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FANNIE LOU HAMER, ROSA PARKS, CORETTA SCOTT KING, AND CÉSAR E. CHÁVEZ VOTING RIGHTS ACT REAUTHORIZATION AND AMENDMENTS ACT OF 2006

JULY 26, 2006.—Ordered to be printed

Mr. SPECTER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 2703]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 2703) to amend the Voting Rights Act of 1965 having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

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I. Purpose of the Voting Rights Act

The Voting Rights Act of 1965, Pub. L. 89–110, 79 Stat. 437, as amended, 42 U.S.C. §§ 1973 to 1973bb–1 (2000), was enacted to remedy 95 years of pervasive racial discrimination in voting, which resulted in the almost complete disenfranchisement of minorities in certain areas of the country. The Act is rightly lauded as the crown jewel of our civil rights laws because it has enabled racial minorities to participate in the political life of the nation. We recognize the great strides that have been made in the treatment of racial minorities over the last forty years, but extending the expiring provisions of the Voting Rights Act is still necessary to continue to fulfill its purpose. For these reasons, the Committee reported favorably on, and passed, S. 2703, the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, and César E. Chávez Voting Rights Act Reauthorization and Amendments Act, which extends for twenty-five years certain provisions of the Voting Rights Act of 1965 that are set to expire in 2007, and which amends several provisions of the Act to ensure that it can continue to serve its historic purpose.

II. History of the Bill and Committee Consideration

From October 18, 2005, through March 8, 2006, the Subcommittee on the Constitution of the House Judiciary Committee held ten hearings featuring testimony from forty witnesses. Those hearings gathered evidence concerning voting rights in America and explored the effects of two Supreme Court decisions: Georgia v. Ashcroft, 539 U.S. 461 (2003), and Reno v. Bossier Parish School Board, 528 U.S. 320 (2000) (Bossier Parish II).

On April 27, 2006, the Senate Judiciary Committee held a hearing at which members of the House of Representatives submitted the voluminous record it had developed over the previous six months.

On May 3, 2006, the House and Senate introduced identical proposals to renew and amend the Voting Rights Act of 1965 (H.R. 9 and S. 2703).

On May 9, 2006, the Senate Judiciary Committee held a hearing on "An Introduction to the Expiring Provisions of the Voting Rights Act." The Committee heard testimony from Chandler Davidson, political science professor at Rice University; Richard Hasen, law professor at Loyola Law School; Samuel Issacharoff, law professor at Columbia Law School; Ted Shaw, President of the NAACP Legal Defense and Educational Fund, Inc. (NAACP–LDF); and Laughlin McDonald, Director of the American Civil Liberties Union (ACLU) Voting Rights Project. At each hearing, in addition to their oral testimony at the hearing, witnesses also submitted written testimony and articles they had written on this topic and answered written questions by Committee members.

On May 10, 2006, the Senate Judiciary Committee held a hearing on "Modern Enforcement of the Voting Rights Act." The Committee heard testimony from Gregory Coleman, former Solicitor General of Texas; Frank Strickland, attorney and member of the Fulton County Board of Registration and Elections in Georgia; Robert McDuff, a civil rights litigator in Mississippi; Juan Cartegena, General Counsel, Community Service Society in New York City;

and Natalie Landreth, attorney for the Native American Rights Fund in Anchorage, Alaska.

On May 16, 2006, the Senate Judiciary Committee held a hearing on "The Continued Need for Section 5." The Committee heard testimony from the following witnesses: Richard Pildes, Professor of Law at New York University; Ronald Keith Gaddie, Professor of Political Science at the University of Oklahoma; Pamela Karlan, Professor of Law at Stanford University; Anita Earls, Director of the Center for Civil Rights at the University of North Carolina and former Deputy Assistant Attorney General for Civil Rights at the U.S. Department of Justice; and Ted Arrington, Professor of Political Science at the University of North Carolina and a former Republican elected official in North Carolina.

On May 17, 2006, the Senate Judiciary Committee held a hearing on "The Benefits and Costs of Section 5." The Committee heard testimony from the following witnesses: Abigail Thernstrom, Senior Fellow at the Manhattan Institute and Vice-Chair of the U.S. Commission on Civil Rights; Nathaniel Persily, Professor of Law and Political Science at the University of Pennsylvania; Fred Gray, Alabama civil rights attorney and former counsel for Rosa Parks and Martin Luther King, Jr.; Drew Days, Professor of Law at Yale University, former Assistant Attorney General for Civil Rights, and former Solicitor General of the United States; and Armand Derfner, a voting rights attorney in South Carolina.

On June 13, 2006, the Senate Judiciary Committee held a hearing on "The Continuing Need for Section 203's Provisions for Limited English Proficient Voters." The Committee heard testimony from John Trasviña, Interim President and General Counsel of the Mexican American Legal Defense and Education Fund (MALDEF); Mauro Mujica, Chairman and CEO of U.S. English; Peter Kirsanow, Commissioner on the U.S. Commission on Civil Rights and member of the National Labor Relations Board; Margaret Fung, Executive Director of the Asian-American Legal Defense and Education Fund; Deborah Wright, Los Angeles County Executive Liaison Officer and Acting Assistant Registrar for the Election Services Bureau; and Linda Chavez, Chairman of the Center for Equal Opportunity and President of One Nation Indivisible.

On June 21, the Subcommittee on the Constitution, Civil rights and Property Rights of the Senate Judiciary Committee held a hearing on "Reauthorization of the Voting Rights Act: Policy Perspectives and Views from the Field." The Subcommittee heard testimony from Debo Adegbile, Associate Director of Litigation of the NAACP Legal Defense and Educational Fund, Inc.; Gerald A. Reynolds, Chairman of the U.S. Commission on Civil Rights and Assistant General Counsel of Kansas City Power & Light Co.; David Canon, Professor in the Department of Political Science at the University of Wisconsin; John J. Park, Jr., an Assistant Attorney General in the Office of the Attorney General of Alabama; Donald M. Wright, General Counsel of the North Carolina State Board of Elections; and Carol Swain, Professor of Political Science and Professor of Law at Vanderbilt University.

On July 10, 2006, the Subcommittee on the Constitution, Civil Rights and Property Rights of the Senate Judiciary Committee held a testimony-only hearing on "The Continuing Need for Federal Examiners and Observers to Ensure Electoral Integrity." The Sub-

committee received testimony from Mark F. (Thor) Hearne, II, National Counsel to the American Center for Voting Rights—Legislative Fund; Kay Coles James, former Director of the U.S. Office of Personnel Management; Constance Slaughter-Harvey, an attorney in private practice in Forest, Mississippi, and former Mississippi Assistant Secretary of State for Elections and General Counsel; Dr. James Thomas Tucker, voting rights consultant to the National Association of Latino Elected and Appointed Officials; and Alfred Yazzie, Navajo Language Consultant for the U.S. Department of Justice and Certified Navajo Interpreter.

On July 13, 2006, the Subcommittee on the Constitution, Civil Rights and Property Rights of the Senate Judiciary Committee held a hearing on "Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options after LULAC v. Perry." The Subcommittee heard testimony from Roger Clegg, President and General Counsel of the Center for Equal Opportunity in Sterling, Virginia; Professor Sherrilyn Ifill, professor at the University of Maryland Law School in Baltimore and former Assistant Counsel at the NAACP Legal Defense and Educational Fund, Inc.; Nina Perales, Southwest Regional Counsel for the Mexican American Legal Defense and Educational Fund (MALDEF); Michael Carvin, a partner with the law firm of Jones Day, specializing in constitutional, appellate, civil rights, and civil litigation against the Federal Government; Professor Joaquin Avila, Assistant Professor of Law at Seattle University School of Law in Seattle, Washington; and Abigail Thernstrom, Senior Fellow at the Manhattan Institute and Vice Chair of the U.S. Commission on Civil Rights.

On July 19, 2006, the Senate Judiciary Committee met in open session to consider the bill S. 2703. A technical amendment was offered by Mr. Leahy to provide that the short title of the bill, S. 2703, would be expanded to include the name of César E. Chávez. The technical amendment was agreed to by voice vote. An amendment was offered by Dr. Coburn to provide that persons who state that they speak English "well" in response to the Census Bureau's inquiry would not be considered limited-English proficient under section 203(b)(3) of the Voting Rights Act. The amendment was defeated by voice vote. The motion to report favorably the bill, S. 2703, was agreed by a roll call vote of 18–0.

III. Section-by-Section Summary of the Bill

Section 1

Section 1, as amended, provides that the Act may be cited as the "Fannie Lou Hamer, Rosa Parks, Coretta Scott King, and César E. Chávez Voting Rights Act Reauthorization and Amendments Act of 2006."

Section 2

Section 2 explains that the "purpose of this Act is to ensure that the right of all citizens to vote, including the right to register to vote and cast meaningful votes, is preserved and protected as guaranteed by the Constitution." Section 2 sets forth the Senate's findings that "[s]ignificant progress has been made," but "vestiges of discrimination in voting continue to exist."

Section 3

Section 3 eliminates the provisions for federal election examiners, who, in the past, were used to ensure that voters were not excluded from voter registration lists. These examiners have not been used for that purpose in over 20 years. Section 3 also eliminates the provisions for terminating federal examiner certifications. In the remaining provisions of the Act, all references to federal examiners have been replaced with references to federal observers.

Section 3 also alters one of the standards for certifying jurisdictions for federal observer coverage. Currently, the Attorney General may appoint federal observers to monitor polling places in covered jurisdictions if the Attorney General has received written complaints from at least twenty residents who have been denied the right to vote by the government. Section 3 amends the Voting Rights Act to allow the Attorney General to do so provided that at least two "residents, elected officials, or civic participation organizations" have complained in writing that voting rights violations "are likely to occur."

Section 4

Section 4 provides for a 25-year renewal of the coverage formula stated in section 4 of the Voting Rights Act of 1965. It also requires Congress to reconsider these provisions in 15 years.

Section 5

Section 5 responds to, in part, two Supreme Court decisions that interpreted the criteria for preclearance of voting changes under Section 5 of the Voting Rights Act of 1965: Reno v. Bossier Parish School Board, 528 U.S. 320 (2000) (Bossier Parish II), and Georgia v. Ashcroft, 539 U.S. 461 (2003).

Section 6

Section 6 amends the Voting Rights Act of 1965 to allow certain prevailing plaintiffs to collect "reasonable expert fees, and other reasonable litigation expenses."

Section 7

Section 7 extends the requirements of section 203 of the Voting Rights Act of 1965 through 2032.

Section 8

Section 8 allows use of American Community Survey census data under the Act.

IV. Congressional Budget Office Cost Estimate

The Committee sets forth, with respect to the bill, S. 2703, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

JULY 20, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2703, the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, and Cesar E. Chavez Voting Rights Act Reauthorization and Amendments Act of 2006.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

Summary: S. 2703 would reauthorize and amend the Voting Rights Act of 1965. Major provisions of the legislation would extend certain expiring provisions of the act for 25 years, expand the use of federal observers at polling sites, and authorize the use of the American Community Survey to identify areas that may need bilingual voting assistance.

CBO estimates that implementing S. 2703 would cost $1 million in fiscal year 2007 and $15 million over the 2007–2011 period, subject to the availability of appropriated funds. Enacting the bill would have no impact on direct spending or revenues.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of the act any legislative provisions that enforce constitutional rights of individuals. CBO has determined that S. 2703 would fall within that exclusion because it would protect the voting rights of minorities and those with limited proficiency in English. Therefore, CBO has not reviewed the bill for mandates.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2703 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—				
	2007	2008	2009	2010	2011
SPENDING SUBJECT TO APPROPRIATION					
OPM spending under current law for voting rights program:					
Estimated authorization level	2	0	0	0	0
Estimated outlays	2	0	0	0	0
Proposed changes:					
Estimated authorization level	1	4	3	3	3
Estimated outlays	1	4	3	3	3
OPM spending under S. 2703 for voting rights program:					
Estimated authorization level	3	4	3	3	3
Estimated outlays	3	4	3	3	3

Note: OPM = Office of Personnel Management.

Basis of estimate: For this estimate, CBO assumes that S. 2703 will be enacted near the end of fiscal year 2006, that the necessary amounts will be appropriated over the 2007–2011 period, and that spending will follow historical spending patterns for the Office of Personnel Management (OPM).

The legislation would extend for 25 years certain expiring provisions of the Voting Rights Act. Under current law, the Department of Justice (DOJ) certifies the appointment of federal observers to work at polling sites when it has received 20 or more written complaints from residents regarding voting rights violations. OPM, through its Voting Rights Program, works closely with DOJ to assign voting rights observers to locations designated by the department. OPM currently has about 1,000 intermittent employees who serve as neutral monitors at particular polling sites on election days. Since 1966, OPM has deployed 26,000 observers to 22 states.

The legislation would amend current law to authorize the Attorney General to assign federal observers without using the certification process to election sites if he or she has had a reasonable belief that violations of the 14th or 15th amendment have occurred or will occur at a polling site. Based on information from OPM and the current cost of operating the observer program, CBO estimates that the Voting Rights Program would spend about $4 million in general election years and about $3 million in other years.

Intergovernmental and private-sector impact: Section 4 of UMRA excludes from the application of the act any legislative provisions that enforce constitutional rights of individuals. CBO has determined that S. 2703 would fall within that exclusion because it would protect the voting rights of minorities and those with limited proficiency in English. Therefore, CBO has not reviewed the bill for mandates.

Previous CBO estimate: On May 17, 2006, CBO transmitted a cost estimate for H.R. 9, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, as ordered reported by the House Committee on the Judiciary on May 10, 2006. The two versions of the bill are similar and CBO's cost estimates for these bills are identical.

Estimate prepared by: Federal Costs: Matthew Pickford; impact on state, local, and tribal governments: Sarah Puro; impact on the private-sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. Regulatory Impact Evaluation

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 2703.

VI. History of the Voting Rights Act of 1965

In 1965, Congress at last began to fulfill our Nation's promise of full participation in the democratic process for all Americans by passing the Voting Rights Act. That Act created permanent, nationwide protection for every American citizen, protections that remain vital to voters today. It also created certain temporary provisions, which were reauthorized and expanded in 1970,[1] 1975,[2] 1982,[3] and (with respect to language assistance) 1992.

[1] Voting Rights Act Amendments of 1970, Pub. L. 91–285, 84 Stat. 314.
[2] Pub. L. 94–73, 89 Stat. 402 (1975).
[3] Voting Rights Act Amendments of 1982, Pub. L. 97–205, 96 Stat. 134.

Prior to the enactment of the Voting Rights Act, African-Americans and other minorities were prevented from exercising their constitutional rights through violence, intimidation, and systematic and deliberate State action.

Tragically, there are too many examples of this overt hatred and discrimination to detail them all in this record. But understanding the environment of bigotry that led to the Act's passage helps to understand its applicability today and in the future.

The effort to give all voters full access to the ballot box was thwarted systematically and violently. In 1961, the Student Nonviolent Coordinating Committee began a black voter registration drive in McComb, Mississippi, led by "Robert Moses, a black field secretary who had quit his job as a private-school mathematics teacher in New York to work full time on voter registration in the South." Abigail Thernstrom, Whose Vote Counts? 14 (Harvard University Press, 1987). "Moses was attacked and beaten by a cousin of the sheriff; a co-worker was ordered out of a registrar's office at gunpoint and then hit with a pistol; a black sympathizer was murdered by a state representative; another black who asked for Justice Department protection to testify at the inquest was beaten (and three years later killed); a white activist's eye was gouged out; and, finally, twelve SNCC workers and local supporters were fined and sentenced to substantial terms in jail." Id. And those were just a few of many incidents.

The "usual" legislation, however, had failed to break the usual pattern of black disfranchisement. Voting rights litigators in the South in the early 1960s had learned several lessons. The first concerned the literacy test. "No matter from what direction one looks at it," V.O. Key had written in 1949, "the Southern literacy test is a fraud and nothing more." It was no less a fraud in 1965. In the 1960s, southern registrars were observed testing black applicants on such matters as the number of bubbles in a soap bar, the news contained in a copy of the Peking Daily, the meaning of obscure passages in state constitutions, and the definition of such terms as habeas corpus. By contrast, even illiterate whites were being registered. Booker T. Washington had believed that "brains, property, and character" would "settle the question of civil rights," but eighty years after the founding of Tuskegee Institute blacks with brains, property, and character in the city of Tuskegee still found themselves unable to demonstrate their literacy. "If a fella makes a mistake on his questionnaire, I'm not gonna discriminate in his favor just because he's got a Ph.D.," the chairman of the Board of Registrars self-righteously maintained. Id. at 15.

"The long struggle for black voting rights during the Twentieth Century crested on the Edmund Pettus Bridge in Selma, when peaceful demonstrators were savagely attacked by law enforcement officers on March 7, 1965." Testimony of Chandler Davidson, An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization, Hrg. before the Senate Judiciary Committee (May 9, 2006). This "Bloody Sunday, was filmed by news photographers and immediately telecast around the world. It shocked the conscience of America, and at the behest of President Lyndon Johnson, a bipartisan Congress passed the Voting Rights Act a few months later." Id.

The Voting Rights Act of 1965 was designed to "foster our transformation to a society that is no longer fixated on race," to an "all-inclusive community, where we would be able to forget about race and color and see people as people, as human beings, just as citizens." *Georgia* v. *Ashcroft,* 539 U.S. 461, 490 (2003) (quoting Rep. John Lewis). The Act includes a permanent provision, section 2, that applies to every voter in America. "As amended by Congress in 1982, it prohibits any voting qualification or practice that results in denial or abridgement of voting rights on the basis of a citizen's race, color, or membership in one of four language-minority groups: speakers of Spanish or of Native American, Native Alaskan, and Asian languages." Testimony of Chandler Davidson, supra. The Act also includes several temporary provisions that "Congress renewed and expanded * * * in 1970, 1975, and 1982, the last time for 25 years." Id.

Congress's enactment of the Voting Rights Act presaged an immediate and breathtaking transformation. The Voting Rights Act of 1965 had a concrete impact on individuals' lives. "Maynard Jackson's mother (in her middle age) was the first black in Atlanta to obtain a library card; in 1973 her son was elected mayor. In Selma, Alabama, in 1965, Andrew Young placed his life in jeopardy on behalf of black voting rights; only seven years later he was the first black congressman elected from the Deep South since Reconstruction." Abigail Thernstrom, Whose Vote Counts? 1 (Harvard University Press, 1987).

The Voting Rights Act of 1965 had a concrete impact on Americans' attitudes and beliefs. In 1975, only 20% of African-Americans said they had good friends who were white; by 2003, the figure had jumped to 88%. And the proportion of whites with good friends who were African American soared from 9% to 82%. Testimony of Abigail Thernstrom, Understanding the Benefits and Costs of Section 5 Pre-Clearance, Hrg. before the Senate Judiciary Committee (May 17, 2006).

Similarly, the Voting Rights Act had a concrete impact on America's political landscape. The covered jurisdictions that once sponsored violence against minority voters now elect hundreds of minorities to elected office. In Georgia, the voting age population is 27.2% African-American, and African-Americans comprise 30.7% of its delegation to the U.S. House of Representatives and 26.5% of the officials elected statewide. U.S. Census Bureau Report on 2004 Election; The Bullock-Gaddie Voting Rights Studies: An Analysis of Section 5 of the Voting Rights Act (2006). Black candidates in Mississippi have achieved similar success. The State's voting age population is 34.1% African-American, and 29.5% of its representatives in the State House and 25% of its delegation to the U.S. House of Representatives are African-American. Id. As of 2003, Texas had elected 2,000 Latinos to office; two years before, California voters had sent 757 Latinos to office. Id. America has had two African-American Secretaries of State, Colin Powell and Condoleezza Rice—both of whom have been touted as formidable candidates for President of the United States, and two African-American Supreme Court Justices, legendary civil rights lawyer Thurgood Marshall, and former head of the Equal Employment Opportunity Commission Clarence Thomas.

Congress is once again confronted with the expiration of several of the Voting Rights Act's temporary provisions. The five provisions of the Voting Rights Act set to expire in June and August of 2007 are sections 4, 5, 6, 8, and 203.[4]

VII. Expiring Provisions of the Voting Rights Act of 1965

Five provisions of the Voting Rights Act are set to expire in June and August of 2007.

Section 4(b) of the Act sets out a formula to identify discriminatory, or "covered," jurisdictions. 42 U.S.C. § 1973b(b). In 1965, a political subdivision was covered under section 4(b) if (1) it used a literacy test or other device as a condition for voter registration on November 1, 1964, and (2) either less than 50% of eligible persons were registered to vote on that date or less than 50% of such persons voted in the Presidential election of that year. Id. Congress has since added similar triggers using data from 1968 and 1972. Id. Congress has also added jurisdictions with a significant population of non-English speakers. 42 U.S.C. § 1973b(f).

Section 5 provides that if a jurisdiction is covered under section 4(b), then all voting laws in that jurisdiction must be pre-approved either by the Justice Department or the federal district court for the District of Columbia, with the burden of proof on the jurisdiction to show an absence of discriminatory purpose or effect. 42 U.S.C. § 1973c.

Section 203 requires covered jurisdictions to provide bilingual elections for American Indians, Asian Americans, Alaskan Natives, or persons of Spanish heritage who are not proficient in English.

Sections 6 and 8 ensure that minority voters may register to vote and cast their ballots. Section 6 provides for federal election examiners to prepare and maintain lists of eligible voters in covered jurisdictions. Section 8 provides for federal election observers to ensure that all voters are permitted to cast their ballots and that all ballots are properly counted.

VIII. The House and Senate Records

The Senate Judiciary Committee held nine hearings regarding the bill, S. 2703, at which the Committee received testimony from 46 witnesses. In addition, the House Judiciary Committee held 12 hearings featuring 46 witnesses. The total record consists of over 15,000 pages. The House and Senate owe thanks to the many groups dedicated to the civil rights of Americans which, over the past two years, have collected and analyzed evidence regarding voting rights in America.

Just as it did for each previous enactment and reauthorization of the Voting Rights Act in 1965, 1970, 1975, and 1982, the Senate collected data consisting of statistics, findings by courts and the Justice Department, and first-hand accounts of discrimination.

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[4] Sections 7 and 9, which provide additional procedures for examiners appointed under section 6, expire together with section 6.

A. STATISTICAL EVIDENCE

1. Minority Registration and Turnout

In 1965, there was significant evidence that black registration was dramatically lower than white registration, and that this significant difference was explained primarily by the purposeful attempts to disenfranchise black citizens. Indeed, in some states, the gap was 50 percentage points. In Alabama, black registration was just 18.5% and in Mississippi, was a dismal 6.4%. Voting Rights Legislation, Sen. Rep. 89–162, at 44 (1965).

Due to the Voting Rights Act of 1965, minorities in covered jurisdictions have made great strides over time. Indeed, presently in seven of the covered States, African-Americans are registered at a rate higher than the national average. Moreover, in California, Georgia, Mississippi, North Carolina, and Texas, black registration and turnout in the 2004 election (the most recent Presidential election) was higher than that for whites. In Louisiana and South Carolina, African-American registration was 4 percentage points lower than that for whites—a rate identical to the national average. Virginia, however, remains an outlier: in the 2004 election, black registration was 7 percentage points lower than the national average, black registration was 11 percentage points lower than white registration, and black turnout was 13 percentage points lower than white turnout. There is some reason to believe that without the Voting Rights Act's deterrent effect on potential misconduct, these rates might be considerably worse.

In the 2004 election, nationwide, Latinos registered and turned out at rates significantly lower than white voters in the 2004 election—roughly 30 percentage points lower. In Texas and California, the gap was slightly smaller—26 percentage points in each State.

State	2004 Registration		2004 Turnout	
	Minority	White	Minority	White
Alabama	Black: 72.9%	73.8%	Black: 63.9%	62.2%
Alaska	n/a	n/a	Native: 41.4%	Non-Native: 68.4%
Arizona	Black: 55.3%	61.4%	Black: 45.6%	55.8%
	Latino: 30.5%		Latino: 25.5%	
California	Black: 67.9%	56.4%	Black: 61.3%	51.3%
	Latino: 30.2%		Latino: 25.6%	
Florida	Black: 52.6%	64.7%	Black: 44.5%	58.4%
	Latino: 38.2%		Latino: 34.0%	
Georgia	Black: 64.2%	63.5%	Black: 54.4%	53.6%
Louisiana	Black: 71.1%	75.1%	Black: 62.1%	64.0%
Mississippi	Black: 76.1%	72.3%	Black: 66.8%	58.9%
North Carolina	Black: 70.4%	69.4%	Black: 63.1%	58.1%
South Carolina	Black: 71.1%	74.4%	Black: 59.5%	63.4%
Texas	Black: 68.4%	61.5%	Black: 55.8%	50.6%
	Latino: 41.5%		Latino: 29.3%	
Virginia	Black: 57.4%	68.2%	Black: 49.6%	63.0%
Nationwide	Black: 64.3%	67.9%	Black: 56.1%	60.3%
	Latino: 34.3%		Latino: 28.0%	

* Source for Citizen Minority Voting Age Population: U.S. Census Bureau Report on 2004 Election.
* Source for all other information: The Bullock-Gaddie Voting Rights Studies: An Analysis of Section 5 of the Voting Rights Act.

2. Minority Elected Officials

For years, States had created unconstitutional barriers for minority candidates resulting in few minorities serving in elected office. In 1964, for example, there were only approximately 300 Afri-

can-Americans in public office, including just three in the United States Congress. Few, if any, black elected officials were elected anywhere in the South. While the Constitution "does not require proportional representation as an imperative of political organization," *City of Mobile v. Bolden*, 446 U.S. 55, 75–76 (1980), and the Voting Rights Act itself specifically rejects a requirement of proportional representation, both stand for the elimination of purposeful obstacles to minorities holding office. The Nation has made great progress in eliminating such obstacles—even if the work of establishing civil rights for all is not yet complete. Much of that progress is due to the Voting Rights Act.

According to data made available to the Senate, today there are more than 9,100 black elected officials, including 43 members of the United States Congress, the largest number ever. Id. at 2. ACLU, Promises to Keep: The Impact of the Voting Rights Act in 2006 (March 2006). "The Act has also opened the political process for many of the approximately 6,000 Latino public officials who have been elected and appointed nationwide," including 263 at the state or federal level, 27 of whom serve in Congress. Id. Indeed in Georgia, minorities are elected at rates proportionate to or higher than their numbers. While Georgia's voting age population is 27.2% African-American, 30.7% of its delegation to the U.S. House of Representatives and 26.5% of the officials elected statewide are African-American. Black candidates in Mississippi have achieved similar success. The State's voting age population is 34.1% African-American, and 29.5% of its representatives in the State House and 25% of its delegation to the U.S. House of Representatives are African-American.

State	Citizen Minority Voting Age Population (2000 Census)	Minority Percentage in State Senate (2005)	Minority Percentage in State House (2005)	Number Minority Officials (2001)	Minority Percentage in U.S. House Delegation (2006)	Minority Percentage in U.S. Senate Delegation (2006)
Alabama	Black: 24.5%	22.86%	25.71%	756	14.3%	0%
Alaska	Black: 3.0%	Black: 5.0% Native: 25.0%	Black: 2.5% Native: 20.0%.	n/a	0%	0%
Arizona	Hispanic of any race: 17.9%.	Latino: 16.7% (2003).	Latino: 15.0% (2003).	Latino: 268 (2000).	Latino: 25%	0%
California	Hispanic of any race: 21.4%.	22.5%	22.5%	757 (as of 2000).	Latino: 11.3%	0%
Florida	Black: 13.0% Hispanic of any race: 12.6%.	Black: 7.5% Latino: 15.0%	Black: 13.3% Latino: 9.2%	Black: 243 Latino: 89	Black: 12% Latino: 12%.	Latino: 50%
Georgia	Black: 27.2%	19.6%	21.7%	611	30.7%	0%
Louisiana	Black: 30.0%	23.1%	21.9%	705	14.3%	0%
Mississippi	Black: 34.1%	21.2%	29.5%	897	25%	0%
North Carolina	Black: 20.5%	14.0%	15.8%	491	7.7%	0%
South Carolina	Black: 27.8%	17.4%	20.1%	534	16.7%	0%
Texas	Black: 11.6% Hispanic of any race: 26.5%.	Black: 6.5% Latino: 19.4%	Black: 9.3% Latino: 18.0%	Black: 460 Latino: 2,000 (as of 2003).	Black: 9.4% Latino: 15.6%.	0%
Virginia	Black: 18.4%	12.5%	11.0%	246	9.1%	0%

*Source for Citizen Minority Voting Age Population: U.S. Census Bureau Report on 2004 Election.
*Source for all other information: The Bullock-Gaddie Voting Rights Studies: An Analysis of Section 5 of the Voting Rights Act; Joint Center for Pol. & Econ. Studies, Black Elected Officials 14 (2001) (Table 2), Materials.

B. COURT VERDICTS AND DOJ ENFORCEMENT

In 1965, the Congress relied upon findings by federal courts and the Justice Department that the covered States were engaged in a pattern of unconstitutional behavior. *South Carolina* v. *Katzen-*

bach, 383 U.S. 301, 329–30 & nn.38, 39 (1966). For example, the 1965 Senate Report observed that Alabama, Louisiana, and Mississippi had lost every voting discrimination suit brought against them, and in the previous 8 years each State had eight or nine courts find them guilty of violating the Constitution. Voting Rights Legislation, Sen. Rep. No. 89–162, at 9–10 (1965).

1. Court Verdicts

The current record discusses hundreds of cases alleging voting rights violations. Since 1982, six published cases have ended in a court ruling or a consent decree finding that one of the 880 covered jurisdictions had committed unconstitutional discrimination against minority voters. The same number of cases ended in a finding that the covered jurisdictions had committed unconstitutional discrimination against white voters. During that same time period, six cases have found that a non-covered jurisdiction committed unconstitutional discrimination against minority voters. See Appendix I for full list.

Examining Voting Rights Act cases also is instructive. Since 1982, 39 court cases have ended with a finding that one of the 880 covered jurisdictions had violated section 2 of the Voting Rights Act—the permanent provision of the Voting Rights Act that prohibits discrimination nationwide. During that same time period, 40 court cases have ended with a finding that one of the non-covered jurisdictions had violated section 2. See Appendix II for full list. Plainly, the Voting Rights Act has done much to achieve its original aims.

2. Department of Justice Enforcement Efforts

The record also indicates that the Justice Department has issued 754 objection letters since 1982:

Year	Number of submissions	Number of objection letters	Percent of submissions receiving objection letter (percent)
1982	2848	66	2.32
1983	3203	52	1.62
1984	3975	49	1.23
1985	3847	37	0.96
1986	4807	41	0.85
1987	4478	29	0.65
1988	5155	39	0.76
1989	3920	30	0.77
1990	4809	37	0.77
1991	4592	75	1.63
1992	5307	77	1.45
1993	4421	69	1.56
1994	4661	61	1.31
1995	3999	19	0.48
1996	4729	7	0.15
1997	4047	8	0.20
1998	4021	8	0.20
1999	4012	5	0.12
2000	4638	4	0.09
2001	4222	7	0.17
2002	5910	21	0.36
2003	4628	8	0.17
2004	5211	3	0.06
2005	4734	1	0.002

Year	Number of submissions	Number of objection letters	Percent of submissions receiving objection letter (percent)
2006	4094	1	0.002

*Data provided by the Department of Justice, Hrg. Before the Senate Judiciary Committee (May 10, 2006) (testimony of Wan J. Kim, Assistant Att'y Gen., Civil Rights Div.) (data current as of May 8, 2006)

It is important to note, however, that many of the objection letters included in the above chart were the result of the Justice Department's application of a standard subsequently struck down by the Supreme Court as unconstitutional. In the 1980s and 1990s, the Justice Department required jurisdictions to include "the maximum number of majority-minority districts that it was possible to create. The Supreme Court ruled that this policy amounted to unconstitutional racial gerrymandering and struck it down. *Miller* v. *Johnson*, 515 U.S. 900, 921 (1995); *see also Bush* v. *Vera*, 517 U.S. 952, 958–59 (1996); *Hunt* v. *Cromartie*, 526 U.S. 541 (1999). In including in the chart objection letters that were subsequently found unconstitutional, we do not mean to endorse the government's earlier position that was struck down.

3. First-Hand Accounts of Voting Discrimination

Most of the record adduced in the House and Senate Judiciary Committees is devoted to first-person accounts of alleged discrimination. Such accounts can be significant because they demonstrate the real impact of any ongoing discrimination.

In 1991, Mississippi legislators rejected proposed House and Senate redistricting plans that would have given African-American voters greater opportunity to elect representatives of their choice, referring to one such alternative on the House floor as the "black plan" and privately as "the n- plan." DOJ objected, concluding that a racially discriminatory purpose was at play. In the 1992 elections, the cured redistricting plans boosted the percentage of African-American representatives in the legislature to an all time high: 27% of the House and 19% of the Senate (up from 13% and 4%, respectively, in a state where 33% of the voting-age population is African-American). Robert McDuff, Voting Rights in Mississippi: 1982–2006, RenewTheVRA.org at 9–10.

Additionally, a witness claimed that "in North Carolina in Alamance County, a sheriff took it upon himself to get a sample list of Latino voters and then announce . . . I'm going to go door to door knocking on people's houses and ask—and see proof of citizenship." Leslie Lobos, Testimony at Nat'l Comm'n on VRA Southern Reg'l Hrg., House hrg. 201 (Oct. 18, 2005). These types of anecdotes, and the others in the record, demonstrate that the type of behavior that may warrant oversight by federal officials. If individuals deny minorities access to the ballot box, equal justice is denied.

Despite the numerous examples of continued discrimination, some of the testimony gathered indicates that certain States have made great progress under the Voting Rights Act. For example, a witness recounted that "[d]uring the last redistricting cycle, the Alaska Redistricting Board took special care to preserve existing 'Native Districts'—districts which provided Native voters the opportunity to elect the candidates of their choice." Nat'l Comm'n on

VRA Report, at 57. One Arizona voting rights attorney, who had represented voters for four decades, observed that "Arizona was added in 1975 because of an amendment that Congress had adopted that said a voting test included the language in which five percent of the people, other than English, five percent of the people spoke. To wit, Spanish. And in a state where more than 50 percent of those who were registered to vote—were not registered to vote. Arizona was such a state, in 1975. But Arizona is not such a state today." Paul Eckstein, Testimony at Nat'l Comm'n on VRA Southwestern Reg'l Hrg., House hrg. 291 (Oct. 18, 2005). Without the Voting Rights Act, it is difficult to know whether such progress would be possible.

The sheer bulk of the record showing both continued problems and significant improvements—nearly 15,000 pages—compels us to summarize these first-hand accounts of discrimination. Accordingly, we attach Appendix III, a comprehensive list of every account of discrimination articulated in the House record and the Senate record available at the time of this writing (several Senate witnesses had not responded as of this writing).

IX. Clarifications to the Voting Rights Act of 1965

Section 5 of the legislation amends the Voting Rights Act by abrogating, in part, two recent Supreme Court decisions: *Georgia* v. *Ashcroft,* 539 U.S. 461 (2003), and *Reno* v. *Bossier Parish Sch. Bd.,* 528 U.S. 320 (2000) ("*Bossier Parish II*"). The changes work together and are designed to protect minorities from purposeful, unconstitutional discrimination and to eliminate potential obstacles to minority representation in elected bodies. With regard to redistricting plans, they protect naturally occurring districts that have a clear majority of minority voters.

A. PROCESS

When the Voting Rights Act was first enacted in 1965, and for each reauthorization, consideration was initiated in the House. This Congress followed the same practice. From October 18, 2005, through March 8, 2006, the Subcommittee on the Constitution of the House Judiciary Committee held ten hearings featuring testimony from forty witnesses. At those hearings, the House gathered extensive factual evidence and considered proposals to amend section 5 of the Voting Rights Act to address *Bossier Parish II* and *Georgia* v. *Ashcroft.*

The House and Senate introduced identical versions of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization Act on May 3, 2006. Because the Senate had not yet held substantive hearings on the Senate bill, S. 2703—other than a hearing on April 27, 2006, at which members of the House of Representatives submitted the record that the House had developed—we relied heavily upon the House's examination of the proposed language in section 5. We found particularly informative the testimony from witnesses called to explain the meaning of and context for the new provisions.

In the course of our consideration, concerns were raised. The Senate Committee on the Judiciary responded by convening hearings in which we further investigated issues implicated by the

amendments in section 5 of the bill. The Committee heard from several witnesses who helpfully commented on the amendments and assured us that the language reflected our intent.

B. "ANY DISCRIMINATORY PURPOSE"

The Supreme Court's decision in *Bossier Parish II* has created a strange loophole in the law: it is possible that the Justice Department or federal court could be required to approve an unconstitutional voting practice "taken with the purpose of racial discrimination." Testimony of Nina Perales, Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options after LULAC v. Perry, Hrg. before the Subcommittee on the Constitution, Civil Rights, and Property Rights of the Senate Judiciary Committee (July 13, 2006). "[A]fter *Bossier Parish II,* the Supreme Court has directed preclearance authorities to permit changes that have an unconstitutional, racially discriminatory purpose as long as the purpose is simply to perpetuate unconstitutional conditions and not to make them actually worse." Pamela S. Karlan, Responses to Written Questions from Sen. Kennedy (submitted for May 16, 2006 hearing). The federal government should not be giving its seal of approval to practices that violate the Constitution. Under this amendment, which forbids voting changes motivated by "any discriminatory purpose," it will not do so.

During the hearings, witnesses echoed the explanation provided by Pamela S. Karlan that "[t]he amendment of section 5 to overturn the Supreme Court's interpretation in *Bossier II* . . . *only* forbids states from making changes that would themselves violate the Fourteenth and Fifteenth Amendments." Testimony of Pamela S. Karlan, The Continuing Need for Section 5 Pre-Clearance, Hrg. before the Senate Judiciary Committee (May 16, 2006) (emphasis added); accord Juan Catagena, Responses to Written Questions from Sen. Schumer (submitted for May 10, 2006 hearing). They testified that the language encompasses voting practices that are "taken with the purpose of racial discrimination," that are "intentionally discriminatory," and that are "purposefully taken . . . to lock out racial and language minorities from political power." Testimony of Perales, supra; Anita Earls, Reponses to Written Questions from Sen. Cornyn (submitted for May 16, 2006 hearing); Responses of Catagena, supra.

The language of the bill, "discriminatory purpose," is clear on its face. Voting practices adopted with a "discriminatory purpose . . . do, of course, violate the Constitution." Testimony of Pamela S. Karlan, supra. This is familiar language. It is the language that the Supreme Court uses in defining unconstitutional behavior under the Fourteenth and Fifteenth Amendments. It is the language of cases such as *City of Mobile* v. *Bolden,* 446 U.S. 55 (1980), and *Washington* v. *Davis,* 426 U.S. 229 (1976).

The question of whether "any discriminatory purpose" provided protections equal to, or beyond, the Constitution was fundamental at the hearings. Several witnesses had raised concerns that expanding section 5 of the Voting Rights Act might render section 5 unconstitutionally broad. Testimony of Michael Carvin, Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options after LULAC v. Perry, Hrg. before the Subcommittee on the Constitution, Civil Rights, and Property Rights of the Senate Judi-

ciary Committee (July 13, 2006); Testimony of Abigail Thernstrom, Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options after LULAC v. Perry, Hrg. before the Subcommittee on the Constitution, Civil Rights, and Property Rights of the Senate Judiciary Committee (July 13, 2006). Committee Members rejected these concerns because witnesses who supported the bill, S. 2703, assured Members that the amendment "causes no constitutional difficulty whatsoever, since the amendment only forbids states from making changes that would themselves violate the Fourteenth and Fifteenth Amendments." Testimony of Karlan, supra; accord id. ("Amending section 5 to prohibit *all* unconstitutional discrimination with respect to the right to vote, rather than only the subset of unconstitutional discrimination that is also retrogressive poses no constitutional difficulties under any conceivable theory of congressional power.").

Another witness confirmed that adding the phrase "any discriminatory purpose" posed no problems since it merely reiterated the constitutional standard: "[T]here can be no constitutional difficulties in prohibiting under Section 5 all unconstitutional discrimination touching upon the right to vote—discrimination which would also violate the 14th and 15th Amendments to the Constitution. Restoring Section 5 preclearance review to a pre-*Reno* [v. *Bossier Parish*] standard would make Section 5 consistent with the prohibition in these Constitutional amendments." Responses of Catagena, supra.

One traditional and important standard for identifying unconstitutional racial discrimination is to ask whether the challenged action departs from normal rules of decision. Courts and the Justice Department should ask whether the decision not to create a black-majority district departed from ordinary districting rules. If a state has a large minority population concentrated in a particular area, ordinary rules of districting—following political and geographic borders and keeping districts as compact as possible—would recommend that those voters be given a majority-minority district. If the State went out of its way to avoid creating such a majority-minority—one that would be created under ordinary rules—that is unconstitutional racial discrimination.

This amendment also has the effect of preventing the recurrence of some Justice Department policies. For years, the Justice Department required States to maximize majority-minority districts at any cost. The result was bizarrely shaped districts and maps gerrymandered beyond recognition, all on the basis of race. The Supreme Court repeatedly ruled that this policy violated the Constitution. See, e.g., *Miller* v. *Johnson,* 515 U.S. 900, 921 (1995); *Bush* v. *Vera,* 517 U.S. 952 (1996); *Hunt* v. *Cromartie*, 526 U.S. 541 (1999). It is perverse to think that, under the guise of enforcing voting rights, the Justice Department was forcing States to violate citizens' constitutional voting rights. This bill prevents future incidences of such behavior by depriving the Justice Department of the power to define for itself "discriminatory purpose" under the Voting Rights Act.

During the Senate hearings, some witnesses raised concerns that the amendment could be misinterpreted, and that the Justice Department or federal courts might compel the creation of so-called influence or coalitional districts. The adopted language does not

prevent a state official from declining to combine a group of minority voters with a group of white voters who tend to support the same parties and candidates in a district where candidates supported by minorities will reliably prevail. Although such an action may make it more difficult for that coalition of voters to elect their preferred candidate, the Voting Rights Act is designed to ferret out and stop unconstitutional discrimination on the basis of race or ethnicity. It is not designed to protect political parties, or to prevent statewide political realignments from being reflected in the redistricting process. Nor can any racial or political group claim a right under the Fourteenth or Fifteenth Amendment to have its members placed as often as possible in districts where candidates of the party favored by that group's members will prevail. The ultimate goal of the Constitution's Fourteenth Amendment is to ensure that persons of all races are treated equally. Those implementing and applying the Voting Rights Act must keep in mind that the Act is designed to enforce the Fourteenth and Fifteenth Amendments.

The language "any discriminatory purpose" does not permit a finding of discriminatory purpose that is based, in whole or part, on a failure to adopt the optimal or maximum number of majority-minority districts or compact minority opportunity districts. Nor does it permit a finding of discriminatory purpose based on a determination that the plan seeks partisan advantage or protects incumbents. The Constitution and the courts already define racial discrimination and it is that constitutional definition which we incorporate. Indeed, it would raise serious constitutional questions if we were to adopt a free-flowing definition of purpose—or authorized the Justice Department to invent one—that is untethered from the Constitution's commands or the Supreme Court's precedents. By anchoring the language of section 5 in the Fourteenth and Fifteenth Amendments, we limit Executive Branch discretion and prevent future incidents of overreaching.

C. "PREFERRED CANDIDATE OF CHOICE"

Another important aspect of the Voting Rights Act is the protection afforded to minorities with respect to districting plans established after each census. For over two decades, the Supreme Court applied a workable standard when reviewing such plans under section 5. The Court asked whether under the proposed plan, "the ability of minority groups . . . to elect their choices to office is . . . diminished." *Beer* v. *United States,* 425 U.S. 130, 141 (1976). In areas with racially polarized voting, this was often equivalent to asking whether the plan maintained naturally occurring majority-minority districts.

In the 2003 case of *Georgia* v. *Ashcroft*, the Court replaced this definition—that is, one that protects against retrogression—with a totality of the circumstances approach. The Court held that Section 5 permits states to replace majority-minority districts in which minorities have the ability to elect a candidate of choice with "coalition" or "influence" districts in which minorities have less voting power.

Whatever the merits of such an approach, experts in the area of voting rights have explained that the *Georgia* standard is unworkable. The concept of "influence" is vague and the concept of a "coalition" district is difficult to define. Theodore M. Shaw, President

and Director-Counsel of the NAACP Legal Defense and Educational Fund, testified that he was "skeptical that a workable standard of minority voters' 'influence' exists, or could be devised and implemented." Testimony of Theodore M. Shaw, Hrg. before the Subcommittee on the Constitution of the House Judiciary Committee 25 (Nov. 9, 2005). And Mr. Shaw was not alone, as numerous witnesses who testified before the House and Senate explained that the *Georgia* standard is functionally unworkable. E.g., Testimony of Robert Kengle, Hrg. before the Subcommittee on the Constitution of the House Judiciary Committee 136 (Nov. 9, 2005); Testimony of David T. Canon, Reauthorizing the Voting Rights Act's Temporary Provisions: Policy Perspectives and Views from the Field, Hrg. before the Senate Judiciary Committee (June 21, 2006); Appendix to Testimony of Nathaniel Persily, The Continued Need for Section 5, Hrg. before Senate Judiciary Committee (May 16, 2006).

The House witnesses were also unified in their conclusion that Congress needed to adopt language in order to prevent the substitution of coalition or influence districts for naturally occurring majority-minority districts. Mr. Shaw testified, "What *Georgia* v. *Ashcroft* does is open a door to cracking, [or] dilution" of majority-minority districts in order to limit minorities' voting power. Testimony of Theodore M. Shaw, supra, at 58. Attorney Anne Lewis explained that the purpose of this language is to prevent elected officials from unpacking majority-minority districts into "influence" or "coalitional" districts. Testimony of Anne W. Lewis, Hrg. before the Subcommittee on the Constitution of the House Judiciary Committee 32 (Nov. 9, 2005); accord id. at 35.

Accordingly, S. 2703 specifically amends section 5 of the Voting Rights Act to clarify that it protects the ability of minority voters "to elect their preferred candidates of choice," and thus re-adopts—and clarifies further—the *Beer* standard. The phrase "preferred candidate of choice" was first proposed in the House hearings by Mr. Shaw, Ms. Lewis, and Congressman Tyrone Brooks to solve this problem.

These witnesses made it clear that the new language did not require the maximization or creation of majority-minority districts. As one witness explained, the Supreme Court has held "in *Miller* v. *Johnson* and *Shaw* v. *Hunt* that maximization of minority voting strength is an improper reading of Section 5," Testimony of Kengle, supra, 139, and this bill does not change that. Ms. Lewis explained that the language "preferred candidate of choice" was not aimed at drawing "bizarre shape[d]" majority-minority districts. Testimony of Anne W. Lewis, supra, 34.

Instead, the language seeks to protect naturally occurring majority-minority districts. Ms. Lewis explained that the goal of the amendment was to prevent states from dismantling or "refusing to draw naturally occurring geographically compact majority-minority districts." Id. Mr. Shaw likewise stated that the "preferred candidate of choice" language was designed to prevent legislators from intentionally "'cracking' or 'fragmenting' geographically compact minority voting communities." Testimony of Shaw, supra, 24.

If covered jurisdictions are permitted to break up districts where minorities form a clear majority of voters and replace them with vague concepts such as influence, coalition, and opportunity—a

standard under which no one factor or specific combination of factors is determinative—this may actually facilitate racial discrimination against minority voters.

Particularly disconcerting is the prospect that the *Georgia* opinion potentially opens the door to increased substitution of partisan interests for the ability of minorities to elect their preferred candidate of choice. Several House witnesses articulated the problem in clear terms: "[To] the extent that [we] can imagine what measures would be used to determine whether substantive representation or influence has been enhanced to prevent retrogression, these measures amount to simply helping Democratic Party candidates . . . Helping Democratic Party candidates would be argued to be equivalent to increasing minority voter influence and helping minority substantive representation. In other words, influence districts, if seen as a replacement for opportunities for minority voters to elect representatives of their choice, would become simply a rationale for creating Democratic party gerrymanders." Prepared Statement of Theodore S. Arrington, Hrg. before the Subcommittee on the Constitution of the House Judiciary Committee 84 (Nov. 9, 2005).

However, as we learned from witnesses, this is not an acceptable result. Congressman Brooks made this point when he stated that ". . . retrogression would be something I could never accept. I would not ever sacrifice the full protections of section 5 . . . simply to promote a particular candidate or a political party. And I think that's basically what it came down to in 2001 in *Georgia*. We were putting political decisions ahead of what the Voting Rights Act really is all about, and I think we made a mistake." Testimony of Rep. Tyrone Brooks, Hrg. before the Subcommittee on the Constitution of the House Judiciary Committee 76 (Nov. 9, 2005). One House Member commented that the Georgia legislature "had made a partisan decision to basically protect Democratic districts, or the Democratic Party," and asked, "do you believe that that's an appropriate use of the Voting Rights Act?" Rep. Brooks responded, "No, I do not," and urged the Committee to accept the "preferred candidate of choice" language in order to prevent this result in the future. Id. Congressman John Lewis, in endorsing the amendment, stated, "I cannot accept the Court's conclusion that the interests of an incumbent minority politician are the same as the interest of minority voters, with respect to redistricting. There is a clear conflict there." Prepared Statement of Congressman John Lewis, Hrg. before the Subcommittee on the Constitution of the House Judiciary Committee 81 (Nov. 9, 2005).

In truth, witnesses made clear to the committee that the "argument was that the Voting Rights Act was not intended to protect the incumbents of any political party or, for that matter, the incumbents of any particular race. Instead, the purpose of the Voting Rights Act is to protect the rights of voters in minority racial and language communities, who have historically been denied the opportunity to elect candidates of their choice." Testimony of Anne W. Lewis, supra, at 34.

The bill's proposed language codifies this understanding. It eliminates any risk that the scenarios feared by *Georgia* v. *Ashcroft's* critics will unfold. By focusing solely on the protection of naturally occurring legislative districts with a majority of minority voters,

the reauthorization bill ensures that minority voters will not be forced to trade away solidly majority-minority districts for ambiguous concepts like "influence" or "coalitional." Rather, as the House Committee Report makes clear, the bill "rejects" the Supreme Court's interpretation of section 5 in *Georgia* v. *Ashcroft*, and establishes that the purpose of section 5's protection of minority voters is, in the words of the bill, to "protect the ability of such citizens to elect their preferred candidates of choice."

It is important to emphasize that this language does not protect any district with a representative who gets elected with some minority votes. Rather, it protects only districts in which "such citizens"—minority citizens—are the ones selecting their "preferred candidate of choice" with their own voting power. These two phrases have a limited but important purpose: protecting naturally occurring majority-minority districts. By limiting non-retrogression requirements to districts in which "such [minority] citizens" are able with their own vote power to elect "preferred" candidates of choice—not just a candidate of choice settled for when forced to compromise with other groups—the bill limits section 5 to protecting those naturally occurring, compact majority-minority districts with which section 5 was originally concerned. This approach would avoid what one minority witness called the "'cracking' of majority-minority districts." Testimony of Persily, supra.

Among the salutary effects of the "preferred candidate of choice" language is that it avoids several legal and practical pitfalls. First, the bill would replace the ambiguous standard set by the Supreme Court in *Georgia* v. *Ashcroft* with the workable standard in *Beer*. This would promote the Act's original purposes, provide predictability to all involved, and reduce wasteful litigation. Additionally, the bill would *not* lock into place coalition or influence districts, as this would wreak havoc with the redistricting process and would stretch the Voting Rights Act beyond the scope of Congress's authority under the Fourteenth and Fifteenth Amendments. Finally, the amendment clarifies that the competitive position of a political party is not the concern of the Voting Rights Act. This legislation definitively is not intended to preserve or ensure the successful election of candidates of any political party, even if that party's candidates generally are supported by members of minority groups. The Voting Rights Act was intended to enhance voting power, not to serve as a one-way ratchet in favor of partisan interests.

Naturally occurring majority-minority districts have long been the historical focus of the Voting Rights Act. They are the districts that would be created if legitimate, neutral principles of drawing district boundaries, such as attention to county and municipal political borders, were combined with the existence of a large and compact minority population to draw a district in which racial minorities form a majority. The changes made by section 5 of this bill, overriding aspects of *Georgia* v. *Ashcroft*, would give federal authorities the tools they need to prevent state and local authorities from arbitrarily refusing to create or arbitrarily dismantling such districts, or from implementing other voting practices that are motivated by racial or ethnic discrimination.

X. Additional Views of Mr. Kyl

I concur without reservation in the Chairman's report. I write separately simply to add a few points with regard to the VRARA's treatment of *Reno* v. *Bossier Parish II*, 528 U.S. 320 (2000), and *Georgia* v. *Ashcroft*, 539 U.S. 461 (2003).

As the Chairman notes, the VRARA's changes to Section 5 of the Voting Rights Act ensure that the Act will protect the creation and retention of naturally occurring districts with a clear majority of minority voters—and nothing more. The Chairman emphasizes that the Act as amended by the bill *does not* protect coalitional or influence districts.

I write separately to explain why I believe that Congress *cannot* require that state or local governments create or retain influence or coalitional districts. These are districts that do not have a majority of minority voters but that nevertheless reliably support candidates and parties supported by minority voters. I believe that extending the protections of Section 5 of the Voting Rights Act to these districts would exceed the scope of Congress's power to enforce the Equal Protection Clause pursuant to Section 5 of the Fourteenth Amendment.

The ultimate goal of the Equal Protection Clause is to ensure that different races are treated equally. Even if influence or coalitional districts were properly understood to protect the interests of minority voters, rather than the interests of political parties—a matter that is of some dispute—a mandate for the creation or retention of such districts would not be a reasonable means of enforcing that Clause. If the Voting Rights Act forced states to create such districts whenever possible (or even only when permitted by neutral redistricting criteria), or barred states from disassembling such districts, Federal law effectively would require that one group of voters be placed as often as possible in districts where candidates and parties supported by that group of voters will prevail.

Such a requirement would be problematic for several reasons. First, it is the nature of politics and elections that some voters will support a winning candidate and that some will support a candidate who loses. It is no violation of a person's voting rights that the candidate that he voted for lost. That is simply how elections work. The Fourteenth and Fifteenth Amendments protect a right to be able to vote free from the influence of racial discrimination. They do not protect a right to have one's candidate prevail in an election.

Moreover, in jurisdictions in which the protected group of voters largely supports one party, a requirement that those voters be placed in districts where their candidates and party will prevail would introduce severe distortions into the redistricting process. In effect, that jurisdiction would be required to create and retain as

many districts as possible that would reliably elect candidates of the party favored by the protected group of voters.

Such a mandate would be grossly unfair to voters who support other parties that compete in the jurisdiction's elections. A requirement that one group of voters be given winning districts as often as possible also is a requirement that other voters who support competing parties be placed in losing districts. It is a mandate that effectively would require affirmative discrimination against the aspirations of other voters. Such a system would not be consistent with the principle of the equal protection of the laws. It would not be a reasonable means of enforcing the guarantees of the Fourteenth Amendment.

Further, any application of Section 5 of the Voting Rights Act that would have the effect of favoring one group of voters above and at the expense of other voters would be in serious tension with other parts of the Act. Statutes with integrated provisions effecting a common general objective are read *in pari matera*—that is, in such a way that one provision does not negate or undercut another. Section 2 of the Voting Rights Act bars the creation of a system under which members of one group "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Obviously, if Section 5 were applied in a way that required that one group of voters be given opportunities superior to those enjoyed by other groups to have its candidates prevail in elections, that section would be inconsistent with Section 2. It would contravene Section 2's prohibition on systems that give some groups "less opportunity than other members of the electorate * * * to elect representatives of their choice."

If the different parts of the Voting Rights Act are to be construed in harmony, no part of that Act should be employed to require implementation or retention of a particular voting practice simply because it increases the competitive position of a political party that is favored by a particular group of voters. The Voting Rights Act does not require maximization or enhancement of the electoral opportunities of any particular group of voters—a result that could only be achieved at the expense of the rights of other groups of voters. Indeed, such a result would be at odds with the very constitutional provision that the Act is designed to enforce, the Fourteenth Amendment, which requires *equal treatment* of the rights and opportunities of different groups of voters.

Finally, I would note that the operative assumptions underlying the concepts of influence and coalitional districts appear to be inconsistent with the predicates for Congress's exercise of its powers under Section 5 of the Fourteenth Amendment. Congress may legislate pursuant to Section 5 in order to enact remedial legislation designed to combat substantial and sustained racial discrimination. Because Section 5 of the Voting Rights Act has been enacted and extended pursuant to these Fourteenth Amendment powers, it must be reasonably targeted at jurisdictions suspected of discriminating against the aspirations of minority voters. In reauthorizing Section 5 of the Voting Rights Act, Congress cannot presume the existence of the *opposite* of the predicates for the exercise of its Fourteenth Amendment powers. The preclearance requirement can-

not be based on the assumption that spreading out minority voters will have no negative impact on their electoral aspirations because other groups will readily support minority voters' preferred candidates. If such an assumption were clearly accurate, there would be no basis for legislating pursuant to Section 5 of the Fourteenth Amendment in the first place. And if this or any future Congress were to incorporate such assumptions into Section 5 of the Voting Rights Act, it would cast doubt on the constitutionality of the Act's mandate that covered states and localities preclear all changes in their voting procedures with the Federal government.

With these considerations in mind, I concur in the Committee's decision to report a bill that does not require influence or coalitional districts, but that instead reaffirms the Voting Rights Act's historical focus on protecting naturally occurring majority-minority districts.

JON KYL.

XI. Additional Views of Mr. Cornyn and Mr. Coburn

We regret that these views will be filed post-enactment. The expedited process prohibited normal order, but we believe the following considerations should accompany the Act's passage.

The Voting Rights Act of 1965 is arguably the most important and effective civil rights legislation ever enacted. Indeed, when signing the landmark legislation into law, Lyndon Johnson, the President of the United States and former member of the Senate from the state of Texas, described the act's passage as "a triumph for freedom as huge as any victory that has ever been won on any battlefield." [1] President Johnson's words captured the importance of the act's passage and underscore that it was a hard-fought victory at a tense time in American history.

It is no secret why the Voting Rights Act was necessary. It was adopted at the height of the civil rights movement, when numerous jurisdictions throughout the United States had actively engaged in the intentional, systematic disenfranchisement of blacks and other minorities from the electoral process. As the committee report and the extensive record reflects, these jurisdictions engaged in the discriminatory use of tests and devices such as literacy, knowledge and moral character tests—tests specifically designed to be failed. Even worse, violence and brutality were commonplace. Blacks were beaten and killed simply for attempting to exercise their right to participate in the democratic process, and civil rights activists were thwarted at every turn in their attempt to enact reform. This type of bigotry and hatred at the polls, coupled with escalating violence and the murder of activists, is the backdrop against which the Voting Rights Act was adopted.

S. 2703, the legislation that has passed out of committee, is another step in our nation's long road toward equal justice under the law for all Americans. The legislation provides for the reauthorization of the expiring provisions of the Voting Rights Act—provisions that are designed to protect against discrimination at the polls. For these reasons, and because we believe that there are certain political subdivisions across the nation that would further benefit from federal oversight, we joined our colleagues in voting for this legislation.

However, we do hold some significant reservations about a number of important issues. These concerns can generally be categorized as follows: (1) the record of evidence does not appear to reasonably underscore the decision to simply reauthorize the existing Section 5 coverage formula—a formula that is based on 33 to 41 year old data, and (2) the seemingly rushed, somewhat incomplete legislative process involved in passing the legislation pre-

[1] Public Papers of the Presidents of the United States: Lyndon B. Johnson, 1965. Volume II, entry 394, pp. 811–815. Washington, DC: Government Printing Office, 1966.

vented the full consideration of numerous suggested improvements to the Act.

In short, while we support reauthorization generally, we reluctantly conclude that the final product is not the best product we might have produced had we engaged in a more thorough debate about possible improvements. We also conclude that it would have been beneficial if the Section 4 coverage formula had been updated in order to adhere to constitutional requirements—an update that would have preserved, strengthened and expanded the Act to ensure its future success.

1. EVIDENCE IN THE RECORD CALLS FOR AN UPDATED COVERAGE FORMULA

The good news is that the Act fulfilled its promise. Today, we live in a different—albeit still imperfect—world. Today, no one can claim that the kind of systematic, invidious practices that plagued our election systems 40 years ago still exist in America. And the Act resulted in almost immediate, measurable improvements with respect to covered jurisdictions. However, simply reauthorizing the expiring provisions with the existing coverage formula—based on 33 to 41 year old data—may not have been the best approach given the evidence today in 2006.

Increased Voter Registration and Turnout Rates in Covered Jurisdictions

In 1965 when the Voting Rights Act was adopted the average registration rate for black voters in the seven original covered states was only 29.3 percent.[2] Today, the voter registration rate among blacks, for example, in covered jurisdictions is over 68.1 percent of the population—higher than the 62.2 percent found in non-covered jurisdictions.[3] As the chart below indicates, voter registration data since the Act's original passage in 1965 shows that covered jurisdictions have demonstrated equal or higher voter registration rates among black voters as non-covered jurisdictions since the mid 1970's.[4] Voter turnout data is equally encouraging, with 60 percent of black citizens casting votes in both covered jurisdictions and non-covered jurisdictions.[5]

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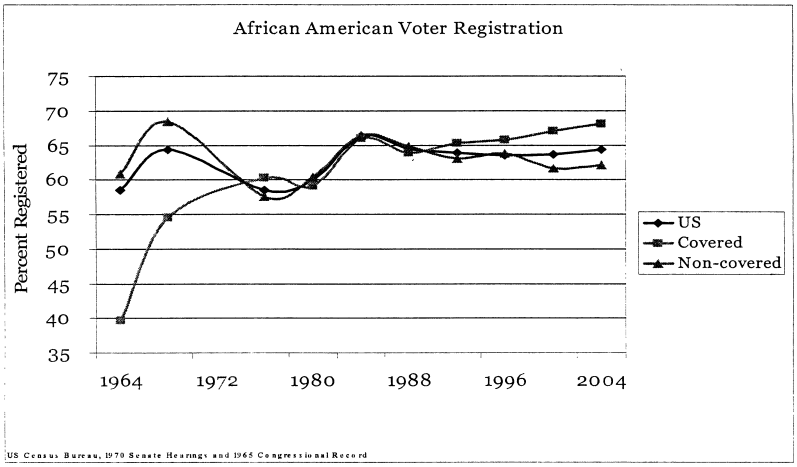
[2] Senate Report 162, at 44 (April 21, 1965).

[3] 2004 Election Data from the U.S. Census Bureau. Reflects the percentage as a percent of the population, as compared to as a percent of the Citizen Voting Age Population. Those numbers are 69.9 percent and 67.9 percent. In addition, certain assumptions were made to account for partially covered jurisdictions—North Carolina and Virginia were considered "covered" for this calculation because of their significant number of covered counties.

[4] Id.

[5] Id.



Further, statistician Keith Gaddie reported registration of black citizens in Alabama during the 2004 elections was 72.9% of the voting age population,[6] in Georgia, 64.2%,[7] in Louisiana, 71.1%,[8] in Mississippi, 76.1%,[9] in South Carolina, 71.1%,[10] and in Virginia, 57.4% of the voting age population. Voter turnout rates were equally improved. For example, in 2004 Alabama had a 63.9% turnout rate of registered black voters,[11] Georgia had a 54.4% turnout rate,[12] Louisiana had a 62.1% turnout rate,[13] Mississippi had a 66.8% turnout rate,[14] South Carolina had a 59.5% turnout rate,[15] and Virginia had a 49.6% turnout rate.[16]

Declining Objections by the Department of Justice

Another important indicator of the success of the Act is the continual decline of objections issued by the Department of Justice to plans submitted under section 5 for pre-clearance. The Supplemental Views submitted by the Chairman of the Committee includes a chart depicting DOJ objections since 1982. It is worth noting that both total objections and objections as a percent of submissions have declined significantly over that time, and as we understand, since the original passage of the Act.

Our review of the data indicates that the continual decline has occurred under both Republican and Democrat Presidential administrations, dropping from 67 objections out of 2848 in 1982 to only 19 objections out of 3,999 submissions in 1995. Perhaps most tell-

[6] Understanding the Benefits and Costs of Section 5 Pre-Clearance: Before the Senate Comm. on the Judiciary, 109th Cong. 5 (2006) (Submitted testimony by Professor Keith Gaddie on May 17, 2006: The Bullock-Gaddie Voting Rights Studies: An Analysis of Section 5 of the Voting Rights Act. See Table 2 on Alabama.)
[7] Id. See Table 2 on Georgia.
[8] Id. See Table 2 on Louisiana.
[9] Id. See Table 1 on Mississippi.
[10] Id. See Table 1 on South Carolina.
[11] Id. See Table 3 on Alabama.
[12] Id. See Table 3 on Georgia.
[13] Id. See Table 3 on Louisiana.
[14] Id. See Table 2 on Mississippi.
[15] Id. See Table 2 on South Carolina.
[16] Id. See Table 2 on Virginia.

ing is the fact that in 2005, there was only 1 objection out of 3,811 pre-clearance submissions.[17]

While some maintain that the analysis may be skewed since *Bossier* v. *Parrish II* removed "discriminatory purpose" from the equation, the fact is that the trend has been a declining number of objections in covered jurisdictions over time. We believe this is something to celebrate as an indication of the success of the Act.

Anecdotal Accounts Submitted Implicate only a Portion of Covered Political Subdivisions

The volume of testimony and submissions amassed during the House and Senate hearings was overwhelming. Indeed, when the Senate Judiciary Committee held its first hearing, the House Judiciary Committee Chairman said, "I am here today to present this Committee with the results of our examination, which includes almost 8,000 pages of testimony that comprise 9 of the 10 hearing records compiled by the House Judiciary Committee." Our understanding is that ultimately the Senate received almost 10,000 pages from the House of Representatives.

Numerous witnesses suggested that the primary rationale for continued coverage based on the existing formula was over 10,000 pages of accounts of discrimination compiled. Senate Judiciary staff analyzed the report during the course of hearings seeking to find all accounts of discrimination alleged in the report. The result of that effort—a 283 page summary of examples of discrimination—is included as Appendix 3 to the Committee Report.

While we take no position on the existence of discrimination alleged in the accounts in the record, at face value the anecdotes submitted implicate only a fraction of the total number of covered political subdivisions.[18] For example, of the 254 counties in Texas, only 22 are implicated by the accounts of discrimination submitted in the record. This analysis admittedly excludes any accounts of statewide discrimination (e.g. a redistricting plan)—because including such examples are indicative of the state policy not the local political subdivision.

COUNTIES SPECIFICALLY IMPLICATED IN HOUSE AND SENATE RECORD ACCOUNTS OF DISCRIMINATION [19]

State	Number of Counties Implicated	Total Number of Counties in the State	Percentage of Counties Implicated (Percent)
Alabama	13	67	19.40
Alaska	5	27	18.52
Arizona	6	15	40.00
California	10	58	17.24
Colorado	2	64	3.13
Florida	5	67	7.46
Georgia	27	159	16.98
Illinois	8	102	7.84
Indiana	1	92	1.09
Kentucky	3	120	2.50
Louisiana	2	64	3.13

[17] Id.

[18] It was not possible for our staffs to investigate and verify each and every account of discrimination submitted.

COUNTIES SPECIFICALLY IMPLICATED IN HOUSE AND SENATE RECORD ACCOUNTS OF DISCRIMINATION [19]—Continued

State	Number of Counties Implicated	Total Number of Counties in the State	Percentage of Counties Implicated (Percent)
Maryland	1	23	4.35
Massachusetts	2	14	14.29
Michigan	5	83	6.02
Minnesota	2	87	2.30
Mississippi	8	82	9.76
Missouri	1	114	0.88
Montana	6	56	10.71
New Jersey	5	21	23.81
New Mexico	3	33	9.09
New York	8	62	12.90
North Carolina	15	100	15.00
Ohio	2	88	2.27
Pennsylvania	3	67	4.48
Rhode Island	1	5	20.00
South Carolina	23	46	50.00
South Dakota	14	66	21.21
Texas	22	254	8.66
Virginia	14	134	10.45
Washington	1	39	2.56
Wisconsin	3	72	4.17
Wyoming	1	23	4.35

[19] Data collected from a review of the record by Senate Judiciary Committee staff.

COUNTIES SPECIFICALLY IMPLICATED IN PARTIALLY COVERED JURISDICTIONS

State	Covered Counties Implicated	Preclearance Counties	Percentage of Preclearance Counties Implicated (Percent)
California	3	4	75
Florida	0	5	0
Michigan	2	2	100
New York	3	3	100
North Carolina	9	40	22.5
South Dakota	2	2	100
Virginia	14	123	11.38

Interestingly, while Florida has 5 counties that are subject to Section 5 coverage, none of these counties were implicated by the accounts of discrimination. Yet there were 5 non-covered counties in Florida that were pointed out in the list of accounts. If reauthorization of Section 5 coverage is based on the accounts in the record, it does not seem that the coverage formula in Florida as re-authorized could possibly be appropriate.

In the Senate Judiciary Committee mark-up, Senator Durbin argued in favor of reauthorization by stating that, "[w]e have gathered thousands of pages of reports and evidence." [20] While there are, in fact, thousands of pages in the record—it is important to clarify that there are a limited number of examples of discrimination and that the examples offered do not implicate the majority of

[20] Unofficial Transcript: Special Executive Business Meeting to Consider S. 2703, Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006: Senate Committee on Judiciary, 109th Cong. 19 (2006) (Oral statement of Senator Dick Durbin on July 19, 2006).

covered political subdivisions. In all, of 893 covered counties, 139 are directly implicated in the accounts of discrimination scattered throughout those "thousands of pages."

There is no question that if those accounts are accurate, that those 139 counties are deserving of coverage under Section 5, and possibly numerous others upon review. That is precisely the reason we voted for this legislation. But it would have been advisable for the committee or the Senate as a whole to consider an updated coverage formula to ensure that the appropriate jurisdictions were covered according to constitutional requirements. That kind of deliberative process simply was not allowed to occur.

It strikes us that much of this is great news. Increased voter registration rates for African American voters in covered jurisdictions, reduced numbers of objections sustained, increased numbers of minority elected officials, fewer counties implicated with discriminatory activity, and generally a decreasing distinction, if any, between covered jurisdictions and non-covered jurisdictions means that there is strong and compelling evidence that, in fact, the Voting Rights Act has largely achieved the purposes that Congress had hoped for and that millions of people who had previously been disenfranchised had prayed for.

In light of this strong indication that the act has largely achieved the purposes that Congress had intended, of course, the logical question before us was whether these provisions under section 5 should have been reauthorized.

2. THE LEGISLATIVE PROCESS FAILED TO PRODUCE THOROUGH DELIBERATION

Misunderstood Timing and Nature of Re-Authorization

From the beginning of the reauthorization process, two critical facts were repeatedly ignored or misunderstood: (1) that the Voting Rights Act is, in fact, permanent and only certain temporary provisions are set to expire; and (2) that the expiring provisions were not set to expire until the summer of 2007—and thus there was plenty of time to work on improving the Act.

The misunderstanding about the permanence of the Voting Rights Act—particularly by the press—is perhaps most troubling. In truth, the act's core provision, section 2, prohibits the denial or abridgement of the right of any citizen to vote on account of race or color, is permanent, and applies nationwide. That provision will never expire, and it is not affected by the reauthorization language we review today.

This is an important distinction because it caused a great deal of confusion in the public. In fact, according to the Department of Justice, the agency "received numerous inquiries concerning a rumor that [was] intermittently circulating around the nation . . . According to this rumor, the Voting Rights Act will expire in 2007, and as a result African Americans are in danger of losing the right to vote in that year."[21] In truth, as the DOJ points out, "[t]he voting rights of African Americans are guaranteed by the United States Constitution and the Voting Rights Act, and those guaran-

[21] *www.usdoj.gov*, U.S. Department of Justice, Civil Rights Division Voting Section, Voting Rights Act Clarification.

tees are permanent and do not expire."[22] Instead, we are addressing (a) temporary provisions that were originally set to expire in 5 years, and that were adopted to subject certain jurisdictions to Federal oversight of the voting laws and procedures until the intent of the Voting Rights Act was accomplished, as well (b) certain temporary, later-added provisions designed to protect voters from discrimination based upon limited English proficiency.

We believe that this misunderstanding about the nature and timing of the expiration of certain provisions of the Voting Rights Act contributed to an unnecessarily heightened political environment that prohibited the Senate from conducting the kind of thorough debate that would have produced a superior product.

Expedited Process Reduced Focus on the Issue

Chairman Specter readily ceded to requests that were made to try to create a complete record. The Chairman worked hard to hold a sufficient number of fair and balanced hearings, but given our busy schedule on the Senate floor, it was not always easy for Members to attend and participate. An artificial rush to move the House version of the Voting Rights Act through the Senate on an expedited basis began more than a full year prior to the earliest expiration of any provisions of the Act.

The Senate Judiciary Committee held nine hearings with a total of forty-six witnesses. Eight of those hearings were held in nine work weeks—and during times when many Committee members had other obligations. Indeed, four hearings were held during a substantial floor debate on the issue of immigration—legislation that directly involved most Judiciary Committee members in one way or another. Two hearings were interrupted by roll-call votes on the floor.

The timing of our hearings and the expedited nature of the process was prohibitive to Senators who otherwise would have participated. Member attendance at these hearings was low. Indeed, at each of the first two hearings on Section 5, only one Senator was able to attend. Five Committee Members were unable to attend any of the hearings, while five others attended only a portion of one hearing. This is not meant as criticism to the Members that were unable to attend—indeed we unfortunately missed a number of hearings. Rather, it is meant to shed light on the process, a process that prohibited the kind of engaged discussion we would have preferred.

The only way many Senators could ask thoughtful questions of witnesses at the hearings was through written questions, and many were submitted. In fact, Senators submitted a total of 610 follow-up questions. Unfortunately, however, when the Senate marked up the legislation, we were told that 107 written questions to 10 witnesses were outstanding. Further, questions had not yet even been submitted for the final hearing—a hearing we had held just one week prior regarding the important issue of how the Supreme Court's decision in *LULAC v. Perry* may have influenced our legislation.

[22] Id.

Suggested Improvements Not Considered

Over the course of the many hearings we held, we heard from a variety of witnesses—from across the political spectrum and across racial lines. Many witnesses, from all sides of the debate, suggested improvements to the Act.

For example, Loyola law professor Rick Hasen suggested in his testimony before the committee several specific ways to amend the Act. For example, he suggested that "Congress should make it easier for covered jurisdictions to bail out from coverage under Section 5 upon a showing that the jurisdiction has taken steps to fully enfranchise and include minority voters," and that Congress should impose a shorter time limit, perhaps 7 to 10 years for extension. The bill includes a 25-year extension, and the Court may believe it is beyond "congruent and proportional" to require, for example, the State of South Carolina to pre-clear every voting change, no matter how minor, through 2031."[23]

Similarly, Samuel Issacharoff, Professor of Constitutional Law at the New York University School of Law, suggested five ways to improve the Act during his oral testimony:

> First, I would recommend that the unit of coverage be moved from the States to political subdivisions of the States . . . Second, I think that is important, as Professor Hasen said a minute ago, to liberalize the bailout provisions . . . Third, I think that if we were to start from scratch today, we might consider a different kind of administrative mechanism other than the preclearance, and one way of thinking about this is that preclearance is extremely onerous and applies an ex ante and ahead-of-time review much like the FDA to any proposed change. One could also imagine a Securities and Exchange Commission type reporting system that covered jurisdictions who have not actively violated the Act in the last 5 years, or some defined period, would be required to post on a website any proposed change and the reasons for it and be subject to either affirmative litigation under Section 2 or simply a false statement litigation . . . Fourth, I would expand the jurisdictional reach of Section 5 by allowing this disclosure regime to be applied to any jurisdiction that has been found guilty of a Section 2 violation or that has engaged in affirmative actions against minority voters. And, finally, I think that there is reason for concern with the language on the overruling of *Georgia v. Ashcroft*, and I think that the reason for the concern is that the current statute faces a climate very different from that in 1965 in that you have real bipartisan competition in most of the covered jurisdictions today, which means that certain features of conduct, State conduct, will not go by unattended, will not simply pass muster without anybody realizing. And I would recommend removing statewide redistricting from Section 5 overview altogether. That has been an area of some con-

[23] Unofficial Transcript: An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization: Before the Senate Comm. on the Judiciary, 109th Cong. 25 (2006).

> troversy with the Department of Justice, and it has been an area where there is plenty of litigation in every redistricting anyway, and I don't think Section 5 worked particularly effectively there.[24]

We believe it would have been beneficial for the long-term viability, constitutionality and success of the Voting Rights Act had for the Senate Judiciary Committee to engage in a serious, reasoned debate over some of these suggested possible improvements as well as any other ideas. These improvements would underscore the Act's original purpose, and would modernize it to reflect today's reality. They would possibly expand the coverage of section 5 to jurisdictions where recent abuses have taken place or, perhaps, have improved the so-called bailout procedures for those jurisdictions that had a successful record of remedying, indeed eliminating discrimination when it comes to voting rights.

One idea that was offered was to update the coverage formula. We don't know if that is a good idea or not, but we would like to know. Some suggest that such an update would "gut" or otherwise undercut the effectiveness of the Act—something that certainly would not be our intention. But we are skeptical that this would be the result. The amendment that was voted on in the House, for example, would have updated the coverage trigger to the most recent three Presidential elections from the current trigger of the 1964, 1968, and 1972 elections.

As we understand it, coverage, after an update to cover the most recent three Presidential elections, would look something like the chart included at the end of our views, entitled "Effect of Basing Section Coverage on Recent Election Data." This chart reflects the effect of implementing a new coverage formula. In other words, rather than basing coverage on election data that is several decades old, where nine states are completely covered and a handful of other political subdivisions around the country are covered, one would see coverage of different jurisdictions around the country based on the updated formula. The intent would be to reflect the problems where they really exist and where the record demonstrates some justification for the assertion of Federal power and intrusion into the local and State electoral processes.

If this map is an accurate reflection of the effects of updating the trigger to the most recent three Presidential elections, it certainly changes the coverage. But we would suggest, just looking at the jurisdictions on the map, it hardly guts it. Another alternative might have been to use the very evidence provided in the House and Senate record—as discussed above—that implicates 139 of the currently covered counties as well as 45 of the non-covered counties throughout the nation.

The primary point is not that any of these methods is necessarily the right approach, but that it would have been beneficial for us to have had a full discussion of ways to improve the Act to ensure its important provisions were narrowly tailored and applied in a congruent and proportional way, something the Supreme Court will

[24] Unofficial Transcript: An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization: Before the Senate Comm. on the Judiciary, 109th Cong. 37 (2006).

take into consideration when it considers the renewed Act. We believe we could have done it had we taken the time to do it.

Legislative Language Seemingly a Foregone Conclusion

Probably our most significant concern is that this important legislation was—unfortunately—a bit of a foregone conclusion. As we described above, the hearings held in the Senate were quite informative. There were numerous perspectives—numerous ideas offered on how to improve the Act from witnesses across the ideological and racial spectrum and those both supportive of the reauthorization and concerned with the reauthorization.

From the outset, the default seemed to be to accept the House product without deliberation. In fact, the findings in the Senate-dropped version of the bill were adopted PRIOR to a single hearing being held in the Senate Judiciary Committee. Despite the fact that each hearing had a very balanced panel and many amendment ideas were offered by witnesses, it was clear that no amendment would be given serious consideration because of the political nature of the bill and the expedited, rushed process. As described earlier in our views, the Committee marked up the legislation with 107 written questions to 10 witnesses outstanding, as well as before questions were even submitted to our final panel. Unfortunately, we proceeded without the benefit of a complete record despite the fact that we had plenty of time to receive the answers from witnesses and fully consider their implications and input.

And the questions that Senators asked revealed that they were interested in at least considering amendments. Many Senators asked which amendments to consider and how to properly draft such amendments. However, when the House of Representatives passed H.R. 9, their version of the Voting Rights Act, without any amendments on July 13, 2006, it became clear that the Senate would pass a bill without any amendments. If there had been any doubt prior, the text of the bill became a foregone conclusion for the Senate after House passage.

The process that led to a vote on the floor reveals that not a single change was permitted to be made to the legislation passed in the Senate. While the Committee approved by voice vote an amendment offered by Senator Leahy to incorporate Mr. Cesar Chavez's name into the title of the Act, it became clear that the Committee would not accept any amendments that changed the substance of the bill, including the amendments circulated by Senator Coburn. In fact, Senators expressed concern about any amendments that would slow the expedited passage of the Act. The Judiciary Committee reported out the Senate's version of the Fannie Lou Hamer, Rosa Parks, Coretta Scott King and Caesar Chavez Voting Rights Act Reauthorization and Amendments Act of 2006, S. 2703, without substantive amendment.

Yet, Majority Leader Frist had already used Rule 14 of Senate procedure to place H.R. 9 on the calendar, and we were told that it was the House legislation would be called up for a full vote on the Senate floor the following afternoon. The rules adopted for floor debate allowed for eight hours of discussion evenly divided by the Republicans and Democrats and ruled out the ability to offer amendments on the floor. The process prevented any amendments

on the floor so that the same Act that the House of Representatives approved would pass the Senate and there would be no conference. While a Member may have been able to object and require a vote on an amendment, the outcome was a foregone conclusion, and thus it would have been futile.

Finally, even the production of this committee report—something that normally is of the utmost significance for such important, complicated legislation—has been short circuited. Indeed, the report will not be filed until several days after the passage of the legislation and just before it is signed into law. We remain convinced that these views are critical to a full understanding of the legislative process behind enactment and thus include them in the Committee Report.

CONCLUSION

We decided to support the extension of the expiring changes, even though it would have been preferable and even constitutionally advisable for us to review the application of the Act's preclearance and other provisions. Unfortunately, the Act's language was a foregone conclusion, and we were unable to have the kind of debate and discussion and perhaps amendment process that might have been helpful to protect the act against future legal challenges. We wish we would have had the opportunity to improve the Act—because we are confident that with a little work, we could have done just that.

We cannot help but fear that the driving force behind this rushed reauthorization process was the reality that the Voting Rights Act has evolved into a tool for political and racial gerrymandering. We believe that is unfortunate and that political re-districting should be driven by objective parameters and should not use race to further the objectives of political parties.

Nonetheless, we voted for reauthorization because of the unparalleled success of the Voting Rights Act in the past in securing the opportunity to vote. Few issues are as fundamental to our system of democracy and the promise of equal justice under law as the Voting Rights Act. The Act was specifically designed to "foster our transformation to a society that is no longer fixated on race," to an "all-inclusive community, where we would be able to forget about race and color and see people as people, as human beings, just as citizens." [25]

It is our sincere hope that we will move beyond distinctions based on race in our policymaking, lest we, in the words of Justice Anthony Kennedy, make "the offensive and demeaning assumption that voters of a particular race, because of their race, think alike, share the same political interests, and will prefer the same candidates at the polls."

The question in the end is this: Is this bill that we have passed the very best possible product? We would conclude that it is not. Yet, in response to the question: Is this the very best that we can do under the circumstances?" We reluctantly conclude that it is. And that is why we supported it in Committee and on the floor.

[25] *Georgia* v. *Ashcroft,* 539 U.S. 461, 490 (2003).

EFFECT OF BASING SECTION COVERAGE ON RECENT ELECTION DATA

The table below reflects the results we believe would occur from updating the Section 4 coverage formula to 2000 and 2004 Presidential Election data from the current formula based on the 1964, 1968 and 1972 election years. The original figure to be included in this Committee Report was a map depicting the counties covered. The purpose of the map was to demonstrate the significant coverage that would be retained in currently covered jurisdictions as well as the fact coverage would be expanded. However, GPO is unable to print such a map into the record, so in its place we have included the following table. As pointed out in the additional views, we do not suggest that this coverage formula is the best or preferred formula, but that it would have been a reasonable alternative and should have been given appropriate consideration in the Senate.

JOHN CORNYN.
TOM COBURN.

VOTER TURNOUT DATA REPRESENTS THE PERCENTAGE OF THE CITIZEN VOTING AGE POPULATION

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
AL	Barbour County		Y		48.72%	1
AL	Bibb County	Y	Y	47.28%	45.89%	1
AL	Blount County		Y		48.68%	1
AL	Butler County		Y		49.92%	1
AL	Calhoun County		Y		45.78%	1
AL	Chambers County	Y	Y	48.85%	43.19%	1
AL	Cherokee County	Y	Y	47.50%	42.12%	1
AL	Cleburne County		Y		47.83%	1
AL	Coffee County		Y		47.67%	1
AL	Coosa County		Y		49.18%	1
AL	Covington County		Y		47.46%	1
AL	Crenshaw County		Y		46.62%	1
AL	Dale County		Y		44.70%	1
AL	DeKalb County	Y	Y	49.04%	43.39%	1
AL	Elmore County		Y		48.84%	1
AL	Escambia County	Y	Y	42.96%	40.16%	1
AL	Franklin County		Y		49.57%	1
AL	Geneva County		Y		48.99%	1
AL	Houston County		Y		49.21%	1
AL	Jackson County	Y	Y	49.39%	43.93%	1
AL	Lauderdale County		Y		47.77%	1
AL	Lawrence County		Y		47.20%	1
AL	Lee County	Y	Y	47.95%	44.22%	1
AL	Limestone County		Y		48.46%	1
AL	Macon County		Y		49.61%	1
AL	Marion County		Y		48.73%	1
AL	Marshall County		Y		46.87%	1
AL	Mobile County		Y		48.96%	1
AL	Montgomery County		Y		48.98%	1
AL	Pike County		Y		47.90%	1
AL	Randolph County		Y		47.56%	1
AL	Russell County	Y	Y	46.98%	40.89%	1
AL	Talladega County		Y		42.43%	1
AL	Tuscaloosa County		Y		48.38%	1
AL	Walker County		Y		47.64%	1
AL	Winston County		Y		49.61%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
	AL Count					36
AR	Arkansas County	Y	Y	46.76%	41.02%	1
AR	Ashley County	Y	Y	49.75%	47.46%	1
AR	Bradley County	Y	Y	46.06%	42.74%	1
AR	Chicot County	Y	Y	49.23%	44.12%	1
AR	Clark County		Y		47.75%	1
AR	Clay County	Y	Y	47.25%	43.59%	1
AR	Columbia County		Y		48.89%	1
AR	Conway County		Y		48.16%	1
AR	Craighead County	Y	Y	46.57%	41.05%	1
AR	Crawford County		Y		46.90%	1
AR	Crittenden County	Y	Y	43.51%	38.14%	1
AR	Cross County		Y		44.39%	1
AR	Dallas County		Y		49.27%	1
AR	Desha County	Y	Y	44.82%	41.86%	1
AR	Drew County	Y	Y	45.31%	43.15%	1
AR	Faulkner County		Y		46.22%	1
AR	Franklin County		Y		47.02%	1
AR	Fulton County		Y		45.84%	1
AR	Grant County		Y		49.62%	1
AR	Greene County	Y	Y	47.95%	44.73%	1
AR	Hempstead County	Y	Y	45.43%	44.84%	1
AR	Hot Spring County		Y		48.56%	1
AR	Howard County	Y	Y	47.05%	44.14%	1
AR	Independence County	Y	Y	49.39%	45.40%	1
AR	Izard County		Y		48.17%	1
AR	Jackson County	Y	Y	46.82%	42.59%	1
AR	Jefferson County		Y		44.03%	1
AR	Johnson County	Y	Y	46.35%	43.69%	1
AR	Lawrence County	Y	Y	49.49%	44.84%	1
AR	Lee County	Y	Y	47.66%	44.49%	1
AR	Lincoln County	Y	Y	36.20%	31.56%	1
AR	Logan County	Y	Y	49.36%	48.83%	1
AR	Lonoke County		Y		48.16%	1
AR	Marion County		Y		48.15%	1
AR	Miller County	Y	Y	46.76%	46.62%	1
AR	Mississippi County	Y	Y	42.71%	34.69%	1
AR	Monroe County		Y		44.95%	1
AR	Nevada County	Y		48.18%		1
AR	Ouachita County		Y		48.98%	1
AR	Pike County	Y	Y	40.98%	47.76%	1
AR	Poinsett County	Y	Y	41.17%	38.37%	1
AR	Polk County		Y		48.54%	1
AR	Pope County		Y		46.10%	1
AR	Prairie County		Y		48.43%	1
AR	Pulaski County		Y		48.01%	1
AR	Randolph County	Y	Y	48.35%	43.01%	1
AR	Sebastian County		Y		49.84%	1
AR	Sevier County	Y	Y	44.53%	42.37%	1
AR	St. Francis County	Y	Y	47.22%	40.24%	1
AR	Union County		Y		46.60%	1
AR	Washington County		Y		46.54%	1
AR	White County	Y	Y	49.46%	44.14%	1
AR	Woodruff County		Y		41.08%	1
AR	Yell County	Y	Y	45.83%	45.81%	1
	AR Count					54
AZ	Apache County		Y		45.83%	1
AZ	Cochise County		Y		41.16%	1
AZ	Gila County		Y		47.14%	1
AZ	Graham County	Y	Y	46.10%	41.95%	1
AZ	La Paz County	Y	Y	35.06%	31.15%	1
AZ	Maricopa County		Y		45.44%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
AZ	Mohave County	Y	Y	43.73%	38.45%	1
AZ	Navajo County	Y	Y	45.43%	40.53%	1
AZ	Pima County		Y		49.14%	1
AZ	Pinal County	Y	Y	43.18%	33.02%	1
AZ	Santa Cruz County		Y		47.26%	1
AZ	Yuma County	Y	Y	39.49%	31.71%	1
	AZ Count					12
CA	Del Norte County	Y	Y	44.04%	42.00%	1
CA	Fresno County	Y	Y	49.16%	49.48%	1
CA	Imperial County	Y	Y	41.45%	38.87%	1
CA	Kern County	Y	Y	47.46%	47.29%	1
CA	Kings County	Y	Y	35.32%	35.48%	1
CA	Lake County		Y		49.10%	1
CA	Lassen County	Y	Y	41.28%	40.42%	1
CA	Madera County	Y	Y	46.71%	46.70%	1
CA	Merced County	Y	Y	44.26%	45.88%	1
CA	Mono County		Y		48.77%	1
CA	Riverside County	Y	Y	47.72%	49.10%	1
CA	San Bernardino County	Y	Y	45.37%	45.98%	1
CA	San Joaquin County	Y		47.66%		1
CA	Stanislaus County	Y	Y	46.90%	48.27%	1
CA	Tulare County	Y	Y	45.20%	46.36%	1
CA	Yuba County	Y	Y	43.89%	43.20%	1
	CA Count					16
CO	Adams County		Y		46.35%	1
CO	Bent County		Y		44.59%	1
CO	Crowley County	Y	Y	33.01%	32.40%	1
CO	Fremont County	Y	Y	48.31%	44.17%	1
CO	Lincoln County		Y		47.92%	1
CO	Prowers County		Y		49.47%	1
	CO Count					6
FL	Bradford County	Y	Y	49.13%	42.76%	1
FL	Columbia County		Y		44.34%	1
FL	DeSoto County	Y	Y	43.05%	38.45%	1
FL	Dixie County		Y		43.80%	1
FL	Duval County		Y		47.87%	1
FL	Gadsden County		Y		46.07%	1
FL	Glades County	Y	Y	47.96%	42.97%	1
FL	Hamilton County	Y	Y	46.82%	39.61%	1
FL	Hardee County	Y	Y	43.26%	38.26%	1
FL	Hendry County	Y	Y	48.82%	41.64%	1
FL	Jackson County		Y		45.24%	1
FL	Lafayette County		Y		47.94%	1
FL	Levy County		Y		49.08%	1
FL	Liberty County		Y		44.60%	1
FL	Madison County		Y		44.81%	1
FL	Okeechobee County	Y	Y	47.52%	40.71%	1
FL	Orange County		Y		46.18%	1
FL	Osceola County		Y		48.91%	1
FL	Polk County		Y		48.48%	1
FL	Suwannee County		Y		48.85%	1
FL	Taylor County		Y		47.19%	1
FL	Union County	Y	Y	42.72%	37.01%	1
	FL Count					22
GA	Appling County	Y	Y	49.41%	49.71%	1
GA	Atkinson County	Y	Y	48.63%	44.05%	1
GA	Bacon County		Y		40.47%	1
GA	Baldwin County	Y	Y	41.43%	35.06%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
GA	Banks County	Y	Y	48.02%	43.31%	1
GA	Barrow County	Y	Y	44.57%	37.44%	1
GA	Bartow County	Y	Y	48.54%	42.41%	1
GA	Ben Hill County	Y	Y	46.36%	37.95%	1
GA	Berrien County	Y	Y	45.88%	37.71%	1
GA	Bibb County		Y		44.59%	1
GA	Bleckley County		Y		44.25%	1
GA	Brantley County	Y	Y	49.08%	43.89%	1
GA	Brooks County	Y	Y	43.08%	38.55%	1
GA	Bryan County		Y		44.52%	1
GA	Bulloch County	Y	Y	41.34%	34.72%	1
GA	Burke County		Y		46.82%	1
GA	Butts County	Y	Y	44.42%	38.15%	1
GA	Calhoun County	Y	Y	45.13%	38.59%	1
GA	Camden County	Y	Y	45.60%	34.46%	1
GA	Candler County	Y	Y	44.08%	41.13%	1
GA	Carroll County	Y	Y	46.90%	40.84%	1
GA	Catoosa County	Y	Y	49.86%	45.38%	1
GA	Charlton County	Y	Y	41.97%	37.99%	1
GA	Chatham County		Y		45.18%	1
GA	Chattahoochee County	Y	Y	11.82%	11.80%	1
GA	Chattooga County	Y	Y	38.54%	33.57%	1
GA	Clarke County	Y	Y	46.61%	37.24%	1
GA	Clayton County	Y	Y	46.99%	40.83%	1
GA	Clinch County	Y	Y	45.62%	39.22%	1
GA	Coffee County	Y	Y	45.70%	36.71%	1
GA	Colquitt County	Y	Y	39.61%	34.90%	1
GA	Cook County	Y	Y	42.45%	35.72%	1
GA	Crawford County	Y	Y	47.19%	39.46%	1
GA	Crisp County	Y	Y	40.98%	36.66%	1
GA	Dade County		Y		44.16%	1
GA	Dawson County		Y		49.77%	1
GA	Decatur County	Y	Y	44.48%	38.73%	1
GA	Dodge County	Y	Y	48.40%	41.83%	1
GA	Dooly County	Y	Y	45.03%	41.63%	1
GA	Dougherty County	Y	Y	49.46%	42.33%	1
GA	Douglas County		Y		47.67%	1
GA	Early County	Y	Y	47.81%	40.91%	1
GA	Echols County	Y	Y	36.83%	39.65%	1
GA	Effingham County	Y	Y	49.87%	40.85%	1
GA	Elbert County	Y	Y	49.93%	39.09%	1
GA	Emanuel County	Y	Y	47.97%	41.14%	1
GA	Evans County	Y	Y	42.86%	42.31%	1
GA	Floyd County	Y	Y	46.54%	40.95%	1
GA	Franklin County	Y	Y	45.89%	37.67%	1
GA	Fulton County		Y		46.36%	1
GA	Gilmer County		Y		44.03%	1
GA	Glynn County		Y		45.42%	1
GA	Gordon County	Y	Y	46.20%	39.93%	1
GA	Grady County	Y	Y	47.38%	40.54%	1
GA	Greene County		Y		49.05%	1
GA	Habersham County	Y	Y	47.14%	37.59%	1
GA	Hall County		Y		44.19%	1
GA	Hancock County	Y	Y	46.95%	40.49%	1
GA	Haralson County	Y	Y	48.80%	43.26%	1
GA	Harris County		Y		49.09%	1
GA	Hart County	Y	Y	49.82%	43.14%	1
GA	Heard County		Y		40.93%	1
GA	Henry County		Y		46.86%	1
GA	Houston County		Y		47.51%	1
GA	Irwin County	Y	Y	46.89%	40.85%	1
GA	Jackson County	Y	Y	45.42%	38.97%	1
GA	Jasper County	Y	Y	49.56%	48.04%	1
GA	Jeff Davis County		Y		47.56%	1
GA	Jefferson County		Y		45.24%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
GA	Jenkins County		Y		42.93%	1
GA	Johnson County		Y		48.33%	1
GA	Jones County		Y		47.24%	1
GA	Lamar County		Y		43.84%	1
GA	Lanier County	Y	Y	45.45%	36.50%	1
GA	Laurens County		Y		43.06%	1
GA	Lee County	Y	Y	48.75%	46.32%	1
GA	Liberty County	Y	Y	38.44%	24.89%	1
GA	Lincoln County		Y		49.32%	1
GA	Long County	Y	Y	43.57%	35.33%	1
GA	Lowndes County	Y	Y	45.24%	38.01%	1
GA	Lumpkin County	Y	Y	49.45%	43.38%	1
GA	Macon County	Y	Y	47.42%	43.58%	1
GA	Madison County	Y	Y	48.51%	42.80%	1
GA	Marion County		Y		44.86%	1
GA	McDuffie County	Y	Y	49.46%	42.93%	1
GA	McIntosh County		Y		49.41%	1
GA	Meriwether County	Y	Y	48.65%	40.92%	1
GA	Miller County		Y		45.80%	1
GA	Mitchell County	Y	Y	42.07%	33.84%	1
GA	Monroe County		Y		47.27%	1
GA	Montgomery County	Y	Y	48.20%	41.89%	1
GA	Murray County	Y	Y	37.54%	32.87%	1
GA	Muscogee County	Y	Y	48.64%	39.37%	1
GA	Newton County	Y	Y	49.84%	41.56%	1
GA	Oglethorpe County		Y		46.83%	1
GA	Paulding County		Y		43.47%	1
GA	Peach County	Y	Y	48.02%	42.11%	1
GA	Pickens County	Y	Y	48.94%	47.32%	1
GA	Pierce County	Y	Y	48.56%	41.49%	1
GA	Pike County		Y		49.65%	1
GA	Polk County	Y	Y	44.21%	37.79%	1
GA	Pulaski County	Y	Y	48.13%	46.54%	1
GA	Putnam County		Y		44.52%	1
GA	Quitman County		Y		46.05%	1
GA	Rabun County		Y		46.78%	1
GA	Randolph County		Y		45.45%	1
GA	Richmond County	Y	Y	49.00%	40.04%	1
GA	Schley County		Y		44.36%	1
GA	Screven County		Y		42.95%	1
GA	Seminole County	Y	Y	48.33%	41.90%	1
GA	Spalding County	Y	Y	47.80%	36.78%	1
GA	Stephens County		Y		43.28%	1
GA	Stewart County		Y		49.97%	1
GA	Sumter County	Y	Y	48.23%	41.27%	1
GA	Tattnall County	Y	Y	38.98%	34.35%	1
GA	Taylor County		Y		43.54%	1
GA	Telfair County	Y	Y	42.58%	38.55%	1
GA	Terrell County	Y	Y	49.77%	40.17%	1
GA	Thomas County	Y	Y	48.10%	39.08%	1
GA	Tift County	Y	Y	45.07%	39.06%	1
GA	Toombs County	Y	Y	48.34%	40.90%	1
GA	Treutlen County		Y		39.09%	1
GA	Troup County		Y		42.75%	1
GA	Turner County	Y	Y	44.63%	37.39%	1
GA	Twiggs County		Y		47.00%	1
GA	Upson County	Y	Y	48.46%	40.86%	1
GA	Walker County	Y	Y	44.88%	41.37%	1
GA	Walton County		Y		44.56%	1
GA	Ware County	Y	Y	42.73%	36.51%	1
GA	Warren County		Y		46.16%	1
GA	Washington County		Y		43.35%	1
GA	Wayne County	Y	Y	45.82%40	.92%	1
GA	Wheeler County	Y	Y	39.33%	33.41%	1
GA	White County		Y		46.39%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
GA	Whitfield County	Y	Y	49.52%	45.37%	1
GA	Wilcox County	Y	Y	38.32%	36.05%	1
GA	Worth County	Y	Y	46.36%	38.89%	1
	GA Count					137
HI	Hawaii County		Y		49.17%	1
HI	Honolulu County	Y	Y	46.34%	41.91%	1
HI	Maui County	Y	Y	48.88%	44.78%	1
	HI Count					3
ID	Elmore County	Y	Y	42.37%	35.19%	1
ID	Madison County		Y		45.77%	1
ID	Owyhee County	Y	Y	49.83%	49.21%	1
ID	Payette County		Y		49.75%	1
	ID Count					4
IL	Brown County	Y	Y	44.89%	47.35%	1
IL	Coles County		Y		47.45%	1
IL	McDonough County		Y		49.22%	1
	IL Count					3
IN	Allen County		Y		48.96%	1
IN	Blackford County		Y		46.30%	1
IN	Cass County	Y		48.60%		1
IN	Clinton County		Y		46.83%	1
IN	Daviess County	Y	Y	49.80%	46.89%	1
IN	DeKalb County		Y		47.88%	1
IN	Delaware County		Y		48.28%	1
IN	Elkhart County	Y	Y	48.16%	44.75%	1
IN	Fayette County		Y		44.82%	1
IN	Grant County		Y		47.35%	1
IN	Henry County		Y		49.87%	1
IN	Jackson County		Y		48.44%	1
IN	Jennings County		Y		47.80%	1
IN	Kosciusko County		Y		48.34%	1
IN	LaGrange County	Y	Y	37.74%	36.75%	1
IN	LaPorte County		Y		48.47%	1
IN	Lawrence County		Y		46.85%	1
IN	Marion County		Y		45.36%	1
IN	Miami County		Y		48.63%	1
IN	Monroe County		Y		42.51%	1
IN	Montgomery County		Y		47.71%	1
IN	Morgan County		Y		45.62%	1
IN	Noble County	Y	Y	48.37%	45.00%	1
IN	Owen County	Y	Y	43.65%	40.72%	1
IN	Parke County		Y		49.29%	1
IN	Putnam County	Y	Y	46.29%	43.50%	1
IN	Randolph County		Y		49.77%	1
IN	Scott County	Y	Y	49.28%	46.39%	1
IN	Shelby County		Y		48.62%	1
IN	Steuben County		Y		46.12%	1
IN	Sullivan County	Y	Y	49.19%	49.14%	1
IN	Switzerland County		Y		48.56%	1
IN	Tippecanoe County	Y	Y	45.13%	42.42%	1
IN	Vigo County		Y		45.00%	1
IN	Wabash County		Y		48.98%	1
IN	Washington County		Y		49.09%	1
IN	Wayne County		Y		47.15%	1
	IN Count					37
KS	Butler County		Y		49.78%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
KS	Finney County	Y	Y	48.90%	43.31%	1
KS	Ford County	Y		49.36%		1
KS	Geary County	Y	Y	41.59%	36.31%	1
KS	Leavenworth County		Y		46.78%	1
KS	Riley County	Y	Y	43.07%	37.43%	1
KS	Seward County	Y	Y	44.99%	43.50%	1
KS	Wyandotte County		Y		46.70%	1
	KS Count					8
KY	Allen County		Y		49.00%	1
KY	Barren County		Y		48.35%	1
KY	Bell County	Y	Y	48.03%	46.92%	1
KY	Bourbon County		Y		49.78%	1
KY	Boyd County		Y		49.84%	1
KY	Boyle County		Y		48.85%	1
KY	Bracken County		Y		49.00%	1
KY	Breathitt County	Y	Y	49.39%	42.47%	1
KY	Carroll County		Y		46.69%	1
KY	Carter County		Y		44.26%	1
KY	Casey County		Y		47.26%	1
KY	Christian County	Y	Y	45.15%	34.79%	1
KY	Clay County	Y	Y	42.14%	36.94%	1
KY	Elliott County		Y		47.20%	1
KY	Estill County	Y	Y	48.36%	40.69%	1
KY	Floyd County		Y		47.68%	1
KY	Fulton County		Y		47.86%	1
KY	Gallatin County		Y		43.81%	1
KY	Grant County		Y		44.78%	1
KY	Grayson County		Y		47.30%	1
KY	Hardin County		Y		46.05%	1
KY	Harlan County	Y	Y	46.15%	42.48%	1
KY	Harrison County		Y		49.36%	1
KY	Hart County	Y	Y	49.58%	46.66%	1
KY	Henderson County		Y		47.80%	1
KY	Henry County		Y		49.32%	1
KY	Hopkins County		Y		46.84%	1
KY	Jackson County		Y		48.74%	1
KY	Johnson County		Y		45.56%	1
KY	Knott County		Y		48.61%	1
KY	Knox County		Y		42.28%	1
KY	Laurel County		Y		46.29%	1
KY	Lawrence County		Y		45.60%	1
KY	Lee County	Y	Y	46.95%	45.21%	1
KY	Leslie County		Y		47.47%	1
KY	Letcher County	Y	Y	47.04%	46.70%	1
KY	Lewis County		Y		43.37%	1
KY	Lincoln County	Y	Y	47.74%	44.10%	1
KY	Logan County		Y		47.62%	1
KY	Madison County		Y		43.21%	1
KY	Marion County		Y		45.60%	1
KY	Martin County	Y	Y	49.02%	49.27%	1
KY	Mason County		Y		46.69%	1
KY	McCreary County	Y	Y	45.07%	38.89%	1
KY	Meade County		Y		49.47%	1
KY	Menifee County	Y	Y	49.91%	45.82%	1
KY	Morgan County	Y	Y	46.80%	39.41%	1
KY	Muhlenberg County		Y		48.66%	1
KY	Owsley County		Y		49.71%	1
KY	Pendleton County		Y		46.79%	1
KY	Perry County		Y		49.58%	1
KY	Pike County		Y		47.70%	1
KY	Powell County	Y	Y	48.87%	44.93%	1
KY	Rockcastle County	Y	Y	48.66%	41.81%	1
KY	Rowan County	Y	Y	49.04%	41.60%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
KY	Simpson County		Y		48.41%	1
KY	Todd County		Y		48.18%	1
KY	Union County		Y		46.32%	1
KY	Warren County		Y		47.97%	1
KY	Wayne County	Y	Y	49.67%	44.08%	1
KY	Webster County		Y		48.24%	1
KY	Whitley County	Y	Y	48.13%	44.44%	1
KY	Wolfe County		Y		46.67%	1
	KY Count					63
LA	Allen Parish	Y	Y	47.21%	43.40%	1
LA	Avoyelles Parish	Y	Y	49.45%	48.33%	1
LA	East Carroll Parish		Y		49.59%	1
LA	Terrebonne Parish		Y		49.99%	1
LA	Vernon Parish	Y	Y	44.68%	37.96%	1
LA	West Feliciana Parish	Y	Y	41.38%	40.48%	1
	LA Count					6
MA	Suffolk County		Y		48.07%	1
	MA Count					1
MD	Allegany County		Y		44.55%	1
MD	Baltimore City	Y	Y	47.47%	40.43%	1
MD	Caroline County	Y	Y	48.85%	41.94%	1
MD	Cecil County		Y		46.93%	1
MD	Dorchester County		Y		49.07%	1
MD	Garrett County		Y		47.84%	1
MD	Somerset County	Y	Y	43.78%	38.29%	1
MD	St. Mary's County		Y		48.11%	1
MD	Washington County		Y		47.41%	1
	MD Count					9
MI	Branch County		Y		47.19%	1
MI	Chippewa County		Y		48.14%	1
MI	Gratiot County		Y		47.45%	1
MI	Isabella County	Y	Y	47.00%	42.51%	1
MI	Luce County		Y		46.24%	1
MI	Mecosta County		Y		47.59%	1
MI	St. Joseph County		Y		49.93%	1
	MI Count					7
MO	Butler County		Y		46.74%	1
MO	Crawford County		Y		49.64%	1
MO	DeKalb County	Y	Y	43.09%	44.38%	1
MO	Dunklin County	Y	Y	49.09%	43.36%	1
MO	Jasper County		Y		49.17%	1
MO	Johnson County		Y		47.58%	1
MO	Madison County		Y		49.28%	1
MO	McDonald County		Y		44.65%	1
MO	Mississippi County		Y		46.60%	1
MO	Pemiscot County	Y	Y	49.81%	43.41%	1
MO	Pulaski County	Y	Y	36.00%	36.13%	1
MO	Randolph County		Y		49.33%	1
MO	St. Francois County	Y	Y	49.99%	44.73%	1
MO	Taney County		Y		49.52%	1
MO	Washington County		Y		48.42%	1
	MO Count					15
MS	Alcorn County		Y		48.34%	1
MS	Attala County		Y		49.63%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
MS	Bolivar County		Y		47.39%	1
MS	Coahoma County		Y		46.81%	1
MS	Covington County		Y		49.96%	1
MS	DeSoto County		Y		46.05%	1
MS	Forrest County	Y	Y	47.67%	41.34%	1
MS	Greene County		Y		44.02%	1
MS	Hancock County		Y		45.59%	1
MS	Harrison County	Y	Y	46.20%	38.30%	1
MS	Hinds County		Y		48.89%	1
MS	Itawamba County		Y		49.83%	1
MS	Jackson County		Y		48.18%	1
MS	Jasper County		Y		49.45%	1
MS	Jefferson County		Y		49.06%	1
MS	Lafayette County	Y	Y	47.31%	41.51%	1
MS	Lauderdale County		Y		45.47%	1
MS	Leake County		Y		46.01%	1
MS	Lee County		Y		46.17%	1
MS	Leflore County	Y	Y	49.10%	42.73%	1
MS	Lowndes County		Y		44.04%	1
MS	Marshall County		Y		49.35%	1
MS	Monroe County		Y		48.45%	1
MS	Neshoba County	Y	Y	49.06%	44.34%	1
MS	Newton County		Y		48.20%	1
MS	Oktibbeha County	Y	Y	49.35%	45.11%	1
MS	Panola County		Y		47.29%	1
MS	Pearl River County		Y		46.69%	1
MS	Pontotoc County		Y		49.57%	1
MS	Prentiss County		Y		44.37%	1
MS	Quitman County		Y		49.64%	1
MS	Rankin County		Y		48.96%	1
MS	Scott County		Y		47.49%	1
MS	Simpson County		Y		48.37%	1
MS	Sunflower County	Y	Y	41.61%	34.09%	1
MS	Tate County		Y		47.08%	1
MS	Tishomingo County		Y		47.74%	1
MS	Tunica County	Y	Y	45.08%	37.83%	1
MS	Washington County	Y	Y	47.87%	42.71%	1
	MS Count					39
MT	Glacier County		Y		48.43%	1
	MT Count					1
NC	Anson County	Y	Y	49.38%	42.51%	1
NC	Avery County		Y		49.49%	1
NC	Bertie County		Y		49.33%	1
NC	Bladen County		Y		45.78%	1
NC	Burke County	Y	Y	46.56%	47.04%	1
NC	Caldwell County		Y		44.80%	1
NC	Caswell County		Y		47.35%	1
NC	Chowan County	Y	Y	48.73%	44.70%	1
NC	Cleveland County		Y		46.04%	1
NC	Columbus County		Y		45.88%	1
NC	Craven County		Y		47.41%	1
NC	Cumberland County	Y	Y	45.77%	36.46%	1
NC	Davidson County		Y		48.02%	1
NC	Duplin County	Y	Y	48.60%	44.55%	1
NC	Edgecombe County		Y		45.73%	1
NC	Franklin County		Y		47.15%	1
NC	Gaston County	Y	Y	45.24%	42.47%	1
NC	Gates County		Y		44.98%	1
NC	Granville County	Y	Y	48.35%	42.72%	1
NC	Greene County	Y	Y	43.88%	43.39%	1
NC	Halifax County	Y	Y	47.30%	40.43%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
NC	Harnett County	Y	Y	45.40%	37.76%	1
NC	Hertford County	Y	Y	48.38%	47.27%	1
NC	Hoke County	Y	Y	42.28%	38.16%	1
NC	Hyde County		Y		48.67%	1
NC	Jackson County		Y		45.71%	1
NC	Johnston County		Y		48.34%	1
NC	Lee County		Y		48.89%	1
NC	Lenoir County		Y		48.53%	1
NC	Martin County		Y		49.71%	1
NC	McDowell County	Y	Y	49.42%	44.02%	1
NC	Montgomery County		Y		47.95%	1
NC	Nash County		Y		47.90%	1
NC	Northampton County		Y		49.32%	1
NC	Onslow County	Y	Y	37.64%	28.04%	1
NC	Pasquotank County	Y	Y	49.80%	42.07%	1
NC	Pender County		Y		46.02%	1
NC	Perquimans County		Y		49.23%	1
NC	Person County		Y		44.29%	1
NC	Pitt County		Y		43.44%	1
NC	Randolph County		Y		45.98%	1
NC	Richmond County	Y	Y	48.20%	42.09%	1
NC	Robeson County	Y	Y	39.12%	35.44%	1
NC	Rockingham County		Y		47.27%	1
NC	Rowan County		Y		46.52%	1
NC	Rutherford County		Y		45.87%	1
NC	Sampson County		Y		46.04%	1
NC	Scotland County	Y	Y	44.32%	36.64%	1
NC	Surry County	Y	Y	49.45%	44.88%	1
NC	Swain County		Y		44.84%	1
NC	Vance County		Y		41.84%	1
NC	Warren County		Y		45.36%	1
NC	Washington County		Y		48.62%	1
NC	Wayne County	Y	Y	49.84%	41.89%	1
NC	Wilkes County		Y		49.28%	1
NC	Wilson County		Y		47.26%	1
	NC Count					56
ND	Benson County	Y	Y	49.00%	48.68%	1
ND	Divide County		Y		44.09%	1
ND	Rolette County		Y		45.12%	1
ND	Sioux County	Y	Y	44.31%	43.54%	1
	ND Count					4
NE	Thurston County		Y		46.57%	1
	NE Count					1
NJ	Cumberland County	Y	Y	49.21%	46.56%	1
NJ	Hudson County		Y		47.60%	1
	NJ Count					2
NM	Chaves County		Y		45.64%	1
NM	Cibola County	Y	Y	39.58%	40.44%	1
NM	Curry County	Y	Y	46.00%	39.79%	1
NM	Dona Ana County		Y		44.31%	1
NM	Eddy County		Y		49.94%	1
NM	Grant County		Y		49.96%	1
NM	Guadalupe County		Y		48.12%	1
NM	Hidalgo County		Y		49.17%	1
NM	Lea County		Y		40.37%	1
NM	Lincoln County		Y		47.12%	1
NM	Luna County	Y	Y	47.89%	45.21%	1
NM	McKinley County	Y	Y	45.52%	34.67%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
NM	Otero County	Y	Y	49.95%	40.47%	1
NM	Rio Arriba County		Y		42.57%	1
NM	Roosevelt County		Y		45.10%	1
NM	San Juan County		Y		46.07%	1
NM	San Miguel County		Y		42.89%	1
NM	Sierra County	Y	Y	49.86%	45.20%	1
NM	Taos County		Y		49.58%	1
NM	Torrance County		Y		43.41%	1
NM	Valencia County		Y		48.66%	1
	NM Count					21
NV	Clark County		Y		42.90%	1
NV	Humboldt County		Y		48.88%	1
NV	Lyon County		Y		49.38%	1
NV	Pershing County	Y	Y	42.03%	38.00%	1
	NV Count					4
NY	Allegany County	Y	Y	48.61%	49.92%	1
NY	Bronx County		Y		41.77%	1
NY	Franklin County	Y	Y	45.30%	45.10%	1
NY	Jefferson County	Y	Y	45.47%	45.21%	1
NY	Kings County		Y		44.59%	1
NY	Orleans County		Y		49.63%	1
NY	Queens County		Y		45.15%	1
NY	Richmond County		Y		46.87%	1
NY	St. Lawrence County	Y	Y	47.87%	47.20%	1
	NY Count					9
OH	Fayette County		Y		43.93%	1
OH	Holmes County	Y	Y	41.53%	36.60%	1
OH	Madison County		Y		48.74%	1
OH	Marion County		Y		49.92%	1
OH	Pickaway County		Y		44.48%	1
OH	Ross County		Y		46.82%	1
	OH Count					6
OK	Adair County	Y	Y	49.20%	41.40%	1
OK	Atoka County	Y	Y	45.78%	40.94%	1
OK	Beckham County	Y	Y	48.97%	44.20%	1
OK	Blaine County		Y		46.10%	1
OK	Bryan County		Y		43.27%	1
OK	Caddo County	Y	Y	47.99%	43.51%	1
OK	Carter County		Y		49.31%	1
OK	Cherokee County		Y		47.11%	1
OK	Choctaw County		Y		46.96%	1
OK	Cleveland County		Y		49.84%	1
OK	Comanche County	Y	Y	40.97%	36.20%	1
OK	Craig County		Y		48.43%	1
OK	Creek County		Y		48.78%	1
OK	Delaware County		Y		48.13%	1
OK	Garvin County		Y		48.60%	1
OK	Grady County		Y		49.07%	1
OK	Greer County	Y	Y	47.00%	44.65%	1
OK	Hughes County	Y	Y	49.82%	42.30%	1
OK	Jackson County	Y	Y	48.93%	41.87%	1
OK	Kiowa County		Y		48.62%	1
OK	Latimer County		Y		46.53%	1
OK	Le Flore County	Y	Y	48.47%	43.18%	1
OK	McCurtain County	Y	Y	45.53%	42.87%	1
OK	Muskogee County		Y		48.57%	1
OK	Nowata County		Y		49.43%	1
OK	Okfuskee County	Y	Y	47.64%	43.02%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
OK	Oklahoma County		Y		48.03%	1
OK	Okmulgee County		Y		45.65%	1
OK	Osage County		Y		48.80%	1
OK	Ottawa County		Y		46.92%	1
OK	Pawnee County		Y		48.73%	1
OK	Payne County		Y		47.51%	1
OK	Pittsburg County		Y		48.95%	1
OK	Pontotoc County		Y		49.02%	1
OK	Pottawatomie County		Y		46.29%	1
OK	Seminole County		Y		43.16%	1
OK	Sequoyah County	Y	Y	49.55%	43.57%	1
OK	Texas County		Y		49.30%	1
	OK Count					38
OR	Malheur County		Y		48.59%	1
OR	Umatilla County		Y		48.59%	1
	OR Count					2
PA	Adams County		Y		49.89%	1
PA	Armstrong County		Y		49.23%	1
PA	Berks County		Y		49.30%	1
PA	Blair County		Y		45.37%	1
PA	Cameron County		Y		49.93%	1
PA	Carbon County		Y		46.72%	1
PA	Centre County		Y		46.65%	1
PA	Clarion County		Y		48.71%	1
PA	Clearfield County		Y		47.62%	1
PA	Clinton County	Y	Y	47.47%	40.57%	1
PA	Columbia County		Y		43.38%	1
PA	Crawford County		Y		49.16%	1
PA	Fayette County	Y	Y	47.98%	43.20%	1
PA	Fulton County		Y		49.23%	1
PA	Greene County	Y	Y	48.64%	43.15%	1
PA	Huntingdon County	Y	Y	49.61%	44.84%	1
PA	Indiana County		Y		44.88%	1
PA	Luzerne County		Y		47.82%	1
PA	Lycoming County		Y		47.10%	1
PA	McKean County	Y	Y	49.89%	45.52%	1
PA	Mifflin County	Y	Y	47.48%	41.90%	1
PA	Monroe County	Y	Y	46.99%	47.22%	1
PA	Montour County		Y		47.57%	1
PA	Northumberland County		Y		45.20%	1
PA	Perry County		Y		49.73%	1
PA	Schuylkill County		Y		49.18%	1
PA	Snyder County		Y		45.19%	1
PA	Tioga County		Y		47.12%	1
PA	Union County	Y	Y	47.45%	40.92%	1
PA	Venango County		Y		47.15%	1
	PA Count					30
SC	Abbeville County	Y	Y	49.61%	43.07%	1
SC	Aiken County		Y		48.98%	1
SC	Allendale County	Y	Y	45.64%	41.12%	1
SC	Anderson County	Y	Y	49.67%	45.78%	1
SC	Bamberg County		Y		44.87%	1
SC	Barnwell County		Y		49.27%	1
SC	Berkeley County	Y	Y	49.64%	42.85%	1
SC	Charleston County		Y		48.39%	1
SC	Cherokee County	Y	Y	47.50%	42.35%	1
SC	Chester County	Y	Y	47.62%	42.07%	1
SC	Chesterfield County	Y	Y	44.48%	40.52%	1
SC	Clarendon County		Y		47.36%	1
SC	Colleton County	Y	Y	48.98%	48.62%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
SC	Darlington County		Y		44.26%	1
SC	Dillon County	Y	Y	41.90%	41.64%	1
SC	Dorchester County		Y		49.83%	1
SC	Edgefield County		Y		47.61%	1
SC	Fairfield County		Y		48.72%	1
SC	Florence County		Y		44.99%	1
SC	Georgetown County		Y		49.41%	1
SC	Greenwood County	Y	Y	47.27%	43.28%	1
SC	Horry County		Y	48.84%	47.27%	1
SC	Jasper County	Y	Y	46.30%	45.15%	1
SC	Lancaster County	Y	Y	44.42%	45.74%	1
SC	Laurens County	Y	Y	45.10%	39.81%	1
SC	Lee County		Y		45.46%	1
SC	Marion County		Y		48.00%	1
SC	Marlboro County	Y	Y	41.13%	37.22%	1
SC	McCormick County		Y		45.65%	1
SC	Newberry County	Y	Y	45.19%	46.69%	1
SC	Oconee County		Y		46.92%	1
SC	Orangeburg County		Y		48.54%	1
SC	Pickens County	Y	Y	46.53%	41.18%	1
SC	Richland County		Y		49.22%	1
SC	Spartanburg County	Y	Y	49.65%	44.93%	1
SC	Sumter County	Y	Y	48.68%	41.34%	1
SC	Union County		Y		48.70%	1
SC	Williamsburg County		Y		42.78%	1
SC	York County		Y		45.61%	1
	SC Count					39
SD	Bennett County		Y		49.21%	1
SD	Brookings County		Y		49.86%	1
SD	Buffalo County		Y		34.52%	1
SD	Clay County		Y		47.55%	1
SD	Corson County		Y		47.03%	1
SD	Dewey County		Y		46.24%	1
SD	Shannon County		Y		28.62%	1
SD	Todd County		Y		29.61%	1
SD	Ziebach County		Y		48.23%	1
	SD Count					9
TN	Bedford County	Y	Y	47.07%	46.73%	1
TN	Benton County		Y		49.17%	1
TN	Bledsoe County	Y	Y	48.67%	44.22%	1
TN	Bradley County		Y		44.61%	1
TN	Campbell County	Y	Y	45.08%	40.63%	1
TN	Cannon County		Y		49.45%	1
TN	Carroll County		Y		48.15%	1
TN	Carter County	Y	Y	45.68%	42.99%	1
TN	Cheatham County		Y		48.86%	1
TN	Chester County		Y		48.94%	1
TN	Claiborne County	Y	Y	44.30%	39.60%	1
TN	Cocke County	Y	Y	45.59%	39.78%	1
TN	Davidson County		Y		49.84%	1
TN	Decatur County		Y		48.21%	1
TN	DeKalb County		Y		47.96%	1
TN	Dickson County		Y		49.31%	1
TN	Dyer County	Y	Y	49.25%	43.19%	1
TN	Fentress County		Y		47.87%	1
TN	Franklin County		Y		49.16%	1
TN	Gibson County		Y		47.13%	1
TN	Giles County		Y		45.63%	1
TN	Grainger County	Y	Y	44.47%	39.21%	1
TN	Greene County	Y	Y	47.93%	43.00%	1
TN	Grundy County	Y	Y	44.98%	42.94%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
TN	Hamblen County		Y		46.28%	1
TN	Hancock County	Y	Y	48.71%	39.81%	1
TN	Hardeman County	Y	Y	48.60%	41.43%	1
TN	Hardin County	Y	Y	48.84%	44.73%	1
TN	Hawkins County	Y	Y	46.89%	41.73%	1
TN	Haywood County		Y		45.28%	1
TN	Henderson County		Y		43.66%	1
TN	Hickman County	Y	Y	48.82%	43.44%	1
TN	Humphreys County		Y		49.19%	1
TN	Jefferson County	Y	Y	45.91%	41.79%	1
TN	Johnson County	Y	Y	43.78%	40.39%	1
TN	Lake County		Y		34.27%	1
TN	Lauderdale County	Y	Y	42.73%	37.58%	1
TN	Lawrence County		Y		49.39%	1
TN	Lincoln County		Y		44.79%	1
TN	Macon County	Y	Y	46.98%	43.83%	1
TN	Marion County		Y		48.56%	1
TN	Marshall County		Y		47.67%	1
TN	Maury County		Y		46.42%	1
TN	McMinn County	Y	Y	46.00%	44.95%	1
TN	McNairy County		Y		48.19%	1
TN	Meigs County	Y	Y	46.64%	40.81%	1
TN	Monroe County	Y	Y	48.94%	44.64%	1
TN	Montgomery County	Y	Y	48.73%	41.49%	1
TN	Morgan County	Y	Y	46.54%	40.59%	1
TN	Overton County		Y		48.75%	1
TN	Perry County		Y		49.85%	1
TN	Polk County		Y		45.37%	1
TN	Putnam County		Y		47.54%	1
TN	Rhea County	Y	Y	48.36%	45.45%	1
TN	Rutherford County		Y		47.70%	1
TN	Scott County	Y	Y	46.82%	42.42%	1
TN	Sequatchie County		Y		45.75%	1
TN	Sevier County		Y		46.74%	1
TN	Sullivan County		Y		46.86%	1
TN	Tipton County		Y		45.84%	1
TN	Unicoi County		Y		46.17%	1
TN	Union County	Y	Y	45.85%	44.14%	1
TN	Warren County	Y	Y	49.18%	46.73%	1
TN	Washington County		Y		45.54%	1
TN	Wayne County	Y	Y	44.24%	40.18%	1
TN	Weakley County		Y		43.95%	1
TN	White County		Y		44.21%	1
	TN Count					67
TX	Anderson County	Y	Y	38.31%	35.28%	1
TX	Andrews County		Y		49.67%	1
TX	Angelina County		Y		49.12%	1
TX	Aransas County		Y		49.72%	1
TX	Atascosa County	Y	Y	41.68%	42.10%	1
TX	Bastrop County	Y	Y	48.93%	47.40%	1
TX	Bee County	Y	Y	38.19%	33.90%	1
TX	Bell County	Y	Y	48.23%	39.22%	1
TX	Bexar County	Y	Y	47.60%	44.77%	1
TX	Bowie County		Y		45.67%	1
TX	Brazoria County		Y		49.37%	1
TX	Brazos County	Y	Y	46.16%	42.97%	1
TX	Brooks County		Y		46.40%	1
TX	Brown County		Y		47.14%	1
TX	Burleson County		Y		49.74%	1
TX	Caldwell County	Y	Y	45.59%	42.43%	1
TX	Calhoun County		Y		47.61%	1
TX	Cameron County	Y	Y	35.61%	35.53%	1
TX	Camp County		Y		48.71%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
TX	Cass County		Y		48.49%	1
TX	Castro County		Y		46.86%	1
TX	Cherokee County	Y	Y	47.84%	45.33%	1
TX	Childress County	Y	Y	37.92%	36.52%	1
TX	Concho County	Y	Y	37.68%	33.90%	1
TX	Coryell County	Y	Y	32.80%	28.14%	1
TX	Crosby County		Y		42.00%	1
TX	Culberson County	Y		46.90%		1
TX	Dallam County	Y	Y	45.90%	44.40%	1
TX	Dallas County		Y		47.29%	1
TX	Dawson County	Y	Y	43.23%	44.34%	1
TX	Deaf Smith County	Y	Y	47.15%	44.28%	1
TX	Delta County	Y	Y	49.21%	48.02%	1
TX	DeWitt County	Y	Y	43.60%	41.23%	1
TX	Dickens County	Y	Y	48.01%	39.52%	1
TX	Duval County	Y		47.70%		1
TX	Eastland County	Y	Y	49.07%	46.96%	1
TX	Ector County	Y	Y	45.71%	42.47%	1
TX	El Paso County	Y	Y	43.40%	39.27%	1
TX	Erath County		Y		47.15%	1
TX	Falls County	Y	Y	46.71%	43.93%	1
TX	Fannin County	Y	Y	47.96%	44.39%	1
TX	Floyd County		Y		47.31%	1
TX	Foard County		Y		46.80%	1
TX	Freestone County		Y		49.59%	1
TX	Frio County	Y	Y	34.60%	37.02%	1
TX	Gaines County	Y	Y	48.57%	42.28%	1
TX	Gonzales County	Y	Y	46.95%	49.53%	1
TX	Gray County		Y		48.72%	1
TX	Grayson County		Y		49.77%	1
TX	Gregg County		Y		49.29%	1
TX	Grimes County	Y	Y	43.33%	39.89%	1
TX	Hale County	Y	Y	43.31%	38.06%	1
TX	Hall County	Y		48.48%		1
TX	Hardeman County		Y		44.63%	1
TX	Harris County		Y		49.61%	1
TX	Hartley County		Y		47.12%	1
TX	Hays County		Y		48.49%	1
TX	Henderson County	Y	Y	48.97%	47.66%	1
TX	Hidalgo County	Y	Y	36.31%	37.42%	1
TX	Hill County		Y		46.79%	1
TX	Hockley County	Y	Y	47.05%	43.53%	1
TX	Hopkins County		Y		48.36%	1
TX	Houston County		Y		47.52%	1
TX	Howard County	Y	Y	43.64%	39.65%	1
TX	Hunt County	Y	Y	47.84%	45.17%	1
TX	Jack County	Y	Y	45.46%	45.26%	1
TX	Jackson County		Y		48.72%	1
TX	Jasper County	Y	Y	49.72%	45.64%	1
TX	Jefferson County		Y		48.65%	1
TX	Jim Wells County	Y	Y	45.12%	45.62%	1
TX	Johnson County	Y	Y	47.14%	44.58%	1
TX	Jones County	Y	Y	38.22%	37.77%	1
TX	Karnes County	Y	Y	40.07%	36.77%	1
TX	Kaufman County	Y	Y	49.73%	47.58%	1
TX	Kleberg County	Y	Y	45.61%	41.91%	1
TX	La Salle County		Y		49.78%	1
TX	Lamar County	Y	Y	47.69%	43.70%	1
TX	Lamb County	Y	Y	42.59%	46.66%	1
TX	Lampasas County	Y		48.73%		1
TX	Liberty County	Y	Y	41.41%	41.33%	1
TX	Limestone County	Y	Y	47.99%	45.22%	1
TX	Live Oak County	Y	Y	46.08%	42.46%	1
TX	Lubbock County		Y		43.03%	1
TX	Lynn County		Y		48.27%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
TX	Madison County	Y	Y	42.13%	36.84%	1
TX	Marion County		Y		46.50%	1
TX	Matagorda County	Y		49.30%		1
TX	Maverick County	Y	Y	44.23%	45.29%	1
TX	McCulloch County		Y		49.58%	1
TX	McLennan County		Y		46.24%	1
TX	Medina County	Y	Y	49.03%	47.38%	1
TX	Milam County	Y	Y	49.28%	48.77%	1
TX	Mitchell County	Y	Y	34.85%	33.85%	1
TX	Moore County		Y		48.79%	1
TX	Nacogdoches County	Y	Y	49.43%	46.27%	1
TX	Navarro County	Y	Y	49.73%	46.19%	1
TX	Newton County		Y		45.04%	1
TX	Nolan County	Y	Y	48.93%	47.06%	1
TX	Nueces County	Y	Y	48.03%	45.26%	1
TX	Orange County		Y		48.55%	1
TX	Palo Pinto County		Y		47.02%	1
TX	Parmer County	Y	Y	47.84%	48.05%	1
TX	Pecos County	Y	Y	42.17%	39.26%	1
TX	Potter County	Y	Y	36.91%	33.34%	1
TX	Rains County	Y	Y	47.88%	48.78%	1
TX	Red River County		Y		48.62%	1
TX	Reeves County	Y	Y	44.61%	38.62%	1
TX	Runnels County		Y		49.77%	1
TX	Rusk County		Y		48.46%	1
TX	San Jacinto County	Y	Y	44.38%	47.40%	1
TX	San Patricio County	Y	Y	45.54%	41.28%	1
TX	Scurry County	Y	Y	46.76%	44.53%	1
TX	Smith County		Y		49.92%	1
TX	Starr County	Y	Y	38.83%	37.44%	1
TX	Stephens County		Y		47.03%	1
TX	Swisher County	Y	Y	38.55%	43.25%	1
TX	Taylor County		Y		47.66%	1
TX	Terry County	Y	Y	46.92%	46.48%	1
TX	Titus County		Y		48.22%	1
TX	Tom Green County		Y		46.83%	1
TX	Tyler County	Y	Y	48.69%	44.76%	1
TX	Uvalde County	Y		49.94%		1
TX	Val Verde County	Y	Y	44.19%	46.12%	1
TX	Victoria County	Y	Y	49.64%	47.47%	1
TX	Walker County	Y	Y	35.90%	29.22%	1
TX	Waller County		Y		48.50%	1
TX	Webb County	Y	Y	40.39%	34.47%	1
TX	Wharton County	Y	Y	49.52%	48.34%	1
TX	Wichita County	Y	Y	48.94%	44.71%	1
TX	Wilbarger County		Y		44.72%	1
TX	Willacy County	Y	Y	39.47%	40.42%	1
TX	Winkler County	Y	Y	48.81%	46.74%	1
TX	Wise County	Y	Y	49.86%	48.59%	1
TX	Wood County		Y		49.37%	1
TX	Zapata County	Y	Y	40.62%	39.42%	1
TX	Zavala County	Y	Y	43.84%	48.52%	1
	TX Count					136
UT	Tooele County		Y		48.86%	1
UT	Weber County		Y		48.91%	1
	UT Count					2
VA	Accomack County	Y	Y	46.02%	42.82%	1
VA	Amherst County		Y		48.39%	1
VA	Bedford city		Y		49.53%	1
VA	Bland County	Y	Y	49.45%	48.55%	1
VA	Bristol city	Y	Y	48.96%	45.53%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
VA	Brunswick County	Y	Y	47.85%	41.15%	1
VA	Buchanan County	Y	Y	49.15%	46.72%	1
VA	Buckingham County	Y	Y	48.06%	45.21%	1
VA	Buena Vista city	Y	Y	48.79%	40.05%	1
VA	Carroll County		Y		47.81%	1
VA	Charlottesville city		Y		36.21%	1
VA	Clifton Forge city		Y		45.18%	1
VA	Covington city	Y	Y	48.62%	45.33%	1
VA	Culpeper County		Y		49.41%	1
VA	Danville city		Y		49.78%	1
VA	Dinwiddie County		Y		49.39%	1
VA	Fredericksburg city	Y	Y	48.80%	43.77%	1
VA	Galax city	Y	Y	49.82%	46.24%	1
VA	Grayson County		Y		47.94%	1
VA	Greene County		Y		49.31%	1
VA	Greensville County	Y	Y	44.32%	41.33%	1
VA	Halifax County		Y		49.53%	1
VA	Hampton city		Y		43.97%	1
VA	Harrisonburg city	Y	Y	34.37%	31.35%	1
VA	Henry County		Y		49.02%	1
VA	Hopewell city	Y	Y	49.53%	43.11%	1
VA	King George County		Y		48.55%	1
VA	Lee County		Y		48.08%	1
VA	Lexington city	Y	Y	37.45%	35.55%	1
VA	Lunenburg County		Y		44.93%	1
VA	Lynchburg city		Y		47.32%	1
VA	Manassas Park city		Y		41.80%	1
VA	Martinsville city	Y	Y	48.99%	48.57%	1
VA	Mecklenburg County	Y	Y	49.98%	46.38%	1
VA	Montgomery County	Y	Y	45.69%	41.23%	1
VA	Newport News city		Y		45.41%	1
VA	Norfolk city	Y	Y	40.43%	35.77%	1
VA	Norton city		Y	48.94%		1
VA	Nottoway County		Y		45.97%	1
VA	Page County		Y		45.07%	1
VA	Patrick County		Y		49.31%	1
VA	Petersburg city	Y	Y	49.57%	44.14%	1
VA	Portsmouth city		Y		47.80%	1
VA	Prince Edward County	Y	Y	45.33%	40.80%	1
VA	Prince George County		Y		45.51%	1
VA	Pulaski County		Y		45.56%	1
VA	Radford city	Y	Y	38.30%	32.69%	1
VA	Richmond city		Y		43.90%	1
VA	Richmond County	Y	Y	44.99%	41.59%	1
VA	Roanoke city		Y		46.55%	1
VA	Rockbridge County		Y		48.83%	1
VA	Rockingham County		Y		48.23%	1
VA	Russell County		Y		45.31%	1
VA	Smyth County	Y	Y	48.33%	45.36%	1
VA	Southampton County		Y		49.80%	1
VA	Staunton city		Y		44.92%	1
VA	Sussex County	Y	Y	45.85%	39.15%	1
VA	Tazewell County	Y	Y	49.49%	46.92%	1
VA	Warren County		Y		48.00%	1
VA	Waynesboro city		Y		48.61%	1
VA	Westmoreland County		Y		47.52%	1
VA	Williamsburg city	Y	Y	42.82%	35.54%	1
VA	Winchester city		Y		45.44%	1
VA	Wise County	Y	Y	43.62%	43.19%	1
VA	Wythe County		Y		47.32%	1
	VA Count					65
WI	Menominee County		Y		45.15%	1

State	County	2004 Coverage	2000 Coverage	2004 Turnout	2000 Turnout	Count
	WI Count					1
WV	Berkeley County		Y		41.19%	1
WV	Boone County		Y		46.73%	1
WV	Braxton County		Y		46.85%	1
WV	Brooke County		Y		46.57%	1
WV	Cabell County		Y		41.82%	1
WV	Calhoun County		Y		44.49%	1
WV	Clay County		Y		46.54%	1
WV	Fayette County	Y	Y	45.51%	39.40%	1
WV	Gilmer County	Y	Y	49.33%	48.34%	1
WV	Greenbrier County		Y		47.47%	1
WV	Hampshire County	Y	Y	48.26%	40.32%	1
WV	Hardy County		Y		46.61%	1
WV	Jefferson County		Y		45.23%	1
WV	Kanawha County		Y		48.97%	1
WV	Lewis County		Y		46.71%	1
WV	Lincoln County	Y	Y	47.95%	44.10%	1
WV	Logan County		Y		49.19%	1
WV	Marshall County		Y		49.35%	1
WV	McDowell County	Y	Y	38.19%	34.90%	1
WV	Mercer County	Y	Y	45.53%	38.07%	1
WV	Mineral County		Y		47.32%	1
WV	Mingo County		Y		46.98%	1
WV	Monongalia County		Y		42.03%	1
WV	Monroe County		Y		44.16%	1
WV	Nicholas County		Y		42.19%	1
WV	Ohio County		Y		48.45%	1
WV	Pocahontas County		Y		48.21%	1
WV	Preston County		Y		46.77%	1
WV	Raleigh County	Y	Y	48.72%	38.98%	1
WV	Randolph County		Y		43.62%	1
WV	Ritchie County		Y		47.87%	1
WV	Roane County		Y		47.64%	1
WV	Summers County	Y	Y	48.11%	45.70%	1
WV	Taylor County		Y		46.18%	1
WV	Upshur County	Y	Y	49.35%	44.98%	1
WV	Wayne County		Y		49.53%	1
WV	Webster County	Y	Y	47.90%	44.22%	1
WV	Wetzel County		Y		46.67%	1
WV	Wyoming County	Y	Y	44.64%	39.54%	1
	WV Count					39
	Total Counties Covered Under Proposed Formula					1010

XII. Additional Views of Mr. Leahy, Mr. Kennedy, Mr. Biden, Mr. Kohl, Mrs. Feinstein, Mr. Feingold, Mr. Schumer and Mr. Durbin in Support of S. 2703

We object and do not subscribe to this Committee Report on S. 2703, the Voting Rights Act Reauthorization and Amendments Act (VRARA), which by including Additional Views signed by the Chairman, has become a very different document than the draft Report circulated by the Chairman on July 24, 2006. As sponsors of the Senate legislation who have supported it, pressed for its enactment and voted for it, we must register our disappointment that this Report does not reflect our views or those of scores of other cosponsors, does not properly describe the record supporting our bill, and does not fully endorse the bill we introduced and sponsored and that we and all Members of the Committee voted to report favorably to the Senate. Although the Senate Committee Report filed today does not make any findings based on the extensive record created in both the House and Senate, those findings can be found in the text of the legislation itself. We submit these additional views to note for the record the unique procedural posture of the Committee's actions today.

On July 19, 2006, the Committee debated and voted on two amendments to the VRARA.[1] No other amendments were offered and there was no further clarifying debate during this session. Then, the Committee unanimously voted to report the legislation favorably to the full Senate. The following day, on July 20, 2006, the full Senate debated H.R. 9,[2] the companion bill that had been passed by the House of Representatives. No amendments were offered and the Senate voted 98–0 for final passage.

The Senate Judiciary Committee Report on the VRARA is being filed close to a week after the Senate unanimously passed its companion bill, H.R. 9.

At the time of floor debate and consideration of final passage of H.R. 9 in the Senate, Senators had the following to inform their vote: the extensive Senate Judiciary Committee record, including thousands of pages of testimony; the full record before the House of Representatives, including thousands of pages of testimony; the House Committee Report; and the full debate on the floor of the House of Representatives, including debate surrounding four substantive amendments to H.R. 9 that were all rejected. Most importantly, at the time they voted, all Senators had before them the de-

[1] Senator Coburn offered the only substantive amendment in the Senate Judiciary Committee. His amendment related to Section 203 of the Voting Rights Act. It was debated and then defeated by a voice vote. Senator Leahy offered an amendment to add the name of César Chávez to the short title, which was adopted.

[2] The House and the Senate legislation are virtually identical. The only difference between them reflects an amendment adopted in the House Judiciary Committee to order a study about Section 203 and an amendment adopted in the Senate Judiciary Committee to add the name of César Chávez to the short title.

tailed findings in Section 2 of the legislation.[3] These findings are identical in H.R. 9 and S. 2703 and, as reauthorization measures, both incorporated the statutory findings within the following provisions of the Voting Rights Act of 1965: Section 203(a);[4] Section 4(f)(1);[5] Section 10(a);[6] and Section 202(a).[7] At the time of floor debate and consideration of H.R. 9 in the Senate, no draft Senate Committee Report was available to Senators.

By voting to pass the legislation, Congress has adopted and reaffirmed the detailed findings in H.R. 9. The Senate unanimously adopted these findings. Nothing written by a Member of Congress after final passage can diminish the force of those findings contained within the enacted legislation itself or the Member's vote supporting them. As several courts have suggested, post-passage legislative history is a contradiction in terms. Any after-the-fact attempts to re-characterize the legislation's language and effects should not be credited.

PATRICK J. LEAHY.
EDWARD M. KENNEDY.
JOSEPH R. BIDEN, JR.
HERBERT KOHL.
DIANNE FEINSTEIN.
RUSSELL D. FEINGOLD.
CHARLES E. SCHUMER.
RICHARD J. DURBIN.

XIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black

[3] *See, e.g.,* "Evidence of continued discrimination includes * * * the hundreds of objections interposed, requests for more information submitted followed by voting changes withdrawn from consideration by jurisdictions covered by the Voting Rights Act of 1965, and section 5 enforcement actions undertaken by the Department of Justice in covered jurisdictions since 1982 that prevented election practices, such as annexation, at-large voting, and the use of multi-member districts, from being enacted to dilute minority voting strength; * * * the number of requests for declaratory judgments denied by the United States District Court for the District of Columbia; * * * the continued filing of section 2 cases that originated in covered jurisdictions; and * * * the litigation pursued by the Department of Justice since 1982 to enforce sections 4(e), 4(f)(4), and 203 of such Act to ensure that all language minority citizens have full access to the political process." Section 2(b)(4). *See also* Section 2(b)(3) ("The continued evidence of racially polarized voting in each of the jurisdictions covered by the expiring provisions of the Voting Rights Act of 1965 demonstrates that racial and language minorities remain politically vulnerable, warranting the continued protection of the Voting Rights Act of 1965.").

[4] 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).

[5] 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).

[6] 42 U.S.C. §1973h(a).

[7] 42 U.S.C. §1973aa–1(a).

brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

VOTING RIGHTS ACT OF 1965

TITLE I—VOTING RIGHTS

* * * * * * *

SEC. 3. (a) 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] *observers* by the Director of the Office of Personnel Management in accordance with section 6 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] *observers* 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] *observers* 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 4(f)(2) (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.

* * * * * * *

SEC. 4. (a)(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 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) * * *

* * * * * * *

(C) no Federal examiners *or observers* under this Act have been assigned to such State or political subdivision;

* * * * * * *

(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] *Fannie Lou Hamer, Rosa Parks, Coretta Scott King, and César E. Chávez Voting Rights Act Reauthorization and Amendments Act of 2006.*

(8) The provisions of this section shall expire at the end of the 25-year period following the effective date of the amendments made by the [Voting Rights Act Amendments of 1982] *Fannie Lou Hamer, Rosa Parks, Coretta Scott King, and César E. Chávez Voting Rights Act Reauthorization and Amendments Act of 2006.*

* * * * * * *

(b) The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, 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 sentence, 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, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. 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.

A determination or certification of the Attorney General or of the Director of the Census under this section or under [section 6] *sec-*

tion 8 or 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

* * * * * * *

SEC. 5. *(a)* Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) 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 4(a) based upon determinations made under the second sentence of section 4(b) 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 4(a) based upon determinations made under the third sentence of section 4(b) 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] *neither has the purpose nor will have the effect* of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), 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.

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

(c) The term "purpose" in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice.

[SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) 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 4(f)(2), 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 9(a) and other persons deemed necessary by the Director to carry out the provisions and purposes of this Act 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 this Act 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, United States Code, 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.

[SEC. 7. (a) The examiners for each political subdivision shall, at such places as the Director of the Office of Personnel Management shall by regulation designate, examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Director may require and shall contain allegations that the applicant is not otherwise registered to vote.

[(b) Any person whom the examiner finds, in accordance with instructions received under Section 9(b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with Section 9(a) and shall not be the basis for a prosecution under Section 12. The examiner shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d) of this section: Provided, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

[(c) The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

[(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States.

[SEC. 8. Whenever an examiner is serving under this Act 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 3(a), to the court.

[SEC. 9. (a) Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by a hearing officer appointed by and responsible to the Director of the Office of Personnel Management and under such rules as the Director shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Director of the Office of Personnel Management shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of

at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

[(b) The times, places, procedures, and form for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Director of the Office of Personnel Management and the Director shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

[(c) Upon the request of the applicant or the challenger or on its own motion the Director of the Office of Personnel Management shall have the power to require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before the Director under the authority of this Section. In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Director or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.]

SEC. 8. (a) Whenever—

(1) a court has authorized the appointment of observers under Section 3(a) for a political subdivision; or

(2) the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under Section 4(b), unless a declaratory judgment has been rendered under Section 4(a), that—

(A) the Attorney General has received written meritorious complaints from residents, elected officials, or civic participation organizations that efforts to deny or abridge the right to vote under the color of law on account of race or color, or in contravention of the guarantees set forth in Section 4(f)(2) are likely to occur; or

(B) in the 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 Attorney General to be reasonably attributable to violations of the 14th or 15th amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 14th or 15th amendment), the assignment of observers is otherwise necessary to enforce the guarantees of the 14th or 15th amendment;

the Director of the Office of Personnel Management shall assign as many observers for such subdivision as the Director may deem appropriate.

(b) Except as provided in subSection (c), such observers shall be assigned, compensated, and separated without regard to the provisions of any statute administered by the Director of the Office of Personnel Management, and their service under this Act 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 Section 7324 of title 5, United States Code, prohibiting partisan political activity.

(c) The Director of the Office of Personnel Management is authorized to, after consulting the head of the appropriate department or agency, designate suitable persons in the official service of the United States, with their consent, to serve in these positions.

(d) Observers shall be authorized to—

(1) 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) 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.

(e) Observers shall investigate and report to the Attorney General, and if the appointment of observers has been authorized pursuant to section 3(a), to the court.

* * * * * * *

SEC. 12. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, [7,] or 10 or shall violate section 11(a), shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which [an examiner has been appointed] *an observer has been assigned* (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section

2, 3, 4, 5, [7,] 10, or 11(a) shall be fined not more than $5,000, or imprisoned not more than five years, or both.

* * * * * * *

(e) Whenever in any political subdivision in which there are [examiners] *observers* appointed pursuant to this Act any persons alleged to such an [examiner] *observer* within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the [examiner] *observer* shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

* * * * * * *

[SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Director of the Office of Personnel Management, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) in such subdivision, and (b), with respect to examiners appointed pursuant to section 3(a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney General's refusal to request such survey or census to be arbitrary or unreasonable.]

SEC. 13. (a) The assignment of observers shall terminate in any political subdivision of any State—

(1) with respect to observers appointed pursuant to section 8 or with respect to examiners certified under this Act before the date of the enactment of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and

Amendments Act of 2006, whenever the Attorney General notifies the Director of the Office of Personnel Management, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision described in subsection (b), that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) in such subdivision; and

(2) with respect to observers appointed pursuant to section 3(a), upon order of the authorizing court.

(b) A political subdivision referred to in subsection (a)(1) is one with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote.

(c) A political subdivision may petition the Attorney General for a termination under subsection (a)(1).

SEC. 14. (a) * * *

(b) No court other than the District Court for the District of Columbia [or a court of appeals in any proceeding under section 9] shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

* * * * * * *

(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, *reasonable expert fees, and other reasonable litigation expenses* as part of the costs.

* * * * * * *

TITLE II—SUPPLEMENTAL PROVISIONS

* * * * * * *

BILINGUAL ELECTION REQUIREMENTS

SEC. 203. (a) * * *

(b) BILINGUAL VOTING MATERIALS REQUIREMENT.—

(1) GENERALLY.—Before August 6, [2007] *2032,* no covered State or political subdivision shall provide voting materials only in the English language.

(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] *the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data,* that—

(i) * * *

* * * * * * *

XIV. APPENDICES

APPENDIX I

Below is a summary of all the cases that staff for the Chairman of the Senate Judiciary Committee located in which a court or a settlement found a constitutional violation of voting rights. Staff reviewed the ACLU's 867-page Voting Rights Report, which discusses 293 cases brought since June 1982. Staff also reviewed the database for the University of Michigan Law School Voting Rights Report. The database was constructed by searching the "federal court" databases of Westlaw or Lexis for any case that was decided since June 29, 1982 and mentions section 2, 42 U.S.C. § 1973. Of all the identified section 2 lawsuits, 209 produced at least one published liability decision under section 2. Staff reviewed the "state reports" introduced into the record and available at RenewTheVRA.org. Finally, staff reviewed the consent decrees introduced into the November 8, 2005 House Judiciary Committee hearing on the minority language provisions of the Voting Rights Act.

Staff identified six published cases resulting in a finding that a covered jurisdiction committed unconstitutional discrimination against minority voters. Six published cases ended in a finding that found that a covered jurisdiction had committed unconstitutional discrimination against white voters. Similarly, six published cases in non-covered jurisdictions found unconstitutional voting practices against minority voters, and two against white or majority voters.

An additional 22 cases found a constitutional violation, but these did not involve racial discrimination or any conduct addressed by the Voting Rights Act.

I. COVERED JURISDICTIONS DISCRIMINATING AGAINST VOTERS

Alabama:

1) ***Hunter v. Underwood***, 730 F.2d 614 (11th Cir. 1984), *affirmed* 471 U.S. 222 (1985) (ACLU Rep., p. 51).
The ACLU represented two voters who were disenfranchised under a nearly 80 year-old law that prohibited those who had committed a "crime of moral turpitude" from voting. *Id.* at p. 52. The court struck down the law because there was evidence that when it was adopted in the early 1900s, the legislators intended to disenfranchise black voters. The Supreme Court unanimously affirmed that, in view of the proof of racial motivation and continuing racially discriminatory effect, the state law violated the Fourteenth Amendment.

2) ***Dillard v. City of Foley***, 926 F. Supp. 1053 (M.D. Ala. 1995) (ACLU Rep., p. 57).
African American plaintiffs in the City of Foley, Alabama, filed a motion to require the City to adopt and implement a nondiscriminatory annexation policy and to annex Mills Quarters and Beulah Heights. Plaintiffs also claimed that the City had violated section 5 and section 2. As a result of negotiations, the parties entered into a consent decree. The decree found plaintiffs had established "a prima facie violation of section 2 of the Voting Rights Act and the United States Constitution." *Id.* at p. 59.

3) ***Brown v. Board of School Comm'rs.***, 706 F. 2d 1103 (11th Cir. 1983) (U Mich. L.Rep., http://www.votingreport.org.).

A class of African American voters challenged Mobile County's at-large system for electing School Board members. In 1852, Mobile County created at-large school board elections of 12 commissioners. In 1870, the election procedures changed; instead of selecting all 12 commissioners, voters would select 9 of the 12 and the other 3 would be appointed. This system had the effect of ensuring minority representation on the school board. In 1876, the Alabama state legislature eliminated the Mobile County school board system and returned the County to the 1852 at-large election scheme which remained in effect until this suit was brought.

The district court found that by re-instating the at-large election system, the Alabama state legislature intended to discriminate against African Americans in Mobile County in violation of the Fourteenth and Fifteenth Amendment. The Eleventh Circuit affirmed.

Georgia

4) ***Miller v. Johnson:*** 515 U.S. 900 (1995) (*ACLU Rep.*, 126-27).
In August 1991, the Georgia legislature adopted a congressional redistricting plan based on the new census containing two majority minority districts--the Fifth and the Eleventh. A third district, the Second, had a 35.4% black voting age population. The state submitted the plan for preclearance, but the Attorney General objected to it. Following another objection to a second plan, the state adopted a third plan which contained three majority black districts, the Fifth, the Eleventh, and the Second. The plan was precleared on April 2, 1992. Following the decision in Shaw v. Reno, a lawsuit was filed by white plaintiffs claiming that the Eleventh Congressional District was unconstitutional. One of the plaintiffs was George DeLoach, a white man who had been defeated by McKinney in the 1992 Democratic primary. Although the Eleventh District was not as irregular in shape as the district in Shaw v. Reno, the district court found it to be unconstitutional, holding that the "contours of the Eleventh District . . . are so dramatically irregular as to permit no other conclusion than that they were manipulated along racial lines." The Supreme Court affirmed. It did not find the Eleventh District was bizarrely shaped, but it held the state had "subordinated" its traditional redistricting principles to race without having a compelling reason for doing so. The court criticized the plan for splitting counties and municipalities and joining black neighborhoods by the use of narrow, sparsely populated "land bridges." On remand the district court allowed the plaintiffs to amend their complaint to challenge the majority black Second District, which the court then held was unconstitutional for the same reasons it had found the Eleventh District to be unconstitutional, [and] the legislature adjourned without adopting a congressional plan.

5) ***Common Cause v. Billups:*** 4:05-CV-201 HLM (N.D. Ga.) (*ACLU Rep.*, 185-91).
The Department of Justice precleared the photo ID bill on August 26, 2005. The ACLU filed suit in federal district court, charging the law violated the state and federal constitutions, the 1965 Voting Rights Act, and the 1964 Civil Rights Act. The district court issued a preliminary injunction holding plaintiffs had a substantial likelihood of succeeding on several grounds, including claims that the photo ID law was a poll tax and violated the equal protection clause of the Constitution. The state appealed to the Eleventh Circuit, which refused to stay the injunction. In an attempt to address the poll tax burden cited by the district court in its injunction, the Georgia legislature passed a hew photo ID bill providing for free photo identification cards.

6) ***Clark v. Putnam County:*** 168 F.3d 458 (11th Cir. 1999) (*ACLU Report at 384-89*). In 1997, four white plaintiffs filed a lawsuit challenging the constitutionality of the majority black county commission districts as racial gerrymanders in violation of the *Shaw / Miller* line of cases. In January 2001, the district court dismissed the complaint. The Eleventh Circuit reversed, holding that the district court erred in failing to find unconstitutional intentional discrimination.

Louisiana:

7) ***Hays v. Louisiana***, 515 U.S. 737 (1995) (ACLU Rep., p. 481).
White plaintiffs successfully challenged Louisiana's Fourth Congressional District as unconstitutional "race-conscious" redistricting. *Id.* at p. 481. The Supreme Court granted cert., but then dismissed the case for lack of standing.

North Carolina:

8) ***Shaw v. Hunt***, 517 U.S. 899 (1996) (ACLU Rep., p. 513).
The 12th District of North Carolina was 57% black and was persistently challenged by white voters and its boundaries were considered by the Supreme Court four separate times. The ACLU participated as an amicus in defending the constitutionality of the 12th District. In 1996, the Supreme Court struck down the plan for the 12th District on the grounds that race was the "predominant" factor in drawing the plan and the State had subordinated its traditional redistricting principles to race. *Id.*

South Carolina:

9) ***Smith v. Beasley***, 946 F. Supp. 1174 (D.S.C. 1996) (ACLU Rep., p. 572).
White voters filed suit in 1995 challenging three state senate districts. A year later, another group of white voters filed suit challenging nine house districts. In both cases, the plaintiffs claimed that the districts were drawn with race as the predominant factor in violation of the Shaw/Miller line of decisions. The cases were consolidated for trial, and black voters, represented by the ACLU, intervened to defend the constitutionality of the challenged districts. Following a trial, a court issued an order in September 1996, finding three of the challenged senate districts and nine of the house districts unconstitutional because they "were drawn with race as the predominant factor." *Id.*

Texas:

10) ***League of United Latin American Citizens v. Midland Indep. Sch. Dist.,*** 648 F. Supp. 596 (W.D. Tex. 1986) (U Mich. L.Rep., http://www.votingreport.org).
Latino plaintiffs argued that the at-large election system diluted their votes. The parties agreed to a court order that eliminated the election scheme and defendants submitted a proposal in which four trustees would be elected from single-member districts and three would be elected at large. Plaintiffs objected and filed a plan in which all seven trustees would be elected from single-member districts. The court, applying *Gingles* and the totality-of-circumstances tests, held that defendants' plans violated section 2 and the Fourteenth and Fifteenth Amendment. The

court ordered that a seven-member district plan for electing trustees be immediately implemented according to district boundaries drawn by the court.

Virginia:

11) ***Moon v. Meadows***, 952 F. Supp. 1141 (E.D. Va. 1997) (ACLU Rep., p. 691).
In 1995, several white voters challenged the Third Congressional District in federal court as an unconstitutional racial gerrymander. In 1997, the district court invalidated the Third Congressional District, finding that race had predominated in drawing the district and that the defendants could not adequately justify their use of race as a districting factor.

12) ***Pegram v. City of Newport News***, 4:94cv79 (E.D.Va. 1994) (ACLU Rep., p. 714).
In July 1994, the ACLU filed suit on behalf of African American voters challenging the at-large method of city elections in the City of New Port. On October 26, 1994, a consent decree was entered in which the City admitted that its at-large system violated section 2 as well as the Fourteenth and Fifteenth Amendments. The consent decree required the City to implement a racially fair election plan.

II. NON-COVERED JURISDICTIONS DISCRIMINATING AGAINST VOTERS

California:

1) ***Garza v. County of Los Angeles,*** 918 F.2d 763 (9th Cir. 1990) (U Mich. Law School's Report. http://www.votingreport.org).
Latino voters alleged that district lines for the Los Angeles County Board of Supervisors were gerrymandered to dilute their voting strength. Plaintiffs requested creation of a district with a Latino majority for the 1990 Board of Supervisors election. The Ninth Circuit affirmed that the County had adopted and applied a redistricting plan that resulted in dilution of Latino voting power in violation of section 2, and by establishing and maintaining the plan, the County had intentionally discriminated against Latinos in violation of the Fourteenth Amendment's Equal Protection Clause.

Florida:

2) ***McMillan v. Escambia County,*** 748 F.2d 1037 (11th Cir. 1984) (U Mich. L.Rep., http://www.votingreport.org).
Black plaintiffs claimed that the at-large election of county commissioners in Escambia County diluted their voting power in violation of section 2 and the Fourteenth and Fifteenth Amendments. The district court found that the State had not implemented the plan with a racially discriminatory purpose, but it had maintained it with such a purpose.

Hawaii:

3) ***Arakaki v. Hawaii,*** 314 F.3d 1091 (9th Cir. 2002) (U Mich. L.Rep., http://www.votingreport.org)
A group of Hawaiian citizens of various ethnic backgrounds sued the State of Hawaii alleging that the requirement that those appointed to the Office of Hawaiian Affairs must be of Native

Hawaiian ancestry violated the Fourteenth Amendment, the Fifteenth Amendment, and section 2 of the Voting Rights Act. The Eleventh Circuit found that the restriction on candidates running for Office of Hawaiian Affairs on the basis of race violated the Fifteenth Amendment as well section 2 of the Voting Rights Act. The Ninth Circuit vacated the district court's judgment that the Fourteenth Amendment had also been violated because plaintiffs did not have standing to challenge the appointment procedures.

New Mexico:

4) ***United States v. Socorro County***, Civ. Action No. 93-1244-JP (November 8, 2005 House Judiciary Committee Hearing Record)
The United States sued pursuant to sections 2, 12(d), and 203 of the VRA, alleging violations of the VRA and the 14th and 15th Amendments arising from Socorro County's election practices and procedures as they affected Native American citizens of the county, including those Native American citizens who rely on whole or in part on the Navajo language. In its 1993 consent agreement, the defendants did "not contest that in past elections [the county] failed to make the election process in Socorro County equally available to Native American and non-Native American citizens as required by Section 2 [of the VRA] and the Fourteenth and Fifteenth Amendments, nor [did] defendants contest that in past elections the county has failed to comply fully with the minority language requirements of Section 203 [of the VRA]."

5) ***United States v. Bernalillo County***, Civ. Action No. 98-156 BB/LCS (November 8, 2005 House Judiciary Committee Hearing Record)
The United States sued pursuant to sections 2, 12(d), and 203 of the VRA, alleging violations of the VRA and the 14th and 15th Amendments arising from Bernalillo County's election practices and procedures as they affected Native American citizens of the county, including those Native American citizens who rely on whole or in part on the Navajo language. In its 1998 consent decree, the defendants did "not contest that in past elections the county has failed in particular areas to make the election process as accessible to Native American citizens as it was to non-Native American citizens as is required by Section 203, Section 2, and the Fourteenth and Fifteenth Amendments."

New York:

6) ***Goosby v. Town Bd. of Town of Hempstead***, 180 F. 3d 476 (2d Cir. 1999) (U Mich. L.Rep., http://www.votingreport.org).
Representatives of the Town Board of Hempstead were chosen through at-large elections. African American voters alleged that they were unable to elect their preferred candidates. The district court held that the at-large elections violated section 2 and ordered the Town to submit a six single-member district remedial plan. The Board submitted two plans. The one the Board preferred was a two-district system, consisting of one single-member district and one multi-member district. The other plan consisted of six single-member districts. The district court held that the two-district plan violated the Fourteenth Amendment, but the six-district plan did not.

The Board appealed. The Second Circuit affirmed the district court's holding that the Board's proposed two-district plan violated section 2 and the Fourteenth Amendment because blacks had no access to the Republican Party candidate slating process.

Pennsylvania:

7) ***Marks v. Stinson,*** 1994 WL 146113 (E.D. Pa. Apr. 26, 1994) (U Mich. L.Rep., http://www.votingreport.org).
Republican candidate for State Senate, Bruce Marks, the Republican State Committee and other plaintiffs challenged the election of Democrat William Stinson for the Second Senatorial District. Although Marks received approximately 500 more votes from the Election Day voting machines than Stinson, Stinson received 1000 more votes than Marks in absentee voting. Marks and the other plaintiffs contended that Stinson and his campaign workers encouraged voters to undermine proper absentee voting procedures and requirements, such as falsely claiming that they would be out of the county or would be physically unable to go to the polls on Election Day. Plaintiffs also contended that Stinson and the other Defendants had focused their efforts to encourage illegal absentee voting on minorities.

The court held: 1) defendants violated plaintiffs' First Amendment rights of association because plaintiffs were denied the freedom to form groups for the advancement of political ideas and to campaign and vote for their chosen candidates; 2) defendants' actions denied plaintiffs' right to Equal Protection by discriminating against the Republican candidate and by treating persons differently because of their race; 3) defendants violated plaintiffs' Substantive Due Process right to vote in state elections by abusing the democratic process; and 4) defendants improperly applied a "standard, practice, or procedure" in a discriminatory fashion in violation of the VRA, targeting voters based on race and denying minority voters the right to vote freely without illegal interference. Finally, the court ordered the certification of Bruce Marks as the winner of the Second Senatorial District seat for the 1993 Special Election because Marks would have won the election but for the illegal actions of the defendants.

Tennessee:

8) ***Brown v. Chattanooga board of Comm'rs,*** 722 F. Supp. 380 (E.D. Tenn. 1989) (U Mich. L.Rep., http://www.votingreport.org).
Black citizens of Chattanooga sued the Board of Commissioners for its use of at-large elections. The court held: 1) applying the *Gingles* test, the method of electing Board of Commissioners violated section 2 because the electoral practice resulted in an abridgment of black voter's rights; and 2) the Property Qualified Voting provision of the Chattanooga charter violated the Fourteenth Amendment under rational basis review because permitting a nonresident who owns a trivial amount of property to vote in municipal elections does not further any rational governmental interest.

III. CONSTITUTINAL VIOLATIONS NOT INVOLVING RACE

1) ***Vander Linden v. Hodges***, 193 F.3d 268 (4th Cir. 1999) (ACLU Rep., p. 562).
Residents of Dorchester, Berkeley, and Charleston Counties, in South Carolina, filed suit in

1991 alleging that the counties' legislative delegation structure violated the Fourteenth Amendment's one-person, one-vote requirement and was adopted with an unconstitutional purpose to discriminate against African American voters. The district court rejected both claims. The Fourth Circuit held that the structure violated the one-person, one-vote rule (making no findings of discriminatory intent) and did not address the second claim.

2) ***NAACP v. Board of Trustees of Abbeville County School District No. 60***, Civ. No. 8-93-1047-03 (D.S.C. 1993) (ACLU Rep., p. 583).
The Board of Trustees of Abbeville County School District 60 traditionally consisted of nine members, five of whom were elected from single member districts and two each from two multi-member districts. African Americans were 32% of the population of the school district, but all the districts were majority white and only one member of the board was African American. In 1993, black residents of the school district and the local NAACP chapter filed suit challenging the method of electing the board of trustees as violating the Constitution's one person, one vote requirement and violating section 2 by diluting minority voting strength. The court decided that the existing plan for the board "is an unconstitutionally malapportioned plan, and is in violation of sections 2 and 5 of the Voting Rights Act." *Id.* at 584.

3) ***Duffey v. Butts County Board of Commissioners:*** Civ. No. 92-233-3-MAC (M.D. Ga.) (*ACLU Report at 237-38*).
Suit challenging districting plans for Board of Education and Board of Commissioners that were determined to be malapportioned after the 1990 census. Plaintiffs sought, and obtained, a preliminary injunction finding that the election districts were "constitutionally malapportioned." Parties entered consent decree that retained five single member districts for both boards and established two majority black districts. Plan was precleared by DOJ.

4) ***Calhoun County Branch of the NAACP v. Calhoun County:*** Civ. No. 92-96-ALB/AMER(DF) (M.D. Ga.) (*ACLU Report at 238-40*).
1979 suit to enjoin the use of at-large elections for failure to comply with Section 5. The county had changed to at-large voting in 1967 following increased black registration. A three-judge panel enjoined the at-large scheme, finding it had never been submitted for preclearance. A consent order then created five single-member districts, two of which were majority black, and two at-large seats. After the 1990 census, black voters again sued, alleging the districts were malapportioned. According to the ACLU report, "the district court entered an order enjoining the upcoming primary election for the board of education under the malapportioned plan. The parties then agreed upon a new plan that complied with the equal population standard and maintained two of the districts as majority black."

5) ***Frank Davenport v. Clay County Board of Commissioners, NO. 92-98-COL (JRE) (M.D. Ga.):*** Civ. No. 92-98-COL (JRE) (M.D. Ga.) (*ACLU Report at 256-59*).
The county had failed to preclear its change to an at-large system of voting for county commissioners in 1967. In 1980, members of the local NAACP challenged the at-large system and the failure to comply with Section 5. The court found a section 5 violation, which resulted in a return to single-member districts. After the 1990 census showed the commission districts to be malapportioned (and following an attempt to create equal districts which was not precleared

before a 1992 legislative poison pill provision rendered it void), the ACLU sued seeking a remedial plan for the upcoming elections. The parties entered a consent decree in which the county admitted the districts were malapportioned in violation of the Fourteenth Amendment's one person one vote requirement and agreed to the redistricting plan which had been created before the 1992 poison pill invalidated it. The plan was precleared by DOJ.

6) ***Jones v. Cook County:*** Civ. No. 7:94-cv-73 (WLS) (*ACLU Report at 271-72*).
The ACLU filed suit on behalf of black voters in 1994, alleging that the county board of commissioners and board of education districts were constitutionally malapportioned after the 1990 census. According to the ACLU's report, "In a hearing on December 19, 1995, county officials agreed that 'the relevant voting districts in Cook County are malapportioned in violation of the equal protection clause of the fourteenth amendment to the United States Constitution.' A consent decree allowed sitting commission members to retain their seats but implemented a new plan, correcting the malapportionment for the 1996 elections."

7) ***Thomas v. Crawford County:*** 5:02 CV 222 (M.D. Ga.) (*ACLU Report at 272-74*).
2002 suit alleged single-member districts were malapportioned in violation of the constitution's one-person-one-vote principle. The plaintiffs won summary judgment and a preliminary injunction to prevent elections from taking place under the plan. The court adopted a plan that maintained two majority-black districts.

8) ***Wright v. City of Albany:*** 306 F. Supp. 2d 1228 (M.D. Ga. 2003) (*ACLU Rep. 289-93*).
Black residents of the city, represented by the ACLU, sued in 2003 to enjoin use of an allegedly constitutionally malapportioned districting plan and requested that the court supervise the development and implementation of a remedial plan that complied with the principle of one person, one vote, and the VRA. According to the ACLU report, "In a series of subsequent orders, the court granted the plaintiffs' motion for summary judgment, enjoined the pending elections, adopted a remedial plan prepared by the state reapportionment office, and directed that a special election for the mayor and city commission [be] held in February 2004."

9) ***Woody v. Evans County Board of Commissioners:*** Civ. No. 692-073 (S.D. Ga. 1992) (*ACLU Report at 297-300*).
In 1992, the ACLU filed suit on behalf of black voters challenging an allegedly malapportioned districting plan for the county commission and board of education under the Constitution and Section 2 of the VRA. According to the ACLU report, "on June 29 the district court enjoined 'holding further elections under the existing malapportioned plan for both bodies.'"

10) ***Bryant v. Liberty County Board of Education:*** Civ. No. 492-145 (S.D. Ga.) (*ACLU Report at 340-42*).
"Because Liberty County was left with a malapportioned districting plan based on the 1980 census, the ACLU filed suit in 1992, on behalf of black voters seeking constitutionally apportioned election districts for the county. The court granted plaintiffs' motion for preliminary injunctive relief on July 7, 1992, and the following year the parties agreed to a redistricting plan in which two of the six single member districts contained majority black voting age populations. The plan was precleared by the Justice Department on April 27, 1993."

11) ***Hall v. Macon County:*** Civ. No. 94-185 (M.D. Ga.) (*ACLU Report at 348-49*).
According to the ACLU Report, "The [Georgia] general assembly failed to redistrict the two boards during its 1992, 1993, and 1994 sessions, and in 1994, the ACLU filed suit on behalf of Macon County residents against county officials seeking a constitutional plan for the 1994 elections. On July 12, 1994, the court enjoined the upcoming election and ordered the parties to present remedial plans by July 15, 1994. In March 1995, the court ordered a five district plan that remedied the one person, one vote violations and ordered special elections be held."

12) ***Morman v. City of Baconton:*** Civ. No. 1:03-CV-161-4 (WLS) (M.D. Ga.) (*ACLU Report at 364-65*).
Suit to block the use of a constitutionally malapportioned districting plan following the 2000 census. According to the ACLU Report, "Black residents of Baconton, with the assistance of the ACLU, then filed suit in federal court to enjoin use of the 1993 plan on the grounds that it would violate Section 5 and the Fourteenth Amendment. The day before the election the court held a hearing, and, hours before the polls opened, granted an injunction prohibiting the city from implementing the unprecleared and unconstitutional plan."

13) ***Ellis-Cooksey v. Newton County Board of Commissioners:*** Civ. No. 1:92-CV-1283-MHS (N.D. Ga.) (*ACLU Report at 370-73*).
According to the ACLU report, the 1990 census showed that the five single member districts for the county board of commissioners and board of education were constitutionally malapportioned. "After the legislature failed to enact a remedial plan, the ACLU filed suit on behalf of black voters in Newton County in June 1992, seeking constitutionally apportioned districts for the commission and school board. The suit also sought to enjoin upcoming primary elections, scheduled for July 21, 1992, as well as the November 3 general election. The parties settled the case the following month and the court issued an order that '[t] he 1984 district plan does not constitutionally reflect the current
population.'"

14) ***Lucas v. Pulaski County Board of Education:*** Civ. No. 92-364-3 (MAC) (M.D. Ga.) (*ACLU Report at 380-84*).
Black residents of the county, represented by the ACLU, filed suit in 1992 to enjoin upcoming elections under an allegedly constitutionally malapportioned plan. According to the ACLU report, "On October 14, 1992, the district court entered a consent order involving the board of Education, affirming that 'Defendants do not contest plaintiffs' allegations that the districts as presently constituted are malapportioned and in violation of the Fourteenth Amendment of the Constitution.'"

15) ***Cook v. Randolph County:*** Civ. No. 93-113-COL (M.D. Ga.) (*ACLU Report at 389-93*).
According to the ACLU Report, "On October 5, 1993, black voters, represented by the ACLU, filed suit. They asked the court to enjoin elections for the school board and board of commissioners on the grounds that the districting plan for both bodies was either malapportioned in violation of the Constitution and Section 2, or had not been precleared pursuant to Section 5. Later that month, on October 29, the parties signed a consent order stipulating that the existing county districts were malapportioned, and agreeing on a redistricting plan containing five single member districts with a total deviation of 9.35%. Three of the five districts were majority black."

16) ***Houston v. Board of Commissioners of Sumter County:*** Civ. No. 94-77-AMER (M.D. Ga.) (*ACLU Report at 420-22*).
The ACLU brought suit in 1984 on behalf of black county residents charging that the five member board of county commissioners was malapportioned in violation of the Constitution and Section 2 of the VRA. The suit also charged defendants with failing to secure preclearance of a valid reapportionment plan under Section 5. According to the ACLU Report, "After plaintiffs moved for a preliminary injunction to block the 1984 board of commissioners election, a consent order was issued acknowledging that the districts were malapportioned, and instructing both parties to submit reapportionment plans to the court. . . . On February 27, 1985, after trial on the merits, the court ruled the challenged plan unconstitutional and directed the defendants to adopt a new plan and seek preclearance under Section 5 within 30 days."

17) ***Cooper v. Sumter County Board of Commissioners:*** Civ. No. 1:92-cv-00105-DF (M.D. Ga.) (*ACLU Report at 422-23*).
After the release of the 1990 census, the ACLU broguth suit on behalf of black plaintiffs, alleging that the county's commission districts were malapportioned in violation of the constitutional principle of one person, one vote. On July 27, 1992, the district court entered a consent order finding "malapportionment in excess of the legally acceptable standard."

18) ***Williams v. Tattnal County Board of Commissioners***: Civ. No. CV692-084 (S.D. Ga.) (*ACLU Report at 426-27*).
After the 1990 census, the ACLU, on behalf of black residents, sued to enjoin further use of an allegedly constitutionally malapportioned districting plan. According to the ACLU Report, "On July 7, 1992, the district court, finding that the existing plan was malapportioned, enjoined the July 1992, primary elections for the board of commissioners and board of education until such time as an election could be held under a court ordered or a precleared plan."

19) ***Spaulding v. Telfair County:*** Civ. No. 386-061 (M.D. Ga.) (*ACLU Report at 431-33*).
In September 1986, the ACLU riled suit on behalf of five black voters alleging that the county board of education was malapportioned. According to the ACLU Report, "On October 31, 1986, less than a week before the November general election, the court entered a consent order staying the elections, ordering a new apportionment plan, and providing for a special election. The court found that 'Plaintiffs have established a prima facie case that the current apportionment of the Board of Education is in violation of the Fourteenth Amendment,' and required the defendants to develop and implement a new apportionment for the school board within 60 days."

20) ***Crisp v. Telfair County:*** CV 302-040 (S.D. Ga.) (*ACLU Report at 439-41*).
The ACLU sued in August 2002, alleging that the county commission lines were malapportioned in violation of the Constitution and Section 2 of the VRA. According to the ACLU Report, "After plaintiffs filed suit, the county stipulated that its commission districts were malapportioned, and that 'It is possible...to draw a five single member district plan with at least one majority black district in Telfair County.' The plaintiffs then filed for summary judgment and asked the court to hold the existing plan unconstitutional and order a new plan into effect. . . . Ruling that the existing plan was malapportioned and 'violates the one person, one vote standard of the equal protection clause of the Fourteenth Amendment,' the court noted that the

plan had been submitted for Section 5 preclearance and ruled the motion for summary judgment was 'largely moot.'"

21) ***Holloway v. Terrell County Board of Commissioners:*** CA-92-89-ALB/AMER(DF) (M.D. Ga.) (*ACLU Report at 441-44*).
In June 1992, the ACLU filed suit on behalf of black voters challenging the malapportionment of the county board of commissioners under the Constitution and Section 2 of the VRA. According to the ACLU Report, "After the reapportionment suit was brought in 1992, defendants admitted the plan was malapportioned . . . . The parties negotiated a new redistricting plan, corrected the malapportionment, and created two effective majority black districts. Despite this agreement, the county proposed, and had the 1993 Georgia General Assembly adopt, a redistricting plan which plaintiffs did not support. . . . In February 1994, the Department of Justice precleared the county's redistricting plan over the objections of the black community . . . ."

22) ***Flanders v. City of Soperton:*** Civ. No. 394-067 (S.D. Ga.) (*ACLU Report at 447-49*).
According to the ACLU Report, "in November 1994, the ACLU again brought suit on behalf of black voters in Soperton, challenging the five member city council as malapportioned in violation of one person, one vote. . . . A consent order was filed August 7, 1995, in which both parties agreed the city election districts were malapportioned, and adopted a districting plan with a total deviation of 6.8% that contained two majority black districts of 75.34% and 72.92% black voting age population, respectively."

APPENDIX II

CASES FINDING SECTION 2 LIABILITY
From 1982 to the Present Published By Westlaw or Lexis or Included in House or Senate Record

Geography	Total Suits (% of total nationwide suits)	Courts Reached Merits on Section 2 or Parties Settled (% of total nationwide suits)	Court Held State Violated Section 2 or Settlement Recognized Section 2 Violation (% of cases that reached merits that held against state)	Cases
Nationwide	330	235	79 out of 235 (33.6%)	See State-by-State Analysis
Jurisdictions Covered by § 5	159 (48.2%)	106 (45.1%)	39 out of 106 (37.7%)	See State-by-State Analysis
Non-Covered Jurisdictions	171 (51.5%)	129 (54.5%)	40 out of 129 (31.0%)	See State-by-State Analysis

SECTION 2 COURT VERDICTS
Section 2 Cases From 1982 to the Present Published By Westlaw or Lexis or Included in House or Senate Record

Geography	Total Suits (% of total nationwide suits)	Courts Reached Merits on Section 2 (% of total nationwide suits)	Holding State Violated Section 2 (% of cases that reached merits that held against state)	Cases
Nationwide	330	210	72 out of 210 (34.3%)	See State-by-State Analysis
Jurisdictions Covered by § 5	159	97	36 out of 97 (37.1%)	See State-by-State Analysis
Non-Covered Jurisdictions	171	113	36 out of 113 (31.9%)	See State-by-State Analysis
Jurisdictions Covered by § 5				
Alabama	25	16	7 (43.8%)	1) Buskey v. Oliver, 565 F. Supp. 1473 (M.D. Ala. 1983) 2) Brown v. Board of School Comm'rs., 706 F.2d 1103 (11th Cir. 1983) 3) Clark v. Marengo County, 623 F. Supp. 33 (S.D. Ala. 1985) 4) U.S. v. Dallas County Com'n, 636 F.Supp. 704 (S.D. Ala. 1986) 5) Dillard v. Baldwin County Bd. of Education, 686 F. Supp. 1459 (M.D. Ala. 1988) 6) Harris v. Siegelman, 695 F. Supp. 517 (M.D. Ala. 1988) 7) Dillard v. Town of North Johns, 717 F. Supp. 1471 (M.D. Ala. 1989)
Alaska	0	0	0 (0%)	n/a
Arizona	3	1	0 (0%)	n/a
Georgia	13	9	1 (11.1%)	1) Cofield v. City of LaGrange, 969 F. Supp. 749 (N.D. Ga. 1997)
Louisiana	17	9	5 (55.6%)	1) Major v. Treen, 574 F. Supp. 325 (E.D. La. 1983) 2) Citizens for a Better Gretna v. Gretna, 834 F.2d 496 (5th Cir. 1987) 3) Clark v. Roemer, 777 F.Supp. 445 (E.D. La. 1990) 4) East Jefferson Coalition For Leadership & Dev. v. Parish of Jefferson,

Geography	Total Suits (% of total nationwide suits)	Courts Reached Merits on Section 2 (% of total nationwide suits)	Holding State Violated Section 2 (% of cases that reached merits that held against state)	Cases
				926 F.2d 487 (5th Cir. 1991) 5) Westwego Citizens for Better Government v. Westwego, 946 F.2d 1109 (5th Cir. 1991)
Mississippi	29	20	12 (60.0%)	1) Jordan v. City of Greenwood, 599 F.Supp. 397 (N.D. Miss. 1984) 2) Jordan v. Winter, 604 F.Supp. 807 (N.D. Miss. 1984) 3) Goodloe v. Madison County Bd. of Election Com'rs, 610 F.Supp. 240 (S.D. Miss. 1985) 4) Martin v. Allain, 658 F.Supp. 1183 (S.D. Miss. 1987) 5) Gunn v. Chickasaw County, 705 F.Supp. 315 (N.D. Miss. 1989) 6) Ewing v. Monroe County, 740 F.Supp. 417 (N.D. Miss. 1990) 7) Mississippi State Chapter, 932 F.2d 400 (5th Cir. 1991) 8) Bryant v. Lawrence County, 814 F.Supp. 1346 (S.D. Miss. 1993) 9) Teague v. Attala County, 92 F.3d 283 (5th Cir. 1996) 10) Clark v. Calhoun County, 88 F.3d 1393 (5th Cir. 1996) 11) Gunn v. Chickasaw County, 1997 U.S. Dist. LEXIS 22087; 1997 WL 33426761 (N.D. Miss. 1997) 12) Houston v. Lafayette County, 20 F.Supp.2d 996 (N.D. Miss. 1998)
South Carolina	7	4	2 (50.0%)	1) Jackson v. Edgefield County, 650 F. Supp. 1176 (D.S.C. 1986) 2) United States v. Charleston County, 365 F.3d 341 (4th Cir. 2004)
Texas	34	26	6 (23.1%)	1) Sierra v. El Paso Ind. Sch. Dist., 591 F. Supp. 802 (W.D. Tex. 1984) 2) Jones v. Lubbock, 727 F.2d 364 (5th Cir. 1984) 3) League of United Latin American Citizens, 648 F. Supp 596 (W.D. Tex. 1986) 4) Campos v. Baytown, 840 F.2d 1240 (5th Cir. 1988) 5) Williams v. City of Dallas, 734 F. Supp. 1317 (W.D. Tex. 1990) 6) League of United Latin Am. Citizens v. North E. Indep. Sch. Dist., 903 F. Supp. 1071 (W.D. Tex. 1995)
Virginia	11	6	3 (50.0%)	1) McDaniels v. Mehfoud, 702 F. Supp. 588 (E.D. Va. 1988) 2) Neal v. Coleburn, 689 F. Supp. 1426 (E.D. Va. 1988) 3) Collins v. City of Norfolk, 883 F.2d 1232 (4th Cir. 1989)
Non-Covered Jurisdictions				
Arkansas	10	8	4 (50.0%)	1) Smith v. Clinton, 687 F. Supp. 1310 (E.D. Ark. 1988) 2) Jeffers v. Clinton, 730 F. Supp. 196 (E.D. Ark. 1989) 3) Williams v. City of Texarkana, 861 F. Supp. 756 (W.D. Ark. 1992)

Geography	Total Suits (% of total nationwide suits)	Courts Reached Merits on Section 2 (% of total nationwide suits)	Holding State Violated Section 2 (% of cases that reached merits that held against state)	Cases
				4) Harvell v. Blytheville Sch. Dist #5, 71 F.3d 1382 (8th Cir. 1995)
California	16 (All Non-Covered)	9 (All Non-Covered)	2 (All Non-Covered) (22.2%)	1) Gomez v. Watsonville, 863 F.2d 1407 (9th Cir. 1988) 2) Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990)
Colorado	5	4	2 (50.0%)	1) Sanchez v. Colorado, 97 F.3d 1303 (10th Cir. 1996) 2) Cuthair v. Montezuma-Cortez, Colo. Sch. Dist. No, RE-1 7 F. Supp. 2d 1152 (D. Colo. 1998)
Connecticut	2	0	0 (0%)	n/a
DC	2	2	0 (0%)	n/a
Delaware	3	1	0 (0%)	n/a
Florida	21 (18 Non-Covered, 3 Covered)	16 (15 Non-Covered, 1 Covered)	3 (All Non-Covered) (18.8%)	1) McMillan v. Escambia County, 748 F.2d 1037 (11th Cir. 1984) 2) Bradford County NAACP v. City of Starke, 712 F. Supp. 1523 (M.D. Fla. 1989) 3) Meek v. Metro. Dade County, 985 F.2d 1471 (11th Cir. 1993)
Hawaii	1	1	1 (100%)	1) Arakaki v. Hawaii, 314 F.3d 1091 (9th Cir. 2002)
Illinois	18	10	5 (50.0%)	1) Rybicki v. State Bd. Of Elections of State of Ill., 574 F.Supp. 1147 (N.D. Ill. 1983) 2) Ketchum v. Byrne, 740 F.2d 1398 (7th Cir. 1984) 3) McNeil v. City of Springfield, 658 F.Supp. 1015 (C.D. Ill. 1987) 4) Harper v. City of Chicago Heights, 1997 WL 102543 (N.D. Ill. 1997) 5) Barnett v. City of Chicago, 17 F.Supp.2d 753 (N.D. Ill. 1998)
Indiana	6	3	0 (0%)	n/a
Kentucky	1	0	0 (0%)	n/a
Massachusetts	4	4	1 (25.0%)	1) Black Political Task Force v. Galvin, 300 F. Supp. 2d 291 (D. Mass. 2004)
Maryland	3	2	2 (66.7%)	1) Marylanders for Fair Representation, Inc. v. Schaefer, 849 F. Supp. 1022 (D. Md. 1994) 2) Cane v. Worcester County, 35 F.3d 921 (4th Cir. 1994)
Michigan	5 (All Non-Covered)	4 (All Non-Covered)	0 (0%)	n/a
Minnesota	2	2	0	n/a

Geography	Total Suits (% of total nationwide suits)	Courts Reached Merits on Section 2 (% of total nationwide suits)	Holding State Violated Section 2 (% of cases that reached merits that held against state)	Cases
			(0%)	
Missouri	9	5	1 (20.0%)	1) Corbett v. Sullivan, 202 F. Supp. 2d 972 (E.D. Mo. 2002)
Montana	3	3	2 (66.7%)	1) Windy Boy v. County of Big Horn, 647 F. Supp. 1002 (D. Mont. 1986) 2) U.S. v. Blaine County, 363 F.3d 897 (9th Cir. 2004)
Nebraska	1	1	1 (100%)	1) Stabler v. County of Thurston, 129 F.3d 1015 (8th Cir. 1997)
New Jersey	3	1	0 (0%)	n/a
New Hampshire	0	0	0 (0%)	n/a
New Mexico	4	0	0 (%)	n/a
New York	26 (18 Non-Covered, 8 Covered)	15 (11 Non-Covered, 4 Covered)	1 (Non-Covered) (6.7%)	1) Goosby v. Town Bd. of Town of Hempstead, 180 F.3d 476 (2d Cir. 1999)
North Carolina	15 (7 Non-Covered, 8 Covered)	5 (All Non-Covered)	2 (All Non-Covered) (40.0%)	1) Thornburg v. Gingles, 478 U.S. 30 (U.S. 1986) 2) Ward v. Columbus County, 782 F.Supp. 1097 (E.D.N.C. 1991)
Ohio	9	6	1 (16.7%)	1) Armour v. Ohio, 775 F.Supp. 1044 (N.D. Ohio 1991) Liability
Pennsylvania	5	4	2 (50.0%)	1) U.S. v. Berks County, 277 F. Supp. 2d 570 (E.D. Pa. 2003) 2) Marks v. Stinson, 1994 WL 146113 (E.D. Pa. Apr. 26, 1994)
Road Island	2	0	0 (0%)	n/a
South Dakota	3 (2 Non-Covered, 1 Covered)	3 (2 Non-Covered, 1 Covered)	2 (Non-Covered) (66.7%)	1) Bone Shirt v. Hazeltine, 336 F.Supp.2d 976 (D.S.D. 2004) 2) Cottier v. City of Martin, 445 F.3d 1113 (8th Cir. 2006)
Tennessee	7	6	3 (50.0%)	1) Buchanan v. City of Jackson, 683 F.Supp. 1515 (W.D. Tenn. 1988) 2) Brown v. Chattanooga Board of Comm'rs, 722 F. Supp. 380 (E.D. Tenn. 1989) 3) Rural W. Tenn. African-American Affairs Council v. Sundquist, 209 F.3d 835 (6th Cir. 2000)
Washington	1	1	0 (0%)	n/a

Geography	Total Suits (% of total nationwide suits)	Courts Reached Merits on Section 2 (% of total nationwide suits)	Holding State Violated Section 2 (% of cases that reached merits that held against state)	Cases
Wisconsin	4	3	1 (33.3%)	1) Prosser v. Elections Bd., 793 F. Supp. 859 (W.D. Wis. 1992)

SECTION 2 SETTLEMENT CHART
Section 2 Cases From 1982 to the Present Published By Westlaw or Lexis or Included in House or Senate Record

Geography	Total Suits (% of total nationwide suits)	Parties Settled	Settlement Recognized Section 2 Violation (% of cases that Settled in which a Section 2 violation was recognized)	Cases	Settlement Recognized a Constitutional Violation
Nationwide	330	25	7 out of 25 (28.0%)	See below	See below
Jurisdictions Covered by § 5	159	9	3 out of 9 (33.3%)	**1. Alabama:** Dillard v. Chilton Cty. Comm'n, 868 F.2d 1274 (11th Cir. 1989) **2. Alabama:** White v. Alabama, 74 F.3d 1058 (11th Cir. 1996) **3. North Carolina:** Moore v. Beaufort County, 936 F.2d 159 (4th Cir. 2004) (*Beaufort County – Covered Jurisdiction*)	**1.** No **2.** No **3.** No
Non-Covered Jurisdictions	171	16	4 out of 16 (25.0%)	**1. North Carolina**: N.A.A.C.P. v. City of Statesville, 606 F.Supp. 569 (W.D.N.C. 1985) (*Iredell County – Non-Covered Jurisdiction*) **2. Ohio:** Mallory v. Eyrich, 922 F.2d 1273 (6th Cir. 1991) **3. New Mexico:** U.S. v. Bernalillo County, CV-98-156 BB/LCS (District of N.M. 1998) **4. New Mexico:** U.S. v. Socorro County, (VA No. 93-1244-2P (District of N.M. 2004)	**1.** No **2.** No **3.** Yes **4.** Yes

The information from this chart is derived from 1) the University of Michigan Law School's Report on the Voting Rights Initiative, available at http://www.votingreport.com., 2) the Hearing on "The Voting Rights Act –Section 203 Bilingual Election requirements", and 3) the State Reports prepared by a collection of civil rights groups, available at http://www.renewthevra.org.

1) The University of Michigan Law School's Voting Rights Project reviewed every case on Westlaw or Lexis that addressed a Section 2 Claim since June 29, 1982, when Section 2 of the Voting Rights Act was amended. Researchers then located all related decisions and organized them by lawsuit. Within each lawsuit there were often multiple appeals and remands, and researcher determined which opinion provided the final word in a given series of litigation. Most often, the final word case in each lawsuit is the last case that assessed liability on the merits and determined whether Section 2 was violated.

If there was not a liability decision on Section 2, researchers coded the final word as the last published case in the lawsuit that made a determination for or against the plaintiff, including whether to approve a settlement, order a remedy, issue a preliminary injuction, or grant fees.

Cottier v. City of Martin, 445 F.3d 1113 (8th Cir. 2006), a case decided after the completion of the University of Michigan Law School's Report on the Voting Rights Initiative, was entered into the Senate Judiciary Committee record on May 9, 2006, and is included in this chart.

2) On November 8 2005, the House Judiciary Committee held a hearing on "The Voting Rights Act –Section 203 Bilingual Election requirements." Witness Bradley J. Scholzman attached as an appendix to his testimony copies of complaints, consent decrees and orders in enforcement actions filed by the United States under the language minority provisions of the voting rights act (section 4(e), 4(f)(4) and 203). See appendix at pgs 69-1381.

3) The Civilrights.org Network, a project of the Leadership Conference on Civil Rights and the Leadership Conference on Civil Rights Education Fund, produced a number of State Reports offering evidence in favor of an extension of the Voting Rights Act. The State Reports analyzed for this chart are Alaska, Arizona, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, South Dakota, Texas, and Virginia. When these reports listed a successful Section 2 case, that case was compared with the list of cases provided in the University of Michigan Law School's Voting Rights Project.

Appendix III

Comprehensive List of the Evidence Offered Concerning Voting Discrimination Gathered By The House And Senate

This document provides a comprehensive list of the identified accounts of discrimination reported in the House and Senate records. The Chairman's staff of the Senate Judiciary Committee reviewed all available House transcripts and appendices as well as all testimony and written material presented to the Senate Judiciary Committee. This record included reports and other materials from various outside organizations, including the American Civil Liberties Union, the National Commission on the Voting Rights Act, and RenewTheVRA.org.

The evidence contained in this document is subdivided by coverage status, state, and type of evidence. Evidence of discrimination found nationwide or across multiple states is presented first, followed by evidence of discrimination, state-by-state, in states covered by the VRA's preclearance requirements, with evidence of discrimination, state-by-state, in non-covered states presented last.

The evidence of discrimination within each state is divided into three rough categories. The first, "Voting Rights Lawsuits/Enforcement," discusses lawsuits against the state or localities within the state and enforcement action by the Department of Justice. The second category, "Statistics," includes statistical evidence, such as the percentage of elected officeholders who are minorities. The final category, "Anecdotal Evidence," includes personal experiences of discrimination and broader statements demonstrating ongoing discrimination against minorities

GENERAL/NATIONAL EVIDENCE

Voting Rights Lawsuits/Enforcement

- "Now employing that standard over the last 40 years, we found retrogression in an extremely small number of cases. Since 1965, out of the 121,000 in total section 5 submissions received by the Justice Department, the Attorney General has interposed an objection to just over 1400. And in the 10 years – last 10 years there have been only 37 objections. In other words, the overall objection rate since 1965 is just a hair over 1 percent, while the annual objection rate since the mid 1990's has declined even more, now averaging less than .2 percent." *Bradley J. Schlozman, House Hearing. 10 (Oct. 25, 2005).*

- "Today, African-American voter registration rates not only are approaching parity with that of whites, but have actually exceeded that of whites in some areas, and Hispanic voters are not far behind. Forty years ago, the gap in voter registration rates between African-Americans and whites in Mississippi and Alabama ranged from 63.2 to 49.9 percentage points. For example, only 6.7% of African-Americans in Mississippi were registered, in comparison with 69.9% of whites. Yet by the 2004 general election, the Census Bureau reported that a higher percentage of African-Americans were registered to vote than whites (76.2% versus 73.6%). Meanwhile, in Alabama in 2004, African-Americans reported registering at a rate only 1.7 percentage points below that of whites (73.2% versus 74.9%).

Moreover, the Census Bureau also recorded an increase in turnout for African-Americans in the South from 44% in 1964 to 53.9% in 2000."
Bradley J. Schlozman, House Hearing. 12 (Oct. 25, 2005).

- "As in other states covered by Section 5 of the Voting Rights Act this new legislation had an immediate and dramatic impact. By 1967, a majority of Georgia's non-white voting age population (52.6%) had registered...

  By 1980, the share of African-American voting age population that reported it was registered in the U.S. Bureau of Census survey, stood at 59.8 percent. The comparable figure for the share of the white voting age population claiming to be registered was 67%...

  In 1990, black and white Georgians had nearly identical registration rates. Among African-Americans of voting age, 57 percent reported being registered compared with 58.1 percent of whites. In 1994, a larger proportion of blacks (57.6 percent) than whites (55 percent) reported being registered." *Edward J. Blum, House Hearing. 22 -24 (Oct. 25, 2005).*

- "Congress really ought to be expanding coverage in Section 203, and Section 5..." Margaret Fung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 347 (Oct. 18, 2005).*

- ". . . the most important impact of Section 5 is its deterrent effect on discriminatory voting changes. . . . on 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. . . . In the period from 1982 through January 2004, there were 501 changes withdrawn after receipt of what are known as 'more information' letters." *Joseph D. Rice, Statement Submitted to the National Commission on the VRA, House Hearing. 66 (Oct. 18, 2005).*

- "The role *[sic]* federal examiners in assisting minority voters in registering to vote has been virtually eliminated since the early days of the voting rights act and is probably no longer necessary." *Joseph D. Rice, Statement Submitted to the National Commission on the VRA, House Hearing. 66 (Oct. 18, 2005).*

- "Not only has the department increased it use of federal observers, but also has started monitoring elections with department employees when it does not have authority to place federal observers. For example, in the 2004 general election, the Department dispatched 840 federal observers to 27 jurisdictions and sent monitors to 58 other jurisdictions." *Joseph D. Rice, Statement Submitted to the National Commission on the VRA, House Hearing. 67 (Oct. 18, 2005).*

- 1,116 § 5 objections from the act's passage through 2004, 56% of which (626) occurred after August 5, 1982. *National Commission on the Voting Rights Act Report, at 3.*

- From 1965-2004, DOJ filed or joined as amicus curiae or plaintiff intervenor in 107 enforcement actions against § 5 jurisdictions to force them to submit proposed changes that had not been precleared. *National Commission on the Voting Rights Act Report, at 3-4.*

- There have been 105 successful § 5 enforcement actions since 1982, filed by private citizens or the DOJ. *National Commission on the Voting Rights Act Report*, at 4.

- Though few minority language enforcement actions since 1975 have involved the DOJ, all were successful and the overwhelming majority—19 of 21—were filed between 1982 and 2004. *National Commission on the Voting Rights Act Report, at 4.*

- Section 5 objections by DOJ reached a peak in the early 1990s, followed by a significant decline ever since. *National Commission on the Voting Rights Act Report, at 4.*

- A study of § 2 lawsuits by Professor Ellen Katz and the University of Michigan Voting Rights Initiative revealed in late 2005 that 117 of these cases led to favorable outcomes for plaintiffs, the majority of whom were African American. 57% of such actions were filed in jurisdictions covered by § 5. *National Commission on the Voting Rights Act Report, at 4.*

- The head of the University of Michigan Law School Voting Rights Initiative stated that "Insofar as these ratios of filings to reported decisions are at all representative, [our] study's compilation of 32[2] lawsuits suggests more than 1600 Section 2 filings nationwide with filings in covered jurisdictions possibly exceeding 800 filings." *National Commission on the Voting Rights Act Report, at 85.*

- The staff of the National Commission on the Voting Rights Act compiled a non-comprehensive list of both reported and unreported Section 2 cases resolved in a manner favorable to minority voters since 1982 in eight of the nine states entirely covered 6 Executive Summary by Section 5, as well as North Carolina and identified 653 successful cases. *National Commission on the Voting Rights Act Report, at 4-5.*

- There have been 206 withdrawals of proposed voting changes since 1982 as a result of DOJ's request for more information before granting preclarance. *National Commission on the Voting Rights Act Report, at 3.*

- Between the issuance of the first objection in June 1968 and the last one for the year 2004, there were 1,116 objections interposed by the Department of Justice, prohibiting 1,589 distinct proposed election-related changes judged to be racially discriminatory. *National Commission on the VRA Report, at 52.*

- The number of objections (626) interposed between August 5, 1982, when Section 5 was last reauthorized and December 30, 2004 was actually greater than the number before that date, constituting 56 percent of the total since 1968. However, the two time periods are unequal as well—the post-1982 period comprises approximately 59 percent of the total period Section 5 has been in effect. Moreover, as Arizona, Alaska, and Texas only came under coverage in 1975, the percentage of objections in those states might well have been

greater in the pre-1982 period than in the latter period if these states had been covered since 1965. *National Commission on the VRA Report, at 52.*

- It is unknown how many changes were not submitted for preclearance by covered jurisdictions, and of those, how many were discriminatory. This problem was described in 1984 by Drew Days and Lani Guinier, the former of whom served as Assistant Attorney General for Civil Rights in the Carter administration, and the latter as Days' assistant at the time. They attributed the absence of a systematic method for identifying unprecleared changes to underfunding by Congress. *National Commission on the VRA Report, at 53.*

- In nine of the sixteen Section 5-covered states, more objections were interposed after 1982 than before. *National Commission on the VRA Report, at 53.*

- 520 instances of "observer coverage," whereby the AG sends federal observers on Election Day to a location because racial tensions are high and efforts to discriminate may occur, from 1965 to 1982. *National Commission on the Voting Rights Act Report, at 3.*

- A brief and far from comprehensive search for cases involving statewide redistricting plans since the 1982 reauthorization revealed twenty-three cases in sixteen states (eight of which are not covered by Section 5) that found racial bloc voting. More than one-third of the cases were decided in 2000 or later. *National Commission on the Voting Rights Act Report, at 95.*

- Five of the six Deep South states originally covered by Section 5 accounted for 66% of all post-1982 observer coverages. *National Commission on the Voting Rights Act Report, at 3.*

- Jurisdiction withdrawals of requests for preclearance between August 5, 1982, and December 30, 2003 were calculated from data on submissions provided by the Department of Justice under the Freedom of Information Act. There were at least 205 withdrawal letters during this period. This compares to 626 objection letters in approximately the same period. As with objections, withdrawals refer to submission letters that may contain more than one illegal change. The most common changes involved polling place location, as well as redistricting and precinct boundary alignment. However, they ran the gamut of electoral changes that were targeted by objection letters as well, including registration procedures, election administration, annexation, purging of voter rolls, term of office, type of elections adopted, number of elected officials, and qualifications of candidates. *National Commission on the VRA Report, at 58.*

- Louisiana, Mississippi, Alabama, Georgia, and South Carolina—five of the six states originally covered by Section 5—accounted for 66 percent of all 622 federal election observer coverages since 1982. *National Commission on the Voting Rights Act Report, at 61.*

- The use of a thousand or more federal observers at election after election beginning in 1965 decreased to the use of hundreds of observers at elections after the early 1980s as a result of the effective enforcement of the Voting Rights Act in Southern states. But the enforcement of the language-minority provisions of the Voting Rights Act, added in 1975, has required

the use of hundreds more federal observers to disclose to Justice Department attorneys evidence of harassment of members of language-minority groups, and instances where ballots and other election material and procedures are not available to those voters in a language they can understand. The result is that between 300 and 600 federal observers continued to be needed annually from 1984 to 2000. *National Commission on the Voting Rights Act Report, at 62.*

- In 2004 alone, the Department of Justice dispatched a total of 898 federal observers and monitors to 85 jurisdictions. *National Commission on the Voting Rights Act Report, at 64.*

- DOJ filed or joined as intervenor in a total of 107 Section 5 actions between 1966 and 2004. *National Commission on the Voting Rights Act Report, at 66.*

- Of the jurisdictions responding to a survey regarding language minority voting assistance, 80.6 percent . . . report providing some type of language assistance to voters: 60.4 percent report providing both oral and written language assistance, 14 percent . . . report only providing written language materials, and 6.2 percent report only providing oral language assistance. In other words, about one jurisdiction out of five surveyed was in total noncompliance with these two basic provisions of the law, and less than two-thirds provided both oral and written assistance. There were other problems as well. Only 39.0 percent of jurisdictions provided assistance to telephone inquiries in all the covered languages in their jurisdiction; 57.1 percent reported not having at least one full-time worker fluent in the covered language; only 38.2 percent reported having a bilingual coordinator who speaks a covered language; and although the Department of Justice requires covered jurisdictions to have "direct contact with language-minority group organizations," only 37.3 percent reported having such contact. In addition, 76.2 percent reported translating more than half of all election materials; 32.9 percent reported that they provide language assistance for more than half of all election activities; 66.2 percent reported that their poll worker training does not include information on the languages covered in their jurisdiction. The report also found that 71.3 percent of responding jurisdictions sampled believed the language-assistance mandate should remain in effect for public elections. *National Commission on the Voting Rights Act Report, at 68-69.*

- The number of preclearance objections per year reached historic highs in the later years of the first Bush administration and the first years of the Clinton administration, and then declined precipitously. In the five-year period between 1991 and 1995, the number of objections was 291; between 1996 and 2000, it was 32; and between 2001 and 2004, it rose slightly to 39. *National Commission on the Voting Rights Act Report, at 76.*

- The sum of objections, submission withdrawals, and declaratory judgments adverse to jurisdictions, declined from a peak of 399 in the early 1990s to a low of 59 in the latter half of that decade, followed by an increase to 91 in the first four years of the current century. The latter number indicates, however, that more than twice as many discriminatory changes were prevented than one might infer by focusing solely on the number of objections (39) in the same period. *National Commission on the Voting Rights Act Report, at 76.*

- In the period between 1991 and 1995, the sum of objections, submission withdrawals, declaratory judgments adverse to jurisdictions, DOJ enforcement actions related to Section 5 and to the language-assistance sections, and observer coverages peaked at 550, as compared to the 291 objections. In the most recent period, the sum of these five factors dropped to an average of 192, as compared with 39 objections. This suggests that objections alone are not as good a measure of intended discriminatory voting changes that were frustrated by the federal government as the sum of general federal activities designed to prevent vote discrimination. *National Commission on the Voting Rights Act Report, at 76.*

- There is a fairly high level of observer coverages, which, except for withdrawals of proposed voting changes in the year 2002, represents a higher level of activity since 1996 than any other type of DOJ enforcement activity. *National Commission on the Voting Rights Act Report, at 77.*

- Department of Justice objections to proposed voting changes have declined sharply in recent years. Although the Act has been in effect forty years, it was only thirteen years ago—1993—that the number of objections interposed (79) was at a historic high. Some decline in objections during the latter part of the decade is to be expected because most jurisdictions have completed redistricting and making other voting changes often connected to redistricting, such as large-scale precinct and polling changes. The same cannot be said for the beginning part of the decade. *National Commission on the Voting Rights Act Report, at 77.*

- The number of observer coverages in 1997 (45) was greater than at any time since 1985, and was the third highest number since 1970. The average number of enforcement actions since 1983 was 3.72, and that figure was twice exceeded (5 in 2002 and 4 in 2004) in the new century. *National Commission on the Voting Rights Act Report, at 77.*

- While prior to 1982 plaintiffs had rarely invoked Section 2 in its original form, most plaintiffs alleging racial vote dilution since 1982 have consistently brought their claims under Section 2. *National Commission on the Voting Rights Act Report, at 82.*

- After June 1982 there were 322 reported cases in the United States in which a Section 2 claim was resolved in a manner that researchers at the University of Michigan Law School Voting Rights Initiative could determine. Of this total, 88 found a violation and another 29 resulted in a favorable determination for plaintiffs, typically a settlement, without finding a Section 2 violation. Thus 117 of the cases led to a reported outcome favorable to plaintiffs of various racial or ethnic groups asserting vote discrimination. The great majority of the 322 cases—including the 117 favorable to plaintiffs—challenged vote dilution. The vote dilution cases involved 145 challenges to at-large elections, 110 challenges to reapportionments; and 11 challenges to majority-vote requirements (A few more cases challenging dilution were included under other rubrics.) Of those cases challenging dilution, 108 had a favorable outcome for plaintiffs. The VRI research team also found that 57 percent of the successful cases were filed in Section 5-covered jurisdictions, which in 2000 contained less than one-quarter of the nation's population, 39 percent of the U.S. African Americans, 31.8 percent of Latinos, and 25 percent of Native Americans. Black plaintiffs filed the great majority (268)

of Section 2 cases ending with a published opinion, followed by Latinos (96), Native Americans (12) and Asian Americans (7). Black plaintiffs also won the largest number of suits (103 or 88 percent of all favorable outcomes). The VRI team also measured the trend in case resolution. Of the cases ending with a finding of a violation, 60.2 percent were resolved in the first ten years after 1982, and 39.8 percent in the following thirteen years. Finally, Katz's VRI team measured judicial documentation of the Senate factors in these lawsuits, including 107 findings of a history of discrimination affecting the right to vote, 91 findings of racially polarized voting, 85 findings of minority-candidate difficulty getting elected, 42 instances of racial appeals in campaigns, and 10 findings of denied access to candidate slating. *National Commission on the Voting Rights Act Report, at 82-83.*

- There were 66 reported Section 2 cases from 1982 onward that were successful for minority groups in nine states—Alabama, Arizona, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia. The sum of both reported and unreported successful cases—653—is almost ten times as great as the number of reported cases in those same states alone. There were 825 times counties in the nine states were affected by the outcome of these same 653 suits. *National Commission on the Voting Rights Act Report, at 87-88.*

- While reported Section 2 cases resolved favorably to plaintiffs were found disproportionately in the sixteen states covered by Section 5, a significant minority of these cases—43 percent—occurred in non-covered states. If anywhere near that percentage of successful unreported cases were resolved outside the Section 5-covered states, the total number of reported and unreported cases since 1982 could reach 1,000. *National Commission on the Voting Rights Act Report, at 88.*

- The number of reported Section 2 cases leading to favorable results for minority voters, identified by the Voting Rights Initiative (VRI), was 117 nationwide in the 23-year period following the 1982 reauthorization. *National Commission on the Voting Rights Act Report, at 88.*

- The cases analyzed by the VRI revealed judicial findings of widespread and serious vote discrimination by whites against minorities. *National Commission on the Voting Rights Act Report, at 88.*

- The majority of the 117 cases were filed in Section 5-covered jurisdictions, in spite of the fact that only about a quarter of the nation's population lived in them. *National Commission on the Voting Rights Act Report, at 88.*

- Cases with black plaintiffs were the most numerous, followed by those with Latino plaintiffs. *National Commission on the Voting Rights Act Report, at 88.*

- The Commission's investigation in nine states of reported and unreported Section 2 cases resolved favorably to minorities, including those cases identified by the VRI, came to approximately ten times the number of reported cases identified by the VRI in these states. *National Commission on the Voting Rights Act Report, at 88.*

- The number of times counties in a study of nine states affected by favorably resolved Section 2 lawsuits is larger than the number of such lawsuits. Specifically, 653 such lawsuits were favorably resolved in those states, while counties were affected by them a total of 825 times. *National Commission on the Voting Rights Act Report, at 88.*

- Of the 186 lawsuits in the Database of the Voting Rights Initiative at the University of Michigan that addressed racially polarized voting, in 91 (49 percent) there was a judicial finding, not overturned by a later court, that it existed. The governments whose elections were so characterized included school boards, city councils, state legislatures, judicial bodies, county commissioner boards, and state commissions of transportation and of public service. These cases were filed in 24 states, both within and outside Section 5 jurisdictions. (Ten states were totally outside Section 5 coverage.) Geographically, the states ranged from California to New York and from Wyoming to Florida. Even in some of the cases minority plaintiffs did not win, the court nonetheless found racial bloc voting. *National Commission on the Voting Rights Act Report, at 97.*

- Congressional plans which maximized minority seats and had been approved (in some cases demanded) by the Justice Department were overturned by the courts in Georgia, Louisiana, North Carolina, Virginia, and Texas. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 37 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).*

- South Carolina has been mentioned by the court, and South Carolina Federal courts said voting in South Carolina continues to be racially polarized to a very high degree. Courts in Texas found racially polarized voting throughout the State between Latinos and non-Latinos. In the Florida case they found a substantial degree of racially polarized voting in South Florida and Northeast Florida. And even the Georgia case, the case that you've heard referenced several times already, please let me note that in Georgia the Federal district court did find that in the three State Senate districts at issue in the preclearance litigation, there was, quote, highly racially polarized voting in the proposed districts. And that was a conclusion that was not disturbed by the U.S. Supreme Court when it reviewed the case. The Court said the district court needed to expand its inquiry, but in no way touched its findings on racially polarized voting. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 49-50 (2005) (statement of Richard Engstrom, Professor, The University of New Orleans).*

- "As I said, we're looking at every reported Section lawsuit that's available with a published decision on LexisNexis, Westlaw and that reached what we're calling a liability stage judgment, meaning that one court reached a determination that Section 2 of the statute had been violated or was not violated, that it got past preliminary matters. ... We're looking at all 50 states, so we're looking at jurisdictions that are covered by Section 5 and those that are not. ... [A]nd we optimistically anticipate having them all by September or October. ... So we're talking about states that are wholly covered by Section 5 of the Voting Rights Act.

And in those states, just a couple of numbers, we've identified 133 lawsuits filed under Section 2. And of those, 93 ended with a liability determination, meaning they got past preliminary matters. ... And of those are numbers – 37 percent, 37.6 percent, in fact, found violation of Section 2.... The next statistic I'll give you is very shaky because it's comparing it to the noncovered states, and we don't yet know we don't obviously have the universe of it. ... The large – the, the majority of challenges that we're finding in coverage jurisdictions are to local practices, not to statewide practices. That many, many more of the lawsuits challenge counties, cities, school boards, entities of that sort as opposed to statewide districting practices and the like. So we're seeing it happen at a, at a low level, and we're seeing that in the number of cases filed and in terms of ones that actually find violations." Ellen Katz, *Testimony Submitted to Midwest Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 404-405 (July 22, 2005).*

- Section 5 objections since 1982--One study of these objections reports that in the 1990s, fully 151 objections were based on purpose alone; another 67 objections relied on a combination of purpose and retrogression; and 41 on both purpose and the need to comply with Section 2. Thus, the intent prong was involved in a remarkable 74 percent of all objections in that decade. *Tesimony of Anita Earls, Senate Hearing, May 16, 2006, at 7.*

- 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.
  Four jurisdictions report that they do not offer ballots, sample ballots, or provisional ballots in covered languages. Four jurisdictions indicate that they do not offer instructions, polling place signs, and other Election Day materials. Two jurisdictions do not offer voter registration and material required by the NVRA. One jurisdiction with an election office, webpage acknowledged that it was not translated. Seven jurisdictions report that they do not offer candidate qualifying information and forms in the covered languages. Six jurisdictions note that they do not provide election results in the covered languages.

  Dr James Thomas Tucker and Dr Rodolfo Espiono, "Minority Language Assistance Practices in Public Elections," found in House Hearing 3/08/06, at 2193-94

- 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 non of the covered languages.

  Dr James Thomas Tucker and Dr Rodolfo Espiono, "Minority Language Assistance Practices in Public Elections," found in House Hearing 3/08/06, at 2199

- "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. *Dr James Thomas Tucker and Dr Rodolfo Espiono, "Minority Language Assistance Practices in Public Elections," found in House Hearing 3/08/06, at 2214*

- Respondents were asked a variety of questions to asses the quality of language assistance offered to votes. 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 election office and voters in the covered language groups.
    - Jurisdictions with larger populations are more likely to use bilingual coordination 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 practice that do not comply Section 208 of the Voting Rights Act

  Dr James Thomas Tucker and Dr Rodolfo Espiono, "Minority Language Assistance Practices in Public Elections," found in House Hearing 3/08/06, at 2203

- Only 11 percent of responding jurisdictions (N = 29) permit voters to receive assistance from campaign workers. The reluctance of many jurisdictions many 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.

  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.

  James Thomas Tucker and Dr Rodolfo Espiono, "Minority Language Assistance Practices in Public Elections," found in House Hearing 3/08/06, at 2215-16

- "If the voter cannot understand or read the English language then they better learn it prior to getting to vote in America!" (319) *Dr James Thomas Tucker and Dr Rodolfo Espiono,*

"Minority Language Assistance Practices in Public Elections," found in House Hearing 3/08/06, at 2340

- "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]" *Dr James Thomas Tucker and Dr Rodolfo Espiono, "Minority Language Assistance Practices in Public Elections," found in House Hearing 3/08/06, at 2340*

- "I do not thing 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) *Dr James Thomas Tucker and Dr Rodolfo Espiono, "Minority Language Assistance Practices in Public Elections," found in House Hearing 3/08/06, at 2340*

- "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) *Dr James Thomas Tucker and Dr Rodolfo Espiono, "Minority Language Assistance Practices in Public Elections," found in House Hearing 3/08/06, at 2338*

Statistics

- In 2004:
  68.7% of black citizens were registered nationwide
  51.8% of Asian citizens were registered nationwide
  57.9% Hispanic citizens were registered nationwide

  The original, seven covered states:
  In Alabama, 72.9% of blacks registered
  In Georgia, 64.2% of blacks registered
  In Louisiana, 71.1% of blacks registered
  In Mississippi, 76.1% of blacks registered
  In North Carolina, 70.4% of blacks registered
  In South Carolina, 71.1% of blacks registered
  In Virginia, 57.4% of blacks registered

  Joseph D. Rice, Statement Submitted to the National Commission on the VRA, House Hearing. 70 (Oct. 18, 2005).

- In 2000, African Americans made up 11.9 percent of the VAP nationally, and 11.7 percent of all citizens who reported voting in the presidential election. Fifty-five percent of African Americans lived in the South. *National Commission on the Voting Rights Act Report, at 7.*

- The gap in reported voter turnout between African Americans and non-Hispanic whites ("Anglos") in 2000 was 6.9 percentage points, down from 12.2 in 1964. *National Commission on the Voting Rights Act Report, at 8.*

- A rapidly growing population (12.6 percent of the total in 2000), Latinos now outnumber African Americans. *National Commission on the Voting Rights Act Report*, at 8.

- As of 2000, non-citizens composed 39.1 percent of the Latino VAP, which partly explains why Latinos make up a much lower proportion of actual voters than blacks. *National Commission on the Voting Rights Act Report, at 8.*

- Even among the citizen VAP, Latinos vote at a much lower rate than Anglos (non-Hispanic whites)—in 2000, for example, only 45 percent of Latino voting-age citizens reported voting, compared to 62 percent of Anglos. *National Commission on the Voting Rights Act Report, at 8.*

- In 2000, Native Americans represented a very small proportion of the nation's population (0.9 percent), but in some counties of various states, they are a significant proportion. *National Commission on the Voting Rights Act Report, at 9.*

- In an election protection project carried out in 12 states with a significant Native American population in 2004, there were 182 complaints regarding registration problems on election day, 22 regarding poll judges, 3 regarding poll watchers, 29 regarding voting machines, 14 regarding provisional ballots, 37 regarding absentee ballots, 8 regarding intimidation, and 8 of a miscellaneous nature. *National Commission on the VRA Report, at 45.*

- There is indirect evidence that Asian Americans face racially polarized voting in many elections. *National Commission on the VRA Report, at 48.*

- In 2000, Asian Americans comprised 4 percent of the nation's population, and 49 percent lived in three states: California, New York, and Hawaii. Their population is quite diverse, embracing over 25 nationality groups. *National Commission on the Voting Rights Act Report, at 9.*

- The Asian American population has grown rapidly, from 1.5 million in 1970 to 12 million in 2000. Much of the growth is the result of immigration. Voter turnout is relatively low for this group. Only 43 percent of Asian VAP citizens reported voting in November 2000, as compared to 62 percent of Anglo citizens. *National Commission on the Voting Rights Act Report, at 9.*

- The total turnout rate among Asian and Pacific Islander registered voters increased 98 percent between 1998 and 2004, according to a staff attorney for the Asian Pacific American Legal Center in Southern California. *National Commission on the Voting Rights Act Report, at 74.*

- The number of Asian American elected officials (AEOs) remains small. It increased modestly from 120 in 1978 to 346 in 2004, in spite of an eight-fold increase in Asian American population between 1970 and 2000. *National Commission on the Voting Rights Act Report, at 10.*

- There were 36.4 million African Americans in the United States in 2000, 55 percent of whom lived in the South. *National Commission on the Voting Rights Act Report, at 36.*

- African Americans composed 11.9 percent of the United States voting-age population (VAP) in 2000, compared with 9.2% in 1960. *National Commission on the Voting Rights Act Report, at 36.*

- In the 2000 presidential election, African Americans were the largest minority group among citizens who reported voting, constituting 11.7 percent. This compared with 80.7 percent for non-Hispanic whites (Anglos). Latinos made up 5.4 percent of the voters; Asian Americans, 1.8 percent; and "other" (including Indians and Alaska Natives), 0.4 percent. *National Commission on the Voting Rights Act Report, at 36.*

- There has been a notable increase in Native American voter turnout in recent years. *National Commission on the Voting Rights Act Report, at 45.*

- Two-thirds of all post-1982 observer coverages occurred in five States covered entirely by section 5-Lousisinana, Alabama, Mississippi, Georgia, and South Carolina. Between 300 and 600 observers were sent out each year between 1984 and the year 2000. *Testimony of Bill Lann Lee before the House Judiciary Committee, March 8, 2006, at 13.*

- According to the Census, in the 2000 election, 45 percent of Hispanic voting age citizens and 43 percent of Asian voting age citizens participated, as compared to 62 percent of non-Hispanic white voting age citizens. *Testimony of Bill Lann Lee before the House Judiciary Committee, March 8, 2006, at 17*

- The Census Bureau estimated that 53.5 percent of the black citizen VAP, compared to 60.4 percent of comparable Anglos, cast a ballot for president in 2000. *National Commission on the Voting Rights Act Report, at 36.*

- In 1964, the black registration rate in the eleven states of the former Confederacy was 43.1 percent. In South Carolina it was 38.7 percent; in Louisiana, 32.0 percent; in Alabama, 23.0 percent; and in Mississippi, 6.7 percent. Much, though by no means all, of the registration gap in the southern states disappeared within a few years of the Act's passage. The black registration rate in those states jumped from 43.1 percent in 1964 to 62.0 in 1968. Twenty years later, in 1988, the average black-white registration gap in those same four states of South Carolina, Louisiana, Alabama, and Mississippi was a mere 4 percentage points. *National Commission on the Voting Rights Act Report, at 37.*

- In 1970, there were only 1,469 black elected officials in the entire nation. In the six southern states originally covered entirely by Section 5, there were 345 at all levels of government. By 2000, the number nationally had increased to 9,040—a gain of over 600 percent, and in the same six states, 3,701—a gain of over 1,000 percent. *National Commission on the Voting Rights Act Report, at 37.*

- As of 2000, thirty-five black elected officials held offices filled by a statewide vote—less than one per state. *National Commission on the Voting Rights Act Report, at 38.*

- In the House of Representatives, the percentage of black elected officials as of 2000 was almost twice as high as for those holding statewide office—9 percent. *National Commission on the Voting Rights Act Report, at 38.*

- In 2000, only four of the 38 black Congressmen were elected from majority white districts. *National Commission on the Voting Rights Act Report, at 38.*

- In 2000 only 8 percent of black U.S. representatives holding office in the fifty states were elected from majority-white districts. Sixteen and 18 percent, respectively, of black state representatives and senators who were officeholders that year were elected from majority-white districts in the forty-one states for which data are available. *National Commission on the Voting Rights Act Report, at 38-39.*

- Reasons for black underrepresentation among elected officials: lack of campaign financing; strong anti-black attitudes; racially polarized attitudes on policy questions. *National Commission on the Voting Rights Act Report, at 39.*

- A University of Georgia study found that whites in the non-South were far more favorably inclined to support government intervention on behalf of blacks than were whites in the South, and that whites in the Deep South (Georgia, Alabama, Louisiana, Mississippi, and South Carolina) were far less likely to do so than those living in the South as a whole. In the sample, 67 percent of whites in the Deep South sample believed government was spending "too much" on assistance to blacks, as compared to 33 percent of whites in the South as a whole and 18 percent of whites in the remainder of the nation. (Less than 3 percent of a national sample of blacks felt the government was spending "too much.") *National Commission on the Voting Rights Act Report, at 39-40.*

- There were 5,205 Hispanic elected officials nationwide as of 2000. *National Commission on the Voting Rights Act Report, at 41.*

- In 2000, non-citizens composed 39.1 percent of the Latino voting age population nationwide, which meant that far fewer Latinos actually voted than their proportion of the voting age population would suggest. Moreover, even among Latino citizens of voting age, only 45 percent reported voting in the 2000 elections, compared to 62 percent of Anglos. *National Commission on the Voting Rights Act Report, at 41.*

- There were no Latino U.S. Representatives holding office in 2000 who had been elected from majority-Anglo districts. *National Commission on the Voting Rights Act Report, at 43.*

- Native Americans, described by the Census as American Indians and Alaska Natives, composed 0.9 percent of the total United States population in 2000, or 2,475,956 persons, and were concentrated in the West and Alaska. *National Commission on the Voting Rights Act Report, at 43.*

- Asian Americans alone in 2000 composed 3.6% of the population and 2.6% of the citizen voting age population. Asians in combination with one or more other races (including Native Hawaiian and other Pacific Islanders) composed 4.2%, or 11.9 million people. Of these, 39% lived in the West, 20% in the Northeast, 19% in the South, and 12% in the Midwest. Slightly more than half lived in three states: Hawaii, New York, and California. *National Commission* on the VRA Report, *at 46.*

- A recent Gallup Poll on discrimination in the workplace, cited by the EEOC, found that 31% of Asian-American workers perceived that they had been subjected to discriminatory or unfair treatment—the highest percentage for any group. (African Americans were second, with 26%.) *National Commission* on the VRA Report, *at 47.*

- There has been a sharp increase in Asian-American immigration over the past generation. From 1970 to 2000, the population of this group increased from 1.5 million to its current 12 mission, much of it as the result of immigration. This influx of immigrants has provoked some nativist prejudice. Race crimes and hate incidents against Asian Americans have received attention from the media and scholars. *National Commission on the VRA Report, at 47.*

- According to the Census Bureau, only 43.3 percent of Asian voting-age citizens reported voting in November 2000, as compared to 61.8 percent of Anglo citizens. *National Commission on the VRA Report, at 48-49.*

- The number if Asian Elected Officials has increased from 120 in 1978 to 346 in 2004, in spite of an eight-fold increase in the Asian population between 1970 and 2000. 75% of Asian elected officials were local officials. Six Asial elected officials currently serve at the national level, including Senator Daniel Inouye of Hawaii and California Representative Mike Honda. *National Commission on the VRA Report, at 47.*

- The incidence of statutory and congressional violations of voting rights is no different in covered jurisdictions then in non-covered jurisdictions. If the problems are national in scope, we should have a national solution. *Edward Blum, AEI, Testimony at House Hearing. p.16 (morning of Oct. 25, 2005).*

- Seventeen of the majority-minority congressional districts in the South, most of them newly created, elected a black representative in the 1992 elections. There were also significant increases in the number of African Americans elected to state legislatures, again primarily from majority black districts. *ACLU Report at 114-15.*

- Black registration lags white registration for most of the time period in the seven covered state analyzed (as it does in nonsouthern states throughout the time series). But, for the last four elections for which there are comparative data, black registration in sex of the seven states (all but Virginia) exceeds black registration rates in the nonsuothern states. In three of the states (Georgia, South Carolina, Mississippi), black registration rates exceeded white registration rates within those states for at least two of the last four elections. *Voting Rights*

Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 33 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- At the congressional level, the 1990s saw significant advancement of descriptive African-American representation. The number of southern, African-American member of Congress tripled. In the states covered by Section 5, the number increased from three in 1991 to a current eleven (one from Virginia, two from North Carolina, one from South Carolina, four from Georgia, one from Alabama, one from Mississippi, and one from Louisiana) – 18% of all congressmen from these states are African-American, compared to the 25% African-American citizen voting population. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 34 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).*

- If we also add the black congressmen elected from the other two Section 5 southern states – Texas and Florida – we total seventee black MCs, or 15% of all MCs from nine states that are collectively 18.9% black by citizen voting age population. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 34 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).*

- The number of congressional districts with between 20 and 40% African-American population southwide – districts especially likely to elect white Democrats – fell from 50 seats to 22, and within two elections the number of Republicans from southern states nearly doubled. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 37 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).*

- In jurisdictions such as North Carolina, Georgia, and Texas, mapmakers responded by drawing far less compact minority districts than might have been possible, in order to ameliorate the political effects of drawing the compact majority minority district. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 38 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).*

- "Since 1966, we have deployed over 26,000 observers in a total of 22 States. Prior to 1976, we sent observers to only five States—Alabama, Georgia, Louisiana, Mississippi, and South Carolina. However, in the past 10 years, as more jurisdictions have been subject to coverage under the Minority Language provisions of the act, we sent the next largest number of observers after Mississippi to these States: Arizona, New Mexico, New Jersey, California, Michigan, Pennsylvania, and New York." *Nancy Randa, House Hearing., 9 (Nov. 15, 2005).*

- "To date, a total of 148 counties and parishes in 9 states have been certified by the Attorney General for election monitoring pursuant to Section 6./2/ In addition, 19 political subdivisions in 12 states are currently certified for election monitoring by federal court order, pursuant to Section 3./3/ On election day last week, the Department sent federal observers and Justice Department personnel to 16 jurisdictions in seven states to monitor elections, including Hamtramck, Michigan, a jurisdiction partly within my district which had an ugly episode of discrimination against Arab-Americans at the polls in 1999. In 2004, the Department coordinated and sent 1,463 federal observers and 533 Department personnel to monitor 163 elections in 105 jurisdictions in 29 states." *Rep. John Conyers, House Hearing., 63-64 (Nov. 15, 2005).*

- "Most Federal observers dispatched to cover elections find no irregularities. Still, problems occur. Over at least the last decade, most of these have related to compliance with the language minority requirements of section 203." *Bradley J. Schlozman, House Hearing., 196 (Nov. 15, 2005).*

- Disparities in access to education, employment, housing, health care, social services, and political participation disenfranchise language minority voters at a disproportionate rate and send the message that their (multilingual) voices do not count. Asian American voter participation rates reflect these disparities and continue to lag behind those of other groups. In the November 2004 Elections, the voting0ate citizen population of Non-Hispanic Whites was 67.2 percent, as compared to 60 percent for Blacks, 47.2 percent for Hispanics, and 44.1 percent for Asian and Pacific Islanders. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, page 17, submitted at SENATE 6/13/06 hearing.*

- At the federal level, Asian American Congressional Members comprise less than 1 percent of the U.S. House and Senate members. [O]utside of Hawai'i, an Asian American candidate has not won a statewide seat since 1996, when Governor Gary Locke won the governor's seat in Washington. At the state level, there are 64 Asian American state senators and 97 state representatives. There are only 3 Asian American governors, all of whom come from U.S. territories that include American Samoa, Guam, and the Mariana Islands. At the local level, there are just 19 city mayors, including 12 from California, 3 from Hawai'I, 1 in Illinois, 2 in Michigan, and 1 in New Jersey. Finally, just 123 Asian American elected officials sit on city or county councils throughout the country. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, page 23, submitted at SENATE 6/13/06 hearing.*

- Of the 4,863 reported offenses of single-bias hate crime incidents motivated by race in 2994, 5.2 percent, or 217 incidents, targeted Asians. In the same year, offenses against Muslims, many of whom are of South Asian and Southeast Asian Descent, accounted for 12.7 percent of the 1,586 reported incidents of religious bias. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, page 30, submitted at SENATE 6/13/06 hearing.*

- In the 8,047 House elections in white-majority districts between 1966 and 2004 (including special elections), only 49(0.61%) were won by blacks. *Canon, David. Written Testimony. SENATE VRA Hearing. 6-21-06. At 4.*

- 302 of the 353 elections (85.6%) between 1966 and 2004 in black-majority districts have produced black representatives, including all of them since 2002. *Canon, David. Written Testimony. SENATE VRA Hearing. 6-21-06. At 6.*

- Given the pattern of racial bloc voting, no blacks were elected from majority white districts in the South between 1980 and 1994. *Canon, David. Written Testimony. SENATE VRA Hearing. 6-21-06. At 9.*

- Section 5 has been used more frequently in the years since 1982 than beforehand as the Department of Justice has interposed 96 objections to proposed voting changes in Louisiana since the last renewal. *Adegbile, Debo. Written Testimony. SENATE VRA Hearing. 6-21-06. At 4.*

- According to the 2000 Census, covered language minority citizens have an average illiteracy rate of 18.8 percent, nearly fourteen times the national rate. The average illiteracy rate of LEP voting age citizens in the covered jurisdictions is as follows: 28.3 percent of Alaska Natives, nearly 21 times the national illiteracy rate (forty percent of covered reservations have illiteracy rates greater than 50 percent); 11.7 percent of American Indians; nearly nine times the national illiteracy rate (over one-quarter of covered reservations have illiteracy rates greater than 50 percent); 20.8 percent of Spanish speakers, over fifteen times the national illiteracy rate; and 8.5 percent of Asian Americans, more than six times the national illiteracy rate. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 1.*

- According to the Census Bureau, in the November 2004 Presidential Election, Hispanic voting-age U.S. citizens had a registration rate of 57.9 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens. According to the Census Bureau, in the November 2004 Presidential Election, Asian American voting-age U.S. citizens had a registration rate of only 52.5 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. at 4.*

- According to the Census Bureau, in the November 2004 Presidential Election, Hispanic voting-age U.S. citizens had a registration rate of 57.9 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 117*

- Latinos still only occupy 0.9 percent of all elected offices, despite comprising nearly 9 percent of all voting age citizens. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 118.*

- According to the Census Bureau, in the November 2004 Presidential Election, Asian American voting-age U.S. citizens had a registration rate of only 52.5 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens. *Trasvina, John.*

Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 118.

- As of 2000, no Hispanics were elected from majority non-Hispanic white districts. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 100.*

- As of 2000, no Native Americans were elected from majority non-Indian districts. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 100.*

- Mr. Pildes- The National Commission on the Voting Rights Act Report, an essential study, part of the record, documents 23 cases, 16 States, since 1982, of polarized voting in redistricting cases. Half are from covered States. Half are from non-covered States. So the racial polarization problem is not unique to the covered areas of the South, at least in this set of cases.

  In fact, there are--let's see--24 cases reporting findings of intentional discrimination since 1982, 13 in non-covered States, 11 in covered States. *5/16/06 SENATE VRA Hearing Transcript, Page 29.*

- Mr. Pildes- [T]he fact that 55 percent or so of African Americans live in the south ' means that about half of the African Americans live in the south in covered areas, half do not. That is a very sort of simple figure. And so the fact that the pattern shows about half of the problems are in covered States and half in non-covered States, does I think suggest something that is more general in the United States. *5/16/06 SENATE VRA Hearing Transcript, Page 38.*

Anecdotal Evidence

- Racially polarized voting, a necessary precondition for vote dilution to occur, continues in many venues across the country, with the result that qualified minority candidates often have difficulty winning election outside of majority-minority districts. *National Commission on the Voting Rights Act Report, at 6.*

- Racially polarized voting plays an important role in depressing the number of minority elected officials relative to their group's proportion of the citizen voting age population. *National Commission on the Voting Rights Act Report, at 6.*

- Location of minority polling places is changed, often on short notice. *National Commission on the Voting Rights Act Report, at 7.*

- Citizens with English-language difficulties are discouraged from voting. *National Commission on the Voting Rights Act Report, at 7.*

- Because of continuing racially polarized voting, it is harder for African Americans to win office in majority-Anglo venues than in majority-minority ones. Black candidates have a harder time winning statewide offices such as governor or U.S. Senator than they do
- winning congressional and state legislative seats, because in these latter cases the Voting Rights Act has been effectively used to create majority-minority districts. *National Commission on the Voting Rights Act Report, at 8.*

- Latino candidates have had to contend with racially polarized voting and numerous vote dilution schemes employed by Anglos. *National Commission on the Voting Rights Act Report, at 8.*

- Latino candidates are much more likely to win election from venues that are majority-minority. *National Commission on the Voting Rights Act Report, at 8.*

- Latinos continue to face problems when trying to register and vote, sometimes because they cannot get the language assistance the law requires, sometimes because of impediments imposed by statutes or election administrators. *National Commission on the Voting Rights Act Report, at 8.*

- In the aggregate, Native Americans suffer high rates of poverty and disease, much of it resulting from the violence and discrimination they have historically suffered at the hands of whites. *National Commission on the Voting Rights Act Report, at 9.*

- Until recently, the VRA was enforced on behalf of Native Americans infrequently. However, beginning in the 1990s, they have filed and won several important suits that have drawn attention to disfranchising efforts and vote dilution against Native Americans. *National Commission on the Voting Rights Act Report, at 9.*

- Most post-1982 objections to voting plan changes were concentrated in the so-called "Black Belt" of most southern states, including the majority-minority counties—those areas V.O. Key, the pioneering scholar of twentieth-century southern politics, identified almost sixty years ago as being most resistant to black enfranchisement. *National Commission on the VRA Report, at 54.*

- Victor Landa, representing the Southwest Voter Registration Education Project at the Southern Regional hearing, stressed the causal link he believes exists between effective language assistance and voter turnout: "I've found that citizens who prefer Spanish registration cards do so because they feel more connected to the process. They also feel they trust the process more when they fully understand it. . . . Without materials in Spanish, many citizens not fluent in English would find the process too difficult to navigate and would not vote or would not necessarily vote in the way that they had intended." *National Commission on the Voting Rights Act Report, at 74.*

- Adam Andrews, an executive assistant with the Tohono O'Oodham Nation, stated that language assistance efforts, including hiring tribal members to serve as poll workers, have

resulted in unprecedented turnout of tribal members in the 2002 and 2004 elections. *National Commission on the Voting Rights Act Report, at 74.*

- Federal judges further have identified a host of campaign tactics nationwide designed to appeal to base racial prejudice, tactics that include manipulating photographs to darken the skin of opposing candidates, allusions or threats of minority group "take over," or imminent racial strife, and cynical attempts to increase turnout among voters perceived to be "anti-black." *National Commission on the Voting Rights Act Report, at 84.*

- Disfranchising efforts now typically consist of the sudden and unannounced moving of polling places in minority neighborhoods shortly before elections, the manipulation of early-voting hours, the harassment and intimidation of minority voters by polling officials and partisan actors, discriminatory hiring of poll workers, illegal purges of voter rolls, and the failure to provide election materials in the language of citizens of limited English proficiency. *National Commission on the Voting Rights Act Report, at 89.*

- The nature of vote dilution consists of mechanisms employed by whites since the First Reconstruction in the nineteenth century, including packing or cracking minority communities during redistricting, at-large or multimember district elections, the use of the numbered-place system and staggered terms, the majority-vote requirement, and race-based annexations. *National Commission on the Voting Rights Act Report, at 89.*

- Political scientist Richard Engstrom, a voting rights scholar at the University of New Orleans and expert witness in numerous vote dilution cases in several states for many years, testified about the extent and degree of racially polarized voting, which he called "a central concept which we deal with in Section 5 of the Voting Rights Act." His research, he said, revealed that much polarization still exists: "Today I want to tell you race remains the central demographic division in American politics. Don't trust me; read the literature. Read the recent books on southern politics. Race is still the major demographic division in southern politics and, indeed, politics across the country. And racially polarized voting persists. I know this because I study it." *National Commission on the Voting Rights Act Report, at 89-90.*

- Sam Hirsch, a partner at Jenner & Block whose litigation practice focuses primarily on election law, redistricting, and voting rights, testified at the Mid-Atlantic Regional Hearing. He stated that in the last ten years he has worked in redistricting litigation in about twenty states, and many of his cases have involved Sections 2 or 5 of the Act. In his experience, "there are politically significant statistical levels of racial polarization between Anglos and Latinos, as between whites and blacks, in almost every locale which I have experienced." His focus was on two states—Texas and Maryland—and regarding the latter he introduced into the record an expert report on polarization by Engstrom. The Maryland example was particularly germane in light of North Carolina Congressman Melvin Watt's earlier claim at the same hearing that racially polarized voting was not simply a function of partisan differences between blacks and whites in his state. In Maryland, the voting patterns of those two racial groups had been analyzed for purposes of litigation in Democratic primary elections only, in the heavily Democratic Prince George's County. The data indicated that

racially polarized voting was very much in play. In four of the five primary elections for state legislators, all since 1994, "the preferences of white voters and the preferences of black voters diverge in 80 percent of the instances," he said. *National Commission on the Voting Rights Act Report, at 90-91.*

- A study by Allan J. Lichtman, a historian at American University, also found racially polarized voting to be common in numerous Democratic primary contests in which at least one black or Latino faced at least one Anglo. While acknowledging that in a Texas study the race of candidates alone was not always determinative of voting behavior, and that the studied states of Maryland and Texas "obviously . . . don't speak directly to the forty-eight [other] states," voting rights lawyer Sam Hirsch nonetheless stressed the quality of the experts' reports, which were "comprehensive, . . . withstood the test of cross-examination . . . and are a rich source of very up-to-date and very carefully executed social scientific analysis and data gathering." *National Commission on the Voting Rights Act Report, at 91.*

- Political Scientist Bernard Grofman, a noted expert on the Voting Rights Act, wrote in the early 1990s that "there is strong evidence for continuing patterns of racially polarized voting for both blacks and Hispanics. Such continuing polarization makes it likely that minorities will feel the need to sue to protect their voting rights . . ." While noting that "most of the evidence on racial polarization is buried in court records," he pointed to the work of sociologist James Loewen, whose review of data from South Carolina elections provided, in Grofman's words, "stark testimony about the levels of polarization in that state which suggests little or no change in polarization over the course of a decade." Grofman stated that both in the Deep South and in many non-southern states, "black legislative success essentially occurs only in districts where blacks constitute a substantial portion of the electorate. While the pattern for Hispanics is not quite as stark, it is similar." *National Commission on the Voting Rights Act Report, at 94-95.*

- According to knowledgeable observers, racial politics may actually be getting more acutely polarized than in the nineties, in part because of partisan polarization. David Bositis of the nonpartisan Joint Center for Political and Economic Studies, writes that the degree of racially polarized voting in the South is increasing, not decreasing. . . . [and is] in certain ways re-creating the segregated system of the Old South, albeit a de facto system with minimal violence rather than the de jure system of late. *National Commission on the Voting Rights Act Report, at 95.*

- "There are many places in the North where there are problems, or in the West." *Jack Kemp, Testimony at House Hearing.15 (Oct. 18, 2005).*

- One of the purposes of these hearings is to determine whether § 5 should be extended outside of the South to the entire country. *Jack Kemp, Testimony at House Hearing.20 (Oct. 18, 2005).*

- Preclearance is necessary. Otherwise a politician can break the rules to win election and then, even if the districts are redrawn, he will be an incumbent and enjoy a great advantage in the next election. *Jack Kemp, Testimony at House Hearing.27 (Oct. 18, 2005).*

- 4.3 million voting age citizens are "limited English proficient." *Tallman, Testimony at House Hearing. 42 (Oct. 18, 2005).*

- 4.3 million voting age citizens are Latino. Without section 203, "those individuals would be unlikely to vote." *Tallman, Testimony at House Hearing. 86 (Oct. 18, 2005).*

- Of the over 300 official "incidents" recorded on Election Day by the NV-EPP poll watchers (with hundreds more unrecorded), nearly 60% dealt solely with basic voter Registration issues. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4637.*

- Section 2 is not sufficient.
  (1) It is too expensive to hire an attorney for a section 2 lawsuit. It can cost millions of dollars.
  (2) Section 2 lawsuits require more facts.
  (3) The burden of proof is on the jurisdiction under § 5.
  Tallman, Testimony at House Hearing. 73-74 (Oct. 18, 2005).

- Section 2 is not sufficient. If a representative commits "fraud," section 2 allows that representative to enjoy the fruit of his fraud while the lawsuit is pending. Section 5 does not, because until DOJ's objection is resolved, the change may not go through. Also, the representative then becomes an incumbent and under section 2, gets to enjoy the benefits of incumbency. Under section 5, he would not. *Rep. Scott, Georgia, Testimony at House Hearing. 76 (Oct. 18, 2005).*

- Section 2 allows a representative to commit "fraud," become an incumbent, and then enjoy the fruits of incumbency. *Marc Morial, Testimony at House Hearing. 76 (Oct. 18, 2005).*

- Every two years we learn about "new allegations of election fraud and abuse of the electoral process. "I've seen first hand how a redistricting plan or flawed ballot can take away the voice of a vital segment of our population." *Lt. Gov. Steele (R-MD), Testimony at House Hearing. 25, 27 (Oct. 20, 2005).*

- "instances of manipulating municipal boundaries to fence some citizens out – basically, minority citizens; moving a registration office to a less convenient location; campaigns by private citizens to intimidate black voters. The list goes on and on. And the things that we used to see all the time, we still, unfortunately, see. Some of these things are purposeful, without question; some of them may not be." *Derfner, Testimony at House Hearing. 37 (Oct. 20, 2005).*

- 90% of the covered jurisdictions today could meet the bailout requirements that the past ten years, they have been complying with the Voting Rights Act. Under the bailout provisions, they also have to show they have eliminated *all* dilution procedures and have engaged in constructive efforts to increase minority participation. I have represented all nine of the jurisdictions that have bailed out since 1982. *Herbert, Testimony at House Hearing. 44-45 (Oct. 20, 2005).*

- The biggest area that needs reform is redistricting. *Lt. Gov. Steele (R-MD), Testimony at House Hearing. 63 (Oct. 20, 2005).*

- Each year, the Civil rights Division of DOJ receives 4,000 to 6,000 submissions under section 5. Redistricting constitutes only a small portion. *Brad Schlozman, Testimony at House Hearing. 23 (morning of Oct. 25, 2005).*

- Since 1965, there have been a total of 121,000 submissions under section 5. The Ag has objected to just over 14,000. Over the past ten years, there have been only 37 objections. The overall objection rate since 1965 is just a hair over 1%. Since 1995, it is 0.2%. *Brad Schlozman, Testimony at House Hearing. 24 (morning of Oct. 25, 2005).*

- Some hurdles today include "continued prevalence of racially polarized voting; redistricting plans that crack and pack minority voters to dilute their voting strength; numerous efforts at the local level to dismantle single-member districting plans; the manipulation of town boundaries through annexations that exclude black voters; and the imposition of new registration and voting practices that make it more difficult for minority voters to register and cast a ballot." *Ms. Earls, Testimony at House Hearing. 30-31 (morning of Oct. 25, 2005).*

- In Texas, North Carolina, Alabama, and elsewhere, jurisdictions that were sued in the 1980s and 90s under section 2 and ordered to implement single-member districts are now trying to return to at-large districts. *Ms. Earls, Testimony at House Hearing. 32 (morning of Oct. 25, 2005).*

- "This is a very important point, and I want to reiterate because it is sort of an urban legend that African Americans will lose their right to vote." Bill Lan Lee, *Testimony Submitted to the National Commission on the Voting Rights Act, House Hearing. 315 (Oct. 18, 2005).*

- "What they found 40 years ago is that they could divide minorities in such a small area that the would create a chilling effect in the preliminary process, and obviously dilute any representation. Now, because of voter population and demographic changes, the minority communities are too large. They are just too large to divide into small areas in the same fashion. So the new way is to draw the district in such a way that you pack as many minorities into one area." David Paterson, *Testimony Submitted to the National Commission on the Voting Rights Act, House Hearing. 322 (Oct. 18, 2005).*

- "There is still tremendous need all over the country, because without that Section 5 protection, some of that discrimination will reappear." Joe Rich, *Testimony Submitted to National Commission on the Voting Rights Act, House Hearing. 340 (Oct. 18, 2005).*

- "[M]any of the situations that we find that we think federal observers are needed are certainly not as [egregious] as we found 30 years ago. What we find is a situation where there is a race on both sides. ... [W]e get questions from local jurisdictions that they would like us there just to have a calming effect." *Joe Rich, Testimony Submitted to National Commission on the Voting Rights Act, House Hearing. 341-42 (Oct. 18, 2005).*

- The greatest impact of section 5 is in local communities and particularly rural areas. Voters in these areas don't have access to litigate. *Ms. Earls, Testimony at House Hearing. 32 (morning of Oct. 25, 2005).*

- In much of the Southwest, Latino and Anglo voters consistently prefer different candidates. *Ms. Perales, Testimony at House Hearing. 37 (morning of Oct. 25, 2005).*

- In the Southwest, influence districts provide only the illusion of full political participation. *Ms. Perales, Testimony at House Hearing. 37 (morning of Oct. 25, 2005).*

- Expert witness fees can be as much as 80% of the cost of section 2 litigation, and are not recoverable. *Ms. Perales, Testimony at House Hearing. 55 (morning of Oct. 25, 2005).*

- Section 5 pre-clearance allows you to stop things that you cannot effectively stop through section 2 litigation because section 2 takes so long. Full section 2 litigation through the end of trial lasts "at least two years." "Two to five years is a rough average." *Ms. Earls, Testimony at House Hearing. 63-64 (morning of Oct. 25, 2005).*

- By 1984, South Carolina and Mississippi ranked at the top of proportion black electorate. Mississippi and Alabama registered the largest proportional gain of size in the black electorate, though Mississippi simultaneously ranked "high" and "low" because the baseline for minority participation was so very low. large proportional gains were inevitable. Georgia and Louisiana conversely rank near the bottom of proportional gain in part because of having the highest rates of black registration of any state originally covered by Section 5. By 1984, the black percentage among registrants tracks closely with the black percentage in the voting age population, evidence of the success of the Voting Rights Act in eliminating obstacles to participation. The states with the largest potential black electorates (Mississippi and South Carolina) had the most-heavily African-American voter registration rolls. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 33 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).*

- Of these states, Alabama has achieved proportionality in the legislature relative to citizen voting age population, while Georgia, Mississippi, and North Carolina are approaching proportionality. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 33 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).*

- The aggressive use of Section 2 of the Voting Rights Act to create majority-minority districts in the early 1990s resulted in an electoral map that shifted one-third of all southern congressional districts to the GOP in a three-election period. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 37 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).*

- You increase minority votes, you increase minority representation, because those minority votes have to be channeled through an election system, and the increase in representation didn't—did lag behind the increase in minority votes largely because it took time for a number of majority-minority districts to be created. *Voting Rights Act: The Continuing Need for Section 5: Hearing*

Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 49 (2005) (statement of Richard Engstrom, Professor, The University of New Orleans).

- And the reason we have the descriptive representation is not just because of the increased Black vote, but also the increased number of majority-minority or near majority-minority districts that have been created to allow that vote to be converted into descriptive representation. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 49 (2005) (statement of Richard Engstrom, Professor, The University of New Orleans).*

- But what I want to point out is those districts are crucial all right, and the reason those districts are crucial is because racially polarized voting continues to persist in the American South and certainly no doubt in other jurisdictions across the country. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 49 (2005) (statement of Richard Engstrom, Professor, The University of New Orleans).*

- Two of the leading scholars of southern politics writer in their most recent book that race continues to be "the central political cleavage" in the South (see Black and Black, 2001: 4). This cleavage is a pronounced aspect of the competition between the two major political parties in the South today. Indeed, to quote those same authors again, "The racial divide remains the most important partisan cleavage" in the region) (at 244; see also Lublin, 2004: 134-171, and McKee and Shaw, 2005, 2005: 285, 287, 300). *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 53 (2005) (prepared statement of Richard Engstrom, Professor, The University of New Orleans).*

- [Regarding the deterrent effect of the current retrogression standard I know that if I were to compare the 1990 review of, say, the North Carolina or South Carolina or Florida section 5 preclearance review that was— given the legislative plans at that time—with the review that the Justice Department gave the similar plans in 2000, the review was far more rigorous and vigorous in the 1990's than it is today. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 29 (2005) (response of Robert Hunter, Voting Rights Litigator, Hunter, Higgins, Miles, Elam and Benjamin, P.L.L.C. to questioning by Congressman Chabot).*

- Proving legislative intent or influence is one of the most amorphous things you can possible prove. Is one legislator more influential than another? Is a coalition of Blacks and Whites more influential? Influenced to do what? *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 29 (2005) (response of Robert Hunter, Voting Rights Litigator, Hunter, Higgins, Miles, Elam and Benjamin, P.L.L.C. to questioning by Congressman Feeney).*

- Just as influence district can be quite subjective—and I'll add another example. I don't mean to name a Member of Congress, but there's supposedly a Latino influence district in Texas. It's a district that elects a Latino Republican. The Latino Republican has never been supported by

Latino voters in his district, never, and what the State did was simply go out, eliminate Latinos from his district, because that was starting to put him at risk, and go out and get more Anglo Republicans to replace Latino Democrats. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 87 (2005) (response of Richard Engstrom, Professor, The University of New Orleans, to questioning by Congressman Feeney).*

- I have seen much racially polarized voting in many elections in which there was an incumbent and in which there was racially polarized voting; and in many of those elections what happens is, if it's a White incumbent, Whites or non-African-Americans support that incumbent and often minorities do not. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 88 (2005) (response of Richard Engstrom, Professor, The University of New Orleans, to questioning by Congressman Nadler).*

- Mr. ENGSTROM. At the local level. When candidates ran Statewide—and keep in mind these may not be candidates from the local area. In most instances, they're not going to be candidates from the local area. There was a pronounced difference in Statewide elections in Georgia. Statewide elections were still racially polarized but not to the degree that the local elections I studied were.
  Mr. NADLER. The local elections are more racially polarized?
  Mr. ENGSTROM. The local ones were more than the Statewide. In the districts I studied. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 88 (2005) (response of Richard Engstrom, Professor, The University of New Orleans, to questioning by Congressman Nadler).*

- But if you're sitting with a district that's 80 percent African-American and you reduce it to 75 percent, I don't think that calls for an objection under the preclearance requirement. You have got an opportunity to elect—when you go from 75 to 80, as a general matter the opportunity doesn't change. Very little. So you don't have to look at it like a linear thing and you're always stuck with a packed district. You can reduce those district percentages without having a retrogressive consequence. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 92 (2005) (response of Richard Engstrom, Professor, The University of New Orleans, to questioning by Congressman Scott).*

- Using methodologies that both Professor Engstrom and I are familiar with, we examined bi-racial contests, which had the most probative value, and also White-on-White contests for comparison; and in the context of what is typically now the election of consequence at these levels in Georgia, the general election, there's little differentiation in the White voter choice between Black and White Democrats. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 93 (2005) (response of Ronald Keith Gaddie, Professor of Political Science, to questioning by Congressman Watt).*

- I have to admit I'm answering first impression, but my first impression is, yes, given Latino growth, given areas that may not have been previously covered because of the relative absence of Latinos and now a substantial presence of them, I think it is something definitely worthy of looking into to see if the coverage mechanism couldn't include new problems that are new geographically, not old problems, but are now surfacing in new situations because of the change in population and demographics. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 95 (2005) (response of Richard Engstrom, Professor, The University of New Orleans, to questioning by Congresswoman Sanchez).*

- The implementation of a majority vote requirement, for example, for a Mayor of a city doesn't sound like a huge change, but if you have three or four White candidates running and one Black candidate running, it may very well be that the White candidates will split the White vote and the Black candidate would get the plurality. If you abolish that and go to a majority vote requirement, it means the Whites can always regroup in the runoff. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 96 (2005) (response of Laughlin McDonald, Director, ACLU Voting Rights Panel, to questioning by Congresswoman Sanchez).*

- "During every election cycle, my staff fields numerous complaints involving election day mischief from around the country. While many simply involve hardball campaign tactics, a troubling number cross the line into questionable race politics that raises the issue of systematic suppression of the minority vote." *Rep. John Conyers, House Hearing., 63 (Nov. 15, 2005).*

- "Many poll workers do not know what to do with bilingual voting materials and signs or give information to Asian American voters. Chinese- and Korean-language signs were not posted, bilingual material often are not displayed, and some poll workers denied Asian American voters the right to cast an affidavit (provisional) ballot when their names are not found in voter registration lists, because Asian names are 'unfamiliar' to them." *Appendix to the Statement of Margaret Fung before the National Commission on Civil Rights, from House Hearing 11/08/05 at 1336-37.*

- "A new energy and cultural shift is occurring throughout Indian Country . . . . Native participation in non-Native elections is starting to be viewed as important in and of itself for Democracy and for Native individuals and communities." *Jacqueline Johnson, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 59 (Nov. 9, 2005) (attachment II to prepared statement, Native Vote 2004: A National Survey and Analysis of Efforts to Increase the Native Vote in 2004 and the Results Achieved)*

- "Justice Department regulations implementing the bilingual ballot provisions have to deal with daunting problems due to the inherent complexity of language. In many countries there is no majority language. For example, a designated language minority group such as 'Filipino' may meet the law's numerical threshold, but the population itself may speak any one of a number of mutually unintelligible languages . . . . So a significant proportion, or even a majority of a language minority group that qualified for bilingual ballot coverage, may derive no actual benefit from bilingual ballots at all . . . . Some languages like Japanese can be written using

different characters . . . . Other languages have no written form at all. All these characteristics of language can result in mind-numbing translation and proof reading problems . . . . They also increase the risk of making serious mistakes and errors." *K.C. McAlpin, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 70 (Nov. 10, 2005) (prepared statement)*

- "[According to our survey], [t]he costs of compliance [with Section 203] were modest, if there are any costs at all." *James Thomas Tucker, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 77 (Nov. 10, 2005)*

- "[R]ecent studies regarding the 2004 election . . . demonstrate that 47 percent of eligible Latinos have turned out to vote in the 2004 election, compared to 67 percent for Whites and about 60 percent for Blacks." *Juan Cartagena, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 135 (Nov. 10, 2005).*

- "[T]he number of Latino elected officials in this country . . . is less than 1½ percent of all the officeholders in this country . . . . Enforcement mechanisms, therefore, have been very important." *Juan Cartagena, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 135 (Nov. 10, 2005).*

- "In the last two decades following the last major VRA reauthorization, Latinos have made significant political advances. U.S. Census data for the November 2004 Presidential election indicate that 7.6 million Latinos voted, an increase of 145% since 1984. During the same period, the number of non-Latino voters grew by only 20%. In January 2005, there were 5,014 Latino elected officials nationwide, an increase of 60% since 1984 . . . . In 1984, no Latinos served in the U.S. Senate . . . . In 2005, two Latinos now serve in the U.S. Senate, and 23 serve as Representatives in the House." *Arturo Vargas, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 202 (Nov. 10, 2005) (prepared remarks).*

- "More than three-quarters (78%) of Latino adult U.S. citizens live in jurisdictions that are covered by either Section 203 or Section 4(f)(4) for Spanish language assistance." *Arturo Vargas, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 202 (Nov. 10, 2005) (prepared remarks).*

- "[A study has] found that Latinos living in areas covered by the language provisions of the VRA were 4.4% more likely to vote than their counterparts residing elsewhere." *Arturo Vargas, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 202 (Nov. 10, 2005) (prepared remarks).*

- "Callers to our . . . hotline from Section 203 covered jurisdictions reported problems when they contacted election officials prior to Election Day to obtain basic election information, such as the location of their polling places or their registration status . . . . When some of those voters called election information hotlines, there were no bi-lingual personnel available to assist them, or the personnel hung up on them when they asked for Spanish-language assistance. In other cases, callers were put on hold or experienced long waits until a bi-lingual staffer could be located. These experiences made it extremely difficult for callers to receive important

information needed to cast a ballot in the election." *Arturo Vargas, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 205 (Nov. 10, 2005) (prepared remarks).*

- "Only 39% of the Spanish speaking callers required having received information from their jurisdictions, compared to 45% of the English-speaking callers . . . . Additionally, callers from Section 203 jurisdictions reported that were no bi-lingual pollworkers available to assist them . . . or that polling places did not have bi-lingual election materials. In many cases [this] made it impossible for Latino voters to resolve basic questions about voting in their polling sites . . . . Because many Latino voters are young or are naturalized citizens, they are still learning about the electoral process . . . . [so] some . . . expressed the humiliation they felt when there was no language assistance available . . . . We also learned that some pollworkers view Latinos who need language assistance at the polls as 'problem voters' and ignore them or treat them rudely." *Arturo Vargas, Testimony at Section 206-Bilingual Election Requirements (Part II), House Hearing. 205 (Nov. 10, 2005) (prepared remarks).*

- "We found that Spanish-speaking Latinos were less likely to receive a sample ballot or information regarding the location of their polling place, than were English-speaking Latinos. Three fifths of the Spanish speakers who called the hotline said they had not received any election information from their respective officials." *Arturo Vargas, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 212 (Nov. 10, 2005) (prepared remarks).*

- [In a report about Section 203, it was found that:]
  - 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 ... indicated they did not have the personnel present who could offer aid in the languages indicated under the [VRA]
  - Levels of compliance ranged widely across states, with five states – Colorado, Kansas, Massachusetts, Nevada, and Rhode Island – having significantly lower compliance rates ....

  Michael Jones-Correa and Israel Waismel-Manor, House Hearing, March 8, 2006, at 2515.

- Ten of the fifteen states [in the report] had perfect compliance with this requirement [to provide required voter registration materials] under Section 203 .... Colorado and Rhode Island had the weakest coverage .... Findings across the larger sample size suggest that Colorado's non-compliance is systematic and widespread. *Michael Jones-Correa and Israel Waismel-Manor, House Hearing, March 8, 2006, at 2524.*

- Nine states [in the report] had perfect compliance with this requirement [to provide personnel who can provide assistance] under Section 203 .... Kansas, Massachusetts, New Mexico, and Rhode Island ... had significant compliance issues .... *Michael Jones-Correa and Israel Waismel-Manor, House Hearing, March 8, 2006, at 2525.*

- "A majority of pre-election complaints came from individuals who had encountered problems with the registration process. There were many instances where callers had attempted to resolve

problems with their registration but were unable to obtain assistance in Spanish . . . ." *Arturo Vargas, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 224 (Nov. 10, 2005) (prepared remarks).*

- "Some voters reported being forced to cast votes outside of the voting booth . . . because there was no room available . . . . Spanish speaking voters reported being treated rudely or ignored by poll workers." *Arturo Vargas, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 225-26 (Nov. 10, 2005) (prepared remarks).*

- "Today, sophisticated computer programs still attempt to minimize minority participation by creating max-pack districts of minority voters—creating opportunities for minority elected officials to be sure, but still limiting the overall opportunities that could be created through fairer, more equitable and ultimately more competitive district boundaries." *Voting Rights Enforcement and Reauthorization: US Commission on Civil Rights Report, at* 2

- "For example, the National Commission on the Voting Rights Act has done a detailed analysis of Section 5 objections as well as other indicators of Section 5 at work in covered jurisdictions. One such indicator within the Section 5 context are withdrawal letters—where a jurisdiction withdraws its proposed change or changes in question, usually in response to requests for further information from the Department of Justice. According to the NCVRA, there were least 205 withdrawal letters from 1982 to December 2003." *Voting Rights Enforcement and Reauthorization: US Commission on Civil Rights Report at 2-3*

- "A (*sic*) upcoming report reveals that in the 1990s Section 5 objections based upon the pre-*Bossier II* intent standard comprised 43% of the total objection letters (151) issues by the Department of Justice. Post-*Bossier II*, the percentage of objection letters based upon the intent standard decreased to a total of 2 between 2001 and 2004. While the authors do not attribute the decline entirely to the new Bossier II standard, as has been observed, '[t]he sheer reduction in the number of overall number of Section 5 objections since the Bossier Parish decision also suggests that the loss of a meaningful intent standard has substantially reduced the effectiveness of Section 5." *Voting Rights Enforcement and Reauthorization: US Commission on Civil Rights Report at 3*

- "William Yeomans, a former career staff attorney in the Civil Rights Division of the Department of Justice, published an article in Legal Affairs in which he wrote 'decisions increasingly were made in isolation from career attorneys and were communicated as orders. Attorneys who sought to engage in discussion or propose alternative approaches were viewed as disloyal and suffered the consequences." *Voting Rights Enforcement and Reauthorization: US Commission on Civil Rights Report Footnote 6, at* 3

- "For example, the drop in objections may be evidence that covered jurisdictions now understand they must comply with Section 5...Anecdotal evidence exists that officials have become more sophisticated in meeting with local advocates of minority voting interests to ensure changes are in compliance with Section 5." *Voting Rights Enforcement and Reauthorization: US Commission on Civil Rights Report At 4*

- "Latinos now outnumber African Americans. Even though the proportion of non-citizens makes up a significant number of Latinos in the voter population, the voting rate among citizens is still at a much lower rate than Caucasians—45 % as compared to 62%." *Voting Rights Enforcement and Reauthorization: US Commission on Civil Rights Report At 4*

- "Especially in Texas, the history of discrimination against Latino voters since the 1982 extension has been a case history for the continued need for Section 5 protections. The Department of Justice has interposed a number of times in the 1990s on cases that sought to dilute the influence of Latino voters. The cases involved redistricting, annexations, and method of election changes." *Voting Rights Enforcement and Reauthorization: US Commission on Civil Rights Report At 4*

- "Data compiled by independent third parties shows that racially polarized voting exists at almost every elected office level, from 'governor to the recorder of mortgages.' The data extends from Louisiana to South Carolina, Georgia, Florida, Alabama, and North Carolina and Texas." *Voting Rights Enforcement and Reauthorization: US Commission on Civil Rights Report At 5*

- "117 successful [Section 2] suits were brought between 1982 and the present, with judicial findings of discrimination against minorities by whites. The Voting Rights Initiative at the Michigan Law School compiled data showing that successful Section 2 suits have been brought as recently as 2004." *Voting Rights Enforcement and Reauthorization: US Commission on Civil Rights Report At 5*

- "Other data, not relying on published decisions, shows an even greater number of favorable outcomes under Section 2. Such data shows that over 600 Section 2 lawsuits were favorably resolved in Section 5 covered jurisdictions." *Voting Rights Enforcement and Reauthorization: US Commission on Civil Rights Report At 5*

- "Regarding language minorities, we note that there remains an enormous gap in political participation. According to the Census, in the 2000 election, 45 percent of Hispanic voting age citizens and 43 percent of Asian voting age citizens participated, as compared to 62 percent of non-Hispanic white voting age citizens." *Bill Lann Lee, Testimony at House Hearing on "Voting Rights Act: Evidence of Continued Need." (March 8, 2006).*

- "Our hearings and review of the records and data show dramatic gains made in decreasing the instances of discrimination and intimidation of minority voters throughout the United States since the establishment of the Voting Rights Act. Plainly, we have come a long way .... However ... the journey toward a colorblind society in which discrimination against minority voters no longer exists, is not yet complete." *Joe Rogers, Testimony at House Hearing on "Voting Rights Act: Evidence of Continued Need." (March 8, 2006).*

- Hate crimes and racial profiling have marginalized Asian Americans and denied them a sense of belonging to this country's rich legacy of immigrant success. Incidents of hate crimes and racial profiling range from the profiling of Dr. Wen Ho Lee at Los Alamos Laboratory to the post-September 11 profiling of South Asian Americans and Muslim Americans. Unfortunately,

police misconduct and brutality plagued Asian American communities long before September 11. Those incidents foster distrust between the police and the community they are sworn to serve. Moreover, that distrust opens the community to exploitation by violent predators who know their victims will rarely file police reports. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, page vii, submitted at SENATE 6/13/06 hearing.*

- Incomplete voter rolls, denial of provisional ballots, improper identification checks, interpreter shortages, and poor poll worker training continued to disproportionately affect language minority communities today. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, page 18, submitted at SENATE 6/13/06 hearing.*

- Previous AALDEF reports found that "Poll workers made improper or excessive demands for identification – often only from Asian American voters – and misapplied the [Help America Vote Act's] ID requirements." Unnecessary identification checks by poll workers who question the eligibility of Asian American voters may lead to lower turnout from a disenfranchised community in subsequent elections. The same disenfranchisement could result when other community residents hear of long lines created by interpreter shortages, the lack of translated ballots or voting materials, and incomplete voter rolls. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, page 18, submitted at SENATE 6/13/06 hearing.*

- In one case, AALDEF represented an eleventh-grade South Asian student who had expressed his fear of a possible terrorist attack to his teacher. Instead of assuaging the student's fears, the school suspended him for making a "terrorist threat. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, page 30, submitted at SENATE 6/13/06 hearing.*

- Six of the seven states that voluntarily adopted their own language assistance provisions have admitted violating or been found to have violated Section 203 and/or other provisions of the Voting Rights Act because of discriminatory practices against language minority voters: California, Florida, Massachusetts, New Jersey, New Mexico, [and] Pennsylvania. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 6-7.*

- "You find racial polarization in Boston and Chicago, in Philadelphia, in Cicero. The cases of vote dilution under Section 2 are spread out across the country." Richard Pildes, Hearing before the Senate Judiciary Committee, 5/16/06

COVERED JURISDICTIONS OVERALL

- The Commission's study finds the Justice Departments objections, as a percentage of submitted changes from covered jurisdictions, have declined steadily and markedly over 40 years to the point that during the last decade, objections have virtually disappeared, particular with respect to change type that represent the bulk of the submitted changes. The Commission's study examined three legislative periods, 1965-1974, 1975-1982 and 1982-2004, and found that the proportion of objections to submitted changes decreased throughout, from 5.5 percent in the first period to 1.2 percent in the second, and to 0.6 in the third. Significantly, the ratio of objections to submitted changes was less that 0.1 percent in the period of 1995-2004. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 2.*

- [S]ince July 1982, the Justice Department has filed 32 enforcement actions, or lawsuits, under Section 5 to demand compliance with the preclearance requirement (it filed 14 in the 1980s, 18 in the 1990s, and none in the current decade), and has participated as amicus curiae in all Section 5 declaratory judgment actions[. T]he Supreme Court rejected the Justice Department's position as a defendant three out of four times during the current reauthorization period. During that period, the Supreme Court has upheld the Justice Department's amicus approach six times (or in 75 percent of cases) and rejected the department's approach twice (or 25 percent), once as a plaintiff and once as amicus curiae. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 23.*

- Since 1965, the percentage of objectionable proposed voting changes have decline steadily to the point of relative insignificance. . . . Between August 1965 and June 30, 2004, jurisdictions filed 117,057 voting change submissions for Justice Department review. The department interposed objections to 1,400 or a mere 1.2 percent. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 25.*

- The Commission grouped submissions and objections into three periods corresponding to relevant Voting Rights Act legislative episodes: 1965-1974; 1975-1982; and 1982-2004. Submissions to the Justice Department in the first, second, and third periods comprised 1.3 percent, 11.9 percent and a substantial 86.6 percent, respectively, of all submissions (117,057). . . . The objections the Justice Department interposed in the first, second, and third periods comprised 15.6 percent, 30.6 percent, and 53.7 percent, respectively, of all objections (1,400). . . . [T]he number of objections the Justice Department interposed in the first period was 14.2 percent. Between the first and second periods, the percentage decreased substantially to 3.1 percent, and fell further to 0.7 percent in the third period, with the current extension period having the lowest level of objections . . . the third period may be divided into two smaller periods, 1982-1994, when the objection rate to submissions was 1.2 percent, and 1995-2004, when the objection rate was 0.2 percent. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 25-26.*

- [T]he percentage of objections interposed is highest between 1968-1974, declines between 1975 and 1981, and reaches a sustained low period between 1982-2004. During the Voting Rights Act reauthorizations in 1970 and 1975, objections constituted only 6.7 and 7.6

percent of submissions, respectively. During the 1982 reauthorization, the comparable figure was 2.3 percent. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 28.*

- The National Commission on the Voting Rights Act (NCVRA) recently preformed a similar analysis and found that objections "reached historic heights in the early 1990s." However, its analysis is misleading in two respects.

  First, the text portion of the NCVRA report failed to note the steadily declining trend in objection relative to submissions over the last 40 years, although data in the report appendix confirm this trend. . . . Second, the Commission's analysis showed that objections peaked in either 1976 or 1986, depending on the methodology chosen for counting objections. The peak did not occur in the early 1990s as NCVRA concluded.

  Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 30.

- The Commission analyzed the types of change to which the Justice Department interposed objections during the current extension period (1982-2004). The six change types in order of number submitted changes are (1) precinct/ polling place/ absentee vote changes, 43.7 percent of all submitted changes, (2) annexations/ boundary changes, 20.7 percent, (3) voter registration, 11.4 percent, (4) special elections, 6.6 percent, (5) methods of election, 4.2 percent, and (6) redistrictings, 2.4 percent.

  Regardless of the type of change, the rate of objections to submitted changes during this period was low, ranging from 0.1 percent to 4.2 percent. Three of six (or half of all) change types showed rates of objections well below 1 percent . . . although methods of elections and redistrictings made up the smallest percentages of submitted changes (4.2 and 2.4 percents, respectively), they were marked by the highest rates of objections, 3.6 and 4.2 percent.

  Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 33.

- Dividing the extension period into two distinct subsets (1982-1994 and 1995-2004) reveals a significant decrease in all types of changes to which the Justice Department objected. For example, from July 1982 through 1994, the Justice Department objected to 978 annexations, but only 23 between 1996 and 2004. . . . During the first period, the department objected to 512 election method changes (94.3 percent); thereafter, it objected to 31. It objected to 318 redistricting plans in the first period (87.4 percent), but only 46 in the second. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 35.*

- [T]he great majority of objections involved alleged vote dilution issues (regarding the constituencies used to elect officials and the rules for determining election outcomes), and relatively few objections concerned the mechanics of running elections. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 36.*

- Beginning in the early to mid-1980s, a large proportion of the election method objections (21.6 percent) concerned changes from at-large election systems to mixed systems of district

and at-large seats. . . . Specifically, the department objected when a relatively large proportion of the governing body remained elected at-large, or the use of a majority vote requirement and/or numbered post or staggered terms limited minority voters' opportunity to elect any of the at-large representatives. Occasionally, these objections were based on a finding of a clear Section 2 violation, though typically in combination with a finding of discriminatory purpose. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 39-40.*

- The Justice Department also interposed 35 objections to the establishment of new elected state court judgeships, between 1988 and 1995, and none in other years during the extension period...the Justice Department concluded that adding judgeships was discriminatory if it represented an extension of an underlying discriminatory election system. . . . The objection led New York, Georgia, Texas, and Arizona to file Section 5 declaratory judgment actions, and in each case the District Court for the District of Columbia granted preclearance (finding that there was no discriminatory purpose and holding, ahead of *Bossier Parish I*, that a Section 2 violation was not a basis for withholding preclearance.) . . . .

  The Last numerically significant category of election method objections since July 1982 concerned objections to changes in the number of elected officials other than judges. . . . The Justice Department interposed objections when the number of new seats proposed, in the context or the election system being used, arguably reduced a minority population's opportunity to win a seat.

  Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 41-42.

- The Justice Department interposed a higher number of objections to redistricting plans adopted after the 1908 and 1990 censuses (approximately 110 plans following the 1980 census and 180 following the 1990 census), relative to other post-census periods. . . . The objections were based partly on retrogression (or a combination of retrogression and discriminatory purpose), and partly on discriminatory purpose where the plans were non-retrogressive (a few objections also were based on Section 2 violations, often in conjunction with a finding of discriminatory purpose). The Justice Department reviewed the post-2000 plans after the two Bossier Parish decisions, and interposed many fewer objections (only 30 in all, with objections interposed to statewide plans in just three states, one of which was later reversed by the Supreme Court in *Georgia v. Ashcroft*). *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 42.*

- Overall, the Justice Department interposed a higher rate of objection to states with smaller numbers of submitted changes and a lower rate to states with a larger number of changes. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 43.*

- Texas, for example, with a 41.6 percent share of proposed changes claimed only 8.3 percent of objections. Texas and Virginia accounted for approximately half of all submitted changes, but less than 10 percent of all objections. On the other hand, the clearest example of objections disproportionately higher than submitted changes is South Carolina, contributing only 6.1 percent of all changes and registering the highest percentage of

objections, 35.9 percent, or 5.9 times its submitted changes. South Carolina and Louisiana combined for 48 percent of the objections even though they represented barely more than 12 percent of the submitted changes. The other states in which the rates of objections are higher relative to submitted changes are Mississippi, North Carolina, Alabama, and Georgia. . . . Even in these six states the objections as a percentage of submitted changes are relatively low: South Carolina, 3.7 percent, Louisiana, 1.2 percent, Mississippi, 1.3 percent, North Carolina, 1.2 percent, and Alabama, 0.9 percent and Georgia, 0.7 percent. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 43.*

- Of the 22 states, Texas submitted the higher number of proposed changes, 41.6 percent, followed by Georgia, 13.7 percent. Together, they accounted for slightly more than a majority of changes. South Carolina received 35.9 percent of all objections, followed by Georgia, 15.6 percent. Together they accounted for a majority of the objections. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 44.*

- A review of the geographic distribution of objections within covered states indicates that a large number of counties (as well as a number of parishes and independent cities) have not had a Section 5 objection since at least July 1982. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 48.*

- From July 1982 until November 2004, the department filed 18 lawsuits to enforce the language minority requirements. . . . .All but one of these 20 lawsuits was filed under Section 203; one was filed under Section 4(f)4. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 52.*

- [T]he 20 lawsuits have produced almost no contested litigation. The Justice Department resolved 17 of the 20 cases through settlements without any litigation order from the court, and no trials on the merits have occurred in any cases. . . .

  The Department filed eight of the first 11 lawsuits (from 1979 until 1998) in Arizona, New Mexico, and Utah; they dealt with the provision of oral information in historically unwritten American Indian languages (Navajo, Zuni, and Keres). The most recent nine lawsuits (filed since 1998) generally concerned the provision of election information in Spanish; the department filed four in the Northeast and three in California. Lawsuits also focused on the provision of information in Chinese, Tagalog, and Vietnamese, and a non-litigation settlement agreement also addressed the provision of information in Vietnamese.

  [T]he Justice Department has filed lawsuits and requested supplemental relief during each administration, beginning in the 1980s. the activity during the current administration is particularly notable—from 2001 until November 2004, the department filed and settled seven cases, obtained supplemental relief in four cases that had been filed in the 1990s, and secured one non-litigation settlement agreement.

  Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 53-54.

- GAO estimated that in the 1984 elections, 83 jurisdictions spent on average 7.6 percent of their total costs on providing written language assistance and 2.8 percent on oral assistance. One research team sought to update the GAO studies by surveying 810 jurisdictions in 33 states about Section 203 practices and costs in post-2000 elections. Of those that responded, more than half reported incurring no extra costs for oral (59.1 percent) and written (54.2 percent) assistance. The survey's findings estimate that jurisdictions spend an average of 8.1 and 4.9 percent of all election expenses on written and oral assistance, respectively. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 55.*

- Between 1985 and 1995, the Justice Department interposed eight Section 5 objections based on violations of Sections 4(f)4 and 203 to changes adopted in Arizona, New York City, and Texas. The bases of seven of the eight objections were exclusively violations of Sections 4(f)4 and 203; there was no discriminatory purpose or retrogressive effect associated with the changes. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 55.*

- The observer program . . . continues to play a vital role in the Justice Department's Voting Rights Act enforcement efforts. . . . In some instances, the department uses observers where there are concerns about racial discrimination in the voting process; at other times, monitoring is done to ensure compliance with bilingual election procedures. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 57.*

- During the 2004 presidential elections, the department sent observers to 27 jurisdictions covered by Sections 4 or 3(c) . . . and to 61 jurisdictions not covered by either provision. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 57-58.*

- The National Association for the Advancement of Colored People and People for the American Way report that in 2004, plans to place challenges in many predominantly African-American precincts were prepared in Kentucky. Press reports indicated plans for similar efforts in Ohio and other states. In Texas, students at Prairie View A&M University, a largely African-American institution, were erroneously told that they were ineligible to vote.

  Also, according to the NAACP and PFAW, in 2000, a flawed list of alleged felons was used to purse some 57,700 voters from registration lists. About 54% of those on the purge list were African-American and Latino. On the day of the election, the NAACP reported scores of calls from Floridians reporting intimidation and other problem at voting places.

  Written Testimony of Jesse Jackson Jr., House Hearing, July 22, 2005, at 3278.

- The Justice Department sent several thousand federal observers in 622 separate Election Day "coverages" when it had reason to expect racial discrimination. These observers have the ability to enter polling places and to observe votes being counted, and not only did they report instances of discrimination, their presence probably discouraged many more such instances. In Mississippi alone there were 250 coverages since 1982 where observers were

dispatched to election sites, involving more than 3,000 federal observers. Significantly, Louisiana, Mississippi, Alabama, Georgia, and South Carolina—five of the six states originally covered by Section 5—accounted for almost two-thirds—66 percent—of all 622 coverages since 1982. *Written Testimony of Chandler Davidson, Senate Hearing, May 9, 2006, at 12.*

- [E]vidence of intentional discrimination are the forty-two cases in which jurisdictions have unsuccessfully sought preclearance of a change affecting voting in the three-member US District Court for the District of Colombia…A total of twenty-five of the cases in which the Court considered the change on the merits and refused to issue such a judgment occurred after 1982.

  A [] compelling source of evidence of purposeful and unconstitutional discrimination comes from judicial findings on intentional discrimination in litigation brought under Section 2 of the Voting Rights Act. Unfortunately many of these findings are in unreported decisions.

  Written Testimony of Anita Earls, Senate Hearing, May 16, 2006, at 4.

- [T]here are frequently allegations of unconstitutional conduct in litigation under Section 2 that is resolved by consent decree. While Defendants in such cases often must admit liability under Section 2 in order for a court to have jurisdiction to order a new method of election, typically they are not willing to admit to unconstitutional conduct and there is not need for them to do so in order for Plaintiff's to obtain a remedy. Thus, the record of many cases resolved under Section 2 of the Voting Rights Act by consent decree is also some evidence that unconstitutional discrimination in matters affecting voting may have occurred. *Written Testimony of Anita Earls, Senate Hearing, May 16, 2006, at 5.*

- Another indirect source of evidence concerning unconstitutional conduct in by local officials is the record of Section 5 submissions that are withdrawn by the jurisdiction before the Department of Justice makes its determination. 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. The fact that jurisdictions were willing to abandon their proposed changes in 501 instances rather than seek a judicial determination that the change is valid under the Voting Rights Act is some evidence of an acknowledgment of a discriminatory purpose or effect. *Written Testimony of Anita Earls, Senate Hearing, May 16, 2006, at 6.*

- There are two reasons why the current coverage is appropriate. First, the jurisdictions currently covered by Section 5 still enact laws that disadvantage minority voters. There is significant evidence before Congress, particularly from objections, submissions that have been withdrawn or modified, and unsuccessful declaratory judgment actions, that the covered jurisdictions in fact do continue to enact changes affecting voting that would have

the purpose or effect of making minority voters worse off. Second, the current coverage is appropriate because self-correcting measures in the law allow for expanded or contracted coverage if it becomes apparent that additional jurisdictions need to be covered in order to prevent continuing racial discrimination in voting, or that covered jurisdictions no longer pose a risk of enacting discriminatory measures. *Supplemental Written Testimony of Anita Earls, Senate Hearing, May 16, 2006, at 1-2.*

- Spencer Overton has compiled a list of states that are most susceptible to political practices that disadvantage voters of color, assessing eight different factors. His indicators of political exclusion are:

  1) Most voting right act objections and claims per capita
  2) Most federal observers sent to monitor elections per capita
  3) Largest disparities between citizens of color and statewide elected officials of color
  4) Largest disparities between citizens of color and officials of color in all elected positions
  5) Least party competition for voters of color
  6) Largest racial disparities in voter turnout
  7) Largest minority group
  8) Largest low-English-proficient populations

  Section 5 covered states predominated in every category above except 6 and 8.

  Supplemental Written Testimony of Anita Earls, Senate Hearing, May 16, 2006, at 1.

- Reviewing election results from hundreds of state and local elections, the courts regularly found more extreme racially polarized voting in the covered jurisdictions than in non-covered jurisdictions.

  > Nearly ninety percent of the specific minority v. white elections documented in covered jurisdictions involved white bloc voting rising to at least 80 percent, meaning that 80 percent of white voters voted exclusively for white candidates in these elections. Virtually all of the elections (96%) analyzed by courts in covered jurisdictions since 1982 exhibited white polarized voting at a level of 70 percent or more. In non-covered jurisdictions, by contrast, only 40 percent of the elections documented involved white polarization of 80 percent or higher, and about 60 percent involved white polarization rising to 70 percent.

  In short, in the elections that involved white and minority candidates analyzed as part of Section 2 claims in cases with reported decisions, virtually all such elections in covered jurisdictions had levels of white bloc voting of at least 70% or above while less than two thirds of such elections in non-covered jurisdictions had white bloc voting at 70% . . . . This wide divergence in racially polarized voting between covered and non-covered jurisdictions is an important empirical finding demonstrating that minorities have less ability to participate equally in the political process in covered jurisdictions.

Supplemental Written Testimony of Anita Earls, Senate Hearing, May 16, 2006, at 2.

- The fact that a majority of jurisdictions have failed to bailout on an individual basis illustrates the ongoing need for section 5 regulation.

  Hebert further testified that the most common complaint issued by a jurisdiction failing to bailout of Section 5 is that they were rejected due to a recent submission that was not precleared. This complaint, however, illustrates that several of the jurisdictions attempting to bailout of Section 5 still have work to do in altering their voting legislation.

  Supplemental Written Testimony of Anita Earls, Senate Hearing, May 16, 2006, at 4.

- DOJ objections since 2000 have protected 8,764 votes in Virginia, 10,518 voters in Georgia, and 12,756 voters in North Carolina. During the same time period, nine objections to South Carolina submissions protected 96,143 African-American voters, two objections to Arizona submissions protected 163,647 Hispanic and American Indian voters, and six objection to Texas submissions protected 359,978 African American and Hispanic voters. Approximately thirteen school board members, twenty-seven local legislators, and six state legislators have been determined by this activity. In total 663,503 minority voters in the last six years have been aided by Section 5 objections. *Supplemental Written Testimony of Anita Earls, Senate Hearing, May 16, 2006, at 2.*

- I believe that the covered jurisdictions in the South are systematically different from the uncovered jurisdictions in the North and Midwest because of their different political histories. The North and Midwest experienced a long period of in-migration during which the political arrangements were modified to accommodate intense ethnic politics. . . . The major migration pattern in the South until after World War II was the out-migration of blacks. The political history in this region was one of efforts to prevent racial accommodation. This history still echoes in this region, as my experience indicates, even though things have changed greatly because of three factors: in-migration since World War II from the North and Midwest, return of blacks, and the VRA. *Supplemental Written Testimony of Theodore Arrington, Senate Hearing, May 16, 2006, at 1-2.*

- The court also noted that these patterns were particularly severe in inter-racial contests noting that "blacks overwhelmingly tend to vote for blacks and whites almost unanimously vote for whites in most black versus white elections." Racial polarization has also been confirmed in a number of decisions involving challenges to local redistricting. *Written Testimony of Constance Slaughter-Harvey, Senate Hearing, July 10, 2006, at 6.*

- [E]ven with the submission procedures, it is true that the number of objections filed by the Department of Justice has declined in the past 10 years to approximately two-tenths of 1 percent. *Testimony of Wan Kim, Senate Hearing, May 10, 2006, at 16.*

- I will say that with respect to the Section 2 cases the Department of Justice has brought in the past 10 years, more of them have been brought in non-covered jurisdictions than covered jurisdictions, which suggests many things, but it certainly could suggest that the preclearance mechanisms in Section 5 do have an effect in the covered jurisdictions in tamping down abuses of the Voting Rights Act. *Testimony of Wan Kim, Senate Hearing, May 10, 2006, at 16.*

ALABAMA

Voting Rights Lawsuits/Enforcement

- "...when black people assist other folk, infirmed folk, with the ballot – with the voting process, the absentee ballot, we had people watching – what do you call, the legal apparatus – I don't want to call his name from Mobile, but I'll leave that alone, the state prosecutor – I mean, yeah, yeah, in the attorney general's office or something, brought charges, filed charges against voter activists in Marion County and Greene County. And they were simply assisting elderly people with the right to vote. They were found not guilty in Marion County and also Dallas County by the appeals." *Dr. Gwendolyn Patton, Program Dir. For the Southern Rainbow Education Project, Testimony at National Commission on the Voting Rights Act Southern Reg'l Hearing., House Hearing. 161 (Oct. 18, 2005).*

- ***Figures v. Hunt***, 507 U.S. 901 (1993): On March 5, 1992, Alabama adopted a congressional redistricting plan which created one majority black district (District 7 66.66% black). The Department of Justice entered an objection, determining that "the fragmentation of black population concentrations outside of the one district with a black voting age population majority was unnecessary," and it appeared "that the elimination of this identified fragmentation would enhance the ability of black voters to elect representatives of their choice."

  The ACLU then filed a motion requesting the district court to modify its redistricting plan in light of the Attorney General's objection and find that a second majority black district should be created. The court denied the ACLU's motion, and on appeal, the Supreme Court affirmed.

  ACLU Voting Rights Report, at 38 -39.

- ***Hunter v. Underwood***, 730 F.2d 614 (11th Cir. 1984), *affirmed* 471 U.S. 222 (1985): The ACLU represented 2 voters who were disenfranchised under a law nearly 80 year old law that prohibited those who had committed a "crime of moral turpitude" from voting. The court struck down the law because there was lots of evidence of racial motivation and discriminatory intent when the law was enacted in the early 1900s.

  The Supreme Court unanimously affirmed that in view of the proof of racial motivation and continuing racially discriminatory effect, the state law violated the Fourteenth Amendment.

Notably, it found a Fourteenth Amendment violation based on current effects evidence that would not have been sufficient by itself to support an inference of intent to discriminate. This suggests that if evidence of intent to discriminate is present, the racial impact may be fairly small and yet still establish a constitutional violation.

The court also noted that discriminatory motive does not have less legal significance by the mere passage of time.

ACLU Voting Rights Report, at 51-52.

- ***Medders v. Autauga***, Civ. No. 3805-N (M.D. Ala. February 22, 1997): In 1973, Autauga County created two multi-member districts, one electing three school board members and the other electing two members, but the plan was not submitted for Section 5 preclearance. In 1992, the school board filed a complaint against the ADC and the Department of Justice, seeking a declaratory judgment that the multi-member plan was constitutional. The court allowed two black citizens to intervene, and they and the ADC filed a counterclaim alleging that "the multi-member district plan is malapportioned, dilutive of the black vote, and violative of [the Voting Rights Act]."

  The litigation was resolved by a consent decree in which the existing plan was declared malapportioned and its further use enjoined.

  ACLU Voting Rights Report, at 56-57.

- ***Dillard v. City of Foley***, 926 F. Supp. 1053 (M.D. Ala. 1995): As a result of Section 2 litigation, the City of Foley, Alabama, was required to abandon its at-large elections in 1989, and it adopted a form of government consisting of a mayor and five council members elected from single member districts. Following the change to district elections, the first African American in history was elected to the city council.

  In 1989, the AG precleared 9 annexations and objected to three. Later, in 1993, it objected to another annexation, noting the city's "continued failure to annex majority black areas, such as Mills Quarters or the area of Beulah Heights."

  Plaintiffs in the initial Section 2 law suit filed a motion to require the city to adopt and implement a nondiscriminatory annexation policy, and to annex Mills Quarters and Beulah Heights, and fully comply with Section 5. As a result of negotiations, the parties entered into a consent decree. The decree found plaintiffs had established "a prima facie violation of Section 2 of the Voting Rights Act and the United States Constitution."

  ACLU Voting Rights Report, at 57-59.

Statistics

- Sixth-largest number of post-1982 § 5 preclearance objections occurred in Alabama. *National Commission on VRA Report, at 3.*

- In the 1990s, private parties brought actions against at least nine Alabama jurisdictions found not to have submitted changes. All were then required to submit them. *National Commission on VRA Report, at 53.*

- In Alabama, the great majority of the federal election observer coverages in the post-1982 period occurred in counties that were over 60 percent nonwhite, and almost all of the rest in counties that were at least 40 percent nonwhite. *National Commission on VRA Report, at 61.*

- The North Johns litigation in Alabama describes the town mayor's refusal to provide African-American candidates registration forms required by state law. The Harris litigation in Alabama tells of Jefferson County's refusal to hire black poll workers for white precincts—and the blind eye state government turned to the voting discrimination perpetuated at local polls. *National Commission on VRA Report, at 83-84.*

- *Harris v. Graddick*: This single Section 2 action in the 1980s ultimately forced 65 of Alabama's 67 counties to implement a non-discriminatory poll worker appointment process that allowed African Americans to participate equally. The state was also a defendant in this case and, after a trial, was compelled to create several new statewide procedures to ensure nondiscriminatory treatment of African American voters at the polls. *National Commission on VRA Report, at 85-86.*

- At least 50 Section 2 cases were resolved favorably to plaintiffs in the post-1982 period in Alabama, Georgia, North Carolina, and Mississippi. In Alabama, even most of the counties with black populations that are 10 percent or less black have been affected at least once. Indeed, all counties but one have been affected—one as many as 11 times. *National Commission on VRA Report, at 87.*

Anecdotal Evidence

- In 2003, the Chilton County Commission, under pressure from members of an all white group, Concerned Citizens of Chilton County, adopted a resolution, over the objection of the sole black commissioner, asking the local legislative delegation to pass a local act reducing the size of the commission to four; restoring the probate judge as *ex official* chair, repealing cumulative voting; and thus ending any opportunity for African Americans to elect a candidate of their choice. The U.S. Attorney General refused to consider Chilton County's submission of the 2003 local act for preclearance. Without the protections of Section 5 of the VRA, white-majority state and local governments in Alabama just 3 years ago succumbed to pressure from their white constituents and were willing to return to the racially discriminatory election practices of the past.

  An expert analysis of the 2004 general election for Chilton County Commission provides "dramatic evidence of how white voters are unwilling to vote for African-American candidates." For example, the one African-American commissioner, Bobby Agee, has served continuously since 1988. Despite his incumbency, he cannot garner support from the

white electorate. He is the first choice of African-American voters represent them on the commission; in contrast, he finishes last in terms of votes cast by non-African Americans in each type of electoral analysis undertaken by voting experts.

Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 7-8.

- The Department of Justice concluded that the redistricting plans submitted by the city [of Selma, Alabama] exhibited a purpose to prevent African Americans from electing candidates of their choice by fragmenting the black voting population. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 8.*

- [W]hen black people assist other folk, infirmed folk, with the ballot—with the voting process, the absentee ballot, we had people watching—what do you call, the legal apparatus—I don't want to call his name from Mobile, but I'll leave that alone, the state prosecutor—I mean, yeah, yeah, in the attorney general's office or something, brought charges, filed charges against voter activists in Marion County and Greene County. And they were simply assisting elderly people with the right to vote. They were found not guilty in Marion County and also Dallas County by the appeals. *Testimony of Gwendolyn Patton, House Hearing, Oct. 18, 2005, at 161.*

- *Dillard v. Crenshaw County* led to changes from an at-large to single-member district for dozens of county commissioners, school boards, and municipalities. *Testimony of Fred Gray, Senate Hearing, May 17, 2006, at 10.*

- [With] Dillard versus the United States... we got our one man, one vote single-voting districts. And because we were 63 percent African-Americans, we were given three majority black districts and two majority white districts.

  From 1988 to 1992, a special master was sent into Greensboro, Alabama, to help us to design a map that would meet the preclearance of Section 5 of the Voting Rights Act. As we drafted those districts, we saw in 1992 the first African-Americans to be elected in the 100 year history of the City of Greensboro.

  Testimony of Bobby Singleton, House Hearing, Oct. 18, 200, at 190-91.

- In 1992 we also experienced other problems with the Voting Rights Act. We had at that time still white minorities in that—in that community, who were still in control of the electoral process, holding the doors, closing the doors on African-American voters before the vote—before the voting hours were over. *Testimony of Bobby Singleton, House Hearing, Oct. 18, 200, at 191.*

- Events in Hale County, Alabama, and its county seat of Greensboro, deep in the state's Black Belt, were discussed by State Senator Bobby Singleton. The senator mentioned one especially tense situation in 1992, during the elections of the first blacks in the city: "We had at that time, still, white minorities . . . in that community who were still in control of the

electoral process, holding the doors, closing the doors on African- American voters before the . . . voting hours were over. I . . . had to go to jail because I was able to snatch the door open and allow people who was coming from the local fish plant . . . whom they did not want to come in, that would have made a difference in the . . . votes on that particular day. We've experienced that in the city of Greensboro . . . over and over again, and even in the county of Hale . . . ." The Department of Justice, Singleton added, was contacted many times to prevent efforts to change voting hours and to prevent "intimidation of black voters going to the poll." As a result of Department intervention and the presence of federal observers, he said, blacks in the county are now a majority on many if not most of the elected governments in Hale County—school boards, the county government, "most of the cities in the area," and, Singleton added, "we were able to elect a black circuit judge, black circuit clerk, myself as a state representative . . ." *National Commission on VRA Report, at 62-63.*

- [T]he provisions in Alabama's State Constitution of 1901, as has been amended all the way up to 1978, are there to prevent local and state governments from raising property taxes. And they key to these provisions is the electoral power of blacks. The federal court found that these provisions were placed there because of the fear of white landowners, that once they were politically empowered, blacks particularly in majority black counties like Hale County, would exercise that power to raise taxes on the property of whites . . . . in 2003, the Republican governor of this state tried to get some of these constitutional provisions amended, and it was defeated. *Testimony of James Blacksher, House Hearing, Oct. 18, 2005, at 194.*

- [V]arious cases that we have had to bring in the last five or six years, at least two examples of cases where the State of Alabama would not submit for preclearance changes that—that do affect voting. And we had to bring three-judge court actions in order to get them to submit them for preclearance, including, by the way, one state statute that—talking about absentee ballots. . . . The Legislature passed a law that said that absentee ballots could not be sent to a post office box; that it could only be sent to a residence address. And, of course, most—many, many rural residents in the Black Belt don't have delivery to their homes. . . .We managed to get that knocked down by a three-judge court ruling. *Testimony of James Blacksher, House Hearing, Oct. 18, 2005, at 195.*

- Courts have also documented some instances of suspicious or "tenuous" policies—as when the legislature in Alabama removed the only majority-minority district from its reapportionment plan after the governor threatened a veto. *National Commission on VRA Report, at 84.*

- "Poll officials instructed white registered voters to confirm their registration status in the office of the Probate Judge. Black voters whose names were not on the list were in each instance simply told that they could not vote, and were given no instruction by poll officials. ... Black voters at box 9-1 (Old Town) were told throughout the day of the October 12, 1982 special run-off election that no more than two voters were allowed in the polling place at one time. This restriction was imposed on 30-35 occasions. In no instance were white voters

required to conform to this procedure, and the poll officials allowed as many as five white voters in the polling place at a time. ... Ms. Stacey enforced the limitation on the amount of time a voter could spend in the booth in a random and discriminatory fashion. She enforced the limitation against black voters more frequently than against white voters. During the last hour of voting the requirement was applied exclusively against black persons. On at least two occasions she told black voters that their time had elapsed when, in fact, it had not." Excerpts from Plaintiff's Response to Interrogatories in *U.S. v. Conecuh County*, House *Hearing., 163-164 (Nov. 15, 2003).*

- For example, Bayou La Batre, Alabama, is a fishing village of about 2,750 residents, about one-third of whom are Asian American. In the 2004 primary elections, an Asian American candidate ran for City Council. In a concerted effort to intimidate supporters of this candidate, supporters of a white incumbent challenged Asian American voters at the polls. The challenges, which are permitted under state law, include complaints that the voters were not U.S. citizens or city residents, or that they had felony convictions. The challenged voters had to complete a paper ballot and have that ballot vouched for by a registered voter. The Department of Justice investigated the allegations and found them to be racially motivated. As a result, the challengers were prohibited from interfering in the general election, and ultimately the town, for the first time, elected an Asian American to the City Council. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights, at 1384-1385.*

- Alabama State Senator Bobby Singleton is from Hale County, Alabama, where the Department of Justice has sent observers on more than 20 occasions. Senator Singleton stated that when the Department of Justice was not present at an election, "whites closed predominantly black polling places early." As a result of Department of Justice intervention on multiple occasions and other Voting Rights Act enforcement measures, blacks are now a majority of most elected bodies in Hale County. To this point, Joe Rich, Chief of the Voting Section of the Department of Justice from 1999-2005, testified about how the mere presence of observers usually calmed racial tensions concerning elections and served to decrease race based incidents." *Testimony of Joe Rogers, House Hearing, Mar. 8, 2006.*

- Some of these [discriminatory] actions were insulting and direct, as are reflected in the United States' responses to interrogatories in *United States v Conecuh County, Alabama*, Civil Action No. 83-1201-H (SD Ala, Jun 12, 1984: "While providing assistance to a black voter, white poll official Albrest asked, 'Do you want to vote for white or niggers?' the voter stated that he wanted to give everyone a fair chance. Albrest proceeded to point out the black candidates and, with respect to one white candidate, stated, 'This is who the blacks are voting for.' Poll official Albrest made further reference to black citizens as 'niggers' in the presence of federal observers, including a statement that 'niggers don't have principle enough to vote and they shouldn't be allowed. The government lets them do anything.'" *Testimony of Barry Weinberg, House Hearing, Nov. 15, 2005, at 30.*

- "White poll workers treated African American voters very differently from the respectful, helpful way in which they treated white voters. When questions arose about the voter registration data for a white person, such as a person's address or date of registration, or

when a white person's name was not immediately found on the poll books, the voter was addressed as Mister or Misses, was treated with respect, and the matter was resolved on the spot. If the voter's name was not found, often he or she either was allowed to vote anyway, with his or her name added to the poll book, or the person was allowed to vote a provisional or challenged ballot, which would be counted later if the person were found to be properly registered. If, however, the voter was black, the voter was addressed by his or her first name and either was sent away from the polls without voting, or told to stand aside until the white people in line had voted. African American voters were not allowed to take sample ballots into the polls, and were made to vote without those aids (it was claimed by white officials that the sample ballots were campaign material which was prohibited inside the polls).". . . . In some instances, white poll workers would loudly announce the African American voter's inability to read or write, embarrassing the voter in front of his or her neighbors. Some white poll workers went so far as to bring a magnifying glass to the polls, and give it to African American voters, challenging the voter to read using the magnifying glass in front of everyone present at the polling place. Illiterate white voters, on the other hand, were allowed assistance by a person of their choice without comment. White couples routinely were allowed to enter the voting booth together to mark their ballots." *Testimony of Barry Weinberg, House Hearing, Nov. 15, 2005, at 30-31.*

- Chilton County entered into a consent decree in 1988 adopting a seven-member county commission elected by cumulative voting . . . . The black candidate, Bobby Agee, received an average 5.2 to 5.6 votes from every African-American voter, but only 0.1 to 0.2 votes from every white voter. . . . Because so few white voters will support an African-American candidate, there is not a single African American holding statewide office in Alabama today. Both (initially appointed) incumbent African Americans serving on the Supreme Court of Alabama were defeated in 2000 by white opponents. Every African-American member of the Alabama Legislature was elected from a single-member district with an effective black voter majority. *Testimony of James Blacksher, House Hearing, Oct. 25, 2005, at 3198-3199.*

- In *Ward v Alabama*, 31 F Supp 2d 968 (MD Ala, 1998) (3-judge court) the district court ordered the State to submit for Section 5 review a change in election law prohibiting the delivery of absentee ballots to "address where the voter regularly receives mail' and restricting mail delivery to 'the voter's residence address." *Testimony of James Blacksher, House Hearing, Oct. 25, 2005, at 3203.*

- Federal observers were able to note and document a wide variety of discriminatory actions that were taken against African-Americans in the polls. Some of these insulting and direct actions are reflected in the United States' responses to interrogatories in US v. Conecuh County . . . .

  "African-American voters who were unable to read and write, due in large part to inferior segregated schools and the need to go to work in the fields at an early age, were refused to have someone help them mark their ballot, notwithstanding the Voting Rights Act's bar on literacy tests. In some instances, white poll workers loudly announced the African-American voter's inability to read or write, embarrassing the voter in from of his or her neighbors."

Testimony of Barry Weinberg, House Hearing, Nov. 15, 2005, at 149.

- EXCERPTS FROM PLAINTIFF'S RESPONSE TO INERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS, *United States v. Conecuh County, Alabama*, Civil Action No. 83-1201-H (S.D. Ala;, Jun 12, 1984).

A white voter waiting in line to vote stated to white poll official John P. Bewley that she was unable to obtain a yellow sample ballot distributed by the Alabama Democratic Conference. The black voter standing next in line had such a ballot. Mr. Bewley stated, "You ain't [sic] of the right color." During the same day, Mr. Bewley stated to federal observer Riddle, "See, the niggers bring in these yellow marked ballots. The nigger preachers run the niggers down here, you know. They tell them how to vote. I don't think that's right."

P.7.

Poll officials instructed white registered voters to confirm their registration status to the office of the Probate Judge. Black voters whose names were not on the list were in each instance simply told that they could not vote, and were given no instruction by poll officials. White voter Salter's name did not appear on the list, and Ms. Salter acknowledged that she resided in a rural precinct and not in box 11-1. Ms. Salter nevertheless was allowed to vote in an unchallenged ballot directly on the machine.

Pp. 8-9.

Ms. Lewis, who required assistance because of a vision problem, signed the poll list and stated that she wished for her companion (unidentified) to provide assistance in voting for her. White poll official Windham stated, "Can't nobody go in there with you." After a pause, Mr. Windham stated to Ms. Lewis, "you can fill out an affidavit and then she can go in with you. Can't you [read]?" Mr. Windham's tone and manner were sufficiently abrasive that Ms. Lewis left the voting place. Some moments later she was observed to remark to a companion, who was trying to persuade her to make another attempt to vote, "I've done had trouble with them twice before and I'm not begging them any more. I'm not scared but I'm not begging anybody." Ms. Lewis returned accompanied by Mr. Richard Rabb, at that time the Chair of the Conecuh county Branch of the Alabama Democratic Conference. Ms. Lewis was allowed to vote, and the poll officials provided necessary assistance with the affidavit. Ms. Lewis remind (*sic*) very upset and remarked, "Why couldn't they have let me vote to begin with?"

Pp. 16-17

Black voters at box 9-1 (Old Town) were told throughout the day of the October 12, 1982 special run-off election, that no m ore than two voters were allowed in the polling place at one time. This restriction was imposed on 30-35 occasions. In no instance were white voters required to conform to this procedure, and the poll officials allowed a (*sic*) as five voters in the polling place at a time.

P. 21.

Ms. Stacey enforced the limitation on the amount of time a voter could spend in the booth in a random and discriminatory fashion. She enforced the limitation against black voters more frequently than against white voters. During the last hour of voting the requirement was applied exclusively against black persons. On at least two occasions she told black voters that their time had elapsed when, in fact, it had not.

P.24

During the course of the day, poll officials addressed all black voters by their first names. Older white voters were addressed by the courtesy titles of Mr. and Ms.

P.35

White poll official James Ellis initiated new procedures for assistance of black voters. Without notice to any person, Mr. Ellis required assistors accompanying voters into the polling place to remain 30 feet outside the polls until Mr. Ellis had finished interviewing the voter and summoned the assistor.

Pp. 36-37.

Poll officials who assisted black voters did not read the ballot to the voters or otherwise advice the voters of the contests and the candidates. They simply asked the voters, "Who do you want to vote for? (*sic*)"

Testimony of Barry Weinberg, House Hearing, Nov. 15, 2005, at 49-50.

- As evidence of this persisting discrimination, I would like to highlight a recent voter referenda campaign to remove discriminatory language from Alabama's 1901 Constitution. This effort was unsuccessful and thus, illustrates the racial challenges that continue to exist in Alabama. On November 2, 2004, voters defeated referenda that would have removed language requiring the racial segregation of schools, struck language inserted in 1956 as part of Alabama's massive resistance to federally imposed desegregation, and repealed the state's poll tax provisions. Despite the fact that well-settled Supreme Court precedent has rendered these state constitutional provisions unenforceable, and despite support on the part of the state's Republican Governor and other key leaders around the state, the referenda failed. *Supplemental Written Testimony of Fred Gray, Senate Hearing, May 17, 2006.*

- Alabama still suffers from severe racially polarized voting. Only two African Americans have ever been elected to statewide office: the late Oscar Adams and Ralph Cook to the Alabama Supreme Court. *Testimony of Fred Gray, Senate Hearing, May 17, 2006, at 8.*

- Racial discrimination in voting has persisted in Alabama since the reauthorization of the Act. Let me give you a few examples.

  In Selma—the birthplace of the Voting Rights Act—the Department of Justice objected to redistricting plans as purposefully preventing African Americans from electing candidates of choice to a majority of the seats on the city council and county board of education.

  Another example: The Department objected to Alabama Legislature's 1992 congressional redistricting plan on the ground that fragmentation of black populations was evidence of a "predisposition on the part of the State political leadership to limit black voting potential to a single district."

  Another example: In 1998, the Department objected to a redistricting plan for Tallapoosa County commissioners on the ground that it impaired the ability of black voters to elect a candidate of choice in order to protect a white incumbent.

  In 2000, the Department objected to annexations by the city of Alabaster which would have eliminated the only majority black district, demonstrating that the boundary manipulations of *Gomillion* are not a relic of the past, but is still presently in existence in our State.

  Testimony of Fred Gray, Senate Hearing, May 17, 2006, at 9-10.

- I gave about seven or eight examples of situations which have occurred in Alabama from, say, 1990 through 2000 where we are still having real serious problems, where there have been objections. *Testimony of Abigail Thernstom, Senate Hearing, May 17, 2006, at 39.*

ALASKA

Voting Rights Lawsuits/Enforcement

- During the last redistricting cycle, the Alaska Redistricting Board took special care to preserve existing "Native Districts"–districts which provided Native voters the opportunity to elect the candidates of their choice. The board hired an expert, Lisa Handley, to determine whether the legislative plan it proposed complied with Section 5, and she concluded that it did. *National Commission on VRA Report, at 57.*

Statistics

- In 2003, Native Americans composed 19% of the population in Alaska. *National Commission on the VRA Report, at 43.*

- There are seven Alaska Natives in the 67-member state legislature, but all of Alaska's U.S. Senators and Congressmen are white. *National Commission on the VRA Report, at 45.*

- Native Americans composed 13.7% of Alaska's voting age population in 2000. *National Commission on the VRA Report, at 45.*

- When unequal educational opportunities and lack of English instruction is combined with the absence of language assistance, it results in significantly depressed voter registration and turnout among the four covered language minority groups. The "largely monolingual elections in Alaska have clearly impacted Alaska Natives' ability to exercise their right to vote," resulting in voter turnout that trails statewide turnout by nearly seventeen percent. *Supplemental Written Testimony of John Trasvina, Senate Hearing, June 13, 2006, at 4.*

- The "largely monolingual elections in Alaska have clearly impacted Alaska Natives' ability to exercise their right to vote," resulting in voter turnout that trails statewide turnout by nearly seventeen percent. *Supplemental Written Testimony of John Trasvina, Senate Hearing, June 13, 2006, at 116-117.*

Anecdotal Evidence

- Voting rights advocates in Alaska believe that the Act is vital in protecting Native interests. Native Alaskans for Fair Redistricting, a coalition seeking the implementation of "an equitable redistricting plan that will serve to provide the best representation to Alaskan voters," was involved in the 2001 redistricting process. This group worked with Alaskan Native leaders to ensure compliance with the Act. According to Myra Munson, an attorney for Alaskans for Fair Redistricting, overall the Act "has had the effect of causing all parties to consider the need to protect Native districts in a way they might ignore" if the state were not covered. "This is important since it means substantial areas of the state are protected prior to the more partisan wrangling that occurs regarding the rest." *National Commission on VRA Report, at 57.*

- Although there are no formal barriers to registration such as literacy tests, there are still barriers. Alaska continues its practice of English-only elections, adversely impacting the ability of Alaska Natives to exercise their right to vote. Alaska only provides registration materials printed in English and many Alaska Natives find the English-only ballot language confusing. Further, Alaska has a re-registration requirement that disproportionately affects Alaska Natives, who are the most mobile segment of the population. *Voting Rights in Alaska 1982-2006 (renewthewra.org), at 5.*

- Nick Jackson, an Elder from Gulkana, and Elmer Marshall from the Native Village of Tazlina, both of which are in the Valdez-Cordova census area, said that the ballot language was confusing. They "make it sound like you vote for it when you're voting against it." Furthermore, Marshall indicated that "Elders vote it wrong because it's confusing." Several other Elders complained that it was hard to understand what they were voting for on ballot initiatives. Many Alaska Natives are clearly at a disadvantage in the English-only elections. *Voting Rights in Alaska 1982-2006 (renewthewra.org), at 27.*

- In interviews conducted with Alaska Natives in October 2005, several residents located within one of the fourteen 203-covered jurisdictions in Alaska indicated that assistance was

not available in their Native language. According to a ninety-one-year-old Elder from Beaver, Alaska, who was raised speaking Gwich'in, "Everybody when I was a child growing up [. . .] talk Gwich'in, nobody talk English." Now, however, the Elder says the poll workers in Beaver speak only English. Similarly, Lillie Tritt, a seventy-four year-old from Venetie, said that no poll workers in her nearby village of Venetie speak Gwich'in. Sidney Huntington, a ninety year-old from Galena, indicated that the poll workers in Galena do not speak the Native language. Nick Jackson and Elmer Marshall indicated that there was no one in Gakona, Glennallen, or Copper Center (the three nearest polling places to their villages) who spoke their Native language. Susanna Horn of St. Michael said the election supervisor in her polling place "doesn't know any Eskimo words" even though he is a Yup'ik Eskimo. *Voting Rights in Alaska 1982-2006 (renewthewra.org), at 32.*

- In addition, the Alaskan electorate has shown itself to be unsympathetic to language minority rights: in 1998, a constitutional amendment passed two to one to require the government to conduct official business in English. Although this initiative was ruled unconstitutional in 2002 because it violated the free speech guarantees of the Alaska Constitution, the state then moved to sever the policy portion of the law from the implementing provisions. In other words, the state asked the court to preserve the policy that English is the official language of the state of Alaska. The Alaska Supreme Court is considering whether the policy alone can be severed and preserved. Such a policy could of course interfere with the State's obligation to provide minority language assistance under the VRA. Indeed, the proponents of the English-only measure specifically opposed printing forms and materials in multiple languages, arguing "millions of taxpayer dollars are wasted on such programs." *Voting Rights in Alaska 1982-2006 (renewthewra.org), at 29.*

- Not only does the statistical evidence show a need for language assistance, we now know that the English ballot is actually interfering with the exercise of the right to vote. This is evidenced by the fact that many people have stated that because they did not understand the English ballot, they voted in a way they did not intend. In 1995, 18 non English-speaking Inupiat sued the City of Barrow claiming that the absence of written materials in Inupiaq led them to ask for assistance; the poll workers allegedly offered incorrect personal explanations, advice about how to vote, and differing interpretations of the initiatives. As a result, these individuals who had intended to vote to ban alcohol in the city unintentionally voted to lift the ban on alcohol. While this was the only lawsuit brought, this has happened elsewhere as well. Ironically, it also occurred during the referendum on an 'English only' constitutional amendment, and it led many Native language speakers to vote for an amendment requiring them to use only English. Thus, oral assistance is not only insufficient under the law but it is also insufficient in fact. Yet there has been no enforcement of the minority language provisions in Alaska. *Written Testimony of Natalie A. Landreth, Senate Hearing, May 10, 2006, at 2.*

- In conclusion, although Alaska finally abolished the English literacy requirement for voting in 1970, it still provides English-only elections; this is the functional equivalent of a literacy test. Yet a significant segment of Alaska's population speaks an indigenous language and does not understand the ballot. In other words, because of Alaska's non compliance with the minority language provisions, a non English-speaking indigenous population is subject to

English-only elections. *Written Testimony of Natalie A. Landreth, Senate Hearing, May 10, 2006, at 3.*

- [In Alaska] [r]esidents of nearly 200 Native villages accessible only by plane live in abject poverty, have high unemployment rates, the lowest levels of education, and a high level of limited-English proficiency that impair their ability to participate in elections. There is substantial non-compliance with Section 203, including lack of oral language assistance, no voter outreach, and the absence of language assistance by telephone. *Supplemental Written Testimony of John Trasvina, Senate Hearing, June 13, 2006, at 106.*

- [Alaska Natives] This enduring but disadvantaged population speaks about 20 different indigenous languages. Yet it is a well-known fact that Alaska does not provide ballots or election materials in any languages other than English and Tagalog out in Kodiak Island. Yet all of Alaska is covered by 4(f)(4) and 14 census areas are also covered by 203. The Native population still meets or exceeds all the population and illiteracy benchmarks set forth in the VRA. Yet Alaska provides nothing more than intermittent oral assistance upon request. *Testimony of Natalie A. Landreth, Senate Hearing, May 10, 2006, at 42-43.*

- We now know also that the English ballot is interfering with the exercise of the right to vote. For example, in 1995, 18 non-English-speaking Inupiat sued the city of Barrow claiming that the absence of written materials in Inupiaq and the absence of a standardized oral translation led them to vote the wrong way. A class of elders wanted to vote to institute an alcohol ban to protect the children being born in the village, and because they did not understand a single-sentence ballot measure in English, they accidentally voted to repeal that measure. *Testimony of Natalie A. Landreth, Senate Hearing, May 10, 2006, at 42.*

- While the Alaska Supreme Court approved the redistricting plan put together after the 1990 Census, the astute staff of the Department of Justice caught a retrogressive district called District 36 that showed evidence of racially polarized voting that actually reduced the Native voting age population. *Testimony of Natalie A. Landreth, Senate Hearing, May 10, 2006, at 44.*

- One of the aspects that has been discussed is the burdensome requirement of having to submit paperwork for preclearance for simple things such as a polling change. In Alaska, that is an incredibly big deal, because if you move a polling station in a community that does not have cars and operates by snow machines or walking in 10 below weather in November, you may actually disenfranchise an entire community. *Testimony of Natalie A. Landreth, Senate Hearing, May 10, 2006, at 59.*

- We have had some of that situation in Anchorage, where they move polling places out of very poor places in Anchorage, and most of the folks could not get time off of work to go to the new polling station, so there are examples of even something like that that another jurisdiction with adequate transportation and adequate systems established would be very ministerial and seem unimportant. In Alaska it is actually

an incredibly important aspect of preclearance. *Testimony of Natalie A. Landreth, Senate Hearing, May 10, 2006, at 59.*

- And the fact is that these are indigenous American citizens, who don't understand the English ballot to such a degree--and here is a perfect example--they didn't understand to such a degree that they actually voted for an English-only law in Alaska, that was then subsequently struck down by our Supreme Court because they had no written translation, and the poll workers simply told them, "Just vote yes." *Testimony of Natalie A. Landreth, Senate Hearing, May 10, 2006, at 62.*

- A ninety-one year old woman, an Elder from Beaver, Alaska, was raised speaking Gwich'in. According to her, "everybody when I was a child growing up [...] talk Gwich'in, nobody talk English." Now, however, she says the poll workers in Beaver only speak English. Similarly, Lillie Tritt, a seventy-four year-old from Venetie said that no poll workers in her near by village of Venetie speak Gwinch'in. Sidney Huntington, a ninety year-old from Galena, indicated that the poll workers in Galena do not speak the Native language. Nick Jackson, an Elder from Gulkana, and Elmer Marshall from the Native Village of Tazlina, both of which are in the Valdez-Cordova Census Area, indicated that there was no one in Gakona, Glennallen, or Copper Center (the three nearest polling places to their villages) who spoke their native language. Susanna Horn of St. Michael said the election supervisor in her polling place "doesn't know any Eskimo words" even though he is a yup'ik Eskimo. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 30.*

- In some states, such as Alaska, election officials placed insufficient postage on absentee ballots. Over 65% of calls on Election Day from Alaskan voters to the Election Protection hotline were complaints regarding absentee ballots that were never received. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4638.*

ARIZONA

Voting Rights Lawsuits/Enforcement

- In Arizona, the Department of Justice has objected to four statewide redistricting plans since 1982 because of their discriminatory impact on language minority citizens, including one in the 1980s, two in the 1990s, and one in 2002. Since 1982, more than 1200 federal observers have been deployed to Apache, Navajo, and Yuma Counties, identifying substantial non-compliance in the availability and quality of language assistance to American Indian and Latino voting-age citizens. In 1989 and 1994, the Department of Justice brought successful cases against the State of Arizona and Apache, Coconino, and Navajo Counties for denying American Indian voters access to the political process, which continued to be a problem as recently as 2002. Indeed, just last week the DOJ brought a Section 203 case in Cochise County, Arizona where a consent decree is currently before the court. *Adegbile, Debo. Written Testimony. SENATE VRA Hearing. 6-21-06 p. 22.*

- Since 1982, DOJ has objected to four statewide redistricting plans [in Arizona] because of their discriminatory impact on language minority citizens, including one in the 1980s, two in the 1990s, and one in 2002. Over 80 percent of all Section 5 objections in Arizona have occurred since 1982. DOJ has interposed objections to discriminatory voting changes in nearly half of Arizona's counties since the last reauthorization. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06 p. 106.*

- In 2002, the Department of Justice objected to Arizona's state legislative redistricting plan because it fractured Latino voters and reduced Latino voting age population in five districts below their 1994 benchmarks, despite the growth of the state's Latino population and the ability to draw three compact majority-Latino districts. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. p. 106.*

- In 1985, the Department of Justice objected to voting changed proposed by the Apache County [Arizona] Board of Supervisors including: the elimination of two polling places; the implementation of a rotating polling place system; and a reduction in the daily hours of operation for those voting stations that remained open. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. p. 10.*

- In June, 2006, Cochise County, Arizona acknowledged non-compliance with Section 203 and entered into a Consent Decree with the Department of Justice to cure those violations. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. p. 107.*

- United States v. State of Arizona (D. Ariz. May 22, 1989) (amended Sept. 27, 1993) (No. 88-1989-PHX EHC): The State of Arizona and Apache and Navajo Counties continue to be under a federal consent decree entered in 1989 and amended in 1993 that addresses the State's failure to provide adequate language assistance and equal voting opportunities to American Indian voters. In response, the State and counties agreed to comprehensive relief to bring them into compliance with Sections 2, 4(f)(4), 5, 203, and 208 of the Voting Rights Act. They subsequently failed to do so, as noted by the Department of Justice in a report prepared after the November 2002 general election. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. p. 103.*

Statistics

- In Arizona, Native Americans composed 6 percent of the state's population and 78 percent of the population in Apache County. *National Commission on the VRA, at 9.*

- In Arizona, where Native Americans composed about 6 percent of the population, they made up approximately 78 and 30 percent, respectively, in Apache and Coconino Counties. *National Commission on the VRA, at 43.*

- In Arizona, American Indian voters in the 2004 presidential election, compared to the statewide turnout of 76 percent. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. p. 4.*

- In Arizona, American Indian turnout remains low, comprising just over 54 percent of all registered American Indian voters in the 2004 presidential election, compared to the statewide turnout of 76 percent. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. p. 117.*

Anecdotal Evidence

- The[] [Navajos] weren't able to read the ballot. They weren't able to understand the ballot. Things were posted in the newspapers by statute, but they couldn't understand them, and that's definitely a disadvantage to someone who is not only maybe language non-speaking, but very language limited as far as even in their cultural, their native language. They don't read Navajo a lot of them.

  And so it is a verbal language. *Testimony of Barry Weinberg, House Hearing, Nov. 15, 2005, at 61.*

- Proposition 200, a popular Arizona referendum passed in 2004, requires anyone registering to vote to present proof of citizenship, and anyone voting must present a photo identification or two pieces of identification with the voter's name and address. According to election officials, these requirements will prevent "thousands" of citizens from voting. *National Commission on the VRA, at 41.*

- "One of the things that I would like to stress is that in my belief Section 2 and the 14th Amendment are sufficient tools to deal with the issues that are before a number of states, including Arizona, today. I have worked on several Congressional and legislative redistricting actions. As the chairman said, one in the 1980s, I think 1982, and one that started in 2001, and is still going, and may be going until I retire from the practice of law." *Paul Eckstein, Testimony at National Commission on VRA Southwestern Reg'l Hearing., House Hearing. 290 (Oct. 18, 2005).*

- "Arizona should never have been added to the list of states covered by section 5 of the Voting Rights Act – when it was added in 1975 – Arizona was added in 1975 because of an amendment that Congress had adopted that said a voting test included the language in which five percent of the people, other than English, five percent of the people spoke. To wit, Spanish. And in a state where more than 50 percent of those who were registered to vote – were not registered to vote, … Arizona was such a state, in 1975. But Arizona is not such a state today. I don't deny there are innumerable injustices that go on every day in this state. There are major and minor slights, and they need to be dealt with. Oftentimes through courts. Sometimes through the political process. But Section 5 is too blunt a tool…." *Paul Eckstein, Testimony at National Commission on VRA Southwestern Reg'l Hearing., House Hearing. 291 (Oct. 18, 2005).*

- "[T]he Justice Department, which can ... decide that there need to be more of a particular minority group. And that's typically the way it is manipulated. And we saw that in the Supreme Court case of Georgia versus Ashcroft, where the Justice Department insisted in its pre-clearance procedures under Section 5 that there be a higher percentage of African-Americans in certain districts. And when the Supreme Court looked at it, they said no. ... The bodies that do the redistricting, in some states legislatures, and in Arizona the independent redistricting commission, and in other states commissions like Arizona, can and often do use the Voting Rights Act as an excuse to pack, and that is an acceptable word and it is a word that people who do this understand very well, although they would deny it, minorities into certain groups so as to limit their influence. ... That happened in Arizona, in the 2001, 2002 redistricting. It happened with district 23. ... [L]egislators are looking out for their self-interest, candidates can say and often do say, look, the Voting Rights Act requires that people in my district be able to elect representatives of their choice. I'm their representative. Let me tell you, I need 60 or 70 percent to get elected." *Paul Eckstein, Testimony at National Commission on VRA Southwestern Reg'l Hearing., House Hearing. 296-97 (Oct. 18, 2005).*

- "Recent examples of measures with a discriminatory effect on language minority voting-age citizens illustrate the continuing need for the Voting Rights Act in Arizona:

  In November 1988, Arizona voters approved an "English as the Official Language" amendment that was struck down by the Arizona Supreme Court under the First and Fourteenth Amendments because of the barriers it created for Spanish and American-Indian speaking citizens and their representatives [*Ruiz v. Hull*,].

  In 2000, Arizona voters adopted Proposition 203, banning bilingual education in public schools to the detriment of tens of thousands of English Language Learner (ELL) students.

  In 2004, Arizona voters adopted Proposition 200, which has made it increasingly difficult for voting-age citizens, particularly elderly American Indian voters, to register or vote because of lack of requisite documentation including birth certificates and other federal or state forms of identification."

  Voting Rights in Arizona 1982-2006, 4 (renewthewra.org).

- "Denial of equal educational opportunities has resulted in high failure rates among Latino and American Indian students on state-mandated graduation tests. On national testing, more than 60 percent of all Latino and American Indian students score below grade level .... Arizona has inadequate English as a Second Language (ESL) and adult ELL courses to help bridge the language gap." *Voting Rights in Arizona 1982-2006, 5 (renewthewra.org).*

- "The office for voter outreach in District 1 of Arizona's Apache County is located in a double-wide trailer near the small town of Ganado, off of one of the only paved roads on the Navajo Reservation. Four the past four years, Matthew Noble has worked from his small office inside, seven days a week, to try and spread news about upcoming elections and ballot proposals to the district's residents. The position he holds has existed since 1993, after a

consent decree in 1988 required that Apache County invest in a voting outreach office. That decree expired years ago. The requirement from the decree expired in 1995, but the office continued to be run by Noble's father, Harold. Since 2002, when Matthew took over, the office has been moved around at the whim of the county's elected officials. The office has been re-located several times in the past few years, including a stint at a local public school. Such treatment, in addition to a severe lack of funding, indicates to Matthew that outreach is not a priority of the current administration in Apache County. "If it weren't for the Voting Rights Act, we'd be gone," Matthew says. He says he feels like an outsider, a feeling that is amplified by the fact that the county hasn't even given him a set of keys for the office he works in." *Voting Rights in Arizona 1982-2006, 22 (renewthewra.org).*

- "The biggest problems ... relate to Proposition 200. Even filling out the new elections form's portion on address proves problematic for the Navajo. The closest word for address in Navajo means 'place in which you pick up your mail.' Unfortunately for those registering to vote, the place in which many Elderly Navajo pick up their mail is different from what the form requires, which is physical address. If the Elderly are made to understand what is being asked of them, their actual physical address may be miles from any official roads and be hard to draw. In addition to the address issue, many Elderly Navajo do not have any of the accepted forms of identification. Most are without driver's licenses, and because many were born outside of state hospitals, they do not have birth certificates. While some do have tribal identification cards, those who do not often have no other acceptable form to allow their votes to be counted. Finally, the passage of Proposition 200 may exacerbate a problem that already exists. One of the biggest challenges Matthew and Virgil face is finding enough poll workers to keep polling places running efficiently on voting days. Even when they do have large turnouts of translators for the training days before elections, they do not have enough funding to pay for all of the poll workers needed. Moreover, many of the trainees fail to show up on election days. This problem has been somewhat alleviated by the distribution of audio tapes to polling places, but sometimes even these fail to show up when appropriate. " *Voting Rights in Arizona 1982-2006, 23 (renewthewra.org).*

- "Anderson is fluent in Navajo, but also speaks English, so she rarely has a problem voting, though she does say that a lack of personnel at the polling places leads her to believe that it would be hard for anyone who didn't speak English to vote in Apache County." *Voting Rights in Arizona 1982-2006, 26 (renewthewra.org).*

- "Tsosie votes at a precinct combining the Ft. Defiance and Window Rock areas, which leads to long lines. While voters stand in line to get to the polls, they are frequently yelled at by supporters of propositions or candidates, who are technically breaking the law, but are never stopped. The wait can take hours, she says, especially since more young people have started to turn out to vote." *Voting Rights in Arizona 1982-2006, 26 (renewthewra.org).*

- "'They translate the ballots into Navajo,' she says. But people who only speak Navajo usually don't know how to read it' .... The polling places themselves are often problematic, too, she says. Precincts change without much notice, and during the last election, Reeder didn't even vote after spending hours waiting in lines, only to be told she was at the wrong

place. Troublesome roads also prevent people from coming. " *Voting Rights in Arizona 1982-2006, 27 (renewthewra.org).*

- "It appears that the lower percentage of Hispanic voters who reported bringing someone with them to assist in voting may be because they believed they would be able to obtain language assistance at the polls, as is required by Section 203. Many of these voters reported that assistance was not available to them in Maricopa County. " *Voting Rights in Arizona 1982-2006, 37 (renewthewra.org).*

- "In 2002, the DOJ objected to an Arizona plan for statewide redistricting which would have diminished the districts where Hispanics could elect their candidate of choice for eight districts to five districts." *Written Responses of Anita Earls to Senator Leahy, Senate Judiciary Committee VRA Hearing, 6/16/06 at 5*

- "For example, where federal observers are not present, I have personally noted that officials fail to post proper signs inside polling sites; incorrectly translate election-related materials; rush voters who are casting ballots; and fail to make assistance available to those disabled or elderly voters who require it. In addition, I have also taken note of a number of elections in which voters were forced to seek or obtain their own language assistance where none was made available by the jurisdiction. Often, voters were unable to cast their ballots because they could not identify someone who could provide an effective oral translation of the English ballot." *Written Testimony of Alfred Yazzie, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 p. 9-10*

- "I have also witnessed a number of elections in which language assistance was inadequate, incorrect or incomplete. Poor quality language assistance does not enable voters to effectively cast their ballots. For example, I have witnessed a number of instances in which the person designated to provide assistance failed to translate from English to Navajo the candidate's partisan affiliation, or the office that the candidate is running for. Although all other information on the ballot may be appropriately translated, exclusion of this relevant information does not give the voter the opportunity to cast a meaningful ballot. I estimate that approximately 50 percent of Navajo voters who require language assistance in order to vote would not understand the English words for party designations and political offices." *Written Testimony of Alfred Yazzie, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 p. 10.*

- AZ: .... Two Navajo ladies were not given real assistance when they arrived at the wrong voting station .... Navajo Vote was approached by the "election inspector" who asked them to show a letter of introduction from a supervisor. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4663.*

CALIFORNIA

Voting Rights Lawsuits/Enforcement

- In *Lopez v. Monterey County*, the court noted that seven different voting changes relating to electing judges in Monterey County, California, between 1972 and 1983 were not submitted for preclearance until the county and the state of California were compelled to do so as a result of litigation in the 1990s. *National Commission on the VRA Report at 53.*

- Monterey County, one of four Section 5 covered counties, refused to submit any of its ordinances for preclearance and did not do so until ordered by a federal court. [*Lopez v. Monterey County*, 525 U.S. 266 (1999)]. *Supplemental Written Testimony of John Transvina, Senate Hearing, June 13, 2006, at 107.*

- In March 2002, the Department of Justice found that Chualar Union school district elections from district to at-large "was motivated, at least in part, by a discriminatory animus," and that it had a retrogressive impact on Latino voting strength. *Supplemental Written Testimony of John Transvina, Senate Hearing, June 13, 2006, at 107.*

- In 2003, the Department of Justice obtained a TRO to stop at least seventeen instances in which Monterey County was moving polling places to limit Latino voting access. *Supplemental Written Testimony of John Transvina, Senate Hearing, June 13, 2006, at 107.*

- The Department of Justice has brought eight successful language assistance cases in California on behalf of Asian American and Spanish speaking voting age U.S. citizens including six since 2004. *Supplemental Written Testimony of John Transvina, Senate Hearing, June 13, 2006, at 108*

- [I]n Monterey County, California, the Board of Supervisors had submitted a plan for redistricting that had to be submitted for Section 5 preclearance. And as a result of Section 5, we were able to prevent the implementation of a plan that was going to divide and fragment a politically cohesive minority community.

  And, in fact, just on Cinco de Mayo of this year, we had a letter of objection that was issued by the Attorney General against the North Harris, Monterey County Community College District because there was a reduction in voting places. It went from 84 polling places to 12 polling places, and clearly this had a dramatic impact on voter participation in that community college district. And the Attorney General issued a letter of objection.

  In that particular submission to the Department of Justice, it was consolidated down to 12 voting precincts from 84, and each of the newly consolidated voting precincts in the non-minority area, where you had the least number of Latinos, it was 6,500 voters. In the more heavily concentrated Latino voters in that district, you had 67,000 voters. That is a dramatic impact.

  Testimony of Joaquin Avila, Senate Hearing, July 13, 2006, at 33- 34.

Statistics

- Los Angeles county multilingual voter requests have increased from 6,227 in 1993 to 135,129 through August 2005. Most of the requests have come from Latinos, followed in number by Chinese and Koreans. *National Commission on the VRA Report at 72.*

- In San Diego County, California, Spanish and Filipino registration were up by over 21 percent, and Vietnamese registration was up over 37 percent, within 6 months following our enforcement efforts. *Testimony of Wan Kim, Senate Hearing, May 10, 2006, at 10.*

Anecdotal Evidence

- [LA in March 2005]. [S]ome 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.

  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.

  Jim Boulet, Jr. and Peter Weyrich, "Without Our Consent: Abuses of Billingual Voting Statutes in the New Millennium", House Hearing, March 8, 2006, at 2802.

- Joaquin Avila, a noted voting rights attorney, law professor, and former MacArthur fellow, addressed racially polarized voting during his testimony at the Commission's Western Regional hearing. He attributed the under-representation of Latinos at the local level—on city councils, school boards, and governing bodies of special election districts in California—to "the pernicious effects of racially polarized voting in at-large methods of election and to the absence of effective enforcement of the bilingual election provisions." *National Commission on VRA Report at 93-94.*

- CalTech historian Morgan Kousser, a longtime resident of Los Angeles County whose research—and much of his testimony as an expert in voting cases—has focused on the South, stressed some of the similarities between California and the South. As an example, he cited a suit decided in 1990 in which Los Angeles County was found to have racially gerrymandered its county supervisor districts to prevent the election of Latinos. "[T]here are instances like this," he said, "even in the enlightened state of California, where you have a history of . . . very important and powerful discrimination," Kousser noted, and then amplified his point: "It's also true in Monterey [County]. . . . When Californians think of Monterey County, they think of Big Sur, they think of Pebble Beach Golf Course, they think of Monterey Bay Aquarium. They don't think of the north county areas. They don't think of the terrible strikes that we've had, the long history of the farm worker—anti-farm worker—violence in Monterey County. They don't think of the degree of discrimination on the county level in drawing the supervisorial districts. It looks just like L.A. County and it looks

just like several southern counties and cities that I've worked in. Again and again, they drew boundaries to ensure that Latinos had no opportunity to elect candidates of their choice, and this went through the 1990s. And they abolished local courts to allow only the countywide Anglo-majority voters to elect, then, virtually all whites to the . . . judgeships." *National Commission on VRA Report at 94.*

- CalTech historian Morgan Kousser stressed that not all elections are polarized, pointing as an example to those in the Pasadena Unified School District, as well as to the statewide election for lieutenant governor won by the Latino candidate Cruz Bustamante. Nonetheless, he noted other example of racial polarization in statewide California contests. Kousser believes African American candidates draw the most white opposition, but that Latinos and Asians attract some, too. *National Commission on VRA Report at 94.*

- I remember my aunt, for the first time in California, this was a few years back, when she went to the polls, she called me right after she voted, and this was in Palmdale, Palmdale, California, and she said, you know, I was so humiliated, I voted, but I tell you what, I voted biting my tongue. ... She said, well, because I asked for assistance in Spanish, and because I heard them say, they may not know that I can understand, I may not feel comfortable speaking it, but they said: I'll bet you she's illegal. ... She was so heartbroken by this. Her original intent was never to go back to the polls. *Testimony of Shirlee Smith, National Commission on VRA Southwestern Reg'l Hearing., found in House Hearing, Oct. 18, 2005, at 285-86.*

- Yuba County, California, spent $17.411 for Spanish language ballot materials . . . despite the fact that the county's registrar of voters reported receiving only one request for voter information in Spanish during his 16 years on the job. *Testimony of K.C. McAlpin, House Hearing, Nov. 10, 2005, at 71.*

- California's Official Voter Information Guide for its November 8, 2005 statewide special election is 80-pages. It provides information on eight ballot measures, including a summary, 'pro' and 'con' arguments, a legislative and fiscal analysis, and the actual text of the ballot measures. This guide is written at a level of English that would present a challenge to native-born citizens . . . who are fully proficient in English, let alone a newcomer who has a basic level of fluency. *Testimony of Arturo Vargas, House Hearing, Nov. 10, 2005, at 203-04.*

- In California, the at-large method of election is the election method of choice in over 905 of all local government entities. There are about 3000 local government entities in California. The use of at-large elections and their potential dilutive effect on minority voting strength has been well documented. *Testimony of Joaquin Avila, National Comm on the VRA Western Regional Hearing, found in House Hearing, Nov. 10, 2005, at 3297.*

- Since 1982, there have been four letters of objection [to California jurisdictions] by the United States Attorney general...Two of the letters involved redistrictings of county supervisorial districts in Merced County and in Monterey County. In both of these instances the ultimate result was the election of a Latina/o candidate for the board of supervisors.

Testimony of Joaquin Avila, National Comm on the VRA Western Regional Hearing, found in House Hearing, Nov. 10, 2005, at 3302.

- Any doubt as to whether covered jurisdictions would revert to discriminatory methods of election once Section 5 preclearance was no longer required, was laid to rest with the attempted conversion fro ma district election system to an at-large method of election for the Chualar Union Elementary School District in Monterey County. The Department of Justice issued a Letter of Objection which prevented this conversion from occurring. *Testimony of Joaquin Avila, National Comm on the VRA Western Regional Hearing, found in House Hearing, Nov. 10, 2005, at 3303.*

- The Department of Justice found that the cover letter accompanying the petition to change the method of election contained language that was expressed in a tone that "...raises the implication that the petition drive and resulting change was motivated, at least in part, by discriminatory animus." *Testimony of Joaquin Avila, National Comm on the VRA Western Regional Hearing, found in House Hearing, Nov. 10, 2005, at 3303.*

- [I]n the *Lopez* litigation, the Supreme Court referred to voting changes, adopted by California and implemented by Montery County in the late 1960s, which as of 1999 had still not received the necessary Section 5 preclearance. *Lopez (II).* This record of non-compliance has been cited numerous times by the United States Commission on Civil Rights, by congressmen and witnesses in testimony when the Act was reauthorized in 1970, 1975, and 1982, by the Government Accounting Office and by Supreme Court precedent. Also as a result of independent reviews of voting changes in selected jurisdictions, the record demonstrates that non-compliance is a significant problem. For example, in Merced County, California, there are special election districts that have not submitted their annexations for Section 5 approval. *Testimony of Joaquin Avila, National Comm on the VRA Western Regional Hearing, found in House Hearing, Nov. 10, 2005, at 3305.*

- November 2000 general election, San Francisco County - Poll monitors witnessed a poll worker yelling at several elderly Chinese-American women, telling them, 'Get out!' The poll worker later explained that he was angry at an elderly Chinese-American voter who had brought a friend to help her vote. The poll worker mistakenly believe that it was 'illegal' to have someone other than a poll worker provide voting assistance. The elderly voter was turned away before she could vote. *Renewthevra.org, California Report at 40.*

- November 2002 general election, San Francisco County – A poll worker reported to the poll monitor that one voter left the polling place without voting because the voter was unable to communicate with the poll worker. The poll worker did not know that he could have called the language assistance line operated by the city of San Francisco's Department of Elections and obtained language assistance for the voter. *Renewthevra.org, California Report at 40.*

- November 2002 general election, San Francisco County – At a poll site with a large number of elderly Chinese-American voters who needed language assistance, the poll monitor observed a number of voters whose votes were not counted. These problems resulted from the Department of Elections failing to staff the poll site with a sufficient number of bilingual

poll workers. Many of the voters at the poll site struggled with the voting process, and the bilingual poll workers were overwhelmed and unable to help everyone who needed voting assistance. The poll inspector showed the poll monitor spoiled ballots on which voters had voted for the wrong number of candidates or checked the write in box with out entering a candidate's name. The poll inspector expressed frustration that some of these voters left the poll site before the poll inspector could ask them to complete new ballots, or left despite being asked because they could not understand his request. The poll monitor observed the poll site's optical scan machine rejecting many completed ballots. *Renewthevra.org, California Report at 4.*

- March 2000 primary election, Monterey Park, Los Angeles County – The inspector stated, 'The bilingual materials are a waste of time and money.' She pulled the bilingual materials out, but then put them back in the envelope. Ultimately, the poll monitor had to assist in laying them out. *Renewthevra.org, California Report at 41.*

- November 2000 general election, San Francisco County – A poll inspector complained that it was difficult to assist Chinese-American voters, stating his belief that they generally are ignorant about the voting process. The poll inspector told the poll monitor, "I guess they don't have free elections in their countries. We don't always have all this time to explain everything about free elections to them." *Renewthevra.org, California Report at 41.*

- November 2002 general election, San Francisco County – The poll monitor noted to a poll worker that the poll site lacked Spanish language voter information pamphlets. The poll worker responded, "If they don't speak English, then they shouldn't be voting in the United States of America." *Renewthevra.org, California Report at 41.*

- November 2000 general election, San Francisco County – A poll monitor observed a poll worker yell at a Chinese-American voter and take the voter's ballot away. The poll worker was frustrated that the voter, who was limited-English proficient, was not following his instructions. The voter left without casting a ballot. *Renewthevra.org, California Report at 42.*

- November 2004 general election, San Diego County – In the words of the poll monitor at one poll site, a poll worker talked to minority voters "as if they were children." *Renewthevra.org, California Report at 42.*

- November 2004 general election, San Mateo County – A poll worker questioned the competency of a voter to vote because of the voter's limited-English proficiency. *Renewthevra.org, California Report at 42.*

- Latina/o voters also encountered difficulties in securing bilingual oral assistance and did not find written voter information that would have enabled them to vote. *Renewthevra.org, California Report at 42.*

- A recent study of state and municipal elections in California between 1998 and 2002 found that there was "evidence of bloc voting in every race where a Vietnamese candidate is pitted

against a White candidate...But like African Americans and Latinos, they vote regularly as a bloc in order to protect the interests of their community against White majorities inclined to defeat them." *Supplemental Written Testimony of John Trasviña, Senate Hearing, June 13, 2006, at 101.*

- [C]ertainly in instances in San Diego County, for example, we found examples where election officials would ask for additional information about citizenship from people who seemed to be Hispanic. And those kinds of violations are often found in the kinds of cases that we bring under the Voting Rights Act. *Testimony of Wan Kim, Senate Hearing, May 10, 2006, at 12.*

- For example, during the 2004 elections, a precinct inspector at a polling place in Koreatown [in Los Angeles County] was documented to have given certain voters time limits and send [sic] one Asian Pacific American to the back of the line. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 1433.*

- Our experience in conducting voter education and protection programs has taught us that polling places serving precincts with a large share of ethnic voters are often more likely to suffer some form of deficiency affecting the ability of these voters to cast their ballot without undue burden. Voters in these precincts are more likely to:
    - Find that their polling place was relocated to a different facility.
    - Enter a polling place with an insufficient number of poll workers.
    - Enter a polling place that has not posted all the required materials regarding a voter's rights and information about the election.
    - Enter a polling place that has run-out the materials necessary to cast a ballot (e.g. marking pens, provisional ballots).
    - Find their name does not appear on the voter roster.
    - Enter a polling place that does have bilingual poll workers or provide materials in more than one language (other than English).

- As Judge Kozinski noted in *Garza v County of Los Angeles*, 'the record before us strongly suggests that political gerrymandering tends to strengthen the grip of incumbents at the expense of emerging communities. Where, as here, the record shows that ethnic or racial communities were split to assure a safe seat for an incumbent, there is a strong inference—indeed a presumption—that this was a result of intentional discrimination. *Testimony of Anne Lewis, House Hearing, Nov. 9, 2005, at 33.*

- In Los Angeles County, it is possible to create two supervisor districts each with close to a 50% Spanish surname registration rate. Yet, a substantial overrepresentation of Latinas/os in one supervisor district exits. In Monterey County, the last supervisorial redistricting served to fragment politically active and cohesive Latina/o communities in the City of Salinas thereby reducing the predominantly Latina/o city's political influence in selecting an additional supervisor...Although Latina'os in 2000 comprise about a third of the state's population, in 2004 there were 535 Latinas/os or 11% out of 4850 elected officials serving on local school boards and there were 357 Latinas/os or 14.2% out of 2507 elected officials

serving on city councils. *Testimony of Joaquin Avila, National Commission on the VRA Western Regional Hearing, found in House Hearing, Nov. 10, 2005, at 3296.*

- March 2004 primary election, Artesia, Los Angeles County – After the poll monitor discussed sample ballots with the poll inspector, the inspector said, 'One day I wish we can have all English,' motioning to the sample ballots with his hand. *Renewthevra.org, California Report at 42.*

- November 2004 general election, Monterey Park, Los Angeles County – When the APALC poll monitor surveyed the poll workers to ascertain which poll workers were bilingual, one of the poll workers responded, 'I speak English; this is America.'" *Renewthevra.org, California Report, Page 42.*

- November 2004 general election, Rowland Heights, Los Angeles County – The poll inspector talked slowly and loudly to elderly APIA voters. When two elderly APIA women made a mistake on their ballots and wanted assistance to get new ones, the inspector told them very loudly, 'Just stay there, just stay.' When asked about translated voter registration forms, the inspector replied that the forms were available in the 'American language.' When asked about hotline numbers for language assistance, the inspector replied, 'They're around here somewhere' and walked away. *Renewthevra.org, California Report at 42.*

- In 2003, Stockton California [in San Joaquin County] mistakenly transposed sections of separate Spanish translations of ballot questions that escaped the notice of proofreaders and resulted in a ballot question that made no sense. *Testimony of K.C. McAlpin, House Hearing, Nov. 10, 2005, at 73.*

- [I]n 1988, the Orange County Republican Party hired uniform security guards to be posted at polling places in heavily Latino precincts. The guards, wearing blue uniforms and badges, were removed from polling places after the chief deputy secretary of state said their presence was an 'unlawful intimidation of voters.' The next year, the Orange County GOP paid $400,000 to settle a lawsuit stemming from their voter intimidation program." *Testimony of Hon. Linda T. Sanchez, House Hearing, Oct. 18, 2005, at 53.*

- During the recent Special Election campaign there were charges of inaccuracies in the Spanish and Korean versions of the ballot proposition. The publication of those non-English language voting materials cost Orange County taxpayers $596,919 for the 2004 and 2005 election . . . . Of the 1.5 million Orange County voters, only 10,506 requested non-English ballots in the last election. That's 0.7% of the total voting population . . . . *Testimony of Chris Norby, House Hearing, Nov. 10, 2005, at 184.*

- March 2000 primary election, Santa Ana, Orange County – The poll inspector was ride and curt to voters, particularly young voters, and was also reluctant to help limited-English proficient voters. She inappropriately asked some young APIA voters for identification (California state law did not at the time and does not now require voters to show identification). The APLAC poll monitor heard the inspector comment, 'Everybody wants

to come to America and take what is ours – our land.'" *Renewthevra.org, California Report at 42.*

- In California, a U.S. Attorney's office randomly investigated voters who had requested Spanish and Chinese language voting materials, and arranged for the Immigration and Naturalization Service to crosscheck the voters' records with citizenship records. In response, California enacted Section 6253.6 of the California Government Code in 1982, which requires government officials to maintain confidentiality of the files of voters who have requested translated voting materials. *Voting Rights Enforcement & Reauthorization, U.S. Commission on Civil Rights at 1385-86.*

- On July 14, 2000, the Monterey County Committee on School District Organization submitted for preclearance a plan that would return the Chualar Union Elementary School District Board of Trustees from a district election system to an at-large election system…the DOJ denied preclearance because the school district had not met its burden of establishing that the proposed voting change would not have the purpose or effect of retrogression on Latino voting strength. The DOJ cited evidence both of the intent to retrogress minority voting strength and that the plan would in fact have retrogressive effect.

  The DOJ found evidence that the petition drive to make the change to at-large elections 'was motivated, at least in part, by a discriminatory animus.' The cover letter for the petition drive 'attacked the credibility of the trustees from that district, citing the language skills of one trustee and making unfavorable references to the language preferences of another.' The DOJ also found that 90% of the persons who signed the petition were non-Spanish surnamed people who lived outside the district.

  Finally, the DOJ determined that the proposed change would, in fact, have a retrogressive effect on Latino voting strength." *Prepared statement of Robert Rubin, National Commission on the VRA Hearing, found in House Hearing, 10/25/05 at 3325-26*

- "In August of 2003, Lawyers' Committee brought a suit on behalf of Latino voters seeking to enjoin the gubernatorial recall election that was to take place on October 7, 2003. *Oliverez v California, supra.* This suit was based on Monterey County's failure to obtain preclearance from the Department of Justice for the voting changes to precinct locations that were to be implemented in the special election.

  In order to accommodate the abbreviated election schedule, Monterey County sough to consolidate its voting precincts and otherwise reduce the number of polling places…

  The Plaintiffs noted at least 17 instances in which the proposed change in polling places would have a retrogressive effect on the Latino community…

  Based on the fact that these poling place reductions and other changes 'constituted changes in voting procedures within the meaning of Section 5 and that Monterey County had not complied with the Section 5 preclearance requirements, the district court issued a Temporary Restraining Order restraining the mailing of overseas ballots and issued an Order to Show

Cause why the County should not be restrained and enjoined from administering the special election until Section 5 preclearance had been obtained. Only after reinstating most of the polling places did Monterey County receive DOJ preclearance to conduct the special election."
Prepared statement of Robert Rubin, National Commission on the VRA Hearing, found in House Hearing, 10/25/05, at 3326-27

- "In the first case brought under the [California Voting Rights Act], *Sanchez, et al v City of Modesto et al*...Latino voters challenged the at-large election system for the Modesto City Council. Members of Modesto's City Council are elected by an at-large voting system, which along with a racially polarized electorate, has repeatedly resulted in a city council with no Latino representatives....Modesto also uses election practices, such as majority vote requirements and run-off elections, which have historically been considered devices for minority vote dilution. The suit against Modesto is currently on appeal to the Fifth Appellate District after the trial court upheld a facial constitutional attack on the CVRA.

  In the second case filed under the CVRA, *Gomez et al v Hanford Joint Union High School District et al*,...Latino voters challenged an at-large high school district election system. Under the at-large election system, the Hanford Joint Union High School District Board of Trustees has had no Latino representative among its five members in the last twenty years, despite the large and growing Latino population in the district, which is currently estimated at 38.6%

  ...

  The School District has agreed to settle the current lawsuit and convert to district elections. Pending Section 5 approval, the new election plan will include the creation of two Latino influence districts."
  Prepared statement of Robert Rubin, National Commission on the VRA Hearing, found in House Hearing, 10/25/05, at 3328-29

COLORADO

Anecdotal Evidence

- "In Colorado, in 1996, Latino voters won the creation of a Latino opportunity district in the southern portion of the state.

  And it took a lawsuit and a negative ruling by the trial court and finally an appeal to the Tenth Circuit Court of Appeals for the Latino voters in southern Colorado to win House District 60. Past voting discrimination against Latinos in this area of Colorado included: Voting registration branches being placed in Anglo homes, limited hours for farm workers to register to vote, and a system where Anglo county commissioners tapped their friends for election judge, resulting in an all Anglo election judge pool."

Nina Perales, Testimony at National Commission on VRA Southwestern Reg'l Hearing., House Hearing. 243 (Oct. 18, 2005).

- "HON. REBECCA VIGIL-GIRON: Dr. Ellis, do you think that it was not just the fact that they reorganized the Ute Nation or the Ute tribe as being resource rich that the 1965 Voting Rights Act had an impact and all of the provisions in it also had an impact, or were they treated any differently because Colorado recognized them as having these rights?

  "MR. RICHARD ELLIS: ... I really do think that the economic factor has probably been most important. ... So economics I think probably more than the, at least initially, with the Voting Rights Act."

  Richard Ellis, Testimony Submitted to the National Commission on the Voting Rights Act, House Hearing. 309 (Oct. 18, 2005).

- "Citing persistent efforts of whites and remove the Utes and expropriate their land, the court said '[i]t is blatantly obvious' that Native Americans 'have been the victims of pervasive discrimination and abuse at the hands of their government, the press, and the people of the United States and Colorado.' The evidence revealed 'a keen hatred for the Ute Indians and their way of life.'

  Anti-Indian attitudes persisted in Colorado and Montezuma County into the Twentieth Century. Communities surrounding the Ute Reservation 'treated Indians as second-class citizens. They were discouraged from attending public schools. Discrimination was rampant against Ute children. They were perceived to be unhealthy, unsanitary, and most of all, unwelcome.' The plight of the Ute Mountain Utes among Indian tribes was especially dire. In the 1960s 'there were only just over 900 tribal members and their infant mortality rate was so high that their death as a viable cultural group could be predicted.'"

  Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, at 133-134

- "The court also found 'a history of discrimination- social, economic, and political, including official discrimination by the state and federal government,' and a depressed socio-economic status caused in part by the past history of discrimination." *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, at 134.*

- 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. *Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 161 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)*

FLORIDA

Voting Rights Lawsuits/Enforcement

- ***Spencer v. Harris***, No. 4:00cv292-WS, Order of Aug 31, 2000 (N.D. Fla) (unpublished opinion affirming denial of preliminary injunction) (ACLU Rep., p. 70): In 1998 Florida enacted numerous election law changes. The changes made extensive use of the voter registrant's social security number, requiring disclosure of the last four digits on several documents related to registration and voting. The Attorney General approved many of the changes, including one that required the four digit number on the application for an absentee ballot, but the Attorney General objected to other sections, including four which involved absentee ballot procedures and the four digit SSNs. The objection was based on the cumbersome nature of the procedures and the statutory mandate to reject ballots if the procedures were not followed.

  One of the sections that was denied preclearance concerned the procedure for voting and returning an absentee ballot. Beyond requiring disclosure of the voter's four digit SSN on the return envelopes, a certificate had to be witnessed by a notary or an election official or a registered voter who had to place his or her voter registration number and other information on the return envelope. Failure to comply with these requirements could result in rejection of the ballot.

  Because Florida had begun implementing some of those changes in covered counties without preclearance, the AG was able to point to specific discriminatory effects. The AG found that 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." *Id.* at p. 71.

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  In the 1990s a voting rights suit was filed in Federal Court and a court decision rendered and then upheld by the 11th Circuit, which declared that at large elections to the Miami-Dade County Commission deprived minority voters of their right to representation. Now, there is a referendum to go before the voters to amend the County Charter to remove the executive powers of that Commission and give them to the County Mayor. A simple example of that impact will suffice for illustration of this impact. There are over 100 Advisory Boards and Committees in Miami-Dade County ranging from the Community Relations Board to the Hospital Trust. The mayor would be the sole selector of all these positions. This removes the ability of the current 4 Black, out of 13, total Commissioner to ensure that their constituents have a voice."

  Bradford Brown, Statement Submitted to National Commission on VRA, House Hearing. 142 (Oct. 18, 2005).

- In a case involving congressional and state legislative districts in Florida, a federal court found, based on nonpartisan, party primary, and general elections, that 'There is a substantial degree of racially polarized voting in south Florida and northeast Florida—the areas of the state involved in plaintiffs' claim of racial vote dilution.' [*Martinez v Bush* , 234 F. Supp 2d 1275, 1298-1299 (SD FL 2002)]. These findings applied to divisions between African Americans and non-African Americans and between Latinos and non-Latinos." *Testimony of Richard Engstrom. House Judiciary Committee, VRA Hearing, 10/25/05, at 60*

- *United States v. Osceola County* (M.D. Fla. 2006): A challenge to the at-large system for electing the county Board of Commissioners in violation of Section 2. [T]he federal court granted preliminary injunctive relief, finding that the United States had shown a likelihood of success on the merits that sustained racial bloc voting combined with the at-large system to dilute Hispanic voting strength. The court also found a likelihood of success on the merits that Osceola County adopted and maintained the at-large method of election with a discriminatory purpose. *Trasviña, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 101.*

- "Highlights of the consent decrees agreed to by Miami-Dade County following the 2000 election are instructive. The County agreed to an equitable distribution of laptop computers amongst polling places. This arose because the telephone access to check on registrations so individuals could be directed to the correct polling place was essentially non-functional while the Hispanic dominated western areas all had laptops with immediate access! The consent decrees go into significant detail in addressing this issue.

  Another agreement stated that a duly qualified official shall be stations at the end of the line at poll closing time so that every voter in line at that time would be given the opportunity to vote. The closure of polling places in 2000 arbitrarily eliminated persons who had been in line prior to the closing time. This problem of persons being in line took place in predominantly Black precincts as the increase in registrants and turn out brought numbers that the elections department was unprepared to handle. The lack of the laptops contributed to this. In the Hispanic areas they prepared for increases due to increases in persons becoming citizens etc. but not in the Black areas. The problem was exacerbated because of the failure to provide assistance in Creole and the prevention of persons taking someone into the polling place to assist them.

  The Elections Department also agreed not to place signs stating that a photo ID was required to vote. Photo IDs have been shown nationwide to be less frequently held by Black voters, particularly though who are low income, and Miami is noted as one of the poorest cities in the country.

  In addition equitable staffing and equipping of polling places was stipulated.

  ...education effort was also agreed to, and in 2004 that did take place. However it was not done fully in the manner I believe the consent decree called for, namely a specific effort involving the NAACP (named in the decree) and others to request specific input as per the decree, into any proposed changes.

Also not fully carried out in our opinion, were the efforts to contact persons who file incomplete registration forms and those who had been wrongly removed from the voting lists by the State of Florida in 2000 under the ruse of removing only ex-felons.

These examples indicate clearly the differential treatment of Black voters by the Miami-Dade County election operations. This consent decree ends May 15, 2005.

The consent decree with the U.S. Department of Justice was based on allegations that Creole speaking voters at several precincts were denied assistance from persons of their choice and that oftentimes the poll workers providing assistance did not speak Haitian Creole. Even where persons were allowed to bring someone to assist them that person was limited to being allowed to explain the sample ballot and not allowed into the polling booth. There are nine pages of specific agreements to address this issue. The decree ends on December 31, 2005. An issue of concern in the termination is the spreading out of the increasing Haitian population and the increasing number of individuals becoming citizens as the decree focuses on 'Haitian' precincts. The number of precincts with increasing Haitian voters is growing.

Of course it is recognizes that the consent decrees make no stipulation of guilt."

Bradford Brown, Statement Submitted to National Commission on VRA, House Hearing. 143 (Oct. 18, 2005).

- In a case involving congressional and state legislative districts in Florida, a federal court found, based on nonpartisan, party primary, and general elections, that "There is a substantial degree of racially polarized voting in south Florida and northeast Florida – the areas of the state involved in plaintiffs' claim of racial vote dilution" [Martinez v. Bush, 234 F. Supp. 2d 1275, 1298-1299 (SD FL 2002)]. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 59-60 (2005) (prepared statement of Richard Engstrom, Professor, The University of New Orleans).*

Statistics

- "...in the 2000 presidential election....it was mainly African-American citizens who were turned away. An estimated 1.9 million votes were discounted in the 2000 election. One million of those were cast by African-American citizens. Voting discrimination in the 2000 election is perhaps best illustrated by the state of Florida where African-Americans were nearly 10 times as likely to have their ballots rejected." Jonah Goldman, *Testimony submitted to National Commission on VRA Midwest Regional Hearing* 377 *(July 22, 2005).*

Anecdotal Evidence

- [In Miami, Florida] the three provisions to which DOJ objected placed heavy emphasis on literacy skills, ability to provide a Social Security number and a witness' signature. In reviewing these changes, DOJ had actual data showing that they disproportionately impacted minority

voters. DOJ's analysis "revealed that during the limited time the State chose to implement the non-cleared absentee voting requirements...the voters of minority electors would have been more likely than white voters to be considered 'illegal' and thus not counted." Further, "minority voters were more likely to fail to meet one of the State's new requirements than were white voters." *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 16.*

- The USCCR report also found that in central Florida, "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 widespread voter disenfranchisement of possible several thousand Spanish-speaking voters." *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 23.*

- Since 1980, the Hispanic population in Osceola County has increased from 2 percent of the total population to 29.4 percent of the total population. In 2002, DOJ filed suit against county officials, alleging that poll workers made hostile remarks to Spanish-speaking voters to discourage them from voting; poll workers failed to staff polling places with bilingual poll workers; and failed to translate written materials. DOJ and the county resolved the case by a Consent Decree, requiring the county to undertake a number of remedial actions. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 23.*

  - [I]n the *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. Poll workers denied the use of assistors to many voters, and when voting assistance was allowed, it was often limited to demonstrations of voting procedures outside of the voting booth. *Angelo N. Ancheta, Draft of "Language Accommodation and the Right to Vote" at 12.*

  - "In *DeGrandy v Wetherell* [794 F. Supp. 1076 (N.D. Fla. 1992)]...the three judge court noted that ' the results of Florida's legislative elections over the pats ten years established the presence of racially polarized voting.' The Court highlighted the impact that racially polarized voting had on minority success in Florida, including: the absence of African-American elected to Congress since the end of Reconstruction and only one Latino Congressman during that period; no African-American state senator until 1988. Relying upon this compelling evidence, the court observed, 'The approach of fracturing the African-American community in order to create influence districts does not further Congress's intent of completely remedying the prior dilution of minority voting strength and providing a meaningful opportunity to participate in the political process." *Written testimony of Theodore Arrington, Senate Judiciary Committee Hearing on VRA, 5/16/06, at 7*

  - Brad Brown, Political Action Chair of the Miami-Dade NAACP, spoke of political conflicts and polarization between Cuban Americans and African Americans (including Haitians) in that area of the Florida—conflicts in which, he said, the rights of African Americans were often ignored regarding ballot access. Department of Justice intervention has sometimes

been necessary, he said, to protect the rights of African Americans. Brown's testimony pointed to the phenomenon of polarization between two minority groups which sometimes occurs—a subject that has yet to be given the attention it deserves. *National Commission* on VRA Report, at 91.

- In a case involving a Florida statewide redistricting plan, the court stated: "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." *National Commission* on VRA Report, at 95.

- "Voting discrimination in the 2000 election is perhaps best illustrated by the state of Florida, where African-Americans were nearly ten times more likely as whites to have their ballots rejected." *Prepared Statement of Emanuel Clever, National Commission on the VRA, Midwest Regional Hearing, found in House Hearing, 10/25/05, at 3276*

- "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." *Voting Rights in Florida 1982-2006, 17 (renewthewra.org).*

- "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.' 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 widespread voter disenfranchisement of possibly several

thousand Spanish-speaking voters in central Florida'" *Voting Rights in Florida 1982-2006, 20-21 (renewthewra.org).*

- "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.' 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.' 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.'" *Voting Rights in Florida 1982-2006, 21 (renewthewra.org).*

- "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.

  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.'" *Voting Rights in Florida 1982-2006, 34 (renewthewra.org).*

- "According to news reports, Florida has more than 140,000 voters who apparently are registered in four other states (in Georgia, Ohio, New York and North Carolina). This includes almost 64,000 voters from New York City alone who are registered to vote in Florida as well." *Written Testimony of Mark Hearne, Senate Judiciary Committee Subcommittee on the Constitution, VRA Hearing, 7/10/06 at 3.*

- "The parties agree that racially polarized voting exists throughout Florida to varying degrees. The results of Florida's legislative elections over the past 10 years established the presence of racially polarized voting." [*DeGrandy v. Wetherell*, 794. F. Supp. 1076 (N.D. Fla. 1992), *aff'd in part and rev'd in part on other grounds, Johnson v. DeGrandy*, 512 U.S. 997, 1079 (1994)] *Trasviña, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 100.*

Broward County

- "Election officials that are often hard pressed to recruit sufficient numbers of English-speaking poll workers . . . are now being forced to search for bilingual poll workers or risk lawsuits by the Justice Department. As Representative Clay Shaw noted on the floor of the House, 150 Broward County . . . poll workers failed to report for work in the 2002 primary election." *K.C. McAlpin, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 70 (Nov. 10, 2005) (prepared statement)*

Palm Beach County

- "In 2004, the Justice Department ordered Briny Breezes . . . to print notices for a local election in Spanish, because the town happens to be in a county [Palm Beach] covered by Section 203. The Justice Department required this despite the fact that Census data showed that 98 percent of the town's residents are life-long U.S. citizens and 99 percent speak English 'very well.'" *K.C. McAlpin, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 70 (Nov. 10, 2005) (prepared statement)*

- "In light of the 2000 elections in Florida, it is absurd to argue that fraud does not exist in our electoral system. When thousands of voters were turned away from voting booths because of their race and their political affiliations and numerous ballots thrown out because they favored one candidate over another, how can we claim that there is no discrimination in the voting process?" *Rep. William Lacy Clay, Statement Submitted to the National Commission on the VRA,, House Hearing. 79 (Oct. 18, 2005).*

- One of the major problems that I found is that the poll workers themselves are no – either are not educated about what their responsibilities are or just fail to adhere to the rules because I've seen where the poll workers have denied Haitians from allowing them to bring their son or their daughter or their cousin to help them translate the ballot…You know, Haitians, again, they feel very intimidated by the entire process. They feel as though if someone questions them about how long have you been here, who are you voting for, they're going to naturally tend to shy away. There's not enough pre-election materials in Haitian Creole to inform them, this is the date that you're supposed to vote, this is the place where you're supposed to go." *Ms. Monestime, Testimony Submitted to the National Commission on the VRA, Florida Hearing 588, August 4, 2005*

- "In Miami-Dade County you saw similar concerns about where to park were posted in English and Creole, and you enter the polling place and the ballot itself was not available in Creole." *Mr. Strickland,, Testimony Submitted to the National Commission on the VRA, Florida Hearing 589, August 4, 2005*

- "The closure of polling places in 2000 arbitrarily eliminated persons who'd been in line prior to closing. This took place predominantly in black precincts as with the increase of registrants and turnouts brought members of the election department was unprepared to handle, the lack of laptops, again, and computers.

In Hispanic areas, they did prepare for the increase due to person becoming citizens, but not in the black areas. The problem was exacerbated in the Haitian area because of the failure to proved assistance in Creole and the prevention of persons taking someone into the polling place to assist them.

The election department as agreed not to place signs stating that a photos ID was required to vote, and again, as we've seen elsewhere, photo IDs are less frequent in low—income black areas and Miami is noted as one of the poorest cities in the county."

Dr. Brown,, Testimony Submitted to the National Commission on the VRA, Florida Hearing 608, August 4, 2005

- "In one early voting site in a predominantly Haitian area, spurious challenges were made concerning person giving assistance to voters, and held up voting so long that numerous persons left before voting. The Justice Department intervened and resolved this issue and the problem did not reoccur." *Dr. Brown,, Testimony Submitted to the National Commission on the VRA, Florida Hearing 609, August 4, 2005*

- "Sometimes language materials are not made available, people's understanding of their right as a voter, what ID requirements are provide since ID requirements was (sic) very disseminatorily enforced in Florida, those became a problem in election protection and other folks need to be able to get to the polling places to inform voters of their rights...[T]he Committee for Fair Elections, they talk about redistricting in Florida that may or may not be a good idea. When asked how can they ensure that voters' minority strength is not diluted, they simply say: We will comply with current federal law, which includes the Voting Rights Act.

  So those preventions are not there, that case level is away and it's important that those provisions be retained...

  We saw in 2004—excuse me. In 2004, there was a conscious effort to, along racial lines – well, I should say ethnic lines, to continue a suspect felony list that had many African-Americans that were included on the list, but to exclude Hispanic-Americans on the voting list who were also guilty of a felony...Of the 50,000 felons that do not have the right vote, about 80 percent of 40,000 still cannot continue to vote and there's all kinds of backlogs, and I'll send written materials on the statistics related to that. But that's a problem with folks having their rights restored and we know this traces back to the 1800s when African-Americans—attempts were made to keep African-Americans from voting."

  Reginald Mitchell,, Testimony Submitted to the National Commission on the VRA, Florida Hearing 612, August 4, 2005

- "Well, the [Jefferson County election secretary], as he as leaving told Reginald Barclay, who was coordinating the efforts, that he could not leave with the voters registrations that were filled out and he communicated to him that, you know, he could and this is what he would normally do and he proceeded to get in his car. And she called the sheriff. Then what

happened was that while driving, Reginald, along with three other young ladies, all under the age, I believe, or 24, were pulled over by three Jefferson County Sheriff's vehicles, handcuffed to the steering wheel... They released him actually with no apology, but just a threat, saying to him: Go straight—and they kept the registration cards, the registration material. Of course, [Reginald and the three women] were very, very nervous. That incident rattled him. It was the first time that those individuals have experienced anything like that. [The police] were very mean. [Reginald and the three women] were not treated well and it really put a negative image on the whole process in their mind." *J. Goodwille Pierre, Testimony Submitted to the National Commission on the VRA, Florida Hearing 617-618, August 4, 2005*

- "Felon disenfranchisement statutes were first enacted in 1868 and the long-term effect of the enactment has disproportionately affected the African-American community. In 1968, the Florida Constitution was re-enacted...From the beginning, felon disenfranchisement was well rooted in racism, the objective being to suppress the political power of newly freed slaves. In 1968, the law was re-enacted again to disenfranchise African-Americans right after newly won civil right were gaining foothold. Today Florida stand as only one of seven states who permanently disenfranchised felons.

  The impact on my community will lead to the dilution of the voting power of the African-American community in Florida."

  Monica Dula,, Testimony Submitted to the National Commission on the VRA, Florida Hearing 627, August 4, 2005

- "It should be made clear—it should be made clear that attempts to block the exercise of franchise through arbitrary photographic ID requirements and other mans of essentially reinstitution the old poll taxes and literacy test of the Jim Crow era should not be tolerated, cannot be tolerated, and violate these bedrock constitutional principles to which I already referred." *Mr. Turner,, Testimony Submitted to the National Commission on the VRA, Florida Hearing 638, August 4, 2005*

- "[T]he Department of Justice recently has filed a Section 2 vote dilution lawsuit against Osceola County, Florida and the case is not resolved yet but it was filed. As far as I know, there appears to be no settlement in the case. But the United States complaint makes the allegation that Osceola County had gone from a single-member district system electing its county commission to an at-large system.

  Now, if the county had been covered under Section 5, the odds are really pretty there would have been a Section 5 objection there had it been covered. But it was not covered and so now Section 2 is being used in order to challenge that at-large system as violating the Section 2 results test. But also there is the claim that it had a discriminatory purpose which, in this context, would be a retrogressive purpose. So that's an example of the kind of change that even under the Bossier 2 standard, it would, I think, be highly subject to Section 5 objection" *Mr. Kengle, National Commission on the VRA, Mid-Atlantic Regional Hearing, 897, October 14, 2005*

GEORGIA

Voting Rights Lawsuits/Enforcement

- Fourth-largest number of post-1982 § 5 preclearance objections occurred in Georgia. *National Commission* on VRA Report, at 3.

- In Georgia, most federal election observer coverages were in counties 40 percent or more nonwhite. *National Commission* on VRA Report, at 61.

- At least 50 Section 2 cases were resolved favorably to plaintiffs in the post-1982 period in Alabama, Georgia, North Carolina, and Mississippi. Georgia and North Carolina have numerous counties affected that are less than 40 percent black. *National Commission* on VRA Report, at 87.

- ***Busbee v. Smith:*** The state filed a declaratory judgment action in the District Court for the District of Columbia arguing that under the retrogression standard of Section 5 it was entitled to have its congressional reapportionment plan precleared. The Supreme Court had previously held that a plan that was either ameliorative or nonretrogressive could not violate the "effect" standard of the statute. The state, however, still had to prove that its plan was not the product of intentional discrimination. Julian Bond, a state senator at that time, introduced a bill at the beginning of the legislative session creating a Fifth District that was 69% black. The Bond plan had the support of two white members of the senate. But the leadership of the house rejected the Bond plan for the Fifth District. Based upon the racial statements of members of the legislature, as well as the absence of a legitimate, nonracial reason for adoption of the plan, the conscious minimizing of black voting strength, and historical discrimination, the District of Columbia court concluded that the state's submission had a discriminatory purpose and violated Section 5.

  The Supreme Court affirmed the decision on appeal. [Then] the general assembly in a special session enacted an apportionment for the fifth district with a black population exceeding 65% and the plan was approved by the court. John Lewis, one of the leaders of the Civil Rights Movement, was elected from the fifth district in 1986 and has served in Congress ever since. *ACLU Rep.,* 109-113.

- In Shaw v. Reno the Court held that white plaintiffs had standing to challenge a majority black congressional district in North Carolina, which they characterized as being "dramatically irregular in shape." [Later] in Miller v. Johnson, the Court invalidated the majority black Eleventh Congressional District in Georgia on the grounds that race was the predominant factor in drawing district lines, and the state had subordinated its traditional districting principles to race without having a compelling reason for doing so. *ACLU Rep.,* 114-115.

- ***Miller v. Johnson:*** In August 1991, the Georgia legislature adopted a congressional redistricting plan based on the new census containing two majority minority districts--the

Fifth and the Eleventh. A third district, the Second, had a 35.4% black voting age population. The state submitted the plan for preclearance, but the Attorney General objected to it. Following another objection to a second plan, the state adopted a third plan which contained three majority black districts, the Fifth, the Eleventh, and the Second. The plan was precleared on April 2, 1992. Following the decision in Shaw v. Reno, a lawsuit was filed by white plaintiffs claiming that the Eleventh Congressional District was unconstitutional. One of the plaintiffs was George DeLoach, a white man who had been defeated by McKinney in the 1992 Democratic primary. Although the Eleventh District was not as irregular in shape as the district in Shaw v. Reno, the district court found it to be unconstitutional, holding that the "contours of the Eleventh District . . . are so dramatically irregular as to permit no other conclusion than that they were manipulated along racial lines." The Supreme Court affirmed. It did not find the Eleventh District was bizarrely shaped, but it held the state had "subordinated" its traditional redistricting principles to race without having a compelling reason for doing so. The court criticized the plan for splitting counties and municipalities and joining black neighborhoods by the use of narrow, sparsely populated "land bridges." On remand the district court allowed the plaintiffs to amend their complaint to challenge the majority black Second District, which the court then held was unconstitutional for the same reasons it had found the Eleventh District to be unconstitutional, [and] the legislature adjourned without adopting a congressional plan.

Georgia refused to appeal the court's redistricting order. The intervenors and the United States filed notices of appeal, and the state switched sides and joined the white plaintiffs in defending the court ordered plan. The Supreme Court upheld the district court's remedial plan. In the senate, the black percentages in two majority black districts represented by whites were reduced from 62% to 43% and from 59% to 42%. In the house, the black percentages were reduced in 11 majority black districts. In District 141, the black percentage was lowered from 62% to 26%. In District 159, the drop went from 62% to 43%, and in District 178, the drop went from 63% to 27%. The plaintiffs in the congressional case filed suit challenging the 1992 legislative plan. The AG initially objected to the special session plan but withdrew the objection on Oct. 15, 1996. [Later] the parties settled the law suit agreeing upon a plan which reduced the number of majority black senate districts from 11 to 10 compared to the 1995 special session plan, and the number of majority black house districts from 33 to 30. Though the total number of majority black districts was reduced, the number of black caucus members at the beginning of the 1998 legislative term stood at 44, an increase of four compared to 1993.

ACLU Rep., 115-120, 124-25.

- Following the 2000 census, Georgia enacted redistricting plans for both houses of its legislature and congressional delegation and sought preclearance in the Federal District Court for the District of Columbia. The three-judge court precleared the house and congressional plans, but objected to three districts in the senate plan on the grounds that the state had not carried its burden under Sction 5 of proving that the reduction of the black voting age population would not have a retrogressive effect on minority voting strength. The state enacted a remedial plan, which increased the black population in the three senate districts at issue, and it was precleared. The state also appealed the decision denying

preclearance to its original senate plan. On appeal, the Supreme Court vacated and remanded because the three-judge court had not considered the existence of so-called "influence districts" in denying preclearance to the original senate plan. *ACLU Rep.*, 126-27.

- ***Georgia v. Aschcroft:*** Tyrone Brooks, a long time member of the Georgia legislature and chair of the Georgia Association of Black Elected Officials, said that "when a district is changed from majority black to majority white it depresses the level of black political activity. The enthusiasm, the spirit, the sense that blacks have a chance are all diminished." Under the 1992 plan, as under the 1982 plan, black electoral success was confined almost exclusively to the majority black districts. Of the 40 blacks elected to the house and senate under the 1992 plan, all but one was elected from a majority black district. The same pattern of polarized voting has continued under the 2002 plan. Of the 10 blacks elected to the state senate, all were elected from majority black districts (54% to 66% black population). Of the 38 blacks elected to the state house, 34 were elected from majority black districts. *ACLU Rep.*, 130-132.

- ***Larios v. Cox:*** [T]he Georgia three-judge court appointed a special master to prepare court ordered plans. Under the special master's plan, nearly half of the black house members, i.e., 18 (46.15%), were paired, or placed in a house district with one or more other incumbents. A number of the paired black incumbents were chairs or officers of house committees, and some were also senior members of the house. The Georgia Legislative Black Caucus, represented by the ACLU argued that the pairing of black incumbents caused a retrogression in minority voting strength within the meaning of Section 5, and created a discriminatory result within the meaning of Section 2. The three-judge court agreed that court ordered plans should "comply with the racial-fairness mandates of ' 2 of the Act, as well as the purpose-or-effect standards of ' 5," and instructed the special master to draw another plan taking into account the unnecessary pairing of incumbents. A new plan was drawn and it unpaired all the black incumbents, except in one instance where pairing was unavoidable. The Republican dominated legislature enacted a new congressional plan in 2005, but before doing so it passed formal resolutions that any redistricting had to comply with Section 5, and the new plan did exactly that. The black percentages in the majority black districts, as well as the black percentages in the majority white districts that had elected blacks, were kept at almost exactly the same levels as under the plan that had been passed by the Democratic controlled legislature in 2002. *ACLU Rep.*,134-36.

- ***Wilson v. Powell:*** The first challenge to the grand jury appointment of school boards was brought in 1983 by the ACLU. The county had a black population of 31%, but no black person had ever been appointed by the grand jury to serve on the board of education. The parties agreed to replace the grand jury system with district elections, although they disagreed both on the specifics of the election plan and its method of implementation. In November 1984, the district court adopted the plaintiffs' proposed plan and ordered a special election held in January 1985. At the election, a black candidate was elected from a majority black district. Two months later, Senator Culver Kidd of Milledgeville called for statewide legislation to abolish the grand jury appointment system. [Five years later, the system was abolished.] *ACLU Rep.*, 138-40.

- ***Vereen v. Ben Hill County:*** A second challenge to the grand jury appointment system was brought in 1988 against Ben Hill. Although blacks were 30% of the population in Ben Hill County, the grand jury had never appointed a black person to serve on the board of education. Black residents filed suit in federal court in 1988 alleging that the grand jury had systematically excluded them from service on the board of education, and that the 1872 grand jury law had been enacted with a racially discriminatory purpose in violation of Section 2 and the Constitution. Shortly after the complaint was filed the grand jury in Ben Hill broke with its 166 year old tradition of white only appointments, and put James Wilcox, an African American, on the board of education.

  The district court ruled that the 1872 statute had not been enacted with a discriminatory purpose. Plaintiffs, in the court's view, had not presented "specific," or direct, evidence of racial purpose. The general assembly, at the request of local officials, enacted a statute in 1990 abolishing the grand jury appointment system in Ben Hill County and adopting a seven member board of education elected from single member districts. And at its 1991 session the legislature took the step that had been urged by Senator Culver Kidd five years earlier. It passed a statute to amend the state constitution in order to abolish the grand jury appointment system statewide and require all local boards of education, both county and city, to be elected by the voters residing in the applicable school districts. *ACLU Rep.*, 140-44.

- Georgia is the only state which authorizes counties to use a sole commissioner form of government. There is no record of a black person ever being elected to office under a sole commissioner scheme. Carroll County, which used the sole commissioner system, was sued under Section 2 by the NAACP and private plaintiffs in 1984. The district court dismissed the complaint but the court of appeals reversed. It found that numerous factors showing vote dilution had been established, including polarized voting and the lack of minority elected officials. Although the county was 17% black, the court found that "no black has ever been elected to any county office in Carroll County." The court also found there was evidence tending to show the sole commissioner system had been enacted with a discriminatory purpose. After the case was sent back to the district court for reconsideration, the county agreed to adopt a plan expanding the size of the county government, with six members elected from districts and a chair elected at-large. *ACLU Rep.*, 145-47.

- ***Holder v. Hall / NAACP of Cochran v. Bleckley County:*** The court in these cases concluded that "the evidence conclusively establishes a pattern of racially polarized voting," and that "the totality of the circumstances found in Bleckley County clearly reveal a situation where the electoral power of Bleckley County blacks has been abridged 'on account of race or color.'" The county appealed to the Supreme Court, which held that the size of an elected body could not be challenged under Section 2.

  The ACLU also brought suit in 1988 against Bleckley County, charging that discrimination in the selection and appointment of poll managers and poll workers in county elections violated the Constitution and Section 2. Plaintiffs sought a declaratory judgment and injunctive relief, but the court declined to rule on any of the issues pending resolution of Hall v. Holder, which was not decided by the Supreme Court until 1994. However, even

after the Supreme Court's decision in that case, the court did not rule on the issues before it in NAACP v. Bleckley County.

ACLU Rep., 147-51.

- ***Clark v. Telfair Country:*** The plaintiffs filed suit in the Telfair County case in 1987, contending that the sole commissioner system diluted black voting strength. Although blacks were about one third of the county's population, no black person had ever been elected to the commission. The sole commissioner decided not to contest the allegations of the complaint and agreed to adopt a new form of government consisting of a board of commissioners elected from districts. The parties agreed that plaintiffs had established "a prima facie case" that the sole commissioner form of government violated Section 2, and the court subsequently issued an order in October 1988, implementing an agreed upon plan providing for a board of commissioners elected from five single member districts, one of which was majority black. *ACLU Rep.,* 152-53.

- ***Sutton v. Anderson:*** The complaint [against Pulaski county] was dismissed after the Supreme Court ruled that Section 2 could not be used to challenge the size of an elected body. *ACLU Rep.*, 153.

- ***Howard v. Comissioner of Wheeler County:*** As of 1990, no African American had ever been elected to the office of sole commissioner or any other county office elected at-large. Plaintiffs contended the sole commissioner system was established with a racially discriminatory purpose and excluded blacks from effective participation in local politics in violation of Section 2. The parties agreed to settle the lawsuit y adopting a three member commission with one majority black district. Less than a dozen counties in Georgia still used the sole commissioner form of government, and in none of them has a black person ever been elected commissioner. *ACLU Rep.*, 154-55.

- ***Brooks v. Miller:*** In 1990, Tyrone Brooks, a veteran member of the Georgia House of Representatives, and other black residents of the state, represented by the ACLU, filed suit challenging Georgia's statewide majority vote requirement. The Brooks plaintiffs made three claims: the majority vote law was enacted with a discriminatory purpose; it discouraged blacks from running for office, particularly in majority white jurisdictions; and it resulted in discrimination in violation of Section 2 of the Voting Rights Act. The district court ruled that the majority vote requirement did not violate the Constitution or the Voting Rights Act, and the court of appeals affirmed.

  The court of appeals further held that the discriminatory results standard of Section 2 could not be used to challenge a majority vote law because there was no "adequate remedy" for a violation. In 1994, the Democrat controlled legislature brushed aside the good government arguments it had advanced in support of the majority vote requirement and repealed the law in favor of a 45% plurality vote for general elections, except those for certain constitutional offices. Four years later, the legislature abolished the majority vote requirement for state constitutional offices as well. The catalyst for repeal was the defeat of Wyche Fowler, the white Democratic incumbent, by a Republican in the 1992 general election for the U.S.

Senate. In a three-way contest, Fowler won a plurality of the votes but was defeated in the ensuing runoff. Thomas Chambless, a house Democrat, explained that it was the majority vote requirement itself - not the plurality rule as had previously been claimed - that allowed so-called stalking horse or fringe candidates to manipulate the electoral process. The people of Georgia were poorly served, he said, "by having a run off election . . . because of the existence of some fringe or very small party candidate such as occurred in 1992."

ACLU Rep., 157-60.

- ***Voter Education Project v. Cleland:*** State law allowed local officials do decide whether to appoint deputy registrars and permit voter registration at places other than the main voter registration office. In September 1984, the ACLU sued state officials. Several registrar boards had failed to appoint enough, or any, deputy registrars. Several counties had imposed dual registration requirements, which required each eligible citizen to register with the county registrar and also with the municipality's registrar in order to vote in national, state, and county elections as well municipal elections. Furthermore, many of the county and city boards refused to act favorably on applications from civil rights groups, such as the NAACP, to appoint their members as deputy registrars. Other boards designated satellite registration locations that were inconvenient to black citizens and refused to permit registration at convenient locations such as churches, public housing facilities, and NAACP offices. Plaintiffs contended state law was vague, gave local registrars uncontrolled discretion in the registration process, and resulted in proportionately fewer blacks than whites being registered to vote. The case was dismissed in January 1987, pursuant to a settlement agreement in which the defendants agreed to expand voter registration opportunities throughout the state. *ACLU Rep.*, 161-63.

- ***Charles H. Wesley Education Foundation, Inc. v. Cox:*** The director of the elections divisions of the secretary of state's office required that persons filling out mail in registration application had to mail or hand-deliver the forms themselves. In 2004, the Charles H. Wesley Education Foundation, a predominantly black chapter of a social service fraternity, decided to conduct a voter registration drive at a major shopping center. The volunteers retained the completed applications and mailed them in one package to the secretary of state's office. The secretary informed the fraternity's lawyer that it was rejecting the forms because no registrar or deputy registrar was at the drive. The fraternity and several of the people who had filled out applications sued to enjoin the state's policy of rejecting applications submitted in bulk. Plaintiffs relied on the National Voter Registration Act of 1993, which provides that states "shall accept" mail in forms. The court held that it did not matter how an application got delivered, only that it made it to the election officials. The court entered a preliminary injunction requiring that qualified voters who sought to apply through the registration drive be eligible to vote. The state appealed the granting of the preliminary injunction. The ACLU filed an amicus brief in the court of appeals supporting the plaintiffs. It argued the state's policy violated both the specific language of the NVRA and Supreme Court decisions, which require that severe restrictions on the right to vote be justified by strong state interests. The court of appeals affirmed the grant of the preliminary injunction. State election officials have drafted interim regulations to

implement the preliminary injunction, registration drives by private citizens are currently conducted, and applications accepted no matter the mode of delivery. *ACLU Rep.*, 163-66.

- ***Project VOTE! v. Ledbetter:*** Project VOTE! held registration drives at several food stamp distribution centers in Fulton County, Georgia. After registering more than 400 persons at a single Project VOTE! sought permission to continue its activities elsewhere,. State officials informed Project VOTE! in August that it would no longer be permitted to conduct voter registration at Dept. of Family and Children Services (DFACS) offices. The ACLU filed suit the following month on behalf of Project VOTE! alleging that because the new policy constituted a change in voting standards, practices or procedures, it required preclearance under Section 5. The lawsuit also charged the state with violating the plaintiffs' First and Fourteenth Amendment rights, and asserted that the state's decision discriminated against blacks in violation of Section 2. Within a week of filing the lawsuit, the state agreed to allow Project VOTE! to conduct non-partisan voter registration activities in DFACS offices. *ACLU Rep.,* 167-69.

- ***Brooks v. Georgia State Board of Elections:*** The ACLU, representing black elected officials and community leaders from across the state, filed suit challenging: (1) the at-large method of electing superior court judges, with majority vote and numbered post requirements, as diluting minority voting strength under Section 2; (2) the failure of the state fully to comply with Section 5 in creating new superior court judgeships and circuits; and (3) the countywide method of electing judges of the state court.

  The Attorney General notified the state in August 1988 that he did not object to 29 of the new judgeships and three of the five new circuits, which were primarily located in the mountain areas of the state in which there was no substantial black population. After the state refused to comply with the AG's request for additional information, the AG objected to the addition of 48 judgeships and the creation of two new circuits. The district court held that the changes affecting the election of judges were subject to Section 5. The state appealed the order of the three-judge court, and the Supreme Court affirmed, thus establishing that the addition of election of judgeships was a covered change under Section 5 of the Voting Rights Act. The state also filed an action in the District Court for the District of Colombia seeking judicial preclearance of the changes that had been objected to by the AG.

  As the Section 5 case was proceeding in the District of Columbia, Anthony Alaimo, a federal district court judge in Brunswick, convened a series of negotiating sessions, which resulted in a proposed settlement in June 1992. Under the settlement, the state agreed to increase the number of African American superior court judges from the existing nine to not less than 25 by December 31, 1994, and an additional five new black superior or state court judges, the black community would have substantial input in the selection of judges.

  All judicial elections would be held under a "retention" election system, thereby increasing the likelihood that the newly appointed black judges would be re-elected. The state would be permanently barred from discriminating on the basis of race in nominations or appointments and would remain subject to the jurisdiction of the court until such time as it

achieved a "racially diverse judiciary which is reasonably representative of the population of the state." The settlement was conditioned upon preclearance by the Department of Justice and/or judicial preclearance in the case in the District of Columbia. The Department of Justice gave approval to the settlement, and it was then submitted for approval to the district court in Savannah. The court rejected the settlement agreement. It held that in the absence of a violation of Section 2 of the Voting Rights Act, the court was without authority to accept a consent agreement changing the provision of state law providing for the election of judges. The court also said the consent agreement was an unlawful "quota" system in violation of the Fourteenth Amendment. The court of appeals dismissed the appeal as moot in July 1995. After the rejection of the settlement agreement, the DDC precleared the state's voting changes.

ACLU Rep., 169-77.

- ***Evans v Bennett:*** In 1984, the legislature enacted legislation, which was precleared under Section 5, exempting local soil and water conservation supervisor elections from the state election code. The state commission subsequently issued election rules and instructions on holding 179 elections, but failed to submit these or any subsequent changes governing the elections for preclearance.

  The elections were not held at predetermined times, nor in conjunction with other elections. Notice to the public that a seat was to be filled by election, and notice of the election date, were given by a legal advertisement. But the elections received virtually no publicity, and were held in a single polling place, usually the county courthouse in each county covered by the district.

  In 2004, two plaintiffs, represented by the ACLU, filed suit against the state commission for failure to submit its voting procedures for preclearance under Section 5. Upon the filing of the lawsuit, the state soil and water commission cancelled all local district elections throughout Georgia pending compliance with Section 5. By agreement of the parties, the court closed the case administratively until the Section 5 process could be completed. The state commission adopted revised election procedures, taking into account the suggestions and comments of plaintiffs. The state commission submitted the new election procedures to the Attorney General for preclearance on October 31, 2005. Plaintiffs supported the request for preclearance, which was granted on December 21, 2005.

  ACLU Rep., 178-81.

- ***Schwier v. Cox:*** Successful challenge to country requirement that voter provide social security numbers). *ACLU Rep.*, 181-84.

- ***Common Cause v. Billups:*** The Department of Justice precleared the photo ID bill on August 26, 2005. The ACLU filed suit in federal district court, charging the law violated the state and federal constitutions, the 1965 Voting Rights Act, and the 1964 Civil Rights Act. The district court issued a preliminary injunction holding plaintiffs had a substantial likelihood of succeeding on several grounds, including claims that the photo ID law was a

poll tax and violated the equal protection clause of the Constitution. The state appealed to the Eleventh Circuit, which refused to stay the injunction. In an attempt to address the poll tax burden cited by the district court in its injunction, the Georgia legislature passed a hew photo ID bill providing for free photo identification cards. *ACLU Rep.*, 185-91.

- ***Kelson v. City of Newton, No. 1:96-CV-106-3 (M.D. Ga.):*** Newton City Council added numbered post requirement for council seats and implemented a majority vote requirement for council and mayoral elections in 1972. The new requirements were not submitted for preclearance under Section 5. The city stopped using the majority vote requirement after the 1995 general election and cancelled the runoffs that the majority vote requirement would have necessitated, but continued to enforce the numbered post requirement. The runoffs would have included several black candidates. In 1996, the ACLU filed suit on behalf of black voters to enforce Section 5, asserting that the mid-stream change in voting procedure was improper. The city eventually entered into a consent agreement rescinding the numbered post and majority vote requirements. *ACLU Report at 193-97.*

- ***NAACP v. the Mayor and Alderman of the City of Milledgeville, No. 83-145-01-MAC (M.D. Ga.):*** May 1983 challenge to the city's at-large voting system as racially discriminatory in violation of Section 2. Resolved through consent decree. *ACLU Report at 197-98.*

- ***Boddy v. Hall, No. 82-406-1-MAC (M.D. Ga.):*** November 1982 challenge on behalf of the local NAACP and black Baldwin County residents challenging at-large elections for the board of commissioners and the board of education as racially discriminatory in violation of the Constitution and Sections 2 and 5. The at-large scheme had been adopted in 1972, but never submitted for preclearance. After the complaint was filed, the county submitted the at-large scheme to the AG for preclearance. The AG objected to the scheme. The county thereafter sued in the DDC seeking a ruling that the 1972 at-large plan was not racially discriminatory in purpose or effect. The ACLU intervened, and the parties entered into a consent order requiring the election of board members from single-member districts by majority vote. Two of the districts were majority black. A subsequent consent decree required the election of five board members—two from majority black single-member districts, and three from a majority white district. *ACLU Report at 198-202.*

- ***Simmons v. Torrance, No. 21, 102 (Super. Ct. Baldwin Cty.):*** ACLU challenge to a Democratic primary runoff election for District 2 of the Baldwin County Board of Commissioners. Alleged that persons who were qualified to vote in District 2 were either not allowed to vote or incorrectly assigned to another voting district, while persons who were not entitled to vote in district 2 had done so, allowing a white candidate to gain a 37-vote margin of victory over a black candidate. The challenge was successful, and the black candidate won a new runoff and the general election. *ACLU Report at 202-03.*

- ***In re City of Winder:*** Winder was 17.8% black in 1987. The ACLU initiated negotiations in 1987 to change the city's at-large city council election plan to a single-member district system. The city agreed to a plan with 4 districts, including one 65% majority black district. The plan was adopted by the legislature and precleared by DOJ. *ACLU Report at 203-04.*

- ***Stephens v. Kennedy:*** After three black candidates won a 3-1 majority on the Kingston City Council, in Bartow County (11.6% black), and before the newly-elected council took office, the incumbent council and mayor created a new non-elected position, transferred to the new position the duties of the mayor and council, and appointed a defeated white incumbent to the position. The group also made addition appointments and changed the regular meeting time of the city council to conflict with the work schedules of two of the newly-elected black council members. The ACLU sued, alleging violations of the Constitution and Section 5 of the VRA. The three-judge court held that the power of the city council had not been reallocated and that the change in the meeting times was not covered by section 5. The plaintiffs settled rather than appeal the case. *ACLU Report at 205-06.*

- ***Orrington v. Israel:*** ACLU suit on behalf of black residents of a majority-black area of Jones County that had been annexed by the City of Macon. In 1984, the City planned to de-annex the Jones County area, purportedly because the city wanted to remove a state legislator from the city's legislative delegation. The black residents objected to the de-annexation. The suit alleged that the defendants failed to prelcear the 1984 de-annexation and that the 1984 plan violated the Constitution and section 2. The City agreed to submit the plan for preclearance, and DOJ objected to the plan, and it did not go forward. *ACLU Report at 206-08.*

- ***Lucas v. Townsend, 686 F. Supp. 902 (M.D. Ga. 1988), 486 U.S. 1301 (1988), 783 F. Supp. 605, 617 (M.D. Ga. 1992), 967 F.2d 549 (11th Cir. 1992):*** The ACLU challenged Bibb County's decision to change the date of a bond referendum from Super Tuesday, a date on which a large black voter turnout was expected, to the day after Memorial Day, as well as its decision to combine two referendum questions—one which black voters supported and one which they opposed—into one question. The County had failed to preclear either change. The Supreme Court granted a last-minute stay as to the election date, and the referendum was rescheduled for the November general election. The ACLU continued to challenge the combined form of the referendum question, but the AG and the district court determined that the "discretionary decision to present the voters with a single vote on the entire project is not the kind of change subject to preclearance." The district and circuit courts also rejected the ACLU's argument that the combined referendum question and the election date change violated Section 2 and the Fourteenth Amendment. *ACLU Report at 209-13.*

- ***Sullivan v. DeLoach, No. CV176-238 (S.D. Ga.):*** Action to challenge majority vote requirement in the city of Waynesboro. The suit was settled by consent decree in 1977, but the agreed-to plan was not submitted for preclearance until 1988 and was not precleared until 1994. The AG noted a pattern of racially polarized voting in Waynesboro and a history of racial discrimination in the city. Following the objection, the city and the plaintiffs agreed to use a plurality requirement instead of a majority requirement in the mayoral election. At the last minute, however, the city reneged on the plurality plan and re-imposed a majority vote requirement. The black candidate won a plurality against three white candidates, but lost in a runoff. The DOJ took no action to enforce its objection to the

majority vote requirement, and the plaintiffs' motion to enjoin the election was not timely heard and was dismissed as moot after the election. *ACLU Report at 219-23.*

- ***Bynes v. Board of Commissioners of Burke County, No. CV 192-085 (S.D. Ga.):*** Challenge to use of a district apportionment plan that was shown by the 1990 census to be outdated. The ACLU represented black residents of Burke County and sued to enjoin use of the plan and to request implementation of a plan that complied with the one-person-one-vote standard and sections 2 and 5 of the VRA. The parties agreed on a remedial plan which was precleared under section 5 by the DOJ. *ACLU Report at 223-25.*

- ***Gresham v. Harris, 695 F. Supp. 1179 (N.D. Ga. 1988):*** The small town of Keysville had only 300 residents, 80% of whom were black. The town had not held municipal elections since 1933. Beginning in 1985, black residents sought to revive the municipal government. Local whites, however, asserted that the town boundaries were unsettled, and it was not possible to know who was qualified to run or vote. Following preclearance of proposed procedures for the election, white citizens obtained a state court injunction against the election. Black citizens filed a section 5 suit, arguing that because the election plans had been precleared, a cancellation of the election itself required preclearance. The federal court allowed the election to go forward, and a black mayor and a city council of four blacks and one white were elected. White citizens continued to challenge the election results, but the challenges were unsuccessful. *ACLU Report at 225-34.*

- ***Brown v. Bailey, No. CV-84-223-MAC (M.D. Ga.):*** Suit on behalf of black voters challenging at-large elections for the Jackson City Council as violating the Constitution and Section 2. The city agreed to a single-member district plan, with two majority black districts. The plan was precleared. *ACLU Report at 236-37.*

- ***Duffey v. Butts County Board of Commissioners:*** Suit challenging districting plans for Board of Education and Board of Commissioners that were determined to be malapportioned after the 1990 census. Plaintiffs sought, and obtained, a preliminary injunction finding that the election districts were "constitutionally malapportioned." Parties entered consent decree that retained five single member districts for both boards and established two majority black districts. Plan was precleared by DOJ. *ACLU Report at 237-38.*

- ***Calhoun County Branch of the NAACP v. Calhoun County:*** 1979 suit to enjoin the use of at-large elections for failure to comply with Section 5. The county had changed to at-large voting in 1967 following increased black registration. A three-judge panel enjoined the at-large scheme, finding it had never been submitted for preclearance. A consent order then created five single-member districts, two of which were majority black, and two at-large seats. After the 1990 census, black voters again sued, alleging the districts were malapportioned. According to the ACLU report, "the district court entered an order enjoining the upcoming primary election for the board of education under the malapportioned plan. The parties then agreed upon a new plan that complied with the equal population standard and maintained two of the districts as majority black." *ACLU Report at 238-40.*

- ***Haywood v. Edenfield:*** In 1976, the city of Kingsland, in Camden County, instituted numbered posts, staggered terms, and a majority vote requirement for elections to the four-member city council, after a black candidate came close to winning a plurality. The city failed to preclear the plans. In November 1981, black residents sued to compel submission of the changes to DOJ under Section 5. The city agreed to stop using the majority vote requirement and submitted the other changes for preclearance. DOJ precleared the use of staggered terms, but objected to the numbered post requirement. *ACLU Report at 240-44.*

- ***Foreman v. Douglas:*** In 1967, the city of St. Mary's instituted numbered posts and a majority vote requirement for city council members and a majority vote requirement for mayor, and it reenacted the changes in 1981. The changes were not submitted for preclearance. Black residents sued in November 1981 to enjoin the use of the majority vote and numbered post requirements absent preclearance. The city submitted the changes to the AG, and the changes were precleared. *ACLU Report at 245-47.*

- ***Baker v. Gay, Civ. No. 284-37 (S.D. Ga.):*** 1984 challenge to Camden County's use of at-large, majority-requirement elections for the board of commissioners and the board of education. The suit alleged that the system dilute black voting strength in violation of the VRA and the Constitution. The parties settled and agreed to create five single-member districts, two of which were majority black. In 1991, the county sought to change the board of commissioners election to four single member districts and one at-large chairman seat, with staggered terms. There is no record that the AG approved the changes. A proposed 1993 plan had only one majority black district. The plan is apparently still awaiting preclearance due to the county's submission of insufficient information. Today, the board of commissioners is still elected from five single-member districts, though none is majority black. *ACLU Report at 247-49.*

- ***Wyatt v. Carroll County Board of Commissioners, Civ. No. 3:92-CV-61-GET (N.D. Ga.):*** The county proposed a plan for election of county commissioners that would eliminate the single majority-black district in the six-district county. Black voters sued, alleging the plan was retrogressive and that the previous apportionment was malapportioned. Although the plaintiffs, through the ACLU, proposed an alternative plan, which would maintain a black majority district in a county with a black population of 15%. The AG rejected the ACLU's alternative plan and precleared the county's plan. *ACLU Report at 249-51.*

- ***Smith v. Carter, Civ. No. 585-088 (S.D. Ga.):*** Suit by black voters alleging the at-large system for electing the county commission and school board diluted black voting strength in violation on Section 2 and the Constitution, and that the county had an egregious record of failing to comply with section 5. The county had used numbered posts and staggered terms for the county board of commissioners in 1978, 1980, 1982, and 1984 in contravention of DOJ objections. The suit was resolved in 1985, and the county admitted its failure to comply with Section 5. The parties agreed to a remedial plan that created five single member districts for the board of education and the board of commissioners. *ACLU Report at 251-55.*

- ***Frank Davenport v. Clay County Board of Commissioners, NO. 92-98-COL (JRE) (M.D. Ga.):*** The county had failed to preclear its change to an at-large system of voting for county commissioners in 1967. In 1980, members of the local NAACP challenged the at-large system and the failure to comply with Section 5. The court found a section 5 violation, which resulted in a return to single-member districts. After the 1990 census showed the commission districts to be malapportioned (and following an attempt to create equal districts which was not precleared before a 1992 legislative poison pill provision rendered it void), the ACLU sued seeking a remedial plan for the upcoming elections. The parties entered a consent decree in which the county admitted the districts were malapportioned in violation of the Fourteenth Amendment's one person one vote requirement and agreed to the redistricting plan which had been created before the 1992 poison pill invalidated it. The plan was precleared by DOJ. *ACLU Report at 256-59.*

- ***In re the City of College Park:*** DOJ objected to a 1977 redistricting plan that would have resulted in only one black district in a city with a 30% black population. DOJ also objected to 17 of 32 proposed annexations. DOJ later objected to a 1983 redistricting plan that it said would have fragmented the concentrations of black voters and created only one majority black district in a city whose black population had increased to 48.3%. A plan containing two black majority districts was later submitted and precleared in 1985. *ACLU Report at 259-62.*

- ***Allen v. Reeves:*** A white candidate for city council challenged 70 ballots that had been submitted with number stubs still attached, in violation of Georgia election law. The 70 ballots were greater than the margin of victory of the black candidate over the white candidate. The ACLU represented the black candidate and argued that granting the challenge would violate the 14th and 15th Amendments and Article 2 of the Georgia Constitution, as well as Section 2 of the VRA. The state court dismissed the challenge, employing what it called a "legal fiction" that the ballots had not actually been cast until an election judge separated the ballots from the number stubs. *ACLU Report at 262-26.*

- ***NAACP v. Moore*** and ***Presley v. Coffee County Bd. Of Comm'rs:*** 1977 challenge to at-large elections for county board of commissioners, board of education, and city commission in the county seat, alleging that the at-large voting violated Section 2 of the VRA and the Constitution. The suit also included a claim that the county had failed to preclear the schemes in violation of Section 5. A 1978 consent agreement between the parties acknowledged that the at-large elections "denied plaintiffs and their class equal access to the political system, in derogation for their rights [under the Constitution and the VRA]." In 1992, black voters challenged malapportionment of the commission, the board of education, and the city council as violating Section 2 and the Constitution. The county did not contest the malapportionment. Plaintiffs moved to enjoin the general election under the malapportioned plan. The court refused to enjoin the election, but ordered a special election once a proper plan was precleared. Such a plan was precleared in 1993. The plaintiffs, however, challenged the precleared plan as violative of Section 2. The parties settled before trial, creating a plan with one black majority district and one black influence district. The revised plan was precleared in 1994. *ACLU Report at 265-68.*

- ***Cross v. Baxter:*** Challenge to at-large elections in Moultrie, Georgia. The district court and court of appeals dismissed the complaint prior to 1982. After the section 2 standard was changed in the 1982 reauthorization of the VRA, the Supreme Court vacated and remanded for a new trial under the new "results" standard. After the Supreme Court remanded, the city agreed to form single member districts. *ACLU Report at 269-70.*

- ***Jones v. Cook County:*** The ACLU filed suit on behalf of black voters in 1994, alleging that the county board of commissioners and board of education districts were constitutionally malapportioned after the 1990 census. According to the ACLU's report, "In a hearing on December 19, 1995, county officials agreed that 'the relevant voting districts in Cook County are malapportioned in violation of the equal protection clause of the fourteenth amendment to the United States Constitution.' A consent decree allowed sitting commission members to retain their seats but implemented a new plan, correcting the malapportionment for the 1996 elections." *ACLU Report at 271-72.*

- ***Thomas v. Crawford County:*** 2002 suit alleged single-member districts were malapportioned in violation of the constitution's one-person-one-vote principle. The plaintiffs won summary judgment and a preliminary injunction to prevent elections from taking place under the plan. The court adopted a plan that maintained two majority-black districts. *ACLU Report at 272-74.*

- ***Wright v. City of Albany:*** Black residents of the city, represented by the ACLU, sued in 2003 to enjoin use of an allegedly constitutionally malapportioned districting plan and requested that the court supervise the development and implementation of a remedial plan that complied with the principle of one person, one vote, and the VRA. According to the ACLU report, "In a series of subsequent orders, the court granted the plaintiffs' motion for summary judgment, enjoined the pending elections, adopted a remedial plan prepared by the state reapportionment office, and directed that a special election for the mayor and city commission [be] held in February 2004." *ACLU Report at 289-93.*

- ***Woody v. Evans County Board of Commissioners:*** In 1992, the ACLU filed suit on behalf of black voters challenging an allegedly malapportioned districting plan for the county commission and board of education under the Constitution and Section 2 of the VRA. According to the ACLU report, "on June 29 the district court enjoined 'holding further elections under the existing malapportioned plan for both bodies.'" *ACLU Report at 297-300.*

- ***Bryant v. Liberty County Board of Education:*** "Because Liberty County was left with a malapportioned districting plan based on the 1980 census, the ACLU filed suit in 1992, on behalf of black voters seeking constitutionally apportioned election districts for the county. The court granted plaintiffs' motion for preliminary injunctive relief on July 7, 1992, and the following year the parties agreed to a redistricting plan in which two of the six single member districts contained majority black voting age populations. The plan was precleared by the Justice Department on April 27, 1993." *ACLU Report at 340-42.*

- ***Hall v. Macon County:*** According to the ACLU Report, "The [Georgia] general assembly failed to redistrict the two boards during its 1992, 1993, and 1994 sessions, and in 1994, the ACLU filed suit on behalf of Macon County residents against county officials seeking a constitutional plan for the 1994 elections. On July 12, 1994, the court enjoined the upcoming election and ordered the parties to present remedial plans by July 15, 1994. In March 1995, the court ordered a five district plan that remedied the one person, one vote violations and ordered special elections be held." *ACLU Report at 348-49.*

- ***Morman v. City of Baconton:*** Suit to block the use of a constitutionally malapportioned districting plan following the 2000 census. According to the ACLU Report, "Black residents of Baconton, with the assistance of the ACLU, then filed suit in federal court to enjoin use of the 1993 plan on the grounds that it would violate Section 5 and the Fourteenth Amendment. The day before the election the court held a hearing, and, hours before the polls opened, granted an injunction prohibiting the city from implementing the unprecleared and unconstitutional plan." *ACLU Report at 364-65.*

- ***Ellis-Cooksey v. Newton County Board of Commissioners:*** According to the ACLU report, the 1990 census showed that the five single member districts for the county board of commissioners and board of education were constitutionally malapportioned. "After the legislature failed to enact a remedial plan, the ACLU filed suit on behalf of black voters in Newton County in June 1992, seeking constitutionally apportioned districts for the commission and school board. The suit also sought to enjoin upcoming primary elections, scheduled for July 21, 1992, as well as the November 3 general election. The parties settled the case the following month and the court issued an order that '[t] he 1984 district plan does not constitutionally reflect the current population.'" *ACLU Report at 370-73.*

- ***Lucas v. Pulaski County Board of Education:*** Black residents of the county, represented by the ACLU, filed suit in 1992 to enjoin upcoming elections under an allegedly constitutionally malapportioned plan. According to the ACLU report, "On October 14, 1992, the district court entered a consent order involving the board of Education, affirming that 'Defendants do not contest plaintiffs' allegations that the districts as presently constituted are malapportioned and in violation of the Fourteenth Amendment of the Constitution.'" *ACLU Report at 380-84.*

- ***Clark v. Putnam County:*** In 1997, four white plaintiffs filed a lawsuit challenging the constitutionality of the majority black county commission districts as racial gerrymanders in violation of the *Shaw / Miller* line of cases. In January 2001, the district court dismissed the complaint. The Eleventh Circuit reversed, holding that the district court erred in failing to find unconstitutional intentional discrimination. *ACLU Report at 384-89.*

- ***Cook v. Randolph County:*** According to the ACLU Report, "On October 5, 1993, black voters, represented by the ACLU, filed suit. They asked the court to enjoin elections for the school board and board of commissioners on the grounds that the districting plan for both bodies was either malapportioned in violation of the Constitution and Section 2, or had not been precleared pursuant to Section 5. Later that month, on October 29, the parties signed a consent order stipulating that the existing county districts were malapportioned, and

agreeing on a redistricting plan containing five single member districts with a total deviation of 9.35%. Three of the five districts were majority black." *ACLU Report at 389-93.*

- ***Houston v. Board of Commissioners of Sumter County:*** The ACLU brought suit in 1984 on behalf of black county residents charging that the five member board of county commissioners was malapportioned in violation of the Constitution and Section 2 of the VRA. The suit also charged defendants with failing to secure preclearance of a valid reapportionment plan under Section 5. According to the ACLU Report, "After plaintiffs moved for a preliminary injunction to block the 1984 board of commissioners election, a consent order was issued acknowledging that the districts were malapportioned, and instructing both parties to submit reapportionment plans to the court. . . . On February 27, 1985, after trial on the merits, the court ruled the challenged plan unconstitutional and directed the defendants to adopt a new plan and seek preclearance under Section 5 within 30 days." *ACLU Report at 420-22.*

- ***Cooper v. Sumter County Board of Commissioners:*** After the release of the 1990 census, the ACLU broguth suit on behalf of black plaintiffs, alleging that the county's commission districts were malapportioned in violation of the constitutional principle of one person, one vote. On July 27, 1992, the district court entered a consent order finding "malapportionment in excess of the legally acceptable standard." *ACLU Report at 422-23.*

- ***Williams v. Tattnal County Board of Commissioners***: After the 1990 census, the ACLU, on behalf of black residents, sued to enjoin further use of an allegedly constitutionally malapportioned districting plan. According to the ACLU Report, "On July 7, 1992, the district court, finding that the existing plan was malapportioned, enjoined the July 1992, primary elections for the board of commissioners and board of education until such time as an election could be held under a court ordered or a precleared plan." *ACLU Report at 426-27.*

- ***Spaulding v. Telfair County:*** In September 1986, the ACLU riled suit on behalf of five black voters alleging that the county board of education was malapportioned. According to the ACLU Report, "On October 31, 1986, less than a week before the November general election, the court entered a consent order staying the elections, ordering a new apportionment plan, and providing for a special election. The court found that 'Plaintiffs have established a prima facie case that the current apportionment of the Board of Education is in violation of the Fourteenth Amendment,' and required the defendants to develop and implement a new apportionment for the school board within 60 days." *ACLU Report at 431-33.*

- ***Crisp v. Telfair County:*** The ACLU sued in August 2002, alleging that the county commission lines were malapportioned in violation of the Constitution and Section 2 of the VRA. According to the ACLU Report, "After plaintiffs filed suit, the county stipulated that its commission districts were malapportioned, and that 'It is possible...to draw a five single member district plan with at least one majority black district in Telfair County.' The plaintiffs then filed for summary judgment and asked the court to hold the existing plan unconstitutional and order a new plan into effect. . . . Ruling that the existing plan was

malapportioned and 'violates the one person, one vote standard of the equal protection clause of the Fourteenth Amendment,' the court noted that the plan had been submitted for Section 5 preclearance and ruled the motion for summary judgment was 'largely moot.'" *ACLU Report at 439-41.*

- ***Holloway v. Terrell County Board of Commissioners:*** In June 1992, the ACLU filed suit on behalf of black voters challenging the malapportionment of the county board of commissioners under the Constitution and Section 2 of the VRA. According to the ACLU Report, "After the reapportionment suit was brought in 1992, defendants admitted the plan was malapportioned . . . . The parties negotiated a new redistricting plan, corrected the malapportionment, and created two effective majority black districts. Despite this agreement, the county proposed, and had the 1993 Georgia General Assembly adopt, a redistricting plan which plaintiffs did not support. . . . In February 1994, the Department of Justice precleared the county's redistricting plan over the objections of the black community . . . ." *ACLU Report at 441-44.*

- ***Flanders v. City of Soperton:*** According to the ACLU Report, "in November 1994, the ACLU again brought suit on behalf of black voters in Soperton, challenging the five member city council as malapportioned in violation of one person, one vote. . . . A consent order was filed August 7, 1995, in which both parties agreed the city election districts were malapportioned, and adopted a districting plan with a total deviation of 6.8% that contained two majority black districts of 75.34% and 72.92% black voting age population, respectively." *ACLU Report at 447-49.*

- In 2001 Georgia Democrats moved to retain control of the state legislature while also expanding their foothold in the state's congressional delegation. This was accomplished through the efficient allocation of black, Democratic voters in a fashion partially opposed by the Justice Department, and which required litigation to establish. This efficient allocation reduced minority majorities particularly in some state Senate districts and was considered retrogressive by the Justice Department. Because the elected representatives of the community of interest approved of the strategy, and because minority choices could prevail in most of the coalition districts, the Supreme Court held that the use of coalition districts as the alternative to less heavily-minority districts was permissible (though not required) to satisfy Section 5. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 39 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- I think this is an excellent gloss on what the State of Georgia did. Judge Murphy, the Federal District Court judge in Rome, Georgia, last week issued a preliminary injunction enjoining use of Georgia's photo ID requirement because you have got to pay $20 to get one and he said this was in the nature of a poll tax. So when people talk about new and subtle schemes to disfranchise, we're going back to history and getting one of the most discriminatory devices for excluding poor and Blacks and making that part of the modern-day scheme. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 90 (2005) (response of

Laughlin McDonald, Director, ACLU Voting Rights Panel, to questioning by Congressman Scott).

- "A 1993 consent order in U.S. v. Johnson County stated that ... Johnson County is 34 percent black.... Of the one hundred thirty one individuals who were employed by Johnson County to serve as poll officials between 188 and August 1992, eighteen (14%) were black. There were no black poll workers during this period at seven of the twelve polling places. ... No black person has ever served as a managing poll officer or an assistant managing poll officer at any of the county's polling places. ... Even with the specific [remedial] steps set out in the fifteen page Johnson County consent decree, the reports of federal observers showed that African-American citizens of Johnson County were continuing to be excluded from among the ranks of those appointed to work at the polls because the supervisor of elections did not adhere to the terms of the decree." Barry Weinberg, House *Hearing*., 155 (Nov. 15, 2005).

- "And in a section 5 case involving state senate districts in Georgia, a federal district court found, based on nonpartisan, party primary, and general elections, 'highly racially polarized voting in the proposed districts' [*Georgia v Ashcroft*, 195 F. Supp 2d 25, 88 (DC DC 2002)]." *Testimony of Richard Engstrom. House Judiciary Committee, VRA Hearing, 10/25/05, at 60*

- ***United States v. Long County, Georgia, et al.***-The defendants in *Long County* erected unlawful barriers to the franchise by requiring Latino voters whose qualifications were challenged to prove their citizenship before casting a ballot. The County did so despite knowledge that the challenges were unsupported by any credible evidence that the challenged voters were not American citizens. The Justice Department's complaint in the case also noted that Latino voters had been subjected to different standards and practices than other members of the electorate. The action was resolved by consent decree in February 2006, through which the County was enjoined from discriminating on the basis of race, color, or membership in a language-minority group. *Transvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 34.*

- Mr. McDonald- There is a more recent lawsuit that has been filed just 2 weeks ago because Randolph County, Georgia, had implemented a voting change without complying with the Voting Rights Act. What they essentially did was to adopt a redistricting plan that took a black incumbent out of his majority black district, Mr. Cook, and put him into a majority white district. Well, given the existence of racial polarization in Randolph County, there was very little prospect that Mr. Cook, who had the overwhelming support of black voters, would be elected. *5/9/06 SENATE VRA Hearing Transcript, Page 32.*

Statistics

- To sum up the proportion of elected officials in Georgia who are black has reached approximate equality with their overall proportion of population in the state. 3 of 11 U.S.

Congressmen are black (page 33), 9 of 34 statewide elected officials are black (page 38). *At*s 31-38

- Even though blacks are 12-15% of the *National* pop, only 2% of elected officials are black. In Georgia, they are 30% of the state pop, but only 6% of elected officials. *Tyrone Brooks, House Hearing., on Retrogression Standard 37 (Nov. 9, 2005)*

- Black registration and participation at the polls exceeds white registration and participation in Georgia and the Nation as a whole.
- Black and white Democratic candidates in Georgia draw comparable support from white voters.
- In the three most recent elections for which data is available, Georgia black registrants was 5% higher than for non-Southern blacks.
- Black candidates receive about 30% of the white vote and 90% of the black vote. Nine out of thirty-four Georgia state-wide officials are black.

Edward Blum, AEI, Testimony at House Hearing. p.16 (morning of Oct. 25, 2005).

- From 1974 to 1993, more than 100 lawsuits were brought against no fewer then 40 cities (in 41 lawsuit) and 62 counties (in 67 law suits) in Georgia alone, challenging at-large election plans as discriminatory violations of either the constitution, the Voting Rights, Act, or both. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 8 (2005) (prepared statement of Laughlin McDonald, Director, ACLU, Voting Rights Panel).

- The work of Professor Epstein indicates that African-American legislative candidate are capable of winning non-majority black districts on an even basis. There are currently two black Republicans in the Georgia Legislature, from heavily-white Gwinnett County and Middle Georgia Houston County. The state has the most-heavily black congressional delegation in the US House (31% of seats). *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 41 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- "In Georgia, the gap between white and black registration rates narrowed steadily since the Voting Rights Act's last reauthorization in 1982, with the self-reported black rate surpassing that of white in 2004 (64.2 percent and 63.5 percent, respectively)."
- *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 15*

- "Black voter turnout rates in Georgia increased from 53.5 percent in 1996 to 72.2 percent in 2004." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at16*

- "The result in each of the three states examined has been a dramatic increase in the number of black elected officials between 1969 and 2001: in Georgia from 30 to 611; in South Carolina from 28 to 534; and in Louisiana from 65 to 705. Nationwide, between 1970 and 2001, the number of black elected officials increased from 1469 to 9101." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 16*

Anecdotal Evidence

- In the 44th Georgia House of Representatives district, Billy McKinney, a long-time incumbent African-American legislator ... saw his African-American voting strength in the precleared plan reduced by approximately 17 percentage points. In the next Democratic primary, he faced a white challenger, a relative unknown, and was defeated. Anne Lewis, House *Hearing*. on Retrogression Standard 35 (Nov. 9, 2005).

- Similarly, in a Senate district in Augusta, the minority voting strength was reduced to a level at which it was doubtful that minority voters still constituted a majority of the actual electorate in the district and could re-elect the African-American Senator.... Subsequently, the Senator, who was the *Majority Leader* in the Georgia Senate, lost his seat to a white challenger in a highly racially polarized election. ... In 2002, the same thing happened to his daughter, Rep. Cynthia McKinney. Anne Lewis, House *Hearing*. on Retrogression Standard, 36 (Nov. 9, 2005).

- "...in Savannah... We had a lot of people whoe were from Haiti, who did not have the proficiency in the English language and requested assistance. The local chair of the state – of the county election board wanted to exercise his right and say that our election protection people could not assist those voters. And we had to get a legal injunction to make sure that those people could assist them."
- *Helen Butler, Testimony at National Commission on VRA Southern Reg'l Hearing., House Hearing. 196 (Oct. 18, 2005).*

- "There is one telling example that new schemes and devices are still being crafted and employed to hinder the right to vote in the covered jurisdictions. The Georgia Voter Identification law, popularly known in Georgia as the Voter Suppression Bill, ... requires a government issued photo identification card be presented each time a voter appears at the polls. This is true no matter how long the voter has been registered or how many other forms of identification the voter has. It also applies universally, disregarding the fact that the voter has not attempted to impersonate another voter, and that no one has attempted to impersonate the voter. This law was passed over impassioned objection by the minority during the 2004 term when republicans gained control of the Georgia legislature for the first time in more than 100 years. Former President Jimmy Carter termed it an 'abomination.'

  . . . As a consequence of the outcry against the voter suppression law, Governor Perdue instituted a mobile voter identification bus. According to Janis L. Mathis, 'our Atlanta staff wrote to the Governor seeking permission for the bus to visit the historic, mostly black, Atlanta University Center to issue identification cards. After receiving no reply, they contacted the Motor Vehicle Unit directly and learned that the mobile van would be parked at Turner Field, about a mile form the campuses. Approximately 20 African-American AUC students traveled to Turner Field in a group to get the appropriate voter identification cards. The published price of the cards -- $10.00 – was hiked to $20.00 without notice to the public. The students' school identification cards, divers licenses and voter identification cards were insufficient proof, according to DMV to authorize issuance of the new photo id

cards. Finally, students who hadthe $20 and were able to prove their Georgia residency to the satisfaction of officials were required to surrender their home state drivers licenses in exchange for a Georgia ID that did not entitle them to drive in Georgia or any other state.

It is not surprising that none of the Atlanta University students was issued a photo identification by the state of Georgia. It is fully understood that the purpose of the law is to suppress the vote of assumed liberals and progressives, and has little if anything to do with identifying those unqualified to vote."

Statement of the Rainbow Push Coalition, House Hearing. 56-57 (Oct. 18, 2005).

- Georgia recently required voters to show ID before voting. This discriminates against the elderly, poor, and those who have a habit of going to the polls to vote rather than absentee voting. A federal judge has enjoined this. *Rep. Scott, Georgia, Testimony at House Hearing. 85 (Oct. 18, 2005).*

- Georgia shows unprecedented progress in voting rights for African-Americans, significant gains in voter participation, voter turnout, and the election of minority candidates when candidates of choice are evident. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 29 (2005) (statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- Black and White Democratic candidates are generally not distinguished by Caucasian voters. African-American candidates win statewide elections, and the Congressional delegation is actually better than proportional to the Black population as of the last Congressional election. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 29 (2005) (statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- But clearly Georgia exhibits progress that makes one wonder why the State continues to be covered by section 5. Other States also show dramatic and sustained progress, though Georgia is the most progressed of the original section 5 States. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 29-30 (2005) (statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- If we look at Georgia, where minority voters register and turn out at a rate higher than Whites, where Black electoral success is evident at all levels of government, where expert testimonies show that a minority candidate can succeed in nonminority districts, we see a State where the need for preclearance has diminished or, if not, has passed. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 29-30 (2005) (statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- A state in which this question is relevant is Georgia. The fastest-growing of the original Section 5 states offers real evidence of voting rights progress in the last decade. African-American candidates run as well or better than white candidates for statewide office of the same party. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 41 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

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

  Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 41 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- Our analysis in Georgia reveals a state where substantial progress on voting rights for African-Americans has been made. Black Democratic candidates are little distinguished from white Democratic candidates in elections. African Americans have made significant gains in voter participation, voter turnout, the election of candidates, and recent political science research shows that black candidates and candidates of choice can usually prevail in legislative constituencies as low as 44% African American. African-American candidates win statewide elections, and the congressional delegation is better than proportional to the black population. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 41 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- [Regarding the deterrent effect of the current retrogression standard] The State of Georgia, for example, just this year redistricted its congressional delegation. And before it did so, it adopted a resolution saying that it must comply with section 5. And the plan that it ultimately adopted didn't change the Black voting age population in the two districts that were majority Black and in the two that were majority—barely majority White. They did not affect or reduce at all the Black voting age population, so we know there is a deterrent effect. The City of Albany, Georgia, after the 2000 census enacted a redistricting plan for the city. And it was submitted for preclearance. The Department of Justice objected on the grounds that there was evidence that it was animated by purposeful discrimination to limit the opportunities of minorities. So it continues to have an actual impact and a deterrent effect. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 80 (2005)

(response of Laughlin McDonald, Director, ACLU Voting Rights Panel, to questioning of Congressman Chabot).

- [Regarding unpacking of districts and influence districts] I can note one of the disturbing things in the *Georgia* case when the case was on remand. The State of Georgia identified 17 districts that were influenced districts, quote unquote, based on what they said was the O'Connor standard. But it was 25 percent Black voting-age population. After that election, when the legislature met, 7—over 40 percent of those districts—7 of the 17 were represented by White Republicans. Now, three of those districts, influenced districts, actually resulted in the election of Republicans. Four more resulted in the election of White Democrats who subsequently changed party. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 83 (2005) (response of Richard Engstrom, Professor, the University of New Orleans, to questioning of Congressman Conyers).

- African-American candidates are little differentiated from White candidates in Georgia. But, by the same token, if we look at the opportunities that exist, African-Americans are elected to the legislature, they are elected from districts that are approaching 50 percent. They could be elected from districts as low as 44 percent, and they are attracting White votes in the same fashion as Black candidates. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 93-94 (2005) (response of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma, to questioning of Congressman Watt).

- "But what happened in Long Count, Georgia is prior to the primary election some individuals cam to the Registrar's Office in Long County and requested a list of all registered voters. From that list, the names of Latinos only were taken off of that list and were challenged. Nearly, two-thirds of the Latino voter registration list was in fact challenged in Precinct One…Of the 46 [Latinos] that were given notice of a hearing, six attended the hearing. Another two showed up at the polling place to vote. We don't have any indication of what happened to the other two but we do know that out of 46 challenged voters, 64 registered voters, only ten voted in the primary. We will never know the complete chilling effect that these challenges had on the community, but we certainly do know that the numbers of these indicate that there may have been a chilling effect by this process." *Ms. Tallman, Testimony submitted to National Commission on VRA South Georgia Regional Hearing, found in House Hearing, 10/18/05 at 474-475*

- "In Atkinson County what transpired was a little bit more disturbing in that individuals who made the challenges simply asked for the Latino registered voter list. They did not ask for a standard list, but they specifically asked for the registered list to be desegregated, specifically requesting the Latino list and from that list we know that the 96 were challenged, and we believe that it was solely by surname but no evidence once again was required of them so we do not know if there was anything other that that." *Ms. Tallman, Testimony submitted to National Commission on VRA South Georgia Regional Hearing, found in House Hearing 10/18/05 at 476*

- "And [Latinos] felt not only as a challenge to their right to vote, as U.S. citizens, but as a challenge to their community for simply being Latino and living in Georgia." *Ms. Tallman, Testimony submitted to National Commission on VRA South Georgia Regional Hearing, found in House Hearing 10/18/05 at 478-476*

- "[T]he sheriff decided that he was going to enlist the assistance of the County Attorney in receiving the Latino registered voters list and he did obtain it from the County Attorney. And with that list, he publicly states that he was go into go door to door to the house of every single registered Latino voter and determine whether or not they were U.S. citizens and to systematically arrest every single person he did not believe to be a U.S. citizen." *Ms. Tallman, Testimony submitted to National Commission on VRA South Georgia Regional Hearing, found in House Hearing 10/18/05 at 480*

- "And do I understand you to say that you were the first African American elected to the Mayorship in Milledgeville in 199 years and shortly after you were elected, the [City] Council voted to abolish the strong Mayor system?" *Mr. Davidson*

  "Yes. They started working on it in nine months after – well, they probably started thinking about I before then – but they voted to recommend to the legislative delegation to change the form of government about nine or ten months after I was elected or went in office…So I think it was somewhat of a conspiracy from the beginning, in case he does win, then we'll take away all of those powers from him and make him more of a figurehead which the Mayor is now pretty much a figurehead." *Mayor Floyd Griffin Testimony submitted to National Commission on VRA South Georgia Regional Hearing, found in House Hearing 10/18/05 at 488-489*

- Mayor Griffin- "So the primary reason in my opinion is that they did not like the fact that this African American mayor had all of this, the same level of responsibility and powers that the other Mayors had. Here I am making the type of decisions that you make under a strong Mayor situation and they wanted to do like some of them had done before, instead of being policy makers, they wanted to be executors in the administration side of the house, and I would not allow that to happen.
  Mr. Davidson- "They didn't say that, I mean, they didn't say publicly that the reason that they wanted to change the form of Mayorship was because you were elected. They must have had some other reasons that they stated for –"
  Mayor Griffin- "Well, [the Council members] basic reason is that they just wanted to change to a manager form of government because they felt that would be a better form of government in carrying out the responsibilities, the day-to-day responsibilities of the city."
  Mr. Rodgers- "I'd like to follow up on what Chandler just mentioned. What was vote of the Council that approved the change (*sic*)?"
  Mayor Griffin- "Unanimous."
  Mr. Rogers- "Was it a unanimous vote?"
  Mayor Griffin- "Right, yes."
  Mr. Rogers- "It was a unanimous vote."
  Mayor Griffin- "Correct."

Mr. Rogers- "And you said each of those members of the Council elected by individual districts(*sic*)?
Mayor Griffin- "Yes."
Mr. Rogers- "And I am right in presuming that the African American members of the Council, three of the six were elected from majority African Americans?"
Mayor Griffin- "You're absolutely correct, yes."
Mr. Rogers- "But they had been on Council for years?"
Mayor Griffin- "Two of them, well, one of them had been on for several years, maybe 12 of 13 years. One of them was in the second term and then one of them was in the first term." *Testimony submitted to National Commission on VRA South Georgia Regional Hearing,, found in House Hearing 10/18/05 at 491-493*

- "With that voter ID situation, I probably will lose the election because we would have at least 21 black poor people, including white. This is not all about black now, would not be able to get the proper identification for a number of reasons.

  One of them is birth certificates. In Georgia, you have to have a birth certificate to go to the Motor Vehicle office to get a driver's license and to get the ID. We have people in George who don't have birth certificates. They were born way back when before they issued birth certificates."

  Mayor Floyd Griffin Testimony submitted to National Commission on VRA South Georgia Regional Hearing, found in House Hearing 10/18/05 at 501

- "And so there are complex matters but sadly we can't overlook the cooling and heating effect that when African Americans or Latinos or Asians see that the political process of native Americans is open to them whether it's by virtue of Section 203 language minority assistance or whether it's by virtue of seeing people that look like them in political office, that in turn inspires them to become more involved, to turn out, which helps elect more minority officials which gives them the record which then enables more whites to feel more comfortable electing them. But if you begin to take way these incentives and allow the barriers if you don't have Section Five pre-clearance as a deterrent, you allow these barriers to come in place. I believe without question you will see the opposite. You will see the cooling effect, participation, uninvolvement and indeed a diminution." *Mr. Levitas Testimony submitted to National Commission on VRA South Georgia Regional Hearing, found in House Hearing 10/18/05 at 544-545*

- "[N]ow everyone in Laurens County knows about early voting and in fact, the last election we just wiped out everything with the early voting, that's why I believe they came back with this new ID, identification voting, because we did such a tremendous job in Laurens County from this last election. We do need the Voting Rights Act…We need it because history has taught us that state rights will not be in our favor. History has taught us that but certainly in the city election, the people in rural area – and I'm' fro ma rural area – are being cleared from the list on a daily basis, misinformation concerning votes who have been incarcerated. And once you're incarcerated, you can never vote again." *Dr. Johnny Vaughn, Testimony*

submitted to National Commission on VRA South Georgia Regional Hearing , found in House Hearing 10/18/05 at 548-549

- "It's a rural area and certainly we do need this Federal Voting Rights Act to be extended because without it you know that I know sate rights will not work. It will not work. Let's not fool ourselves here." *Dr. Johnny Vaughn, Testimony submitted to National Commission on VRA South Georgia Regional Hearing, found in House Hearing 10/18/05 at 551*

- "The minority voter turnout and voter participation in that election was admirable but the illegal use of the absentee votes was rampant and widespread." *Charles Sumblin, Testimony submitted to National Commission on VRA South Georgia Regional Hearing, found in House Hearing 10/18/05 at 555*

- "In Long and Atkinson Counties in Georgia, there were efforts to wrongfully challenge Latino voters en masse in the 2004 election cycle." *Joe Rogers, Testimony at House Hearing on "Voting Rights Act: Evidence of Continued Need." (March 8, 2006).*

- "[T]he city of Albany, Georgia, adopted a new redistricting plan [and]…'the proposed plan was designed to limit and retrogress the increased black voting strength in Ward 4, as well as in the city as a whole.' J. Michael Wiggins, Acting Assistant Attorney General, to Al Grieshaber, Jr., City Attorney, September 23, 2002." *House Judiciary Committee, VRA Hearing, 10/25/05, at 14*

- "Isn't it true that minority voters are still vulnerable to schemes, whether they're voting at the same level as everybody else or not? Mr. McDonald?"- Mr. Scott
  "The dramatic example of that, Mr. Scott, is what the State of Georgia did this year in 2005. It passed the most draconian photo-ID requirement for in-person voting of any State in the Union…Judge Murphy, the Federal District Court judge in Rome, Georgia, last week issued a preliminary injunction enjoining use of Georgia's photo ID requirement because you have got to pay $20 to get on and he said this was in nature of a poll tax." *Testimony of Laughlin McDonald, House Judiciary Subcommittee on the Constitution Hearing, "Continuing Need for Sec. 5", 10/25/05, at 90*

- "The district court, in ruling for the plaintiffs, found: 'Native Americans vote together and choose Native American candidates when given the opportunity,' 'whites vote for white candidates to defeat the Native American candidate of choice,' 'it is obvious that Native Americans lag behind whites in areas such as housing, poverty, and employment.' And there was evidence of 'overt and subtle racial discrimination in the community.' The court invalidated the at-large plan under Section 2 of the Voting Rights Act and held the plaintiffs were entitled to a new plan creating a third majority Indian district." *Appendix to statement of Laughlin McDonald, House Judiciary Subcommittee on the Constitution Hearing, "Continuing Need for Sec. 5", 10/25/05, at 109*

- "[T]here are still regular attempts by certain legislators to deny that right to Indians living on land exempt from state taxation." *Appendix to statement of Laughlin McDonald, House*

Judiciary Subcommittee on the Constitution Hearing, "Continuing Need for Sec. 5", 10/25/05, at 110

- "Indians ranked 'far behind other groups in educational achievement, employment rates and per capita income…Indians are the poorest of the poor.' Cultural and linguistic barriers were further factors 'which enhance the redistricting plan's discriminatory effect on Indians,' said the court." *Appendix to statement of Laughlin McDonald, House Judiciary Subcommittee on the Constitution Hearing, "Continuing Need for Sec. 5", 10/25/05, at 111*

- "[T]he Department of Justice precleared the congressional plan but objected to the state legislative plan on the grounds that the division of the San Carlos Apache Tribe 'raises concerns which will not allow us to conclude that the legislative plan does not have a discriminatory purpose or effect.' The fragmentation of the tribe under the proposed plan, according to the district court, 'has the effect of diluting the San Carlos Apache Tribal voting strength and dividing the Apache community of interest." *Appendix to statement of Laughlin McDonald, House Judiciary Subcommittee on the Constitution Hearing, "Continuing Need for Sec. 5", 10/25/05, at 111*

- "Two judges of the district court, observing that racially polarized voting continued to characterize elections in these districts, and predicting, in the light of the evidence presented, that the percentage of white voters who would 'cross over' to vote for black candidates was insufficient to preserve the preexisting opportunity of minority voters to elect their candidates of choice, denied preclearance." *Testimony of Theodore Shaw, Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, at 21*

- "Before the VRA was passed, and continuing to the present day, 'cracking' or 'fragmenting' geographically compact minority voting communities have been preferred methods of undermining the effectiveness of minority votes….[S]preading minority voters among more districts dilutes the collective power of their votes, this technique remains a desirable goal for many and its use is likely to increase as a result of the endorsement of so-called 'influence districts' in the *Georgia v. Ashcroft* opinion." *Testimony of Theodore Shaw, Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, at 24*

- "Unless the renewed Section 5 makes clear Congress' intent to negate or limit the rather amorphous, ill-defined, and theoretical portions of the majority opinion in *Georgia v Ashcroft* by restoring ability-to-elect as the touchstone of Section 5, it will be far too easy for states and localities to justify preclearance by pointing to small increases in minority voting age population in so-called 'influence' districts with 20% minority voting populations, and titled positions that may or many not carry significant authority for the individuals in them." *Testimony of Theodore Shaw, Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, at 28*

- "Similarly, in a Senate district in Augusta, the minority voting strength was reduced to a level at which it was doubtful that minority voters still constituted a majority of the actual electorate in the district and could re-elect the African-American Senator; we objected to the district in the *Ashcroft* case on those very grounds. The Department of Justice did not.

Subsequently, the Senator, who was the *Majority Leader* in the Georgia Senate, lost his seat to a white challenger in a highly racially polarized election...The 12th Congressional District was touted by the State as a district which could be won by an African-American, despite the fact that it was not a majority-minority district. In 2002, the African-American candidate was defeated by a white candidate in the general election in a racially polarized contest. In 2004, in that same district, an African-American candidate was defeated by white candidate in the primary.

In 2002, Congresswoman Cynthia McKinney saw the minority voting strength in her district diminished. She was defeated in one of the most racially polarized elections in Georgia history, even though her opponent in the Democratic primary was also an African-American." *Testimony of Anne Lewis, Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, at 36*

- "And just this year, the state enacted a photo ID requirement for voting in person that will without doubt deter or prevent a disproportionate number of minorities from voting, as well as the elderly and the disabled. It is not only difficult for many people to get a photo ID, but it costs $20 and is in essence a fee for voting. Fortunately, the federal court recently issued an injunction prohibiting use of the photo ID requirement, which it said was in the nature of a poll tax." *Testimony of Tyrone Brooks, Sr., Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, at 38*

- "And the State also made the extraordinary argument, directly contrary to case law and to the intent of Congress when it extended the Voting Rights Act, that racial minorities—the very group for whose protection section 5 was enacted—should never be allowed to participate in the preclearance process.

  The minority influence theory, moreover, is frequently nothing more than a guise for diluting minority voting strength. The White members of the Georgia legislature, for example, opposed the creation of a majority-Black congressional district in 1981, on the grounds that it would diminish minority influence. It would cause, it said, White flight and the disruption of harmonious working relationships between the races.

  Well, the three-judge court said that the so-called diminution of minority influence was actually a pretext, and that the refusal of the State legislature to create a majority-Black district in the Atlanta metropolitan area was 'the product of purposeful racial discrimination.'"

  Testimony of Tyrone Brooks, Sr., Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, at 50

- "The brief filed by the state of Georgia in *Georgia v Ashcroft provides a dramatic, present day example of the continued willingness of one of the states covered by Section 5 to manipulate the laws to diminish the protections afforded racial minorities*." (emphasis in transcript) *Testimony of Tyrone Brooks, Sr., Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, at 51*

- "Dr. Epstein also failed to take into account the 'chilling' effect upon black political participation, and the 'warming' effect upon white political participation, caused by the transformation of a majority black district into a majority white district. Once a district is perceived as no longer being majority black, black, candidacies and black turnout are diminished, 'or chilled,' while white candidates and white turnout are enhanced, or 'warmed.'" *Testimony of Tyrone Brooks, Sr., Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, at 53*

- "Minority influence theory, moreover, is frequently nothing more than a guise for diluting minority voting strength. White members of the Georgia legislature, for example, opposed the creation of a majority black congressional district in 1981 on the ground that black political influence would be diminished by 'resegregation,' 'white flight,' and the disruption of the 'harmonious working relationship between the races.'" *Testimony of Tyrone Brooks, Sr., Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, at 54*

- "According to the District of Columbia Court, [Georgian Speaker of the House Tom] Murphy 'refused to appoint black persons to the conference committee [to resolve the dispute between the house and senate] solely because they might support a plan which would allow black voters, in once district, an opportunity to elect a candidate or their choice.' Id. At 510, 520. Joe Makc Wilson, the chair of the house reapportionment committee, and the person who dominated the redistricting process in the lower chamber, was of a similar mind and advised his colleagues on numerous occasions that 'I don't want to draw nigger districts.' Id. At 501...Based upon the racial statements of members of the legislature, as well as the absence of a legitimate, nonracial reason for adoption of the plan, the conscious minimizing of black voting strength, and historical discrimination, the District of Columbia court concluded that the state's submission had a discriminatory purpose and violated Section 5." *Testimony of Tyrone Brooks, Sr., Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, at 54*

- "I could say similar things about decisions in predominantly black College Park, GA, to locate a polling location within a police precinct or attempts in the City of Albany, GA or Dougherty County, GA to dilute naturally emerging majority black districts by packing black votes into other districts." *Prepared Statement of Meredith Bell-Platts, National Commission on the VRA, found in House Hearing 10/25/05, at 3285*

- "One of the state's arguments was that the retrogression standard of Section 5 should be abolished in favor of an "equal opportunity" to elect standard, which it defined as "a 50-50 chance of electing a candidate of choice." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3233*

- "The state argued further that a district provided an equal opportunity to elect when it contained only a 44% black voting age population...Georgia further...arguing that minorities should never be allowed to participate in the preclearance process. *Prepared*

Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3234

- "Since 1974, New York municipal and state governments have attempted nineteen times to make electoral changed that the U.S. Department of Justice's Civil Rights Dicision found to have a retrogressive effect on minority voting rights. Proposed Changed blocked under Section 5 have included dilutive redistricting plans, inadequate translation services, removal of polling places from minority neighborhoods, unilateral suspension of minority-elected bodies, and even end-runs around the state constitution." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3236*

- "Since the 1982 reauthorization, the Department of Justice has used section 5 objectives six times against proposed municipal, state, and federal redistricting plans that would have diluted minority voting power." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3329*

- "Among the proposed voting changes were plans that would have:
  - gerrymandered the central Bronx into a 174-sided State Senate district to consolidate white voting power in 1982 while fragmenting that neighborhood's Black and Hispanic majority in a way described as "particularly offensice" by President Regan's Assistant Attorney General Wm. Bradford Reynolds;
  - cannibalized Black Congressional districts in Williamsburg and Bushwick in order to allow for a Hispanic district, so that the political gains of one group could come only at the expense of the other, while white neighborhoods would have been left uncontested;
  - again over-concentrated the northern Brooklyn Hispanic vote in one City Council district in Williamsburg in 1991, this time at the expense of other Hispanic voters in Bushwick and Cypress Hills;
  - over-concentrated the minority vote into 80%-minority districts across the city, drastically reducing the number of majority-minority districts in the covered areas;
  - created a supposedly "Hispanic" City Council district which the DOJ determined that Hispanic voters would "not be able to elect a candidate of their choice;"
  - Further minimized Hispanic voting strength in northern Manhattan by splitting the Hispanic population there in two separate Assembly districts in 1992;"

  Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3339-40

- "[I]n 1982, the same year as the last VRA reauthorization, the Department of Justice found that state redistricting would have reduced the number of Assembly districts in New York City in which minority voters had a reasonable chance to elect the candidates of their choice from 43% to 35%, at a time when the minority population of New York City was growing rapidly." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3341*

- "In 1994, the state attempted an end-run around the entire electoral process by proposing to allow the Governor to appoint judges to the Court of Claims and then immediately transfer them to the Supreme Court. The Civil Rights Division struck down this proposal under section 5, noting that "the state thus effectively has changed the method of selecting a class of Supreme Court judges from election to appointment." (3242)
- In 1996, Section 5 allowed the Civil Rights Division to intervene when the Schools Chancellor dismissed nine minority Community School Board members elected by a 90% minority district and replaced them with unilaterally chosen political appointees. (3242)
- [T]he Federal Government blocked a proposed 1999 change to limited voting in school board elections. Limited-voting is a classic "anti-single-shot" strategy used throughout the South to dilute voting power by preventing minorities from casting their votes in blocs." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3243*

- "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 n_gg_rs 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." *Voting Rights in Georgia 1982-2006, 18 (renewthewra.org).*

- "There presently are two 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." *Voting Rights in Georgia 1982-2006, 33 (renewthewra.org).*

- "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." *Voting Rights in Georgia 1982-2006, 34 (renewthewra.org).*

- "The African-Americans in those districts [in Georgia] will have no (or at least vanishingly little) influence on the Republican representatives for two reasons…[A]ny attempt by Republican politicians to court the black vote would suffer from a backlash from those who still harbor the racial animosity of the past and regularly vote Republican. IT is doubtful that such voters would vote for a Democratic candidate, but they might be discouraged from turning out to vote especially in an off-year election. Attempts to bridge that gap between these 'core' Republican voters and blacks, who are strongly opposed to Republicans, would be doomed from the start." *Written Responses of Theodore Arrington to Questions from Senators, Senate Judiciary Committee VRA Hearing, 6/1/06, at 7*

- I'm not sure how many of you might have noticed, but over the weekend an African American in DeKalb County, Georgia, who did win a sheriff's race there, was scheduled to actually be sworn in today and he was murdered at his home on Saturday, and it was an

assassination. Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 3062.

- [T]he city of Albany, Georgia adopted a new redistricting plan for its mayor and commission to replace an existing malapportioned plan, but it was rejected by the Department of Justice under Section 5. The department noted that, while the black population had steadily increased in Ward 4 over the past two decades, subsequent redistricting had decreased the black population "in order to forestall the creation of a majority black district." The letter of objection concluded it was "implicit" that "the proposed plan was designed with the purpose to limit and retrogress the increased black voting strength in Ward 4, as well as in the city as a whole." *Written Testimony of Nadine Strossen before the House Judiciary Committee, March 8, 2006, at 4.*

- A three-judge court in the District of Columbia denied preclearance to Georgia's infamous 1980 congressional redistricting plan finding that it was adopted with "a discriminatory purpose in violation of Section 5." *Written Testimony of Nadine Strossen before the House Judiciary Committee, March 8, 2006, at 6.*

- A three-judge court in Georgia appointed a special master to prepare court-ordered plans aster the state failed to enact remedial plans for the house and senate. Under the special master's plan, nearly half of the black house members were paired, or placed in a house district with one or more incumbents. A number of the paired incumbents were chairs or officers of house committees, and some were also senior members of the house. Their loss would inevitably have adversely affected the representation of the black community in the state legislature. *Written Testimony of Nadine Strossen before the House Judiciary Committee, March 8, 2006, at 16.*

- More recently, the Georgia legislature, in a vote sharply divided on racial and partisan lines, passed a new voter identification bill that had the dubious distinction of being the most restrictive in the United States. To vote in person-but not by absentee ballot-a voter would have to present one of five specified forms of photo ID. Those without such an ID would have to purchase one for $25. Not only are there laws on the books that make voter fraud a crime, but there was no evidence of fraudulent in-person voting to justify the stringent photo ID requirement. *Written Testimony of Nadine Strossen before the House Judiciary Committee, March 8, 2006, at 10.*

- [I]n October 1992, DOJ objected to a polling place change for Johnson County [Georgia] in which 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. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 17.*

ILLINOIS

Voting Rights Lawsuits/Enforcement

- "In the mid-1980s, a suit was brought against the City of Chicago regarding the alderman wards, as African-Americans in Chicago's wards were not being adequately represented. Due to the lack of majority African-American wards, it was very difficult to elect African-American aldermen, or even to elect the candidate of the African-American population's choice.

  The federal court in Illinois ordered that the city's wards be remapped to created a larger number of African-American majority wards. The maps were redrawn in 1985, creating 2 majority black wards, for a total of 19 African-American wards."

  Alice Tregay, Statement Submitted to National Commission on VRA, House Hearing. 135 (Oct. 18, 2005).

- "And we have a Section case going on right now in Aurora, Illinois, where there's a – it used to be a, an at-large system. They now created a 10-member district system with two at-large seats and, and in, in a city whose population is about 30 percent Latino. They created one safe district and keep fighting where – well, we just reached summary judgment in that case. So I, I think it's actually a very strong case." Jorge Sanchez, *Testimony submitted to National Commission on VRA Midwest Regional Hearing* 426 *(July 22, 2005).*

Statistics

- "As noted in an October 2004 article in *The Chicago Reporter*, 'In the March [2004] primary, 13,424 voters in majority black wards who were incorrectly challenged took the extra steps at the polls to restore their voting status, compare with 3,745 voters in majority white wards and 2,006 in majority Latino wards. Those who did not have enough identification either had to go home to get it or used provisional ballots.' Rupa Shenoy, *A Challenging Election*, The Chicago Reporter, Oct., 2004, *available at* http://www.chicagoreporter.com/200410-2004/vote/vote1.htm. *Alice Tregay, Statement Submitted to National Commission on VRA, House Hearing. 136 (Oct. 18, 2005).*

Anecdotal Evidence

- In 2002, there were voting rights challenges in Cook County, Illinois. [*Testimony at House Hearing. 43 (Oct. 18, 2005).*

- "Although the 1985 Chicago redistricting resulted in a fairer representation of minorities in Chicago elections, the population has changed, and the wards in Chicago have again been mapped in a manner that results in an unequal and unfair representation of African-Americans. The wards are oddly drawn in a manner that "packed" too many African-Americans into wards. Certain Chicago wards contain almost 95% African-Americans, even though a ward need only be about 65% African-America to ensure that the African-American population of that ward be able to elect the candidate of their choice." *Alice Tregay, Statement Submitted to National Commission on VRA, House Hearing. 135 (Oct. 18, 2005).*

- "In both the 2000 and 2004 elections, the voting status of many African-Americans in Chicago was challenged, and many African-Americans lost their votes in these elections. This group faced challenges to registration – the voting registration form was difficult for many to fill out completely, and the forms were rejected if they were not filled out completely and accurately – as well as challenges to their right to go to the polls and case votes." *Alice Tregay, Statement Submitted to National Commission on VRA, House Hearing. 136 (Oct. 18, 2005).*

- "Many African-Americans are wrongly removed from the voting rolls, purportedly because they no longer live at the address that is listed on their voting registration, despite having lived in the same house for many years." *Alice Tregay, Statement Submitted to National Commission on VRA, House Hearing. 136 (Oct. 18, 2005).*

- Joelle has lived in her Chicago home for many, many years. In both the 2000 and 2004 elections Joelle went to her polling place to cast her vote, as she had done many times before. However, in *both* 2000 and 2004, she was told at the polling place that she was not on the voting rolls and was not entitled to vote. Although this seemed impossible to her, as she had not moved, her polling place had not moved, and she was an active voter for many years, Joelle responded that she would then cast a provisional ballot in 2004. After the election, she was told by the Board of Elections that her provisional ballot was not counted. No reason was given." *Alice Tregay, Statement Submitted to National Commission on VRA, House Hearing. 136 (Oct. 18, 2005).*

- "In the City of Chicago in 1982, they had an alderman named Keane who had gone to prison, but when he got out, they asked him to draw up the map for the City of Chicago. We were 40% of the population there. And he decided that we didn't deserve but 17 wards but we really were over 19 wards. And we had to go to court. This is the year Harold Washington was elected. And it took three years before that court case came to bear in the court system, and we got the other two aldermen and we got two more Hispanics. So it does change when people fight for their right for proper representation. And I went all off of this piece of paper." *Alice Tregay, Testimony submitted to National Commission on VRA Midwest Regional Hearing 381 (July 22, 2005).*

- "This is the second ward in Chicago. This is one ward out of 50, and it goes everywhere. And what they do, and they get the Black and the Hispanic aldermen to go along with it because our mayor is very strong mayor and he keeps them in office. So Hispanics still don't have the correct amount of representation and blacks are down also. So we have to somehow get the people who draw these maps – this was going on in 1982, again in 2002, so nothing changed. I mean, this I 30 years. Everything is the same. *Alice Tregay, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 381 *(July 22, 2005).*

- "In our last election in Chicago, we had – in 2004, the primary, 13, 424 voters in majority black wards who were incorrectly challenged and took the extra step at the polls to restore their voting rights status with 3,700 voters. the majority white wards in 2000 and majority Latino wards, those who did not have enough identification either had to go home or to use

provisional ballots. Those provisional ballots were not counted, most of them." *Alice Tregay, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 381 *(July 22, 2005).*

- "And in particular what's fascinating to me is to hear you talk about essentially how alderman districts were drawn in Chicago. You point to the example, as the chairman notes, of sort of being a salamander example of a district in and of itself. Essentially, you talk about how the black folks are packed into districts, as much as 95 percent of black folks are packed into districts. And then you talk about the fact that essentially we really don't need that many black folks in the district in order to have black representation. What we'd really like to have is only about 65 percent or so in order to have that number." *Joel Rogers, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 390 *(July 22, 2005).*

- "In Cook County, which is a fairly friendly jurisdiction to both immigrants and Latinos, it was only after litigation that the clerk of the Cook County ordered all materials to be translated. We actually are very, very happy to have Cook County as an example at this point. It allows us to go to other jurisdictions and say, look, Cook County was able to do it, you can talk to them, you can talk to David Ohr (spelled phonetically), ask him who he used to translate these materials." *Jorge Sanchez, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 422 *(July 22, 2005).*

- "MALDEF met in late 2001 with the King County registrar. It's a jurisdiction to the west and somewhat north of Chicago. The office, the office was made aware of its obligations, and for the next years – for the next three years did almost nothing to comply with the Section 203 provisions to translate its materials. It was only as a result of activism by a statewide coalition and the efforts of MALDEF that we were able to push the jurisdictions – actually take movement on, on these issues. I mean, and – in, in '04 when we meeting with them they were saying, 'Well, you know, the election's right around the corner. How are we ever going to get this done?' And that's when we went back to our notes and said, 'Well, we met with you three years ago.' And, in fact, the Justice Department had met with King County at the same time. And so we said, 'You all were well aware of your obligations at the time. You know, it's not an excuse now to be saying you don't have enough time to do this.' Even after they agreed that they were covered, that they had the obligation to translate everything, we found them fighting about what needed to be translated. Well, does it really have to be everything? You walk into the King County registrar's office and there's absolutely no sign in Spanish of any kind. So someone who's a Spanish speaker comes in and can't even figure out where they have to go to register a vote. There are pamphlets that talked about voting for seniors that weren't translated into Spanish at the time. There, there were pamphlets that were seeking election judges and were seeking to get high school students involved in the election that weren't translated into Spanish. And they though t these thinks were kind of minimal and, and not important. And we said, 'You know, this is the whole point. If you're making the outreach to white or English speaking high school students to start getting involved in the election process, what message is it sending to the Latino or the Spanish speaking students who want to be part of this to not even give them the opportunity? Even more striking was a Web site that was quite extensive, no translations

at all at the time. They've made quite a lot of progress in King County thanks to our efforts and, and, you know, a recognition of that, that it is really only Section 203 that made them do this. I mean, it was the threat of litigation that if you don't comply, you've had a lot of time, we're going to come after you." *Jorge Sanchez, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 423 *(July 22, 2005).*

- "I wanted to talk a little bit now about observers. I think it's very important that, that the observers and, and monitor provisions be maintained on the Voting Rights Act. Chicago has a very, very checkered history with elections, and not just Chicago but jurisdictions around Chicago as well. We hear about people being – voting who are dead, people voting from addresses that are registered – that are vacant lots, et cetera. And, and similar, as was raised, a lot of times the flash points are placed of rapid population growth, if not of rapid population growth, of growing Latino empowerment." *Jorge Sanchez, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 423 *(July 22, 2005).*

- "I think of Cicero, Illinois as being one of these places that had election monitors the last time around. And needs them and absolutely needs them. This is a town that was basically Al Capone's headquarters for decades, and organized crime still has a lot of influence in this town. It's a town where – which is a complete Latino majority in terms of total population, and which only recently saw it elected its first Latino mayor. It's a place where all sorts of shenanigans go on, and we know it and everyone knows it, and the only way to put a stop to these kinds of things are by having federal monitors there on site." *Jorge Sanchez, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 423-424 *(July 22, 2005).*

- "Again in Illinois, there's an organization called the Illinois Coalition for Immigrant and Refugee Rights, which undertook a massive voter registration campaign. I believe they registered over 24,000 voters in the state of Illinois. And as part of their registration efforts, they also had done Get-Out-The-Vote efforts and then election day monitoring efforts. And in one jurisdiction in Kane County, the county registrar out there, Willard Helander, initially denied this group the ability to go and observe the election. And, and there were a few precincts in Lake County that they were interested in looking at. The, the reality is there aren't yet a lot of Latinos yet in Lake County, so they're, they're in a fairly small area. And it was only again the threat of litigation that, that opened the doors for this group. And, and the defense that Ms. Helander gave – first she said this group wasn't registered with the state, which indeed they were registered with the state to be a registrar of voters statewide, and had the proper credentials to, to do the poll-watching as well. But then Ms. Helander was very, very proud of the fact that – she said, 'Well, you know what? I denied the League of Women Voters observing status too, because monitoring elections isn't within their mission statement.'" *Jorge Sanchez, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 425 *(July 22, 2005).*

- "Throughout the '80s and through the '80s and into the '90s, the tradition in Illinois was that you drew a map that created the smallest number of districts in which minorities could elect candidates of their choice. It was not until special elections were held in the mid-1980s that required a significant redrawing of districts that Hispanics obtained their first representatives

on Elkton, Illinois and in Chicago, despite the fact that they had quite substantial populations. And, indeed, in the '90s the first Hispanic congressional district. The process has been corrected, to the extent that it has been corrected, only through litigation. In the 1980s, there were – there was litigation over the congressional redistricting in which efforts were made to create two African-American congressional districts in a jurisdiction in which it took a tremendous amount of energy to draw anything less than three districts. It was only after litigation that we succeeded in creating three districts that we have today, in terms of litigation in the '90s, was to create a Hispanic district. In the local scene in Chicago in the 1980s, it took four years of litigation to address a map that had the smallest number of African-American and Hispanic districts that could possibly be created. In fact, the city is so segregated that you were able to draw a boundary throughout the city that ran on both sides of the existing boundaries that would include potential populations that could have been put into a majority black ward or majority white ward. In the 1980s, blacks in that area were 34 times as likely to be placed in majority white districts than white were to be placed in majority black districts." *Judson Miner, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 443 *(July 22, 2005).*

- "[T]he problems are most profound at the most local level. It's one thing to be addressing this issue in a city government where these racial concerns are created mostly. The next level is the state level where districts are much bigger and it is, it is still severe but not quite as severe." Judson Miner, *Testimony submitted to National Commission on VRA Midwest Regional Hearing* 444 *(July 22, 2005).*

- "All I can say is when you get into local politics, race becomes more important, seems to be. All of our voting analysis shows that race plays a more predictable, profound role in determining how people vote. In biracial elections in Chicago, whites virtually never cross over and draft African-Americans at the local level." *Judson Miner, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 446 *(July 22, 2005).*

- "As recently as 2002, Cook County, Illinois purchased a voting system that used punch-cards with 'voter error notification' capabilities that was incapable of notifying Spanish-speaking voters of problems with their ballots. Only by virtue of a lawsuit and a negotiated consent decree on behalf of Latino voters did the county agree to increase the number of Spanish-speaking poll workers and implement new training, monitoring, and hotline procedures." *Theodore M. Shaw, House Hearing., 19 (Nov. 9, 2005).*

- "Also, the other thing that was noted was even though Korean voters have—go to the right polling sites, and even though voters have all the right required information, including voter registration cards, so sometimes they were asked to vote by provisionary ballot instead of the usual ones.

  And the third one is lack of sample ballots in Korean language, so that kind of impeded Korean voters to be able to choose—vote candidates in their districts because they are not given information about candidates – for positions and what they run for in their districts." *Kat Choi, Testimony Submitted to the National Commission on the VRA, Midwest Regional Hearing, at 451, July 22, 2005*

- "As recently as 2002, Cook County, Illinois purchased a voting system that used punch-cards with 'voter error notification' capabilities that was incapable of notifying Spanish-speaking voters of problems with their ballots. Only by virtue of a lawsuit and a negotiated consent decree on behalf of Latino voters did the county agree to increase the number of Spanish-speaking poll workers and implement new training, monitoring and hotline procedures." *Testimony of Theodore Shaw, Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, at 19*

INDIANA

Anecdotal Evidence

- "Another – a very, a very common problem that we see too is the lack of competent translators to produce intelligible translations. In one of the cases we were involved in in East Chicago, Indiana, they had a clerk translating ballot materials. And so you actually had them making up words that don't exist in Spanish. They had translated the words 'ballot' as – I don't remember. They basically made up a word that was not the word for ballot in Spanish. And this had actually gone out. This was some time ago." *Jorge Sanchez, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 423 *(July 22, 2005).*

- "In the May 6th, 2006 mayoral primary in East Chicago, Indiana, a decades-old political machine, in an attempt to regain its waning power, engages in a series of actions aimed at vote suppression, vote stealing, vote buying and vote denial. There was quite a lot of litigation over this, over this primary, and it resulted in a, in an opinion by a district court. And these are the findings that the district court made. After eight and half days of testimony and after hearing from approximately 165 witnesses, the court found that over 155 instances of individual voter fraud existed. The trial court made a number of specific findings, and I'll read some of these. A predatory pattern existed by Pastrick supporters of inducing voters that were first-time voters or otherwise less informed or lacking any knowledge of the voting crisis – process, the infirm, the poor and those with limited skill in the English language to engage in absentee voting. There was widespread solicitation of people to apply for absentee votes and then a concomitant handling of those ballots or applications or the – either the ballots before or after they were voted. There were numerous actions of Pastrick supporters of providing compensation and/or creating the expectation of compensation to induce voters to cast their ballots via the absentee process. The use of vacant lots or former residence of voters on applications for absentee ballots. The possession of unmarked absentee ballots by Pastrick supporters and the delivery of those ballots to absentee voters. I could go on and on. This is – the court summed up by saying… I could go on and on. This is a jurisdiction that is about 75 percent Latino and, and had not been able to elect an executive for decades. And, and it's, it's particularly important that these kinds of fraud were aimed at a Latino and in some cases a limited English population and first-time voters. … There, there's also issues of – actually, let me read the quote from the court. 'The East Chicago Democratic mayoral primary may be a textbook example of the chicanery that can attend the absentee vote cast by mail.' … And what the court leaves out is it was primarily the Latino population that suffered these indignities. This, this didn't happen without the help of the

election authorities. On May 6th, prior to the May 6th election, one of the plaintiffs in the case was a poll judge, and she had attended a training session prior to the election. On the day of the election, she was told incorrectly that she could not help anybody, any Spanish speaking voters, that Spanish could not be spoken in the polling place at all. This was told and, and actually given to her in writing on the day of the election when she sought to help people who actually sought her help to vote. … [A]s a result of the litigation in this case, a new election, a special election was ordered by the Indiana Supreme Court and a federal judge appointed federal monitors to oversee the election." *Jorge Sanchez, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 424-425 *(July 22, 2005).*

KENTUCKY

Anecdotal Evidence

- "First, in the 2000 general elections, the voters of Louisville and Jefferson County passed a referendum merging the City of Louisville and the unincorporated areas of the county… Prior to this, the general assembly had passed enabling legislation which passed the referendum on the ballot and stated that the University of Louisville Geography Professor, Dr. Bill Dakan, would draw the 26 districts for the new government. The enabling legislation also stated that Jefferson Physical Court had to approve the districts drawn by Dakan without alterations or amendments. A one-man show.

  During the campaign. The proponents and Dakan of merger had promised that there would be – six of 26 districts would be majority black districts. However, the plan as drawn by Dakan diluted minority voting strength because it failed to create the effective voting age minorities – majorities – I'm sorry – in District 2 and District 3. Several alternative plans submitted to Dakan by the NAACP clearly demonstrated that it was possible to create majorities of voting age African-Americans sufficient to provide the citizens of those districts with a reasonable opportunity to elect their candidates of choice, as required by the Voting Rights Act. Today the plan drawn by Dakan is in place."

  Raoul Cunningham, Testimony at National Commission on VRA Southern Reg'l Hearing., House Hearing. 184 (Oct. 18, 2005).

- "…the NAACP unveiled a redistricting plan that showed how the Legislature could draw three majority black districts in Louisville instead of two and create an influenced district in Jefferson County as well as Christian County in the west.

  The House and the Senate, within an hour after that declaration, passed the bill, and the governor affixed his signature that same afternoon. The problem with that is that there was no third African-American district in Jefferson County, and the other two districts had been greatly diluted. Prior to 2002, the 42nd district had 71.2 percent black voting age population, and the 43rd district had 61.8 black – black voting age population. Under the House Bill 1 that we – that now is in effect, the 41st, which was to have been the new majority black

district, has 47.6 black voting age population. The 42nd has 52.6 black voting age population, and the 43rd has 54.1 black voting age population."

Raoul Cunningham, Testimony at National Commission on VRA Southern Reg'l Hearing., House Hearing. 184 (Oct. 18, 2005).

- "...Kentucky is not a covered state. Basically, we had not had problems of intimidation since the 1800s. We found it very interesting that it would then – and would come about in 2003. The first two cases that we discussed with you brings to mind what can happen in states that are not covered by Section 5."*Raoul Cunningham, Testimony at National Commission on VRA Southern Reg'l Hearing., House Hearing. 185 (Oct. 18, 2005).*

- "Similarly, during the 2003 Kentucky gubernatorial election, I referred a complaint to the Department [of Justice] concerning reports that 59 precincts with significant African-American populations had been targeted for vote challenges by local campaign officials." *Rep. John Conyers, House Hearing., 63 (Nov. 15, 2005).*

- "Kentucky Secretary of State Trey Grayson found that more than 8,000 people on the Kentucky voter roll were also registered to vote in Tennessee and South Carolina." *Written Testimony of Mark Hearne, Senate Judiciary Committee Subcommittee on the Constitution, VRA Hearing, 7/10/06 at 4*

LOUISIANA

Voting Rights Lawsuits/Enforcement

- ***Hays v. Louisiana***, 515 U.S. 737 (1995): A court invalidated Louisiana's Fourth Congressional District for unconstitutional "race-conscious" redistricting. *Id.* at 481. The Supreme Court granted cert, but then dismissed the case for lack of standing. ACLU Rep., at 481.

- ***ACORN v. Fowler***, Civ. No. 95-0614 (E.D. La. 1995): Following passage of the National Voter Registration Act (NVRA) in 1993, Louisiana enacted implementing legislation on June 29, 1994, which it submitted to the Department of Justice for preclearance. The department approved most of the plan on November 21, but it objected to a provision which required first time voters who had registered by mail to present photo identification at the polls. ACLU Rep., at 482.

  As of 1990, the population of Louisiana was 30.6% black, and, according to the Justice Department, the ID provision would "eliminate certain of the gains to minority voters mandated by Congress in enacting the NVRA" and would weigh heaviest on "the very group of voters whose political participation in federal elections the NVRA seeks to encourage through increased access to voter registration opportunities." *Id.* at 482. It also said that blacks were four to five times less likely than whites to have driver's licenses or other photo identification.

- ***Wilson v. Mayor and Board of Aldermen of St. Francisville***, 964 F. Supp. 217 (M.D. La. 1997) *aff'd* 135 F.3d 996 (5th Cir. 1998): Based on the 1990 census, the city of St. Francisville had a population of 1,700 people, 31% of whom were black. Its mayor and five member board of aldermen were elected at-large, and as of 1992, no black person had ever been elected to a city office. At the request of black residents, the city adopted a districting plan in 1992, creating one single member district that was majority black, and one four member district that was majority white.

  The Attorney General denied preclearance to the city's proposed districting plan in1993, because it unnecessarily limited "the opportunity for minority voters to elect candidates of their choice." *Id.* at 491.

  The next plan created one majority black district and a second district with a substantial black population. The plan was precleared by DOJ. ACLU Rep., at 489.

- Every redistricting plan by the Louisiana House of representatives submitted to DOJ for section 5 pre-clearance has not been pre-cleared. Both Democratic and Republican Attorneys General have found faults. *Mark Morial, House Hearing at 18 (Oct. 18, 2005)*

- Third-largest number of post-1982 § 5 preclearance objections occurred in Louisiana. *National Commission on VRA Report, at 3.*

- In Louisiana, Orleans Parish, which includes the city of New Orleans, is another majority-minority jurisdiction where there have been no objections in the post-1982 period. *National Commission* on VRA Report, at 54.

- Orleans Parish has also been the focus of voting rights litigation in statewide redistricting: the 1980s congressional redistricting plan was found to dilute minority voting strength there and the post-2000 effort to eliminate a majority minority state house district in Orleans Parish was thwarted by the Section 5 process. Louisiana elected to abandon its Section 5 declaratory judgment action when it became apparent that the court was going to rule against it. *National Commission* on VRA Report, at 55.

- In Louisiana, most federal election observer coverages were in counties 40 percent or more nonwhite. *National Commission* on VRA Report, at 61.

- One thing I want to do is to document, at least in one State as an example, and only as an example, the existence of racially polarized voting today. The State is going to be the State of Louisiana, my home State....I chose Louisiana because there is an extensive amount of data concerning a large number of elections, over a large number of different offices, that have been analyzed for the purpose of determining the extent to which racially polarized voting was present in those elections.... That work is my own work. It was done as an expert witness in the case called *Louisiana House of Representatives v. Ashcroft,* a section 5 case. This case did not go to trial. The State did—it was settled when changes were made in the map that were favorable to minorities in Louisiana. But I want to use this as a demonstration. In the tables that are part of my written testimony you will see lots of

numbers....These are 90 elections....And these results I can summarize, and the summary is on page 9 of my report, but out of these 90 elections, 78, that is 86.7 percent, showed racial divisions in candidate preferences, and normally to quite high levels, all right, not just some preference, but extraordinarily strong preferences of one group favoring candidates different from the other. So that is 86.7 percent. The time frame for this study was 1991 to 2002, the entire time in which we were existing under the previous map in Louisiana. And time frame made no difference under the extent to which there was racially polarized voting. The office made no difference. It didn't matter if we are talking about State Rep, State Senator, Governor, Mayor, Register of Conveyances, Recorder of Mortgages, or Traffic Court Judge. Racially polarized voting was there across basically all the offices that were contested. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 49-50 (2005) (statement of Richard Engstrom, Professor, The University of New Orleans).

- Overall, jurisdictions within Louisiana have withdrawn 45 changes after receiving an MIR since the last renewal. *Adegbile, Debo. Written Testimony. SJC VRA Hearing. June 21, 2006 at 4.*

- [S]everal jurisdictions within Louisiana have received multiple objections to proposed voting changes since the 1982 renewal. The DOJ has interposed an objection to every initial reapportionment plan adopted for the State House of Representatives since the VRA was passed in 1965 *Adegbile, Debo. Written Testimony. SJC VRA Hearing. June 21, 2006 at 4-5.*

- [I]n 1991, the Louisiana legislature once again proposed a plan that retrogressed African-American voting strength. DOJ objected to the proposed configuration of district boundaries in seven areas across the state finding that "the state has not consistently applied its own criteria" and the inconsistent application "in each instance" negatively impacted black voters' ability to elect a candidate of their choice. *Adegbile, Debo. Written Testimony. SJC VRA Hearing. June 21, 2006 at 4.*

- In 2001, the state filed a declaratory judgment action in *Louisiana House of Representatives v. Ashcroft* (Civ. No. 02-62 D.D.C.) seeking judicial preclearance process of its state house redistricting plan. In that case, the legislature argued that its proposed elimination of a viable majority African-American district in Orleans Parish was justified by arguing that white voters in this part of the state were entitled to "proportional representation," an unrecognized Section 5 defense, while ignoring long-standing Section 5 principles and disregarding significant growth of the African-American population in the Parish. *Adegbile, Debo. Written Testimony. SJC VRA Hearing. June 21, 2006 at 4.*

- An example of a particularly resistant jurisdiction is Pointe Coupee Parish, in which DOJ interposed objections to the school board and police jury district redistricting plans three decades in a row. Most recently, DOJ interposed an objection to a 2002 plan that would have eliminated a majority-black district. *Adegbile, Debo. Written Testimony. SJC VRA Hearing. June 21, 2006 at 6-7.*

- Mr. Shaw- [T]he State of Louisiana, sought preclearance of its plan for the State House of Representatives and filed the Declaratory Judgment Act in the D.C. District Court rather than seek preclearance. And among the things that it was trying to do, it wanted to have a redistricting plan that eliminated one black opportunity district in Orleans Parish. The State argued that there ought to be proportionate representation for white voters in Orleans Parish, even though it was not arguing that black voters ought to have proportionate representation statewide. There was no replacement district that was created. That plan ultimately did not work. . *5/9/06 SJC VRA Hearing Transcript, Pages 41-42.*

- I will say just a word about a case I litigated, which was the last objection, which came in the form of a declaratory judgment action right here in Washington, DC. That case was remarkable, for a lot of reasons.

  First, the State tried to eliminate in to an opportunity to elect district from Orleans Parish. There was no argument that there was an offset. There was no argument that there was influence being given to African American. Political motivations and other motivations, in our view, led the legislature to eliminate a district altogether.

  [T]he Section 5 declaratory judgment action resulted in Louisiana withdrawing that discriminatory voting change and instead implementing a plan that restored the district.

  It is very significant to note that in that case there was substantial evidence of intentional discrimination, not the least of which was that the line drawers eliminated provisions of the redistricting guidelines that said that the State needs to follow the Voting Rights Act before they undertook to draft the redistricting plan. *Testimony of Debo Adegbile, june 6/21/06 Senate Hearing Transcript, at 20- 21.*

Statistics

- The analysis on which I rely was performed by me for a section 5 case, Louisiana House of Representatives v. Ashcroft, (D.D.C. CA No. 1: 02cv00062), a case that never went to trial but was settled on terms favorable to the minority voters. Prior to the settlement retrogression issues were raised concerning four state House of Representatives districts, Dists. 11, 21, 72, and 98, adopted by the state following the 2000 census, and the state introduced a focus on a fifth district, Dist. 102. These districts are located in different areas across the state....I analyzed a total of 90 elections....between 1991 and 2002, inclusive, the time period during which the previous redistricting plan adopted following the 1990 census, was in place. These were the 90 elections in which voters in these areas were presented with a choice between or among African American and non-African American candidates. These included the elections for the state House seats themselves and also elections for other offices, called exogenous elections, in which voters in these districts participated....Elections involving a biracial choice of candidates are widely recognized as the most probative for the purpose of determining whether, and the extent to which, voting is racially polarized. If the analysis of these types of elections reveal that African American voters have a distinct preference to be represented by people from within their own group, and non-African American voters reveal a distinct preference to be represented by others,

then any dilution or retrogression inquiry must be concerned with the relative opportunities that African American have to elect fellow African Americans....Attached to this testimony are tables that report the results of the analyses of these elections...In the far right columns the values of correlation coefficients are reported for each analysis. These coefficients may vary from 1.0 through 0.0 to -1.0. If increases in the African American percentage of those receiving ballots in the precincts relate to increases in the percentage of the vote received by the African American candidate or candidates in a perfectly consistent way across the precincts, then the value of the coefficient will be 1.0. If the relative presence of African American voters in the precincts does not relate at all to the vote cast for the African American candidate or candidates, then the value of the coefficient will be 0.0. If the relative presence of African American voters is inversely related, again in a perfectly consistent way, to the vote received by these candidates, then the value of the coefficient will be -1.0.

While coefficients with values of .9 or above are virtually unheard of in social science research generally, this has not been the case when the coefficients concern the relationship between the race of voters and the race of candidates they support. Among the 127 correlation coefficients reported in these tables, 102 have values of .9 or greater....Clearly, across these elections, the votes received by the African American candidates in the precincts and the race of the voters in those precincts are variables that are strongly related.

Testimony of Richard Engstrom, *House Hearing, Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 54-57 (2005) (prepared statement of, Professor, The University of New Orleans).

- In 78 of the 90 elections analyzed, 86.7 percent, all available estimates show that African Americans cast a majority of their votes, usually extraordinary majorities over them, in support of an African American candidate, while a majority, also usually an extraordinary majority, of the non-African Americans voted for a non-African American candidate. This was true for 23 of the 25 elections (92.0 percent) for the state House seats, and 55 of the 65 elections (84.6 percent) for other offices. In only one of the areas did the analysis reveal that al of the available estimates did not show racial divisions in the candidate preferences in over 80 percent of the elections. The exception was Dist. 98 in New Orleans, in which all available estimates showed such divisions in 79.5 percent of the elections. *Testimony of Richard Engstrom, House Hearing, 10-25-05, at 58-59.*

- "The result in each of the three states examined has been a dramatic increase in the number of black elected officials between 1969 and 2001: in Georgia from 30 to 611; in South Carolina from 28 to 534; and in Louisiana from 65 to 705. Nationwide, between 1970 and 2001, the number of black elected officials increased from 1469 to 9101." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 16*

- "Finally, between 1980 and 2004, self-reported registration rates between blacks and whites were similar in Louisiana, each above 70 percent for most years. Black voter registration rates in Louisiana are higher than blacks outside the South; in 2002, blacks in Louisiana

were 16.5 percentage points more likely to report being registered than non-southern blacks. Similarly, black turnout rates in Louisiana are higher than in states outside the South in the 2000 election, the difference was 10 percentage points. And black and white turnout rates in Louisiana are consistently similar." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 16*

- "[T]hat voting in these dispersed areas of Louisiana is unquestionably characterized as racially polarized. Indeed, the phenomenon is pronounced. In 78 of the 90 elections analyzed, 86.7 percent, all available estimates show that African Americans cast a majority of their votes, usually extraordinary majorities, of the non-African Americans voted for a non-African American candidate. This was true for 23 of the 25 elections (92.0 percent) for the state House seats, and 55 of the 65 elections (84.6 percent) for other offices." *Testimony of Richard Engstrom. House Judiciary Committee, VRA Hearing, 10/25/05, at 58*

- "There is no evidence in this analysis that racially polarized voting is a thing of the past in Louisiana. In the later years of the time period studied voting remained polarized just as it was in the earlier years. And the racial differences in candidate preferences are pervasive across offices. It doesn't matter whether the office at issue is state Representative state Senator, Governor, Mayor, District Attorney, or Public Service Commissioner." *Testimony of Richard Engstrom. House Judiciary Committee, VRA Hearing, 10/25/05, at 59*

Anecdotal Evidence

- Since the 2000 census, Political scientist Richard Engstrom has worked in seven states conducting studies of racially polarized voting, "or at least what it takes to elect minority-choice representatives." As an example of his findings, he presented several data sets measuring polarization in different ways in various types of Louisiana elections. Specifically, he focused on ninety elections using three measures of polarization for each. "Almost every election analysis in those tables," he testified, shows "racially-polarized voting in that election. . . . There are a few exceptions, usually when African Americans themselves may not be supportive of the African-American candidate. But . . . rarely is that the case." Engstrom analyzed elections for at least ten types of office in his study—from governor to the recorder of mortgages. "It doesn't matter what office is at issue; it doesn't matter whether it's high profile or low profile; it doesn't matter whether it's top of the ballot or down on the ballot. Time, place, and office do not matter. What we find consistently in almost every instance," he testified, is racially polarized voting. *National Commission* on VRA Report, at 90.

- · In a federal case involving a Louisiana statewide redistricting plan, the court stated: "A consistently high degree of electoral polarization in Orleans Parish was proven through both statistical and anecdotal evidence. Particularly as enhanced by Louisiana's majority vote requirement, . . . racial bloc voting substantially impairs the ability of black voters in this parish to become fully involved in the democratic process." *National Commission* on VRA Report, at 96.

- Louisiana exhibits evidence of Black progress and voter participation through registration and voting. Black legislators are elected to the Congress and to the State legislature, though not in proportion to their numbers. Louisiana voting is such that the Black candidates running statewide have failed in their efforts. Racial polarization is insufficient to deny the election of Democrats in general who are very successful in statewide elections, but the success has not been obtained by African-Americans running statewide in the Pelican State. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. at 29, 10-25-05 (statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).*

- The, in Louisiana, we see evidence of black progress in voter participation through registration and voting. Black legislators are elected to Congress and the state legislature, though not in proportion to their numbers. Louisiana voting is such that black candidates running statewide have failed in their efforts. Racial polarization is insufficient to deny the election of Democrats in general, who are very successful in statewide elections, but African-American candidates fare less well among white voters. However, some black candidates are not candidates of choice of the black electorate, and in Democratic verus Republican head-to-head elections, cohesive black voting plus a minority of the white electorate can elect Democrats who are preferred by black voters. The current domination of statewide office by Democrats indicates that, at least as previously constituted, the Louisiana electorate afforded circumstances where black voters act as critical partners in crafting statewide majorities for constitutional office. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. at 42 (10-25-05) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).*

- "In Louisiana, attempts to dilute black voting strength have been widespread. 33, 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 one time...every proposed Louisiana State House of Representatives' redistricting plan has been objected to by the DOJ, including three since 1982...A period of 40 years of CRA protection has been insufficient to erase the effects and ongoing practice of voting discrimination." *Debo Adegbile,, Testimony Submitted to the National Commission on the VRA, placed in House Hearing, 10-18-05, at 592-593.*

- "Officials have time and again attempted to limit black voters' political influence by over-concentrating them into a few districts packing or fragmenting them 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 cracking. This second generation form of discrimination known as vote dilution is designed to cabin minority voting power and pick up where the more outright vote denial left off...In 1982, even as Congress debated the continuing need for Section 5, the Louisiana House submitted a redistricting plan that was crafted with the purpose of reducing black voting power in New Orleans...Violating purported traditional redistricting principles, white officials resorted to drawing a non-contiguous district in uptown New

Orleans in order to dilute the black vote there." *Debo Adegbile,, Testimony Submitted to the National Commission on the VRA, placed in House Hearing, 10-18-05, at 594.*

- "If Section 5 had not been renewed in 1982, 96 attempts to dilute black voting strength since then would have had the force of law in Louisiana, leading to the deprivation of our most fundamental right to tens of thousands of African-Americans.

  The record shows that the need for Section 5 coverage in Louisiana has not declined since 1982. In fact, the average number of objections per year actually increased from 3.8 before 1982 to 4.2 since." *Debo Adegbile,, Testimony Submitted to the National Commission on the VRA, placed in House Hearing, 10-18-05, at 595.*

- "And as we've heard some people say, many of the southern jurisdictions have the highest percentage of serving African American in their legislatures, school boards and congressional delegations. So in terms of representation, the progress has been measured." *Debo Adegbile,, Testimony Submitted to the National Commission on the VRA, placed in House Hearing, 10-18-05, at 599.*

- "I highlight the most recent 2001 state redistricting plan for the Louisiana House of Representatives, which provides important recent evidence of the persistence of discrimination by the state. No Louisiana House of Representatives redistricting plan since the VRA was passed has been precleared as initially submitted." *Response of Theodore Shaw, Director-Counsel, NAACP Legal Defense and Educational Fund, Inc. to Questions from Senator Arlen Specter June 9, 2006, at. 1-2.*

- "In redistricting after the 2000 US Census, the Louisiana Legislature had to deal with population loss in the New Orleans region. This loss dictated that the City area would have one less State House district. The legislature chose to reduce the number of black districts and maintain the same number of white districts. When I say "black district" I merely mean a district in which African-American citizens have a reasonable opportunity to elect a representative of their choice. A "white district" simply means a district in which no such reasonable opportunity for black voters exists. The US Census for 2000 indicated that the loss of population in New Orleans was in the white population. Indeed, the number of blacks in the City had increased. I drew several district plans for the region that had lower population deviations, had more compact districts, and treated incumbents equally as well as the districts proposed by the State. Yet I maintained the same number of black districts and reduced the number of white districts by one. How could anyone justify reducing opportunities for blacks when it was the white population that was leaving the area? Of course, Louisiana could not justify their arrangement and the Attorney General did not pre-clear their original proposal. They finally adopted something similar to my district plans." *Written Responses of Theodore Arrington to Questions from Senators, Senate Judiciary Committee VRA Hearing, 6/1/06, at 5*

- The persistence of the attempts to dilute minority voting strength in Orleans Parish, which has been the most concentrated area of African-American population in the state, is best illustrated through the decennial redistrictings for the Louisiana House of Representatives.

Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 12.

- 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. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 13.*

- 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 [in Alabama] 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. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 23.*

MARYLAND

Voting Rights Lawsuits/Enforcement

- In a federal case involving a Maryland statewide redistricting plan, the court stated: "In sum, the Gingles threshold inquiry clearly shows that a bloc-voting white majority on the Eastern Shore [of Maryland] consistently defeats black candidates supported by a politically cohesive and geographically compact black community. Plaintiffs' claim of vote dilution is anything but hypothetical." *National Commission on VRA Report, at 96.*

Anecdotal Evidence

- "During the 2002 election, I referred a complaint to the Department of Justice concerning fliers circulated in African-American areas of Baltimore, Maryland, that were intended to confuse and suppress voter turnout in those communities. The flier misstated the date of election day and implied that payment of overdue parking tickets, moving violations and rents were qualifications for voting." *Rep. John Conyers, House Hearing., 63 (Nov. 15, 2005).*

- During the 2002 election, I referred a complaint to the Department of Justice concerning fliers circulated in African-American areas of Baltimore, Maryland, that were intended to confuse and suppress voter turnout in those communities. The flier misstated the date of election day and implied that payment of overdue parking tickets, moving violations and rents were qualifications for voting. Similarly, during the 2003 Kentucky gubernatorial election, I referred a complaint to the Department concerning reports that 59 precincts with significant African-American populations had been targeted for vote challenged by local campaign officials. *Testimony of Barry Weinberg, House Hearing, Nov. 15, 2005, at 63.*

MASSACHUSETTS

Voting Rights Lawsuits/Enforcement

- In a federal case involving a Massachusetts statewide redistricting plan, the court stated: "The evidence establishes beyond peradventure that African-American voters in the Boston area are politically cohesive. The same evidence, taken as a whole, also suffices to show that white voters, who constitute a majority in most districts, vote sufficiently as a bloc to enable them, as a general rule, to defeat the black-preferred candidates." *National Commission on VRA Report, at 96.*

- "[T]he 2000 Census first became a majority-minority city with people of color making up 50.5 percent of the population. Despite substantial growth of the minority population, the two – now one district began. Instead of increasing the number of minority districts for the state, the House of Representatives eliminated the two majority-minority districts and put in White, and several of the incumbent districts and super-packed another district so that it had 98 percent minorities. The district's performance was well in excess of the number justified by the white voting age population. The Re-districting Act, 'gerrymandered' districts and diluted minority strength in violation of Section Two of the Voting Rights Act. And the constituents redistricting actions deprived them of equal voting power and prevented them from re-electing candidates of their choice. The Lawyer's Committee for Civil Rights Under Law brought suit in Federal Court, on behalf of several organizations, including the Black Political Task Force and Oiste, and 13 individuals of color. In 2003, we had a trial before a three-judge panel. The three judge court in 2004 found that the re-districting plan was unlawful and deprived the rights of African-American voters, in that it diluted the minority vote. The Court found that the legislature – and this is their language – sacrificed racial fairness to the voters to achieve incumbency protection, and to make matters worse, the House knew what it was doing, despite the fact that this is what the Court found. It increased the number of majority White districts to 12, and diminished the number of black districts to one. The court found that the plan contained extremes and unexplained 'packing.' After moving out of two districts, it says the plan leaves African-American citizens in the Boston area less opportunity than other members of the electorate to participate and elect representatives of their choice. The court gave the legislature six weeks to come up with a new plan and they specifically told the legislature that they could not 'rob Peter to pay Paul.' After the haggling, we finally agreed on a new plan, and I'm very happy to say that as a result of the districting laws, the speaker, as the House of Representatives, which was once the most powerful politician in the state, reassigned an American-Asian person, and he was recently been indicted by the D.A. for lying in the redistricting, saying that he had never seen that plan prior to his disclosure." Nadine Cohen, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 334-35 (Oct. 18, 2005).*

- *United States v. City of Lawrence* (D. Mass. 2002): The United States alleged that the city's methods of electing its city council and school board violated Section 2 of the Voting Rights Act because both denied Hispanic citizens an equal opportunity to participate in the political process and elect candidates of their choice. The complaint also alleged violations of

Section 203 and Section 2 of the Act based on the city's failure to provide Spanish-language minority citizens with electoral information and assistance in Spanish and the refusal to appoint Hispanic and Spanish-speaking poll workers. The city agreed to comply with the language assistance provisions of the Act and to change the method of electing its school committee from at-large to single-member districts, and to adopt an election plan for its city council and school board that complied with Section 2 upon supplemental complaint, which alleged that the post-2000 Census redistricting plans did not resolve[d] (*sic*) the Section 2 violation. In a separate consent decree, the city agreed in 2002 to revise the districting plans for both bodies to provide an additional Hispanic-majority district. The consent decree also required the city to appoint a person who is bilingual in English and Spanish to the board of registrars and to the staff in the elections office. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 102.*

- *United States v. Boston* (D. Mass. 2005): On July 29, 2005, the United States filed complaint against the City of Boston under Sections 2 and 203 of the Voting Rights Act. The City's election practices and procedures discriminated against persons of Spanish, Chinese, and Vietnamese heritage and denied and abridged their right to vote in violation Section 203 by failing to make all election information available in Spanish to voters who need it. On October 18, 2005, the three-judge court issued an order authorizing federal examiners through December 31, 2008. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 104.*

- *United States v. City of Boston, MA* (D. Mass. 2005) On July 29, 2005, the United States filed a complaint against the City of Boston under Sections 2 and 203 of the Voting Rights Act. The complaint alleged that the City's election practices and procedures discriminate against members of language-minority groups, specifically persons of Spanish, Chinese, and Vietnamese heritage, so as to deny and abridge their right to vote in violation of Section 2. The suit also alleged that the City has violated Section 203 by failing to make all election information available in Spanish to voters who need it. On October 18, 2005, the three-judge court issued an order authorizing federal examiners through December 31, 2008; retaining the court's jurisdiction through expiration of the federal examiner designation and the agreement, both to occur on December 31, 2008; and providing that either the Department or the City may petition to the court to resolve any disputes during the life of the agreement. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. at 133.*

Statistics

- "...[V]oting rights in Massachusetts. The African-Americans, Latinos and Asian hold less than two percent of key elected offices. The State's twelve-member congressional delegation is comprised of all White men. All statewide constitutional offices from the government on down are held by Whites. There has not been one non-white official elected to statewide office since Ed Brooke was last elected to the U.S. Senate 30 years or more. The 160-member House of Representatives has only five African-Americans and three Latinos, and Latinos have recently elected the fourth in the State. Massachusetts Senate has

only one African-American senator and has had only one African-American senator for most of its recent history. Just very recently, the first Latino was elected to the State Senate. No African-American or Latino member of the state legislature has ever held any of the influential positions. Virtually every mayor in the state is White. Only 40 or so of the state's 351 in the community have elected an official of color in the past 25 years. ... People of color have battled over districts for seats for city counsel and school committees that have operated to dilute minority voting strength in a state that was once the center of the movement to abolish slavery. ... 'GerryMandering' continues to be used in the office as a means to dilute the vote. Section 5 is essential where minority voters have faced many barriers in there efforts to retain their freedom of choice." Nadine Cohen, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 334 (Oct. 18, 2005)..*

Anecdotal Evidence

Boston

- "At least two poll monitors noted that Vietnamese interpreters criticized the poor Vietnamese translation of instructions on the use of provisional ballots." *Appendix to the Statement of Margaret Fung before the US Commission on Civil Rights, found in the House Record, Nov. 8, 2005, at 1312.*

- "At the Pasciucco Apartments poll site, Chinese and Vietenamese voter assistance materials mandated by a court settlement were not provided unless explicitly requested. Poll workers claimed the tables were too small to accommodate court-ordered translated voting materials." *Appendix to the Statement of Margaret Fung before the US Commission on Civil Rights, found in the House Record, Nov. 8, 2005, at 1312.*

- "At the Dorchester House poll site, court-mandated Vietnamese and Spanish voter assistance materials were segregated on a separate table." *Appendix to the Statement of Margaret Fung before the US Commission on Civil Rights, found in the House Record, Nov. 8, 2005, at 1313.*

- "At the Early Learning Center, Spanish voter assistance materials were not available unless specifically requested." *Appendix to the Statement of Margaret Fung before the US Commission on Civil Rights, found in the House Record, Nov. 8, 2005, at 1313.*

- "At two Boston poll sties, Thomas A. Edison Middle School and Jewish Community Housing for the Elderly, Chinese-language sample ballots and provisional ballots were entirely missing from the poll site. When one voter at Edison Middle School was asked to show ID but did not have any with him, the poll site warden sent him away and remarked, 'Read up before you come back.'" *Appendix to the Statement of Margaret Fung before the US Commission on Civil Rights, found in the House Record, Nov. 8, 2005, at 1313.*

- "At the Academy Hill library, poll workers put up the multilingual 'Interpretation Available' and 'Fill in the Oval' signs, a Chinese-language check-in table sign, and Chinese-language

voter registration forms only after AALDEF's poll monitor arrived." *Appendix to the Statement of Margaret Fung before the US Commission on Civil Rights, found in the House Record, Nov. 8, 2005, at 1313.*

- "Boston provides another example of ongoing discrimination against language minorities. On July 29, 2005, the Justice Department sued the city for violating the Voting Rights Act. The suit alleged that the city's practices during several elections discriminated against citizens of Hispanic, Chinese and Vietnamese descent, in violation of Section 2, and that the city failed to provide Spanish language information to voters, in violation of Section 203. For example, when minority language voters could not locate their correct polling place, the city directed them to the city's English-only online polling site locator. In addition, they city treated Asian American voters with limited English proficiency disrespectfully, refused to allow them to use an assistor of choice, and improperly influenced, coerced, and ignored their ballot choices. Ultimately, the court approved a settlement agreement requiring the City of Boston to provide language assistance to Chinese, Vietnamese, and Hispanic voters. The assistance includes providing interpreters, translated ballots, and translated voter notices, as well as mandatory poll worker and interpreter training. The agreement also creates a mechanism for voters to lodge complaints against poll workers. In addition, it establishes an advisory task force and permits federal examiners to monitor elections." *Prepared Statement of the Asian American Justice Center before the US Commission on Civil Rights, found in the House Record, Nov. 8, 2005, at 1385.*

- "In . . . Boston, the DOJ alleged the city engaged in . . . egregious practices such as treating Latino voters disrespectfully, refusing to permit Latino voters to be assisted by person of their choice, improperly influencing, coercing, or ignoring Latino voters' ballot choices, and refusing to provide provisional ballots to Latino voters." Arturo Vargas, *Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 207 (Nov. 10, 2005) (prepared remarks).*

- In Boston in 2004, election officials reported that poll workers at one site segregated voters and formed 2 separate lines for minority voters and white voters. They claimed that separate but equal lines for those who were limited English proficient would speed up the voting process for others. This resulted, in part, to a federal district court requiring the city to provide language assistance in Chinese and Vietnamese. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization "Report, at 19, submitted*

- In 2004, large numbers of voters in New York, New Jersey, and Massachusetts reported that poll workers improperly required them to provide identification in order to vote. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 19, submitted at SJC 6/13/06 hearing.*

- [I]n Massachusetts, 57% of Asian American voters who were required to provide identification were actually eligible voters exempt from the ID requirements. *Fung, Margaret. Responses to Written Questions. SJC VRA Hearing. 6-13-06 at 5.*

- Mr. Kim- [W]e have found voters who have been denied other protections either by statute or by the Constitution. For example, in a recent lawsuit we brought against the city of Boston under Section 203 and Section 2 of the Voting Rights Act, we found instances where voters were forcibly--ballots presented to certain voters who did not understand English very well were taken from those voters and marked out against those voters' will. *5/10/06 SJC VRA Hearing Transcript, At 12*

MICHIGAN

Voting Rights Lawsuits/Enforcement

- ***Hernandez v. Thomas***, No. 1:92-CV-173, Order of March 12, 1992 (W.D. Mich): Buena Vista Township in Saginaw County and Clyde Township in Allegan County are covered jurisdictions which had conducted elections since the date of their coverage in1976, without providing the required bilingual election material. In 1992, the ACLU brought suit on behalf of Spanish speaking plaintiffs. On March 12, 1992, the three-judge district court ordered that Spanish ballots and ballot instructions and bilingual interpreters be provided for the March 17, 1992, presidential primary. ACLU Rep., at 500.

- "On November 2, 1999, Hamtramck held a general election for the municipal offices of mayor, city council, and city clerk. There were a number of dark-skinned citizens of Hamtramck wanting to vote, but were harassed by individuals that wanted to keep the election 'pure'.....

  At the November election of 1999, more than forty voters in Hamtramck were challenged by CBH on the ground of their 'citizenship.' The challenged voters had dark skin and distinctly Arab/Muslim names such as Mohamed, Ahmed, and Ali. Although a number of the challenged dark-skinned voters produced US passports as proof of citizenship, which is conclusive evidence of citizenship, members of the CBH were not satisfied, and the election inspectors required citizenship oaths as a prerequisite to voting. No white voters were challenged for citizenship and required to make an oath before being allowed to vote. The City did not prevent the challenges on the basis of color and surname from continuing. Moreover, the chairperson of one election precinct directed election inspectors to the effect that anyone who 'looks Arab' must show a driver's license and voter registration card.

  The Attorney General of the US filed action against the city of Hamtramck for violating Sections 2 and 12 (d) of the Voting Rights Act of 1965. This action resulted in the following actions:

  1. The city was to establish a training program to train election officials and private citizens regarding the proper grounds for election challenges;
  2. The city was to train election officials to remove challengers who appeared to be discriminating against voters based on their race, color or ethnicity;
  3. The city was to provide notices in English, Arabic, and Bengali to inform voters regarding their procedures;

4. And lastly, the city was to provide bilingual workers on election day."

Ihsan Ali Alkhatib, Statement Submitted to National Commission on VRA, House Hearing 140 (Oct. 18, 2005).

Anecdotal Evidence

- A complaint was made that, during the 2004 election, a man taking photographs of voters was not asked to stop or leave. *National Commission* on the VRA Report, at 45.

- "Hamtramck is a small city in Wayne County, and Hamtramck has traditionally been Polish; mainly Polish-Americans live in Hamtramck. ... It has a lot of Arabs and a lot of people from other Middle Eastern communities that are not Arab. However, they do look like Arab and they have Arabic sounding names because they are Muslim. ... [U]nder Michigan law, challengers, challengers can be involved in the process where if they suspect that somebody's not eligible to vote, they can approach that person and make sure that they're eligible to vote. And what happened is it was a group called the Citizens for a Better Hamtramck which filed to be involved in the monitoring stating that they want to keep the election pure. And what they were doing was approaching people on the basis of skin color and on the basis of name that would indicate they're not – that they're Muslim or Arab. And about 40, actually 40 citizens were approached. Now, no white citizens were approached and required to conduct an oath of, of citizenship. Actually, despite the fact that a number of these voters presented American passports to prove citizenship, that did not end the inquiry, and it was clearly an attempt to suppress the vote. ... So some people did change their mind about voting because of this. This led to the US Department of Justice being involved in the – filing an action, and this action was settled. It was brought on the basis of Section and Section 12(d).... And the action resulted in the city establishing a training program to train election officials and private citizens regarding the proper grounds for election challenges, and training election officials to move challengers who appeared to be discriminating. Third, the city was to provide notices in English, Arabic, and Bengali. And the city was to provide bilingual workers on election day. ... However, at the same time, Wayne County, to look at a accurate state remedy, Wayne County did --- at the time the prosecutor was John O'Hair. ... And finally, we were able to find a provisions, actually an obscure, he said, provision in the common law that made a misdemeanor what these people did. So they were charged, they were convicted of – under that provision." Mr. Alkhatib, *Testimony submitted to National Commission on VRA Midwest Regional Hearing, found in House Hearing, 10-18-05, at* 388-389.

- "Michigan, just as a way of some context, is probably one of the most segregated states in the nation. ... [A] recent report shows that five of the 10 most segregated cities are located in Michigan." Michael C. Murphy, *Testimony submitted to National Commission on VRA Midwest Regional Hearing, found in House Hearing, 10-18-05, at* 397.

- "Allegan County, that location, that locality was not in compliance with the Voting Rights Act, I believe Section 203. And also it was said earlier about Hamtramck. Buena Vista, which is in Saginaw County, is also a locality that is under the Voting Rights Act." Michael

C. Murphy, *Testimony submitted to National Commission on VRA Midwest Regional Hearing, found in House Hearing, 10-18-05, at* 397.

- "During the 2004 election, there were problems, long lines in Detroit and other cities, denial of provisional ballots. Leading up to that election last year, we had one of our former legislators who made the comment in the Detroit media that we must suppress the Detroit vote. That controversial comment made its way all the way to The New York Times. And this legislator, who was a Republican, denied that it was racially motivated, but it was the buzzword to keep African-American votes, especially in Detroit, at a minimum and to discourage that. ... There were misleading phone calls made to voters in Detroit, Flint, Pontiac saying that they wouldn't be able to vote at a particular site. There was an incident with the secretary of state's office putting out a flier that said that people could no longer register to vote because the time had passed, which was not true." Michael C. Murphy, *Testimony submitted to National Commission on VRA Midwest Regional Hearing, found in House Hearing, 10-18-05, at* 397-398.

- "Voter intimidation, off-duty police officers at the polls, particularly in African-American and Hispanic precincts, is something that happens just about every national election in Michigan...." Michael C. Murphy, *Testimony submitted to National Commission on VRA Midwest Regional Hearing, found in House Hearing, 10-18-05, at* 398.

- "In 2004, another Republican legislator in Michigan, John Papageorge, made clear that the Republic strategy in the 2004 election cycle would be to suppress the vote. He was widely quoted in the media, national media and international media, with his statement, and I quote "We are going to have a tough time if we don't suppress the Detroit vote." *Mr. Turner, Testimony Submitted to the National Commission on the VRA, Florida Regional Meeting, found in House Hearing, 10-18-05, at 634.*

- "But we were monitoring the very same thing and we saw an unprecedented effort by lawyers, staffed for the Republican party, in precincts in Detroit, in Pontiac, Michigan, In Flint, Michigan, in Latino areas, in the suburbs of Detroit, intimidating voters of color asking for identification outside polling locations, interfering with elections inspectors as they sought to move voters through lines in an orderly process, which greatly contributed to the lengthening of lines and discouragement (*sic*) voters from waiting two, three and four hours in order to vote." *Mr. Turner, Testimony Submitted to the National Commission on the VRA, Florida Regional Meeting, found in House Hearing, 10-18-05, at 637.*

- "In Hamtramck, Michigan, where Arab and bangle interpreters were once required under a consent decree with the Justice Department, several Bangladeshi voters at the People's Community Services poll site in the 2004 elections complained that they were given wrong poll site information and sought language assistance. Bangla interpreters are still needed in this location." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1336*

- "[I]n Hamtramck, Michigan, an organization called 'Citizens for Better Hamtramck' challenged voters (including Bengali Americans) who 'looked' Arab, had dark skin, or had

Arab or Muslim sounding names. Voters were pulled from voting lines and forced to show passports or citizenship papers before they could vote. Some were asked to take an oath of allegiance even though they had appropriate citizenship documentation. No white voters were challenged. The Department of Justice sued, and the city entered into an agreement that required the city to appoint at least two Arab Americans or one Arab American and one Bengali American election inspector to provide language assistance for each of the 19 polling places where challenges of dark-skinned voters occurred during the November 2, 1999 general election." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1385*

- "In 2000, poll workers required minority voters in Hamtramck, Michigan to show identification, even though identification was not required, and poll workers did not require the same of white voters." Joe Rogers, Testimony at House Hearing on "Voting Rights Act: Evidence of Continued Need." (March 8, 2006).

- "In instances where African American voters were allowed an assistor in the booth, arbitrary rules were concocted that limited the number of voters an assistor could help, or made the assistor wait outside the polling place, requiring the voter to enter the polls alone and negotiate alone the sign-in procedures administered by unfriendly white poll workers, before being allowed to ask that the assistor be allowed to help. All too often, when the voter said he or she needed assistance the white poll worker would proceed to help the voter, and not give the voter a change to ask for the assistor the voter wanted; the voter did not know if the poll worker cast the ballot as the voter desired, and had no confidence that the ballot was cast correctly...On November 2, 1999, in the City of Hamtramck, Michigan, the qualifications of more than 40 voters were challenged on grounds that they were not citizens...As described in the Consent Order and Decree in *United States v City of Hamtramck,* Civil Action No. 00-73541 (ED Mich Aug 7, 2000): 'Some voters were challenged before they signed their applications to vote. Other voters were challenged after they had signed their applications and their names had been announced. The challenged voters had dark skin and distinctly Arabic names, such as Mohamed, Ahmed, and Ali. The challengers did not appear to possess or consult any papers or lists to determine whom to challenge.'" *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 31 (and appendix to his statement, at 150)*

- "In Detroit, a State Representative was quoted as saying, 'If we do not suppress the Detroit vote, we're going to have a tough time in this election.' This statement was widely interpreted as a suggestion that African-American voters would be targeted." *Prepared Statement of Jesse Jackson Jr. National Comm on the VRA, found in House Hearing, 10-25-05, at 3279.*

- In Michigan, the *Detroit News* in a front page article reported that, "In Michigan, even dead vote: From Holland to Detroit, votes were cast by 132 dead people; Detroit's voting records are riddled with inaccuracies, casting doubt on elections' integrity." The Detroit News found that, in Michigan, dead voters were not just on the voter rolls, but actual ballots were being

illegally cast in their name." *Written Testimony of Mark Hearne, Senate Judiciary Committee Subcommittee on the Constitution, VRA Hearing, 7/10/06 at 5*

- In Hamtramck, Michigan, the Justice Department sued the city and law enforcement officials who engaged in blatant racial profiling. During the 1999 elections, officials in Hamtramck, a historically Polish community with a growing South Asian population, profiled Arab and South Asian voters. Police escorted Arab and Bangladeshi voters from voter lines to interrogate them about their eligibility to vote and required them to provide multiple forms of identification and proof of citizenship. The improper use of police, racist profiling, and blatant attempt to disenfranchise Arab and Bangladeshi voters in Hamtramck was not unlike the forms of intimidation used against minority voters prior to passage of the VRA in 1965. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization "Report, page 32, submitted at SJC 6/13/06 hearing*

- In *the United States v. City of Hamtrack*, language assistance did play a central role in the remedial portion of a consent decree involving racial discrimination. The Hamtrack 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 Hamtrack, Michigan- a problem that was largely unaddressed by local election officials. *Angelo N. Ancheta, Draft of "Language Accommodation and the Right to Vote", House Hearing, March 8, 2005, at 2525.*

- Voter Intimidation: .... Man taking photographs of voters was not asked to stop or leave. MI. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4654.*

- An older native woman registered at the last minute .... Her information was [not on the rolls]. She was not allowed to vote, but did register to vote for the next election. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4673.*

MINNESOTA

Anecdotal Evidence

- "It was devastating what happened at our polls. And right up to the last three days before the election, the secretary of state kept changing her mind, basically, about tribal IDs, which just threw us into a tailspin. ... [B]ring that tribal ID, but also if you've got a utility bill. ... In the 10 years I lived there and voted there, I'd never seen this many people of color come to the polls. It was a sea of white up until this last election literally. And so there was tension in our polls like you wouldn't believe in places." *Maggie Kazel, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 399 *(July 22, 2005).*

- "On November 2nd, I witnessed several acts of voter discouragement and harassment. I also witnessed a very calm, prepared Native American by the name of Michael Sayers, who hopefully you'll hear from later today, as he endured tense examination and cross-examination of his people as to their right to vote. Michael had registered hundreds of

natives all through our city in the months prior to the election. On the day of election, he gave rides to and from the polls, several times observing, as I did, his people being questioned vigorously and relentlessly over and over. At the Duluth Public Library downtown branch, it was common to see all people of color experience an unusually high level of questioning by judges and mostly by challengers. The effect was chilling. Many were turned away and many more witnessing this decided to avoid being grilled, opting to relinquish their right to vote. Several people broke down in tears as they were questioned, leaving with looks on their faces of shame and humiliation. At the downtown Duluth Public Library where I personally have voted the last nine years, my worst fears regarding challenger behavior came true. One set of challengers were almost zealot like in their mission. They looked a great deal alike, all Caucasians wearing business suits and trench coats and all carrying cell phones. When questioned as to where they came from, three of them identified as attorneys from the D.C. metro area, northern Virginia to be specific. We decided to go up and ask them, 'Where are you from?' And they said they had been in our city for a week getting ready for this election and paid. These folks stood out very obviously and made a point of walking all of the site frequently. It felt to be intimidating, like soldiers guarding a site. Four separate times at this polling site I served as a voucher, and all four times I went through a challenge. On the last challenge, I clearly irritated one party's challenger beyond her tolerance level. She repeatedly announced her challenge until several election judges reminded her that I had worked as a family advocate for nearly a decade and knew many people from all walks of life. I knew very well the stakes attached to my oath, but the fine amount of $10,000 was loudly announced as I signed my name, as was the felonious nature of my possible crime. This particular challenger then flipped open her cell phone and basically called in an alarm to her party. Within 20 minutes a group of about 30 to 40 people raucously assembled outside of our library. Their presence, their yelling and their posters posed such an intimidating, harassing presence that the librarians were forced to call the police. The demonstrators were also blocking the polling site entrance. I had a teenager with me. We left by the back entrance because she was frightened. I explained to her that the fear she was experiencing was similar to that of the people now afraid to enter the polling site. I also explained to her that this was democracy being thwarted. And then we discussed the McCarthy era and how similar it was to the menacing tone and presence of certain challengers at our polling place. … Also to note, women from a battered women's shelter. We had a whole group that had to leave because they couldn't prove where they live. They didn't want to say where they lived, so they had to go back to the shelter and come back again. And what I will term loosely white trash, people who were poor and who were dressed not in middle class clothes were also challenged vigorously. I mean, this was really well organized. And one thing I noted when we came down to the state legislature, someone had done their homework and found that in 1930s in our state the voters' ballots reflected 26 languages. So we do have a history of having done it right. But my concern is that we – of those three provisions that we really need observers at our polls." *Maggie Kazel, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 399-400 *(July 22, 2005).*

- "I call them the council of the silver hairs. At my public library, the same troop of little white ladies come in every year to do our deal. And I'm telling you, I find them

intimidating." Maggie Kazel, *Testimony submitted to National Commission on VRA Midwest Regional Hearing* 402 *(July 22, 2005).*

- "Red Lake Nation last fall in the 2004 elections. ... The Red Lake Nation is the only closed Indian reservation in Minnesota and in theory, anyone who is not a Red Lake tribal member must get permission from the tribe before coming onto their reservation. ... On election day, that did not happen, and several party sponsor challengers showed up on the reservation before the polls opened. There are four voting precincts on the Red Lake Reservation. The Ponemah precinct is where the major issues occurred. A Republican challenger showed up in Ponemah, started questioning and intimidating the election judges, and then started to intimidate voters by arbitrarily challenging individuals who were standing in line to vote. Some potential voters left the precinct because of this challenger's antics. The Red Lake Tribal Police Department was called to observe the situation. However, the challenger's behavior worsened once the officers arrived. He continued to disrupt the voting process, and eventually tribal officers were forced to remove him from the precinct and escort him to the reservation's border. A few things to note here. According to one election judge, up until this election, no challenger had ever showed in Red Lake during an election. Two, Red Lake is the only area in the state where all of the election judges are native, and nearly the entire voting population is native. Three, some of the challengers that showed up in Red Lake were from out-of-state areas, and that was determined by conversations with the election judges. And that the particular challenger at Ponemah was a lobbyist from Washington, D.C., and that's how he identified himself. There were two other challengers identified, one being Republican and one Democrat, that did show up in Red Lake, but they only observed and did not disrupt the voting process." Elona Street-Stewart, *Testimony submitted to National Commission on VRA Midwest Regional Hearing* 411 *(July 22, 2005).*

- "Last year at the 2004 elections, ... We turned out the Native American vote. In Duluth we had 96 percent. And, and I know we got commendations from around the state. We were one of the highest, highest turnouts. But we did run into a lot of problems with the Republican challengers who openly engaged in voter suppression. And myself, I live in a predominantly white neighborhood of Duluth, and when I went to vote, there was poll challengers at the polls. And I have other friends and other colleagues that work in and live in white neighborhoods in the Duluth area and, you know, they observed the same thing. And you go to the inner city where the population is predominantly black and Native American, there was poll challengers at every polling place. And the Republican challengers were all from Washington, D.C. and were all attorneys." *Mr. Sayers, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 433-434 *(July 22, 2005).*

- "At the Duluth Public Library, I personally brought down several individuals from a halfway house, and they were all Native American. Only one had an ID, and he was going to vouch for the six other, six other residents of the halfway house. Now, the poll challenger let the first five through. And when the sixth, the sixth voter registered and cast his vote, the Republican challenger jumped up to the other guy, 'Okay, you just vouched for this man. You know, you're subject to a $10,000 fine, 10 years in prison for each illegal vote that went through here.' And, you know, he said it loud enough for everybody in the whole, you know, in the whole polling place to hear him. And so then I stepped in and said, 'No, you're

wrong. He can vouch for as many people as he knows. He can vouch for anyone as long as he knows them, knows where they live, and, you know, that's, you know, that's the way the law reads.' So the republican challenger said, 'No you're wrong. If any one of them is an illegal vote, he's subject to a $10,000 fine and 10 years in prison.' And I said, 'Well, no, if you're, if you're going to challenge his vote, you need to take the election judge aside and in private say you're going to challenge that vote. You can't openly threaten someone with prison time or, you know, monetary damages or something like that. That's voter suppression, and you can't do that. And you do it again, I'm going to call the police myself and have you removed from this polling place.' So we didn't have any more problems at that area." *Mr. Sayers, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 434 *(July 22, 2005).*

- "So I went up the hill and I took some ladies from a battered women's shelter to another polling place. And they also had an attorney that was a poll challenger. And we brought the ladies in. Now, the ladies in a battered women's shelter, they're in a domestic violence situation. There's federal laws and state laws that, you know, govern what information they can put on their, their voter registration cards. … And the poll challenger challenged every one of them; demanded – he wanted each and every one of them's address. And I said, 'Well, you know, you're potentially putting these women at risk by trying to put this out as public information when they're in a domestic violence situation and there's federal laws that govern that and you can't do that.' And so he was adamant that, 'Well, then they can't vote. You know, we can't allow you to vote. The election judge should not let you vote because you're not putting an address down. So I told the ladies to go ahead and vote. If he's going to challenge the votes, we would actually, you know, brings its attorney over to actually discuss it with him. Which they have an attorney on site at the federal women's shelter. So those five ladies got to vote in the end, but we just felt that, you know, that's, you know, that's a statement, voter suppression to, you know, try to – a little, any little thing that they could use to try to keep people from voting. And it was pretty blatant that they were only minority communities in the Duluth area. You know, there wasn't poll challengers in the white communities. You know, and I know that firsthand because I voted, you know, in a predominantly white neighborhood." *Mr. Sayers, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 434 *(July 22, 2005).*

- "There was another fellow from Mille Lacs that was doing pretty much the same work I was doing, and we kind of, you know, touched base with each other throughout the day. And he related about 1 or 12 different incidents at the polling places he was working at. So there were several incidents in Duluth last year with voter suppression. So I just feel that, you know, it was pretty blatant in the Duluth area. *Mr. Sayers, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 435 *(July 22, 2005).*

- "We have found that during the election – the last election in 2003 that there were numerous problems around the state, challenges among the party that were harassing people of color. And this was an attempt to discourage voters from actually, you know, casting their ballot as well as—in the city as well as in the Duluth and the Indian reservations that this was experienced." *Shade Buyobe-Hammond, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 456 *(July 22, 2005*

- "So there's so many obstacles that the secretary of state was trying to put in front of [low income immigrants], which is going to affect the immigrant mostly because a lot of them aren't driving." *Sunday Alabi, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 457 *(July 22, 2005)*

- "Of note, in Long and Atkinson Counties in Georgia, there were efforts to wrongfully challenge Latino voters en masse in the 2004 election cycle. Similar efforts were invoked against Indian voters in Duluth, Minnesota." *Joe Rogers, Testimony at House Hearing on "Voting Rights Act: Evidence of Continued Need." (March 8, 2006).*

- In Red Lake, Minnesota, Tribal Police were forced to eject a partisan poll-watcher based on his on-going intimidation of poll workers, poll watchers, and voters, disrupting the voting process .... *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4638-39.*

[U]ntil NV-EEP helped file suit, the Minnesota Secretary of State was attempting to enforce discriminatory Tribal ID rules. In addition, Minnesota still has a rule on the books allowing towns of under 500 to open polls at 10:00am instead of 7:00am. This disproportionately affected many of our native communities in Minnesota as many Native communities have fewer than 500 residents. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4639.*

MISSISSIPPI

Voting Rights Lawsuits/Enforcement

- ***Young v. Fordice***, 520 U.S. 273 (1997): Mississippi traditionally operated a dual system of voter registration requiring citizens to register twice, first for state and federal elections, and again for municipal elections. In 1987, a federal district court found the original version of the dual registration requirement "was enacted as part of the 'Mississippi plan' to deny blacks the right to vote following the Constitutional Convention of 1890," and that a revised version of the registration system, adopted in 1984, violated Section 2 because it "result[ed] in a denial or abridgement of the right of black citizens in Mississippi to vote and participate in the electoral process." *Id.* at 502. The court found the registration rate among blacks was significantly lower than for whites (54% compared to 79%). *Operation PUSH v. Allain*, 674 F. Supp. 1245, 1251, 1253, 1268 (N.D. Miss. 1987).

  Mississippi temporarily fixed the problem, but then resurrected a dual registration system in 1995 which it did not submit for preclearance. The Supreme Court, in a unanimous opinion, ruled the state's regulations requiring separate registration for state and federal elections were unenforceable unless precleared under Section 5.

  The Attorney general denied preclearance because he thought the dual registration system had a "disproportionate impact on black citizens, preventing them, to a greater extent than white citizens, from voting in state and local elections."

(ACLU Rep., at 502)

- ***McCarty v. Board of Supervisors of Perry County***, No. 2:92cv169, Order of Aril 9, 2001) (S.D. Miss.) / ***Coleman v. Board of Supervisors of Perry County***, Civ. No. 2:93cv250 (S.D. Miss): In Perry County, despite the fact that the county was 22.5% black, the districts had always been majority white, and no black person had ever been elected to the board of supervisors or the election commission. When the 1990 census showed the county's districts were malapportioned, and the county proceeded to adopt a new districting plan, it again drew all majority white districts.

  The Department of Justice denied preclearance. According to the Attorney General: "There are significant concentrations of black population in the county that seem to have been fragmented unnecessarily." *Id.* at 507.

  The County adopted a new plan with a majority white district, which was precleared.

  (ACLU Rep., at 506)

- Largest number of post-1982 § 5 preclearance objections occurred in Mississippi. *National Commission* on VRA Report, at 3.

- Mississippi's dual voter registration system was a relic of the state's 1890 constitutional convention called for the purpose of disfranchising blacks. Following Congress's amendment of Section 2 in its reauthorization of the Act in 1982, Mississippi's system was challenged by a Section 2 suit, and in 1987, a federal court found that the system was adopted for a discriminatory purpose and had a discriminatory effect, accounting, in part, for the 25 percentage-point difference in the registration rates of blacks and whites. However, following passage of the National Voter Registration Act (NVRA) in 1993, the state once more adopted a dual registration system, becoming the only state in the union to require people who registered to vote in federal elections at drivers' license offices and other NVRA-sanctioned offices to register yet again for state and local elections. In contrast, people who registered with the circuit clerk were allowed to vote in all elections. After at first refusing to submit the changed procedure to the Department of Justice for preclearance, Mississippi was forced to do so by a Section 5 enforcement action, with the U.S. Supreme Court unanimously ruling that the state was required to submit the change. When the state did so, the Department of Justice issued an objection, finding, just as the court had found in the 1987 Section 2 case, that the new dual system was racially discriminatory both in purpose and effect. *National Commission* on VRA Report, at 56-57.

- In the post-1982 period there were 250 federal election observer coverages in Mississippi involving over 3,000 federal observers. *National Commission* on VRA Report, at 60.

- Mississippi accounted for 40 percent of federal election observer coverages since 1983. Mississippi also ranks highest among the fifty states in terms of the proportion of African-American population. *National Commission* on VRA Report, at 61.

- Mississippi, stands out in the number of federal election observer coverages in counties less than 40 percent nonwhite. A large number of the coverages are concentrated in heavily black Mississippi Delta counties. But others are liberally scattered among the 20-40 percent nonwhite counties, and some even in the 10-20 percent counties. The heavily black counties in the northwest part of the state, ten to be precise, accounted for 100 coverages in the post-1982 period alone—more in absolute numbers than in any entire state but Mississippi. In fact, those 100 coverages between 1982 and 2004 outnumber the entirety of coverages in any states but Alabama and the rest of Mississippi in the period between 1966 and 2004. *National Commission* on VRA Report, at 61.

- At least 50 Section 2 cases were resolved favorably to plaintiffs in the post-1982 period in Alabama, Georgia, North Carolina, and Mississippi. Mississippi has numerous counties that are less than 40 percent black which have been affected at least once, although the Delta Counties have been affected disproportionately, as they were by Department of Justice objections. *National Commission* on VRA Report, at 87.

- [I]n 2001, the Town of Kilmichael, Mississippi, cancelled its general election for alderman and mayor, after the all-White Board of Aldermen realized that, given 2000 census data, African Americans comprised a majority of both the town's total population and registered voters. The cancellation prompted a 2001 objection from the DOJ on the grounds that the voting change prevented African Americans from electing candidates of their choice (since several African Americans had already qualified for the town's elections). *Adegbile, Debo. Written Testimony. SJC VRA Hearing. June 21, 2006 at 7.*

- In Jordan v. Winter, a congressional redistricting case, the three-judge district court stated "[f]rom all the evidence, we conclude that blacks consistently lose elections in Mississippi because of the majority of voters choose their preferred candidates on the basis of race." *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 "racial polarization exists throughout the State of Mississippi...and that blacks overwhelmingly tend to vote for blacks and white almost unanimously vote for white in most black versus white elections." *Adegbile, Debo. Written Testimony. SJC VRA Hearing. June 21, 2006 at 8.*

- [F]ederal observers have been deployed to monitor elections in Mississippi no less than 250 times covering 48 of the state's 82 counties since the 1982 renewal. *Adegbile, Debo. Written Testimony. SJC VRA Hearing. June 21, 2006 at 9.*

Statistics

- 250 instances of "observer coverage," whereby the AG sends federal observers on Election Day to a location because racial tensions are high and efforts to discriminate may occur, since 1982 in Mississippi, involving 3000 observers. *National Commission* on VRA Report, at 3.

- In Mississippi, where the black voter registration gap in 1965 had been 63.2, it was 6.3 by 1988. *National Commission* on VRA Report, at 37.

Anecdotal Evidence

- [I]n an August 1999 primary election in Mississippi, federal observers told DOJ that a white pollwatcher had a camera that she used only to take pictures of African-American voters who needed assistance in casting their ballots (because of physical need or illiteracy). The observers reported this to the Voting Section attorneys who contacted the county election official and led to a cessation of the conduct. Appendix to Statement of Anita Earls, House Hearing, Oct. 25, 2005, at 3192

- Voting rights attorney Robert McDuff noted that "There are no statewide black elected officials in Mississippi." He went on to elaborate on this point: In 2003, there was an election for state treasurer. One of the candidates, African-American, had been the director of the State Department of Economic Development. He had a number of qualifications for the job that made him clearly the best choice, and he was defeated by a 29-year-old white man who had no relevant experience in the area in an election that was characterized by severe racially polarized voting. Another witness, Jackson, Mississippi, attorney Carlton Reeves, secretary of the predominantly black Magnolia Bar Association, added his observation to McDuff's illustration of racially polarized voting in the 2003 race for state treasurer. It is true, he said, that the African American was a Democrat and the white who beat him, a Republican; and this fact might lead the uninformed observer to infer that the outcome was determined by partisanship, not race. However, Reeves pointed to another contest, for attorney general, in the same election cycle. This one was between two white candidates of roughly the same age and experience for the job, in which the Republican "lost resoundingly," suggesting that race rather than party was the operative factor in the contest the black lost for statewide office. Moreover, Reeves noted, even those races involving a Supreme Court judgeship that blacks have won have occurred after they were first appointed to the post. "All the black justices of the Supreme Court were first appointed. No justice has been elected first." Reeves also pointed to the use of the phrase, "He's one of us," by white candidates opposing blacks. He added, "We know what those signals mean, 'being one of us'." *National Commission* on VRA Report, at 93.

- "There was an election contest. He ended up having to run – having to run again. And, basically, what occurred was a situation where black voters were purged. All of this sine 1982. There (*sic*) were purged due to the fact that they had misdemeanor convictions…[Rapes and murders are] not a disenfranchising offense at that time. But petit theft and petit crimes were crimes that were disenfranchise (*sic*). So as a result, these people were purged, and that is one of the things that is still going on. People are still being purged from voter rolls.

  And now, young black men who get incarcerated at higher rates, they're being told when they're incarcerated that you can no longer vote, no matter what the conviction is. And that is a really bad problem, I think, with judiciary action, informing or misinforming young black men and women that they cannot vote. And we have a real bad problem in our area,

and I think in the entire State with that...So I guess hat I would state that there's no question in my mind that the Voting Rights Act, in particular Section5 enforcement, is very necessary. We are in a regressive state in Mississippi. We need stronger enforcement. Carroll's statement about the judicial elections (*sic*). Here we have now again at large elections in the judiciary."

Deborah McDonald National Commission on the VRA Mississippi Hearing, found in House Hearing, 10-18-05, at 938.

- "In 1991, we had a situation here in Hinds county when Benny Thompson was still the supervisor, there was a lady, a black lady by the name of Peggy Hopson who ran for supervisor, she lost on the machines. She lost on the machines in Hinds County in a supervisor race. However, then Benny Thompson at that time was a supervisor. He was at the election commission, saw all of the boxes coming in, and saw a large number of affidavit ballots out of her precincts.

  And so, therefore, we monitored that process and found out that she had enough votes to win if those affidavit ballots were counted. And the long and short of it is a decision was made by the election commission that they would not count those affidavit ballots, because they were not initialed.

  A court challenge was brought, and eventually there was a ruling by the Supreme Court that they did not have to be initialed...But since that time, election commissioners in this State still do not count affidavit ballots unless they are initialed...they will say they aren't going to count it, you can take it to court. And that shouldn't be.

  But because of the Voting Rights Act, some election commissions where you bring that up, say, we're going to – we're going to bring a suit, they'll back off and go ahead and do the right thing. So, as I said, it's the levees that keep the repression from raining back and running back into Mississippi."

  John Walker, National Commission on the VRA Mississippi Hearing, found in House Hearing, 10-18-05, at 957.

- "The original form of dual registration in Mississippi was the requirement that, in order to vote in local elections, voters had to register twice—one with the county registrar (to vote in country, state and federal elections) And once with the municipal clerk (to vote in municipal elections)...By 1984 Mississippi was the only state still to require dual registration."
  Brenda Wright, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/1/05 at 71

- "In 1984, a group of African American citizens and two voter registration organizations...filed suit challenging the dual registration requirement as a violation of the 14th and 15th Amendments and Section 2 of the Voting Rights Act...In a decision issued in 1987, the district court found that both of these limitations on voter registration had been adopted for a racially discriminatory purpose. It also found that these barriers continued to

have a racially discriminatory effect. Black voter registration rates lagged far below those of whites; 79 percent of voting age whites were registered compared to only 54 percent of voting age blacks, a difference of 25 percentage points." *Brenda Wright, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/1/05 at 71-72*

- "In the March 10, 1987 municipal Democratic primary election in the City of Marks, Mississippi, 56 voters who had registered to vote with the Quitman County Circuit Clerk prior to August 3, 1984, but who had not registered with the Marks Municipal Clerk, were require to cast affidavit ballots by election officials. These affidavit ballots were later rejected and not counted by the marks Municipal Democratic Committee. All 56 of these voters were black. In that election two black candidates for the board of aldermen lost by voter margins less than the number of affidavit ballots that were rejected." *Brenda Wright, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/1/05 at 72*

- "On February 1, 1995, the Department of Justice granted preclearance to the unitary system described in the 1994 NVRA implementation manual.

  The Mississippi Legislature, however, never passed the implementing legislation. State Senator Kay Cobb, the chair of the Mississippi Senate Elections Committee, unexpectedly tabled the bill. She later explained her position in part by focusing upon the registration opportunities offered to welfare recipients under the NVRA, saying that people who 'care enough to go get their welfare and their food stamps but not walk across the street to the circuit clerk,' should not be accommodated. Then-Governor Kirk Fordice later sounded the same theme in opposing full NVRA implementation, saying the legislation 'should be called 'Welfare Voter' rather than 'Motor Voter' because it provides access to voter registration for public assistance recipients...

  The result of this legislative impasse was that Mississippi implemented NVRA procedures for federal elections only—since that was required by federal law—but not for state elections...

  In other words, Mississippi once again had a dual registration system, and the electorate was divided into two classes of voters. One group of registrants, those who took advantage of the opportunity to register at drivers' license offices and other offices designated by the NVRA, were eligible to vote only in federal elections; the other group, who registered with the circuit clerk under pre-existing Mississippi procedures, were eligible to vote in all elections." *Brenda Wright, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/1/05 at 74-76*

- "What should have happened next was for Mississippi to submit its new, dual registration plan for Section 5 preclearance, so that it could be examined to determine if these procedures would have racially discriminatory effect or were adopted for a racially discriminatory purpose. But that State refused to do so, even after the Department of Justice wrote to the State and advised it that the voting practice described in the new memorandum were subject to the Section 5 preclearance requirement and had to be submitted.

Accordingly, the only way to force Mississippi to comply with Section 5 was, once again, to go to federal court, this time with a Section 5 enforcement action...[T]he Supreme Court...unanimously held that Mississippi had violated Section 5 by refusing to submit its federal-election-only NVRA plan for preclearance review. And when, after almost two years of litigation, Mississippi finally was forced to submit its dual registration procedures for Section 5 preclearance, the Department of Justice objected...the Department found that the State's method of implementing this confusing registration system was racially discriminatory both in its effect and in its purpose."

Brenda Wright, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/1/05 at 76

- "The predominantly white clientele registering at the drivers' license offices...were simultaneously being offered the opportunity to fill out a state mail-in form that was effective to register voters for all election (*sic*). By contrast, the predominantly black clientele registering at public assistance agencies was not being offered a state mail-in form at the time of registration, but instead was being offered only the NVRA registration form that resulted only in registration for federal elections...[T]he Justice Department noted that the State's re-institution of a dual registration system 'is particularly noteworthy because it occurred only a few years after a federal court had found that a similar requirement had led to pronounced discriminatory effects of black voters[,]' bolstering the conclusion that it was 'tainted by improper racial considerations.'...[A]fter the Department issued this objection, the State failed to correct the problem. Governor Fordice vetoed legislation in 1998 that would have created a unified system in order to cure the Section 5 violation." *Brenda Wright, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/1/05 at 77*

- [I]n the summer of 1998...[a] three-judge district court, noting 'the failure of the State of Mississippi to enact remedial legislation after full and fair opportunity to do so,' entered an order enjoining the State from 'denying the right to vote in any state, county or municipal election to any voter who is registered and qualified to vote in federal elections under the NVRA.'" *Brenda Wright, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/1/05 at 77-78*

- "Racial campaign appeals still surface in elections in the state. In the race 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." *Voting Rights in Mississippi 1982-2006, 3 (renewthewra.org)*

- "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. " *Voting Rights in Mississippi 1982-2006, 14 (renewthewra.org)*

- "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." *Voting Rights in Mississippi 1982-2006, 14 (renewthewra.org)*

- "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." *Voting Rights in Mississippi 1982-2006, 15 (renewthewra.org)*

- "In Mississippi, the experience with dual registration requirements that were implemented intentionally to disadvantage minority voters involved Section 2 litigation, a Section 5 enforcement action, and an objection under Section 5." *Written testimony of Anita Earls, Senate Judiciary, 5/16/06, at 7*

- "One recent example of the VRA combating voter discrimination occurred in Kilmichael, Mississippi in 2001, where the African American voting population became over 50% of the voting age population according the 2000 Census *(sic)*. Three weeks before the 2001 election, the all-white board of aldermen cancelled the election when four of the ten citizens running for Aldermen were black as well as

one of the three mayoral candidates. However, due to Section 5, the DOJ was able to object to the change." *Written Responses of Anita Earls to Senator Kohl, Senate Judiciary Committee VRA Hearing, 6/16/06, at 2*

- "Between 1965 and 2001, the town of Kilmichael, Mississippi did not elect a single African-American to the Board of Aldermen and only one African-American even ran for mayor of the town. Statistics from the 2000 census indicated that the town had become majority African-American and would likely elect multiple black Alderman and perhaps even a black Mayor in the 2001 election. With this knowledge, the all-white council cancelled their general election three weeks before its scheduled date with no notice to the community...[B]ecause the town was required to submit the proposal to the DOJ for preclearance, the elections were reinstated." *Written Responses of Anita Earls to Senator Leahy, Senate Judiciary Committee VRA Hearing, 6/16/06, at 4*

- "During a recent election, poll workers at a majority African-American precinct failed to offer affidavits to voters without proper identification." *Written Testimony of Constance Slaughter-Harvey, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 at 13*

- "For instance, during a recent election, federal observers documented heavy police presence at majority Black precincts and no such presence at majority white precincts." *Written Testimony of Constance Slaughter-Harvey, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 at 14*

- "Among the numerous complaints received, some included concerns about potential tampering with absentee ballots, candidates' names omitted from ballots and intimidating poll watchers who prevented concerned voters from investigating these potential improprieties." *Written Testimony of Constance Slaughter-Harvey, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 at 15*

- "During a recent August 1999 primary election in Grenada, white poll watchers showed up at polling sites with cameras that were used only to take pictures of Black voters who needed assistance casting their ballots. This selective behavior proved intimidating to Black voters." *Written Testimony of Constance Slaughter-Harvey, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 at 16*

- "Subsequently, officials placed the bond issue on the ballot during the general election. This time, the bond issue passed because officials produced two separate ballots – one ballot containing the bond issue and a second ballot containing all other remaining contests on the ballot. Because many Blacks did not know about the bond referendum and because the separate bond ballot was not offered to Black voters, the referendum passed." *Written Testimony of Constance Slaughter-Harvey, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 at 16*

- "In addition to the accounts provided above, I also recall receiving a range of complaints from voters about intimidating behavior at the polls including:

    - Use of video cameras to intimidate
    - Black voters in Noxubee and Lowndes Counties, Mississippi Black voters required to provide social security number in order to cast their ballots in Hinds County,
    - Mississippi Election Official refusing to pick up and count absentee ballots from local post office in Warren County, Mississippi
    - A Black incumbent's name excluded from ballots during a 1991 Hinds County election
    - Voting machine problems, misalignment of ballots, and absentee balloting problems during a hotly contested election in Coahoma County
    - White men wearing dark dunglasses *(sic)* and beige trench coats intimidating Black voters by demanding that Black voters provide their names and addresses and documenting this information in notebooks"

  Written Testimony of Constance Slaughter-Harvey, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 at 17

- Mr. McDuff- In absolute numbers, Mississippi has the highest number of black elected officials among any of the 50 States. But despite the fact that it also has the highest percentage of black population among the 50 States, no black citizen has been elected to office in a statewide election in Mississippi in the 20th century, and at every level of government, viewed from a statewide perspective, the percentage of black officeholders is lower than the black voting age population percentage in the State, and the percentage of white officeholders is higher than the percentage of white voting age population, and we continue to see disturbing signs of the destructive role that race plays in public life.
    - In the second most recent legislative redistricting process in Mississippi, the one in 1991 and 1992, the legislature defeated proposed redistricting plan that would have increased the number of black majority districts with legislators repeatedly referring to it on the floor as the "black plan," and some privately calling it the "nigger plan," even though it was supported by a biracial coalition of 20 black legislators and 38 whites.
    - The legislature passed a plan that created fewer majority black districts than this proposal, but fortunately, the Department of Justice objected to it on racial purpose grounds, citing as part of the evidence these racial characterizations.
    - In 2001 the all-white city council of Kilmichael, Mississippi, canceled city elections three weeks before they were to be held after new data showed the town's voting population had become majority black and after, for the first time in the city's history, a number of black citizens qualified to run for office. Fortunately, the Department of Justice objected to that cancellation.
    - In 2003, in the most recent statewide election in Mississippi, a 46-year-old black candidate for State treasurer, who had served as the State's Director of Finance Administration, who had a wealth of public finance and private sector experience, was defeated in an election marked by racially polarized voting by

a 29-year-old white candidate, whose only experience was that he had worked as a mid-level bank employee, demonstrating that it is still difficult for a black person, no matter how qualified, to be elected to statewide office in Mississippi.

- In 2004, a sitting white trial court judge, running against the only black supreme court justice in the State, used the slogan, "one of us" when referring to himself, implying that there is a them, and his opponent is one of them, a throwback to a slogan condemned as a racial appeal 20 years earlier by a three-judge Federal District Court in Mississippi, when it was used by a white congressional candidate, who defeated a black candidate trying to become Mississippi's first black member of Congress in the 20th century.
- And finally, in 2005, a three-judge Federal District Court had to enjoin the City of McComb, Mississippi, from changing the qualification requirements and removing a black city council member without seeking preclearance of the change.

5/10/06 SJC VRA Hearing Transcript, Pages 50-52.

- Mr. McDuff- Of the 25 majority black counties of Mississippi, Mr. Anderson, the 46-year-old black candidate who had this history of public finance and private sector experience, won 24 of the 25. Of the majority white counties, he won 18 and lost 39. It was very clear that he was treated differently in white areas as compared to black areas. *5/10/06 SJC VRA Hearing Transcript, Page 65.*

- [There were] 169 objections to voting changes in Mississippi. Nearly two-thirds of those came after Section 5 was reauthorized in 1982. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 8.*

- [In]*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. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 9.*

- The Court unanimously held, in the case of *Young v. Foridce* that the officials had violated Section 5 and could not go forward with the changes until preclearance was obtained. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 9.*

- As recently as November, 2005, a three-judge federal court enjoined the city of McComb [Mississippi] 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. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 55.*

- Thirty-six percent of Mississippi's population is black, the highest percentage of the fifty states. 33 percent of the voting age population is black. But no black person has been elected to statewide office since Reconstruction. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 10.*

- When Congress enacted the National Voter Registration Act, moter-voter, in 1993, Mississippi tried to revive its dual-registration system by passing legislation that restricted moter-voter registrants to voting only in Federal elections. Mississippi refused to submit its dual-registration system for section 5 preclearance until it was sued by the Department of Justice in a section 5 enforcement action and the United States Supreme Court ultimately unanimously ordered Mississippi to submit the changes for preclearance. When Mississippi ultimately complied with the court order and submitted its dual-registration system to the Department of Justice, the Department objected in 1998 and Mississippi was prevented from reinstituting the discriminatory registration system. *Written Testimony Joe Rogers before the House Judiciary Committee, March 8, 2006, at 87-88.*

- When Congress enacted the National Voter Registration Act in 1993, Mississippi tried to revive the dual registration system by passing legislation that restricted NVRA-registrants to voting only in federal elections. Mississippi refused to submit its new dual registration system for Section 5 preclearance until it was sued by the Department of Justice in a Section 5 enforcement action and the United States Supreme Court unanimously ordered Mississippi to submit the changes for preclearaence. When Mississippi complied with the Court order and ultimately submitted its dual registration system from reinstituting the discriminatory registration system. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 91.*

MISSOURI

Anecdotal Evidence

- "during the 2000 elections. I found it disturbing that St. Louis election officials routinely violated state and federal law in the implementation on Missouri Statute Section 115.195. This statute specifically limits the use of the inactive voter list. . . . The law does not give election officials authority to purge the names of inactive voters from the election rolls. . . . St. Louis City and County violated this law by keeping records differentiating between active and inactive voters and then denying those identified as inactive voters from voting when they came to the polls." *Rep. William Lacy Clay, Statement Submitted to the National Commission on the VRA,, House Hearing. 79-80 (Oct. 18, 2005).*

- "After the 2004 elections, there were reports that poll workers failed to distribute provisional ballots and that many did not understand the legal issues surrounding these ballots." *Rep. William Lacy Clay, Statement Submitted to the National Commission on the VRA,, House Hearing. 80 (Oct. 18, 2005).*

- "St. Louis city and County violated this law by keeping records differentiating between active and inactive voters....I firmly believe that provisional ballots are detrimental to our democracy. A federal judge in Missouri ruled that the state is not required to count provisional ballots if they are cast outside the voter's own precinct. After the 2004 elections, there were reports that pollworkers failed to distribute provisional ballots, and that many did not understand the legal issues surrounding these ballots. Clearly the provisional ballot law is confusing. It lends itself to interpretation by ill-informed election officials and must be eliminated. *Mr. Goldman, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 376 *(July 22, 2005).*

- "I was quite disturbing that St. Louis election official routinely violated state and federal law in the implementation of Missouri Statute Section 114.195. This statute specifically limits the use of the inactive goes list. It states that the inactive voter designation can only be used to determine the number of ballots to be printed, to compute the proportional cost of elections or to facilitate mailing information to registered voters. the allow does not give election officials authority to purge the names of inactive voters from the election rolls. It is meant to ensure that voters' rights are protected and not denied because the voter has relocated or the U.S. Postal service has failed to update it records. *Mr. Goldman, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 376 *(July 22, 2005).*

- "In some Missouri counties, there are more registered voters than there are people and in others the number of registered voters exceeds the voting age population (as determined by the U.S. Census Bureau) by more than 150%." *Written Testimony of Mark Hearne, Senate Judiciary Committee Subcommittee on the Constitution, VRA Hearing, 7/10/06 at 2-3*

MONTANA

Voting Rights Lawsuits/Enforcement

- "Old Person v. Cooney, later called Old Person v. Brown . . . . Voting rights case that was filed after the 1992 Redistricting Process. We spent many years on this and it became moot after the 2003 Redistricting Plan was approved for Montana." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 87 (Oct. 18, 2005).*

Anecdotal Evidence

- "...after the 2000 census, the Montana State Legislature has created the opportunity for eight (8) American Indians serving – 6 in the House and 2 in the Senate. We expect to have nine (9) in the 2007 Session.....Although we may be equitably represented in the Montana State Legislature, Indian people are far from equitably represented in county government systems, school boards, city governments, and all those other policy making bodies that make the decisions that impact all people in the state, including tribal communities." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 87-88 (Oct. 18, 2005).*

- "Just recently in Blaine County in Montana, which includes the Fort Belknap Reservation, another election legal challenge was filed and won by the Indian people of that community. For 80 years there had never been an Indian County Commissioner elected. An election was held with a new district created on the Reservation area and an Indian was elected." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 88 (Oct. 18, 2005).*

- "The rural locations on reservation render American Indians at the mercy of the county clerks, for electors must accurately place their residence location in 'section, township and range.' This is hypertechnical voter registration cards. In Bighorn County, it is our experience that the lack of addressing in our county places our potential registrants at risk. They will often get 'tossed' if the location is not specific." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 88 (Oct. 18, 2005).*

- "Montana has had a purge process that removes registered voters from the voter lists if the voter does not cast a vote in the general election when the U.S. President is up for election. This process eliminates many registered voters.....The impact of the voter purging primarily impacts first time and young voters, who are the most difficult to register and whose voting habits are hardly developed." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 89 (Oct. 18, 2005).*

- "American Indian voters in Montana experience the highest level of discrimination in the voting process in the established methods of election schemes. The election schemes in Montana are at-large systems. Most Indian voters are unaware that the election schemes dilute their strength, and make it nearly impossible to elect school board members, county commissioners, water board commissioners, city mayors, and more." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 89 (Oct. 18, 2005).*

- "Northern Cheyenne Reservation . . . . Bilingual (Cheyenne and English) speaking people are still needed at the polls here and it is never a priority despite us pointing it out over the years.....On our Reservations, we are dealing with a disenfranchised population who are already hesitant to vote due to backlash—and they have none or maybe one person who can speak the tribal language at the polls." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 89 (Oct. 18, 2005).*

- "Flathead Reservation....This is what Get out the Vote Flathead Reservation encountered in the most recent election in 2004: Smudged Voter Cards. Voter Cards were sent out and ink smudged by the precinct number/district. *[sic] Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 90 (Oct. 18, 2005).*

- "Flathead Reservation . . . . Remarks from the Lake County Election Admin Assistant when we took electors in to due *[sic]* changes of addresses: 'Oh, You moved again, we can't keep up with you.'" *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 90 (Oct. 18, 2005).*

- "Flathead Reservation . . . . Sending a Kootenai Elder on a wild goose chase to vote: The elder went to Dayton to vote and was told she had to vote in Polson. She went to Polson to vote and Polson told her to vote in Dayton. (I called Kathie Newgard, Lake County Election Administrator, her reply was 'That was my fault Anita. She should be voting in Polson and I sent her out a new card this morning.' This was on said Election Day. No election judge offered the elder to vote provisional in Dayton. *[sic]* A total of 50 miles or more for the elder to get the run around." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 90 (Oct. 18, 2005).*

- "Flathead Reservation . . . . Talking down to a Kootenai Male Elder and treating him like he was in kindergarten." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 90 (Oct. 18, 2005).*

- "Flathead Reservation . . . . Election Judges I.D. discrimination and not following voting protocol. Not asking their friends or relatives or community people for I.D.'s *[sic]* and letting them vote. When an Indian went to vote who had been voting in the same precinct for 30 years, he was asked to produce an I.D." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 90 (Oct. 18, 2005).*

- "Flathead Reservation . . . . Sending an Indian to vote in three different precincts because the voter card was wrong, which was not the electors fault. (This is a tough one and needs lengthy explanation)." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 90-91 (Oct. 18, 2005).*

- "Flathead Reservation . . . . Not having anyone who can speak Native Language as Election Judges to help the Kootenai / Salish people vote." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 91 (Oct. 18, 2005).*

- "Flathead Reservation . . . . Our Indian Representative running for office and her name was not on the absentee ballots that had been sent out. She had to request the absentee ballots be spoiled and had to ask for a new ballot send out." *Rep. Carol Juneau, Submitted to National Commission on VRA, House Hearing. 91 (Oct. 18, 2005).*

- "The last election cycle we encountered a number – there were rumors floating about that the cops were going to pull over Indian people, Indian drivers and check for insurance and drivers license. And, of course, if we don't have that, we're breaking the law. So a number of our folks were reluctant to go out driving. My organization provides rides to the polls. We work and we make sure that people are registered and educated and we mobilize them. We got a number of calls from people who did not want to drive because they don't have insurance; they're poor, they can't afford it, and it's against the law if we don't have it." Janet Robideau, *Testimony submitted to National Commission on VRA Midwest Regional Hearing* 436-437 *(July 22, 2005).*

- "So we encounter clerks who don't want to give us voter registration cards. They – and they're actually very nasty about it. They say, 'Well, we'll give you 10, we're not giving you 100.' In Missoula, we registered over 2,300 people for this last election. We had to go in

and get cards 10 at a time because these folks refused to give us the cards because they – you know, I'm not sure what's – you know, why. We actually did go over their heads. We were told, we talked to attorneys and they said, 'Call the state office.' And so they sent us this huge box of voter registration cards so that we could register people to vote. Then when – every Friday we took our cards to the county elections office, and they were outrageously rude to our folks. We had to send our nicest, most mellow folks to go and deal with the county clerks because they would literally like throw cards. They were upset. They, you know, they didn't want to – they didn't want to deal with us. And we were very careful about explaining to people how they should fill out these cards, because we would encounter rudeness at the – from the county clerks which, you know, they ultimately deny." Janet Robideau, *Testimony submitted to National Commission on VRA Midwest Regional Hearing* 437 *(July 22, 2005).*

- "And the redistricting that was done after the 2000 census has allowed the opportunity for Montana to have eight American Indians serving in the state legislature at this time, six in the house, two in the senate. And we hope by 2006 to have three in the senate, so we would have a representation of nine Indians in the state legislature. One of the issues, I think the issue of proportional representation for American Indians in the state legislatures throughout the United States, as well as proportional representation in the county, city, school boards and other local government systems needs to be addressed by this commission which deals right directly with voting rights." Carol Juneau, *Testimony submitted to National Commission on VRA Midwest Regional Hearing* 439 *(July 22, 2005).*

- "Most recently in Blaine County in Montana, which includes the Fort Belknap Reservation, there was an election legal challenge filed by some Indian people in that community and they won. For 80 years, there has never been an Indian county commissioner elected, and that went to court. They got a district in the Fort Belknap community, and an election was held and a new district added, that new district, and an Indian was elected, and so we're real proud of that action." Carol Juneau, *Testimony submitted to National Commission on VRA Midwest Regional Hearing* 439 *(July 22, 2005).*

- "Anita Big Springs from the Flathead Reservation, who's been working issues for many years as well, brought some specific examples out at what happened on the Flathead Reservation in 2004. And again, going back to clerk and recorders, that relationship, excluding our community, the clerk and recorders continues to be an issue. She said the clerk and recorder from Lake County, when they took in some voter cards due to changes of address, they said, 'Oh, you moved again? We can't keep up with you.'" Carol Juneau, *Testimony submitted to National Commission on VRA Midwest Regional Hearing* 440 *(July 22, 2005).*

- "And they sent – in the voting they sent a Kootenai elder on a wild goose chase to vote. She went – the elder went to Dayton to vote, which is a small community there. She was told to go back to Polson to vote. She went to Polson to vote, another community, and Polson told her to go back to vote in Dayton. So Anita called the clerk and recorder, and there was a reply that said, 'That was my fault, Anita. She should be voting in Polson. And Polson sent her out a new card this morning. And that was said on election day. And no election judge

offered this lady an opportunity to vote provisional status, which she could have been provided that opportunity." Carol Juneau, *Testimony submitted to National Commission on VRA Midwest Regional Hearing* 440 *(July 22, 2005).*

- "Among the court's findings were: 'the right of Indians to vote has been interfered with, and in some cases denied, by the county;' 'Indians who had registered to vote did not appear on voting lists;' 'Indians who had voted in primary elections had their names removed from voting lists and were not allowed to vote in the subsequent general elections;' Indians were 'refused voter registration cards by the county;' 'evidence of official discrimination touching on the right to participate in elections concerned the failure of the county to appoint Indians to county boards and commissions,' 'discrimination in the appointment of deputy registrars of voters and election judges limiting Indian involvement in the mechanics of registration and voting; 'in the past there were laws prohibiting voting precincts on Indian reservations and effectively prohibiting Indians from eligibility for positions such as deputy registrar,' 'there is racial bloc voting in Big Horn County,' 'there is evidence that race is a factor in the minds of voters in making voting decisions,' '[w]hen an Indian was elected Chairman of the Democratic Party, white members of the party walked out of the meeting,' '[u]nfounded charges of voter fraud have been alleged against Indians and the state investigator who investigated the charges commented on the racial polarization in the county;' the size of the county 'is huge (5,023 square miles), the roads are poor, and travel is time consuming;' 'the use of staggered terms along with residential districts promotes head-to-head contests...making it more difficult for Indian supported candidates to successfully participate in the political process;' 'Indians have lost land, had their economics disrupted, and been denigrated by the policies of the government at all levels;' there was 'discrimination in hurting by the county;' 'race is an issue and subtle racials appeals, by both Indians and whites, affect county politics;' '[i]indifference to the concerns of Indian parents' by school board members; 'the polarized nature of campaigns,' 'a strong desire on the part of some white citizens to keep Indians out of Big Horn County government,' 'the effects on Indians of being frozen out of county government remain and will continue to exist in years to come;' 'English is a second language for many Indians, further hampering participation;' and a depressed socio-economic status that makes it 'more difficult for Indians to participate in the political process and there is evidence linking these figures to past discrimination.'" *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, at 112-113*

- "Commission members ridiculed the redistricting proposals submitted by tribal members as 'idiotic' and 'a bunch of crap.' As one commissioner put it when he looked at a plan that would have created a majority Indian district in the area of the Rocky Boy and Ft. Belknap Reservations, 'I can feel anger coming on and I might well spew it here tonight...before tonight, I mean. Now, just to be really blunt, this is a bunch of crap.' They called the tribes' demographer, whom they had never met, a 'jackass,' 'some turkey from God-Knows-Where,' a 'dingaling,' and an 'SOB.' One commissioner said that if 'that bugger' shows up at a meeting 'I'll toss him in the trees someplace.' When a staff member mistakenly gave some of the commissions blank pieces of paper instead of a tribal redistricting proposal, one commissioner remarked, 'I got a blank one too...[t]his is typical of them Indians.'...Another commissioner declared that [[i]f the federal government wants to redistrict Montana

according to the Indian Tribes and Reservations, they are going to have to do it. I am not going to do it.' When the commission felt obligated to draw a majority Indian district, one commissioner lamented that '[w]e're being had here, ladies and gentlemen.' Another commissioner added, '[a]nd we can't do anything about it.' Placing white residents in a majority Indian district would, according to one commissioner, 'emasculate' white voters." *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, at 114-115*

- "Joe Medicine Crow, a Crow tribal historian and anthropologist, says the mentality of [Montanans Opposed to Discrimination] is 'do not give the Indians the opportunity to enjoy those rights that have been traditionally the white man's rights, don't let them have it.'" *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, at 115*

- "Margaret Campbell [said], 'Non-Indians come to the Native Americans for their support, but they would prefer that...we do not support them publicly among the non-Indian community. For example, they don't bring us bumper stickers and huge yard signs, that sort of thing...If a non-Indian candidate were to make it known that they had the broad support of the Native American community, it would be the kiss of death to their campaign.'" *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, at 116*

- "The district court also found that 'Indians continue to bear the effects of past discrimination in such areas as education, employment and health which, in turn, impacts upon their ability to participate effectively in the political process.' The effects of discrimination included low Indian voter participation and turnout, and very few Indian candidates.'" *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, at 117*

- "A second trial was held in *Old Person*...It reaffirmed the prior findings that American Indians suffered from a history of discrimination, that Indians have a lower-socioeconomic status that whites, that these social and economic factors hinder the ability of Indians in Montana to participate fully in the political process, and that in at least two recent elections in Lake County there had been overt or subtle racial appeals." *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, at 118-119*

- "[T]he courts concluded: (1) there was a history of official discrimination against Indians, including 'extensive evidence of official discrimination by federal, state and local governments against Montana's American Indian population,' (2) there was racially polarized voting white 'made it impossible for an American Indian to succeed in an at-large election;' (3) voting procedures including staggered terms of office and 'the County's enormous size [which] makes it extremely difficult for American Indian candidates to campaign county-wide,' enhanced the opportunities for discrimination against Indians; (4) depressed socio-economic conditions existed for Indians; and, (5) there was a tenuous justification for the at-large system, in that at-large elections were not require by state law

while 'the county government depends largely on residency districts for purposes of road maintenance and appointments to County Board, Authorities and Commissions." *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, at 121*

- "*United States v Blaine County, Montana* [363 F.3d 897 (9th Cir. 2004)] [] [is] a § 2 challenge to the County's at-large method of electing its three member Board of Commissioners. Blaine County is not covered by § 5...The court acknowledged that despite comprising over one-third of the County's population, no American Indian had served as a County Commissioner in the County's 86-year history. The appellate court found that there was substantial evidence of white bloc voting that defeated American Indian candidates of choice. In reaching this conclusion, the court rejected the County's arguments that the racially polarized voting could be ignored because there was no evidence American Indians had distinct political concerns or that white voters had discriminatory motives. The court reasoned:

  > Blaine County's at-large voting system enhances the possibility that a bloc of white voters will prevent American Indians from electing candidates of their choice. In challenges to multimember districts, evidence of racial bloc voting provides the requisite causal link between voting procedure and the discriminatory result...Accordingly, the district court did not err by declining the inquire into the divisive and irrelevant issue of whether white voters in Blaine County are motivated by discriminatory motives.

  Written testimony of Theodore Arrington, Senate Judiciary Committee Hearing on VRA, 5/16/06, at 7-8

- Native voters were not as consistently offered provisional ballots as White voters were. MT. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4654.*

- Montana .... [in Lake County] [s]ubtle discrimination occurred in the case of Native voters. They were not offered friendly, helpful explanations; were seldom invited to register or re-register when they have been; were not as consistently offered provisional ballots. Some were asked to stand aside if they didn't appear on the precinct roles and left there (standing) while non-Indians behind them in line were assisted. They were subtlety treated as second-class citizens. Several became frustrated and left without voting. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4657.*

- 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." *Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 161 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)*

NEBRASKA

- 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 "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." *Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 161 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)*

NEW JERSEY

Voting Rights Lawsuits/Enforcement

- United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al., No. 99-2544 (NHP) (D.N.J> 1999): A three-judge court found voting discrimination so severe and pervasive that it resulted in the first Federal Court takeover of a county's election system. Federal observers were deployed for 18 elections, documenting direct disenfranchisement, discriminatory voter purges, threats, intimidation, violence, and widespread non-compliance with the VRA. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 104.*

Statistics

- "New Jersey Latinos make up 14 percent of New Jersey's population which is an estimated 1.2 million residents. ... There are no Latinos in our State Senate." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 326 (Oct. 18, 2005).*

Anecdotal Evidence

- "the ability of the attorney general to assign federal observers to monitor elections pursuant to Section 8 of the Act in jurisdictions to which federal examiners have been appointed remains a crucial provision. . . . . Passaic County, New jersey. The county was under a consent decree which required specific actions to bring the county into compliance with Section 203 of the Act . . . . On the basis of information gathered by federal observers at several elections, the Department took legal action to ensure full implementation of Passaic's court-mandated language assistance program." *Joseph D. Rice, Statement Submitted to the National Commission on the VRA, House Hearing. 66-67 (Oct. 18, 2005).*

- "In 1999, the Department of Justice's Civil Rights Division found that Passaic County was discriminating against Latino voters by denying equal access to the election process. The county was not providing Spanish-speaking workers or Spanish language voting materials. The Civil Rights division entered into a consent decree with the County of Passaic. From 1999 to the present, Passaic County conducts four elections each year, all monitored by federal observers. A three-judge panel of the U.S. District Court of New Jersey was formed to ensure that the County will comply with its court orders. ... In order to avoid similar intervention from the Civil Rights Division, the other counties took affirmative actions to bring themselves in compliance with the Voting Rights Act." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 326 (Oct. 18, 2005).*

- "Our organization receives complaints in every election from almost every county. Some of the complaints are as follows: [1]) Counties don't recruit enough bilingual election workers that work specifically in Passaic, which by the way, Passaic was supposed to stop in 2003, and the Civil Rights Division saw fit to extend it because they still haven't recruited better workers and trainers for the country. 2) The election workers are not properly 15 trained to deal with language issues. 3) The Spanish language signs and documents are not in the poll places and are not posted in places accessible to the people in the community. 4) Community Outreach: To educate our community that language assistance is available is deficient at best, and in some instances, non-existent." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 326 (Oct. 18, 2005).*

- "We received complaints from Latinos from the City of Vineland during the last mayoral election that election workers were asking for identification from many Latinos irrespective of whether they were new mail registers or not. Some people, because of frustration or embarrassment, simply go home and don't return to vote. The conduct of the Vineland election workers, which might be a lack of training, is not only in violation of HAVA, but also of the Voting Rights Act." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 326-27 (Oct. 18, 2005).*

- "Some people could argue that if Section 203 of the Voting Rights Act is not reauthorized, Latinos in New Jersey can turn to the state laws for protection. Those who've lived in New Jersey long enough, know that the office of the Attorney General in our state has not been the most effective agency in prosecuting corruption or illegal conduct of other government agencies. We understand that it is the responsibility of New Jersey to continue to pressure our state agencies, like the Attorney General, to become more effective, but the reality tells us that we still need the Department of Justice to protect our voting rights." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 327 (Oct. 18, 2005).*

- "CARTAGENA: I have a short question for Mr. Perez and that is, you mentioned before that there are more Blacks connected to the New Jersey State Senate. Could you just give us your opinion of what may contribute to that, dysfunctionally or otherwise?

"PEREZ: The biggest contribution? The contributor is the registering process." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 330 (Oct. 18, 2005).*

- "Sheriff of Passaic county – Sheriff Paiyalsik – that tried to suppress the Latinos voting. The Latinos were trying to organize Latinos, and he was there from time to time suppressing the vote. And Mr. Paiyalsik is still the Sheriff of Passaic county. And when he was elected, his first act was to fire 12 Latino Sheriff Officers that participated. There are some litigations still going on in the Courts." Martin Perez *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 330-31 (Oct. 18, 2005).*

- "[M]anipulation of the Act, particularly Section 2, mainly in the drawing of state legislative districts. Both the major political parties have each found reason to cast their fate in a self-serving manner in the name of political voters. ... I will say that I am a registered democrat. In 2001, I crossed the party lines to the republican party because of my outrage of what was happening in the state, and all this was on that premise that some Black elected officials were from minority districts and their outright control by powerful party bosses. In this case the numbers lied, because we did not accurately represent the dearth of the Black state. And, to add insult to injury, they were required to sign identical affidavits attesting to the plan's positive impact on minority representation without ever first seeing the plan. My action was shared with Black legislatures, but I had it as a consultant for one of the parties. They never signed the plan, but that plan empowered the party's leadership, insisting that there be an expanse to the Democratic floor. Their plan would empower Black voters indirectly by reclaiming that it be in line to control committee assignment. It was a spurious claim then and remains so today. For years, the number of Black voters in New Jersey has not increased, and their presence has had little impact, judging by their inability to claim any of the primary leadership posts. If you look at Hudson county in New Jersey, the fact of the matter is, it had a black legislature. It no longer has a black legislation. They also denied the line to identify black incumbents, replaced the black incumbents, and then tried to remove the incumbent when they tried to run for the presidency. So, I think we have to be very careful with how the Act has become a partisan tool." Walter Fields, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 338 (Oct. 18, 2005)..*

- "A recent example in New Jersey: Two talk radio hosts on 101.5 FM, a so-called radio announcer made racist remarks about Jun Choi commenting on an accent in response to a color stated a caller, 'Indians have taken over Edison.' The response was, 'It's like being a foreigner in your own country.' The Asian American, South Asian community organized a broad-based coalition to protest these remarks and they got an on-air apology from Millennium Radio." Margaret Fung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 348 (Oct. 18, 2005).*

- "[I]n the year 2000, the Justice Department came into the City of Passaic because of the irregularities that existed in the voting process in the City of Passaic. ... We had 33 districts and all the districts in the City of Passaic are largely Hispanic, which qualifies the act of

Hispanic poll workers. Normally you would have in the 33 districts you would have one Republican, one Democratic poll worker. So that would amount to having 66 Hispanic poll workers. In the City of Passaic, when the Justice Department came in, there was only 12. They started implementing the county, so on and so forth, and eventually it brought it up to par. ... And harassment leads to not just ill-treating them in a lower manner, we've had many of these problems prior – where it was a form of discouraging voters to go out and vote. When the Justice Department came in and we started getting Hispanic poll workers, it made it better as far as the Hispanic communities to go out and vote. If they had questions, they could ask the poll workers and thus far, we've had a great deal of success in that area." Ozzie Maldonado, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 359-60 (Oct. 18, 2005).*

- "At the Senior Citizens Center in Fort Lee, one Korean American voter was asked to show ID before she could vote. After voting, she reported that a person came up to her and asked in a harsh tone if she as eligible to vote, and demanded to know her ethnicity. Another Korean American who had been voting since 1985 had his eligibility challenged." *Appendix to the Statement of Margaret Fung before the US Commission on Civil Rights, found in the House Record, Nov. 8, 2005, at 1312.*
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- "Based on surveys AALDEF volunteers conducted with exiting voters, poll workers insisted that number of Asian American voters (at least a dozen in Edison and Jersey City) show identification before being allowed to cast a ballot, even though several who had voted in previous elections were not affected by HAVA voter identification provisions for new voters." *Appendix to the Statement of Margaret Fung before the US Commission on Civil Rights, found in the House Record, Nov. 8, 2005, at 1312.*

- "In Jersey City, after two Korean American voters cast their ballots, a partisan challenger asked for and mocked the name of one Korean American voter named Hung, asking the poll site, 'Have you ever hung a [voter's surname]?" The challenger continued to ridicule the voter's name with a song, in the presence of other waiting voters and site poll workers, who failed to rebuke the challenger." *Appendix to the Statement of Margaret Fung before the US Commission on Civil Rights, found in the House Record, Nov. 8, 2005, at 1312.*

- "The experience of language minority voters in Passaic County is especially egregious . . . . [B]etween 1999 and 2004, a total of 454 federal election observers were deployed in Passaic County in 18 different elections to monitor compliance with Section 203, ensure that Latino voters were not intimidated and that translated materials were available in sufficient supply. This massive and necessary federal engagement was the culmination of a federal investigation . . . . As recently as 2003, municipal officials in Clifton were still questioning the need to comply with federal law and provide bilingual assistance to voters." Juan Cartagena, *Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 146 (Nov. 10, 2005) (prepared remarks).*

- "*United States v Passaic City, New Jersey and Passaic County, New Jersey*, Civil Action No 99-2544 (NHP) (DNJ Sep 5, 2000) (three-judge court), 'At P.S. 6, observers called to report

that the challenger was making racist remarks about Hispanics. At the Ukrainian school, challengers became very aggressive and were yelling at voters, stating that they did not live in the country and should not vote. Ironically, many of these challenged voters were off-duty Passaic City police officers. Angel Casabona, Jr. was one such challenged police officer who avoided confrontation and properly came to Passaic City Hall to have his voting status clarified. Escorted by the City Clerk and investigators from the prosecutor's office, Mr. Casabona reentered the polling site and was permitted to exercise his vote. The brazen challenger was reprimanded and board workers were reminded that challengers should not be interacting with voters.'" *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 34*

- "Walter F. Timpone, *Office of the Election Monitor, Fifth Report*, June 15, 2001, at 3-4: 'The most disturbing incident of the [June 26, 2001 municipal primary election] occurred at the polling place at St. Mary's School in Passaic...The officer [who had been called] entered the polling place and asked who had called the police. No one responded. The officer barked comments in substance t the poll workers as follows, 'Can't you read? What country do you come from?' When a municipal worker of Indian origin came to see what the problem was, the officer then asked, 'And what country do you come from?' When a Latino federal observer tried to explain the dictates of the consent decree, the officer asked for credentials. When the observer showed his credentials, the officer found them inadequate because they lacked a picture and detained the observer. The Officer told the observer, 'I could arrest you for this.' Upon being alerted to the controversy I asked investigators from the Passaic County Prosecutors Office and Deputy Chief of the Passaic County Police Department to intercede. When a Sergeant from the Passaic Police department responded at the scene and learned what had happened, he apologized to the federal observer and told him he thought some sensitivity training might be in order for the officer. Notably, this discriminatory behavior took place in a city where the Latino population is at 62%." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 34-35*

- "Depressed registration and turnout rates among Latinos in Passaic County were the direct result of widespread official and unofficial discrimination. As early as 1986, state courts held the County liable for discriminatory voter purges, voter challenges, and failure to hire Spanish- speaking poll workers in heavily Hispanic election precincts in violation of state law.57 Hispanic voters and candidates were threatened and subjected to ethnic slurs.58 Law enforcement officials were placed in the polls to discourage Hispanics from voting.59 Some Hispanic persons were denied opportunities to register voters.60 County officials failed to timely process voter registration applications submitted by Hispanics.61 Despite the large number of Spanish-speaking voters, the County did not have any Spanish-speaking election officials to assist voters or persons attempting to register.62 Election information was not advertised in Spanish-language newspapers or media.63 Often, Hispanic voters spent hours trying to locate their polling places.64 These problems were exacerbated further by the refusal of many poll workers to permit limited-English proficient Hispanic voters to receive voting assistance from the person of their choice.65 The presence of these structural barriers to Spanish-speaking voters frequently caused them to be turned away from the polls without voting and discouraged others from making any attempt to vote." *Written Testimony of*

James Tucker, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 at 20-21

- "[I]n November 1999, 25 of the 33 voting machines in the predominately Hispanic community of Passaic City were inoperative for several hours after the polls opened, which was worsened by the lack of Spanish language assistance for filling out emergency ballots.71 Incidents of intimidation of Hispanic voters and poll workers by County sheriff's officers violating state statutes restricting law enforcement activities at the polls were reported in Paterson.72 For example, observers encountered a man wearing a law enforcement shirt while serving as a challenger at one polling site and noted that seven plainclothes officers spent two hours at another polling site challenging only the Democratic poll workers.73 At one polling site in Clifton, two armed sheriff's officers beat and injured a Democratic campaign worker as he was taking campaign signs from his car.74 Election officials in Clifton also were hostile to efforts to assist Latino voters, including an April 2000 incident in which non-Hispanic poll workers screamed at two high school students acting as Spanish language translators and forced them to leave the site." *Written Testimony of James Tucker, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 at 22-23*

- "At least four poll workers were dismissed for inappropriate behavior, including one elderly poll worker at a site in Passaic who made a derogatory remark about Puerto Ricans and a poll worker in Paterson who refused to cooperate with federal observers." *Written Testimony of James Tucker, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 at 24*

- "Several problems persisted during the four elections held in Passaic County in 2001. In the April school board elections, some poll workers in Passaic City and North Haledon told Hispanic voters they "should all go back to Mexico" and "should learn English."82 In the June primary election, a Passaic City police officer made derogatory remarks to an Indian poll worker and detained a Hispanic federal observer, as the County continued to have inadequate numbers of bilingual poll workers.83 In the November general election, threatening post cards were sent to Hispanic and African-American voters in Passaic City in an apparent effort to intimidate them and keep them away from the polls.84 In Passaic City and Paterson, minority voters received phone calls that also tried to discourage them from turning out to vote." *Written Testimony of James Tucker, Senate Judiciary Committee, Subcommittee on the Constitution VRA Hearing, 7/10/06 at 24-25*

- Racially discriminatory tactics continue to be employed by elections administrators and political candidates to intimidate Asian American citizens attempting to exercise their right to vote. In 2004 in Edison, New Jersey, radio hosts ridiculed then Asian American mayoral candidate, Jun Choi, as a "foreigner" and urged listeners to vote for "Americans." *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at vii, submitted at SJC 6/13/06 hearing.*

- In the 1999 City Council elections in Palisades Park, New Jersey, then- mayoral incumbent, Sandy Farber, wrote to constituents warning against Korean Americans "attempting to take

over our town and change it inside out." *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at vii, submitted at SJC 6/13/06 hearing.*

- In 2004, large numbers of voters in New York, New Jersey, and Massachusetts reported that poll workers improperly required them to provide identification in order to vote. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 19, submitted at SJC 6/13/06 hearing.*

- In 2004 in Edison, New Jersey, one poll worker carried on for several minutes stating that, "If you are an American, you better lose the rest of the [Asian] crap." *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 22, submitted at SJC 6/13/06 hearing.*

- In 2004 in Palisades Park, New Jersey, the Borough Clerk of the City of Palisades Park approached the AALDF's election observer and said, "Maybe you should teach your people how to read English." *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 22, submitted at SJC 6/13/06 hearing.*

- In the 2005 elections in New Jersey, 2 radio personalities known as the "Jersey Guys," ridiculed at length then-mayoral candidate, Jun Choi, by telling voters that Americans should vote for "Americans." The Jersey Guys also mocked Asian American accents and said too many Asians gambled in Atlantic City. In an interview that followed the arrival of federal observers, the campaign manager of Choi's opponent said, "[Asians] walk in here. They don't know what they're doing, and their countryman is telling them who to vote for." In effect, the jersey Guys attempted to mask voter intimidation under the guise of humor. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 31, submitted at SJC 6/13/06 hearing.*

- In the 1999 City Council elections in Palisades park, New Jersey, then-mayoral incumbent, Sandy Farber, made racial appeals and warned voters against Korean Americans "attempting to take over our town and change it inside out." Farber did not attempt to cloak his blatantly racist appeal with code words or subtle slights at Korean Americans. In attacking a Korean American candidate for City Council, Farbert wrote: "Now we are faced with a new problem – one that threatens to wipe out our history and heritage…Our quality of life will be brought to an abrupt and chaotic end." *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 32, submitted at SJC 6/13/06 hearing.*

- In New Jersey, a first-time South Asian voter in Jersey City had to go to 6 different poll sites. She eventually voted, but by provisional ballot. She stated that poll workers were incompetent, "it's too much trouble to vote," and that she does not want to vote in the next election. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 20, submitted at SJC 6/13/06 hearing.*

- In Edison, NJ, federal observers reported that a poll worker said that when a Gujarati or Hindi-speaking voter appeared, she would "send them to the nearest gas station." *Fung, Margaret. Responses to Written Questions. SJC VRA Hearing. 6-13-06. At 4-5.*

NEW MEXICO

Voting Rights Lawsuits/Enforcement

- New Mexico has been the location of the second highest number of successful Section 203 cases, trailing only California. These successful cases have been brought on behalf of both American Indian and Spanish language voters. There has been more federal observer coverage in New Mexico than any language assistance cases, with over 70 elections covered. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 108.*

Anecdotal Evidence

- "And in Roswell, New Mexico, I believe it was that the traditional polling place was, for Mexican-Americans, was not open for the same number of hours that the polling place was open in the – I heard it was weekend hours at the mall in the northern part of Roswell." *Nina Perales, Testimony at National Commission on VRA Southwestern Reg'l Hearing., House Hearing. 244 (Oct. 18, 2005).*

- "My mother, my mother voted for the first time this election. … She voted at the Dreamy Draw legislative district ten. There were no bilingual assistants outside. I stood outside, outside the limit, and I explained to her how she was, you know, how to effectively vote for a candidate, in connecting the arrows, just, you know, we do have a mark system and we have to connect the arrows, and I thought I did a wonderful job explaining to her for the first time. I forgot one important thing. So when she went in there, she was lost. The poll workers, they didn't deny her the right to vote, but they did deny her the opportunity of being properly instructed in how to vote. It was a terrible experience for her. She was heartbroken because she thought maybe her vote didn't count. … So she was wondering if I vote yes, if I vote no, when you vote would you do more harm than good. If abstaining from voting, will her entire ballot be tossed out." *Shirlee Smith, Testimony at National Commission on VRA Southwestern Reg'l Hearing., House Hearing. 286-87 (Oct. 18, 2005).*

- "And in New Mexico, it looks like machines that had extremely high error rates of undervotes in past election were deliberately—may have deliberately or were allocated to minority districts." *Kathy Dopp , Testimony at National Commission on VRA Midwestern Regional Hearing, 452, July 22, 2006*

- Whereas if you voted in counties using the DRE electronic ballot machines, you had this very high rate, and it was – and those machines were allocated more—they—the rate was particularly higher of undervotes in the precincts where you had minorities, a higher portion of minorities." *Kathy Dopp , Testimony at National Commission on VRA Midwestern Regional Hearing, 453, July 22, 2006*

- "You know, what I find really interesting about [ballot spoilage rates] is supposedly this ballot spoilage rate was much higher in precincts where there was a high number of minority

votes. And a lot of those precincts had precinct-base op-scan systems where supposedly you stick the ballot into the counter at the precinct and it spoils it back at you if there's an overvote, so there should have been no overvotes in some of those districts. And so how did those overvotes get there? You might wonder if maybe, A, the, the feature that caught and detected and warned the voters of overvotetes might have been turned off on those machines, or perhaps there was some insider that was spoiling the ballots after the fact." *Kathy Dopp , Testimony at National Commission on VRA Midwestern Regional Hearing, 454, July 22, 2006*

- "One of the biggest challenges for voter mobilization efforts designed to increase Native American participation has been identifying and targeting this constituent group. Fortunately, in New Mexico the Secretary of State's Office efforts to increase Native American voter participation has been particularly helpful . . . . [A]s a result of a U.S. Department of Justice legal action against the state, it was required to 'extend greater election information to Native Americans . . . .' To remedy this problem, the Native American Election Information Program (NAEIP) was established within the Bureau of Elections. The goal of the NAEIP is to provide voter education to the state's Native American population and to ensure compliance with the minority language assistance amendments of the [VRA] . . . . The office currently has two Native American Program Coordinators who provide a wide range of services to Native American voters . . . ." *Jacqueline Johnson, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 39 (Nov. 9, 2005) (attachment II to prepared statement, Native Vote 2004: A National Survey and Analysis of Efforts to Increase the Native Vote in 2004 and the Results Achieved)*

- "A total of 1,042 tribal members cast a vote in this year's election, however, due to several problems, only 955 of the total votes cast by tribal members were actually counted. There were numerous problems that were a result of mistakes made by the County Clerk in processing voter registration forms, fulfilling absentee ballot requests, and having inadequate materials for provisional voting on Election Day. As a result, some voters were registered in the wrong precinct or did not receive absentee ballots. In other cases, voters were not notified that they had registered incorrectly. As a result, 98 Laguna votes were not counted." *Jacqueline Johnson, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 40 (Nov. 9, 2005) (attachment II to prepared statement, Native Vote 2004: A National Survey and Analysis of Efforts to Increase the Native Vote in 2004 and the Results Achieved)*

- "All of the tribes analyzed in this particular report saw increases in voter turnout in 2004 over 2000. Some communities . . . had turnout rates over 80 percent. In precincts where Native people are a majority, their ability to swing a local election is a reality . . . . [T]here is also an emphasis to have qualified tribal members run for political office." *Jacqueline Johnson, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 44 (Nov. 9, 2005) (attachment II to prepared statement, Native Vote 2004: A National Survey and Analysis of Efforts to Increase the Native Vote in 2004 and the Results Achieved)*

- "'The level of political participation by Native American citizens of Cibola County is depressed. Voter registration rate in the predominantly Native American precincts have been less than half the rate in non-Native American precincts, and Native Americans are affection disproportionately by voter purge procedures. Although Native Americans comprise over 28 percent of the county population, few than eight percent of all absentee ballots have been from the predominantly Native American precincts. There is a need for election information in the Navajo and Keresan languages, and a need for publicity concerning all phases of the election process for voters in Ramah, Acoma and Laguna. The rate of participation by Native Americans on such issues is less than one third of the participation rate among non-Native Americans. There is a need for polling places staffed with trained translators conveniently situated for the Native American population.'" *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 36*

- "Native American voters who had been purged from the voter rolls because they failed to respond to written notices they either did not receive or did not understand, were turned away from the polls with no explanation of why they were not able to vote, and were given no opportunity to re-register there." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 37*

- "In Albuquerque, New Mexico, Dwight Adkins tried to vote on Election Day in November 2004 but was not allowed to do so because someone had already voted in his place... Another Albuquerque citizen, Glen Stout found that his 13-year old son was illegally registered to vote by a 527 voter registration organization prior to the 2004 general election. In Philadelphia, Donna Hope, a non-citizen immigrant from Barbados who resides in Philadelphia, was told by a representative of the voter registration group "Voting is Power," the voter mobilization arm of the Muslim American Society that she could register to vote if she has been in the United States at least 7 years. Ms. Hope completed the registration form and was added to the voting rolls. In November of 2004, Ms. Hope did not vote because she was not a citizen, but later found out that according to Philadelphia election officials' records; someone illegally cast a ballot in her name. *Written Testimony of Mark Hearne, Senate Judiciary Committee Subcommittee on the Constitution, VRA Hearing, 7/10/06 at 5*

NEW YORK

Voting Rights Lawsuits/Enforcement

- "In fact, the 19 times the Civil Rights Division has made Section 5 objections, in the City of New York, 11 have occurred ... since 1982. In 1982, most Assistant Attorney Generals who have served under Republican and Democratic presidents, have noted the persistence of racial polarized voting in New York City. Geographic segregation by race, ethnicity, language was significantly higher than the national average and reflects the existence of continued impediment." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 329 (Oct. 18, 2005).*

- "First the Hempstead case. That Hempstead case was filed in 1981 with a challenge to 'at large' election system used in the historical town of Hempstead, which is the largest town in the country, largest in the cities. It took us ten years, ten years to bring that case to trial, to successfully litigate it to trial successfully. Ten years later, in the town of Hempstead, after having created an African-American district when they were redistricting, we had to again threaten that town with further litigation and they had to come to their senses that it was not a good thing to try and butcher that district." Randolph McLaughlin, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 336 (Oct. 18, 2005).*

- "[I]n 1989. We successfully used the Voting Act to stop the discriminatory purge of over 320,000 voters, United Parents Association Versus New York City Board of Elections. Subject to the State's non-voting purge, CSS proved that the law's application had an unlawful discriminatory affect as Blacks and Latinos were 32 percent more likely to be purged for non-voting." Walter Fields, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 337 (Oct. 18, 2005).*

- In February 2006, AALDEF sued New York City for violations of Section 203, including failure to train and provide adequate numbers of bilingual poll inspectors; failure to provide adequately translated materials to voters regarding registration and poll site information; failure to make telephone assistance available in the required Asian languages; failure to post translated signs at polling places; and failure to provide correctly translated ballots. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA June 13, 2006 at 108.*

- Since 2003, successful Section 203 cases have been brought against Westchester County, Suffolk County, and the Brentwood Union Free School District for failure to provide Spanish language assistance. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA June 13, 2006 at 108.*

Anecdotal Evidence

- "CRENSHAW: You tell a story of the effect of 'cracking' in the minority district and the inability to effectively contest that with the existing provisions. And the latter story is one of 'packing,' and so, I'm curious about how you go about what might be the best way of providing the 'cracking' that you talk about and the 'packing' that you talk about.
- "PATERSON: [T]he interesting aspect of 'cracking' in Nassau county and 'packing' in the Bronx and Westchester county – what's crucial about it is that the courts both ruled in the same situation and one has to wonder as a matter of sophistry, what the reason was that the Court took this rather mercurial position of almost defending two competing aspects of the law at the same time." David Patterson, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 323 (Oct. 18, 2005).*

- "[L]itigation in the City of New York and particularly in the borough of Brooklyn, where the center is located. … [W]e also had reason to use Section 5 in other areas, particularly New York City. They used to have community school boards. The school boards were

dismantled a couple of years ago and we went to the Justice Department to argue that that was a violation of the Voting Rights Act." Joan Gibbs, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 325 (Oct. 18, 2005).*

- "If you compare Kings County, New York County, and the Bronx with Queens – which never, of course, had Section 5 protection in Queens where redistricting plans are not subject to the scrutiny of preclearance review, pressure to protect White incumbents from dramatic demographic changes has wrought a districting pattern that, according to former Assistant Attorney General John R. Dunne, who served under that public administration of the Justice Department, 'consistently disfavored the Hispanic voters.' The Queens county district is twice as overpopulated as Kings County, New York County, and Bronx County. If Section 5 is allowed to expire, we can expect to see that pattern become the 'norm' in covered jurisdictions." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 328 (Oct. 18, 2005).*

- "Now in New York City, as we see in Queens, a few examples of non-geographic vote dilution from 1994. That state amendment to the Bill proposing the allowing of the Governor to appoint judges to the Court of Claims and then immediately transfer them to the Supreme Court. That would effectively take away or dilute the Voting Rights Act with respect to Supreme Court Justices. The Civil Rights Division rejected these under Section 5, noting that the method of selecting supreme court judges, from election to appointment has changed." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 328-329 (Oct. 18, 2005).*

- "In 1996, Section 5 allowed the jurisdiction to intervene when the Schools Chancellor dismissed nine minority community school Board members elected by a 90 percent minority district and replaced them with unilaterally chosen political appointees." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 329 (Oct. 18, 2005).*

- "Now we see the dismantling of New York City community schools, but these obviously occurred before that, and even that dismantling was subject to Section 5 with clearance, which should have been. It was pre-cleared over the objection of the minority advocates." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 329 (Oct. 18, 2005).*

- "[The] federal government blocked a 1999 proposal that would have claimed to alienate government in voting, in school board elections. Limited voting is a classic 'anti-single-shot' strategy to prevent minorities to casting their vote blocs, and as the Chair of this Commission may recall when he was in the role of acting Assistant Attorney General for Civil Rights, he determined that these changes would have made it three times as hard to elect a candidate of their choice to the New York City school board in elections." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 329 (Oct. 18, 2005).*

- "So half-hearted was New York City's original Chinese translation language plan that acting Assistant Attorney General James P. Turner, 1993, noted, 'There was no awareness that there were multiple Chinese dialects spoken in the city.' In addition, no procedure for assessing the language abilities of the people and the translation skills. Without the intervention of Section 5, that city's plan was to send one interpreter to the polling place, no matter how many Chinese speakers needed translation in that district, and one single interpreter would have had to have served 2,000." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 329 (Oct. 18, 2005).*

- "CRENSHAW: Is it also fair to infer that both Democratic and Republican local administration have been 'equal opportunity violators' of the Voting Rights Act? ... "SHAW: Let me answer that first question by simply saying, yes." Ted Shaw, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 330 (Oct. 18, 2005).*

- "...Brooklyn, we received a number of calls – a substantial number of calls regarding requests for identification in circumstances where it wasn't required, and we are concerned about that. ... Brooklyn is a large home of people of African descent, and it is also the home of a number of immigrants from all over the world, including African immigrant. And we are concerned our registered voters – and have been – that they subject to be asked for identification as well as Latinos and Hispanics being asked for identification." Joan Gibbs, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 331 (Oct. 18, 2005).*

- "Davis had previously been an 'at large' location for the citizen counsel. The first opportunity the citizen counsel had in New Rochelle to redistrict itself. It decided, over the objection of the NAACP, ... It decided to gut the only black district in the city. New Rochelle was literally polling off sections in the Black communities and placing them in White communities and importing them into a heavily Republican town, reducing themto a majority Black district. ... [W]e were forced to sue New Rochelle. We were successful under Judge Bryan and the Judge ordered the city of New Rochelle to restore the Black district to a majority status." Randolph McLaughlin, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 336 (Oct. 18, 2005).*

- "I do not believe that we need to 'push the envelope' and consider expanding the scope of Section 5 protection to include, not just the districts that are presently under the Act, but to include perhaps districts where Civil Rights plaintiffs have successfully gained Section 2 cases over a period of years – make it five years, ten years. ... Section 2 districts are just as likely to violate the Act as covered districts are." Randolph McLaughlin, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 336 (Oct. 18, 2005).*

- "Notwithstanding the success of 203, there continues to be a deficiency in the program. The translations in the 2000 Presidential elections of 'Democrat' and 'Republican' were

converted in several polls in Queens. Absentee ballots contained mistakes in the Chinese language. Asian Americans were given instructions in Chinese to 'vote for three,' other instructions to 'vote for five.' The word 'yes' was translated as 'Si' on the Chinese ballot. John Kerry complained that voters were not able to recognize his name based on the Chinese translation, based on what the Chinese were given, the interpreters which created long lines in the polling process." Margaret Fung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 347 (Oct. 18, 2005).*

- "Jackson Heights, Queens at P.S. 69, one poll inspector told an oriental guy, 'You are taking too long to vote,' and turned to one of our monitors to say for them to tell 'his people' – implying Asian Americans – they should really vote faster because others are waiting on line. Another one commented if they need help with language, they should not ask to vote. At the poll site, a Chinese American voter who asked for language assistance, was directed to a Korean interpreter, who could not help. And several hostile White voters at this poll site made remarks such as, 'You're all turning this country into a third world waste dump,' and 'You can't have anyone go inside the booth with you,' and 'You should prepare and learn English before you come out to vote.'" Margaret Fung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 348 (Oct. 18, 2005).*

- "[T]he [New York City] Board of Elections kept saying, 'Well we provide translation of simple ballots, but we really can't interpret ballots in the voting machines.' And the oversight in the Chinese Language Assistance Program. It was mailed to Chinese and there was a faulty translated ballot in New York City and that really wouldn't have offset it without Section 5." Margaret Fung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 347 (Oct. 18, 2005).*

- "Congress really ought to be expanding coverage in Section 203, and Section 5..." Margaret Fung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 347 (Oct. 18, 2005).*

- "Even today, 14 years later, we're still fighting with the New York City board of legislators whether or not it's assigning enough interpreters, why it can't do translations correctly, but nonetheless, the program has become more institutionalized." Margaret Fung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 358 (Oct. 18, 2005).*

- "For example, here in New York City, White off duty officers with guns in view, blanketed polling sites in Black communities during the 1993 mayoral election in an effort to discourage Black voters from casting their ballot in the re-election of David Dinkins." Hazel Dukes, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 357 (Oct. 18, 2005).*

- "Voter access was severely inhibited in 2000 by reducing the number of voting machines and using old voting machines which broke down and which were not repaired in a timely way in Black polling sites. This was purposely done to oppress the Black vote in the Gore-

Bush presidential election." Hazel Dukes, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 357 (Oct. 18, 2005).*

- "Many African-Americans who registered to vote in public agencies such as Motor Vehicles Departments, Social Security and public assistance offices. Names were not sent to the Board of Elections in a timely manner so that these voters were not able to go into the voting booths on election day and many were not able to use a paper ballot either." Hazel Dukes, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 357 (Oct. 18, 2005).*

- "[I]n the last elections, despite the federal mandate to provide language assistance for Koreans as a required language, there were 4 states that provided zero interpreters on Election Day. (Cases Q38, Q0086, Q0040.) Of all those cases in Queens county, where there were clear indicators likely to have Korean efforts to the polls, there was actually zero interpreters to those non-designated sites, and so between those types of numbers and the fact that the overall percentage of our communities report having difficulties and despite even the speaking – lack of – the panicking with the current foreign language, it...very imperative that we need to do much more to enforce federal law." Veronica Jung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 357 (Oct. 18, 2005).*

- "But in a nutshell, the lines redrawn in the 80s/90s percent range which perpetuated a larger number of minority-free candidates to be elected but also ended up in creating white gerrymanders in surrounding area by actually packing as many minority voters and residents into as few districts as possible where the state senate used the Voting Rights Act as a sword to make the argument that historically in the '70s, '80s and '90s, you had to have a higher numbers of residents and voters in districts to maintain them." *Mr. Wice, National Commission on the VRA, Mid-Atlantic Regional Hearing, 849-850, October 14, 2005*

- "During the 2000 general election six polling places in heavily Chinese populated areas of Queens . . . had 'Democratic' translated in Chinese as 'Republican' for party labels and vice versa on election day ballots. And the Chinese characters on the ballots were often too tiny to read without magnifying glasses." *K.C. McAlpin, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 73 (Nov. 10, 2005) (prepared statement)*

- "[R]ecent data on Latinos and voting in New York documents depressed levels of participation in the City . . . . 'A million and a half voting age Latinos live in New York City, but only about 700,000 Latinos are registered to vote and only about 455,000 regularly participate in elections.'" Juan Cartagena, *Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 146 (Nov. 10, 2005).*

- "I cite a New York Times article in my testimony that demonstrates that there are no places for adults to learn English in virtually all of Queens County." Juan Cartagena, *Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 168 (Nov. 10, 2005) (responding to question of Chairman Chabot).*

- "In recent years, racially offensive comments have been made by poll workers against Hispanic voters in Reading, Pennsylvania and against Asian voters in New York City." Joe Rogers, Testimony at House Hearing on "Voting Rights Act: Evidence of Continued Need." (March 8, 2006).

- "In the area in and around Freeport, Roosevelt, Uniondale, and Hempstead, there is a large, geographically compact, politically cohesive minority community – one that I have no doubt would elect a minority State Senator if it were combined into a single State Senate district. However, under the State Senate redistricting plan that was enacted in 2002, this cohesive minority community has been cracked into four separate State Senate districts, such that the minority community in each district is relatively small. The result is that minority voters in Nassau County do not have a meaningful opportunity to participate in the political process and elect the State Senator of their choice." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3260*)

- "In *Rodriguez versus Pataki* a coalition of voters argued, among other things, that Section 2 of the Voting Rights Act required the State to place the compact and cohesive minority community in Nassau County into a single State Senate district, such that their political potential could be realized. The court disagreed, finding that the plaintiffs had not proven that they would be sufficiently numerous to elect their candidate of choice in their proposed minority district, where they black percentage of the citizen voting age population would have been upwards of 40% by the time of the 2004 election." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3260*)

- "In 1989 CSS successfully used the Voting Rights Act to stop the discriminatory purge of over 320,000 voters in United Parents Associations v. New York City Board of Elections. Subject to the State's non-voting purge, CSS proved that the law's application had an unlawful, discriminatory effect as Black and Latino voters were 32% more likely to be purged for non-voting. The federal National Voter Registration Act of 1993 eventually superseded and eliminated New York's non-voting purge." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3264*

- "In the 2001 legislative redistricting in New Jersey Democrats advanced a plan, under the guise of fulfilling the Voting Rights Act, that not only diluted majority-minority urban districts and but (*sic*) also ceded political power to suburban, white districts. This was done based on the premise that some Black legislators were elected from non-majority minority districts." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3269*

- "The party's leadership insisted that an expansion of Democratic seats in the legislature would empower Black voters indirectly, by reclaiming the majority Black legislators would then be in line to control key committees. It was a spurious claim then and remains so

today." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3269*

- "Until the DOJ intervened under Section 5, the City's plan was to send one untrained interpreter to each polling place, no matter how many Chinese speakers needed translation services in that district. In one district, a single interpreter would have had to serve 2629 Chinese-speaking voters. In addition, before the DOJ objected, the city's plan was to provide no translation services at all for districts with fewer than 200 voting-age Chinese residents who in the city's estimation spoke English less than well. A year later, though the city had complied with the letter of the 1993 objections, the DOJ was compelled to object *yet again* because the city was translating everything *except* candidates' names on the ballots to be filled out by Chinese-speaking voters." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3344*)

- "[O]f the nineteen times the Civil Rights Division has made Section 5 objections in New York, eleven occurred since 1982, the year of the last VRA reauthorization." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3346*)

- In 2002 in Queens County, New York, one poll inspector referred to South Asian voters as "terrorists." *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at, vii, submitted at SJC 6/13/06 hearing.*

- In New York City during the 2000 Presidential Elections, ballots in at least 6 poll sites in Queens reversed the translated party headings so that Republican candidates were listed as "Democrats," and Democrats as "Republicans." *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 19, submitted at SJC 6/13/06 hearing.*

- AALDEF has documented instances in which poll workers have interfered with the right of Asian American voters to receive assistance under Section 208 of the VRA. In 2001, AALDEF documented that poll workers at P.S. 94 in Sunset Park Brooklyn interfered with Chinese voters who brought someone to assist them in the voting booth, and that poll workers at Rutgers House in Manhattan's Chinatown refused to allow official Board of Elections interpreters to enter the voting booth with Chinese voters at the voters' requests. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 19, submitted at SJC 6/13/06 hearing.*

- In New York City during the 2004 Presidential Elections, 82 of the 116 poll sites AALDEF monitored fell short of the required number of assigned Chinese and/or Korean interpreters, often creating long lines and confusion for LEP voters in need of language assistance. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 19, submitted at SJC 6/13/06 hearing.*

- Poorly trained interpreters, or interpreters who proved unqualified to assist voters, also posed barriers to Asian American voters in need of language assistance. In 2002, several

interpreters at P.S. 2 in Manhattan were not bilingual and did not understand English. Likewise, Korean interpreters at P.S. 189 in Queens County, New York did not know of the availability of Korean language materials. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 19, submitted at SJC 6/13/06 hearing.*

- In 2004, large numbers of voters in New York, New Jersey, and Massachusetts reported that poll workers improperly required them to provide identification in order to vote. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 19, submitted at SJC 6/13/06 hearing.*

- In New York, one Pakistani voter in Flushing stated that she was not informed that her poll site was changed, and noted that approximately 200 families in her neighborhood were also affected by this change, many of whom were senior citizens who could not travel to the other site. At least 100 voters at one site in Richmond Hill were redirected, and a poll worker commented that "Queens recently rezoned its precincts" and that voters had not been made aware that their poll sites had been changed. South Asian voters in Floral Park complained about being shuffled between 2 poll sites in the neighborhood for the past 3 years and again in 2004. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 20, submitted at SJC 6/13/06 hearing.*

- A survey of 113 poll sites in 2004 found that 82 fell short of the required Chinese and Korean interpreters. As recently as 2005, 11 of 18 poll sites in Manhattan, and 10 of 19 poll sites in Queens, fell short of the assigned number of interpreters. The shortage of interpreters in New York City in 2005 was further punctuated when voting machines at a particularly busy poll site in Chinatown were shut down by the Board of Elections after the discovery that Chinese-translated ballots were unavailable. With just one Chinese interpreter, voters waited for assistance, and the interpreter estimated that he assisted 60 to 70 voters in the half hour that machines were shut down. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 21, submitted at SJC 6/13/06 hearing.*

- In 2004 in Queens County, New York, a poll site coordinator said, "I'll talk to [Asian voters] the way they talk to me when I call to order Chinese food," and then say random English phrases in a mock Chinese accent. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 21, submitted at SJC 6/13/06 hearing.*

- In 2004 in Queens County, New York, several white voters yelled at Asian Americans, saying "You all are turning this country into a third-world waste dump!" and "You should prepare and learn English at home before you come out to vote!" *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 21, submitted at SJC 6/13/06 hearing.*

- In 2004 in Kings County, New York, a poll site coordinator asked, "How does one tell the difference between Chinese and Japanese?" and brought her fingers to the side of each eye and moved her skin up and down. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 21, submitted at SJC 6/13/06 hearing.*

- In 2003 in Queens County, New York, a poll site coordinator made disparaging remarks about South Asian voters. She repeatedly referred to herself as a "U.S. citizen" and said that she was "born here" in front of south Asian voters. She instructed the door clerk to "keep an eye" on all the South Asian voters. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 22, submitted at SJC 6/13/06 hearing.*

- In 2003 in Chinatown in Manhattan, a voter complained that all the poll inspectors at his poll site mocked his last name, which was "Ho." *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 22, submitted at SJC 6/13/06 hearing.*

- In 2002 in Queens County, New York, one poll worker referred to South Asian voters as "terrorists." *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 22, submitted at SJC 6/13/06 hearing.*

- In 2001 in Queens County, New York, an elderly Korean voter asked for a Korean interpreter to assist her inside the voting booth. The inspector said, "I don't think you should be allowed to vote if you can't speak English." *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 22, submitted at SJC 6/13/06 hearing.*

- In 2000 in Queens County, New York, and elderly Korean married couple came to the poll site to vote. The wife needed assistance from her husband. AT that point, the poll worker blew up at the older Korean woman and yelled, "You cannot talk to anyone!" She further threatened, "You can end up in jail!" The couple was completely bewildered and became fearful at the exceptionally hostile attitude of the poll worker. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 22, submitted at SJC 6/13/06 hearing.*

- In one case involving allegations of hate crimes and discriminatory denial of access to public accommodations, AALDEF represented 6 Asian American Syracuse University students who were denied service at a Denny's restaurant and then left the diner only to be physically beaten by white customers while two security guards did nothing to stop the attack. In another case of campus violence, John Lee, a Korean American student at the State University of new York at Bringhamton, and 3 other Asian American classmates, were beaten by white members of the school's wrestling team in 2000. The victims were attacked unwittingly, and for no other reason than because of their race. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, page, 30, submitted at SJC 6/13/06 hearing.*

- In the 1998 election for New York State Attorney General, then-incumbent Dennis Vacco sued to overturn his loss in a close election. Vacco alleged that voters in poor, immigrant communities, many of which were Asian American, voted illegally and said discrepancies between the number of missing names from credit reports and voter registration lists was evidence that 103,000 voters cast illegal ballots. His lawsuit would have required a police sweep of poor, immigrant communities to verify the eligibility of minority voters by knocking on targeted residences and requiring them to prove their eligibility to vote. *"Asian*

Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 31, submitted at SJC 6/13/06 hearing.

- Also in the 1998 primary elections in New York, poll workers harassed 4 Chinese American sisters who attempted to vote in Brooklyn. One poll worker outright refused to allow the sisters to vote even though the polls were open for at least 45 more minutes. The site coordinator also scolded the sisters for requesting translated materials and for reading a Chinese language voting instructions placard. Poll workers demanded that the police remove the sisters from the poll site, but the police officer refused and affirmed that the sisters had a right to vote. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 31, submitted at SJC 6/13/06 hearing.*

- At another polling site, an Asian American voter complained that a police officer accompanied her in the voting booth when the voting machine broke down. The officer asked for whom she was voting. After the machine was fixed, the police officer still stuck his head in while the voter cast her ballot. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 32, submitted at SJC 6/13/06 hearing.*

- Before 2001, the only electoral success for Asian Americans was on the local [New York City] community school boards. In each election, in 1993, 1996, and 1999, Asian American candidates ran for school board and won. This stood in stark contrast to the total absence of Asian Americans in the City Council, State Legislature, or Congress, despite a city-wide population of over 800,000 Asian Americans, and 15 Asian American elected officials on the school boards.

  The school boards used an alternative voting system known as "single transferable voting" or "preference voting." Instead of selecting one representative from single-member districts, voters ranked candidates in order of preference, from "1" to "9."

  In 1998, however, New York opted to change the voting system from "preference voting" in which voters ranked their choice, to a different system of "limited voting" where voters could select only 4 candidates f or the 9-member board, and the 9 candidates with the highest number of votes were elected.

  The Justice Department, under its authority under Section 5, interposed an objection and prevented the voting change from taking effect. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, pages, 39-40, submitted at SJC 6/13/06 hearing.*

- In every election AALDEF has monitored in New York City, the Board of Elections has not taken all the reasonable steps to ensure that Asian American voters are informed of their correct poll sites. Voters have been misinformed about their poll sites *before* the elections or misdirected by poll workers at poll sites on Election Day.

  In 2001, the primary elections were scheduled for September 11. But the elections were cancelled due to the attacks on the World Trade Center and rescheduled for September 25.

The week prior to the rescheduled primary elections, AALDEF discovered that a certain poll site, I.S. 131, located in the heart of Chinatown and within the restricted zone in Lower Manhattan, was being used by the Federal Emergency Management Agency (FEMA) for services related to the World Trade Center disaster. The Board of Elections chose to close down the poll site but failed to inform voters of the change.

The Justice Department issued an objection and informed the Board of Elections that the change could not take effect. The elections took place as originally planned at I.S. 131, and hundreds of votes were cast on September 25. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, pages, 40-41, submitted at SJC 6/13/06 hearing.*

- Although the Board of Elections had agreed to provide sample ballots and voting instructions in Chinese for the 1994 primary elections, it claimed that New York's mechanical-lever voting machines did not have space for the candidates' names in Chinese. AALDEF met on numerous occasions with local election officials to convince them that candidates' names must be transliterated into Chinese, emphasizing that the transliterated name was the single most important piece of information on the ballot to voters.

  Ultimately, the denial of preclearance of the Board of Election's language assistance program under Section 5 is what forced the recalcitrant Board to provide fully translated machine ballots with candidates; names in Chinese. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 42, submitted at SJC 6/13/06 hearing.*

- The interaction of Section 5 and 203 also came into play after the 2000 Census. The census reported a 66 percent growth in the Asian American population in New York.
  Despite this population growth, the Board of Elections tried to curtail its language assistance program by proposing a change in its targeting formula.

  The effect of this change was the removal of nearly 70 poll site (26 in Manhattan, 12 in Brooklyn, and 27 in Queens) from being targeted for Chinese language assistance. This also removed 16 sites in Queens for Korean language assistance.

  The Justice Department, in deciding whether to interpose an objection, sent the Board of Elections a "more information" letter that asked for more detailed information to refute AALDEF's contentions. Upon receiving this "more information" letter, along with AALDEF's opposition letter, the Board of Elections withdrew its submission to change the targeting formula.

  "Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, pages, 42-43, submitted at SJC 6/13/06 hearing.

- [I]n the 2000 Elections, many voters in New York City were turned away because there were too few interpreters at poll sites. The observations and reports filed by the Justice Department following the elections persuaded the New York City Board of Elections to implement and maintain a backup pool of interpreters who could be assigned on the day of

the election. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 44, submitted at SJC 6/13/06 hearing.*

- In other elections, Asian American voters and community groups complained that translations of candidates' names on ballots were too small for voters to read. After federal observers were sent to New York to observe this complaint, the Board of Elections began to place magnifying sheets inside voting booths for voters to use. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 44, submitted at SJC 6/13/06 hearing.*

- In 2004, before the general election, the New York City Board of Elections considered the videotaping and photographing of voters. Attorneys from the Justice Department expressed their view that this is would violate federal law and the Board of Elections quickly dropped any further consideration of this proposal. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 44, submitted at SJC 6/13/06 hearing.*

- [R]eports had circulated before the 2001 mayoral elections in New York that "voter integrity" poll watchers were going to be placed in poll sites in minority neighborhoods. Community groups had denounced the effort as an attempt at voter suppression and called upon the Justice Department to dispatch federal observers. The Justice Department sent federal observers, and few reports of voter intimidation by non-poll workers were reported on election day. *"Asian Americans and the Voting Rights Act: The Case for Reauthorization" Report, at 44, submitted at SJC 6/13/06 hearing.*

- A poll worker in Jackson Heights, Queens, NY approached AALDEF's poll monitor to demand that he tell Asian American voters to vote faster because "one of his people" was waiting to vote. Another poll worker blamed Asian American voters for holding up the lines saying: "You Oriental guys are taking too long to vote." Asian American voters complained that they felt unduly rushed to vote. *Fung, Margaret. Responses to Written Questions. SJC VRA Hearing. 6-13-06. At 4-5.*

- In the 2004 elections in New York City, an Asian American voter in Flushing, Queens was asked to show her naturalization certificate to prove her eligibility to vote. She was not a first-time voter and was not required to show ID under HAVA. Poll workers in Sunset Park, Brooklyn told some Asian American voters that in addition to showing photo IDs, they had to produce their social security numbers and passports. In Palisades Park, NJ, an elderly first-time Korean American voter was asked to provide several forms of identification. After showing the poll worker his voter registration and poll site letter from the Board of Elections, the poll worker still asked the voter to present a driver's license, utility bills and other forms of ID. *Fung, Margaret. Responses to Written Questions. SJC VRA Hearing. 6-13-06. At 5.*

- [I]n the 2004 elections in New York, 69% of Asian American voters who were required to show identification were not required to do so. *Fung, Margaret. Responses to Written Questions. SJC VRA Hearing. 6-13-06 At 5.*

- In 2001, AALDEF monitors observed that poll workers at one site in Sunset Park, Brooklyn interfered with Chinese voters who brought someone to assist them in the voting booth, and that poll workers at Rutgers House in Manhattan's Chinatown refused to allow official Board of Elections interpreters to enter the voting booth with Chinese voters at the voters' requests. *Fung, Margaret. Responses to Written Questions. 6-13-06. SJC VRA Hearing. At 14.*

- "[African Americans have made progress.] There are now 24 African-American members of the New York State legislature." *Hazel N. Dukes, NY State Conference of NAACP Branches, Statement Submitted to the National Commission on the VRA,, House Hearing 61 (Oct. 18, 2005).*

- "Voter access was severely inhibited in 200 by reducing the number of voting machined *[sic]* and using older machines that broke down and which were not repaired in a timely way in black polling sites. This was purposefully done to oppress the black vote in the Gore/Bush Presidential election. Many African-Americans who registered to vote in public agencies, such a motor vehicles, social security and public assistance offices, names were not forwarded to the local board of elections in a timely manner; so that these voters were not able to go into the voting booths on election day. And, many were not able to use a paper ballot either." *Hazel N. Dukes, NY State Conference of NAACP Branches, Statement Submitted to the National Commission on the VRA,,House Hearing 62-63 (Oct. 18, 2005).*

- "Felony disenfranchisement keeps millions of African-Americans from voting because they are in prison or on parole. For some, this is a lifetime ban on their right to vote, even after release from prison. Here in New York, there is pending before the 2nd Circuit a lawsuit brought under the Voting Rights Act claiming that New York's felon disenfranchisement law is an arbitrary voter qualification that results in the denial and abridgement of the right of a citizen of the United States to vote; and, which has a disparate impact on those denied their right to vote and their communities from which they come. Felon disenfranchisement laws differ from state to state. Main *[sic]* and Vermont permit felons to vote form prison; however, the number of African Americans in both these states combined is so small as to be less than those in the village of Harlem. But in some states, felons are denied their right to vote for life." "Voter access was severely inhibited in 200 by reducing the number of voting machined *[sic]* and using older machines that broke down and which were not repaired in a timely way in black polling sites. This was purposefully done to oppress the black vote in the Gore/Bush Presidential election. Many African-Americans who registered to vote in public agencies, such a motor vehicles, social security and public assistance offices, names were not forwarded to the local board of elections in a timely manner; so that these voters were not able to go into the voting booths on election day. And, many were not able to use a paper ballot either." *Hazel N. Dukes, NY State Conference of NAACP Branches, Statement Submitted to the National Commission on the VRA, House Hearing 63-64 (Oct. 18, 2005).*

- "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.'" *Voting Rights in New York 1982-2006, 15 (renewthewra.org).*

- *"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.'" *Voting Rights in New York 1982-2006, 16 (renewthewra.org).*

- *"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." *Voting Rights in New York 1982-2006, 16 (renewthewra.org*

- "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. 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. 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." *Voting Rights in New York 1982-2006, 16 (renewthewra.org)*

- "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. This research also evidenced less than full compliance in providing personnel capable of handling requests in Spanish." *Voting Rights in New York 1982-2006, 17 (renewthewra.org)*

- "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." *Voting Rights in New York 1982-2006, 27 (renewthewra.org)*

- "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." *Voting Rights in New York 1982-2006, 31 (renewthewra.org)*

- "Poll workers interfered with the 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 County8 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." *Voting Rights in New York 1982-2006, 32 (renewthewra.org)*

- "[A]t 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." *Voting Rights in New York 1982-2006, 33 (renewthewra.org)*

- "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." *Voting Rights in New York 1982-2006, 33 (renewthewra.org)*

- "Interpreters at PS 250 in Williamsburg were not given tables and chairs and told instead that they had to stand all day. " *Voting Rights in New York 1982-2006, 33-34 (renewthewra.org)*

- "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. " *Voting Rights in New York 1982-2006, 34 (renewthewra.org)*

- DOJ found that New York knowingly fractured the Latino Community with the intend and effect of reducing the community's ability to elect candidates of choice. In fact, DOJ found that the state was aware of that the consequences of their redistricting plan would minimize Hispanic voting strength. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 21.*

- In that election [Queens County, 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. Noting 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 P.M., 5:30 P.M., 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 to "vote for any five."

- Magnifying sheets issued by the Board of Elections ostensibly to solve this problem were not available in all site and in Queens, 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 transliterating of John Liu's name was not was he submitted to the board or what he used in Korean media. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 24.*

- [N]o ballots were translated for Chinese voters in PS 250 in Williamsburg, despite its designation as a targeted site by the board of elections...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 needed to keep their tables "clean" and others remarking that their manual required them to keep their tables free of "clutter"...The monitoring reveled that, overall, one out of three interpreters assigned to the polling sites did not show up to work. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 26.*

- [In] *United Sates v. Brentwood Union Free District* 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. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 29.*

- In Brentwood, New York, DOJ ordered "remove poll workers who have engaged in hostile treatment of Spanish-speaking and/or Hispanic voters." *Jim Boulet, Jr. and Peter Weyrich, "Without Our Consent: Abuses of Billingual Voting Statutes in the New Millennium", House Hearing, March 8, 2006, at 2816.*

- **New York City, New York:** "CRENSHAW: You tell a story of the effect of 'cracking' in the minority district and the inability to effectively contest that with the existing provisions. And the latter story is one of 'packing,' and so, I'm curious about how you go about what might be the best way of providing the 'cracking' that you talk about and the 'packing' that you talk about.

  "PATERSON: [T]he interesting aspect of 'cracking' in Nassau county and 'packing' in the Bronx and Westchester county – what's crucial about it is that the courts both ruled in the same situation and one has to wonder as a matter of sophistry, what the reason was that the Court took this rather mercurial position of almost defending two competing aspects of the law at the same time." David Paterson, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 323 (Oct. 18, 2005).*

- "[L]itigation in the City of New York and particularly in the borough of Brooklyn, where the center is located. ... [W]e also had reason to use Section 5 in other areas, particularly New York City. They used to have community school boards. The school boards were dismantled a couple of years ago and we went to the Justice Department to argue that that was a violation of the Voting Rights Act." Joan Gibbs, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 325 (Oct. 18, 2005).*

- "If you compare Kings County, New York County, and the Bronx with Queens – which never, of course, had Section 5 protection in Queens where redistricting plans are not subject to the scrutiny of preclearance review, pressure to protect White incumbents from dramatic

demographic changes has wrought a districting pattern that, according to former Assistant Attorney General John R. Dunne, who served under that public administration of the Justice Department, 'consistently disfavored the Hispanic voters.' The Queens county district is twice as overpopulated as Kings County, New York County, and Bronx County. If Section 5 is allowed to expire, we can expect to see that pattern become the 'norm' in covered jurisdictions." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 328 (Oct. 18, 2005).*

- "Now in New York City, as we see in Queens, a few examples of non-geographic vote dilution from 1994. That state amendment to the Bill proposing the allowing of the Governor to appoint judges to the Court of Claims and then immediately transfer them to the Supreme Court. That would effectively take away or dilute the Voting Rights Act with respect to Supreme Court Justices. The Civil Rights Division rejected these under Section 5, noting that the method of selecting supreme court judges, from election to appointment has changed." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 328-29 (Oct. 18, 2005).*

- "In 1996, Section 5 allowed the jurisdiction to intervene when the Schools Chancellor dismissed nine minority community school Board members elected by a 90 percent minority district and replaced them with unilaterally chosen political appointees." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 329 (Oct. 18, 2005).*

- "Now we see the dismantling of New York City community schools, but these obviously occurred before that, and even that dismantling was subject to Section 5 with clearance, which should have been. It was pre-cleared over the objection of the minority advocates." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 329 (Oct. 18, 2005)..*

- "[The] federal government blocked a 1999 proposal that would have claimed to alienate government in voting, in school board elections. Limited voting is a classic 'anti-single-shot' strategy to prevent minorities to casting their vote blocs, and as the Chair of this Commission may recall when he was in the role of acting Assistant Attorney General for Civil Rights, he determined that these changes would have made it three times as hard to elect a candidate of their choice to the New York City school board in elections." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 329 (Oct. 18, 2005)..*

- "So half-hearted was New York City's original Chinese translation language plan that acting Assistant Attorney General James P. Turner, 1993, noted, 'There was no awareness that there were multiple Chinese dialects spoken in the city.' In addition, no procedure for assessing the language abilities of the people and the translation skills. Without the intervention of Section 5, that city's plan was to send one interpreter to the polling place, no matter how many Chinese speakers needed translation in that district, and one single

interpreter would have had to have served 2,000." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 329 (Oct. 18, 2005).*

- "In fact, the 19 times the Civil Rights Division has made Section 5 objections, in the City of New York, 11 have occurred ... since 1982. In 1982, most Assistant Attorney Generals who have served under Republican and Democratic presidents, have noted the persistence of racial polarized voting in New York City. Geographic segregation by race, ethnicity, language was significantly higher than the national average and reflects the existence of continued impediment." Martin Perez, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 329 (Oct. 18, 2005).*

- "CRENSHAW: Is it also fair to infer that both Democratic and Republican local administration have been 'equal opportunity violators' of the Voting Rights Act? ...
- "SHAW: Let me answer that first question by simply saying, yes." Ted Shaw, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 330 (Oct. 18, 2005).*

- "...Brooklyn, we received a number of calls – a substantial number of calls regarding requests for identification in circumstances where it wasn't required, and we are concerned about that. ... Brooklyn is a large home of people of African descent, and it is also the home of a number of immigrants from all over the world, including African immigrant. And we are concerned our registered voters – and have been – that they subject to be asked for identification as well as Latinos and Hispanics being asked for identification." Joan Gibbs, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 331 (Oct. 18, 2005).*

- "First the Hempstead case. That Hempstead case was filed in 1981 with a challenge to 'at large' election system used in the historical town of Hempstead, which is the largest town in the country, largest in the cities. It took us ten years, ten years to bring that case to trial, to successfully litigate it to trial successfully. Ten years later, in the town of Hempstead, after having created an African-American district when they were redistricting, we had to again threaten that town with further litigation and they had to come to their senses that it was not a good thing to try and butcher that district." Randolph McLaughlin, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 336 (Oct. 18, 2005).*

- "Davis had previously been an 'at large' location for the citizen counsel. The first opportunity the citizen counsel had in New Rochelle to redistrict itself. It decided, over the objection of the NAACP, ... It decided to gut the only black district in the city. New Rochelle was literally polling off sections in the Black communities and placing them in White communities and importing them into a heavily Republican town, reducing them to a majority Black district. ... [W]e were forced to sue New Rochelle. We were successful under Judge Bryan and the Judge ordered the city of New Rochelle to restore the Black district to a majority status." Randolph McLaughlin, *Testimony Submitted to Northeast*

Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 336 (Oct. 18, 2005).

- "I do not believe that we need to 'push the envelope' and consider expanding the scope of Section 5 protection to include, not just the districts that are presently under the Act, but to include perhaps districts where Civil Rights plaintiffs have successfully gained Section 2 cases over a period of years – make it five years, ten years. … Section 2 districts are just as likely to violate the Act as covered districts are." Randolph McLaughlin, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 336 (Oct. 18, 2005).*

- "[I]n 1989. We successfully used the Voting Act to stop the discriminatory purge of over 320,000 voters, United Parents Association Versus New York City Board of Elections. Subject to the State's non-voting purge, CSS proved that the law's application had an unlawful discriminatory affect as Blacks and Latinos were 32 percent more likely to be purged for non-voting." Walter Fields, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 337 (Oct. 18, 2005).*

- "Notwithstanding the success of 203, there continues to be a deficiency in the program. The translations in the 2000 Presidential elections of 'Democrat' and 'Republican' were converted in several polls in Queens. Absentee ballots contained mistakes in the Chinese language. Asian Americans were given instructions in Chinese to 'vote for three,' other instructions to 'vote for five.' The word 'yes' was translated as 'Si' on the Chinese ballot. John Kerry complained that voters were not able to recognize his name based on the Chinese translation, based on what the Chinese were given, the interpreters which created long lines in the polling process." Margaret Fung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 347 (Oct. 18, 2005).*

- "Jackson Heights, Queens at P.S. 69, one poll inspector told an oriental guy, 'You are taking too long to vote,' and turned to one of our monitors to say for them to tell 'his people' – implying Asian Americans – they should really vote faster because others are waiting on line. Another one commented if they need help with language, they should not ask to vote. At the poll site, a Chinese American voter who asked for language assistance, was directed to a Korean interpreter, who could not help. And several hostile White voters at this poll site made remarks such as, 'You're all turning this country into a third world waste dump,' and 'You can't have anyone go inside the booth with you,' and 'You should prepare and learn English before you come out to vote.'" Margaret Fung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 348(Oct. 18, 2005).*

- "[T]he [New York City] Board of Elections kept saying, 'Well we provide translation of simple ballots, but we really can't interpret ballots in the voting machines.' And the oversight in the Chinese Language Assistance Program. It was mailed to Chinese and there was a faulty translated ballot in New York City and that really wouldn't have offset it

without Section 5." Margaret Fung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 347 (Oct. 18, 2005).*

- "Even today, 14 years later, we're still fighting with the New York City board of legislators whether or not it's assigning enough interpreters, why it can't do translations correctly, but nonetheless, the program has become more institutionalized." Margaret Fung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 353 (Oct. 18, 2005).*

- "For example, here in New York City, White off duty officers with guns in view, blanketed polling sites in Black communities during the 1993 mayoral election in an effort to discourage Black voters from casting their ballot in the re-election of David Dinkins." Hazel Dukes, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 357 (Oct. 18, 2005)..*

- "Voter access was severely inhibited in 2000 by reducing the number of voting machines and using old voting machines which broke down and which were not repaired in a timely way in Black polling sites. This was purposely done to oppress the Black vote in the Gore-Bush presidential election." Hazel Dukes, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 357 (Oct. 18, 2005).*

- "Many African-Americans who registered to vote in public agencies such as Motor Vehicles Departments, Social Security and public assistance offices. Names were not sent to the Board of Elections in a timely manner so that these voters were not able to go into the voting booths on election day and many were not able to use a paper ballot either." Hazel Dukes, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 357 (Oct. 18, 2005).*

- "[I]n the last elections, despite the federal mandate to provide language assistance for Koreans as a required language, there were 4 states that provided zero interpreters on Election Day. (Cases Q38, Q0086, Q0040.) Of all those cases in Queens county, where there were clear indicators likely to have Korean efforts to the polls, there was actually zero interpreters to those non-designated sites, and so between those types of numbers and the fact that the overall percentage of our communities report having difficulties and despite even the speaking – lack of – the panicking with the current foreign language, it…very imperative that we need to do much more to enforce federal law." Veronica Jung, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, found in House Hearing 359 (Oct. 18, 2005).*

- "Voter Intimidation in recent elections has been both blatant and subtle. For example, here in New York City, white off duty police with guns in view blanketed polling sites in black communities during the 1993 mayoral election in an effort to discourage black voters from casting their ballot in the re-election of David Dinkins." *Hazel N. Dukes, NY State*

Conference of NAACP Branches, Statement Submitted to the National Commission on the VRA, found in House Hearing 62 (Oct. 18, 2005).

- Glenn D. Magpantay, a staff attorney with the Asian American Legal Defense and Education Fund (AALDEF), has reported on election problems Asian American citizens confronted on Election Day 2000 in New York City; and his organization more recently has reported on such problems in a study of eight states and twenty-three cities in 2004. Among the problems discovered in 2002 were faulty translations of bilingual ballots, signs, and voting materials; an absence of translators at polling sites; poorly trained, rude, threatening, or hostile poll workers; numerous omissions of Asian American voters from voter lists; confusing changes in poll sites; and breakdowns in voting machinery. *National Commission on the VRA Report, at 48.*

- "At the Mott St. Senior Center, in the heat of Chinatown only two of the hour assigned Chinese interpreters were present by 5:20 pm; for the majority of the time, only one Chinese interpreter was on duty, making the site substantially inaccessible to Chinese speakers. In addition, the 'Vote Here' sign at the site's entrance was only posted in English and Spanish, and only one Chinese-language sample ballot was available for seven voting machines. Poll workers were inconsistent in their treatment of voters who names were not found in voter rolls. One man was sent to four election district tables to look up his name, and without an interpreter available, believed he could not vote. A poll worker eventually left to get him and ask him to fill out an affidavit ballot." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1310-1311*

- "At the busy Land's End II poll site in Chinatown, the NYC Board of Elections shut down the site's voting machines for half an hour in the early evening, forcing waiting voters to vote by emergency ballots. In addition, a district leader prevented one Chinese American voter at the site from allowing the poll site interpreter to accompany her into the voting booth." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1311*

- "At P.S. 20 in the Lower East Side, Chinese-language sample ballots were missing from four of the give total election district tables. Chinese-language voting machine instructions were not posted at one election district voting table, and posted far from voting machines at two election district voting tables. Chinese voter registration forms, and various multilingual materials were kept behind voting machines, in direct violation of the law." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1311*

- "At Ralph Hernandez Tenement in Chinatown, only two of four Chinese interpreters assigned by the Board of Elections were present at the polling site, and a wide array of mandated voters' rights materials were left unopened in their original plastic wrap or were, as in the case of multilingual affidavit ballot instruction, entirely missing from two of three election district tables. *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1311*

- "At Manhattan Civil Court, another poll site, only two Chinese interpreters of the four assigned were present by 11:26 a.m." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1311*

- "In the 2000 Presidential election, the Chinese translations of 'Democrat' and 'Republican' were inverted at several poll sties in Queens. Absentee ballots also contained mistakes in the Chinese-language instructions for selecting New York Supreme Court justices—voters were given contradictory instruction in Chinese to 'vote for three' and also 'vote for five.' And on one New York City referendum, the work 'yes' was translated as 'si' on the Chinese-language ballot. Candidates' names have been transliterated in awkward ways, making them unrecognizable to the average voter." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1336*

- "Throughout New York City, an insufficient number of Chinese and Korean interpreters has created to long lines at polling places, with some voters leaving before casting a ballot due to the absence of language assistance. In the 2000 elections, 336 Chinese interpreters were to have been placed at 150 sites in Manhattan, Brooklyn and Queens, the three counties covered under section 203. In the 2004 elections, 303 sites were targeted for Chinese-language assistance and 66 sites in Queens were targeted for Korean-language assistance, requiring 975 interpreters. The Board of Elections failed to meet these requirements in these and many other elections. And every year, in the weeks before Election Day, the VOTE-NYC hotline set up by the Board of Elections is constantly busy. Those who waited for bilingual assistance about their poll site locations or to verify their voter registration status often encountered interpreters who did not speak the most common Chinese dialects of Mandarin or Cantonese." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1336*

- "[T]he 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." *Voting Rights in New York 1982-2006, 14(renewthewra.org).*

- "And the provisions on deploying federal observers – 881 observers were required to ensure compliance and stop voter intimidation from 1985 to 2004 alone! – are also critically important to enforce the guarantees of the 14th and 15th Amendments to the Constitution." *Answers by Juan Cartagena to Written Questions From Members of the Senate Judiciary Committee, at. 12 (May 10, 2006).*

Village of Hempstead, Long Island, New York (Nassau and Suffolk Counties)

- "When Mayor garner ran for election in Hempstead in March 2001, the management of HUD senior citizen buildings told tenants that if they didn't vote for Mayor Garner they would lose their apartments. At 260 Clinton, a senior HUD building, the management put

up flyers saying that HUD was coming to inspect apartments on Election Day, and if they weren't home to let the HUD inspectors in, they would risk losing their apartments." *Dolores Watson, ACORN, Statement Submitted to the National Commission on the VRA, House Hearing 72 (Oct. 18, 2005).*

- "Also, during that election, workers inside the polls were asking people if they were Democrat or Republican, and this was a general election, not a primary. . . . Poll inspectors were turning people away if they didn't tell them what party they belonged to." *Dolores Watson, ACORN, Statement Submitted to the National Commission on the VRA, House Hearing 72 (Oct. 18, 2005).*

- "This past November, they had long lines even in the morning when I went to vote, because the poll workers were confused about which machines they should be telling people to vote on. . . . The poll workers were sending people away and telling them to vote at Kennedy park, and then the people at Kennedy Park were sending them back over to the middle school. When people were turned away from voting, I told them they should challenge that and ask for a provisional ballot, but once they've been hassled, they won't go back." *Dolores Watson, ACORN, Statement Submitted to the National Commission on the VRA, House Hearing 72 (Oct. 18, 2005).*

Kings County, New York

- "At P.S. 217 in Midwood, Brooklyn, a Pakistani American voter noticed his voting machine was malfunctioning. When he reported it to the poll workers, the site supervisor summoned looked at the machine and then chose to ignore the problem and the voter. When the voter asked for some resolution to the voting problem, she vulgarly cursed him and refused to address his concern." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1311*

- "Also at P.S. 217, at least two Pakistani American voters were immediately asked to show IDs in order to vote. At least one Pakistani American whose name could not be found in the voter rolls left without voting, although he had voted recently and some of his family members were in the voter rolls. Under the Help America Vote Act (HAVA), only certain first-time voters are required to show ID, and voters whose names do not appear in the voter rolls have a right to vote by provisional ballot." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1311*

- "At P.S. 314 in Sunset Park, a Chinese American voter could not vote because she was told her name was not listed. Although she knew that it was misspelled in the voter rolls, poll workers rudely refused to let her look under a different name or fill out a form to correct the voting record. She was able to vote only because an interpreter intervened to assist her." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1311*

Queens County

- "At Flushing High School, only two Chinese and two Korean interpreters were on duty, although four of each had been assigned to the poll site. At four of the five election district tables, Chinese- or Korean- language affidavit ballots were missing. Multilingual instruction cares for affidavit ballots and voting machines were entirely missing from all five election district tables." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1311*

- "At J.H.S. 189, a poll worker rushed one Chinese American voter to finish voting even though she had not yet finished reading the instructions. The poll worker stopped when a supervisor arrived. Another voter reported that a poll worker at the site was very rude and tried to belittle her." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1312*

- "At P.S. 69 in Jackson Heights, a Bangladeshi American voter could not find her name in the voter rolls although he had voted at the same site in 1996, and registered again after poll workers could not find his name during the 2005 primaries and was asked to vote by affidavit ballot. He voted again this year by affidavit ballot. Another Bangladeshi American was asked to provide ID even though this election was not his first time voting." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1312*

- "At P.S. 11 in Woodside, voting instruction signs were not posted in Korean." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1312*

- "At P.S. 150 in Sunnyside, a variety of voting materials were not available in Korean or Chinese." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1312*

- "At P.S. 148 in East Elmhurst, one election district voting table had bilingual materials stacked in a pile in unopened packages. At South Ridge Coops in Jackson Heights, a Spanish interpreter was available but poll workers did not seek the interpreter's assistance when a voter needed it." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1312*

- "At least one Asian American voter at the Rosenthal Senior Center in Flushing was turned away and misdirected to P.S. 114, another poll site miles away in Far Rockaway." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, at 1312*

- "*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. 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." *Voting Rights in New York 1982-2006, 15 (renewthewra.org).*

- "In Queens County at Cardozo HS, ED56/AD 35, 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. 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." *Voting Rights in New York 1982-2006, 31 (renewthewra.org).*

NEVADA

Anecdotal Evidence

- "Hispanics have also been told they need to speak English in order to vote. This is a clear violation.So they have problems.They've been told they need a driver's license, which we know is incorrect. And many, many other false statement." *Andres Ramirez, Testimony at National Commission on VRA Southwestern Reg'l Hearing., House Hearing. 248 (Oct. 18, 2005).*

- "We had several forms of Hispanics who went to register and their forms were found in the dumpster outside some stores, so their forms were not submitted and they could not vote." *Andres Ramirez, Testimony at National Commission on VRA Southwestern Reg'l Hearing., House Hearing. 248 (Oct. 18, 2005).*

NORTH CAROLINA

Voting Rights Lawsuits/Enforcement

- ***Thornburg v. Gingles***, 478 U.S. 30 (1986) (ACLU Rep., p. 512-13): Black residents successfully challenged in district court six multi member house and senate districts in the state's 1982 legislative redistricting plan as diluting black voting strength in violation of Section 2.

  The Supreme Court, in its first opinion construing amended Section 2, affirmed the decision of the lower court, and in doing so rejected the argument that "some" black electoral success foreclosed a Section 2 challenge. Citing the legislative history and the language of Section 2, it held that if the election of a few minority candidates foreclosed the possibility of dilution of the

black vote, the majority might evade Section 2 "by manipulating the election of a 'safe' minority candidate." *Id.* at 513. The court concluded, where a districting plan "generally works to dilute the minority vote, it cannot be defended on the grounds that it sporadically and serendipitously benefits minority voters. "This was a landmark case because the court set standards for adjudicating vote dilution claims, i.e., by proof of minority geographic compactness, minority political cohesion, and legally significant white bloc voting, known as the "Gingles factors." *Id.*

- ***Shaw/Miller Litigation***:

  Shaw v. Hunt, 517 U.S. 899 (1996) (ACLU Rep., p. 513): The 12th District was 57% black and was persistently challenged by white voters and its boundaries were considered by the Supreme Court four separate times. In *Shaw v. Reno* the Court held that North Carolina's 1991 congressional plan was subject to challenge under the Fourteenth Amendment, saying the plan "bears an uncomfortable resemblance to political apartheid," and because the majority black district was "bizarrely" shaped. *Id.* at 514. The ACLU, along with its involvement in other Shaw/Miller litigation, participated as an amicus in defending the constitutionality of District 12.

  Another time the 12th District was challenged, the Supreme Court stuck down the plan on the grounds that race was the "predominant" factor in drawing the plan and the state had subordinated its traditional redistricting principles to race. *Id.*

  In response to the decision of the Supreme Court, North Carolina enacted a new congressional plan in 1997. The district court struck it down and it was appealed to the Supreme Court. The ACLU argued that the entire Shaw/Miller line of cases should be reconsidered by the court, and that it should return to the pre-existing rule that redistricting plans may be invalidated only if they cause actual harm to some

identifiable group in the jurisdiction. The Supreme Court did not set aside its *Shaw* jurisprudence, but it again reversed the lower court and held that its finding that the challenged district had been drawn primarily on racial lines was clearly erroneous, and that the district was constitutional

- ***Green v. City of Rocky Mount***, Civ. No. 83-81-CIV-8 (E.D.N.C. 1983) (ACLU Rep., p. 523): In 1977, the city of Rocky submitted 67 different annexations for preclearance, 36 of which the Department of Justice objected to because they would have diluted black voting strength. The city tried again to annex 11 new areas. Under that plan, approximately 42.1% of the city's black population was packed into Ward 2, resulting in a minority population of 87%. The remaining black population was spread evenly across Wards 3, 4, and 5, each having a majority white population. The city submitted the proposed annexation plan to the Justice Department in 1983. The Department of Justice objected to the proposed annexations, saying: "[E]ven though blacks constitute over 42 percent of the city's population, at no time has more than one black been elected to the city council, which appears to be the result of a general pattern of racially polarized voting . . . [and] the planned development of the areas to be annexed would over time most likely result in a substantially larger percentage dilution." *Id.* at 525-26.

- ***The Edgecombe County School District***, [no citation given] (ACLU Rep., p. 527-28): The Edgecombe County School District drew an objection from the Department of Justice in 1984,

when it sought to establish residency districts for the election of six of the seven school board members.

- ***Hines v. Callis***, No. 89-62-CIV-2-BO (E.D.N.C. 1989) (ACLU Rep., p. 528): Ahoskie is a small town located in Hertford County. The plaintiffs alleged that the town's failure to obtain preclearance for annexations violated Section 5 and that the town's at-large method of electing its five member town council violated Section 2 and the Constitution. The Attorney General precleared five of Ahoskie's annexations but objected to the proposed annexation of several predominantly white neighborhoods. The Attorney General observed that "even though the town is close to 50 percent black in total population, black candidates have had extremely limited success in winning seats on the five-member town council." According to the Justice Department, the black candidates' lack of success was due "largely to a pervasive pattern of racially polarized voting in town elections in combination with the existing at-large electoral structure for the town council." *Id.* at 531.

  Ahoskie eventually agreed not to contest the plaintiffs' claim that at-large elections violated Section 2, but the parties were unable to agree on a remedial plan. The Cities plan was eventually upheld.

- ***Speller v. City of Laurinburg***, No. 3:93 CV 365 (M.D.N.C. 1993) (ACLU Rep., p. 549): The plaintiffs argued that the city's at-large method of electing the council violated Section 2. While the lawsuit was pending, the city adopted an annexation ordinance which would have added approximately 4,100 people to the city's population, and thereby reduced the black share of the city's population by 6.5%. The city submitted the annexation to the Department of Justice for preclearance under Section 5. Noting "an apparent pattern of racially polarized voting that has limited the ability of black voters to elect their preferred candidates" in Laurinburg, the Attorney General objected to the proposed change on April 25, 1994, concluding that the annexation "would further limit the opportunity of black voters to elect their candidates of choice to the city council." *Id.* at 549-50.

- ***Fussell v. Town of Mt. Olive***, Civ. No. 930303-CIV-5-D (E.D.N.C. 1993) (ACLU Rep., p. 556): The City of Mt. Olive adopted a plan that contained two at-large seats and packed blacks in one district at the level of 97%. The Attorney General entered an objection, concluding: "given the presence of polarized voting and the limited success that black voters have enjoyed when five at-large seats are elected, there is considerable doubt as to whether black voters would have a significant opportunity to elect any at-large member under the proposed election method." *Id.* at 557.

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- After Jesse Helms' campaign aired blatantly racist TV ads and, in cooperation with the state Republican Party, systematically mailed registered black voters false information about state voter qualifications, DOJ sued, charging both the state Republican Party and the Helms campaign with violating the Voting Rights Act by intimidating and interfering with black voters. Both defendants signed a consent decree agreeing not to engage in such tactics in the future. *National Commission* on VRA Report, at 38.

- At least 50 Section 2 cases were resolved favorably to plaintiffs in the post-1982 period in Alabama, Georgia, North Carolina, and Mississippi. Georgia and North Carolina have numerous counties affected that are less than 40 percent black. The latter state is interesting in that, while the majority of its Section 5-covered counties were affected, only about a fifth (13) of its 60 non-covered counties were. *National Commission* on VRA Report, at 87.

- The importance of continued Section 5 enforcement is shown in the 2000 cycle of redistricting. In Stephenson I, Judge Knox Jenkins, a conservative democrat state superior court judge, found that the state legislature had failed to follow Section 2 and Section 5 guidelines as well as the state constitutional limits in establishing legislative districts. In his remedial decisions, Stephenson II Judge Jenkins found the Gingles preconditions to exist in several areas of the state and created a court drawn plan adding minority districts in some areas and strengthening minority concentrations in others to correct and ameliorate the problems of racial polarization which he found present in the state legislative plans. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 21 (Oct. 25, 2005) (prepared statement of Robert Hunter, Voting Rights Litigator, Hunter, Miles, Elam, and Benjamin, P.L.L.C.).

- [Regarding influence districts] I tried a case about the election of North Carolina judges, Superior Court judges, statewide called *Martin v. Republican Party*. It took 12 years to litigate an intentional discrimination against Republican voters in the State in the election of Superior Court judges. It was incredibly difficult. We finally won. It's the only political gerrymandering case that's ever been successful. It took us 12 years to prove it, and it has to do with this whole idea of influence. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 85 (Oct. 25, 2005) (response of Robert Hunter, Voting Rights Litigator, Hunter, Higgins, Miles, Elam, and Benjamin, P.L.L.C., to questioning of Congressman Feeney).

- "Comparing the treatment of the legislature with that of the state court is useful to show that intent to retrogress still exits in the legislative bodies throughout the South when it is useful for partisan political ends. Sutton 3 (infra), was found to be unconstitutional on state constitutional grounds. Subsequently the state court was able to draw a 23 seat minority district plan by strengthening existing black concentrations and creating an additional VRA district in Wake County. For example, the court plan also reconfigured VRA districts in Guilford to apply with traditional redistricting principles. Districts 33 (48.59%) and 38 (45.61%) in Wake County were created to ensure compliance with federal law. In Guilford County, VRA District 58 was reconfigured with a total black population of 57.69% and District 60 with a total black population of 59.95%. In District 18, the court increased the total black population to 46.99%. This created a total of approximately 23 districts/ The court's interim districts were precleared on July 12, 2002." *Testimony of Robert Hunter, House Judiciary Committee, VRA Hearing, 10/25/05, pg 24*

- "[T]he 2000 history of redistricting in North Carolina showed a concerted attempt on the part of Legislative leadership to minimalize black voting strength in existing districts and in marginal districts in the state to draw districts in which the black communitites' voting strength would be

secondary to the ability to elect white democrat representatives. This trade-off in marginal VRA areas, even if supported by minority legislators who may have more legislative influence to gain in support a redistricting plan, does not favor the voting interests of the black community as traditionally understood in Voting Rights law." *Testimony of Robert Hunter, House Judiciary Committee, VRA Hearing, 10/25/05, pg 24*

Statistics

- In the initial draft of legislative districts, the General Assembly created 21 districts which they contended were "effective" minority districts. Large losses in depopulated districts were made up by putting white "Republican" voters in these black districts. The plan also contained three districts, with a population of at least forty percent (40%), which would "afford black voters a strong likelihood of being a dominant force able to elect representatives of their choice." *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 23 (Oct. 25, 2005) (prepared statement of Robert Hunter, Voting Rights Litigator, Hunter, Miles, Elam, and Benjamin, P.L.L.C.).

- SL2003-434 contained 21 new VRA House districts and 12 which reduced black voting strength. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 24 (Oct. 25, 2005) (prepared statement of Robert Hunter, Voting Rights Litigator, Hunter, Miles, Elam, and Benjamin, P.L.L.C.).

Anecdotal Evidence

- Recently, the counsel to the North Carolina Board of Elections said that, in his experience, complying with section 5 is not burdensome for State and local officials. *Ms. Earls, Testimony at House Hearing. 33 (morning of Oct. 25, 2005).*

- "Similarly here in North Carolina in Alamance County, a sheriff took it upon himself to get a sample list of Latino voters and then announce in front of the board of commissioners and said, I'm going to go door to door knocking on people's houses and ask – and see proof of citizenship." *Leslie Lobos, Testimony at National Commission on VRA Southern Reg'l Hearing., House Hearing. 201 (Oct. 18, 2005).*

- Harvey Gantt, former mayor of Charlotte, was ahead in some polls during his 1990 challenge of North Carolina Senator Jesse Helms until Helms's campaign aired blatantly racist TV ads and, in cooperation with the state Republican Party, systematically mailed registered black voters false information about state voter qualifications. *National Commission on VRA Report, at 38.*

- In order for a black to win statewide election, a prior appointment to fill a vacancy is not always sufficient. Congressman Melvin Watt, testifying before the National Commission on the Voting Rights Act, noted the case of Judge Allyson K. Duncan, an African-American Republican woman appointed to the North Carolina Court of Appeals, a statewide office, who was then defeated by a white challenger when she ran for election as an incumbent. Her qualifications

were such that she was later appointed to the U.S. Fourth Circuit Court of Appeals. *National Commission on VRA Report, at 38.*

- The situation in North Carolina was described by Congressman G. K. Butterfield, one of the first black U.S. Representatives elected from that state since 1899. Butterfield asserted that "racially polarized voting continues to be a very, very serious problem in the rural South." *National Commission on VRA Report, at 92.*

- In North Carolina we have recently formed an ad hoc group of election lawyers to informally discuss voting issues which arise in elections. This informal group consists of about 20 lawyers who regularly practice in the field of voting litigation. Last year when we met, I raised the issue of whether this bi-partisan group felt that re-authorization of Section 5 was still needed after 40 years of effort. The unanimous conclusion of both Republican and Democratic lawyers what that it is still needed, despite the tremendous advances which have been made in voter participation in the South. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 18 (Oct. 25, 2005) (prepared statement of Robert Hunter, Voting Rights Litigator, Hunter, Miles, Elam, and Benjamin, P.L.L.C.).

- As my Law Review article points out, this aggressive enforcement led North Carolina from a position where less than 5 black legislators were elections in the late 1970s to where approximately 20 House members and 6 Senators were elected in 2000. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 20 (Oct. 25, 2005) (prepared statement of Robert Hunter, Voting Rights Litigator, Hunter, Miles, Elam, and Benjamin, P.L.L.C.).

- The effect of these plans was evident. For example, in Pitt County, North Carolina, House District 8, a white incumbent has been able to remain in her legislative position because of low percentages of black populations included in the districts, notwithstanding the fact that sufficient black populations exist in Pitt County to create a district in which the black community could nominate and elect a candidate of its choice. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 23 (Oct. 25, 2005) (prepared statement of Robert Hunter, Voting Rights Litigator, Hunter, Miles, Elam, and Benjamin, P.L.L.C.).

- Comparing the treatment of the legislature with that of the state court is useful to show that intent to retrogress still exists in the legislative bodies throughout the South when it is useful for partisan political ends. Sutton 3 was found to be unconstitutional on state constitutional grounds. Subsequently the state court was able to draw a 23 seat minority district plan by strengthening existing minority concentrations and creating an additional VRA district in Wake County. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 24 (Oct. 25, 2005) (prepared statement of Robert Hunter, Voting Rights Litigator, Hunter, Miles, Elam, and Benjamin, P.L.L.C.).

- For example, the court plan also reconfigured VRA districts in Guilford to apply with traditional redistricting principles. Districts 33 (48.59%) and 38 (45.61%) in Wake County were created to ensure compliance with federal law. In Guilford County, VRA District 58 was reconfigured with a total black population of 57.69% and District 60 with a total black population of 59.95%. In District 18, the court increased the total black population to 46.99%. This created a total of 23 VRA districts. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 24 (Oct. 25, 2005) (prepared statement of Robert Hunter, Voting Rights Litigator, Hunter, Miles, Elam, and Benjamin, P.L.L.C.).

- Interestingly, in the VRA house district created in Wake County (a second VRA district for Raleigh) democrats nominated a white democrat, Deborah Ross when two black candidates split the minority vote. She was elected in the fall. In the redrafting of the districts, she utilized her incumbency to reduce the voting strength in this potential district. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 24 (Oct. 25, 2005) (prepared statement of Robert Hunter, Voting Rights Litigator, Hunter, Miles, Elam, and Benjamin, P.L.L.C.).

- In summary, the 2000 history of redistricting in North Carolina Showed a concerted attempt on the part of the Legislative leadership to minimalize black voting strength in existing districts and in marginal districts in the state to draw districts in which the black communities' voting strength would be secondary to the ability to elect white democrat representatives. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 24 (Oct. 25, 2005) (prepared statement of Robert Hunter, Voting Rights Litigator, Hunter, Miles, Elam, and Benjamin, P.L.L.C.).

- "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...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." *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3181*

- "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 Reservations' 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 office. 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 demonstrated that the proposed change had neither a discriminatory purpose nor a discriminatory effect." *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3182*

- "[I]n the mid-1990's a traditionally African-American community in North Carolina called 'Battleboro' was eager to be a part of the economic growth occurring around the city of Rocky Mount....At the time, Rocky Mount was a majority-white city, although the differential rates of population growth were apparent. City planners projected that by the 2000 Census, Rocky Mount would be a majority-black city. Annexing Battleboro would only increase this trend...Residents of Battleboro organized and lobbied the Mayor and city Council members to annex them. One of the key factors that led the city to agree to annex this community was the fact that community members were prepared to vigorously protest any future annexation of white neighborhoods in the Section 5 preclearance process." *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3182-83*

- "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." *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3183*

- "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...The ballots under question were cast disproportionately 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 votes were advised by local election officials that provisional ballots votes cast outside their home precincts would count." *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3183-84*

- "Election administration in this state continues to need improvements, particularly because polling place officials turn votes away without justification. Election protection workers 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 votes 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." *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3184*

- "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." *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3184*

- "Richard Engstrom's 1995 study of 50 recent election in North Carolina in which voters have been presented with a choice between African-American and white candidates, including elections for the US 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...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...Every statewide election since 1988 where voters were presented with a biracial field of candidates has been marked by racially polarized voting. In all expect two-low profile contests, racially polarized voting was sufficient to defeat the candidate hosen by black voters. Of every biracial state legislative district election sine 1988, only one was not marked by racially polarized voting. The one exception was a 1992 multiseat election in which Mickey Michaux received more white votes than two white challengers from the Libertarian party...Most significantly, in 1990, just days before the general election in which Harvey Gantt, an African-America, was running against Jessie Helms for US Senate, post cards headed 'Voter Registration Bulletin' were mailed to 125000 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...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 elections office to try to vote there. Considerable resources were devoted to trying to clear up the confusion...Specific polls in the 1990 election report substantial white North Carolinians who said they would simply not vote for a black candidate." *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3185-86*

- "An anonymous leaflet warned Columbus County voters in 1990that black in the county have too much political power and 'more Negroes will vote in this election than ever before.'" *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3186*

- "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...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*." *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3187*

- "As of January 1989, African-Americans were 21% of the state's voting age population but only 8.1% of the elected officials.

  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 black 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 who 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.**" (emphasis in transcript) *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3187-88*

- "[I]n 1989, of 529 county commissioners throughout the state, 36 were black...the relative percentages of black elected official 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 toality of circumstances inquiry in a vote dilution claim." *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3188*

- "[I]n an August 1999 primary election in Mississippi, federal observers told DOJ that a white pollwatcher had a camera that she used only to take pictures of African-American voters who needed assistance in casting their ballots (because of physical need or illiteracy). The observers reported this to the Voting Section attorneys who contacted the county election official and led to a cessation of the conduct." *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3192*

- "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. 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. Other documented problems have included ex-felons receiving incorrect

information about their right to vote and polling sites being moved with insufficient notice. Such voting irregularities generally affect African-American voters in greater percentages than white voters." *Voting Rights in North Carolina 1982-2006, 10 (renewthewra.org).*

- "Today, despite the VRA, it is still difficult for African-American citizens to register, vote and elect candidates of their choice. In North Carolina, African-American voters also report voter intimidation at an alarming rate." *Voting Rights in North Carolina 1982-2006, 10 (renewthewra.org).*

- "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 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." *Voting Rights in North Carolina 1982-2006, 11 (renewthewra.org).*

- "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. 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. 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.' .... 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. 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." *Voting Rights in North Carolina 1982-2006, 12 (renewthewra.org).*

- "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. 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.'" *Voting Rights in North Carolina 1982-2006, 12 (renewthewra.org).*

- "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.' 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." *Voting Rights in North Carolina 1982-2006, 12 (renewthewra.org).*

- "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." *Voting Rights in North Carolina 1982-2006, 12 (renewthewra.org).*

- "Ralph Campbell, the only African-American to win a non-judicial statewide election in North Carolina knew well what this [racist] Virginia voter was saying. In his election campaigns for state auditor, he used a label from Campbell's soup can rather than his photograph, in his election materials." *Written testimony of Anita Earls, Senate Judiciary, 5/16/06*

- "When the preclearance provisions were last extended in 1982, Congress optimistically expected that not only would the number of objections decrease over time, but that numerous and perhaps all of the covered jurisdictions would eventually be eligible for bailout, which, among other things, requires that no change submitted by the jurisdiction be the subject of an objection for the previous ten years.

  In fact, the record has been exactly the opposite. In many of the covered jurisdictions, including North Carolina, the number of objections since 1982 is actually greater than the total number from 1965 to 1982. In states that are substantially covered (that is, where more than a handful of counties are covered), there were a total of 481 Section 5 objections prior to August, 1982, and 682 objections from August 1982-2004. Many of these post-1982 objections include evidence that the change was motivated by a discriminatory intent. In a comprehensive review of all Section 5 objection determination letters, authors Peyton McCrary, Christopher Seaman, and Richard Valelly concluded that evidence of discriminatory purpose were significant in well over half the objections. For example, they report that '[i]n the 1990s, fully 151 objections (43 percent) were based on purpose alone. Another 67 objections (19 percent) relied on a combination of purpose and retrogression, and 41 (12 percent) on both purpose and the need to comply with Section 2." *Written testimony of Anita Earls, Senate Judiciary, 5/16/06*

- "In February of 2005 the North Carolina Supreme Court ruled that approximately 12,000 ballots case on Election Day by voters outside their home precincts would not be counted. 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...As one researcher reported, out-of-precinct voting in North Carolina 'especially helps working class, you 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. Additionally, 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." *Written testimony of Anita Earls, Senate Judiciary, 5/16/06, pg 7-8*

- "[W]e are seeing in North Carolina that counties that are not covered by Section 5 are seeking to return to at-large election methods even though racially polarized voting in those counties has not decreased...[T]he recent use of voter suppression technique aimed at minority voters, such as the post-card campaign in North Carolina, threats to videotape voters as they enter polling places, threats to challenge voters on election day, and a variety of other practices, indicate that racial animus still motivates some actors in the political process." *Written Responses of Anita Earls to Senator Leahy, Senate Judiciary Committee VRA Hearing, 6/16/06, pg 6*

- Mr. Gaddie- Recently, 125,000 voters in predominantly African-American precincts, that is, targeting black voters in North Carolina, were sent postcards erroneously telling them that they could not vote on election day if they had moved, causing great confusion, discouraging them from voting. *5/16/06 SJC VRA Hearing Transcript, Page 50.*

- Mr. Gaddie- Another example, in 2004, the sheriff of Alamance County in North Carolina, took a list of registered voters in his county that had Spanish surnames, and said publicly that he would send deputies to the homes of each of those voters to verify that they were citizens. That type of discouraging of minority voting, those people are all registered, but they are still targeted by these types of campaigns. That is the atmosphere that we are dealing with, and those types of examples are found in numerous other States. *5/16/06 SJC VRA Hearing Transcript, Pages 50-51.*

OHIO

Statistics

- "...the most memorable disenfranchisement of minority voters in the Midwest region recently occurred in Ohio. And that report found that 28% of all Ohio voters and 5% of black voters said that they experienced problems in voting." *Rep. Gwen Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 385 *(July 22, 2005).*

- "...during the 2004 election...A recent report found that 28 percent of all Ohio voters and 52 percent of black voters said experienced problems in voting."

- *Rep. Gwen Moore, Statement Submitted to National Commission on VRA, House Hearing. 127 (Oct. 18, 2005).*

- "In Ohio, over 35,000 registered voters were placed on a statewide list to be challenged at the polls by partisan party operatives. Over 150,000 were not able to participate in our elections due to administrative and sometimes political barriers that occurred on election day. For that one day they became second-class citizens, and the term 'provisional' was stamped on their right to vote and we believe nullifying their right to vote." *Gregory Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 430-431 *(July 22, 2005).*

Anecdotal Evidence

- "In fact, in Cleveland Heights, there were several challengers present. When I relayed this fact to a white attorney I was working on a case with, he indicated that he lived in a white, affluent suburb and that he nor any of his white friends ever saw a challenger present at their respective voting locations."
  Marlon Primes, Statement Submitted to National Commission on VRA, House Hearing. 146-47 (Oct. 18, 2005).

- "During the 2004 Presidential election in Defiance County, Ohio, Chad Staton was paid crack cocaine to fraudulently register Mary Poppins, Dick Tracy, Jive Turkey and almost one hundred other fraudulent and fictional "voters". When the Senate was debating the Help America Vote Act of 2002 ("HAVA"), Missouri Senator Kit Bond told of Ritzy Meckler – a cocker spaniel – being registered to vote in St. Louis, Missouri." *Written Testimony of Mark Hearne, Senate Judiciary Committee Subcommittee on the Constitution, VRA Hearing, 7/10/06 at 2*

PENNSYLVANIA

Voting Rights Lawsuits/Enforcement

- A Philadelphia lawsuit describes a deliberate and collusive effort by party officials and city election commissioners to trick Latino voters into casting illegitimate absentee ballots that would never be counted. *National Commission* on VRA Report, at 84.

- Election observers in Reading, Pennsylvania, documented several instances of poll workers making unwelcoming statements about Hispanic voters, including the following:

    - "This is why we don't like you Hispanic people coming here, you get everything messed up."
    - "I don't know why the ballot is in Spanish if Hispanics don't know how to read."
    - Poll workers making fun of a Hispanic voter, shouting "Hip, hip, hooray" and then the voter's name while the voter was in the booth.
    - A poll worker asking a Hispanic voter: "Why do you guys have such long last names?"
    - Several examples where election materials were not in the minority language or were poorly translated.
    - Examples where minority voters were required to provide identification information but not requiring the same of white voters.

    --*National Commission* on VRA Report, at 64.

Berks County, Pennsylvania

- EDPA found that Berks County, Pennsylvania violated §§ 2, 4(e), and §208 of the VRA by failing to make ballots available in Spanish for Puerto Rican voters. The cases were *U.S. v. Berks County*, 250 F. Supp. 2d 525 (E.D. Pa. 2003). "The Court emphasized on *[sic]* 'evidence that election officials permitted poll workers to openly express hostility to Hispanic voters; that 'Hispanic voters were treated differently and discriminated against at poling places, and Hispanic residents in county were severely underrepresented as poll workers.'" *Carlos Zayas, Statement Submitted to the National Commission on the VRA, House Hearing. 74-75 (Oct. 18, 2005).*

- "Berks County, PA election practices. Hostile and disparate treatment of Hispanic and Spanish-speaking voters. Poll workers turned away Hispanic voters because they could not understand their names, or refused to deal with Hispanic Surnames. Poll workers made hostile statements about Hispanic voters; others made discriminatory statements concerning Hispanics. Poll workers placed burdens on Hispanic voters that were not impose on Anglo voters, like demanded photo identification. Poll workers required only Hispanic voters to verify their addresses. Hispanic voters stated that this hostile attitude and rude treatment makes them uncomfortable and intimidated in the polling place,and discourages them from voting." *Carlos Zayas, Statement Submitted to the National Commission on the VRA, House Hearing. 75 (Oct. 18, 2005).*

- "Lack of bilingual poll workers. There is a need to recruit, appoint, train, or maintain a pool of Hispanic poll workers or poll workers with Spanish language skills. There was approximately 3 percent of poll workers in reading precincts with Spanish surnames, compared to a voting age population that is over 30 percent Hispanic." *Carlos Zayas, Statement Submitted to the National Commission on the VRA, House Hearing. 75 (Oct. 18, 2005).*

- "Lack of Bilingual materials. This has severe impact on limited-English proficient voters. Many are unable to read these English only materials." *Carlos Zayas, Statement Submitted to the National Commission on the VRA, House Hearing. 75 (Oct. 18, 2005).*

- "Denial of Assistor Choice. Due to the lack of bilingual materials and assistance available at the polling places, many voters attempt to bring bilingual friends or family members to the polling places to assist them, but poll workers have not permitted voters to bring their assistors of choice with them." *Carlos Zayas, Statement Submitted to the National Commission on the VRA, House Hearing. 75 (Oct. 18, 2005).*

- "Section 4(e). . . . Berks County knowingly conducted English-only elections and fails to provide limited-English proficient United States citizens of Puerto Rican descent with election information and assistance necessary for their effective participation in the electoral process." *Carlos Zayas, Statement Submitted to the National Commission on the VRA, House Hearing. 76 (Oct. 18, 2005).*

- "Section 208. Berks OCunty violated this section by failignt o ensure that voters who are unable to read the ballot receive voting assistance at the polling place from assitors of their choice." *Carlos Zayas, Statement Submitted to the National Commission on the VRA, House Hearing. 76 (Oct. 18, 2005).*

- "Section 2. . . . "Based in *[sic]* the totality of the circumstances, Berks County election policies and practices has *[sic]* denied limited-English proficient Hispanic voters the opportunity to participate effectively in the electoral process on an equal basis with other members of the electorate. . . . Section 2 had been brought to challenge election officials' failure to provide language assistance as well as failure to appoint minority poll workers. Had been established that lack of minority poll workers also is a serious impediment to Hispanic voters gaining equal access to the electoral process." *Carlos Zayas, Statement Submitted to the National Commission on the VRA, House Hearing. 76 (Oct. 18, 2005).*

- "Redding, Pennsylvania. They were throwing against us – the Hispanic – exactly the same remarks [as panelist Margaret Fung recounted], and that was the observers of the Department of Justice. For two years we have been working in the investigation. Also, if we can't trust them, we came to Passaic we can make with the department in this situation. ... We called them and provided all the areas that we collected and that expedited the investigation in Redding. They spent two more years during the investigation in Pennsylvania, they augmented all the findings, and eventually they went to Federal Court because there was no explanation from the statutes of 1999. Every time that we asked for something – their standard reply – they always said, 'You want something here, take us to

court.' And now they have compliance. … I want to mention here that the Board of Pennsylvania, the 21st century in my point of view, is the case of discrimination of the polling base of minority language for the past six years. As I said, I have seen the action of the rights and voting rights in Pennsylvania, especially Pennsylvania Dutch country, Berks county, and surrounding counties. … In summary, the Court found that Berks County 'use of English only election process violated Section 4E of the Voting Rights Act by continuing the right to vote for the county's Puerto Rican community. Many who attended schools in Puerto Rico were not really able to read, write, understand English.' They denied information and assistance necessary for those citizens to participate in the election process and initial findings was 'English Only' election process violated Section 203 for the test on the Voting Rights Acts." Carlos Zayas, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 348-49 (Oct. 18, 2005)..*

- "The hostility that Hispanics and Spanish-speaking voters receive. Poll workers turned away Hispanic voters because they could not understand their names or refused to deal with Hispanic surnames. Poll workers made hostile statements about Hispanic voters, others made discriminatory statements about Hispanic voters that are not imposed on Anglo voters like, demanding photo identification. That was not a requisite. The city of Pennsylvania required only Hispanic voters to verify their address. Hispanic voters say this hostile treatment in the public place discourages them from voting. That was at this time a practice that was mentioned. Another one is the lack of bilingual poll workers that are left to recruit, train, and maintain a pool of poll workers that are Hispanic. One more approximating 30 percent of poll workers in Reading precincts with Spanish surnames compared to a voting population that is over 30 percent. … [T]hey need to comply with the mere use of the media to reach our community. There was a denial of a choice to vote due to lack of bilingual materials and assistants for Hispanics in the voting places. Many voters would bring their friends, their companions of choice to vote. But poll workers have not permitted voters to bring their assisters of choice with them. Also the county officials have acknowledged to reintroduce this information, and they have knowledge about this in practice, and I think since the state began telling me to take them to court in regards to Section 4E." Carlos Zayas, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 349-50 (Oct. 18, 2005)..*

- "LEE: How prevalent in the state of Pennsylvania is it? Are there a lot of cities in Pennsylvania that have a lot of inadequacies?
  "WALTON: I know there is a violation going on in Bethlehem. I assume by accepting information, knowledge in Philadelphia, Section 5, we have an extremely huge Hispanic population in Allentown, Bethlehem, Lancaster, York, and Montgomery counties. But the big ones, Allentown, Bethlehem, Lancaster and York is growing." Charles Walton, *Testimony Submitted to Northeast Regional Hearing of the National Commission on the Voting Rights Act, House Hearing. 353 (Oct. 18, 2005)..*

- "In recent years, racially offensive comments have been made by poll workers against Hispanic voters in Reading, Pennsylvania and against Asian voters in New York City."

Joe Rogers, Testimony at House Hearing on "Voting Rights Act: Evidence of Continued Need." (March 8, 2006).

- "In Albuquerque, New Mexico, Dwight Adkins tried to vote on Election Day in November 2004 but was not allowed to do so because someone had already voted in his place... Another Albuquerque citizen, Glen Stout found that his 13-year old son was illegally registered to vote by a 527 voter registration organization prior to the 2004 general election. In Philadelphia, Donna Hope, a non-citizen immigrant from Barbados who resides in Philadelphia, was told by a representative of the voter registration group "Voting is Power," the voter mobilization arm of the Muslim American Society that she could register to vote if she has been in the United States at least 7 years. Ms. Hope completed the registration form and was added to the voting rolls. In November of 2004, Ms. Hope did not vote because she was not a citizen, but later found out that according to Philadelphia election officials' records; someone illegally cast a ballot in her name. *Written Testimony of Mark Hearne, Senate Judiciary Committee Subcommittee on the Constitution, VRA Hearing, 7/10/06 at 5*

Anecdotal Evidence:

- In Reading, Pennsylvania, a federal court recently noted the high level of exclusion of Latinos from elections positions. Although the largely Puerto Rican Hispanic population comprised nearly one-third of Reading's voting age population, in the 1999 election only 1.3 percent of all poll workers were Hispanic. The failure to recruit bilingual Spanish-speaking poll workers deprived LEP Spanish-speaking voters of an equal opportunity "to cast an informed and effective vote." *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. At 22.*

- [I]n *United States v. Berks County*, a 2003 case that also involved violations of section 4(e) and section 2, a federal 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." *Angelo N. Ancheta, Draft of "Language Accommodation and the Right to Vote", House Hearing, March 8, 2006, at 2526.*

- 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 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." *Jim Boulet, Jr. and Peter Weyrich, "Without Our Consent: Abuses of Billingual Voting Statutes in the New Millennium", House Hearing, March 8, 2006 at 2817*

RHODE ISLAND

Anecdotal Evidence:

- "There has never been and African-American elected to a statewide office, although three strong candidates have run for statewide office in recent times." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3271*

- "Today, Providence is a majority-minority city. There are four minority representatives on the City Council, two blacks and two Hispanics. One of the black members is the first female and the first African-American to serve as President Pro Tem of the City Council. Whites hold eleven seats on the City Council, and the City has never had a minority mayor." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3272*

- "Pawtucket is nearly a majority-minority city, but has never had a black or Hispanic on the City Council and never had a minority elected to the School Committee." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3272*

- "The City of Woonsocket, in the northern part of the state, is rapidly becoming majority-minority in population. There has never been a person of color on the City Council and in recent history there have been only two minorities to be elected to the School Committee." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3272*

- "Based on my eighteen years in public office, my participation in redistricting, and my observations of the political process, I believe that discrimination in voting and in election processes in the northeastern states is a significant problem. Subtle methods of drawing districting lines to dilute minority voting strength continue. For example, the requirement that legislative districts follow city boundaries often means that a concentrated minority population that straddles city limits ends up being placed in two districts and thereby is not able to wield significant electoral power. Second, at-large election methods are still used for many local governing bodies. They have the effect of maintaining white voters' control over school districts and city councils even where the minority population is rapidly growing and close to being in the majority." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3275*

- "I can see a great benefit to having more of the country covered by the pre-clearance provisions of Section 5 of the Voting Rights Act." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 at 3375*

SOUTH CAROLINA

Voting Rights Lawsuits/Enforcement

- In 2004, the Fourth Circuit invalidated Charleston County's at-large elections on the grounds that voting was racially polarized. Blacks were rarely elected to the city council and disproportionately few minorities had ever won at-large elections in Charleston County. The court noted that the ongoing racial separation socially, economically, religiously, in housing, and in business made it difficult for African American candidates to get votes from non African-Americans. There was significant evidence that African Americans were harassed at polls in the 1980s. There was *evidence of racism in campaigns. After this at-large scheme was struck down, the legislature enacted an identical scheme for elections to the Board of Education, which DOJ refused to pre-clear. McDonald, Testimony at House Hearing. 12-13 (afternoon of Oct. 25, 2005).*

- In 2002, a judge had to draw South Carolina's districts. The judge said that voting in all regions of South Carolina continues to be racially polarized. *McDonald, Testimony at House Hearing. 13-14 (afternoon of Oct. 25, 2005).*

- ***Vander Linden v. Hodges***, 193 F.3d 268 (4th Cir. 1999) (ACLU Rep., p. 562): Residents of Dorchester, Berkeley, and Charleston Counties, represented by the ACLU, filed suit in 1991 challenging the county legislative delegation structure in South Carolina. They contended that it violated one person, one vote, and allowed persons who were neither residents nor voters of a county to elect members of another county's legislative delegation. They also contended that the system was adopted and was being maintained with a racially discriminatory purpose and had a racially discriminatory effect in violation of the Constitution and the Voting Rights Act.

  The Court of Appeals agreed that there were discriminatory origins of the legislative delegation system and concluded it was unconstitutional.

- ***Burton v. Sheehan***, 793 F. Supp. 1329 (D.S.C. 1992);

- ***SRAC v. Theodore***, 508 U.S. 968 (1993) (ACLU Rep., p. 568): Because of partisan deadlock - the house and senate were controlled by Democrats while the governor was a Republican – South Carolina was unable to redistrict its House, Senate, and Congressional delegation after the 1990 census. The governor vetoed the redistricting plans in January 1992.

  Prior to the governor's veto in 1992, the Republican Party filed a law suit in federal court alleging that the general assembly and the governor were deadlocked and asked the court to implement interim court ordered redistricting. The ACLU and the NAACP filed a second law suit in October 1991, on behalf of the Statewide Reapportionment Advisory Committee (SRAC), asking the court to enjoin further use of the malapportioned plans and order into effect remedial plans which provided minority voters an equal opportunity to elect candidates of their choice. A three-judge court held that the existing plans violated one person, one vote and it constructed a new plan.

  Later, the state enacted a congressional plan patterned after the court ordered plan, and it was precleared in May 1994. The state also enacted a plan for the House, but it was objected to by the Attorney General under Section 5, who noted that "the House gave little or no consideration

to Section 2 of the Voting Rights Act in formulating the submitted plan, and . . . incumbency protection drove the process." *Id.* at 571.

- ***Smith v. Beasley***, 946 F. Supp. 1174 (D.S.C. 1996) (ACLU Rep., p. 572): White voters filed suit in 1995 challenging three state senate districts. A year later, another group of white voters filed suit challenging nine house districts. In both cases, the plaintiffs claimed that the districts were drawn with race as the predominant factor in violation of the Shaw/Miller line of decisions. The cases were consolidated for trial, and black voters, represented by the ACLU, were allowed to intervene to defend the constitutionality of the challenged districts. Following a trial, the three-judge court issued an order in September 1996, finding three of the challenged senate districts and nine of the house districts unconstitutional because they "were drawn with race as the predominant factor." *Id.*

- ***Marcharia v. Hodges***, Civ. No. 01-3892 (D.S.C. 2002) (ACLU Rep., p. 576): The South Carolina legislature, under the control of Republicans for the first time since Reconstruction, passed redistricting plans based on the 2000 census for the house and senate and the congressional delegation. The governor, however, who was a Democrat, vetoed all three plans. Three lawsuits were filed following the legislative impasse, two by members of the legislature and the third, Marcharia v. Hodges, by African American voters represented by the ACLU. All of the law suits, which were consolidated, challenged the existing plans as being in violation of one person, one vote and requested the three judge court to order into effect interim court ordered plans.

  The trial court noted the "disturbing fact [of racially polarized voting] has seen little change in the last decade. Voting in South Carolina continues to be racially polarized to a very high degree." *Id.* The court concluded that "a majority-minority or very near majority-minority black voting age population in each district remains a minimum requirement."

- ***Grass Roots Leadership v. Beasley***, No. 3:95-CV-345 (D.S.C. 1995) (ACLU Rep., p. 579): On January 24, 1995, South Carolina sued the United States seeking to enjoin enforcement of the National Voter Registration Act (NVRA), which was designed to increase access to voter registration, particularly among the poor, the disabled, and minority groups. On November 20, 1995, the court held the NVRA was constitutional: "Congress' goals are legitimate, its means are appropriate and limited, and the NVRA fully meets all constitutional requirements." *Id.* at 580. The court permanently enjoined the state from refusing to comply with the NVRA, and ordered it to submit a plan for implementation within 30 days.

- ***Robinson v. Abbeville***, Civ. No. 9-88-0096-17 (D.S.C. 1988) (ACLU Rep., p. 581): Black residents of the city and county of Abbeville filed suit in 1988, alleging that the at-large method of elections for the city council and the county board of commissioners violated the Constitution and Section 2. The parties settled and a new plan was adopted for eight single member districts, four of which were majority black.

- ***NAACP v. Board of Trustees of Abbeville County School District No. 60***, Civ. No. 8-93-1047-03 (D.S.C. 1993) (ACLU Rep., p. 583): The Board of Trustees of Abbeville County School District 60 traditionally consisted on nine members, five of whom were elected from single

member districts and two each from two multi-member districts. Blacks were 32% of the population of the school district, but all the districts were majority white and only one member of the board was African American.

Black residents of the school district, and the local NAACP chapter filed suit in 1993 challenging the method of electing the board of trustees as violating one person, one vote and diluting minority voting strength in violation of Section 2. The court decided that the existing plan for the board "is an unconstitutionally malapportioned plan, and is in violation of Sections 2 and 5 of the Voting Rights Act." *Id.* at 584.

- ***United States v. Charleston County*** and ***Moultrie v. Charleston County***, 316 F. Supp. 2d. 268 (D.S.C. 2003), *aff'd* 365 F.3d 341 (4th Cir. 2004), *cert. denied* 125 S. Ct. 606 (2004) (ACLU Rep., p. 591): The United States and private plaintiffs brought suit in 2001 challenging the at-large method of electing the nine member Charleston County Council as diluting black voting strength in violation of Section 2. The two cases were consolidated, and after a lengthy trial the court issued an order invalidating the at-large system. The decision was affirmed on appeal.

  The courts, applying the analysis in Thornburg v. Gingles, found that blacks in Charleston County were geographically compact and politically cohesive, and that whites voted sufficiently as a bloc usually to defeat the candidates preferred by black.

  Following the decision of the federal courts, a system of single member districts was adopted for the county council. At the ensuing elections, four blacks were elected from the four majority black districts. In 2003, the state again enacted legislation adopting the identical method of elections for the Board of Trustees of the Charleston County School District that had earlier been found in the county council case to dilute minority voting strength in violation of Section 2.

  In denying preclearance to the county's submission, the Department of Justice concluded that "[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." *Id.* At 600. It noted further that, "every black member of the Charleston County delegation voted against the proposed change, some specifically citing the retrogressive nature of the change." *Id.*

- ***NAACP v. Cherokee County School District No. 1***, C.A. No. 7:92-2948-3 (D.S.C. 1992) (ACLU Rep., p. 600): In 1991, the South Carolina legislature changed the method of electing the school board of Cherokee County School District No. 1 from at-large to single member districts. The plan was submitted for preclearance, but a few weeks before the election, the Department of Justice requested additional information. Despite the lack of preclearance, county officials proceeded to allow the election to go forward under the new plan. Black residents of the county and the local NAACP filed suit seeking to enjoin implementation of the new plan absent preclearance. The plaintiffs and the county board of education agreed to a consent order which: provided that the submitted plan "results in a dilution of minority voting strength;"

postponed the elections; and directed the parties to develop a "racially fair districting plan and implementation schedule" for new elections. *Id.* at 601.

- ***McCain v. Lybrand***, 509 F.2d 1049, 1054 (4th Cir. 1974) (ACLU Rep., p. 604): The most protracted voting rights litigation in Edgefield County involved a challenge to the at-large method of electing the five member county council. filed suit alleging that the at-large system diluted black voting strength in violation of Section 2 and the Constitution and were malapportioned and violated one person, one vote.

  The court concluded that "the rights of the blacks to due process and equal protection of the laws in connection with their voting rights have been and continue to be constitutionally infringed and the present system must be changed." *Id.* at 607.

  But five days after the district court issued its opinion, the Supreme Court decided City of Mobile v. Bolden and held that a voting practice violated the Constitution and the Voting Rights Act only if it was adopted or was being maintained with a racially discriminatory purpose or intent. Since the district court's decision had been based on the result of the challenged at-large system, the court vacated its order and provided the parties an opportunity to submit additional evidence.

  Meanwhile, the plaintiffs discovered that the at-large system had never been submitted for pre-clearance. The parties disputed whther it needed to be submitted and the Supreme Court ruled that it did. When it was submitted, the Attorney General objected to the plan citing the findings of the district court, he concluded that the proposed at-large elections have "the potential for impermissibly diluting minority voting strength." *Id.* at 610.

- ***Jackson v. Edgefield County School District***, Civ. No. 9:85-709-3 (D.S.C. 1985) (ACLU Rep., p. 611): In 1985, plaintiffs challenging the at-large system for electing the board of school trustees in Edgefield County, which had been adopted in 1968. The Court found, based upon "the totality of the circumstances," the at-large system diluted black voting strength in violation of Section 2 of the Voting Rights Act.

  The board of trustees adopted a remedial plan and submitted it to the Department of Justice for preclearance under Section 5. The Attorney General denied preclearance because of the existence of racial bloc voting and other factors that "strongly suggest that blacks will have a realistic opportunity for electing candidates of their choice in only two of the school board's proposed districts - as opposed to the four claimed by the county." *Id.* at 613.

- ***Thomas v. Mayor and Town Council of Edgefield & Jackson v. Mayor and Town Council of Johnston***, Civ. No. 9:86-2901-16 (D.S.C. May 27, 1987) & Civ. No. 9:87-955-3 (D.S.C. Sept. 30, 1987) (ACLU Rep., p. 613): In 1987, black residents filed suit challenging the at-large method of electing the town councils in Edgefield and Johnston, the two largest towns in Edgefield county. Both towns agreed to change their systems. The plan for the town of Johnston provided for six single member districts, and at the ensuing election three black candidates were elected from three majority black districts. The release of the 1990 census showed the districts to be malapportioned, and the council adopted, over the objections of the

three black members, a plan which packed, black residents in three districts at 94.5%, 82.7%, and 82% of the population respectively. *Id.* at 614.

The Attorney General objected in June 1992, concluding that the plan unnecessarily packed black voters, and had been approved by a vote "along racial lines" without any legitimate nonracial reason given for its adoption. *Id.*

- ***Walker v. Fairfield County Council***, Civ. No. 0-88-2927-6 (D.S.C. 1988) (ACLU Rep., p. 615): In 1988 the ACLU filed suit on behalf of black voters in Fairfield County challenging at-large elections for the county council under the Constitution and Section 2. The court ruled that plaintiffs could establish a prima facie case of a violation of Section 2, and the parties agreed in December to submit a new plan for district elections.

- ***Glover v. Laurens, South Carolina Mayor and Council***, Civ. No. 6:87-1663-17 (D.S.C. 1987) (ACLU Rep., p. 624): Black residents of Laurens and the local NAACP brought suit in federal court in 1987, challenging at-large city council elections. The plaintiffs moved for summary judgment, which the defendants did not oppose. In its order granting the motion, the court found "at-large elections for the Mayor and City Council are in violation of [Section 2]." *Id.* at 625. The court enjoined elections under the at-large system and directed the defendants to propose a "new system of district elections for the City of Laurens," which "shall fairly represent black residents." *Id.*

- ***The City of Clinton***, [citation not given] (ACLU Rep., p. 625): The city council in the City of Clinton was composed of seven single member districts, three of which were majority black. A proposed annexation would have reduced the minority percentage in Ward 1 from 59.3% to 50.0%, and the percentage of black voting age residents to less than 50%. *Id.* at 626. In 2002, the Department of Justice objected to annexations that would have hampered black electoral success.

- ***R.O. Levy vs. Lexington County, South Carolina, School District Three Board of Trustees***, Civ. No. 03-3093 (D.S.C. 2003) (ACLU Rep., p. 627): Lexington School District 3' s seven member board of education was elected at-large in nonpartisan elections. Although blacks constitute 28.5% of the population of the school district, prior to a vote dilution lawsuit filed by the ACLU on behalf of black residents in 2003, no black person had ever been elected to the school board under the challenged system.

  The City of Batesburg, which is in School District 3, adopted a council form of government and a majority vote requirement in 1986. On February 24, 1986, the Department of Justice objected to the majority vote requirement, noting that "elections in Batesburg raises a clear inference that voting in elections involving black candidates is polarized along racial lines and that this voting pattern has hampered the ability of black voters to elect candidates of their choice." *Id.* at 628.

  Seventeen years later, local officials once again adopted a majority vote requirement for council and mayoral elections. Again, the Department of Justice objected to the majority vote requirement on June 1, 1993, noting "an apparent pattern of racially polarized voting in town

elections for both Batesburg and Leesville that has hampered the ability of black voters to elect candidates of choice." *Id.* at 629.

- ***Reaves v. City Council of Mullins***, Civ. No. 4:85-1533-2 (D.S.C. 1985) (ACLU Rep., p. 630): Black residents of the City of Mullens filed suit in federal court challenging at-large elections as diluting minority voting strength. The court adopted a plan prepared by the state Division of Research and Statistical Services which called for six single member districts with the mayor elected at-large.

- ***Owens v. City Council of Orangeburg***, Civ. No. 5:86-1564-6 (D.S.C. 1986) (ACLU Rep., p. 631): In the summer of 1986, black voters in Orangeburg, sued the city council alleging that its at-large system diluted black voting strength in violation of Section 2 and the Constitution. In a subsequent consent order, the court found "plaintiffs would present a prima facie case" that the at-large system violated Section 2. *Id.* at 634.

  In 1984, Elloree, a rural town in eastern Orangeburg County, adopted staggered terms for its council members and a majority vote requirement for town council members and water commission elections. The Department of Justice objected to the changes, noting that "blacks constitute 34.43 % of the town's population. Our analysis also indicates that, in the context of the racial bloc voting patterns that seems to exist in Elloree, a change from concurrent elections by a simple plurality to staggered terms and a majority vote requirement adversely affect the ability of minorities to elect candidates of their choice to office." *Id.*

  In 1985 the AG reviewed a plan a redistricting plan adopted by the State several years before containing four majority white Districts and blacks were packed in one district at the level of 98%, and in another at 70%. When the Department of Justice objected to the plan, it noted that "several alternative plans were developed and considered by county officials, but that the plan ultimately selected, and submitted, failed to give any meaningful recognition to the significant increase in the county's minority population over the past decade. . . . [the VRA] prohibit[s] the drawing of a redistricting plan so as to unfairly minimize the voting strength of black citizens." *Id.* at 635.

  Following the 1990 census, the county council attempted once again to dilute black voting strength but the Department of Justice objected, saying, "the county is required to show that the plan it adopted was not motivated, at least in part, by a desire to deny or abridge the right to vote on account of race." *Id.* at 636.

- ***Lewis v. Saluda County***, C.A. No.13-1514-3 (D.S.C. 1983) (ACLU Rep. p. 646): In June 1983, black residents of the county challenged the at-large voting system as violating Section 2 and the Constitution. Prior to trial, the defendants sought a settlement and the parties agreed to a new plan containing four single member districts, one of which was majority black, with the chair elected at-large. The district court entered an order on July 19, 1985, finding that "the plaintiffs have established a prima facie case that the present method of at-large elections for the County Council is in violation of 42 U.S.C. 1973." *Id.* at 649.

- ***County Council of Sumter County, South Carolina v. United States***, 555 F. Supp. 694 (D.D.C. 1983) (ACLU Rep., p. 650): In 1982, the county filed suit in the District of Columbia seeking preclearance of Act 371, which provided for a seven member county council elected at-large by majority vote. Black residents of the county intervened to urge denial of preclearance.

  One of the arguments raised by the county was that Section 5 was no longer constitutional because Congress made no findings in 1982 of the extent of voter registration in 1975 and 1982 that would justify the extension, and that in any event as of May 28, 1982, more than half of blacks were registered to vote in Sumter County and in South Carolina. In rejecting the county's claim, the court noted that a similar challenge to the constitutionality of the 1975 amendment had been dismissed by the Supreme Court and that the 1982 amendments "had a much larger purpose than to increase voter registration in a county like Sumter to more than 50 percent." *Id.* at 653.

  On May 25, 1984, the three-judge court denied preclearance to Act 371 on the grounds that Sumter County had not carried its burden of proving that the proposed change would not have an unlawful purpose or effect.

  Later, a Section 5 objection was entered by the Department of Justice after the City of Sumter attempted to annex portions of the county in 1985. The city submitted other changes for preclearance in 1986. The city also asked the department to reconsider its objections to the annexations in light of these new changes; however, the department, citing "the uncontroverted existence of racial bloc voting in the city," declined to do so. *Id.* at 655.

  In 2000, District 7 had a black voting age population of 58.6%, and had little deviation from ideal district size. The council drew a new plan that would lower the black population in District 7 to 49.3%. *Id.* at 656. The Department of Justice denied preclearance.

  After preclearance was denied, more than a dozen proposals were reviewed by the community and county council. Following the council's refusal to allow certain black citizens to speak during public meetings, two black citizens of District 7 showed up at the next council meeting holding signs saying "Don't Reduce the Black Vote." *Id.* at 658. The council finally adopted a plan that preserved District 7 as majority black, and the Department of Justice granted preclearance. *Id.*

- ***Rodgers v. Union County***, 7:02cv1390 (D.S.C. 2002) (ACLU Rep., p. 659): City of Jonesville was split between Districts 1 and 2. Dissatisfied with the outcome, three residents of District 2 sued Union County alleging that the council had racially gerrymandered District 2 by splitting Jonesville. Black residents and the Union County Branch of the NAACP, moved to intervene to defend the challenged plan.

- The parties settled the case by redrawing District 2 so that Jonesville was not split, but, maintained the district as majority black. As part of the settlement agreement, intervenors introduced the findings of Dr. Ruoff who concluded that voting was racially polarized in the County.

- ***NAACP v. Hemingway***, 4:93cv2733 (D.S.C. 1993) (ACLU Rep., p. 661): On October 18, 1993, black residents of Hemingway and Williamsburg County filed suit alleging that the town had failed to preclear several of its recent annexations of white areas, and that the town's annexation policies were racially selective and discriminatory.

  On February 22, 1994, the three-judge district court granted plaintiffs' motion for summary judgment and enjoined further use of the disputed annexations absent Section 5 approval.

  The defendants submitted the annexations for preclearance, and the Attorney General objected. He noted that the selective approach to annexations "raise significant doubts as to the town's motivations." *Id.* at 662.

  The Attorney General also objected to another proposed change which would have transferred a portion of Williamsburg County, including Hemingway, to adjacent Florence County, which was majority (61%) white. In denying preclearance, the Attorney General concluded that "the town's discriminatory definition of its town boundaries in turn infects the definition of the proposed transfer area." *Id.* at 663.

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- Fifth-largest number of post-1982 § 5 preclearance objections occurred in South Carolina. *National Commission on VRA Report, at 3.*

- In one lawsuit in Charleston, the Department of Justice and private plaintiffs filed an action in 2001 alleging that the at-large method of electing the nine-member county council, in combination with racially polarized voting, diluted minority voting strength in violation of Section 2. In a county that was more than one-third black, no black candidates preferred by black voters had been elected in a decade, despite a cohesive black vote for several of them. The court's opinion favoring the plaintiffs found a pattern of racially polarized voting. It also pointed to several instances in which African American voters were harassed and intimidated at the polls, and to political campaigns in which white candidates overtly or subtly raised the issue of race. The opinion was affirmed unanimously by the Court of Appeals for the Fourth Circuit, and in the first election by districts, in 2004, black voters elected three black council members favored by black voters. *National Commission on VRA Report, at 55-56.*

- In 2001, a majority of the nine-member the Charleston County School Board was black. In 2003, the South Carolina General Assembly, led by legislators from Charleston County, enacted a law changing the method of electing the school board to that which had been successfully challenged in the county council case. The Department of Justice objected to the change on the ground that it would decrease minority voting strength. *National Commission* on VRA Report, at 56.

- In South Carolina, most federal election observer coverages were in counties 40 percent or more nonwhite. *National Commission* on VRA Report, at 61.

- In the case of *U.S. v. Charleston County*, DOJ fought a four-year battle to overturn a discriminatory election method in Charleston, South Carolina. After we won, South Carolina adopted the same discriminatory tactics for the school board. If it were not for DOJ objecting under §5, we'd be back in court again. *Derfner, Testimony at House Hearing. 38-39 (Oct. 20, 2005).*

- But in a 2004—not 1904—but in a 2004 opinion, the 4th Circuit Court of Appeals unanimously affirmed a decision in the District Court invalidating Charleston County's at-large elections on the grounds that evidence presented by the parties supports the district court's conclusion that voting in Charleston County council elections is severely and characteristically polarized along racial lines. And it noted the rarity with which Blacks were elected to office of the county council, and that disproportionately few minorities had ever won any of the at-large elections in Charleston County. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 4 (Oct. 25, 2005) (statement of Laughlin McDonald, Director, ACLU, Voting Rights Panel).

- After that decision was handed down by the district court invalidating that at-large system, the Legislature enacted the identical method of elections for the County Board of Education now, despite the fact that it had been held to dilute minority strength in violation of section 2. They, of course, had to submit that for preclearance to the Department of Justice, and the Department of Justice concluded that the proposed change would significantly impair the present ability of minority voters to elect candidates of choice to the school board, and they rejected it. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 5 (Oct. 25, 2005) (statement of Laughlin McDonald, Director, ACLU, Voting Rights Panel).

- I would also call to the panel's attention a decision of a three judge court that was issued in 2002 which involved statewide redistricting. There was a deadlock between the Governor and the Legislature. They couldn't enact a plan. There were several lawsuits filed asking the court to draw a plan. The Court held a lengthy hearing and drew its own plan. And here is one of the things the Court found. And the judges who were on that panel were, all three, South Carolinians—Judge William Traxler, Judge Matthew Perry, and Judge Joe Anderson. And they noted—and this is a quote: "The disturbing fact of racially polarized voting has seen little change in the last decade. Voting in South Carolina continues to be racially polarized to a very high degree in all regions of the State. And in both primary and general elections statewide, Black citizens are a highly politically cohesive group, and Whites engage in significant White bloc voting." *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 5 (Oct. 25, 2005) (statement of Laughlin McDonald, Director, ACLU, Voting Rights Panel).

- The a 2004 opinion, the Fourth Circuit Court of Appeals unanimously affirmed a decision of the district court invalidating at-large elections for the Charleston City Counsel. The court of appeals found that "evidence presented by both parties supported the district court's conclusion 'that voting in Charleston County Council election is severely and characteristically polarized along racial lines.'" United States v. Charleston County, 365 F. 3d 341, 350 (4th Cir. 2004). *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the*

Constitution of the House Comm. On the Judiciary, 109th Congress. 8 (Oct. 25, 2005) (prepared statement of Laughlin McDonald, Director, ACLU, Voting Rights Panel).

- Following the election of several black candidates to the nine member Charleston County school board in 2000, the county legislative delegation, in what the district court described as an "episode [ ] of racial discrimination against African-American citizens attempting to participate in the local political process," tried to change the method of elections to the system used by the County Counsel and to limit the board's fiscal authority. These voting changes would have made it more difficult for African-American voters to elect their candidate of choice. The measures were passed by the legislature but were vetoed by the governor. After the 2002 elections, only one African-American remained on the school board. United States v. Charleston County, 316 F. Supp.2d 268, 280, 286 n.23 (D.S.C. 2003). *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 8-9 (Oct. 25, 2005) (prepared statement of Laughlin McDonald, Director, ACLU, Voting Rights Panel).

- In 2003, the state legislature once again enacted, and this time the governor signed, legislation adopting the identical method of elections for the Board of Trustees of the Charleston County School District that had earlier been found in the county counsel case to dilute minority voting strength in violation of Section 2 of the voting Rights Act.... In denying preclearance to the country's submission, the Department of Justice conclusded that "[t}he proposed change would significantly impar the present ability of minority voted to elect candidates of choice to the school board and to participate fully in the political process." every black member of the Charleston County delegation voted against the proposed change, some specifically citing the retrogressive nature of the change. Our investigation also reveals that the retrogressive nature of this change is not only recognized by black members of the delegation, but is recognized by other citizens in Charleston County, both elected and unelected. R. Alexander Acosta, Assistant Attorney General, to C. Havird Jones, Jr., February 26, 2004. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 9-10 (Oct. 25, 2005) (prepared statement of Laughlin McDonald, Director, ACLU, Voting Rights Panel).

- In 2002, a three-judge court, after a reapportionment deadlock by the state legislature and the governor, implemented a court ordered redistricting plan for the state's house, senate, and congressional delegation. The court, which consisted of three South Carolinians (Judges Traxler, Perry, and Anderson), noted that the:

  Disturbing fact [of racially polarized voting] has seen little change in the last decade. Voting in South Carolina continues to be racially polarized to a very high degree, in all regions of the state and in both primary and general elections. Statewide, black citizens generally are a highly politically cohesive group and whites engage in significant white-bloc voting. Colleton County Council v. McConnell, 201 F.Supp.2d 618, 641 (D.S.C. 2002).

  Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 10 (Oct. 25, 2005) (prepared statement of Laughlin McDonald, Director, ACLU, Voting Rights Panel).

- In a case involving the redrawing of state legislative and congressional districts in South Carolina, a federal district court found that "Voting in South Carolina continues to be racially polarized to a very high degree, in all regions of the satte in both primary elections and general elections" [Colleton County Council v. McConnell, (DC CA 201 F. Supp. 2d 618, 641, 2001)]. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 59 (Oct. 25, 2005) (prepared statement of Richard Engstrom, Professor, The University of New Orleans).

- "[O]ne problem that has plagued voters is manipulation of city boundaries to maintain white control. ... In 1987 I brought a lawsuit against the city of Orangeburg, South Carolina, for the same thing. Orangeburg was once a round town, that is, it had been formed, like many cities, by drawing a circumference from a center point. As black voting grew, however, the town officials responded by a series of annexations that turned the town border into a jagged design of the most irregular shape. Our lawsuit resulted in a decision which allowed the annexations but minimized their discriminatory effect by changing from at-large elections to elections by fairly drawn districts or wards. A similar lawsuit in Hemingway, South Carolina, also blocked that city's annexations, and the discriminatory nature of those annexations was plainly shown when the city decided that rather than annex nearby areas of black residents, it would simply undo the annexations of white people. In other words, if it could not carry out its discriminatory design, it had no use for these annexed areas." Armand Derfner, House *Hearing*., 83 (Oct. 20, 2005).

- "The presence of pervasive racial polarization among voters has not abated. ... In the most recent statewide redistricting case, a three-judge court took extensive note of the persistence of racially polarized voting, and how it affects the fundamental right to vote. Among the court's findings, it said 'the history of racially polarized voting in South Carolina is long and well-documented,' and the court cited the 'disturbing fact' that there has been 'little change in the last decade.' ... In fact, I am not aware of any one of the dozens of voting lawsuits in our state in which any single expert has ever said we do not suffer from racially polarized voting." Armand Derfner, House *Hearing*., 84 (Oct. 20, 2005).

- "This case involved the method of electing the County Council in Charleston County. The County Council members were elected from nine separate districts until 1969, when there was a sudden change to at-large elections for the nine members. Unfortunately, when that change took place in 1969, it was precleared under Section 5. ... In any event, in 2001 the U.S. Department of Justice, along with a group of individual voters, brought a lawsuit to challenge the at-large elections as racially discriminatory. ... [I]t resulted in a sweeping decision overturning the at-large elections on the ground that system discriminates against black voters on account of their race. The court issued a 75-page opinion analyzing in minute detail what the role of race has been and continues to be in our elections. ... In a county with a population more than one-third black, only three of the 41 people elected to County Council since 1970 were minority, including only one in the last decade. In that last decade, all nine black candidates supported cohesively by black voters were defeated in the general elections, as well as 90% of the 21 preferred candidates of whatever race. For example, black voters did best in 1998, but even in that year, the two white candidates they supported won but the two black candidates they supported lost. ... In addition to demographic factors that are relevant in judging voting

discrimination, there was powerful evidence of intimidation and harassment of blacks at the polls during the 1980s and 1990s and even as late as the 2000 general election. There was also evidence of race baiting tactics used by political strategists. Perhaps the most telling sign of voting discrimination in Charleston County elections was the Court's finding that racial appeals of a subtle or not-so-subtle (i.e., overt) nature were used in election campaigns. The most telling of these examples were white candidates running ads or circulating fliers with photos of their black opponents—sometimes even darkened to leave no mistake—to call attention to the black candidates' race in case any white voter happened to be unaware of it. ... Another telling note: the Charleston County School Board has an election method that is similar but not identical to the County Council. While the County Council case was going on, the South Carolina General Assembly, led by legislators from Charleston County, tried to change the school board method to adopt the most discriminatory features of the County Council. ... Fortunately, Section 5 of the Voting Rights Act covered this voting change and when it was presented for preclearance under that Section, preclearance was denied. If Section 5 had gone out of existence, this bill would have become law even though its precise twin had already been found to be racially discriminatory." Armand Derfner, House *Hearing*., 84-85 (Oct. 20, 2005).

- "[I]n a 2004 opinion [*U.S.* v *Charleston County*], the 4th Circuit Court of Appeals unanimously affirmed a decision in the District Court invalidating Charleston County's at-large elections on gthe ground that evidence presented by the parties supports the district court's conclusion that voting in Charleston County council elections is severely and characteristically polarized along racial lines. And it noted the rarity with which Blacks were elected to office of the county council, and that disproportionately few minorities had ever won and of the at-large elections in Charleston County.

  And the factors contributing to minority vote dilution found by the District Court included...'the ongoing racial separation that exists, socially, economically, religiously, in housing, in business patterns, which makes it especially difficult for African-Americans to get votes from non-African American voters.'...

  'Significant evidence of intimidation and harassment of Blacks at the polls during the 1980's and the 1990's and even as late as the 2000 general elections.' And the court also found that there was evidence of subtle or overt racial appeals in campaigns. And one of the recurring examples of that was that White candidates would take out photographs, which they would run in the newspaper of their Black opponents, and they would darken their features to call attention to their race.

  After that decision was handed down by the district court invalidating that at-large system, the Legislature enacted the identical method of elections for the County Board of Education...They...had to submit that [plan] for preclearance to the Department of Justice, and the Department of Justice concluded that the proposed change would significantly impair the present ability of minority voters to elect candidates of choice to the school board, and they rejected it...

  Other factors contributing to minority vote dilution found by the courts included: 'fewer financial resources' available to minority candidates to finance campaigns; 'past discrimination

that has hindered the present ability of minorities to vote or to participate equally in the political process;' '[t]he on-going racial separation that exists in Charleston County—socially, economically, religiously, in housing and business patterns—[which] makes it especially difficult for African-American candidates seeking county-wide office to reach out to and communicate with the predominantly white electorate;' 'significant evidence of intimidation and harassment' of blacks 'at the polls during the 1980s and the 1990s and even as late as the 2000 general election;' and 'incidents of subtle or overt racial appeals' in campaigns, such as white candidates darkened photos of their black opponents to call attention to their race." *Laughlin McDonald, House Judiciary Committee, VRA Hearing, 10/25/05, pg 9*

- "[I]n 2002, [Colleton County Council v McConnell, a case] which involved statewide redistricting...[the Court] noted...'The disturbing fact of racially polarized voting has seen little change in the last decade. Voting in South Carolina continues to be racially polarized to a very high degree in all regions of the State. And in both primary and general elections statewide, Black citizens are a highly politically cohesive group, and Whites engage in significant White bloc voting.' *Laughlin McDonald, House Judiciary Committee, VRA Hearing, 10/25/05, pg 5*

- "*United States v Charleston County*...The court of appeals further noted 'the rarity with which minorities are elected is not unique to the County Council; disproportionately few minorities have even won any of the at-large election in Charleston County.'" *Laughlin McDonald, House Judiciary Committee, VRA Hearing, 10/25/05, pg 8*

- "In a case involving the redrawing of state legislative and congressional districts in South Carolina, a federal district court found that 'Voting in South Carolina continues to be racially polarized to a very high degrees in all regions of the state and in both primary elections and general elections.' [*Colleton County Council v McConnell*)DC SC 201 F. Supp. 2d 618, 641, 2002]. *Testimony of Richard Engstrom. House Judiciary Committee, VRA Hearing, 10/25/05, pg 59*

Statistics

- "The result in each of the three states examined has been a dramatic increase in the number of black elected officials between 1969 and 2001: in Georgia from 30 to 611; in South Carolina from 28 to 534; and in Louisiana from 65 to 705. Nationwide, between 1970 and 2001, the number of black elected officials increased from 1469 to 9101." *Voting Rights Enforcement & Reauthorization, US Commission on Civil Rights, pg 16*

- No African American has been elected to statewide office since passage of the [VRA]. Governor Mike Sanford [has said] that he did not expect to see such an election "[in] the foreseeable future." . . . . Not one of South Carolina's 8 black state senators or 23 House of Representatives members was elected in a district with less than 45 percent black voting age population . . . . Sixty-one percent of [Department of Justice] objections (73) have come since the 1982 renewal of the [VRA]. *Voting Rights in South Carolina 1982-2006, at 3 (renewthewra.org).*

- Just since 2000 in [8] 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. *Voting Rights in South Carolina 1982-2006, at 3-4 (renewthewra.org).*

- Election observers have been assigned to 37 South Carolina counties, 23 times since 1982. *Voting Rights in South Carolina 1982-2006, at 4 (renewthewra.org).*

Anecdotal Evidence

- [I]n 2003, the DOJ interposed an objection to a proposed annexation in the Town of North, South Carolina. The DOJ determined that the town had "been racially selective in its response to both formal and informal annexation requests" and found that "white petitioners have no difficulty in annexing their property to the town" while "town officials provide little, if any, information or assistance to black petitioners and often fail to respond to their requests, whether formal or informal, with the result that the annexation efforts of black persons fail." [I]n 2004, the DOJ interposed an objection to the state's proposed change to Charleston County School Board's method of election because the change from non-partisan to partisan elections would "make it extremely difficult for minority-preferred candidates to win." *Adegbile, Debo. Written Testimony. SJC VRA Hearing. 6-21-06. Pgs 8-9.*

- Mr. Derfner- One of the objections just took place less than two years ago to the Charleston County School Board. We had just won an arduous case against the Charleston County Council in which not only the district court, but the Fourth Circuit, in an opinion by Judge J. Harvie Wilkinson, found discrimination in the Charleston County Council system. *5/17/06 SJC VRA Hearing Transcript, Page 45.*

- In 2003, Charleston County, South Carolina enacted legislation adopting the identical election method for the board of trustees of the school district, which had earlier, in a case involving the county council, been found to dilute minority voting strength in violation of Section 2....The department further noted that: "every black member of the Charleston County delegation voted against the proposed change, some specifically citing the retrogressive nature of the change. Our investigation also reveals that the retrogressive nature of this change is not only recognized by black members of the delegation, but is recognized by other citizens in Charleston County, both elected and unelected." *Written Testimony of Nadine Strossen before the House Judiciary Committee, March 8, 2006, at 5.*

- "In the 2000 election, just as everyone read about in Florida, but exactly the same thing happened in Hampton County, South Carolina. In this last election, it cannot be coincidence, it seems to me, that both in Texas at predominantly black school and South Carolina predominantly black school that police are there, and students were discouraged from voting and poll watchers." *Dr. Burton, Professor, Testimony at National Commission on VRA Southern Reg'l Hearing., House Hearing. 168 (Oct. 18, 2005).*

- Until February, 2004, a third of South Carolina's 46 counties did not recognize the Martin Luther King federal holiday, including the most prosperous county, Greenville. *Statement of the Rainbow Push Coalition, House Hearing. 57 (Oct. 18, 2005).*

- "Trial judges in South Carolina are elected by the state legislature. In the 2005 session, not a single black judge was elected in a state that is more than 30% black, despite several highly qualified candidates. If the legislature, despite ominous warnings from the State's Chief Justice, that the administration of justice requires a more diverse bench, cannot see its way to appoint even one black judge, the prospect of nonbiased electoral regulation is not good." *Statement of the Rainbow Push Coalition, House Hearing. 58 (Oct. 18, 2005).*

- The situation of blacks in South Carolina was addressed by Meredith Bell Platts, an attorney with the Voting Rights Project of the ACLU Southern Regional Office. She spoke of "the high levels of racial polarization," with the result that "black voters are rarely able to elect their candidates of choice in majority white districts." One result of this situation is the need for majority-or near-majority-black districts, which in some cases appears to depress the number of Democratic seats in the legislature. According to Bell Platts, a Democratic governor, Jim Hodges, argued that black percentages in such districts should be reduced, "to ward off further electoral failures for the Democratic party in senatorial elections." His reasoning was rejected by the three-judge court in the case of Colleton County Council v. McConnell. As an illustration of the intensity of racial feelings regarding redistricting, Bell Platts noted that during the trial, "it was reported that a group of citizens in Lexington County . . . which is slightly outside the City of Columbia, informed one of their Republican representatives that they didn't want any, and they used a racial epithet, the 'n' word, on the Lexington County delegation, referring specifically to a plan that had drawn a black representative into portions of Lexington County." *National Commission* on VRA Report, at 92.

- In a federal case involving a South Carolina statewide redistricting plan, the court stated: "In this case, the parties have presented substantial evidence that this disturbing fact has seen little change in the last decade. 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." *National Commission* on VRA Report, at 96.

- In the Charleston County, South Carolina probate judge election, there was an ad that published a picture of a white candidate and black candidate, "making ti very clear to everyone outh there – especially the white vote – just who was white and who was black . . . you know you never publish your opponent's picture unless you publish it to show something bad." *Derfner, Testimony at House Hearing. 38 (Oct. 20, 2005).*

- In South Carolina, significant progress has been made in terms of participation and in the election of Black candidates to legislative office. Black candidates have not enjoyed success statewide, though this lack of success is more a function of the fall of the South Carolina Democratic Party than of the race of the candidate *per se. Voting Rights Act: The Continuing*

Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 29 (Oct. 25, 2005) (statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- In South Carolina, significant progress has been made in terms of participation and in the election of black candidates to legislative office, and analysis indicates that African-American candidates of choice can prevail in less-than-majority black districts on an even basis. While black candidates enjoy no success statewide, this lack of success is more a function of the fall of the South Carolina Democratic Party than of race of the candidate. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 42 (Oct. 25, 2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- "A second type of problems frequently encountered is harassment of poor or black voters at the polls. In a 1990 election for Probate Judge of Charleston County, a black candidate faced a white candidate. There was widespread intimidation of black voters at rural polling places, especially black voters who needed assistance because they were old, infirm or not fully literate. ... Despite the attempts to suppress black voting, the black candidate, Bernard Fielding, won that election. However, the State Election Commission, acting on unverified complaints from some of the same people who had tried to intimidate the black voters, set the election aside. We had to appeal to the South Carolina Supreme Court, which fortunately upheld Fielding's election. One of the other features of that campaign was the white candidate tactic of running an ad with his black opponent's picture, to make sure that every white voter knew exactly who was white and who was black." Armand Derfner, House *Hearing*., 84 (Oct. 20, 2005).

- "Indeed, South Carolina's Republic Governor Mark Sanford was asked in May of this year about the prospect of a black winning a statewide office in South Carolina. He responded, quote: I don't think there never will be (*sic*); end quote." *Meredith Bell-Platts, Testimony Submitted to the National Commission on the VRA, Florida Hearing 604, August 4, 2005*

- "*Stephenson II* Judge Jenkins found the *Gingles* preconditions to exist in several areas of the state and created a court drawn plan adding minority districts in some areas and strengthening minority concentrations in others to correct or ameliorate the problems of racial polarization which he found present in the state legislative plans. Similarly, in *Colleton County*, a three judge panel consisting of federal Circuit Judges William B. Traxler, Joseph F. Anderson and Mathew Perry, in South Carolina found as follows:

  'The history of racially polarized voting in South Carolina is long well documented—so much so that in 1992 the parties in *Burton* stipulated that 'since the 1984 there is evidence of racially polarized voting in South Carolina.' Burton, 793 F. Supp at 1357-58. The three-judge panel in *Smith* made a similar finding...Smith, 946 F. Supp At 1202-03...'In this case, the parties have presented substantial evidence that this disturbing fact has seen little change in the last decade. Voting in South Carolina continues to be racially polarized to a very high degree, in all regions of the state in both primary and general elections...'" *Testimony of Robert Hunter, House Judiciary Committee, VRA Hearing, 10/25/05, pg 21*

- "[T]he *Colleton County* case, where the Governor vetoed redistricting plans and urged in lieu of effective minority district concentrations weakened or bleached minority districts with minority voting age populations well below 45% in many areas. His expert witnesses urged these positions on the three judge panel which properly rejected this idea. *Colleton* at 556-664" *Testimony of Robert Hunter, House Judiciary Committee, VRA Hearing, 10/25/05, pg 22*

- "In the face of such evidence, legislative Democrats, led by then-governor Jim Hodges, argued that black percentages in majority-black senatorial districts could be reduced in order to ward off further electoral failure for the Democratic Party in senatorial election…it was reported that a collection of citizens in Lexington County, S.C. informed one of their Republican representatives that they didn't want any n----s on the Lexington County delegation—referring specifically to a plan that had drawn a black representative into portions of Lexington county.

- Our expert found that no black candidate of choice of black voters was elected in contested general elections to the General Assembly from a district that was less than 43% nonwhite. Indeed South Carolina Republican Governor Mark Sanford was asked in May about the prospects of blacks winning statewide office in South Carolina; he responded, 'I think there never will be.'" *Prepared Statement of Meredith Bell-Platts, National Comm on the VRA, 8/4/05, pg 3282*

- "In 1984, the District Court for the District of Columbia denied preclearance to a proposal to adopt an at-large method of electing representatives to the County Council. It found that Sumter County: 'failed to carry their burden proving that the legislature did not pass Act 371 in 1967 for a racially discriminatory purpose at the insistence of the white majority in Sumter County, because the at-large method of voting may have diluted the value of the then increasing voting strength of the black minority, may have prevented formation of a black majority senate district, and probably prevented appointment by the Governor of blacks to the Sumter County Council. [and]…failed to carry their burden of proving that the at-large system was not maintained…after 1967 for racially discriminatory purposes and with racially discriminatory effect. (*County Council of Sumter County v United States* 596 FSupp 35, 38 (DDC 1984)" *Prepared Statement of Meredith Bell-Platts, National Comm on the VRA, 8/4/05, pg 3282-83*

- "Either due to slightly greater increase in black population relative to white population or to the fact that housing remains highly segregated in Sumter County, the benchmark plan with the 2000 Census data showed that Sumter had gained an additional majority black district on County council, increasing the number of majority black districts from 3 to 4, even though blacks only made up roughly 47% of the population." *Prepared Statement of Meredith Bell-Platts, National Comm on the VRA, 8/4/05, pg 3283*

- "At the outset of the redistricting efforts, white council members states that they were going to create a plan that contained 3 majority white districts, three majority black districts and one 'even' district. The Department of Justice denied preclearance." *Prepared Statement of Meredith Bell-Platts, National Comm on the VRA, 8/4/05, pg 3283*

- "Following the Council refusing to allow certain black citizens to speak during public comment, two black citizens of District 7 showed up at the next council meeting holding signs stating

'Don't Reduce the Black Vote.' Chaos resulted with certain council members walking out. A Sumter County resident yelled at council, 'I didn't know the NAACP was going to run it [the meeting].' Councilman Burr tried to have the citizens forcibly removed from the chambers. Chairwoman Sanders stated that they could remain." *Prepared Statement of Meredith Bell-Platts, National Comm on the VRA, 8/4/05, pg 3284*

- "In a 1990 election for Probate Judge of Charleston County, a black candidate faced a white candidate. There was widespread intimidation of black voters at rural polling places, especially black voters who needed assistance because they were old, infirm, or not fully literate . . . . Oner of the other features of that campaign was the white candidate's tactic of running an ad with his black opponent's picture, to make sure that every white voter knew exactly who was white and who was black." *Prepared Statement of Armand Derfner, Senate Judicary, May 17, 2006, pg. 6.*

- "Another threat to voting rights occurred when Congress passed the National Voter Registration Act in the mid-1990s .... Our then Governor announced that South Carolina would not comply with the Act, and our then-Attorney General went to court to defend South Carolina's right to ignore the law. Again, fortunately, the court issued an injunction bring the Motor Voter law to South Carolina." *Prepared Statement of Armand Derfner, Senate Judiciary, May 17, 2006, pg. 6.*

- "In South Carolina, the Department of Justice and private plaintiffs recently proved that the county's at-large election method of electing the county council violated Section 2. The County Council spent more than $2 million and three years defending its at-large system, and ultimately paid private plaintiffs' attorneys fees. When, in 2003, the South Carolina General Assembly enacted a law that would have changed the method of electing the Charleston School Board to the one successfully challenged in the County Council case, the Department of Justice objected to the change on the ground that it would decrease minority voting strength." *Written testimony of Anita Earls, Senate Judiciary, 5/16/06, pg 6-7*

- "In...Beaufort County and Columbus County, efforts are underway to dismantle court orders requiring majority-black districts but no motions have been filed in court. Of all these local jurisdictions, only Beaufort County is covered by Section 5." *Written testimony of Anita Earls, Senate Judiciary, 5/16/06, pg 7*

- "[I]n *United States v. Charleston County, South Carolina*...the Fourth Circuit's opinion by Judge J. Harvey Wilkinson, the court concluded that 'voting in Charleston County elections is severely and characteristically polarized along racial lines.' Judge Wilkinson rejected the County's argument that politics, not race, explained the polarized voting, observing that the County's own expert, Dr. Ron Weber, agreed that 'partisanship and race as determinants of voting are 'inextricably intertwined.'' As Judge Wilkinson explained... "even controlling for partisanship in Council elections, race still appears to play a role in the voting patterns of white and minority voters in Charleston County.' Racially polarized voting, combined with an at-large method of election, a large county size...staggered terms. residency districts, and the primary nomination system, had a clear effect on African-American voters. Regardless of party,

they could not elect their candidates of choice." *Written testimony of Theodore Arrington, Senate Judiciary Committee Hearing on VRA, 5/16/06, pg 8-9*

- "[In *United States v. Charleston County, South Carolina*] [t]he district court and the circuit court saw the case as I did. Countywide numbered post elections for County Council had the effect of preventing minority voters from having an equal opportunity to elect representatives of their choice." (emphasis present in testimony) *Written Responses of Theodore Arrington to Questions from Senators, Senate Judiciary Committee VRA Hearing, 6/1/06, pg 16*

- Mr. Arrington- [Charleston County] [T]he judge found, in accordance with my testimony, that there was legally and substantively polarized voting; that because of that and the at-large elections that they had there, African Americans did not have a reasonable opportunity to elect candidates of their choice. But he also found that in the school board where the elections were non-partisan and, as I remember, were not in numbered posts, African Americans did have a pretty good chance of winning. *5/16/06 SJC VRA Hearing Transcript, Page 55.*

- Mr. Arrington- The racially polarized voting in the school board elections was only slightly less than the racially polarized voting in the county commission. They were extreme. We are talking about 90 percent of the blacks typically voting for black candidates and some similar number of whites voting for white candidates. *5/16/06 SJC VRA Hearing Transcript, Page 55.*

- Mr. Derfner- One of the things that tells me that we still have too much of a disease is an exhibit I attached to my testimony. This is an ad that a white candidate for probate judge in 1990 published showing a picture of his opponent. I know as a politician you don't typically do that, but he wanted to make sure that everybody could see that his opponent was black. We still see that routinely....Congressman James Clyburn had that happen to him in 1992 and 1994. It happened in another election that I know of in the year 2000. *5/17/06 SJC VRA Hearing Transcript, Page 46.*

- Mr. Derfner- [W]hen blacks in 1998 achieved five members out of nine on the school board, that is when the attempt to change the school board elections by putting in a majority requirement to make basically--I think everybody was clear that it was to make certain that blacks could not win a significant number of seats. That came in. The legislature passed that in, I think, 2000 or 2001.

  It was vetoed by the then-governor. They came back again in 2003. Directly after the Federal courts had thrown out a similar system for the county council, they came back and passed it again. At that time, then-Governor Sanford, who was the new governor, let it become law. He still refused to sign it. He wouldn't sign the bill. He let it become law. At that point, the Department objected to it. So what you have here is a change over a period of years in the types of tactics or the types of mechanisms, but the need is still there. *5/17/06 SJC VRA Hearing Transcript, Page 61.*

- Since 1982, those Department of Justice objections to discriminatory practices have covered all levels of government: the General Assembly . . . , counties, county boards of education, school districts, cities and municipalities, and a board of public works. *Voting Rights in South Carolina 1982-2006, at 16 (renewthewra.org).*

- At a public hearing [discussing redistricting], 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 Asians (.9[%] of the population) and Hispanic (1.8[%]...) minorities who would get no district . . . . Nearly a year later, the council still had not adopted a plan. At a November 11, 2003, meeting, a white member of the council ... demanded the removal of African-American citizens ... who were silently holding signs saying "Don't reduce the Black Vote" and "Respect the Voting Rights Act" .... [and] stormed from another meeting after the council chair ... allowed the citizens to remain. [A citizen said]: "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." *Voting Rights in South Carolina 1982-2006, at 20 (renewthewra.org).*

- After the 2000 census, redistricting for the Senate also ended up before a three-judge panel ... after Governor Jim Hodges vetoed [the bill] . . . . "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' ... and a claim that the ... plan unnecessarily split several counties within the state." *Voting Rights in South Carolina 1982-2006, at 30 (renewthewra.org).*

- In the 1990s, Section 5 review played a key role in expanding the number of house districts in which African-Americans 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. *Voting Rights in South Carolina 1982-2006, at 32 (renewthewra.org).*

- 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. *Voting Rights in South Carolina 1982-2006, at 42 (renewthewra.org).*

- In McCormick County in 1994, following redrawing of South Carolina House District 12 as a majority African-American district, a heated election between lone-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 Registrars was indicted for, to use the words of South Carolina

Attorney General Charles Condon, "voting early and often." 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." *Voting Rights in South Carolina 1982-2006, at 45 (renewthewra.org).*

- 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 2000referendum to change the 4-2-1 system to a 5-1-1 was rejected b y the white majority electorate despite the endorsement of the mayor. *Voting Rights in South Carolina 1982-2006, at54 (renewthewra.org).*

SOUTH DAKOTA

Voting Rights Lawsuits/Enforcement

- "Indians recently won a court case on July 14, 2005 which granted an injunction against the state of South Dakota for violating the preclearance section or *[sic]* the VRA." *Gwen Carr, Statement Submitted to National Commission on the Voting Rights Act, House Hearing. 84 (Oct. 18, 2005).*

- *Bone Shirt v. Hazeltine* (2001): The ACLU sued South Dakota for failing to submit a legislative redistricting plan for preclearance. The district judge invalidated the plan, which diluted Native American voting strength, and issued a 144-page opinion that contained a detailed history of South Dakota's discrimination against Native American voters, including several instances since 1999. Among these recent instances were illegal denials of the right to vote in certain elections, dilutive voting schemes in elections for county commissioners and school board members, barriers to voter registration, intimidation and unsubstantiated charges of vote fraud, non-compliance with the Voting Rights Act's language assistance provision, and lack of access to polling sites. Legislators engaged in debate over an unsuccessful bill to make it easier for Indians to register were quoted in the opinion as expressing prejudice against Indians. Alluding to Indians, one legislator said, "I'm not sure we want that kind of person in the polling place." *National Commission on the Voting Rights Act Report*, at 43-44.

- In one case it was discovered, in the words of a federal judge, "from . . . 1976 [when two counties in South Dakota were first subject to Section 5] until 2002, South Dakota enacted over 600 statutes and regulations that affected elections or voting in Shannon and Todd Counties, but submitted fewer than 10 for preclearance." Only after Indians in the counties brought suit against the state in 2002 to enforce compliance with Section 5 did the state begin to submit the statutes to the Department of Justice. *National Commission on the Voting Rights Act Report*, at 52-53.

- As recently as last year, a federal court determined that South Dakota discriminated against Native-American voters by packing them into a single district to removed their ability to

elect a second representative of their choice to the state legislation. Bone Shirt v. Hazeltine, 226 F. Supp. 2nd 976 (D.S.D. 2004). *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 8 (Oct. 25, 2005) (prepared statement of Laughlin McDonald, Director, ACLU, Voting Rights Panel).

- "[A] federal court determined that South Dakota discriminated against Native-American voters by packing them into a single district to remove their ability to elect a second representative of their choice to the state legislature. *Bone Shirt v. Hazeltine*." Laughlin McDonald, *House Judiciary Committee, VRA Hearing, 10/25/05, pg 8*

- In 2004, a three judge Court found that the State's 2001 legislative redistricting plan diluted American Indian voting strength in violation of Section 2 of the VRA. The court found that there was "substantial evidence that South Dakota officially excluded Indians from voting and holding office." *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 109.*

- In 2002, several members of the Oglala and Rosebud Sioux Tribes in Shannon and Todd Counties (the two South Dakota counties covered under Section 5 of the VRA) sued South Dakota to force it to comply with Section 5. Following negotiations among the parties, the court entered a consent order in December 2002, in which it directed the state to develop a comprehensive plan "that will promptly bring the State into full compliance under Section 5." *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 109.*

- Since Shannon and Todd Counties became covered under Section 5 of the VRA in 1972, state and county officials failed to apply for preclearance of at least 600 voting changes. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 109.*

- As recently as June 2006, the Department of Justice monitored primary elections in two 4(f)(4) covered counties (Shannon and Todd) and four 203 covered counties (Bennett, Dewey, Mellette, and Ziebach Counties) because of widespread noncompliance with the language assistance provisions. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 109.*

- *United States v. Day County and Enemy Swim Sanitary District* (D.S.D. 1999): The defendants admitted violating Section 2 by intentionally excluding American citizens from the Enemy Swim Sanitary District. Day County entered into a consent decree to remedy the violation by incorporating a new sanitary district comprised of all voters, including American Indian citizens around and near Enemy Swim Lake. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 102.*

Statistics

- In South Dakota, Native Americans made up 8 percent of the population, but 94 and 86 percent, respectively, in Shannon and Todd Counties. *National Commission on the Voting Rights Act Report*, at 9.

- As a result of the 1975 amendments of the Voting Rights Act, two counties in South Dakota, Todd and Shannon, which are home to the Pineridge and Rosebud Indian reservations, a large Sioux Indian population, became covered by section 5. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 5 (Oct. 25, 2005) (statement of Laughlin McDonald, Director, ACLU, Voting Rights Panel).

- Well, William Janklow at that time was the Attorney General of South Dakota. And he was outraged over the extension of section 5 to his State. In fact, he wrote a formal opinion to the South Dakota Secretary of State. He derided the 1975 law as a, ''facial absurdity.'' He was confident that it would be declared unconstitutional by the courts; but in the meantime he instructed the Secretary of State not to comply with section 5, and the Secretary of State in fact did not. There were more than 600 voting changes that were enacted and were not precleared under section 5. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 6 (2005) (statement of Laughlin McDonald, Director, ACLU, Voting Rights Panel).

Anecdotal Evidence

- A witness at a South Dakota hearing by the National Commission on the VRA testified that among the problems Native Americans face is the false but "widespread perception" that Indians are not taxpayers, and thus shouldn't be allowed to vote, "especially in state and local elections"; the long distance from place of residence to polling stations, "especially over bad roads; polls that are not located conveniently or not on Indian reservations; hostility among election workers and public officials; the purging of voter lists; a poor understanding of election laws and procedures; difficulties and resistance when attempting to register to vote; and efforts to dilute the impact of Indian voting." *National Commission on the Voting Rights Act Report*, at 46.

- Problems of racial polarization in voting regarding Indians in South Dakota were mentioned by Dan McCool, a professor of political science at the University of Utah. He testified "there is still a high level of racial polarization in a number of areas. . . . [While not true everywhere in the state] this is especially true when Indians run against Anglos . . ." *National Commission on the Voting Rights Act* Report, at 92.

- In a federal case involving a South Dakota statewide redistricting plan, the court stated: "The court concludes that substantial evidence, both statistical and lay, demonstrates that voting in South Dakota is racially polarized among whites and Indians in Districts 26 and 27." *National Commission on the Voting Rights Act* Report, at 96.

- The importance of Indian voters was certainly not lost on either of the [2004 Senate] candidates, both of whom made numerous visits to the reservation where they attended pow-wows and meetings with tribal leaders in an attempt to influence Native voters. *Jacqueline Johnson, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 45 (Nov. 9, 2005) (attachment II to prepared statement, Native Vote 2004: A National Survey and Analysis of Efforts to Increase the Native Vote in 2004 and the Results Achieved)*

- "In South Dakota, a tribal official personally witnessed a situation where a husband who could not read was not allowed to get help from his wife and the election officials could not help him because they did not speak Lakota. As a result, the husband ripped his ballot in half and threw it in the trash. The unavailability of assistance violated Section 203 and the refusal to let his wife help violated Section 208." Joe Rogers, Testimony at House Hearing on "Voting Rights Act: Evidence of Continued Need." (March 8, 2006).

- "The trial court dismissed the complaint but the court of appeals reversed. It held the trial court failed to consider 'substantial evidence…that voting in the District was polarized along racial lines.' 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,' the discriminatory impact of staggered terms of office and apportioning seats between rural and urban members on the basis of registered voters which underrepresented Indians, and the presence of only two polling places." *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, pg 122-123*

- "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." *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, pg 123-124*

- "Plaintiffs analyzed the six legislative contests between 1992-1994 involving Indian and non-Indian candidates in District 28 held that under the 1991 plan to determine the existence, and extent, of any racial bloc voting. Indian voters favored the Indian candidate at an average of 81 percent, while whites voted for the white candidate at an average of 93 percent….While cohesion also flourished widely depending on whether 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. 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." *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, pg 125*

- "'[S]ubstantial evidence that South Dakota officially excluded Indians from voting and holding office.' Indians in recent times have encountered numerous difficulties in obtaining registration cards from their county auditors, whose behavior 'ranged from unhelpful to hostile.' 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.' According to Dr. Dan McCool, the director of the American West Center and the University of Utah and an expert witness for the plaintiffs, the accusation of voter fraud were 'part of an effort to create 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." *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, pg 12*

- "'[L]aws that added additional requirements to voting,' including a law requiring photo identification at the polls. Rep. Van Norman said that in passing the burdensome new photo requirement 'the legislature was retaliating because the Indian vote was a big facto in new registrants and a close senatorial race.' 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 Indian voters, he said 'I'm not sure we want that sort of person in the polling place.'" *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, pg 129*

- "The district court also found '[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.' Thomas Hennies, Chief of Police in rapid City, has said '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.' Don Holloway, the sheriff of Pennington County, concurred that prejudice and the perception of prejudice in the community were 'true or accurate descriptions.'

  The court concluded that 'Indians in Couth 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.' There was also 'significant lack of responsiveness on the part of elected officials to Indian concerns.' Rep. Van Norma said 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 Can Norman of 'being a racist' for introducing a bill requiring law enforcement officials to keep records of people pulled over for traffic stops.

  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 white.' Elsie Meeks, for example, told about her first exposure to the non-Indian world and the fact 'that there might be some people who

don't think well of people for 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 there 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 for from non-Indians nearly every time they go into a border towns community...[T]hen their...reciprocal feeling are based on that, that they know, or at least feel that the non-Indians don't like them and don't trust them.

When Meeks was a candidate for lieutenant governor in 1998, she felt welcome 'in Sioux Falls and a 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...we don't pay property tax...that we shouldn't be allowed [to run for office].' Such views were expressed by a member of the state legislature who said he would be 'leading the charge...to support Native American voting right when Indians decide to be citizens of the State by giving up tribal sovereignty and paying their fair share of the tax burden." *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, pg 129-130*

- "The case was settled by a consent decree in which the county admitted 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." *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, pg 132*

- "My office first learned of [South Dakota's] intentional noncompliance [with the VRA] in early 2002 and spent the next six months identifying more than 600 unprecleared voting changes at the state level." *Prepared Statement of Bryan Sells, National Commission on the Voting Rights Act, 9/9/05, found in House Hearing, Oct. 25, 2005, at 3287*

- "The parties negotiated a consent order remedial plan in which the Secretary eventually admitted to more than 800 separate violations of Section 5, and Secretary Nelson has been in the process of bringing the State into compliance with Section 5 for those past violations for the last three years." *Prepared Statement of Bryan Sells, National Commission on the Voting Rights Act, 9/9/05, found in House Hearing, Oct. 25, 2005, at 3288*

- "Secretary nelson has been cited twice by the court for noncompliance with the terms of the consent order. This year, the *Quiver* plaintiffs had to return to court after the Secretary refused to comply with the consent order with respect to a new law passed at the 2005 legislative session in response to our seventh lawsuit on behalf of Indian voters." *Prepared Statement of Bryan Sells, National Commission on the Voting Rights Act, 9/9/05, found in House Hearing, Oct. 25, 2005, at 3288*

- "[The *Quiver plaintiffs*] obtained a temporary restraining order enjoining the Secretary from implementing House Bill 1265 absent preclearance, and a three-judge district court later turned that TRO into a preliminary injunction. In its unanimous decision issuing the

injunction, the three-judge court noted the State's history of intentional noncompliance with the Act, including Secretary of State Nelson's refusal to seek preclearance for the State's 2001 legislative redistricting plan, and described House Bill 1265 as 'a rushed attempted to circumvent the VRA." (*sic*) *Prepared Statement of Bryan Sells, National Commission on the Voting Rights Act, 9/9/05, found in House Hearing, Oct. 25, 2005, at 3290*

- "In March 2003, the Voting Rights Project filed suit on behalf of three members of the Crow Creek Sioux Tribe in a challenge to the county commission districts in Buffalo County, South Dakota, known as Crystal Kirkie versus Buffalo County." *Prepared Statement of Bryan Sells, National Commission on the Voting Rights Act, 9/9/05, found in House Hearing, Oct. 25, 2005, at 3290*

- "Buffalo County...has a population of approximately 2100 people, approximately 85% of whom are Native American. The county's three commissioner districts, which had been in use for decades, contained populations of approximately 1700, 300 and 100 people, respectively. Virtually all of the 1700 people in commissioner district 1 were Native American, while not a single Indian lived in the under populated district 3. The result was that the county's miniscule non-Indian minority had effective control over the county commission.

  The parties settled the case in early 2004. The county agreed to redraw its commissioner districts and to hold a special election for two of the three seats. The county also agreed to relief under Section 3(c) of the Voting Rights Act, which effectively means that Buffalo County, is now subject to preclearance requirements of Section 5 of the Voting Rights Act along with Shannon and Todd counties in South Dakota." *Prepared Statement of Bryan Sells, National Commission on the Voting Rights Act, 9/9/05, found in House Hearing, Oct. 25, 2005, at 3291*

- "*Emery v Hunt* was a successful challenge in 2000 to the state legislature's decision in 1996 to abolish a single-member house district on the Cheyenne River Reservation that was specifically created in 1991 to avoid minority vote dilution.

- *Weddell v Wagner Community School District* was a successful challenge in 2002 to at-large school board elections in Charles Mix County, South Dakota, that resulted in the adoption of a cumulative voting scheme by consent of the parties.

- *Bone Shirt. v Nelson* was a successful challenge to the state's 2001 legislative redistricting plan. The plaintiffs prevailed on both their Section 5 claim and their Section 2 claim." *Prepared Statement of Bryan Sells, National Commission on the Voting Rights Act, 9/9/05, found in House Hearing, Oct. 25, 2005, at 3292-93*

- "During the 2002 legislative session, Representative Teupel made a lengthy speech in opposition to a bill which would have required state law enforcement officers to collect data on racial profiling. He said that he would be 'leading the charge' to end racial profiling, to reduce alcoholism and poverty on reservations and 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.' Rather than face censure from his colleagues for such openly hostile remarks, Representative Teupel's colleagues elected him to the House Republican leadership in 2003." *Prepared Statement of Bryan Sells, National Commission on the Voting Rights Act, 9/9/05, found in House Hearing, Oct. 25, 2005, at 3293*

- "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." *Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 149(, "The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)*

- "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." 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 Court of Appeals for the Eighth Circuit concluded that "[l]ow political participation is one of the effects of past discrimination." 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." Finally, the Court of Appeals for 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."
  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% of Indians in the state were registered to vote. 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." *Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 152-53 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)*

- "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
  . . .

  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 Court of Appeals for 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." 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," the discriminatory impact of staggered terms of office and apportioning "seats between rural and urban members on the basis of registered voters " which underrepresented Indians, and "the presence of only two polling places." On remand, the parties reached a settlement utilizing cumulative voting for the election of school board members.

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. 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.

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 noncontiguous pieces of land owned by whites could vote, while residents of the remaining 87% 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.

Steven Emery, Rocky Le Compte, 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." The report recommended the creation of a majority Indian district in the area of Shannon, Washabaugh, Todd, and Bennett Counties. Under the existing plan, there were twenty-eight legislative districts, all of which were majority white and none of which had ever elected an Indian. 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, effectively neutralizing the Indian vote in that area." 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."

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." 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. Thomas Short Bull, an early proponent of equal voting rights for Indians, ran for the senate the following year from District 28 and was elected, becoming the first Indian ever to serve in the state's upper chamber."

Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 153-54 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)

- "[T]he [South Dakota] legislature abolished House Districts 28A and 28B and required candidates for the House to run in District 28 at-large. Tellingly, the repeal took place after an Indian candidate, Mark Van Norman, won the 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. The reconstituted House District 28 contained an Indian VAP of 29%. 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." *Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 154 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)*

- "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%, while whites voted for the white candidates at an average rate of 93%. In all six of the contests the candidate preferred by Indians was defeated.

  Dr. Cole also analyzed one countywide contest involving an Indian candidate, the 1992 general election for treasurer of Dewey County. Indian cohesion was 100%, white cohesion was 95%, and again the Indian-preferred candidate was defeated."

  Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 155 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)

- "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.' 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. " *Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 155-56 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)*

- "One of the most blatant schemes to disfranchise Indian voters was employed in Buffalo County. The population of the county was approximately 2000 people, 83% of whom were Indian, 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 1500 people--were packed in one district. Whites, though only 17% of the population, controlled the remaining two districts, and thus the county government. The system, with its total deviation among districts of 218%, 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." *Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 156 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)*

- "[B]y Section 2, the court found there was "substantial evidence that South Dakota officially excluded Indians from voting and holding office." Indians in recent times have encountered numerous difficulties in obtaining registration cards from their county auditors, whose behavior "ranged from unhelpful to hostile." 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 *62 unfounded, they have "intimidated Indian voters." 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."

  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. 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." 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 Indian voters, he said "I'm not sure we want that sort of person in the polling place." Bennett County did not comply with the provisions of the Voting Rights Act enacted in 1975 requiring it to provide minority language assistance in voting until prior to the 2002 elections, and only then because it was directed to do so by the Department of Justice.

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." 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." Don Holloway, the sheriff of Pennington County, concurred that prejudice and the perception of prejudice in the community were "true or accurate descriptions."

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." There was also "a significant lack of responsiveness on the part of elected officials to Indian concerns." 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."

Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 157-58 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)

- "When Meeks was a candidate for lieutenant governor in 1998, she felt welcome "in Sioux Falls and a 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.]" 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.'" *Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 158 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)*

- "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." … As one court has

explained, the lack of minority candidates "is a likely result of a racially discriminatory system.' As another court has said, white bloc voting "undoubtedly discourages [minority] candidates because they face the certain prospect of defeat."" *Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 159 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)*

- "[T]he state sought to justify denying residents in 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." 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.

  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." Again, the court disagreed. It held that the "presumption" that Indians lacked a substantial interest in county elections "is not a reasonable one." ...

  According to the court, "[r]acially 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." 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." 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."

  ...

  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 and the courts have rejected efforts to blame reduced black participation on 'apathy.'" 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. 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." 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." It is convenient and reassuring for a jurisdiction to blame the victims of discrimination for their condition, but it is not a defense to a challenge under Section 2."

Appendix to the statement of Laughlin McDonald, House Hearing, Oct. 25, 2005, at 159-60 ("The Voting Rights Act in Indian Country: South Dakota, A Case Study" American Indian Law Review 2004, 2005)

- "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.'" *Voting Rights in South Dakota 1982-2006, 35 (renewthewra.org).*

- "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.'" *Voting Rights in South Dakota 1982-2006, 35 (renewthewra.org).*

- "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.'" *Voting Rights in South Dakota 1982-2006, 37 (renewthewra.org).*

- "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.'" *Voting Rights in South Dakota 1982-2006, 38 (renewthewra.org).*

- "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." *Voting Rights in South Dakota 1982-2006, 41 (renewthewra.org).*

- "Senator Johnson's victory in the 2002 election 'caused a serious backlash based on the Indian voter turnout.' 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. The bill became law but is still opposed by many. Thomas Short Bull, asserts that it 'punishes' American Indian 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. 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." *Voting Rights in South Dakota 1982-2006, 41-42 (renewthewra.org).*

- "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 … 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.' 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." *Voting Rights in South Dakota 1982-2006, 42 (renewthewra.org).*

- "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.." *Voting Rights in South Dakota 1982-2006, 42 (renewthewra.org).*

- "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." *Voting Rights in South Dakota 1982-2006, 42 (renewthewra.org).*

- "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.'" *Voting Rights in South Dakota 1982-2006, 43 (renewthewra.org).*

- "The court concludes that substantial evidence, both statistical and lay, demonstrates that voting in South Dakota is racially polarized among white and Indians in Districts 26 and 27." [*Bone Shirt v. Hazeltime*, 336 F. Supp. 2D 976, 1036 (D.S.D. 2004)] *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pgs 100-101.*

- "In the lawsuit over the 1996 interim redistricting plan in South Dakota, the state conceded Indians were not equal participants in elections in District 28, but argued it was the 'reservation system' and 'not the multimember district which is the cause of [the] 'problem' identified by Plaintiffs.'" *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, pg 135*

- "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 '[fencing out' from the franchise a sector of the population because of the way they may vote...In a 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.' Again, the court disagreed. It held the 'presumption' that Indians lacked a substantial interest in county elections 'is not a reasonable one.'" *Appendix to the Statement of Laughlin McDonald, Subcommittee on the Constitution, House Judiciary Committee, VRA hearing, 10/25/05, pg 135*

- Following the 2002 elections in South Dakota, for example, which saw a surge in Indian political activity, the legislature passed laws that placed additional requirements for voting, including requiring photo identification at the polls. State Rep. Tom Van Norman, a member of the Cheyenne River Sioux Tribe, said the legislation retaliated against new Indian voters because they were a factor in a close Senate race. During legislative debate on another bill which would have made it easier for Indians to vote, an opponent of the measure said, "I, in my heart, feel that this bill...will encourage those who we don't particularly want to have in the system." Alluding to Indian voters, he said "I'm not sure we want that sort of person in the polling place." *Written Testimony of Nadine Strossen before the House Judiciary Committee, March 8, 2006, at 11.*

- In the 2001 plan, the boundaries of District 27, which included Shannon and Todd Counties, were altered so that Indians made up 90 percent of the district, while the district was one of the most overpopulated in the state. As was apparent, American Indians were "packed," or over-concentrated, in the new District 27. Had American Indians been "unpacked," they could have made up a majority in an additional, neighboring house district. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 39.*

- [On the Rosebud Indian Reservation in Todd County, South Dakota], [t]he overall racial distribution of the Parmelee precinct poll watchers included ... 3-4 white Republicans ... 2 white Democrats, and 1 Native independent woman . . . . I found a general consensus that tribal members found the gathering of whites intimidating and the election atmosphere tense at times. At two different times throughout the day the partisan poll watcher's from both parties made a request for our group to leave the polling building .... Both party member representatives looked together through the South Dakota Election Day Precinct Manual to find a legal statute to have us removed. With enough space and approval from the poll judges, we were allowed to watch. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4660.*

- Allegations of voter intimidation and fraud garnered the most attention and there were some very public occurrences during the November elections. For example, during early voting in South Dakota, Senator Daschle filed a lawsuit against the Thune campaign based on reports that Thune's non-Indian volunteers were following cars of Indian voters and writing down their license plates. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4638.*

TENNESSEE

Anecdotal Evicence

- A three-judge court found that in West Tennessee there is "a high level of white bloc voting which usually enables the majority to defeat the black community's candidate of choice," and that racial polarization is so extreme that "black candidates cannot expect to succeed in majority-white districts." *Written Testimony of Nadine Strossen before the House Judiciary Committee, March 8, 2006, at 8.*

TEXAS

Voting Rights Lawsuits/Enforcement

- A 2002 lawsuit against the City of Seguin, Texas forced the city to increase the number of majority-Latino districts from four out of eight to five out of eight. *Ms. Perales, Testimony at House Hearing. 36-37 (morning of Oct. 25, 2005).*

- Second-largest number of post-1982 § 5 preclearance objections occurred in Texas. *National Commission on the Voting Rights Act* Report, at 3.

- At the time Section 5 was extended to the entire states of Texas and Arizona, the Latino civil rights movement in Texas had already begun to challenge control by Anglo Democratic bosses along the Rio Grande border, and activities by various civil rights organizations such as the Southwest Voter Education Project (SWVEP) and the Mexican American Legal Defense and Educational Fund (MALDEF), collaborating with voting rights lawyers, filed suits attacking electoral arrangements such as multi-member districts. Section 5 made their task much easier. For example, blacks and Latinos in Houston, one of the nation's largest cities, had gone to court in the early 1970s challenging the city's at-large election system as diluting their vote. Only one black city councilman had been elected since Reconstruction, and no Latinos had been, although the city by 1970 was 26 percent black and 12 percent Latino. The city's huge land area made an at-large council campaign costly. Elections were highly polarized. The plaintiffs lost the case and had begun trying to raise money for an appeal when, in 1975, Congress extended Section 5 coverage to Texas. Soon thereafter, the city annexed some territory south of the municipal boundary. The population was predominantly white and would thus add to the white percentage of the city. But Houston now had to get approval from the Department of Justice, and the Department required the city to change its council election method to include at least some single-member majority-minority districts. *National Commission on the Voting Rights Act* Report, at 42.

- In Texas, where the most heavily non-white counties (60-100 percent) are predominantly majority-Latino, located along the Mexican border, there were few objections in the post-1982
- period. Even so, the 40-60 percent non-white Texas counties are far more likely than the remaining ones with smaller minority populations to have experienced objections. Numerous East Texas counties, whose minority population is largely black, are locales where numerous objections were interposed. This was the area in which most of the slave plantations were located before the Civil War. *National Commission on the Voting Rights Act* Report, at 54.

- The Department of Justice objection to the Texas State House redistricting plan in 2001 was predicated on the state's attempt to eliminate effective districts for Latino voters in heavily Latino South and West Texas. *National Commission on the Voting Rights Act* Report, at 54.

- A section 5 enforcement action was filed in Waller County, Texas, in 2004, in which the city of Prairie View is located. The county contains historically black Prairie View A&M University within the majority-black city of Prairie View. In the 1970s, the county registrar went to dramatic lengths to prevent most students from voting, on the alleged ground that they were not legal residents of the county. Only legal action under Section 5 prevented the registrar from doing so, in a case that went to the Supreme Court. In the early 1990s a number of students were indicted for "illegal voting"; all of the charges were subsequently dropped. Two Prairie View students decided to run for local office in the March 2004 primary, including one for Waller County Commissioners' Court, the county governing body. The white criminal district attorney, a former state judge, threatened the predominantly black Prairie View student body with felony prosecution for illegal voting if they voted in the election. Almost five weeks before Election Day, the university chapter of the NAACP and five students sued the district attorney, who shortly thereafter backed down. The issue did not end there, however. Less than a week after the lawsuit was filed, and a month before the election, the Waller County Commissioners' Court voted to reduce the availability of early voting at the polling place closest to campus, from seventeen hours over two days to six hours in one day. This was particularly significant because the students would be on spring break during the day of the primary and would have to vote early if they planned on leaving town for the break. A Section 5 enforcement action was filed by the university student NAACP chapter to enjoin Waller County from implementing this change without Section 5 preclearance. County officials abandoned the change and restored the additional eleven hours, which technically mooted the lawsuit, although the objectives of the suit were fulfilled. About three hundred Prairie View students took advantage of the early voting period, compared to sixty who would vote on the day of the primary, and the Prairie View student running for a seat on the commissioners' court narrowly prevailed in his primary contest. *National Commission on the Voting Rights Act* Report, at 65-66.

- Texas is the state with the largest number of Section 2 suits resolved on behalf of minority plaintiffs since 1982. In that state, 206 such suits, both reported and unreported, were identified. As a result of these 206 cases, 197 jurisdictions changed their discriminatory voting procedures. The map shows that 110 of Texas' 254 counties were affected at least once by the suits, for a total of 274 times. Two counties—one that was 60 percent or more minority, the other between 40 and 60 percent—have each experienced eleven changes in voting procedure as a result of Section 2 cases since 1982. Texas is in some respects unusual, in that it has both a large black and Latino population. There were very few successful Section 2 cases resolved in the heavily minority counties along the Rio Grande border. Latinos are now fairly well-integrated into the political structure of that area. Most of the East Texas counties, whose minority populations are largely black, appear not to have witnessed much Section 2 activity—even those in the 20 to 40 percent minority range. (In this respect, Texas differs from the other Section 5-covered states that also belonged to the Confederacy.) Rather, West and Central Texas are the locus of most of the litigation. These are counties where the Latino population is growing in size and political aspirations. *National Commission on the Voting Rights Act* Report, at 86-87.

- In August 2002, DOJ objected to plans by the City of Freeport, Texas to return to an at-large method of election with numbered postst that had been previously declared illegal because it

discriminated against Hispanic voters. *Ms. Earls, Testimony at House Hearing. 32 (morning of Oct. 25, 2005).*

- In Texas, plaintiffs challenged the mid-decade congressional redistricting on several dimensions. One claim was that districts lacking a minority of a minority, but electing candidates preferred by minority voters, were protected from change under Section 5. One Plaintiff's expert testified that districts as low as 5% minority population might be protected from change under the Voting Rights Act, unless agreed to by the minority community's leadership. This reasoning was rejected by both the Justice Department, which precleared the new Texas map and the Federal district court in Austin, which explicitly rejected the argument that there is an obligation to create coalition districts under federal law. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 39 (Oct. 25, 2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).

- In a case involving congressional districting in Texas, a federal district court found, based on evidence from Democratic primaries and general elections, that "the presence of racially polarized voting throughout the state" between Latinos and non-Latinos [Sessions v. Perry, 258 F. Supp. 2d 451, 493 (ED. TX 2004)]. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 59 (Oct. 25, 2005) (prepared statement of Richard Engstrom, Professor, The University of New Orleans).

- [Regarding whether you can carve up influence districts] In Texas—and Professor Engstrom may recall this as well—Judge Higgenbotham had this issue put on him with regard to maintaining the integrity of Representative Frost's district, whether Representative Frost was a candidate of choice for the African-American community, his district which had no particular majority but was a majority of minorities. The Federal court said, no, this district is not protected from retrogression. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary*, 109th Congress. 92 (Oct. 25, 2005) (response of Ronald Keith Gaddie, Professor of Political Science, The University of Oklahoma, to questions of Congressman Scott).

- "In *League of United Latin American Citizens v. North E. Indep. Sch. Dist.*, 903 F. Supp. 1071 (W.D. Tex. 1995) the United States District Court sitting in San Antonio made a number of findings demonstrating the discriminatory impact of at large elections on Latino voters. Included among its findings were the following: [Between 1973 and 1994,] 'an Anglo candidate was the winner in 47 of 48 elections [for the school board], a Hispanic candidate in only 1 out of 48 elections, and a Black candidate has never won. ... [T]here is a clear and persistent history of racially polarized voting in both NEISD school board elections as well as in exogenous elections.... [T]here are not enough Anglo cross-over votes to allow a minority candidate to succeed in the at-large election system.... There is no dispute that Texas has a long history of discrimination against its Black and Hispanic citizens in all areas of public life. ... The Court finds that plaintiffs have shown that Blacks and Hispanics still bear the effects of past discrimination in such areas as education,

employment and health, which hinder their ability to participate effectively in the political process.' ... The Court went on to find the at large election system for the election of trustees to the Northeast Independent School District to violate Section 2 of the Voting Rights Act. ... In the first election after the adoption of single member districts a Latino candidate and an African American candidate secured election from majority minority districts." Jose Garza and George Korbel, House *Hearing*., 15-34 (Oct. 20, 2005).

- [Paraphrase:] In 1997, the Justice Department objected to an annexation of an all-white jurisdiction by the city of Webster, in Harris County, Texas. DOJ said it would dilute minority voting strength in Webster. Jose Garza and George Korbel, House *Hearing*., 45-48 (Oct. 20, 2005).

- [Paraphrase:] In 1998, DOJ objected to a change in Texas procedures for replacing appellate judges who had died or resigned before their term had expired. DOJ said Governor Bush had appointed whites that Hispanic voters wouldn't have chosen. Jose Garza and George Korbel, House *Hearing*., 48-50 (Oct. 20, 2005).

- "After a Federal District Court ordered Galveston to adopt a single member district plan, the City attempt[ed] to modify it so as to reintroduce procedures to frustrate minority voting rights." Jose Garza and George Korbel, House *Hearing*., 52 (Oct. 20, 2005).

- [Paraphrase:] In 2000, DOJ objected to a change in election procedures for Sealy Independent School District in Austin County, Texas. SISD wanted to change from at large elections for its seven board members to a "numbered posts" system so that candidates would run for a specific, numbered seat on the board. DOJ objected that when minorities are forced to compete head-to-head for a seat, they are more likely to lose. Jose Garza and George Korbel, House *Hearing*., 56-58 (Oct. 20, 2005).

- "In a case involving congressional districting in Texas, a federal district court found, based on evidence from Democratic primaries and general elections, that 'the presence of racially polarized voting throughout the state' between Latinos and non-Latinos [*Sessions v Perry*, 258 F. Supp 2d 451, 493 (ED. TX 2004]" *Testimony of Richard Engstrom. House Judiciary Committee, VRA Hearing, 10/25/05, pg 59*

- Since 1982, Texas has the second highest number of Section 5 objections interposed by the DOJ, including at least 107 objections, 10 of which were for statewide voting changes. A majority of all Section 5 objections to discriminatory voting changes in Texas have been since 1982, which have affected nearly 30 percent of Texas's 254 counties, where 71.8 percent of the State's non-white voting age population resides. [I]n 2004, Waller County was stopped from disenfranchising African American students at Prairie View A&M who were trying to vote for two African American students running for County office. In 2002, Section 5 prevented the City of Seguin from dismantling a Latino city council district and then from canceling the candidate-filing period to prevent Latino candidates from running in the district and winning a majority of seats. In 2002, DOJ used Section 5 to prevent the City of Freeport from restoring at-large elections that had been eliminated after a successful voting rights lawsuit brought by Latino and African American voters who comprised a

majority of the City's population. *Adegbile, Debo. Written Testimony. SJC VRA Hearing. 6-21-06. Pg 23.*

- In total, the DOJ has issued 201 Section 5 objections to proposed electoral changed in Texas since the State was covered in 1976. Of those, 52 percent, 107, occurred *after* the 1982 reauthorization of Section 5. Ten of the post-1982 objections were interposed in response to statewide voting changes. *Trasvina, John. Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 4.*

- In 1978, Latino plaintiffs sued the City [of Seguin, Texas] for failing to redistrict when the previous districts had become malapportioned....A federal court enjoined the 1978 election and the following year adopted a new redistricting plan proposed by the city. The city failed to redistrict after the 1980 and 1990 Census. By 1993, 60% of Seguin's population was minority but only 3 of 9 city council members were Latino. Latino plaintiffs sued again and won a settlement from the city in 1994 that created 8 single-member districts, five of which had a majority of minority voters. Following the 2000 Census, Seguin redistricted again but spread the city's Latino population across its electoral districts in order to preserve the incumbency of an Anglo member of the city council. When the Department of Justice refused to grant Section 5 preclearance to the city's redistricting plan, Seguin corrected the violation but then closed its candidate filing period so that the Anglo incumbent would run for office unopposed. Latino plaintiffs sued once again and secured an injunction under Section 5 of the Voting Rights Act. The parties eventually settled after negotiating a new date for the election. *Trasvina, John. Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 4.*

- Since 1982, the DOJ has issued at least 107 objections to proposed electoral changes in Texas (including ten statewide objections), which is the second highest total of Section 5 objections, trailing only Mississippi. Since 1982, more successful Section 5 cases have been brought in Texas than any other state (at least 29), and Texas leads the nation in the number of discriminatory voting changes withdrawn after submission to DOJ (at least 54). Since 1982, Texas also has the highest number of successful Section 2 cases (at least 206). *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 109-110.*

- In 2002, DOJ objected to a change in the method of election proposed by the City of Freeport, Texas, which involved abandoning single-member districts adopted as a result of a Section 2 violation in favor of a return to at-large elections. DOJ recognized that because of the extremely polarized racially polarized voting, at-large elections would impair the ability of minority voters to elect a candidate of their choice. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 110.*

- In 2001, DOJ objected to attempts to reinstitute a discriminatory at-large voting system for the Haskell Consolidated Independent School District in Haskell, Knox and Throckmorton Counties [in Texas], which had been abandoned in favor of single-member districts as a result of a successful Section 2 case. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 111.*

- Ms. Perales- I wanted to give an example of the deterrence effect of Section 5 in the city of Seguin, which is in between Austin, Houston, and San Antonio. The city of Seguin, when they found out that they had a majority of districts in their city council plan that were going to be Latino in the upcoming redistricting, they dismantled one of those districts so as not to have a Latino majority in the city council. This, of course, is nonpartisan elections. When they submitted this plan to the Justice Department, the Justice Department expressed concerns, asked for more information. As a result, that plan was withdrawn and a better plan, one that actually reflected the Latino majority of the city and the five council districts was ultimately submitted. *7/13/06 SJC VRA Hearing Transcript, Pages 65-66.*

Statistics

- "In Texas, there have been 196 section 5 objections to proposed election changes since 1975, more than any other state covered by section 5." *Nina Perales, Statement Submitted to National Commission on the Voting Rights Act, House Hearing. 86 (Oct. 25, 2005).*

- In 1973, there were 565 Latino elected officials in the state. By 1984, the number had grown to 1,427. By January 2005, the number had increased to 2,137 Latino elected officials elected to Congress and to the state legislature has been particularly significant. Between 1984 and 2005, the number of Latino Members of Congress doubled from 3 to 6, the number of state Senators nearly doubled from 4 to 7, and the n umber of state Representatives increased from 21 to 29. *Trasvina, John. Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 5.*

- Nearly 1.2 million Latino voting age citizens in Texas lack a high school diploma, or 40 percent of all Latino voting age citizens, compared to only 13.5 percent of all Alnglo voting age citizens. *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg3 .*

Anecdotal Evidence

- "...the 2004 election, showed an African-American candidate in Texas for county commissioner in Caplan (phonetic) County winning, but they later said a computer made a mistake in one of the races and took a couple of hundred votes away from her, and she lost by a handful of votes. It's another example, I think, of these kinds of things – this is Texas." *Dr. Burton, Professor, Testimony at National Commission on the Voting Rights Act Southern Reg'l Hearing., House Hearing. 169 (Oct. 18, 2005).*

- "...there were transcripts of hearing the Texas NAACP had in 2001 and 2003 in Houston, Texarkana, and Fort Worth, where they detailed many examples of problems with voting encountered by minority systems. There they had illegal use of mailboxes in Fort Worth, where intimidating articles were included in an African-American newspaper threatening to have people arrested if they illegally voted. They stationed police cars outside of polling places; dropping individuals from poll lists without cause; not allowing individuals to file

challenge ballots… And one of the worst things documented in several places was actually a hate crime in Wharton, where a female campaign staff treasurer for a black candidate for sheriff had her home burned down. And her husband, a former county commissioner, were actually inside and got out only because the dog was barking. And she had just received threatening calls saying what would happen to her if she did not get – and we won't use the N word – sign out of her yard." *Dr. Burton, Professor, Testimony at National Commission on the Voting Rights Act Southern Reg'l Hearing., House Hearing. 169 (Oct. 18, 2005).*

- "Again, in 1992 we had 19 people indicted by the district – assistant district attorney at that time McKeg (phonetic) in order to say that they were voting illegally. One of the interesting things about that '92 case is where they said a lot of students had registered twice; a lot of students had voted n other elections. Like in Beaumont, where we had a young man named Moore, I think it was Carl Moore Jr. His father was senior. He voted in Beaumont, but nobody bothered to go and check the records to make sure that it was senior that had voted rather than junior. Also the students marched on the Waller County courthouse in '92 and fought that – those indictments, and eventually, they won out." *Mayor Frank Jackson, Prairie View, Texas, Testimony at National Commission on the Voting Rights Act Southern Reg'l Hearing., House Hearing. 173-74 (Oct. 18, 2005).*

- "It was our experience in the 2004 election cycle in Texas that there exists what can only be described as strategic efforts to exclude certain citizens from voter registration. In one county in south Texas, some of our Spanish-speaking volunteers were denied the eligibility to be deputized as registrars. Now, in Texas only a deputized registrar can register voters in the field. Some officials who are empowered by law to deputize registrars deliberately set obstacles to deputization for people who may have belonged to an opposing political party. One of our volunteers was stripped of his deputized registrar privileges because he turned in a registration card with a numerical transposition. His team of volunteers was also denied deputization privileges on similar flimsy technical merits. On one occasion, a volunteer was told by an authorized person in the elections office to change a date on the registration card. And as soon as that date was changed, her deputized registrar privileges were taken from her. Sadly, I can elaborate not further, because the volunteers in question fear retribution and have asked that names and locations not be mentioned." *Victor Landa, Testimony at National Commission on the Voting Rights Act Southern Reg'l Hearing., House Hearing. 181-82 (Oct. 18, 2005).*

- "Representatives Betty Brown and Jim Jackson have introduced in committee House Bill 516, relating to requiring proof of citizenship at the time a person registers to vote. The bill states that a person would have to provide a copy of proof of citizenship in order to register to vote; a driver's license or a Social Security card would not work… The most common forms of identification that you and I carry would not be enough to register to vote. This bill carries the stated intent of fighting voter fraud, but what it actually does is set greater obstacles for the registration of new voters, and a substantial portion of new voters in Texas are Latin voters."
- *Victor Landa, Testimony at National Commission on the Voting Rights Act Southern Reg'l Hearing., House Hearing. 182 (Oct. 18, 2005).*

- "Even though Tarrant County is required to provide bilingual ballots, their translation or their purported translation of the ballot into Spanish was utterly incoherent, because it had been done by a non-Spanish speaking staff in the county elections administrator's office. And when we appeared, not to sue them, in fact rarely, this was a rare occasion where we went to negotiate, we were simply told flat out by the elections administrator that we were wrong, that this was correct Spanish – he didn't speak Spanish either." *Nina Perales, Testimony at National Commission on the Voting Rights Act Southwestern Reg'l Hearing., House Hearing. 244 (Oct. 18, 2005).*

- "...in the spring of 2003, Bexar County close a very large number of its early polling places, and all of the early voting polling places on the west side and south side of San Antonio, which is where the Mexican-American population is concerned. They also failed to timely submit for pre-clearance under Section 5. If the Justice Department had had an opportunity to view these changes, we have no doubt that they would have concluded hat they were retrogressive."
- *Nina Perales, Testimony at National Commission on the Voting Rights Act Southwestern Reg'l Hearing., House Hearing. 245 (Oct. 18, 2005).*

- Rogene Calvert, former president of Houston Chapter of the Organization of Chinese Americans, spoke about the difference that Section 203 coverage of Vietnamese voters beginning in July 2002 has made in the Houston area. As a result of an agreement between the county and the Department of Justice, the county's ballot is now translated in Vietnamese; the county has hired a Vietnamese staff member in the county clerk's office; and it has staffed precincts having a significant number of Vietnamese voters with poll workers who speak the language. These measures had a direct impact on the participation of Vietnamese voters and probably are responsible, in part, for the election of Hubert Vo, the first member of the Texas Legislature of Vietnamese descent, who in 2004 won election to the state house of representatives by 16 votes. *National Commission on the Voting Rights Act* Report, at 73.

- Regarding Texas, voting rights attorney Sam Hirsch introduced reports on congressional elections by Jonathan Katz, a political scientist at Caltech. "Dr. Katz studied 113 different general elections in the U.S. House alone in the 1990s," he said. These were in districts with large black or Latino populations. Katz found "a virtually universal pattern of racially polarized voting with the Latino and black voters overwhelmingly preferring Democratic [candidates] . . . and Anglo [i.e., non-Hispanic white] . . . voters heavily preferring Republican candidates for Congress in Texas." *National Commission on the Voting Rights Act* Report, at 91.

- In a federal case involving a Texas statewide redistricting plan, the court stated: "This court recognizes that Plaintiffs have established racially polarized voting and a political, social, and economic legacy of past discrimination." *National Commission on the Voting Rights Act* Report, at 96.

- "Can I say, what (Texas) then did was they created a new majority Hispanic district elsewhere that stretches from the Mexico border on the river 300 miles north to the Hispanic

neighborhoods of Austin and Central Texas. This district is more than 300 miles long and in places less than 10 miles wide. They did that because they thought if they didn't do that, they for sure would lose under the Voting Rights Act." *Mr. Hirsch, National Commission on the VRA, Mid-Atlantic Regional Hearing, 861, October 14, 2005*

- Corpus Christi had segregated theatres and schools for African-Americans and Mexican-Americans. [A lawsuit may have been pending in 1982?] *Garza, Testimony at House Hearing. 12 (Oct. 20, 2005).*

- Sherryland Independent School District had segregated schools, and the Mexican schools were underfunded. [A lawsuit may have been pending in 1982?] *Garza, Testimony at House Hearing. 13 (Oct. 20, 2005).*

- In 1984, the City of Taft maintained a segregated cemetery that had been donated by the KKK. *Garza, Testimony at House Hearing. 13 (Oct. 20, 2005).*

- In 1984, the City of Taft's health clinic had segregated waiting rooms. *Garza, Testimony at House Hearing. 13 (Oct. 20, 2005).*

- A 1979 survey of 200 Texas counties demonstrated that every single one was gerrymandered in violation of the VRA. [Does not explain what this means.] *Garza, Testimony at House Hearing. 13 (Oct. 20, 2005).*

- Through a series of lawsuits, which extended intot he 1980s, we almost doubled thenumber of [minority?] city commissioners elected in Texas. *Garza, Testimony at House Hearing. 13 (Oct. 20, 2005).*

- There is a great degree of noncompliance with the section 5 requirement to submit all changes to DOJ. Roscoe Independent School District in Texas provides an example. *Garza, Testimony at House Hearing. 50 (Oct. 20, 2005)..*

- In Texas, election laws are enforced against minorities more than against whites. *Garza, Testimony at House Hearing. 60-61 (Oct. 20, 2005).*

- "For example, in Bexar County, Texas in 2003, county officials sought to undermine Latino voting strength by failing to place polling places near those communities during a special election where a Constitutional amendment was on the ballot. Using the special provisions of the VRA, Latino advocates were able to obtain expedited relief from the local district court that prevented the Latino voters from being silenced in the election." Theodore M. Shaw, House *Hearing*. on Retrogression Standard, 19 (Nov. 9, 2005).

- "After two decades of litigation and redistricting . . . Mexican Americans increased by 79% to 129 of 1270 (10.15%) of the members of the county commissioners courts in Texas in 1994. Between 1980 and 1994, the number of Mexican American members of the Texas

House of Representatives increased from 15 to 27." *Garza, Testimony at House Hearing. 16 (Oct. 20, 2005).*

- "Plaintiffs claim that the naming of an athletic center of Virgil T. Blossoms, an alleged racist, as evidence of the school district's insensitivity . . . . Plaintiffs also cite the fact that Robert E. Lee High School flew the Confederate flag until 1993 as evidence of the school district's insensitivity to minorities .... [as well as a failure] to actively recruit minority teachers .... [and] the scarcity of Hispanics in administrative positions .... Another example ... is the establishment of boundary lines that result in Lee High School having a student population which is 56% minorities while Churchill High School has a population that is less than 25% minorities even though the two schools share a common boundary line and are less than five miles apart" *Garza, Testimony at House Hearing. 30-32 (Oct. 20, 2005).*

- "Until 1999, there were only eight polling places ... for school board elections, even though the school district contains more than 250,000 people." *Garza, Testimony at House Hearing. 33 (Oct. 20, 2005).*
- "Until recent years, all ballots were printed exclusively in English, and tended to deter voting by Mexican-Americans voters who did not understand the English language." *Garza, Testimony at House Hearing. 37 (Oct. 20, 2005).*

- "Mrs. Maxine Silva, a candidate for trustee in the 1948 school board election, testified that during her campaign she ... was subjected to ethnic slurs .... It was further her testimony that times have changed, and that the same atmosphere does not exist today. In fact, Mrs. Silva is again a candidate for trustee in the 1984 school board election." *Garza, Testimony at House Hearing. 41 (Oct. 20, 2005) (quote from Sierra v. El Paso Independent School District, 591 F. Supp. 802 (D. Tex., 1984)).*

- "Waller County is at once a white flight area from heavily minority Houston but also the location of Prairie View A&M, one of the traditional African-American land grant colleges. This is the latest of a more than 40 year history of limiting African-Americans going to school there from interfering with local politics by voting. After several different federal and appellate courts found that such actions violated Section 2 and the 14th Amendment, the County now tries to accomplish the same thing through racial gerrymandering." *Garza, Testimony at House Hearing. 67 (Oct. 20, 2005).*

- "We had a congressional race not too long ago in Houston, where 1,700 White voters voted ... in the Republican primary, and then switched to vote in the Democratic run-off where an Hispanic was running against an Anglo candidate. That's illegal in Texas. That's a felony. Nobody was prosecuted." *Garza, Testimony at House Hearing. 101 (Oct. 20, 2005).*

- "I represented a young man in Uvalde, Texas, who assisted an illiterate voter secure an absentee ballot .... In Texas, a voter can only witness ... one application for absentee ballot ... for an illiterate voter. My client witnessed two, and he was prosecuted. The DA dropped the charges when I sent him a copy of the 1983 action that I would file if he continued." *Garza, Testimony at House Hearing. 101 (Oct. 20, 2005).*

- "I think the biggest area that needs reform is redistricting .... You see gerrymandering taking place at all levels; and oftentimes, aimed at keeping certain potential candidates off the county commission or the city council or school board. So I see intentional ... fragmentation of the minority community, so that they cannot elect a candidate of choice.." *Herbert, Testimony at House Hearing. 102 (Oct. 20, 2005).*

- "The recent 2004 election offers insight into continuing voter discrimination in Texas. In conjunction with other organizations, MALDEF served as a resource center to address election irregularities. Fielding complaints throughout the voting period, MALDEF learned of several voting rights violations, including:

  The closing of a polling place in a predominately African-American precinct, contrary to state law, despite the fact that voters remained in line;
  Minority voters being turned away from their polling locations and asked to return at a later time;
  Election judge intimidation through demands for identification, contrary to Texas law, and threats of jail time if it was determined that voters had outstanding warrants;
  Disproportionately stringent voter screening and questioning; and
  A racial slur directed at a minority voter by an election judge."

  Voting Rights in Texas 1982-2006, 6 (renewthewra.org).

- "During the November 2004 presidential election, MALDEF served as a legal resource center for coalitions conducting election protection work. . . . . MALDEF received numerous telephone calls from Latino voters unable to find their polling site, many as a result of language barriers. In addition to the calls about polling site locations, MALDEF received more than 30 calls relating to irregularities, complaints, assistance needed, or problems in the voting process from predominantly Latino and African-American voters. Specific reports from callers included:
  • At polling places in a predominantly Latino precinct, understaffing of poll workers resulted in long lines and only two voting stalls being put to use. Election judges informed voters they should come back at a later time.
  • An elderly Latina voter was told that she was not on the voter registration list and not allowed to vote with a provisional ballot, despite the recently enacted Help America Vote Act (HAVA), which provides for provisional ballots in such situations. She and her family had been voting at the same location for more than 20 years. The election judge refused to unlock a box containing provisional ballots until a MALDEF attorney arrived and negotiated on behalf of the Latina voter.
  • An eligible African-American woman was told by an Anglo election judge to "take that doo-rag off your head" before voting [I think the same as "racial slur directed at a minority voter by an election judge"].
  • Police officers were stationed outside three polling sites in the outskirts of San Antonio's far west side, an overwhelmingly Latino area. This practice is a familiar form of voter intimidation."

  Voting Rights in Texas 1982-2006, 30 (renewthewra.org).

- "The national Election Protection coalition issued a report entitled, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections." The report documents the following additional incidents in Texas:
  • During early voting at the Power Center in Harris County, a voter observed Harris County police officers yelling at the 200 or more voters in line that they must show I.D. and that anyone with a warrant would go to jail. People left the line, including the voter who reported the situation. Proof of identity is not required to vote in Texas.
  • An African-American voter and her mother were subjected to heightened levels of questioning at their local polling place. At the time they arrived, they were the only black voters present. The poll workers first asked all voters for registration or I.D. and then if they had moved. The voter and her mother were subjected to additional questions, as the workers appeared not to believe their responses. The polling agents took the voter's license to check against other records. Reportedly, this did not happen to other voters. She was eventually allowed to vote." *Voting Rights in Texas 1982-2006, 30-31 (renewthewra.org).*

- "Today, Latinos in Texas continue to suffer language-based discrimination and marginalization in the election process, further demonstrating the need for the protections of Section 203. For example, in 2003, the chairman of Texas House Redistricting Committee stated that he did not intend to hold redistricting hearings in the Rio Grande Valley in South Texas, where many U.S. citizens are Latino, because only two members of the Redistricting Committee spoke Spanish. Chairman Crabb stated that the members of the Committee who did not speak Spanish 'would have a very difficult time if we were out in an area other than Austin or other English speaking areas to be able to have committee hearings to be able to converse with the people that did not speak English.' This is a stark example of a situation in which limited LEP status was invoked as a justification for closing off access to critical governmental functions that bear upon the lives of all of Texas's citizens. Only after widespread media coverage of his remarks did the Chairman agree to hold hearings in South Texas." *Voting Rights in Texas 1982-2006, 31-32 (renewthewra.org).*

- "In 2005, MALDEF sent letters to 101 Texas counties covered by Section 203 requesting, under the Texas Open Records Act, copies of translated voting materials and information on language assistance in elections. The letters called for voting related materials or election information relevant to determining whether covered counties in Texas are complying with the language minority provisions. Requested materials included, but were not limited to, voter registration forms, official ballots, polling place notices related to voting locations, days and hours of voting, and the availability of Spanish speaking poll workers.Of the 101 requests for translated voting materials, 67 counties or 66 percent of Texas counties responded to MALDEF's request. Of the 67 counties that responded to the request for records, 47 (70 percent) failed to demonstrate that they provided voter registration forms, a ballot, a provisional ballot and written voting instructions in Spanish. Of the counties that could demonstrate provision of some basic language assistance to voters, only one could show that it complied fully with the requirements of Section 203. In addition, a substantial amount of Spanish language voting materials provided by covered counties to MALDEF were characterized by incomplete and inaccurate translations, including misplaced gender identifiers, and misspellings. For example, one Texas county failed to translate on the ballot the political offices for which the election was being held. In another county, a notice

directing voters to contact the county clerk for additional election information did not translate the term 'county clerk.' " *Voting Rights in Texas 1982-2006, 37 (renewthewra.org).*

- An elderly Latina voter in San Antonio, Texas was told by the election judge at her polling place that she was not on the voter registration list and could not vote with a provisional ballot, despite the recently enacted Help America Vote Act, which provides for provisional ballots in such situations. She and her family had been voting at the same location for over 20 years. The election judge refused to unlock a box containing provisional ballots until a MALDEF attorney arrived and negotiated on behalf of the Latina voter. *Trasvina, John. Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 5.*

- In 2003, the Chairman of Texas House Redistricting Committee stated that he did not intend to hold redistricting hearings in the Rio Grande Valley in South Texas, where many U.S. citizens are limited English proficient Spanish-speakers, because only two members of the Redistricting Committee spoke Spanish "would have a very difficult time if we were out in an area other than Austin or other English speaking areas to be able to have committee hearings to be able to converse with the people that did not speak English." *Trasvina, John. Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 5.*

- "This court recognizes that Plaintiffs have established racially polarized voting and a political, social, and economic legacy of past discrimination." [Session v. Perry, 298 F. Supp.2D 451, 492 (E.D. Tex. 2004), *vacated and remanded on other grounds, Jackson v. Perry*, 125 S. Ct. 351 (2004)] *Trasvina, John. Supplemental Written Testimony. U.S. Senate Judiciary. Hearing on the VRA 6-13-06. Pg 100.*

- Mr. Davidson- [Waller County, Texas] In the run-up to the 2004 elections, a couple of black Prairie View students ran for the county commissioner's court, the Democratic primary nomination. And the white district attorney, a former State district judge, announced that any Prairie View students--that Prairie View students voting who did not have parents living in that county, if they voted in that election they would be prosecuted. *5/9/06 SJC VRA Hearing Transcript, Page 60.*

- [Melody Rames: When accompanying a friend to the polls] a man ran across the room and put his hand on my shoulder and began pushing me, saying "you have to get out of here now" while pushing me out the door [accusing me of loitering]. I told him I was not loitering, that I was accompanying my friend to vote he said I could not come in there. *Appendix to written testimony of Claude Foster (Minority Voter Intimidation Report Forms), House Hearing, March 8, 2006, at 3825.*

- [A couple of Houston voters were] told [that he was] not listed [on voter rolls when he appeared to vote]. *Appendix to written testimony of Claude Foster (Minority Voter Intimidation Report Forms), House Hearing, March 8, 2006, at 3826-27.*

- [A Houston voter, Bernadine Thorn] was told by precinct judge that she couldn't vote [because] she was not in city limits. She voted at that same place for 12 [years]. *Appendix to*

written testimony of Claude Foster (Minority Voter Intimidation Report Forms), House Hearing, March 8, 2006, at 3828.

- [A Houston voter] showed a list of signed names of the only people could vote. White people of same zip code were allowed to vote. *Appendix to written testimony of Claude Foster (Minority Voter Intimidation Report Forms), House Hearing, March 8, 2006, at 3829.*

- [A Houston voter said that people in the polling place] would not let her vote. Did not try to help her find out what precinct to vote in and ultimately was discouraging *Appendix to written testimony of Claude Foster (Minority Voter Intimidation Report Forms), House Hearing, March 8, 2006, at 3830.*

- [A Houston voter] drove 30 miles to vote from original precinct and was again told she couldn't vote. Never allowed to vote .... *Appendix to written testimony of Claude Foster (Minority Voter Intimidation Report Forms), House Hearing, March 8, 2006, at 3831.*

- [A Houston voter was told she was not allowed to vote even without checking her identification]. She tried to submit [the challenge ballot but] they rejected it saying she could not vote .... *Appendix to written testimony of Claude Foster (Minority Voter Intimidation Report Forms), House Hearing, March 8, 2006, at 3832.*

- [A Houston voter was] told she could not vote [because] she wasn't in the county. White people were allowed to vote though. *Appendix to written testimony of Claude Foster (Minority Voter Intimidation Report Forms), House Hearing, March 8, 2006, at 3833.*

- [A Houston voter] saw a list of handwritten names was told that those people's votes wouldn't count. Also her husband was on that list and she was told she was not allowed to vote. *Appendix to written testimony of Claude Foster (Minority Voter Intimidation Report Forms), House Hearing, March 8, 2006, at 3834.*

- [A Houston voter] tried to vote and precinct judge told him he was not on rolls. Told he could not vote in elections. *Appendix to written testimony of Claude Foster (Minority Voter Intimidation Report Forms), House Hearing, March 8, 2006, at 3836.*

- [A Houston voter was told] they could not vote [because] they were not in that county. They claimed they ran out of ballots ....". *Appendix to written testimony of Claude Foster (Minority Voter Intimidation Report Forms), House Hearing, March 8, 2006, at 3840.*

- Mr. Howard Jefferson ... testified that on he Thursday before the Saturday election of November 6, 2000 he was made aware that 100 polling places were changed. On Election Day, there were 171 polling places... changed without notifying the voters. He also said people were put in jail because they were trying to vote. Others had their license and were still not allowed to vote. *Appendix to written testimony of Orville Burton (NAACP Voter Irregularity Hearing), House Hearing, March 8, 2006, at 3060.*

- Ms. Felicia Dykes testified that ... she was 43 years old, and ... had been voting at the same location since the age of 18. During this election she was told that she needed to go to another location to vote. She went to vote ... twice. The first time she was turned away and on the second occasion she was told that her vote wouldn't count after she filled out the necessary paperwork for a challenged affidavit and submitted her ballot. *Appendix to written testimony of Orville Burton (NAACP Voter Irregularity Hearing), House Hearing, March 8, 2006, at 3060.*

- Terrence Scott testified that he was arrested because he insisted that he be able to vote. He went to cast a vote at the local church where his mom votes but he was told that he was registered to vote on another side of town .... The police officer charged him with trespassing. *Appendix to written testimony of Orville Burton (NAACP Voter Irregularity Hearing), House Hearing, March 8, 2006, at 3060.*

- Linda D. Mitchell testified that she was given the runaround as to where she needed to vote. *Appendix to written testimony of Orville Burton (NAACP Voter Irregularity Hearing), House Hearing, March 8, 2006, at 3060.*

- Denise Jordan testified that she voted and called to see if her elderly mother had voted yet. She was made aware that her mother attempted to vote but was told that she needed to go to another location and when she did, she was told that that location was closed .... [There was a picture of a] sign that no one in the 506 precinct could vote in the mayor's election. The sign did not say where those individuals were to go to vote. *Appendix to written testimony of Orville Burton (NAACP Voter Irregularity Hearing), House Hearing, March 8, 2006, at 3060.*

- [An] African-American [ran for election against an Anglo-American]. After counting almost half of the votes, [the African-American] was in the lead by about six boxes. This greatly upset his opponent's wife, and she called the chairman of the county commission .... At that time a recess was called. [The back of the machine was sprayed to make counting easier and the] machine automatically shut down .... [Vote officials] had ensured ... that enough ballots were purchased for the election, but this was not the case [and had to use Xerox ballots] .... Forty-seven ballots in the city of Fouke happened to disappear. *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 3062.*

- We were made aware early on of a number of irregularities, intimidation efforts in Fort Worth through calls to individuals trying to make suggest that they needed to be sure that they were registered to vote, trying to raise issues that would suppress the African-American vote. Texarcana individuals being located within the 100 foot limit of polling places directing African-Americans how to vote. *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 2977.*

- [A] white family that supported [an African-American sheriff candidate] had their home burned down [after receiving threats; a cross might have been burned; the police were nto helpful – the investigator went on vacation; a possible suspect rented property from local

Republicans]. *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 2979, 2999-3020.*

- One of the first irregularities we noted was that there was very little notice given by the County Clerk with regard to the official voting times and location .... What we have noticed is that over the last couple of elections, the times are changed at the last minute, and frequently, the voting locations are changed with no notice – often in the minority community. We received complaints of poll workers requiring two forms of ID .... [and some complaints of people who registered] yet their names were not on the rolls. We also had complaints of people who had voted in the past and their names were wrongfully purged from the rolls .... One individual ... said he hadn't voted in a couple of years, but when he went to vote, he was told that he had requested an absentee ballot and had voted already, when, in fact, the individual had noted voted.... Another person [was] initially turned away but when they found out that that person was knowledgeable about voting procedures, they tried to just shush them up and tell them, okay, well you can go ahead and vote, but hurry up and get out of here .... Last, but not least, we had reports of people who were turned away to vote even though those individuals were in line .... *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 2986-88.*

- [Someone witnessed] a Caucasian [that] went up to the desk and said "Oh, I hear my name is on the ballot twice." [The witness complained and then the poll worker] voided his name [but] I just don't think she probably would have voided it if I hadn't said anything. *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 2995.*

- The ... machine broke down when they were counting votes. They said that the machine was jamming. They said that some of the ballots were wet from humidity .... They said that they sent to Houston for a new machine, but when the machine got there, they continued using the malfunctioning machine .... They sent people elsewhere to vote ... because they [allegedly] weren't on the record. *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 3006.*

- I cannot substantiate this, but we were told that someone overheard some other people ... saying how they had messed up the votes on that side. *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 3020.*

- [When] they split the precincts, they left a lot of voters off the books .... *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 3026.*

- [One precinct judge was telling over 100 minority voters to go to the wrong place even though] there's a short term form that you use on the day of election and those are the guidelines that you follow [and they were not followed.] *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 3027-35.*

- We had a lot of young people [young black males] who I think were turned away simply because of their dress. They were asked, do you have any outstanding traffic tickets, and if they said "yeah" they said "you can't vote. Do you have any outstanding warrants ... You can't vote." . . . . The people were [also] being turned away because they did not have a photo ID *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 3039-41.*

- [There were] a lot of calls about people being sent back for multiple IDs, even if they had the voter registration cards, it didn't matter, you had to have a picture ID. They weren't taking the challenge ballots .... They were not helping anybody who had questions about how to put the ballots in the ballot box .... *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 3044-45.*

- [My sister] was turned back and they wouldn't let her vote ... Some of the numbers were left off the voter's registration cards so they claimed that they didn't know what precinct she could go to vote in. There were a number of people that were voting there that were sent back that had voted there years before, because I see them every time we vote, and some of them did not know to challenge .... A lot were frustrated and they didn't want to go through that procedure as far as challenging votes. *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 3046-47.*

- Lines were extremely long and there were only three computers available with only two of the working. Our compassionate conservative tax assessor collector did not with to provide additional machines once they were notified of the lines wrapping around the building. *Appendix to written testimony of Orville Burton (NAACP Voter Intimidation Hearing), House Hearing, March 8, 2006, at 3049.*

- DOJ, in an August 12, 2002 objection letter to Freeport, TX (Brazoria County), which in 1992 had switched form an at-large voting system to single member districts, stated:

  Under the subsequent single-district method of election, minority voters have demonstrated the ability to elect candidates of choice in at least two districts, wards A and D. The city now proposed to reinstitute the at-large method of election. Our analysis shows that the change will have a retrogressive effect on the ability of minority voters to elect a candidate of their choice.

  Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 18.

- Of the 254 requests – 73.6 percent failed to respond at any level to the inquiry. Only 67 counties responded, and of those, 47 were found to be "fundamentally non-compliant" with Section 203, resulting in their inability to provide Spanish-speaking voters with the fundamental materials required for them to cast their ballots. Only one Texas county was able to provide the vast majority of election materials requested. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 24.*

- [I]n August 2005, DOJ filed a claim against Ector County, Texas on grounds that the county had failed to provide a sufficient number of bilingual poll workers for its Spanish speaking population, and had failed to effectively publicize the availability of bilingual voting materials and services. The county admitted to wrongdoing and agreed to a consent decree and "required the immediate implementation of a Spanish language program for minority constituents, as well as the use of federal observers during election periods to monitor and ensure their compliance." *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 24.*

Texas (Harris County)

- "I would like to take a few minutes and discuss some of the complaints received from actual voters in Harris County.

  Said they – and I'm quoting here, and I'm taking it right off the complaints that were received.

  Said they could not vote because they were not in that county.

  They claim they ran out of ballots.

  Tried to vote and the precinct judge told him he was not on the rolls.

  Told he could not vote in elections.

  Was told by precinct judge that she could not vote because she was not in city limits. She voted at that same place for 12 years.

  Showed a list of signed names of the only people who could vote.

  White people of the same ZIP code were allowed to vote.

  The woman would not let her vote, did not try to help her find out what precinct to vote in, and ultimately was discouraged.

  Drove 30 miles to vote from original precinct and was again told she couldn't vote. Never allowed to vote today.

  They asked her name without asking for ID, and told her she was not eligible to vote. She received a challenge ballot. When she tried to submit the ballot, they rejected it saying she could not vote.

  Told her she could not vote because she wasn't in the county.

  Again, white people were allowed to vote though.

  Saw a list of handwritten names and was told those people's votes wouldn't count. Also her husband was on the list, and she was told she was not allowed to vote.

  The precinct or school called the police. Black people were not being allowed to vote. Mr. Chairman, I also brought with me some additional documents which clearly show the continued disenfranchisement of African-Americans in Texas."

Claude Foster, Testimony at National Commission on the Voting Rights Act Southwestern Reg'l Hearing., House Hearing. 241 (Oct. 18, 2005).

- "This was done in the Houston area in the election in 2001, when over 166 precincts were changed without the African-American community being notified."
- *Claude Foster, Testimony at National Commission on the Voting Rights Act Southwestern Reg'l Hearing., House Hearing. 242 (Oct. 18, 2005).*

- "[I]n Bexar County, Texas, in 2003, county officials sought to undermine Latino voting strength by failing to place polling places near those communities during a special election where a Constitutional amendment was on the ballot. Using the special provisions of the VRA, Latino advocates were able to obtain expedited relief from the local district that prevented the Latino voters from being silenced in the election." *Testimony of Theodore Shaw, Subcommittee on the Constitution, House Judiciary Committee, 11/9/05, pg 19*

- "In Texas and Southern Arizona polling places Hispanic voters were admonished not to use Spanish when talking in the polling places and when giving assistance to voters who need help when voting." *Prepared Statement of Barry Weinberg, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 11/15/05 pg 34 (also in the appendix to his statement, pg 151)*

- "[C]omplaints received from actual voters in Harris County, Texas:
  - 'Said they could not vote because they were not in that county. They claimed they ran out of ballots.'
  - 'Tried to vote and precinct judge told him he was not on rolls. Told he could not vote in elections.'
  - 'Was told by precinct judge that she could not vote because she was not in city limits. She voted at that same place for 12 years.'
  - 'Showed a list of signed names of only people who could vote. White people of same zip code were allowed to vote.'
  - 'The women would not let her vote. Did not try to help her find out what precinct to vote in and ultimately was discouraging.'
  - 'Drove 30 miles to vote from original precinct and was again told she couldn't vote. Never allowed to vote today.'
  - 'they asked her name without asking for ID & told her she was not eligible to vote. She received the challenged ballot and when she tried to submit the ballot, they rejected it saying she could not vote.'
  - 'Told she could not vote because she wasn't in the county. White people were allowed to vote though.'
  - 'Saw a list of handwritten names and was told that those people's votes wouldn't count. Also her husband was on that list and she was told she was not allowed to vote. The precinct or school called the police. Black people were not being allowed to vote.'
  - "Tried to vote and precinct judge told him he was not on rolls. Told him he could not vote in elections.'" *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3195-96*

- "[I]n the Houston mayoral election in 2001 when over 166 precincts were changed without the African American Community being notified. The community was not notified of the changes until the civil rights community challenged election officials under Section 5 of the Voting Rights Act. Or, what about the students at Prairie View A&M University who were denied the right to vote because election officials challenged the students' residency requirements?" *Appendix to Statement of Anita Earls, Subcommittee on the Constitution, House Judiciary Committee, VRA Hearing, 10/25/05, pg 3197*

- On the outside of this polling place which was hidden in a neighborhood, this particular club house was behind homes. You couldn't see it unless you actually—it was like around and hidden and on a dead end street. There was a notice on the window of this place with 506 crossed out with a big X on it. And it said nobody in the 506 precinct could vote in the mayo's election. *Testimony of Denise Jordan at Houston Coalition For Black Civic Participation, NAACP Voter Irregularity Hearing, found in House Hearing 3/08/06, at 3743-44*

- I don't know where this man came from. But like I said, I had seen him before, the white gentlemen sitting at the end of the room. He rushed across the room, okay, assaulted me, pushed me forcibly on my arm, and backed me up to the door. It was so forcefully, I back up three spaces...

  And as I stepped back over the threshold, I asked him, what did I do? What's wrong? He says, no, you can't be in here. He was yelling at me, screaming at me...He ran back to the other side of the room and he brought a paper and he ran back to me, and he showed me something. He read it as he put his finger on it, and it said no loitering within 100 feet of the polling place. I looked at him, I said, sir, I'm not loitering. I brought my friend to vote. What's wrong? He said no, get out, you can't be in here.

  And I was like, okay. I'm in Texas, I know about y'all. I heard about y'all. I read about y'all. I stepped back, I came back, I called my office and asked them what I should do.

  About an hour later, they called me in and a police officer came and took my statement and that's about as much as I know about that.

  Testimony of Melody Rames at Houston Coalition For Black Civic Participation, NAACP Voter Irregularity Hearing, found in House Hearing 3/08/06, at 3748-50

- And upon arriving to the school, which was Howard Middle School, where I was told to vote and where I had been voting for the pats 12 years. I had been at that address for 12 years. When I got there, they had combined both precincts 428 and 488. One lady asked to see my driver's license, and I gave her that. And she gave it to a gentleman that as standing to the side. I later found out that he was on of the Precinct Judges. His name was Larry Binham. He took my driver's license, I looked at the sheet of paper and told me that I could not vote in a mayo's election. *Testimony of Melody Rames at Houston Coalition For Black Civic Participation, NAACP Voter Irregularity Hearing, found in House Hearing 3/08/06, at 3755*

  I have been living at the same address for five years. I went to go vote. First time for the mayor, they told me I wasn't on the list, that I would have to sign an affidavit. But being it was a quarter until 7:00, she didn't have any affidavits, so I wasn't eligible to vote because they didn't have anything. So I went, thank God, to the second one. Got there, I was the first voters, and they told me, you're not registered to vote here, you're over on 59 and Crosatimbere. I haven't lived there in six or seven years. And I got all the way over there, they told me, you're not even a registered voter. You don't exist. They game me numbers

to call. I went back, called Ms. Kaufman's office. They told me I had to call to verify registration. They give me the number. I waited 20 minutes. Her name was Gloria. She said, I'm sorry, I don't know how to transfer the phone. I am a supervisor. I will call you back, and we will get you to vote. I never did vote." *Testimony of Christy Bosados at Houston Coalition For Black Civic Participation, NAACP Voter Irregularity Hearing, found in House Hearing 3/08/06, at 3769*

- So when I went to the polls, which was at Harvest Time Church on Imperial Valley Drive, I went in and before I could even get to the table, to show my driver's license to find out, you know, whether or not my name was on the list, the Election Judge, Sandi Jo Seale-Mason...She was stopping everyone at the door, basically just asking, where do you live? Where do you live? She wouldn't allow them the opportunity to even get to the table and see if their name was on the list. Where do you live? Where do you live? Give me your driver's license.
  ...
  I went outside and while I was on the phone outside, Sandi Jo came outside to smoke a cigarette. But she never lit the cigarette. She just stood there listening to me on the phone. She just kept saying, who are you talking to? Who are you talking to? And I ignored her at first.

  Testimony of Patricia Howard-Crawford at Houston Coalition For Black Civic Participation, NAACP Voter Irregularity Hearing, found in House Hearing 3/08/06, at 3782-85

VIRGINIA

Voting Rights Lawsuits/Enforcement

- ***Moon v. Meadows***, 952 F. Supp. 1141 (E.D. Va. 1997) (three-judge district court) (ACLU Rep., p. 691): In 1995, several voters challenged the Third Congressional District in federal court as an unconstitutional racial gerrymander. The district court invalidated the district in February 1997, finding that race had predominated in drawing the district and that the defendants could not adequately justify their use of race as a districting factor.

- ***Morse v. Oliver North***, 853 F. Supp. 212 (W.D.Va. 1994); Morse v. Republican Party of Virginia, 517 U.S. 186 (1996) (ACLU Rep., p. 697): The Republican Party of Virginia adopted a requirement that delegates to the party's 1994 U.S. Senate nominating convention pay a registration fee of $35 to $45. Three state residents filed suit challenging the requirement on the grounds that it had not been precleared under Section 5, and that the fee was an unlawful poll tax prohibited by the Constitution and the Voting Rights Act.

  The three-judge district court dismissed the Voting Rights Act claims because it held that the registration fee was not subject to Section 5, and only the Attorney General was authorized to enforce Section 10. The Supreme Court reversed, holding that the fee would have to be preclareared. The Republican party decided to drop the fee rather than seek preclearance.

- ***Richmond Crusade for Voters v. Allen***, 3:95CV531 (E.D. Va. 1995) (ACLU Rep., p. 699): In 1995, Governor George Allen vetoed the National Voter Registration Act enabling legislation, he and the Commonwealth filed suit against the United States seeking to have the NVRA permanently enjoined and declared unconstitutional. They argued that, the NVRA exceeds Congress' power. Governor Allen was reported as saying the NVRA was an "unfunded mandate on the states" from the "nannies" in Washington "treating us like puppets and minions." *Id.* at 700.

  On October 18, 1995, the court issued a final written order holding the NVRA constitutional. It also ordered Virginia not to enforce the provision of its constitution in conflict with the NVRA.

- ***Person v. Ligon***, Civ. No. 84-0270-R (E.D. Va. 1984) (ACLU Rep., p. 707): The vote dilution case in Brunswick County was settled on January 12, 1988, by a consent decree that reduced the size of the nine member city council from nine to eight members, and created three single member districts and two multi-member districts. According to the decree, the new method of elections would provide "black voters of the City of Emporia, a greater opportunity than previously existed to elect candidates of their choice." *Id.* at 709.

- ***Taylor v. Forrester***, Civ. No. 89-00777-R (E.D. Va. 1989) (ACLU Rep., p. 712): In December 1989, acting on behalf of black voters, the ACLU challenged the election districts of the all white, three member Lancaster County Board of Supervisors as violating Section 2 and the Constitution.

  In a consent decree, the defendants stipulated that the county's single member districts had "the effect of violating Section 2 of the Voting Rights Act," and agreed to expand the council to five members and appoint two African Americans to the council. *Id.* at 713.

- ***Pegram v. City of Newport News***, 4:94cv79 (E.D.Va. 1994) (ACLU Rep., p. 714): In July 1994, the ACLU filed suit challenging the at-large method of city elections in the City of New Port. On October 26, 1994, a consent decree was entered in which the city admitted that its at-large system violated Section 2 as well as the Fourteenth and Fifteenth Amendments. The consent decree required the city to implement a racially fair election plan.

- ***Neal v. Harris***, No. 85-0738-R (E.D. Va. 1985) (ACLU Rep., p. 714): In September 1985, the ACLU filed suit on behalf of seven African American voters, alleging that the at-large method of electing the seven member town council in Blackstone diluted black voting strength in violation of Section 2 and the Constitution. The town agreed to settle the case.

- On June 4, 1986, the district court adopted a remedial plan under which five members of the town council would be elected from single member wards and two would be elected at-large. African Americans were a majority in three of the five wards, constituting 65.3%, 62%, and 65.9% of the total population, respectively. The court rejected the defendants' preferred plan, which would have contained only two majority black wards, because "race conscious voting that occurred amongst both the black and white electorate in Blackstone"

would likely have resulted in the continued under representation of African Americans on the town council. *Id.* at 716.

Anecdotal Evidence

- Douglas Wilder of Virginia is the only African American to be elected governor in the U.S. *National Commission on the Voting Rights Act* Report, at 37.

- Virginia offers evidence that local circumstances can change in order to allow jurisdictions to "bail out" from under Section 5. *Voting Rights Act: The Continuing Need for Section 5: Hearing Before the Subcomm. on the Constitution of the House Comm. On the Judiciary, 109th Congress. 40 (2005) (prepared statement of Ronald Keith Gaddie, Professor of Political Science, the University of Oklahoma).*

- "I filled out the (voting registration) questionnaire honestly and to the best of my ability. A few days later, I received a letter notifying me that my right to register had been denied. The reason? I lived in a dormitory and the city considered this a temporary address. Though I, like so many other college students, live with my parents for less than six weeks out of the year, I was told I needed to register where my parents lived in Arkansas...My case is no unique. In Virginia and nationally, students are either denied the right to vote because of confusing laws, antistudent administrative practices or statutes or acts of blatant disenfranchisement." *Luther Lowe, National Commission on the VRA, Mid-Atlantic Regional Hearing, 919, October 14, 2005*

- "Fredericksburg, Virginia, the city council was preparing to dismantle its only majority African American district until the city attorney simply "warned" the council that doing so would violate Section 5." *Joe Rogers, Testimony at House Hearing on "Voting Rights Act: Evidence of Continued Need." (March 8, 2006).*

- "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.'" *Voting Rights in Virginia 1982-2006, 17 (renewthewra.org).*

- "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." *Voting Rights in Virginia 1982-2006, 25 (renewthewra.org).*

- "John W. Boyd of Mecklenburg County, Virginia, an African-American, testified that recently he was a candidate for Congress in Virginia's Fifth Congressional District. While campaigning, he attended a political function in the southwest part of the state. He

encountered a white woman at the function who told him '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.' Her polite advice was that he would get more votes if he didn't campaign in person because once people saw that he was black, they would not vote for him." *Written testimony of Anita Earls, Senate Judiciary, 5/16/06*

- In 2004 in Falls Church, Virginia, a poll worker commented to other poll workers, in the presence of a Pakistani American voter, that he knew about Muslims and said, "If you think certain cultures are weird, you should ready about them. They're really weird." *"Asian Americans and the Voting Rights Act: The Case for Rauthorization" Report, at 22, submitted at SJC 6/13/06 hearing*

- [I]in July 1991, DOJ objected to the redistricting plan of the Virginia House of Delegates. They found the proposed configuration minimized black voting strength in Charles City County, James City County, and the Richmond/Henrico County areas. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 18.*

- [I]n October 1999, the Darvills Precinct for Dinwiddie County [Virginia] was forced to move the location of a polling center because the old location had burned down...[A] public hearing was held to find a new, centrally located location. On August 4, 1999, the board approved changing the polling place to the Bott Memorial Presbyterian Church, located on the extreme east end of the precinct. 1999 census data showed that a significant portion of the African-American population lived on the western end of the precinct. *Written Testimony of Wade Henderson before the House Judiciary Committee, March 8, 2006, at 19.*

WASHINGTON

Anecdotal Evidence

- "In 2003, a County Commissioner, with a long and 'distinguished' career fighting Indian tribes was defeated after a coordinated effort that was lead by the Lummi Nation. Then, in 2002, a Native lead statewide independent expenditure campaign was cited as the reason for the defeat of a renowned anti-Indian lawyer in his bid for a seat on the State Supreme Court." *Jacqueline Johnson, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 50 (Nov. 9, 2005) (attachment II to prepared statement, Native Vote 2004: A National Survey and Analysis of Efforts to Increase the Native Vote in 2004 and the Results Achieved)*

- "The Govenor's race was especially interesting in 2004. The Republican former State Senator Dino Rossi was a conservative who happened to be part Tingit (Alaska) and had a 94.4 percent voting record on Native issues . . . ." *Jacqueline Johnson, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 51 (Nov. 9, 2005) (attachment II to prepared statement, Native Vote 2004: A National Survey and Analysis of Efforts to Increase the Native Vote in 2004 and the Results Achieved)*

- "[T]he No on I-892 [an initiative to permit more non-tribal gaming] campaign raised $8.6 million, the vast majority of which came from tribes . . . . [T]he tribes worked to educate their members about the initiative and the importance of voting . . . . It was difficult to travel through Indian Country and not see multiple signs advocating a 'no' vote on I-892." *Jacqueline Johnson, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 51 (Nov. 9, 2005) (attachment II to prepared statement, Native Vote 2004: A National Survey and Analysis of Efforts to Increase the Native Vote in 2004 and the Results Achieved).*

- "[T]he numbers in Washington state show a steady improvement and put Washington Native communities closer to general population participation rates than almost anywhere in the country. At this point, it is clear that Native voters, like all other voters, will be more likely to participate . . . when they feel either threatened directly . . . or possess the opportunity to elect a Native candidate, or non-Native candidate with a strong commitment to issues important to them." *Jacqueline Johnson, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 55 (Nov. 9, 2005) (attachment II to prepared statement, Native Vote 2004: A National Survey and Analysis of Efforts to Increase the Native Vote in 2004 and the Results Achieved)*

- "King County, Washington . . . reported that after printing 3,600 Chinese language ballots only 24 people requested them . . . . " *K.C. McAlpin, Testimony at Section 203-Bilingual Election Requirements (Part II), House Hearing. 71 (Nov. 10, 2005) (prepared statement)*

- Voter Intimidation: .... Female went to go vote and was told by three men that she could not vote there, but instead had to "go vote on the reservation." WA. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4654.*

- Voter Intimidation: .... Two hecklers asked to leave, sitting outside polls making remarks to voters. WA. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4654.*

- Voter Intimidation: .... A poll watcher photographed 4 Native voters at least two of whom cast provisional ballots. Poll watchers also questioned officials on how many provisional ballots had been given out. WA. *Native Vote 2004 Special Report, House Hearing, March 8, 2006, at 4654.*

WISCONSIN

Statistics

- "[W]e had the largest turnout of native Americans in the history of Wisconsin in 2004. We had six out of the tribes had 100 percent voter turnout when, when measured against voting age members that were enrolled in the tribe." *Gwen Carr, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 408 *(July 22, 2005).*

Anecdotal Evidence

- "In the 2004 election with, with George W. Bush, having lost the State of Wisconsin in the year 2000 by a mere 5,000 votes, there were all types of voter suppression fliers, commercials targeted to black voters with misinformation designed to discourage them from voting in Milwaukee, Wisconsin which, of course, comprises most of my congressional district. For example, there was a flier distributed by a fictitious group called the Milwaukee Black Voter League.....this flier told black citizens that they couldn't vote for president if they had already voted in an election in that year. And, of course, there was an overwhelming number of African-Americans who had voted for a black mayoral candidate in April of 2004....That even traffic violations made them ineligible to vote, and that a conviction for anything by anyone in a voter's family made the voter ineligible to vote, and that by violating any of these restrictions, that would result in a prison term and a seizure of their children.....*Mr. Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 384 *(July 22, 2005).*

- Another flier urged black voters to vote by noon with a confusing message, an implication that it was not possible to vote if they didn't vote by noon. *Mr. Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 384 *(July 22, 2005).*

- Hundreds of thousands of dollars were spent on radio messages to inflame African-Americans about Teresa Heinz's claim that she was an African. *Mr. Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 384 *(July 22, 2005).*

- Literally, since the Bush versus Gore election in 2000 when Wisconsin delivered the vote Al Gore by a mere 5,000 votes, there has been an ongoing effort on the part of the state legislature to raise the bar for black voters, you know, by requiring voter IDs; not just any old voter ID but state-issued driver's licenses. And that the—that this really amounts to a poll tax that they have been fervently trying to impose upon the black community.... *Mr. Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 384 *(July 22, 2005).*

- "In Wisconsin we have had numerous bills introduced in the state legislature that have tried to disenfranchise Indians as well as non Indian minority groups by redistricting. Even tho *[sic]* Wisconsin isn't one of the states which is named and required to comply with that Section of the VRA; without it in place on a national level there would be no protection against more of the same kind of legislation." *Gwen Carr, Statement Submitted to National Commission on VRA, House Hearing. 84 (Oct. 18, 2005).*

- "Early and first time voters who reside in Red Spring, which is outside the Menominee reservation and in neighboring Shawano County but is comprised of a significant Indian population, were told they could not vote in Red Spring and had to go to Neopit or Kashena on the reservation." *Gwen Carr, Statement Submitted to National Commission on VRA, House Hearing. 85 (Oct. 18, 2005).*

- "Red Spring town clerk told early voters that they could vote at her house and to meet her at 5PM. 50 Menominee and Stockbridge voters were driven to her house. She never showed up. Finally after waiting 3 hours she arrived home and told them she'd never made that

statement." *Gwen Carr, Statement Submitted to National Commission on VRA, House Hearing. 85-86 (Oct. 18, 2005).*

- "Shawano High school students who were of voting age were told by school officials that Indians cannot vote in Shawano County under any circumstances." *Gwen Carr, Statement Submitted to National Commission on VRA, House Hearing. 85-86 (Oct. 18, 2005).*

- "Menominee tribal members were requested by Red Springs town clerk to identify in writing ALL known Indians who resided in Middle Village which is in Shawano County before they would be allowed to vote." *Gwen Carr, Statement Submitted to National Commission on VRA, House Hearing. 85-86 (Oct. 18, 2005).*

- "Prior to 2000, a Wisconsin state statute enabled election inspectors to challenge electors by asking them questions that had nothing to do with their eligibility to vote. In the 1996 Milwaukee mayoral race, when an African-American county sheriff challenged the white incumbent, the election inspectors, under the mayor's authority, resurrected these archaic statutes to challenge black voters. Inspectors were asking questions like 'Do you plan to file an income tax in this ward?'; 'Are you married?"; or 'Do you live with your parents?'.....Considering Milwaukee's high unemployment among African-Americans, these questions, many of which directly or indirectly related to economic status, were clearly designed to suppress the vote. As people answered 'no' to some of these questions, they were given the false perception that they were not eligible to vote.....Subsequently, as a State Senator, I authored legislation to revise the statute to specifically state what kind of questions could be asked of electors." *Rep. Gwen Moore, Statement Submitted to National Commission on VRA, House Hearing. 125-26 (Oct. 18, 2005).*

- "In the 2004 election, with George Bush having lost the state by 5,000 votes in 2000, there were all types of flyers targeted to black voters with misinformation designed to discourage them from voting in Milwaukee, which comprises most of my congressional district. For example, there was a flyer distributed by a fictitious group called the 'Milwaukee Black Voter League.' As Chairman Julian Bond mentioned in his speech during the NAACP's national convention in Milwaukee in July 2005, this flyer told black citizens they couldn't vote for President if they already voted in an election that year. Of course, there had been a strong outpouring of votes for the mayoral race earlier that year. The flyer also told black citizens that a traffic violation made them ineligible to vote; that conviction for anything by anyone in a voter's family made the voter ineligible, and that violating any of these restrictions would result in a prison terms and the seizure of their children.

  There was also another flyer mailed that included extremely racist remarks towards black supporters of Senator Feingold. As a tasteless tactic of psychological warfare, the pejorative 'N' word chided African American voters for their previous allegiance to the Democratic pol. Yet another flyer urged black voters to vote by noon with the confusing implication that voting was not possible after noon." *Rep. Gwen Moore, Statement Submitted to National Commission on VRA, House Hearing. 126 (Oct. 18, 2005).*

- There was also another flier mailed using the United States mail that included extremely racists remarks toward black supporters of Senator Feingold. The pejorative "N" word, as in psychological warfare, Mr. Chairman, psychological warfare.....Clearly a voter suppression tactic designed to make them feel guilty and ashamed of supporting him. *Mr. Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 384 *(July 22, 2005).*

- "Prior to 2000, the Wisconsin stat statute enabled election inspectors to challenge electors by asking them questions that had nothing to do with their being eligible to vote. Our state statute provided for question to challenge electors. In the 1996 Milwaukee mayoral race, an African-American county sheriff, Sheriff Richard Ardisson, who had been the largest biggest vote-getter countywide, challenged the white incumbent mayor, and the election inspectors, under the mayor's authority, literally resurrected these archaic statutes and challenged black voters with, , with the questions from the statutes. Inspectors were asking questions like, quote, 'Do you plan to file an income tax in this ward,' unquote. 'Are you married or do you live with your parents?' They were using these questions fro the state statute that were clearly , clearly designed to suppress voters." .....And subsequently as a state senator, I authored legislation to repeal and recreate these statute to eliminate these unnecessary questions from being asked at the polls and to have more typical question asked, like are you 18 years of age, are you an American citizen, literally things that were relevant. *Mr. Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 383-84 *(July 22, 2005).*

- "Another flier urged black voters to vote by noon with a confusing message, an implication that it was not possible to vote if they didn't vote by noon." *Rep. Gwen Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 384 *(July 22, 2005).*

- "Hundreds of thousands of dollars were spent on radio messages to inflame African-Americans about Teresa Heinz's claim that she was an African." *Rep. Gwen Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 384 *(July 22, 2005).*

- "Literally, since the Bush versus Gore election in 2000 when Wisconsin delivered the vote Al Gore by a mere 5,000 votes, there has been an ongoing effort on the part of the state legislature to raise the bar for black voters, you know, by requiring voter IDs; not just any old voter ID but state-issued driver's licenses. And that the—that this really amounts to a poll tax that they have been fervently trying to impose upon the black community...." *Rep. Gwen Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 384 *(July 22, 2005).*

- "[T]his may sound a little self-serving because my son, of course, is the defendant in this action. The Republicans sort of flipped the script on us. There was an incident on the morning, on election morning where tires were slashed, where literally the Republicans had rented up all the vans available. ... And on the morning of election day, tires – some of the tires were slashed. And so the immediate outcry was from black Republicans and Republicans saying that Democrats were trying to suppress the vote. And so that was the,

the message. And that is where the law enforcement effort went, towards prosecuting young African-American men who were suspect and indicted fore felonious tire slashing when all of these other tactics had occurred." *Rep. Gwen Moore, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 387 *(July 22, 2005).*

- "I got a lot of phone calls about some of the things that happened in 2004, even given the great turnout we had. And the fact that people overcame these things this time, as opposed to just turn around and go home, says a lot for the determination of the native community in Wisconsin to have their voice heard. We have – and most of these things happened – I'm going to generalize three or four of them. … But most of these were from either early voters or first-time voters. … And, and so – and as other people have testified to, Indian people were told, A, the high school students around the Menominee Reservation, which is an entire county in Wisconsin, they were told that they could not vote under any circumstances. High school students that were voting age were told by school officials that they could not vote, period. And then we had other people – one of the great things, I think one of the greatest successes of our voter turnout program was the fact that we really did go for grassroots people who lived in the community and give them the tools and the ability to do what they do best. So there were a lot of people gathering new voters and taking them for either early voting or on election day. And a lot of the counselors around the Menominee Reservation, the Lac du Flambeau Reservation, Mole Lake Reservation. One county clerk told about 50 people that they could vote at her home, okay? And then – that they should be there at 5:00. So they bused 50 people, 50, 55 people to this county clerk's home 5 p.m. and she never showed up. They waited for three hours. They were not leaving until they saw a person. And finally, you know, she showed up, I think, about 9:00 or so. … And then also that a lot of people who had actually worked on the campaign, the Indian turnout, the Indian vote campaign, they were asked to submit lists of tribal members to county clerks and voting officials, in addition to identifying them verbally. And so – they wanted to know who the Indians were." *Gwen Carr, Testimony submitted to National Commission on VRA Midwest Regional Hearing* 408-409 *(July 22, 2005).*

WYOMING

- "[The Fremont County election clerk] basically followed the element of the Voting Rights Act which allowed tribal members to register at the polls on election day. As a matter of fact, we had one precinct where people voted until 9:00 that night. They had to close the doors at 7, but we had people inside the building and they were allowed to vote until 9:00.

  The Fremont County clerk allowed that allowed—they set up a registration date on our reservation and at our tribal facilities for tribal members to register. But that is not to say that this is a very rosy picture, because it's been a long struggle to get to this point. And I would like to echo the sentiments expressed by Ms. Juneau and Ms. Robideau and the struggles they continue to have in Montana. There area barriers and there are dilution of Native American voters.

  One of the barriers is my locality is the Fremont County Commission. All the people are at large and it's virtually impossible for Native Americans to elect a commissioner…I believe

the Voting Rights Act has been implemented well in Fremont County and has allowed tribal members to participate in voting. However, it's really incumbent upon the tribal members and leadership to get those voters out to vote and get them to understand what the franchise means to them." – *W. Patrick Goggles, Testimony submitted to the National Commission on the VRA Midwest Regional Hearing 448 (July 22, 2005).*

Several reports by third-party groups are cited in this document. These reports were made a part of the record in the House and Senate, and may be located as follows:

- The report of the National Commission on the Voting Rights Act, "Protecting Minority Voters: The Voting Rights Act at Work 1982-2005," was submitted to the House Judiciary Committee on March 8, 2006, and may be found in the hearing record.
- The report of the American Civil Liberties Union, "VOTE: The Case for Extending and Amending the Voting Rights Act," was submitted to the House Judiciary Committee on March 8, 2006, and may be found in the hearing record.
- The report of the Asian American Legal Defense and Education Fund, "Asian Americans and the Voting Rights Act: The Case for Reauthorization," was submitted to the Senate Judiciary Committee on June 13, 2006, and may be found in the hearing record.
- The report of the U.S. Commission on Civil Rights, "Voting Rights Enforcement and Reauthorization: The Department of Justice's Record of Enforcing the Temporary Voting Rights Act Provisions," was submitted to the Senate Judiciary Committee on May 16, 2006, and may be found in the hearing record.
- The state reports of RenewTheVRA.org were submitted to the House Judiciary Committee on March 8, 2006, and may be found in the hearing record.