b. failing to provide an adequate pool of bilingual poll officials capable of providing Hispanic and Filipino citizens with effective language assistance at certain polling places where such assistance was necessary;
>
> c. failing to make available in Spanish and Tagalog certain election-related announcements, instructions, and notices at election sites;
>
> d. failing to translate into Spanish and Tagalog certain election-related information, including but not limited to information contained in legal notices publicizing elections and materials available to the general public on the Internet website of the Registrar of Voters.

Also in the third county, the Civil Rights Division's investigation "indicated that a lack of bilingual poll workers resulted in considerable confusion at the polls, and that some poll workers were hostile to Hispanic voters."

[7] Full text available at http://www.usdoj.gov/crt/voting/sec_203/documents/sandiego_comp.htm.

Note that not one of these complaints involved anything like fire hoses and police dogs used to deny some people the right to vote. Rather, a failure to offer a translation of a web site or provide a CD of a the ballot in Tagalog becomes transmuted into a federal case.

There are a great many more of these cases around than most people realize. Just ask the Justice Department:

> Each year, the Department of Justice deploys hundreds of observers and attorneys to monitor elections across the country. In 2002, the Department coordinated and sent 608 federal observers and 221 Department personnel to 40 counties in 17 states to monitor 60 elections and ensure access to the polls. In 2003, the Department coordinated and sent 380 federal observers and 136 Department personnel to monitor 42 elections in 26 political subdivisions in 14 states. So far in 2004, including the September 14 elections, the Department has coordinated and sent 467 federal observers and 259 Department personnel to monitor 72 elections in 66 counties in 20 states.[8]

What does this mean in practical terms? Consider this October, 2004 announcement by the Department of Justice:

> Today, the Justice Department announced it will again send approximately 840 federal observers and more than 250 Civil Rights Division personnel to 86 jurisdictions in 25 states to monitor the general election on Tuesday, November 2, 2004. This list is not exhaustive, and other jurisdictions may be designated by election day. ...
>
> Federal observers will monitor polling place activities in 27 jurisdictions:
>
> •Apache, Navajo and Yuma Counties, Arizona;
> •San Benito, San Diego, and Ventura Counties, California;
> •Cook County (Cicero), Illinois;
> •Lake County (East Chicago), Indiana;
> •Wayne County (Hamtramck), Michigan;
> •Jones, Kemper, Leake, Neshoba, Newton, and Winston Counties, Mississippi;
> •Passaic County, New Jersey;
> •Bernalillo, Cibola, Sandoval, and Socorro Counties, New Mexico;

[8] http://www.usdoj.gov/opa/pr/2004/September/04_crt_615.htm. This estimate was low, if a statement the following year from Department of Justice was accurate:

> In 2004, a record of 1,463 federal observers and 533 Department personnel were sent to monitor 163 elections in 105 jurisdictions in 29 states. This compares to 640 federal observers and 103 Department personnel deployed in 2000.

http://www.usdoj.gov/opa/pr/2005/May/05_crt_267.htm.

•Kings County (Brooklyn), New York County (Manhattan), and Suffolk County, New York;
•Berks County (Reading), Pennsylvania;
•Buffalo County, South Dakota;
•Dallas County, Texas; and,
•Yakima County, Washington.

The observers will watch and record activities during voting hours at select polling locations in the counties. Civil Rights Division personnel will coordinate the federal activities and maintain contact with local election officials. In addition, Justice Department personnel, all of whom are Civil Rights Division attorneys and staff, will monitor the election in an additional 58 jurisdictions:

•Kodiak Island, Alaska;
•Pulaski County, Arkansas;
•Cochise, Gila, Graham, Maricopa, Pima, and Santa Cruz Counties, Arizona;
•Imperial and Orange Counties, California;
•Broward, Duval, Gadsden, Hillsborough, Miami-Dade, Orange, Osceola, and Palm Beach Counties, Florida;
•Atkinson, Henry and Long Counties, Georgia;
•Polk County, Iowa;
•Jefferson County, Kentucky;
•Wayne County (Detroit) and Oakland County (Pontiac), Michigan;
•Hennepin County, Minnesota;
•City of St. Louis, Missouri;
•Alamance, Scotland and Wake Counties, North Carolina;
•Chaves, Rio Arriba and San Juan Counties, New Mexico;
•Clark and Washoe Counties, Nevada;
•Nassau, Queens, Richmond, and Westchester Counties, New York;
•Cuyahoga, Franklin and Hamilton Counties, Ohio;
•Philadelphia County, Pennsylvania;
•Bennett, Corson, Dewey, Jackson, Mellette, Shannon, Todd, Tripp and Ziebach Counties, South Dakota;
•Harris, Hidalgo, Tarrant and Waller Counties, Texas;
•Chesterfield County, Virginia; and,
•Franklin County, Washington.[9]

In addition to the federal government's aggressive enforcement efforts are the work of private organizations. The Asian American Legal Defense and Education Fund, which dispatched over 600 volunteer attorneys, students and community workers to over 175 poll sites

[9] http://www.usdoj.gov/opa/pr/2004/October/04_crt_725.htm.

in 8 states for the 2004 general election, reported that "Asian American voters throughout the country faced obstacles in exercising their right to vote."[10] Asian American professional ethnic activist groups generated over 90 single-spaced pages of complaints of this sort for only eight counties regarding the 2004 election.[11]

Their New York City complaints were remarkable for their nit-picking nature:

> One Chinese American voter who asked for language assistance was directed to a Korean interpreter, who could not help.
>
> At IS 131 in Manhattan's Chinatown, the City was required to place 10 Chinese-language staff at this busy polling place; only 4 Chinese interpreters were observed during the day. Despite several calls to the NYC Board of Elections about the need for more bilingual election workers, no additional staff were dispatched. At 1 PM, when one voting machine broke down, a line of 40 mostly Chinese American voters waited for assistance as the responsible poll worker walked out to take a lunch break. These Asian American voters were never offered emergency paper ballots while the machine was down.
>
> At PS 20 in Flushing, Queens, several Korean American voters needed interpreters to assist them, but all 4 Korean interpreters did not show up at this site.
>
> At PS 2 in Manhattan's Chinatown, only 2 Chinese interpreters were present at a site that required 6 Chinese interpreters under the NYC Board of Elections own targeting plan.

Why Are American Citizens Voting in Foreign Languages?

By 1906, Congress had decided to require oral English literacy as a condition of becoming a naturalized American citizen.[12] In 1950, Congress added the requirement that persons who wish to become citizens must "demonstrate an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language."[13]

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[10] "Asian American Civil Rights Group Reports Widespread Voter Problems on Election Day" (press release), Asian American Legal Defense and Education Fund, Nov. 2. 2004 (http://www.aamovement.net/news/2004/voterproblems.html).

[11] http://www.napalc.org/files/appendix.pdf.

[12] Leibowitz, *The Official Character of Language in the United States: Literacy Requirements for Immigration, Citizenship, and Entrance into American Life*, 15 AZTLAN 25, 47 (1984).

[13] *Id.*

Since only citizens may vote, legal immigrants who became naturalized citizens since 1950 can be expected to be at least somewhat literate in English. And since almost two full generations have passed since English literacy was required to achieve citizenship, it is no wonder that advocates of bilingual ballots must resort to opinion polls and a few horror stories. The need just doesn't exist.

Contrary to popular belief, bilingual ballots were not required by the Voting Rights Act until the 1975 amendments were added to it. That it took a decade for Congress to legislate in this area indicates that the problem of the Khmer-speaker confronted with a ballot written in English was not of the same intensity as that of an African-American attempting to register to vote at a rural Alabama courthouse in 1963.

Advocates of bilingual ballots had the same problem then that they do today: there is little evidence that bilingual ballots were needed by many people.

Granted, the Spanish-speaking citizens of Puerto Rico are United States citizens. But both English and Spanish are the official languages of Puerto Rico and both languages are taught in island schools. American Indians are also qualified voters who may or may not have language difficulties.

Why State and Local Governments Balk at Bilingual Voting: (A) The Problem of Cost

James Auffant, a lawyer and a member of a Hispanic voting-rights group that handled voter complaints after the 2000 election, complained to the *Orlando Sentinel*: "What do you do about a 90-year-old lady who's lived here her whole life and paid her taxes and she **prefers** to speak Spanish?" Auffant said. "The law says they need to be provided for. It's not a favor" (emphasis added).[14]

Bilingual ballot supporters used to claim people needed them. Now they are saying people just want them. In both cases, the taxpayers get stuck with the bill. Nailing down the actual cost of multilingual voting services is a task akin to attempting to nail Jell-O to a wall.

When former Congressman John Porter asked the General Accounting Office to determine "the actual cost that covered jurisdictions incurred to provide bilingual voting assistance in 1996," the GAO responded with a report, *Bilingual Voting Assistance: Assistance Provided and Costs*.[15]

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[14] http://www.englishfirst.org/bloggerarchive/2002_06_01_bloggerarchive.html#85205070

[15] General Accounting Office, *Bilingual Voting Assistance: Assistance Provided and Costs*, May, 1997, GAO/GGD-97-81.

At the time of this report, the Voting Rights Act's "bilingual voting assistance requirements applied to ethnic groups in 422 "covered jurisdictions" in 28 states.[16] GAO asked for data from "election officials in 28 states and 391 "covered jurisdictions;" only 26 states and 292 U.S. jurisdictions bothered to respond.[17]

Fully 208 of the 272 jurisdictions that reported to GAO that they furnished some bilingual voting assistance in 1996, "208 were unable to provide information on their costs."[18] Only 64 jurisdictions provided any cost information to GAO and only 34 jurisdictions (8.1% of a universe of 422) provided information on their total costs. "Several counties ... reported no additional costs, as they used bilingual workers to provide assistance. Conversely, Los Angeles County, CA ... reported additional costs exceeding $1.1 million."[19]

Only two states reported their total costs for 1996 bilingual voting assistance to GAO. Hawaii spent $23,328, while Florida claimed $7,900 as its total cost.[20]

What accounts for this pitiful bookkeeping? Most election expenses are local, not statewide. Furthermore, few elected officials really want to know the answers in line-item terms. When an Allentown elected official asked how much the Spanish ballot cost her city, she was told "nothing" since the Spanish ballot was printed at the same time as English ballots for all of Pennsylvania.[21]

Accordingly, much of the cost information for bilingual voting in the 21 century is either anecdotal, guesstimites or both. In San Diego County, "adding ballots in languages other than English might increase the cost of printing election materials from 15% to 40%. Adding bilingual poll workers adds to the expense. ... The Board of Supervisors of Ventura County recently adopted a plan which would have bilingual county employees work at the polls on election day instead of doing their regular duties. In addition to their standard salary, these individuals would also receive a $90.00 supplement.[22]

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[16] *Id.* at 1.

[17] *Id.* It is worth noting the GAO found that "five jurisdictions and two states reported furnishing bilingual voting assistance to groups that the act did not require them to assist" at 2.

[18] *Id.* at 3.

[19] *Id.*

[20] *Id.* at 4.

[21] Conversation between Jim Boulet, Jr. and Allentown, PA, Councilwoman Emma Tropiano.

[22] Domenico Maceri, "Bilingual Voting?," *HispanicVista.com*, Week of October 4-10, 2004, http://www.hispanicvista.com/HVC/Columnist/dmaceri/100404maceri.htm.

How much of a monetary incentive bilingual poll workers receive, and how many are needed, can also dramatically skew cost estimates. In San Diego, "Poll workers receive between $60 and $100 for their day of service, depending on the job assigned at the voting location. Bilingual poll workers receive an additional $5. [23]

The question then becomes: how many poll workers are required? In Florida:

> Election workers in Orange County say they have signed up 321 Spanish-speaking workers for their 250 precincts -- more than double the number recruited for the 2000 election and more than required by its recent settlement with the U.S. Justice Department.
>
> Osceola also has reached its Justice Department mandate for Spanish speakers. Miami-Dade has surpassed its requirement for providing Creole-speaking workers in precincts that are predominantly Haitian, officials said. ...
>
> Poll workers must be U.S. citizens, read and write English and be registered voters. They are paid varying amounts by the county, ranging from $87 per day for a poll worker in Miami-Dade to $150 per day for a poll clerk in Orange County. Poll clerks are the top election official in their precincts.[24]

Another cost estimate was made in a 1986 report by the General Accounting Office on this same topic. GAO found that of the 375 political subdivisions (in 21 states) covered by the bilingual ballot provisions of the Voting Rights Act in 1986,[25] 83 jurisdictions stated it cost

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[23] "Westgate to serve as election central Tuesday evening," *San Diego Daily Transcript*, July 21, 2005, available at http://www.sddt.com/microsite/mayor/mayor-072105-1.html.

[24] "Bilingual Aid Will Be Ready At Primaries," *Orlando Sentinel*, Sept. 3, 2002 http://www.puertorico-herald.org/issues/2002/vol6n36/OverdueHelp-en.shtml.

[25] The 375 figure may strike some readers as high. But there are two ways a jurisdiction may be federally required to provide bilingual election services. As of 1992, Section 203 of the Voting Rights Act of 1965 covered 197 counties. Statement of Supervisor Gloria Molina before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, Hearing on the Voting Rights Act Language Assistance Amendments of 1992 (February 26, 1992).

Section 4 of the Voting Rights Act also mandates bilingual assistance if certain conditions are met, a "formula [that] draws in the entire states of Alaska, Arizona, and Texas, and counties in California, Florida, Michigan, New York, North Carolina, and South Dakota." Statement of John Dunne, Assistant Attorney General before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, Hearing on the Voting Rights Act Language Assistance Amendments of 1992 (February 26, 1992) ("Dunne Statement").

roughly $388,000 to provide written bilingual assistance and 39 jurisdictions stated it cost them about $30,000 to provide oral assistance for the 1984 general election.[26]

Costs in 1986 were held down by two important factors. First, most of this assistance was done in Spanish. According to the GAO:

> Hispanics were the most commonly served minority group, with 96 percent of the respondents that offered written assistance doing so for Hispanics, and 89 percent of those offering oral assistance serving Hispanics.[27]

More important, much of the translation help was provided by volunteers:

> Most jurisdictions incur no costs to provide oral assistance because they do not hire additional workers. Instead, they seek to find poll workers who are able to converse in the covered minority language. Also, jurisdictions generally pay bilingual poll workers at the same rate as monolingual workers. In some cases, jurisdictions do not actually have bilingual workers stationed at the polling places. Rather, someone is available to come to the polling place, if called, to provide assistance. These standby workers may be volunteers, or they may be paid, or paid only if they are actually called upon to assist at the polling place.[28]

According to the jurisdiction breakdowns in Appendix 2 of the 1986 GAO report, volunteers or other no additional cost services have predominated in most parts of the country. In fact it was so common that it is used as an argument as to why the costs of multi-language voting is supposedly not high: "for small counties, oral voting assistance may be provided at almost no cost as most interpreters volunteer their services gratuitously."[29]

However, just because something has been free or relatively inexpensive to obtain in the past is no guarantee that it will remain inexpensive in the future, especially if it is made mandatory by a federal consent decree.

A fluent Hmong-English translator who knows that the county will likely be sued if it does not use his services is less likely to donate them than is the Spanish major at the local college. Spanish translators are relatively plentiful. Translators of other languages are less so.

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[26] United States General Accounting Office, *Bilingual Voting Assistance: Costs of and Use During the November, 1984, General Election*, September, 1986, at 1,2.

[27] *Id.* at 14.

[28] *Id.* at 20.

[29] Guerra, *Voting Rights and the Constitution: The Disenfranchisement of Non-English Speaking Citizens,* 97 YALE L.J. 1419, (1988) at 1435, note 92.

The rules of supply and government-created demand will doubtlessly have an impact on the taxpayers at election time.

Why State and Local Governments Balk at Bilingual Voting: (B) The Problem of Errors

Supporters of bilingual ballots suggest that without them, persons who do not understand English may well have "an incentive for such citizens to cast uninformed votes."[30] Yet they forget (or ignore) the fact that translation is far from an exact science. A bilingual ballot or interpreter may not convey the real meaning of a referendum issue or beliefs of a candidate. A vote cast on that basis is not only "uninformed;" it may well reflect precisely the opposite of a voter's real intentions.

Languages which use non-Roman alphabets and/or are highly dependent on tonal variation, like Chinese, are particularly susceptible to translation error.

> At six voting sites in Flushing, Queens, where there are large Chinese American populations, the party headings for all state races were wrong. The "Democratic" label was translated as "Republican," and "Republican" was rendered as "Democratic."
>
> "I just don't understand why they can't get the Chinese ballots right," says Chinatown voter Stephanie Woo. "It just shows how little they care." ...
>
> The Cantonese instructions given on the Board of Elections voter hotline were so poor that bilingual Kymie Hwang says she had to listen to them in English before she could understand the Cantonese. ...
>
> Having monitored Chinatown elections since 1992, Peter Lau of the Chinatown Voter Education Alliance says translation mistakes happen every year.[31]

While indifference may be an explanation for these errors in rendering English ballots into Chinese, the more likely explanation involves the problem of proofreading. Virtually any American citizen involved in the production of an English-language ballot has both the ability and the opportunity to see if mistakes were made.[32] When it comes to American election ballots

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[30] Leibowicz, *The Proposed English Language Amendment: Shield or Sword?,* 3 YALE L. & POL'Y REV. 519 (1985) at 548.

[31] "Chinatown Ballot Shows "Republican' as "Democrat,'" *Village Voice*, November 13, 2000.

[32] Not that this is any guarantee of accuracy:

> Defeated Democratic presidential candidate John Kerry likely is going to get one less electoral vote nationally than he should have -- 251 instead of 252 -- because of an apparent mistake Monday by one of Minnesota's 10 DFL electors.

written in other languages, the translator may be the only person able to review the documents for any mistakes which may have crept into the production process.

Washington State incorrectly believed that it could get by with an automated translation of its state elections web site into Chinese as a less cost option and still maintain reasonable accuracy:

> Debbie Hsu says something was lost in translation when Washington residents who speak Chinese tried to view the Secretary of State's Web site in their native language.
>
> The Web site lets visitors view the site in different languages, but the Chinese translation was apparently way off. For example, a statement about Secretary of State Sam Reed proposing "statewide mandates to restore public trust" was translated as "Swampy weed suggests whole state order recover open trust," according to Hsu and others in the Section 203 Voting Rights Coalition. ...
>
> The office pays a California company, Systran, about $6,000 a year for use of translation software that takes the English version and currently allows people to view it in Russian, Japanese, French, German, Spanish and Italian.[33]

The issue of potential vote fraud also arises:

> Alhambra [CA] resident Lucy Wong, an election-day translator for about five years, said Chinese American voters face a special problem: Chinese are used to having their surnames come first.
>
> "Last name, first name, they're all mixed up on the roster," said Wong, 49, who speaks Mandarin and Cantonese. "We have to ask them, 'What names have you been using?' Then we ask for their address, just to be sure."[34]

> One of the 10 handwritten ballots cast for president carried the name of vice presidential candidate John Edwards (actually spelled "Ewards" on the ballot) rather than Kerry. ...
>
> [E]lector Michael Meuers . . . said he was certain that the Edwards ballot wasn't his, but he noted that "both the candidates were named John, and the ballots looked pretty much alike." *Minneapolis Star-Tribune*, December 14, 2005, cited at http://www.tacitus.org/story/2004/12/14/101720/29.

[33] "Secretary of State Site Had Translation Errors," *Seattle Times*, January 26, 2005, available at: http://www.multiling.com/newsletter/2005/seattletimes.htm.

[34] "Need for Bilingual Poll Workers Never Ends," *Los Angeles Times*, November 1, 2005.

While it seems that there are consistent problems with Asian-langauge election materials, the Spanish versions are also subject to error: "[D]ue to poor translation of the English guide into Spanish, all the guides were recalled, an embarrassing moment for the Register of Voters.[35]

Oral interpreters at polling places have been regularly responsible for inadvertent misrepresentation of issues and even outright fraud during the 1988 and 1990 elections, according to former U.S. Assistant Attorney General John Dunne:

> [E]ven when translators were available, the message conveyed to minority language voters often did not resemble the issue on the ballot and it was impossible for a minority language individual to cast an informed vote.[36]

In his oral testimony that same day, Mr. Dunne noted that a Victim's Rights Initiative was translated as referring to any number of things other than the issue at hand. He added that many Indian languages do not even have English equivalent words for complicated ballot questions.

Given this testimony was a decade old, one might think the problem has been corrected. That assumption would be incorrect:

> A community volunteer who drove seven people to a polling site in Dorchester reportedly entered the polls with them, filled out their ballots, and cast them.
>
> "When a lady asked him, 'Can I vote now?' he said, 'I already voted for you,' " Tran said. "How in the world could an election officer overlook that?"
>
> Tran said that nearly half of those with problems were first-time US voters.[37]

The U.S. Justice Department seems convinced that these errors can be ordered away, if the Yakima County Consent Decree of September 3, 2004 is any indication:

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[35] "No Spanish Language Voter Guides, But There Will Be Bilingual Poll Workers to Help With the Vote," *La Prensa San Diego,* October 29, 2004, http://www.laprensa-sandiego.org/archieve/october29-04/vote.htm

[36] Statement of John Dunne, Assistant Attorney General before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, Hearing on the Voting Rights Act Language Assistance Amendments of 1992 (February 26, 1992) ("Dunne Statement").

[37] "To build vote bias case, US sought reports," *Boston Globe*, August 2, 2005, available at http://www.commongroundcommonsense.org/forums/lofiversion/index.php/t35002.html.

> Yakima County shall translate into Spanish all election-related documents and information it provides in English. Such translation shall begin as soon as the English text is known and shall be completed so as to allow distribution along with the English text.
>
> To ensure the quality of translations, the County shall employ trained translators who are familiar with Spanish language election terminology to produce clear and accurate written translations.[38]

This same requirement was applied to Florida's Osceola County via consent decree in 2002:

> Bilingual poll officials shall be trained in the translation of the entire ballot, all election related forms used in the polls on election day, and the voting process (e.g., how to operate new voting machines) in the Spanish language so that bilingual election officials will be able to provide a full and accurate translation.[39]

The problem with this guarantee of an accurate translation is that there is no one single Spanish language. Just as American English and British English use different spellings for the same word, Spanish can be written and spoken in different ways, Cuban Spanish, Puerto Rican Spanish, Chicano Spanish, and additional forms of Spanish all exist within the borders of the U.S., creating vast potential for cross-cultural confusion.

The Translator's Handbook gives a good example of this difficulty: "One community refers to [the English word] "eyeglasses" as *anteojos*, a second community calls them *gafas*, a third, *espejuelos*, and a fourth, *lentes*."[40]

This linguistic variation is not limited to Spanish, either. There are also differences between French as used in Europe and the French used in Canada.[41] Chinese is written in both traditional and simplified characters and varies between the mainland and Taiwan.[42] Japanese is written in three different ways, depending on the origin of the word. A word taken from China is

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[38] http://www.usdoj.gov/crt/voting/sec_203/documents/yakima_cd.htm.

[39] United States of America v. Osceola County, Florida (Consent Decree), Civil Action. 6:02-CV-738-ORL-22JGG (July 22, 2002) http://www.usdoj.gov/crt/voting/sec_2/osceola_cd.htm.

[40] *Id.*

[41] *Id.* at 58.

[42] *Id.* at 62-63.

written in *Kanji*, a native Japanese word is written in either *Kanji* or *Kana*, while a word which originated in the West is written in *Katakana*.[43]

The Translator's Handbook also notes that "there are several spoken Arabic dialects which are not always mutually intelligible, such as Syrian and Egyptian and . . . even the official written Arabic has different terms and uses in different Arab countries."[44]

The Department of Justice's official Guidelines on this matter raise the issue of variation of Chinese:

> 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.[45]

Smile, Everybody

Sometimes, overwhelmed poll workers are less than gracious. In Cook County, IL, one election judge who could not understand a voter said that the voter should learn to speak English. While the National Asian Pacific American Legal Consortium thought this soul worthy of censure,[46] most Americans could easily put themselves in the shoes of that harried, overworked election judge.

In Brentwood, New York, DOJ ordered "remove poll workers who have engaged in hostile treatment of Spanish-speaking and/or Hispanic voters."[47] In Reading Pennsylvania, a Justice Department lawsuit

> alleges that poll workers turned away Hispanic voters because they could not understand their names, and sometimes made hostile statements in the presence of other voters, such as the following: "This is the U.S.A. -- Hispanics

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[43] *Id.* at 61. The *Attorney General's Language Minority Guidelines* explicitly recognize this problem in Section 55:12(b): "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." http://www.usdoj.gov/crt/voting/28cfr/55/28cfr55.htm

[44] *Id.* at 66.

[45] *Attorney General's Language Minority Guidelines*, Section 55:13(a).

[46] http://www.imdiversity.com/villages/asian/politics_law/napalc_voting_obstacles_0805.asp.

[47] http://www.usdoj.gov/opa/pr/2003/June/03_crt_335.htm

should not be allowed to have two last names. They should learn to speak the language and we should make them take only one last name."[48]

San Benito County, California's consent agreement with the Department of Justice includes this requirement:

> Prior to each election, in addition to any required state or county training, the county shall train all poll officials and other election personnel present at the polls regarding the following: The provisions of Section 203 of the Voting Rights Act, including the legal obligation and means to make Spanish-language assistance and materials available to voters; **the requirement that poll officials be respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities and to avoid inappropriate comments**; and the provisions of Section 302 of the Help America Vote Act, as they apply to elections for Federal office.[49]

Surname Equals Ancestry

Because Section 203 of the Voting Rights Act refers not to "Spanish-speakers" but rather Spanish surnamed individuals,[50] federal enforcement efforts of bilingual ballot requirements

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[48] http://www.hispanicbusiness.com/news/newsbyid.asp?id=9750

[49]http://www.usdoj.gov/crt/voting/sec_203/documents/sanbenito_cd.htm

[50] See also the *Attorney General's Guidelines*, Section 55:1: "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))."

Hispanic groups fought for this definition in order to increase the size of the potential protected class back in the early 1970's. According to the Free Dictionary web site [http://www.thefreedictionary.com/Hispanic]:

> "*Hispanic*," from the Latin word for "Spain," has the broader reference, potentially encompassing all Spanish-speaking peoples in both hemispheres and emphasizing the common denominator of language among communities that sometimes have little else in common."

Another source suggests:

> *Hispanic* as a ethnic label originated from the 1978 decision by the Office of Management and Budget to operationalize the label as "a person of Mexican, Puerto Rican, Cuban, Central or South American, Spain, or other Spanish culture or origin, regardless of race" (*Federal Register*, 1978, May 4, p.69). [Portuguese-speaking] Brazilians were included in this ethnic label years later.

often begin by counting last names[51] rather than determining if any of the Gonzalezs and Rodriguezs so counted actually speak any Spanish.

DOJ's complaint[52] against Berks County, Pennsylvania, included this gem

> Defendants have failed to recruit, appoint, train, and maintain an adequate pool of Hispanic and bilingual poll officials, despite their knowledge of the needs of limited English proficient Hispanic voters. For example, defendants have maintained a pool of poll workers that contains, on average, only 3 percent with **Spanish surnames**, even though Hispanics comprise approximately 35 percent of registered voters in Reading. As a result, some Hispanic voters with limited English proficiency are unable to obtain effective assistance at certain polling places because most polling places are not staffed with bilingual polling officials [emphasis added].

A. Camacho, "Tying Hispanic Cultural Values to Market research, *Ipsos Insight*, September, 2005 at 3 http://www.ipsos-ideas.com/library/IpsosInsight_WP_HispanicCulturalValues.cfm.

Not all Hispanics speak Spanish, although this assumption is regularly hinted at by advocates. One could just as easily assume that any Hispanic who must pass an American citizenship test knows a minimum of English, at least enough to distinguish between B-U-S-H and G-O-R-E on a ballot. While Spanish-speaking Puerto Ricans are American citizens, they cannot vote in American elections unless they reside on the American mainland, meaning these Puerto Ricans have a better chance than most of their compatriots on the island of Puerto Rico to pick up some English.

[51] The U.S. Department of Justice has actually compiled a list of Spanish surnames:

> The Bilingual Program also tracks Yakima County Spanish surnamed voter statistics. The compiling of these statistics was made possible through a list of surnames supplied by the Department of Justice in the summer of 2004. The Department of Justice designated certain surnames as Spanish or Spanish heritage surnames. "Yakima County's Bilingual Election Program," http://www.co.yakima.wa.us/vote/English/Biling_Prog_Intro.htm.

It is beyond the scope of this paper to discuss Census issues such as the counting of illegal aliens for purposes of Congressional redistricting. However, if the Department of Justice is encouraging states and localities to print ballots based upon the number of Spanish surnames, a certain percentage of those surnames will belong to illegal aliens who by law are barred from voting in federal elections, means ballots are being prepared for people who not only should not be voting, but should not be here in the first place.

[52] Full text: http://www.usdoj.gov/crt/voting/sec_2/berks_comp.htm.

The phrase "Spanish surnames" occurs once again in a consent decree applied to Washington State:

> In polling places where the number of Spanish surnamed registered voters is 150 to 299, there shall be at least one poll worker bilingual in Spanish and English.
>
> In polling places where the number of Spanish surnamed registered voters is 300 to 599, there shall be at least two poll workers bilingual in Spanish and English.
>
> In polling places where the number of Spanish surnamed registered voters is 600 to 999, there shall be at least three poll workers bilingual in Spanish and English.
>
> In polling places where the number of Spanish surnamed registered voters is over 1,000, there shall be at least four poll workers bilingual in Spanish and English.

It should be unnecessary to point out in the 21st Century that a person with a Hispanic surname may not actually be Hispanic. Or the reverse may be true:

> Lisa Sertuche, Ector County's new bilingual coordinator, has a message for Odessa's Hispanics.
>
> "If we get more Hispanics involved in the political process and they know there's someone who speaks their language in this position, I think they will come around," said the 36-year-old who will spend her first day in the newly mandated position Monday.
>
> The position was created after the U.S. Justice Department sued and settled with Ector County over the number of Spanish-speaking poll workers in Ector County.
>
> Sertuche, who had applied for the position under the name Elizabeth Serrano Flores because she had not changed her Social Security card or other official documents to her married name ...[53]

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[53] "Bilingual coordinator relying on heritage, God to get message across," *Odessa American*, Oct. 5, 2005, available at http://www.oaoa.com/news/nw100505k.htm. Readers of the article also learned the details of her previous career, none of which involved elections:

> Sertuche spent 16 years working as a translator for Ector County Independent School District. In that capacity, she said, her duties also involved working with bilingual students, serving as a liaison between school officials and the parents of bilingual students, and translating for non-Spanish speaking

Jobs, Jobs, Jobs

Many of the consent agreements reviewed for this paper included one or more DOJ-mandated bilingual coordinator and staff jobs, like the one Elizabeth Serrano Flores Sertuche now occupies. A full-time job with as few as two rush seasons every other year is tempting enough. Having a job in which your removal may require the permission of the federal government makes such posts pearls beyond price.

The Osceloa consent decree of July 22, 2002 requires,[54] among other things:

> Defendants shall assign one or two employees to act as the Spanish Language Assistance Coordinator(s), for at least three months prior to a federal, state or county election, to help carry out the requirements of this Consent Decree. The Coordinator(s) shall be bilingual in English and in Spanish.
>
> The County shall employ, on a full time basis, an individual to coordinate the County's Bilingual Election Program ("Program Coordinator") for all elections within the County. The County shall provide that individual with transportation and other support sufficient to meet the goals of the Program. The Program Coordinator shall be able to understand, speak, write, and read fluently both Spanish and English. ... sending staff to make presentations and answer questions at events and meetings sponsored by Latino community organizations

So does the Yakima County consent decree of September 3, 2004:

> Yakima County shall translate into Spanish all election-related documents and information it provides in English. Such translation shall begin as soon as the English text is known and shall be completed so as to allow distribution along with the English text. To ensure the quality of translations, the County shall employ trained translators who are familiar with Spanish language election terminology to produce clear and accurate written translations. ...
>
> Trained bilingual (English/Spanish) election personnel shall be available to answer voting related questions by telephone without cost during normal business hours and while the polls are open on election days.[55]

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personnel.

In other capacities, Sertuche worked with ECISD administering bilingual tests to students, as a bilingual teacher, and as a building clerk.

[54] Full text: http://www.usdoj.gov/crt/voting/sec_2/osceola_cd.htm.

[55] http://www.usdoj.gov/crt/voting/sec_203/documents/yakima_cd.htm

San Benito County's consent decree mandates:

> Spanish-language assistance shall be available at all locations where election-related transactions are conducted. Trained bilingual (Spanish/English) election personnel shall be available to answer voting-related questions by telephone without cost and during normal business hours and while the polls are open on election days.[56]

So too does the Brentwood County, New York, consent decree:

> In addition to enjoining further violations of Section 203, the consent decree requires the Brentwood school district to appoint a Spanish Language Assistance Coordinator to ensure that Spanish-speaking citizens receive full and complete information in Spanish about all stages of the electoral process; investigate and remove poll workers who have engaged in hostile treatment of Spanish-speaking and/or Hispanic voters; and provide sufficient numbers of poll officials who are bilingual in Spanish and English to assist voters.[57]

Even minor complaints[58] can result in new and expensive bilingual bureaucracies:

> Bell County [Texas] Republican Party Chair, Nancy Boston says she certainly plans to follow the law when it comes to bilingual election clerks, but she's not happy about it.
>
> "Financial fear and punishment is as bad as physical punishment and our Republican people feel we are being mandated to do something that is not required," Boston said.
>
> Boston feels Bell County doesn't have enough Hispanic residents to mandate putting a bilingual clerk at each of the county's 45 polling locations. On top of that, she feels it's unnecessary altogether.[59]

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[56] http://www.usdoj.gov/crt/voting/sec_203/documents/sanbenito_cd.htm The consent decree also, remarkably, requires bilingual explanation of acceptance or rejection of provisional ballots: "Defendants shall provide a free access system for informing voters about whether their provisional ballot has been counted, and if it has been rejected, the reason for the rejection. The information on this system shall be available to each provisional voter in both English and Spanish."

[57] http://www.usdoj.gov/opa/pr/2003/June/03_crt_335.htm

[58] http://www.usdoj.gov/opa/pr/2005/August/05_crt_430.htm

[59] "Bilingual Election Clerk Mandate Sparks Controversy," *KWTX-News*, September 29, 2004, http://www.kwtx.com/home/headlines/1058411.html.

Believe it or not, it is the official position of the Bush Justice Department that

> 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 (emphasis added).[60]

Mandatory Consultation with Professional Ethnic Activists

It is the official position of the U.S. Department of Justice that "[a] jurisdiction is more likely to achieve compliance with these [bilingual voting] requirements if it has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group."[61]

This position has crept into the various consent decrees:

> The Coordinator(s) and the Osceola County Supervisor of Elections shall meet with representatives of the Hispanic community at least one month prior to each election cycle (e.g., prior to the 2002 primary election) and solicit their views on what steps are needed to ensure the effectiveness of bilingual assistance for Spanish-speaking Hispanic voters

Justice may not be aware that groups which claim to represent Hispanics or Asians are often not membership groups at all. The Mexican American Legal Defense and Education Fund is a group of lawyers well to the left of the average Hispanic. Yet a community that "consults" with MALDEF has met its obligation to confer with the Hispanic community:

> Steve Reyes, staff attorney for the Mexican American Legal Defense and Education Fund, added, "The city reached out to community groups for assistance in locating polling places and volunteers, but it could have happened sooner. Some of the translated ballots arrived too late to make any substantive changes. We have to review where bilingual assistance was offered and where the highest

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[60] *Attorney General Language Minority Guidelines*, Section 55:18(c)

[61] *Attorney General Language Minority Guidelines*, Section 55:16.

concentration of voters who need it are located. Low turnout or not, 100 percent compliance with Section 203 should be the goal. But recruitment and training of volunteers, and volunteering itself, are thankless tasks."[62]

Thus, Yakima County must not only hire a bilingual program coordinator, but that person must create an advisory council from a list of Justice Department-approved organizations:

> The Program Coordinator shall establish and chair an Advisory Group to assist and inform the Bilingual Election Program and shall invite participation from all organizations listed in Attachment A, as well as other individuals and organizations that work with or serve the Spanish-speaking and Latino communities in Yakima County.

Justice takes the same approach to ethnic newspapers that its does to ethnic activist groups: it makes dealing with them mandatory:

> **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.[63]

Accordingly, DOJ ordered Yakima County to distribute "Spanish-language information shall be distributed through newspapers, radio and other media that exclusively or regularly publish or broadcast information in Spanish."

Osceola County was hit even harder:

> Defendants shall recruit bilingual election officials by providing notices in English and Spanish to the Spanish-language media, Hispanic community organizations (e.g., voting organizations, businesses, churches, senior citizen centers, etc.), the county election supervisor's Internet site, and any other recruitment methods the county normally uses.
>
> Defendants also shall publicize in Spanish prior to the election, through these same publicity methods, the availability of bilingual poll workers to assist Spanish-speaking voters at the polls on election day

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[62] Jeffrey Anderson, "A Flawed Democracy," *LA Weekly*, March 18 - 24, 2005, http://www.laweekly.com/ink/printme.php?eid=62187

[63] *Attorney General Language Minority Guidelines*. section 55:18(e)

Now these ethnic newspapers are usually shoestring operations whose main income comes from ads run by businesses eager to prove they seek a diverse workforce and various government ads.

The web site for the Chicago, Illinois Spanish newspaper, *Lawndale News*, boasts that "Major Governmental printing contracts insure that our newsprint costs are comparable to a large daily newspaper" with display ads at a base rate of $4,290.00 for a full page, $2,145.00 for a half page, or $1,072.50 for a quarter page."[64] Consider also that the Justice Department will get complaints if Osceola County runs a one column inch ad instead of a full-page display ad and you can see that DOJ has just pumped a lot of money into ethnic newspapers., ethnic newspapers, which, by the way, few read.

A 2004 study by the Pew Hispanic Center found "the share of Latino newspaper readers that gets news only from publications in English is three times larger (62 percent) than the share reading Spanish-language newspapers (21 percent)." On a variety of subjects, Hispanics preferred English to Spanish news by at least a 2-to-1 margin.[65]

-- prepared on December 29, 2005

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[64] http://www.lawndalenews.com/rates.html

[65] "The Press in Print," *Hispanic Business Magazine*, December, 2004, http://www.hispanicbusiness.com/news/newsbyid.asp?id=19460&cat=Magazine&more=/magazine/

You may view the consent decree in pdf format.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ECTOR COUNTY, TEXAS; SHARON WILSON, the ELECTIONS ADMINISTRATOR, in her official capacity; the ECTOR COUNTY COMMISSIONERS COURT; and JERRY D. CADDEL, the COUNTY JUDGE, in his official capacity, Defendants.	)	No. M005CV131 **PROPOSED CONSENT DECREE, JUDGMENT, AND ORDER**

The United States of America filed this action pursuant to Section 4(f)(4) of the Voting Rights Act of 1965 ("Section 4(f)(4)"), as amended, 42 U.S.C. § 1973b(f)(4); 42 U.S.C. § 1973j; and 28 U.S.C. § 2201, over violations of Section 4(f)(4) arising from Ector County's election practices and procedures as they affect Spanish-speaking citizens of the County.

Ector County is covered under Section 4(f)(4) to provide Spanish-language written materials and assistance to voters. See 42 U.S.C. § 1973b(f)(4). The State of Texas, including Ector County, has been subject to the requirements of Section 4(f)(4) since September 23, 1975. See 40 Fed. Reg. 43,746; see also 28 C.F.R. pt. 51, Appendix. Since 1992, the Department has sent Ector County and other covered jurisdictions information regarding the bilingual election requirements of the Voting Rights Act.

According to the 2000 Census, Ector County had a total population of 121,123 persons, of whom 51,306 (42.4%) were Hispanic. The total citizen voting-age population was 77,460, of whom 24,840 (32.1%) were Hispanic. Finally, the number of Hispanic voting-age citizens who were limited-English proficient ("LEP") was 6,775.

Defendants have not complied with the requirements of Section 4(f)(4) for Spanish-speaking citizens residing in Ector County by failing to provide an adequate number of bilingual poll workers trained to assist Spanish-speaking voters on election day, and by failing to provide in an effective manner certain election-related information to Spanish-speaking voters.

To avoid protracted and costly litigation, the parties have agreed that this lawsuit should be resolved through the terms of this Consent Decree (the "Decree"). Accordingly, the United States and Defendants hereby consent to the entry of this Decree, as indicated by the signatures of counsel at the end of this document. The parties waive a hearing and entry of findings of fact and conclusions of law on all issues involved in this matter.

Defendants admit that they have not fully complied with all of the provisions of Section 4(f)(4); however, Defendants are committed to comply fully with all of such requirements in future elections. Defendants

stipulate that each provision of this Consent Decree is appropriate and necessary.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendants, their agents, employees, contractors, successors, and all other persons representing the interests of the Defendants are hereby PERMANENTLY ENJOINED from failing to provide in Spanish "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," that they provide in English, as required by Section 4(f)(4) of the Voting Rights Act. 42 U.S.C. § 1973b(f)(4). The terms of this Decree apply to all federal, state, and local elections administered by the County, including County-run elections for city, school district, and other political subdivisions of the County. Whenever Defendants enter into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of that entity, Defendants shall require such other entity to agree to abide by the terms of this Decree as if such entity were a party to this Decree with the United States, and consistent with the responsibility of each such entity to comply fully with Section 4(f)(4).

Translation of Election-Related Materials

2. All information that is disseminated by Ector County in English about "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," 42 U.S.C. § 1973b(f)(4), shall also be provided in the Spanish language. Defendants shall ensure that both English and Spanish language election information, materials, and announcements provided by Ector County are made equally available.

Dissemination of Spanish-Language Information

3. Defendants shall ensure that Spanish-language election information, materials, and announcements are provided to the same extent as they are provided in English. Spanish-language information shall be distributed in newspapers, radio, and/or other media that exclusively or regularly publish or broadcast information in Spanish. These announcements need not be identical in all respect to English-language announcements, but shall be in the form, frequency, and media best calculated to achieve notice and understanding equal to that provided to the English-speaking population and to provide substantially the same information.

Spanish-Language Assistance

4. Spanish-language assistance shall be available at all locations where election-related transactions are conducted. Trained bilingual (Spanish/English) election personnel shall be available to answer voting-related questions by telephone without cost during normal business hours and while the polls are open on election days.

5. Defendants shall recruit, hire, and assign election officials able to understand and speak Spanish fluently to provide assistance to Spanish-speaking voters at the polls on election days. The County shall survey its employees to identify personnel who speak Spanish fluently and, to the extent such employees can be made available to provide assistance, allow and encourage such employees to serve at the polls on election day. As part of its obligation to ensure that entities on whose behalf the County conducts elections are fully compliant with Section 4(f)(4) in their elections, the County shall request that each entity for which it conducts elections perform similar surveys of its employees, and the County shall request each school district or other educational entity within the County to devise and implement an educational program that allows and encourages selected bilingual students (as permitted by state law and as part of an educational program devised by such district) to serve as poll officials on election day for all County elections, including election days that fall on school days, with such students receiving academic credit appropriate to their service as well as all pay and benefits of poll officials. The County shall advise counsel for the United States of any entity that does not participate fully. The County shall also invite eligible members of the Advisory Group, discussed below, to serve as poll officials and to encourage other bilingual voters to do so.

6. In addition to the requirements of state law,

(a) any election precinct in which there are 100-249 registered voters with Spanish surnames shall be staffed by at least one bilingual election official;

(b) any election precinct in which there are 250-499 registered voters with Spanish surnames shall be staffed by at least two bilingual election officials;

(c) any election precinct in which there are 500 or more registered voters with Spanish surnames shall be staffed by at least three bilingual election officials; and

(d) Defendants shall employ bilingual personnel, trained in Spanish-language election terminology, who shall be on call and available to travel to an election precinct not staffed by a bilingual poll worker to provide any necessary assistance to any Spanish-speaking voter.

7. Signs in both English and Spanish shall be posted prominently at polling places stating that Spanish-language assistance is available. At sites without bilingual staff, signs in both English and Spanish shall be posted that explain how voters can obtain Spanish-language assistance.

Election official training

8. Prior to each election, in addition to any required state or county training, the County shall train all poll officials and other election personnel present at the polls regarding the following: The provisions of Section 4(f)(4) of the Voting Rights Act, including the legal obligation and means to make Spanish-language assistance and materials available to voters, and the requirement that poll officials be respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities and to avoid inappropriate comments. In addition to the general training for poll officials, the County shall train all bilingual poll officials on Spanish-language election terminology, voting instructions, and other election-related issues. The County shall maintain a record of which poll officials attend training sessions, including the time, location, and training personnel involved.

Response to Complaints About Poll Workers

9. Defendants, upon receipt of complaints by voters, whether oral or written, shall investigate expeditiously any allegations of poll worker hostility toward Spanish-speaking and/or Hispanic voters in any election. The results of the investigation(s) conducted by the Defendants shall be reported to the United States. Where there is credible evidence that poll workers have engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters, Defendants shall remove the poll workers.

Program Coordinator

10. The County shall employ an individual to coordinate the County's bilingual election Program ("the Coordinator") for all elections within the County. The County shall provide that individual with support sufficient to meet the goals of the Program. The Coordinator shall be able to understand, speak, write, and read fluently both Spanish and English. The Coordinator's responsibilities shall include coordination of the translation of ballots and other election information; development and oversight of Spanish publicity programs, including selection of appropriate Spanish-language media for notices and announcements; training, recruitment and assessment of Spanish-language proficiency of bilingual poll officials and interpreters; and managing other aspects of the Program.

Advisory Group

11. The Coordinator shall establish and chair an Advisory Group to assist and inform the bilingual Program. The Coordinator shall invite participation from all interested individuals and organizations that work with or serve the Spanish-speaking community in Ector County, to determine how most effectively to provide election materials, information, and assistance to Spanish-speaking voters and to fill any gaps in public awareness about the County's bilingual election program due to past failures to provide accessible election-related information to Spanish-speaking voters. The Group shall be open to all interested persons. The Coordinator shall provide notice of all planned meetings to each member, including the time, location, and agenda for the meeting, at least 14 days in advance, although

members of the Advisory Group may agree to waive or shorten this time period as necessary. Within five working days following each meeting, the Coordinator shall provide a written summary to all members and to the County Elections Administrator of the discussion and any decisions reached at the meeting. If the County Elections Administrator decides not to implement an Advisory Group suggestion or a consensus cannot be reached respecting such suggestion, he or she shall provide to the group through the Coordinator and maintain on file a written statement of the reasons for rejecting such suggestion.

12. The County shall transmit to all interested members of the Advisory Group copies, in English and Spanish, of all election information, announcements, and notices that are provided to the electorate and general public and request that they share with their members.

Federal Examiners and Observers

13. To monitor compliance with and ensure effectiveness of this Decree, and to protect the Fourteenth Amendment rights of the citizens of Ector County, the appointment of a federal examiner is authorized for Ector County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), as long as the Decree is in effect.

14. Defendants shall recognize the authority of federal observers to observe all aspects of voting conducted in the polls on election day, including the authority to view County personnel providing assistance to voters during voting, except where the voter objects.

Evaluation of plan

15. The parties recognize that regular and ongoing reassessment may be necessary to provide the most effective and efficient Spanish-language Program. Defendants shall evaluate the bilingual Program after each election to determine which aspects of the bilingual Program are functioning well; whether any aspects need improvement; and how to affect needed improvements. The Program may be adjusted at any time upon joint written agreement of the parties.

Retention of Documents and Reporting Requirements

16. During the duration of this Decree, the County shall make and maintain written records of all actions taken pursuant to this Decree and shall produce such records to the United States upon its request.

17. During the duration of this Decree, at least thirty (30) days before each County-administered election held in the County, Defendants shall provide to counsel for the United States, (a) the name, address, and precinct designation of each polling place; (b) the name and title of each poll official appointed and assigned to serve at each polling place, as of the date the materials are sent; (c) a designation of whether each poll official is bilingual in English and Spanish; and (d) an electronic copy of the voter registration list to be used in such elections. Within thirty (30) days after each election, Defendants shall provide to counsel for the United States any updated report regarding changes in items (a)-(c) above that occurred at the election, and provide information about all complaints the County received at the election regarding language or assistance issues.

Other Provisions

18. This Decree is final and binding between the parties and their successors in office regarding the claims raised in this action. This Decree shall remain in effect through August 6, 2007, and the parties further stipulate that the Decree shall be extended through December 31, 2009, if Defendants remain under a continuing federal statutory obligation to provide minority language materials and assistance after August 6, 2007.

19. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Section 4 (f)(4) of the Voting Rights Act.

20. Each party shall bear its own costs and fees.

Agreed to this 22nd day of August, 2005.

AGREED AND CONSENTED TO:

For Plaintiff:

ALBERTO R. GONZALES
Attorney General

_____/s/_____
BRADLEY J. SCHLOZMAN
Acting Assistant
Attorney General
Civil Rights Division

_____/s/_____
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United States Attorney
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_____/s/_____
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For Defendants:

_____/s/_____
LILLY A. PLUMMER
First Assistant County Counsel
300 North Grant, Room 201
Odessa, Texas 79761

_____/s/_____
JERRY D. CADDEL
Ector County
County Judge

JUDGMENT AND ORDER

This Court, having considered the United States' claim under Section 4(f)(4) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973b, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, hereby enters the relief set forth above and incorporates those terms herein.

ENTERED and ORDERED this _26th___ day of __August___, 2005.

_____/s/_____
Robert A. Junell
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA

THE UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 6:02-CV-738-ORL-22JGG
OSCEOLA COUNTY, FLORIDA; and DONNA BRYANT, Supervisor of Elections,	)	
Defendants.	)	
	)	

CONSENT DECREE

The United States of America initiated this action pursuant to Sections 2, 11(a), 12(d), and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973i(a), 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-6, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act arising from Osceola County's election practices and procedures as they affect Spanish-speaking citizens of the county.

The United States alleged in its complaint that defendants have engaged in various election practices and procedures that unlawfully denied Spanish-speaking citizens an opportunity equal to that of other citizens to vote in Osceola County elections. The challenged practices concern the failure of poll officials to communicate effectively to Spanish-speaking voters necessary information concerning their eligibility to vote, voter registration status, identification requirements, and polling place changes and assignments; the refusal of poll officials to allow certain Spanish-speaking voters assistance in voting by a person of their choice; and hostile remarks by poll officials directed toward Hispanic voters with limited English proficiency.

Despite defendants' alleged failure to adhere to Sections 2 and 208 of the Voting Rights Act, the United States does not contend that defendants intended to deny Spanish-speaking voters an equal opportunity to participate in the political process. To the contrary, the United States recognizes that defendants have demonstrated an appreciation for the difficulties encountered by Spanish-speaking voters and a willingness to take some measures designed to make the process more accessible to these voters on election day.

Defendants deny any violation of the Voting Rights Act as alleged by the United States. Moreover, defendants are committed to ensuring that voters with limited ability to understand English get the assistance necessary for their effective participation in the voting process. Defendants are dedicated to ensuring that all future elections in Osceola County comply with Section 2 and Section 208 of the Voting Rights Act.

This Court has jurisdiction over the parties and the subject matter of this litigation. The United States and defendants have negotiated in good faith and have agreed to entry of this Consent Decree as an appropriate resolution of the claims alleged. This agreement is final and binding between the parties, which pursuant to Fla Stat. Ann. 125.15 (West 2002) binds the Osceola Board of County Commissioners as well as the Supervisor of Elections, and their successors in office regarding the claims raised in this action.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendants shall ensure that the Spanish-speaking population of Osceola County does not "have less opportunity than other members of the electorate to participate in the political process and to elect the representatives of their choice."

2. Defendants shall assign one or two employees to act as the Spanish Language Assistance Coordinator (s), for at least three months prior to a federal, state or county election, to help carry out the

requirements of this Consent Decree. The Coordinator(s) shall be bilingual in English and in Spanish. The Coordinator(s) shall be trained in all aspects of the election process by the Osceola County Supervisor of Elections.

3. The responsible Coordinator upon receipt of complaints shall investigate all allegations of poll worker hostility toward Spanish-speaking and/or Hispanic voters in any election. The Coordinator shall report the results of the investigation(s) to the Osceola County Supervisor of Elections. Where the Coordinator has reasonably found poll workers who have engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters, the Supervisor shall remove these poll workers, and these poll workers shall not be eligible to be poll workers in future elections.

4. The Coordinator(s) and the Osceola County Supervisor of Elections shall meet with representatives of the Hispanic community at least one month prior to each election cycle (e.g., prior to the 2002 primary election) and solicit their views on what steps are needed to ensure the effectiveness of bilingual assistance for Spanish-speaking Hispanic voters.

5. Defendants shall ensure that voters are permitted to have assistance in the voting booth by a person of their choice as provided by 42 U.S.C. 1973aa-6. The voter may choose anyone to provide assistance as long as the assistor is not the voter's employer or agent of that employer or union officer or agent of the voter's union. 42 U.S.C. 1973aa-6. The assistor will be permitted to assist in all aspects of the voting process.

6. In any precinct where registered Hispanic voters comprise at least five percent of the voters in the precinct, there shall be at least one poll official bilingual in Spanish and English. In each election precinct in Osceola County where Hispanic voters comprise more than 40 percent of the registered voters, the county shall seek to ensure that at least half of the polling officials are bilingual in Spanish and English.

7. Osceola County shall use its best efforts to secure bilingual poll officials. Defendants shall recruit bilingual election officials by providing notices in English and Spanish to the Spanish-language media, Hispanic community organizations (e.g., voting organizations, businesses, churches, senior citizen centers, etc.), the county election supervisor's internet site, and any other recruitment methods the county normally uses.

8. Defendants also shall publicize in Spanish prior to the election, through these same publicity methods, the availability of bilingual poll workers to assist Spanish-speaking voters at the polls on election day. Defendants also shall publicize in Spanish and English prior to the election that voters may bring their assistor of choice under the allowances provided for in Section 208 of the Voting Rights Act.

9. Defendants shall provide in Spanish and English notification of elections, polling place changes, sample ballots, voting instructions and procedures at the polls, and election materials used at the polls (including the ballot) to ensure that limited English proficient voters do not have less opportunity than other members of the electorate to cast a ballot on election day.

10. The Coordinator(s) and the Osceola County Supervisor of Elections (or another employee designated by the Supervisor) shall conduct the training of poll officials and any other election related personnel who will be working at the polls on election day regarding the importance of all eligible citizens being able to cast a ballot at the polls, the right of voters to have assistance in Spanish (including inside the voting booth), and the right of certain voters, including voters with limited-English proficiency, to be assisted by the person of their choice.

11. Bilingual poll officials shall be trained in the translation of the entire ballot, all election related forms used in the polls on election day, and the voting process (e.g., how to operate new voting machines) in the Spanish language so that bilingual election officials will be able to provide a full and accurate translation.

12. Nothing in this Decree shall preclude Defendants from the use of contracting to carry out any of the terms and conditions specified herein, including the establishment and operation of the Coordinator

position(s). However, should defendants exercise this option, they shall nevertheless maintain responsibility for compliance with the terms and conditions herein.

13. At least ten (10) days before each federal, state, or county election in Osceola County, the Coordinator (s) or the Osceola County Supervisor of Elections shall provide to counsel for the United States a report containing the following information: (a) the name and precinct designation of each polling place; (b) the name and title of each poll official appointed and assigned to serve at each polling place (including a designation of those who are bilingual in English and Spanish); and (c) a copy of the most recent voter registration lists on computer disk. Within ten (10) days after each federal, state or county election in Osceola County, the Coordinator(s) or the Osceola County Supervisor of Elections shall provide to counsel for the United States any updated report regarding changes in items (a)-(c) above that occurred at the election, and provide information about all complaints the county received at the election regarding language or assistance issues.

14. The parties recognize that a regular and ongoing reassessment may be necessary in order to provide Spanish-language minority voters equal access to the electoral process in Osceola County. The county shall evaluate its program and procedures after each election cycle (e.g., after the 2002 general election) and on an ongoing basis through meetings with the Hispanic community and other interested parties and counsel for the United States.

15. If the Director of the Census designates Osceola County as a covered county under Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, the county must comply fully with Section 203. Nothing in this Consent Decree is meant to limit Osceola County's obligation to comply with Section 203.

16. The parties agree that to assist in carrying out the purposes of this Consent Decree, the United States will be permitted to monitor elections in Osceola County from the date of the entry of this Consent Decree through January 31, 2005.

    A. The United States will give timely notice of its intent to monitor a particular election;

    B. Department of Justice personnel, including attorneys and staff members, will be permitted into the precincts for the purpose of observing the election process; such Department personnel shall not seek to interfere in any way with the conduct of the election, but will merely observe and report problems to county election officials for resolution.

17. This Consent Decree shall remain in effect through January 31, 2005. Plaintiff may move the court for good cause shown to extend this Consent Decree.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Sections 2 and 208 of the Voting Rights Act.

Entered this _22nd__ day of _July___, 2002.

For Plaintiff:
UNITED STATES OF AMERICA

PAUL I. PEREZ
United States Attorney

RALPH F. BOYD, JR.
Assistant Attorney General

For Defendants:
OSCEOLA COUNTY

_____/s/_____
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___/s/_____
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_____/s/_____
JO THACKER
Osceola County Attorney
One Courthouse Square
Suite 4200
Kissimmee, FL 34741

Entered this _22nd__ day of _July_____, 2002.

_____/s/_____
Anne C. Conway
UNITED STATES DISTRICT COURT JUDGE

STATEMENT OF SHINY LIU, RESIDENT, FRESH MEADOWS, NEW YORK

The following statement was provided by Shiny Liu, a resident of Fresh Meadows, New York. Lily Liang, an interpreter for the Asian American Legal Defense and Education Fund in New York City, translated Ms. Liu's statement.

Shiny Liu
58-263 188th Street
Fresh Meadows, NY 11365
718-357-2996

I was born in China on December 12, 1960 and immigrated to the United States in 1992. I can understand and speak some English, but my native language is Chinese Mandarin and I am much more comfortable using Chinese to communicate. For example, if you ask me questions in English, I can understand what you are saying but cannot form my answers in English. I would need to do that in Chinese.

I first learned English as a college student in China and have continued to try to improve my fluency in it here in the United States. When I first lived in New York, I went to a language school. I then moved to Florida, where I enrolled in an intensive English language program at Miami University. Even with all those classes, my English is still limited.

I became a United States citizen in October of 2002 and attempted to register to vote with an English voter registration form. I filled it out as best I could and submitted it, but did not receive a voter identification card from the Board of Elections. I called the Board of Elections after six months to ask about my registration. I spoke with a representative in English and was sent another English form, which I completed and mailed back to them. I received a voter identification card after that, but the process of registering was very difficult and confusing for me.

The first time I voted was in 2003 and I used an interpreter. Now, I know how to vote, so I vote alone without any assistance. I have voted on ballots in English before, but am not comfortable doing so because I am not confident that I properly understand the English. I would rather vote on ballots translated into Chinese because I can be sure of who and what I am voting for.

Chinese Americans should be allowed to vote in Chinese because there are many Chinese citizens in America who do not understand or speak any English. They need to have Chinese language assistance in order to vote. We vote because we live here in the United States and we are here to stay. I am proud to be an American. I have joined this country want to know what is going on. As Chinese Americans, we should learn and know some English, but we should also be able to vote in a language we understand. We should be treated equally with other Americans because we are all citizens. We are all equal.

STATEMENT OF BYUNG SOO PARK, RESIDENT, FLUSHING, NEW YORK

The following statement was provided by Byung Soo Park, a resident of Flushing, New York. Daniel Baek, Program Director at the Kroean American Voters' Council in New York City, translated Mr. Park's statement.

Byung Soo Park
149-37 Cherry Avenue
Flushing, NY 11355
917-217-7119

I came to the United States from Korean in 1988 and first settled in San Francisco, California. I moved to Flushing, New York in 1991. I speak and understand very little English and cannot carry conversations in it.

I became a citizen in October 2001 and registered to vote at the Korean American Voters' Council office with the help of their staff. The Korean American Voters' Council is a community group that serves Korean American voters. Ever since I first registered to vote, I have never missed an election. Most recently, I voted in both Primary and General Elections, in September and November.

Every time I vote I need to use the assistance of an interpreter. I need to continue voting with an interpreter because I am old – I am 52 years old. Many senior Korean immigrants here in America are limited English proficient, so we need interpretation in order to vote. More than that, it also feels good to vote in America in my native language. Americans who know English should vote in English but I did not go to school in the United States and I do not know English. I want to learn English but I have no time because I am a truck driver and work long hours on the road.

Korean Americans should be treated as United States citizens because that is what they are. I want us all to be treated equally.

STATEMENT OF HENRY YEE, CO-CHAIR, CHINATOWN RESIDENT ASSOCIATION, BOSTON

The following statement was provided by Henry Yee, a resident of Boston's Chinatown for over 40 years, and Co-Chair of the Chinatown Resident Association, an advocacy group for affordable housing in Chinatown. Carlin Yuen, a law clerk for the Asian American Legal Defense and Education Fund in New York City, translated Mr. Yee's statement.

Henry Yee
230 Harrison Avenue, #B603
Boston, Massachusetts 02111
617-426-5242
617-338-7088

I first arrived in the United States through Seattle and lived there for 2 years before I came to Boston in 1964. I've lived 40 years in Boston's Chinatown. That means I have been in the United States for more that 40 years. It has been 42 years and I still cannot speak English. Most of the people of my generation cannot, and it is too late for us to learn, but we still have the right to vote and want to exercise it.

That is why it is important for the ballots to be in Chinese. I tried to learn English. I am too old now, so I cannot do it anymore. I could not learn it even when I tried though. I am not proud of this, but I have given up. Since I don't know English, it is almost like I am paralyzed. I cannot do so many things in the United States because I am limited in my English. When I first arrived in America, I wanted to learn, but I had no time. I had to work to survive. I had to work at a restaurant. All of us men had to work at the restaurants. The women worked as seamstresses. We had to work 12 hour days. I am retired now, but back then, I would work all day. The restaurants were busy and there just was not enough staff to help out. I was lucky if I got out of work within 10 hours.

Last year, I helped the Asian American Legal Defense and Education Fund sue the city so that Boston would translate its ballots to Chinese. I even signed papers to do it. I was scared that there would be negative repercussions, but I did it anyway because I believe that this is very important. I certainly want to vote in Chinese, though, and think that I should be able to continue doing that. I always support things like that because we always need important documents to be translated into Chinese. This is especially true for voting materials and, most importantly, the ballot. If they are not in Chinese, we do not know who to vote for. We do not know the candidates. We need it in Chinese so that we can understand what we are doing.

Chinese Americans should be allowed to vote in our own language because we need to be represented. We hope to be part of American society. We need to vote for our government officials. We need to know who can help us and who cannot. We want to choose who we want. It is our right to do that.

It is the only way to empower our communities. One area of concern for Chinatown residents is that we do not have money to buy expensive housing, so we need to elect officials who will give us affordable housing. Low-income housing is also very important for Chinese people.

I am currently co-chairman of the Chinatown Resident Association in Boston and we want affordable housing that is adequate for Chinatown residents' income. We all only have $10,000 of income a year. Chinatown is being gentrified right now and even the old buildings are increasing their rents too. We cannot afford to pay the expensive rents, but the Chinese people have nowhere else to go. We are as good as dead. We cannot afford housing anymore. Where will we live? Soon, we will all have to move out of Chinatown. Then there will be no more Chinese in Chinatown.

The Chinatown Resident Association has informational meetings with Chinatown's residents before each election. We identify which candidates will support our needs and which will not. We organize the community and one person will spread the information to another and that person to another. We work hard to organize our community. Our Association began in 1999. It has been seven years and we still work hard to mobilize. That is why we need the voting materials to be translated into Chinese. We work to get out to vote, but cannot knowledgeably vote if the materials are not in Chinese.

Chinese Americans should be treated the same as all other Americans. America is the land of equality and opportunity. It is a democracy. We should all be treated the same, and we should have our ballots in a language we understand. Language should not become an obstacle to our ability to vote.